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BY EMAIL

May 14, 2021

Christine E. Long
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
registrar@oeb.ca

Dear Ms. Long:

**Re: Ontario Power Generation Inc. (OPG)
2022-2026 Payment Amounts
OEB Staff Participation in Issues List Hearing and Motions Day
Ontario Energy Board (OEB) File Number: EB-2020-0290**

Procedural Order No. 1 required intervenors and OEB staff to file a letter with the OEB by May 14, 2021 indicating whether they intend to participate in the issues list hearing on May 18, 2021.

Procedural Order No. 2 required intervenors and OEB staff that intend to participate in the motions day on May 21, 2021 to file a letter with the OEB by May 14, 2021 indicating: (1) the interrogatory, technical conference undertaking, or other matter at issue; (2) references (or links) to any supporting documentation; and (3) one paragraph explaining the reasons for wanting the information.

This letter is OEB staff's response to the direction in those two procedural orders. OEB staff intends to participate in both sessions.

Issues List Hearing

OEB staff will participate in the issues list hearing. OEB staff expects to make submissions with respect to two potential issues: (1) what types of revenues fall within

the scope of “other revenues” under issue 11.1, and in particular whether this includes the proceeds from the sale of assets irrespective of whether those assets were included in OPG’s rate base; and (2) whether OPG’s spending on small modular reactors is within scope of this proceeding, recognizing that OPG is not seeking any recovery for these amounts in the test period.

Issue 11.1: Other Revenues

OPG may sell certain assets during, or prior to, the term of the test period. Some of the details surrounding these potential sales are confidential and cannot be discussed in this letter; however OEB staff is exploring ways to discuss these issues at the issues list hearing and as necessary the motions day without needing to go *in camera*.

OPG has recovered its costs associated with these assets through payment amounts at least since the OEB began setting OPG’s payment amounts in 2008.¹ Although the assets may not be in OPG’s rate base, OPG recovers the costs of these assets through asset service fees that form part of its approved payment amounts. Asset service fees appear to recover costs in almost exactly the same manner as would an asset in rate base: OPG recovers depreciation, its cost of capital, O&M expenses, and taxes.²

OPG has refused to answer questions regarding the gain it expects to realize from the potential sale of these assets³, and the quantum of any asset retirement obligations associated with these assets⁴ (which is relevant because these obligations were apparently not recovered from ratepayers through asset service fees, and could therefore be an offset to any gains on the sale of the assets) on the grounds that these questions are not relevant to this proceeding – in other words that this issue is out of scope.

OEB staff believes that this issue is in scope. There is OEB precedent for crediting a portion of the gains on asset sales to ratepayers where the functions for which the asset was being used are simply transferred to a new location. The Divisional Court has also confirmed that the OEB has the power to do this. In the current case, the assets in question do not appear to be truly surplus; and their functions are simply being moved to a new location (which will be paid for by ratepayers). In OEB staff’s view, it is irrelevant whether the assets were in rate base or whether the costs for the asset were recovered from ratepayers through some other mechanism such as asset service fees.

¹ EB-2007-0905 / Exhibit F3 / Tab 3 / Schedule 1 / pp. 4-5.

² F3-02-Staff-264 (part a and Attachment 1).

³ D3-01-Society-007 (parts j and l).

⁴ Confidential Technical Conference Transcript / Day 4 / p. 108; and D3-01-Society-007 (part l).

To be clear, OEB staff has not yet determined what its final submission will be with respect to this issue (assuming it is in scope), and it may or may not ultimately argue that some portion of the proceeds of any sale of the assets should be credited to ratepayers. However, OEB staff is asking that the OEB confirm that this issue falls within the scope of the proceeding and that parties can ask questions and make submissions in this area.

Small Modular Reactors

OPG is spending money in 2020 and 2021 related to the planning and preparation for a small modular reactor (SMR) generating station at the Darlington Site. There were no forecast costs associated with the planning and preparation for the development of an SMR included in OPG's 2017-2021 Payment Amounts proceeding.⁵ OPG is not seeking to recover any of that spending during the test period, however it does plan to record those costs in the Nuclear Development Variance Account (NDVA).

OEB staff agrees with OPG that its expenditures related to SMRs during or before the test period are not an issue in this proceeding, subject to two conditions. OPG must accept that the OEB is not making any determinations in this proceeding with respect to: (1) the prudence of any costs that are placed in the NDVA; and (2) whether the costs related to SMRs that OPG records in the NDVA are actually eligible to be placed in the NDVA.

Motions Hearing

OEB staff's participation in the motions hearing will depend on the OEB's determination of whether other revenues related to the sale of assets is in scope for this proceeding. If the OEB determines that the issue is not in scope, OEB staff will not be bringing any motions. If the OEB determines that the issue is in scope, OEB staff is hopeful that OPG will provide responses to the related disputed interrogatory⁶ and undertaking request⁷, in which case a motion will not be necessary. If OPG does not agree to provide the responses, OEB staff will argue the motion at the motions day based on the grounds described in the section on the issues list hearing above. In addition to the documents referenced above, OEB staff would rely on the following additional documentation: the

⁵ EB-2016-0152.

⁶ D3-01-Society-007 (parts j and l).

⁷ Confidential Technical Conference Transcript / Day 4 / p. 108.

- 4 -

OEB's [decision and order](#) in EB-2007-0680, and the related [decision](#) of the Divisional Court in *Toronto Hydro-Electric System Ltd. v. Ontario Energy Board*.

Any questions relating to this letter should be directed to Lawrie Gluck at Lawrie.Gluck@oeb.ca, copying OEB Counsel, Michael Millar at Michael.Millar@oeb.ca and Ian Richler at Ian.Richler@oeb.ca.

Yours truly,

A handwritten signature in cursive script that reads "Lawrie Gluck".

Lawrie Gluck
Project Advisor, Generation & Transmission

c: All parties to EB-2020-0290