



EB-2013-0321

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.

**DECISION AND ORDER ON ISSUES LIST
AND PROCEDURAL ORDER NO. 3**

February 19, 2014

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 its nuclear generating facilities and the currently prescribed hydroelectric generating facilities, to be effective January 1, 2014. The application also seeks approval for payment amounts for newly prescribed hydroelectric generating facilities, to be effective July 1, 2014.

The Board issued Procedural Order No. 1 which made provision for submissions on the draft issues list. On February 7, 2014, the Board issued Procedural Order No. 2 which made provision for surreply.

Issues List

Introduction

Submissions on the draft issues list were received from the following parties: Board staff, OPG, the Power Workers' Union ("PWU"), the Green Energy Coalition ("GEC"), Environmental Defence, Lake Ontario Waterkeeper ("Waterkeeper"), the School Energy Coalition ("SEC"), Energy Probe Research Foundation ("Energy Probe"), Haudenosaunee Development Institute ("HDI"), and the Association of Major Power Consumers in Ontario ("AMPCO"). Reply submissions were received from Board staff, OPG and SEC.

Surreply was filed by OPG, Waterkeeper, Energy Probe, Environmental Defence and HDI. Replies were filed by Board staff and OPG.

The Board has considered all submissions and reply submissions in establishing a final unprioritized issues list which is attached as Appendix A. The submissions are referred to where required below.

OPG Submission

The submission was prefaced with general principles that OPG states should be applied in finalizing the issues list. Those principles are that:

- Issues should be broadly defined and material
- Regulatory matters unrelated to the application should be addressed outside the proceeding
- Issues decided in the last payment amounts hearing should not be reheard absent material changes or significant new information.

On the third point, Board staff replied that by excluding matters that are unchanged from the last proceeding, OPG is prejudging the outcome of the Board's findings. Similarly, SEC replied that previous decisions, while persuasive are not binding upon this Board panel. The issues list is not only a list of contentious issues or issues that deviate from previous Board findings. Staff submitted that the issues list represents a comprehensive list of all the key determinations that the Panel must make in approving a final revenue requirement and production forecasts that will underpin the new payment amounts.

The Board does not agree with OPG's general principle regarding matters previously before this Board. These matters should be reviewed on a case by case basis taking into consideration previous proceedings.

HDI Submission

The HDI submission raised a number of matters related to the Crown's duty to consult with Aboriginal peoples. HDI asked the Board to add 10 new separate issues to the issues list, and to modify another 8 issues that were part of the original draft. HDI proposed issues on: the Board's authority to consider the duty to consult, the role of the Board and OPG with respect to the duty to consult, the extent to which the duty to consult has been discharged, potential remedial steps if the duty to consult has not been discharged, a potential conflict of interest between the Board and OPG, and potential payment amount implications relating to costs OPG may incur for infringements or impairments to Haudenosaunee rights.

In reply, Board staff referred to the Supreme Court's decision in *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council* ("Rio Tinto"), in which the Court found that a tribunal's authority to consider duty to consult issues extend only to the matters that are actually before it in a proceeding. Board staff replied that it was not clear whether there are any duty to consult issues within the scope of the application before the Board. The Board approves payment amounts, and generally speaking not OPG's actual activities. As it is conceivable that there could be a matter that could trigger the duty to consult, Board staff was not opposed to an issue that stated: To the extent that any of the approvals requested by OPG in this proceeding trigger the duty to consult, has that duty been sufficiently discharged?

In reply, OPG observed that the Board has no formal policy with regard to Aboriginal consultation. OPG replied that in carrying out responsibilities under section 1(1)1 (to protect the interests of consumers of electricity) and section 78.1 (to set OPG payment amounts) of the Act, the Board's actions related to the determination of payment amounts would not trigger a duty to consult or impact on Aboriginal and Treaty rights. In support of its position, OPG referred to Rio Tinto, three other Supreme Court decisions¹, and three Board proceedings².

¹ Haida Nation v. British Columbia (Minister of Forests) [2004] 3 S.C.R. 511, Taku River Tlingit First Nation v. British Columbia (Project Assessment Director) [2004] 3 S.C.R. 550, and Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), [2005] SCC 69

² ACH Limited Partnership (EB-2011-0065, EB-2011-0068), Union Gas Limited (EB-2011-0040, EB-2011-0041, EB-2011-0042), and Yellow Falls Power (EB-2009-0120)

HDI noted the possibility of conflict of interest or “structural bias” as Board members are appointed by the Province of Ontario, which is OPG’s sole shareholder. Board staff submitted that the Board regulated a number of crown owned businesses and that this is not an issue in other Canadian jurisdictions.

HDI also proposed adding a number of issues concerning costs that OPG might incur in addressing any infringement or impairment to HDI’s treaty rights. Board staff submitted that these matters are related to the appropriateness of the proposed payment amounts and that the issues proposed are subsumed within existing draft issues. With respect to costs, OPG stated that it is not forecasting any costs related to any Haudenosaunee claims for the test period. OPG replied that none of the specific issues is appropriate in this proceeding.

In surreply filed on February 11, 2014, HDI asked the Board to consider “whether it has jurisdiction to consider whether OPG and/or the Crown have breached fiduciary duties owed to the Haudenosaunee arising from infringements and impairments to the Haudenosaunee treaty rights occasioned by OPG and/or Crown conduct in bringing the subject application.” HDI submitted that the amount applied for by OPG in this proceeding is not legally just and reasonable and that it must include an amount that reflects the rights and interests of the Haudenosaunee.

Board staff responded that issues relating to the proposed revenue requirement are encompassed in the existing draft issues list. Parties may argue that OPG’s proposed revenue requirement is too low, just as parties may argue that the proposed revenue requirement is too high.

OPG responded that its legal status is not that of the Crown and that it has no fiduciary duty to the Haudenosaunee. Further, the Board has no statutory authority to consider matters related to Haudenosaunee treaty rights or whether a fiduciary duty is owed by OPG. The payment amounts are established for all rate payers while HDI’s submission seeks an amount to be paid by OPG to HDI. OPG responded that such a payment is not contemplated by section 78.1 of the Act.

The Board will not add any of HDI’s proposed issues to the issues list. Although there are cases in which the Board will be responsible for considering whether an applicant has triggered (and possibly discharged) the duty to consult, this is not one of those

cases. This is an application by OPG for payment amounts. Generally speaking, the Board does not approve OPG's activities, nor is OPG seeking approval to conduct any particular activity. HDI has been unable to point to anything that OPG is seeking approval for in this application that could trigger the duty to consult. As the Board stated in a previous case: 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*). The Board does not see any such nexus here, and therefore is not inclined to consider whether OPG may have triggered the duty to consult through conduct that is not regulated by the Board.

In its surreply, HDI argued that OPG has breached a fiduciary duty to the Haudenosaunee (for example by failing to conduct adequate consultation for the Niagara Tunnel Project), and as a direct result of this will incur additional costs in the test period, and that these additional costs are not reflected in OPG's application. HDI similarly argues that payment amounts must reflect the costs that the Crown will incur to fulfil its fiduciary duties. Essentially HDI is arguing that OPG's forecast payment amounts are too low because they do not include what, in HDI's view, could be a significant cost.

The Board will not allow evidence, discovery, or argument on this issue. The Board is responsible for setting just and reasonable payment amounts for the test period. However, HDI's argument that OPG will be responsible for significant costs relating to the duty to consult (or some other fiduciary duty) in the test period is highly speculative. In its response to surreplies, OPG stated: "[n]either 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." To the extent that any such claims did arise, the chances of any significant damages being settled during the test period are, at best, unlikely.

To accept the issues as framed by HDI could require very significant hearing time. As OPG and Board staff pointed out, the Board would have to conduct a multi-faceted analysis of whether the duty to consult had been triggered, whether it had been discharged, and to the extent it hadn't, what if any damages were likely to arise in the test period. Any "answer" the Board arrived at with respect to damages would be little more than a guess.

Finally, the Board observes that its decision to exclude HDI's issues does not cause any prejudice to HDI, the Haudenosaunee, or any Aboriginal group. The only party that can actually be adversely impacted by this decision is OPG. If the Haudenosaunee, or any other Aboriginal group, makes a successful claim which results in an award of damages from OPG during the test period, OPG will have to pay those damages whether they are included in the payment amounts or not. If those damages cannot be covered from the existing payment amounts, then they will have to be paid by OPG's shareholder. It is not HDI that is at risk, it is OPG. If OPG had felt there was a realistic chance that it could be required to pay damages for a breach of the duty to consult, it would likely have included those amounts in its application (or more likely requested a deferral account). OPG has not done so, and the Board is not inclined to force them to.

The Board will also not add HDI's proposed issues relating to structural bias or conflict of interest to the issues list. The mere fact that Board members are appointed by the government does not give rise to any reasonable apprehension of bias, nor does it point to any inherent structural bias.

Submissions on Specific Issues

1. GENERAL

The parties did not make submissions on the three General issues in the draft issues list, however, AMPCO proposed an additional issue: "Is the overall increase in 2014 and 2015 revenue requirement reasonable given the overall bill impact on customers?" AMPCO noted that this issue was included in the issues list of EB-2010-0008. In reply, SEC supported including this issue. OPG replied that no specific issue relating to overall revenue requirement is necessary as the determination of revenue requirement is the core function of this proceeding.

The Board has no concern with including the proposed issue.

AMPCO also proposed a second additional issue: "Does OPG's business transformation initiative appropriately support the alignment of OPG's costs with its declining generation capacity?" AMPCO submitted that a separate issue is warranted as OPG has identified business transformation as a high priority. In reply, OPG argued that, "The [Board] does not, and should not, approve OPG's individual business initiatives – that remains the purview of OPG's management."

The proposed issue will not be included. It is already subsumed in the review of revenue requirement and production forecast.

2. RATE BASE

The parties did not make submissions on the single rate base issue in the draft issues list. SEC proposed an additional issue relating to the calculation of the initial rate base for the newly regulated hydroelectric facilities. SEC referred to section 6(2)5 of O. Reg. 53/05, and stated that unlike when OPG was first regulated, the Board was not bound to accept net fixed amounts as set out in its then most recent financial statements.

The Board finds that the proposed issue is not required. As noted by OPG, section 6(2)11, as amended, provides that, in making its first order for the newly regulated hydroelectric facilities, the Board shall accept values for assets and liabilities as set out in OPG's most recently audited financial statements for the newly regulated hydroelectric facilities.

3. CAPITAL STRUCTURE AND COST OF CAPITAL

- 3.1 What is the appropriate capital structure and rate of return on equity for the currently regulated facilities and newly regulated facilities?
- 3.2 Is OPG's proposal for return on equity appropriate for the currently regulated facilities and for the newly regulated facilities?
- 3.3 Are OPG's proposed costs for its long-term and short-term debt components of its capital structure appropriate?

OPG submitted that issue 3.2 should be excluded as it is subsumed in issue 3.1. The Board agrees that issue 3.2 is subsumed in issue 3.1.

Energy Probe suggested that reference to proposed costs in issue 3.3 should be changed to "terms and conditions" to include matters such as OPG's agreements with the OEFC. As noted in surreply, Energy Probe argued that OPG raised the matter of terms and conditions in its application and that Energy Probe's proposal broadened the issue. OPG replied that, to the extent such matters influence the cost of debt, they can be examined under issue 3.3 as originally proposed.

The Board finds that there is no need to revise issue 3.3. The issue in its current form has been included in almost all Board approved issues lists.

4. CAPITAL PROJECTS

Regulated Hydroelectric

- 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?
- 4.2 Are the proposed regulated hydroelectric capital expenditures and/or financial commitments appropriate?
- 4.3 Are the proposed test period in-service additions for regulated hydroelectric projects appropriate?

OPG submitted that issues 4.1 should be restated to better reflect O. Reg. 53/05, noting that its suggestion was consistent with the wording of the issues list from the previous cost of service proceeding, EB-2010-0008. The proposed revision is: "Do the costs associated with the regulated hydroelectric projects that are subject to section 6(2)4 of O. Reg. 53/05 and proposed for recovery (including the Niagara Tunnel Project), meet the requirements of that section?"

OPG also submitted that "appropriate" should be modified to "reasonable" for issue 4.2 and other issues where there is no direct impact on payments amounts or riders.

The Board has no concern with OPG's restatement of issue 4.1 or the replacement of "appropriate" with "reasonable" in issue 4.2.

AMPCO proposed modifying issue 4.1 to exclude the Niagara Tunnel Project ("NTP"), and to add a set of capital project issues specific to NTP. AMPCO cited scope, complexity, and impact of NTP on revenue requirement as reasons for the proposed modifications. OPG replied that the changes are unnecessary as review of NTP will proceed regardless of whether it is included in specific NTP issues or within hydroelectric capital issues. In the event that the Board is inclined to create issues specific to NTP, OPG suggested revisions to AMPCO's proposed NTP issues.

The Board finds that there is merit in establishing issues specific to NTP. These new issues may assist with hearing matters such as witness panels and determination of cross examination time. Issues 4.1 and 4.3 will be revised to exclude NTP. The following issues will be added to the final issues list:

Do the costs associated with the Niagara Tunnel Project that are subject to section 6(2)4 of O. Reg. 53/05 and proposed for recovery, meet the requirements of that section?

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

Nuclear

- 4.4 Are the costs associated with the nuclear 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?
- 4.5 Are the proposed nuclear capital expenditures and/or financial commitments appropriate?
- 4.6 Are the proposed test period in-service additions for nuclear projects (excluding those for the Darlington Refurbishment Project) appropriate?
- 4.7 Are the proposed test period in-service additions for the Darlington Refurbishment Project) appropriate?
- 4.8 Are the proposed test period capital expenditures associated with the Darlington Refurbishment Project reasonable?
- 4.9 Are the commercial and contracting strategies used in the Darlington Refurbishment Project reasonable?
- 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?

The final issues list will reflect revisions to issues 4.4 and 4.5 that are consistent with the revisions accepted by the Board for issues 4.1 and 4.2.

Environmental Defence wishes to explore the following issues:

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?

Environmental Defence believes the above are sufficiently captured by draft issues 4.5 to 4.9, however, if they are not, Environmental Defence requests that the issues be added to the final issues list. Environmental Defence noted that \$1.5 billion in Darlington Refurbishment Project costs are forecast for the test period, which would have a significant impact on consumers. OPG replied that the additional issues are not appropriate subjects for this proceeding. The Darlington Refurbishment Project has been included within the Long Term Energy Plan ("LTEP") and there is no statutory requirement for the Board's consent to be obtained, nor is it appropriate to consider whether the Darlington Refurbishment Project is the lowest cost alternative. In OPG's view, draft issues 4.8, 4.9 and 4.10 establish the appropriate scope of the Board's review.

In surreply, Environmental Defence maintained that the Darlington Refurbishment Project and Pickering Continued Operations were not conclusively mandated. But even if that were the case, Environmental Defence argued that of cost effectiveness of these projects should still be examined. Environmental Defence concluded, however, that the issues it proposes are captured by the draft issues list. OPG repeated its position in reply and submitted that expanding issues to deal with LTEP considerations should be rejected.

The Board notes that Environmental Defence has submitted in surreply that the issues it proposes are subsumed in existing issues on the draft issues list. The Board agrees and will not add the proposed issues. With respect to forecast costs, the examination of cost effectiveness of capital expenditure in the test period is within scope in this proceeding. Parties are reminded that the Board's jurisdiction is the setting of payment amounts and not the management of OPG's activities or the selection of generation options.

Waterkeeper submitted that the issues list should encourage meaningful assessment of the environmental consequences of the Darlington Refurbishment Project, and that the Board's public interest mandate includes a commitment to environmental factors. Waterkeeper submitted that the Board should consider the Darlington Refurbishment Project in light of the conditions of its federal Environmental Assessment ("EA"). Specifically, Waterkeeper proposed the following issue: "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 the best available technologies?" OPG replied that issues 4.5, 4.8, 6.3 and 6.7 provide for review of the Darlington Refurbishment Project test period costs. Further, matters related to the EA are within federal jurisdiction and that the issue should not be included in the current proceeding.

In surreply, Waterkeeper clarified that it was not asking the Board to assess the EA or infringe on federal jurisdiction. It submitted that considering the EA and whether it was included in revenue requirement would assist the Board. OPG replied that the matter is adequately addressed by the draft issues list and that there is no need for a subject specific issue.

The examination of costs for compliance with the EA are already subsumed in the issues list. The Board agrees with OPG that this proceeding is not the correct forum for a review of the specifics of the approved EA.

As the amount related to the Darlington Refurbishment Project that is closing to rate base is not significant in terms of the total project cost, Board staff submitted that the purpose of issue 4.9 and the review of OPG's commercial and contracting strategies in the current proceeding were not apparent. Board staff questioned whether OPG was seeking a level of pre-approval on the prudence of the \$10.8 billion forecasted Darlington Refurbishment Project costs. The panel of the Board hearing the current proceeding cannot bind a future panel. Board staff submitted that the Board needs to have a clear understanding of what any determinations made under issue 4.9 would be and how they would relate to a future prudence review of the Darlington Refurbishment Project.

SEC submitted that it would be in the best interests of OPG and ratepayers for the Board to review and provide feedback to OPG on the commercial and contracting

strategies for the \$10.8 billion the Darlington Refurbishment Project. GEC also supported retaining issue 4.9, but submitted that the Board should require a demonstration that the structure of the commercial and contracting strategies comply with the policy directives but avoid a finding of prudence.

OPG replied that including the issue will provide OPG with the benefit of the Board's view on the reasonableness of the proposed commercial and contracting strategies, noting as well that the examination is not a prudence review. OPG referred to submissions of parties on NTP prudence in the EB-2010-0008 proceeding before the completion of the NTP project. The Board did not agree with those submissions. Further, OPG notes that all substantial contracting for NTP had been completed at the time of the EB-2010-0008 proceeding, so it is inconsistent to make any comparisons with the Darlington Refurbishment Project in the current proceeding.

Environmental Defence proposed the following issue if it is not captured in draft 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?

Environmental Defence noted the LTEP approach to proceed cautiously with nuclear refurbishment. OPG replied that the LTEP makes clear that the Darlington Refurbishment Project is to be assessed against the seven principles. OPG stated that ED3 is not necessary and argued that, "... attempts 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 the commercial and contracting strategies".

The Board agrees that ratepayers would benefit from a review of OPG's commercial and contracting strategies. That review under issue 4.9 will also consider issue 4.10 and any direction provided by the LTEP. As is always the case, the Board's determination on any matter relates to the test period, unless specified otherwise. The Board finds that Environmental Defence's proposed issue ED3 is not required.

GEC submitted that issue 4.10 should refer to life extension for Pickering as well as nuclear refurbishment, citing reference to the possible earlier shutdown of Pickering units in the LTEP. OPG replied that this proposal be rejected as the seven principles of the LTEP are directed only at nuclear refurbishment. OPG also submitted that early shutdown of Pickering units will not be considered in the 2014-2015 test period.

The Board will not revise issue 4.10 to refer to life extension for Pickering. The potential early shutdown of Pickering is not a test period consideration.

5. PRODUCTION FORECASTS

Regulated Hydroelectric

- 5.2 Is the estimate of surplus baseload generation appropriate? What economic and supply conditions are forecast to generate the surplus baseload generation outlook?
- 5.4 Is the proposed new incentive mechanism appropriate? Does the proposed new incentive mechanism increase benefits to consumers while maintaining operational incentives for OPG?

AMPCO proposed some revisions to the second part of issue 5.2. OPG submitted that the second part of issue 5.2 should not be included as forecasts of surplus baseload generation ("SBG") have no impact on payment amounts or riders. In reply, OPG noted that the SBG variance account records the value of actual production lost to SBG, and that it is not based on the difference between forecast and actual SBG.

OPG also submitted that the second part of issue 5.4 should not be included as the reference to "increase benefits" suggests prejudging of the standard that should be used to assess the new incentive mechanism.

The Board will revise issues 5.2 and 5.4 as submitted by OPG. AMPCO will be able to address its SBG concerns under the revised issue 5.2.

Nuclear

- 5.5 Is the proposed nuclear production forecast appropriate?
- 5.6 Are the estimates of forced loss rates for the individual nuclear plants reasonable?

SEC observed that there was a material increase in the forecast planned outages in the updated evidence filed on December 6, 2013. SEC proposed a new issue related to the estimates for planned outages. OPG submitted that issue 5.6 and the SEC proposed issue should not be included because they are subsumed in issue 5.5.

The Board will eliminate draft issue 5.6 and will not include an issue related to planned outages. As above, parties will be able to address concerns related to forced loss rate and planned outages under issue 5.5.

6. OPERATING COSTS

Nuclear

- 6.3 Is the test period Operations, Maintenance and Administration budget for the nuclear facilities appropriate?
- 6.6 Are the test period expenditures related to continued operations for Pickering Units 5 to 8 appropriate?

Environmental Defence proposed the following issue if it is not captured in draft issues 6.3 and 6.6:

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)?

Environmental Defence referred to the LTEP and submitted that the government has not made a final decision regarding continued operation of Pickering. In reply, OPG noted that the Board stated in the first OPG cost of service proceeding, EB-2007-0905, that with regard to the long term viability of Pickering, the Board's role is to review cost of the prescribed facilities and to set payment amounts. OPG also argued that ED4 is not required as the LTEP addresses the preferred mix of generation.

The Board will not add the proposed issues. With respect to forecast costs, the examination of cost effectiveness of OM&A expense in the test period is within scope in this proceeding.

Depreciation

6.11 Is the proposed test period depreciation expense appropriate?

6.12 Are the depreciation studies and associated proposed changes to depreciation expense appropriate?

OPG submitted that issue 6.12 should not be included because it is subsumed in issue 6.11.

GEC proposed an additional issue, referring to statements in the LTEP regarding off-ramps and Pickering: “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?”

OPG replied that issue 6.11 fully covers matters related to depreciation expense. OPG disagreed that the matters cited by GEC will impact depreciation in the test period, but noted that GEC can choose to address the matters under issue 6.11.

The Board will not add GEC’s proposed issue; the potential for changes to Pickering depreciation may be addressed under issue 6.11. As indicated by Board direction from the EB-2010-0008 decision, the Board has specific interest in the depreciation studies. Accordingly, issue 6.12 will be retained.

8. NUCLEAR WASTE MANAGEMENT AND DECOMMISSIONING LIABILITIES

8.1 Is the revenue requirement methodology for recovering nuclear liabilities in relation to nuclear waste management and decommissioning costs appropriate? If not, what alternative methodology should be considered?

Consistent with its position on general principles for issues, OPG submitted that issue 8.1 should not be included because no change in methodology has been proposed and there is no reason to reopen the issue. With regard to general principles set out by OPG, Board staff replied that by excluding matters unchanged from the last application, OPG is prejudging the outcome of the proceeding. In the event the matter is not contentious, it will be addressed efficiently in the prioritization process.

Issue 8.1 will remain on the final issues list. In the event there are any new developments with respect to methodologies for recovering nuclear liabilities and decommissioning costs, parties may bring that information to the attention of the Board.

9. DEFERRAL AND VARIANCE ACCOUNTS

- 9.1 Is the nature or type of costs recorded in the deferral and variance accounts appropriate?
- 9.2 Are the balances for recovery in each of the deferral and variance accounts appropriate?
- 9.3 Are the proposed disposition amounts appropriate?
- 9.4 Is the disposition methodology appropriate?
- 9.6 Is OPG's proposal to not clear deferral and variance account balances in this proceeding (other than the four accounts directed for clearance in EB-2012-0002) appropriate?
- 9.7 Is OPG's proposal to create sub-accounts of variance accounts for the newly regulated hydroelectric generation facilities appropriate?

OPG submitted that issues 9.1, 9.2, 9.3 and 9.4 should be restated to start with, "For the four accounts for which OPG has requested clearance ..." as all other accounts have no impact on payment amounts or riders. Board staff replied that the approach was inconsistent with issue 9.6. Further, as the current proceeding is a full cost of service proceeding, parties should have the opportunity to assess the elements of revenue requirement related to all accounts and to potentially request disposition. SEC also disagreed with OPG's proposed revisions to issues 9.1 to 9.4.

The Board agrees with the submissions of Board staff and SEC. To the extent that parties need to examine the deferral and variance accounts that OPG has not requested clearance for, that opportunity will exist under issues 9.1 to 9.4.

OPG submitted that issue 9.7 is too narrow and should be revised to, "Is OPG's proposal to make existing hydroelectric variance accounts applicable to the newly regulated hydroelectric generation facilities appropriate?"

The Board will accept OPG's revision to issue 9.7. Parties may query whether it is appropriate to use the existing accounts for the newly regulated hydroelectric facilities under this issue.

AMPCO proposed a new issue in the event new accounts are contemplated: "What other deferral accounts if any, should be established for the test period?" There were no replies on this submission.

The Board has no concerns with adding this issue,

11.METHODOLOGIES FOR SETTING PAYMENT AMOUNTS

- 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?

OPG submitted that the issue is redundant and is fully subsumed in issue 1.1. PWU submitted that the issue is unclear as the EB-2010-0008 decision directed that OPG file a work plan and status report for independent productivity study in the current proceeding. PWU also noted that the Board direction on benchmarking from the previous proceeding related to the nuclear business, while the incentive regulation direction related to the hydroelectric and nuclear business. As the issue of incentive regulation was considered in more depth in consultation and a Board Report in proceeding EB-2012-0340, issue 11.1 should reflect the outcomes of that proceeding. Alternatively, the Board could consider the incentive regulation matter under issue 1.1.

Incentive regulation for OPG has been discussed since 2006 as described in the Board's EB-2006-0064 report. It is not appropriate to consider this matter under the general issue 1.1. As OPG and PWU note, there was consultation on IRM in 2012 followed by a Board report, EB-2012-0340. The Board will revise the issue to: Has OPG responded appropriately to Board direction on establishing incentive regulation?

SEC proposed an additional issue: "Is the design of the regulated hydroelectric and nuclear payment amounts appropriate?" Consistent with its position on general principles for issues, OPG replied that design of payment amounts has been reviewed in two previous cost of service proceedings and there is no change or new information to require this issue.

SEC also proposed an issue related to mitigation: "To what extent, if any, should OPG implement mitigation of any rate increases determined by the Board? If mitigation should be implement[ed], what is the appropriate mechanism that should be used[?]."

OPG replied that cost control is a prominent element of OPG's business planning process. OPG also noted that the total bill impact of the current application has not exceeded 10%, the typical threshold for consideration of mitigation.

The Board agrees that the two issues proposed by SEC are key elements of the payment amounts calculations and thus should be included on the final issues list.

Procedural Matters

The Board has made provision for submissions on OPG's request for confidential treatment of the updated Exh D2-2-1 Attachment 5. The public version of this document was filed on February 6, 2014. Until the Board has made a determination on all the documents for which OPG seeks confidential treatment, parties shall treat all the redacted information as confidential. The Board has also added a second filing date for Board staff interrogatories on the updated evidence due to timing constraints posed by the recent filing vis a vis the established schedule. No other changes to the schedule have been made. The Board reminds parties that interrogatories from intervenors are due February 28, 2014.

The Board also reminds all parties to sort their interrogatories and responses by issue, and to use continuous numbering as well as the interrogatory nomenclature per *Chapter 1 of the Filing Requirements for Electricity Distribution Rate Applications*.

An updated list of parties to this proceeding has been provided as Appendix B. Sustainability-Journal and Waterkeeper were approved as intervenors after Procedural Order No. 1 was issued. Further, the Board has been advised by some parties of changes to counsel or consultants. Parties are to use the updated list for the distribution of documents. Parties must use their acronym identified in Appendix B for the numbering of interrogatories.

The Board considers it necessary to make provision for the following matters related to this proceeding.

THE BOARD ORDERS THAT:

1. The final Issues List (attached as Appendix "A") is approved for this proceeding.

2. If OPG has not already done so, in accordance with the Board's *Practice Direction on Confidential Filings*, OPG shall immediately file copies of the confidential version of updated Exh D2-2-1 Attachment 5 as well as a cover letter explaining why OPG seeks confidential treatment for this document with the Board.
3. Board staff and intervenors wishing to make submissions on the confidentiality status of the updated Exh D2-2-1 Attachment 5 shall file such submissions with the Board and deliver them to OPG and all other parties on or before **March 3, 2014**.
4. If OPG wishes to respond to any submissions on the confidentiality status of the updated Exh D2-2-1 Attachment 5, it shall file such submissions with the Board and deliver them to the relevant intervenor and all other parties on or before **March 10, 2014**.
5. Board staff may file written interrogatories on the updated Exh D2-2-2 Attachment 5 with the Board and shall serve the interrogatories on all parties on or before **February 28, 2014**.

All filings to the Board must quote the file number, **EB-2013-0321**, 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. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available parties may email their documents to the address below. 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 7 paper copies.

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, Violet Binette at

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DATED at Toronto, February 19, 2014

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A

**ONTARIO POWER GENERATION INC.
2014-2015 PAYMENT AMOUNTS**

EB-2013-0321

FINAL ISSUES LIST

**Ontario Power Generation Inc.
2014-2015 Payment Amounts for
Prescribed Generating Facilities
EB-2013-0321**

FINAL ISSUES LIST (UNPRIORITIZED)

1. GENERAL

- 1.1 Has OPG responded appropriately to all relevant Board directions from previous proceedings?
- 1.2 Are OPG's economic and business planning assumptions for 2014-2015 appropriate?
- 1.3 Has OPG appropriately applied USGAAP accounting requirements, including identification of all accounting treatment differences from its last payment order proceeding?
- 1.4 Is the overall increase in 2014 and 2015 revenue requirement reasonable given the overall bill impact on customers?

2. RATE BASE

- 2.1 Are the amounts proposed for rate base appropriate?

3. CAPITAL STRUCTURE AND COST OF CAPITAL

- 3.1 What is the appropriate capital structure and rate of return on equity for the currently regulated facilities and newly regulated facilities?
- 3.2 Are OPG's proposed costs for its long-term and short-term debt components of its capital structure appropriate?

4. CAPITAL PROJECTS

Regulated Hydroelectric

- 4.1 Do the costs associated with the regulated hydroelectric projects that are subject to section 6(2)4 of O. Reg. 53/05 and proposed for recovery (excluding the Niagara Tunnel Project), meet the requirements of that section?
- 4.2 Are the proposed regulated hydroelectric capital expenditures and/or financial commitments reasonable?
- 4.3 Are the proposed test period in-service additions for regulated hydroelectric projects (excluding the Niagara Tunnel Project) appropriate?

- 4.4 Do the costs associated with the Niagara Tunnel Project that are subject to section 6(2)4 of O. Reg. 53/05 and proposed for recovery, meet the requirements of that section?
- 4.5 Are the proposed test period in-service additions for the Niagara Tunnel Project appropriate?

Nuclear

- 4.6 Do the costs associated with the nuclear projects that are subject to section 6(2)4 of O. Reg. 53/05 and proposed for recovery, meet the requirements of that section?
- 4.7 Are the proposed nuclear capital expenditures and/or financial commitments reasonable?
- 4.8 Are the proposed test period in-service additions for nuclear projects (excluding those for the Darlington Refurbishment Project) appropriate?
- 4.9 Are the proposed test period in-service additions for the Darlington Refurbishment Project) appropriate?
- 4.10 Are the proposed test period capital expenditures associated with the Darlington Refurbishment Project reasonable?
- 4.11 Are the commercial and contracting strategies used in the Darlington Refurbishment Project reasonable?
- 4.12 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?

5. PRODUCTION FORECASTS

Regulated Hydroelectric

- 5.1 Is the proposed regulated hydroelectric production forecast appropriate?
- 5.2 Is the estimate of surplus baseload generation appropriate?
- 5.3 Has the incentive mechanism encouraged appropriate use of the regulated hydroelectric facilities to supply energy in response to market prices?
- 5.4 Is the proposed new incentive mechanism appropriate?

Nuclear

- 5.5 Is the proposed nuclear production forecast appropriate?

6. OPERATING COSTS

Regulated Hydroelectric

- 6.1 Is the test period Operations, Maintenance and Administration budget for the regulated hydroelectric facilities appropriate?
- 6.2 Is the benchmarking methodology reasonable? Are the benchmarking results and targets flowing from those results for the regulated hydroelectric facilities reasonable?

Nuclear

- 6.3 Is the test period Operations, Maintenance and Administration budget for the nuclear facilities appropriate?
- 6.4 Is the benchmarking methodology reasonable? Are the benchmarking results and targets flowing from those results for the nuclear facilities reasonable?
- 6.5 Is the forecast of nuclear fuel costs appropriate? Has OPG responded appropriately to the suggestions and recommendations in the Uranium Procurement Program Assessment report?
- 6.6 Are the test period expenditures related to continued operations for Pickering Units 5 to 8 appropriate?
- 6.7 Is the test period Operations, Maintenance and Administration budget for the Darlington Refurbishment Project appropriate?

Corporate Costs

- 6.8 Are the 2014 and 2015 human resource related costs (wages, salaries, benefits, incentive payments, FTEs and pension costs) appropriate?
- 6.9 Are the corporate costs allocated to the regulated hydroelectric and nuclear businesses appropriate?
- 6.10 Are the centrally held costs allocated to the regulated hydroelectric business and nuclear business appropriate?

Depreciation

- 6.11 Is the proposed test period depreciation expense appropriate?
- 6.12 Are the depreciation studies and associated proposed changes to depreciation expense appropriate?

Income and Property Taxes

- 6.13 Are the amounts proposed to be included in the test period revenue requirement for income and property taxes appropriate?

Other Costs

- 6.14 Are the asset service fee amounts charged to the regulated hydroelectric and nuclear businesses appropriate?
- 6.15 Are the amounts proposed to be included in the test period revenue requirement for other operating cost items appropriate?

7. OTHER REVENUES

Regulated Hydroelectric

- 7.1 Are the proposed test period revenues from ancillary services, segregated mode of operation and water transactions appropriate?

Nuclear

- 7.2 Are the forecasts of nuclear business non-energy revenues appropriate?

Bruce Nuclear Generating Station

- 7.3 Are the test period costs related to the Bruce Nuclear Generating Station, and costs and revenues related to the Bruce lease appropriate?

8. NUCLEAR WASTE MANAGEMENT AND DECOMMISSIONING LIABILITIES

- 8.1 Is the revenue requirement methodology for recovering nuclear liabilities in relation to nuclear waste management and decommissioning costs appropriate? If not, what alternative methodology should be considered?
- 8.2 Is the revenue requirement impact of the nuclear liabilities appropriately determined?

9. DEFERRAL AND VARIANCE ACCOUNTS

- 9.1 Is the nature or type of costs recorded in the deferral and variance accounts appropriate?
- 9.2 Are the balances for recovery in each of the deferral and variance accounts appropriate?
- 9.3 Are the proposed disposition amounts appropriate?
- 9.4 Is the disposition methodology appropriate?
- 9.5 Is the proposed continuation of deferral and variance accounts appropriate?

- 9.6 Is OPG's proposal to not clear deferral and variance account balances in this proceeding (other than the four accounts directed for clearance in EB-2012-0002) appropriate?
- 9.7 Is OPG's proposal to make existing hydroelectric variance accounts applicable to the newly regulated hydroelectric generation facilities appropriate?
- 9.8 Is the proposal to discontinue the Hydroelectric Incentive Mechanism Variance Account appropriate?
- 9.9 What other deferral accounts, if any, should be established for the test period?

10.REPORTING AND RECORD KEEPING REQUIREMENTS

- 10.1 What additional reporting and record keeping requirements should be established for OPG?

11.METHODOLOGIES FOR SETTING PAYMENT AMOUNTS

- 11.1 Has OPG responded appropriately to Board direction on establishing incentive regulation?
- 11.2 Is the design of the regulated hydroelectric and nuclear payment amounts appropriate?
- 11.3 To what extent, if any, should OPG implement mitigation of any rate increases determined by the Board? If mitigation should be implemented, what is the appropriate mechanism that should be used?

12.IMPLEMENTATION

- 12.1 Are the effective dates for new payment amounts and riders appropriate?

APPENDIX B

ONTARIO POWER GENERATION INC. 2014-2015 PAYMENT AMOUNTS

EB-2013-0321

APPLICANT & CURRENT LIST OF INTERVENORS

**Ontario Power Generation Inc.
EB-2013-0321**

APPLICANT & LIST OF INTERVENORS

February 19, 2014

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**Ontario Power Generation Inc.
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**Ontario Power Generation Inc.
EB-2013-0321**

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**Ontario Power Generation Inc.
EB-2013-0321**

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**Ontario Power Generation Inc.
EB-2013-0321**

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**Ontario Power Generation Inc.
EB-2013-0321**

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EB-2013-0321**

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EB-2013-0321**

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**Ontario Power Generation Inc.
EB-2013-0321**

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**Ontario Power Generation Inc.
EB-2013-0321**

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February 19, 2014

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