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July 8, 2015

VIA RESS FILING and COURIER

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
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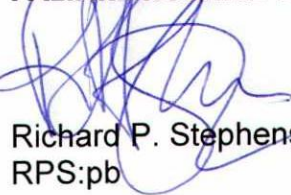
Dear Ms. Walli:

**Re: OPG Application for Approval to Dispose of Certain Deferral
and Variance Account Balances (EB-2014-0370)**

Attached please find the Submissions of the Power Workers' Union with respect
to the above-noted application.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP



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Attach.

c: Applicant and Intervenors
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IN THE MATTER OF the *Ontario Energy Board Act, 1998*,

AND IN THE MATTER OF an Application by Ontario Power Generation Inc. for an order or orders approving the disposition of the balances as of December 31, 2014, in its deferral and variance accounts.

**Ontario Power Generation
Application to Dispose of Balances in Certain
Deferral and Variance Accounts**

POWER WORKERS' UNION SUBMISSIONS

1. These are the submissions of the Power Workers' Union ("PWU") regarding the disputed issue under the Settlement Proposal accepted by the Board on June 23, 2015. The PWU supports and adopts the submissions made by Ontario Power Generation Inc. ("OPG") in respect of the disputed issue, dated June 30, 2015. The PWU makes the following additional submissions.
2. The PWU submits that the disputed issue can be resolved by answering the following question: When did the Board's Decision in EB-2013-0321 dated November 20, 2014, take effect?
3. The PWU submits that the answer to this question is clear on the face of the Board's Decision. After thoughtfully considering the matter, the Board concluded that its Decision would be effective on November 1, 2014. Having decided the matter, no aspect of the Decision can have legal force or effect prior to November 1, 2014, in the absence of an express provision in the Decision to the contrary.
4. The PWU notes that it was open to OPG, or another affected party to seek to challenge the Board's Decision regarding its effective date. In theory, such a challenge could have been by way of a review motion, an appeal, or potentially both. No party has made any such challenge.

5. It is important to recall that, as a general principle, the Board may not make rate orders effective on the date prior to the decision being rendered. Retroactive rate making is prohibited.
6. The recognized exception to the prohibition on retroactive rate making is when the rates in effect at the time the order is made had previously been declared by the Board to be “interim”.¹
7. OPG sought and obtained an Order from the Board on December 13, 2013, declaring its current rates “interim” effective January 1, 2014 (for nuclear and existing hydraulic payment amounts) and July 1, 2014 (for newly regulated hydraulic payment amounts).²
8. As noted above, the Board’s decision in this case was given retroactive effect by the Board. It was made retroactive back to November 1, 2014, from November 20, 2014. It was only by virtue of its order dated December 17, 2013, declaring current rates to be interim, that such a retroactive Order was possible.
9. As described by the Board, OPG requested the effective date of the Decision to be as follows:

OPG requests an effective date of January 1, 2014, in respect of the previously regulated hydro electric and nuclear facilities, and an effective date of July 1, 2014, for the newly regulated hydro electric facilities.³

10. The Board rejected OPG’s proposal. The Board stated:

The Board’s general practice with respect to the effective date of its Orders is that the final rate becomes effective at the conclusion of the proceeding. This practice is predicated on a forecast test year which establishes rate going forward, not retrospectively. Going forward, the utility knows how much money it has available to spend and the ratepayer knows how much it is going to cost to use electricity in order to make consumption decisions. The forecast test year enables both the utility and the ratepayer to make informed decisions based on approved rates. The forecast test

¹ *Bell Canada v. Canada (CRTC)*, [1989] 1 S.C.R. 1722.

² EB-2013-0321, Board Decision with Reasons, November 20, 2014, at p. 131.

³ EB-2013-0321, p. 131.

year is a pillar in rate setting and the Board's practice must be respected.⁴

11. The Board concluded by determining that the effective rate for final payment amounts for both the nuclear and all hydro electric facilities would be November 1, 2014.⁵

12. As noted above, the Board's Decision does vary from its "general practice", albeit only by 20 days.

13. The critical point is this: The issue of the effective date of the Decision was a live and hotly contested issue before the Board when it made its original Decision. It considered OPG's position, it considered the Board's own "general practice", and it specifically decided on a date somewhere in between.

Effective date of Board's November 20, 2014, decision is not limited to rates

14. The PWU understands that it is the disputing Parties' position that while the effective date of the Board's Decision with respect to OPG's actual payment amounts was November 1, 2014, the effective date of the decision with respect to the revenue requirement which underpins those payment amounts was January 1, 2014. The PWU submits that this position should be rejected, for at least two reasons.

15. First, the Board's November 20, 2014, decision simply does not say this. The bifurcation of the effective date, for different aspects of the decision (assuming such an outcome is legally permissible) would be a novel result. In the absence of a provision of the decision expressly establishing such a bifurcation, there is simply no basis to "read in" such an outcome.

16. Secondly, the Board has expressly ruled that the effective date of its Decision with respect to deferral accounts is November 1, 2014. The Board deals with this issue in its payment amounts Order (Appendix G).⁶

⁴ EB-2013-0321, p. 134.

⁵ EB-2013-0321, at p. 137, 138.

⁶ OPG Book of Authorities, Tab 7.

17. In Appendix G, the Board deals separately with the issue of the clearance of existing deferral and variance accounts and the issue of OPG's continuing deferral and variance accounts. With respect to the issue of clearance of existing deferral and variance accounts, the Board orders that:

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.⁷

18. The Board deals separately with the issue of continuing deferral and variance accounts. Specifically, the Board provides that:

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 of 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.⁸

19. The point is this: The Board specifically identifies a date as the demarcation point between old and new deferral and variance accounts. That date is November 1, 2014, the same date as the effective date of the Decision as a whole. To the extent the Board had the authority to select a different date to deal with the deferral and variance accounts issue it did not exercise that authority.

All of which is respectfully submitted.

⁷ Payment Amounts Order EB-2013-0321, Appendix G, p. 1 of 15.

⁸ Payment Amounts Order EB-2013-0321, Appendix G, p. 2 of 15.