



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 MOTIONS,
ISSUES LIST AND CONFIDENTIALITY,
AND PROCEDURAL ORDER NO. 9**

May 16, 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 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.

Motions

The Association of Major Power Consumers in Ontario ("AMPCO"), the School Energy Coalition ("SEC") and Environmental Defence filed motions seeking full and adequate responses to certain interrogatories and/or technical conference undertakings. The Board held a motion hearing on May 9, 2014 to hear the submissions of parties. Both SEC and OPG noted at the start of hearing that OPG had provided responses to two of the interrogatories identified in the SEC motion, Exh L-6.2-SEC-84 and Exh L-6.8-SEC-

118; accordingly this decision will not address these interrogatory responses.

Exh L-1.2-AMPCO-5 and Exh L-5.1-AMPCO-23(d)

Interrogatory 1.2-AMPCO-5 requested that OPG consider the decline in generation related to coal units and Pickering and, "...discuss OPG's longer term 10 year business plan outlook including emerging issues and proposed spending levels beyond 2016 and include any supporting materials such as memorandums, reports and presentations to OPG's Board of Directors that address this issue." On March 19, 2014, OPG replied that information beyond the 2014-2015 test period was not relevant.

SEC supported AMPCO's motion on Exh L-1.2-AMPCO-5, stating that the information would provide context for pacing and prioritization of capital expense. SEC also observed that the long term information was especially important for the hydroelectric business as it moves to incentive regulation in the near term.

AMPCO referred to the longer planning horizon considered by the Renewed Regulatory Framework for electricity distributors ("RRFE"). AMPCO argued that a comparison to the RRFE is appropriate as OPG has a significant role to play in the Long-Term Energy Plan. AMPCO also noted that its members do not plan on a two year time frame. In reply, OPG stated that it has provided information for the period for which it seeks rates. The RRFE is applicable to electricity distributors on a 5 year rate cycle. It is not applicable to OPG and the incentive framework for OPG is yet to be established.

OPG submitted that AMPCO is not seeking just a 10 year plan, but a wide range of information and noted that long term forecasts can easily change. However, in AMPCO's view, the information it seeks is typically provided in a business plan presentation to a board of directors. OPG stated that the notion about pacing of capital expense was not supported by identification of specific capital and OM&A expenditures. OPG seeks approval to close certain items to rate base but is not seeking approval of its capital budget per se. OPG submitted that the information sought by AMPCO and SEC is of almost no probative value.

The Board agrees with AMPCO that understanding OPG's longer term business plan outlook would provide additional context to the proposed capital and operating expenditures for the period for which payments are to be set. However, the Board also agrees with OPG that a long term outlook, such as the 10 year period for which

information is being sought, becomes increasingly speculative and uninformative. OPG has already provided a business plan which includes discussion of emerging issues and proposed spending levels for the period 2014 to 2016, in other words, one year beyond the period under review for which payment amounts are to be set. The Board believes this is sufficient context for the setting of payment amounts for 2014 and 2015.

Interrogatory 5.1-AMPCO-23(d) referred to Exh N1-1-1, Attachment 4 which is OPG's 2014-2016 business plan. AMPCO sought an explanation for the 2016 hydroelectric production forecast compared to the 2015 plan, found at page 3. AMPCO argued that if it was important enough to provide the data, it is important enough to inquire into the information. OPG stated that the inquiry is irrelevant to the determination of payment amounts for the test period.

The Board agrees that an explanation for the 2016 forecast as it compares to the 2015 hydroelectric production forecast should be disclosed. This forecast is available and the explanation is relevant to understanding the context of future hydroelectric production. This is consistent with the decision concerning disclosure of the planning outlook for 2016 and the Board believes the forecast and accompanying explanation of hydroelectric production in 2016 may be useful.

Exh L-3.1-SEC-25

SEC sought information related to actual debt:equity ratios, however, OPG replied that for regulatory accounting, reporting and ratemaking, it applies the approved 53:47 debt:equity ratio. Following amendment of O. Reg. 53/05, OPG did not conduct an internal analysis of the effect of the newly regulated hydroelectric facilities on capital structure. OPG retained Foster Associates to assess business risk as a result of the regulation amendment.

SEC submitted that the actual information is important to understand the risk related to the newly regulated facilities. While OPG has filed an external analysis of business risk, SEC states that one way to measure the reasonableness of that evidence is to look at the actual equity structure.

The Board is not prepared to order the production of documents, if any exist, which deal with the corporate capital structure or the forecast of actual debt:equity ratios. The

corporate capital structure includes non-regulated assets and the period 2014-2018 goes beyond the period for setting rates.

Exh L-6.8-SEC-116 and Exh L-1.2-CCC-5

These interrogatories sought production of a KPMG report prepared for the Ministry of Energy, which assessed OPG benchmarking studies. OPG has not produced the report as it has not secured permission from the Ministry. SEC noted that OPG has confirmed that they are in possession of the report and that OPG refers to the report in its response to the Auditor General's ("AG") findings. SEC argued that ownership of the document is not at issue, and cited Rule 26.02(d) of the Board's *Rules of Practice and Procedure*, which refers to documents in a party's possession.

OPG submitted that it wants to produce the document but has not been given authorization. SEC submitted that the information is critical and should be provided before the settlement conference.

The Board is very interested in reviewing the KPMG Efficiency Review report, and appreciates the efforts that OPG has taken to obtain approval to disclose this report. The Board encourages OPG to continue its dialogue with the Ministry in this regard. It is the Board's expectation that the report will be provided and placed on the public record once it receives authorization from the Ministry of Energy. However, the Board notes Rule 26.02(d) and will revisit the issue if the document is not produced prior to the hearing.

Exh L-1.1-CME-1

CME sought production of information provided to and received from OPG's Board of Directors regarding the Auditor General ("AG") Report. OPG declined on the basis that the AG's Report was issued after the application and the application update. SEC argued that the AG's findings on human resources costs are significant and OPG's response to the AG's findings will have an effect on test year budgets. The information is relevant, probative and important for the purpose of cross examination. While OPG has provided information regarding the actions it has taken, these are not necessarily the actions it should take or what was provided to the OPG Board of Directors.

In OPG's view, an appropriate line of inquiry is what OPG is doing in the test period that is responsive to issues raised by the AG. OPG noted that it has responded to several questions from parties on these matters.

The Board finds that the responses provided by OPG in response to the AG's Report, as provided at the Technical Conference, are sufficient at this juncture. The Board does not require the communication to and from the OPG Board of Directors with respect to the AG Report. Parties will have the opportunity to question OPG on its responses and to ask OPG for updates at the oral hearing.

Exh L-1.4-SEC-20

SEC sought disclosure of information provided to OPG's Board of Directors in approving the application. OPG declined to produce the documents on the basis of relevance and litigation privilege, referring to the Board's decision in the previous cost of service proceeding, EB-2010-0008¹ which did not provide the relief sought by parties.

SEC is not seeking hearing strategies or OPG analysis of intervenor positions, but the trade-offs between cost control and price increase considered when the OPG Board of Directors approved the current application. SEC states the current proceeding is an administrative proceeding and that the Board need not make a ruling with respect to litigation privilege. In the EB-2011-0120 proceeding (the "CANDAS proceeding"), the Board did not agree that the CANDAS proceeding was considered litigation for the purposes of litigation privilege.² OPG commented that the Board's findings on litigation privilege in the CANDAS proceeding were obiter, as there was a reasonable apprehension of a court proceeding.³

In OPG's view, the scope of litigation privilege is broad and includes the authorization to commence a proceeding. OPG referred to *Blank v. Canada*⁴ in which the Supreme Court stated that, "Litigation privilege is based upon the need for a protected area to facilitate investigation and preparation of a case for trial or hear an administrative proceeding by the adversarial advocate." OPG further stated that there have been many cases in which it has been determined that litigation privilege applies to administrative tribunals. The current proceeding is adversarial, unlike the CANDAS

¹ EB-2010-0008, Tr. Vol. 1, pages 113-114

² EB-2011-0120, Decision and Order, page 17, February 22, 2012

³ Ibid page 14

⁴ *Blank v. Canada* (Department of Justice), 2006 SCC 39

proceeding, and the applicant and intervenors are entitled to a zone of privacy in which to frame their case. In OPG's view, this provides efficiency to the process. OPG stated that the Board need not decide on the issue of litigation privilege, but could follow the EB-2010-0008 decision on the same materials.

SEC argued that the current proceeding differs from EB-2010-0008 proceeding in which payment amount increases of 6.2% were sought. SEC estimates that the current proceeding seeks increases of 20 to 30%. In SEC's view, the CANDAS proceeding was adversarial and the current proceeding is less so as the Board can choose neither the applicant nor the intervenors positions in establishing payment amounts.

The Board has determined that it does not need to see the requested documents provided to OPG's Board of Directors in approving this application. OPG is on the record testifying that the application was approved by its Board – that is sufficient, and the documents seeking that approval are of no probative value to the Board in determining payment amounts. Parties are free to examine OPG on options presented to the Board of Directors during the oral hearing. Given the Board's determination that the requested documents are not relevant, the Board does not need to make a determination as to whether the documents requested are protected by litigation privilege.

Exh L-1.2-SEC-4

OPG's Memorandum of Agreement with its shareholder requires timely reporting on major developments and issues. SEC sought production of the last five reports. OPG declined as the documents form no part of the application and major developments and issues are addressed in the application. SEC commented that OPG has wide latitude in deciding what to include in the application, and that evidence should be tested for reasonableness.

The primary method by which OPG informs the shareholder is through the business planning process, and the 2013-2015 and 2014-2016 business plans have been filed in the current proceeding. Different levels of the OPG organization report regularly to the Ministry on a wide range of subjects. It would be a significant task to sort that communication into major issues that relate to the test period payment amounts. SEC replied that it would be reasonable to provide a summary of the last five relevant reports.

The Board does not see the relevance of the communications between OPG and the Ministry of Energy as it pertains to this proceeding. The Board agrees with OPG that this would be a very time consuming exercise and the connection between these materials and the determination of payment amounts is tenuous, at best.

Exh L-2.1-ED-2, Exh L-2.1-ED-3, Exh L-2.1-ED-4

These three interrogatories sought information regarding rate base determination for the newly regulated hydroelectric facilities. It is Environmental Defence's position that the rate base proposed for the newly regulated facilities could result in windfall income as assessment at market value is higher than original capital cost. Environmental Defence acknowledges that the Board is required by O. Reg. 53/05 to accept certain values for these assets as determined in the most recently audited financial statements. However, the information should be provided for the sake of transparency and public accountability. Further, the identification of a gap would justify a lower rate of return.

OPG observed that O. Reg. 53/05 requirements regarding rate base for the newly regulated facilities is no different than the O. Reg. 53/05 requirements for the currently regulated facilities. OPG also commented that the amount recorded on OPG's financial statements did not change as a result of the regulation amendment. OPG argued that in terms of transparency, OPG's financial statements are publicly available. OPG also argued that there is no legal way under the fair return standard to cut OPG's rate of return on the basis of a legislative choice relating to the value of particular assets.

As the requirements of O. Reg 53/05 are very clear about the valuation of assets and liabilities that the Board must accept upon regulating the newly regulated hydroelectric facilities, no further disclosure is required by the Board at this time. To the extent that parties want to test whether the value of the newly regulated assets included in rate base affects business risk or the deemed rate of return, parties will be able to examine this within issue 3.1.

Exh L-4.7-ED-7

In lieu of Darlington capacity factor for each year of operating life, OPG has provided unit capability factor from 2005 to 2013 as it is not required to provide earlier historic information. Environmental Defence seeks the former as the LUEC calculation assumes an 88% capacity factor. In support of its position, Environmental Defence

referred to a decision on motion in the Bruce to Milton proceeding (EB-2007-0050) in which the Board found that historical information would assist the Board.

OPG noted that unit capability factors are the industry recognized measurement. In OPG's factum, filed on May 8, 2014, OPG provided Darlington capacity factors from 2005, when OPG became subject to rate regulation, to 2013. OPG argued that Environmental Defence's interest in the data prior to 2005 and the basis for the LUEC calculation is to provide an opinion on Darlington refurbishment. As the Board is not tasked with supply mix choices, the historical information prior to 2005 is not relevant. In OPG's view the comparison with the Bruce to Milton proceeding is not appropriate as the Board does consider the economics of projects in leave to construct applications.

The Board finds that the disclosure of the net capacity factor from 2005 is sufficient for the issues the Board must determine in this proceeding.

Exh L-4.7-ED-8, Exh L-4.7-ED-9 and Exh 6.3-ED-15

These interrogatories seek comparisons of Darlington and Pickering with other generation alternatives. Environmental Defence acknowledges that the Board is not being asked to decide on the future of Darlington or the continued operations of Pickering, however, a comparison with generation alternatives is a factor the Board can consider in setting payment amounts and rate of return.

OPG is not engaged in any of the generation alternatives listed in the interrogatories and it is not equipped to provide the information. OPG argued that Environmental Defence is inviting the Board to consider supply mix choices and to punish OPG financially for choices it has not made.

OPG noted the Board reliance on hydroelectric and nuclear benchmarking in the two previous cost of service proceedings and stated that this is a relevant line of inquiry.

The Board agrees with OPG's submissions that the information required to perform these calculations is in the control of the OPA. Therefore, OPG is not required to provide the requested comparisons.

Exh L-4.12-ED-14

A summary of previous Ontario Hydro and OPG projects, prepared by the Ontario Clean Air Alliance Research Inc., was appended to this interrogatory. Environmental Defence sought OPG's assessment of accuracy of the summary. Environmental Defence states that the information is from public sources, many from OPG's own documents.

In OPG's view, it has provided information on Darlington Refurbishment and contracting strategies, and comparisons with previous projects is not relevant. OPG estimated that there were at least 28 footnotes to check and noted that non-OPG sources would need to be retrieved and reviewed. In OPG's view, Environmental Defence has the option to lead the evidence and provide a witness.

The Board is of the opinion that OPG has the capability and expertise to respond to the issues cited in the report filed by Environmental Defence, which was produced by the Clean Air Alliance. However, the Board also agrees with OPG that the interrogatory, as framed, would be onerous to respond to and more detailed than necessary. The Board's understanding is that the purpose of Environmental Defence's request is to review OPG's track record in terms of project management and cost overruns. It appears to the Board that an easier way to solicit this evidence, without OPG verifying every source in the appendix, is to reframe the interrogatory as, "Does OPG have any basis/evidence to dispute the information contained in the Clean Air Alliance Report, Appendix A page 17, with respect to cost overruns?" The Board orders OPG to respond to this reframed question prior to the commencement of the hearing.

Exh L-6.3-ED-15

In addition to generation alternatives as noted above, this interrogatory sought OM&A costs for Pickering from 2010 to 2015. Environmental Defence submitted that the response excluded fuel and some administrative costs and seems to understate some costs, which Environmental Defence attributed in part to an allocation issue between Darlington and Pickering.

OPG replied that JT1.14 provides Pickering fuel costs and explains the cost allocation. OPG has a Board approved allocation methodology and is not required to apply another allocation. Environmental Defence argued that OPG has not addressed the issue which was to reconcile the numbers that Environmental Defence provided and, if incorrect, explain why they were incorrect.

The information that Environmental Defence seeks is found in several sources in the evidence. The Board directs OPG to assist Environmental Defence by assembling the data that Environmental Defence seeks in calculating Pickering operating costs for 2010 to 2015. It is the Board's expectation that the parties will co-operate to achieve final resolution of this interrogatory and related undertakings.

Exh L-4.7-ED-5

Environmental Defence requested the cost of the Darlington Refurbishment Project in 2014 dollars as it is helpful for comparison purposes. OPG replied that it has presented the financial information in "in-year" dollars and has responded to 4.7-ED-5 and to the corresponding undertaking JT2.1.

The Board sees no reason why OPG should not respond to this interrogatory to ensure the integrity of the comparison and therefore orders OPG to provide the costs related to the Darlington Refurbishment Project in 2014 dollars.

Exh L-4.12-ED-11 and Undertaking JT2.2

Undertaking JT2.2 relates to a breakdown of costs for the Darlington Refurbishment Project and various overrun scenarios and the percentage of contractor cost overruns that are passed onto OPG.

Environmental Defence stated that OPG had not done what was requested and queried the calculations. OPG replied that the answers are not deficient and that the undertaking response explains the calculations.

The Board finds that OPG has responded to the interrogatory and that parties may seek further clarification during the proceeding.

Prioritization of Issues

On February 19, 2014, the Board issued Procedural Order No. 3 and the final, unprioritized issue list. In Procedural Order No. 4, issued on March 21, 2014, the Board made provision for submissions on categorizing issues into primary and secondary issues following the interrogatory process.

Submissions were filed by Board staff, Green Energy Coalition (“GEC”), the Society of Energy Professionals (the “Society”), Environmental Defence, Sustainability Journal and OPG.

SEC, Consumers Council of Canada (“CCC”), AMPCO, Canadian Manufacturers & Exporters (“CME”) and Energy Probe Research Foundation (“Energy Probe”) submitted that, due to the volume of interrogatory responses, issue prioritization would be more appropriate following the technical conference or settlement conference. In Procedural Order No. 5, issued on April 3, 2014, the Board provided for the filing of additional submissions on issues prioritization to follow the technical conference and the filing of the related undertakings. All submissions previously filed would be retained for the Board’s consideration.

On May 7, 2014, a submission was filed by AMPCO, CCC, CME, Energy Probe, London Property Management Association, SEC and the Vulnerable Energy Consumers Coalition (the “Group of Intervenors”). Additional submissions were filed by GEC and Sustainability Journal, and reply was filed by OPG. A late submission was filed by Lake Ontario Waterkeeper (“Waterkeeper”) to which OPG was unable to reply.

At the motion hearing on May 9, 2014, the Board informed parties that it had deemed a subset of issues primary and that this subset of issues would be removed from the settlement discussions and would proceed to oral hearing. Those issues are: 1.4, 4.7, 4.11, 6.1, 6.2, 6.3, 6.4, 6.8, 6.9, 6.10, 9.6, 11.1, 11.3 and 12.1.

As noted in OPG’s reply submission, all parties agreed that the following issues should be designated as secondary issues: 3.2, 6.13, 6.14, 6.15, 7.1, 7.2, 10.1 and 11.2. The Board agrees that these issues should be secondary issues.

OPG’s reply submission also identified issues that all the parties agreed should be designated as primary issues: 1.1, 1.2, 2.1, 4.4, 4.5, 4.9, 4.10, 4.12, 5.4 and 5.5. The Board will designate these issues as primary issues. The remaining issues are addressed below.

1. GENERAL

- 1.3 Has OPG appropriately applied USGAAP accounting requirements, including identification of all accounting treatment differences from its last payment order proceeding?

Due to OPG's proposed changes to pension and OPEB costs, the Group of Intervenor submitted that it would want to cross examine on USGAAP conversion. OPG replied that the matter was discussed extensively in the EB-2012-0002 proceeding on deferral and variance accounts and USGAAP. OPG stated that the changes in pension and OPEB costs in this proceeding have nothing to do with the conversion to USGAAP.

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?

The Group of Intervenor submitted that the inclusion of the newly regulated hydroelectric facilities raises the issue of the appropriate capital structure and return on equity and that the issue will require cross examination. Board staff submitted that, as technology specific cost of capital was extensively reviewed in the EB-2010-0008 cost of service proceeding and as no intervenor evidence has been filed, a written hearing would be reasonable. OPG acknowledges that the newly regulated hydroelectric facilities presents a change circumstance, however OPG has filed evidence addressing why this change does not warrant a change in the current capital structure.

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?

With respect to issues 4.1 to 4.5, the Group of Intervenor submitted that the “biggest single impact on the payment amounts is the Applicant’s significant capital spending plan.” Board staff submitted that issue 4.1 should be a secondary issue as no interrogatories were filed under this issue. OPG replied that other than Niagara Tunnel, there are no issues in respect of previously and newly regulated hydroelectric facilities that would warrant consideration in an oral hearing.

4. CAPITAL PROJECTS

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?
- 4.8 Are the proposed test period in-service additions for nuclear projects (excluding those for the Darlington Refurbishment Project) appropriate?

With respect to issues 4.6 to 4.12, the Group of Intervenor submitted that level of nuclear capital spending, Darlington Refurbishment and other capital projects should be considered a primary issue. Board staff submitted that issue 4.6 should be a secondary issue as no interrogatories were filed under this issue. OPG replied that the Group of Intervenor’s submission focused on Darlington Refurbishment and provided no reasons why spending on other nuclear areas should be made a primary issue. OPG has provided extensive evidence on nuclear capital projects and that its approach to budgeting, planning and capitalization follows that previously reviewed and approved by the Board.

5. PRODUCTION FORECASTS

Regulated Hydroelectric

- 5.1 Is the proposed regulated hydroelectric production forecast appropriate?
- 5.1(a) Could the storage of energy improve the efficiency of hydroelectric generating stations?
- 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?

Due to the importance of the hydroelectric production forecast in the determination of payment amounts, the Group of Intervenor submitted that this is a primary issue. The Group of Intervenor submitted that issues 5.2 to 5.4 should be considered primary as well given OPG's proposed new hydroelectric incentive mechanism and the consideration of surplus baseload generation. OPG replied that, given the hydroelectric water conditions variance account, the Group of Intervenor's claim about the significant impact of hydroelectric production forecast on cost is incorrect. OPG also replied that the proposed changes to the incentive mechanism and treatment of surplus baseload generation are unlikely to have a material financial impact.

Sustainability Journal submitted that, "Some of the relevant [energy storage] technologies are new so the Board and Intervenor should be given the opportunity to ask questions about these new technologies at the hearing. Written exchanges would not be suitable for such explanations, particularly as they offer the potential for quickly reversing the general trend towards higher electricity prices in Ontario." OPG replied that due to the late emergence of issue 5.1(a) and the lack of evidence, this issue is best addressed through written submissions.

6. OPERATING COSTS

Nuclear

- 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?

The Society submitted that issues 6.1 to 6.10 should be categorized as primary as all of the issues concern operating costs. The Society anticipates substantial interest in staffing and compensation which might affect Society membership. Oral cross examination is required to ensure a factual record.

The Group of Intervenor submitted that given the proposed level of spending related to OM&A costs that issues 6.1 to 6.10 should be considered primary issues. It was noted that there was Board direction from the previous proceeding regarding nuclear fuel cost.

OPG replied that it has complied with Board direction to file an independent review of nuclear fuel procurement and that it has adopted most of the recommendations.

GEC submitted that the LTEP refers to the possible earlier shutdown of Pickering units, and that the related expenditure plan must be considered. OPG replied that issue 6.6 should be secondary as the Board fully considered Pickering Continued Operations in the previous cost of service proceeding. A consideration of earlier shutdown is beyond the test period.

OPG submitted that the Darlington Refurbishment OM&A expenditures in the test period are relatively small and variances are trued up through the capacity refurbishment variance account. Waterkeeper submitted that issue 6.7 be included as a priority issue as it provides an opportunity for the Board to assess the reasonableness of OPG's proposed environmental monitoring and mitigation costs for Darlington Refurbishment. As the Waterkeeper submission was filed late, OPG did not have an opportunity to respond.

6. OPERATING COSTS

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?

As above, GEC submitted that there is a high likelihood that Pickering will close earlier than the 2020 timeframe, and the depreciation schedule must be considered. In OPG's view, GEC is using depreciation to challenge Pickering Continued Operations and Darlington Refurbishment. OPG stated that such a challenge is beyond the scope of the proceeding and designating the depreciation issues as primary would do nothing to change that.

7. OTHER REVENUES

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?

The Group of Intervenor submitted that the calculation of Bruce net revenues is complex and material and that the adoption of USGAAP raises concerns requiring further exploration through oral cross examination. OPG replied that the methodology for determination of Bruce net revenues has not changed and that the impact of adoption of USGAAP was fully discussed in EB-2012-0002.

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?

As OPG's nuclear asset retirement obligations and costs are significant and as there is a new Ontario Nuclear Funds Agreement ("ONFA") Reference Plan, the Group of Intervenor submitted that these issues merit further examination in an oral hearing. Based on review of methodology in the previous cost of service proceeding, EB-2010-0008 and review of the current ONFA Reference Plan in EB-2012-0002, and as no intervenor evidence has been filed, Board staff submitted that issue 8.1 should be a secondary issue. OPG replies that it continues to apply the approved methodology to recover costs and that determination of nuclear liabilities is unchanged from previous cases.

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?
- 9.7 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?

As the deferral and variance accounts are numerous and complex and as the 2013 year-end balance is significant, the Group of Intervenors submitted that issues 9.1 to 9.9 should be categorized as primary. Board staff submitted that the operation of the majority of accounts was examined in detail in EB-2012-0002. As OPG only seeks clearance of four accounts, Board staff submitted that written hearing would be appropriate for issues 9.1 to 9.6. OPG replied that given the recent examination in EB-2012-0002, there is no reason why deferral and variance account issues not designated for oral hearing cannot be addressed in writing.

Board Findings on Prioritization of Issues

The Board has considered the submissions of the parties on the remaining issues. Any unsettled primary issues will proceed by way of oral hearing as the Board believes that it will benefit from cross examination to test the evidence. Any unsettled secondary issues will proceed by way of written submissions. A secondary issue does not imply that an issue is of secondary importance; a secondary issue may be efficiently dealt with by way of written submissions. The Board has therefore decided that of the remaining issues 3.1, 5.1(a) and 6.7 should be designated as primary issues.

Confidential Filings

In the Decision and Order on Confidential Filings and Procedural Order No. 8 issued on May 6, 2014, the Board directed OPG to file public versions of audit reports provided in interrogatory response Exh L-4.7-SEC-51 that were free of any potential attribution. OPG subsequently filed the audit reports, free of any redactions for the public record.

In Procedural Order No. 8, the Board also required OPG to provide further explanation of the rationale for the confidential treatment of Exh L-7.1-Staff-176 relating to hydroelectric ancillary services revenue and Exh L-6.3-Staff-76 related to nuclear fuel costs. OPG has since been advised that the IESO does not object to the public disclosure of the ancillary services revenue. At the motion hearing, OPG restated its concern that disclosure of the nuclear fuel costs will result in higher prices when contracts are renegotiated and that the ratepayers will ultimately be harmed.

The Board is not convinced that there will be harm to OPG or ratepayers in disclosing costs related to a contract that ends in 2021. Presumably the renegotiation of contract terms and prices would not commence until 2019 at the earliest. By then, many factors will have changed, and the Board does not see how keeping information confidential about a contract that expires in 2021 is harmful to OPG. OPG shall file an unredacted version of Exh L-6.3-Staff-76 for the public record.

On May 8, 2014, OPG requested confidential treatment for 6 technical conference undertakings and provided the reasons why it sought confidential treatment.

The Board will make provision for submissions on the request for confidential treatment for these undertakings. The documents will be considered confidential until the Board renders a decision.

OPG has reviewed the confidential version of the transcript from the motion hearing held on May 9, 2014. OPG has confirmed that no redactions are required. The entire transcript will be made available on the public record.

Hearing Plan and Settlement Proposal

It is the Board's expectation that parties will work with Board staff to develop a hearing plan. As five days have been set for the settlement conference, the Board expects parties to use some of this time for discussion on and development of a hearing plan. The plan will be filed with the Board no later than June 5, 2014.

Any settlement proposal arising from the settlement conference shall also be filed on June 5, 2014.

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

THE BOARD ORDERS THAT:

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

2. Board staff and parties wishing to make submissions on the request for confidential treatment of technical conference undertakings shall file such submissions with the Board and deliver them to OPG and all other parties on or before **May 26, 2014**.
3. If OPG wishes to respond to any submissions on its request for confidential treatment of technical conference undertakings, it shall file such submissions with the Board and deliver them to the relevant intervenor and all other parties on or before **June 2, 2014**.

All filings to the Board must quote the file number, **EB-2013-0321**, be made through the Board's web portal at <https://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 <http://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 violet.binette@ontarioenergyboard.ca and Board Counsel, Michael Millar at michael.millar@ontarioenergyboard.ca.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary
E-mail: boardsec@ontarioenergyboard.ca

Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, May 16, 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 (PRIORITIZED)

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

FINAL ISSUES LIST (PRIORITIZED)

1. GENERAL

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

2. RATE BASE

- 2.1 Primary - Are the amounts proposed for rate base appropriate?

3. CAPITAL STRUCTURE AND COST OF CAPITAL

- 3.1 Primary - What is the appropriate capital structure and rate of return on equity for the currently regulated facilities and newly regulated facilities?
- 3.2 Secondary - 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 Secondary - 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 Secondary - Are the proposed regulated hydroelectric capital expenditures and/or financial commitments reasonable?

- 4.3 Secondary - Are the proposed test period in-service additions for regulated hydroelectric projects (excluding the Niagara Tunnel Project) appropriate?
- 4.4 Primary - 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 Primary - Are the proposed test period in-service additions for the Niagara Tunnel Project reasonable?

Nuclear

- 4.6 Secondary - 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 Oral Hearing: Are the proposed nuclear capital expenditures and/or financial commitments reasonable?
- 4.8 Secondary - Are the proposed test period in-service additions for nuclear projects (excluding those for the Darlington Refurbishment Project) appropriate?
- 4.9 Primary - Are the proposed test period in-service additions for the Darlington Refurbishment Project) appropriate?
- 4.10 Primary - Are the proposed test period capital expenditures associated with the Darlington Refurbishment Project reasonable?
- 4.11 Oral Hearing: Are the commercial and contracting strategies used in the Darlington Refurbishment Project reasonable?
- 4.12 Primary - 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 Secondary - Is the proposed regulated hydroelectric production forecast appropriate?
- 5.1(a) Primary - Could the storage of energy improve the efficiency of hydroelectric generating stations?
- 5.2 Secondary - Is the estimate of surplus baseload generation appropriate?
- 5.3 Secondary - Has the incentive mechanism encouraged appropriate use of the regulated hydroelectric facilities to supply energy in response to market prices?
- 5.4 Primary - Is the proposed new incentive mechanism appropriate?

Nuclear

5.5 Primary - Is the proposed nuclear production forecast appropriate?

6. OPERATING COSTS

Regulated Hydroelectric

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

Nuclear

- 6.3 Oral Hearing: Is the test period Operations, Maintenance and Administration budget for the nuclear facilities appropriate?
- 6.4 Oral Hearing: Is the benchmarking methodology reasonable? Are the benchmarking results and targets flowing from those results for the nuclear facilities reasonable?
- 6.5 Secondary - 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 Secondary - Are the test period expenditures related to continued operations for Pickering Units 5 to 8 appropriate?
- 6.7 Primary - Is the test period Operations, Maintenance and Administration budget for the Darlington Refurbishment Project appropriate?

Corporate Costs

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

Depreciation

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

Income and Property Taxes

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

Other Costs

- 6.14 Secondary - Are the asset service fee amounts charged to the regulated hydroelectric and nuclear businesses appropriate?
- 6.15 Secondary - 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 Secondary - Are the proposed test period revenues from ancillary services, segregated mode of operation and water transactions appropriate?

Nuclear

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

Bruce Nuclear Generating Station

- 7.3 Secondary - 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 Secondary - 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 Secondary - Is the revenue requirement impact of the nuclear liabilities appropriately determined?

9. DEFERRAL AND VARIANCE ACCOUNTS

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

- 9.4 Secondary - Is the disposition methodology appropriate?
- 9.5 Secondary - Is the proposed continuation of deferral and variance accounts appropriate?
- 9.6 Oral Hearing: 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 Secondary - Is OPG's proposal to make existing hydroelectric variance accounts applicable to the newly regulated hydroelectric generation facilities appropriate?
- 9.8 Secondary - Is the proposal to discontinue the Hydroelectric Incentive Mechanism Variance Account appropriate?
- 9.9 Secondary - What other deferral accounts, if any, should be established for OPG?

10.REPORTING AND RECORD KEEPING REQUIREMENTS

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

11.METHODOLOGIES FOR SETTING PAYMENT AMOUNTS

- 11.1 Oral Hearing: Has OPG responded appropriately to Board direction on establishing incentive regulation?
- 11.2 Secondary - Is the design of the regulated hydroelectric and nuclear payment amounts appropriate?
- 11.3 Oral Hearing: 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 Oral Hearing: Are the effective dates for new payment amounts and riders appropriate?