

**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. pursuant to section 78.1 of the *Ontario  
Energy Board Act, 1998* for an Order or Orders determining  
payment amounts for the output of certain of its generating  
facilities.

**WRITTEN REPLY SUBMISSION OF THE APPLICANT,  
ONTARIO POWER GENERATION INC.  
RE: DRAFT ISSUES LIST**

**Introduction**

In accordance with the Ontario Energy Board's (the "OEB") Procedural Order No. 1 in this proceeding and further to the comments from other parties on the Draft Issues List attached as Appendix C to that Order (the "Draft Issues List"), this is the reply submission of Ontario Power Generation Inc. ("OPG"). In this submission, OPG responds to the submissions of Board Staff, AMPCO, Energy Probe, Environmental Defence, Green Energy Coalition ("GEC"), Haudenosaunee Development Institute ("HDI"), Lake Ontario Waterkeeper ("Waterkeeper"), Power Workers Union ("PWU"), and School Energy Coalition ("SEC"). OPG's submission is organized by issue so that the comments of all parties on an issue are addressed under that issue. To the extent that OPG does not address an issue below, it has nothing to add to its opening submission.

OPG continues to believe that the general principles included in its opening submission should inform the framing of the issues. To the extent that the submissions of other parties on specific issues are inconsistent with these general principles, these inconsistencies are addressed under the relevant issues.

### **Reply Comments on General Issues**

The HDI has made a request to add a number of what it has characterized as general issues and specific issues to the Issues List. It submits that the general issues deal with “engagement”

and the specific issues address items reflected in the Draft Issues List attached as Appendix C to Procedural Order No. 1.

OPG submits that none of the issues proposed by the HDI is appropriate for inclusion on the Issues List.

### **OPG Response to the General Issues Proposed by the HDI**

The HDI raises the issue of whether the OEB has discharged its duty to engage further to, *inter alia*, the OEB draft Aboriginal Consultation Policy (ACP) with respect to OPG’s payment amounts application.

In EB-2007-0050, the OEB held at paragraphs 268-269 of that decision that the OEB has not adopted the draft ACP and that it has no formal policy with regard to Aboriginal consultation. This continues to be the case. Instead, the OEB considers Aboriginal consultation issues on a case by case basis. OPG submits that in this payment amounts application by OPG, it would be inappropriate for the OEB to consider the issues raised by the HDI and that for the reasons expanded upon further below, the OEB has no responsibility or authority to consider the adequacy of the Crown’s consultation efforts in this proceeding.

The decision before the OEB is to determine payment amounts to be made to OPG as a prescribed generator under section 78.1 of the *OEB Act* (the “Act”) and Ontario Regulation 53/05 under the Act (the “Regulation”) for the test period 2014 -2015. In making an order under section 78.1 of the Act, the OEB is to do so in accordance with the rules prescribed by the Regulation and on the basis that the payment amounts are just and reasonable.

Section 1(1)1 of the Act states that in carrying out its responsibilities under the Act or any other legislation in relation to electricity, the OEB shall be guided by the objective to, *inter alia*, protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service. In making a payment amounts order in respect of OPG under section 78.1 of

the Act and pursuant to the OEB's objectives as stated herein, there is no action being contemplated by the OEB that could give rise to an adverse impact which would trigger the duty to consult or which may result in an interference and/or impact upon what are referred to as Aboriginal and Treaty rights.

The HDI has provided the OEB with an outline of the nature of their aboriginal and treaty rights. For the purpose of the OEB's assessment of the adequacy of consultation, OPG refers to the rights and impacts identified by the HDI in its letter dated November 29, 2013. The impact identified by the HDI is the alleged past or continuous impairment and infringement by OPG's generation facilities upon Haudenosaunee rights and interests, including the right to free and undisturbed harvesting.

The application before the OEB, if approved, will have no direct impact on OPG's operation of its stations with respect to for example, water levels or flows or emissions. All of OPG's generating stations which are the subject of this application are existing stations and have been in operational existence, to varying degrees, for a substantial period of time. OPG has been receiving payments for the stations' output on a volumetric basis through regulated or market rates for a substantial period of time. The OEB's decision on OPG's application will have no impact on any Haudenosaunee rights and interests.

As stated by the Supreme Court of Canada in *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council* [2010] 2 S.C.R. 550 at para. 49 ("Rio Tinto"),: "The question is whether there is a claim or right that potentially may be adversely impacted by the *current* government conduct or decision in question. Prior and continuing breaches, including prior failures to consult, will only trigger a duty to consult if the present decision has the potential of causing a novel adverse impact on a present claim or existing right."

There must be a "clear nexus between the matter before the OEB (i.e. the application the OEB is being asked to approve) and the circumstances giving rise to the (possible) duty to consult." (*ACH Limited Partnership Re; EB-2011-0065, EB-2011-0068*). OPG's application is a request for changes to payment amounts. The HDI's alleged deficiencies in consultation relate, or appear to relate, to alleged past and on-going infringements by OPG's current operations and the consequential damages flowing from such operations. Whether OPG's operations have or are continuing to create infringements on treaty rights is not a matter before the OEB. There is no clear nexus between the impacts identified on Haudenosaunee rights and interests and the

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decision to grant or refuse OPG's application for payments amounts. Any change in the rate for the stations' volumetric output does not give rise to an adverse impact on Haudenosaunee rights and interests, or otherwise, which triggers a duty to consult or an assessment of the adequacy of consultation.

To the extent that the HDI claims that it is entitled to payments in the nature of justifications for treaty rights impairment, this asks the OEB to assess the strength or merit of the asserted rights of the Haudenosaunee. This is a matter beyond the OEB's jurisdiction. Furthermore, any such alleged costs or contingent liabilities must be evaluated by OPG and a determination made as to whether they are reasonable costs to forecast for the test period. Neither OPG nor the Crown is aware of any pending claim for damages for infringement and impairment of rights arising from OPG's operations, but for the HDI's submissions in this application. OPG is not forecasting any costs related to any Haudenosaunee claims for the test period.

#### The Duty to Consult

The Crown has a duty to consult with aboriginal groups prior to taking any action which may have an adverse impact on an aboriginal or treaty right. The duty arises where the Crown has knowledge, real or constructive, of the potential existence of an aboriginal right and contemplates conduct that may adversely affect it. (see three recent Supreme Court of Canada decisions: *Haida Nation v. British Columbia (Minister of Forests)* [2004] 3 S.C.R. 511 ("Haida"), *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)* [2004] 3 S.C.R. 550 ("Taku"), and *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] SCC 69 ("Mikisew"). The Crown may also delegate procedural aspects of consultation to proponents. (see: *Haida Nation v. British Columbia (Minister of Forests)* [2004] 3 S.C.R. 511 ("Haida").

With respect to the jurisdiction of the OEB to conduct consultation or assess the adequacy of consultation, the OEB is limited by its enabling statute. In relation to the jurisdiction to undertake consultation itself, the Board addressed this question in an application by Union Gas Limited in July 25, 2011 (OEB EB-2011-00040; OEB EB-2011-0041. OEB EB-2011-0042). Upon reviewing its enabling legislation and relying on the decision of the Supreme Court of Canada in *Rio Tinto*, the Board found that the statute does not provide the Board with the power to undertake consultations with aboriginal communities itself. The Supreme Court of Canada in *Rio Tinto* at paragraph 60 states: "A tribunal has only those powers that are expressly or

implicitly conferred on it by statute. In order for a tribunal to have the power to enter into interim resource consultations with a First Nation, pending the final settlement of claim, the tribunal must be expressly or impliedly authorized to do so. The power to engage in consultation itself, as distinct from the jurisdiction to determine with a duty to consult exists, cannot be inferred from the mere power to consider questions of law.” ( See also OEB EB-2011-00040; OEB EB-2011-0041; OEB EB-2011-0042).

Section 19 of the Act provides that the OEB is empowered to determine questions of fact and law within its jurisdiction. The Supreme Court of Canada has decided that tribunals that have been endowed with the express power to determine questions of law, have residual or presumed jurisdiction to resolve constitutional issues that come before them in the normal course of their work. (See: *Paul v British Columbia (Forest Appeals Commission)*, [2003] S.C.J. 34.) Because the OEB’s power to determine questions of law is specifically limited in Section 19 to areas within its jurisdiction, the OEB has no authority to determine constitutional issues, such as the adequacy of consultation with Aboriginals, in relation to matters beyond the criteria in sections 1(1)1 and 78.1 of the Act and the criteria in the Regulation (See: *Yellow Falls Power*, OEB EB-2009-0120, Procedural Order No.4).

### **Reply Comments on Specific Issues**

***Issues 3.1, 4.1, 4.2, 4.5, 4.10, 8.1, and 8.2:*** For all the reasons set out above in OPG’s reply to the HDI’s general issues sought to be added to the Issues List, OPG submits that none of the HDI’s specific issues is appropriate for this proceeding.

### ***Issue 3.3 – Are OPG’s proposed costs for its long-term and short-term debt components of its capital structure appropriate?***

Energy Probe proposes modifying this issue to read: “*Are the terms and conditions of OPG’s long-term and short-term debt appropriate?*” OPG opposes this modification. Energy Probe seeks to broaden the issue to include matters such as: “... the term of OPG’s debt, the effect of OPG’s agreement with OEFC and the impact on refinancing, the alleged benefits of matching debt terms with asset life, and the distinction between OPG’s corporate and project debt and the credit margins thereon.” (Energy Probe, pp. 1-2). OPG submits that to the extent that these matters can be shown to influence the cost of its debt, they can be examined under the issue as originally proposed. To the extent that Energy Probe wishes to examine these issues

independent of their cost consequences however, such an inquiry would be beyond the scope of an OEB review of OPG's payment amounts. As the OEB has consistently recognized, with respect to OPG and other regulated companies, its job is to establish payment amounts (rates), not manage the regulated companies in the normal course.<sup>1</sup>

***Issue 4.1 - Are the costs associated with the regulated hydroelectric projects subject to section 6(2)4 of O. Reg. 53/05 (including the Niagara Tunnel Project) within the project budgets approved by the OPG Board of Directors before the making of the Board's first order establishing payment amounts for the regulated facilities? If not, were the excess costs prudent?***

To allow the Niagara Tunnel Project (NTP) to be considered on a stand-alone basis apart from other hydroelectric capital issues, AMPCO proposes modifying this issue (and Issue 4.3) to remove reference to the NTP and adding the following new issues:

Are the costs associated with the regulated hydroelectric projects subject to section 6(2)4 of O. Reg. 53/05 within the project budgets approved by the OPG Board of Directors before the making of the Board's first order establishing payment amounts for the regulated facilities? If not, were the excess costs prudent?

Are the proposed test period capital expenditures associated with the Niagara Tunnel Project reasonable?

Are the proposed test period in-service additions for the Niagara Tunnel Project appropriate?

OPG submits that these changes are unnecessary as the OEB's review will likely consider the project budget regardless of whether it is included as a separate issue or within the hydroelectric capital issues. If the OEB is inclined to create NTP-specific issues, however, OPG

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<sup>1</sup> As the OEB stated with respect to OPG in its decision in EB-2007-0905 (p.28) "the Board agrees with OPG that the Board's role in this application is to review the proposed costs of the prescribed facilities and to order reasonable payment amounts."

In EB-2009-0139 (p.16), intervenors argued that the OEB should direct Toronto Hydro to borrow from Infrastructure Ontario. The OEB rejected these arguments stating: "The Board will not direct THESL to borrow from Infrastructure Ontario ("IO"). **It is the responsibility of the management of THESL, not the Board, to manage the affairs of the utility**" [emphasis added]

believes that the first and third of AMPCO's proposed issues should be modified to be phrased neutrally and consistent with other issues. OPG submits that AMPCO's proposed wording be modified as follows:

Are the costs associated with the regulated hydroelectric projects subject to section 6(2)4 of O. Reg. 53/05 within the project budgets approved by the OPG Board of Directors before the making of the Board's first order establishing payment amounts for the regulated facilities? If not, were the ~~excess costs prudent~~ costs not included in the budget approved by the OPG Board of Directors before the making of the Board's first order prudently incurred?

...

Are the proposed test period in-service additions for the Niagara Tunnel Project ~~appropriate~~ reasonable?

***Issue 4.5 - Are the proposed nuclear capital expenditures and/or financial commitments appropriate?***

Environmental Defence requests a substantial expansion of this issue by having the OEB either reinterpret its meaning or accept the inclusion of proposed issues ED1 and ED2 shown below. OPG submits that both these approaches should be rejected for the reasons that follow.

ED1 Is the proposed Darlington Refurbishment Project likely to be the lowest cost option to meet Ontario base-load electricity needs, including in comparison to alternatives?

ED2 Are the expected rate impacts of the proposed Darlington Refurbishment Project reasonable and prudent?

The matters covered by issue ED1 are not appropriate subjects for this hearing. The purpose of this proceeding is to set payment amounts pursuant to Section 78.1 of the *OEB Act* and as such the OEB is to consider the cost consequences of OPG's projects and other initiatives. The Government of Ontario, and more particularly the Minister of Energy acting in the public interest, has included the Darlington Refurbishment Project within its Long Term Energy Plan (LTEP). Accepting provincial policy, OPG is undertaking the Darlington Refurbishment Project. There is no statutory requirement for the OEB's consent to be obtained in this regard. As such, this proceeding is not the forum to consider need. The consideration of whether the costs are

prudently incurred is the subject of this proceeding. A consideration of whether the Darlington Refurbishment Project is the lowest cost alternative goes to need and is not an appropriate issue.

Proposed issue ED2 is also inappropriate. The proposed rate impacts of Darlington Refurbishment will only be known when the project is further advanced. At this stage of the project, Issues 4.8, 4.9, and 4.10 discussed below, establish the appropriate scope for the OEB's review.

***Issue 4.8 - Are the proposed test period capital expenditures associated with the Darlington Refurbishment Project reasonable?***

Waterkeeper invites the OEB to expand the scope of this and subsequent issues related to Darlington Refurbishment to include matters related to the conditions in the Environmental Assessment (including follow-up reports) that are exclusively within the jurisdiction of the Federal Government. The OEB must decline this invitation as the Environmental Assessment has been dealt with in another forum.

***Issue 4.9 Are the commercial and contracting strategies used in the Darlington Refurbishment Project reasonable?***

Board staff questions the inclusion of this issue because only “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.” (Board staff, pp.1-2) If the issue is included, Board Staff submits that the OEB needs to 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.”

SEC takes a different view:

The Darlington Refurbishment Project (“DRP”) when complete is projected to cost \$10.8 billion (excluding interest and escalation). It is the largest, by a significant margin, capital project the Board will ever have reviewed. SEC submits it would be in the best interest of both OPG and ratepayers for the Board to review the commercial and contracting strategies of OPG at this time. This would allow for the Board to learn about the project so as to provide OPG with appropriate feedback to minimize potential



ratepayer and shareholder costs if it believes the commercial and contracting strategies are not appropriate. (SEC p. 2, footnote omitted).

GEC would include this issue, but explicitly limit its scope as follows:

The Board should require a demonstration that the structure of OPG's commercial and contracting strategies *prima facie* comply with the policy directives (which largely address contract structure not price) but explicitly avoid a finding of prudence. Such a review could result in the avoidance of inappropriate contract commitments that do not adequately off-load risk, or the early renegotiation of existing contracts to enable compliance.

OPG submits that this issue should be included because it is appropriate to examine whether its proposed commercial and contracting strategies (see Ex. D2-2-1 p 15-17) are reasonable given the long time horizon and significant costs of the project. Such an examination will not be a prudence review, which can occur only after project completion when costs are known. This issue will provide OPG with the benefit of the OEB's view on the reasonableness of proposed commercial and contracting strategies as those strategies are implemented and administered over the Project's life. Project plans at times must adapt to changing circumstances. A review of commercial and contracting strategies at the current stage will provide the OEB with a baseline against which to consider the ultimate execution of the project on a future full prudence review.

Both the nature of the proposed review and its timing distinguish the situation here from the NTP review proposed in EB-2010-0008 as cited by Board staff. In their EB-2010-0008 submissions on the issues list, SEC, CME and CCC all requested that the OEB examine the prudence of the NTP before the project was complete and its costs closed to rate base (SEC Opening Submission, p. 2; CME Opening and Reply Submission, p. 2; and CCC Opening Submission, p. 1). OPG properly opposed these requests and the OEB agreed. Here neither OPG nor any of the parties supporting inclusion of this issue are suggesting that the OEB conduct a prudence review of Darlington Refurbishment. The proposed review involves only OPG's contracting strategies, not the project's cost.

At the time EB-2010-0008 was litigated, all the substantial contracting for the NTP had been completed and the project was being built. Given this timing, a review of contracting strategies would have made little sense. In contrast, here contracting is ongoing and work on the Darlington Refurbishment is still in the design phase. Given the current status of Darlington Refurbishment, a focussed review of contracting strategies makes sense.

***Issue 4.10 Does OPG's nuclear refurbishment process align appropriately with the principles stated in the Government of Ontario's Long Term Energy Plan issued on December 2, 2013?***

Environmental Defence suggests adding the following issue if it is not captured in issues 4.9 and 4.10.

ED3 Are the proposed commercial and contracting strategies for the Darlington Refurbishment Project consistent with the seven principles set out in the Long-Term Energy Plan?

As noted above, GEC similarly requests that OPG's contracting strategies be reviewed against these seven principles.<sup>2</sup> The LTEP makes clear that the overall Darlington Refurbishment is to be assessed against the seven principles. As such, Environmental Defence's additional issue (ED3) is unnecessary and GEC's attempt to focus the review of OPG's contracting strategy on consistency with the seven principles fails to recognize that the seven principles are applicable to the overall Darlington Refurbishment Project which is longer in timing than the implementation of OPG's commercial and contracting strategy. The OEB should assess the reasonableness of OPG's commercial and contracting strategy under issue 4.9 and the consistency of the Darlington Refurbishment project with the seven principles in the Long Term Energy Plan under Issue 4.10.

GEC also attempts to bootstrap a review of Pickering Life Extension onto this issue as follows:

4.10 ~~Does~~ OPG's nuclear refurbishment and life extension processes align appropriately with the principles stated in the Government of Ontario's Long Term Energy Plan issued on December 2, 2013?

This attempt should be rejected. First, in introducing the seven principles the LTEP (page 29) states: "The nuclear refurbishment process will adhere to the following principles:" Thus, these

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<sup>2</sup> GEC's Submission includes as an attachment the Minister's December 17, 2013 letter to OPG's Chair. The seven principles contained in the letter are exactly the same as those in the Long Term Energy Plan.

principles are directed at refurbishment (by both OPG and Bruce Power) and have nothing to do with life extension. Second, the LTEP's primary reference to Pickering (page 30) makes clear that the potential for assessing early shutdown of Pickering is dependent on "projected demand, the progress of the fleet refurbishment program, and the timely completion of the Clarington Transformer Station." It will be several years (i.e. beyond the test period) before the information on refurbishment progress and the timing of Clarington Transformer Station completion are known<sup>3</sup>. As a result, the early shutdown of Pickering is not currently an issue.

***Issue 5.2 - Is the estimate of surplus baseload generation appropriate? What economic and supply conditions are forecast to generate the surplus baseload generation outlook?***

AMPCO proposes amending this issue as follows:

Is the estimate of surplus baseload generation appropriate? ~~What~~ Are the economic and supply conditions ~~are~~ forecast to generate the surplus baseload generation outlook reasonable?

AMPCO's proposed change is unnecessary and should not be made. OPG does not forecast SBG as part of its Application and, pursuant to the decision in EB-2010-0008, OPG does not deduct SBG from its hydroelectric production forecast. Thus, there is no basis on which the OEB could decide whether "the economic and supply conditions forecast to generate the surplus generation outlook are reasonable."

Moreover, nothing turns of the forecast levels of SBG. The SBG Variance Account approved in EB-2010-008 and continued in this application, records the value of the actual production lost due to SBG. It is not based on the difference between forecast SBG and actual SBG experienced. For these reasons, as explained in OPG's January 24<sup>th</sup> Submission, the issue should be modified to include the first sentence only.

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<sup>3</sup> The timeline for the Clarington Transformer Project on Hydro One's website suggests an in service date of Fall 2016 based on construction commencing Fall 2013, but construction has not started.  
<http://www.hydroone.com/Projects/Clarington/Pages/Timeline.aspx>

Furthermore, by asking whether the economic and supply conditions are reasonable, AMPCO is asking the OEB to conclude on Ontario's economic circumstances and current supply mix. This is clearly beyond the scope of this proceeding.

***Issue 5.5 - Is the proposed nuclear production forecast appropriate?***

SEC proposes a new issue: "5.X Are the estimates for planned outages reasonable?" (SEC, p. 2). This issue is unnecessary because consideration of planned outages is fully subsumed under Issue 5.5. As OPG's evidence makes clear, the forecast of planned outages is an integral part of the Nuclear production forecast (See, Ex. E2-T1, S1, pp. 5-6).

***Issue 6.6 - Are the test period expenditures related to continued operations for Pickering Units 5 to 8 appropriate?***

Environmental Defence asks the OEB to interpret Issue 6.6 as including the following or, alternatively, to add it as a new issue:

ED4 Is the continued operation of Pickering Nuclear Generating Station ("Pickering GS") the most cost-effective and otherwise preferred option to meet Ontario base-load electricity needs, including in comparison to alternatives such as conservation, clean power imports, and other forms of generation (e.g. CHP, renewables)?

For the reasons previously given with respect to Issue 4.5, the suggested interpretation or new issue would be inconsistent with the purposes of this proceeding under Section 78.1 of the *OEB Act*. As the OEB stated in its EB-2007-0905 decision with regard to the long term viability of Pickering, this issue is beyond the OEB's jurisdiction<sup>4</sup>.

More generally, issues relating to the preferred mix of generation to meet Ontario's electricity needs are addressed in the LTEP, which states (page 30) "The continued operation of Pickering facilitates the refurbishment of the first units at Darlington and Bruce by providing replacement capacity and energy without greenhouse gas emissions while managing prices." Thus the very

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<sup>4</sup> As the OEB stated with respect to OPG in its decision in EB-2007-0905 (p.28) "the Board agrees with OPG that the Board's role in this application is to review the proposed costs of the prescribed facilities and to order reasonable payment amounts."

issue that Environmental Defence would have the OEB address has already been decided in the LTEP. As noted above, the conditions the LTEP provides for considering an earlier shutdown of Pickering cannot be met for several years, if they are met at all.

***Issue 11.1 - Has OPG responded appropriately to Board direction from the previous proceeding regarding benchmarking of generation performance with an intention to establishing incentive regulation?***

The PWU requests modification to this issue on the grounds that it is unclear (PWU, p.3). Among the potential solutions advanced by the PWU, the issue could be considered to be fully subsumed within Issue 1.1. OPG supports this solution.

**Reply Comments on Newly Proposed Issues**

***SEC Issue 2.x: Is the methodology for calculating the initial rate base of the newly regulated hydroelectric facilities appropriate?***

In its submission SEC says that “Unlike when OPG was first rate regulated, the Board is not bound by section 6(2)5 of Regulation 53/05, which required the Board to accept the net fixed amounts of [sic] as set out in its then most recent financial statements. This is because the Board is not making its “first order under section 78.1 of the OEB Act.””

SEC’s submissions overlooks Section 6(2)(11), as amended, which provides that:

*In making its first order under section 78.1 of the Act in respect of Ontario Power Generation Inc. that is effective on or after July 1, 2014, the following rules apply:*

- i. The order shall provide for the payment of amounts with respect to output that is generated at a generation facility referred to in paragraph 6 of section 2 during the period from July 1, 2014 to the day before the effective date of the order.*
- ii. The Board shall accept the values for the assets and liabilities of the generation facilities referred to in paragraph 6 of section 2 as set out in Ontario Power Generation Inc.’s most recently audited financial statements that were approved by the board of directors before the making of that order. This includes values relating to the income tax*

*effects of timing differences and the revenue requirement impact of accounting and tax policy decisions reflected in those financial statements.*

Based on this amendment to O.Reg. 53/05, the proposed issue is inappropriate.

***SEC Issue 11.x: Is the design of the regulated hydroelectric and nuclear payment amounts appropriate?***

Consistent with the General Principles proposed in OPG's January 24<sup>th</sup> submission, given that the design of the payment amounts was heard and decided in both EB-2007-0905 and EB-2010-0008, OPG feels that it is unnecessary to include this issue on the list. There has been no material change or significant new information that warrants the re-examination of the design of the payment amounts.

***AMPCO "Proposed New Issue:" Is the overall increase in 2014 and 2015 revenue requirement reasonable given the overall bill impact on customers?***

***SEC Issue 11.x: To what extent, if any, should OPG implement mitigation of any rate increases determined by this Board? If mitigation should be implementing, what is the appropriate mechanism that should be used?***

OPG submits that both of these proposed new issues are related and deal with the reasonableness of OPG's revenue requirement and the possible mitigation of payment amounts. OPG submits that no specific issue relating to overall revenue requirement is necessary. Determination of the revenue requirement is a core function of this proceeding. Furthermore, since all elements which form the revenue requirement are already subject to review as part of the draft issues list, there is no need for AMPCO's proposed issue.

With respect to mitigation, as in the past, cost control is a prominent element of OPG's business planning process. Moreover according to the OEB's existing mitigation approach for transmitters and distributors, the threshold for considering mitigation is a 10% total bill impact to customers. That threshold has not been reached here.

***AMPCO “Proposed New Issue”: Does OPG’s business transformation initiative appropriately support the alignment of OPG’s costs with its declining generation capacity?***

The question of whether Business Transformation is an appropriate initiative is not a matter for review by the OEB and thus AMPCO’s proposed issue should be rejected. As discussed above (under Issue 3.3), the purpose of this proceeding is to review OPG’s cost of service for the prescribed generation assets and set the resulting payment amounts. The proposed issues list allows ample scope for this review. The OEB does not, and should not, approve OPG’s individual business initiatives – that remains the purview of OPG’s management.

***Waterkeeper Proposed New Issue 6: “Do costs, as proposed by OPG, factor in the fulfillment of federal environmental mitigation and management requirements for the Darlington Nuclear Generating Station through the adoption and implementation of best available technologies?”***

Issues 4.5 and 6.3 cover review of test period nuclear capital and operating costs, respectively. Similarly, Issues 4.8 and 6.7 provide for the review of test period Darlington Refurbishment capital and operating costs, respectively. Given the existence of these issues, the proposed issue is unnecessary. Moreover, as set out above in the discussions on Issue 4.8, matters related to compliance with the Federal Environmental Assessment are exclusively within the jurisdiction of the Federal Government and are not appropriately considered in this proceeding.

***GEC Proposed New Issue 6.13: Are the proposed depreciation periods for nuclear assets appropriate given the principles stated in the Government of Ontario’s Long Term Energy Plan issued on December 2, 2013 including the call for refurbishment off-ramps and the potential earlier shutdown of the Pickering units?***

Issue 6.11 fully covers a review of matters related to OPG’s depreciation expense. OPG disagrees that the matters cited by GEC have any potential to impact depreciation expense in the test period, but, if GEC feels that they do, it can attempt to demonstrate that under these issues. There is no need for the additional narrow issue that GEC proposes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

*[Original signed by]*

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Counsel for the Applicant,  
Ontario Power Generation Inc.

January 31, 2014