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BY EMAIL

July 27, 2006
Our File No. 2060552

Ontario Energy Board
2300 Yonge Street
26th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: Ontario Power Generation - Payments for Prescribed Assets – EB-2006-0064

We are counsel for the School Energy Coalition, and in this letter are providing our comments on the Board Staff Proposal dated July 6, 2006 in this matter.

Overview

School Energy Coalition had the opportunity to comment on the earlier draft of this paper, and to participate in the discussion groups about the issues raised. As the Board will be aware, our view in reaction to the earlier drafts was that a form of modified cost of service, in which parts of OPG's business were reviewed each year until all had been considered, would balance the need for rigour and transparency with the goal of regulatory efficiency. We accepted then, and we do now, that there are tradeoffs required to find the optimum solution.

In the final draft of this Proposal, in our view Board Staff has come up with another way to balance those goals that is, arguably, more effective and more elegant than the solution we had proposed. We will comment below on some of the specifics, but at a higher level we think Board Staff should be commended for:

- Not only listening to, but responding to, the input of all parties in their relatively thorough consultative process. This is not a question of reciting the positions of stakeholders in the paper, but rather the fact that the proposed solution internalizes and gives effect to key concerns, ideas and suggestions of many of those who commented on the earlier draft.
- Avoiding the trap of picking one side or another, and the equally dangerous trap of trying to fashion a compromise driven by trying to make everyone happy rather than trying to make good policy. Clearly in this case Board Staff identified the main goals that should be achieved, and then developed a new model that achieves those sometimes conflicting goals without giving up any of them more than was necessary.

We also note that this draft, much more so than the last draft, shows in most areas a crisp analysis that makes Board Staff's conclusions and tradeoffs easy to understand and assess.

Specific Feedback

While our overall reaction to the Proposal is very positive, we do have a number of specific comments that we hope will be useful:

1. ***Conceptual Framework.*** As we see this proposal, it really amounts to a three stage regulatory process.
 - a. In the first stage, part one of the transitional period, OPG would gather and file information, and the Board would, next spring, consider evidence on some of the details of the structure that remain open. During the first stage, existing payments would be maintained.
 - b. In the second stage, part two of the transitional period and potentially lasting several years, OPG would have regular public reporting requirements akin to cost of service information. During that stage, payments would be adjusted automatically by an IR formula starting from the existing payment levels (subject to potential upfront adjustments for new capital expenditures, ROE, and a couple of other major issues). They could also be adjusted during that stage on a discretionary basis, after an appropriate public process, in the event that the quarterly filings reveal a need to do so.
 - c. In the third stage, which may but need not be the end-state, OPG, having had adjustments over a period of time and sustained transparency of their operating information, would likely undergo a cost of service review, perhaps as a rebasing for further IR.

Subject to our other comments below, this appears to us to be a careful step-by-step approach.

2. ***Transparency.*** Of course, the key to this Proposal is that it not only seeks transparency, but it uses it as a tool. The Proposal recognizes that transparency is the reason why this responsibility was given to the Board in the first place, and is an important goal of many stakeholders. That having been said, right now the Board and the public currently have information of only limited use about OPG and these particular business activities. By establishing a detailed initial filing, coupled with comprehensive quarterly filings, the Board and stakeholders would gradually get a much clearer picture of these businesses. There is one danger here that we feel the Board must address.

Historically many periodic utility filings before the Board are either confidential or have limited public accessibility. This Proposal only works if the initial and quarterly filings of OPG are detailed and completely open to public scrutiny. Transparency is why it works, so limitations on transparency are counterproductive.

3. **Re-Opening.** In our comments on the earlier draft we proposed that each year some aspects of OPG's activities be reviewed in a cost of service hearing. This Proposal appears to seek the same goal of incremental review by letting the information guide the Board and stakeholders in identifying the timing and scope of any detailed review. This is in our view a good approach, but we see two potential dangers that the Board would have to manage:

- a. Some stakeholders, particularly those who today are seeking immediate and full cost of service, may see each periodic filing as another opportunity to try to have every aspect of OPG's operations reviewed. That may especially be true of some who have particular agendas, whether ideological or business. Early on, the Board would have to set specific expectations to control the scope of reviews.
- b. On the other side of that coin, there is a risk that some stakeholders, or the Board itself, will see active reviews as "rocking the boat", and will seek to severely restrict the extent to which the Board acts on the information in the periodic filings. Knowing more about OPG, without doing anything about it, is of limited value. A few years out, when it is time for cost of service, the Board would not be much further ahead than it is today. As well, moving OPG payments towards true costing, which could have started, would have been delayed, and the eventual cost of service would be a bigger step and potentially bigger rate impact. In our view the Board should be prepared and willing to identify and hold an annual hearing on some or all of the material issues (if any) disclosed in the quarterly filings.

4. **Level of Payments.** This is a transitional plan, and the Board is clearly already cognizant of the need to ensure that OPG's health and quality of service are maintained despite the lack of a cost of service review. What the Board also has to do, in our opinion, is maintain a close review of the impact (if any – there will not always be one) of OPG's payments on the prices of electricity in Ontario at the margin, and on the price signals being given for future merchant and load displacement generation, and for conservation.

5. **Sculpted Payments.** The Proposal suggests changes to the current payment structure to incent appropriate operational and market decisions on the part of OPG. No details are provided, and there is no detailed analysis in the Proposal of why structuring is necessary. Assuming this is to be considered in a spring 2007 hearing, we suggest that the Board commission an expert review of past operational and market practices of OPG to see what, if any, specific operational efficiencies need to be addressed.

6. **Z Factors and Off Ramps.** The School Energy Coalition generally opposes extensive use of Z factors and off ramps in IR regimes. In this respect, we agree with the conclusions of the Natural Gas Forum. This Proposal is for an IR in a transitional context, though, so some flexibility may be required. However, in our view if the approach to reopening (see #3 above) is appropriately balanced, there should be little need for Z factors and no need at all for off ramps.

7. ***Regulatory Options Review.*** While the bulk of the Proposal has good analysis and descriptions of underlying concepts, principles, and goals, we were concerned with the statements at the top of page 5 on the regulatory tools at the Board's disposal. This is the subject of another, parallel consultation process on how the Board makes decisions, and in our view these declarative conclusions are premature. Our substantive comments on these conclusions are being provided to the Board in that parallel process.

Conclusion

We look forward to seeing the next steps in this process, at which time we anticipate providing more input if requested to do so. In the meantime, we appreciate having had the opportunity to participate to date.

Yours very truly,
SHIBLEY RIGHTON LLP

Jay Shepherd

Cc: Interested parties (by email)