PALIARE
ROLAND
BARRISTERS

Richard P. Stephenson
T 416.646.4325 Asst 416.646.7417
F 416.646.4301
E richard.stephenson@paliareroland.com
www.paliareroland.com

File 21755

June 7, 2013

VIA *RESS* FILING AND COURIER

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: Ontario Power Generation Inc.'s Application for a Reliability Must-Run Agreement for the Thunder Bay Generating Station
Board File No. EB-2013-0061

Attached please find the Power Workers' Union's Submissions in connection with the above-noted proceedings. An electronic copy has been filed through the Board's RESS filing system, and two paper copies will follow by courier delivery.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Richard P. Stephenson

RPS:jr

encl.
cc: All Participants
J. Kwik
J. Sprackett

Doc 893436v1

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.

Submission of the Power Workers' Union

A. INTRODUCTION

1. On November 15, 2012, Ontario Power Generation Inc. ("OPG") gave the Independent Electricity System Operator ("IESO") notice of its intent to deregister all generation facilities at the Thunder Bay Generation Station ("Thunder Bay GS"). OPG sought deregistration of the facilities under the IESO's Market Rules, or in the event that the IESO determined that these facilities were required for local reliability reasons, to enter into a Reliability Must Run ("RMR") contract with the IESO. Thunder Bay GS is comprised of two units representing a total of 306 MW net installed capacity. OPG advised that the revenue earned by these facilities from the wholesale electricity market had not been sufficient to cover Thunder Bay's facilities costs.

2. By letter issued on January 7, 2013, the IESO advised that the technical assessment of the deregistration request for Thunder Bay GS concluded that the removal from service of the two units over 2013, when Atikokan GS is out of service for conversion to biomass, would likely have an unacceptable impact on the reliability of the IESO-controlled grid. The IESO indicated that it was prepared to enter into discussions with a view to entering an RMR contract with OPG for Thunder Bay GS.

3. In February 2013 OPG and the IESO entered into an RMR Agreement for the procurement of physical services from Thunder Bay GS (“the RMR Agreement”). The RMR Agreement was executed by OPG on February 6, 2013 and by the IESO on February 15, 2013. The RMR Agreement runs from January 1, 2013 to December 31, 2013.

4. OPG submitted that as a result of the IESO’s decision to include only one Thunder Bay GS unit (i.e. unit G3) in the RMR agreement, OPG had taken the necessary steps to remove from service the remaining Thunder Bay GS unit. The RMR Agreement refers to Thunder Bay GS Unit G3 as the RMR facility.

5. By letter issued on February 27, 2013 OPG filed with the Ontario Energy Board (“OEB”) a request for approval of the RMR Agreement, pursuant to Part 1, Paragraph 5.2 of OPG’s Generation Licence EG-2003-0104.

6. In the Decision on the Issues List[1] the Board confirmed the following issues in relation to the RMR application:

> ***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?***

B. POWER WORKERS’ UNION’S SUBMISSION

7. In this section the PWU provides comments with respect to the three issues for consideration by the Board.

ISSUE 1: DOES THE RELIABILITY MUST-RUN AGREEMENT COMPLY WITH OPG’S LICENCE?

8. Section 5 of OPG’s licence sets out that a RMR contract must comply with the applicable provisions of the IESO Market Rules.

9. The PWU submits that OPG’s RMR Agreement complies with the applicable provisions of the IESO Market Rules.

[1] Ontario Energy Board. Decision on Issues List and Procedural Order No. 2, May 21, 2013.

10. OPG and the IESO complied with Chapter 7 of the Market Rules with respect of the process to be followed to conclude a RMR contract. Section 2.4.5 of Chapter 7 sets out that if a market participant requests to deregister a registered facility and the IESO, having conducted a technical assessment concludes that the removal from service of the facility will or is likely to have an unacceptable impact on the reliability of the IESO-controlled grid, the IESO and the market participant will commence a process with a view to concluding a RMR contract for that facility.

11. As indicated above, on November 15, 2012 OPG gave the IESO notice of its intent to deregister all generation facilities at the Thunder Bay GS. By letter issued on January 7, 2013, the IESO notified that the technical assessment of the request by OPG concluded that the removal from services of the two units over 2013, when Atikokan GS is out of service for conversion to biomass, would likely have an unacceptable impact on the reliability of the IESO-controlled grid. In its January 7, 2013 letter the IESO advised OPG that it was prepared to enter into discussions with a view to concluding the RMR contract for Thunder Bay GS. In February 2013 OPG and the IESO concluded the RMR contract for the Thunder Bay GS. The RMR Agreement was executed by OPG on February 6, 2013, and by the IESO on February 15, 2013.

12. The PWU submits that the RMR Agreement also complies with the process that the IESO is required to use to conclude RMR contracts. Chapter 7, Section 9.6.7.2 of the Market Rules authorizes the IESO to negotiate with OPG as the single potential supplier for the RMR contract.

13. The PWU submits that compensation provisions of the RMR Agreement comply with Chapter 7, Section 9.6.9 of the Market Rules which authorizes the IESO to include in any RMR contract other than a standard form reliability RMR contract such compensation provisions as the IESO determines is appropriate. The IESO has included compensation provisions that it has determined as appropriate.

14. The PWU submits that the RMR Agreement complies with term and conditions of RMR contracts as stipulated in Chapter 7, Section 9.7 of the Market Rules. In this regard, the PWU notes that:

- The duration of the RMR Agreement does not exceed one year (Article 7 of the RMR Agreement);
- The RMR Agreement addresses the situations under which the Thunder Bay GS Unit G3 may be called (Article 3.1);
- The RMR Agreement sets out the situations under which the terms of the agreement may be terminated (Articles 7.3 and 7.4);
- The RMR Agreement addresses the nature and timing of any advance notice required for the IESO to call upon Thunder Bay GS Unit G3 (Schedule A - Settlement & Payments - 1. Additional Market Participation Provisions);
- The payment terms, including the amount of timing of any availability payment, are addressed in the RMR Agreement (Article 8 and Schedule A – Settlement & Payments);
- The provisions pertaining to agreed dispatch data that the IESO will use to dispatch the Thunder Bay GS Unit G3 are referenced in Article 3.3 and Schedule A – Settlement & Payments. Article 3.3 sets out that OPG is required to participate in the IESO-administered markets and in other electricity markets with respect to its RMR facility, including making day-ahead offers in the energy market and the operating reserve market and participating in any IESO-administered market or any other market that develops in future facility-related product in a commercially reasonable manner. Schedule A – Settlement & Payment of the RMR Agreement provides that OPG must offer the RMR facility in real time and day-ahead as required by the Market Rules the maximum available amount of each category of energy, operating reserve and, as applicable, any future facility-related products in the IESO-administered markets, consistent with good utility practices. According to Article 3.3, by acting in a commercially reasonable manner, OPG is required to offer a unit economically over a sustained period of time based on its costs and in a manner consistent with

how its coal generation is being offered in accordance with its CO_2 Implementation Strategy, as amended from time to time.

- The RMR Agreement provides for the process for amending the terms of the RMR contract (Article 9.3); and
- The RMR Agreement sets out penalties for failure by OPG in fulfilling the obligations under the RMR contract (Article 3.9 and Schedule B – Performance and Standards).

15. The PWU also notes that the compliance of the RMR Agreement with the Market Rules is reinforced by the fact the RMR Agreement explicitly sets out that both OPG and the IESO are bound by and must comply with all the provisions of the Market Rules, so far as they are applicable to either OPG or the IESO, in the same manner as if such provisions formed part of the RMR Agreement (Article 3.1 and Article 4.1).

ISSUE 2: ARE THE FINANCIAL PROVISIONS OF THE RELIABILITY MUST-RUN AGREEMENT REASONABLE?

I. FINANCIAL PROVISIONS

16. The PWU submits that the financial provisions of the RMR Agreement are reasonable.

17. The payment terms of the RMR Agreement compensates OPG for the following amounts:[2]

a. A monthly fixed payment based on a forecast of predetermined costs;

b. Market costs, covering IESO charges related to the energy withdrawn from the IESO-controlled grid to maintain station operations;

c. Auxiliary boiler fuel costs and, in certain situations, costs incurred for regulatory testing; and,

[2] OPG Letter Requesting for Approval of a RMR Agreement for Thunder Bay GS. February 27, 2013, s.4 (b).

d. A Net Revenue Sharing Adjustment ("NRSA"), which allows OPG to retain 5 per cent of the operating profit when the RMR facility is dispatched to run.

18. Variable costs are compensated through revenues earned in the IESO markets and not via the RMR Agreement.

19. The PWU notes that OPG's costs to be recovered through the RMR agreement have been circumscribed to the costs that OPG would avoid if the facility was deregistered. In this respect, the IESO submitted that in reviewing the reasonableness of OPG's cost estimates of the RMR contract, it had as an objective, among others, to gain reasonable assurance that the contract only included costs that could be avoided within a reasonable timeframe, if the plant were to be deregistered.[3]

20. The RMR Agreement provides for a fixed monthly payment that was reviewed and agreed upon by the IESO over the negotiation of the RMR Agreement. The fixed monthly payment was based on a forecast of RMR costs as specified in Schedule D of the RMR Agreement. The RMR Agreement also allows OPG to recover the variable costs through the IESO energy market revenues. In previous RMR contracts OPG was allowed to recover fixed and variable costs after-the fact as determined and invoiced by the IESO. The PWU agrees with OPG that the fixed monthly payment is an improvement of the RMR Agreement compared to previous RMR contracts given that the fixed payment provides an increased incentive for OPG to manage its costs within the agreed levels[4] while capping the risk to ratepayers.[5]

21. The NRSA mechanism as specified in the RMR Agreement is an asymmetric sharing mechanism which allows OPG to retain 5 per cent of the operating profit when the RMR facility is dispatched to run and offers no compensation when fuel costs exceed market revenues. The PWU submits that the asymmetric component of the NRSA mechanism is appropriate. The RMR Agreement ensures that OPG is not penalized when OPG is no longer able to receive operating profits; i.e. when the IESO

[3] IESO's Response to VECC Interrogatory 2-VECC-2.
[4] OPG Letter Requesting for Approval of a RMR Agreement for Thunder Bay GS. February 27, 2013, s.4 (d).
[5] OPG's Response to PWU Interrogatory 2-PWU-1 (b).

declares that the RMR facility is energy limited and directs OPG to curtail the use of coal and/or purchase additional coal. The PWU agrees with OPG that the NRSA under the RMR Agreement is an improvement compared to previous RMR contracts which provided for a revenue sharing mechanism allowing OPG to receive 5 per cent of gross revenue. The RMR Agreement results in increased efficiency of the sharing mechanism as it provides an incentive for OPG to offer the RMR unit based on its costs.

22. Schedule E of the RMR Agreement sets out the methodology for OPG to manage its limited fuel supplies. In the PWU's view the fact that the IESO is in a better position to manage the risk of fuel inventory levels by transferring the majority of the risk of fuel levels to the IESO does not only reduce the cost of the agreement, as submitted by OPG in an interrogatory response,[6] but also reduces the cost of the wholesale electricity system in its entirety.

23. With regard to performance provisions the PWU is of the view that the Equivalent Forced Outage Rate – Operations (EFOR-OP) target of 8 per cent as per OPG's business plan for Thunder Bay GS Unit G3 is a reasonable and realistic target based on the asset condition of the unit and the funding for an OM&A project in 2013. The PWU submits that a more aggressive performance target could only be considered in the context of a longer term strategy aiming at enhancing the asset condition of the facility. However, such a strategy apparently would not be feasible given the uncertainty as to whether this facility will be required beyond December 31, 2013.

24. For these reasons the PWU concludes that the financial provisions of the RMR Agreement are reasonable.

II. RMR COSTS

25. The PWU submits that the RMR Agreement's costs are reasonable.

26. Schedule D, Table 1 of the RMR Agreement provides for a monthly fixed payment of $3.164M. The monthly fixed payment is based on the forecast of 2013 fixed costs. In the PWU's view, in assessing the reasonableness of the cost estimates underlying the annualized and monthly fixed payment amounts, the Board can take

[6] Ibid.

comfort and should rely on the IESO's review of the cost estimates provided by OPG and the amount to be paid to OPG under the RMR Agreement. The PWU notes that in previous RMR applications, when assessing the reasonableness of financial provisions the Board relied on the IESO's review of contract costs. For example, in its decision on one of the Lennox RMR Agreements (EB-2008-0298), the Board stated:

> **The Board accepts that the financial provisions of the RMR agreement are structurally the same as those in RMR agreements that have previously been approved by the Board. In addition, the Board recognizes that the IESO audit reports have also determined that the contract costs are reasonable.[7]**

27. The IESO submitted that based on the meetings with OPG the IESO gained assurance that the costs were reasonable and properly allocated to the RMR Agreement.[8] As indicated by the IESO, when reviewing the 2013 forecast costs the IESO had the following objectives:

- **Gain reasonable assurance that the contract only included costs that could be avoided with a reasonable timeframe, if the plant were to be deregistered;**
- **Ensure that the costs did not include those costs related to Thunder Bay Unit 2;**
- **Understand the OEB approved Centralized Support and Administrative Cost Allocation Methodology used for the allocation of direct and indirect costs to the RMR contract;**
- **Gain a better understanding of the year-to-year changes by cost category.[9]**

III. LABOUR COSTS

28. The PWU submits that the RMR Agreement's labour costs are reasonable.

29. The PWU observes that labour cost of $17.311M is a major cost underlying the monthly fixed payment specified in the RMR Agreement; i.e. labour cost represents 46 per cent of the Monthly Fixed Payment.

30. Labour cost breakdown data shows that 2013 proposed collective agreement-driven pay rates and payroll burden, which are included in the Standard Labour Rates

[7] Ontario Energy Board. EB-2008-0298 Decision, December 15, 2008. Transcripts, Volume 1, pages 99-100.
[8] IESO's Response to VECC Interrogatory 2-VECC-2.
[9] Ibid.

("SRL") for Thunder Bay GS, increased by 2.30 per cent and 5.30 per cent, respectively, compared to 2012 actuals.[10] Based on the historic backup information and analysis relied upon by OPG in the course of the negotiation to derive and validate the annualized and monthly fixed payment amounts[11] the collective agreement-driven pay rates and payroll burden amount for Thunder Bay GS Unit G3 are as follows:

Table 1

Thunder Bay GS Unit G3 ($ Thousands)		
2012 Total Labour	**Temporary Regular Labour**	**2012 Total Labour (excl. Temporary Regular Labour)**
16,458	511	15,947

Table 2

Change in Standard Labour Rate (SLR) - Thunder Bay GS Unit G3	$ Thousands	Percentage Relative to 2012 Total Labour
2012 - 2013 Collective Agreement-driven pay rate increases	221	1.4%
Discount Rate-driven (pension/OPEB included in SLR)	510	3.2%
Personal Time Off, Maternity Leave	121	0.8%
Total Change in SLR	852	5.3%
2012 Total Labour (excl. temp)	15,947	

31. Table 2 indicates that 2013 proposed collective agreement-driven pay rates and payroll burden amount, which are included in the SRL for Thunder Bay GS Unit G3, increased by 1.4 per cent and 3.2 per cent, respectively, compared to 2012 actuals.

32. The PWU assumes that OPG has allocated pension and other post-employment benefits ("OPEB") costs to Thunder Bay GS using the same cost allocation methodology as it used for its regulated assets. On that basis, the PWU understands that the portion of the pension and OPEB included in the standard labour rate is based on the budgeted current service cost, while the remainder of pension and OPEB costs,

[10] OPG's Response to CME Interrogatory#2, Attachment1, Table 4.
[11] Ibid.

which includes interest costs on the obligations, the expected return on pension plan assets, amortization of applicable past service costs, amortization of actuarial gains and losses, and any current service cost variance from budget, is recorded as a centrally-held cost. The PWU understands that the payroll burden for Thunder Bay GS is part of the labour cost category as presented in the tables provided in the response to CME interrogatory #2, Attachment 1. The centrally-held costs for pension and OPEB are directly assigned and allocated to the Total Thunder Bay GS in proportion to the pension and OPEB costs that are charged to Thunder Bay GS units based on direct charges via payroll burden plus the costs assigned and allocated from the corporate support groups. The PWU understands that the centrally-held costs for pension and OPEB that are directly assigned and allocated to the Total Thunder Bay GS are reflected in the Direct Assigned cost category as reported in the tables provided in the response to CME interrogatory #2, Attachment 1.

33. Discount rates are major factors underlying pension and OPEB costs. The evidence in this proceeding shows that discount rate changes are major factors influencing the increase of proposed burden in 2013 compared to 2012 actuals. Discount rate changes are also factors underlying the increase of Direct Assigned costs in 2013 relative to 2012 actuals and budget costs. The PWU submits that the Board should be mindful that year over year changes in Burden Payroll and Direct Designed costs are highly influenced by discount rate changes which are beyond OPG's control. Given that Burden Payroll and the Direct Designed costs are mostly driven by factors that are outside of the control of OPG, the PWU recommends that the Board give little weight to year over year changes in Burden Payroll and the Direct Designed costs when assessing the reasonableness of RMR costs.

34. The PWU submits that analysis of the historic backup information provided by OPG in an interrogatory response[12] shows that the labour costs underlying the annualized and monthly fixed payment amounts under the RMR Agreement are reasonable.

[12] OPG's Response to CME Interrogatory#2, Attachment1

IV. CENTRALIZED SUPPORT AND CORPORATE COSTS

35. The PWU submits that the Centralized Support and Corporate Costs have been properly allocated.

36. With regard to Central Support - BU Allocated costs provided in Schedule D, Table 1, OPG submitted that it had allocated these costs to the Thunder Bay GS' RMR resource using the same cost allocation methodology approved by the OEB for its regulated facilities; i.e. primarily based on the amount of work effort the respective corporate group devotes to a particular plant. The PWU submits that by using this methodology OPG ensures that the costs for the corporate functions assigned to the Thunder Bay RMR resource do not include costs related to Thunder Bay Unit G2 or other generation facilities. The PWU notes that the IESO's objectives when reviewing OPG's costs underlying the RMR contract included the understanding that the OEB approved Centralized Support and Administrative Cost Allocation methodology employed for OPG's regulated assets was used to properly allocate corporate support costs to the RMR contract as well as to ensure that the costs assigned to the RMR contract did not include costs related to Thunder Bay GS Unit G2.

37. In the PWU's view OPG properly provided evidence tracking corporate support costs and their corresponding allocations to the RMR contract as well as identifying key factors explaining changes in 2013 planned costs compared to 2012 actual and planned amounts:

- A large business transformation related to the transfer of Supply Chain and Training from Thermal to Central Support – BU Allocated;
- Business transformation reductions from measures such as amalgamation of Thermal and Hydro; and
- The rolling of corporate function costs into Central Support – BU Allocated due to cost centre reduction efficiency measure.

V. CONCLUSION

38. For the above reasons the PWU concludes that the financial provisions of the RMR Agreement are reasonable.

ISSUE 3: WHAT ARE THE INCENTIVE EFFECTS, IF ANY, OF THE RMR CONTRACT?

39. In previous RMR contract proceedings for Lennox GS the Board provided the following clarification with respect to this issue:

> **Specifically, does the RMR Contract provide incentives that may cause OPG to alter its offering behaviour? If OPG's offering behaviour is altered, what is the potential impact on wholesale electricity prices and other market participants?**[13]

40. In previous RMR proceedings the Board found that the RMR did not provide incentives for OPG to alter its offer behaviour. In the PWU's view the RMR Agreement is an improvement relative to previous RMR contracts as it introduces the proper economical signal preventing OPG to alter its offer behavior and ensures that OPG is not encouraged through a perverse incentive to engage undesirable behavior.

41. As noted earlier, the RMR Agreement provides for a fixed monthly payment which is based on a forecast of costs and the recovery of variable costs through IESO energy market revenues; i.e. as opposed to actual or fixed and variable costs determined after the fact as provided for in previous RMR contracts. Previous contracts provided for a revenue sharing mechanism that allowed OPG to receive 5 per cent of gross revenue, while the RMR Agreement allows OPG to receive 5 per cent of net revenues after deducting the actual costs of fuel used when dispatched.

42. The RMR Agreement and previous RMR agreements approved by the Board include similar provisions that require OPG to participate in the IESO-administered markets and in other electricity markets in a commercially reasonable manner. Section 3.3 of the RMR Agreement and previous RMR contract clarify that acting in a commercially reasonable manner with respect to any given activity includes, other than in exceptional circumstances, that OPG will offer a unit economically over a sustained period of time based on its costs.

[13] Ontario Energy Board. EB-2005-0490. March 13, 2006. Page 4.

43. In previous RMR proceedings the Board clarified that the phrase "based on its costs" referred to OPG's variable costs prior the reimbursement of any such costs by the IESO.[14] In this application, OPG submitted that the RMR Agreement complied with the requirement to act in a commercially reasonable manner based on its costs and that the RMR resource would be offered into the IESO-administered market using variable costs which include fuel and variable maintenance costs. OPG further clarified that "based on its costs" meant that these costs are prior to the receipt of any reimbursement of such costs by the IESO.[15]

44. The PWU notes that previous contracts contained other terms and conditions such as ongoing true-ups against actual approved costs, notification of significant events such as new projects or significant increases in costs of projects and audit provisions all of which act as safeguards against any potential for OPG to alter its offer behavior[16] and not acting in a commercially reasonable manner based on its costs. It is also important to note that previous RMR contracts required such safeguards given that the recovery of fixed and variable costs by OPG were after-the-fact as determined and invoiced by the IESO.

45. In the PWU's view the use of a monthly fixed payment provides an incentive for OPG to manage its costs within the agreed predetermined levels as well as offer the RMR unit into the IESO-administered markets based on its costs which include fuel and variable maintenance costs. The PWU is of the view that this incentive acts as a direct safeguard against any potential for OPG to alter its offer behavior. The PWU also sees that the sharing mechanism that allows OPG to receive 5 per cent of net revenues after deducting the actual costs of fuel when dispatched is an explicit economic incentive for OPG to act in a commercially reasonable manner based on its costs.

46. Given that OPG has anticipated $CO_{2,}$ emissions well below the CO_2 target, the PWU submits that OPG's expectation that the CO_2 Emission Target Strategy will not have an impact on OPG's offer strategy is reasonable.

[14] Ontario Energy Board, EB-2005-0490 Decision. March 13, 2006. Page 11.
[15] OPG's Response to Board Staff Interrogatory #8 (a).
[16] Ontario Energy Board, EB-2005-0490 Decision. March 13, 2006., page 11.

47. The PWU sees that the RMR Agreement's provisions requiring OPG to offer the facility in such a way as to manage its limited fuel supplies in order to meet the IESO's reliability needs while minimizing stranded fuel costs will not have an impact on OPG's offer strategy, i.e. in fulfilling its requirement to act in a commercially reasonable manner based on its costs.

48. The PWU concludes that the RMR Agreement does not provide inappropriate incentives for OPG to alter its offer behavior as the RMR Agreement introduces the proper economical signal that incents OPG to act in a commercially reasonable manner based on its cost.

All of which is respectfully submitted.