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Ontario

BY E-MAIL

March 16, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: Ontario Power Generation Inc.
Ontario Energy Board File Number EB-2018-0085

Please find attached the OEB staff submission with respect to Ontario Power Generation Inc.'s notice of motion to review and vary the EB-2016-0152 Decision and Order. OPG and all intervenors have been copied on this filing.

Yours truly,

Original signed by

Violet Binette
Project Advisor, Applications

Attach

ONTARIO POWER GENERATION INC.

MOTION TO REVIEW AND VARY

DECISION AND ORDER (EB-2016-0152)

EB-2018-0085

Ontario Energy Board

Staff Submission

March 16, 2018

Background

Ontario Power Generation Inc. (OPG) has brought this motion to review and vary the decision of the Ontario Energy Board (OEB) dated December 28, 2017 in the EB-2016-0152 proceeding (the Decision), insofar as the Decision established an effective date of June 1, 2017 for OPG's payment amounts rather than January 1, 2017 as requested in the application.

OPG's application for payment amounts for January 1, 2017 to December 31, 2021 was filed on May 27, 2016. On December 8, 2016, at OPG's request, the OEB declared the existing payment amounts to be interim as of January 1, 2017, pending the issuance of a final payment amounts order.

In the Decision, the OEB determined that, if OPG expected an effective date of January 1, 2017, it should have filed its application earlier. Nevertheless, although the OEB noted that "It is the common practice of the OEB to establish new rates and payment amounts prospectively,"[1] and several intervenors representing ratepayers had argued for the OEB to follow that practice in this case, the OEB decided to make the new (higher) payment amounts retroactive to June 1, 2017. This gave OPG at least seven months of retrospective recovery. The OEB explained that, "In arriving at the June 1, 2017 effective date, the OEB has attempted to balance the revenue requirement needs of OPG and rate certainty expected by ratepayers."[2]

In its Notice of Motion, OPG argues that by declining to order an effective date of January 1, 2017 as requested by OPG, the OEB failed to ensure that payment amounts for the "stub period" between January 1 and May 31, 2017 were just and reasonable. OPG also argues that it was unreasonable for the OEB to have expected OPG to file its application any earlier than it did, and that in fact it would have been impossible for OPG to do so.

In OEB staff's submissions in the payment amounts case, OEB staff supported OPG's request for a January 1, 2017 effective date, noting that OPG submitted its application shortly after audited financial statements were available for 2015 and that OPG had complied with the deadlines established for the proceeding in Procedural Order No. 1.

Despite this, OEB staff disagrees with OPG's argument that a January 1, 2017 effective date was legally required. Rather, the selection of an effective date is a matter of judgment, admitting of more than one reasonable outcome. June 1, while in our view towards the stricter end of the range of reasonable outcomes, is still within the range. OEB staff therefore submits that the original hearing panel's decision does not need to be varied, and the motion should be dismissed.

[1] Decision, p. 159 (OPG's Motion Record and Book of Authorities [MRBA], Tab 1).
[2] Decision, p. 159 (MRBA, Tab 1).

The purpose of a motion to review

Rule 43.01 of the OEB's *Rules of Practice and Procedure* states:

> In respect of a motion brought under Rule 40.01, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits.

Rule 42.01 provides the grounds upon which a motion may be raised with the OEB:

> 42.01 Every notice of a motion made under Rule 40.01, in addition to the requirements under Rule 8.02, shall:
>
> (a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:
>
> (i) error in fact;
>
> (ii) change in circumstances;
>
> (iii) new facts that have arisen;
>
> (iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time.

The OEB's most thorough analysis of the Rule came from a decision on several motions filed in the Natural Gas Electricity Interface Review Decision:

> Therefore, the grounds must "raise a question as to the correctness of the order or decision". In the panel's view, the purpose of the threshold test is to determine whether the grounds raise such a question. This panel must also decide whether there is enough substance to the issues raised such that a review based on those issues could result in the Board deciding that the decision should be varied, cancelled or suspended.
>
> With respect to the question of the correctness of the decision, the Board agrees with the parties who argued that there must be an identifiable error in the decision and that a review is not an opportunity for a party to reargue the case.
>
> In demonstrating that there is an error, the applicant must be able to show that the findings are contrary to the evidence that was before the panel, that the panel failed to address a material issue, that the panel made inconsistent findings, or something of a similar nature. It is not enough to argue that conflicting evidence should have been interpreted differently.
>
> The applicant must also be able to demonstrate that the alleged error is material and relevant to the outcome of the decision, and that if the error is corrected, the reviewing panel would change the outcome of the decision.
>
> In the Board's view, a motion to review cannot succeed in varying the outcome of the decision if the moving party cannot satisfy these tests, and in that case, there would be no useful purpose in proceeding with the motion to review.[3]

[3] EB-2006-0322/EB-2006-0338/EB-2006-0340, Decision with Reasons, May 22, 2007, p. 18 (MRBA, Tab 35).

In a subsequent decision, the OEB further commented: "in the case of an applicant-driven motion to review, it is not sufficient to simply reargue the case, or to argue that a different outcome might have been preferred. The moving party must show that the decision at issue is incorrect in an identifiable, relevant and material way."[4] In another case, the OEB stated: "This [i.e. the motion to review] is not a hearing of the application *de novo*. In considering a motion to vary, the Board considers whether new evidence has been presented by the Applicant, or whether the original panel made an error in law or principle so as to justify the reversal of the original Decision."[5]

The purpose of a motion to review, therefore, is not simply to re-hear the original issue before the OEB. Most issues before the OEB require a significant exercise of judgment on behalf of the OEB panel, and lend themselves to a number of possible outcomes. The purpose of a motion to review is not for a party to simply re-argue the same case in front of a different panel in the hope of achieving a different outcome.

Similarly, the task of a reviewing panel is not to consider the matter afresh – a motion to review is not a hearing *de novo*. The role of the reviewing panel is not to consider the evidence and decide what outcome it would have arrived at. A reviewing panel should instead look at the matter and determine if the original panel made an identifiable and material error of law or fact. If the answer to that question is "no", then the motion should fail. It does not matter if the reviewing panel might have come to a different conclusion on the evidence – if the original panel did not make an identifiable and material error then the reviewing panel should not consider the matter further.

In the context of this motion to review, therefore, the reviewing panel should not simply consider the relevant evidence afresh and determine what it would have selected as the effective date. Instead, it should be assessing if the original panel made (as OPG alleges) a material legal or factual error in selecting June 1, 2017 as the effective date. If the reviewing panel finds that there was no such error, then the motion should be dismissed irrespective of whether June 1 is the date it would have selected.

In addition to being in keeping with the legislation, Rules and OEB precedent, there are solid policy reasons behind this approach. Most issues before the OEB could result in a range of decisions – all of which would meet the broad test of being just and reasonable. A party should not be permitted two opportunities to argue the same case.

Absent an identifiable error, parties should have confidence that an OEB decision is final. A motion to review also consumes significant OEB and party resources, and regulatory efficiency demands that these motions only be permitted where a clear error has been made. If parties could simply re-argue any issue that they "lost" in the original proceeding before the OEB, there would be little incentive for them not to file a motion to review.

[4] EB-2007-0797, Decision and Order, November 26, 2007, p. 8.
[5] RP-2004-0167/EB-2005-0188, Decision with Reasons, October 6, 2005, p. 7.

Although OEB staff argued that January 1, 2017 was the appropriate effective date in its final submissions in the main proceeding, that does not mean that OEB staff supports OPG's motion. As described above, the purpose of a motion to review is different than the purpose of the initial hearing. OEB staff did not take the position in the original hearing that it would be an error to approve some other effective date, and does not adopt that position now.

In the Notice of Hearing and Procedural Order No. 1 issued in respect of this motion to review, the OEB invited submissions on both the threshold question and the merits of the motion.

The following is OEB staff's submission on the threshold issue and the merits of the motion.

The threshold test

OEB staff is prepared to accept that the threshold has been met in this case.

OPG's main argument is that the OEB made an error of law by failing to set just and reasonable payment amounts for the year 2017 – in other words that the OEB's decision to set an effective date of June 1 denied it the opportunity to recover its reasonably incurred costs for the year. As discussed below, this is essentially the same argument OPG made in the last payment amounts case (EB-2013-0321), which the OEB rejected with detailed and unambiguous reasons. OEB staff does not see a compelling reason for the OEB to consider and rule on that same question again. (In any case, in accordance with the Notice of Hearing and Procedural Order No. 1, OEB staff sets out its views on the question below.)

However, there is another ground raised by OPG that does not merely repeat what was argued in EB-2013-0321 or before the original hearing panel in EB-2016-0152. In particular, OPG argues that it was incorrect for the original hearing panel to apply a procedural standard (i.e., that OPG should have filed its application well before May 27, 2016) "which OPG was not previously advised of and could not reasonably have anticipated."[6] Although OEB staff disagrees with that argument, it is not obviously spurious and should be considered on its merits.

The merits of OPG's motion

OEB was not legally required to approve January 1, 2017 as the effective date

OPG argues that, as a result of the OEB's decision, the payment amounts for the stub period of January 1 to May 31, 2017 were not just and reasonable. As OEB staff

[6] Notice of Motion, para. 25.

understands it, OPG's argument amounts to saying that the OEB, having (a) declared rates interim as of January 1, 2017, (b) approved a formulaic adjustment factor for the hydroelectric payment amounts, and (c) approved the nuclear revenue requirement for 2017, was legally required to accept January 1, 2017 as the effective date of the final payment amounts order.

OEB staff disagrees with this argument. OPG made essentially the same argument in the last payment amounts case and it was rejected by the OEB in its decision on the main case. It is therefore worth quoting from that decision at some length:

> The Board does not accept that there is a legal requirement that it set the effective date of its final orders to the date that rates were declared interim. OPG's view is not supported by the wording of the legislation, the case law, nor the Board's practice.
>
> The Board's power to set interim rates derives from section 21(7) of the Act: "[t]he Board may make interim orders pending the final disposition of a matter before it." As the use of the word "may" reveals, there is no requirement that the Board issue interim rate orders at all. As the decision to issue an interim order is discretionary, it follows that any decision to draw the effective date of the final payments order back to the date of the interim order is also discretionary. Nothing in the legislation suggests that the issuance of an interim order in any way ties the Board's hands with respect to the effective date of the final order. If the Legislature had intended that the Board be required to match the effective date of an order to the date interim rates were declared, it would have written that into the legislation. This was not done, and the Legislature has instead left the matter to the Board's discretion.
>
> The Bell decision referred to by OPG establishes that interim rate orders give the Board the *ability* to retrospectively alter rates (or in this case payment amounts) back to the date the interim order was issued.[7] As the Board stated in its decision in EB-2005-0361, nowhere does Bell state, or even suggest, that the Board is *required* to do so. Instead, the language of Bell suggests a permissive or discretionary approach. The Court stated: "It is inherent in the nature of interim orders that their effect as well as any discrepancy between the interim order and the final order may be reviewed and remedied by the final order." The Bell decision does not support OPG's conclusion that the Board is legally required to align the effective date to the interim date, and OPG has not pointed to any other cases which support its position.
>
> The Board issued the interim payment amounts order on December 17, 2013 at OPG's request and without any input from any other party. The Board was clear that by declaring rates interim it was not committing itself to ultimately setting the effective date of the final order to match the interim date: "This determination [i.e. the order declaring payment amounts interim] is made without prejudice to the Board's ultimate decision on OPG's application, and should not be construed as predictive, in any way whatsoever, of the Board's final determination with regards to the effective date for OPG's payment amounts arising from this application."
>
> Although OPG questioned in final argument whether the Board even has the ability to set an effective date to some date other than the interim date, it made no comment on this point when it made its request for interim payment amounts, nor when the interim order was issued. Given that the sentence quoted above is commonly included in the Board's interim orders, the Board is surprised to hear for the first time in OPG's final argument that OPG feels the Board lacks this authority. The very reason that the Board generally issues interim orders without seeking

[7] This case – *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission),* [1989] 1 S.C.R. 1722 – is cited in OPG's Notice of Motion (MRBA, Tab 19).

> submissions from parties is that parties will be given the opportunity to ask questions and make submissions about the effective date of the final order throughout the hearing process. If the Board is legally required to match the effective date to the interim date, as OPG argues, then the issuance of the interim order without process arguably represents a breach of the "right to be heard" principle. In the current case, ratepayer groups would be responsible for hundreds of millions of dollars in costs relating to the "interim" period without being afforded any opportunity for comment at all.
>
> OPG argues that the Board has an obligation to ensure that rates are just and reasonable at all times. As a general statement, this is true. However, the Board's power to consider and set what makes a just and reasonable rate is very broad and allows significant flexibility. The obligation to ensure that rates are always just and reasonable does not mean that the Board must examine and adjust a utility's rates on a constant basis. Most utility's *(sic)* rates are set on a forecast basis, for example, and invariably these forecasts turn out to be inaccurate to some extent. Absent extraordinary circumstances, the Board does not intervene to adjust rates simply because actual costs or revenues are different from what was forecast – even though the Board has the power to do so. In other words, there is a measure of "wiggle room" in a just and reasonable rate. Just and reasonable rates can fall within a range, and there is no defined line past which rates immediately become "unreasonable". Indeed, under incentive regulation rates are deliberately de-coupled from a utility's actual costs. The Board therefore does not agree with OPG's argument that the requirement to ensure just and reasonable rates at all times leads to an automatic requirement to match the effective date with the date interim rates were set.[8]

OEB staff notes that this aspect of the OEB's decision in respect of the 2014-2015 payment amounts was not challenged by OPG.[9] OEB staff submits that OPG has not provided any convincing reasons to depart from the above finding that the OEB has the authority and discretion to establish an effective date of the final payment amounts that is later than the first day of the interim period.

OEB staff would highlight the following points arising out of the passage above. First, as the OEB noted, it is clear from the language of section 21(7) of the *Ontario Energy Board Act, 1998*, which gives the OEB the power to make interim orders, that it is a permissive power – the OEB is not actually required to make any interim order at all. Had the OEB chosen not to make an interim order in the EB-2016-0152 case, then the effective date of the order would not even have been an issue, as the OEB would have had no ability to make a retroactive adjustment.

Second, in making the interim order in EB-2016-0152, the OEB informed all parties that its approval of interim payment amounts was "made without prejudice to the OEB's ultimate decision on OPG's application, and should not be construed as predictive, in any way whatsoever, of the OEB's final determination with regards to the effective date for OPG's payment amounts arising from this application,"[10] just as it had in the EB-2013-0321 case. This is in fact standard language that the OEB uses when making an

[8] EB-2013-0321, Decision with Reasons, November 20, 2014, pages 132-132 (emphasis added by OEB; footnotes omitted) (MRBA, Tab 15).
[9] OPG filed a motion to review and vary certain aspects of the EB-2013-0321 decision, but the effective date was not one of them (EB-2014-0369).
[10] EB-2016-0152, Interim Payment Amounts Order, December 8, 2016, p. 1 (MRBA, Tab 16).

interim rate order. What this language confirms is that, in this case, as in other cases where an interim order has been issued, the OEB certainly did not consider that it was in any way fettering its discretion to approve an effective date for the final order, nor that it lacked such discretion to begin with.

Third, the finding that "the obligation to ensure that rates are always just and reasonable does not mean that the Board must examine and adjust a utility's rates on a constant basis" refutes OPG's argument that the stub period payment amounts were not just and reasonable because they did not reflect the significant drop in production resulting from the shutdown of Darlington Unit 2 for refurbishment in October 2016. Indeed OPG's actual payment amounts for all of 2016 were based on costs for 2014-2015 (as established by the OEB in EB-2013-0321). Given the size of the revenue deficiency that OPG reported for 2017 as part of the EB-2016-0152 proceeding, it is clear that by 2016 its approved payment amounts were no longer covering its actual costs – the revenue deficiency for 2017 did not develop overnight from December 31, 2016 to January 1, 2017. Yet OPG does not suggest that payment amounts were not just and reasonable prior to that date, or that the OEB should have intervened earlier in 2016 to ensure that payment amounts were reasonable "at all times". This is not simply a matter of the OEB not having the ability to retroactively adjust OPG's payment amounts after the fact – the OEB has the power to commence a proceeding on its own motion and if payment amounts are meant to always be in perfect harmony with prudent costs then OPG's argument would mean that it was required to do so.

Fourth, if OPG's argument were accepted, it would impair the OEB's ability in other cases to set an effective date other than the date interim rates came into effect, even where the final rate order was delayed only because the application was late or deficient. Applicants must bear some responsibility for ensuring that their applications are filed in a manner that allows for a final decision prior to the commencement of their proposed rate adjustment. Although an interim order removes the legal prohibition against retroactive rate adjustments, it is still preferable that such adjustments be avoided. The problems of intergenerational inequity and, to a lesser extent, rate finality still exist when rates are amended retroactively through an effective date that is prior to the date of the final order. Most ordinary ratepayers do not have any meaningful understanding of what an interim rate is, and the fact that it can result in after the fact adjustments to their rates. Even where ratepayers have actual knowledge that rates are subject to change, that does not completely alleviate the concerns about increasing rates retroactively. The Alberta Court of Appeal recognized this in *ATCO v. Alberta (Utilities Commission)*, where it stated: "concerns about predictability and unfairness that underlie the prohibitions against retroactive and retrospective ratemaking become less significant" where the affected parties are aware that the rates were subject to change.[11]

[11] *Atco Gas and Pipelines Ltd. v. Alberta (Utilities Commission),* 2014 ABCA 28, at para. 56 (MRBA, Tab 23) (citing *Calgary (City) v. Alberta (Energy and Utilities Board),* 2010 ABCA 132) (MRBA, Tab 24), (emphasis added).

In the EB-2013-0321 decision, the OEB observed that it normally does not make retroactive orders, even where an interim order would allow it to do so, "where utilities have not filed their applications in time to have rates in place prior to the effective date".[12] In that case, the OEB found that "the reasons this proceeding could not be completed by January 1, 2014 were almost entirely within OPG's control."[13]

OEB staff would add that the OEB's reluctance to cure late or deficient applications through the use of retroactive orders is well known to utilities and other stakeholders. Indeed it is noteworthy that when OPG applied for 2011-2012 payment amounts, it requested an effective date of March 1, 2011, two months after the start of the test period, "because of the timing of the application".[14] The application in that case was filed on May 26 in the year before the test period.

OEB staff submits that the approach articulated by the OEB in the EB-2013-0321 decision makes good sense. Where unreasonable delays in processing an application are caused by the applicant, it would be unfair to impose the consequences on ratepayers through large catch-up rate adjustments. One can imagine an extreme case where an applicant, after having been granted interim rates, withdrew its application for new rates, or brazenly refused to comply with the OEB's procedural orders. Surely the interim order should not automatically shield the applicant from its own incompetence or wrongdoing.

The OEB is therefore well within its mandate to carefully consider whether retroactive adjustments are warranted, and it is perfectly legitimate for it to consider whether the applicant gave it enough time to process the application and reach a decision prior to the proposed commencement date of new rates.

That is the question we turn to next.

The timeliness of OPG's application

In the Decision, the OEB explained:

> It is unrealistic of OPG to expect that a final decision would be rendered and a payment amounts order processed in time for January 1, 2017 payment amounts. OPG filed a complicated application which was comprised of a Custom IR application for its nuclear facilities, an IRM application for its regulated hydroelectric facilities, a review of DRP and

[12] EB-2013-0321, Decision with Reasons, November 20, 2014, p. 135 (MRBA, Tab 15).
[13] EB-2013-0321, Decision with Reasons, November 20, 2014, p. 136 (MRBA, Tab 15).
[14] EB-2010-0008, OPG Application (Exhibit A1-3-1). OPG explained: "The revenue requirement requested in this application is based on forecast costs from January 1, 2011 through December 31, 2012. However, OPG is not requesting to make the new payment amounts effective until March 1, 2011 because of the timing of the application. As a result, OPG is foregoing recovery of the forecast increase in costs for January and February of 2011." The OEB approved the March 1 effective date.

> consideration of PEO. OPG should have known that it would take more than seven months for the OEB to consider the application, render a decision and finalize a payment amounts order.[15]

OPG says in its Notice of Motion that this amounted to applying "a standard for reviewing and processing OPG payment amounts applications that has never been articulated in any previous decision or policy document."[16] OPG elaborates: "In the EB-2013-0321 decision, the OEB indicates that its standard performance metric of 235 days from application to decision for applications with oral hearings applies to OPG. Given this standard and the May 27, 2016 application filing date, OPG could reasonably have expected a decision in January 2017 with an effective date of January 1, 2017."[17] In its submission in support of the motion, OPG adds that it had a "legitimate expectation" that the metric would be followed, and that the OEB had a corresponding duty of procedural fairness to act consistently with that expectation.

OEB staff has some difficulty with this argument. What the EB-2013-0321 decision actually said was:

> The Board must control its regulatory process. The Board hears a large number of cases throughout the year and must plan its resources accordingly to ensure cases are completed and decisions are rendered. In cases where utilities have not filed their applications in time to have rates in place prior to the effective date, the Board's practice has typically been to not allow the utility to retrospectively recover the amounts from the period where the interim order was in effect. All applicants are aware of the Board's metrics. The process for an oral hearing is expected to take 235 days from the filing of the application to the issuance of the final decision, and 280 days until the issuance of the rate order.[18]

The OEB's performance metrics for hearings are not set out in legislation or the OEB's Rules. They are merely a guide to participants in the OEB process and do not establish any right of reliance for applicants. Indeed, it is telling that in the EB-2013-0321 decision, the OEB did not determine that OPG was entitled to an effective date that was 280 days from the date of the actual filing. The actual effective date approved in that case was November 1, 2014, 331 days after the complete application was filed on December 5, 2016.

Moreover, as OPG acknowledges in its Notice of Motion, every previous payment amounts case took longer than the metric. And this application was complex, spanning a five-year test period and involving separate rate frameworks for the nuclear and hydroelectric facilities, and including the review of the multi-billion dollar "legacy project", the Darlington Refurbishment Program. This undermines OPG's argument that it had a legitimate expectation that the metric would be achieved.

If OPG truly expected that the OEB's regular metric would apply at the time it filed its application, that expectation was soon dispelled when the OEB issued Procedural Order

[15] EB-2016-0152, Decision and Order, December 28, 2017, p. 158 (MRBA, Tab 1).
[16] Notice of Motion, para. 21.
[17] Notice of Motion, para. 22 (footnotes omitted).
[18] EB-2013-0321, Decision with Reasons, November 20, 2014, page 135 (footnotes omitted) (MRBA, Tab 15).

No. 1 on August 12, 2016, which set February 21, 2017 as the first day of the oral hearing and contemplated that the hearing might run into April.[19] OPG did not complain at the time that this schedule amounted to a breach of the OEB's duty of procedural fairness.

This case took longer than any previous payment amounts case. But the OEB recognized that this was not entirely within OPG's control. Had the hearing panel determined that OPG was solely responsible for the timing of the final payment amounts order, it likely would have approved an effective date after the order; that is, with no retroactive adjustment at all. Instead, the panel determined that a purely prospective order would not be fair to OPG:

> It is the common practice of the OEB to establish new rates and payment amounts prospectively. However, as this has been a complicated case involving a lengthy submission and decision writing process, the OEB has decided it will not make payment amounts effective after this Decision is rendered.[20]

The panel elaborated: "In arriving at the June 1, 2017 effective date, the OEB has attempted to balance the revenue requirement needs of OPG and rate certainty expected by ratepayers."[21]

In OEB staff's view, this was not an error. The panel recognized that, although it had reserved for itself the power in this case to make a retroactive order, retroactivity is generally to be avoided, not least because it offends the principle of rate certainty for consumers. Writing nearly 12 months after OPG's proposed effective date, the panel's solution was a pragmatic compromise: to make payment amounts retroactive, but not all the way back to January 1.

To reiterate, OEB staff took the position in its submissions in EB-2016-0152 that January 1 would have been appropriate. However, the selection of an effective date is a discretionary exercise on which reasonable people may disagree. The panel's selection of June 1 was supported with reasons, and those reasons disclose no legal or factual error. OEB staff therefore cannot say it was unreasonable.

OPG correctly notes in its submission that audited financial statements are required under the OEB's filing guidelines for OPG.OEB staff notes that the filing guidelines clearly contemplate that the statements may be provided by way of an update: "Audited OPG financial statements should be provided as soon as they are available. If the statements are not available at the time of filing, OPG should provide these as an

[19] Procedural Order No. 1 (MRBA, Tab 6).
[20] Decision, p. 159 (MRBA, Tab 1).
[21] Decision, p. 159 (MRBA, Tab 1).

update."[22] Filing the application earlier, knowing that a substantial update would be required, was certainly an option for OPG.

Closing

In summary, OEB staff's position in the main case was that OPG's request for a January 1, 2017 effective date was reasonable. However, in OEB staff's view that was not the only date within the range of reasonable outcomes. The hearing panel's preference for June 1, 2017 is also within the range. It was supported with cogent reasons and did not result from an error of law or fact. OEB staff therefore submits that there is no need for this reviewing panel to vary the Decision.

All of which is respectfully submitted.

[22] *Filing Guidelines for Ontario Power Generation Inc. – Setting Payment Amounts for Prescribed Generation Facilities,* revised November 11, 2011, p. 9 (MRBA, Tab 4).