BOOK OF AUTHORITIES

on behalf of

ONTARIO POWER GENERATION INC.

(EB-2014-0370)

INDEX

TAB 1

Chart 1

Alternative Account Transactions for the Period January 1, 2014 to October 31, 2014 ($M) -Disputed Accounts Only-				
Line No.	***Account***	***OPG Proposed Entries Based on EB-2010-0008 Forecasts***	***Proposed by Some Parties Based on EB-2013-0321 Forecasts***	***Difference***
		(a)	(b)	(c) = (b)-(a)
	Previously Regulated Hydroelectric:			
1	Hydroelectric Water Conditions Variance	(1.7)	(23.9)	(22.2)
2	Ancillary Services Net Revenue Variance – Hydroelectric	(12.1)	(17.3)	(5.3)
3	Hydroelectric Incentive Mechanism Variance	(2.4)	(2.9)	(0.4)
4	Hydroelectric Surplus Baseload Generation Variance	22.7	27.4	4.7
5	Income and Other Taxes Variance – Hydroelectric	(0.0)	(0.0)	0.0
6	Capacity Refurbishment Variance – Hydroelectric	117.3	(0.1)	(117.4)
7	Hydroelectric Deferral and Variance Over/Under Recovery Variance	0.6	0.6	0.0
8	Total	124.3	(16.2)	(140.5)
	Nuclear:			
9	Nuclear Liability Deferral	81.6	-	(81.6)
10	Nuclear Development Variance	1.2	1.2	-
11	Ancillary Services Net Revenue Variance – Nuclear	0.3	(0.3)	(0.6)
12	Capacity Refurbishment Variance - Nuclear – Capital Portion	6.3	2.9	(3.4)
13	Capacity Refurbishment Variance - Nuclear – Non-Capital Portion	(2.4)	2.2	4.6
14	Bruce Lease Net Revenues Variance – Derivative Sub-Account	(57.5)	(57.5)	-
15	Bruce Lease Net Revenues Variance – Non-Derivative Sub-Account - EB-2012-0002 Additions	-	-	-
16	Bruce Lease Net Revenues Variance – Non-Derivative Sub-Account - Post 2012 Additions	41.1	(38.6)	(79.7)
17	Income and Other Taxes Variance – Nuclear	(2.7)	(3.5)	(0.8)
18	Pickering Life Extension Depreciation Variance	(39.0)	-	39.0
19	Nuclear Deferral and Variance Over/Under Recovery Variance	12.1	12.1	-
20	Total	41.1	(81.4)	(122.5)
21	**Grand Total**	165.4	(97.6)	(263.0)

TAB 2

In the Court of Appeal of Alberta

Citation: Edmonton (City) v. J.J.C. Holdings Ltd., 1984 ABCA 179

Date: 19840620
Docket: 16847
Registry: Edmonton

Between:

The Assessor of the City of Edmonton and the City of Edmonton

Appellants

\- and -

J.J.C. Holdings Ltd. and Wednesday Holdings Ltd.

Respondents

\- and -

Her Majesty the Queen in Right of Alberta as represented by the Minister of Municipal Affairs

Respondent

The Court:

The Honourable Mr. Justice Kerans
The Honourable Mr. Justice Stevenson
The Honourable Mr. Justice Belzil

Reasons for Judgment of The Honourable Mr. Justice Stevenson
Concurred in by The Honourable Mr. Justice Belzil

Dissenting Reasons by The Honourable Mr. Justice Kerans

APPEAL FROM THE JUDGMENT OF THE HONOURABLE MR. JUSTICE M. E. LOMAS OF THE COURT OF QUEEN'S BENCH OF ALBERTA DATED THE 6TH DAY OF JUNE, 1983 AND FILED THE 7TH DAY OF JULY, 1983.

COUNSEL:

R. J. Liteplo, Esq., and L. B. Chrzanowski, Esq., for the Appellants

L. A. Desrochers, Esq., Q.C., and J. Gill, Esq., for the Respondents, J.J.C. HOLDINGS

W. Nugent, Esq., for respondent, HER MAJESTY THE QUEEN

REASONS FOR JUDGMENT OF
THE HONOURABLE MR. JUSTICE STEVENSON

---

[1] This case raises the question whether the Lieutenant Governor in Council of Alberta, in exercise of his power under s.22(1) of the *Municipal Government Act* to prescribe the terms and conditions of an annexation of land to municipalities, impermissibly amended the *Municipal Taxation Act.*

[2] The facts are agreed: the lands in question had been in the County of Sturgeon and were, by Order in Council 538/81 dated June 11, 1981, annexed to the City of Edmonton effective January 1, 1982. The City then sought to impose land taxes upon the lands in 1982. To that end, the City Assessor had re-assessed the lands and had entered the new assessment on the assessment roll. The new assessment of $909,960.00 was of more than trifling interest to the owners because the County assessment had been $1,770.00.

[3] The owners sought and obtained in Queen's Bench a judgment declaring that the assessment was *ultra vires.* The City appeals. The learned chambers judge held firstly that the Order in Council did not clearly authorize the new assessment and, secondly, there was no authority to do so. In my view the appeal should be dismissed for the second reason expressed by the learned chambers judge. I do not agree with his first argument, which is that the term in the Order in Council upon which the City relies is so unclear that it cannot be enforced. In my view, the meaning of the provision is clear enough but it is beyond the power of the Lieutenant Governor in Council.

[4] The challenge to the City is to prove that it had the power to impose a tax in 1982. The taxing power of a city is regulated in detail in the *Municipal Taxation Act* R.S.A. 1980, c. M-31. It is common ground that the scheme of that Act requires that tax be imposed only upon property on the assessment roll and that the roll must be prepared annually for the next following year. Accordingly, lands could not be taxed by Edmonton in 1982 unless placed on the roll in 1981. The City did not argue for a different interpretation of the Act: the appeal proceeded on the assumption that the City had to go beyond the *Municipal Taxation Act* for authority to tax in 1982 and it finds that authority in the Order in Council. The Order in Council was passed under s.22(1) of the *Municipal Government Act* R.S.A. 1980, c. M-26:

> "22(1) The Lieutenant Governor in Council may, by order, annex territory

(a) from a municipality to an improvement district, special area or another municipality, or

(b) from an improvement district of special area to a municipality.

(2) An order made under subsection (1)

(a) may prescribe the terms and conditions, if any, governing the annexation, and

(b) shall be published in the Alberta Gazette.

(3) An order under subsection (1) becomes effective on the date named in the order or, if no date is named in the order, on the date of the publication of the order in The Alberta Gazette."

[5] The Act might have expressly authorized modification of the scheme provided by the *Municipal Taxation Act.* It did not do so and the City relies upon the general words of s.22 to authorize the establishment of a special scheme through a condition. That condition, which must be read with the next term of the order is:

"13. For the purposes of assessment and valuation, the effective date of this Order is December 31, 1981. All properties which by this Order are annexed to a new municipal jurisdiction will be subject to assessment, valuation and taxation in the year 1982 by the new municipality.

14. That the effective date of this Order is the First (1st) day of January, A.D. 1982."

[6] It was this clumsily-worded expression which dissatisfied the learned chambers judge but the object is clear. As counsel for the City submits, it is there for one purpose: to create a deemed annexation in 1981 which would trigger the *Municipal Taxation Act* and permit Edmonton to assess in time for the 1982 taxation year. The very interpretation, however, which gives the term meaning also demonstrates its invalidity: it is an attempt indirectly to do that which it cannot do directly, namely amend the *Municipal Taxation Act.*

[7] The invalidity involves two propositions which need amplification: first, that the Legislature has not delegated to the Lieutenant Governor in Council a power to amend the *Municipal Taxation Act* and, secondly, that paragraph 13 is an indirect attempt.

[8] It is argued that the term under review is merely transitional and a "term" or "condition" of annexation and authorized by s.22. Assuming for the purpose of argument that the term under review amounts to an amendment of the *Municipal Taxation Act,* the question is not whether the term is transitional but whether the power to amend a public Act has been delegated. That the Legislature can delegate the power to amend the general law is beyond dispute: e.g. *Re Gray* (1918) 57 S.C.R. 150. Whether the legislation should be interpreted in

that way is a separate question, and the rule is that no delegated power to make laws repugnant to the general law will be found in the absence of clear and express words to that effect. As observed in *Craies on Statute Law,* 7 Edition, even the creation of express delegated power to repeal or amend other statutes only "happens occasionally". I would require clearer words.

[9] An apt illustration of appropriate judicial approach to delegated legislation can be found in *R. and W. Paul Ltd. v. The Wheat Commission,* [1937] A.C. 139 (H.L.). The English *Wheat Act,* 1932, had delegated to the Wheat Commission the power to make regulations "for the final determination by arbitration" of disputes arising in connection with the administration of that Act. The Commission then published regulations which created a novel scheme of arbitration and which also provided that "The *Arbitration Act, 1889,* shall not apply". That regulation was found to be *ultra vires* by a unanimous House of Lords. Lord MacMillan said, at 154:

> "I do not think that, when Parliament enacts by one statute that disputes under it are to be referred to arbitration, it can be presumed to have empowered by implication the abrogation of another statute which it has enacted for the conduct of arbitrations. Rather the contrary. If this is intended, express words to that effect are in my opinion essential, and there are here no such express words."

[10] The same reasoning applies. I do not think that when the Legislature enacts by one statute that the Lieutenant Governor in Council may annex, on terms, territory in one municipality to another, it can be presumed to have empowered the abrogation of another statute which it has enacted for the conduct of the business of local government. Rather the contrary. If this is intended express words to that effect are essential and here there are no such express words.

[11] It is argued that support can be drawn from s.20 of the *Municipal Government Act.* By that provision, the Local Authorities Board also can, in certain circumstances, order annexation. Section 20(4)(b) permits the Board order to contain "directions that the annexing municipality ... assess the land ... on any basis or principle of assessment that seems proper to the Board ....". It is argued that the intention of the Legislature was that s.22 gives a similar power to the Lieutenant Governor in Council. But s.20(4) gives powers in very explicit terms, and these do not include the power to resolve the assessment problem now before us. The inference that I would draw is that neither the Local Authorities Board nor the Lieutenant Governor in Council are empowered to deal with the problem in this way.

[12] I conclude that the Lieutenant Governor in Council has not been delegated the power to amend the *Municipal Taxation Act.*

[13] Moving to the second question. I find paragraph 13 is nothing more than an indirect attempt to amend the *Municipal Taxation Act.*

[14] It was not the intention of the Executive Council to make annexation effective any date other than January 1, 1982. Paragraph 13 is a deeming provision. And as was stated in *R. v. The County Council of Norfolk* (1891) 60 L.J.Q.B. 379 at 380:

> "... generally speaking, when you talk of a thing being deemed to be something, you do not mean to say that it is that which it is to be deemed to be. It is rather an admission that it is not what it is deemed to be, and that, notwithstanding it is not that particular thing, nevertheless, for the purposes of the Act, it is to be deemed to be that thing."

[15] The provision here simply asserts a fiction in order to avoid the problem discussed. The fiction is that annexation does not occur on January 1 but rather on December 31. I say this is an attempt to do indirectly what one cannot do directly. It is argued that one could say there are two "effective dates", and that the *Interpretation Act* permits us to read subsection (3) in the plural so as to permit two effective dates. The argument is without merit. The expression, "effective date" means, according to the Oxford English Dictionary, the date of "coming into operation". Annexation cannot come into operation twice.

[16] I would affirm the order and dismiss the appeal.

DATED at EDMONTON, Alberta
this 20th DAY of JUNE,
A.D. 1984.

REASONS FOR JUDGMENT
OF THE HONOURABLE MR JUSTICE KERANS

[17] I have read the judgment of the majority.

[18] I first must say that I am in sympathy with the view that, in general terms, the Legislature should be presumed not to have delegated the power to grant dispensations from compliance with statutes of general application. Further, I acknowledge that the term under review might be classified as a deeming provision. But there is a great difference between attempting to amend a statute and attempting to organize affairs so as to avoid any

unnecessary complication which arises on its application. The first might be forbidden; the second is not.

[19] I accept the argument for Edmonton that, having recognized the problems which arise because of the mechanics in the Municipal Taxation Act, it was decided by the Executive Council to introduce annexation in stages. The first stage was to occur on December 31, 1981, and was to be annexation for the purposes of assessment under that Act. The second stage was to be implemented January 1, 1982 and was for all other purposes. By this view, paragraphs 13 and 14 should be read as stating this:

> 13. For the purpose of the Municipal Taxation Act, the effective date of this order is December 31, 1981.
>
> 14. For all other purposes, the effective date of this order is January 1, 1982.

[20] I do not say that the interpretation placed by the majority is unreasonable. I say only that enactments are to be interpreted where possible so as to avoid repugnance. See Bishop of Vancouver Island v. City of Victoria (1921) 3 W.W.R. 124 (P.C.). The interpretation offered by Edmonton is reasonable and should be preferred.

[21] I would allow the appeal and declare the tax validly imposed.

DATED AT EDMONTON, ALBERTA

THIS 20th DAY OF JUNE, A.D. 1984.

TAB 3

COURT FILE NO.: 05-CV-291632PD1
DATE: 20051012

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
CARTAREAL CORPORATION N.V.	**Leonard Ricchetti, for the Applicant**
Applicant	
- and -	
HER MAJESTY THE QUEEN IN RIGHT OF CANADA, represented by the Minister of Public Works and Government Services Canada	**Andrea Bourke, for the Respondent**
Respondent	
	HEARD: September 30, 2005

M. DAMBROT J.

BACKGROUND

[1] In 2002, the Immigration and Refugee Board required leased space for a limited term in order to conduct hearings in Toronto. Public Works and Government Services Canada acquired space for the IRB from the applicant on three floors at 505 University Avenue in Toronto. The lease was for a five-year term commencing on June 1, 2002. On May 17, 2005, the lessee served a notice of termination of the lease effective on November 30, 2005, and remitted a penalty payment of three months rent, purportedly in compliance with a termination provision in the lease. The applicant reads the termination provision differently, says that the respondent had no right to terminate the lease at that time, and brings this application for an order interpreting the lease.

THE EVIDENCE

[2] When Public Works assumed responsibility for leasing space for the IRB, it prepared a tender document package in which it sought bids to be received by April 3, 2002. The invitation to offerors stipulated as a term that:

1. the lessee required a lease term of five years;
2. offerors should submit an offer based on a uniform rental rate throughout the term; and
3. the lessee required the right to terminate the lease after the first two years of occupancy with a six month written notice prior to termination.

[3] On April 3, 2002 the applicant submitted an offer in the required form. In respect of the term mentioned above, the applicant added a qualification that when exercising the termination provision, the lessor would be required to pay a penalty equal to three months rent.

[4] After some discussion, on April 19, 2002 counsel for the applicant circulated a draft lease. The draft contained no early termination clause.

[5] By letter dated May 9, 2002 representatives of Public Works accepted the offer. In their letter, they set out what the terms and conditions of the lease "will be," including the following:

> TERM: 5 years commencing the first (1st) day of June, 2002 and ending the thirty-first (31st) day of May, 2007. Lease may be terminated after two years with a six month notice subject as more particularly described in the lease.

[6] By letter dated September 24, 2002 counsel for the applicant forwarded to counsel for the respondent a draft lease drawn in the form provided by Public Works, black lined to reflect his amendments. He indicated that these amendments were intended to make the lease consistent with the terms set out in the May 9, 2002 agreement to lease. He specifically mentioned that cleaning and insurance had been left open for discussion in the May 9 agreement.

[7] The September 24 draft included the following:

> The lessee shall have the right to terminate the lease effective May 31, 2004, upon delivering to the landlord at least 6 months prior written notice together with a penalty equal to three months rent.

[8] A lease was executed on June 1, 2002. The termination provision in that lease mirrors the provision drafted by counsel for the applicant that first appeared in the draft lease forwarded to Public Works on September 24, 2002. It is this provision that I am called upon to interpret.

[9] The applicant takes the position that the lessee was only entitled to a one day right of early termination, on May 31, 2004. The respondent says that the lessor had the right to terminate the agreement on any date after May 30, 2004, upon six months notice and payment of a penalty equal to three months rent.

THE POSITION OF THE PARTIES

[10] The applicant submits that the language of the option to terminate is clear and unambiguous, and not capable of supporting the interpretation advanced by the respondent. In the alternative, the applicant says that I can divine the true intent of the parties, and resolve the ambiguity, by a consideration of extrinsic evidence. To this end, in argument, counsel for the applicant took me on an excursion through the affidavits and cross-examinations of the principals involved in the negotiation of the contract, in an effort to demonstrate that the commercial purpose of the contract and the details of the negotiation support his interpretation.

[11] Counsel for the respondent also submits that the language of the option to terminate is clear and unambiguous, but she says that it is not capable of supporting the interpretation advanced by the applicant. She says that the respondent's interpretation is both commercially reasonable and in accordance with ordinary business practice. If it is ambiguous, she says that the negotiation process, and the fact that any ambiguity was caused by counsel for the applicant at the time of drafting, should lead me to resolve the ambiguity in favour of the respondent.

MY ANALYSIS

[12] I must say at the outset that in my view, I can only resolve this dispute on this application if I reach the conclusion that the termination provision is unambiguous. There are material facts in dispute that preclude me from resolving any ambiguity on the basis of the negotiation history of the agreement, and an action would be required.

[13] With regard to ambiguity, I confess that upon first impression, unlike either of the parties, I thought that the provision was ambiguous. They have convinced me otherwise. In particular, I was persuaded by the argument of counsel for the respondent that while the provision might be better drafted, it is, nonetheless, unambiguous. It created a right to terminate the lease that became effective on May 31, 2004 and continued until the end of the lease.

[14] The proper interpretation of the termination provision turns on the meaning of the word "effective". I have been referred to a number of dictionary definitions of that word. While the word may have a variety of meanings, in my view, in a contractual context, it most commonly means "coming into operation." In this regard, I rely on the decisions of Molloy J. in *Medad v. Versatech Industries Inc.*, [1999] O.J. No. 3750 at para. 46 (Sup. Ct.) and of Stevenson J.A. in *Re Assessor of City of Edmonton and J.C.C. Holdings Ltd* (1984), 12 D.L.R. (4^{th}) 380 at 385 (Alta. C.A.).

[15] As a result, I conclude that, properly interpreted, the provision gives the lessor a right to terminate the lease that comes into operation on May 31, 2004, upon six months notice and upon

paying the stipulated penalty. As a consequence, the right to terminate continues for the remainder of the lease. It is not a one-day right. I am comforted, in reaching this conclusion, by the fact that my interpretation is consistent with the remainder of the lease, and, in my view, is commercially reasonable.

DISPOSITION

[16] Having regard to my analysis, I interpret the provision in question in the manner advanced by the respondent – the provision provides a right to terminate anytime after May 30, 2004.

[17] The parties may exchange and file written submissions in respect of costs, if necessary, within thirty days of the release of these reasons.

[18] I cannot leave this matter without expressing my gratitude to counsel for both parties for their concise, persuasive and helpful arguments.

M. DAMBROT J.

Released: October 12, 2005

COURT FILE NO.: 05-CV-291632PD1
DATE: 20051012

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

CARTAREAL CORPORATION N.V.

Applicant

- and –

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, represented by the Minister of Public Works and Government Services Canada

Respondent

REASONS FOR JUDGMENT

M. DAMBROT J.

Released: October 12, 2005

TAB 4

ADMINISTRATIVE LAW IN CANADA

FIFTH EDITION

Sara Blake

LexisNexis®

4. Interim Remedies

To protect the public, some tribunals have statutory authority to issue interim orders before holding a hearing.[81] If there is a risk to the public from the continuing practice of a licensee, the licence may be suspended pending a hearing. To protect the environment, emergency orders may be made. Usually a hearing need not be held before making an interim order.[82] These powers are in the nature of injunctions and should be used sparingly, especially where the suspension deprives a person of a source of income.[83] If the suspension order is not made promptly upon learning of the risk to the public, a court may question the need to act without a hearing.[84] Most statutes that authorize interim suspension orders specify a short time limit within which a hearing must be held. If no time limit is specified, the hearing should be held as soon as possible.[85]

Tribunals that regulate rates charged to consumers may grant interim rate increases to relieve applicants from financial difficulties caused by the duration of rate-application proceedings. Interim rate increases may be varied or rescinded by the final order.[86]

An interim remedy granted to maintain the status quo pending a hearing should be precise as to the acts that must or must not be done.[87]

5. Retroactive Orders

No order may take effect prior to the date it is made without express authority. Orders must be prospective in effect.[88] However, benefits may be reinstated on appeal effective the date they were revoked.[89] Rates may

---

81 See for example, *Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 15; *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 16.1 [as am.].

82 *Bunn v. Law Society of Manitoba*, [1990] M.J. No. 76 (Man. Q.B.), vard [1990] M.J. No. 87 (Man. C.A.); *Walpole Island First Nation v. Ontario*, [1996] O.J. No. 4682 (Ont. Div. Ct.).

83 *Re James*, [1982] B.C.J. No. 1555 (B.C.S.C.); *Farbeh v. College of Pharmacists of British Columbia*, [2009] B.C.J. No. 1640 (B.C.S.C.).

84 *Marston c. Autorité des marches financiers*, [2009] J.Q. no 13816 at para. 64 (Que. C.A.).

85 *Menon v. College of Physicians and Surgeons (N.B.)*, [2007] N.B.J. No. 270 (N.B.Q.B.).

86 *Bell Canada v. Canada (Canadian Radio-television and Telecommunications Commission)*, [1989] S.C.J. No. 68.

87 *Saskatchewan Health Care Assn. v. Service Employees International Union, Local 299*, [2007] S.J. No. 240 (Sask. Q.B.).

88 *Day and Ross Ltd. v. Jumbo Motor Express*, [1972] N.B.J. No. 74 (N.B.C.A.); *Western Decalta Petroleum Ltd. v. Alberta (Public Utilities Board)*, [1978] A.J. No. 597 (Alta. C.A.).

89 *Kelley v. New Brunswick (Workplace Health, Safety and Compensation Commission)*, [2009] N.B.J. No. 165 (N.B.C.A.).

be fixed as at the date of the interim rate order or application[90] but may not compensate for a windfall or loss resulting from a prior final rate order.[91] Authority to review a decision fixing rates may be exercised to adjust the rates effective the date of the earlier order.[92] An order, directing the use of funds that were ordered put aside in case of a difference between forecast and actual revenues and costs, is not regarded as retroactive.[93] If a statutory requirement for prior approval cannot be met due to urgency, necessity may permit retroactive approval.[94]

6. Contempt Powers

Every tribunal has an inherent power to control its own processes but may not punish a person for contempt unless it is granted, by statute, the powers of a superior court to enforce its own orders.[95]

D. POST-DECISION POWERS

After a decision has been made, may a tribunal reconsider it? May it vary, amend, or rescind its order? May it reopen a hearing that it has completed? To a limited extent, every tribunal has some post-decision powers, even if they are not expressly conferred by statute. Clerical and arithmetic errors may be corrected.[96] If the decision turned on a finding of fact that was incorrect due to mistake or a party's dishonesty, the factual error may be corrected and the decision reconsidered,[97] but new evidence is not a ground to reconsider.[98] If the tribunal forgot to deal with an issue or issued an

---

90 *Nova Corp. v. Amoco Canada Petroleum Co.*, [1981] S.C.J. No. 92; *Eurocan Pulp and Paper Co. v. British Columbia (Energy Commission)*, [1978] B.C.J. No. 1228 (B.C.C.A.).

91 *Northland Utilities (Yellowknife) Ltd. v. Northwest Territories (Public Utilities Board)*, [2010] N.W.T.J. No. 91 (N.W.T.S.C.).

92 *Scott v. Nova Scotia (Rent Review Commission)*, [1977] N.S.J. No. 571 (N.S.C.A.).

93 *Bell Canada v. Bell Aliant Regional Communications*, [2009] S.C.J. No. 40.

94 *C.-W. (C.) (Litigation guardian of) v. Ontario (Health Insurance Plan, General Manager)*, [2009] O.J. No. 140 (Ont. Div. Ct.).

95 *Chrysler Canada Ltd. v. Canada (Competition Tribunal)*, [1992] S.C.J. No. 64; *Sternberg v. Ontario (Racing Commission)*, [2008] O.J. No. 3864 (Ont. Div. Ct.).

96 *Muscillo Transport Ltd. v. Ontario (Licence Suspension Appeal Board)*, [1997] O.J. No. 3062 (Ont. Gen. Div.), affd [1998] O.J. No. 1488 (Ont. C.A.); *New Brunswick Publishing Co. v. New Brunswick (Executive Director of Assessment)*, [2002] N.B.J. No. 163 (N.B.Q.B.).

97 *Grier v. Metro International Trucks Ltd.*, [1996] O.J. No. 538 (Ont. Div. Ct.); *Chan v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 838 at para. 28 (F.C.T.D.); *Park v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 133 (F.C.T.D.).

98 *Nazifpour v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 179 (F.C.A.), leave to appeal refused [2007] S.C.C.A. No. 196; *contra*: *Kurukkal v. Canada (Minister of Citizenship and Immigration)*, [2010] F.C.J. No. 1159 (F.C.A.).

ambiguous decision, it may deliver supplementary reasons to address the issue or clarify the ambiguity,[99] but this may not be done to strengthen a decision in anticipation of appeal.[100] If the decision is a nullity because required procedure was not followed, or if a court has quashed the decision, the tribunal may start again.[101] If the decision was made in the absence of a person affected by the order, who should have been notified but was not, the tribunal may reopen the matter.[102] If a party was unable, through no personal fault, to exercise the right to be heard, the hearing may be reopened.[103] The investigation of a closed complaint may be reopened even if the subject of the investigation has been told that no further action will be taken.[104] It is not accurate to characterize any of these circumstances as a "re-hearing" or a new proceeding. They are a continuation of the original proceeding that was not properly completed.[105]

There is no inherent power to reconsider a decision after it has been made. After a final decision has been rendered, a tribunal is *functus officio*. The issue, then, is whether a final decision has been rendered. A tribunal has a continuing power to change its mind until the final decision is released. If the statute requires that the final decision be in writing or embodied in a formal order, there may be no final decision until these requirements are fulfilled.[106] Preliminary rulings on any issue may be revisited and changed in the final decision.[107] If the statute prescribes two steps to issue a licence, its authorization then its actual issuance, an authorization may be revoked until the licence is issued.[108] A decision

---

99 *Nova Scotia Government and General Employees Union v. Capital District Health Authority*, [2006] N.S.J. No. 281 (N.S.C.A.); *Severud v. Canada (Employment and Immigration Commission)*, [1991] F.C.J. No. 68 (F.C.A.).

100 *Sea-Scape Landscaping v. New Brunswick (Workplace Health, Safety and Compensation Commission)*, [2004] N.B.J. No. 348 (N.B.C.A.); *Jacobs Catalytic Ltd. v. International Brotherhood of Electrical Workers, Local 353*, [2009] O.J. No. 4501 (Ont. C.A.).

101 *Chandler v. Alberta Assn. of Architects*, [1989] S.C.J. No. 102.

102 *Di Leo v. Hétu*, [1982] C.S. 442 (Que. S.C.).

103 *Kaur v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 1100 (F.C.A.); *Zutter v. British Columbia (Council of Human Rights)*, [1995] B.C.J. No. 626 (B.C.C.A.), leave to appeal refused [1995] S.C.C.A. No. 243.

104 *Holder v. College of Physicians and Surgeons*, [2002] M.J. No. 405 (Man. C.A.), leave to appeal refused [2002] S.C.C.A. No. 519.

105 *Nicholson v. Haldimand-Norfolk (Regional Municipality) Commissioners of Police*, [1980] O.J. No. 3845 (Ont. C.A.), leave to appeal refused [1981] 1 S.C.C.A. No. 254; *Webb v. Ontario (Securities Commission)*, [1987] O.J. No. 161 (Ont. Div. Ct.).

106 *Bowen v. Edmonton (City)*, [1977] A.J. No. 560 (Alta. C.A.); *Brigham v. Ontario (Residential Premises Rent Review Board)*, [1979] O.J. No. 4360 (Ont. Div. Ct.).

107 *Vatanabadi v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 323 (F.C.A.); *International Brotherhood of Electrical Workers, Local 1733 v. New Brunswick Power Corp.*, [1994] N.B.J. No. 551 (N.B.Q.B.); *Brysenko v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1443 (F.C.T.D.).

108 *Comeau's Sea Foods Ltd. v. Canada (Minister of Fisheries and Oceans)*, [1997] S.C.J. No. 5; *Wagowsky v. Metropolitan Toronto (Municipality)*, [1997] O.J. No. 3566 (Ont. Div. Ct.).

TAB 5

Appendix F: Variance and Deferral Accounts

CLEARANCE OF EXISTING VARIANCE AND DEFERRAL ACCOUNTS

With respect to the variance and deferral accounts established by O. Reg. 53/05 and the Board's decisions and orders in EB-2007-0905, EB-2009-0038 and EB-2009-0174, the Board approves the recovery of December 31, 2010 balances in these accounts and recovery periods as provided in the following tables:

Table F - 1
Regulated Hydroelectric Accounts

Account	Approved Dec 31, 2010 Balances ($M)	Approved Recovery Period	
		Starting	Ending
Hydroelectric Water Conditions Variance	(70.2)	Mar 1, 2011	Dec 31, 2012
Ancillary Services Net Revenue Variance - Hydroelectric	(9.4)	Mar 1, 2011	Dec 31, 2012
Income and Other Taxes Variance	(8.1)	Mar 1, 2011	Dec 31, 2012
Tax Loss Variance	78.8	Mar 1, 2011	Dec 31, 2014
Hydroelectric Interim Period Shortfall (Rider D) Variance	(2.3)	Mar 1, 2011	Dec 31, 2012
Hydroelectric Deferral and Variance Over/Under Recovery Variance	(7.9)	Mar 1, 2011	Dec 31, 2012

Table F - 2
Nuclear Accounts

Account	Approved Dec 31, 2010 Balances ($M)	Approved Recovery Period	
		Starting	Ending
Pickering A Return To Service Deferral	33.2	Mar 1, 2011	Dec 31, 2011
Nuclear Liability Deferral	39.2	Mar 1, 2011	Dec 31, 2012
Nuclear Development Variance	(110.8)	Mar 1, 2011	Dec 31, 2012
Transmission Outages and Restrictions Variance	0.1	Mar 1, 2011	Dec 31, 2012
Ancillary Services Net Revenue Variance - Nuclear	0.6	Mar 1, 2011	Dec 31, 2012
Capacity Refurbishment Variance	(8.5)	Mar 1, 2011	Dec 31, 2012
Nuclear Fuel Cost Variance	6.4	Mar 1, 2011	Dec 31, 2012
Bruce Lease Net Revenues Variance	249.4	Mar 1, 2011	Dec 31, 2012
Income and Other Taxes Variance	(31.6)	Mar 1, 2011	Dec 31, 2012
Tax Loss Variance	413.7	Mar 1, 2011	Dec 31, 2014
Nuclear Interim Period Shortfall (Rider B) Variance	6.6	Mar 1, 2011	Dec 31, 2012
Nuclear Deferral and Variance Over/Under Recovery Variance	20.8	Mar 1, 2011	Dec 31, 2012

The Board approves OPG's recovery of the approved balances in the regulated hydroelectric variance and deferral accounts using a payment rider. A payment rider of $(1.65)/MWh (Regulated Hydroelectric Payment Rider), determined in Appendix D, Table 1, effective March 1, 2011, shall apply to OPG's regulated hydroelectric production.

The Board approves OPG's recovery of the approved balances in the nuclear variance and deferral accounts using a payment rider. A payment rider of $4.33/MWh (Nuclear Payment Rider) determined in Appendix E, Table 1, effective March 1, 2011, shall apply to OPG's nuclear production.

For the period January 1, 2011 to February 28, 2011, OPG shall continue to record entries into the variance and deferral accounts established by O. Reg. 53/05 and the Board's decisions and orders in EB-2007-0905, EB-2009-0038 and EB-2009-0174 pursuant to the methodologies established by O. Reg. 53/05 and the above decisions and orders.

CONTINUING VARIANCE AND DEFERRAL ACCOUNTS

OPG shall continue the variance and deferral accounts listed below effective March 1, 2011, as follows:

<u>Hydroelectric Water Conditions Variance Account</u>

The Hydroelectric Water Conditions Variance Account shall continue to record the financial impact of differences between forecast and actual water conditions as proposed in OPG's application. OPG shall determine the production impact of changes in water conditions by entering the actual flow values into the same production forecast model used to calculate the Board approved production forecast, holding all other variables constant. OPG shall determine the deviations from forecast as the difference between the resulting production from the production forecast model based on actual flows and the energy production forecast approved by the Board. OPG shall determine the revenue impact of the production variance by multiplying the deviation from forecast, as described above, by the approved regulated hydroelectric payment amount of $35.78/MWh as calculated in Appendix B, Table 1. The resulting amount shall be recorded in the Hydroelectric Water Conditions Variance Account.

OPG shall also continue to record in this account changes in the gross revenue charge costs reflected in the revenue requirement approved by the Board as a result of differences in energy production described above. OPG shall determine amounts to be recorded in this account by multiplying the production deviation as described above by the applicable gross revenue charge rate.

OPG shall also continue to record in this account any variations from the amounts payable to the St. Lawrence Seaway Management Corporation reflected in the revenue requirement approved by the Board for the conveyance of water in the Welland Ship Canal.

Ancillary Services Net Revenue Variance Account – Hydroelectric

OPG shall compare actual hydroelectric ancillary services net revenue to the forecast amount of $77.8 million, reflected in the revenue requirement approved by the Board. The difference shall continue to be recorded in this variance account. The ancillary services for regulated hydroelectric operations include black start capability, operating reserve, automatic generation control, and reactive support/voltage control service.

Income and Other Taxes Variance Account

The Income and Other Taxes Variance Account shall continue to record the financial impact on the revenue requirement approved by the Board of:

- Any differences in payments in lieu of corporate income or capital taxes that result from a legislative or regulatory change to the tax rates or rules of the *Income Tax Act* (Canada) and the *Taxation Act, 2007* (Ontario) (formerly the *Corporations Tax Act* (Ontario)), as modified by the regulations under the *Electricity Act, 1998*, and any differences in payments in lieu of property tax to the Ontario Electricity Financial Corporation that result from changes to the regulations under the *Electricity Act, 1998*.
- Any differences in municipal property taxes that result from a legislative or regulatory change to the tax rates or rules for OPG's prescribed assets under the *Assessment Act, 1990*.
- Any differences in payments in lieu of corporate income or capital taxes that result from a change in, or a disclosure of, a new assessing or administrative policy that is published in

the public tax administration or interpretation bulletins by relevant federal or provincial tax authorities, or court decisions on other taxpayers.

- Any differences in payments in lieu of income or capital taxes that result from assessments or re-assessments (including re-assessments associated with the application of the tax rates and rules to OPG's regulated operations or changes in assessing or administrative policy including court decisions on other taxpayers).

The income tax provision of $60.9 million for 2011 and $91.1 million for 2012, reflected in the revenue requirement approved by the Board shall be used to calculate any variances in income taxes recorded in the Income and Other Taxes Variance Account. The income tax provision reflected in the revenue requirement approved by the Board is calculated in Appendix A, Tables 6 and 7.

Tax Loss Variance Account

OPG shall record only interest and amortization in the Tax Loss Variance Account based on the approved recovery period.

Hydroelectric Interim Period Shortfall (Rider D) Variance Account

OPG shall record only interest and amortization in the Hydroelectric Interim Period Shortfall (Rider D) Variance Account based on the approved recovery period. The balance remaining in the account as at December 31, 2012 shall be transferred to the Hydroelectric Deferral and Variance Over/Under Recovery Variance Account. Following this transfer, the Hydroelectric Interim Period Shortfall (Rider D) Variance Account shall be terminated on December 31, 2012.

Hydroelectric Deferral and Variance Over/Under Recovery Variance Account

The Hydroelectric Deferral and Variance Over/Under Recovery Variance Account shall record the differences between the amounts approved for recovery in the hydroelectric variance and deferral accounts and the actual amounts recovered resulting from the differences between the forecast and actual regulated hydroelectric production. The account shall also include the transfer of the balance remaining in the Hydroelectric Interim Period Shortfall (Rider D) Variance Account as at December 31, 2012.

Pickering A Return To Service Deferral Account

As the approved balance in this account as at December 31, 2010 is ordered to be cleared by December 31, 2011, OPG shall record amortization and interest only in the Pickering A Return To Service Deferral Account until December 31, 2011. The balance remaining in the account as at December 31, 2011 shall be transferred to the Nuclear Deferral and Variance Over/Under Recovery Variance Account. Following this transfer, the Pickering A Return To Service Deferral Account shall be terminated on December 31, 2011.

Nuclear Liability Deferral Account

The Nuclear Liability Deferral Account shall continue to record the revenue requirement impact of any change in OPG's nuclear decommissioning liability arising from an approved reference plan measured against the forecast impact reflected in the revenue requirement approved by the Board. OPG shall not record the revenue requirement impact of a change in its nuclear decommissioning liability associated with its nuclear obligations related to the Bruce facilities in this account. OPG shall record the return on rate base in the account using the weighted average accretion rate on OPG's nuclear liabilities of 5.58 per cent.

The "nuclear decommissioning liability" shall be defined as "the liability of Ontario Power Generation Inc. for decommissioning its nuclear generating facilities and the management of its nuclear waste and nuclear fuel." An "approved reference plan" shall be defined as "a reference plan, as defined in the Ontario Nuclear Funds Agreement, which has been approved by Her Majesty the Queen in the right of Ontario in accordance with that agreement."

Nuclear Development Variance Account

The Nuclear Development Variance Account shall continue to record variances between the actual non-capital costs incurred and firm financial commitments made in the course of planning and preparation for the development of proposed new nuclear generation facilities and those forecast costs and firm financial commitments reflected in the revenue requirement approved by the Board.

Transmission Outages and Restrictions Variance Account

The approved balance in the Transmission Outages and Restrictions Variance Account as at December 31, 2010 represents accumulated unrecovered interest. Therefore, OPG shall record only amortization in this account based on the approved recovery period. The balance remaining in the account as at December 31, 2012 shall be transferred to the Nuclear Deferral and Variance Over/Under Recovery Variance Account. Following this transfer, the Transmission Outages and Restrictions Variance Account shall be terminated on December 31, 2012.

Ancillary Services Net Revenue Variance Account - Nuclear

OPG shall compare actual nuclear ancillary services net revenue to the forecast amount of $5.9 million, reflected in the revenue requirement approved by the Board. The difference shall continue to be recorded in this variance account. The ancillary services for nuclear operations include operating reserve and reactive support/voltage control service.

Capacity Refurbishment Variance Account

The Capacity Refurbishment Variance Account, pursuant to section 6(2)4 of O. Reg. 53/05, shall continue to record variances between the actual capital and non-capital costs, and firm financial commitments incurred to increase the output of, refurbish or add operating capacity to a prescribed generation facility referred to in O. Reg. 53/05 section 2 and those forecast costs and firm financial commitments reflected in the revenue requirement approved by the Board. This account shall include assessment costs and pre-engineering costs and commitments.

Nuclear Fuel Cost Variance Account

OPG shall record only interest and amortization in the Nuclear Fuel Cost Variance Account based on the approved recovery period. The balance remaining in the account as at December 31, 2012 shall be transferred to the Nuclear Deferral and Variance Over/Under Recovery Variance Account. Following this transfer, the Nuclear Fuel Cost Variance Account shall be terminated on December 31, 2012.

Bruce Lease Net Revenues Variance Account

The Bruce Lease Net Revenues Variance Account shall continue to capture differences between (i) the forecast revenues and costs related to the Bruce lease that are factored into the nuclear revenue requirement approved by the Board, and (ii) OPG's actual revenues and costs in respect of the Bruce facilities.

The variance recorded in this account shall continue to be measured by comparing the Bruce lease revenues net of costs credited to customers through the approved nuclear payment amount of $51.52/MWh, as calculated in Appendix C, Table 1, to the actual Bruce lease revenues net of costs realized by OPG. The Bruce lease revenues net of costs credited to customers shall be equal to the rate of recovery reflected in the nuclear revenue requirement approved by the Board multiplied by OPG's actual nuclear production. The rate of recovery shall be calculated using the forecast Bruce lease revenues net of costs reflected in the nuclear revenue requirement approved by the Board divided by the nuclear production forecast approved by the Board.

The cost impact of any changes in OPG's liability for decommissioning the Bruce nuclear generating facilities and the management of nuclear waste and nuclear fuel related to the Bruce stations shall also continue to be recorded in this account.

Nuclear Interim Period Shortfall (Rider B) Variance Account

OPG shall record only interest and amortization in the Nuclear Interim Period Shortfall (Rider B) Variance Account based on the approved recovery period. The balance remaining in the account as at December 31, 2012 shall be transferred to the Nuclear Deferral and Variance Over/Under Recovery Variance Account. Following this transfer, the Nuclear Interim Period Shortfall (Rider B) Variance Account shall be terminated on December 31, 2012.

Nuclear Deferral and Variance Over/Under Recovery Variance Account

The Nuclear Deferral and Variance Over/Under Recovery Variance Account shall record the differences between the amounts approved for recovery in the nuclear variance and deferral accounts and the actual amounts recovered resulting from the differences between the forecast and actual nuclear production. The account shall also include the transfer of the balances remaining in the Pickering A Return To Service Deferral Account as at December 31, 2011, the Transmission Outages and Restrictions Variance Account as at December 31, 2012, the Nuclear Fuel Cost Variance Account as at December 31, 2012 and the Nuclear Interim Period Shortfall (Rider B) Variance Account as at December 31, 2012.

NEW VARIANCE AND DEFERRAL ACCOUNTS

OPG shall establish the following two new accounts effective March 1, 2011:

Hydroelectric Surplus Baseload Generation Variance Account

OPG shall establish the Hydroelectric Surplus Baseload Generation Variance Account to record the financial impact of foregone production at its prescribed hydroelectric facilities due to surplus baseload generation ("SBG").

OPG shall determine the revenue impact of SBG by multiplying the foregone production volume due to SBG by the approved regulated hydroelectric payment amount of $35.78/MWh as calculated in Appendix B, Table 1. The resulting amount shall be recorded in the Hydroelectric Surplus Baseload Generation Variance Account.

OPG shall also record in this account changes in the gross revenue charge costs reflected in the revenue requirement approved by the Board as a result of SBG. OPG shall determine amounts to be recorded in this account by multiplying the foregone production volume at its prescribed hydroelectric facilities due to SBG by the applicable gross revenue charge rate.

OPG shall also record in this account any variations from the amounts payable to the St. Lawrence Seaway Management Corporation reflected in the revenue requirement approved by the Board for the conveyance of water in the Welland Ship Canal as a result of foregone production at its prescribed hydroelectric facilities due to SBG.

The reconciliation of the account will be based on any IESO order or instructions (if applicable), general market conditions (e.g., total demand, total baseload, total supply) and actual production reports from the SBG-affected prescribed generation units that show deviations from production that are contemporaneous with SBG conditions.

Hydroelectric Incentive Mechanism Variance Account

OPG shall establish the Hydroelectric Incentive Mechanism ("HIM") Variance Account to record 50 per cent of HIM net revenues above $10M in 2011 and $14M in 2012 as a credit to ratepayers.

INTEREST

Except for the Nuclear Liability Deferral Account, OPG shall record interest on the balances in the variance and deferral accounts using the interest rates set by the Board from time to time pursuant to the Board's interest rate policy. OPG shall apply simple interest to the opening monthly balance of the accounts until the balances are fully recovered.

TAB 6

Appendix B: Deferral and Variance Accounts

CLEARANCE OF EXISTING DEFERRAL AND VARIANCE ACCOUNTS

With respect to the deferral and variance accounts established by O. Reg. 53/05 and the Board's decisions and orders in EB-2007-0905, EB-2009-0038, EB-2009-0174, EB-2010-0008, EB-2011-0090 and EB-2011-0432 as well as the Pickering Life Extension Depreciation Variance Account established by the decision in this proceeding, the Board approves December 31, 2012 balances in these accounts, as provided in column (a) of Table B-1, below. The Board approves the recovery, effective January 1, 2013, of the balances in these accounts, as provided in column (b) of Table B-1, below. The Board also approves the amortization amounts for these balances for the periods from January 1, 2013 to December 31, 2013 and from January 1, 2014 to December 31, 2014, as calculated at Appendix A, Table 4, columns (d) and (e), respectively, and set out in columns (c) and (d), respectively of Table B-1, below.

Table B - 1
Regulated Hydroelectric and Nuclear Accounts

Account	Approved Settlement Balance Dec 31, 2012	Adjusted Settlement Balance For Recovery	Jan 1 - Dec 31 2013 Amortization	Jan 1 - Dec 31 2014 Amortization	Balance Remaining at Dec 31, 2014
	($M)	($M)	($M)	($M)	($M)
Hydroelectric Accounts	(a)	(b)	(c)	(d)	(e)
Hydroelectric Water Conditions Variance	17.1	17.1	10.3	6.8	0.0
Ancillary Services Net Revenue Variance - Hydroelectric	34.0	34.0	20.4	13.6	0.0
Income and Other Taxes Variance - Hydroelectric	(2.5)	(2.5)	(1.5)	(1.0)	0.0
Tax Loss Variance - Hydroelectric	48.2	48.2	28.9	19.3	0.0
Pension and OPEB Cost Variance - Hydroelectric	15.1	15.2	2.8	1.9	10.5
Impact for USGAAP Deferral - Hydroelectric	2.8	2.8	1.7	1.1	0.0
Hydroelectric Deferral and Variance Over/Under Recovery Variance	(3.9)	(3.9)	(2.3)	(1.5)	0.0
Hydroelctric Subtotal	110.9	111.0	60.3	40.2	10.5
Nuclar Accounts					
Nuclear Liability Deferral	206.2	124.8	74.9	49.9	81.4
Ancillary Services Net Revenue Variance - Nuclear	1.7	1.7	1.0	0.7	0.0
Capacity Refurbishment Variance - Nuclear	11.8	11.8	7.1	4.7	0.0
Bruce Lease Net Revenues Variance - Derivative Portion	230.3	230.3	40.5	27.0	162.8
Bruce Lease Net Revenues Variance - Non-derivative Portion	74.8	74.8	22.4	15.0	37.4
Income and Other Taxes Variance - Nuclear	(32.5)	(32.5)	(19.5)	(13.0)	0.0
Tax Loss Variance - Nuclear	253.3	253.3	152.0	101.3	0.0
Pension and OPEB Cost Variance - Nuclear	309.1	309.9	57.1	38.1	214.7
Impact for USGAAP Deferral - Nuclear	60.3	60.3	36.2	24.1	0.0
Nuclear Deferral and Variance Over/Under Recovery Variance	6.9	6.9	4.2	2.8	0.0
Pickering Life Extension Depreciation	N/A	(93.8)	(56.3)	(37.5)	0.0
Nuclear Subtotal	1,121.7	947.3	319.5	213.0	496.2
Total Hydroelectric and Nuclear	1,232.6	1,058.3	379.8	253.2	506.7

Numbers may not add due to rounding

For greater clarity, the 2012 total audited balance for the hydroelectric and nuclear deferral and variance accounts was $1,274.4M, of which $34.5M relates to balances in five accounts which were set aside for review in a future proceeding. Excluding the account balances deferred for future consideration, the 2012 account balances reviewed in this proceeding totaled $1,239.9M, which was reduced by $7.3M due to negotiated reductions to accumulated interest, resulting in agreed and approved 2012 account balances totalling $1,232.6M[1]. Further negotiated adjustments and advancements of credits over the two years 2013 and 2014 of $174.4M result in total balances settled for recovery of $1,058.3M[2]. After the approved recovery of $633.0M[3] in the 2013 and 2014 period, the total approved balance remaining at the end of 2014 is $506.7M[4], which includes an advancement of $81.4M for the Nuclear Liability Deferral Account not recovered in the 2013-2014 recovery period (see Settlement Agreement, Ex M1-1, pages 18 and 19).

The Board approves amortization of the balances for recovery in all of the above accounts over a 24 month period commencing January 1, 2013, with the following exceptions. The balance in the Future Recovery portion[5] of the Pension and OPEB Cost Variance Account is to be recovered over 144 months, commencing January 1, 2013. The balance in the non-derivative portion of the Bruce Lease Net Revenues Variance Account[6] is to be recovered over 48 months, commencing January 1, 2013. Amortization amounts for the derivative portion of the Bruce Lease Net Revenues Variance Account for 2013 and 2014 are calculated as described in Ex. M1-1, Section B3 and shall commence on January 1, 2013.

The Board approves OPG's recovery of the approved balances in the regulated hydroelectric deferral and variance accounts using payment amount riders. Payment amount riders, as determined in Appendix A, Tables 1 and 3, effective January 1, 2013 and listed at page 5 of this Order, shall apply to OPG's regulated hydroelectric production for the period from March 1, 2013 to December 31, 2014.

---

[1] See Table B-1, column (a) total.
[2] See Table B-1, column (b) total.
[3] See Table B-1, sum of column (c) and column (d) totals.
[4] See Table B-1, column (e) total.
[5] The Future Recovery portion of the Pension and OPEB Variance Account is defined at Ex. M1-1, p 14.
[6] The non-derivative portion of the Bruce Lease Net Revenues Variance Account is defined at Ex. M1-1, p 16.

The Board approves OPG's recovery of the approved balances in the nuclear deferral and variance accounts using payment amount riders. Payment amount riders, as determined in Appendix A, Tables 2 and 3, effective January 1, 2013 and listed at page 5 of this order, shall apply to OPG's nuclear production for the period from March 1, 2013 to December 31, 2014.

The Board approves amortization amounts for 2013 and 2014 as shown in columns (c) and (d), respectively of Table B1 above and as calculated at columns (d) and (e), respectively of Appendix A, Table 4.

CONTINUING DEFERRAL AND VARIANCE ACCOUNTS

Unless otherwise stated in this Order, effective January 1, 2013, OPG shall continue to record entries into the deferral and variance accounts authorized by O. Reg. 53/05 and the applicable decisions and orders of the Board pursuant to the methodologies established by O. Reg. 53/05 and such decisions and orders, as outlined in OPG's Application at Ex. H1-3-1 and as summarized below.

Effective January 1, 2013, OPG shall record entries into deferral and variance accounts listed below as follows:

<u>Hydroelectric Water Conditions Variance Account</u>

The Hydroelectric Water Conditions Variance Account was originally approved in EB-2007-0905. This account shall continue to record the financial impact of differences between forecast and actual water conditions. OPG shall determine the production impact of changes in water conditions by entering the actual flow values into the same production forecast model used to calculate the Board-approved production forecast, holding all other variables constant. OPG shall determine the deviations from forecast as the difference between the resulting production from the production forecast model based on actual flows and the energy production forecast approved by the Board. OPG shall use the average of the monthly forecasts for 2011 and 2012 underpinning the EB-2010-0008 payment amounts as the reference values against which to measure production variances due to changes in water conditions arising for the corresponding months after December 31, 2012. Therefore, for each month after 2012, OPG shall determine energy production based on actual flows by entering actual water flow values into the 2011 and 2012 forecast models and computing an average of the resulting imputed monthly energy values from the two models. OPG shall determine the revenue impact of the production variance by multiplying the deviation between imputed production from actual flows and forecast production, as described above, by the EB-2010-0008 approved regulated hydroelectric payment amount of $35.78/MWh. The resulting amount shall be recorded in the Hydroelectric Water Conditions Variance Account.

OPG shall also continue to record in this account changes in the gross revenue charge costs reflected in the revenue requirement approved by the Board as a result of differences in imputed production from actual flows and forecast energy production described above. OPG shall determine amounts to be recorded in this account by multiplying the production deviation as described above by the applicable gross revenue charge rate.

OPG shall also continue to record in this account any variations from the amounts payable to the St. Lawrence Seaway Management Corporation reflected in the revenue requirement approved by the Board for the conveyance of water in the Welland Ship Canal.

Ancillary Services Net Revenue Variance Account – Hydroelectric

The Ancillary Services Net Revenue Variance Account – Hydroelectric was originally approved in EB-2007-0905. OPG shall continue to compare actual hydroelectric ancillary services net revenue to the forecast amount reflected in the revenue requirement approved by the Board (the "reference amount"). The monthly reference amounts shall be 1/24 of the total forecast amount of $77.8M for 2011 and 2012 underpinning the two-year revenue requirement approved in EB-2010-0008. The monthly reference amount shall be $3.24M. The difference shall continue to be recorded in this variance account. The ancillary services for regulated hydroelectric operations include black start capability, operating reserve, automatic generation control, and reactive support/voltage control service.

Income and Other Taxes Variance Account

The Income and Other Taxes Variance Account was originally approved in EB-2007-0905. This account shall continue to record the financial impact on the EB-2010-0008 revenue requirement approved by the Board (the "reference amount") of:

- Any differences in payments in lieu of corporate income or capital taxes that result from a legislative or regulatory change to the tax rates or rules of the *Income Tax Act* (Canada) and the *Taxation Act, 2007* (Ontario) (formerly the *Corporations Tax Act* (Ontario)), as modified by the regulations under the *Electricity Act, 1998*, and any differences in payments in lieu of property tax to the Ontario Electricity Financial Corporation that result from changes to the regulations under the *Electricity Act, 1998*.
- Any differences in municipal property taxes that result from a legislative or regulatory change to the tax rates or rules for OPG's prescribed assets under the *Assessment Act, 1990*.
- Any differences in payments in lieu of corporate income or capital taxes that result from a change in, or a disclosure of, a new assessing or administrative policy that is published in the public tax administration or interpretation bulletins by relevant federal or provincial tax authorities, or court decisions on other taxpayers.
- Any differences in payments in lieu of income or capital taxes that result from assessments or re-assessments (including re-assessments associated with the application of the tax rates and rules to OPG's regulated operations or changes in assessing or administrative policy including court decisions on other taxpayers).

The income tax provision reflected in the revenue requirement approved by the Board shall be used to calculate any variances in income taxes recorded in the Income and Other Taxes Variance Account. The income tax provision reflected in the revenue requirement approved by the Board is calculated in the EB-2010-0008 Payment Amounts Order, Appendix A, Tables 6 and 7. The monthly reference amounts shall be 1/24 of the total forecast amount of $152.0M for 2011 and 2012 underpinning the two-year revenue requirement approved in EB-2010-0008. The monthly reference amount shall be $6.33M.

<u>Tax Loss Variance Account</u>

The Tax Loss Variance Account was originally approved in EB-2009-0038. OPG shall continue to record only interest and amortization in the Tax Loss Variance Account. The balances remaining for the regulated hydroelectric and nuclear portions of this account as at December 31, 2014 shall be transferred to the Hydroelectric Deferral and Variance Over/Under Recovery Variance Account and Nuclear Deferral and Variance Over/Under

Recovery Variance Account, respectively. Following this transfer, the Tax Loss Variance Account shall be terminated on December 31, 2014.

Impact for USGAAP Deferral Account

Impact for USGAAP Deferral Account was originally approved in EB-2011-0432. This account captured the financial impacts of OPG's transition to and implementation of USGAAP. OPG shall record only interest and amortization in the Impact for USGAAP Account. The balances remaining for the hydroelectric and nuclear portions of this account as at December 31, 2014 shall be transferred to the Hydroelectric Deferral and Variance Over/Under Recovery Variance Account and Nuclear Deferral and Variance Over/Under Recovery Variance Account, respectively. Following this transfer, the Impact for USGAAP Deferral Account shall be terminated on December 31, 2014.

Pension and OPEB Cost Variance Account

The Pension and OPEB Cost Variance Account was originally approved in EB-2011-0090. This account will continue to record the difference between:

(i) the pension and OPEB costs, plus related income tax PILs, reflected in the current revenue requirement approved by the Board (the "reference amount") ,and

(ii) OPG's actual pension and OPEB costs, and associated tax impacts, for the prescribed generation facilities.

The monthly reference amounts shall be 1/24 of the forecast amounts underpinning the two-year revenue requirement approved in EB-2010-0008 for 2011 and 2012. The monthly reference amount shall be $26.38M. The differences between reference amounts and actual amounts will continue to be calculated and recorded in a manner consistent with that underpinning the approved account balance as at December 31, 2012. Actual pension and OPEB costs used in the calculation of the difference shall be calculated using the same accounting standards as those used to derive the reference amounts.

The balance in this account as at December 31, 2012, including interest accrued to that date, shall be split into Historic Recovery and Future Recovery components. The Historic Recovery component of the account balance shall be 2/12ths of the total balance in the account as at December 31, 2012. The Future Recovery component of the account balance shall be 10/12ths of the total balance in the account as at December 31, 2012.

The Historic Recovery component of the account balance, together with interest projected to accrue on this component during the period from January 1, 2013 to December 31, 2014, shall be recovered over 24 months commencing January 1, 2013. The Future Recovery component shall be recovered over a period of 144 months commencing January 1, 2013.

OPG shall not record any interest on the Future Recovery component during the period from January 1, 2013 to December 31, 2014.

To the extent the actual interest amounts during the period from January 1, 2013 to December 31, 2014 related to the Historic Recovery component are different from those used in establishing amortization amounts in this order, OPG shall record such differences in an interest sub-account of the Pension and OPEB Cost Variance Account.

Hydroelectric Surplus Baseload Generation Variance Account

Clearance of this account is deferred to the next payment amounts proceeding.

The Hydroelectric Surplus Baseload Generation Variance Account was originally approved in EB-2010-0008. This account shall continue to record the financial impact of foregone production at the prescribed hydroelectric facilities due to surplus baseload generation ("SBG") conditions in accordance with the Board's Order in EB-2010-0008.

OPG shall determine the revenue impact of SBG by multiplying the foregone production volume due to SBG by the approved regulated hydroelectric payment amount of $35.78/MWh. The resulting amount shall be recorded in the Hydroelectric Surplus Baseload Generation Variance Account. OPG shall also record in this account changes in the gross revenue charge costs reflected in the revenue requirement approved by the Board as a result of SBG. OPG shall determine amounts to be recorded in this account by multiplying the foregone production volume at its prescribed hydroelectric facilities due to SBG by the applicable gross revenue charge rate. OPG shall also record in this account any variations from the amounts payable to the St. Lawrence Seaway Management Corporation reflected in the revenue requirement approved by the Board for the conveyance of water in the Welland Ship Canal as a result of foregone production at its prescribed hydroelectric facilities due to SBG. The reconciliation of the account will be based on any IESO order or instructions (if applicable), general market conditions (e.g., total demand, total baseload, total supply) and actual production reports from the SBG-affected prescribed generation units that show deviations from production that are contemporaneous with SBG conditions.

Hydroelectric Incentive Mechanism Variance Account

Clearance of this account is deferred to the next payment amounts proceeding.

The Hydroelectric Incentive Mechanism ("HIM") Variance Account was originally approved in EB-2010-0008. This account will record 50 per cent of HIM net revenues above $13M per calendar year after December 31, 2012 as a credit to ratepayers, derived as described below.

The HIM Variance Account was established in EB-2010-0008 to record 50 per cent of HIM net revenues above $10M in 2011 and above $14M in 2012 as a credit to ratepayers. For 2011, the $10M is associated with the ten months beginning March 1, 2011, which is the effective date of the EB-2010-0008 approved payment amounts. Annualizing this figure produces a full-year 2011 amount of $12M. The $13M annual threshold for the recording of amounts into the account after December 31, 2012 represents the average of the annualized 2011 threshold of $12M and the full-year 2012 threshold of $14M.

Hydroelectric Deferral and Variance Over/Under Recovery Variance Account

The Hydroelectric Deferral and Variance Over/Under Recovery Variance Account was originally approved in EB-2009-0174. This account shall continue to record the differences between the amounts approved for recovery in the hydroelectric deferral and variance accounts and the actual amounts recovered based on actual regulated hydroelectric production and approved riders. The account shall also include the transfer of the hydroelectric portion of the balances remaining in the Tax Loss Variance Account and Impact for USGAAP Deferral Account as at December 31, 2014.

Nuclear Liability Deferral Account

The Nuclear Liability Deferral Account was originally approved in EB-2007-0905. This account shall continue to record the revenue requirement impact of any change in OPG's nuclear decommissioning liability arising from an approved reference plan measured against the forecast impact reflected in the revenue requirement approved by the Board in EB-2010-0008. OPG shall not record the revenue requirement impact of a change in its nuclear decommissioning liability associated with its nuclear obligations related to the Bruce facilities in this account. Effective January 1, 2013, OPG shall record the return on rate base in the account using the weighted average accretion rate on OPG's nuclear liabilities of 5.37%.

The "nuclear decommissioning liability" shall be defined as "the liability of Ontario Power Generation Inc. for decommissioning its nuclear generating facilities and the management of its nuclear waste and nuclear fuel." An "approved reference plan" shall be defined as "a reference plan, as defined in the Ontario Nuclear Funds Agreement, which has been approved by Her Majesty the Queen in the right of Ontario in accordance with that agreement."

Effective January 1, 2013, OPG shall not record any interest on the balance of the Nuclear Liability Deferral Account.

Nuclear Development Variance Account

Clearance of this account is deferred to the next payment amounts proceeding.

The Nuclear Development Variance Account was originally approved in EB-2007-0905. This account shall continue to record variances between the actual non-capital costs incurred and firm financial commitments made in the course of planning and preparation for the development of proposed new nuclear generation facilities and those forecast costs and firm financial commitments reflected in the revenue requirement approved by the Board (the "reference amount"). The monthly reference amounts shall be 1/24 of the total forecast amount underpinning the two-year revenue requirement approved in EB-2010-0008 for 2011 and 2012. The monthly reference amount shall be $0.

Ancillary Services Net Revenue Variance Account - Nuclear

The Ancillary Services Net Revenue Variance Account – Nuclear was originally approved in EB-2007-0905. OPG shall compare actual nuclear ancillary services net revenue to the forecast amount reflected in the revenue requirement approved by the Board (the "reference amount"). The monthly reference amounts shall be 1/24 of the forecast amounts underpinning the two-year revenue requirement approved in EB-2010-0008. The monthly reference amount shall be $0.25M. The difference shall continue to be recorded in this variance account. The ancillary services for nuclear operations include operating reserve and reactive support/voltage control service.

Capacity Refurbishment Variance Account

Clearance of portions of the December 31, 2012 balance in this account as set out at Appendix A, Tables 1 and 2, column (d) is deferred to the next payment amounts proceeding.

The Capacity Refurbishment Variance Account was originally approved in EB-2007-0905. This account shall continue to record variances between the actual capital and non-capital costs, and firm financial commitments incurred to increase the output of, refurbish or add operating capacity to a prescribed generation facility referred to in O. Reg. 53/05 section 2 and those forecast costs and firm financial commitments reflected in the revenue requirement approved by the Board (the "reference amount"). The monthly reference amounts shall be 1/24 of the total forecast amount underpinning the two-year revenue requirement approved in EB-2010-0008 for 2011 and 2012. The monthly reference amount shall be $4.42M. This account shall continue to include assessment costs and pre-engineering costs and commitments.

Bruce Lease Net Revenues Variance Account

The Bruce Lease Net Revenues Variance Account was originally approved in EB-2007-0905. This account shall continue to capture differences between (i) the forecast revenues and costs related to the Bruce lease that are factored into the nuclear revenue requirement approved by the Board, and (ii) OPG's actual revenues and costs in respect of the Bruce facilities. The monthly reference amounts shall be 1/24 of the total forecast amounts underpinning the two-year revenue requirement approved in EB-2010-0008 for 2011 and 2012. The monthly reference amount shall be $11.30M.

The variance recorded in this account shall continue to be measured by comparing the Bruce lease revenues net of costs credited to customers monthly through the EB-2010-0008 approved nuclear payment amount of $51.52/MWh to the actual monthly Bruce lease revenues net of costs realized by OPG. The monthly Bruce lease revenues net of costs credited to customers shall continue to be equal to the rate of recovery reflected in the nuclear revenue requirement approved by the Board multiplied by OPG's actual nuclear production. The rate of recovery shall continue to be calculated by dividing the 24-month forecast Bruce lease net revenues approved in EB-2010-0008 for 2011 and 2012 by the approved 24-month forecast nuclear production approved in EB-2010-0008 for 2011 and 2012.

Effective January 1, 2013, this account will be divided into two sub-accounts as follows:

1. Derivative Sub-Account: The balance in the account relating to the derivative liability for the conditional supplemental rent rebate provision of the Bruce lease (including associated income tax impacts on Bruce lease net revenues calculated in accordance with generally accepted accounting principles for unregulated entities) and the rent rebates associated with supplemental rent revenue , and

2. Non-Derivative Sub-Account: The balance in the account relating to the non-derivative aspects of the account.

The balance in the account as at December 31, 2012 of $305.0M is split $74.8M and $230.3M for the non-derivative and derivative sub-accounts, respectively.

The cost impact of any changes in OPG's liability for decommissioning the Bruce nuclear generating facilities and the management of nuclear waste and nuclear fuel related to the Bruce stations shall also continue to be recorded in this account and shall be reflected in the Non-Derivative Sub-Account.

For the derivative sub-account, the amount to be cleared each year, starting in 2013, shall be equal to the amount of the rebate forecast to be payable to Bruce Power for that year by OPG and associated income tax impacts as described above less the difference between the following amounts to the extent this difference has not yet been credited to, or recovered from, ratepayers:

(i) cumulative amount recovered from ratepayers for the derivative portion since April 1, 2008; and

(ii) cumulative amount of actual rent rebates and associated income taxes (as described above) incurred by OPG since April 1, 2008.

Recovery amounts for 2013 and 2014 for the derivative portion of this account are based on forecasts of supplemental rent rebate amounts payable to Bruce Power as set out in Ex. M1-1, Attachment 2, Table 14c. To the extent that the actual supplemental rent rebate amounts paid to Bruce Power differ from the above referenced forecast amounts, such differences shall be entered into the Derivative Sub-Account in order to be carried forward to adjust amortization amounts the next time the account balance is cleared.

OPG shall not record any interest on either sub-account balance during the period from January 1, 2013 to December 31, 2014.

Nuclear Deferral and Variance Over/Under Recovery Variance Account

The Nuclear Deferral and Variance Over/Under Recovery Variance Account was originally approved in EB-2009-0174. This account shall continue to record the differences between the amounts approved for recovery in the nuclear deferral and variance accounts and the actual amounts recovered based on actual nuclear production and approved riders. The account shall also include the transfer of the nuclear portion of the balances remaining in the Tax Loss Variance Account and Impact for USGAAP Deferral Account as at December 31, 2014.

NEW VARIANCE ACCOUNT

Pickering Life Extension Depreciation Variance Account

Effective January 1, 2013, OPG shall establish a Pickering Life Extension Depreciation Variance Account. OPG shall record a credit amount of $46.9M over the course of a year at approximately $3.9M per month, for the period from January 1, 2013 until the effective date of new nuclear payment amounts (excluding riders), reflecting the revised service lives, for depreciation purposes, of the Pickering stations. No interest shall be recorded on the balance in this account.

INTEREST

Except where otherwise stated, effective January 1, 2013, OPG shall record interest on the balances in all deferral and variance accounts using the interest rates set by the Board from time to time pursuant to the Board's interest rate policy. OPG shall apply simple interest to the opening monthly balance of the accounts until the balances are fully recovered. Effective January 1, 2013, OPG shall not record interest on the balances of the Nuclear Liability Deferral Account. During 2013 and 2014, OPG shall not record interest on the balances of the Pension and OPEB Cost Variance Account, the Bruce Lease Net Revenues Variance Account and the Pickering Life Extension Variance Account as set out in the preceding section of this Appendix B.

TAB 7

Appendix G: Deferral and Variance Accounts

CLEARANCE OF EXISTING DEFERRAL AND VARIANCE ACCOUNTS

With respect to the deferral and variance accounts established by O. Reg. 53/05 and the Board's decisions and orders in EB-2007-0905, EB-2009-0038, EB-2009-0174, EB-2010-0008, EB-2011-0090, EB-2011-0432 and EB-2012-0002, the Board approves the recovery of the December 31, 2013 balances in the accounts or portions of accounts, as provided the following table, over the twelve month period, January 1, 2015 through December 31, 2015.

Chart G-1

Account	Approved December 31, 2013 Balances ($M)
Hydroelectric Incentive Mechanism Variance	(5.0)
Hydroelectric Surplus Baseload Generation Variance	19.2
Capacity Refurbishment Variance – Hydroelectric	112.7
Nuclear Development Variance	56.5
Capacity Refurbishment Variance – Nuclear - Capital Portion	5.7

The Board approves OPG's recovery of the above approved balances in the previously regulated hydroelectric deferral and variance accounts using a payment amount rider. A payment rider of $6.04/MWh, as determined in Appendix E, Table 1, shall apply to OPG's previously regulated hydroelectric production for the period from January 1, 2015 to December 31, 2015.

The Board approves OPG's recovery of the above approved balances in the nuclear deferral and variance accounts using a payment amount rider. A payment rider of $1.33/MWh, as determined in Appendix F, Table 1, shall apply to OPG's nuclear production for the period from January 1, 2015 to December 31, 2015.

For the period January 1, 2014 to October 31, 2014, OPG shall continue to record entries into the deferral and variance accounts established by O. Reg. 53/05 and the applicable previous decisions and orders of the Board pursuant to the methodologies established by O. Reg. 53/05 and such decisions and orders.

CONTINUING DEFERRAL AND VARIANCE ACCOUNTS

Unless otherwise stated in this Order, effective November 1, 2014, OPG shall continue to record entries into the deferral and variance accounts authorized by O. Reg. 53/05 and the applicable decisions and orders of the Board pursuant to the methodologies established by O. Reg. 53/05 and such decisions and orders, as outlined in OPG's Application at Ex. H1-3-1 and as summarized below. Unless otherwise stated in this Order, for the period from November 1, 2014 to December 31, 2014, OPG shall continue to record amortization entries into the applicable deferral and variance accounts pursuant to the EB-2012-0002 Payment Amounts Order.

Effective November 1, 2014, OPG shall record entries into deferral and variance accounts listed below as follows:

Hydroelectric Water Conditions Variance Account

The Hydroelectric Water Conditions Variance Account was originally approved in EB-2007-0905 for the previously regulated hydroelectric facilities. OPG shall continue this account and maintain separate sub-accounts for the previously and newly regulated hydroelectric prescribed assets. The account shall apply to the previously regulated hydroelectric facilities and to 21 of the newly regulated hydroelectric facilities. These 21 newly regulated hydroelectric facilities are listed in EB-2013-0321, Ex. E1-1-1 Appendix 1.

For the previously regulated hydroelectric facilities, OPG will continue to determine the hydroelectric production impact of changes in water conditions by entering the actual flow values into the same production forecast models used to calculate the Board-approved production forecast, holding all other variables constant. Deviations from forecast will be determined as the difference between the calculated production resulting from entering actual flows for the month into the forecast model and the energy production forecast approved by the Board. The revenue impact of the production variance recorded in the account for the previously regulated hydroelectric facilities will continue to be determined by multiplying the deviation from forecast, as described above, by the approved payment amount for these facilities. For production from the previously regulated hydroelectric facilities, OPG shall determine the revenue impact of the production variance by multiplying the deviation from forecast, as described above, by the approved payment amount of $40.20/MWh.

Energy production forecasts for 21 of the newly regulated hydroelectric plants, listed in EB-2013-0321, Ex. E1-1-1 Appendix 1, are produced using similar computer models to those used to forecast production for the previously regulated hydroelectric facilities. The models convert forecast water availability to forecast energy production using historical median monthly flows as the basis for determining the monthly energy production forecasts. Similar to the previously regulated hydroelectric facilities, for these 21 facilities, OPG shall compute deviations of actual monthly flows from these historical median monthly flows in order to determine the production variance for purposes of the Hydroelectric Water Conditions Variance Account. OPG shall determine the revenue impact of the production variance by multiplying the deviation from forecast, as described above, by the approved payment amount of $41.93/MWh.

In respect of production from the previously and the applicable 21 newly regulated hydroelectric facilities, OPG shall also record in this account changes in the gross revenue charge costs reflected in the revenue requirement approved by the Board, as a result of differences between imputed production from actual flows and forecast energy production described above. OPG shall determine amounts to be recorded in this account by multiplying the production deviation as described above by the applicable gross revenue charge rates.

In respect of production from the previously regulated hydroelectric facilities, OPG shall also record in this account any variations from the amounts payable to the St. Lawrence Seaway Management Corporation for the conveyance of water in the Welland Ship Canal reflected in the revenue requirement approved by the Board.

In respect of production from the applicable 21 newly regulated hydroelectric facilities, OPG shall also record in the account any variances from the amounts payable to the Government of Quebec for water rentals reflected in the revenue requirement approved by the Board.

Ancillary Services Net Revenue Variance Account – Hydroelectric

The Ancillary Services Net Revenue Variance Account – Hydroelectric was originally approved in EB-2007-0905 for the previously regulated hydroelectric facilities. The account shall apply to the previously and newly regulated hydroelectric facilities. OPG shall maintain separate sub-accounts for the previously and newly regulated hydroelectric prescribed assets.

OPG shall compare actual hydroelectric ancillary services net revenue to the forecast amount reflected in the revenue requirement approved by the Board (the "reference amount"). The monthly reference amount shall be 1/24 of the total forecast amount of $110.9M ($65.1M for the previously regulated hydroelectric facilities and $45.8M for the newly regulated hydroelectric facilities) for 2014 and 2015 underpinning the two-year revenue requirement approved by the Board. The resulting monthly reference amount shall be $4.62M ($2.71M for the previously regulated hydroelectric facilities and $1.91M for the newly regulated hydroelectric facilities). The difference shall be recorded in this variance account. The ancillary services for the regulated hydroelectric operations include black start capability, operating reserve, regulation service (formerly referred to as automatic generation control), and reactive support/voltage control service.

For the newly regulated hydroelectric facilities sub-account, OPG shall ensure that amounts recorded in the account do not include those that OPG indicated it is not seeking to recover from, or refund to, ratepayers as part of the differences between the revenue requirement in its pre-filed evidence dated September 27, 2013 and the information based on OPG's 2014-2016 Business Plan. These amounts are outlined in OPG's Impact Statement dated December 6, 2013, as found at EB-2013-0321, Ex. N1-1-1 Chart 1.

<u>Income and Other Taxes Variance Account</u>

The Income and Other Taxes Variance Account was originally approved in EB-2007-0905. This account shall continue, and OPG shall attribute amounts recorded in the account to each of the previously regulated hydroelectric, newly regulated hydroelectric and nuclear prescribed assets.

This account shall continue to record the financial impact on the revenue requirement approved by the Board (the "reference amount") of:

- Any differences in payments in lieu of corporate income or capital taxes that result from a legislative or regulatory change to the tax rates or rules of the *Income Tax Act* (Canada) and the *Taxation Act, 2007* (Ontario) (formerly the *Corporations Tax Act* (Ontario)), as modified by the regulations under the *Electricity Act, 1998*, and any differences in payments in lieu of property tax to the Ontario Electricity Financial Corporation that result from changes to the regulations under the *Electricity Act, 1998*.

- Any differences in municipal property taxes that result from a legislative or regulatory change to the tax rates or rules for OPG's prescribed assets under the *Assessment Act, 1990.*
- Any differences in payments in lieu of corporate income or capital taxes that result from a change in, or a disclosure of, a new assessing or administrative policy that is published in the public tax administration or interpretation bulletins by relevant federal or provincial tax authorities, or court decisions on other taxpayers.
- Any differences in payments in lieu of income or capital taxes that result from assessments or re-assessments (including re-assessments associated with the application of the tax rates and rules to OPG's regulated operations or changes in assessing or administrative policy including court decisions on other taxpayers).

The income tax provision reflected in the revenue requirement approved by the Board shall be used to calculate any variances in income taxes recorded in the Income and Other Taxes Variance Account. The income tax provision reflected in the revenue requirement approved by the Board is calculated in Appendix A, Tables 7 and 8. The monthly reference amount shall be 1/24 of the total forecast amount of $115.9M for 2014 and 2015 underpinning the two-year revenue requirement approved by the Board. The monthly reference amount shall be $4.83M.

Tax Loss Variance Account

The Tax Loss Variance Account was originally approved in EB-2009-0038. OPG shall continue to record only interest and amortization in the Tax Loss Variance Account during the period from November 1, 2014 to December 31, 2014. The previously regulated hydroelectric and nuclear balances remaining in this account at December 31, 2014 shall be transferred to the Hydroelectric Deferral and Variance Over/Under Recovery Variance Account and the Nuclear Deferral and Variance Over/Under Recovery Variance Account, respectively. Following this transfer, the Tax Loss Variance Account shall be terminated on December 31, 2014.

Impact for USGAAP Deferral Account

The Impact for USGAAP Deferral Account was originally approved in EB-2011-0432. OPG shall continue to record only interest and amortization in the Impact for USGAAP Deferral Account during the period from November 1, 2014 to December 31, 2014. The previously regulated hydroelectric and nuclear balances remaining in this account at December 31, 2014 shall be transferred to the Hydroelectric Deferral and Variance Over/Under Recovery Variance Account and the Nuclear Deferral and Variance Over/Under Recovery Variance Account, respectively. Following this transfer, the Impact for USGAAP Deferral Account shall be terminated on December 31, 2014.

Pension and OPEB Cost Variance Account

The Pension and OPEB Cost Variance Account was originally approved in EB-2011-0090. This account recorded the difference between (i) the pension and OPEB costs, plus related income tax PILs, reflected in the current revenue requirement approved by the Board (the "reference amount"), and (ii) OPG's actual pension and OPEB costs, and associated income tax impacts, for the previously regulated hydroelectric and nuclear prescribed generation facilities. Actual pension and OPEB costs used in the calculation of the difference were to be calculated using the same accounting standards as those used to derive the reference amount.

In EB-2012-0002, the approved December 31, 2012 balance in the Pension and OPEB Cost Variance Account was split into the Historic Recovery and Future Recovery components. In EB-2013-0321, OPG identified a third component, which comprised additions recorded in the account subsequent to December 31, 2012. OPG shall continue to track these components separately, with any remaining balance of the Historic Recovery component at December 31, 2014 transferred to the Hydroelectric Deferral and Variance Over/Under Recovery Variance Account and Nuclear Deferral and Variance Over/Under Recovery Variance Account, as applicable.

Effective November 1, 2014, OPG will record only amortization in this account. OPG shall not record any interest on the balance of this account.

Hydroelectric Incentive Mechanism Variance Account

The Hydroelectric Incentive Mechanism Variance Account was originally approved in EB-2010-0008 for the previously regulated hydroelectric facilities. Going forward, the account shall apply to the previously and newly regulated hydroelectric facilities. OPG shall maintain separate sub-accounts for the previously and newly regulated hydroelectric prescribed assets.

In its decision, the Board found that the current hydroelectric incentive mechanism ("HIM") has encouraged appropriate use of the regulated hydroelectric facilities to supply energy in response to market prices. The Board has maintained the current structure of the incentive mechanism (and the corresponding variance account) but has specified that the unintended interaction of the HIM due to surplus baseload generation ("SBG") conditions be eliminated. The Board directed OPG to achieve this by changing its monthly average hourly production threshold calculation used by the IESO for purposes of settling HIM revenues.

The Board also found that HIM net revenues are to continue to be shared between ratepayers and OPG using a 50:50 ratio. The resulting annual revenue requirement offset with respect to the HIM net revenues will be $25.5M for 2014. The annual revenue requirement offset for 2015 will be $29M. Accordingly, during the period from November 1, 2014 to December 31, 2014, the Hydroelectric Incentive Mechanism Variance Account will record a credit to ratepayers equal to 50 per cent of OPG's total HIM net revenues from the prescribed hydroelectric facilities above $8.5M, being 2/12 of the 2014 annual threshold of $51M. During the period from January 1, 2015 to December 31, 2015, OPG shall record a credit to ratepayers equal to 50 per cent of OPG's total HIM net revenues above $58M.

Hydroelectric Surplus Baseload Generation Variance Account

The Hydroelectric Surplus Baseload Generation Variance Account was originally approved in EB-2010-0008 for the previously regulated hydroelectric facilities. OPG shall continue this account and shall maintain separate sub-accounts for the previously and newly regulated hydroelectric prescribed assets.

This account shall continue to record the financial impact of foregone production at the prescribed hydroelectric facilities due to SBG conditions. The account shall apply to the previously regulated hydroelectric facilities and to 21 of the newly regulated hydroelectric facilities. These 21 newly regulated hydroelectric facilities are listed in EB-2013-0321, Ex. E1-1-1 Appendix 1.

OPG shall determine the revenue impact of SBG conditions by multiplying the foregone production volume by the approved previously regulated hydroelectric payment amount of $40.20/MWh or the approved newly regulated hydroelectric payment amount of $41.93/MWh, as applicable. The resulting amount shall be recorded in the Hydroelectric Surplus Baseload Generation Variance Account.

In respect of production foregone due to SBG conditions at the previously and the 21 applicable newly regulated hydroelectric facilities, OPG shall also record in this account changes in the gross revenue charge costs reflected in the revenue requirement approved by the Board. OPG shall determine amounts to be recorded in this account by multiplying the production volume foregone at its prescribed hydroelectric facilities due to SBG conditions by the applicable gross revenue charge rates.

In respect of production foregone due to SBG conditions at the previously regulated hydroelectric facilities, OPG shall also record in this account any variations from the amounts payable to the St. Lawrence Seaway Management Corporation for the conveyance of water in the Welland Ship Canal reflected in the revenue requirement approved by the Board. In respect of foregone production at the 21 applicable newly regulated hydroelectric facilities, OPG shall also record in the account any variances from the amounts payable to the Government of Quebec for water rentals reflected in the revenue requirement approved by the Board.

Changing the monthly average hourly production threshold calculation associated with the HIM by removing any contribution from production volume foregone due to SBG conditions eliminates the need for any rebating back to ratepayers of unintended benefits of this interaction through the Hydroelectric Surplus Baseload Generation Variance Account.

Hydroelectric Deferral and Variance Over/Under Recovery Variance Account

The Hydroelectric Deferral and Variance Over/Under Recovery Variance Account was originally approved in EB-2009-0174 for the previously regulated hydroelectric facilities. The account shall apply to the previously and newly regulated hydroelectric facilities. OPG shall maintain separate sub-accounts for the previously and newly regulated hydroelectric prescribed assets.

This account shall record the differences between the amounts approved for recovery in the hydroelectric deferral and variance accounts and the actual amounts recovered based on actual regulated hydroelectric production and approved riders. The account shall also include the transfer of the previously regulated hydroelectric balances in the Tax Loss Variance Account and the Impact for USGAAP Deferral Account upon their expiry on December 31, 2014, the previously regulated hydroelectric balance of the Historic Recovery component of the Pension and OPEB Cost Variance Account at December 31, 2014, and other accounts as they may expire from time to time.

Nuclear Liability Deferral Account

The Nuclear Liability Deferral Account was originally approved in EB-2007-0905. This account shall continue to record the revenue requirement impact of any change in OPG's nuclear decommissioning liability arising from an approved reference plan measured against the forecast impact reflected in the revenue requirement approved by the Board. OPG shall not record the revenue requirement impact of a change in its nuclear decommissioning liability associated with its nuclear obligations related to the Bruce facilities in this account. OPG shall record the return on rate base in the account using the weighted average accretion rate on OPG's nuclear liabilities of 5.37%.

The "nuclear decommissioning liability" shall be defined as "the liability of Ontario Power Generation Inc. for decommissioning its nuclear generating facilities and the management of its nuclear waste and nuclear fuel." An "approved reference plan" shall be defined as "a reference plan, as defined in the Ontario Nuclear Funds Agreement, which has been approved by Her Majesty the Queen in the right of Ontario in accordance with that agreement."

OPG shall not record any interest on the balance of the Nuclear Liability Deferral Account.

Nuclear Development Variance Account

The Nuclear Development Variance Account was originally approved in EB-2007-0905. This account shall continue to record variances between the actual non-capital costs incurred and firm financial commitments made in the course of planning and preparation for the development of proposed new nuclear generation facilities and those forecast costs and firm financial commitments reflected in the revenue requirement approved by the Board (the "reference amount"). The monthly reference amount shall be 1/24 of the total forecast amount of $0 underpinning the two-year revenue requirement approved by the Board for 2014 and 2015. The monthly reference amount shall be $0.

Ancillary Services Net Revenue Variance Account – Nuclear

The Ancillary Services Net Revenue Variance Account – Nuclear was originally approved in EB-2007-0905. OPG shall compare actual nuclear ancillary services net revenue to the forecast amount reflected in the revenue requirement approved by the Board (the "reference amount"). The monthly reference amount shall be 1/24 of the total forecast amount $3.4M for 2014 and 2015 underpinning the two-year revenue requirement of approved by the Board. The monthly reference amount shall be $0.14M. The difference shall be recorded in this variance account. The ancillary services for nuclear operations include reactive support/voltage control service.

OPG shall ensure that amounts recorded in the account do not include those that OPG indicated it is not seeking to recover from, or refund to, ratepayers as part of the differences between the revenue requirement in its pre-filed evidence dated September 27, 2013 and the information based on OPG's 2014-2016 Business Plan. These amounts are outlined in OPG's Impact Statement dated December 6, 2013, as found at EB-2013-0321, Ex. N1-1-1 Chart 1.

Capacity Refurbishment Variance Account

The Capacity Refurbishment Variance Account was originally approved in EB-2007-0905. This account shall continue and will record variances between the actual capital and non-capital costs, and firm financial commitments incurred to increase the output of, refurbish or add operating capacity to a prescribed generation facility referred to in O. Reg. 53/05 section 2 and those forecast costs and firm financial commitments reflected in the revenue requirement approved by the Board for 2014 and 2015. This account shall continue to include assessment costs and pre-engineering costs and commitments.

OPG shall separately track amounts recorded in this variance account for each of the previously regulated hydroelectric, newly regulated hydroelectric and nuclear prescribed assets.

OPG shall ensure that amounts recorded in the account do not include those that OPG indicated it is not seeking to recover from, or refund to, ratepayers as part of the differences between the revenue requirement in its pre-filed evidence dated September 27, 2013 and the information based on OPG's 2014-2016 Business Plan. These amounts are outlined in OPG's Impact Statement dated December 6, 2013, as found at EB-2013-0321, Ex. N1-1-1 Chart 1.

Bruce Lease Net Revenues Variance Account

The Bruce Lease Net Revenues Variance Account was originally approved in EB-2007-0905. This account shall continue to capture differences between (i) the forecast revenues and costs related to the Bruce lease that are factored into the nuclear revenue requirement approved by the Board (the "reference amount"), and (ii) OPG's actual revenues and costs in respect of the Bruce facilities. The monthly reference amount shall be 1/24 of the total forecast amount of $80.3M underpinning the two-year revenue requirement approved by the Board for 2014 and 2015. The monthly reference amount shall be $3.35M.

The variance recorded in this account shall be measured by comparing the Bruce lease revenues net of costs credited to customers monthly through the approved nuclear payment amount of $59.29/MWh to the actual monthly Bruce lease revenues net of costs realized by OPG. The monthly Bruce lease revenues net of costs credited to customers shall continue to be equal to the rate of recovery reflected in the nuclear revenue requirement approved by the Board multiplied by OPG's actual nuclear production. The rate of recovery shall be calculated by dividing the 24-month forecast Bruce lease net revenues approved by the Board for 2014 and 2015 by the 24-month forecast nuclear production approved by the Board for 2014 and 2015.

OPG shall ensure that amounts recorded in the account do not include those that OPG indicated it is not seeking to recover from, or refund to, ratepayers as part of the differences between the revenue requirement in its pre-filed evidence dated September 27, 2013 and the information based on OPG's 2014-2016 Business Plan. These amounts are outlined in OPG's Impact Statement dated December 6, 2013, as found at EB-2013-0321, Ex. N1-1-1 Chart 1.

The account balance shall not attract interest for the period from November 1, 2014 to December 31, 2014.

This account will continue to have two sub-accounts as follows:

Derivative Sub-Account

The sub-account balance relates to the derivative liability for the conditional supplemental rent rebate provision of the Bruce lease (including associated income tax impacts on Bruce lease net revenues calculated in accordance with generally accepted accounting principles for unregulated entities) and the rent rebates associated with supplemental rent revenue.

The amount to be cleared for this sub-account in respect of each year shall be equal to the amount of the rebate forecast to be payable to Bruce Power for that year by OPG and associated income tax impacts as described above, less the difference between the following amounts to the extent this difference has not yet been credited to, or recovered from, ratepayers:

(i) Cumulative amount recovered from ratepayers for the derivative portion since April 1, 2008; and
(ii) Cumulative amount of actual rent rebates and associated income taxes (as described above) incurred by OPG since April 1, 2008.

To the extent that the actual supplemental rent rebate amounts paid to Bruce Power differ from the approved forecast amounts used to establish amounts to be recovered by OPG in respect of this sub-account, such differences shall be reflected in the Derivative Sub-Account in order to be carried forward to adjust amortization amounts the next time the sub-account balance is cleared.

Non-Derivative Sub-Account

The sub-account balance relates to the non-derivative aspects of the account.

The cost impact of any changes in OPG's liability for decommissioning the Bruce nuclear generating facilities and the management of nuclear waste and nuclear fuel related to the Bruce stations shall continue to be recorded in the Non-Derivative Sub-Account of the Bruce Lease Net Revenues Variance Account.

Pickering Life Extension Depreciation Variance Account

The Pickering Life Extension Depreciation Variance Account was originally approved in EB-2012-0002 to record a credit amount of $46.9M over the course of a year at approximately $3.9M per month, for the period from January 1, 2013 until the effective date of new nuclear payment amounts (excluding riders), reflecting the revised service lives, for depreciation purposes, of the Pickering stations. As the payment amounts authorized in this Order reflect these revised service lives, effective November 1, 2014, OPG will record only amortization in the account. No interest shall be recorded on the balance in this account.

Nuclear Deferral and Variance Over/Under Recovery Variance Account

The Nuclear Deferral and Variance Over/Under Recovery Variance Account was originally approved in EB-2009-0174. This account shall continue to record the differences between the amounts approved for recovery in the nuclear deferral and variance accounts and the actual amounts recovered based on actual nuclear production and approved riders. The account shall also include the transfer of the nuclear portion of the balances in the Tax Loss Variance Account and the Impact for USGAAP Deferral Account upon their expiry on December 31, 2014, the balance of the nuclear portion of the Historic Recovery component of the Pension and OPEB Cost Variance Account at December 31, 2014, and other accounts as they may expire from time to time.

NEW DEFERRAL AND VARIANCE ACCOUNTS

Effective November 1, 2014, OPG shall establish and record entries into deferral and variance accounts listed below as follows:

Gross Revenue Charge Variance Account

The Gross Revenue Charge Variance Account will record the cost impact of a gross revenue charge reduction under Ontario Regulation 124/02, once approved by the Ontario Ministry of Natural Resources and Forestry, pertaining to production increases at OPG's Sir Adam Beck plants due to the operation of the new Niagara tunnel. The impact shall be determined by applying the approved reduction under Ontario Regulation 124/02 to the forecast gross revenue charge costs included in the revenue requirement approved by the Board for 2014 and 2015, holding all other variables constant. The impact shall be calculated as of the later of November 1, 2014 and the effective date of the approved gross revenue charge reduction.

Pension & OPEB Cash Payment Variance Account

The Pension & OPEB Cash Payment Variance Account will record the difference between OPG's actual registered pension plan contributions and other post employment benefit plan payments (including the long-term disability benefit plan) attributed to the prescribed generating facilities, and such forecast amounts reflected in the revenue requirement approved by the Board (the "reference amount"). With respect to OPG's forecast registered pension plan contributions, the monthly reference amount shall be 1/24 of the total forecast contribution of $651.5M for 2014 and 2015 ($561.2M for the nuclear facilities, $31.7M for the previously regulated hydroelectric facilities, and $58.6M for the newly regulated hydroelectric facilities) underpinning the two-year revenue requirement approved by the Board. With respect to OPG's forecast other post employment benefit plan payments (including the long-term disability benefit plan), the monthly reference amount shall be 1/24 of the total forecast benefit payments of $185.4M for 2014 and 2015 ($159.8M for the nuclear facilities, $9.0M for previously regulated hydroelectric facilities, and $16.7M for the newly regulated hydroelectric facilities) underpinning the two-year revenue requirement approved by the Board. The resulting monthly reference amount shall be $27.15M for OPG's registered pension plan contributions ($23.38M for the nuclear facilities, $1.32M for the previously regulated hydroelectric facilities, and $2.44M for the newly regulated hydroelectric facilities) and $7.73M for OPG's other post employment benefit plan payments ($6.66M for the nuclear facilities, $0.38M for the previously regulated hydroelectric facilities, and $0.69M for the newly regulated hydroelectric facilities).

OPG shall separately track amounts recorded in this variance account for each of the previously regulated hydroelectric, newly regulated hydroelectric, and nuclear prescribed assets.

<u>Pension & OPEB Cash Versus Accrual Differential Deferral Account</u>

The Pension & OPEB Cash Versus Accrual Differential Deferral Account will record differences between (i) OPG's actual pension and OPEB costs for its prescribed generating facilities determined using the accrual accounting method applied in OPG's audited consolidated financial statements, and (ii) OPG's actual registered pension plan contributions and other post employment benefit plan payments (including the long-term disability benefit plan) attributed to OPG's prescribed generating facilities. The deferral account shall also record any associated income tax impacts.

OPG shall separately track amounts recorded in this deferral account for each of the previously regulated hydroelectric, newly regulated hydroelectric, and nuclear prescribed assets. No interest shall be recorded on the balance of this account.

INTEREST

Except where otherwise stated, effective November 1, 2014, OPG shall record interest on the balances in all deferral and variance accounts using the interest rates set by the Board from time to time pursuant to the Board's interest rate policy. OPG shall apply simple interest to the opening monthly balance of the accounts until the balances are fully recovered or refunded.

TAB 8

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2012-0180

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S. O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by Hydro One Networks Inc. to Establish a Deferral Account Related to the East-West Tie Line Proceeding (EB-2011-0140).

BEFORE: Cynthia Chaplin
Vice Chair and Presiding Member

Cathy Spoel
Member

DECISION AND ORDER
July 12, 2012

The Proceeding

On March 22, 2012 Hydro One Networks Inc. ("HONI") filed an application for an accounting order authorizing it to establish a new deferral account, the East West Tie deferral account ("EWTDA"). The purpose of the EWTDA is to record expenses relating to the East-West Tie Line proceeding (EB-2011-0140, also referred to as the "Designation Proceeding") and subsequent connection project-related activities related to the new electricity transmission line. The Board assigned File No. EB-2012-0180 to the application.

HONI is requesting that a single deferral account, the EWTDA, be created and that it consist of three sub-accounts to address three main categories of costs, namely: OEB Allocated Proceeding Costs; Support Costs for OEB Designation Process; and Development Work Associated with Stations and Other Supporting Asset Expenditures. HONI proposes that the EWTDA be made effective as of January 3, 2012.

On May 28, submissions were received from the following intervenors: Canadian Manufacturers & Exporters ("CME"), Great Lakes Power Transmission LP ("GLPT"), Power Workers Union ("PWU"), London Property Management Association ("LPMA"), School Energy Coalition ("SEC"), and Vulnerable Energy Consumers Coalition ("VECC"); and, Board staff. HONI filed its reply submission on June 4, 2012.

Board Findings

In reviewing an application for the approval of a deferral account, the Board generally considers the following criteria: causation, materiality, and reasonableness. The Board will consider causation in terms of whether the amounts to be recorded in the account are clearly outside of the base upon which base rates were derived and whether the costs to be recorded in the account relate directly to the purpose of the account. The Board will consider materiality in terms of whether the amount of the costs to be recorded in the account is sufficiently high to justify establishing the account. The forecast amounts should exceed the Board-defined materiality threshold and be likely to have a significant influence on the operation of the utility. Finally, the Board will consider the reasonableness of the forecast costs and whether the proposed expenditures are cost-effective (although the Board's review and its final determination of prudence would be made at the time of disposition).

For the reasons set out below, the Board denies HONI's request for a deferral account for the cost category titled OEB Allocated Proceeding Costs, and the Board grants, with conditions, HONI's request for the other two cost categories: Support Costs for OEB Designation Process; and Development Work Associated with Stations and Other Supporting Assets. HONI may record these costs in the following new deferral sub-accounts, effective March 22, 2012:

- Account 1508, Other Regulatory Assets, Sub-account EWTDA - Support Costs for OEB Designation Process; and
- Account 1508, Other Regulatory Assets, Sub-account EWTDA - Development Work Associated with Stations and Other Supporting Asset Expenditures.

The Board cautions that the establishment of these deferral sub-accounts does not guarantee that the amounts collected therein will be automatically disposed, consistent with the principles underlying all Board-approved deferral accounts.

<u>OEB Allocated Proceeding Costs</u>

This category of costs consists of the costs awarded to participants in the Designation Proceeding and the Board's own costs.

The Board in the Designation Proceeding has determined that the costs awarded in that proceeding, including the Board's own costs, will be charged to the licensed transmitters:

> the Board has determined that the costs of this proceeding, both cost awards to eligible intervenors and the Board's own costs, will be recovered from licensed transmitters...The costs will be apportioned between these transmitters based on their respective transmission revenues.[1]

HONI proposes to track amounts that have been apportioned to it through invoice by the Board in relation to any hearing costs in the OEB Allocated Proceeding Costs sub-account of the EWTDA. LPMA, PWU, CME and VECC supported HONI's proposal.

[1] EB-2011-0140, Procedural Order No. 1 dated March 9, 2012, page 2

TAB 9

Ontario

Ontario Energy Board Act, 1998
Loi de 1998 sur la Commission de l'énergie de l'Ontario

ONTARIO REGULATION 53/05

PAYMENTS UNDER SECTION 78.1 OF THE ACT

Consolidation Period: From July 1, 2014 to the e-Laws currency date.

Last amendment: O. Reg. 312/13.

This Regulation is made in English only.

Definition

0.1 (1) In this Regulation,

"approved reference plan" means a reference plan, as defined in the Ontario Nuclear Funds Agreement, that has been approved by Her Majesty the Queen in right of Ontario in accordance with that agreement;

"nuclear decommissioning liability" means the liability of Ontario Power Generation Inc. for decommissioning its nuclear generation facilities and the management of its nuclear waste and used fuel;

"Ontario Nuclear Funds Agreement" means the agreement entered into as of April 1, 1999 by Her Majesty the Queen in right of Ontario, Ontario Power Generation Inc. and certain subsidiaries of Ontario Power Generation Inc., including any amendments to the agreement. O. Reg. 23/07, s. 1.

(2) For the purposes of this Regulation, the output of a generation facility shall be measured at the facility's delivery points, as determined in accordance with the market rules. O. Reg. 312/13. s. 1.

Prescribed generator

1. Ontario Power Generation Inc. is prescribed as a generator for the purposes of section 78.1 of the Act. O. Reg. 53/05, s. 1.

Prescribed generation facilities

2. The following generation facilities of Ontario Power Generation Inc. are prescribed for the purposes of section 78.1 of the Act:

1. The following hydroelectric generating stations located in The Regional Municipality of Niagara:

   i. Sir Adam Beck I.

   ii. Sir Adam Beck II.

   iii. Sir Adam Beck Pump Generating Station.

   iv. De Cew Falls I.

v. De Cew Falls II.

2. The R. H. Saunders hydroelectric generating station on the St. Lawrence River.

3. Pickering A Nuclear Generating Station.

4. Pickering B Nuclear Generating Station.

5. Darlington Nuclear Generating Station.

6. As of July 1, 2014, the generation facilities of Ontario Power Generation Inc. that are set out in the Schedule. O. Reg. 53/05, s. 2; O. Reg. 23/07, s. 2; O. Reg. 312/13, s. 2.

Prescribed date for s. 78.1 (2) of the Act

3. April 1, 2008 is prescribed for the purposes of subsection 78.1 (2) of the Act. O. Reg. 53/05, s. 3.

4. REVOKED: O. Reg. 312/13, s. 3.

Deferral and variance accounts

5. (1) Ontario Power Generation Inc. shall establish a variance account in connection with section 78.1 of the Act that records capital and non-capital costs incurred and revenues earned or foregone on or after April 1, 2005 due to deviations from the forecasts as set out in the document titled "Forecast Information (as of Q3/2004) for Facilities Prescribed under Ontario Regulation 53/05" posted and available on the Ontario Energy Board website, that are associated with,

(a) differences in hydroelectric electricity production due to differences between forecast and actual water conditions;

(b) unforeseen changes to nuclear regulatory requirements or unforeseen technological changes which directly affect the nuclear generation facilities, excluding revenue requirement impacts described in subsections 5.1 (1) and 5.2 (1);

(c) changes to revenues for ancillary services from the generation facilities prescribed under section 2;

(d) acts of God, including severe weather events; and

(e) transmission outages and transmission restrictions that are not otherwise compensated for through congestion management settlement credits under the market rules. O. Reg. 23/07, s. 3.

(2) The calculation of revenues earned or foregone due to changes in electricity production associated with clauses (1) (a), (b), (d) and (e) shall be based on the following prices:

1. $33.00 per megawatt hour from hydroelectric generation facilities prescribed in paragraphs 1 and 2 of section 2.

2. $49.50 per megawatt hour from nuclear generation facilities prescribed in paragraphs 3, 4 and 5 of section 2. O. Reg. 23/07, s. 3.

(3) Ontario Power Generation Inc. shall record simple interest on the monthly opening balance of the account at an annual rate of 6 per cent applied to the monthly opening balance in the account, compounded annually. O. Reg. 23/07, s. 3.

(4) Ontario Power Generation Inc. shall establish a deferral account in connection with section 78.1 of the Act that records non-capital costs incurred on or after January 1, 2005 that are associated with the planned return to service of all units at the Pickering A Nuclear Generating Station, including those units which the board of directors of Ontario Power Generation Inc. has determined should be placed in safe storage. O. Reg. 23/07, s. 3.

(5) For the purposes of subsection (4), the non-capital costs include, but are not restricted to,

(a) construction costs, assessment costs, pre-engineering costs, project completion costs and demobilization costs; and

(b) interest costs, recorded as simple interest on the monthly opening balance of the account at an annual rate of 6 per cent applied to the monthly opening balance in the account, compounded annually. O. Reg. 23/07, s. 3.

5.1 REVOKED: O. Reg. 312/13, s. 3.

Nuclear liability deferral account

5.2 (1) Ontario Power Generation Inc. shall establish a deferral account in connection with section 78.1 of the Act that records, on and after the effective date of the Board's first order under 78.1 of the Act, the revenue requirement impact of changes in its total nuclear decommissioning liability between,

(a) the liability arising from the approved reference plan incorporated into the Board's most recent order under section 78.1 of the Act; and

(b) the liability arising from the current approved reference plan. O. Reg. 23/07, s. 3.

(2) Ontario Power Generation Inc. shall record interest on the balance of the account as the Board may direct. O. Reg. 23/07, s. 3.

5.3 REVOKED: O. Reg. 312/13, s. 3.

Nuclear development variance account

5.4 (1) Ontario Power Generation Inc. shall establish a variance account in connection with section 78.1 of the Act that records, on and after the effective date of the Board's first order under section 78.1 of the Act, differences between actual non-capital costs incurred and firm financial commitments made and the amount included in payments made under that section for planning and preparation for the development of proposed new nuclear generation facilities. O. Reg. 27/08, s. 1.

(2) Ontario Power Generation Inc. shall record interest on the balance of the account as the Board may direct. O. Reg. 27/08, s. 1.

Rules governing determination of payment amounts by Board

6. (1) Subject to subsection (2), the Board may establish the form, methodology, assumptions and calculations used in making an order that determines payment amounts for the purpose of section 78.1 of the Act. O. Reg. 53/05, s. 6 (1).

(2) The following rules apply to the making of an order by the Board that determines payment amounts for the purpose of section 78.1 of the Act:

1. The Board shall ensure that Ontario Power Generation Inc. recovers the balance recorded in the variance account established under subsection 5 (1) over a period not to exceed three years, to the extent that the Board is satisfied that,

   i. the revenues recorded in the account were earned or foregone and the costs were prudently incurred, and

   ii. the revenues and costs are accurately recorded in the account.

2. In setting payment amounts for the assets prescribed under section 2, the Board shall not adopt any methodologies, assumptions or calculations that are based upon the contracting for all or any portion of the output of those assets.

3. The Board shall ensure that Ontario Power Generation Inc. recovers the balance recorded in the deferral account established under subsection 5 (4). The Board shall authorize recovery of the balance on a straight line basis over a period not to exceed 15 years.

4. The Board shall ensure that Ontario Power Generation Inc. recovers capital and non-capital costs, and firm financial commitments incurred to increase the output of, refurbish or add operating capacity to a generation facility referred to in section 2, including, but not limited to, assessment costs and pre-engineering costs and commitments,

   i. if the costs and financial commitments were within the project budgets approved for that purpose by the board of directors of Ontario Power Generation Inc. before the making of the Board's first order under section 78.1 of the Act in respect of Ontario Power Generation Inc., or

   ii. if the costs and financial commitments were not approved by the board of directors of Ontario Power Generation Inc. before the making of the Board's first order under section 78.1 of the Act in respect of Ontario Power Generation Inc., if the Board is satisfied that the costs were prudently incurred and that the financial commitments were prudently made.

4.1 The Board shall ensure that Ontario Power Generation Inc. recovers the costs incurred and firm financial commitments made in the course of planning and preparation for the development of proposed new nuclear generation facilities, to the extent the Board is satisfied that,

i. the costs were prudently incurred, and

ii. the financial commitments were prudently made.

5. In making its first order under section 78.1 of the Act in respect of Ontario Power Generation Inc., the Board shall accept the amounts for the following matters as set out in Ontario Power Generation Inc.'s most recently audited financial statements that were approved by the board of directors of Ontario Power Generation Inc. before the effective date of that order:

i. Ontario Power Generation Inc.'s assets and liabilities, other than the variance account referred to in subsection 5 (1), which shall be determined in accordance with paragraph 1.

ii. Ontario Power Generation Inc.'s revenues earned with respect to any lease of the Bruce Nuclear Generating Stations.

iii. Ontario Power Generation Inc.'s costs with respect to the Bruce Nuclear Generating Stations.

6. Without limiting the generality of paragraph 5, that paragraph applies to values relating to,

i. capital cost allowances,

ii. the revenue requirement impact of accounting and tax policy decisions, and

iii. capital and non-capital costs and firm financial commitments to increase the output of, refurbish or add operating capacity to a generation facility referred to in section 2.

7. The Board shall ensure that the balance recorded in the deferral account established under subsection 5.2 (1) is recovered on a straight line basis over a period not to exceed three years, to the extent that the Board is satisfied that revenue requirement impacts are accurately recorded in the account, based on the following items, as reflected in the audited financial statements approved by the board of directors of Ontario Power Generation Inc.,

i. return on rate base,

ii. depreciation expense,

iii. income and capital taxes, and

iv. fuel expense.

7.1 The Board shall ensure the balance recorded in the variance account established under subsection 5.4 (1) is recovered on a straight line basis over a period not to exceed three years, to the extent the Board is satisfied that,

i. the costs were prudently incurred, and

ii. the financial commitments were prudently made.

8. The Board shall ensure that Ontario Power Generation Inc. recovers the revenue requirement impact of its nuclear decommissioning liability arising from the current approved reference plan.

9. The Board shall ensure that Ontario Power Generation Inc. recovers all the costs it incurs with respect to the Bruce Nuclear Generating Stations.

10. If Ontario Power Generation Inc.'s revenues earned with respect to any lease of the Bruce Nuclear Generating Stations exceed the costs Ontario Power Generation Inc. incurs with respect to those Stations, the excess shall be applied to reduce the amount of the payments required under subsection 78.1 (1) of the Act with respect to output from the nuclear generation facilities referred to in paragraphs 3, 4 and 5 of section 2.

11. In making its first order under section 78.1 of the Act in respect of Ontario Power Generation Inc. that is effective on or after July 1, 2014, the following rules apply:

i. The order shall provide for the payment of amounts with respect to output that is generated at a generation facility referred to in paragraph 6 of section 2 during the period from July 1, 2014 to the day before the effective date of the order.

ii. The Board shall accept the values for the assets and liabilities of the generation facilities referred to in paragraph 6 of section 2 as set out in Ontario Power Generation Inc.'s most recently audited financial statements that were approved by the board of directors before the making of that order. This includes values relating to the income tax effects of timing differences and the revenue requirement impact of accounting and tax policy decisions reflected in those financial statements. O. Reg. 23/07, s. 4; O. Reg. 27/08, s. 2; O. Reg. 312/13, s. 4.

7. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 53/05, s. 7.

SCHEDULE

1. Abitibi Canyon.
2. Alexander.
3. Aquasabon.
4. Arnprior.
5. Auburn.
6. Barrett Chute.
7. Big Chute.
8. Big Eddy.
9. Bingham Chute.
10. Calabogie.
11. Cameron Falls.
12. Caribou Falls.
13. Chats Falls.
14. Chenaux.
15. Coniston.
16. Crystal Falls.
17. Des Joachims.
18. Elliott Chute.
19. Eugenia Falls.
20. Frankford.
21. Hagues Reach.
22. Hanna Chute.
23. High Falls.
24. Indian Chute.
25. Kakabeka Falls.
26. Lakefield.
27. Lower Notch.
28. Manitou Falls.
29. Matabitchuan.

30. McVittie.
31. Merrickville.
32. Meyersberg.
33. Mountain Chute.
34. Nipissing.
35. Otter Rapid.
36. Otto Holden.
37. Pine Portage.
38. Ragged Rapids.
39. Ranney Falls.
40. Seymour.
41. Sidney.
42. Sills Island.
43. Silver Falls.
44. South Falls.
45. Stewartville.
46. Stinson.
47. Trethewey Falls.
48. Whitedog Falls.

O. Reg. 312/13, s. 5.

TAB 10

OPG did not apply for a variance account for test period revenues and costs in respect of the Bruce stations. Section 6(2)9 of the regulation requires the Board to ensure that OPG recovers all of its costs related to the Bruce stations. In the Board's view, this section obligates the Board to ensure OPG recovers its actual, not forecast, costs related to Bruce. Section 6(2)10 requires that the excess of revenues earned in respect of the Bruce stations over the costs incurred by OPG should reduce the payment amounts for the prescribed facilities. In the Board's view, this section obligates the Board to ensure that the actual, not forecast, excess of revenues over costs is used to offset the payment amounts for Pickering and Darlington. Accordingly, the Board directs OPG to establish a variance account to capture differences between (i) the forecast costs and revenues related to Bruce that are factored into the test period payment amounts for Pickering and Darlington, and (ii) OPG's actual revenues and costs in respect of Bruce. The cost impact of any changes in nuclear liabilities related to the Bruce stations should be recorded in this account, not the nuclear liabilities deferral account required by Section 5.2 of the regulation.

TAB 11

increase the output of, refurbish or add operating capacity to a prescribed generation facility. This variance account is intended to capture differences between forecast amounts of such costs included in the test period revenue requirement and actual costs incurred.

Intervenors either supported OPG's request for these accounts or were silent in their submissions.

Board Findings

The Board authorizes OPG to establish the hydroelectric water conditions and ancillary services for the test period. As discussed earlier in this chapter, the Board disallowed the balance in the capacity refurbishment variance account proposed by OPG for the period before April 1, 2008. In light of the obligation imposed on the Board by Section 6(2)4, the Board accepts that a variance account is required for the period beginning April 1, 2008 and authorizes OPG to establish the capacity refurbishment variance account.

O. Reg. 53/05 requires OPG to maintain the PARTS, nuclear liability, and nuclear development accounts. As discussed in Chapter 5 on nuclear liabilities, the Board finds that the nuclear liability deferral account required by O. Reg. Section 5.2 should be restricted to the revenue requirement impact of changes in nuclear liabilities related to the prescribed nuclear facilities at Pickering and Darlington.

7.3.2 New Accounts Proposed by OPG

OPG requested approval to establish four new variance accounts:

- **Nuclear fuel expense**
  This account would capture the difference between the forecast and actual nuclear fuel expense during the test period. OPG proposed to determine a per MWh fuel expense based on the forecast fuel expense and production levels in its application. Entries to the account would be made when OPG's actual fuel expense per MWh differs from the forecast.