Filed: 2016-05-27
EB-2016-0152
Exhibit C2
Tab 1
Schedule 1
Page 1 of 15

NUCLEAR WASTE MANAGEMENT AND DECOMMISSIONING – REVENUE REQUIREMENT IMPACT OF NUCLEAR LIABILITIES

1.0 PURPOSE

The purpose of this evidence is to outline the OEB-approved revenue requirement treatment of OPG's liabilities for nuclear waste management and decommissioning ("nuclear liabilities") and to present the forecast amounts of nuclear liabilities costs included in the proposed revenue requirement for the 2017 to 2021 test period. This evidence also presents the projected financial impacts of the year-end 2015 adjustment to the nuclear liabilities recorded by OPG to reflect changes in accounting assumptions for nuclear station end-of-life ("EOL") dates effective December 31, 2015 ("2015 nuclear liabilities adjustment"), as anticipated in EB-2015-0374.

2.0 OVERVIEW

OPG is seeking recovery of $2,293.4M, after-tax, over the test period in respect of the nuclear liabilities for both prescribed and Bruce facilities. This reflects the approved 2012 Ontario Nuclear Funds Agreement ("ONFA") Reference Plan, as well as projected financial impacts of $372.1M over the test period resulting from the 2015 nuclear liabilities adjustment.

For the prescribed facilities, OPG is seeking recovery of a total pre-tax test period amount in respect of the nuclear liabilities of $707.7M consisting of $147.7M, $147.1M, $156.9M, $144.1M and $111.9M for years 2017 to 2021, respectively (Ex. C2-1-1 Table 1, line 6). The associated income tax impacts are ($2.8M), ($9.4M), ($36.3M), $36.3M and $25.6M for years 2017 to 2021, respectively (Ex. C2-1-1 Table 1, line 7).

For the Bruce facilities, OPG is seeking recovery of a total pre-tax test period amount in respect of the nuclear liabilities of $1,179.3M as a reduction to Bruce Lease net revenues, consisting of $232.0M, $234.3M, $238.9M, $244.2M and $229.8M for years 2017 to 2021, respectively (Ex. C2-1-1 Table 1, line 15). The associated income tax impacts are $77.3M,

2

$78.1M, $79.6M, $81.4M and $76.6M for years 2017 to 2021, respectively (Ex. C2-1-1 Table 1, line 16).

The 2015 nuclear liabilities adjustment increased the nuclear liabilities by approximately $2.3B, primarily on account of the planned refurbishment of the not-yet-refurbished Bruce units as announced by the Province of Ontario in December 2015 (see Ex. F4-1-1). The 2016 impacts of the 2015 nuclear liabilities adjustment are projected to be a credit to ratepayers of $65.2M for the prescribed facilities and a decrease of $69.9M in Bruce Lease net revenues (i.e. amount to be recovered from ratepayers). These impacts are being recorded in the Impact Resulting from Changes in Station End-of-Life Dates (December 31, 2015) Deferral Account established in EB-2015-0374 and the Bruce Lease Net Revenues Variance Account, respectively.

For the purposes of determining the 2017 to 2021 test year revenue requirement and amounts recorded in the above deferral and variance accounts with respect to the 2015 nuclear liabilities adjustment, OPG is maintaining the nuclear liabilities revenue requirement methodology approved by the OEB in EB-2007-0905, EB-2010-0008 and EB-2013-0321.

Section 3.0 describes OPG's financial accounting for the asset retirement obligation ("ARO") related to nuclear waste management and decommissioning and sets out the OEB-approved revenue requirement methodology for the nuclear liabilities. Section 4.0 discusses changes in the ARO, the corresponding unamortized asset retirement costs ("ARC") and the segregated fund balances set aside for discharging the nuclear liabilities in accordance with the Ontario Nuclear Funds Agreement ("ONFA"). Section 5.0 presents the impact of the 2015 nuclear liabilities adjustment. Section 6.0 provides a status update for the 2017 ONFA Reference Plan update, which is under development and has not been reflected in the proposed test period revenue requirement. Once finalized and implemented, the revenue requirement impact of the 2017 ONFA Reference Plan will be subject to the Nuclear Liability Deferral Account and the Bruce Lease Net Revenues Variance Account.

Question: How many reactors are covered in this plan?

Partial text of the Nuclear Liability and Compensation Act

Liability for Nuclear Incidents

Operator's Liability

Marginal note:Limitation

8 An operator is not liable for damage that is caused by a nuclear incident except for any liability that is provided for under this Act.

Marginal note:Liability — Canada

- **9** (1) An operator — and no person other than an operator — is liable for damage that is caused within Canada or its exclusive economic zone by
    - (a) ionizing radiation emitted from any source of radiation within, or released from, the operator's nuclear installation;
    - (b) ionizing radiation emitted from nuclear material being transported
        - (i) from the operator's nuclear installation until it is placed in another nuclear installation or until liability is assumed by the operator of that other nuclear installation, under the terms of a written contract,
        - (ii) [Repealed, 2015, c. 4, s. 121]
        - (iii) from the operator's nuclear installation to a person who is within the territory of a State that is not a Contracting State until it is unloaded from the means of transport by which it arrived in that State, or
        - (iv) with the operator's written consent, from a person who is within the territory of a State that is not a Contracting State to the operator's installation, from the time that it is loaded on the means of transport by which it is to be carried from that State;
    - (b.1) ionizing radiation emitted from nuclear material being transported from the operator's nuclear installation
        - (i) before liability is assumed under the terms of a written contract, by a person who is within the territory of a Contracting State other than Canada and who is designated or recognized under the laws of that State as operating a nuclear installation as defined in Article 1.I(b) of the Annex to the Convention, or
        - (ii) in the absence of a contract, before that person takes charge of the nuclear material;

- 4

- (b.2) ionizing radiation emitted from nuclear material being transported to the operator’s nuclear installation

  -

  - (i) after liability is assumed by the operator under the terms of a written contract, from a person who is within the territory of a Contracting State other than Canada and who is designated or recognized under the laws of that State as operating a nuclear installation as defined in Article 1.I(b) of the Annex to the Convention, or

  - (ii) in the absence of a contract, after the operator takes charge of the nuclear material; or

- (c) a combination of the radioactive properties and toxic, explosive or other hazardous properties of a source referred to in paragraph (a) or nuclear material referred to in paragraph (b), (b.1) or (b.2).

- **Marginal note:Preventive measure — liability in Canada**

(2) An operator and no person other than an operator — is liable for damage that is caused within Canada or its exclusive economic zone if the damage is caused by a preventive measure that is taken under subsection — 20(1) in relation to that operator’s nuclear installation or in relation to any transportation for which the operator is responsible.

- (3) [Repealed, 2015, c. 4, s. 121]

- **Marginal note:Additional liability — Contracting State other than Canada**

(4) An operator — and no person other than an operator — is liable for damage that is caused within a Contracting State other than Canada or within that State’s exclusive economic zone by

- (a) ionizing radiation emitted from any source of radiation within, or released from, the operator’s nuclear installation;

- (b) ionizing radiation emitted from nuclear material being transported from the operator’s nuclear installation

  - (i) before liability is assumed, under the terms of a written contract, by a person who is within the territory of the Contracting State other than Canada and who is designated or recognized under the laws of that State as operating a nuclear installation as defined in Article 1.I(b) of the Annex to the Convention, or

  - (ii) in the absence of a contract, before that person takes charge of the nuclear material;

- (c) ionizing radiation emitted from nuclear material being transported to the operator’s nuclear installation

- 5
    - (i) after liability is assumed by the operator, under the terms of a written contract, from a person who is within the territory of the Contracting State other than Canada and who is designated or recognized under the laws of that State as operating a nuclear installation as defined in Article 1.I(b) of the Annex to the Convention, or
    - (ii) in the absence of a contract, after the operator takes charge of the nuclear material; or
- (d) a combination of the radioactive properties and toxic, explosive or other hazardous properties of a source referred to in paragraph (a) or nuclear material referred to in paragraph (b) or (c).

- **Marginal note:Preventive measure — liability in Contracting State other than Canada**

(5) An operator — and no person other than an operator — is liable for any damage that is caused within a Contracting State other than Canada or within that State's exclusive economic zone if the damage is caused by a preventive measure that is taken under subsection 21(1) in relation to that operator's nuclear installation or in relation to any transportation for which the operator is responsible.

- **Marginal note:Additional liability — transportation to or from non-contracting State**

(6) An operator — and no person other than an operator — is liable for damage that is caused within a Contracting State other than Canada or within that State's exclusive economic zone by

- (a) ionizing radiation emitted from nuclear material being transported
    - (i) from the operator's nuclear installation to a person who is within the territory of a State that is not a Contracting State until it is unloaded from the means of transport by which it arrived in that State; or
    - (ii) with the operator's written consent, from a person who is within the territory of a State that is not a Contracting State to the operator's nuclear installation, from the time it is loaded on the means of transport by which it is to be carried from that State; or
- (b) a combination of the radioactive properties and toxic, explosive or other hazardous properties of nuclear material referred to in paragraph (a).

- 2015, c. 4, ss. 120 "9", 121.

Previous Version

Marginal note:Absolute liability

- **10** (1) The liability of an operator for damage that is caused by a nuclear incident is absolute.

- **Marginal note:Tort or fault**

  (2) For the purposes of subsection (1), no proof of tort or of fault within the meaning of the *Civil Code of Québec* is required.

Marginal note:Liability — jointly and severally, or solidarily

11 If liability under this Act is incurred by two or more operators, each is jointly and severally, or solidarily, liable to the extent that it cannot reasonably be determined what portion of the liability is attributable to each operator.

Marginal note:Person responsible for nuclear incident

12 An operator is not liable for damage that is suffered by a person if that person intentionally caused the nuclear incident wholly or partly by an act or omission or under circumstances amounting to gross negligence or, in Quebec, gross fault.

Marginal note:No recourse

13 In respect of damage that is caused by a nuclear incident, an operator has no right of recourse against any person other than an individual who intentionally caused the nuclear incident by an act or omission.

Compensable Damage

Marginal note:Bodily injury or damage to property

14 Bodily injury or death and damage to property that are caused by a nuclear incident are compensable.

Marginal note:Psychological trauma

15 Psychological trauma that is suffered by a person is compensable if it results from bodily injury to that person that was caused by a nuclear incident.

Marginal note:Liability for economic loss

16 Economic loss that is incurred by a person as a result of their bodily injury or damage to their property and that is caused by a nuclear incident, or psychological trauma that results from that bodily injury, is compensable.

Marginal note:Costs and wages

- **17** (1) The costs that are incurred by a person who loses the use of property as a result of a nuclear incident and the resulting wage loss by that person’s employees are compensable.

- **Marginal note:Power failure**

(2) If a nuclear incident occurs at a nuclear installation that generates electricity, the costs resulting from a failure of the installation to provide electricity are not compensable under subsection (1).

Marginal note:Environmental damage — Canada

18 Reasonable costs of remedial measures that are taken to repair, reduce or mitigate environmental damage that is caused by a nuclear incident are compensable if the measures are ordered by an authority acting under federal or provincial legislation relating to environmental protection.

Marginal note:Environmental damage — Contracting State other than Canada

19 Unless the damage is insignificant, reasonable costs of remedial measures that are taken to repair, reduce or mitigate environmental damage that is caused by a nuclear incident are compensable if the measures are ordered by an authority of a Contracting State other than Canada acting under the laws of that State relating to environmental protection.

Commentary on the NLCA on the NRCan web site

Strengthening Canada's Nuclear Liability Regime (from nuclearsafety.gc.ca The Nuclear Liability and Compensation Act, Additional information list)

Domestic improvements – dual system for the compensation of claims

As under the current NLA, the NLCA will provide that a special compensation regime may be established to replace the courts in the event of a major nuclear incident when the Government determines that claims would be better dealt with by an administrative quasi-judicial tribunal to accelerate claims payments and provide an efficient and equitable forum.

Once the Government has declared that the claims resulting from a nuclear incident are to be dealt with by a tribunal, the regular routes of receiving compensation, whether directly from the insurers, or indirectly through the courts, are replaced by a nuclear claims tribunal. All court actions are halted and the operator ceases to be liable to the public for any damage caused by the incident. The operator becomes instead liable to the Crown in Right of Canada.

As there are very good reasons for providing for a dual system for the compensation of claims, the new legislation carries this forward from the current NLA, and further strengthens the provision by elaborating how the administrative quasi-judicial tribunal would operate.

It is recognized that both the judicial system and the administrative law

system have their respective advantages depending on the nature of a nuclear incident. The judicial system functions well in many circumstances, and has numerous procedural requirements which operate to safeguard the rights and liberties of both the defendant and the plaintiff. For instance, in order not to be besieged by claims of unlikely damages in the event of a small incident, where little or no radiation is released, the operator may be better served by the full procedural protections and requirements of the judicial system than by the administrative law system. On the other hand, in the event of a large incident, the administrative quasi-judicial claims tribunal would be able to ensure that claims are handled quickly and fairly –with victims receiving at least a minimum of compensation– without the need to hire expensive legal counsel.

The proposed legislation will elaborate the features and process of this administrative quasi-judicial tribunal. The Tribunal is to be made up of a minimum of five members, the majority to be appointed by the Government to be judges or lawyers. Claims are to be heard by panels of the Tribunal consisting of one or more members. The Tribunal may, in order to process claims expe-ditiously, establish classes of claims that may be determined by a claims officer. A claimant or operator who is dissatisfied with a claims officer's decision may apply to the Tribunal for a rehearing by a panel. If a claim has been heard by a panel that consists of fewer than three members, the claimant or operator may bring an appeal to a panel consisting of three other members.

The proposed legislation will provide that the Minister –without delay after the Government has made the declaration to deal with claims by a tribunal– report to Parliament on the estimated cost of the damage arising from the nuclear incident. The advantages of such a report would be to inform Parliament of the extent of the nuclear incident, to permit the Government to decide on next steps and whether additional funds would need to be appropriated for related compensation, and to inform the Government on the need for regulations relating to the payment of claims.

9

Nuclear Claims Tribunal

Governor in Council's Declaration

Declaration

36 (1) The Governor in Council may declare that claims in respect of a nuclear incident are to be dealt with by a Tribunal, if he or she believes that it is in the public interest to do so, having regard to the extent and the estimated cost of the damage, and the advantages of having the claims dealt with by an administrative tribunal.

Publication

(2) The declaration is not a statutory instrument for the purposes of the *Statutory Instruments Act*, but it must be published, without delay, in the *Canada Gazette*, Part II.

Effect of declaration

37 (1) Section 34 ceases to apply in respect of a nuclear incident on the day on which a declaration is made under subsection 36(1), and any proceedings brought or taken before the declaration is made are discontinued.

New jurisdiction

(2) Any claims that could have been made before the declaration is made are, after the day on which it is made, only to be brought before the Tribunal.

10

Examples of potential liabilities: chernobyl and fukushima

(from “the balance”, Sept 8, 2016 – list of damages at Chernobyl)

1. Damage directly caused by the accident.
2. The cost of sealing off the reactor. It is crumbling, exposing the environment to contamination again. The European Bank for Reconstruction and Development and a group of foreign donors are building a replacement. It will be completed in 2017 and cost 2.35 billion euros.
3. Creating an exclusion zone of 30 kilometres around the power plant.
4. Resettling 330,000 people.
5. Health care for those exposed to radiation. The leak immediately doused 1,000 people with high levels of radiation. Four thousand children later came down with thyroid cancer from drinking contaminated milk. Also, more than 600,000 emergency workers were exposed. Many died or suffered severe health issues.
6. Seven million people are still receiving benefits payments in Russia, Ukraine and Belarus. That costs Ukraine at least 5% of its annual budget and Belarus at least 6% of its budget.
7. Research to find out how to produce uncontaminated food.
8. Monitoring environmental radiation levels.
9. Toxic waste clean-up and disposal of radioactive waste.
10. The opportunity cost of removing farmland and forests from use.
11. Loss of power from the Chernobyl plant itself. Unit 4 was shut down. Reactors 1, 2 and 3 were restarted in October 1986. They produced power until December 2000. (Source: "Arch Rises to Seal Chernobyl 30 Years On, WSJ, April 26, 2016. "Chernobyl Images Now and Then," RT.com, April 26, 2014.)
12. The cancellation of Belarus’s nuclear power program. Belarus estimates total losses of $235 billion. (Source: *Chernobyl’s Legacy: Health, Environmental and Socio-Economic Impacts*, The Chernobyl Forum: 2003-2005)

11

Fukushima costs – from Forbes: After five years what was the cost of the Fukushima accident? March 10, 2016

> The direct costs of the Fukushima disaster will be about $15 billion in clean-up over the next 20 years and over $60 billion in refugee compensation. Replacing Japan's 300 billion kWhs from nuclear each year with fossil fuels has cost Japan over $200 billion, mostly from fuel costs for natural gas, fuel oil and coal, as renewables have failed to expand in Japan. This cost will at least double, and that only if the nuclear fleet is mostly restarted by 2020.

Outline of the Paris Agreement – Environmental Commissioner of Ontario, Climate Change Report 2016

1.8 Paris Agreement

In December 2015, the countries of the world, including Canada, reached a new agreement to limit greenhouse gas emissions.

The Paris Agreement is an agreement within the framework of the United Nations Framework Convention on Climate Change (UNFCCC) dealing with greenhouse gas emissions mitigation, adaptation and finance starting in the year 2020. It was negotiated by representatives of 195 countries at the 21st Conference of the Parties of the UNFCCC in Paris and adopted by consensus on December 12, 2015. The agreement entered into force on November 4, 2016, thirty days after 55 countries that produce at least 55 per cent of the world's greenhouse gas emissions had

ratified, accepted, approved or acceded to the agreement.[90] Canada submitted its formal ratification on October 5, 2016.

The purpose of the agreement is described in Article 2:

> *(a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;*
>
> *(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production;*
>
> *(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.*

Each ratifying country agrees to make an ambitious contribution to achieving this shared purpose by reducing emissions and taking other actions, and to reach "global peaking of greenhouse gas emissions as soon as possible." Each country's contribution must increase with time.

The 2°C target will be very challenging to meet; 1.5°C will be even harder. IPCC modelling, relied upon during the Paris negotiations, suggested that global greenhouse gas emissions must be cut 80 per cent by 2050 to have a reasonable chance of meeting the 2°C target. The national reduction commitments that were made in Paris are not nearly enough to keep the average air temperature change to 2°C, (much less 1.5°C) even if every country does what it has promised.[91] Further international meetings are planned to seek more stringent commitments every five years, in the hope that new technologies and greater access to funding may make greater reductions easier with time.

1.8.1 Is an 80 per cent Emission Cut Enough?

How much must world greenhouse gas emissions be cut to keep the average air temperature change below 2°C? Based on sophisticated climate computer modeling, the IPCC 5 report concluded that reducing emissions 80 per cent by 2050 would give us a reasonable chance of keeping the temperature change below 2°C. Unfortunately, even larger reductions will be essential to avoid exceeding the 2°C, (or 1.5°C) thresholds, because of something that is not yet in the model:[92] permafrost.[93]

At the time the IPCC 5 report was being written, the data about permafrost carbon was not yet good enough for inclusion in the model.[94] Now that much better data are available, an IPCC study scheduled for 2018 is expected to show that world air temperature will warm even faster than previously predicted. In other words, it will likely show that an 80 per cent emission reduction by 2050 is not enough to keep world average temperatures from going up more than 2°C.

Canada made a formal commitment in Paris to reduce our national greenhouse gas emissions by 30 percent from 2005 levels by 2030.[95] The federal government is working on policies to achieve and improve this commitment, in co-operation with other levels of government and the public. Ontario has a lot at stake, and we must do our fair share.

1.9 Ontario's Fair Share

Ontario has 38.5 per cent of Canada's population and 37.7 per cent of its Gross Domestic Product (GDP).[96] In the new *Climate Change Mitigation and Low-carbon Economy Act, 2016,* Ontario committed to reduce our own emissions by 80 per cent below 1990 levels by 2050 (see Chapter 2.1.2). Is this fair? The ECO thinks so.

Two common excuses for climate inaction are that:

- "our emissions are too small to matter anyway;"

13

Text of the preamble to Ontario Bill 172

Preamble to Bill 172, *Climate Change Mitigation and Low-carbon Economy Act, 2016*

Human-induced climate change is real and impacts are being experienced around the globe. The Intergovernmental Panel on Climate Change has concluded that warming of the climate is unequivocal and that most of the observed increase in global average temperature is due to human activity.

To prevent dangerous climate change, the global community has identified the objectives of holding the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial temperatures and pursuing efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial temperatures. A rise beyond 2 degrees Celsius poses the very real risk that countries around the world will experience irreversible damage to their environment. Such a rise in temperature poses a risk of irreversible widespread impacts on human and natural systems and threatens Ontario's agricultural resources, natural areas and ecosystems, and economic well-being.

This risk justifies action to mitigate climate change, including reducing greenhouse gas that causes climate change. The global community is mobilizing around this goal through the United Nations Framework Convention on Climate Change and its related agreements, and Ontario is committed to playing its part.

By taking action now, Ontario's households and communities, infrastructure, agricultural resources, natural areas and ecosystems, including the Great Lakes and the boreal forest, will be better protected for the benefit and enjoyment of all. Ontario will also be well positioned to take advantage of the low-carbon economy through local job creation, an expanding low-carbon technology sector and other global economic opportunities.

All Ontarians have a role to play in addressing climate change, including understanding how Ontarians contribute to greenhouse gas emissions and changing their behaviour to reduce those emissions.

The Government of Ontario believes that the public interest requires a broad effort to reduce greenhouse gas and to build a cleaner and more prosperous Province. The Government will continue to involve and engage individuals, businesses, communities, municipalities, non-governmental organizations and First Nation and Métis communities in the ultimate goal of fostering a high-productivity low-carbon economy and society in Ontario.

First Nation and Métis communities have a special relationship with the environment and are deeply connected spiritually and culturally to the land, water, air and animals. They may offer their traditional ecological knowledge as the Government of Ontario develops specific actions.

The Government of Ontario cannot address this challenge alone. Collective action is required. As a leading sub-national jurisdiction, Ontario will participate in the international response to reduce greenhouse gas by establishing a carbon price. A key purpose of this Act is to establish a broad carbon price through a cap and trade program that will change the behaviour of everyone across the Province, including spurring low-carbon innovation. A cap and trade program in Ontario will allow Ontario to link to other regional cap and trade markets as part of the international, national and interprovincial responses to reduce greenhouse gas.

In addition to the carbon price signal and to further support the reduction of greenhouse gas, the Government of Ontario will pursue complementary actions to support and promote the transition to a low-carbon economy.

Enabled and supported by the cap and trade program and related actions, the Government of Ontario envisions, by 2050, a thriving society generating fewer or zero greenhouse gas emissions. Businesses and innovators will be creating world-leading low-carbon technologies and products that drive new economic growth, productivity and job creation. Ontarians will live, work and travel in sustainable ways in healthier and more liveable communities.

14

Section of the Nuclear Liability and Compensation Act dealing with the Nuclear Claims Tribunal

Nuclear Claims Tribunal

Governor in Council's Declaration

Declaration

36 (1) The Governor in Council may declare that claims in respect of a nuclear incident are to be dealt with by a Tribunal, if he or she believes that it is in the public interest to do so, having regard to the extent and the estimated cost of the damage, and the advantages of having the claims dealt with by an administrative tribunal.

Publication

(2) The declaration is not a statutory instrument for the purposes of the *Statutory Instruments Act*, but it must be published, without delay, in the *Canada Gazette*, Part II.

Effect of declaration

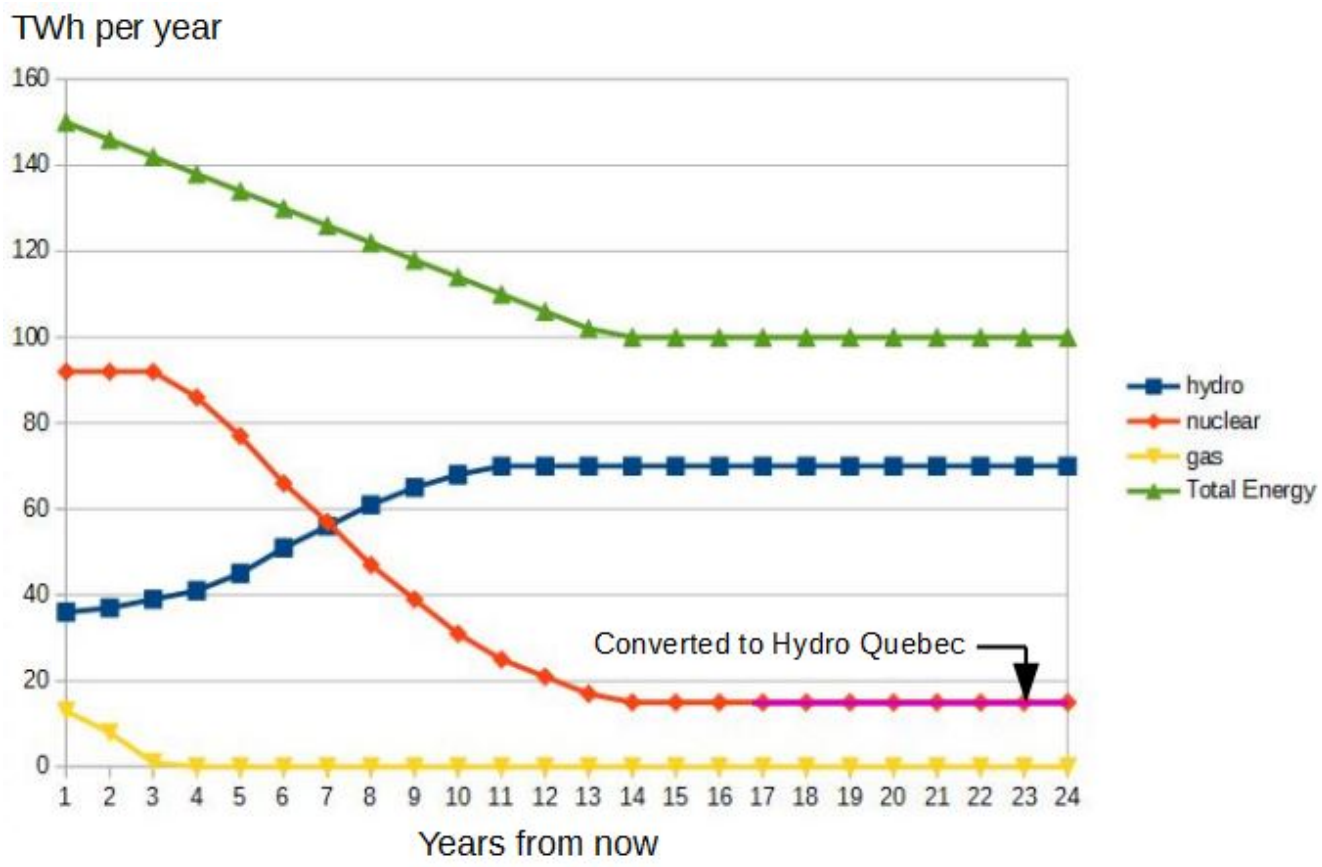
37 (1) Section 34 ceases to apply in respect of a nuclear incident on the day on which a declaration is made under subsection 36(1), and any proceedings brought or taken before the declaration is made are discontinued.

New jurisdiction

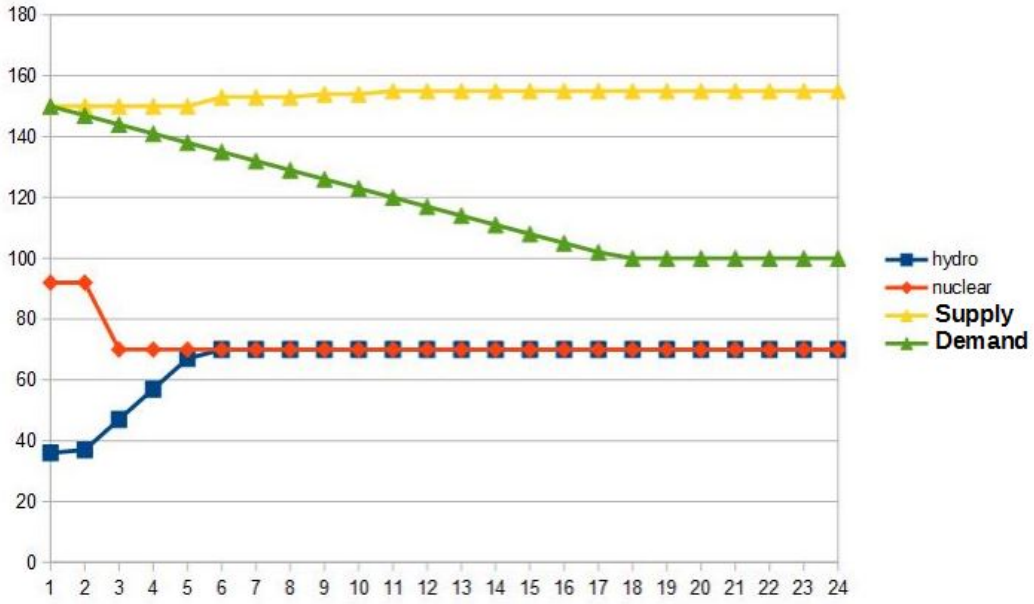
(2) Any claims that could have been made before the declaration is made are, after the day on which it is made, only to be brought before the Tribunal.

15

Plot of Ontario power demand after thermal loads are removed per Bill 172



Plot of excess electricity supply after Bill 172 if all 10 reactors are refurbished



9.2 Termination of Refurbishment Due to Counterparty's More Economic Alternative

(a) **Counterparty Election to Terminate Refurbishment**. In addition to the entitlement of the Counterparty to elect that the Generator not proceed with the Refurbishment of one or more Units in accordance with the provisions of Section 9.1(a), the Counterparty may elect that the Generator not proceed with the Refurbishment of all of the remaining Units to be Refurbished in accordance with the provisions of this Section 9.2.

(b) **Notice and Deemed Election**. If on or before the date that is ninety (90) days after the Generator has delivered to the Counterparty a final Basis of Estimate Report in accordance with the provisions of Section 2.5 for either the Third Unit or the Fifth Unit the Counterparty has determined, acting reasonably, that changes in supply or demand for Electricity have resulted in there no longer being a need to Refurbish the remaining Units or there being more economic alternatives to the Refurbishment of the Units remaining to be Refurbished, then, by notice provided by the Counterparty to the Generator within such ninety (90) days, the Counterparty may elect that the Generator not proceed with the Refurbishment of all of the other Units that have yet to be Refurbished at the time the Counterparty provides such notice (collectively in this Section 9.2, the "**Terminated Units**"). Such notice shall provide a reasonably detailed explanation of the rationale behind the Counterparty's determination. If the Counterparty does not provide notice of such election within such ninety (90) days then, without prejudice to any future elections that it is entitled to exercise pursuant to Section 9.1(a) or this Section 9.2, it will be deemed to have elected that the Generator proceed with the Refurbishment of the Units remaining to be Refurbished. For greater certainty, the election in this Section 9.2(b) shall not terminate the Refurbishment of any Unit in respect of which the Go Election has been made at the time the Counterparty provides such notice.

(c) **Effects of Termination**. If the Counterparty makes its election in accordance with Section 9.2(b), then:

(i) the Generator shall within ninety (90) days of such election or deemed election prepare and deliver to the Counterparty a Unit Extension Plan and an Off-Ramp LAMP for the Terminated Units. The Counterparty will advise the Generator by notice given within sixty (60) days of receipt of both such plans whether it chooses for the Generator to proceed with the Unit Extension Plan or the Off-Ramp LAMP. If no notice is given by the Counterparty within such sixty (60) day period, the Counterparty will be deemed to have chosen that the Generator proceed with the Off-Ramp LAMP;

(ii) subject to the terms and conditions of this Agreement and the choice or the deemed choice of the Counterparty pursuant to Section 9.2(c)(i), the Generator shall either perform the Unit Extension Work in the Unit Extension Plan or perform the Asset Management Work in the Off-Ramp LAMP, in either case in respect of the Terminated Units, provided that the Generator may also perform any other work on such Units as it