

ONTARIO ENERGY BOARD

EB-2020-0297

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S. O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF an application by Ontario Power Generation for its 2022-2026 Payment Amounts

Submissions of Environmental Defence

OPG 2022-2026 Payment Amounts

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Overview

Ontario Power Generation is currently in the planning and preparation phase for Small Modular Nuclear Reactors at its Darlington site.¹ It aims to complete a class 5 estimate by November 2021 upon which an investment decision will be made.² OPG's application indicated \$272 million of SMR-related spending up until 2021, which OPG plans to record in the Nuclear Development Variance Account (NDVA).³ If the project goes forward, costs will be incurred at a much higher rate. Environmental Defence's submissions in this proceeding relate solely to the issue of NDVA eligibility.

OPG declined to answer any questions that might shed light on whether the project is likely to go forward or the order of magnitude of the eventual costs. For example, OPG would neither confirm nor deny the SMR generation cost estimate of \$163 per MWh (up to \$215 per MWh with a 3% cost overrun) developed by the Canadian Small Modular Reactor Roadmap Steering Committee, even though OPG was a member of that committee.⁴

Although there are major concerns with SMRs due to factors such as the high unit costs, the dangers of radioactive waste, and the risk of cost overruns, we understand that these matters are outside the scope of this proceeding. These submissions address 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."⁵ Environmental Defences submits that the OEB should not rule on NDVA eligibility for any going-forward spending (i.e. 2022 onward). The nature of this spending is too uncertain and therefore NDVA eligibility should be the subject of a future proceeding.

Decision on NDVA Eligibility is Premature

A decision on NDVA eligibility for 2022 forward would be premature because it is unclear what kind of spending is at issue and it would be inefficient and problematic to decide these questions in the abstract. Throughout the hearing, OPG repeatedly declined to answer a variety of questions because no investment decision has been made yet. For example, it was not able to say whether it would be seeking to recoup SMR-related capital amounts through s. 6(2)(4.1) of the regulation.⁶ There are virtually no details on the 2022 spending on which to decide a number of questions regarding NDVA eligibility that have arisen. These questions are detailed below.

Non-capital versus capital

There are two sources of ambiguity when it comes to capital versus non-capital expenses. First, the regulation limits NDVA to "non-capital costs" in s. 5.4(1) but refers simply to "costs" in s. 6(2)(4.1) regarding recovery of new nuclear generation facility amounts.⁷ Second, the distinction

¹ EB-2020-0290, Exhibit F2, Tab 8, Schedule 1, Page 3.

² EB-2020-0290, Exhibit F2, Tab 8, Schedule 1, Page 5.

³ OEB, Issues List Decision, May 20, 2021, p. 8.

⁴ Canadian Small Modular Reactor Roadmap Steering Committee (2018), *A Call to Action: A Canadian Roadmap for Small Modular Reactors*, pages 35 and 54.

⁵ OEB, Issues List Decision, May 20, 2021, p. 8.

⁶ Transcript, Volume 1, August 4, 2021, pp. 45-46.

⁷ O. Reg. 53/05.

between capital and non-capital expenses has not been entirely clear.⁸ One concern is that a large number of capital costs be incurred and recorded in a mechanism not created for that purpose. Whether that has occurred should be decided based on more concrete information.

Variance versus deferral

It could be argued that OPG is using the NDVA as if it is a deferral account when it is in fact a variance account. This is particularly relevant because the Ontario Government previously repealed the deferral account relating to new nuclear. In particular, s. 5.3 of O. Reg 53/05 previously read as follows before it was repealed in 2013:

5.3 (1) Ontario Power Generation Inc. shall establish a deferral account in connection with section 78.1 of the Act that records, for the period up to the effective date of the Board's first order under section 78.1 of the Act, the costs incurred and firm financial commitments made on or after June 13, 2006, in the course of planning and preparation for the development of proposed new nuclear generation facilities that are associated with any one or more of the following activities:...

It is hard to see how costs from 2022 onward could be “variances” when there are no budgeted amounts for them to vary from. In any event, that issue should be decided in the future when the nature of any such costs are clearer.

Regulated versus competitive

OPG has acknowledged that SMRs are a competitive market with a significant number of participants.⁹ If an SMR is approved, it is not known whether it would be a regulated or non-regulated asset. This could give rise to questions about the appropriateness of certain costs being recorded in the NDVA. It is premature to answer these questions without knowing more.

Proposed facility versus general R&D

Ontario Regulation 53/05 refers to “proposed new nuclear generation facilities” in s. 5.4(1) and in s. 6(4.1)(2). It is not clear whether OPG's work relates to a “proposed facility” or is more in the nature of general research and development on new technology. This will be much clearer in the future.

Conclusion

Environmental Defence has focused these submissions on the going forward spending in 2022 and beyond as this spending has the potential to be very large. Environmental Defence submits that this spending should not be deemed eligible for the NDVA at this time as it is too soon to resolve the issues around eligibility outlined above.

⁸ Transcript, Volume 1, August 4, 2021, pp. 45-46.

⁹ Transcript, Volume 1, August 4, 2021, pp. 73 & 76.