



By E-mail

November 17, 2008

Andrew Barrett, P.Eng., MBA
Vice-President
Ontario Power Generation
700 University Avenue, H18G2
Toronto ON M5G 1X6

Dear Mr. Barrett

Ontario Power Generation Inc. ("OPG")

Board File No.: EB-2007-0905

Our File No.: 339583-000001

This letter is further to our exchange of voice and e-mail messages on Friday, November 14, 2008, pertaining to the Draft Order you circulated by letter dated November 13, 2008.

Our comments on OPG's Draft Rate Order and suggested amendments are set out below. Hopefully, we will have an opportunity to discuss these comments and suggested amendments with you before Thursday in order to ascertain whether OPG is amenable to making revisions to its Draft Rate Order along the lines we suggest.

In the interests of expediency, we are sending a copy of this letter to Ms Walli, the Board Secretary and to Ms Campbell and Mr. Battista of Board Staff, as well as the other ratepayer representatives who actively participated in these proceedings so that they will be aware of the points we have raised.

The primary objectives of the amendments to the Draft Rate Order we are proposing are as follows:

- (a) To add operative paragraphs pertaining to the Board's directions with respect to OPG's calculation of "Bruce Net Revenues" and the "Test Period Income Tax Provision Benchmark";
- (b) To broaden the text of paragraphs 2 and 4 of OPG's Draft Rate Order to quantify the rider amounts that are to be added to the payment amounts and the combined amounts that will be payable for the 13 months between December 1, 2008 and December 31, 2009; and

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- (c) To add a paragraph to the Draft Rate Order pertaining to consumer impacts along with an additional Appendix Table 6a to show the percentage impact on the bill of a typical residential customer of the combined amount that will be payable for OPG's hydroelectric and nuclear electricity generation with its prescribed assets, effective December 1, 2008.

Our comments and suggested amendments to the Draft Formal Order are as follows:

1. Bruce Net Revenues Directive

The Draft Order recites the Board's direction to OPG to revise its calculation of the forecast net revenues related to OPG's lease of the Bruce nuclear facilities to reflect the findings in the Decision. However, there is no operative provision in the Order which refers to OPG's response to this directive which is set out in Appendix A, Table 7.

We suggest that a new paragraph needs to be added, following paragraph 1 of the Order, to identify OPG's response to the Board's Bruce Net Revenues Directive. We suggest that a new paragraph be added, following paragraph 1 of the Order, to read something to the following effect:

"The revised calculation of the forecast net revenues related to OPG's lease of the Bruce facilities is set out in Appendix A, Table 7."

With respect to the format of Appendix A, Table 7, we suggest that it be broadened to be compatible with the format of Appendix A, Table 2 so that, in addition to the columns entitled "April 1 to December 31, 2008" and "January 1 to December 31, 2009", there is a "Total" column containing three (3) sub-columns as in Table 2.

We also request that OPG advise us whether the amount at line 12 entitled "Accretion on Nuclear Liabilities" is treated as an expense when determining taxable income and taxes in accordance with Generally Accepted Accounting Principles ("GAAP") which we understand is the basis upon which the income tax amounts at line 9 of Table 2 have been calculated.

2. Quantify Rider Amounts and Combined Amounts in paragraphs 2 and 4 of the Draft Rate Order

We suggest that the paragraphs of the formal Order should clearly transmit the Board's determinations of the payment and rider amounts that are to be combined and paid, effective December 1, 2008.

Our suggestion is that paragraph 2 be amended to read something to the following effect:

"2. Effective April 1, 2008, and subject to the Incentive Mechanism described in paragraph 3¹ of this Order for the prescribed hydro-

¹ We prefer the use of the word "paragraph" rather than "section" to refer to the numbered provisions in the Draft Order.

electric facilities, the payment amount is \$36.66/MWh, as set out in Appendix B, plus the implementation payment rider set out in paragraph 7 of this Order of \$2.08/MWh effective December 1, 2008, for a total amount of \$38.74/MWh for the 13 months between December 1, 2008 and December 31, 2009.²

We suggest that paragraph 4 of the Draft Rate Order be amended to read something to the following effect:

“4. Effective April 1, 2008, for the prescribed nuclear facilities, the payment amount is \$52.98/MWh, as set out in Appendix C, plus the nuclear deferral/variance account payment rider set out in paragraph 5 of this Order in the amount of \$2.00/MWh effective December 1, 2008, and the two nuclear implementation payment riders of \$2.15/MWh and \$1.23/MWh respectively, set out in paragraph 6 of this Order, for a total nuclear amount of \$58.36/MWh for the 13 months between December 1, 2008 and December 31, 2009.”

3. Distinguish between Deferral/Variance Account Rider and Implementation Riders in paragraphs 5, 6 and 7 of the Draft Rate Order

We suggest that rider A in paragraph 5 of the Draft Rate Order be characterized as the nuclear “deferral/variance account” payment rider and that the paragraph be amended to read as follows:

“5. Effective April 1, 2008, for the prescribed nuclear facilities, the nuclear deferral/variance account payment rider A for the amortization of approved variance and deferral account balances is \$2.00/MWh, as set out in Appendix D.”

We suggest that the payment riders B and C in paragraph 6 of the Draft Rate Order be characterized as “implementation” payment riders and that the paragraph be amended to read as follows:

“6. Effective December 1, 2008, for the prescribed nuclear facilities, the nuclear implementation payment rider B is \$2.15/MWh and the nuclear implementation payment rider C is \$1.23/MWh as set out in Appendix E. Nuclear implementation payment rider B provides for the recovery of the difference between interim payment amounts and the \$52.98/MWh for the period April 1, 2008 to November 30, 2008. Nuclear implementation payment rider C provides for the recovery of nuclear payment rider A for the period April 1, 2008 to November 30, 2008.”

² We believe some words should be added to capture what paragraph 3 of the Order describes. We believe “Incentive Mechanism” is a phrase which applies but if it is not, then add the phrase OPG considers to be descriptive of the mechanism described in paragraph 3 of its Draft Order.

We suggest that the hydroelectric payment rider in paragraph 7 of the Draft Rate Order be characterized as an “implementation” payment rider and that paragraph 7 be amended to read as follows:

“7. Effective December 1, 2008, for the prescribed hydroelectric facilities, the hydroelectric implementation payment rider is \$2.08/MWh, as set out in Appendix E. The hydroelectric implementation payment rider provides for the recovery of the difference between interim payment amounts and \$36.66/MWh for the period April 1, 2008 to November 30, 2008. This implementation payment rider will be applied to the hourly volumes as set out in section 3 b).”

4. Consumer Impacts as of April 1 and December 1, 2008

We suggest that a paragraph needs to be added to the Draft Rate Order after paragraph 7 to explain the inclusion of Appendix A, Table 6. We understand that Appendix A, Table 6 shows the impact on a Typical Residential Customer of the Board-approved increased payment amounts, effective April 1, 2008, excluding deferral/variance account and implementation payment riders.

We suggest that the 2.05% increase shown in Appendix A, Table 6 is somewhat misleading in that it does not reflect the percentage increase in bill payments that a Typical Residential Customer will face on December 1, 2008, as a result of the combined effect of the approved payment amounts and the additional deferral/variance account and implementation riders.

We calculate that the combined hydroelectric payment amount and implementation rider of \$38.74/MWh is a \$5.74 or 17.4% increase over and above the previously approved \$33/MWh payment amount.

We calculate that the combined nuclear amount of \$58.36/MWh, effective December 1, 2008, is an \$8.86 or about 17.8% increase over the previously approved \$49.50/MWh payment amount.

We estimate that the “combined payment” impact, effective December 1, 2008, is something in the order of 3.2% for the Typical Residential Customer described in Appendix A, Table 6.

We suggest that a further Table 6a be added to Appendix A of the Draft Rate Order to show the impact of these combined amounts, effective December 1, 2008, on a Typical Residential Customer. Without an additional table of this nature, Appendix A, Table 6 will have a misleading effect on its readers. A new Table 6a will reveal whether our calculation of a 3.2% impact is a reasonable order of magnitude estimate.

The new paragraph that should be added following paragraph 7 of the Draft Rate Order to refer to the Consumer Impact Tables should read something to the following effect:

“The Typical Residential Customer bill impact of the payment amounts determined by the Board for the prescribed hydroelectric facilities of \$36.66/MWh, effective April 1, 2008, and of \$52.98/MWh for the prescribed nuclear facilities, effective April 1, 2008, excluding the deferral/variance account and implementation riders effective December 1, 2008, is 2.05% as shown in Appendix A, Table 6. The Typical Residential Customer bill impact of the combined payment amounts and the deferral/variance and implementation riders effective December 1, 2008, is _____ % as shown in Appendix A, Table 6a for the 13 months between December 1, 2008 and December 31, 2009.”

The “Combined Payment” impact on the industrial customer which we discussed with you at the May 13, 2008 Technical Conference at transcript pages 80-82 is, by my calculations, a December 1, 2008 bill impact increase in the order of 5.0%. The appropriateness of this estimated impact will be clarified when OPG presents its Industrial/Commercial Customer Impact Analysis to CME members.

5. Income Tax Provision Directive

The “Income Tax Provision Directive” is recited on page 2 of the Draft Rate Order. However, there is no operative provision in the Draft Rate Order pertaining to this particular directive. Instead, there is language in Appendix F of the Draft Rate Order on page 7 of 7 which reads as follows:

“OPG shall calculate the income tax provision resulting from the revenue requirement approved by the Board and file it with the Board. That tax provision shall be used to calculate any variations in taxes recorded in the variance account.”

This language implies that the tax calculation is mechanical and that interested parties will have no opportunity to question its appropriateness. We will not know whether we have any questions about the benchmark tax provision OPG calculates until we see the calculation. OPG’s calculation may be disputed. For example, if OPG proposes to add income taxes to the “accretion” amount, which the Board has approved in OPG’s revenue requirement for nuclear liabilities, then OPG’s tax calculation will be disputed.

In order to assure that the rights of interested parties to question OPG’s tax calculation will be preserved and to remove the income tax provision directive from Appendix F and, instead, reflect it in an operative provision of the Draft Rate Order, we suggest that an additional paragraph be added at the end of the Order to read something to the following effect:

“OPG shall calculate the income tax provision resulting from the revenue requirement described in paragraph 1 of this Order by (a deadline date to be established by the Board) with the amount thereof being without prejudice to the rights of interested parties to question the appropriateness of OPG’s benchmark income tax



provision in a subsequent proceeding. Once approved by the Board, the benchmark income tax provision shall be used to calculate any variations in taxes recorded in the Income and Other Taxes Variance Account.”

We are sending a copy of these comments on OPG’s Draft Rate Order to the other ratepayer representatives who actively participated in these proceedings.

Please let me know when you would be available for a conference call to discuss the contents of this letter.

The full text of the operative provisions of the Amended Draft Rate Order we propose is enclosed for your consideration (excluding Appendices).

Yours very truly,

Peter C.P. Thompson, Q.C.

PCT\slc
enclosure

- c. Board Secretary
Donna Campbell and Richard Battista (OEB)
Barbara Reuber (OPG)
Michael Penny (Torys)
Jay Shepherd
Michael Buonaguro
Bob Warren
Julie Girvan
Allison Duff
David MacIntosh
Paul Clipsham (CME)
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