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EB-2013-0326

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** Section 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 a review its proposed expenditures and revenue requirement and the fees which it proposed for the year 2014.

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**SCHOOL ENERGY COALITION ARGUMENT COMPENDIUM**

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Ontario Energy Board	
FILE No.	EB-2013-0326
EXHIBIT No.	K1
DATE	Oct 7, 2014
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08/99	

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**EB-2013-0326**

**ONTARIO ENERGY BOARD**

**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 requirement for the year 2014.

**REVISED SUBMISSION FOR REVIEW**

1. Pursuant to section 25.22 of the *Electricity Act, 1998* (the "Act"), the Ontario Power Authority ("OPA") has submitted its Business Plan to the Minister of Energy (the "Minister"). In the 2014-2016 Business Plan the OPA set its operating expense budget for 2014 at \$60.3 million. The OPA's requested revenue requirement of \$60.3 million is based on its operating budget. The 2014-2016 Business Plan for the fiscal year 2014 has been approved by the Minister pursuant to section 25.22 (3) of the Act.
2. The OPA hereby submits to the Ontario Energy Board ("Board") its proposed 2014 expenditure and revenue requirement for review and approval pursuant to subsection 25.21(1) of the Act.
3. 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.
4. The OPA proposes to continue to charge registration fees of up to \$10,000 per proposal for electricity supply and capacity procurements, including conservation and load management procurements. The OPA also proposes to continue to charge non-refundable application fees for the Feed-in-Tariff ("FIT") program of \$0.50/kW of proposed Contract Capacity, having a minimum of \$500 and to a maximum of \$5,000.

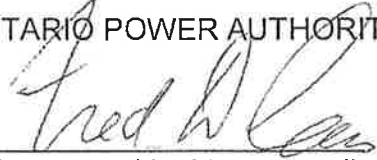
5. The OPA also proposes to charge a Large Renewable Procurement ("LRP") qualification submission fee from request for qualification ("RFQ") applicants which is the sum of:
- i. The greater of: (a) \$2,000 for the first (or only, if only one renewable fuel is proposed) proposed renewable fuel submitted; or (b) \$1.00 per kW of estimated contract capacity for all large renewable project(s) to a maximum amount of \$30,000; plus
  - ii. \$2,000 for each additional renewable fuel proposed; plus
  - iii. GST on the total of (a) and (b) above.
6. Pursuant to subsection 25.21(2) of the Act, the OPA is seeking the following approvals from the Board:
- approval of the usage fee and the registration fees described above, including the LRP RFQ submission fee, or such further or other fees as the Board may deem appropriate;
  - interim approval of the LRP RFQ submission fee described above;
  - if necessary interim orders as the Board may deem appropriate;
  - approval of a revenue requirement comprised of the proposed 2014 operating expense budget of \$60.3 million;
  - approval of its proposal to refund amounts in the Forecast Variance Deferral Account in excess of a balance of \$15.0 million;
  - approval of the establishment of the 2014 Forecast Variance Deferral Account ("FVDA"), of the 2014 Government Procurement Costs Deferral Account ("GPCDA"), and of the 2014 Registration Fees Deferral Account ("RFDA"), and approval or continuation of such further or other deferral accounts as the Board may deem appropriate; and
  - all necessary orders and directions, pursuant to the *Ontario Energy Board Act, 1998* and the Board's Rules of Practice and Procedure, as may be necessary in relation to this submission, and execution of the approvals requested in the Business Plan.
7. The OPA proposes the following title for this proceeding: Ontario Power Authority Fiscal 2014 Expenditure and Revenue Requirement Submission for Review ("2014 Revenue Requirement Submission" or "Submission").

8. The OPA proposes that the Board review of the Submission proceed by way of a written hearing.
9. The OPA may amend its pre-filed evidence from time to time, prior to and during the course of the Board proceeding. Furthermore, the OPA may seek to have additional meetings with Board Staff and intervenors in order to identify and address any further issues arising from this submission, with a view to an early settlement and disposition of this proceeding.
10. The OPA requests that a copy of all documents filed with the Board by each party to this proceeding, be served on the OPA and the OPA's counsel in this proceeding as follows:

- |      |                                    |  |
|------|------------------------------------|--|
| a)   | <u>The Ontario Power Authority</u> | Ms. Miriam Heinz<br>Regulatory Coordinator<br><br>120 Adelaide Street West, Suite 1600<br>Toronto, ON, M5H 1T1<br><br>Telephone: 416 969-6045<br>Fax: 416 969-6383<br>E-mail: <a href="mailto:miriam.heinz@powerauthority.on.ca">miriam.heinz@powerauthority.on.ca</a> |
| <br> |                                    |  |
| b)   | <u>Aird &amp; Berlis LLP</u>       | Mr. Fred D. Cass<br>Counsel<br><br>Brookfield Place, Suite 1800<br>181 Bay Street<br>Toronto, ON, M5J 2T9<br><br>Telephone: 416 865-7742<br>Fax: 416-863-1515<br>E-mail: <a href="mailto:fcass@airdberlis.com">fcass@airdberlis.com</a>                                |

DATED at Toronto, Ontario, this 29th day of August, 2014.

ONTARIO POWER AUTHORITY

  
by its counsel in this proceeding  
Fred D. Cass



# Electricity Act, 1998, SO 1998, c 15, Sch A

Current version: in force since Jul 24, 2014

Link to the latest version: <http://canlii.ca/t/2xn>

Stable link to this version: <http://canlii.ca/t/529ds>

Citation to this version: Electricity Act, 1998, SO 1998, c 15, Sch A, <<http://canlii.ca/t/529ds>> retrieved on 2014-10-06

Currency: Last updated from the e-Laws site on 2014-09-29

## Electricity Act, 1998

### S.O. 1998, CHAPTER 15 SCHEDULE A

**Consolidation Period:** From July 24, 2014 to the e-Laws currency date.

Last amendment: 2014, c. 7, Sched. 7.

## PART I GENERAL

### Purposes

1. The purposes of this Act are,
  - (a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;
  - (b) to encourage electricity conservation and the efficient use of electricity in a manner consistent with the policies of the Government of Ontario;
  - (c) to facilitate load management in a manner consistent with the policies of the Government of Ontario;
  - (d) to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;
  - (e) to provide generators, retailers and consumers with non-discriminatory access to transmission and distribution systems in Ontario;

**Note:** On a day to be named by proclamation of the Lieutenant Governor, clause (e) is amended by striking out “generators, retailers and consumers” and substituting “generators, retailers, market participants and consumers”. (See: 2014, c. 7, Sched. 7, ss. 1, 17 (1))

- (f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;
- (g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;
- (h) to ensure that Ontario Hydro’s debt is repaid in a prudent manner and that the burden of debt repayment is fairly distributed;
- (i) to facilitate the maintenance of a financially viable electricity industry; and
- (j) to protect corridor land so that it remains available for uses that benefit the public, while recognizing the primacy of transmission uses. 2004, c. 23, Sched. A, s. 1.

### Interpretation

25.7 The directors and officers of the OPA shall comply with the provisions of the Governance and Structure By-law relating to conflict of interest. 2004, c. 23, Sched. A, s. 29.

**Codes of conduct**

25.8 (1) The board of directors of the OPA may establish codes of conduct applicable to the directors, officers, employees and agents of the OPA and to members of panels established by the OPA. 2004, c. 23, Sched. A, s. 29.

**Conflict**

(2) Any provision of a code of conduct that conflicts with this Act or the OPA's by-laws is void. 2004, c. 23, Sched. A, s. 29.

**Delegation**

25.9 Subject to the Governance and Structure By-law, the board of directors of the OPA may delegate any of the OPA's powers or duties to a committee of the board, to a panel established by the board or to any other person or body, subject to such conditions and restrictions as may be specified by the board of directors. 2004, c. 23, Sched. A, s. 29.

**Panels**

25.10 The board of directors of the OPA shall establish such panels as the board considers necessary for the purposes of this Act. 2004, c. 23, Sched. A, s. 29.

25.11 Repealed: 2009, c. 12, Sched. B, s. 3.

**Stakeholder input**

25.12 The OPA shall establish one or more processes by which consumers, distributors, generators, transmitters and other persons who have an interest in the electricity industry may provide advice and recommendations for consideration by the OPA. 2004, c. 23, Sched. A, s. 29.

**Staff and assistance**

- 25.13 (1) Subject to the by-laws of the OPA, a panel established by the board of directors may use the services of,
- (a) the OPA's employees, with the consent of the OPA; and
  - (b) persons other than the OPA's employees who have technical or professional expertise that is considered necessary.
- 2004, c. 23, Sched. A, s. 29.

**Provision of information to the IESO**

(2) The OPA shall provide the IESO with such information as the IESO may require from time to time. 2004, c. 23, Sched. A, s. 29.

**Confidential information relating to a market participant**

(3) A record that contains information provided to or obtained by the OPA relating to a market participant and that is designated by the OPA as confidential or highly confidential shall be deemed, for the purpose of section 17 of the *Freedom of Information and Protection of Privacy Act*, to be a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization. 2004, c. 23, Sched. A, s. 29.

**Liability**

25.14 (1) No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the OPA or a member of the Advisory Committee or a panel established by the board for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this or any other Act, the regulations, the OPA's licence, the OPA's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty. 2004, c. 23, Sched. A, s. 29.

**Same**

(2) Subsection (1) does not relieve the OPA of any liability to which it would otherwise be subject in respect of a cause of action arising from any act, neglect or default referred to in subsection (1). 2004, c. 23, Sched. A, s. 29.

**Liability of directors under the *Employment Standards Act, 2000***

25.15 Part XX of the *Employment Standards Act, 2000* does not apply to a director of the OPA. 2004, c. 23, Sched. A, s. 29.

**By-laws**

of subsection (1). 2004, c. 23, Sched. A, s. 29.

#### **Delegation**

(3) In an order under subsection (1), the Lieutenant Governor in Council may delegate to an officer or employee of the Crown or an agency of the Crown or to a solicitor engaged to act for the Minister of Finance, any or all of the powers of the Minister of Finance under this section. 2004, c. 23, Sched. A, s. 29.

#### **Fees payable to Minister of Finance**

(4) The OPA shall pay to the Minister of Finance such fees as are prescribed by the regulations in respect of securities purchased and sums loaned under this section. 2004, c. 23, Sched. A, s. 29.

#### **Reimbursement of costs incurred by the Crown**

25.18 (1) The OPA shall reimburse the Crown or, if so directed by the Minister of Finance, an agency of the Crown for costs relating to the OPA, a procurement contract, an initiative described in clause 25.32 (4) (a) or a matter within the objects of the OPA, if,

- (a) the costs were incurred by the Crown or an agency of the Crown after January 20, 2004 and before the Board's first approval of the OPA's procurement process under subsection 25.31 (4); or
- (b) the liability of the Crown or an agency of the Crown for the costs arose during the period described in clause (a). 2004, c. 23, Sched. A, s. 29.

#### **Payment of reimbursement**

(2) The OPA shall make the reimbursement by making one or more payments in such amount or amounts at such time or times as may be determined by the Minister of Finance. 2004, c. 23, Sched. A, s. 29.

#### **Minister's determinations final**

(3) The determinations of the Minister under subsection (2) are final and conclusive and shall not be stayed, varied or set aside by any court. 2004, c. 23, Sched. A, s. 29.

25.19 Repealed: 1998, c. 15, Sched. A, s. 25.19 (3). See: 2004, c. 23, Sched. A, s. 30.

#### **Fees and charges**

25.20 (1) The OPA may establish and impose fees and charges to recover,

- (a) the costs of doing anything the OPA is required or permitted to do under this or any other Act; and
- (b) any other type of expenditure the recovery of which is permitted by the regulations, subject to any limitations and restrictions set out in the regulations. 2004, c. 23, Sched. A, s. 31 (1).

#### **Collection**

(2) The IESO shall, in accordance with the regulations, collect and pay to the OPA all fees and charges payable to the OPA. 2004, c. 23, Sched. A, s. 31 (1).

#### **May recover costs of procurement contracts**

(3) For greater certainty, the OPA may, subject to the regulations, establish and impose charges to recover from consumers its costs and payments under procurement contracts. 2004, c. 23, Sched. A, s. 31 (2).

#### **Board deemed to approve recovery**

(4) The OPA's recovery of its costs and payments related to procurement contracts shall be deemed to be approved by the Board. 2004, c. 23, Sched. A, s. 31 (2).

#### **Review of requirements and fees**

25.21 (1) The OPA shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves or is deemed to approve the OPA's proposed business plan for the fiscal year under section 25.22. 2004, c. 23, Sched. A, s. 32.

#### **Board's powers**

(2) The Board may approve the proposed requirements and the proposed fees or may refer them back to the OPA for further consideration with the Board's recommendations. 2004, c. 23, Sched. A, s. 32.

#### **Same**

(3) In reviewing the OPA's proposed requirements and proposed fees, the Board shall not take into consideration the remuneration and benefits of the chair and other members of the board of directors of the OPA. 2004, c. 23,

Sched. A, s. 32.

**Changes in fees**

(4) The OPA shall not establish, eliminate or change any fees without the approval of the Board. 2004, c. 23, Sched. A, s. 32.

**Hearing**

(5) The Board may hold a hearing before exercising its powers under this section, but it is not required to do so. 2004, c. 23, Sched. A, s. 32.

(6), (7) Repealed: 2009, c. 33, Sched. 14, s. 2 (3).

**Business plan**

25.22 (1) At least 90 days before the beginning of its 2006 and each subsequent fiscal year, the OPA shall submit its proposed business plan for the fiscal year to the Minister for approval. 2004, c. 23, Sched. A, s. 32.

**Minister's approval**

(2) The Minister may approve the proposed business plan or refer it back to the OPA for further consideration. 2004, c. 23, Sched. A, s. 32.

**Deemed approval**

(3) If the Minister does not approve the proposed business plan and does not refer it back to the OPA for further consideration at least 70 days before the beginning of the fiscal year to which it relates, the Minister shall be deemed to have approved the OPA's proposed business plan for the fiscal year. 2004, c. 23, Sched. A, s. 32.

(4) Repealed: 2009, c. 33, Sched. 14, s. 2 (4).

**Auditor**

25.23 The board of directors of the OPA shall appoint one or more auditors licensed under the *Public Accountancy Act* to audit annually the accounts and transactions of the OPA. 2004, c. 23, Sched. A, s. 32.

**Auditor General**

25.24 The Auditor General may audit the accounts and transactions of the OPA. 2004, c. 23, Sched. A, s. 32; 2008, c. 7, Sched. G, s. 3.

**Annual report**

25.25 (1) The OPA shall, within 90 days after the end of every fiscal year, submit to the Minister an annual report on its affairs during that fiscal year, signed by the chair of its board of directors. 2004, c. 23, Sched. A, s. 32.

**Financial statements**

(2) The audited financial statements of the OPA shall be included in the annual report. 2004, c. 23, Sched. A, s. 32.

**Tabling**

(3) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 2004, c. 23, Sched. A, s. 32.

**Other persons**

(4) The OPA may give its annual report to other persons before the Minister complies with subsection (3). 2004, c. 23, Sched. A, s. 32.

**Other reports**

25.26 (1) The OPA shall submit to the Minister such reports and information as the Minister may require from time to time. 2004, c. 23, Sched. A, s. 32.

**Same**

(2) The OPA shall submit to the Minister of Finance and the Minister such reports and information as the Minister of Finance may require from time to time. 2004, c. 23, Sched. A, s. 32.

**Information to Board**

25.27 The OPA shall provide the Board with such information as the Board may require from time to time. 2004, c. 23, Sched. A, s. 32.

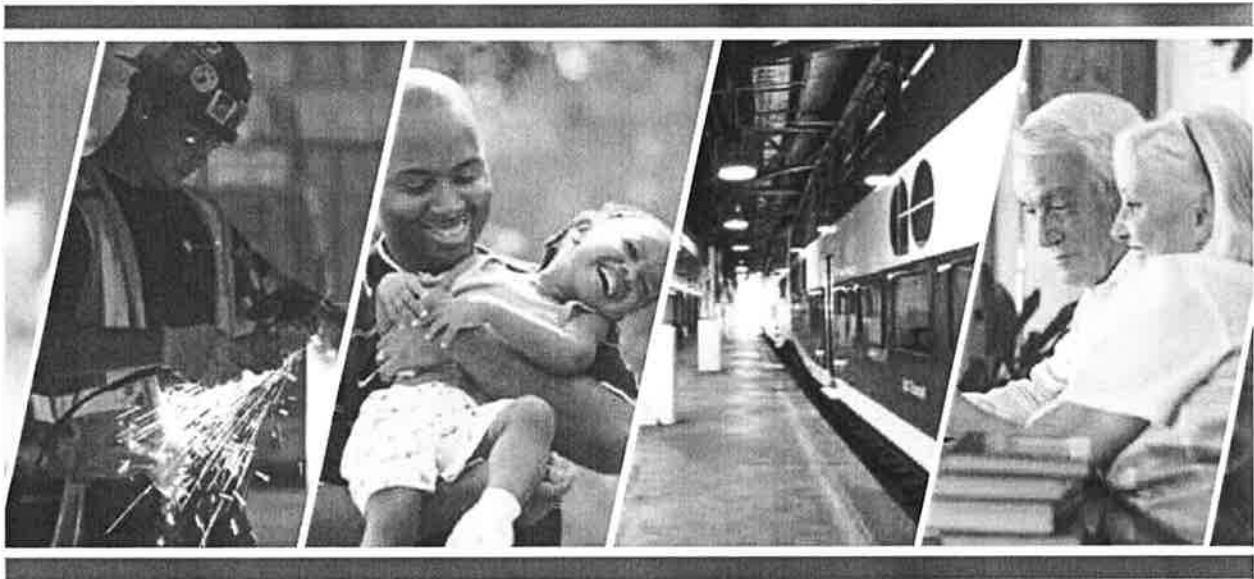
**Application of corporations statutes**

25.28 Except as otherwise provided by the regulations, the *Corporations Act* and the *Corporations Information*





# **BUILDING OPPORTUNITY SECURING OUR FUTURE**



**ONTARIO BUDGET • 2014 • BUDGET PAPERS**

*The Honourable*  
**CHARLES SOUSA**  
*Minister of Finance*

## **Continuing to Improve Agency Accountability and Transparency**

The government continues to strengthen its oversight of classified agencies and reduce risk in the agencies sector. The government is committed to ensuring that only those agencies that play an important role in the social and economic fabric of the province continue to operate.

In 2010–11, the government reduced the number of classified agencies in Ontario from 259 to 246 (a drop of five per cent). Since March 2011, hard work and careful management have seen an additional reduction in the number of classified agencies by approximately 20 per cent.

By March 2015, the government is committed to reducing the number of classified agencies by approximately 30 per cent below the 2011 baseline (246 classified agencies). For example, the government is proposing to merge the Ontario Mortgage Corporation with the Ontario Mortgage and Housing Corporation, eliminating some overlapping functions. The merger would result in more efficient administration of various housing and loan programs.

The government is also proposing legislative amendments to consolidate two electricity agencies — Ontario Power Authority (OPA) and the Independent Electricity System Operator (IESO) — in order to realize efficiencies and contain costs.

Beginning this year, the government will be requiring that the mandates of all classified agencies be reviewed on a regular basis. By undertaking focused mandate reviews, the government will ensure that the tax dollars of hardworking Ontarians will only be used to support those classified agencies that are carrying out activities and/or delivering services that are aligned with the needs and expectations of citizens and their government. In instances where agencies are not aligned or meeting expectations, the government will use the mandate review results to help determine whether particular agencies should be downsized, consolidated or divested.

**UNDERTAKING NO. J1.1**

**REFERENCE**

September 18, 2014 Transcript Volume 2 p. 15

UNDERTAKING NO. J1.1: TO ADVISE IN WHICH PREVIOUS OPA PROCEEDING OPA HAS SOUGHT TO RETAIN MONEY IN THE FORECAST VARIANCE DEFERRAL ACCOUNT BECAUSE OF UNFORESEEN OR UNPLANNED WORK THAT MAY COME UP

**RESPONSE**

In the OPA's 2014 Revenue Requirement Submission (EB-2013-0326), the OPA has, for the first time, requested that it retain a portion of the surplus in its Forecast Variance Deferral Account ("FVDA") for unforeseen or unplanned work. The retention of the surplus in the FVDA is in lieu of seeking a contingency amount from any other source, including adjusting its revenue requirement.

In previous proceedings, the OPA asked for both a contingency fund for unexpected expenses as part of its revenue requirement, and the use of an FVDA in which to record revenue and cost variances not otherwise incorporated into the revenue requirement submission. Any surplus or deficit in the account due to collection of the OPA's usage fee is also recorded in the FVDA.

The OPA has proposed a contingency fund to address unexpected operating costs and additional work associated with new directions from the Minister or the OEB in each of its Revenue Requirement Submissions since its inception, as shown in the table below. The exception was EB-2010-0279 (2011 Revenue Requirement) where it stated that "In prior years the OPA budgeted for unforeseeable expenses through a contingency provisions. In the 2011 Budget this has been eliminated. Given conditions expected in 2011, the OPA has confidence in its ability to manage within the amount budgeted." (It should be noted that the OPA was unable to file both its 2012 and 2013 Revenue Requirements as it was unable to obtain the Minister's approval of its Business Plans.) Please see the table below for a summary of the OPA's requests for a contingency fund, an FVDA, and retention of funds in the FVDA.

OPA Revenue Requirement Submissions	Contingency in Revenue Requirement	No Contingency	FVDA	Retention of Surplus in FVDA for Contingency
EB-2005-0489 (2006 RRS)	•			
EB-2006-0233 (2007 RRS)	•		•	
EB-2007-0791 (2008 RRS)	•		•	
EB-2008-0312 (2009 RRS)	•		•	
EB-2009-0347 (2010 RRS)	•		•	
EB-2010-0279 (2011 RRS)		•	•	
EB-2013-0326 (2014 RRS)			•	•

1

2 Although this is the first time that the OPA has asked for funds to be retained in its FVDA to  
3 cover unexpected costs, the OPA believes that this is consistent with the original intent of  
4 the FVDA. Since the OPA has no other source of revenue, there was a need for an FVDA  
5 account to record variances between the OPA's actual expenses and actual revenues, and  
6 those budgeted and approved in the revenue requirement submission. The FVDA is broad  
7 enough to capture a difference between actual costs and actual revenues that is caused, in  
8 part, by merger costs.

9 The OPA believes it may be helpful to provide an example of an analogous situation that  
10 occurred when the OPA was created. O. Reg. 47/05 *Fees for OPA's 2005 Fiscal Year*,  
11 under the *Electricity Act, 1998* provided that the IESO would pay the OPA's established  
12 fees out of any surplus collected to the end of December 2004. In its 2006 revenue  
13 requirement submission, the OPA stated in EB-2005-0489 at Exhibit A-4-1, page 2 that:

14 Activities in 2005 were funded by a transfer of \$15 million in "seed money" from  
15 surplus operating reserves of the Independent Electricity System Operator ("IESO")  
16 to fund start up activities. This initial seed money was provided without any  
17 supporting analysis or intention that this amount would represent an appropriate  
18 amount for ongoing operations in future years. The seed money covered costs that  
19 included initial staffing, temporary accommodations, information technology tools,  
20 and consulting fees that were necessary to design the organization, its functions and  
21 administrative processes, and perform activities mandated by specific Government  
22 directives.



# Fees for OPA's 2005 Fiscal Year, O Reg 47/05

**This regulation is repealed or spent since 2009-12-15.**

## Repealed or spent version

Link to the latest version: <http://canlii.ca/t/sfq>

Stable link to this version: <http://canlii.ca/t/l0h0>

Citation to this version: Fees for OPA's 2005 Fiscal Year, O Reg 47/05, <<http://canlii.ca/t/l0h0>> retrieved on 2014-10-06

Currency: Last updated from the e-Laws site on 2014-09-29

## Electricity Act, 1998 Loi de 1998 sur l'électricité

### ONTARIO REGULATION 47/05

### FEES FOR OPA'S 2005 FISCAL YEAR

#### Historical version for the period December 15, 2009 to March 8, 2011.

Note: This Regulation became spent on December 15, 2009.  
No amendments.

*This Regulation is made in English only.*

#### Fees for 2005

1. (1) For the purpose of subsection 25.21 (7) of the Act, the established fees for the OPA's 2005 fiscal year are \$15,000,000. O. Reg. 47/05, s. 1 (1).

(2) The IESO shall collect the fees established under subsection (1) and shall pay them to the OPA. O. Reg. 47/05, s. 1 (2).

(3) Despite subsection (2), the IESO may pay the fees established under subsection (1) or a portion of them from amounts collected by it on or before December 31, 2004. O. Reg. 47/05, s. 1 (3).

Electricity Act, 1998, SO 1998, c 15, Sch A

This version is not the latest.

Past version: in force between Jan 1, 2005 and Jan 30, 2005

Link to this version: <http://canlii.ca/t/1k20>  
Citation to this version: Electricity Act, 1998, SO 1998, c 15, Sch A, <<http://canlii.ca/t/1k20>> retrieved on 2014-10-06

Electricity Act, 1998

S.O. 1998, CHAPTER 15  
SCHEDULE A

Historical version for the period January 1, 2005 to January 30, 2005.

**Caution:** This historical version is affected by one or more retroactive provisions. The retroactivity is not reflected in this historical version. For more information, see S.O. 2005, chapter 31, Schedule 6, subsections 4 (2-4) as well as the Table of Consolidated Public Statutes – Detailed Legislative History.

Amended by: 1999, c. 9, ss. 102-104; 1999, c. 14, Sched. F, s. 3; 2000, c. 25, s. 46; 2000, c. 26, Sched. D, s. 1; 2000, c. 42, ss. 22-43; 2001, c. 8, s. 205; 2001, c. 9, Sched. F, s. 1; 2001, c. 23, ss. 67-69; 2002, c. 1, Sched. A; 2002, c. 17, Sched. F, Table; 2002, c. 22, ss. 61-63; 2002, c. 23, s. 3; 2002, c. 24, Sched. B, s. 33; 2004, c. 8, s. 46, Table; 2004, c. 16, Sched. D, Table; 2004, c. 17, s. 32; 2004, c. 19, s. 12; 2004, c. 23, Sched. A; 2004, c. 31, Sched. 11.

PART I  
GENERAL

Purposes

1. The purposes of this Act are,
- (a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;

(b) to encourage electricity conservation and the efficient use of electricity in a manner consistent with the policies of the Government of Ontario;

(c) to facilitate load management in a manner consistent with the policies of the Government of Ontario;

(d) to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(e) to provide generators, retailers and consumers with non-discriminatory access to transmission and distribution systems in Ontario;

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(h) to ensure that Ontario Hydro’s debt is repaid in a prudent manner and that the burden of debt repayment is fairly distributed;

(i) to facilitate the maintenance of a financially viable electricity industry; and

(j) to protect corridor land so that it remains available for uses that benefit the public, while recognizing the primacy of

consumers its costs and payments under procurement contracts. 2004, c. 23, Sched. A, s. 31 (2).

#### **Board deemed to approve recovery**

(4) The OPA's recovery of its costs and payments related to procurement contracts shall be deemed to be approved by the Board. 2004, c. 23, Sched. A, s. 31 (2).

#### **Review of requirements and fees**

**25.21** (1) The OPA shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves or is deemed to approve the OPA's proposed business plan for the fiscal year under section 25.22. 2004, c. 23, Sched. A, s. 32.

#### **Board's powers**

(2) The Board may approve the proposed requirements and the proposed fees or may refer them back to the OPA for further consideration with the Board's recommendations. 2004, c. 23, Sched. A, s. 32.

#### **Same**

(3) In reviewing the OPA's proposed requirements and proposed fees, the Board shall not take into consideration the remuneration and benefits of the chair and other members of the board of directors of the OPA. 2004, c. 23, Sched. A, s. 32.

#### **Changes in fees**

(4) The OPA shall not establish, eliminate or change any fees without the approval of the Board. 2004, c. 23, Sched. A, s. 32.

#### **Hearing**

(5) The Board may hold a hearing before exercising its powers under this section, but it is not required to do so. 2004, c. 23, Sched. A, s. 32.

#### **Transitional, 2005 fiscal year**

(6) Despite subsection (1), the OPA shall submit its proposed expenditure and revenue requirements for its 2005 fiscal year and the fees it proposes to charge during that fiscal year to the Minister for review not later than 30 days after the Minister approves or is deemed to approve the OPA's proposed business plan for the 2005 fiscal year under section 25.22. 2004, c. 23, Sched. A, s. 32.

#### **Same**

(7) Despite subsections (2) and (4), the fees for the OPA's 2005 fiscal year or for part of that year may be established and imposed by regulation. 2004, c. 23, Sched. A, s. 32.

#### **Business plan**

**25.22** (1) At least 90 days before the beginning of its 2006 and each subsequent fiscal year, the OPA shall submit its proposed business plan for the fiscal year to the Minister for approval. 2004, c. 23, Sched. A, s. 32.

#### **Minister's approval**

(2) The Minister may approve the proposed business plan or refer it back to the OPA for further consideration. 2004, c. 23, Sched. A, s. 32.

#### **Deemed approval**

(3) If the Minister does not approve the proposed business plan and does not refer it back to the OPA for further consideration at least 70 days before the beginning of the fiscal year to which it relates, the Minister shall be deemed to have approved the OPA's proposed business plan for the fiscal year. 2004, c. 23, Sched. A, s. 32.

#### **Transitional, 2005 fiscal year**

(4) The following rules apply in respect of the OPA's proposed business plan for its 2005 fiscal year:

1. The OPA shall, within the time period specified by the Minister, submit its proposed business plan for its 2005 fiscal year to the Minister for approval.
2. If the Minister does not approve the proposed business plan and does not refer it back to the OPA within 20 days of receipt, the Minister shall be deemed to have approved the proposed business plan. 2004, c. 23, Sched. A, s. 32.

#### **Auditor**

**25.23** The board of directors of the OPA shall appoint one or more auditors licensed under the Public Accountancy



**EB-2011-0339**

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

**AND IN THE MATTER OF** section 21 of the *Ontario Energy  
Board Act, 1998*

**AND IN THE MATTER OF** an application by the Ontario  
Power Authority for an Interim Fees Order.

### **INTERIM FEES ORDER**

On December 20, 2011 the Ontario Power Authority (the "OPA") filed an application with the Ontario Energy Board, (the "Board") for an interim fee order (the "Interim Order") pursuant to subsection 21(7) of the Ontario Energy Board Act, 1998 for:

- (a) approval to continue to charge the usage fee approved by the Board in EB-2010-0279 (\$0.551 per MWh) until the end of the month in which the Board makes a final order approving a usage fee for 2012;
- (b) approval to continue to charge registration fees of up to \$10,000 per proposal for electricity supply and capacity procurements, subject to any final order made by the Board in this proceeding;
- (c) approval to continue to charge non-refundable application fees for the Feed-in-Tariff ("FIT") program of \$0.50/kW of proposed Contract Capacity, having a minimum of \$500 and to a maximum of \$5,000, subject to any final order made by the Board in this proceeding; and
- (d) approval of such further or other interim relief as the Board may deem appropriate.



**BACKGROUND**

Section 25.21 of the *Electricity Act, 1998* provides that the OPA shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditures and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister of Energy approves or is deemed to have approved the OPA's proposed business plan for the fiscal year.

The OPA advises that the Minister of Energy has not approved, at this time, the OPA's 2012-14 Business Plan and that the OPA will submit its application and proposed 2012 expenditures, revenue requirement and fees to the Board when its business plan is approved by the Minister. In the interim and pending final approval by the Board of its 2012 usage fee, the OPA is seeking an interim order confirming that it may continue to charge its 2011 usage fee.

The OPA requested that the Board issue the Interim Order without holding a hearing pursuant to subsection 25.21 of the *Electricity Act, 1998*. The OPA submitted that, in the circumstances, there is no prejudice because the Board's usual written or oral hearing process will be followed before any final relief is granted on its proposed 2012 expenditures, revenue requirement and fees. The OPA also noted that the final order can be framed to account for any differences between the interim relief and the final order.

**BOARD FINDINGS**

The Board finds that, under the circumstances, it is in the public interest to grant the OPA an interim order pursuant to section 21(7) of the *Ontario Energy Board Act, 1998*, allowing it to continue to charge the existing 2011 usage fee from January 1, 2012 as requested by the OPA.

The Board also finds that it is in the public interest to issue the interim order at this time without a hearing as, for the reasons described by the OPA, no party will be adversely affected in a material way by this order.

**THE BOARD THEREFORE ORDERS THAT:**

The OPA's current 2011 usage fee of \$0.551 per MWh, registration fees of up to \$10,000 per proposal for electricity supply and capacity procurements, non-refundable application fees for the FIT program of \$0.50/kW of proposed Contract Capacity, having a minimum

of \$500 and to a maximum of \$5,000 are approved on an interim basis, effective January 1, 2012, pending approval by the Board of its 2012 usage fees. The appropriate treatment of any difference between the interim usage fee and the approved final 2012 usage fee will be considered later in the proceeding.

**ISSUED** at Toronto, December 22, 2011

ONTARIO ENERGY BOARD

*Original Signed By*

Kirsten Walli  
Board Secretary



120 Adelaide Street West  
Suite 1600  
Toronto, Ontario M5H 1T1  
T 416-967-7474  
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November 2, 2012

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27th Floor  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**Re: Ontario Power Authority  
2013 Revenue Requirement Submission**

As you know, Bill 75 was an act introduced to amend the Electricity Act, 1998 in order to amalgamate the OPA and the IESO into a single agency. It received first reading on April 26, 2012. On October 15, 2012, however, the Ontario legislature was prorogued, resulting in the termination of Bill 75.

Given this development, by letter dated October 30, 2012 attached, the Deputy Minister of Energy requested that a business plan update for fiscal year 2013 be submitted as soon as possible to the Minister of Energy for review. Pursuant to Section 25.22(2) of the Electricity Act, 1998, the Minister may approve the proposed business plan or refer it back to the OPA for further consideration. Once the Minister has approved the Business Plan, the OPA will submit its proposed 2013 expenditure and revenue requirements and fees for approval by the Ontario Energy Board.

Given that the OPA does not have an approved Business Plan for 2013 at this time and is therefore not able to submit its expenditure and revenue requirements and fees for approval, it is the OPA's understanding that the interim fees will continue in effect until such time as the Board makes a final order with respect to the OPA's filing for 2013.

Yours truly,

A handwritten signature in dark ink, appearing to read "Colin Andersen".

Colin Andersen  
Chief Executive Officer

**Ontario Energy  
Board**  
P.O. Box 2319  
27th Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416-481-1967  
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de l'Ontario**  
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**BY EMAIL**

November 19, 2012

Nancy Marconi  
Manager, Regulatory Proceedings  
Legal, Aboriginal and Regulatory Affairs  
Ontario Power Authority  
120 Adelaide Street West  
Toronto ON M5H 1T1

Dear Ms. Marconi:

**Re: OPA Fiscal 2013 Fees Submission for Review**

This is in response to the letter on this subject dated November 2, 2012.

The Board's interim fee order, dated December 22, 2012, will remain in effect until replaced by a final order of the Board. We understand that the OPA will file its Fiscal 2013 Fees Submission for Review once the Minister of Energy approves the OPA's proposed business plan, and the Board looks forward to receiving this application.

Yours truly,

*Original signed by*

Kirsten Walli  
Board Secretary



**EB-2010-0279**

**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 requirement for the year 2011.

**BEFORE:** Paul Sommerville  
Presiding Member

Karen Taylor  
Member

## **DECISION AND ORDER**

### **Application**

On November 2, 2010, the Ontario Power Authority (the “OPA”) filed with the Ontario Energy Board (the “Board”) its proposed 2011 expenditure and revenue requirement and fees for review pursuant to subsection 25.21(1) of the *Electricity Act, 1998* (the “Electricity Act”). Pursuant to subsection 25.21(2) of the Act, the OPA is seeking the following approvals from the Board:

- approval of a net revenue requirement comprised of the proposed 2011 operating budget of \$64.1 million and a number of adjustments that result in a net amount of \$79.861 million;
- approval of a \$0.523/MWh usage fee, which is a decrease from the approved usage fee of \$0.551/MWh for 2010 and to recover its usage fees from export customers, in addition to Ontario customers;

- if necessary, interim approval of the usage fee described above, or such further or other interim orders as the Board may deem appropriate;
- approval of registration fees of up to \$10,000 per proposal for electricity supply and capacity procurements;
- approval of non-refundable application fees for the Feed-in-Tariff program of \$0.50/kW of proposed Contract Capacity, having a minimum of \$500 and to a maximum of \$5,000;
- approval of proposed 2011 capital expenditures of \$2.2 million;
- approval of its proposal to recover through fees the balances of the 2010 Forecast Variance Deferral Account;
- approval to continue to recover the balance of Retailer Settlement Deferral Accounts over three years;
- approval of establishment of the 2011 Retailer Contract Settlement Deferral Account, of the 2011 Retailer Discount Settlement Deferral Account, of the 2011 Government Procurement Costs Deferral Account and of the 2011 Forecast Variance Deferral Account, and approval or continuation of such further or other deferral accounts as the Board may deem appropriate; and
- all necessary orders and directions, pursuant to the *Ontario Energy Board Act*, 1998 and the Board's Rules of Practice and Procedure, as may be necessary in relation to this submission, and execution of the approvals requested in the Business Plan.

The Board issued a Notice of Application dated November 24, 2010 with respect to this proceeding. The Board received intervention requests from the Association of Power Producers of Ontario ("APPRO"), HQ Energy Marketing Inc. ("HQEM"), the Independent Electricity System Operator ("IESO"), Manitoba Hydro, Ontario Power Generation ("OPG"), and Shell Energy North America (Canada) Inc. ("Shell Canada"). The Board also received two requests for observer status. The Board approved the intervention requests from APPRO, HQEM, IESO, Manitoba Hydro, OPG and Shell Canada and the two requests for observer status.

The Board also received requests for intervention and cost eligibility from Electricity Distributors Association ("EDA"), Energy Probe Research Foundation ("Energy Probe"), Green Energy Coalition ("GEC"), Low-Income Energy Network ("LIEN"), Ontario Sustainable Energy Association ("OSEA"), Pollution Probe, Vulnerable Energy Consumer Coalition ("VECC"), Canadian Energy Efficiency Alliance ("CEEA"), Canadian Manufacturers and Exporters ("CME"), School Energy Coalition ("SEC") and the Consumers Council of Canada ("CCC").

The Board determined that Energy Probe, GEC, LIEN, Pollution Probe, CEEA, CME, SEC, CCC and VECC are eligible for an award of costs in this proceeding. The Board made no finding with respect to the cost eligibility request submitted by the EDA. The Board stated that it would address the EDA's cost eligibility if the EDA requests an award of costs.

The Board accepted OSEA's participation as an intervenor in this proceeding. However, the Board determined that OSEA is not eligible for a cost award.

On November 24, 2011, the Board issued its Draft Issues List and notified parties that December 17, 2010 would be Issues Day. Submissions on the issues list were received from Board staff, the OPA, LIEN, Energy Probe, APPrO, CEEA, and Pollution Probe. The Board received one letter of comment.

On December 13, 2010, the Board issued its original Decision on intervenor requests and Cost Eligibility. Supplemental Board Decisions on intervenor requests and Cost Eligibility were issued on December 14, 16 and 21, 2010.

On December 17, 2010, the Board approved an interim usage fee for 2011 of \$0.551/MWh, effective January 1, 2011 pending the final decision in this proceeding.

On January 11, 2011, the Board issued its Board Approved Issues List and Procedural Order No. 2. Procedural Order No. 2 outlined the dates for written interrogatories and a Settlement Conference.

On January 20, 2011, the Board issued Procedural Order No. 3 that outlined the dates for the filing of intervenor evidence and interrogatories on the intervenor evidence.

On February 8, 2011, the Board issued Procedural Order No. 4 that outlined the dates for filing interrogatories and subsequent responses as well as the Settlement Conference.

From March 30, 2011 to March 31, 2011, parties participated in the Settlement Conference. On April 1, 2011, the OPA filed a letter notifying the Board that no settlement was reached. The OPA did mention however, that no party had any issues with respect to Deferral and Variance Accounts (Issues 8.1 and 8.2 in the Issues List).

On March 28, 2011, the OPA filed an update to its application which reflected audited 2010 actual results and an update to the IESO's 2011 forecast. The OPA reduced the usage fee to \$0.514/MWh and the revenue requirement amount to \$78.882 million.

An oral hearing was held on May 9, 10, 12 and 13, 2011. At the oral hearing, the Board set out dates for arguments by Board staff, intervenors and the OPA's reply argument.

Arguments were received from Board staff, APPrO, CEEA, CME, CCC, Energy Probe, GEC, HQEM, LIEN, Manitoba Hydro, OSEA, Pollution Probe, SEC and VECC on a variety of issues from the Board's approved Issues List. The OPA filed reply argument.

### **The Legislative Framework**

The Board's power to review the OPA's proposed fees is set out in section 25.21 of the Electricity Act:

**25.21 (1)** The OPA shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves or is deemed to approve the OPA's proposed business plan for the fiscal year under section 25.22.

#### **Board's powers**

**(2)** The Board may approve the proposed requirements and the proposed fees or may refer them back to the OPA for further consideration with the Board's recommendations.

#### **Same**

**(3)** In reviewing the OPA's proposed requirements and proposed fees, the Board shall not take into consideration the remuneration and



benefits of the chair and other members of the board of directors of the OPA.

**Changes in fees**

(4) The OPA shall not establish, eliminate or change any fees without the approval of the Board.

**Hearing**

(5) The Board may hold a hearing before exercising its powers under this section, but it is not required to do so.

In considering the approval of the OPA fees, the Board is also guided by its electricity objectives under section 1 of the *Ontario Energy Board Act, 1998* (the "OEB Act"):

**Board objectives, electricity**

1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

**Facilitation of integrated power system plans**

(2) In exercising its powers and performing its duties under this or any other Act in relation to electricity, the Board shall facilitate the implementation of all integrated power system plans approved under the *Electricity Act, 1998*.

## Issues Decision

The Issues Decision that was issued on January 11, 2011, included a significant discussion on the scope of this proceeding. The Board stated the following:

*The Board finds that its mandate in relation to the review of the OPA's fees application comes from section 25.21 of the Electricity Act. The Board agrees that section 1 of the OEB Act informs the Board in the exercise of that mandate. However, Section 1 is not, in the Board's view, a source of independent or incremental responsibility that can override the direction that has been provided by the legislature in relation to the Board's mandate as set out in section 25.21 of the Electricity Act. This is confirmed by the wording of section 1 itself, which refers to the objectives as guiding the Board "in carrying out its responsibilities under" the OEB Act or any other Act.*

*The Board finds that its mandate in this case is limited to approval of the OPA's administrative fees, which comprise approximately 3% of the OPA's total annual spending. However, the Board is of the view that an assessment of the OPA's administrative fees must require an examination and evaluation of the management, implementation, and performance of the OPA's charge-funded activities. This is necessary because the OPA's administrative and non-administrative activities that are funded by fees and charges, respectively, are unavoidably linked. It is the Board-approved fees that give the OPA the means to acquire and allocate the resources (e.g., staff) that are required to undertake its various responsibilities, resulting in charge-funded activities. The Board finds that an assessment of the performance of the OPA's charge-funded activities is a necessary, legitimate and reasonable tool for determining the effectiveness of the OPA's utilization of its Board approved fees.*

## Issues 1.0 to 6.0, 9.0

As discussed above, the Board's jurisdiction in this case is more limited than in, for example, a section 78 or section 36 rates case. Although the Issues List as approved by the Board includes reference to the six strategic objectives from the OPA's Business Plan, the Board's order in this case relates only to approving (or declining to approve) the OPA's proposed revenue requirement and fees. Although the evidence and argument relating to the six strategic objectives can be relevant in considering the

proposed revenue requirement and fees, the Board does not actually “approve” the objectives or the Business Plan itself. The Board will therefore make direct reference to evidence and arguments relating to issues one through six only to the extent that they are directly relevant to the Board’s decision on the proposed revenue requirement and fees. The Board has reviewed and considered the complete record, but refers directly only to the portions of the record that are within the scope of the proceeding and bear directly on the proposed revenue requirement and fees.

## **Positions of the Parties**

### **Transparency and Stakeholder Engagement**

The OPA’s 2011 Business Plan states that one of its guiding principles of transparency is that its communications both internally and externally are clear, candid, open and reliable.

The OPA submitted that its webcasts, teleconferences and other stakeholder engagement sessions provide an opportunity for stakeholders to bring forward their views and questions to the OPA.

The OPA submitted that intervenors that made submissions about stakeholder engagement did not address the evidence regarding the efforts of the OPA to engage stakeholders. The OPA also stated that it will strive to enhance further the effectiveness of its communications with stakeholders.

The OPA stated that in addition to the establishment of the stakeholder advisory group, the OPA will hold a session prior to the filing of its next revenue requirement submission. At this session, intervenors in the 2011 proceeding will be able to discuss their views and questions with the OPA. The OPA expects that the timing of the session to be likely during August 2011.

A number of intervenors and Board staff had concerns regarding the OPA’s transparency and stakeholder engagement. One party stated that it appeared that the OPA did not feel, as rate-regulated entities normally do, as much of a pressing need to ensure that the Board was provided with the fullest possible information. Other parties submitted that the OPA should enhance its communication systems, website and vastly improve the degree of transparency with which it operates.

Some parties argued that the Board should place conditions on its approval of the revenue requirement submission requiring certain organizations to be represented on the stakeholder advisory group that was discussed in the evidence.

### **Metrics and Milestones**

The OPA's 2011 Business Plan includes efficiency metrics measuring performance in two areas of its operations: conservation and generation. The metrics are tracked on a per-employee and per-\$million of operating budget basis. The OPA submitted that the metrics showed that it was delivering its mandate with improved efficiency. The Business Plan also includes milestones the OPA expects to achieve by year-ends 2011 and 2013 respectively for each strategic objective.

The OPA submitted that intervenors that had made submissions on efficiency metrics expressed the view that they do not believe that the OPA's current metrics are adequate for the purposes of the Board's review.

The OPA submitted a proposal to consult with intervenors on metrics or other methods of assessing the OPA's budget, stating that it expected to schedule consultations during August of 2011.

The OPA also submitted that it will aim to provide more clarity regarding progress towards milestones in its next revenue requirement submission.

Board staff and a number of intervenors had concerns regarding the OPA's efficiency metrics and reporting on milestone achievement. Many parties submitted that the OPA's current efficiency metrics are inadequate for the purposes of the Board's review of its revenue requirement. Parties submitted that the OPA should develop a comprehensive set of efficiency metrics, using both qualitative and quantitative measures, to give a more accurate picture of the OPA's performance. In addition, some parties submitted, with respect to milestones, that the OPA should report more comprehensively on the extent to which milestones have been achieved.

### **Board Findings**

For the purposes of considering the fiscal 2011 proposed expenditure and revenue requirement and fees application by the OPA, the Board expanded the scope of the

issues that had traditionally been considered, the purpose of which was to recognize, as set out above, that the OPA's administrative and non-administrative activities that are funded by fees and charges, respectively, are unavoidably linked. While the Board's mandate in this case is limited to approval of the OPA's administrative fees, which comprise approximately 3% of the OPA's total annual spending, an assessment of the performance of the OPA's charge-funded activities is a necessary, legitimate and reasonable tool for determining the effectiveness of the OPA's utilization of its Board approved fees.

The Board has considered the full record of the proceeding and the submissions of the OPA, Board staff and parties to the proceeding and makes the following findings.

The Board is of the view that the OPA has not, as per Issue #9, responded appropriately to previous Settlement Agreements and Decisions. In particular, the Board notes that in Decision and Order dated April 27, 2010 (EB-2009-0347), the Board directed the OPA, with respect to:

- workforce hiring practices to make appropriate adjustments to its staffing practices, including overall staffing levels in light of the organization's mandate and be prepared to demonstrate that it has done so in future revenue requirement filings; and
- test year milestones, the Board directed the OPA to include more precise and informative documentation of its performance metrics for review through the fees case process. The OPA was also directed to report on its achievement of its metrics, sorted by Strategic Objective.

These issues were discussed during the proceeding, and it is evident that the filing deficiencies these directions were intended to remedy remain unresolved as it relates to the 2011 Fees case.

The OPA addressed the submissions of Board staff and parties by grouping the issues raised and recommendations made based on major themes. For convenience, the Board will also deliver its findings based on similar themes.

### **Scope of the Revenue Requirement Proceeding, Metrics and Milestones, Budgeting**

The OPA argued that the Electricity Act empowers the Board to review the proposed expenditure and revenue requirement and fees of the OPA and that the Electricity Act does not in any way contemplate that the Minister's approval of activities and milestones in the Business Plan could be overturned by the Board. The OPA argues that the Board's review is relevant to determine whether the OPA's expenditure and revenue requirements and fees are appropriate for fulfillment of the Business Plan approved by the Minister.

The Board notes that while the Electricity Act provides that the Minister must approve the Business Plan, the Electricity Act is not prescriptive with respect to the content of the Business Plan. Moreover, the information that must be contained in the business plan for the purpose of the Minister's approval is not necessarily the same as that required for the Board's purposes in considering the OPA's expenditure and revenue requirement and the consequential fee.

Adequate performance and efficiency measurement tools and milestones are essential to the Board's determination of whether an applied-for expenditure and revenue requirement for the fiscal year and the fees resulting therefrom are prudent, cost effective and whether the OPA is, in fact, capable of fulfilling the Business Plan approved by the Minister. The Board notes that in its reply argument dated June 6, 2011, the OPA concurs. The OPA also acknowledges that meaningful metrics will produce information that will assist the Board in its review of the expenditure and revenue requirements.

The Board is mindful of the limitations of its jurisdiction in its consideration of the applied-for expenditure and revenue requirement and the consequential fees. The Board does not consider that it has the authority to place conditions on its approval of the revenue requirement or fees. It does however believe that it has the authority to direct the OPA with respect to the evidence it requires in order to come a determination as to the appropriateness of the revenue requirement. The Board notes that previous panels have directed the OPA with respect such issues.

The Board does not accept that the mandate of the OPA is so unique and so vulnerable to change during a fiscal period so as to preclude the development and implementation

of effective performance and efficiency metrics and milestones that will be meaningful for the Board's purposes pursuant to the Electricity Act.

The Board is of the view that the performance and efficiency metrics and milestones filed in conjunction with this application were of little or no assistance to the Board in its determination of whether the applied-for Net Revenue Requirement, as adjusted, was appropriate, nor whether the OPA is achieving a reasonable standard of effectiveness and efficiency in performing the functions it is mandated to undertake.

Put simply, the metrics proposed by the OPA and presented, presumably in response to the panel's direction in EB-2009-0347 do not measure productivity or efficiency. They record performance, but do not provide any insight with respect to the efficiency or effectiveness with which the OPA is completing its work

The OPA's evidence with respect to its efficiency metrics appears at exhibit A – 2 – 1, page 48. This chart was updated to include data from 2008 to 2010. Efficiency metrics for generation are expressed in terms of generation capacity contracted in megawatts as a function of total OPA budget and as a function of total full-time equivalent employees. The number of megawatts under contract in a given year is a cumulative figure, which includes contracted capacity from previous years. Incremental annual contracted capacity is not shown, and cannot be reliably inferred from the data without the knowledge of what capacity from previous years is no longer included in the total. This use of cumulative procurement figures ensures that the metric calculation is performed by the OPA is not informative about current productivity.

Another flaw in the OPA's efficiency metric calculation arises from the fact that OPA uses total full-time employees and the total OPA budget in the calculation, instead of only that portion of the budget and the full-time employee force actually associated with the procurement and contract administration activities. The majority of OPA staff is not involved in any meaningful degree in these activities, and including them can simply mask inefficiency in the procurement and contract administration process. As was pointed out in the submissions of Energy Probe, this approach could yield misleading information.

Similarly, the fact that the metric calculation does not include temporary employees undermines its credibility. Circumstances could exist where no new procurement was

developed during the course of a year, but the efficiency calculation would remain the same. This same analysis applies to the OPA's conservation activities.

The Board directs the OPA to develop a more complete and informative set of performance and efficiency metrics, cost benchmarking, and program milestone tools in order to assist the Board with its determination that the applied-for Net Revenue Requirement is appropriate. The Board expects improved performance and efficiency measurement, cost benchmarking, and program milestones to be part of the evidentiary material filed in conjunction with the OPA's 2012 expenditure and revenue requirement and fees application. As part of this activity, the Board expects the OPA to develop the capability of assessing with a reasonable degree of confidence the actual costs associated with the execution of individual initiatives. While the witnesses suggested that the OPA operates on a "matrix" basis, it is necessary to have an appreciation of the costs associated with specific initiatives so that informed operational decisions can be made by OPA leadership.

The Board acknowledges that the OPA has proposed to consult with intervenors on the subject of metrics or other methods of assessing the OPA's budget. In particular, the Board notes that the OPA has undertaken to:

- consult with intervenors on the subject of metrics or other methods of assessing the OPA's budget; and
- endeavour to develop a capability to allocate internal staff costs for the purposes of its next revenue requirement, taking into account the cost and dedicated staff resources required to implement such an initiative.

Absent adequate performance and efficiency measurement tools and milestones, the Board may find itself unable to approve future OPA expenditure and revenue requirement and fees applications, as it may not have a sufficient evidentiary base to determine whether the applied-for expenditure and revenue requirement and fees are appropriate.

### **Stakeholder Engagement and Transparency, Program Verification**

The Board also has concerns respecting the OPA's stakeholder engagement processes and organizational transparency, both in terms of program design and communication.



For example, as part of its evidence in the oral portion of this proceeding, the OPA witness suggested that this hearing process was part of the consultation process respecting extension of OPA fees to exporters. Board hearings are adjudicative processes, not consultative processes. The Board is of the view that many of the recommendations of parties with respect to the design of OPA programs and subsequent program performance and measurement, were fundamentally based on the non-transparent and exclusionary manner in which the OPA has designed, implemented, and plans to measure its own performance as it relates to its core strategic objectives, being Power System Planning, Supply Procurement and Contract Management, Conservation, and Communication. The Board appreciates that the organization is often in a reactive mode, responding to pressing Directives from the Government. However, the Board is of the view that appropriate consultation can result in improvements in program design, implementation and measurement and is likely to increase the acceptance and credibility of OPA programs.

The Board is of the view that the OPA would be well-served by refining its stakeholder consultation processes to increase transparency and inclusiveness at all stages of program design. The Board is of the view that the OPA should provide evidence of how its processes have evolved in conjunction with its 2012 expenditure and revenue requirements and fees application.

## **Issue 7.0 – Proposed Fee**

### **Revenue Requirement**

#### **Board Findings**

Notwithstanding the findings of the Board set out in this Decision, the Board will approve the OPA's applied-for Net Revenue Requirement of \$78.882 million, as updated on March 28, 2011. The Board notes that the Net Revenue Requirement is comprised of a proposed 2011 operating budget of \$64.1 million and a number of adjustments that result in the net amount approved by the Board.

The Board is of the view that at this juncture, it would be impractical to refer the Net Revenue Requirement back to the OPA for further consideration with the Board's recommendations. Even if the OPA were to adopt all of the findings of the Board, it is unlikely that they could be implemented during fiscal 2011 and would therefore not likely

have a material effect on the OPA's 2011 Net Revenue Requirement. Although the Board has concerns regarding the OPA's efficiency metrics and the transparency of some of its processes, it is satisfied that for the test year the proposed Net Revenue Requirement is appropriate. For this reason, the Board approves the Net Revenue Requirement, as updated on March 28, 2011.

The Board also finds the applied-for registration fees, non-refundable application fees and 2011 capital expenditures to be reasonable and appropriate. The Board notes that Board staff and parties to the proceeding raised no issues with respect to these amounts.

### Usage Fee – Export Customers

The OPA proposes to recover its 2011 Net Revenue Requirement by establishing a usage fee to consumers of Ontario electricity to be effective January 1, 2011. The usage fee is derived by dividing the Net Revenue Requirement by the Ontario electricity forecast, less line losses, plus electricity exports. In past years, the OPA has recovered its fees from Ontario customers only. In this application, the OPA proposes to recover its fees from export customers as well. Table 1 sets out the derivation of the fee as per the OPA's initial filing and the update.

**Table 1. OPA Fee Calculation**

	2010 Budget	2011 Budget – As Filed	2011 Budget – Updated
Net Revenue Requirement	\$76,027,000	\$79,861,000	\$78,882,000
Ontario Electricity Forecast (TWh)		142.9	143.7
Line Losses (TWh)		(3.1)	(3.1)
Exports (TWh)		<u>12.9</u>	<u>13.4</u>
Total IESO Energy Forecast (TWh)	138.0	152.6	153.5
OPA Fee (\$/MWh)	\$0.551	\$0.523	\$0.514
Fee Exclusive of Export Volumes (\$/MWh)	\$0.551	\$0.571	\$0.563

Net Revenue Requirement – updated March 28, 2011

Updated Total IESO Energy Forecast from Undertaking No. J1.9 dated May 12, 2011. Page 1.

## Positions of the Parties

The OPA proposes to recover the 2011 usage fee from export customers in addition to Ontario customers. The OPA indicated that it was appropriate since export customers benefit from the planning, conservation and procurement activities undertaken by the OPA. The OPA also stated that recovering the fees from export customers is consistent with the practice of the IESO. Concentric Energy Advisors, Inc. ("Concentric") prepared evidence on behalf of the OPA. The Concentric evidence indicated that the OPA's proposal is consistent with the OPA's fundamental responsibilities that provide benefits to both domestic and export customers and is consistent with the IESO's cost recovery from domestic and export customers.

VECC supported the OPA's proposal to recover the usage fee from export customers. VECC submitted that export customers receive significant benefits from OPA conservation spending and programs and should contribute to OPA costs. VECC indicated that it would also be satisfied if the Board directed the OPA to engage in a study that would be presented in a future application. CCC also supported the OPA's proposal since it is consistent with the methodology established by the IESO. SEC submitted that it supports the OPA's position and that creating a fee structure that is equal to all consumers of electricity in Ontario, recognizes that export customers, like domestic customers benefit from the activities of the OPA. GEC submitted that if the Board is persuaded that an allocation approach should be used, the recovery of the usage fee from exporters should not be delayed pending further study.

Energy Probe submitted that there is some merit in the OPA argument that its activities result in some benefit to exporters, however there is insufficient evidence to support the proposal to impose the same tariff to exporters that it does to domestic consumption. Energy Probe also submitted that the Board cannot make a decision to impose the export tariff as proposed without further study.

HQEM submitted that the proposed extension of the OPA's fee to exporters is unjust, unreasonable and inappropriate. It is the view of HQEM that the OPA's proposal would have external loads pay twice through utility bills in home jurisdictions and through the occasional purchases from the Ontario market through exporters. HQEM indicated that Ontario consumers would receive a subsidy by not having to pay the full OPA costs that belong to them. HQEM recommended that the Board require the OPA to initiate a proper stakeholder process on the issue, that a simple cost allocation study be

undertaken and the study should be filed at the OPA's next fees case. Elenchus Research Associates Inc. ("Elenchus") prepared evidence on behalf of HQEM. The evidence indicated that costs should be recovered from customers in a manner consistent with Generally Accepted Regulatory Principles which include the principle of cost causality and that a cost allocation study is required.

APPrO submitted that the Board should not approve the usage fee as proposed and to refer the submission back to the OPA and recommend that the 2011 usage fee exclude export volumes. APPrO also recommended a study should be conducted if the Board is of the view that exporters should pay a portion of the fee or if the Board is not clear if the fee should be extended to exporters. Manitoba Hydro submitted that it also did not support the OPA's proposal and that the OPA failed to show how its activities benefit exporters.

### **Board Findings**

The Board will not approve the OPA's proposal to recover the 2011 usage fee from export customers for a number of reasons.

First, the Board is of the view that the mandate of the OPA is not comparable to that of the IESO. Even the most cursory examination of the relevant sections of the Electricity Act is illustrative of the distinct nature of the two organizations. Section 5(1)(e) of the Electricity Act, which sets out the objects of the IESO, clearly states that the IESO is to work with the responsible authorities outside Ontario to co-ordinate the IESO's activities with their activities. In contrast, section 25.2(1) which is the section of the Electricity Act that describes the objects of the OPA, expresses the OPA's fundamental responsibilities as being "for Ontario" and "in Ontario".

Second, the Board is not convinced that, in executing its objectives pursuant to the Electricity Act that the OPA creates benefits for export customers in the manner asserted by the parties supporting the extension of the fee to exporters. In particular, by engaging in power system planning that meets the reliability and self-sufficiency goals of the government of Ontario, the OPA's activities have the consequence of creating potential export capability. It does not necessarily follow that this "unintended" consequence is a benefit for which exporters should pay. The Board is also reticent to create the linkage that necessarily follows this argument, which is because exporters

“pay for this benefit” the OPA is obligated to engage in system planning in a manner that ensures export capability exists.

Third, the Board agrees with the submissions of parties that the proposed fee has not been supported by empirical evidence. The OPA proposal rests primarily on the IESO example, and a rather cursory benefits analysis. The extension of fees to market participants should generally be conducted on a firm empirical and principled basis. There is no such basis in the evidence before the Board. In this case, if the OPA intends to reintroduce this approach in this or a future expenditure and revenue requirement and fees case, it should be prepared to demonstrate a coherent rationale, quite possibly based on an allocation study, as suggested by Mr. Todd from Elenchus.

Finally, the Board notes that the OPA did not undertake any meaningful or substantive consultation with stakeholders regarding this proposal. Should the OPA choose to re-introduce this approach now or in the future, the Board expects the OPA to have engaged the stakeholder community in a relevant and substantive manner and will require that evidence of this consultation be filed in conjunction with the associated revenue requirement and fees application.

For these reasons, the Board is referring the calculation of the usage fee back to the OPA for reconsideration. The Board recommends that the OPA choose one of the following three alternatives.

First, the OPA may apply to the Board for approval of the Usage Fee based on the approved Net Revenue Requirement and a Total IESO Energy Forecast that is exclusive of exports. As per Table 1, the resulting Usage Fee is \$0.563/MWh. Should the OPA pursue this approach, the Board is prepared to approve it pursuant to an expedited and administrative process.

Second, the OPA may choose to re-apply to the Board to recover the 2011 Usage Fee from export customers in addition to Ontario customers, provided that application is accompanied by an appropriate evidentiary foundation as discussed above and evidence of stakeholder consultation.

Third, the OPA may choose to continue with the current Usage Fee of \$0.551/MWh which was set for fiscal 2010 and declared interim by the Board for fiscal 2011 on December 17, 2010. In this alternative, the Board would make the current interim rate

final. The Board notes this alternative would likely result in a larger than forecast balance in the 2011 Forecast Variance Deferral Account.

The Board directs the OPA to advise the Board within 30 days of the issuance of this Decision and Order as to its approach with respect to the 2011 usage fee.

## **Issue 8.0 – Deferral and Variance Accounts**

### **Board Findings**

The Board finds that the proposal to recover the balances of the 2010 forecast Variance Deferral Account through fees to be reasonable and appropriate. The Board also approves the continued recovery of the balance of the Retailer Settlement Deferral Accounts over three years and finds that it is appropriate to establish the 2011 Deferral and Variance Accounts as proposed by the OPA. The Board notes that Board staff and parties to the proceeding raised no issues with respect to the existing and proposed Deferral and Variance Accounts.

### **COST AWARDS**

Intervenors eligible for an award of costs shall file their cost submissions in accordance with the *Practice Direction on Cost Awards* with the Board Secretary and with the OPA within 15 days of the date of this Decision and Order. The OPA may make submissions regarding the cost claims within 30 days of this Decision and Order and the intervenors may reply within 45 days of this Decision and Order. A decision and order on cost awards and the Board's own costs will be issued in due course.

**DATED** at Toronto, July 8, 2011

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

***stakeholders are invited to ask questions on any aspect of the various responsibilities of the OPA.***

(Emphasis added.)

18. There is no evidence in this case of any instance where a stakeholder has taken up this invitation to ask questions on an aspect of the OPA's responsibilities and has received an unsatisfactory response. The evidence in this case is that the OPA receives generally favourable assessments among stakeholders with regard to communication effectiveness and that stakeholders are decidedly positive in assessing the job that the OPA does communicating with them compared to their experiences with other similar organizations.<sup>74</sup>

19. While the OPA believes that its webcasts, teleconferences and other stakeholder engagement sessions provide an opportunity for stakeholders to bring forward their views and questions to the OPA, the issues raised by a number of intervenors in this proceeding suggest that the OPA should continue to improve its communications with stakeholders. The OPA will strive to enhance further the effectiveness of its communications with stakeholders.

20. As discussed by Ms McNally in her testimony, the OPA has decided to establish a stakeholder advisory group. Ms McNally's evidence in this regard was as follows:

.... And as I've mentioned a few times, we are in the process of designing the creation of a stakeholder advisory group that we hope to get going this year. So our day-to-day business continues and is not put on hold or chilled by the IPSP.

MR. POCH: I'm sorry, you said you are going to have a stakeholder advisory group. Is that going to be like -- include intervenors? Is it going to be a funded process where people could comment on proposed evaluations, scopes of evaluations? Have I missed that?

MS. McNALLY: So we haven't -- no, I've only talked at the highest level about it. We have not nailed down the details yet, but certainly the thinking is that it would include customers, supply chain, delivery agents, OEB stakeholders, other experts. And it would be providing us advice on, particularly on programs, policy activities, research. I don't imagine that that group will get into the nitty-gritty of evaluations, but that group may want to comment on the evaluation protocols.<sup>75</sup>

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<sup>74</sup> Exhibit B-5-1, page 9.

<sup>75</sup> Transcript, Volume 3, page 72.

21. LIEN argues that the Board should place conditions on its approval of the revenue requirement submission requiring certain organizations to be represented on the stakeholder advisory group mentioned by Ms McNally and also on the OPA's Consumer Advisory Council.<sup>76</sup> The OPA submits that this proposal does not fall within the scope of the Board's review of the 2011 revenue requirement submission, but, in any event, the OPA urges the Board not to impose requirements with respect to representation on advisory groups when the evidentiary record lacks any basis for the Board to reach an informed decision about the appropriate composition of such groups.

22. As stated in the Business Plan, the OPA is undertaking a review of its stakeholder groups in 2011.<sup>77</sup> It is premature to decide the composition of stakeholder groups before this review has been completed. With respect to the stakeholder advisory group, for example, it is clear from the evidence of Ms McNally that the OPA itself had not, at the time of her evidence, worked out the details of the role to be played by this group. The OPA welcomes suggestions from stakeholders (which can be provided to Ms McNally) about the process for establishing the stakeholder advisory group.

23. In addition to the establishment of the stakeholder advisory group, the OPA will hold a session prior to the filing of its next revenue requirement submission, during which intervenors in this proceeding will be able to discuss their views and questions with the OPA. The OPA expects that the timing of this session is likely to be during August of 2011.

#### **4. Metrics and Milestones**

24. The submissions of a number of intervenors address the OPA's metrics and milestones. GEC says that the milestones are activity-based rather than outcome-based,<sup>78</sup> while CCC says that the milestones are results-based and not activity-based.<sup>79</sup> GEC argues that "[v]ague milestones defeat accountability" and that "minimum achievement goals ... should be explicit in the milestones and should be quantified where possible."<sup>80</sup>

25. The OPA readily acknowledges that it needs to provide information to assist the Board in reviewing the expenditure and revenue requirements and fees that are proposed to fulfill the Business Plan approved by the Minister. The milestones may well be considered by the Board for this purpose, namely, to assist the Board in its review of whether the OPA's expenditure and revenue requirements and fees are appropriate. Thus, consideration of the OPA's progress in meeting milestones during one fiscal year

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<sup>76</sup> LIEN Argument, pages 4 and 6.

<sup>77</sup> Exhibit A-2-1, page 40.

<sup>78</sup> GEC Argument, page 7.

<sup>79</sup> CCC Argument, page 11, para 45.

<sup>80</sup> GEC Argument, pages 7-8.