



Ontario Power Generation Inc.

**Application for payment amounts for the period from
January 1, 2022 to December 31, 2026**

**PROCEDURAL ORDER NO. 2 AND DECISION ON MOTION
April 29, 2021**

Ontario Power Generation Inc. (OPG) filed an application dated December 31, 2020, with the Ontario Energy Board (OEB) under section 78.1 of the *Ontario Energy Board Act, 1998* seeking approval for changes in payment amounts for the output of its nuclear generating facilities in each of the five years beginning January 1, 2022 and ending on December 31, 2026. OPG also requested approval to maintain, with no change, the base payment amount it charges for the output of its regulated hydroelectric generating facilities at the payment amount in effect December 31, 2021 for the period from January 1, 2022 to December 31, 2026.

Interrogatory Refusals

Pursuant to Procedural Order No. 1, OPG provided responses to most interrogatories filed by intervenors and OEB staff on April 19, 2021.¹ The cover letter also contained two indexes: (1) an index of interrogatories for which information was unavailable; and (2) an index listing interrogatories to which OPG did not provide responses. Intervenors and OEB staff filed letters with the OEB identifying interrogatories, for which no responses were provided, and wished to dispute at the April 23, 2021 interrogatory refusals hearing.

On April 21, 2021, the OEB issued a letter stating that the forum of the interrogatory refusals hearing was changed to an interrogatory refusals day. In Procedural Order No. 1, the interrogatory refusals hearing was established to be transcribed and heard by the OEB panel. However, as OPG did not provide responses to over 65 interrogatories, it was determined that the OEB panel would not “hear arguments” on disputed interrogatories. Instead, the proceeding was changed to a discussion between OPG,

¹ In its cover letter accompanying the interrogatory responses, OPG noted that it would file the remaining interrogatory responses by April 26, 2021, which was later revised to April 28, 2021.

intervenors and OEB staff, in the absence of the OEB panel and without a transcribed record. The discussion was intended to provide parties with the forum to resolve interrogatories in dispute.

OPG filed an updated index list on April 26, 2021. The updated index list identified disputed interrogatories that had been resolved, interrogatories where some level of progress had been made, and interrogatories which OPG continued to refuse.

Findings

The OEB acknowledges the progress made by OPG, intervenors and OEB staff during the interrogatory refusals day on April 23, 2021. The updated list of interrogatory refusals and unavailable information prepared by OPG indicating those interrogatories that have been resolved, withdrawn or rephrased is particularly helpful to the OEB in focusing on the remaining disputes.

The OEB is establishing the next steps for intervenors and OEB staff who intend to pursue responses to their interrogatories by filing a motion. In addition, the OEB is deciding the motion filed by Environmental Defence on April 27, 2021.

Next Steps

A Motions Day is scheduled for May 21, 2021. On Motions Day, the OEB intends to hear oral motions regarding interrogatory or undertakings at issue. The objective is to avoid a lengthy written process. In the EB-2016-0152 proceeding, the OEB established a written and oral motions process to hear 13 issues, resulting in the filing of motions, letters of support, submissions, compendiums, one hearing day and two OEB decisions.

To prepare for an oral process in this proceeding, intervenors and OEB staff who intend to participate on Motions Day shall file a letter with the OEB by May 14, 2021 indicating:

- The interrogatory, technical conference undertaking or other matters at issue
- References (or links) to any supporting documentation
- One paragraph explaining the reasons for wanting the information

Environmental Defence Motion

On April 27, 2021, Environmental Defence filed a letter labelled “refusals motion” with the OEB. The letter requested that OPG be required to provide the Independent Electricity System Operator’s (IESO) and OPG’s cost-benefit analyses for Pickering

Generating Station's life extension to 2025 – including the underlying assumptions. Environmental Defence noted that release of this information would resolve three of its disputed interrogatory refusals² and could be released without prejudice to any arguments OPG wishes to make in this proceeding. Environmental Defence noted that such information could be provided before the Technical Conference.

In its reasoning, Environmental Defence referenced information provided in OPG's previous payment amounts proceeding (2017-2021 Payment Amounts Proceeding)³. Specifically, reference was made to how OPG included the IESO's analysis associated with Pickering Generating Station's previous life extension. Environmental Defence also stated that the OEB found the IESO's analysis on the previous life extension to be relevant in the 2017-2021 Payment Amounts Proceeding.

In its letter, Environmental Defence also noted how the release of the requested information would assist in the current proceeding. Environmental Defence stated that the information would provide the OEB with context and allow for the assessment of the reasonableness of Pickering Generating Station's extended life OM&A costs, and costs enabling such extension. Reference was also made by Environmental Defence to how Ontario Regulation (O. Reg.) 53/05 does not preclude an assessment of the costs of Pickering Generating Station's operations or require the OEB to accept the need for the life extension as it has for other projects and other costs.

In response to Environmental Defence's letter, OPG filed a letter on April 27, 2021. OPG noted, among other things, that any IESO analysis can only be addressed by the IESO and that such information is irrelevant for the purposes of establishing payment amounts.

Through a response letter, dated April 28, 2021, Environmental Defence stated that OPG can answer questions about the information it provided to the IESO – such as production forecasts – and any conflict between the IESO's and OPG's assumptions.

Findings

Environmental Defence's motion is denied, and the OEB does not require any further submissions on this issue (although the OEB recognizes that OPG filed a response to Environmental Defence's motion, and Environmental Defence filed a response to that letter). The OEB will not order OPG to provide any IESO or OPG cost-benefit analysis

² Environmental Defence interrogatories 10, 13 and 19.

³ EB-2016-0152.

of the Pickering Generating Station life extension, including any underlying assumptions.

In support of its motion, Environmental Defence referenced the EB-2016-0152 decision. In that decision, the OEB found that the IESO-sourced analysis was informative. There were, however, no findings by the OEB based upon the analysis. The decision acknowledged that a large number of factors that needed to be assessed by the IESO and that many underlying system planning considerations were not considered in the proceeding.⁴ Further, the OEB clarified that “generation planning, including the economics related to generation planning, is not within the scope of this payment amounts proceeding.”⁵

The OEB denies the motion on the basis that the request is out of scope for this OPG payment amounts proceeding and would not be helpful to the OEB in its deliberations.

While the OEB accepts that the requested analysis may be important in issues associated with prudent generation system planning, it is not within the scope of the OEB’s authority to review and determine the requisite payments for nuclear generation. The OEB’s role in this proceeding is distinct from the IESO and the OEB is not the system planner. As such, the OEB does not have the mandate or authority to consider or adjudicate on analyses and proposals respecting generating asset mixes for the Ontario electricity market in this proceeding. A cost-benefit analysis of the Pickering Generating Station life extension, generation planning in Ontario, or the economics of generation planning, is out of scope for this payment amounts proceeding. All of the Pickering Generating Station units are prescribed generation facilities under O. Reg. 53/05 for which payment amounts are to be set. This determination is consistent with the OEB’s decision in EB-2016-0152, cited above.

The OEB notes that, the determination of Pickering Generating Station’s costs as a component of OPG’s appropriate nuclear payment amounts for 2022 to 2026 will be considered in this proceeding. In addition, the OEB will review the deferral account approved on an interim basis effective January 1, 2021 to record the revenue requirement impact of changes to nuclear liabilities, and the depreciation and amortization expense resulting from changes in Pickering Generating Station end-of-life dates (the Impact Resulting from Optimization of Pickering Station End-of-Life Dates Deferral Account).

⁴ EB-2016-0152 / Decision with Reasons / December 28, 2017 / p. 64

⁵ *Ibid.*, p. 63.

The OEB is providing a decision on the motion at this time to enable Environmental Defence to plan for the Technical Conference next week.

THE ONTARIO ENERGY BOARD THEREFORE ORDERS THAT:

1. If OEB staff and intervenors wish to participate in the Motions Day, they shall file a letter with the OEB indicating the information sought, references to supporting documentation and a one-paragraph explanation by **May 14, 2021**.

How to File Materials

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2020-0290**, for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://p-pes.ontarioenergyboard.ca/PivotalUX/>.

- Filings should clearly state the sender's name, postal address, telephone number, fax number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at www.oeb.ca/industry.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the web portal can contact registrar@oeb.ca for assistance.

All communications should be directed to the attention of the Registrar at the address below and be received by end of business on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Lawrie Gluck at Lawrie.Gluck@oeb.ca and OEB Counsel, Michael Millar at Michael.Millar@oeb.ca and Ian Richler at Ian.Richler@oeb.ca.

Email: registrar@oeb.ca
Tel: 1-877-632-2727 (Toll free)

DATED at Toronto, **April 29, 2021**

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar