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Ontario Power Generation Inc.
Application for payment amounts for the period from January 1, 2022 to December 31, 2026

EB-2020-0290

Submission of the
Vulnerable Energy Consumers Coalition
(VECC)

August 31, 2021

Vulnerable Energy Consumers Coalition

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Introduction

VECC submissions are with respect to the inclusion of costs for Small Modular Reactors (SMRs) and the consideration of costs incurred for the D2O project. Our submissions are brief and informed by the opportunity to review and discuss our views with the Association of Major Power Consumers in Ontario and the Consumer Council of Canada (AMPCO/CCC), School Energy Coalition (SEC) and Energy Probe (EP). These parties have made substantive submissions with respect to the outstanding issue and especially with respect to the appropriate cost to be included in payments for the D2O project.

SMRs – Issues 1.2, 13.1 and 14.1

It is VECC's submission that the costs being incurred and expected to be incurred by OPG for SMR research do not meet the requirements of the Ontario Regulation 53/05.

That regulation states:

> *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.*

It is clear from a plain reading of the provision that the intent of the legislation is for OPG to record costs related to actual new nuclear facilities that will or are, being constructed. The clarity of this point is found in the fact that the account is established to track a variance, hence it is called a "variance account" and not a "deferral account". A variance account requires a baseline from which to vary – in this case that is some amount that might be included in OPG approved payments. No such baseline exists for SMRs. In contrast a "deferral" account would be used for booking the type of costs sought by OPG which are for the activity of exploring new nuclear power options. Some parties might argue that variance and deferral are to be used interchangeably, but they would be wrong. Words have meaning and when attached to legislation special attention should be paid to those words.

In their argument in chief OPG suggests that the coincident obligation as found under section 6(2)(4.1) of Reg O. 53/05 is determinative of something. That provision reads:

> *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.

This section is simply repetitive of the language under 5.4. What is left unsaid in OPG's argument in chief is that the language in question is simply repetitive and reiterates the payment setting authority of the Board stating:

> *6. (1) Subject to subsection (2), the Board may establish the form, methodology, assumptions and calculations used in making an order that determines payment amounts for the purpose of section 78.1 of the Act. O. Reg. 53/05, s. 6 (1).*

That is, the provision adds nothing new to 5.4 other than to inform that what amounts the Board determines as prudent and that are booked into a variance account are recoverable in payments.

In their AIC OPG state:

"*There can be no dispute that the NDVA is for the recording of costs for "planning and preparing" to develop a new nuclear generating facility*[1]"

There is fact such a dispute. And we argue the facts say different than argued by OPG and as outlined in our exchange with their witnesses providing evidence:

MS. LADAK: Yes, there is a unit of people that's working on nuclear development.

MR. GARNER: Right. So in essence, I know you have three different type of costs, but I'm just going to in generality say that there are really two types of costs you're dealing with. One is the assessment of technologies and the other is ensuring the Darlington site is able to license one of those technologies on that site you have. Is that basically what's going on?

MS. LADAK: That -- in addition to that, it's also trying to get an understanding of the costs, as well as their ability -- in addition to licensing, we're looking at safety. There's a variety of things that we're looking at, so it's not just those two things. There's a number of things that have to be done.

[1] AIC, page 4

MR. GARNER: Would it be fair to say that part is to look at the -- in addition to assessing the technologies, you are looking at what the costs of running those technologies might be on the Darlington site for that --for those units?

MS. LADAK: Yes, we're looking at -- exactly. We're looking at the construction costs, we're looking at the operating costs. We're looking at a whole number of different things.

……

MR. GARNER: And it's not clear to me this -- these monies that you have booked into this account, it's not clear to me as how these monies -- how you're associated with these entities. Is it the -- is it the goal of this exercise to have a partnership? Or is this a goal of purchasing a technology? I'm not clear which goal you're doing. What's your objective?

MS. LADAK: ***At this point we're just trying to determine if we want to pursue an SMR at the Darlington site. We're looking at some commercial types of questions that you're asking, so that's part of the work that we're doing right now as well, so I don't have an answer to your question at this time****.* (emphasis added)

The relevant section of O. 54/05 is specific it anticipates planning and preparation for the development of **proposed** new nuclear generation facilities. In fact, OPG is not planning for new generation facilities. Rather they are exploring technologies, potential business partners and trying to determine the economic viability of some as yet unknown SMR technology which they might, or might not, purchase. OPG made it clear it has no specific proposal:[2]

MR. Garner……Now, as I understand, no proposed facilities -- there are no proposed facilities. You have yet to go to your board of directors, yet to go to a shareholder to propose anything. You're actually exploring technologies right now, aren't you? You're not proposing anything. Did I miss something?

MS. MacDONALD: We are exploring and doing the planning and preparatory work in order to propose an SMR at Darlington.

MR. GARNER: Right. So to emphasize your words, in order to propose something. You have yet to propose something to anybody, anybody in the sense of running your [audio dropout] at OPG. Nothing has been proposed yet.

MS. MacDONALD: If you mean to our board of directors for approval or to our shareholder for approval, the answer is no.

[2] Vol. 1, page 89-90

In fact, there may never be such a proposal:

> *MR. GARNER: So is it beyond the realm of possibility that there will never be a proposal put to OPG's board of directors? If one were to assess this and decide we have neither the economies of scale nor can we find the technology, therefore we're not going to the board of directors to propose anything?*
>
> *MS. LADAK: Yes, that's a possibility. We would only go forward if we have a good business case, which is what we're in the process of developing right now.*

O. 53/05 allows for the establishment of a variance account. At best (and we do not concede this point) it may be used to book costs related to approved nuclear facilities whose costs are ultimately recovered in regulated payments. It does not anticipate that it be used for the exploration of technologies or exploration of business strategies.

It seems to us that OPG is somewhat aware of the incongruity of using the account for something not yet approved by its Board of Directors. And so, they have provided the "Collaboration Memorandum of Understanding"[3] between the provinces of Ontario, New Brunswick and Saskatchewan as somehow indicative of the necessary requirement to have an approved proposal. However, not only is this memorandum non-binding it does not constitute direction by the shareholder to OPG.

Furthermore, even if the shareholder were to agree to exploring SMR this does not mean that O. 53/05 is in anticipation of that exercise. If it were then presumably the regulation would also then turn its mind to the allocation of risk between ratepayers and Ontario taxpayers (here shareholder). And certainly, if the "stand-alone" principle were applied the shareholder would carry at least part of that risk.

The distinction as to what is an exploration and what is a proposal for nuclear facilities is not trivial. In fact, in our submission, it is particularly meaningful in the case of OPG - a utility with a history of high operating costs and, as shown again with D2O, the inability to constrain and manage new projects. Legislation has narrowly definition of O. 53/05 so as to require the Utility to have a nuclear generating proposal. We submit this requirement was made explicitly to financially constrain the Utility and to require rigour and form to its expenditures. Such costs could then be reviewed by the regulator under the premise provided by the legislation.

If OPG can now do what it wants – pursue exploring alternative technologies (ill defined as is the case for SMRs) then we – low income ratepayers – are being forced into a position. We must later argue that none of these costs are properly before the Board in the first instance.

[3] L-F2-08-Staff-248

We must present to the Board why amounts in a variance account – which are deferred costs – are not properly reimbursed by consumers. The burden now become ours – not the Applicants.

Simply put the legislation does not contemplate these costs and this is irrespective of the feelings of the Government of the day as to the attractiveness of SMRs or the past practices of the Board.

VECC is not a pro or anti nuclear constituent. We are a value constituent. And we acknowledge that we are asking this panel of the Ontario Energy Board to consider an uncomfortable question. Who is now responsible for considering the future nuclear power plans in Ontario? Ratepayers? Taxpayers? Or a bit of both?

In our submission the Board needs to turn its mind to two fundamental questions. The first is that if no SMR is ultimately approved or built would any exploratory costs booked into a variance account prudent? In any event, in the absence of any change to O. 53/05 what would be the basis of the Board deciding that question one way or the other?

The second question is - what is the regulatory treatment if SMRs are built and then not operated as designated asset? How is it that the costs of an asset – never to be operated as a designated asset – can somehow find there way into an account (variance or deferral) that does not contemplate its use for non-designated assets?

The weak answer, we respectfully submit, is: "we'll figure it all out later." This can seem appealing- avoiding the issue- and hoping for clarity in the future. But this decision inherently puts ratepayers at the disadvantage leaving them most likely to pay to clean up for whatever does not work. "After all it will only be a few dollars a month" might seem a satisfactory answer if a few dollars a month is not something that makes a difference to you. A sentiment we find disrespectful to a large number of ratepayers that VECC tries to represent.

In our submission the Board needs to consider now the difficult question raised by OPG's SMR NDVA proposal.

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We will not make lengthy submissions with respect to the cost overruns of D2O. In the spirit of the Board's direction for like minded parties to work together VECC has had the opportunity to work with and consider the draft submissions of AMPCO/CCC, SEC and EP. While all three parties take slightly different tacks, all conclude, as has have we, that this project is demonstrative of OPG's nuclear operations being unable and/or unwilling to control costs.

Fundamentally, and as argued in some detail by AMPCO/CCC, the problem begins with OPG's inability to efficiently make a decision as to how to achieve two related, but different

objectives. One objective was to temporarily store heavy water during Darlington refurbishment. The other was to modernize and accommodate water for its Tritium Removal Facility. The inability to efficiently address these issues compounded with scope creep issues culminate in a demonstrative failure of OPG nuclear management. What's more the off loading of significant portions of the design and management of the project to third party contractors shows a lack of management competence which ultimately left the Utility vulnerable to cost overruns.

The finding of auditors, including OPG's own auditors, of bad planning and execution confirm that there are real problems with OPG's management of nuclear facilities. Our conclusion, after many of these proceedings with this Utility, is that under the protective umbrella of nuclear science and safety, OPG's nuclear executives have never encountered a problem that could not be made more complex and more costly.

Finally, in a regulatory justification akin to a "hail Mary pass" the evidence of Bates White, other than showing the impressive CV of its authors, ultimately tells us nothing more than the material cost of the project are - its material cost. Nothing provided by OPG helps answer the question the Board must answer - is it prudent for ratepayers to pay over a half a billion dollars for a bunch of tanks holding low risk tritium laced water in a seismic resistant pit?

VECC agrees with the submissions of other intervenors that it patently is not. We consider the arguments for a reduction in the order of $200 million to be reasonable and as supported by the detailed arguments AMPCO/CCC, SEC and EP.

Reasonably Incurred Costs

These are our respectful submission. VECC submits that it has acted responsibly and efficiently during the course of this proceeding and requests that it be allowed to recover 100% of its reasonably incurred costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

AUGUST 31, 2021