

August 29, 2023

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

Dear Ms Marconi:

**EB-2023-0209 – Ontario Power Generation Inc. – Application to Establish a Variance Account – Motion to Review**

We are representing the Consumers Council of Canada (Council) in the above-referenced proceeding.

On March 1, 2023, Ontario Power Generation (OPG), applied to the Ontario Energy Board (OEB) for 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), which prescribed limits on compensation increases in the Ontario public sector, including OPG. Bill 124 restricted both union and non-union provincial public sector wage increases and total compensation increases to 1% annually for a three-year moderation period effective November 8, 2019.

In its 2022 to 2026 payment amounts application, filed on December 31, 2020, OPG based its compensation cost forecasts on adherence to the restrictions of Bill 124.<sup>1</sup> The variance account for which OPG sought approval is to record the revenue requirement impacts of the difference between the forecast compensation costs included in the EB-2020-0290 proposed revenue requirements and such compensation costs for the nuclear facilities reflecting the overturning of Bill 124.<sup>2</sup>

Following a written hearing, on June 27, 2023, the OEB issued its Decision and Order denying the accounting order application. The OEB concluded that the evidence on the record did not support the argument that the overturning of Bill 124 was unforeseen. In addition, the OEB concluded that the proposed account did not meet two of the OEB's three standard tests of causation and materiality.<sup>3</sup>

On July 17, 2023, OPG filed a notice of motion to review and vary the decision. On August 11, 2023, OPG filed its Argument-in-Chief. The Council has reviewed the detailed legal submissions filed by Counsel to the Canadian Manufacturers and Exporters (CME) on August 28, 2023. CME's has detailed why OPG's arguments are without merit and they have concluded that the OEB's Decision is both correct, as well as reasonable, and was supported by the evidence that was before it. The Council

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<sup>1</sup> Application, EB-2023-0098, p. 8

<sup>2</sup> Application, p. 12

<sup>3</sup> EB-2023-0098, Decision and Order dated June 27, 2023, pp. 6, 10

supports CME's conclusions and urges the OEB to uphold its Decision. Ontario ratepayers should not be subject to additional compensation costs arising from Bill 124 being overturned.

Yours truly,

**Julie E. Girvan**

Julie E. Girvan

CC: All parties