



By E-mail

November 20, 2008

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th floor
Toronto ON M4P 1E4

Dear Ms Walli,

Ontario Power Generation Inc. ("OPG")
Board File No.: EB-2007-0905
Our File No.: 339583-000001

This letter is further to our November 17, 2008 letter to Mr. Barrett containing our initial comments on OPG's Draft Rate Order.

Matters pertaining to OPG's Draft Rate Order and our initial blackline version thereof were discussed in a conference call with OPG representatives on Tuesday, November 18, 2008. Mr. Adams representing AMPCO and Mr. Battista of Board Staff participated in the conference call.

As a result of the discussions that took place during the conference call, our understanding is that OPG prefers to adhere to its version of the Draft Rate Order, even though it has no substantive concerns with some of the amendments we have suggested.

Bruce Net Revenues and Income Tax Provision Directives

We understand that OPG has no substantive problem with our suggestion that operative provisions be added to the Draft Rate Order to address the "Bruce Net Revenues" directive and the "Income Tax Provision" directive contained in the Decision.

We reiterate the position expressed in our letter of November 17, 2008, to the effect that each of these directives should be reflected in operative provisions of the Order. They should not be buried in an Appendix or Schedule to the Order.

With respect to our suggested wording of a provision in the Draft Rate Order pertaining to the Income Tax Provision directive, OPG accepts that its calculation of the tax provision is to be without prejudice to the rights of others to question the calculation. OPG sees no reason why a deadline date for providing the calculation needs to be established and we have removed the words that called for the Board to establish such a

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deadline from paragraph 11A of our revised blackline version of OPG's Draft Rate Order, which is attached to this letter.

In our letter of November 17, 2008, we had invited OPG to broaden Appendix A, Table 7 (which responds to the Board's Bruce Net Revenues directive) to include a "Total" section so that the numbers at line 16 of Table 7 would include the numbers in columns (g), (h) and (i) of line 20 in Table 2 of Appendix A. OPG has persuaded us that this revision to the format of the Appendix A, Table 7 is unnecessary and we withdraw our suggestion that the format of that Table be revised.

Combined Payment Amounts and Consumer Impacts Effective December 1, 2008

In subparagraphs (b) and (c) of our November 17, 2008 letter, we suggested that the provisions of the Board's 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, and that the wording of the formal Order should distinguish between the deferral/variance account rider and the implementation riders that flow from the Board's determinations. We also suggested that a paragraph should be added to the formal Order to deal with customer impacts and that an additional Table 6a should be added to show customer impacts as of December 1, 2008.

(i) Combined Payments

OPG accepts that, in the revisions we suggest to paragraphs 2 and 4 of their Draft Rate Order, we have accurately quantified the amounts of the various rate riders and the combined amounts payable, as of December 1, 2008. We also understand that the words that we added to paragraphs 5, 6 and 7 of OPG's Draft Rate Order to distinguish between the deferral/variance rider and implementation riders are not of major concern to OPG.

As we understand it, OPG's resistance to our suggested amendments is based on the proposition that the formal Orders that the Board has issued in other proceedings containing deferral/variance account riders and/or implementation riders do not quantify the deferral/variance account amounts and the implementation rider amounts in the manner we have suggested. We submit that the principle which should guide the Board's consideration of our suggested amendments is not whether the Board has required the amounts to be quantified in other proceedings, but whether considerations of clarity and transparency call for the amounts to be quantified in this particular case.

In OPG's case, the Board determines one payment amount for hydroelectricity generation, one payment amount for nuclear generation and one nuclear deferral/variance account amount, along with implementation rider amounts for each of these determinations. Unlike the cases of electricity and gas distributors, there is no allocation of these amounts to different rate classes. As a result, in OPG's case, there are not a series of different rate riders and implementation amounts for different rate classes. In addition, the deferral/variance account amounts and the implementation riders in OPG's case in and of themselves operate to recover hundreds of millions of dollars from electricity consumers. In these circumstances, we submit that the combined amounts

payable, as of December 1, 2008, should be clearly quantified in the Order the Board issues concluding OPG's Application.

Since this is the first time the Board has determined OPG's revenue requirement and recoverable deferral/variance account amounts, we submit that it is particularly important for the Board's formal Order to reflect the impact on consumers of these determinations as of the date they become effective so as to demonstrate that the Board has considered consumer impacts in reaching its decision.

For these reasons, we urge the Board to direct OPG to amend the provisions of paragraphs 2, 4, 5, 6 and 7 of the Draft Rate Order in the manner we have suggested.

(ii) Customer Impact December 1, 2008

OPG's position with respect to our suggestion that a paragraph be added to the Order to refer to customer impacts and that a Table 6a be added to Appendix A to reflect customer impacts at December 1, 2008, is that such a provision is unnecessary.

OPG prefers that the consumer impact result, effective April 1, 2008, be buried as an attachment to the formal Order and that there be no provision in the formal Order referring to that Table. We submit that OPG's position is incompatible with considerations of clarity and transparency which should guide the Board's assessment of the amendments we suggest.

The wording we suggest for an operative paragraph in the Order dealing with customer impacts is contained in paragraph 7A of our enclosed blackline version of OPG's Draft Rate Order. It should be noted that our letter of November 17, 2008, incorrectly suggested that the 2.05% impact shown in Appendix A, Table 6 excludes the deferral/variance account rider amount. In fact, the impact calculation effective April 1, 2008, includes the nuclear deferral/variance account amount of \$2.00/MWh but excludes the implementation riders effective December 1, 2008. Paragraph 7A of our current blackline version of OPG's Draft Rate Order corrects this mistake.

Paragraph 7A of the Draft Rate Order we ask the Board to issue requires OPG to add a Table 6a to show the consumer impact of the combined payment amount, and deferral/variance account and implementation riders effective December 1, 2008. We submit that the December 1, 2008 impact should be reflected in the formal Order because it is the impact of the combined amounts on December 1, 2008, which will appear in the bills of electricity consumers. The impact of the payment amount, effective April 1, 2008, including the deferral/variance account amount, but excluding implementation riders, shown in OPG's Appendix A Table 6 is not the impact that electricity consumers will experience and, in this context, is primarily a matter of academic interest only.

Without an additional Table 6a of the type we have suggested, Appendix A, Table 6 will have a misleading effect on its readers. The 2.05% increase shown in Appendix A, Table 6 is 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 a

combined effect of the approved payment amounts and the additional deferral/variance account and implementation riders. The Board's formal Order needs a Table 6a to clearly and transparently demonstrate that the Board has considered and has approved the full impact that its determinations will have on consumers effective December 1, 2008.

During the course of the conference call, we asked OPG to calculate the percentage impact of the combined amounts, effective December 1, 2008, so that we could insert the correct percentage in paragraph 7A of the Order we urge the Board to issue. In an e-mail circulated after the conference call, OPG declined to provide this calculation. For this reason, there is a blank in paragraph 7A of our revised blackline version of the Draft Rate Order.

In order to prevent OPG's refusal to provide a December 1, 2008 impact calculation from jeopardizing a December 1, 2008 effective date for the formal Order, we ask that, upon receipt of this letter, OPG be directed to provide to the Board, on a without prejudice basis, and on or before the November 25, 2008 due date for OPG's reply comments, the consumer impact calculation as of December 1, 2008. Such a direction is required so that the Board will have the necessary information in its possession to issue a final Order, including a December 1, 2008, consumer impact calculation, should the Board find favour with our submissions with respect to the matter.

Unfunded Liabilities Related to Pickering and Darlington

During the course of the conference call, Mr. Adams questioned OPG about the derivation of the amounts appearing in Footnote 6, item 2 of Table 4b and Footnote 5, item 2 of Table 5b with respect to the "Bruce Lease portion" of the "Average unfunded nuclear liability". The amount shown in Table 4b for this item is \$160.7M and in Table 5b, is a credit amount of \$134.8M.

In the e-mail circulated following the conference call yesterday, OPG declined to provide any further information to reveal how it had derived these amounts. OPG provided these amounts to respond to the directive contained on page 90 of the Decision with Reasons where the Board stated as follows:

"The Board has some, but not all, of the information required to calculate the portion of rate base that will attract the 5.6% return. OPG's evidence includes the forecast amounts of average unamortized ARC in the Pickering and Darlington fixed assets (\$1,227 million for 2008 and \$1,121 for 2009). Its evidence, however, did not include the forecast unfunded liability in respect of Pickering and Darlington (the evidence provided by OPG showed a combined unfunded amount that included amounts related to the Bruce stations). OPG should provide the amounts of forecast average unfunded liabilities related to Pickering and Darlington as part of the information supporting the draft payment order based on this decision."

We agree with Mr. Adams that something more than the bald numbers are required to comply with the Board's directive. Upon receipt of this letter, we urge the Board to direct OPG to provide, on or before the November 25, 2008 due date for its reply comments, a description of the manner in which the amounts have been derived so that

OPG's refusal to provide further information will not jeopardize the issuance of a formal Order which accommodates the December 1, 2008 effective date.

We submit that the Board needs something further to enable it to conclude that OPG has correctly derived the "forecast average unfunded nuclear liabilities related to Pickering and Darlington".

Conclusion

In summary, we submit that OPG's Draft Rate Order should be amended in order to more clearly and transparently reflect all of the matters the Board determined in this OPG's first proceeding pertaining to its regulated payment amounts and its deferral/variance account balances and payments to be recovered from electricity consumers. We submit that the formal Order OPG proposes to conclude this complex proceeding does not achieve these objectives.

Costs

The Decision with Reasons dated November 3, 2008, is lengthy and complex. Considering the Decision, reporting on its results, and considering whether OPG's Draft Rate Order and supporting materials clearly and transparently reflect all of the Board's determinations are time consuming tasks. We respectfully request that our client be awarded its reasonably incurred costs for the services that we rendered in performing these tasks. We have attempted to be constructive in submitting these comments on OPG's Draft Rate Order which are intended to assist the Board. A Supplementary Cost Claim particularizing these services we have rendered since the date of our last Cost Claim will be submitted shortly.

Please contact me if there are any questions about the contents of this letter.

Yours very truly,



Peter C.P. Thompson, Q.C.

PCT\slc
enclosure

c. Andrew Barrett (OPG)
Barbara Reuber (OPG)
Interested Parties
Paul Clipsham (CME)
Vince DeRose (BLG)

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ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B

AND IN THE MATTER OF an application by Ontario Power Generation Inc. pursuant to section 78.1 of the *Ontario Energy Board Act, 1998* for an Order or Orders determining payment amounts for the output of certain of its generating facilities.

BEFORE: Gordon Kaiser
Presiding Member & Vice Chair

Cynthia Chaplin
Member

Bill Rupert
Member

CME'S PROPOSED AMENDMENTS TO
DRAFT RATE ORDER
November 13, 2008

Ontario Power Generation Inc. ("OPG", or the "Applicant") filed an Application dated November 30, 2007 with the Ontario Energy Board (the "Board") under section 78.1 of the Ontario Energy Board Act; S.O. 1998, c. 15, Sched. B (the "Act") for an order or orders approving the payment amounts for generating facilities prescribed under Ontario Regulation 53/05 ("O. Reg. 53/05"), as amended, for the period from April 1, 2008 through December 31, 2009 (the "test period"). The Board assigned file number EB-2007-0905 to the Application.

On February 7, 2008, the Board heard a Motion by OPG for i) an order declaring OPG's current payment amounts interim, effective April 1, 2008 and ii) an interim order increasing OPG's payment amounts on an interim basis. The Board granted OPG's

request to declare its current payment amounts interim, effective April 1, 2008 and denied its request for an interim increase in payment amounts.

The Board held an oral hearing on OPG's Application and issued a Decision with Reasons on November 3, 2008. The Decision directed OPG to file a draft order including the final revenue requirement and payment amounts for the prescribed nuclear and hydroelectric facilities that reflect the findings made by the Board in its Decision. With respect to the calculation of payment amounts, the Board indicated that OPG should assume that the Independent Electricity System Operator (the "IESO") would start billing the new payment amounts as of December 1, 2008 and that the payment amounts would be adjusted through the use of a payment rider to allow for the recovery of the 21 month revenue requirement over the period December 1, 2008 to December 31, 2009.

The Board directed 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 and to establish a variance account to capture differences between (i) the forecast cost and revenues related to Bruce that are factored into the test period payment amounts for Pickering and Darlington, and (ii) OPG's actual revenues and costs in respect of Bruce.

The Board also directed OPG to calculate the test period income tax provision, before consideration of any tax loss carry-forwards, consistent with the revenue requirement determined in accordance with the Decision, to establish a benchmark to measure variations in taxes during the test period for the purposes of the approved tax variance account.

The Board directed that the return on a portion of the rate base be limited to the average accretion rate on OPG's nuclear liabilities, which is currently 5.6%. That portion of the rate base that attracts that return is equal to the lesser of: (i) the forecast amount of the average unfunded nuclear liabilities related to the Pickering and Darlington facilities, and (ii) the average unamortized asset retirement costs included in the fixed asset balances for Pickering and Darlington. The Board directed OPG to provide a test period forecast of the average unfunded nuclear liabilities related to Pickering and Darlington for the purposes of this determination.

The Board therefore orders that:

1. The test period revenue requirement is \$1,153.4M for the prescribed hydroelectric facilities and \$4,850.9M for the prescribed nuclear facilities, as set out in Appendix A. These revenue requirements shall form the basis of the payment amounts, including the authorized payment riders.
- 1A. 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.

2. Effective April 1, 2008 and subject to the Incentive Mechanism described in paragraph 3 of this Order~~section 3~~, for the prescribed hydroelectric facilities, the payment amount is \$36.66/MWh, as set out in Appendix B, plus the implementation payment rider set out in ~~section~~ 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.
3.
 - a) For the period April 1, 2008 – November 30, 2008, if the total combined output of the prescribed hydroelectric facilities exceeds 1,900 megawatt hours in any hour, the hydroelectric payment amount applies to output from the prescribed facilities up to 1,900 MWh in any hour and production over 1,900 MWh in any hour receives the market price from the IESO-administered energy market determined under the market rules.
 - b) For the period after December 1, 2008, the hydroelectric payment amount applies to the average hourly net energy production in megawatt hours from the prescribed hydroelectric facilities in any given month (the “hourly volume”) for each hour of that month. Net energy production over the hourly volume that is supplied into the IESO-administered energy market will receive the market price, calculated on a five minute basis. Where net energy production from the regulated hydroelectric facilities that is supplied into the IESO-administered energy market is less than the hourly volume, OPG’s revenues will be adjusted by the difference between the hourly volume and the actual net energy production that is supplied into the IESO-administered energy market at the market price, calculated on a five minute basis.
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 riders~~s~~ set out in ~~sections~~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~~and~~ 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.
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.
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 \$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.

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).
- 7A. 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, including the deferral/variance account rider but excluding 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.
8. The IESO shall make payments to OPG in accordance with this order as of December 1, 2008. The IESO shall collect the difference between the interim payment amounts and the approved payment amounts from each wholesale customer based on that customer's historical actual load consumption for the period between April 1, 2008 and November 30, 2008.
9. OPG shall recover the balances in the following variance and deferral accounts in accordance with Appendix F:
 - Hydroelectric Water Conditions Variance Account
 - Ancillary Services Net Revenue Variance Account
 - Transmission Outages and Restrictions Variance Account
 - Pickering A Return to Service Deferral Account
 - Nuclear Liability Deferral Account, Transition
 - Nuclear Development Deferral Account, Transition
10. OPG shall maintain the following variance and deferral accounts in accordance with Appendix F:
 - Hydroelectric Water Conditions Variance Account
 - Ancillary Services Net Revenue Variance Account
 - Pickering A Return to Service Deferral Account
 - Nuclear Liability Deferral Account
 - Nuclear Development Variance Account

11. OPG shall establish the following variance and deferral accounts in accordance with Appendix F:

- Capacity Refurbishment Variance Account
- Nuclear Fuel Cost Variance Account
- Income and Other Taxes Variance Account
- Bruce Lease Net Revenues Variance Account

11A. OPG shall calculate the income tax provision resulting from the revenue requirement described in paragraph 1 of this Order 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.

DATED at Toronto _____, 2008

ONTARIO ENERGY BOARD

Kirsten Walli
Board Secretary