

CITY OF TORONTO
City's Proposed Issues
Concordance with OEB's Index for Intervenors

CITY'S ISSUE	OEB PROPOSED INDEX REFERENCE
<p>Issue 1: Has the OPA, in setting out only a plan for a plan for transmission in the City of Toronto, met the criteria of the Directive? Specifically has the OPA, with respect to Toronto:</p> <p style="padding-left: 40px;">a) met the criteria set out at Reg. 424/04 Section 1?</p> <p style="padding-left: 40px;">b) met the criteria set out at Goal 1 of the Directive?</p> <p style="padding-left: 40px;">c) met the criteria set out at Goal 2 of the Directive?</p> <p style="padding-left: 40px;">d) met the criteria set out at Goal 6 of the Directive?</p> <p>Issue 2: Has the OPA met the requirement of Reg 424/04 to consult with the City in developing a transmission plan as it impacts the City of Toronto?</p> <p>Issue 3: Has the OPA met the requirement of Reg 424/04 to ensure that safety, environmental protection and environmental sustainability have been considered in formulating transmission solutions for the City of Toronto?</p> <p>Issue 4: Has the OPA met the requirement of Reg 424/04 to ensure that for those projects which meet 8(2) the plan for transmission solutions in the City of Toronto contain a sound environmental rationale?</p>	<p>A-1, A-9, A-10, A-14</p> <p>A-9, A-10, A-14, A-15</p> <p>A-10, A-14, A-15</p> <p>A-10, A-14, A-15</p> <p>A-14, A-15</p> <p>A-9, A-10, A-14, A-15</p> <p>A-14, A-15, A-17</p> <p>A-14, A-15, A-17</p>

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OEB – IPSP Review

OEB File No.: EB-2007-0707

City of Toronto
Submissions on Proposed Issues
Jan. 16, 2008

Order of Submissions

- Concerns with OPA Proposed Approach
- Role and Jurisdiction of OEB
- City of Toronto – Relevant Facts
- Goals Addressed by City's Issues
- OPA's Deferral of Obligations on Transmission Lines
- City's Issues in Context

Concerns with OPA Narrow Approach

- Purpose of this proceeding – to organize presentation of materials in Phase 2
 - Assist OEB in conduct of Phase 2
 - Detail issues beyond OPA filing
 - Facilitate efficient and effective participation
- OPA seeks to unduly narrow issues and evidence

Difficulties with OPA Position

- Seeking to link substantive determination on jurisdiction into discussion of issues list
 - Properly the subject of a separate motion
- OPA argument to constrain OEB jurisdiction does not reflect legislation and common law
- Danger of OEB inadvertently rejecting relevant evidence without benefit of basis on which to assess its relevance

(Université du Québec à Trois-Rivières v. Larocque, [1993] 1 S.C.R. 471, S.C.J. No. 23)

Role and Jurisdiction of OEB

- OEB's role is to approve or disapprove of the OPA's IPSP

- Proceeding is an application for approval
- Proceeding is not a judicial review

- Power of the OEB set out at 25.30(5)

Board's Powers

(5) After review, the Board may approve a plan or refer it back with comments to the OPA for further consideration and resubmission to the Board

- Basis for determination set out at 25.30(4)

Review of IPSP

(4) The Board shall review each integrated power system plan submitted by the OPA to ensure it complies with any directions issued by the Minister and is economically prudent and cost effective

Proposed Constraints are Inappropriate

- Curial deference and judicial review constraints are incompatible with OEB's legislated duty
- No privative clauses; no provision in Electricity Act to protect OPA's decision from review
- No sharing of power – OEB has exclusive jurisdiction and duty to determine all matters of fact and law with respect to the subject that has been referred to it by legislature
 - Refer Ontario Energy Board Act subsections 19(1) and 19(6)

City of Toronto – Relevant Facts

- Toronto's peak demand is approximately 20% of province-wide peak demand
 - Subject to conservation obligations to province
- Toronto's Climate Change, Clean Air and Sustainable Energy Plan ("Sustainable Energy Plan") ties to Directive goals
 - Toronto to become Canada's capital for renewable energy
 - Development of distributed generation capacity
 - Conservation and demand management initiatives
 - City and Toronto Hydro initiatives to effect City policies
- Toronto's Official Plan
 - Land use addresses Hydro Corridors at request of province
 - Addresses environmental and health concerns regarding Hydro Corridors

Directive Criteria addressed by City Issues

- Goal 1: Reduce peak demand reduction from conservation
- Goal 2: Increase use of renewable energy
- Goal 6: Strengthen transmission system to:
 - enable achievement of supply mix
 - develop and use renewable energy where most significant development opportunities exist
 - promote system efficiency and congestion reduction; integrate new supply; maintain reliability
- Goal 7: Comply with Reg 424/04

1(a) OPA shall develop and submit an IPSP

2(1) In developing the IPSP, the OPA shall:

1. consult with interested persons to ensure priorities and views are considered in the development of the plan
2. identify and develop innovative strategies to accelerate implementation of conservation, energy efficiency and demand management measures
3. identify opportunities to use natural gas in high efficiency and high value applications
7. ensure that safety, environmental protection and environmental sustainability are considered
8. ensure that for those projects which meet 8(2) the plan contains a sound rationale including,
 - i. an analysis of the impact on the environment of the project, and
 - ii. an analysis of the impact on the environment of a reasonable range of alternatives

8(2) criteria for 2(1)8:

1. an environmental assessment of the project under the EAA must be required

Deferral by OPA

- OPA expressly defers the proposal of a transmission solution for the City to a later day (Exhibit E.5.5.pg.1):

“The OPA is considering and developing options for meeting potential mid-term and long-term reliability needs of central and downtown Toronto.

At this stage, the OPA is not recommending solutions to address potential reliability needs for Downtown Toronto. Rather the OPA recommends that development work be undertaken so that appropriate solutions are available to address reliability needs if they materialize in the mid-term (2015 to 2017)... Any preferred solution will be subject to applicable regulatory processes (eg. Environmental assessment (“EA”), leave-to-construct)”

- Reg 424/04 s. 1 requires submission of a transmission solution, not submission of a plan to make a plan outside the IPSP process

1. For the purpose of section 25.30 of the Act, the OPA,
(a) shall develop and submit an integrated power system plan that covers a period of 20 years from the date of its submission;...

Transmission Plan Development will be Outside IPSP

- OPA has not conceded that its procedural obligations in developing the IPSP have also been deferred
- Development of plan will come after approval of IPSP, when procedural requirements of Reg 424/04 no longer apply or are not subject to review by OEB
- OPA expressly references the post-approval “implementation” regulatory processes as applying to the later-developed plan. No contemplation of applying 424/04 requirements to the later-developed plan.

Other difficulties with post-approval plan development

- Potential regulatory streamlining post-approval presumes full analysis in IPSP:

“Parties with an interest in those issues [those adequately addressed in the context of the IPSP] must therefore ensure that their positions are brought forward during the IPSP proceeding”

(ref OEB Report at Exhibit A-3-1, pg. 13)

No consultation

- IPSP makes no reference to consulting with the City in developing transmission plans:
 - no reference in consultation section to communications with the City (Table of Contents for Exhibit C)
 - no reference in Exhibit E.5.5 to communications with the City

Consequences of No Consultation

Goal 1: Reduce peak demand reduction from conservation

Goal 2: Increase use of renewable energy

Goal 6: Strengthen transmission system to:

- develop and use renewable energy where most significant development opportunities exist

City's Sustainable Energy Plan, passed by Council:

- identifies conservation and demand management initiatives
- aims to make Toronto the renewable energy capital of Canada

No indication that OPA considered City's Sustainable Energy Plan's initiatives on renewable energy

Goal 6: Strengthen transmission system to:

- promote system efficiency and congestion reduction; integrate new supply; maintain system reliability

Reg 424/04 2(1)3. Identify opportunities to use natural gas in high efficiency and high value applications

City's Sustainable Energy Plan, passed by Council:

- promotes distributed generation within the City of Toronto
- Toronto Hydro is working in line with City's Sustainable Energy Plan

No indication that OPA considered City's Sustainable Energy Plan's initiatives on distributed generation

Reg 424/04 2(1)

7 Ensure that safety, environmental protection and environmental sustainability are considered

8 Ensure that for those projects which meet 8(2) the plan contains a sound rationale including an analysis of the impact on the environment

City's Official Plan identifies limitations on land use

- identifies use of Hydro Corridor lands
- sets land use parameters based on health, safety and environmental considerations

No indication that OPA considered City's Official Plan

Summary of Issues

Issue 1: Has the OPA, in setting out only a plan for a plan for transmission in the City of Toronto, met the criteria of the Directive? Specifically has the OPA, with respect to Toronto:

- a) met the criteria set out at Reg. 424/04 Section 1?**
- b) met the criteria set out at Goal 1;**
- c) met the criteria set out at Goal 2;**
- d) met the criteria set out at Goal 6?**

Issue 2: Has the OPA met the requirement of Reg 424/04 to consult with the City in developing a transmission plan?

Issue 3: Has the OPA met the requirement of Reg 424/04 to ensure that safety, environmental protection and environmental sustainability have been considered in formulating transmission solutions for Toronto?

Issue 4: Has the OPA met the requirement of Reg 424/04 to ensure that for those projects which meet 8(2) the plan for transmission solutions in Toronto contain a sound environmental rationale?