Board Staff Interrogatory #5

Interrogatory

Ref: (1) Application for an Accounting Order, p. 2
(2) Application for an Accounting Order, p. 7
(3) Application for an Accounting Order, p. 8

Preamble:

In Reference 1, OPG stated that it was not able to reasonably anticipate the overturning of Bill 124 during the 2022-2026 payment amounts application.

Reference 2 states the following:

> Each bargaining unit will address the implications of the Bill 124 Decision on existing collective agreements covered by the moderation period according to the provisions of such agreements. If the collective agreement contained provisions that reopen compensation should the Bill 124 challenge be successful ("Reopener Provision"), the union has the ability to seek increased compensation for such period through two-party bargaining and interest arbitration. If the collective agreement contained no such language, the union may seek increased compensation through the Ontario Superior Court where the constitutionality issue was originally decided. Alternatively, the union could pursue increased wages in the subsequent round of collective bargaining to make up for the wage restraint during the moderation period.

OPG indicated in Reference 2 that the current two-year collective agreement with the Society expiring on December 31, 2023 contains a Reopener Provision. This Reopener Provision was included through an interest arbitration award issued in December 2021. OPG further noted that the one-year collective agreement with the PWU, which contained the 1% increase, expired on March 31, 2022 and did not contain a Reopener Provision. OPG and the PWU have been in negotiations for a collective agreement renewal since the spring of 2022.

Per Reference 3, OPG noted that its compensation cost forecasts for the 2022-2026 period were premised on the known requirement of Bill 124. OPG further noted that in discussing unionized salaries in EB-2020-0290, OPG stated that it is "legally bound by its collective agreements, which establish salary rates and govern salary increases, any cost of living adjustments, and progressions through established salary ranges."

Question(s):

a) Please confirm whether OPG was already aware that a Reopener Provision was expected to be included in the collective agreement with the Society, prior to the conclusion of the 2022-2026 Payment Amounts proceeding.

b) If so, please explain why OPG did not request a variance account for these impacts as part of that proceeding, given the timing of the ratification of the agreement with the Society.

Response

a) OPG became aware that the collective agreement with the Society would include a Reopener Provision during the interest arbitration hearing held on November 19, 2021. The arbitrator's award was issued on December 3, 2021.

b) OPG did not seek a variance account related to the Reopener Provision because doing so would have been highly speculative and disruptive to the EB-2020-0290 proceeding, as the arbitrator's award was issued more than two weeks after the OEB's Decision and Order on EB-2020-0290. It was also not necessary to request a variance account at that time; such an account would only become necessary if a Reopener Provision was incorporated into a future Society collective agreement and if the Ontario Superior Court ultimately overturned Bill 124. During the EB-2020-0290 proceeding, OPG did not know that both of these events would occur. After it became clear that the Bill 124 Decision would likely have a material impact on OPG's nuclear revenue requirement in 2023 and beyond, OPG filed this Application.

Furthermore, no prejudice results to ratepayers or to OPG from OPG's present request for the variance account, as no revenue requirement impacts from the overturning of Bill 124 arise prior to the Application. Accordingly, had a variance account been established earlier, entries to it would have been made at the same time as they will be made in the account being proposed.