



EB-2008-0312

IN THE MATTER OF sections 25.20 and 25.21 of *the Electricity Act, 1998*;

AND IN THE MATTER OF a Submission by the Ontario Power Authority to the Ontario Energy Board for the review of its proposed expenditure and revenue requirement for the year 2009.

BEFORE: Paul Vlahos
Presiding Member

Paul Sommerville
Member

Cynthia Chaplin
Member

DECISION AND ORDER

Application

On November 2, 2008 the Ontario Power Authority (“OPA”) filed with the Ontario Energy Board (“Board”) its proposed 2009 expenditure and revenue requirement and fees for review pursuant to subsection 25.21(1) of the *Electricity Act, 1998*. The Board assigned file number EB-2008-0312 to this matter.

The OPA sought approval for a proposed usage fee of \$0.485/MWh. The fee forms part of the Wholesale Market Service Charge invoiced by the Independent Electricity System Operator (“IESO”). The proposed fee of \$0.485/MWh is the result of the following:

- 1) a proposed 2009 operating budget of \$65.073 million;
- 2) amortization of the proposed 2009 capital expenditures amount of \$2.9 million;
- 3) the continuation of a registration fee of \$10,000 to be charged to proponents for electricity supply and capacity procurement processes, with a revenue estimate of \$220,000 for 2009;

- 4) recovery over 2009 of the \$1.34 million September 30, 2008 balance in the 2008 Government Procurement Costs Deferral Account, refund over 2009 of the \$10.32 million September 30, 2008 balance in the 2008 Forecast Variance Deferral Account, and recovery of \$14.3 million of the \$42.5 million of the September 30, 2009 net balance in the Retailer Contract Settlement Deferral accounts; and
- 5) dividing the revenue requirement in 2009 of \$70.206 million reflecting the above by the IESO's 2009 energy forecast of 144.7 terawatt hours.

The OPA sought approval to continue for 2009 the above noted variance and deferral accounts.

The OPA also sought interim approval of the proposed \$0.485/MWh fee effective January 1, 2009.

The Board issued a Notice of Application on November 28, 2008. In Procedural Order No. 1, dated December 17, 2008, the Board approved the following nine intervention requests: Association of Major Power Consumers in Ontario ("AMPCO"); Electricity Distributors Association; Energy Cost Management Inc. ; Energy Probe Research Foundation ("Energy Probe"); Hydro One Networks Inc.; Ontario Power Generation Inc. ("OPG"); Shell Energy North America (Canada) Inc.; Toronto Hydro Electric System Limited; and Union Gas Limited. The IESO requested and received observer status. AMPCO and Energy Probe applied for cost award eligibility and the Board found that both parties were eligible for a cost award.

In Procedural Order No. 1, the Board approved the proposed usage fee of \$0.485/MWh on an interim basis effective January 1, 2009 and set out dates for the proceeding up to and including the filing by March 2, 2009 of a settlement proposal. Procedural Order No. 1 also called for submissions from parties (along with responses to these submissions) on a Board Staff proposed issues list which was attached to Procedural Order No 1. The Board determined the issues in its Issues Decision and Order dated January 27, 2009.

Settlement Proposal

A Settlement Conference was held at the Board's offices on February 23, 2009. The following parties participated: AMPCO, Energy Probe, and OPG. A Settlement Proposal dated February 27, 2009 was filed with the Board. The Settlement Proposal also included an updated response to one of Energy Probe's interrogatories. The Settlement Proposal is attached to this Decision and Order.

Settlement was reached on Issues 1 through 6.3, whereby the OPA's proposals were accepted except as noted below. The operating budget for 2009 proposed by OPA was accepted as part of the settlement but it was agreed that Energy Probe and AMPCO would be allowed to make written submissions that "will address the overall level or trend of the budget and will request that the Board provide direction to the OPA regarding the budget for 2010, and other future years". The Settlement Proposal provided that the OPA would have the right of reply to these submissions.

The Settlement Proposal also provided as follows with respect to Issue 6.4 ("Workforce Hiring Practices").

Energy Probe and AMPCO will make written submissions on issue 6.4, regarding OPA's response to the Board's expectations in respect of workforce hiring practices for 2009, and will request that the Board provide direction to the OPA regarding the budget for 2010 and future years. The OPA will have the right to reply to these submissions.

On March 5, 2009, the OPA filed with the Board and sent to intervenors certain revisions to its original filing. In its original filing the OPA had proposed to charge a registration fee of \$10,000 for electricity supply and capacity competitive procurement. The revised proposal is that the fee will be up to \$10,000. The OPA noted that this change will allow the OPA to establish an appropriate registration fee for a feed-in-tariff ("FIT") program if Bill 150¹ is passed by the legislature. The revenue from registration fees had not been altered, and therefore there was no change to the original proposed revenue requirement.

In Decision on Settlement and Procedural Order No. 2, dated March 6, 2009, the Board

¹: Bill 150, the proposed *Green Energy and Green Economy Act, 2009* was introduced in the legislature on February 23, 2009.

accepted the Settlement Proposal as reasonable, subject to the submissions by Energy Probe and AMPCO as stipulated in the Settlement Proposal and subject to submissions by any party on the OPA's revised request regarding registration fees. In Procedural Order No.1 the Board also set out the dates for submissions by intervenors and the OPA's reply submission.

Submissions were received from Energy Probe on the following matters: operating budget levels; hiring practices; and the revised request for registration fees. AMPCO's submission only dealt with the matter of hiring practices where it stated that it has nothing to add to the submission by Energy Probe. The OPA replied to the submissions.

Board Findings

Operating Budget Levels

Energy Probe observed that the OPA "keeps adjusting" the areas of responsibility associated with its various cost centres from year to year, and this makes examination of spending trends for its operating divisions difficult. The Board does not discount these difficulties. However, the Board considered that the OPA is a relatively new organization and, also, its activities are largely driven by ministerial directives and changing government energy policy that can lead to significant adjustments to its scope and effort of its various objectives from time to time. The Board further notes that the OPA has attempted to be helpful by recasting the data to enable comparisons from year to year and to explain the differences that arose from reallocations. However, as this information was adduced mainly in responses to interrogatories, the Board encourages the OPA in future to recast the data in its pre-filed evidence rather than waiting for interrogatories, and to do so by considering this year's interrogatories in that regard. The Board concludes that no further direction is required at this time regarding the framing or presentation of OPA's budget.

Energy Probe noted that the OPA appears to have difficulty forecasting future year revenue requirements, by cost centre and in total. The Board recognizes that the OPA's activities are largely driven by ministerial directives issued throughout the year and changing government energy policy, after its budget is prepared and approved. Therefore, variations between forecast and actual expenditures at the cost centre level may at times be quite pronounced. The Board does not share Energy Probe's concern

regarding variances at the cost centre level, but agrees that the OPA's record in total budget forecasts and actual spending in the last two years is of some concern. Forecast total spending in 2007 was 26% above actual and in 2008 15% above actual. These are significant variances, and both indicate that the fees for the years in question were overstated. As the OPA is a non-for-profit entity and variances are used to adjust the next year's revenue requirement, it is not an issue of the OPA profiting from such forecast record. Rather it is an issue of the fees being reasonable for the time period for which they are set. The OPA could improve on the record of the last two years. As for Energy Probe's suggestion that in light of the forecasting record the next application by the OPA should be heard orally, this is a determination which will be made by the Board in the context of that application.

Workforce Hiring Practices

In the 2008 fees decision the Board stated "the Board expects the OPA to review its hiring practices for 2008 and to fully justify increases to its permanent full time workforce in its 2009 fees application". Energy Probe argued that the OPA had misinterpreted the Board's 2008 fees decision regarding the OPA's hiring practices. It appeared to Energy Probe that the OPA had interpreted the Board's "direction" as shifting temporary employees to full time status rather than the OPA being mindful of the potential consequences of the Arnett Report² on the questionable future of the OPA as an organization, which was the intent of the Board's comment. The Board finds that the OPA has not misinterpreted the Board's expectation in the manner suggested by Energy Probe. The OPA's evidence goes into appropriate detail as to the justification for the type of hiring policies it has undertaken since the 2008 fees decision was released. In any event, as the OPA points out, the recently introduced Bill 150 is a major legislative initiative by the Ontario government on electricity matters and there is no indication in that proposed legislation that the Government intends to act on the recommendations in the Arnett Report as it pertains to the OPA.

²The Arnett Review Panel Phase II Final Report On Ontario's Provincially-Owned Electricity agencies, December 20, 2007

Revised Registration Fee

Energy Probe noted that the OPA had argued “strongly” for a fixed registration fee approach for supply and capacity procurements in a prior proceeding, in which it had produced a consultant’s report in support of that approach, and submitted that the OPA has not made its case for a revised approach. The Board does not find merit in Energy Probe’s position. As the OPA points out, the FIT program is a key element of a significant legislative initiative by the Ontario government. Although Bill 150 is not yet passed into law, the revised registration fee range approach in the revised application provides the OPA with needed flexibility to make the FIT program viable and effective without the need for the OPA to make another application mid-year. The Board agrees such an approach is appropriate.

COST AWARDS

A decision regarding cost awards will be issued later. Eligible parties shall submit cost claims by April 22, 2009 in accordance with the Board's Practice Direction on Cost Awards. The OPA will have until May 6, 2009 to object to any aspect of the costs claimed. Any party whose cost claim is objected to may respond by May 13, 2009. Copies of all submissions must be filed with the Board and served on the OPA.

THE BOARD ORDERS THAT:

1. A registration fee of up to \$10,000 may be charged to proponents for electricity supply and capacity procurement.
2. The interim usage fee of \$0.485/MWh effective January 1, 2009 is final.

DATED at Toronto, April 9, 2009
ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

**ONTARIO POWER AUTHORITY
SETTLEMENT PROPOSAL**

February 27, 2009

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6.3	Commitments from previous Settlement Agreements <ul style="list-style-type: none"> Has the OPA met its commitments, as set out in previous Settlement Agreements and Decisions? 	
6.4	Workforce Hiring Practices <ul style="list-style-type: none"> Has the OPA responded appropriately to the expectation of the Board Panel in respect of workforce hiring practices as stated on page 11 of the Decision and Order in the EB-2007-0791 proceeding? 	

Introduction

This Settlement Proposal is filed with the Ontario Energy Board (“OEB”) in connection with the 2009 Expenditure and Revenue Requirement Submission (“2009 RRS”) of the Ontario Power Authority, filed November 3, 2008 under sections 25.20 and 25.21 of the *Electricity Act, 1998*. A Settlement Conference was held on February 23, 2009 in accordance with the *Ontario Energy Board Rules of Practice and Procedure* (the “Rules”) and the *Ontario Energy Board Settlement Conference Guidelines* (“Settlement Guidelines”). This Settlement Proposal arises from the Settlement Conference.

The Ontario Power Authority (the “OPA”) and the following intervenors listed alphabetically (collectively, “the parties”), and the OEB technical staff (“Board Staff”), participated in the Settlement Conference:

Association of Major Power Consumers in Ontario (“AMPCO”)

Energy Probe Research Foundation (“Energy Probe”)

Ontario Power Generation Inc. (“OPG”)

The Settlement Proposal represents the positions of the intervenors on the issues listed in the Table of Contents and the Final Issues List attached as Appendix “A” to the OEB’s Issues Decision and Order dated January 26, 2009 (the “Issues List”). The numbers given to each of the issues correlate to the sections in the Settlement Proposal and each issue is categorized under one of the following descriptions:

Complete Settlement – The OPA and all intervenors who take a position on the issue agree to the proposed settlement.

Incomplete Settlement – The parties are only able to agree on some, but not all, parts of the issue.

No Settlement – The parties were unable to reach agreement on any part of the issue.

The categorization of each issue assumes that all intervenors participated in the negotiation of an issue, unless specifically noted otherwise. Any intervenors that are identified as not having participated in the negotiation of that issue also take no position on any settlement or other wording pertaining to the issue. In accordance with the Rules and the Settlement Guidelines, Board Staff takes no position on any issue and, as a result, is not a party to the Settlement Proposal.

The Settlement Proposal describes the agreements reached on the settled issues. The Settlement Proposal identifies the intervenors who agree with each settlement, or who take no position on the issue. The Settlement Proposal lists the evidentiary references for each issue. Therefore the intervenors who are in agreement with any settled issue(s) believe that the evidence provides sufficient information to support their views to support the Settlement Proposal and combined with the rationale for settlement, will assist the OEB in its decision making on those issues.

Settlement Proposal

1. Strategic Objective #1: POWER SYSTEM PLANNING – Plan for an adequate, reliable and sustainable system that integrates conservation, generation and transmission and implements the Minister’s directives	
1.1	2009 Operating Budget for Strategic Objective #1 – Power System Planning <ul style="list-style-type: none"> Is the Operating Budget of \$5.790 million allocated to Strategic Objective #1 reasonable and appropriate?

Evidence: The evidence in relation to this issue includes the following:

A-2-1 2009 - 2011 Business Plan
B-1-1 Strategic Objective 1
I-1-3, 8 Board Staff Interrogatory 3, 8
I-2-1 Energy Probe Interrogatory 1
I-3-1, 2 AMPCO Interrogatory 1, 2

Complete Settlement

The parties have reached a full settlement of this issue on the basis that the operating budget for 2009 is accepted. However, Energy Probe and AMPCO will make written submissions in this proceeding that will address the overall level or trend of the budget and will request that the Board provide direction to the OPA regarding the budget for 2010, and other future years. The OPA will have the right to reply to these submissions.

Participating Intervenors: AMPCO, Energy Probe, and OPG

Approval: All participating parties agree except OPG which takes no position

2. Strategic Objective #2: CONSERVATION – Plan and procure conservation resources to meet the requirements identified in the IPSP and promote sustainable conservation practices that contribute to a culture of conservation	
2.1	2009 Operating Budget for Strategic Objective #2 – Conservation <ul style="list-style-type: none"> Is the Operating Budget of \$20.072 million allocated to Strategic Objective #2 reasonable and appropriate?

Evidence: The evidence in relation to this issue includes the following:

A-2-1 2009 - 2011 Business Plan
 A-3-1 CECO Annual Report 2008
 A-4-1 Supplement to CECO Annual Report 2007 dated May 2008
 B-2-1 Strategic Objective 2
 D-2-1 2009 Fees, Operating Costs and Capital Expenditures
 I-1-3, 9 Board Staff Interrogatory 3, 9
 I-2-2 Energy Probe Interrogatory 2

Complete Settlement

The parties have reached a full settlement of this issue on the basis that the operating budget for 2009 is accepted. However, Energy Probe and AMPCO will make written submissions in this proceeding that will address the overall level or trend of the budget and will request that the Board provide direction to the OPA regarding the budget for 2010, and other future years. The OPA will have the right to reply to these submissions.

Participating Intervenors: AMPCO, Energy Probe, and OPG

Approval: All participating parties agree except OPG which takes no position

3. Strategic Objective #3: SUPPLY PROCUREMENT AND CONTRACTS – Plan and design procurement processes and enter into procurement contracts for generation resources to meet the requirements identified in the IPSP and to embed “best in class” contracting practices that support investment in necessary infrastructure and contribute to a sustainable electricity system	
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3.1	2009 Operating Budget for Strategic Objective #3 – Supply Procurement and Contract Management <ul style="list-style-type: none"> • Is the Operating Budget of \$7.732 million allocated to Strategic Objective #3 reasonable and appropriate?
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Evidence: The evidence in relation to this issue includes the following:

A-2-1 2009 - 2011 Business Plan
 B-3-1 Strategic Objective 3
 D-2-1 2009 Fees, Operating Costs and Capital Expenditures
 I-1-10 Board Staff Interrogatory 10
 I-2-3 Energy Probe Interrogatory 3

Complete Settlement

The parties have reached a full settlement of this issue on the basis that the operating budget for 2009 is accepted. However, Energy Probe and AMPCO will make written submissions in this proceeding that will address the overall level or trend of the budget and will request that the Board provide direction to the OPA regarding the budget for 2010, and other future years. The OPA will have the right to reply to these submissions.

Participating Intervenors: AMPCO, Energy Probe, and OPG

Approval: All participating parties agree except OPG which takes no position

4.	Strategic Objective #4: BARRIERS TO THE DEVELOPMENT OF ECONOMICALLY SUSTAINABLE CONSERVATION AND SUPPLY RESOURCES – Identify and assess barriers to the development of economically sustainable conservation and supply resources and develop solutions to address these barriers in cooperation with stakeholders
4.1	2009 Operating Budget for Strategic Objective #4 – Barriers to Resource Development <ul style="list-style-type: none"> • Is the Operating Budget of \$1.031 million allocated to Strategic Objective #4 reasonable and appropriate?
4.2	Is it appropriate for two government agencies (the IESO and the OPA) to both be involved in market development activities?

Evidence: The evidence in relation to this issue includes the following:

A-2-1 2009 - 2011 Business Plan
 B-4-1 Strategic Objective 4
 D-2-1 2009 Fees, Operating Costs and Capital Expenditures
 I-1-11, 12 Board Staff Interrogatories 11, 12
 I-2-4, 5 Energy Probe Interrogatories 4, 5
 I-3-3 AMPCO Interrogatory 3

Complete Settlement

The parties have reached a full settlement of this issue on the basis that the operating budget for 2009 is accepted. However, Energy Probe and AMPCO will make written submissions in this proceeding that will address the overall level or trend of the budget and will request that the Board provide direction to the OPA regarding the budget for 2010, and other future years. The OPA will have the right to reply to these submissions.

Participating Intervenors: AMPCO, Energy Probe, and OPG

Approval: All participating parties agree except OPG which takes no position

5. Strategic Objective #5 – ORGANIZATIONAL CAPACITY – Maintain and develop organizational capacity to achieve all other strategic objectives.	
5.1	2009 Operating Budget for Strategic Objective #5 – Organizational Capacity <ul style="list-style-type: none"> • Is the Operating Budget of \$30.448 million allocated to Strategic Objective #5 reasonable and appropriate?
5.2	Are organizational resources adequate, appropriately managed and suitably allocated amongst the various OPA functions and work groups?
5.3	Is the resource mix of in-house resources, consultant/purchased services and out-sourcing utilized by the OPA appropriate in all areas and for all circumstances?

Evidence: The evidence in relation to this issue includes the following:

A-2-1 2009 - 2011 Business Plan
B-5-1 Strategic Objective 5
D-2-1 2009 Fees, Operating Costs and Capital Expenditures
A-5-1 OPA 2007 Annual Report
B-1-1 Strategic Objective 1
B-2-1 Strategic Objective 2
B-3-1 Strategic Objective 3
B-4-1 Strategic Objective 4
I-1-2, 3, 4 Board Staff Interrogatories 2, 3, 4
I-2-6 Energy Probe Interrogatory 6

Complete Settlement

The parties have reached a full settlement of this issue on the basis that the operating budget for 2009 is accepted. However, Energy Probe and AMPCO will make written submissions in this proceeding that will address the overall level or trend of the budget and will request that the Board provide direction to the OPA regarding the budget for 2010, and other future years. The OPA will have the right to reply to these submissions.

Participating Intervenors: AMPCO, Energy Probe, and OPG

Approval: All participating parties agree except OPG which takes no position

6. General	
6.1	Proposed Usage Fee <ul style="list-style-type: none"> • Is the proposed usage fee reasonable and appropriate?
6.2	Deferral and Variance Accounts <ul style="list-style-type: none"> • Is the proposed disposition of the various Deferral and Variance Accounts reasonable and appropriate?
6.3	Commitments from previous Settlement Agreements <ul style="list-style-type: none"> • Has the OPA met its commitments, as set out in previous Settlement Agreements and Decisions?
6.4	Workforce Hiring Practices <ul style="list-style-type: none"> • Has the OPA responded appropriately to the expectation of the Board Panel in respect of workforce hiring practices as stated on page 11 of the Decision and Order in the EB-2007-0791 proceeding?

Evidence: The evidence in relation to this issue includes the following:

A-1-1 Submission
A-2-1 2009 - 2011 Business Plan
B-5-1 Strategic Objective 5
D-2-1 2009 Fees, Operating Costs and Capital Expenditures
A-5-1 OPA 2007 Annual Report
D-1-1 2009 Revenue Requirement
D-3-1 Deferral and Variance Accounts
D-3-3 2008 Forecast Variance Deferral Account
I-1-5, 6, 7 Board Staff Interrogatories 5, 6, 7
I-2-7 Energy Probe Interrogatory 7

Incomplete Settlement

Parties have reached a complete settlement for issues 6.1, 6.2, and 6.3 on the basis that the OPA's proposals are accepted. Parties are unable to reach a settlement on issue 6.4. Energy Probe and AMPCO will make written submissions on issue 6.4, regarding OPA's response to the Board's expectations in respect of workforce hiring practices for 2009, and will request that the Board provide direction to the OPA regarding the budget for 2010 and other future years. The OPA will have the right to reply to these submissions.

Participating Intervenors: AMPCO, Energy Probe, and OPG

Approval: All participating intervenors agree with the settlement of issues 6.1, 6.2 and 6.3 as described above, with the exception of OPG which takes no position on any of the issues.