

# Elson Advocacy

May 2, 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 on behalf of Environmental Defence to request that the Ontario Energy Board (OEB) re-open or institute a new proceeding to consider issues relating to Ontario Power Generation's ongoing sales of clean energy credits arising from its OEB-rate-regulated assets. Ontario ratepayers have paid for these clean energy resources. By selling these credits into other jurisdictions, OPG may be undermining Ontario businesses and municipalities that wish to or are required to reduce their carbon footprint and report on those efforts.

## **Background**

It appears that OPG has been selling clean energy credits to buyers outside of Ontario for some time now. This became public only very recently. These credits allow the purchaser to "prove that the electricity they consume from the grid comes from clean generation sources, even if they operate within an electricity grid that includes high-emitting generation sources."<sup>1</sup> The credits cannot be double-counted.<sup>2</sup> Therefore, when a purchaser secures the right to say they are consuming clean energy with respect to a volume of electricity, that right is taken from Ontario electricity consumers.

OPG sells clean energy credits associated with its OEB-rate-regulated assets, namely its regulated nuclear and hydro facilities.<sup>3</sup> These assets are paid for by Ontario electricity consumers through payment amounts approved by the OEB. OPG does not sell clean energy credits from its unregulated assets under contract with the IESO as the IESO prohibits doing so in its contracts.

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<sup>1</sup> OPG, Clean energy credit program, <https://www.opg.com/climate-change/cec-program/>.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

OPG sells these credits through third party registries such as the Midwest Renewable Energy Tracking System (M-RETS) or via Attestation Letters.<sup>4</sup> It is not yet clear (a) when these sales began, (b) how many have been sold (number of megawatt-hours or value of revenue), (c) how many are forecast to be sold, and (d) what the average carbon intensity is for the remaining energy in Ontario.

As the OEB is likely aware, the IESO is exploring a voluntary clean energy credit market for Ontario. That is a separate process and Environmental Defence is not asking the OEB to address this initiative. The ongoing OPG sales are different as they involve sales into other jurisdictions of assets and rights that have been paid for by Ontario electricity consumers.

### **Potential harm to customers**

The selling of clean energy credits has the potential to harm customers.

### **Benefits lost to Ontarians**

The potential harm to Ontarians is illustrated by the IESO's practice regarding environmental attributes and clean energy credits in its contracts with generators. The IESO reserves the environmental attributes in its contracts for the benefit of Ontarians. Therefore, generators, including OPG, cannot sell clean energy credits for the power they sell through IESO contracts. The IESO presumably does this because environmental attributes have real value that should remain with the Ontarians that have purchased the power in question.

When clean energy credits are sold by OPG, the value that is transferred to the purchaser is taken from Ontario electricity customers. If a purchaser has bought the right to claim they consume a MWh of carbon-free power, this same right was lost to Ontarians because there can be no double counting. This is a real loss that could have significant ramifications for Ontario businesses, municipalities, and all ratepayers.

### **Businesses**

OPG's clean energy credit sales may harm businesses by undermining their ability to meet corporate carbon targets, qualify for ethical accreditation, and report on carbon emissions.

Many companies have set corporate Environmental and Sustainability Goals ("ESG") regarding their carbon emissions.<sup>5</sup> These often include calculating indirect carbon emissions from electricity consumption. Many will calculate the carbon footprint of their electricity consumption based on the assumption that Ontario's generation is approximately 92% carbon-free. That is no longer valid if clean energy credits are being sold by OPG to others. Ontario consumes approximately 74 TWhs annually. For every TWh that OPG sells of clean energy credits, the

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<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

remaining TWhs have a higher carbon intensity. Ontario businesses and credit purchasers cannot both rely on the same carbon-free energy and both claim the value of the associated carbon reductions. That would be double counting.

The concerns are even greater for carbon-related accreditation, such as ethical investment criteria. There are a variety of accreditations that include carbon-related criteria. Taking rights and value from Ontario electricity customers may cause problems for those trying to qualify.

Regardless of the magnitude of sales, businesses may encounter significant reporting problems. Those problems would arise for self-imposed corporate targets, external accreditation schemes, or other listing requirements. Without knowing how many credits have been sold as a proportion of Ontario's electricity output, it is not possible to calculate the carbon emissions arising from the power they consume while also avoiding double counting.

### **Municipalities**

Municipalities face similar issues. Many have passed climate plans that include reducing carbon emissions, including indirect emissions from the electricity they consume (i.e. "scope 2" emissions). Selling environmental attributes out from under these municipalities will undermine those efforts. They cannot claim to consume carbon-free power with respect to megawatt-hours that have been sold off.

Municipalities are also required to calculate and report their indirect "scope 2" emissions from electricity consumption under Ontario Regulation 507/18. It is unclear how that should be done in light of the clean energy credits without double counting.

### **Ontario's and Canada's carbon targets**

These clean energy credit sales may also undermine Ontario's and Canada's carbon targets. Canada's carbon targets are mandated by law and international treaty. It is unclear how these targets are impacted if a significant number of clean energy credits are being sold into the United States. Again, the value of the carbon reductions cannot be accounted for twice, once in each country.

### **Homeowners and the public good**

Ontario has gone to significant efforts to phase out coal power. This has a cost, and a corresponding value. Some unknown amount of that value is being lost to all Ontario electricity customers, including homeowners across the province who want to know they have an almost-carbon-free electricity grid. From a public interest perspective, to the extent that OPG sells credits into coal-burning jurisdictions, it is as if Ontario is back to burning coal by giving others an excuse to continue doing so.

## OEB Jurisdiction

As noted above, the IESO is responsible for determining whether OPG can sell clean energy credits with respect to its contracted generation facilities (i.e. non-regulated assets). With respect to OPG's assets prescribed under section 78.1 of the *Ontario Energy Board Act*, the OEB presumably has that responsibility. It clearly has that *jurisdiction* under s. 78.1(4) of the *Ontario Energy Board Act*, which grants the OEB the authority to include conditions in orders fixing the payment amounts to OPG.

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.

In any event, if there is a disagreement regarding the OEB's responsibility or jurisdiction, that should be decided with the benefit of submissions from applicable stakeholders.

## Issues and procedural pathways

As noted above, Environmental Defence requests that the OEB re-open or institute a proceeding. We believe the following two issues should be explored:

1. It is appropriate for OPG to sell environmental attributes, credits, and/or rights with respect to the regulated assets funded by ratepayers?
2. If yes, how should the proceeds be accounted for and allocated?

The OEB could achieve this by instituting a new proceeding on its own motion under s. 78.1(5)(b) of the *Ontario Energy Board Act*.

Alternatively, the OEB could re-open the recently-decided OPG payment amounts proceeding (EB-2020-0290) under Rule 5.01. Under that rule, the OEB may grant all necessary relief where a party to a proceeding has not complied with a requirement of the Rules. In EB-2020-0290, OPG did not comply with Rule 16.02 because its application did not include the information required by the relevant filing guidelines.<sup>6</sup> For instance, OPG's applications are required by s. 2.8.2 of the filing guidelines to include "other revenue" broken down by revenue source, including historic figures, a six-year forecast, and a detailed explanation of how the other revenues are attributed to the prescribed generation facilities.<sup>7</sup> These key details with respect to clean energy credit revenue, both past and forecast, were not included in the application.

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<sup>6</sup> OEB, *Filing Guidelines for Ontario Power Generation Inc.; Setting Payment Amounts for Prescribed Generation Facilities*, July 27, 2007, Revised November 11, 2011.

<sup>7</sup> *Ibid.* at s. 2.8.2.

We do not wish to suggest any ill intent on the part of OPG. We assume noncompliance was due to an inadvertent oversight. OPG is a large organization and regulatory staff may not have turned their minds to this issue. For relief to flow from s. 5.01 of the Rules, no bad faith is required. In our submission, the OEB should simply consider whether there was noncompliance and whether the relief in question is in the best interests of customers. We believe the answer is clearly yes to both of those questions.

The applicant did not provide details of its ongoing clean energy credit sales, including the historic and forecast revenue amounts, as required by the filing guidelines. If it had, multiple parties would have explored the issue and made submissions on appropriate OEB directions. If the OEB decides against instituting a new proceeding, the appropriate relief would be to re-open EB-2020-0290 with the sole purpose of exploring clean energy credit issues.

### **Urgency and efficiency**

This matter cannot wait until the next OPG application. Without more details now, Ontario businesses and municipalities may be unable to calculate and report on the indirect emissions from their electricity consumption. More concerning is that these sales presumably cannot be “undone” and as such the value of the clean energy benefits are permanently lost to Ontario consumers.

Furthermore, there is no need to wait. In our view, an oral hearing would not be required, and therefore these issues can be addressed in a focused, timely, and highly efficient manner.

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