Ontario Energy Board

Commission de l'energie de l'Ontario

Ontario

EB-2007-0791

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 requirements and the fees which it proposes to charge for the year 2008.

BEFORE: Pamela Nowina
Presiding Member and Vice Chair

Paul Vlahos
Member

DECISION AND ORDER

May 15, 2008

The Proceeding

Pursuant to subsection 25.21(2) of the *Electricity Act, 1998* (the “Act”), on November 2, 2007 the Ontario Power Authority (the “OPA”) filed with the Ontario Energy Board (the “Board”) its Submission for Review seeking approval of its proposed 2008 expenditure and revenue requirement and fees, as stipulated in subsection 25.21(1) of the Act. The Board assigned file number EB-2007-0791to this matter.

In its initial submission, the OPA sought the following approvals from the Board:

1) a net revenue requirement of $58.616 million;
2) 2008 capital expenditures of $2.6 million;
3) a usage fee of $0.391/MWh; and
4) an Interim Fees Order effective January 1, 2008 in the absence of a final Order.

On December 6, 2008, the Board issued a Notice of Application. The following parties applied for and received intervenor status:

- Association of Power Producers of Ontario (“APPrO”)
- Direct Energy Marketing Inc. (“Direct Energy”)
- Electricity Distributors Association (“EDA”)
- Hydro One Networks Inc. (“Hydro One”)
- Ontario Power Generation Inc. (“OPG”)
- jointly the Green Energy Coalition, the Pembina Foundation and the Sustainable Energy Association (for convenience “GEC”)
- Energy Probe Research Foundation (“Energy Probe”)
- Pollution Probe
- The Vulnerable Energy Consumers Coalition (“VECC”)

On December 14, 2006 the Board issued Procedural Order No.1 which set out timelines for an Issues Conference, Technical Conference and a Settlement Conference.

On December 20, 2008, the Board approved, on an interim basis, a usage fee of $0.391/MWh, effective January 1, 2008, pending a final decision in this proceeding.

On January 30, 2008, an Issues Conference was held. The participants and Board staff agreed on a draft Issues List.

On February 7, 2008, the Board held an Issued Day. The Decision on Issues was issued on February 11, 2008.

On February 12, 2008, the OPA updated its evidence to reflect the difference between its 2007 forecast spending and 2007 unaudited actual spending. As a result, the OPA's revised proposed 2008 net revenue requirement decreased from $58.616 million to $51.868 million and the proposed usage fee decreased from $0.391/MWh to $.346/MWh.

On March 18 and 19, a Settlement Conference was held. The parties subsequently advised the Board that there was no settlement on the issues.

On March 28, 2008, a Motion by Pollution Probe was heard seeking responses to certain interrogatories. By oral decision, the Board denied the Motion. On April 1, 2008, Pollution Probe advised the Board and the parties that it takes no position with respect to the outstanding issues.

The oral hearing took place on April 14, 2008. Written argument was received by GEC, VECC and Energy Probe, and written reply argument by the OPA. The argument phase of the hearing was completed on April 24, 2008.

The full record of the proceeding is available at the Board's offices. The Board has summarized the record only to the extent necessary to provide context for its findings.

The Issues

The Issues List that the Board approved for this proceeding was extensive. However, the issues at the oral hearing and in argument were almost exclusively around the OPA's CDM programs and activities. The Board will deal with these issues under the following headings:

- CDM - General and Low Income Programs
- CDM - Avoided Costs
- Environmental Attribute Trading
- Workforce

CDM - General and Low Income Programs

GEC’s submissions were focused on criticism of OPA’s CDM programs and activities, on several fronts.

First, in GEC’s view, the OPA’s CDM program goals are “far below” estimates of achievable CDM. Specifically, GEC argued that the OPA has neither placed sufficient priority in avoiding the need for capital investment in single cycle gas plants nor studied peak losses for the province as a whole. GEC also expressed concern with the absence of fuel switching programs in the Northern York region or the Kitchener Waterloo Cambridge Guelph region. GEC proposed that the Board should direct OPA to prioritize the development and execution of plans to implement all economic CDM in transmission constrained areas.

Second, in GEC’s view, the OPA has admitted that its focus on peak reduction will result in lost opportunities to save energy. GEC proposed that the Board should require the OPA to aggressively pursue energy savings in addition to peak savings in the design and delivery of CDM programs.

Third, in GEC’s view, the OPA does not have a long term plan or “roadmap” to achieve all cost-effective CDM and market transformation. GEC proposed that the Board should require the OPA to develop roadmaps for the attainment of all achievable CDM in all sectors, and to make this a priority.

VECC noted that the OPA has “extraordinary” operational flexibility, “unparalleled” by any other regulated entity. In VECC’s view, while the OPA needs “considerable” flexibility in carrying out its mandate, in the absence of some commitments offered by the OPA, or ordered by the Board, the annual fees review process “is of very limited value”.

VECC noted the OPA's testimony that the goal of 100 MW peak demand reduction within the low income sector is not time-specific. VECC accepted that the OPA is not in the position of being able to lay out a "meaningful" time frame. However, VECC submitted that if the OPA is never required to clarify how and when it expects to achieve the Directive's goal on peak saving in the low income sector, then review of its progress is "an empty exercise".

VECC also noted that all customers are being billed on a volumetric basis and if the development of CDM programs does not recognize the obstacles that low-income customers have in accessing CDM programs, there is a subsidy involved from low-income to other customers.

VECC proposed that the OPA should be required to develop targets and timeframes with respect to the delivery of CDM programs targeted towards low income customers and embrace, at least in principle, that an appropriate percentage of the residential spending on developing and delivering CDM savings be allocated to programs targeting low-income customers.

VECC questioned the effectiveness of the OPA's plan to retain a consulting firm or other expert to evaluate the success of its programs where that party "will have an incentive to tell the OPA what it wants to hear", absent any "limited" independent verification by interested stakeholders.

VECC stated that it does not find it possible to opine as to the reasonableness of the OPA's revenue requirement. Specifically, VECC stated:

> "… with so much latitude, so little hard evidence as to efficacy, and with targets and timelines that are virtually abstractions at this point, we can only respectfully suggest that the Board require the OPA to continue to develop more certainty in its budget, more evidence relating to the effectiveness of its spending, and more specificity with respect to its overall targets and timelines so as to make it possible, as the OPA matures, to more reasonably assess its revenue requirement."

Board Findings

The Board's review of the OPA's proposed 2008 expenditure and revenue requirement and approval of a usage fee is pursuant to subsections 25.21(1) and 25.21(2) of the Act:

> *s.**25.21** (1) The OPA shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves or is deemed to approve the OPA's proposed business plan for the fiscal year*

> *s.**25.21** (2) The Board may approve the proposed requirements and the proposed fees or may refer them back to the OPA for further consideration with the Board's recommendations*

This then is a proceeding where the Board reviews and approves the OPA's operating (or organizational) budget, and revenue requirement and the fees to be charged (for convenience "the fees proceeding").

Fees are separate from the OPA's "charges". Charges are the costs associated with the programs that the OPA undertakes or funds in the CDM and other areas of its mandate and are not recovered through the OPA's fees that are approved by the Board. The Board has no role in approving the OPA's CDM charges.

To put the relative magnitude of the OPA's fees and charges into perspective, the OPA's CDM organizational budget proposed for 2008 is $26.445 million. In contrast, the OPA's CDM program related charges are potentially $400 million[1].

The OPA's mandate is in legislation and its activities are driven by the various Ministerial Directives. Under section 25.30(4) of the Act, the Board is required to review the OPA's Integrated Power System Plan ("IPSP") to ensure that it complies with

[1] On July 13, 2006 the OPA was directed by the Minister of Energy to begin organizing the delivery and funding of CDM programs through LDCs immediately, with implementation of funding to occur in the earliest practical timeframe. The funding was limited to a total of $400 million over three consecutive years. ("Letter, Re: Coordination and Funding of LDC activities to deliver Conservation and Demand-Side Management Programs", Dwight Duncan, July 13, 2006).

directions issued by the Minister of Energy and that it is economically prudent and cost effective. In addition, under section 25.31(4) of the Act, the Board is required to review the OPA's proposed procurement processes. The Board received the OPA's application for review of the IPSP and procurement processes on August 27, 2007 and has commenced the review in a proceeding (EB-2007-0707). Issues around CDM programs and activities figure prominently in the IPSP proceeding. The Board-approved CDM issues for the IPSP proceeding are as follows[2]:

Conservation

1. Does the IPSP define programs and actions which aim to reduce projected peak demand by 1350 MW by 2010, and by an additional 3,600 MW by 2025?
2. Has the OPA, in developing the IPSP, identified and developed innovative strategies to accelerate the implementation of conservation, energy efficiency and demand management measures?
3. Is the mix of Conservation types and program types included in the plan to meet the 2010 and 2025 goals economically prudent and cost effective?
4. Would it be more economically prudent and cost effective to seek to exceed the 2010 and 2025 goals?
5. Is the implementation schedule for Conservation initiatives economically prudent and cost effective?

There are other issues in the Board-approved Issues List in the IPSP proceeding which may be reasonably thought of as influencing or being influenced by CDM.

Cross-examination and argument by GEC and VECC was almost entirely on CDM issues. These intervenors did not take issue with the OPA's proposed organizational budget. Their participation had little to do with the OPA's organizational budget as such; rather their concerns had to do with the CDM programs themselves. The submissions by GEC and VECC represent almost entirely recommendations about how

[2] **OEB Decision with Reasons (EB-2007-0707) March 26, 2008. Appendix A, Issues List.**

the OPA should go about fulfilling its mandate on CDM matters and proposed directions the Board should issue to the OPA on CDM.

More specifically, the Board's concerns with GEC's submissions are twofold. First, the issues that GEC raises are generally contained in the issues that the Board will review as part of the IPSP proceeding. Examples are the test of economic prudence for perhaps exceeding the stated goals, the mix of conservation types and programs, and implementation schedule. There will be an evidentiary record in that proceeding to consider those issues. It would not therefore be appropriate for the Board to comment specifically or generally on GEC's submissions in this proceeding.

Second, the Board is concerned with the nature of GEC's submissions in a fees proceeding. The Board's expectations regarding the scope of the fees proceeding were made clear throughout the proceeding. For example, in its decision on issues, the Board stated:

> "…this is an OPA fees case and the overall purpose of this hearing is to determine if the revenue requirement and fees proposed by the OPA are reasonable. In order to determine if the fees are reasonable, of course, some examination of the costs that make up this fee may be necessary. The Board does not intend, however, to entertain a debate concerning specific programs that the OPA should consider to meet a MWh goal or target." [3]

In the preamble of its written argument, GEC notes as follows:

> "We limit our comments to matters where we submit that the Board's guidance will help ensure that OPA's operating budget is applied to the necessary research and analysis to support its broader mission and ensure that it functions cost-effectively; that OPA is managing its internal resources in conformity with the stated mission and the government's priorities; and that OPA is respecting the applicable regulatory and accountability structures."

[3] "OEB Decision on Issues" (EB-2007-0791), page 3.

The Board's role in a fees proceeding is to assess whether the proposed organizational budget is reasonable. Despite the Board's caution, and GEC's prologue, its submissions were on how the OPA should go about fulfilling its CDM mandate on the program side, and no link was made to whether the proposed organizational budget was reasonable or unreasonable.

GEC requested that the Board impose requirements on the OPA. The OPA characterized these as being in effect conditions of approval. The OPA also argued that the Board lacks the jurisdiction to attach conditions to a fees case. As noted earlier, GEC's proposals, and the proposals by VECC, are not linked in any concrete way to the assessment of the reasonableness of the 2008 proposed fees and it is for this reason that the Board does not accept their arguments regarding CDM programs. Therefore, the Board does not need to consider the OPA's arguments on jurisdiction in order to determine the issue before the Board.

The same general conclusions above regarding the Board's role in the OPA's CDM programs and activities also apply to VECC's requests regarding proportional spending for low income customers and the development of targets and timeframes. VECC did set out the reasons why it feels it cannot provide assistance on the revenue requirement. As much as these reasons may be legitimate, the parameters of the OPA's fees review are not set by the Board; they are rooted in legislation.

CDM - Avoided Costs

The OPA's evidence was that it is not using the Board-approved avoided costs for electricity distributors to screen CDM programs. The values the OPA is proposing are the same as those filed in the IPSP proceeding.

GEC noted that the OPA's proposed values are lower than the Board-approved values used by distributors and they are untested, pending the IPSP review. The result according to GEC will be to reduce the limit of cost-effectiveness when screening for CDM programs.

When asked if its proposed budget and resources could accommodate a direction from the Board to use the Board-approved avoided costs supplemented by added values for transmission constraints and distribution peak losses, the OPA responded that it could accommodate such a request. GEC argued that the Board should make this a requirement.

Board Findings

The Board has already dealt with GEC's submissions regarding the pursuit of all economic and cost-effective CDM and decided that these are not matters for the 2008 fees proceeding. Accordingly, this issue is also beyond the scope of this fees proceeding.

Environmental Attribute Trading

Included in the OPA's 2008 budget is an amount of $32,000 relating to the establishment of an environmental attribute trading program. The OPA's work on this program has been temporary suspended at the request of the Minister of Energy.

GEC acknowledged that $32,000 is a small amount but suggested that the OPA be required not to re-institute spending on the environmental attribute trading program prior to the Board's review in the IPSP process unless specifically directed by government to do so.

Board Findings

The Board agrees with the OPA that any decision about when, how, or to what extent the temporary suspension should be lifted is not a matter for this proceeding. For purposes of the 2008 operating budget, it is not clear from the evidence how much of this amount may already have been spent. In any event, it is a relatively small amount in total and will not have any impact on the proposed fee.

Workforce

Energy Probe stated in its argument that it does not oppose the OPA's proposed 2008 revenue requirement, capital expenditures or usage fee. However, Energy Probe argued that the recommendations in the Report of the Agency Review Panel, Phase

Two[4], taken in full would redistribute the OPA into the Ministry of Energy and the Independent Electricity System Operator once the current review of the initial IPSP is completed. Therefore the OPA should not build another increase in manpower and revenue requirement into its 2009 budget as this will make transition more difficult. Energy Probe also suggested that the OPA's 2009 revenue requirement should show very modest, if any, increases. The OPA responded that Energy Probe's arguments and comments have no bearing on this case and that these are matters for the 2009 fees case.

Board Findings

The Board agrees that these are matters for the 2009 fees case. Having said that, the Board has noted that the OPA's 2008 budget reflects a substantial increase in it overall workforce – it increases from 137.0 in 2007 to 183.8 Full Time Equivalents in 2008. In the CDM area specifically, the OPA is doubling its workforce to 66.2 Full Time Equivalents. The Board has also noted from OPA's testimony that the OPA is currently not in a position to forecast its workforce requirements and acknowledged that in the future its workforce could be reduced. The possibility for a reduction in the future has not altered the OPA's practice in continuing to augment its existing workforce with full-time permanent employees. While the Board accepts the OPA's budget associated with its workforce for the 2008 year, in light of the uncertainties for future workforce requirements acknowledged by the OPA, 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.

Conclusion

The Board approves the OPA's proposed 2008 expenditures, revenue requirement and fees, as well as the deferral and variance accounts, set out in the Amended Submission for Review.

The approved usage fee of $0.346/MWh proposed in the Amended Submission for Review is less than the $0.391/MWh interim fee that was implemented on an interim

[4] "The Report of the Agency Review Panel on the Phase II of its Review of Ontario Provincially-owned Electricity Agencies", November 2007.

basis effective January 1, 2008. There will be a positive difference between the amount actually collected from January 1st to the effective date of implementation of the Board's final fee order and the amount that would have been collected if the final approved fee had been implemented on January 1st. As suggested by the OPA, this positive difference shall be recorded in the 2008 Forecast Variance Deferral Account for disposition in the 2009 Revenue Requirement Submission.

Intervenors eligible for an award of costs shall file their cost submissions in accordance with the *Practice Direction on Cost Awards* with the Board Secretary and with the OPA within 15 days of the date of this Decision and Order. The OPA may make submissions regarding the cost claims within 30 days of this Decision and Order and the intervenors may reply within 45 days of this Decision and Order. A decision and order on cost awards and the Board's own costs will be issued in due course.

THEREFORE:

1. The Board finds a 2008 revenue requirement of $51.868 million, including capital expenditures of $2.6 million.

2. The Board orders a 2008 usage fee of $0.346/MWh.

DATED at Toronto, May 15, 2008
ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary