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BY EMAIL and RESS

May 26, 2014
Our File No. EB-2013-0321

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2013-0321 – OPG 2014-2015 Payment Amounts – Issues Prioritization

We are counsel for the School Energy Coalition. This letter is sent to request that the Board re-prioritize a small number of issues from Secondary to Primary, so that the Board and parties can benefit from testing of the evidence on those issues through oral evidence. The request arises because, during the course of the ADR process, there are deeper dialogues about many of the issues – between intervenors, intervenors and Board Staff, and Applicant with intervenors and Board Staff – resulting in a clearer picture of what still has to be put on the record in order for the Board to determine the issues.

Our request relates to the following issues:

1. **Issues 4.6 and 4.8.** Issue 4.6 relates to the requirements of s. 6(2)4 of O.Reg. 53/05 for nuclear capital expenditures. Issue 4.8 relates to the in-service additions for nuclear capital expenditures. In both cases, it would appear to us that they are inextricably linked to Issue 4.7, nuclear capital expenditures and commitments. Capital expenditures under O.Reg. 53/05 are either co-extensive with, or a subset of, the capex under Issue 4.7, and the in-service additions are highly dependent on the capex to be discussed under 4.6 and 4.7. Issue 4.7 has been designated for oral hearing. In preparing cross for that issue, we found numerous times when there might be a question as to whether our areas of cross were including Issue 4.6 or Issue 4.8. In order to avoid this problem, SEC requests that 4.6 and 4.8 be re-designated as Primary, so that they can be included in cross-examination on 4.7 without any potential for procedural wrangling. [Incremental SEC cross: probably zero.]



2. **Issue 5.2.** This issue asks whether “the estimate of surplus baseload generation” is appropriate. The Applicant has not provided such an estimate, as SBG is captured in the Hydroelectric Surplus Baseload Generation Variance Account (i.e. it is really a deferral account). What we have seen is that the actual SBG for 2013, forecast in the Application in the fall to be \$3.9 million, actually came in at \$14.9 million (Tab 9.1, 17-SEC-132, Attach. 1, Table 1). There is a risk that the SBG for the Test Period could be significantly higher, but current forecasts are not on the record. Some parties may wish to argue that the Hydroelectric Surplus Baseload Generation Variance Account actually be structured as a variance account, with a forecast (properly tested, in this case through cross-examination) built into rates, and variations above and below that amount credited or debited to ratepayers. Ratepayers would thus avoid at least some of a potentially large claim after the fact. Moving this issue to Primary would facilitate the determination of an appropriate forecast, and its inclusion in rates, if the Board were to agree with this argument. [Incremental SEC cross: 45-60 minutes.]
3. **Issue 6.13.** The Applicant has recently disclosed that they have an operating loss for tax purposes, in 2013, of about \$153.8 million (Tab 6.13, 1 Staff-166). There is an issue as to whether that operating loss should be carried forward to 2014 to reduce the tax liability in that year, and thus reduce the payment amounts by about \$70 million. Since this is only recent information, it has not been subjected to discovery or other testing (other than a brief set of questions by Board Staff at Technical Conference Tr.2:219-220), and so in our submission should be tested in the hearing. Except as discussed under Issue 9.9, below, SEC believes that the other components of both property taxes and income taxes do not need to be moved from Secondary to Primary, but this one component should be re-prioritized. [Incremental SEC cross: 30-45 minutes.]
4. **Issue 7.2.** Some parties will likely take the position that the Applicant has a history of under-forecasting heavy water sales. While much of the factual information relating to that issue is already on the record, in our submission the Board would benefit from hearing from the Applicant – through cross-examination - the reasons for past under-forecasting, so that the current forecast can be assessed more accurately. [Incremental SEC cross: 15 minutes.]
5. **Issues 8.1 and 8.2.** These are the issues relating to nuclear waste and decommissioning costs. This is, of course, a complicated area that has been reviewed by the Board in the past. We understand that both the Decommissioning Fund and the Used Fuel Fund are, for the first time since 2007, in an overfunded position, with the result that approximately \$1.7 billion has been added to the “Due to Province” line for those funds. That figure comes from the 2013 Annual Report of the Applicant dated March 6, 2014, which is not currently in evidence in this proceeding. No interrogatories or technical conference questions have, therefore, been asked with respect to those amounts or their treatment. The status of those amounts under the Ontario Nuclear Funding Agreement is a matter of some debate, as is the impact of that overfunding (if that’s what it is) on the amounts to be charged to ratepayers in the Test Period. It may well be that, in the end, the Applicant’s proposed treatment of these funds is correct. However, in view of the large amounts and potential impact on payment amounts, SEC submits that the Board should hear that debate on their treatment, so that it can determine the appropriate outcome. We would expect that the



ONFA and the Annual Report will be filed on the record in this proceeding, and the Applicant's witnesses will be asked to track the treatment of that \$1.7 billion through the provisions of that Agreement. [Incremental SEC cross: 30-60 minutes.]

6. **Issue 9.7.** A number of parties will argue that certain of the hydroelectric deferral accounts should not apply to the newly-regulated hydroelectric facilities. One of those relates to the proposed e-HIM (which is already a Primary Issue), and another to SBG (which we have proposed above to move to Primary). In both cases, the determination of their applicability depends on a comparison of hydrologic and operating conditions between the previously-regulated and newly-regulated facilities. The evidence on the record is not thorough on these questions, and therefore SEC believes that the Board would benefit from oral evidence to review those questions. In the absence of oral evidence, some parties may argue that the Applicant has failed to provide sufficient evidence of hydrologic and operating conditions requiring certain variance account protections for the newly regulated facilities. In our view, it is preferable to complete the record on these questions, so that the Board can make its determination based on a full record, rather than failure to meet an onus of proof. [Incremental SEC cross: 30 minutes.]
7. **Issue 9.9.** On March 19th, in response to an interrogatory (Tab 9.7, Schedule 17-SEC-138), the Applicant disclosed that the newly regulated hydroelectric facilities include a balance sheet item for deferred taxes of \$283.5 million as of December 31, 2013. Grossed-up to be a rates equivalent, that is potentially \$378.0 million of future rates. The record does not appear to have the figures for June 30, 2014, immediately prior to those facilities becoming subject to regulation. The appropriate treatment of that pre-regulation liability in the Test Period and beyond will be a key issue in this proceeding. It is a small component of Issue 6.13 (see above), but will be the basis for a proposal from some parties for the creation of a deferral account to capture this pre-regulation deferred tax liability. We note that the differences between this issue, and the tax loss issue that arose in EB-2007-0905 and EB-2010-0008, will be important aspects of the treatment of this amount. Because those issues are very complicated, SEC believes that the Board and all parties would benefit from a full discussion in oral evidence. [Incremental SEC cross: 60 minutes.]

We have included, above, our estimates for incremental cross-examination on these issues, which total 3.5 to 4.5 hours over all issues, assuming none of them are settled. On at least the tax issues, SEC is likely to take the lead in cross-examination.

SEC is conscious that some of the evidence underpinning the above issues was placed on the record during interrogatory responses in March, or the Technical Conference in April, i.e. before the submissions by the parties on the prioritization of the issues. To the extent that the information noted above was available to SEC earlier, and thus we could have reached the conclusions noted above earlier, we apologize. Most of them have become clear to us only through the dialogue leading up to, and during, the ADR.

We note that none of the above submissions relating to the need for oral evidence on these issues were made by the intervenors in our previous submissions on the prioritization of issues. That is, we are not re-arguing what has already been argued. Rather, we are drawing to the Board's attention issues in respect of which it has now become clear to us that oral evidence



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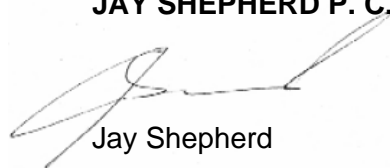
and cross-examination is required for the Board to determine just and reasonable payment amounts. In the case of each issue, the impact is material, and the Board's ability to assess the evidence will be compromised if the issue is not included in the oral hearing.

Based on the foregoing, SEC submits that the Board would benefit from re-prioritizing the above issues from Secondary to Primary.

All of which is respectfully submitted.

Yours very truly,

JAY SHEPHERD P. C.



Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties