

May 31, 2021

Ms. Christine E. Long
Registrar and Board Secretary
Ontario Energy Board
PO Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Long:

**Re: EB-2020-0290 Ontario Power Generation Payment Amounts Application –
Response to the OEB Panel’s requests at Issues Day and Motions Day**

We are the lawyers for Ontario Power Generation Inc. (“OPG”). The purpose of this letter is to address: (i) Commissioner Sardana’s request at Issues Day on May 18, 2021 for OPG to clarify what annual reporting and record keeping requirements (“RRR”) information related to regulatory return is available as of May 31, 2021,¹ and (ii) the Chair’s request at Motions Day on May 21, 2021 that OPG file a letter providing clarification with respect to the following:

Given Section 6(2)13 of O.Reg 53/05:

Question #1: why does the OEB need to approve the “freezing of the hydroelectric rates for five years”?²

Question #2: In maintaining the Hydroelectric rate over the 5-year freeze period, is there no opportunity for the Board to declare hydroelectric rates interim during that period or to establish an offramp permitting the Board to trigger a regulatory review by an excess of 300 basis points above approved return on equity (“ROE”)?³

Issues Day

At Issues Day, Commissioner Sardana asked OPG to advise the extent to which information it is required to file as part of its annual RRR relating to its actual regulatory return can be made available by May 31, 2021.⁴ OPG confirms that this information has been substantially provided in the following interrogatory responses, on a preliminary basis:

¹ Tr. Issues Day, May 18, 2021, p. 109 line 3 to p. 110 line 10.

² Tr. Motions Day, May 21, 2021, p. 84, line 7.

³ Tr. Motions Day, May 21, 2021, p. 84, lines 12-16 and p. 85, lines 18 – 24.

⁴ OPG’s RRR actual regulatory return for the year 2020 is due July 31, 2021.

- Ex. L-A1-02-Staff-002, Attachment 1, Table 5 (which contains information similar to that provided in Table 1 of the annual regulatory return RRR filing)
- Ex. L-I1-01-SEC-159, Attachment 1, Tables 4 and 4a (which contains information similar to that provided in Tables 2 and 2a of the annual regulatory return RRR filing)
- Ex. L-I1-01-SEC-012, Attachment 1, Table 4 (which contains information similar to that provided in Table 3 of the annual regulatory return RRR filing)

As noted at Ex. L-I1-01-SEC-159, p. 1, lines 24-25, the above information is preliminary pending completion of the 2020 tax return and the update of the cash working capital for 2020 actual results. As noted at Ex. L-A1-03-Staff-013, part c), OPG's corporate tax returns are finalized and submitted to the tax authorities by June 30 and therefore will not be available by May 31, 2021. As also noted in that evidence, the preliminary information reflects the 2020 planned, rather than actual, cash working capital, given the detailed nature of the underlying calculations which OPG does not expect to have completed by May 31, 2021. Therefore, the above information currently on the record is the best available information as of May 31, 2021. OPG will file the final 2020 regulatory return information by July 31, 2021.

Motions Day

Question #1

As set out below, the OEB is required to issue an order to establish the payment amount paid by the IESO to OPG for output from the prescribed facilities and in issuing that order the OEB must abide by certain rules including setting the base hydroelectric payment amount in accordance with Section 6(2)13 of O.Reg 53/05. Under Section 78.1 (1) of the Ontario Energy Board Act (the "OEB Act"), the IESO is obliged to make payments to OPG as a prescribed generator with respect to output that is generated by a unit at a prescribed generation facility. Pursuant to Section 78.1 (2), the payment made by the IESO to OPG "shall be the amount determined in accordance with the order of the Board then in effect." Therefore, for the IESO to fulfill its obligation of paying an amount to OPG, the OEB must make an order setting out the payment amount.

In making that order, Section 78.1 (4) provides a mandatory obligation on the OEB as follows:

"The Board shall make an order under this section in accordance with the rules prescribed by the regulations..."

The rules prescribed by the regulations are set out in Section 6(2) of O.Reg 53/05. With respect to the hydroelectric rate freeze, O.Reg 53/05 provides:

6(2) The following rules apply to the making of an order by the Board that determines payment amounts for the purpose of section 78.1 of the Act: ...

13. In making its first order under section 78.1 of the Act that is effective on or after January 1, 2022 setting payment amounts for the hydroelectric facilities, the following rules apply:

- i. The order shall provide for a base payment amount for the hydroelectric facilities that is equal to the base payment amount for the hydroelectric facilities on December 31, 2021,

and that applies until the effective date of a subsequent order setting payment amounts for the hydroelectric facilities that comes into effect after December 31, 2026.

Therefore, with respect to Question #1 above, it is OPG's view that for the IESO to fulfill its obligation to pay an amount for output, the OEB must issue a payment amount order under Section 78.1 of the OEB Act and, in accordance with the rule set out in Section 6(2)13 of O.Reg 53/05, and issue an order effective on or after January 1, 2022 for hydroelectric facilities, where the base payment amount will be equal to the base payment amount for the hydroelectric facilities on December 31, 2021 until the next hydroelectric payment amount order that comes into effect after December 31, 2026.

As a result of the foregoing, and as set out in Ex. A1-1-2, OPG filed its application for an order setting the base hydroelectric payment amount as required under Section 6(2)(13)(i) of O.Reg 53/05 and equal to the base hydroelectric payment amount approved by the OEB in EB-2020-0210 for 2021.

Question #2

In brief, there is no opportunity for the OEB to (i) declare rates interim or (ii) establish an offramp, if the purpose of that offramp is to revise or otherwise adjust hydroelectric base payment amounts in effect during the rate freeze period.

Pursuant to Section 78.1 (4), the OEB is required to follow the rules set out in Section 6(2) of O.Reg 53/05. While Section 78.1(4) also provides that the OEB "...may include in the order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment," this discretion cannot be exercised in such a manner as to limit or amend the general obligation to follow the mandatory provision of Section 78.1(4) to make an order in accordance with the rules prescribed by O.Reg 53/05. The OEB could exercise its discretion in a manner that is complementary or neutral to the rule prescribed in Section 6(2) 13 of O.Reg 53/05, but not contrary to the rule.

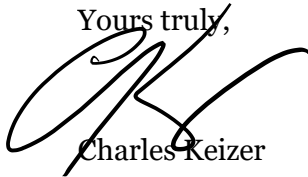
With respect to whether the OEB could make rates interim, there is not a basis to do so. Pursuant to Section 21(7) of the OEB Act, "The Board may make interim orders pending the final disposition of a matter before it." However, taken together, Section 78.1(4) of the OEB Act and Section 6(2)13 of O.Reg 53/05 prescribe for the OEB the basis of the final disposition with respect to base hydroelectric payment amounts. As such, the legislation has already established the final disposition and there is no basis upon which the OEB can establish interim rates. Declaring the hydroelectric base payment amount that is applicable during the rate freeze interim would mean that the frozen base payment amount would be subject to change and retroactive adjustment during the freeze period. This would be contrary to the rule to maintain the base payment equal to a specific payment in effect on December 31, 2021 over the 5-year period from January 1, 2022 to December 31, 2026.

As noted above, because of Section 6(2)13 of O.Reg 53/05, there is no opportunity for the OEB to establish an offramp mechanism if the purpose of that offramp is to revise or otherwise adjust the frozen hydroelectric base payment amount during January 1, 2022 to December 31, 2026. However, without adjusting the hydroelectric base payment amount (directly or by implication), it is OPG's view that the OEB can consider a potential offramp similar to the OEB's decision in the OPG 2017-2021 payment amounts proceeding (EB-2016-0152) where the OEB determined that if OPG's earnings for its regulated operations were more than 300 basis points above (or

below) the OEB-approved ROE, a regulatory review may be initiated. For example, if the OEB adopted a similar approach as in EB-2016-0152, it would be open to the OEB to establish an overearnings account for OPG's regulated operations at some future date as a means to effect such a review, as it did in EB-2020-0248. A similar result would apply if an earnings sharing mechanism and a related account were established for OPG's regulated operations.

We would be pleased to respond to any questions that the OEB would have in this regard.

Yours truly,

A handwritten signature in black ink, appearing to be 'CK' or similar, written over the text 'Yours truly,'.

Charles Keizer

cc: Aimee Collier, OPG
Crawford Smith, Lax O'Sullivan Lisus Gottlieb LLP
Michael Millar, OEB
All parties