

M. Garner

FEB-2005-0245



Ontario
Executive Council
Conseil des ministres

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit:

WHEREAS the Minister may, with the approval of the Lieutenant Governor in Council, issue directives under section 28 of the *Ontario Energy Board Act, 1998* with respect to license conditions to address issues which arise from the market share which Ontario Power Generation Inc. has in the Ontario electricity industry;

AND WHEREAS the Minister, with the approval of the Lieutenant Governor in Council, issued such Directives on March 24, 1999 (OIC No. 600/99), March 19, 2003 (OIC No. 654/2003) and April 2, 2003 (OIC No. 843/2003), with attached schedules, in respect of the license of Ontario Power Generation Inc. issued to it by the Ontario Energy Board;

AND WHEREAS the *Electricity Restructuring Act, 2004*, which received Royal Assent on December 9th, 2004, provides for a new framework for the pricing of electricity for Ontario consumers through amendments to both the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* which allows the government to prescribe prices for certain of Ontario Power Generation Inc.'s nuclear and base-load hydro-electric assets;

AND WHEREAS it is desirable, in order to implement the government's new electricity pricing strategy created pursuant to the *Electricity Restructuring Act, 2004*, that the latter directive, and in particular schedule B attached thereto, be amended to replace that Schedule to modify Ontario Power Generation Inc.'s payment obligations.

NOW THEREFORE the above-noted Schedule B attached to the Directive made pursuant to Order-in-Council No. 843/2003, dated April 2, 2003, shall be replaced with the Schedule "B" attached hereto, to be effective as of the date that this Order in Council is signed.

Recommended:

Minister of Energy

Concurred:

Chair of Cabinet

Approved and Ordered:

FEB 16 2005

Date

Lieutenant Governor

O.C./Décret, 207/2005

SCHEDULE B - ADDITIONAL TERMS AND CONDITIONS OF SETTLEMENT AGREEMENT BETWEEN IMO & OPG

The following sets out the procedure for calculating, allocating and passing through the Market Power Mitigation Agreement (MPMA) Rebate. Where there is a conflict between Schedule A in the Minister's Directive dated March 16, 1999, as amended by the Minister's Directive dated February 25, 2003, and this Schedule B, then this Schedule B prevails.

For the First Settlement Period (May 1, 2002 to April 30, 2003)

- 1) The first MPMA Rebate is to be paid out for the 9-month period ending January 31, 2003. This is the amount, as calculated by the IMO and agreed to by OPG, that OPG is required to rebate for the nine month period, based on OPG's MPMA license conditions, less the interim payment already made by OPG of approximately \$335 million and amounts relating to decontrol applications pending before the Ontario Energy Board. OPG is to pay this net amount to the IMO by May 9, 2003.
- 2) The second MPMA Rebate will cover the three-month period February 1, 2003 to April 30, 2003 inclusive. This is the amount, as calculated by the IMO and agreed to by OPG, that OPG is required to rebate for the three month period, based on OPG's license conditions, adjusted for any true-up required to ensure that the sum of the two rebates for the first settlement period, including the interim payment, is equal to OPG's full rebate requirements for the first Settlement Period under the OPG's MPMA license conditions. OPG is to pay this amount to the IMO by August 12, 2003.
- 3) The IMO will pay the pro rata share of the first MPMA Rebate and the second MPMA Rebate based on the allocated quantity of energy withdrawn during the applicable period by market participants who are receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998* to the Ontario Electricity Financial Corporation.
- 4) The IMO will pay the pro rata share of the first MPMA Rebate and the second MPMA Rebate based on the allocated quantity of energy withdrawn during the applicable period by market participants who are not distributors and are not receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998* directly to those market participants or their assignees that are market participants where the market participants have assigned their MPMA rebate.
- 5) The IMO will pay to distributors who are market participants, including host distributors on behalf of their embedded distributors, the pro rata share of the first

MPMA Rebate and the second MPMA Rebate based on the share of energy withdrawn during the applicable period by consumers in the distributor's or embedded distributor's respective service areas who are not receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998* and by customers of retailers who have assigned all or a portion of their entitlement to an MPMA Rebate to that retailer. In making these calculations and payments the IMO will rely on the information reported by the distributors to the IMO as required under Appendix D. Once the IMO has received the information from the distributors and disbursed the first MPMA Rebate or the second MPMA Rebate in accordance with this Schedule B, there shall be no opportunity to correct any such information or provide any additional information and all amounts paid shall be final and binding and not subject to any adjustment.

- 6) After making the payments set out in 3), 4), and 5), the IMO is to pay any remaining Rebate to the Ontario Electricity Financial Corporation to offset in whole or in part the cost of providing the fixed price of 4.3 cents per kilowatt hour to consumers who are eligible to receive, are receiving or have received the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998*. Any amounts returned to the IMO by distributors in accordance with their license conditions shall be paid over to the Ontario Electricity Financial Corporation.

For the Settlement Periods (May 1, 2003 to January 31, 2005)

- 7) For each Settlement Period or partial Settlement Period from May 1, 2003 to January 31, 2005, OPG is to make quarterly MPMA Rebate payments to the IMO, consistent with OPG's MPMA license conditions, as calculated by the IMO and agreed to by OPG. The IMO and OPG may agree to appropriate true-up and carry forward mechanisms provided that these are consistent with forwarding the Rebate as soon as practicable.
- 8) For each Settlement Period or partial Settlement Period from May 1, 2003 to January 31, 2005 the MPMA rebate payments to market participants will be calculated and determined by the IMO as follows:

$$\text{BPPR} = [(\text{WAP} - \text{CAP}) \times 0.5 \times \text{TAQEW}]$$

Where:

"Business Protection Plan Rebate" or "BPPR" is the MPMA Rebate paid out to consumers who are not receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998*. The BPPR is to rebate half of the amount by which the weighted average commodity price of electricity exceeds 3.8 cents per kilowatt-hour.

"Weighted Average Price" or "WAP" is the average Hourly Ontario Electricity Price weighted by load over the Settlement Period as determined by the IMO.

"Total Allocated Quantity of Energy Withdrawn" or "TAQEW" is the total electricity withdrawn from the IMO-controlled grid for use in Ontario during the Settlement Period.

- 9) The IMO will make quarterly MPMA payments to market participants based on the applicable Settlement Period to the end of the previous quarter, and taking into account all prior quarterly MPMA payments made with respect to the applicable Settlement Period. The IMO will adjust the payment for the final quarter of each Settlement Period to ensure that the sum of the quarterly MPMA payments for the applicable Settlement Period does not exceed the BPPR entitlement for the Settlement Period. If there is an overpayment of quarterly payments over a Settlement Period based on the BPPR entitlement for that Settlement Period, any such overpayment can be carried over to successive Settlement Periods to be offset against future payments.
- 10) The IMO will pay the pro rata share of the BPPR based on the allocated quantity of energy withdrawn for the applicable period by market participants who are receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998* to the Ontario Electricity Financial Corporation.
- 11) The IMO will pay the pro rata share of the BPPR based on the allocated quantity of energy withdrawn for the applicable period by market participants who are not distributors and are not receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998* directly to those market participants or their assignees that are market participants where the market participants have assigned their MPMA Rebate
- 12) The IMO will pay to distributors who are market participants, including host distributors on behalf of their embedded distributors, the pro rata share of the BPPR based on the share of energy withdrawn for the applicable period by consumers in the distributor's or embedded distributor's respective service areas who are not receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act 1998* for the MPMA Rebate and by customers of retailers who have assigned all or a portion of their entitlement to an MPMA Rebate to that retailer. In making these calculations and payments the IMO will rely on the information reported by the distributors to the IMO as required under Appendix D. Once the IMO has received the information from the distributors and disbursed the BPPR for that quarter in accordance with this Schedule B, there shall be no opportunity to correct any such information or provide any additional information and all amounts paid shall be final and binding and not subject to any adjustment.
- 13) For the quarterly periods from May 1, 2003 to January 31, 2005, after making the payments set out in 10), 11), and 12), the IMO is to pay any remaining Rebate to the Ontario Electricity Financial Corporation to offset in whole or in part the cost of providing the prices established under sections 79.4 and 79.5 of the *Ontario*

Energy Board Act, 1998 to consumers who are eligible to receive the prices established under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998*. Any amounts returned to the IESO by distributors in accordance with their license conditions shall be paid over to the Ontario Electricity Financial Corporation.

For the Payment for the Period (February 1, 2005 to March 31, 2005)

14) For the Payment for the Period from February 1, 2005 to March 31, 2005, OPG is to make an MPMA Rebate payment to the IESO, consistent with OPG's MPMA license conditions, as calculated by the IESO and agreed to by OPG. The IESO and OPG may agree to appropriate true-up and carry forward mechanisms provided that these are consistent with forwarding the Rebate as soon as practicable.

15) For the Payment for the Period from February 1, 2005 to March 31, 2005 the MPMA rebate payments to market participants will be calculated and determined by the IESO as follows:

$$BPPR = [(WAP - CAP) \times 0.5 \times TAQEW]$$

Where:

"Business Protection Plan Rebate" or "BPPR" is the MPMA Rebate paid out to consumers who are not receiving the fixed price under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act, 1998*. The BPPR is to rebate half of the amount by which the weighted average commodity price of electricity exceeds 3.8 cents per kilowatt hour.

"Weighted Average Price" or "WAP" is the average Hourly Ontario Electricity Price weighted by load over the Settlement Period as determined by the IESO.

"Total Allocated Quantity of Energy Withdrawn" or "TAQEW" is the total electricity withdrawn from the IESO-controlled grid for use in Ontario during the Settlement Period.

16) The IESO will make the MPMA payment to market participants for the two month period ending March 31, 2005 taking into account all prior MPMA payments made in that Settlement Period.

17) The IESO will pay the pro rata share of the BPPR based on the allocated quantity of energy withdrawn for the applicable period by market participants who are receiving the prices established under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* to the Ontario Electricity Financial Corporation.

18) The IESO will pay the pro rata share of the BPPR based on the allocated quantity of energy withdrawn for the applicable period by market participants who are not distributors and are not receiving the prices established under sections 79.4, 79.5,

and 79.16 of the *Ontario Energy Board Act, 1998* directly to those market participants or their assignees that are market participants where the market participants have assigned their MPMA Rebate

19) The IESO will pay to distributors who are market participants, including host distributors on behalf of their embedded distributors, the pro rata share of the BPPR based on the share of energy withdrawn for the applicable period by consumers in the distributor's or embedded distributor's respective service areas who are not receiving the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act 1998* for the MPMA Rebate and by customers of retailers who have assigned all or a portion of their entitlement to an MPMA Rebate to that retailer. In making these calculations and payments the IESO will rely on the information reported by the distributors to the IESO as required under Appendix D. Once the IESO has received the information from the distributors and disbursed the BPPR for that quarter in accordance with this Schedule B, there shall be no opportunity to correct any such information or provide any additional information and all amounts paid shall be final and binding and not subject to any adjustment.

20) After making the payments set out in 17), 18), and 19), the IESO is to pay any remaining Rebate to the Ontario Electricity Financial Corporation to offset in whole or in part the cost of providing the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act 1998* to consumers who are eligible to receive the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act, 1998*. Any amounts returned to the IESO by distributors in accordance with their license conditions shall be paid over to the Ontario Electricity Financial Corporation.

Replacement of the MPMA Rebate With A New Payment for the Period (April 1, 2005 to April 30, 2006)

21) For the Payment for the Period from April 1, 2005 to April 30, 2006, OPG is to make a single payment to the IESO, calculated as follows:

$$\text{Payment} = \text{Sum over all hours } [(\text{HOEP} - \$47) \times (\text{ONPA (output)} \times 0.85)]$$

Where:

ONPA or OPG's Non-Prescribed Assets are those Ontario Power Generation assets, excluding Lennox Generating Station, that are not prescribed assets under section 78.1 of the *Ontario Energy Board Act, 1998* as amended by the *Electricity Restructuring Act, 2004*.

HOEP is the Hourly Ontario Energy Price as determined by the IESO.

ONPA (output) is the generation output from OPG's Non-Prescribed Assets generation assets over each hour of the period adjusted to take account of volumes sold through Transitional Rate Option contracts and forward contracts in effect as of January 1, 2005.

- 22) For the Payment for the Period from April 1, 2005 to April 30, 2006 the single payment to market participants will be equal to the payment calculated in 21) above.
- 23) The IESO will pay the pro rata share of the Payment based on the allocated quantity of energy withdrawn for the applicable period by market participants who are receiving the prices established under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* to the Ontario Power Authority to be applied to the variance account established under section 25.33 (5) of the *Electricity Act, 1998* as amended by the *Electricity Restructuring Act, 2004*.
- 24) The IESO will pay the pro rata share of the Payment based on the allocated quantity of energy withdrawn for the applicable period by market participants who are not distributors and are not receiving the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act, 1998* directly to those market participants or their assignees that are market participants where the market participants have assigned their Payment.
- 25) The IESO will pay to distributors who are market participants, including host distributors on behalf of their embedded distributors, the pro rata share of the Payment based on the share of energy withdrawn for the applicable period by consumers in the distributor's or embedded distributor's respective service areas who are not receiving the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act 1998* for the Payment and by customers of retailers who have assigned all or a portion of their entitlement to a Payment to that retailer. In making these calculations and payments the IESO will rely on the information reported by the distributors to the IESO as required under Appendix D. Once the IESO has received the information from the distributors and disbursed the Payment for the period in accordance with this Schedule B, there shall be no opportunity to correct any such information or provide any additional information and all amounts paid shall be final and binding and not subject to any adjustment.
- 26) After making the payments set out in 23), 24), and 25), the IESO is to pay any remaining amount of the Payment to the Ontario Power Authority to be applied to the variance account established under section 25.33 (5) of the *Electricity Act, 1998* as amended by the *Electricity Restructuring Act, 2004*.
- 27) With respect to its non-prescribed generating facilities, OPG shall maximize their value to the people of Ontario by operating those facilities in response to the price signals of the IESO-administered markets. OPG's conduct in the IESO-

administered markets under this direction is subject to review by the Market Surveillance Panel of the Ontario Energy Board.