ONTARIO POWER GENERATION

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Ms. Christine E. Long
Registrar
Ontario Energy Board
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February 11th, 2020

Dear Ms. Long:

RE: EB-2020-0133 – Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency – OPG Reply Comments

OPG has had the opportunity to review the submissions prepared by stakeholders relating to the OEB staff's Proposal for the treatment of the Deferral Account for Impacts Arising from the COVID-19 Emergency (the "Account"). OPG submits the following comments on these submissions for consideration by the OEB.

1. **Principle of Necessity**

OPG has reviewed the submissions made in this consultation on the introduction of the principle of necessity and shares some of the caution on the broader use of this principle as raised by the Society of United Professionals and the OEA on behalf of the CLD+. OPG agrees that it is not desirable to establish policy based on a new and untested regulatory principle.

The OEB has a set of well defined and established regulatory principles to rely on, including[1]:

- fairness
- minimizing intergenerational inequity
- minimizing rate volatility
- appropriate allocation of risk
- transparency

[1] General regulatory principles have similarly been referred to in EB-2015-0040 Report of the Ontario Energy Board, Regulatory Treatment of Pension and Other Post-employment Benefits (OPEBs) Costs, dated September 14, 2017, page 3.

- providing value to customers

Based on this comprehensive set of well established principles, OPG agrees with the OEA that the OEB has the flexibility to arrive at a just and reasonable outcome in this consultation without the introduction of new regulatory principles.

The principle of necessity has not been identified or used in past OEB proceedings. OPG does not believe that it would be appropriate to establish a new and untested regulatory principle in response to a once in a century 'black swan' event, such as the COVID-19 pandemic. In OPG's view, a new regulatory principle, which could have the potentially unintended impact of being referenced or applied in subsequent proceedings, should only be adopted upon a more in-depth and wide ranging review and consideration, which is beyond the scope of this consultation.

2. Application of Savings

SEC has proposed that, in addition to actual achieved cost savings, the Account should record theoretical cost savings "that should have been achieved."[2] While OPG appreciates and supports an overall goal of demonstrating that utilities seeking recovery acted prudently in incurring costs to respond to the pandemic, it opposes the proposed approach on the basis that it would be a wholly unreasonable and impractical standard for recording amounts into a deferral account and would fundamentally alter the Account's intent.

OPG does not believe it is appropriate to require utilities to undertake an exercise to identify, evaluate and quantify an exhaustive list of hypothetical business actions that could have or should have been undertaken (and to also presumably enumerate why these actions were not taken) in response to a once-in-a-century pandemic emergency. Such an approach would require utilities and ultimately the OEB to speculate on a potentially wide spectrum of possible outcomes for various "what if" scenarios, all while guarding against inappropriate use of hindsight. In OPG's view, there is no reasonable (or efficient) basis to conduct such a comparative assessment to enable quantification of the theoretical amounts to be recorded in the Account. Instead, utilities should bear a general onus of demonstrating, based on their specific circumstances, that the net impacts being sought for recovery resulted from prudent actions. OPG believes that this onus, coupled with some of the other proposed mechanisms such as a means test, would provide an appropriate, practical approach to establish parameters for the Account.

Importantly, the intent of the Account is to provide financial relief, where needed, to utilities because of the COVID-19 pandemic. It is not, however, meant to be a mechanism to financially assess and penalize utilities for their management decisions in response to this unprecedented emergency, as SEC's proposal suggests. If this were to be the case, utilities would be expected to assess the financial impact of every decision they did not make, in an effort to return to customers savings they did not receive. Such an approach would distort the Account's purpose and effectively amount to a broad, retroactive regulatory review of existing regulated rates. In recognition of just and reasonable final rates that remain in place

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[2] SEC Reply Comments, EB-2020-0133, January 25, 2020 P. 7

and in keeping with original basis for establishing the Account, SEC's proposal should be rejected by the OEB.

3. OPG-Specific Proposals

SEC and CCC have proposed that the OEB's final policy on the Account should not apply to OPG. Instead, SEC proposes an approach that would effectively result in an OPG specific account.

Specifically, SEC proposes that OPG record all costs/savings in the Account without any pre-established rules regarding the basis on which the amounts would be settled with customers. SEC further proposes that an OPG-specific basis for disposition be established as part of OPG's current 2022-2026 payment amounts proceeding (EB-2020-0290), considering output and cost forecasts in that application. Essentially, based on SEC's proposal, 2020 and 2021 costs and savings would be assessed relative to future IR term period costs and savings. OPG is concerned with this approach for several reasons.

First, an OPG-specific account would be inconsistent with the intended industry-wide application of the Deferral Account and overall approach to this consultation. As OPG noted in its submission of June 11, 2020, OPG believes that the consultation should focus on the appropriate common principles and criteria that can be used by the industry to assess the net cost impacts, and the circumstances surrounding them, that are eligible for inclusion and recovery through the account. OPG does not believe it is practical or appropriate to address, in this consultation, unique circumstances that each individual utility is facing. Customizing account parameters for particular utilities, but not others, would be selective.

Second, SEC's proposal is not consistent with the intended purpose of the Account, which the OEB staff notes "was not established as an industry-wide variance for all pandemic-related impacts, but as a mechanism for utilities to track those impacts in the event that they qualify for relief."[3] As OPG noted in its submissions of January 25, 2020, to the extent that the Account can provide relief to utilities that have to date experienced impacts supporting the need for such relief, it should do so; however, it should not serve as a true up for any and all pandemic-related impacts that have or may arise. The purpose of the Account is not to return a net gain to consumers, whether a result of net savings or increases in utility revenues (in OPG's case arising from nuclear output). To do so would be a significant expansion of the original Account scope. Thus, OPG continues to support the OEB staff Proposal that only utilities that intend to submit a claim for recovery of balances in the Account should be required to continue to track impacts associated with the Account.

Third, the SEC proposal fails to acknowledge that OPG's 2020 and 2021 payment amounts are subject to a final Payment Amounts Order and remain just and reasonable. In particular, in expanding the Account's scope well beyond its intended purpose, SEC's proposal would turn the Account into a mechanism for retroactive rate adjustment notwithstanding that the final payment amounts remain just and reasonable. As proposed by SEC, the Account could be used to retroactively review OPG's cost and production forecasts notwithstanding that OPG may not seek relief and the period in question is the

[3] OEB Staff Proposal, EB-2020-0133, December 16, 2020, P. 17

subject of a final Payment Amounts Order. Similarly, SEC suggests that even though the financial consequences of 2020 and 2021 production levels are incurred during the term of a final rate order, they could, as part of the Account's consideration, be taken into account in OPG's current Payment Amounts Application. As the proposal is premised on these retroactive rate making considerations, it would be inappropriate for the OEB to adopt it.

SEC's proposal is also is inconsistent with the OEB's examination of OPG's regulated earnings over the 2017-2021 rate term, including creation of a variance account in EB-2020-0248 to record earnings in 2021 above the 300 basis points over the approved ROE. In doing so, the OEB noted that earnings for 2019 and 2020 are related to a past period and will not be subject to the 2021 Overearnings Variance Account. The OEB also indicated that since OPG's approved revenue requirement (including the regulatory ROE) was determined on an annual basis, the OEB did not find it appropriate to record any potential overearnings that may arise in the final months of 2020. SEC's proposal would undermine the OEB's approach and findings to reviewing OPG's earnings set out in EB-2020-0248.

Finally, as a practical matter, OPG notes that the discussion of the pandemic-related impacts on OPG's nuclear production has thus far focused on the deferral of the refurbishment outage on Unit 3 of the Darlington nuclear generating station (Darlington GS) during 2020, but has not considered that OPG has been required to add a new planned outage for Unit 4 of the Darlington GS during 2021. As noted in OPG's EB-2020-0290 application, this outage is required to support Unit 4 operation until the start of its revised refurbishment start date under the modified refurbishment schedule resulting from the Unit 3 deferral.[4] Neither the reduced generation nor incremental outage OM&A cost impact of this three-month Unit 4 outage is reflected in OPG's approved nuclear payment amount for 2021. The OM&A costs for the outage are estimated at approximately $100M.

Thank you for the opportunity to provide these comments. If there are any questions regarding these submissions, please do not hesitate to reach out to me.

Kind Regards,

Lindsey Arseneau-Mackinnon

Lindsey Arseneau-MacKinnon

CC:

B. MacDonald, Ontario Power Generation Inc. (by e-mail)

A. Collier, Ontario Power Generation Inc. (by e-mail)

[4] EB-2020-0290, Ex. E2-1-1, p. 5 and E2-1-2, p. 6.