

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

AND IN THE MATTER OF an Application Ontario Power Generation Inc. for an order or orders approving payment amounts for prescribed generating facilities commencing January 1, 2017.

AND IN THE MATTER OF Rule 27 of the Board's *Rules of Practice and Procedure*.

NOTICE OF MOTION

The School Energy Coalition ("SEC") will make a motion to the Ontario Energy Board ("the Board") at its offices at 2300 Yonge Street, Toronto, on December 16, 2016 at 9:30 AM, pursuant to the Board's Procedural Order #1 in this matter.

PROPOSED METHOD OF HEARING

SEC requests this motion be dealt with orally.

THE MOTION IS FOR:

1. An order requiring Ontario Power Generation Inc. to provide a full and adequate response to SEC Interrogatory #95 under issue 11.1. The response provided is listed as Exhibit L, Tab 11.1, Schedule 15-SEC-95.
2. Such further and other relief as the SEC may request and the Board may grant.

THE GROUNDS FOR THE MOTION ARE:

1. The Board issued a Notice of Proceeding on an application by Ontario Power Generation Inc. ("OPG") pursuant to section 78.1 of the of the *Ontario Energy Board Act, 1998* for an order or orders approving just and reasonable payment amounts for prescribed generating facilities commencing January 1, 2017.

2. SEC is an intervenor in this proceeding. Pursuant to Procedural Order #1 issued August 12, 2016, SEC delivered written interrogatories to OPG.
3. Rule 27.03 of the Board's *Rules of Practice and Procedure*¹ provides that a party may bring a motion seeking direction from the Board if it is not satisfied that a party has provided a "full and adequate response to an interrogatory." SEC brings this motion because OPG has not provided a full and adequate response to the specific interrogatory, which interrogatory requested information relevant to the issues to be decided in this proceeding.
4. The SEC Interrogatory #95 relates to the appropriateness of the proposed IRM formula for the hydroelectric payment amounts. As proposed by OPG, the payment amounts would be set on the basis of a formula, and then capital spending to which the Capacity Refurbishment Variance Account would be recovered from ratepayers as an additional amount. SEC sought to understand better how the additional recoveries would affect the overall rate increases. The intent is to determine whether the IRM formula should be adjusted to reflect the fact that some costs are proposed to be recovered outside of the IRM formula.
5. OPG has responded to part (c) of the interrogatory, confirming that no adjustment has been made to the proposed IRM formula due to the existence of the CRVA.
6. However, OPG has refused to provide answers to parts (a) and (b) of the interrogatory, which asked them to provide forecasts of the amounts currently forecast to be spent, and ultimately included in the CRVA, in the IRM years. That information is necessary for the Board to assess the impact of the IRM formula, and in particular whether there is any potential for double counting between the IRM formula and the CRVA. OPG claims that information is not relevant because no adjustment to the IRM formula is, in their opinion, required.
7. SEC submits that, since a price cap IRM adjustment applies to both the capital and operating components of rates, by definition no additional funding for normal capital spending should be required. If, as OPG submits, the CRVA is required by O.Reg. 53/05, then the operation of the price cap adjustment no longer covers all costs, and the Board must investigate whether an adjustment to the price cap formula is required. The fact that OPG believes no adjustment is required is not a relevant factor in providing the information. The Board must have the information necessary to make its own independent assessment.

¹ Ontario Energy Board, *Rules of Practice and Procedure* (as revised on April 24, 2014)

8. SEC notes that, in the case of electricity distributors, the Board provides for an Advance Capital Module, and an Incremental Capital Module, to deal with certain types of capital spending that are outside of the price cap regime for electricity distributors. The ACM and ICM have criteria applied to them, and have a threshold formula and other metrics meant to ensure that the IRM formula, and the additional capital funding, are properly integrated. OPG is seeking a similar mechanism, but without providing the Board with sufficient information to determine what, if any, safeguards are necessary to integrate the IRM formula and the additional capital funding through the CRVA.
9. Subsequent to the filing of SEC Interrogatory #95, and OPG's refusal to provide a full response, OEB Staff have filed the evidence of Pacific Economics Group Research LLC as Exhibit M2. The authors of the PEG expert evidence raise similar issues to those SEC was exploring in Interrogatory #95. In their report², PEG expresses concern that the Board does not have a forecast of hydroelectric capital spending and rate base after 2015, and that OPG refused SEC's request in Interrogatory #95 to provide that information. PEG later cites the potential relationship between CRVA and IRM, and how the latter has control mechanisms in place.
10. PEG also states that double counting (called "overcompensation") may occur if the IRM formula and the CRVA co-exist with no adjustment. Quoting the response to SEC Interrogatory #95, PEG says:

*"When asked by SEC how the hydroelectric CRVA affected other provisions of OPG's proposed plan the Company responded that "as the CRVA is consistent with IR, and OPG has followed the price-cap option as defined in the RRFE, no adjustment is necessary and none is proposed." **We disagree.** Research by PEG in other proceedings has shown that utility productivity growth is substantially higher when a share of plant additions is removed from the calculations. **If the CRVA is approved as proposed, an increase in the X factor is indicated which is commensurate with the excluded capex.**"*³*[emphasis added]*
11. SEC therefore submits that the information requested is necessary for the Board to consider the appropriate parameters of the IRM for hydroelectric payment amounts.

THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE MOTION:

1. The Record in EB-2016-0152.

² Exhibit M2, pp. 62-65.

³ Exhibit M2, p. 64.

2. Such further and other material as counsel may advise and the Board may permit.

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