Independent Electricity System Operator
EB-2022-0002
2022 Rates

Interrogatories of Environmental Defence

Interrogatory # 1-ED-1

Reference: Exhibit A, Tab 1, Schedule 2, Page 1

Preamble: "The IESO proposes a 2022 revenue requirement of $201.5 million."

Question(s):

(a) What is the approximate annual value of the costs that the IESO oversees, such as the total value of transactions in IESO-administered markets and the capital projects driven by IESO planning processes, including a breakdown of the various elements? A value for a sample year or an average is sufficient. We are seeking the information to get a picture of importance of the IESO's work as it relates to overall electricity costs borne by customers.

Interrogatory # 1-ED-2

Reference: Exhibit B-1-2, Page 7

Preamble:

> "To that end, the IESO is initiating the first in a series of medium-term RFPs in late 2021 for up to 750 MW, with a three-year commitment period beginning in 2026. A longer-term RFP with a commitment period of at least seven years is expected to launch in late 2022 for at least 1,000 MW. These procurements will acquire the resources necessary to meet system needs that we have forecasted over this period. The annual capacity auctions are an efficient tool for resources to bridge between procurement periods, while also enabling us to respond to changing circumstances."

Question(s):

(a) Approximately what portion of the IESO's $201.5 million revenue requirement is attributable to the above-referenced capacity auctions and RFPs?
(b) Please list each of the specific RFPs noted above by (i) MW to be procured and (ii) commitment period start and end.
(c) Please list the outcomes of the above-referenced RFPs that are complete broken down by (i) generation type and (ii) average price.

Interrogatory # 1-ED-3

Reference: Exhibit B-1-2, Page 13

Preamble:

> "With a budget of $692 million, the current suite of programs is forecasted to achieve 440 MW of peak demand savings and 2.7 TWh of energy savings."

Question(s):

(a) Please express the IESO's 2022 CDM programming as a LUEC figure.
(b) What are the total benefits (gross benefits and net of costs) forecast from the IESO's 2022 CDM program according to (i) the TRC test and (ii) the SCT test.
(c) Please express the IESO's 2022 CDM programming as a cost (or savings) per tonne of avoided CO2e figure.

Interrogatory # 1-ED-4

Reference: Exhibit B-1-2, Page 13 and the attached materials regarding OPG sales of credits

Preamble:

> Per Exhibit B-1-2, Page 13: "At 94 per cent emissions free in 2020, Ontario has the one of the lowest emitting electricity systems in North America, if not the world."

(a) Please describe the approach taken by the IESO with respect to the environmental attributes for the electricity it purchases on behalf of Ontario. For instance, does the IESO sell those environmental attributes, and if it does, does it use that revenue to reduce its revenue requirement? If it does not sell the attributes, please explain the reasoning behind that decision.
(b) Is the IESO considering sales of its environmental attributes in 2022 or in future years?
(c) How many MWh of clean energy credits (i.e. environmental attributes) did OPG sell in 2020? What percent of Ontario's electricity grid was carbon emission free in 2020 after netting out those sales?
(d) Is the IESO responsible for determining whether OPG should sell the environmental attributes relating to OEB-rate-regulated assets and for how any proceeds should be used? If not, which entity is responsible and is does the IESO's mandate including providing advice to that entity?

Interrogatory # 1-ED-5

Reference: Exhibit B-1-2, Page 14

Preamble:

With respect to decarbonization efforts, including the new gas moratorium and pathways study, the IESO states as follows: “In addition to electricity system benefits, these initiatives will also help achieve other policy objectives, such as economic development and job creation. The scope and magnitude of this new work will require some additional resources with expertise in a number of specific areas. These include research and analysis, modelling and simulations, system operations, contract management, communications, settlements, finance and other critical functions.”

Question(s):

(a) If the IESO is required based on government directives to take steps that will increase costs above forecast for 2022 relating to decarbonization or otherwise, how will it secure the funding to take those steps? Could a deferral or variance account be created for that purpose?

Interrogatory # 1-ED-6

Reference: Exhibit B-1-2, Page 20

Preamble:

Average FTEs

Full-Time Equivalents (FTEs)	**2021 Budget**	**2022 Budget**	**2023 Budget**	**2024 Budget**
Baseline	713	706	716	705
MRP Post-go live	-	3	18	21
Resource Adequacy	-	3	4	4
Enabling Resources	-	1	2	2
Other initiatives	-	10	11	9
Pathway to zero emissions	-	7	-	-
Core Operations	713	730	751	741
Market Renewal Program	81	97	101	10
Total FTEs	**794**	**827**	**852**	**751**

Question(s):

(a) The proposed staffing levels seem modest in comparison to staffing required to cost-effectively procure capacity and energy to meet forecast deficits, replace expiring contracts, and address economy-wide decarbonization. If it becomes clear that additional staff are necessary, what steps can be taken to ensure cost recovery?

(b) How much capacity will be purchased by the IESO in 2022 (KW)? Please also provide a rough high-level estimate of the cost of that capacity over the lifetime of the contracts.

Interrogatory # 1-ED-7

Reference: Exhibit B-1-2, Page 20

Preamble:

> **Risk: Regulatory Change.** A regulatory decision is made that impedes the ability of the IESO to enhance competition.
>
> **Risk Assessment: Medium**
>
> **Risk Mitigation Approach**
>
> While the Ontario Energy Board (OEB) is typically aligned with IESO direction for achieving a more competitive electricity market, in making decisions, the OEB will give significant weight to past decisions which may impede market competition. The IESO will seek to engage the OEB in support of a coordination framework to enable ongoing education and strengthen the understanding of the foundational Market Renewal Program (MRP) or wider market or grid-operation changes.

Question(s):

(a) Please provide a list of potential regulatory decisions that are contemplated by the above passage.

Interrogatory # 1-ED-8

Reference: Exhibit C, Tab 2, Schedule 1, Page 2

The IESO commissioned a study on the IESO Regulatory Scorecard by John Todd of Elenchus and filed it in EB-2017-0150, Exhibit C-1-1, Attachment 1. It stated at page 36:

> "[S]ince system losses are important to Ontario's electricity users it is reasonable to suggest that a comprehensive metric would be a useful indicator of the performance of the industry with respect to optimizing the various types of investment and grid management opportunities that impact on transmission system losses. …
>
> It may be reasonable to give further consideration to including a measure of the cost efficiency of transmission losses in the IESO scorecard in the future. Factors to consider include the degree of control that the IESO has over transmission losses and the division of responsibilities between the IESO and transmission owner/operators. In addition, further work would be needed to develop an acceptable methodology for calculating transmission loss metrics that factors in cost optimization."

Questions:

(a) Does the IESO agree with John Todd that "system losses are important to Ontario's electricity users."?

(b) Does the IESO agree with John Todd that "a comprehensive metric would be a useful indicator of the performance of the industry with respect to optimizing the various types of investment and grid management opportunities that impact on transmission system losses."?

(c) Has the IESO given further consideration to including a measure of the cost efficiency of transmission losses in the IESO scorecard and if not, when does it believe it would be the appropriate time to do so?

(d) Please provide a table with the following data for the most recent five years that this data is available:
   i. Annual transmission losses (MWh);
   ii. Annual transmission losses as a percent of annual demand;
   iii. The ratio of the figure in (ii) to the peak demand (peak hour); and
   iv. Transmission losses at the time of system peak demand as a percentage of system peak demand (peak hour).

(e) What share of supply costs are currently reflected in market prices? Please provide a detailed answer, including appropriate references to the Global Adjustment ("GA") and Hourly Ontario Electricity Price ("HOEP").

(f) Please describe at a qualitative level the percent of energy costs that are reflected outside of market prices (i.e. outside of HOEP). Please also estimate the approximate percent of energy costs reflected outside of market prices (i.e. outside of HOEP).

(g) Please describe at a qualitative level the percent of operating costs that are reflected outside of market prices (i.e. outside of HOEP). Please also estimate the approximate percent of operating costs reflected outside of market prices (i.e. outside of HOEP).

(h) Please complete this table to the best of the IESO's ability, making and stating assumptions, simplifications, and caveats as necessary:

Breakdown of Total Electricity Supply Costs				
	Operating costs	Capital costs	Return/profit	Total
% reflected in HOEP				100%
% reflected in GA				100%
% elsewhere				100%
Total	100%	100%	100%	

(i) Please complete this table to the best of the IESO's ability, making and stating assumptions, simplifications, and caveats as necessary:

Breakdown of Total Electricity Supply Costs			
	Energy costs	Capacity costs	Total
% reflected in HOEP			100%
% reflected in GA			100%
% elsewhere			100%

Total	100%	100%	

Interrogatory # 1-ED-9

Reference: Exhibit C, Tab 3, Schedule 1

Preamble:

> As set out in Exhibit A-1-2 – 2022 Submission, the IESO is requesting approval to charge proponents a fee for the activities the IESO undertakes to reliably integrate new or modified facilities to the IESO-Controlled Grid (ICG).

Question(s):

(a) Please confirm whether the reliable integration fee will be applied to customers seeking to connect to a local distribution company's grid.
(b) Please defined the IESO-controlled grid and provide a map or figure differentiating the ICG from electricity distribution systems.
(c) Is there a MW threshold under which a project will would not be charged a reliable integration fee?
(d) Approximately how much would the IESO anticipate charging through the reliable integration fee on an annual basis?
(e) Approximately how much will the reliable integration fee cost on a per-project basis? Please provide a response on a rough, best-estimate basis with caveats as necessary. Please also differentiate by the size of the facility (MW).
(f) Are certain kinds of generation more or less likely to raise reliability issues in the connection assessments undertaken by the IESO through this fee?

Interrogatory # 1-ED-10

Reference: Exhibit D, Tab 1, Schedule 1, p. 5-6

Preamble:

> "The Minister has asked the IESO to evaluate a moratorium on procuring new natural gas generating stations and to develop a pathway to decarbonization in the electricity sector.4 The IESO will provide this additional analysis by November 2022. This effort is currently structured to support the development of a proposed pathway, but does not account for the resources needed for implementation. The budget for 2022 includes resources for additional staff and technical consultants to undertake the analysis, design and stakeholder engagement necessary to develop a plan to phase-out gas generation in a cost-effective and reliable way for Ontarians."

Question(s):

(a) Please provide a complete breakdown of the above-referenced budget for the pathways study.

Interrogatory # 1-ED-11

Reference: Exhibit G-1-1 Attachment 4, Page 16

Preamble:

> Through the Reliability Standards Review stakeholder engagement, the IESO reviewed assumptions related to compliance with Northeast Power Coordinating Council (NPCC) resource adequacy standards (NPCC "Directory 1"), including assumptions for non-firm imports. Through this engagement, the IESO proposed a methodology to determine an appropriate assumption for non-firm imports which takes into account the NPCC Review of Interconnection Assistance Reliability Benefits study. The Reliability Standards Review concluded on April 9, 2021.
>
> The stakeholdered methodology to determine an appropriate assumption for non-firm imports will be included in the assessments for the 2021 Annual Planning Outlook (APO).

Question(s):

(a) Please describe the changes in methodology at a high level, and quantify the impact (MW, $, and %) on the level of non-firm imports that is now considered appropriate to assume in resources adequacy studies.
(b) Please confirm that these assumptions can have major financial impacts through the capacity that the IESO will need to procure.
(c) Please confirm whether the IESO will continue this work in an effort to lower costs if possible in 2022 or the future.

Interrogatory # 1-ED-12

Reference: Exhibit G-1-1 Attachment 4, Page 25

Preamble: Market surveillance panel recommendation:

> "The IESO should immediately cease reimbursements to gas generators of carbon cost payments."

Question(s):

(a) Has the IESO received specific government direction regarding this recommendation? If yes, please provide the documentation containing that direction.
(b) Please confirm that the IESO has declined to follow this recommendation.
(c) Please confirm whether the IESO is open to reconsidering its response.

(d) Please confirm that following through with this recommendation would not increase the IESO's requested revenue requirement.

Interrogatory # 1-ED-13

Reference: Exhibit G-1-1 Attachment 4, Page 27

Preamble:

> "As noted in response to recommendation 3-3 from the Market Surveillance Panel's September 2021 report, in the short term, the RT-GCG program will continue to reimburse carbon costs to ensure reliability consistent with the current program design as set out in 2017. In the future, the Market Renewal Program (MRP) will introduce the enhanced realtime unit commitment process which will facilitate enhanced competition between generators based on their all-in costs, including carbon costs. MRP is expected to be in service by November 2023."

Question(s):

(a) Please confirm that this does not entail ceasing the reimbursement of generators or preserving the incentives of the carbon price.
(b) Could the IESO adjust the dispatch order *as if* the carbon price was added to gas generation to preserve the carbon price impact? Please discuss. Please indicate the cost to do so in 2022 if implemented immediately.

Interrogatory # 1-ED-14

Reference: Exhibit G-1-1 Attachment 4, Page 27

Preamble: Market surveillance panel recommendation:

> "If the IESO does reimburse gas generators for carbon cost payments, the total annual reimbursement from the IESO should be made public to improve transparency, beginning with the total reimbursement to gas generators for 2019 that was made in 2021."

Question(s):

(a) Please provide the above-referenced information or provide a link to where it is publicly available. If only draft or partial details are available, please provide those.

Interrogatory # 1-ED-15

Reference: Exhibit B

Preamble:

Question(s):

(a) The OEB has prepared a report for the Ministry of Energy on an Optional Enhanced Time of Use rate structure. If this were to be implemented, what tasks would fall to the IESO? Would these entail additional costs or staff work for the IESO? If yes, how much?
(b) The OEB report on the optional enhanced rate structure briefly discussed implementation issues relating to net metering.[1] Customers with net metering are typically made to switch to tiered rates (from TOU rates) when they get a net meter. This means that customers with net metering will not be able to benefit from the new optional enhanced TOU rates. This would rule out a number of proactive customers who might otherwise be interested in the optional rate. Does the IESO have tools or mechanisms to resolve that issue? Please explain. If yes, would that fix entail additional costs or staff work for the IESO? If yes, how much?
(c) Net metering is currently not available for residential customers with local storage that do not also have renewable generation. If that were to change (e.g. via a change to the regulation), what steps would the IESO need to take to implement that change and what costs and staff time would be required from the IESO.

Interrogatory # 1-ED-16

Reference: Exhibit A, Tab 1, Schedule 2, Page 1

Preamble: "The IESO proposes a 2022 revenue requirement of $201.5 million."

Question(s):

(a) When did the IESO develop its proposed budget of $201.5 million for 2022? Please provide as specific of an answer as possible.
(b) For the point in time when the IESO developed the $201.5 million budget, please provide the underlying planning assumptions:
    i. Short term electricity demand forecast;
    ii. Long term electricity demand forecast;
    iii. Low, medium, and high electric vehicle penetration forecasts (# of vehicles and impact on electricity demand);
    iv. Government directives on electric vehicles; and
    v. Forecast impacts on electricity demand from electrification of heating.
(c) For each of the items in (b), please provide the IESO's *latest* assumptions, or where they are unchanged, please state so.
(d) Please describe how any changed assumptions could impact IESO's costs.
(e) If those assumptions change between now and the end of 2022 necessitating increased spending, how can the IESO ensure cost recovery? Could a deferral or variance account be created for that purpose?

Interrogatory # 1-ED-17

[1] https://www.oeb.ca/sites/default/files/Report-Design-of-an-Optional-Enhanced-Time-of-Use-Price-20220331.pdf, p. 58.

Reference: Exhibit G-2-1

Preamble:

> MRP high level design began with two streams: the energy stream and the capacity stream (known as the Incremental Capacity Auction (ICA)). In July 2019, further work on the ICA portion of the program was stopped as a result of updated planning assumptions and in response to stakeholder feedback.

Questions:

(a) In light of increasing capacity gaps expected in the future, is the IESO considering resuming the Incremental Capacity Auction stream of market renewal? If not now, what conditions would convince the IESO to resume this stream?

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Advocacy

May 2, 2022

BY EMAIL AND RESS

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, Suite 2700, P.O. Box 2319
Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

Re: Ontario Power Generation Clean Energy Credits

I am writing on behalf of Environmental Defence to request that the Ontario Energy Board (OEB) re-open or institute a new proceeding to consider issues relating to Ontario Power Generation's ongoing sales of clean energy credits arising from its OEB-rate-regulated assets. Ontario ratepayers have paid for these clean energy resources. By selling these credits into other jurisdictions, OPG may be undermining Ontario businesses and municipalities that wish to or are required to reduce their carbon footprint and report on those efforts.

Background

It appears that OPG has been selling clean energy credits to buyers outside of Ontario for some time now. This became public only very recently. These credits allow the purchaser to "prove that the electricity they consume from the grid comes from clean generation sources, even if they operate within an electricity grid that includes high-emitting generation sources."[1] The credits cannot be double-counted.[2] Therefore, when a purchaser secures the right to say they are consuming clean energy with respect to a volume of electricity, that right is taken from Ontario electricity consumers.

OPG sells clean energy credits associated with its OEB-rate-regulated assets, namely its regulated nuclear and hydro facilities.[3] These assets are paid for by Ontario electricity consumers through payment amounts approved by the OEB. OPG does not sell clean energy credits from its unregulated assets under contract with the IESO as the IESO prohibits doing so in its contracts.

[1] OPG, Clean energy credit program, https://www.opg.com/climate-change/cec-program/.
[2] *Ibid*.
[3] *Ibid*.

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OPG sells these credits though third party registries such as the Midwest Renewable Energy Tracking System (M-RETS) or via Attestation Letters.[4] It is not yet clear (a) when these sales began, (b) how many have been sold (number of megawatt-hours or value of revenue), (c) how many are forecast to be sold, and (d) what the average carbon intensity is for the remaining energy in Ontario.

As the OEB is likely aware, the IESO is exploring a voluntary clean energy credit market for Ontario. That is a separate process and Environmental Defence is not asking the OEB to address this initiative. The ongoing OPG sales are different as they involve sales into other jurisdictions of assets and rights that have been paid for by Ontario electricity consumers.

Potential harm to customers

The selling of clean energy credits has the potential to harm customers.

Benefits lost to Ontarians

The potential harm to Ontarians is illustrated by the IESO's practice regarding environmental attributes and clean energy credits in its contracts with generators. The IESO reserves the environmental attributes in its contracts for the benefit of Ontarians. Therefore, generators, including OPG, cannot sell clean energy credits for the power they sell through IESO contracts. The IESO presumably does this because environmental attributes have real value that should remain with the Ontarians that have purchased the power in question.

When clean energy credits are sold by OPG, the value that is transferred to the purchaser is taken from Ontario electricity customers. If a purchaser has bought the right to claim they consume a MWh of carbon-free power, this same right was lost to Ontarians because there can be no double counting. This is a real loss that could have significant ramifications for Ontario businesses, municipalities, and all ratepayers.

Businesses

OPG's clean energy credit sales may harm businesses by undermining their ability to meet corporate carbon targets, qualify for ethical accreditation, and report on carbon emissions.

Many companies have set corporate Environmental and Sustainability Goals ("ESG") regarding their carbon emissions.[5] These often include calculating indirect carbon emissions from electricity consumption. Many will calculate the carbon footprint of their electricity consumption based on the assumption that Ontario's generation is approximately 92% carbon-free. That is no longer valid if clean energy credits are being sold by OPG to others. Ontario consumes approximately 74 TWhs annually. For every TWh that OPG sells of clean energy credits, the

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[4] *Ibid*.
[5] *Ibid*.

remaining TWhs have a higher carbon intensity. Ontario businesses and credit purchasers cannot both rely on the same carbon-free energy and both claim the value of the associated carbon reductions. That would be double counting.

The concerns are even greater for carbon-related accreditation, such as ethical investment criteria. There are a variety of accreditations that include carbon-related criteria. Taking rights and value from Ontario electricity customers may cause problems for those trying to qualify.

Regardless of the magnitude of sales, businesses may encounter significant reporting problems. Those problems would arise for self-imposed corporate targets, external accreditation schemes, or other listing requirements. Without knowing how many credits have been sold as a proportion of Ontario's electricity output, it is not possible to calculate the carbon emissions arising from the power they consume while also avoiding double counting.

Municipalities

Municipalities face similar issues. Many have passed climate plans that include reducing carbon emissions, including indirect emissions from the electricity they consume (i.e. "scope 2" emissions). Selling environmental attributes out from under these municipalities will undermine those efforts. They cannot claim to consume carbon-free power with respect to megawatt-hours that have been sold off.

Municipalities are also required to calculate and report their indirect "scope 2" emissions from electricity consumption under Ontario Regulation 507/18. It is unclear how that should be done in light of the clean energy credits without double counting.

Ontario's and Canada's carbon targets

These clean energy credit sales may also undermine Ontario's and Canada's carbon targets. Canada's carbon targets are mandated by law and international treaty. It is unclear how these targets are impacted if a significant number of clean energy credits are being sold into the United States. Again, the value of the carbon reductions cannot be accounted for twice, once in each country.

Homeowners and the public good

Ontario has gone to significant efforts to phase out coal power. This has a cost, and a corresponding value. Some unknown amount of that value is being lost to all Ontario electricity customers, including homeowners across the province who want to know they have an almost-carbon-free electricity grid. From a public interest perspective, to the extent that OPG sells credits into coal-burning jurisdictions, it is as if Ontario is back to burning coal by giving others an excuse to continue doing so.

OEB Jurisdiction

As noted above, the IESO is responsible for determining whether OPG can sell clean energy credits with respect to its contracted generation facilities (i.e. non-regulated assets). With respect to OPG's assets prescribed under section 78.1 of the *Ontario Energy Board Act*, the OEB presumably has that responsibility. It clearly has that *jurisdiction* under s. 78.1(4) of the *Ontario Energy Board Act*, which grants the OEB the authority to include conditions in orders fixing the payment amounts to OPG.

Ontario ratepayers pay for OPG's regulated assets through amounts set by OEB orders under s. 78.1 of the *Ontario Energy Board Act*. The OEB's jurisdiction to include conditions in these orders must extend to conditions regarding the sale of environmental attributes and rights that Ontario customers have paid for.

In any event, if there is a disagreement regarding the OEB's responsibility or jurisdiction, that should be decided with the benefit of submissions from applicable stakeholders.

Issues and procedural pathways

As noted above, Environmental Defence requests that the OEB re-open or institute a proceeding. We believe the following two issues should be explored:

1. It is appropriate for OPG to sell environmental attributes, credits, and/or rights with respect to the regulated assets funded by ratepayers?

2. If yes, how should the proceeds be accounted for and allocated?

The OEB could achieve this by instituting a new proceeding on its own motion under s. 78.1(5)(b) of the *Ontario Energy Board Act*.

Alternatively, the OEB could re-open the recently-decided OPG payment amounts proceeding (EB-2020-0290) under Rule 5.01. Under that rule, the OEB may grant all necessary relief where a party to a proceeding has not complied with a requirement of the Rules. In EB-2020-0290, OPG did not comply with Rule 16.02 because its application did not include the information required by the relevant filing guidelines.[6] For instance, OPG's applications are required by s. 2.8.2 of the filing guidelines to include "other revenue" broken down by revenue source, including historic figures, a six-year forecast, and a detailed explanation of how the other revenues are attributed to the prescribed generation facilities.[7] These key details with respect to clean energy credit revenue, both past and forecast, were not included in the application.

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[6] OEB, *Filing Guidelines for Ontario Power Generation Inc.; Setting Payment Amounts for Prescribed Generation Facilities*, July 27, 2007, Revised November 11, 2011.
[7] *Ibid*. at s. 2.8.2.

We do not wish to suggest any ill intent on the part of OPG. We assume noncompliance was due to an inadvertent oversight. OPG is a large organization and regulatory staff may not have turned their minds to this issue. For relief to flow from s. 5.01 of the Rules, no bad faith is required. In our submission, the OEB should simply consider whether there was noncompliance and whether the relief in question is in the best interests of customers. We believe the answer is clearly yes to both of those questions.

The applicant did not provide details of its ongoing clean energy credit sales, including the historic and forecast revenue amounts, as required by the filing guidelines. It if had, multiple parties would have explored the issue and made submissions on appropriate OEB directions. If the OEB decides against instituting a new proceeding, the appropriate relief would be to re-open EB-2020-0290 with the sole purpose of exploring clean energy credit issues.

Urgency and efficiency

This matter cannot wait until the next OPG application. Without more details now, Ontario businesses and municipalities may be unable to calculate and report on the indirect emissions from their electricity consumption. More concerning is that these sales presumably cannot be "undone" and as such the value of the clean energy benefits are permanently lost to Ontario consumers.

Furthermore, there is no need to wait. In our view, an oral hearing would not be required, and therefore these issues can be addressed in a focused, timely, and highly efficient manner.

Thank you for considering this request.

Yours truly,

Kent Elson

cc: Parties in EB-2020-0290

ONTARIO POWER GENERATION

Saba Zadeh
VP Regulatory Affairs

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May 6, 2022

BY EMAIL

Ms. Nancy Marconi
Registrar
Ontario Energy Board
27th Floor - 2300 Yonge Street
Toronto, ON
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Dear Ms. Marconi:

Re: Ontario Power Generation Inc. ("OPG") – Clean Energy Credits

This correspondence is in response to the letter of Environmental Defence dated May 2, 2022, in which Environmental Defence requests that the Ontario Energy Board (the "OEB") reopen proceeding EB-2020-0290 or institute a new proceeding on its own motion to consider the appropriateness of OPG selling environmental attributes, credits or rights (collectively "Clean Energy Credits") and the treatment of any proceeds arising therefrom. Environmental Defence premised its request on two assertions: (i) in submitting its EB-2020-0290 application, OPG did not comply with the OEB's Filing Guidelines, as required by OEB Rule 16.02, because it did not include revenues from the sale of Clean Energy Credits in "non-energy revenues," and (ii) the OEB has jurisdiction under section 78.1 of the *Ontario Energy Board Act* (the "OEB Act") to impose conditions on the sale of Clean Energy Credits.

In OPG's view, neither of the above assertions is correct and the OEB should not entertain either of Environmental Defence's procedural requests.

The determination of how revenues from Clean Energy Credits sales will either flow back to ratepayers or be used to support future clean energy projects will be based on developing government policy direction, which is expected to issue following the conclusion of the Independent Electricity System Operator's ("IESO") ongoing stakeholder engagement to develop a Clean Energy Credit registry.

Revenues from Clean Energy Credits sales are currently included in OPG's overall revenues and are expected to be subject to any registry established by the IESO. OPG's sales of Clean Energy Credits derived from its hydroelectric assets have yielded immaterial revenues to date (e.g., approximately $6M in total over the 2019-2021 period).

Given that OPG's hydroelectric payment amounts were frozen pursuant to O. Reg 53/05, EB-2020-0290 did not consider changes to either hydroelectric costs or revenues. As such, OPG led no evidence on hydroelectric costs or non-energy revenues, including the immaterial revenues derived from Clean Energy Credit sales. Instead, the EB-2020-0290 proceeding addressed the calculation of

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OPG's nuclear payment amounts. At no time prior to the resolution of the EB-2020-0290 application and the issuance of the resulting payment amounts order did OPG sell or contemplate selling Clean Energy Credits related to its prescribed nuclear assets. Therefore, the evidence in EB-2020-0290 was proper and complete and no update was required under Rule 11.02.

With respect to the OEB's jurisdiction, Environmental Defence relies on section 78.1(4) of the OEB Act, which provides:

> The Board shall make an order under this section in accordance with the rules prescribed by the regulations and may include in the order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment.

Environmental Defence only focuses on the wording that the OEB may impose conditions in a payment amounts order issued under section 78.1. However, these conditions are not limitless and must be consistent with the statutory framework and authority granted to the OEB under the OEB Act. Section 78.1 requires the OEB to establish payment amounts that are just and reasonable. Section 78.1(4) provides the OEB with the broad discretion to "include in the order conditions … respecting the calculation of the amount of the payment."

If in a future application, OPG forecast revenues from the sale of Clean Energy Credits derived from a prescribed asset that is within the OEB's authority to establish payment amounts, it would be within the ambit of section 78.1(4) to consider these revenue. However, Environmental Defence's request that the OEB consider the merits of Clean Energy Credits in general or the general registration, administration, authorization or permission to sell Clean Energy Credits, is beyond the ambit of section 78.1(4).

Given that there are no payment amount consequences arising from the sale of Clean Energy Credits by OPG related to its hydroelectric business to date and OPG's approved nuclear payment amounts remain just and reasonable, there is no basis to adopt either of Environmental Defence's procedural requests and therefore they should be denied.

Respectfully submitted,

Saba Zadeh

Saba Zadeh

cc: Charles Keizer, Torys LLP
Aimee Collier, OPG

Elson
Advocacy

May 6, 2022

BY EMAIL AND RESS

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, Suite 2700, P.O. Box 2319
Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

Re: Ontario Power Generation Clean Energy Credits

I am writing in response to OPG's letter of today's date regarding its sales of Clean Energy Credits. OPG argues that the OEB should not explore OPG's past or future sales of clean energy credits arising from its OEB-rate-regulated assets on the basis that (a) they are immaterial, (b) disclosure was not required in EB-2020-0290, and (c) the OEB lacks jurisdiction. None of these arguments have merit.

Materiality

OPG argues that the OEB need not explore this issue because OPG's sales of clean energy credits have yielded "immaterial revenues" in the amount of $6 million. This is an overly narrow understanding of materiality for the following reasons:

- **Volumes:** Sales of $6 million may equate to significant volume of electricity. If OPG is selling unbundled credits, the price may be in the range of $1 per MWh.[1] Therefore, the revenues could equate to approximately 6,000,000 MWh of clean energy credits. That is almost 10% of the output of OPG's nuclear and hydroelectric generating facilities.[2] Even a much lower volume would be material.

- **Impact on emissions intensity:** Sales of a non-trivial number of MWhs of Clean Energy Credits will have an impact on the emissions intensity of the remaining electricity, which may be important for entities that track and report on their secondary emissions from electricity use.

[1] United States Environmental Protection Agency, *Unbundle Electricity and Renewable Energy Certificates*, https://www.epa.gov/lmop/unbundle-electricity-and-renewable-energy-certificates
[2] Ontario Power Generation, *2020 Annual Report*, https://www.opg.com/documents/2020-annual-report-pdf/, p. 57.

- **Value to customers:** The value lost to OPG's customers may well be significantly more than $6 million.

- **Dollar value:** Revenue of $6 million is not below any OEB-mandated materiality threshold. Nor does it appear to be below an OPG threshold. In its pre-filed evidence in EB-2020-0290, OPG listed various "other revenue" items that were well below $6 million, including past and forecast figures.[3]

- **Future value:** The value and volume of ongoing and future sales are relevant, not only the past sales. OPG does not indicate what these will be in its letter. However, it has stated publicly that "OPG has seen a strong increase in interest, and uptick in sales."[4]

- **Reporting barriers:** The sales of clean energy credits can make it impossible for municipalities and businesses to accurately report on their secondary emissions from electricity consumption without double counting even if the volume of sales is modest. See my letter of May 2, 2022 for details.

Finally, OPG has not addressed the concerns outlined in our letter of May 2, 2022 about the potential impacts of these sales on businesses, municipalities, and homeowners. These potential impacts are material and warrant further exploration from the OEB.

Disclosure Obligations in EB-2020-0290

OPG argues that it was not required to notify the OEB of its past clean energy credit sales nor its future proposed sales in EB-2020-0290 as it did not "sell or contemplate selling Clean Energy Credits related to its prescribed nuclear assets" at the relevant time. However, this is inconsistent with publicly available information. For instance, on January 26, 2022, the President and CEO of OPG, Ken Hartwick, is quoted as stating as follows:

> OPG has seen a strong increase in interest, and uptick in sales, for environmental attributes from our non-emitting hydroelectric and **nuclear facilities**. The government's proposed centralized CEC registry is a significant step that will benefit ratepayers and support Ontario electricity consumers wishing to track and report on their emissions goals.[5]

This statement was made before the final order in EB-2020-0290.[6] More importantly, it is surely the case that the President and CEO of OPG does not make public statements like that without significant discussions and investigations by OPG staff. It is hard to imagine that OPG would not have at least contemplated sales of clean energy credits associated with its nuclear assets, if not

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[3] OPG, Exhibit G2, Tab 1, Schedules 1 and 2 (see, for example, ancilliary services sales to the IESO).
[4] News Release, January 26, 2022, https://news.ontario.ca/en/release/1001486/new-ontario-clean-energy-registry-will-make-province-even-more-attractive-for-investment.
[5] *Ibid.*
[6] EB-2020-0290, OEB, Payment Amounts Order, January 27, 2022.

already sold them, long before the conclusion of EB-2020-0290. Even if this information was not known at the outset, it should have been provided to the OEB and intervenors as an update under Rule 11.[7]

Moreover, OPG is incorrect in concluding that its sales of credits from its hydroelectric facilities were irrelevant. O. Reg. 53/05 only froze the "base payment" for hydroelectric facilities while explicitly stating that this "does not affect any authority of the Board to approve … the establishment of or changes to deferral or variance accounts relating to the hydroelectric facilities."[8] These hydroelectric issues were explicitly included in the Issues List under issue 13.[9] In the very least, details about clean energy credits arising from hydroelectric facilities were relevant to whether the OEB should create a new deferral or variance account for this revenue or adjust an existing account to the same end.

More broadly, OPG appears to take a view of materiality that is overly narrow and technical. Adopting it could set a bad precedent for OEB proceedings. The OEB relies on applicants to disclose relevant information and updates in proceedings. Although the OEB outlines specific items, such as "other revenues," it also requires, more generally, that applicants provide relevant information that could inform the OEB's decision-making. These past, ongoing, and future sales are captured both by the specific requirement to disclose other revenues and the overriding obligation to provide information that could inform the OEB's decision-making.

OEB Jurisdiction

OPG incorrectly asserts that the OEB has no jurisdiction to consider the issues raised by Environmental Defence. The scope of the OEB's jurisdiction should be decided with the benefit of submissions from the relevant stakeholders and a factual record. In any event, OPG's submissions on this issue are clearly wrong.

OPG argues that the OEB is only allowed to include conditions in its orders if they concern the calculation of the payment amount. This is based on a misquotation of section 78.1(4) of the *Ontario Energy Board Act*. OPG states as follows: "Section 78.1(4) provides the OEB with the broad discretion to 'include in the order conditions … respecting the calculation of the amount of the payment.'" OPG incorrectly omits the key portions of the section relevant to its meaning. The full section reads as follows:

> The Board shall make an order under this section in accordance with the rules prescribed by the regulations and **may include in the order conditions**, classifications or practices, **<u>including</u> rules respecting the calculation of the amount of the payment**.[10]

[7] OEB Rules of Practice and Procedure, Rule 11.
[8] Ontario Regulation 53/05, s. 6(3).
[9] EB-2020-0290, OEB, *Decision on Issues List,* May 20, 2021.
[10] *Ontario Energy Board Act*, s. 78.1(4).

The jurisdiction to include conditions is not limited to calculation issues as OPG suggests. It *includes* conditions regarding calculations issues.

Furthermore, OPG's description of the OEB's jurisdiction is completely at odds with the conditions that the OEB has included in orders in the past. For instance, the filing guidelines list 17 conditions from a previous payment order issued by the OEB, all or most of which would have been beyond the OEB's jurisdiction based on OPG's assertion that only calculation issues can be addressed in conditions.[11]

Ontario ratepayers pay for OPG's regulated assets through amounts set by OEB orders under s. 78.1 of the *Ontario Energy Board Act*. The OEB's jurisdiction to include conditions in these orders must extend to conditions regarding the sale of environmental attributes and rights that Ontario customers have paid for, particularly where those sales could have significant impacts on customer interests as outlined in our letter of May 2, 2022.

Finally, OPG asserts that "the determination of how revenues from Clean Energy Credits sales will either flow back to ratepayers or be used to support future clean energy projects will be based on developing government policy direction." That is not accurate for a number of reasons. First, Environmental Defence has raised concerns about OPG's sales into other jurisdiction, both past and future. The potential Ontario market is completely different, and would at least initially be limited to "the trading of credits within Ontario."[12] Second, the government may or may not decide to pursue an Ontario market. Third, the creation of an Ontario market likely would not address the past and ongoing sales by OPG outside that market.

Proceeding Needed

OPG's letter raises a number of issues that are best addressed via a short and efficient re-opening of EB-2020-0290 or a short and efficient new hearing. A proper process would allow for an appropriate canvassing of the facts and the law based on the input of relevant stakeholders. In contrast, declining to explore the issue through a proceeding would require the OEB to make determinations without that input and based on incomplete information.

Take, for instance, the facts. On April 20, 2022, I wrote to OPG's Vice President of Regulatory Affairs, Ms. Zadeh, requesting more information on these clean energy credit sales. In particular, I requested the "amount sold thus far and a rough forecast to 2026 ($ and TWh), broken down by hydro and nuclear." I have yet to receive a response. We now have OPG's letter indicating sales of $6 million from 2019-2021. But we still do not know the volume (TWh), the sales prior to 2019 (if any), or the amounts expected in 2022 and onward for hydroelectric or nuclear. Nor have intervenors had an opportunity to test OPG's assertions about the lack of nuclear-related

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[11] OEB, *Filing Guidelines for Ontario Power Generation Inc.; Setting Payment Amounts for Prescribed Generation Facilities*, July 27, 2007, Revised November 11, 2011, p. 2-5.

[12] Letter from the Ministry of Energy to IESO, January 26, 2022, p. 2 (https://www.ieso.ca/-/media/Files/IESO/Document-Library/corporate/ministerial-directives/Letter-from-the-Minister-of-Energy-20220126.ashx).

sales or ask any other relevant questions by way of interrogatories. There is an asymmetry of information between OPG on one hand and the OEB and intervenors on the other hand. A proceeding would help to remedy this asymmetry and result in better decision-making.

The same is true for the legal issues and stakeholder perspectives. A proceeding would allow these to be quickly and efficiently canvassed. Declining to re-open or institute a new hearing would require the OEB to effectively decide on these matters without the benefit of those perspectives.

Finally, we urge the OEB to avoid deferring a new or re-opened proceeding by creating a deferral or variance account that would be cleared in the next payment amount proceeding. This would only address a narrow accounting issue. But it would not address the other important issues set out in our letter of May 2, 2022, including the potential impacts on businesses and municipalities, their reporting needs, their climate targets, and the value they place on the environmental attributes of Ontario's energy supply that could be sold out from under them in ways that cannot be undone. The OEB would benefit from hearing the perspectives of those stakeholders through a short and efficient hearing, including on jurisdiction issues, before irreversible steps are made that could negatively impact their interests.

Thank you for considering this request.

Yours truly,

Kent Elson

cc: Parties in EB-2020-0290