



EB-2013-0326

IN THE MATTER OF Sections 25.20 and 25.21 of the
Electricity Act, 1998;

AND IN THE MATTER OF a Submission by the Ontario Power
Authority to the Ontario Energy Board for the review of its
proposed expenditure and revenue requirements and the fees
which it proposes for the year 2014.

Before: Christine Long
Presiding Member

Cathy Spoel
Member

**DECISION ON MOTION FOR PRODUCTION OF DOCUMENTS
AND OTHER INFORMATION**

July 24, 2014

On March 6, 2014, the Ontario Power Authority (the “OPA”) filed with the Ontario Energy Board (the “Board”) its proposed 2014 expenditure and revenue requirement and fees for review.

The OPA is seeking approval for the fees charged through electricity rates to recover its proposed 2014 operating budget of \$60.3 million. The operating budget is based upon the OPA’s 2014-2016 Business Plan that was approved by the Minister of Energy on January 29, 2014.

The OPA proposes to charge a usage fee of \$0.439/MWh, an increase of \$0.001 from the 2014 interim approved fee of \$0.438/MWh, and a reduction of \$0.112/MWh from its 2013 approved usage fee of \$0.551/MWh.

The OPA proposes to hold its other fees (which are for registrations and applications that generally do not directly impact residential consumers) constant.

Motion

On July 15, 2014 a motion was filed on behalf of Canadian Manufacturers & Exporters (“CME”), Association of Major Power Consumers in Ontario (“AMPCO”), Vulnerable Energy Consumers Coalition (“VECC”), Building Owners and Managers Association, Greater Toronto (“BOMA”) and Energy Probe Research Foundation (“Energy Probe”) (hereinafter referred to collectively as the “Moving Parties”) for an Order that the OPA produce certain documents and other information pursuant to four interrogatories (the “Motion”).

The Board granted the request on July 16, 2014 and heard submissions on the Motion orally on July 22, 2014. Submissions were made by CME, School Energy Coalition (“SEC”), Energy Probe, VECC, Board staff and the OPA.

Submissions

The Moving Parties asked that the Board make an Order that the OPA provide a full and adequate response to the following interrogatories:

- (a) Issue 1.1/Board Staff/4;
- (b) Issues 1-5/Board Staff/5;
- (c) Issue 1.1/CME/4; and
- (d) Issue 4.1/SEC/7.

All of the above interrogatories relate to Local Distribution Company (“LDC”) compliance and assessment audits and internal audits conducted by the OPA.

Board Staff interrogatories Nos. 4 and 5 requested descriptions of the findings and recommendations arising from the internal audits and the actions the OPA has taken to address those recommendations or findings.

In CME interrogatory 4 and SEC interrogatory 7 the OPA was asked to provide copies of all written audits. The audits requested included both internal audits and value for money audit reports as well as audits conducted of various LDC’s (collectively referred to as the “Audit Reports”).

With respect to the two Board staff interrogatories, CME, on behalf of the Moving Parties submitted that the OPA has failed to provide a meaningful description of the findings and recommendations arising from the internal audits and the actions which the OPA has taken to address the recommendations. In support of its submission CME made reference to Rule 27 of the Board's Rules of Practice and Procedure and the requirement that a party provide full and adequate responses to each interrogatory. CME argued that the responses provided were incomplete and did not provide the parties with sufficient information. CME also argued that there is an asymmetry of information in the context of an application in that the OPA has better information than the intervenors and the Board. As such, CME submitted that it becomes even more important that responses to interrogatories be answered in a comprehensive and detailed manner.

CME also submitted that the relevance of the requests for further information and production of the Audit Reports relates to the following evidence in the application:

Internal Audit Program

During this period, the OPA managed and coordinated 35 internal audit projects to confirm the effectiveness and efficiency of its business processes and systems. The status of actions taken to implement ongoing improvements in operations provided in the audit recommendations confirmed that the OPA has addressed all outstanding recommendations. In addition, the OPA achieved further assurance through internal audits conducted at the program counter party level (i.e. at the LDC level). These related to the review of the legitimacy and accuracy of amounts paid or received pertaining to OPA funded conservation and FIT programs.

The fact that the internal audit programs have been relied upon by the OPA in its own evidence demonstrates that the Audit Reports are relevant. CME submitted that the Audit Reports have been referred to by the OPA in the application in support of their contention that they are providing an efficient service. The detail of what they have done is relevant as it is the basis of their ongoing operations.

Energy Probe and SEC both supported the Motion. SEC also submitted that the Audit Reports are relevant as they will provide the Board with the necessary evidence to ensure that the proposed revenue requirement, and the corresponding fees which it is

approving, are adequate. SEC put forward the position that production of the Audit Reports and the additional information is necessary to ensure that not only are the cost based programs efficient, the other 95 percent of funds being spent on charge funds and non-administration fees are done so adequately and appropriately.

Board staff supported the Motion with respect to the request for further and better answers to the two Board Staff interrogatories however Board staff did not support the Motion requesting the production of the Audit Reports. Board staff submitted that the actual level of detail that's provided in the Audit Reports is not something that is relevant for the purpose of the Board making a determination on the particular issue in this proceeding.

In response to the Motion the OPA made the following submissions:

1. There is a limited scope of review in this case, as provided for in the statute and the request for production is not within the scope.
2. The audits are not a review of operating budgets, financial forecasts or the OPA's annual business plan and are therefore not relevant to this case.
3. In the absence of some specific reason to support the Moving Parties submission that the Audit Reports are going to help the Board with the 2014 review requirement expenditure requirement or fees, it's not appropriate to require production.
4. The evidence filed in the application makes it clear that there are no outstanding issues from the OPA's audit process. There would be no value added to any process, either the Board's process for review of the OPA's submission or the audit process, for the Board to take on a responsibility as an additional level of review of audit findings.
5. Even if the Board determines that the Audit Reports are relevant, the prejudice in producing them outweighs any probative value in this situation. Further, the audit function would be further compromised if subject to public dissemination.

Board Findings

The Board finds that its mandate in relation to the review of the OPA's fees application comes from section 25.1 of the *Electricity Act* and is limited to a review of the administrative fees. However, as submitted by SEC and the Moving Parties an assessment of the OPA's administrative fees requires an examination and evaluation of the management, implementation, and performance of the OPA's charge-funded activities. This was noted by the Board in the last OPA's fees proceeding.¹

The Board has considered the submissions and has determined that the OPA must provide much more specific answers to the interrogatories which are the subject matter of this Motion however, the OPA is not required to produce the Audit Reports. In answering the interrogatories the OPA is expected to expand on the answers given and to provide details of the subject matter of the Audit Reports, the recommendations, the action(s) that the OPA has taken as a result of each recommendation, and the status of the implementation of that action. The information set out should be clear and comprehensive and should enable the intervenors and the Board to understand the nature of the investigations and the outcome.

The Board also finds it important to note that while it does not accept the OPA's position that information in the Audit Reports is not relevant to the Board's mandate in approving the 2014 fees, the Board does accept the submission made by both the OPA and Board staff that the detail contained in the Audit Reports about the method by which the auditors conducted their inquiries is not relevant in this case. It is only the outcome of the audit that is relevant going forward.

In making this determination the Board emphasizes that this finding is not a general finding about audits but rather it is about the specific Audit Reports referred to in this proceeding.

At this time, the Board considers it necessary to make provisions for the following procedural matters.

¹ EB-2010-0279 at page 6

THE BOARD ORDERS THAT:

1. The OPA is to provide the subject matter of the Audit Reports, the recommendations, the action(s) that the OPA has taken as a result of each recommendation, and the status of the implementation of that action by **July 29, 2014**.
2. The Settlement Conference for the purpose of settling issues will be reconvened at the Ontario Power Authority's offices located at 120 Adelaide Street West, Suite 1600, Toronto on **July 31, 2014** beginning at 9:30 a.m.
3. If there is a settlement or partial settlement agreement forthcoming from the Settlement Conference then that agreement shall be filed with the Board no later than **August 8, 2014**.
4. To the extent that there are any unsettled issues, Board staff and intervenors may file submissions with respect to whether or not these should be handled by way of written hearing or oral hearing by **August 8, 2014**.
5. To the extent that there are any unsettled issues, the OPA may file a reply submission as to whether or not these issues should be handled by way of written hearing or oral hearing by **August 12, 2014**.

All filings to the Board must quote the file number EB-2013-0326 and be made electronically through the Board's web portal at in searchable/unrestricted PDF format at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies and must also be filed at the Board's address provided below. 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 4:00 p.m. on the required date.

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DATED at Toronto, July 24, 2014

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary