



EB-2011-0432

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15, Schedule 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: Marika Hare
Presiding Member

Paul Sommerville
Member

DECISION AND ORDER

Introduction

Ontario Power Generation Inc. (“OPG”) filed an application for an accounting order with the Ontario Energy Board, (the “Board”) on December 29, 2011 under section 78.1 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Schedule B). The application seeks approval to establish a deferral account to record the financial impacts resulting from the transition to and implementation of the Generally Accepted Accounting Principles of the United States (“USGAAP”) from January 1, 2012 to the effective date of the next payment amounts order. The Board assigned the application File No. EB-2011-0432.

The 2011-2012 payment amounts were established in the EB-2010-0008 payment amounts Order which was issued on April 11, 2011. Those payment amounts were determined on a Canadian Generally Accepted Accounting Principles (“CGAAP”) basis. The current application states that OPG will adopt USGAAP for accounting and financial reporting purposes on January 1, 2012. The application also states that OPG will apply to the Board for approval to adopt USGAAP for regulatory accounting purposes in the next payment amounts proceeding. OPG is engaged in an assessment of the differences between CGAAP and USGAAP, and proposes that the balance in the account and its disposition be reviewed as part of the next payment amounts proceeding. OPG also proposed that the deferral account record interest on the balance using interest rates set by the Board.

OPG’s current estimate of the amount that would be captured in the proposed account is \$40 million which is related to actuarial gains/losses and past service costs associated with OPG’s long-term disability plan. OPG states in the application that there is no immediate rate impact.

On January 13, 2012, a Notice of Hearing and Procedural Order No. 1 was issued. The Board adopted the parties of record from the EB-2010-0008 payment amounts proceeding as parties in the current proceeding. In Procedural Order No. 1, the Board observed that initiating a discovery process on the request for the deferral account would likely produce unsatisfactory results as OPG was in the midst of the assessment of differences between CGAAP and USGAAP. The Board stated that it was considering granting the request for the deferral account subject to conditions.

The Board invited submissions from parties on whether the proposal was appropriate or whether there was a need for further discovery of OPG’s evidence filed in this application.

Position of Parties

Four submissions were filed.

Board staff and the School Energy Coalition (“SEC”) filed submissions opposing the proposal to grant a conditional deferral account without further discovery. The SEC submission was adopted by the Canadian Manufacturers & Exporters. The Power Workers’ Union (“PWU”) supported the proposal to grant a conditional deferral account.

Board staff submitted that there is a need for further discovery of OPG's evidence, including discovery related to causation, materiality and prudence of the proposed deferral account. Staff submitted that this information would assist the Board in making an informed decision on the request. In a submission on Union Gas Limited's request for a Transition to USGAAP Account (EB-2011-0025), staff was opposed to granting the account because (1) the Board does not regulate accounting and financial reporting (2) the Board has not made a determination with respect to USGAAP for regulatory accounting and (3) there is no rate implication as annual amortization of the liability is already included in rates. Board staff also noted some similar deferral account issues in an Enbridge Gas Distribution Inc. proceeding (EB-2011-0277) and suggested consistent practice for Union, Enbridge and OPG.

SEC submitted that the Board should defer consideration of the OPG accounting order application until supporting evidence was filed, or invite OPG to merge the application with the next payment amounts application.

In its reply submission, OPG stated that, to date, it has identified only one financial impact, which is associated with other post employment benefit ("OPEB") costs, resulting from the transition to USGAAP. OPG also explained that the impact to OPEB costs result from (1) the immediate recognition of all previously deferred actuarial gains or losses and all past service costs related to the long-term disability plan upon the transition to USGAAP effective January 1, 2012; and (2) higher OPEB costs in the 2011 and 2012 periods which will continue until rates are reset as part of OPG's next payments application.

OPG submitted that its application addresses criteria for establishing a deferral account and stated that the parties did not cite any specific inadequacies in the accounting order application.

- Causation: OPG is required to adopt a different accounting methodology on January 1, 2012.
- Materiality: One major difference has been identified to date with a material financial impact of approximately \$40 million.
- Prudence: OPG stated that adopting USGAAP has a smaller financial impact than adopting International Financial Reporting Standards ("IFRS").

OPG dismissed comparisons with Enbridge and Union requests for USGAAP deferral accounts as the gas utilities are under an incentive rate mechanism for 2012 and can apply for Z-factor treatment of costs incurred, while OPG is operating under a cost of service regime for 2012. Further, OPG argued that the Addendum to the Report of the Board on IFRS indicates that pension and OPEB issues would be addressed on a utility-specific basis.¹

SEC observed that the Board did not approve a generic variance account for the impacts of the conversion to IFRS, but did approve a specific property, plant and equipment (“PP&E”) variance account. In contrast to this specific uncertainty, SEC submitted that OPG’s current request is unreasonably broad. In SEC’s submission, the Board does not know the extent of the differences between CGAAP and USGAAP for OPG. SEC also submitted that the proposal in Procedural Order No. 1 does not give direction to OPG about making entries and therefore there is no compelling rationale for the account.

OPG replied that the deferral account should include all financial impacts resulting from transition to and implementation of USGAAP, including amounts owing to OPG or to ratepayers. In OPG’s view, the IFRS PP&E account is very broad. OPG also noted that the Board approved an “Impact for USGAAP” account for Hydro One Networks Inc.’s transmission business (EB-2011-0268). That account is symmetrical and OPG referred to the Hydro One decision in which the Board stated that it “will take into account whether Hydro One adequately reviewed in its application all of the impacts of the accounting changes associated with the transition...”

In SEC’s submission, the need for the account will arise the first time that rates are set under USGAAP, not earlier. OPG replied that there is a financial impact on transition to USGAAP, and that if the proposed deferral account is not approved, the financial impact may be characterized as an out-of-period cost.

The PWU and OPG submitted that the Board’s proposal to establish the conditional deferral account is reasonable. OPG submitted that if additional discovery is required, it would be efficient to conduct the discovery together with the next payment amounts application.

¹ Addendum to Report of the Board: Implementing International Financial Reporting Standards in an Incentive Rate Mechanism Environment, EB-2008-0408, June 13, 2011, p14.

Board Findings

The Board approves the establishment of the “Impact for USGAAP Deferral Account” to record the financial impacts resulting from the transition to and implementation of USGAAP. The account is subject to the following conditions:

- The account is effective from January 1, 2012 to the effective date of the next payment amounts order;
- The approval of the establishment of the deferral account should not be considered to be in any manner or degree whatsoever predictive of disposition of the account; and
- Approval of the establishment of the deferral account should not be considered to be predictive in any manner or degree whatsoever of the Board’s determination with respect to the adoption of USGAAP for regulatory accounting purposes in OPG’s next payment amounts application.

The extent to which any of the amounts captured in this account would be subject to carrying charges will be determined by the panel deciding the next payments case.

The Board notes that OPG must transition from CGAAP to another accounting standard effective January 1, 2012. OPG has determined that it will adopt USGAAP and has estimated that the impact of transition to and implementation of USGAAP is \$40 million related to actuarial gains/losses and past service costs associated with OPG’s long-term disability plan.

If the proposed deferral account is not approved, the financial impact could be characterized as an out-of-period cost. In order to make provision so that any balances arising from the transition and implementation of USGAAP may be eligible for recovery, it is appropriate to approve the establishment of the account at this time, even though there is no immediate rate impact.

OPG states that its next payment amounts application will be based on USGAAP. That application will include the documentation to support financial reporting by OPG on a USGAAP basis, and to support the amounts recorded in the deferral account. The Board recognizes that it is impossible to describe with precision all of the costs which may ultimately be considered for inclusion in the account and possible future disposition at this time. While more precision would be preferable, it is simply not definitively available now, and the Board is satisfied that the panel considering the next payments case will be able to define what amounts, if any, should be eligible for disposition. In the

current Application the only costs which have been identified for capture in the account are those related to the treatment of actuarial gains/losses and past service costs associated with the long-term disability plan.

While parties have suggested that consideration of the deferral account should be merged with the next payment amounts application and that the account is not required until payment amounts are set under USGAAP, the Board finds there is no compelling reason to delay the establishment of the account.

Policy guidance was provided by the Board on the topic of the transition to IFRS in the *Report of the Board, Transition to IFRS* dated July 28, 2009 (EB-2008-0408). The Addendum to the Report of the Board on IFRS addressed implementation of IFRS in an Incentive Rate Mechanism environment, and considered the use of USGAAP as an alternative to IFRS. It states:

The Board requires a utility that adopts USGAAP or an alternate accounting standard other than IFRS, in its first cost of service application following the adoption of the new accounting standard, to:

- demonstrate the eligibility of the utility under the relevant securities legislation to report financial information using that standard;
- include a copy of the authorization to use the standard from the appropriate Canadian securities regulator (if applicable); and
- set out the benefits and potential disadvantages to the utility and its ratepayers of using the alternate accounting standard for rate regulation.²

The Addendum to the Report of the Board on IFRS noted that the Board must consider the general public interest in ensuring efficiency and consistency in utility regulation in Ontario³ and retains the authority to require specific accounting standards and practices for regulatory purposes in any case where the Board finds that the public interest requires uniformity in those standards and practices among utilities.⁴

The Board will consider OPG's application for the use of USGAAP for setting payment amounts in the next case against the criteria listed in the Addendum to the Report of the Board on IFRS.

² Addendum to Report of the Board: Implementing International Financial Reporting Standards in an Incentive Rate Mechanism Environment, Appendix A.

³ Ibid, p 19.

⁴ Ibid, Appendix A.

It should also be noted that the Board considers benchmarking and comparisons with other utilities to be an important regulatory tool. OPG should be mindful, that whatever accounting system may be used by a utility, the Board may require the production of evidence, statistics, data or information in such form or format as may be necessary to make meaningful comparisons possible.

As noted in the third deferral account condition, the establishment of the Impact for USGAAP Deferral Account is not predictive of the Board's ultimate decision on USGAAP for regulatory purposes for OPG. In the event that the Board does not approve the use of USGAAP for regulatory purposes, the Impact for USGAAP Deferral Account would not be required and the balance recorded in the account would not be recognized. In addition, approving the establishment of the Impact for USGAAP Deferral Account does not guarantee that the amount in the deferral account will be disposed, consistent with the principles underlying all Board-approved deferral accounts.

Cost Awards

The Board may grant cost awards to eligible parties pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of the Board's *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied.

The Board will issue a Decision on Cost Awards after the steps set out below have been completed.

THE BOARD ORDERS THAT:

1. OPG shall establish a deferral account, subject to conditions noted in this decision, to be named the "Impact for USGAAP Deferral Account" to be effective from January 1, 2012 to the effective date of the next payment amounts order.
2. Intervenors eligible for cost awards shall file with the Board and forward to OPG their respective cost claims within 14 days from the date of this decision.
3. OPG shall file with the Board and forward to intervenors any objections to the claimed costs within 21 days from the date of this decision.

4. Intervenor, whose cost claims have been objected to, may file with the Board and forward to OPG any responses to any objections for cost claims within 28 days of the date of this decision.
5. OPG shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote the file number, EB-2011-0432, be made through the Board's web portal at <https://www.errr.ontarioenergyboard.ca>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ISSUED at Toronto, March 2, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary