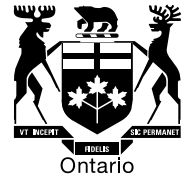


**Ontario Energy  
Board**  
P.O. Box 2319  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416- 481-1967  
Facsimile: 416- 440-7656  
Toll free: 1-888-632-6273

**Commission de l'énergie  
de l'Ontario**  
C.P. 2319  
27<sup>e</sup> étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone: 416- 481-1967  
Télécopieur: 416- 440-7656  
Numéro sans frais: 1-888-632-6273



**BY E-MAIL**

January 21, 2014

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, Suite 2700  
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Ontario Power Generation Inc.  
Board File No. EB-2013-0321**

Please find attached Board staff's submission with respect to the issues list for Ontario Power Generation Inc.'s 2014-2015 payment amounts proceeding.

Yours truly,

*Original signed by*

Violet Binette  
Project Advisor, Applications & Regulatory Audit

Attach

ONTARIO POWER GENERATION INC.  
2014-2015 PAYMENT AMOUNTS  
ISSUES LIST

EB-2013-0321

**Board Staff Submission**

January 21, 2014

## Introduction

Ontario Power Generation Inc. (“OPG”) filed an application, dated September 27, 2013, with the Ontario Energy Board under section 78.1 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Schedule B) seeking approval for increases in payment amounts for the output of certain of its generation facilities, to be effective January 1, 2014.

On December 20, 2013, the Board issued Procedural Order No. 1 which included a draft issues list. OPG filed a draft issues list with its application at Exhibit A1, Tab 10, Schedule 1. The Board did not delete any issues, but added some potential issues, generally based on the approved issues list of the previous cost of service proceeding (EB-2010-0008). The Board made provision for submissions on the draft issues list. Board staff only has a submission on Issue 4.9 which was included as part of Issue 2.2 as proposed by OPG in its draft issues list.

## Issue 4.9

### **Are the commercial and contracting strategies used in the Darlington Refurbishment Project reasonable?**

Board staff questions the appropriateness of including Issue 4.9 on the approved list for this application.

Board staff notes that based on the evidence as filed, OPG estimates, with high confidence, that the Darlington Refurbishment Project (“DRP”) total costs will not exceed \$10.8B (2012\$) excluding interest and escalation.<sup>1</sup>

Only a relatively small portion is expected to close to rate base during the test period. OPG is requesting that certain costs related to the DRP be closed to rate base for the subject test period since OPG views them as “in-service”. The costs total almost \$338M covering the 2012-2015 period.<sup>2</sup> It is not clear what portion of the “commercial and contracting strategies” referred to in the proposed issue relates to this \$338M, but presumably it is a very small portion. In other words, the commercial and contracting

---

<sup>1</sup> Exh D2-2-1 Attachment 5 p.1

<sup>2</sup> The in-service additions are 2012/ \$5.0M; 2013/\$104.2M; 2014/\$18.7M; 2015/\$209.4M for the following projects: Darlington Energy Complex, Water and Sewer Project, Heavy Water Storage and Drum Handling Facility, Darlington Operations Support Building Refurbishment, Auxiliary Heating System and Electrical Power Distribution System plus Powerhouse Steam Venting System, Emergency Power Generator and Misc.

strategies for the most part likely do not relate to amounts that will be closing to rate base in the test years.

Board staff notes that, normally, a consideration of an applicant's management of projects would be part and parcel of any prudence review to determine the appropriate level of costs to be recovered from ratepayers. This review would ordinarily occur at the time the assets go into rate base. It is not apparent to Board staff what the purpose of a review of OPG's commercial and contracting strategies would be in the current proceeding

Further, if not to support the Board's approval of the recovery of DRP related costs in the current application, it is unclear why the stated issue is included for specific determination by the Board in this proceeding. It appears that OPG may be seeking a level of pre-approval on the prudence of forecasted DRP costs.<sup>3</sup> At a minimum, the Board should have a clear understanding of what any determinations made under such an issue would be, and how they would relate to a future prudence review of the DRP to be heard by a subsequent Board panel.

Board staff submits that additional information from OPG is needed before the Board can make a finding on the appropriateness of this issue.

First, Board staff notes that the approved issues list for the last cost of service proceeding (EB-2010-0008) included the following issue: 4.2 – Are the capital budgets and/or financial commitments for 2011 and 2012 for the regulated hydroelectric business appropriate and supported by business cases? In its decision on the issues list, the Board noted that it would only make prudence determinations with respect to projects or costs that close to rate base in the test period.<sup>4</sup> The test period for OPG's last cost of service filing was 2011-2012.

With respect to the Niagara Tunnel Project, which was not forecast to close to rate base in the test period, intervenors mainly addressed the issue of reporting. Intervenors

---

<sup>3</sup> Exh D2-2-1 p.30 lines 14-20 : A number of major contracts have already been awarded and several remain to be awarded over the next few years. OPG's Commercial Strategy and the Contracting Strategies for major work packages are based on industry best practices. **Commercial and Contracting Strategies were reviewed by an independent consultant that found them to be appropriate and reasonable and that they met the regulatory standard of prudence [emphasis added].** OPG expects that the Board will agree with that finding and will determine that it's Commercial and Contracting Strategies are reasonable.

<sup>4</sup> EB-2010-0008 Procedural Order No. 3 p. 11 dated July 21, 2010

submitted that OPG should be required to report regularly on the status of the project, with one intervenor submitting that if these reports indicated a significant cost over-run, that the Board could call OPG in for a review.

OPG objected to any reporting that specifically focussed on the Niagara Tunnel Project, including the idea of the Board holding a “mini-hearing”. OPG submitted that the Board does not have the same role as the OPG Board in overseeing and managing the project. The Board’s decision on the EB-2010-0008 application stated the following:

OPG also objected to mid-year reporting for the purposes of allowing the Board to hold a mini-hearing. OPG submitted that there is no legal basis for the Board to assume a quasi-project management role during the course of a major project; nor is it a proper role for the Board. OPG also suggested it would create a conflict with the Board’s later duty to determine the prudence of the expenditures.

**Board Findings**

The Board will not require additional reporting on the status of the Niagara Tunnel Project prior to OPG’s next payments case. The Board does not intend to manage the project, nor will it to conduct any sort of intermediate review, or “mini-hearing”. The appropriate course of action is for the Board to conduct a thorough prudence review at the time that OPG proposes to add the project to rate base. The Board will expect OPG to file Project Execution Plans, as well as any other progress reports completed over the duration of the project, at the time of the prudence review.

Based on OPG’s position in the last cost of service proceeding, and the Board’s findings with respect to both the scope of that proceeding vis a vis future major capital projects and the scope of the Board’s oversight outside of a final prudence application, it is unclear to Board staff in what fashion the proposed issue in the current application differs. While the forecast cost of the DRP is more than 6 times the Niagara Tunnel Project cost, it appears to Board staff that the principles at play are similar.

Second, it is unclear to Board staff whether OPG is expecting the Board, and parties, to spend a significant amount of time and resources in this proceeding to assist in the assessment and testing of the reasonableness of the DRP commercial and contracting strategies. It is unclear what criteria would be applied and on what basis the Board would make its determination. Board staff would need to consider if it is necessary to engage expert witnesses to assess the reasonableness of OPG’s strategies.

Third, it is unclear to Board staff why OPG is limiting the issue to only the DRP rather than having it apply to all of its projects.

Fourth, the panel of the Board hearing the current proceeding cannot bind a future panel. Therefore, in the event the Board determines in this proceeding that the strategies are reasonable, it is unclear to staff what weight this could have in justifying the DRP costs in future applications where more significant portions of the project costs will be proposed for inclusion in rate base. As noted above, the amount closing to rate base in the current proceeding is relatively small, less than 5% of the current forecasted total project cost, and the commercial and contracting strategies for the most part likely do not relate to amounts that will be closing to rate base in the test years, while in future proceedings the rate base additions would be more significant.

Finally, if the Board determines that OPG's commercial and contracting strategies are reasonable, Board staff would expect that Board approval would be required for any material change to these strategies. It is also unclear to Board staff what implications this would have on years when OPG was not planning to file cost of service applications.

All of which is respectfully submitted