



EB-2013-0061

IN THE MATTER OF the *Ontario Energy Board Act*
1998, S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an Application by Ontario
Power Generation Inc. for approval, pursuant to Part 1,
Paragraph 5.2 of Ontario Power Generation Inc.'s
Generation Licence EG-2003-0104, of a Reliability Must-
Run Agreement for the Thunder Bay Generating Station
between Ontario Power Generation Inc. and the
Independent Electricity System Operator.

BEFORE: Paula Conboy
Presiding Member

Peter Noonan
Member

**DECISION ON ISSUES LIST
AND
PROCEDURAL ORDER NO. 2**

May 21, 2013

Ontario Power Generation Inc. ("OPG") filed an application on March 1, 2013 with the Ontario Energy Board (the "Board") seeking approval of a reliability must-run ("RMR") agreement entered into with the Independent Electricity System Operator (the "IESO") in relation to one of the two 153 MW coal-fired units at OPG's Thunder Bay Generating Station (the "Thunder Bay GS Unit"). The application was made under section 5 of OPG's generation licence, which requires that any RMR agreement be approved by the Board prior to its implementation. The Board has assigned file number EB-2013-0061 to OPG's application.

On April 3, 2013, the Board issued its Notice of Application and Procedural Order No. 1. Among other things, in Procedural Order No. 1 the Board confirmed the following as the three key issues in this proceeding:

- 1. Does the reliability must-run agreement comply with OPG's licence?*
- 2. Are the financial provisions of the reliability must-run agreement reasonable?*
- 3. What are the incentive effects, if any, of the reliability must-run agreement?*

However, the Board also made provision for the filing of submissions on whether any further issue(s) should be added to the issues list for this proceeding, and for the filing of responding submissions.

Initial Submissions

Further to Procedural Order No. 1, the Board received submissions from the following parties: (i) Canadian Manufacturers & Exporters ("CME"); (ii) a coalition comprised of the City of Thunder Bay, Common Voice Northwest, the Northwestern Ontario Municipal Association and the Northwestern Ontario Associated Chambers of Commerce (the "NOACC Coalition"); and (iii) the Power Workers' Union ("PWU").

CME submitted that no additional issues need to be added to the three identified in Procedural Order No. 1.

In its submission, PWU noted that in the first proceeding to approve an RMR agreement for the Lennox generation station (EB-2005-0490), the Board's issues list included the same issues as issues 1 and 3 in this proceeding, but also referred specifically to the following:

- i. with respect to issue 1, the Board's issues list in the Lennox proceeding referred specifically to compliance with four sections of the Market Rules; namely, section 4.8 of Chapter 5 and sections 2.4, 9.6 and 9.7 of Chapter 7; and
- ii. with respect to issue 3, the Board's issues list in the Lennox proceeding referred specifically to any incentives arising from the RMR agreement that

may cause OPG to change its offer behaviour, and the potential impact of such change (if any) on wholesale electricity prices and other market participants.

PWU proposed that the same details be added in respect of issues 1 and 3 in this proceeding, to provide greater clarity regarding their scope. The NOACC Coalition's submission expressed support for PWU's proposed clarifications.

In addition, PWU proposed the addition of the following issue:

Should the Board develop an expedited process to deal with an extension of the term of the RMR agreement for Thunder Bay GS beyond December 31, 2013?

In proposing this issue, PWU stated that an expedited process would: ensure that appropriate and timely notice is provided to market participants of the potential impact of the RMR agreements and future contract expiry; provide sufficient time for market response to the RMR agreement and contract expiry driven needs; allow for the timely evaluation of generator licence expiry options; avoid unnecessary regulatory delays; and assist with regulatory approval streamlining.

Responding Submissions

Responding submissions in relation to the issues list for this proceeding were received from OPG, Energy Probe and Board staff.

OPG did not support PWU's proposal to add further details to issues 1 and 3. In OPG's view, the additional detail is not necessary and should not be preferred over the more general language used by the Board in Procedural Order No. 1. OPG submitted that the issues list proposed in that Procedural Order represents the "state of the art" for applications of this nature, and should not be replaced with wording from a much earlier application to approve an RMR agreement.

OPG also did not support the addition of the new issue proposed by PWU. According to OPG, the addition of this issue has the potential to delay this proceeding without a clear benefit to the parties to the RMR agreement for the Thunder Bay GS Unit, the Board or intervenors given that it is unclear whether another RMR agreement will be required for

the Thunder Bay GS Unit. OPG submitted that, if the Board believes that an expedited process is necessary in the event that a second RMR agreement is required for the Thunder Bay GS Unit, a better approach would be for the Board to direct OPG and the IESO to consider and propose an expedited process when OPG files its application for approval of the RMR agreement.

In its submission, Energy Probe stated that no additional issues need to be added to those framed by the Board and set out in Procedural Order No. 1.

With respect to the additional details proposed by PWU for issue 1, Board staff noted that it was not aware of any other provisions of the Market Rules beyond those cited by PWU that govern the process or terms and conditions applicable to RMR agreements. Board staff similarly noted that it was not aware of other incentive effects beyond those cited by PWU that would require consideration in the context of this proceeding under issue 3.

With respect to the additional issue proposed by PWU, Board staff noted that the RMR agreement for the Thunder Bay GS Unit by its terms does not contemplate any extension to its one-year term. Board staff also noted that neither the need for, nor the terms and conditions of, any new RMR agreement for the Thunder Bay GS Unit is known at this time. Board staff therefore submitted that the development of a process for the review of any future RMR agreement for the Thunder Bay GS Unit may be premature at this time. In Board staff's view, the Board will be better positioned to develop an appropriate review process as and when an application for approval of such an agreement is filed.

Board Findings

The Board does not believe that it is necessary or desirable at this time to qualify the issues list for this proceeding in the manner proposed by PWU. As noted by OPG, the first Lennox proceeding took place a number of years ago. In addition, the RMR agreement for the Thunder Bay GS Unit differs in certain respects from the RMR agreement for the Lennox generation station. The Board therefore considers it appropriate to retain the more general framing of the three issues as set out in that Procedural Order. That framing encompasses the more specific elements noted by PWU in its submission.

The Board also concludes that the development of an expedited process for any subsequent RMR agreement for the Thunder Bay GS Unit is premature at this time, and runs the risk of unnecessarily protracting this proceeding. The Board will therefore not add PWU's proposed issue to the issues list.

In Procedural Order No. 1, the Board made provision for the filing of interrogatories to OPG or the IESO in relation to the three issues as identified in that Procedural Order and now confirmed in this Procedural Order. Given the Board's findings above, it is not necessary for the Board to make provision for the filing of supplementary interrogatories in relation to any new issues. The Board will, however, establish timelines for the next steps in this proceeding.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. Any intervenors and Board staff that wish to file written submissions in respect of the issues in this proceeding shall file those submissions with the Board and serve them on all other parties on or before **June 7, 2013**.
2. OPG shall file with the Board any written submissions in response to those filed under paragraph 1 and serve them on all other parties on or before **June 25, 2013**.

All filings to the Board must quote file number EB-2013-0061, be made through the Board's web portal at www.pes.ontarioenergyboard.ca/eservice/, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to the Board at BoardSec@ontarioenergyboard.ca. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper copies. If you have submitted through the Board's web portal an e-mail is not required.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than **4:45 p.m.** on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Michael Bell at Michael.Bell@ontarioenergyboard.ca and the Board's Associate General Counsel, Martine Band at Martine.Band@ontarioenergyboard.ca.

DATED at Toronto, **May 21, 2013**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary