



Ontario | Commission
Energy | de l'énergie
Board | de l'Ontario

BY EMAIL

May 13, 2026

Mr. Ritchie Murray
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ritchie Murray:

**Re: Ontario Energy Board (OEB) Staff Submission regarding O. Reg 53/05
section 8 conditions and applicability of Part III
Ontario Power Generation Inc. (OPG) and DNNP LP (the Applicants)
2027-2031 Payment Amounts
OEB File Number: EB-2025-0297**

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to the OEB's Procedural Order No. 4.

Yours truly,

Thomas Eminowicz
Senior Advisor,
Electricity Supply

Jeffrey Sauer
Senior Advisor,
Electricity Supply

cc: All parties in EB-2025-0297



ONTARIO ENERGY BOARD

OEB Staff Submission Regarding O. Reg 53/05 section 8

Ontario Power Generation Inc. and DNNP LP

2027-2031 Payment Amounts

EB-2025-0297

May 13, 2026

Background

One of the Applicants' requests in this proceeding is for:

An order declaring, for purposes of section 78.1 of the Act, that DNNP LP has satisfied the conditions set out under section 8 of O. Reg 53/05. (Exhibit A1-2-2).

Section 8 of O. Reg. 53/05 specifies that Part III the Regulation, which relates to the Darlington New Nuclear Program (DNNP), takes effect when the OEB is satisfied that certain factual conditions have been met. It reads in full:

This Part applies on and after the effective date of an order made by the Board for the purposes of section 78.1 of the Act in which it specifies that it is satisfied that the following conditions are met:

- 1. At least one unit of DNNP LP is held by a limited partner other than DNNP GP Inc.*
- 2. The DNNP generator has entered into a lease with Ontario Power Generation Inc. with respect to the Darlington New Nuclear Project that provides for a lease term duration that is not less than the expected useful life of the DNNP Nuclear Generating Station.*
- 3. The effective date of the lease referred to in paragraph 2 has been published on a publicly-accessible website.*
- 4. The DNNP generator has incurred capital costs in respect of the Darlington New Nuclear Project.*

On February 27, 2026, the Applicants filed a letter with the OEB stating that the four conditions under section 8 have been met as of December 31, 2025. In an interrogatory, OEB staff asked the Applicants if they required a section 8 order before the OEB's final decision in this application. They responded with a letter dated April 17, 2026, in which they explained that they would like the order issued "as soon as possible."

On April 27, 2026, the OEB issued Procedural Order No. 4 where the OEB invited submissions from intervenors and OEB staff regarding the request for a section 8 order. The OEB indicated that the submissions should address the following:

- Whether anyone disputes that the four conditions set out in section 8 of O. Reg. 53/05 have been met
- The appropriate effective date of any order issued under section 8 of O. Reg. 53/05
- Any other argument relevant for purposes of issuing the section 8 order

OEB Staff Submission

Section 8 sets out four conditions for Part III of the Regulation to take effect. Confirming that those four conditions have been met is a purely factual matter. There is no discretion or judgment involved. The OEB must issue an order if it is satisfied that, as a matter of fact, the conditions have been met.

OEB staff submits that the Applicants have provided sufficient information for the OEB to be satisfied that the conditions have been met and to issue an order to that effect.

Condition 1: At least one unit of DNNP LP is held by a limited partner other than DNNP GP Inc.

The February 27 letter includes Appendix 1, which listed the DNNP LP unit holders. This DNNP LP Unitholders' Register identified DNNP GP Inc. as holding one Managing General Partner Unit, OPG as holding one Ordinary General Partner Unit and one Common Unit, and 1001368516 Ontario Inc. as holding one Common Unit. Other than OPG's Common Unit, which has a date of December 31, 2025, all other units are registered at October 16, 2025.

Condition 2: The DNNP generator has entered into a lease with Ontario Power Generation Inc. with respect to the Darlington New Nuclear Project that provides for a lease term duration that is not less than the expected useful life of the DNNP Nuclear Generating Station.

In the February 27 letter, the Applicants state that DNNP GP Inc, on behalf of DNNP LP, entered into a lease agreement with OPG on December 29, 2025, satisfying Condition 2.

In response to L-A1-CCC-010, as Attachment 1, the Applicants filed the amended and restated lease, executed April 20, 2026. OEB staff notes that the lease specifies a "Commencement Date" of December 29, 2025. Echoing the wording of Condition 2, the lease specifically says in section 2.5: "the Parties acknowledge that the Initial Term, together with the Renewal Term (assuming the Renewal Term is exercised in full), provide for a total lease term that is not less than the expected useful life of the Facility."

Condition 3: The effective date of the lease referred to in paragraph 2 has been published on a publicly-accessible website.

The February 27 letter provides [a link](#) to OPG's public website regarding the DNNP, stating that the information is provided under a "DNNP Chronology" timeline.

OEB staff notes that the information relating to Condition 3 is accessed by clicking the "information icon" associated with October 2025. When this icon is clicked, an information pop-up includes the statement that "On Dec. 29, 2025, OPG leased the

Darlington SMR land to DNNP LP.”

Condition 4: The DNNP generator has incurred capital costs in respect of the Darlington New Nuclear Project.

The February 27 letter states that on December 31, 2025, OPG and DNNP LP entered into a contribution agreement, pursuant to which OPG has been reimbursed for construction-in-progress costs.

In response to L-A1-CCC-010, as Attachment 2, the Applicants filed the reimbursement agreement between OPG and DNNP LP. This agreement identifies that OPG has incurred costs and describes reimbursement by DNNP LP.

The Effective Date for the Section 8 Order

OEB staff does not take issue with the Applicants’ request for the section 8 order to be issued as soon as possible, for the reasons they expressed in their April 17 letter. There remains, however, the question of the effective date for the order.

Although the February 27 letter states the four conditions have been met as of December 31, 2025, it does not indicate what effective date the Applicants seek for the section 8 order. Nor do the April 27 letter or Exhibit A1.

It appears to OEB staff that there is no compelling reason to back-date the section 8 order, that is, to make the effective date earlier than the date of issuance. That is because the Regulation stipulates that, for both the DNNP nuclear development variance account (section 11) and the DNNP capital cost variance (section 12), DNNP LP is to include any amounts “that arose on or after the effective date of the lease ... and before the DNNP transition date” (in other words, amounts that arose between December 29, 2025 and the effective date of the OEB’s section 8 order). So even if the order is effective on say, June 1, 2026, DNNP LP could still record eligible costs that arose between December 29, 2025 and that date.

That said, OEB staff has not had the benefit of reviewing any submission from the Applicants on the effective date. They may have good reasons for wanting an earlier effective date, which they can articulate in their submission due on May 22, 2026. In principle, OEB staff would not be opposed to an effective date as early as January 1, 2026, which is when section 8 came into force, and the day after the day the Applicants say the four conditions were met. Section 8 does not expressly prohibit an effective date other than the date of issuance. And the usual concerns about rate retroactivity do not arise in the circumstances: both the Applicants and ratepayers have effectively been on notice, since the Regulation was amended, that Part III would take effect whenever the four conditions were met.

~All of which is respectfully submitted~