



**SOCIETY of
UNITED PROFESSIONALS**
IFPTE 160

31st August, 2021

Chris Graham
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VIA Email and RSS Filing

Ms. Christine E. Long
Registrar
Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON
M4P 1E4

**Re: Ontario Power Generation Inc.
EB-2020-0290 OPG Application For 2022-2026 Payment Amounts –
Submissions of the Society of United Professionals**

Dear Ms. Long,

Please find attached the Society of United Professionals' (SUP) Submissions in the matter of EB-2020-0290, OPG's Application for 2022-2026 Payment Amounts.

Consistent with OEB direction, no hard copies of this submission are being sent to your attention.

Sincerely,

[Original signed by Joseph Fierro for]

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Copy by email: interested parties



SOCIETY *of*
UNITED PROFESSIONALS
IFPTE 160

Society of United Professionals'
SUBMISSIONS

Re: Ontario Power Generation Inc.
Application For 2022-2026 Payment Amounts
EB-2020-0290

31st August, 2021

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EB-2021-0290 - Society of United Professionals' Submissions

Introduction

These are the submissions of the Society of United Professionals (“the Society” or “SUP”) in the matter of Ontario Power Generation Inc.’s (“OPG”) Application for 2022-2026 Payment Amounts (EB-2020-0290).

General

SUP has reviewed the Argument-in Chief (“OPG Argument”) of OPG, which was filed with the Ontario Energy Board (“OEB”) on August 17, 2021. The OPG Argument covers two general issues: Issue 13.1 the eligibility of its Small Modular Reactor (“SMR”) expenditures for inclusion in the Nuclear Development Variance Account (“NDVA”); and Issue 7.6 the \$494.7 million that OPG seeks to add to its rate base as it puts the D2O Storage Project in-service. These were the only two technical issues not included in the wider settlement agreement between OPG and the intervenors to this proceeding. A third issue pertaining to rate smoothing will be addressed at a future date once a comprehensive decision has been made by the OEB.

SUP supports OPG’s specific arguments related to both remaining general issues as they are laid out in the OPG Argument. SUP’s specific comments follow:

Eligibility of SMR Costs for Inclusion in the NDVA

The OEB has limited the SMR issue to a subset of the wider issue 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?” Specifically, the OEB defined the SMR issue as “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” (Decision on Issues List, May 20, 2021, p.9).

In its argument, OPG noted that its “ongoing planning and preparation activities for an SMR nuclear generating facility at the Darlington site are consistent with the expectations of the Province of Ontario (“Province”), which is ultimately responsible for system planning and the decision to develop a potential SMR facility.” (OPG Argument p.2) This is important because, unlike many investments, the decision to approve, site and construct an SMR at Darlington will not entirely be an OPG corporate decision.

The NDVA is established and defined by Ontario Regulation 53/05 Payments Under Section 78.1 of the (OEB) Act.

Excerpts:

“Nuclear development variance account

5.4 (1) Ontario Power Generation Inc. shall establish a variance account in connection with section 78.1 of the Act that records, on and after the effective date of the Board’s first order under section 78.1 of the Act, differences between actual non-capital costs incurred and firm financial commitments made and the amount included in payments made under that section for planning and preparation for the development of proposed new nuclear generation facilities. O. Reg. 27/08, s. 1.

(2) Ontario Power Generation Inc. shall record interest on the balance of the account as the Board may direct. O. Reg. 27/08, s. 1.

And

4.1 The Board shall ensure that Ontario Power Generation Inc. recovers the costs incurred and firm financial commitments made in the course of planning and preparation for the development of proposed new nuclear generation facilities, to the extent the Board is satisfied that,

- i. the costs were prudently incurred, and*
- ii. the financial commitments were prudently made.”*

SUP’s position is like OPG’s in that it considers that the criteria for including OPG’s SMR costs in the NDVA are and will be met. OPG will incur expenditures for planning and preparation for the development of potential future SMR facilities. Because these facilities fall under the approval authority of the Province, OPG does not have complete assurance they will proceed. However, in the absence of it performing the front-end conceptual work, there is assurance that they will not proceed.

As these expenditures are being incurred prior to a preferred plan being approved, they are classified as non-capital by OPG. The costs must therefore be treated as OM&A expense for accounting purposes unless they are included in the NDVA and deferred. No accommodation has been made in OPG’s payments to treat these amounts as OM&A as incurred if they are excluded from the NDVA. A reasonable case can be made that a decision that allows them to be charged to the NDVA will enable OPG to make these expenditures in the public interest. Conversely, a decision to exclude them would presumably force OPG to rethink making these investments, as an inability to defer the costs in the NDVA would result in them being treated as OM&A as incurred. This would result in the costs being fully funded by OPG’s shareholder, the Province. Effectively, the decision to allow the expenditures to be charged to the NDVA may also be a decision that directly impacts whether or not they are made.

It is also important to note that any SMR expenditures deferred in the NDVA will be reviewed by the OEB for prudence at some future date, prior to the NDVA balances being cleared and amounts therein being included in OPG payments. That is the appropriate time to evaluate the reasonableness of expenditures and OPG recognizes that it is at risk for defending the prudence of its expenditures.

Normally, deferral and variance accounts are set up and defined by the OEB and the criteria for charging expenditures to such an account are well understood and not overly controversial. Wording in OEB Accounting Procedures is not often a source of disagreement. However, in the case of the NDVA, the account parameters have been set by the Province and they are included in an Ontario Regulation. This invites a more legalistic interpretation of the purpose of the account as well as the criteria and parameters for including expenditures in it.

In its review of the evidence, SUP noted that there appeared to be an interest in finely interpreting, or misinterpreting, the words in the regulation to potentially exclude costs. For example, during VECC's day one cross examination (Transcript p.90), Mr. Garner seemed to suggest that a specific project must be defined and proposed with a specific scope for costs to qualify for inclusion in the variance account.

"MR. GARNER: And again, at the risk of treading into areas that I shouldn't, let me suggest to you that the word "proposed" was purposely put there (i.e. in the regulation), and the idea being that in fact the proposal allows the regulator or anybody to have a scope of what should be going into the account. So in a sense I'm suggesting is, have you put the horse before the cart? You're doing it the other way around. You are developing a proposal and asking for that to go into the account."

SUP would argue that "proposed" in the sense used in the Regulation with respect to the NDVA should be interpreted as referring to something that is possible, and which is advocated for and likely enough to come to fruition to make incurring significant financial investments now a prudent course of action. If a specific project with a specific scope existed, it would likely be considered capital and the NDVA would not be required. Limiting the account to expenditures where there is a specific scope would result in material front end conceptual costs not being included and not being recovered by OPG. In fact, VECC's suggestion that a specific scope is needed to qualify an expenditure as being "proposed" would likely result in the exclusion of most planning and preparation costs from the NDVA. Such costs are non-capital because there is not enough assurance of a future asset resulting to qualify them as capital under GAAP. The NDVA exists to remove a disincentive to invest in such early OM&A costs. It provides a mechanism to defer and spread such costs and also provides a facility for the regulator to review them for reasonableness prior to approval.

Essentially, the general scope of the work is to consider, investigate and evaluate different possible SMR technologies that could be used at Darlington. Under GAAP

and OPG's accounting policies, these costs will be expensed until a specific SMR technology is chosen and a business case for it is approved by the Province. All costs leading up to the approval of a specific preferred alternative proposal are to be expensed, including the costs to develop the proposal. Hence by definition these are the costs which should go into NDVA.

Similarly, there were hints that the NDVA would not be used appropriately as a variance account if gross expenditures are charged directly to it. The implication was made that only variances between approved and actual nominal amounts can be included in a variance account. OPG clarified that a variance can be one hundred percent if no amount has been approved for recovery (Undertaking Response J1.02).

SUP agrees with this but also sees this as an issue as symptomatic of one that arises again and again. Regulatory accounts can be deferral, variance or tracking accounts, and the terms tend to be mixed up and used in a fairly loose manner. In the case of OPG's use of the NDVA, the account may at first look as if it is being used as a deferral account as full expenditure amounts are being included (rather than a net variance between two nominal amounts). This confusion may be because there are no generally accepted definitions available for each type of account (i.e. deferral and variance). SUP's view is that restricting use of the account to variances between two nominal amounts would not be consistent with the Ontario Regulation's intent. SUP agrees with OPG's position as put forward in J1.02. As the Province has said the amount approved to be charged to ratepayers as an expense in 2020 & 2021 will be zero, so by extension all the costs incurred must be charged to NDVA.

Another area of confusion is the inclusion of the words "firm financial commitments" in the Regulation. OPG was asked "to describe the circumstances and means by which it would record firm financial commitments in the NDVA." It responded with Undertaking response J1.02. Specifically: "such commitments is (are) captured in the account only in the circumstances and at point in time that they give rise to a non-capital cost recognized in OPG's financial statements under GAAP." Thus, firm financial commitments for the purpose of the NDVA are only recognized period costs under GAAP. One must conclude that the inclusion of the term "firm financial commitments" in the regulation's criteria is confusing, redundant and duplicative because the regulation already allows for recognized period costs to be charged. From an accountant's perspective, a firm commitment is a possible financial statement disclosure item and not necessarily a recognized period cost under GAAP.

SUP highlights this issue because it illustrates the danger in applying legal wording and interpretation to what is in effect a regulatory and accounting mechanism. If some degree of professional judgment is not applied, a nonsensical outcome may result. Just because an amount is contractually or otherwise committed, does not mean it qualifies as a period cost under GAAP. A firm commitment may exist that should not be included in the NDVA. If a committed amount that does not meet

GAAP period cost recognition criteria were charged to the NDVA, hopeless confusion would result.

SUP raises these apparently minor wording issues in detail in the hopes that they will help in dissuading the OEB from applying too legalistic an interpretation to the criteria for costs to be included in the NDVA. Does a specific proposed project scope have to exist for a cost to qualify? Does a written proposal to some approval authority have to exist? Must a facility be a building? If one narrows the interpretation of specific words in the Regulation, SUP argues the intent is lost and qualifying expenditures could be excluded and potentially stifled.

As such, SUP agrees with OPG that its planned SMR expenditures are eligible NDVA expenditures within the original intent of the Ontario Regulation and that they should be approved for inclusion in that account.

Inclusion of D20 Storage Project Costs in Rate Base

SUP has reviewed the evidence with respect to the project history of OPG's D20 storage project. OPG has provided extensive argument on the project's history, on what its initial assumptions were, and on what steps it took to keep the project on track. In addition, the project was discussed in fine detail in various areas of evidence including in cross examination.

SUP does not intend to wade into the voluminous detail in this matter. However, SUP does find OPG's assertions that it prudently managed the project to be complete and convincing.

Equally, SUP supports OPG's arguments on the applicable prudence standard that should be applied by the OEB. SUP in particular supports the continued use of the OEB's historical approach to prudence review. Continuance of the historical approach has the benefits of supporting fairness, consistency, predictability, and avoidance of uncommunicated "rulebook" changes while the project is still being actively managed.

It should not need to be said but the existence of a budget overrun does not in itself provide evidence of poor management or imprudence. OPG has made this same point in its Argument. An overrun may not even provide evidence of faulty front-end estimating. SUP views OPG's explanations for its original estimates and for overages as reasonable and to a large degree reflective of both unknown and unknowable engineering and other factors.

SUP also requests, if the OEB does determine that a disallowance should be applied, that it be determined, documented and communicated on a reasonably specific basis with detailed rationale. This is opposed to a top-down percentage cut applied to the total project costs. A detailed decision would assist in OPG and other stakeholders in being able to assess the validity of the OEB rationale and to determine to what

degree the decision was consistent with OEB and other regulatory precedent and principles. It would provide greater understanding of the regulator's thoughts and expectations for future use by all stakeholders in the Province.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED ON THIS
31st DAY OF AUGUST, 2021**