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**Commission de l'énergie
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BY E-MAIL

February 13, 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 reply on the Haudenosaunee Development Institute's surreply 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 Reply to Surreply

February 13, 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) (the “Act”) seeking approval for increases in payment amounts for the output of certain of its generation facilities, to be effective January 1, 2014.

On February 7, 2014, the Board issued Procedural Order No. 2 which made provision for surreply on the reply submissions filed by Board staff, OPG and SEC related to the draft issues list.

Submission

Board staff offers the following brief reply to Haudenosaunee Development Institute’s (“HDI”) submission dated February 11, 2014. HDI’s submission was a response to Board staff’s submission dated January 31, 2014.

Board staff has never suggested that the activities of OPG do not trigger the duty to consult. OPG engages in innumerable activities, and it is certainly possible that some of these activities have triggered the duty to consult (though, to be clear, Board staff does not have any direct knowledge about this).

Board staff’s position is that the Board is only responsible for considering the duty to consult with respect to matters over which it has approval authority. Board staff stated that it was not aware of any approvals being sought from the Board by OPG in this application that could trigger the duty to consult. OPG made a similar submission. In its surreply, HDI did not provide any examples of issues over which the Board has approval authority that could trigger the duty to consult. Therefore it now seems clear that the Board does not need to include a new issue on the issues list relating to whether or not the duty to consult has been discharged with respect to the matters before the Board.

HDI also argues that OPG’s application has failed to include all of the costs it can be expected to incur during the test years; in particular HDI alleges that OPG has failed to include all of the costs it will incur in discharging the duty to consult. This argument ostensibly relates to the Board’s power to set just and reasonable payment amounts:

HDI is essentially saying that the payment amounts proposed by OPG are too low because they do not include what in HDI's view could be a significant line item.

Board staff has already stated that issues relating to the proposed revenue requirement are encompassed in the existing draft issues list, and no new issues need to be added. It would be open to a party to argue that OPG's proposed revenue requirement is too low, just as parties can argue that the proposed revenue requirement is too high.

However, Board staff caution that in its view the Board hearing should not become a forum to determine what, if any, activities conducted by OPG have triggered the duty to consult. As noted above, the Board should only consider the duty to consult with respect to conduct that it actually approves, and in the current case there appears to be no Board approved conduct that can trigger the duty. A determination on whether OPG has triggered the duty to consult (and whether any mitigation efforts have been sufficient) will occur in another forum, possibly the courts.

Although there could theoretically be un-forecasted costs to OPG arising from duty to consult issues, it would not be a productive exercise for the Board to attempt to quantify these costs. Such an exercise would require an analysis of: 1) Has the duty been triggered? 2) If the duty has been triggered, has any consultation and/or accommodation been sufficient? 3) To the extent that the duty has been triggered and any consultation and/or accommodation has not been sufficient, how much money is this likely to cost OPG during the test period?

Any monetary figure that the Board would come up with in answer to 3) would be little more than guesswork.

As it currently stands, it is OPG that is at risk if any potential duty to consult related costs are not included in its test period revenue requirement (and therefore its approved payment amounts). To the extent any such costs did arise, the burden would fall not on HDI or any Aboriginal group, but on OPG's shareholder. OPG will be well aware of this; however it has been clear that it does not want HDI's issues on the final issues list.

All of which is respectfully submitted