



Ontario Power Generation Inc.

**Application for a variance account to capture the
nuclear revenue requirement impact of the overturning
of Bill 124**

**INTERIM ORDER
March 22, 2023**

On March 1, 2023, Ontario Power Generation Inc. (OPG) filed an application with the Ontario Energy Board (OEB) under section 78.1 of the *Ontario Energy Board Act, 1998* seeking approval to establish a variance account to record the nuclear revenue requirement impacts resulting from the Ontario Superior Court overturning the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* (Bill 124).

In addition, OPG requested approval to establish the proposed variance account effective March 1, 2023 on an interim basis, pending the outcome of this application. In the application, OPG stated that there are undetermined cost impacts as a result of Bill 124 being overturned because negotiations with the OPG's direct bargaining units respecting compensation provisions in their collective agreements are ongoing. OPG requested to establish the proposed variance account on an interim basis to record the impacts that could arise once the negotiations conclude.

Effective November 8, 2019, Bill 124 set a 1% maximum for annual increases in both wages and total compensation for unionized and non-unionized employees in the Ontario public sector for a three-year period, referred to as the "moderation period". The bill was legally challenged by unions and other organizations. On November 29, 2022, the Ontario Superior Court overturned Bill 124 and declared it to be "void and of no effect."

Bill 124 was applicable to OPG based on the Complementary Amendments of Bill 124, including OPG's direct bargaining units, Power Workers' Union (PWU) and the Society of United Professionals (Society).¹ The renewal process of PWU's collective agreement (which expired on April 1, 2022) is ongoing and the renewal process for Society's collective agreement is expected to begin later in 2023. The current Society collective agreement also includes a "reopener" provision in the event that Bill 124 is overturned (which has now occurred), however, PWU's current collective agreement does not include a reopener provision.

The potential nuclear revenue requirement impacts from increased compensation as a result of Bill 124 being overturned could be significant, and potentially greater than OPG's annual \$10 million materiality threshold. The OEB finds it appropriate, at this time, to establish the Bill 124 variance account on an interim basis. The establishment of this variance account on an interim basis will allow OPG to begin booking entries as early as March 1, 2023.

The determination to establish the Bill 124 variance account on an interim basis is made without prejudice to the OEB's final determination regarding the establishment of this account and the mechanics of the account. Although this interim approval will allow OPG to begin making entries as early as March 1, 2023, the ultimate effective date of the account (to the extent the account is approved) will be determined by the OEB in the final decision, and this interim approval is not a guarantee that the effective date for the account will be March 1, 2023. In the event that the OEB ultimately does not approve the establishment of the account, any entries into the account made pursuant to this interim approval will not be recoverable.

THE ONTARIO ENERGY BOARD THEREFORE ORDERS THAT:

1. Ontario Power Generation Inc. shall establish the Bill 124 variance account to record the nuclear revenue requirement impacts resulting from the Ontario Superior Court overturning the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* on an interim basis effective March 1, 2023, pending the outcome of this proceeding.

¹ Additionally, OPG has a direct bargaining relationship with the Canadian Union of Skilled Workers, which represents certain construction trades employees. Information related to this small number of employees has been historically aggregated as part of the Electrical Power Systems Construction Association (EPSCA) category of employees in OPG's evidence.

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DATED at Toronto, **March 22, 2023**

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar