



**Ontario Power Generation Inc.**

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

**DECISION ON ISSUES LIST  
May 20, 2021**

This is a decision by the Ontario Energy Board (OEB) approving an issues list to define the structure and scope of the EB-2020-0290 proceeding.

Ontario Power Generation Inc. (OPG) filed an application dated December 31, 2020, with the OEB under section 78.1 of the *Ontario Energy Board Act, 1998*. OPG's application seeks 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.

Procedural Order No. 1, dated February 17, 2021, made provision for, among other matters, the filing of a proposed issues list. On May 13, 2021, OEB staff filed a letter (May 13 Letter) with the OEB indicating that parties had reached agreement on a partial proposed issues list for the proceeding. Issues for which no agreement was reached were separately identified and pertained to hydroelectric payment amounts, hydroelectric capital plans, other revenues, deferral and variance accounts, and small modular reactor (SMR)-related costs.

The OEB held an issues list hearing on May 18, 2021 to review the May 13 Letter. The issues list hearing provided parties<sup>1</sup> with the opportunity to make submissions on issues for which no agreement was reached.

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<sup>1</sup> Parties in attendance included: OPG, OEB staff, Association of Major Power Consumers in Ontario (AMPCO), Consumers Council of Canada (CCC), Energy Probe Research Foundation (Energy Probe), Environmental Defence Canada Inc. (Environmental Defence), Ontario Association of Physical Plant Administrators (OAPPA), Ontario Sustainable Energy Coalition (OSEA), Quinte Manufacturers

## Proposed Issues for which Agreement was Reached

Attached as Schedule A to the May 13 Letter was a list of the settled issues that parties proposed for this proceeding.

### *Findings*

The OEB approves issues on the partial issues list, as drafted, that were provided in Schedule A to the May 13 Letter. The OEB finds that these issues are appropriate for inclusion in the approved issues list, as they identify relevant issues for the proceeding and are consistent with OPG's application and the OEB's jurisdiction.

## Proposed Issues for which No Agreement was Reached

The OEB has considered all submissions on the issues for which no agreement was reached. The submissions of the parties are referred to, where required, below.

### Hydroelectric Payment Amounts

The May 13 Letter indicated that parties proposed two new issues related to hydroelectric payment amounts be included in the issues list. The two issues are addressed below.

*Proposed Issue 1a: Should the current hydroelectric payment amount be adjusted prior to December 31, 2021?*

Ontario Regulation (O. Reg) 53/05 provides that the first payment amount order for OPG's hydroelectric facilities that is effective on or after January 1, 2022 must set the base hydroelectric payment amount at the same level as it was at on December 31, 2021, and the order must stay in effect until at least December 31, 2026. Several intervenors expressed a desire to be able to test evidence regarding OPG's current hydroelectric payment amount with a view to possibly changing the payment amount prior to December 31, 2021. SEC provided a submission and argued that the inclusion of this issue would allow the OEB to gather and test evidence as to whether OPG's current 2021 hydroelectric payment amount is just and reasonable, considering it would be "frozen" until December 31, 2026.

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Association (QMA), School Energy Coalition (SEC), and Vulnerable Energy Consumers Coalition (VECC).

SEC's submission was supported by CCC, VECC, OSEA, QMA, Energy Probe, OAPPA, AMPCO, and Environmental Defence.

In its submission, SEC estimated that, based on the 2019 annual reporting and record-keeping requirement (RRR)-type filing, the 2019 return on equity (ROE) for OPG's hydroelectric business is 11.08% or 192 basis points above the OEB-approved ROE of 9.16% for OPG's regulated businesses (i.e., nuclear and hydroelectric combined). Based on OPG's financial statements, SEC also provided a "back-of-envelope" estimate for OPG's 2020 ROE for the hydroelectric business of 12.44% or 328 basis points above the OEB-approved OPG rate of 9.16% (which is above the 300 basis point threshold that triggers an OEB review under the existing framework). As such, SEC submitted that there is a possibility that the 2021 hydroelectric payment amount may not be just and reasonable and that parties should be allowed to examine this issue in the proceeding. SEC also requested that OPG provide its 2020 RRR-type filing by May 31, 2021, instead of July 31, 2021, to inform the proceeding of any possible hydroelectric-specific overearnings experienced in 2020.

OPG argued against the inclusion of this issue and the submission made by SEC. OPG highlighted that the hydroelectric payment amount formula was set in OPG's previous payment amounts application (2017-2021 Payment Amounts Proceeding),<sup>2</sup> with annual updates issued by the OEB – as recent as December 2020<sup>3</sup>. As such, inclusion of the issue in this proceeding, as stated by OPG, would be a "collateral attack" against the December 2020 hydroelectric payment amount order and the rate framework established in the 2017-2021 Payment Amounts Proceeding. OPG further stated that it does not have a hydroelectric ROE or nuclear ROE. Instead, there is only an ROE for the regulated business as a whole.

### **Findings**

The OEB will not include Issue 1a in the approved issues list.

The OEB has a responsibility to ensure that payment amounts are just and reasonable under section 78.1 of the *Ontario Energy Board Act, 1998*. The OEB recently reviewed and approved OPG's 2021 payment amount for the hydroelectric business in December 2020. Moreover, prior to issuing that order for 2021 hydroelectric payment amount, the OEB commenced a "regulatory review" of OPG's 2021 payment amounts generally on November 9, 2020.<sup>4</sup> The OEB explained that, in response to OPG's significant

<sup>2</sup> EB-2016-0152 / Decision and Order / December 28, 2017.

<sup>3</sup> EB-2020-0210 / Decision and Payment Amounts Order / December 3, 2020.

<sup>4</sup> EB-2020-0248 / Notice of Proceeding and Accounting Order / November 9, 2020.

overearnings in 2019, it was ordering OPG to establish a variance account to record earnings achieved in 2021 that are more than 300 basis points over the OEB-approved ROE (the 2021 Overearnings Variance Account), with disposition if any to be determined after a hearing. Through this mechanism, OPG's 2021 payment amounts for both hydroelectric and nuclear are subject to change in the event of actual overearnings in 2021 (though not the "base" hydroelectric payment amount that will be frozen for five years).

SEC questioned whether the government, with its regulation, intended to "bake into rates" excess earning for hydroelectric generation for the next five years.<sup>5</sup> The OEB finds that to the extent that OPG's hydroelectric payment amounts result in excess earnings, there are other mechanisms that can be explored as part of the current proceeding to address any concerns related to potential overearnings within the proposed 2022 to 2026 period. For instance, there was some discussion at the issues list hearing of an earnings sharing mechanism for the entire regulated business (nuclear and hydroelectric), or an overearnings variance account like the one that is currently in place for 2021. OPG did not suggest that the exploration of such tools would be out of scope in this proceeding. The OEB wishes to make it clear, without intending to signal either support or skepticism of such mechanisms, that they are in scope. To that effect, the OEB has decided to add Issue 2.2 under Rate Framework.

*New Issue 2.2: Is it appropriate to establish an earnings sharing mechanism or similar type of mechanism for the 2022 to 2026 period?*

In addition to the concerns discussed above, adding a new issue to get at the question of whether the 2021 hydroelectric payment amount remains just and reasonable (in effect whether there should be a hydroelectric rebasing) is problematic at this stage of the proceeding; there are other mechanisms for addressing any potential overearnings that are more appropriately considered.

*Proposed Issue 1b: Is the operation by OPG of the regulated hydroelectric facilities consistent with optimal use of the assets, minimization of Surplus Baseload Generation, and maximization of value for customers? Are any adjustments to the Hydroelectric Incentive Mechanism required to incent greater optimization of hydroelectric assets?*

Environmental Defence provided a submission for the inclusion of this issue, which was supported by CCC, OSEA and SEC. As part of its submission, Environmental Defence referenced a previous OPG payment amounts decision that directed OPG to optimize the use of its Pump Generating Station to limit Surplus Baseload Generation (SBG)-

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<sup>5</sup> Issues List Hearing Transcript / p. 19

related impacts on ratepayers.<sup>6</sup> Environmental Defence also noted that OPG filed an SBG study on the record of the current proceeding. Environmental Defence indicated that the OEB's previous decisions and orders provide justification for the inclusion of the issue in this proceeding.

VECC and Energy Probe both submitted that a review of OPG's SBG practices should be in scope for the proceeding, but argued that the issue appears to be covered as part of the already settled issues list. VECC submitted that it was not clear as to what is new in the proposed Issue 1b that is not addressed under Issue 13.2,<sup>7</sup> related to deferral and variance accounts (DVA) which had been agreed to by parties. Although the base hydroelectric payment amounts will be frozen, OPG seeks to dispose of certain hydroelectric DVAs during the test period. Energy Probe submitted that Issue 13.2 should, and does, address the matter outlined in the proposed Issue 1b.

OPG also submitted that the proposed issue has elements that could be subsumed in Issue 13.2, as it proposed to dispose of the balance recorded in the Hydroelectric Surplus Baseload Generation Variance Account (SBGVA) in this proceeding. OPG raised a concern that the wording of the proposed issue was too broad and would be used as a vehicle to explore SBG in general, which it believes is not relevant to the proceeding. OPG stated that SBG is a system-wide result and is driven by a number of integrated factors in the Independent Electricity System Operator (IESO)-controlled grid. As such, OPG's hydroelectric assets do not necessarily control SBG, but are expected to respond to SBG.

The second aspect of proposed Issue 1b related to OPG's Hydroelectric Incentive Mechanism (HIM). SEC and Environmental Defence noted that O. Reg 53/05 specifically allows for changes to the HIM during the period that the base hydroelectric payment amounts are frozen.

OPG argued that any adjustments to the HIM should await a future OPG application, which is expected to be filed once the details of the IESO's Market Renewal Program (and how it may impact OPG) are better known.

### ***Findings***

The OEB will not include Issue 1b in the approved issues list. The OEB finds that Issue 13.2 is sufficient to address OPG's proposed disposition of the 2018 and 2019 SBGVA

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<sup>6</sup> EB-2010-0008 / Decision with Reasons / March 10, 2011 / p. 147.

<sup>7</sup> Issue 13.2 states: "Are the balances for recovery and the proposed disposition amounts in each of the deferral and variance accounts related to OPG's nuclear and regulated hydroelectric assets appropriate?"

balance of \$208 million. Issue 13.2 as stated will enable parties to assess the prudence of the amounts recorded in the SBGVA in the context of the OEB's EB-2010-0008 decision.

The OEB accepts OPG's explanation that the IESO's Market Renewal Program may affect OPG's HIM. The OEB notes that O. Reg 53/05 does not restrict the OEB's ability to review the HIM during the hydroelectric payment amount freeze, and the EB-2018-0243 decision required OPG to file a SBG Study in the current proceeding. However, the OEB has decided to defer consideration of both the SBG Study<sup>8</sup> and HIM, to be concurrent with its consideration of OPG's forthcoming Market Renewal Program application.

The OEB agrees with intervenors that SBG and the HIM are important issues, yet the OEB expects it would be more efficient to address these issues concurrent with any future review of a Market Renewal Program-related application by OPG, to avoid any potential duplication.

### Other Revenues

As outlined in the May 13 Letter, no change was proposed to the issues list language for Other Revenues (Issue 11). However, a request was made for a determination on whether the following issue is in scope for the proceeding.

*Proposed Issue 2a: What is the appropriate ratemaking treatment of gains on sale of assets for which a portion of the costs are recovered through asset service fees?*

OEB staff believed the matter to be subsumed in Issue 11.1 while OPG did not. Counsel to OPG also noted discussions it had with counsel to OEB staff about addressing the matter at the motions hearing, scheduled for May 21, 2021. Both OPG and OEB staff agreed that addressing the matter at the motions hearing was acceptable. No parties expressed opposition to this proposed approach.

### **Findings**

The OEB will maintain Issue 11.1 regarding other revenues as proposed. The OEB will determine the scope of Issue 11.1 after considering submissions from the parties at the motions hearing, scheduled on May 21, 2021.

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<sup>8</sup> To the extent that the SBG Study is relevant to OPG's proposed disposition of the balance recorded in the SBGVA, the SBG Study is in scope for the current proceeding.

### Deferral and Variance Accounts

With respect to deferral and variance accounts, parties were unable to agree as to whether a new issue should be included in the issues list. The proposed issue is as follows.

*Proposed Issue 3a: Is the capital plan for the hydroelectric facilities, including capital that will be recorded in the Capacity Refurbishment Variance Account (CRVA), appropriate?*

SEC provided a submission on this issue, which was supported by Environmental Defence. SEC noted that the OEB normally reviews future capital plans of a utility, in certain rate applications, to gain context on what the utility will undertake in future years. SEC also stated that there may be a significant balance in the CRVA by 2026. As such, reviewing the capital plan for hydroelectric facilities will allow the OEB to comment on: (1) whether it is appropriate; and (2) how it relates to other issues, such as rate smoothing, which will push cost recovery into future years.

OPG argued that a capital plan is not required in relation to its CRVA proposals as OPG is not seeking recovery of the hydroelectric-related CRVA balances in the current application. OPG further stated that capital plans for the hydroelectric business have not previously been needed in OPG payment amounts proceedings (in the circumstance where OPG is not seeking to set hydroelectric payment amounts on a cost basis). In addition, OPG noted that capital plans will not inform the establishment of rates – recognizing that the base hydroelectric payment amount will be frozen over the rate term.

### **Findings**

The OEB will not include this proposed issue in the approved issues list. To the extent that OPG's capital plan for its hydroelectric business includes capacity refurbishment, OPG is able to record any applicable variance in the CRVA.

The OEB acknowledges the concerns of parties regarding the potential for balances to accumulate within the CRVA during the 2022 to 2026 period. The OEB has confirmed that DVA balances are provided and monitored as part of OPG's annual RRR-type filings. To inform the OEB's monitoring of the CRVA balance, the OEB may direct OPG to include the hydroelectric capital plan as part of its RRR-type reporting for the test period.

*Small Modular Reactors (SMRs)*

OPG has booked costs from 2020 and 2021 relating to SMRs in its Nuclear Development Variance Account (NDVA), yet OPG is not seeking any disposition of this account in the current proceeding. There was no agreement amongst parties as to whether SMR-related costs are an issue within the scope of this proceeding. As such, in the May 13 Letter, parties requested an OEB determination on whether SMR-related matters are in scope (or whether language describing the financial risks that are applicable to OPG related to SMR costs should be included in the Decision on Issues List).

AMPCO, VECC, OAPPA, QMA and Energy Probe all expressed concern regarding the amount of SMR-related costs recorded in the NDVA, with limited regulatory oversight or review. Parties also expressed concern about the quantum of SMR-related capital and non-capital costs that could potentially be incurred during the test period.

OPG objected and clarified that it was accepting the risks relating to SMR-related costs and that there is no requirement in O. Reg 53/05 that requires any of the expenditures to be pre-approved prior to booking in the NDVA. OPG took the position that SMR-related costs are being recorded in accordance with the scope of the account. Further, OPG stated that the balances would be subject to both a prudence review, and a review of whether the costs belong in the account at all, when OPG seeks disposition of such costs.

***Findings***

The OEB finds that SMR-related costs are within scope and subsumed within Issue 13.1 regarding the nature and type of costs recorded in DVAs and Issue 14.1 regarding OPG's annual RRR-type filings.

The OEB agrees with AMPCO that OPG raised the topic of SMR-related costs in its pre-filed evidence. OPG indicated that \$272 million was to be recorded in the NDVA for expenses in 2020 and 2021.

The NDVA is addressed in O. Reg 53/05 and the account was approved as part of the EB-2007-0905 decision. However, there appears to be disagreement among parties regarding the appropriate use of the NDVA to record SMR-related costs.

This issue is before the OEB in this proceeding. There are financial risks to OPG's shareholder and ratepayers associated with ambiguity regarding an existing DVA. The



OEB will consider the narrow issue of whether OPG's SMR-related costs are consistent with the purpose of the NDVA and thereby appropriate to be booked in the account.

**THE ONTARIO ENERGY BOARD THEREFORE ORDERS THAT:**

1. The approved issues list is attached to this Decision as Schedule A.

**DATED** at Toronto, **May 20, 2021**

**ONTARIO ENERGY BOARD**

*Original Signed By*

Christine E. Long  
Registrar

**SCHEDULE A**  
**APPROVED ISSUES LIST**  
**ONTARIO POWER GENERATION INC.**  
**EB-2020-0290**  
**MAY 20, 2021**

**ONTARIO POWER GENERATION INC.  
2022-2026 PAYMENT AMOUNTS  
EB-2020-0290  
ISSUES LIST**

**1. GENERAL**

- 1.1 Has OPG responded appropriately to all relevant OEB directions from previous proceedings?
- 1.2 How could OPG further improve its customer engagement process?

**2. RATE FRAMEWORK**

- 2.1 Is OPG's approach to incentive rate-setting for establishing the nuclear payment amounts appropriate?
- 2.2 Is it appropriate to establish an earnings sharing mechanism or similar type of mechanism for the 2022 to 2026 period?

**3. NUCLEAR BENCHMARKING**

- 3.1 Is the nuclear benchmarking methodology reasonable? Are the benchmarking results and targets flowing from OPG's nuclear benchmarking reasonable?

**4. IMPACT OF COVID-19 PANDEMIC**

- 4.1 Is OPG's proposed ratemaking treatment of the COVID-19 pandemic-related impacts appropriate?

**5. RATE BASE**

- 5.1 Are the amounts proposed for nuclear rate base appropriate?

**6. CAPITAL STRUCTURE AND COST OF CAPITAL**

- 6.1 Are OPG's proposed capital structure and rate of return on equity appropriate?

- 6.2 Are OPG's proposed costs for the long-term and short-term debt components of its capital structure appropriate?

## **7. CAPITAL PROJECTS**

- 7.1 Do the costs associated with the nuclear projects that are subject to section 6(2)4 of O. Reg 53/05 and proposed for recovery meet the requirements of that section?
- 7.2 Are the proposed nuclear capital expenditures and/or financial commitments (excluding those for the Darlington Refurbishment Program) reasonable?
- 7.3 Are the proposed nuclear capital expenditures and/or financial commitments for the Darlington Refurbishment Program reasonable?
- 7.4 Are the proposed test period in-service additions for nuclear projects (excluding those for the Darlington Refurbishment Program) appropriate?
- 7.5 Are the proposed test period in-service additions for the Darlington Refurbishment Program appropriate?
- 7.6 Are the proposed test period in-service additions for the D2O Project reasonable?

## **8. PRODUCTION FORECASTS**

- 8.1 Is the proposed nuclear production forecast appropriate?

## **9. COMPENSATION**

- 9.1 Are the test period human resource related costs for the nuclear facilities (including wages, salaries, payments under contractual work arrangements, benefits, incentive payments, overtime, FTEs and pension and other post-employment benefit costs) appropriate?

## **10. OPERATING COSTS**

- 10.1 Is the test period Operations, Maintenance and Administration budget for the nuclear facilities appropriate?

10.2 Is the forecast of nuclear fuel costs appropriate?

**Corporate Costs**

10.3 Are the corporate costs allocated to the nuclear business appropriate?

10.4 Are the centrally held costs allocated to the nuclear business appropriate?

10.5 Are the asset service fee amounts charged to the nuclear business appropriate?

**Depreciation**

10.6 Is the proposed test period nuclear depreciation expense appropriate?

**Income and Property Taxes**

10.7 Are the amounts proposed to be included in the test period nuclear revenue requirement for income and property taxes appropriate?

**11. OTHER REVENUES**

**Nuclear**

11.1 Are the forecasts of nuclear business non-energy revenues appropriate?

**Bruce Generating Station**

11.2 Are the test period costs related to the Bruce Generating Station, and costs and revenues related to the Bruce lease appropriate?

**12. NUCLEAR WASTE MANAGEMENT AND DECOMMISSIONING LIABILITIES**

12.1 Is the revenue requirement methodology for recovering nuclear liabilities in relation to nuclear waste management and decommissioning costs appropriate?

12.2 Is the revenue requirement impact of the nuclear liabilities appropriately determined?

### **13. DEFERRAL AND VARIANCE ACCOUNTS**

- 13.1 Is the nature or type of costs recorded and the methodologies used to record costs in the deferral and variance accounts related to OPG's nuclear and regulated hydroelectric assets appropriate?
- 13.2 Are the balances for recovery and the proposed disposition amounts in each of the deferral and variance accounts related to OPG's nuclear and regulated hydroelectric assets appropriate?
- 13.3 Is the proposed continuation of deferral and variance accounts related to OPG's nuclear and regulated hydroelectric assets appropriate?
- 13.4 Are the deferral and variance accounts that OPG proposes to establish appropriate?

### **14. REPORTING AND RECORD KEEPING REQUIREMENTS**

- 14.1 Are the proposed reporting and record keeping requirements, including performance scorecards proposed by OPG, appropriate?

### **15. RATE SMOOTHING**

- 15.1 Is OPG's proposal for smoothing nuclear payment amounts consistent with O. Reg. 53/05 and appropriate?

### **16.1 IMPLEMENTATION**

- 16.1 Are the effective dates for new payment amounts and riders appropriate?