

May 12, 2023

BY RESS

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, ON
M4P 1E4

Dear Ms. Marconi:

Re: EB-2023-0098 - An Application by Ontario Power Generation Inc. (“OPG”) For an Accounting Order Establishing a Variance Account to Capture the Nuclear Revenue Requirement Impact of the Overturning of Bill 124 – Reply to SEC Request for Further IR Responses

Ontario Power Generation (“OPG”) has reviewed the School Energy Coalition (“SEC”) letter dated May 9, 2023 wherein SEC and the Canadian Manufacturers and Exporters (“CME”), request that the OEB require OPG to provide further information on two topics addressed in OPG’s interrogatory responses filed on May 4, 2023. OPG’s response to each of these topics is provided below.

Timing of OPG’s Knowledge of the Legal Challenges to Bill 124

SEC requests that OPG supplement its responses to two interrogatories (SEC Interrogatory 2(a) and CME Interrogatory 1(b)) related to when OPG first became aware of the legal challenges to Bill 124. The interrogatories refer to the specific legal challenges filed by the Power Workers’ Union (“PWU”) and the Society of United Professionals (“Society”), as well as the legal challenges “generally.” OPG’s response stated that the company “would have first become aware of legal challenges to Bill 124 after the corresponding Notices of Application were filed.”¹

In its letter, SEC requests that OPG provide specific dates on which the company became aware of the legal challenges to Bill 124. OPG cannot provide the specific date(s) that it became aware of the various legal challenges to Bill 124 as OPG does not maintain a record of the dates on which any specific individual in the company becomes aware of legal challenges that may pertain to OPG’s business. Moreover, OPG was not specifically monitoring the courts for filings of legal challenges to Bill 124. The company became aware of the legal challenges after the matters were reported in the media.

The dates of the Notices of Application are matters of public record. For the convenience of the parties, those dates are:

¹ Ex. L-SEC-02, Part (a).

- First legal challenge filed: February 11, 2020, by the Ontario English Catholic Teachers Association
- Power Workers' Union: November 24, 2020
- Society of United Professionals: November 24, 2020

2022 Actual Return on Equity ("ROE")

SEC requests that OPG supplement its responses to certain interrogatories requesting the company's actual 2022 ROE for the regulated facilities. OPG refused to provide this information on the basis of relevance. As noted in OPG's response to Ex. L-Staff-04, an applicant's actual ROE is not relevant to the establishment of a deferral or variance account.

SEC argues that "the degree to which the company needs incremental funding is a relevant issue for parties to explore" in this proceeding. OPG disagrees. The OEB has articulated three eligibility criteria for establishing such accounts: causation, materiality, and prudence. Contrary to SEC's statements, there is no "means test" or "need" criterion for establishing a deferral or variance account. SEC has not articulated any connection between OPG's 2022 actual ROE and the eligibility criteria for the establishment of deferral and variance accounts and, accordingly, OPG maintains that the requested information is not relevant to the matters before the OEB in this application. Further, SEC's analogy to the *Filing Requirements For Electricity Distribution Rate Applications – 2022 Edition for 2023 Rate Applications* is not applicable to this proceeding. The referenced section (Chapter 3, p. 22) requires electricity distributors to provide actual ROE values when seeking to dispose of balances in Account 1572, Extraordinary Events Costs, which is generically available to all electricity distributors in accordance with the OEB's Accounting Procedures Handbook for Electricity Distributors.

Notwithstanding OPG's objection to the relevance, and without prejudice to any position that OPG may take in this or any other application, OPG is providing a preliminary estimate of the 2022 actual ROE figure, because this information will soon become available when OPG finalizes the calculation and makes its annual Reporting and Record Keeping Requirements ROE filing in July 2023 and the company wishes to avoid any potential delay to this proceeding. The estimate is in part preliminary due to the fact that the income tax component of the calculation will not be finalized until the filing of OPG's income tax return by June 30. On this basis, OPG confirms that a preliminary estimate of the 2022 actual ROE for the regulated facilities is in the range of 12.5% to 13.0%.

If you have any questions regarding this submission, please contact me at 416-592-2976.

OPG has submitted this document through the Regulatory Electronic Submissions System.

Respectfully submitted,



Saba Zadeh

CC:

Peter Cuff (OPG) via e-mail
Charles Keizer (Torys LLP) via e-mail
Intervenors of Record in EB-2023-0098