

Elson Advocacy

May 6, 2022

BY EMAIL AND RESS

Nancy Marconi

Registrar

Ontario Energy Board

2300 Yonge Street, Suite 2700, P.O. Box 2319

Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

Re: Ontario Power Generation Clean Energy Credits

I am writing in response to OPG's letter of today's date regarding its sales of Clean Energy Credits. OPG argues that the OEB should not explore OPG's past or future sales of clean energy credits arising from its OEB-rate-regulated assets on the basis that (a) they are immaterial, (b) disclosure was not required in EB-2020-0290, and (c) the OEB lacks jurisdiction. None of these arguments have merit.

Materiality

OPG argues that the OEB need not explore this issue because OPG's sales of clean energy credits have yielded "immaterial revenues" in the amount of \$6 million. This is an overly narrow understanding of materiality for the following reasons:

- **Volumes:** Sales of \$6 million may equate to significant volume of electricity. If OPG is selling unbundled credits, the price may be in the range of \$1 per MWh.¹ Therefore, the revenues could equate to approximately 6,000,000 MWh of clean energy credits. That is almost 10% of the output of OPG's nuclear and hydroelectric generating facilities.² Even a much lower volume would be material.
- **Impact on emissions intensity:** Sales of a non-trivial number of MWhs of Clean Energy Credits will have an impact on the emissions intensity of the remaining electricity, which may be important for entities that track and report on their secondary emissions from electricity use.

¹ United States Environmental Protection Agency, *Unbundle Electricity and Renewable Energy Certificates*, <https://www.epa.gov/lmop/unbundle-electricity-and-renewable-energy-certificates>

² Ontario Power Generation, *2020 Annual Report*, <https://www.opg.com/documents/2020-annual-report-pdf/>, p. 57.

- **Value to customers:** The value lost to OPG’s customers may well be significantly more than \$6 million.
- **Dollar value:** Revenue of \$6 million is not below any OEB-mandated materiality threshold. Nor does it appear to be below an OPG threshold. In its pre-filed evidence in EB-2020-0290, OPG listed various “other revenue” items that were well below \$6 million, including past and forecast figures.³
- **Future value:** The value and volume of ongoing and future sales are relevant, not only the past sales. OPG does not indicate what these will be in its letter. However, it has stated publicly that “OPG has seen a strong increase in interest, and uptick in sales.”⁴
- **Reporting barriers:** The sales of clean energy credits can make it impossible for municipalities and businesses to accurately report on their secondary emissions from electricity consumption without double counting even if the volume of sales is modest. See my letter of May 2, 2022 for details.

Finally, OPG has not addressed the concerns outlined in our letter of May 2, 2022 about the potential impacts of these sales on businesses, municipalities, and homeowners. These potential impacts are material and warrant further exploration from the OEB.

Disclosure Obligations in EB-2020-0290

OPG argues that it was not required to notify the OEB of its past clean energy credit sales nor its future proposed sales in EB-2020-0290 as it did not “sell or contemplate selling Clean Energy Credits related to its prescribed nuclear assets” at the relevant time. However, this is inconsistent with publicly available information. For instance, on January 26, 2022, the President and CEO of OPG, Ken Hartwick, is quoted as stating as follows:

OPG has seen a strong increase in interest, and uptick in sales, for environmental attributes from our non-emitting hydroelectric and **nuclear facilities**. The government’s proposed centralized CEC registry is a significant step that will benefit ratepayers and support Ontario electricity consumers wishing to track and report on their emissions goals.⁵

This statement was made before the final order in EB-2020-0290.⁶ More importantly, it is surely the case that the President and CEO of OPG does not make public statements like that without significant discussions and investigations by OPG staff. It is hard to imagine that OPG would not have at least contemplated sales of clean energy credits associated with its nuclear assets, if not

³ OPG, Exhibit G2, Tab 1, Schedules 1 and 2 (see, for example, ancillary services sales to the IESO).

⁴ News Release, January 26, 2022, <https://news.ontario.ca/en/release/1001486/new-ontario-clean-energy-registry-will-make-province-even-more-attractive-for-investment>.

⁵ *Ibid.*

⁶ EB-2020-0290, OEB, Payment Amounts Order, January 27, 2022.

already sold them, long before the conclusion of EB-2020-0290. Even if this information was not known at the outset, it should have been provided to the OEB and intervenors as an update under Rule 11.⁷

Moreover, OPG is incorrect in concluding that its sales of credits from its hydroelectric facilities were irrelevant. O. Reg. 53/05 only froze the “base payment” for hydroelectric facilities while explicitly stating that this “does not affect any authority of the Board to approve ... the establishment of or changes to deferral or variance accounts relating to the hydroelectric facilities.”⁸ These hydroelectric issues were explicitly included in the Issues List under issue 13.⁹ In the very least, details about clean energy credits arising from hydroelectric facilities were relevant to whether the OEB should create a new deferral or variance account for this revenue or adjust an existing account to the same end.

More broadly, OPG appears to take a view of materiality that is overly narrow and technical. Adopting it could set a bad precedent for OEB proceedings. The OEB relies on applicants to disclose relevant information and updates in proceedings. Although the OEB outlines specific items, such as “other revenues,” it also requires, more generally, that applicants provide relevant information that could inform the OEB’s decision-making. These past, ongoing, and future sales are captured both by the specific requirement to disclose other revenues and the overriding obligation to provide information that could inform the OEB’s decision-making.

OEB Jurisdiction

OPG incorrectly asserts that the OEB has no jurisdiction to consider the issues raised by Environmental Defence. The scope of the OEB’s jurisdiction should be decided with the benefit of submissions from the relevant stakeholders and a factual record. In any event, OPG’s submissions on this issue are clearly wrong.

OPG argues that the OEB is only allowed to include conditions in its orders if they concern the calculation of the payment amount. This is based on a misquotation of section 78.1(4) of the *Ontario Energy Board Act*. OPG states as follows: “Section 78.1(4) provides the OEB with the broad discretion to ‘include in the order conditions ... respecting the calculation of the amount of the payment.’” OPG incorrectly omits the key portions of the section relevant to its meaning. The full section reads as follows:

The Board shall make an order under this section in accordance with the rules prescribed by the regulations and **may include in the order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment.**¹⁰

⁷ OEB Rules of Practice and Procedure, Rule 11.

⁸ Ontario Regulation 53/05, s. 6(3).

⁹ EB-2020-0290, OEB, *Decision on Issues List*, May 20, 2021.

¹⁰ *Ontario Energy Board Act*, s. 78.1(4).

The jurisdiction to include conditions is not limited to calculation issues as OPG suggests. It *includes* conditions regarding calculations issues.

Furthermore, OPG’s description of the OEB’s jurisdiction is completely at odds with the conditions that the OEB has included in orders in the past. For instance, the filing guidelines list 17 conditions from a previous payment order issued by the OEB, all or most of which would have been beyond the OEB’s jurisdiction based on OPG’s assertion that only calculation issues can be addressed in conditions.¹¹

Ontario ratepayers pay for OPG’s regulated assets through amounts set by OEB orders under s. 78.1 of the *Ontario Energy Board Act*. The OEB’s jurisdiction to include conditions in these orders must extend to conditions regarding the sale of environmental attributes and rights that Ontario customers have paid for, particularly where those sales could have significant impacts on customer interests as outlined in our letter of May 2, 2022.

Finally, OPG asserts that “the determination of how revenues from Clean Energy Credits sales will either flow back to ratepayers or be used to support future clean energy projects will be based on developing government policy direction.” That is not accurate for a number of reasons. First, Environmental Defence has raised concerns about OPG’s sales into other jurisdiction, both past and future. The potential Ontario market is completely different, and would at least initially be limited to “the trading of credits within Ontario.”¹² Second, the government may or may not decide to pursue an Ontario market. Third, the creation of an Ontario market likely would not address the past and ongoing sales by OPG outside that market.

Proceeding Needed

OPG’s letter raises a number of issues that are best addressed via a short and efficient re-opening of EB-2020-0290 or a short and efficient new hearing. A proper process would allow for an appropriate canvassing of the facts and the law based on the input of relevant stakeholders. In contrast, declining to explore the issue through a proceeding would require the OEB to make determinations without that input and based on incomplete information.

Take, for instance, the facts. On April 20, 2022, I wrote to OPG’s Vice President of Regulatory Affairs, Ms. Zadeh, requesting more information on these clean energy credit sales. In particular, I requested the “amount sold thus far and a rough forecast to 2026 (\$ and TWh), broken down by hydro and nuclear.” I have yet to receive a response. We now have OPG’s letter indicating sales of \$6 million from 2019-2021. But we still do not know the volume (TWh), the sales prior to 2019 (if any), or the amounts expected in 2022 and onward for hydroelectric or nuclear. Nor have intervenors had an opportunity to test OPG’s assertions about the lack of nuclear-related

¹¹ OEB, *Filing Guidelines for Ontario Power Generation Inc.; Setting Payment Amounts for Prescribed Generation Facilities*, July 27, 2007, Revised November 11, 2011, p. 2-5.

¹² Letter from the Ministry of Energy to IESO, January 26, 2022, p. 2 (<https://www.ieso.ca/-/media/Files/IESO/Document-Library/corporate/ministerial-directives/Letter-from-the-Minister-of-Energy-20220126.ashx>).

sales or ask any other relevant questions by way of interrogatories. There is an asymmetry of information between OPG on one hand and the OEB and intervenors on the other hand. A proceeding would help to remedy this asymmetry and result in better decision-making.

The same is true for the legal issues and stakeholder perspectives. A proceeding would allow these to be quickly and efficiently canvassed. Declining to re-open or institute a new hearing would require the OEB to effectively decide on these matters without the benefit of those perspectives.

Finally, we urge the OEB to avoid deferring a new or re-opened proceeding by creating a deferral or variance account that would be cleared in the next payment amount proceeding. This would only address a narrow accounting issue. But it would not address the other important issues set out in our letter of May 2, 2022, including the potential impacts on businesses and municipalities, their reporting needs, their climate targets, and the value they place on the environmental attributes of Ontario's energy supply that could be sold out from under them in ways that cannot be undone. The OEB would benefit from hearing the perspectives of those stakeholders through a short and efficient hearing, including on jurisdiction issues, before irreversible steps are made that could negatively impact their interests.

Thank you for considering this request.

Yours truly,

A handwritten signature in blue ink, appearing to read 'K. Elson', written in a cursive style.

Kent Elson

cc: Parties in EB-2020-0290