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VIA FAX, EMAIL AND MAIL

File 15119

RECEIVED

APR 30 2007

ONTARIO ENERGY BOARD

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario M4P 1E4

Re: **Staff Discussion Paper on Filing Requirements for OPG – Setting Payment Amounts for Prescribed Generation Assets, EB-2006-0064.**

The Power Workers' Union ("PWU") represents a large portion of the employees working in Ontario's electricity industry and has utmost interest in initiatives that impact the energy industry and the provision of on going service quality and reliability to customers. Attached please find a list of PWU employers.

The PWU appreciates the opportunity provided by the Ontario Energy Board for comments on Board Staff's Discussion Paper on *Filing Requirements for Ontario Power Generation* in the Board's proceeding on Setting Payment Amounts for Prescribed Generation Assets, EB-2006-0064. Attached please find the PWU's comments.

We hope that the Board will find the comments helpful.

Yours very truly,

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**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*;  
S.O. 1998, Section 78.1.

**AND IN THE MATTER OF** Setting Payments for the Output  
from OPG's Prescribed Generation Assets.

**Power Workers' Union's Comments on  
Staff Discussion Paper on  
Filing Requirements for Ontario Power Generation**

On November 30, 2006, following a consultation on a suitable methodology for setting payment amounts for the output of Ontario Power Generation's ("OPG") Prescribed Generation Assets ("PGA"), the Ontario Energy Board ("OEB" or the "Board") issued a report on *A Regulatory Methodology for Setting Payment Amounts for the Prescribed Generation Assets of Ontario Power Generation Inc.* ("OPG Report"). In the OPG Report the Board concluded that the regulatory methodology to be used to set the initial payment amounts for the output of the PGA will be a cost of service review of costs that are not under the limitations set out under the *Ontario Energy Act, 1998* (the "Act"), Regulation 53/05 regarding certain financial values that must be accepted by the Board in making its first PGA payment order: OM&A and rate of return. The Board stipulated that nuclear and hydroelectric PGA will be reviewed separately.

The Board indicated that OPG should make periodic filings on specific information to inform and support future Board proceedings to set payment amounts and that the filing requirements and accounting and reporting framework would be developed in consultation with interested parties. On March 30, 2007 the Board then issued a Staff Discussion Paper on *Filing Requirements for Ontario Power Generation* ("Discussion Paper") with regard to the setting of payment amounts for the PGA on which the Board invites comment.

To this end, the Power Workers' Union ("PWU") provides comments that reflect our energy policy statement:

**Reliable, secure, safe and reasonably priced electricity supply and service, supported by a financially viable industry, and a skilled labour force, is essential for the continued prosperity and social welfare of the people of Ontario. In minimizing environmental impact, due consideration must be given to economic impacts, and the efficiency and sustainability of all energy sources and existing**

**assets. A stable environment and predictable and fair regulatory framework will promote investment in technical innovation that results in efficiency gains.**

Except for the objective of safety of electricity supply and service in our policy statement, the PWU's energy policy statement is in line with the Board's objectives with respect to electricity under the Act:

- *to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; and,*
- *to promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.*

The PWU's reference to safety is consistent with that set out in the September 8, 2006 OEB Staff Discussion Paper on the Review of the Ontario Power Authority's Integrated Power System Plan ("IPSP") and Procurement Processes where safety:

*Refers to the safety of workers and members of the public through compliance with all applicable Ontario and federal laws and regulations pertaining to the construction and operation of facilities identified in the IPSP, including regulations and requirements of the Electricity Safety Authority and of the Canadian Nuclear Safety Commission.*

The alignment of the PWU's energy policy with the Board's legislated objectives, as well as the PWU's policy interest related to safety, demonstrates the public interest embodied in our energy policy.

The following are the PWU's comments on the Discussion Paper.

## **PART 1: Overview of Legislative Context and Regulatory Methodology**

The Discussion Paper notes that one of the Board's conclusions in the OPG Report is that:

*the first payment proceeding will consider the most substantive issues that are not affected by the prescriptive rules set out in Regulation 53/05; namely OM&A and rate of return on equity, with each of the nuclear and hydroelectric businesses being reviewed separately;*

The Discussion Paper then goes on to state that:

*As contemplated in the OPG Report, the Board will review the prescribed hydroelectric and nuclear generation assets in separate sequential proceedings.*

The PWU submits that the Board's specification for reviewing the nuclear and hydroelectric businesses separately should not automatically be interpreted as a requirement for separate proceedings. Given that the two business units are separate business units under one common corporate entity, there are likely a large number of issues/costs common to both business units that can be addressed more efficiently by reviewing them once in a single proceeding rather than twice in separate proceedings. In particular, review of issues such as allocation of corporate costs and common assets would be best accomplished through a simultaneous review of cost causation of both

business units. Within a single proceeding the Board's direction for separate reviews of nuclear and hydroelectric businesses can be achieved by separating the proceeding into three phases that deal with: distinct hydraulic business unit issues; distinct nuclear business unit issues; and common issues. Moreover, conducting the review within the context of a single proceeding will eliminate the prospect that two separate panels of the Board might issue inconsistent decisions on common or related issues.

### **Requirements of Regulation 53/05**

The Discussion Paper states that:

*While Regulation 53/05 contains rules to be followed as part of the payment-setting process, the manner in which some elements of Regulation 53/05 are to be applied is not prescriptive in all respects. Practical issues arise as a result, principally in relation to the timing of recording of amounts in the variance and deferral accounts relative to the timing of issuance of the Board's first order.*

*The filing requirements set out in Part 2 call upon OPG to identify its proposed manner of addressing some of these issues. ....*

The PWU agrees with the approach of having OPG identify proposals on the manner of addressing issues that arise that are related to the variance and deferral accounts. OPG can then discuss its proposals with interested parties in its stakeholder consultation process that will allow OPG to file proposals with the Board that stakeholders have had input to and some familiarity with, possibly expediting the Board's review of the proposals.

#### **i. Variance Account for Costs Incurred and Revenues Earned or Foregone due to Deviations from Forecast**

The Discussion Paper notes that the Board must ensure that OPG recovers the balance in the variance account established by OPG under section 5(1) of Regulation 53/05 for costs incurred and revenues earned or foregone due to deviations from forecast "over a period not to exceed three years to the extent that the Board is satisfied that (a) the revenues recorded in the account were earned or foregone and the costs were prudently incurred and (b) the revenues and costs are accurately recorded in the account." The Discussion Paper points out, that while the variance account covers the period starting on April 1, 2005, the Regulation does not specify the last date on which amounts may be recorded in the account. The Discussion Paper then states that "It is not expected that this variance account will be used to record amounts subsequent to the effective date of the Board's first order, although a similar one may be approved by the Board."

The PWU concurs with the Discussion Paper's expectation that the variance account established by OPG under section 5(1) of Regulation 53/05 for costs incurred and revenues earned or foregone due to deviations from forecast existing variance account will not be used to record amounts subsequent to the effective date of the first order and that a similar one may be approved by the Board. While the balance in the existing variance account is determined according to section 5(2) of Regulation 53/05, under the

Discussion Paper's premise, a similar Board approved variance account would then not be bound by calculations around the existing payment levels, but by the payment levels approved by the Board.

**ii. Deferral Account for Non-Capital Costs Associated with Pickering A**

With regard to the end date for the Deferral Account for Non-Capital Costs Associated with Pickering A established under Regulation 53/05 the Discussion Paper notes that the Regulation requires the Board to accept the amounts recorded in the account in OPG's most recently audited financial statements approved by its Board of Directors before the effective date of the Board's first payment order. The PWU therefore, agrees with the Discussion Paper's premise that "It is not expected that this deferral account will be used to record amounts subsequent to the effective date of the Board's first order, although a similar one may be approved by the Board if appropriate".

**iii. Deferral Accounts for Nuclear Decommissioning Liability**

The Discussion Paper states that Section 6[(2)5](i) of Regulation 53/05 "would appear" to require the Board in making its first order under section 78.1 to accept the amounts recorded in the Deferral Accounts for Nuclear Decommissioning Liability as set out in OPG's most recently audited financial statements approved by its Board of Directors before the effective date of the Board's first order. In the PWU's opinion it not only appears to be the case, but it is implicitly so.

**iv. Recovery of Specified Costs, etc.**

The PWU agrees with the Discussion Paper's interpretation of Regulation 53/05 with regard to the recovery of: costs and commitments associated with refurbishment or increases in output and capacity; revenue requirement impact of nuclear decommissioning liability; and costs and revenues associated with Bruce nuclear generation stations.

**v. Acceptance of OPG Financial Values**

With regard to the Discussion Paper's position that section 6(2)5 "appears" to include the amounts in deferral accounts or Nuclear Decommissioning Liability, the PWU repeats its opinion that it not only appears to be the case, but that it is implicitly so.

**Part 2: Filing Requirements Framework**

**Page 5, Paragraph 4**

The Discussion Paper states that the Board "indicated that 3 years of historical data was required (2004, 2005 and 2006)." It then specifies filing requirement for detailed

variance analysis comparing the budget amounts to actual amounts for each of the historic years.

In the OPG Report the Board in fact states that it “considers“ it appropriate that OPG file historical data with the Board for the years 2004, 2005 and 2006. In its consideration, the Board needs to take into account that OPG’s PGA only started being regulated in 2005. As such the Board can not expect OPG to necessarily have maintained the financial information as described in Part 2 for 2004. If this is the case, any requirement for OPG to file 2004 information may result in the filing of historic information that is not reliable and that would therefore not provide a suitable basis for setting just and reasonable payment amounts for the output of the PGA. Therefore, while the Board considers it appropriate for OPG to provide historical data for 2004, if OPG cannot provide reasonably reliable information for 2004, the Board ought not to require OPG to file 2004 information.

### **Page 10, Paragraph 3**

Filing separate exhibits on the categories identified in the Discussion Paper (i.e. Administrative Document, Rate Base, Operating Revenue, Operating Costs, Deferral and Variance Accounts, Cost of Capital and Rate of Return, Calculation of Revenue Deficiency or Surplus, and Payment Structure) for the hydraulic and nuclear businesses in a common proceeding would facilitate the separate review of the two business units as stipulated by the Board in the OPG Report.

### **Page 11, Paragraph 1, Bullet 2**

The second bullet states that “A complete filing includes all documentation detailed in this document.” Assuming that the Board staff has not received any input from OPG on its ability to provide all documentation detailed in the Discussion Paper, the Board should consider feedback from OPG on the filing details presented in the Discussion Paper before deciding on what might reasonably constitute a complete filing (e.g. 2004 information).

### **Page 20, Paragraph 1, Bullets 4 and 5**

The Discussion Paper includes the following filing requirements related to capital structure:

- *A historic accounting of changes to OPG’s total capital structure from OPG’s inception in 1998 to the present, including, but not limited to, asset valuations, writedowns, debt issues and retirements.*
- *All internal or commissioned reports, studies or analysis of how to value OPG’s assets and assigned debt by business unit or asset class since OPG’s inception in 1998.*

These filing requirements going back to 1998 do not appear to be consistent with the provisions made under section 6(2) of Regulation 53/05 which require the Board in

making its first order under section 78.1 of the Act to accept the amounts for OPG's assets and liabilities, other than the variance account referred to in subsection 5(1), as set out in OPG's most recently audited financial statements that were approved by the Board of Directors of OPG before the effective date of the first order. In addition to which, the timeline back to 1998 covers years prior to the start of the Board's regulatory authority over the PGA in 2005 and brings into question the purpose of the review of the pre-2005 filing requirements.

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