

June 30, 2020

**VIA EMAIL**

Ms. Christine E. Long  
Registrar and Board Secretary  
Ontario Energy Board  
27<sup>th</sup> Floor,  
2300 Yonge Street,  
Toronto, ON M4P 1E4

Dear Ms. Long:

**Re: OEB Seeks Input on Virtual Hearings**

Ontario Power Generation Inc. (“OPG”) appreciates the opportunity to provide early input into the Ontario Energy Board’s (“OEB”) planning process for virtual hearings. Health and safety is a critical component of everything that OPG does, and OPG is supportive of developing a virtual hearing process that ensures the safety of its employees and all parties to the proceeding.

Hearings historically have been an important part of OPG’s rates applications. While OPG does not currently anticipate being before the OEB for a hearing in the near term, this letter discusses some factors that the OEB may wish to consider in designing a virtual hearing format for a portion of OPG’s upcoming rates application (including technical conference), or for other large applications. OPG notes that settlement conferences may require additional considerations.

OPG has organized its submissions around the three questions posed by the OEB in its letter dated June 17, 2020 requesting input on virtual hearings.

**1. What issues should the OEB consider as it plans for the ability to conduct a virtual hearing?**

Below are some considerations that OPG believes are important to ensure that a virtual hearing will be effective and efficient:

- **Ability for witnesses to confer:** Witness panels (including expert panels) will sometimes need to confer with one another prior to responding to a question. A virtual hearing should still provide witnesses this opportunity. OPG recommends that the OEB allow applicants the option of: (i) allowing witnesses to communicate with one another through use of a separate platform/virtual meeting room (e.g., Skype or text messages), or if it is safe to do so, (ii) permitting arrangements that keep witnesses together in the same physical

room, which would allow witnesses to caucus with physical distancing (e.g., by muting the audio). Ultimately, allowing the opportunity for witnesses to confer will make for a more efficient hearing as it provides the OEB with the most complete answers and minimizes any overlapping attempts to respond to a question.

OPG is aware that the Zoom technology provides opportunities for chat and breakout rooms, but these features, as currently configured, are not useful because they are not private. They can be recorded and/or viewed by other participants in the hearing (including messages sent directly/privately to other participants).

- **Limiting Speakers:** It would be difficult to have a virtual hearing if there was a lot of background sound disrupting the hearing. To that end, OPG suggests that the OEB consider implementing a few elements:
  - *Separate Dial-ins for Participants and the Public:* OPG has had some experience with using technologies that allow the meeting organizer to designate a separate meeting ID for active participants and those calling into a meeting to listen only. The separation is helpful for controlling audio participation in that those that are calling into the hearing to listen only would join the meeting muted and would not be able to speak unless a moderator specifically provides them with permission to speak. This would mitigate many concerns, including both inadvertent and intentional interruptions.

If this were implemented, all parties to the proceeding (including the OEB Panel, witnesses, OEB Staff, counsel, intervenors, and the transcriptionist) should have the ability to mute and unmute themselves without needing a moderator to do so.

- *OEB Panel and Counsel:* The OEB Panel and the applicant's counsel may sometimes need to interject during the proceeding. The OEB Panel and the counsel should always have the ability to speak throughout the proceeding and should never be muted by others.
- *Moderator:* The OEB should consider retaining an experienced moderator that can monitor and "mute" any unintended speakers as directed by the Chair of the OEB Panel. Where there are open questions posed by the OEB Panel that lead to a number of submissions from different parties, the moderator can also designate a speaking order through the hand raising feature or other prioritization mechanisms.
- **Compendiums:** Intervenor compendiums of hearing materials have historically been submitted to OPG either by email or by USB stick in the hearing room, and sometimes also as hard copies shortly before the beginning of the hearing in which they are to be used. For virtual hearings, OPG believes that the OEB should consider implementing a digital compendium submission deadline. OPG recommends that the deadline be no later than 6pm the day before the party is expected to cross-examine witnesses (subject to the OEB's rules for service of new materials as set out in Rule 14.01 of the OEB's *Rules of Practice and Procedure*). This allows the OPG team to ensure that there are no issues with either receiving the materials or pre-loading them in the virtual hearing room. Some particular concerns:

- *File size*: Some files may be too large to be received by OPG via e-mail due to technological constraints (>20mb).
- *Deadline*: If materials are sent too late, the team will not have time to troubleshoot and ensure that materials will be ready to be projected.
- *Continued ability to rely on the full evidence*: Witnesses should be able to refer to the full evidence as is the current practice. Compendiums are excerpts that do not always provide full context. Witnesses should continue to be permitted to indicate that they would like to review the full evidence and given time to do so.
- **Screen sharing**: OPG and other applicants have historically been responsible for putting up referenced documents onto the monitors in the hearing room. This ensures that the hearing is run efficiently as referenced documents are located quickly and everyone is able to look at the same document at the same time. In a virtual hearing, OPG would propose that this practice should continue. A few considerations:
  - *Technology*: The technology chosen should allow the applicant team to use more than one screen and be able to select which screen to project. This mimics how OPG currently uses one screen to locate a document before “dragging it” into the screen that is shared for projection.
  - *Limit screen-sharing ability*: The ability to share screens should be limited to the applicant team, in order to ensure that any set-up is retained throughout the hearing. It is also most efficient as the applicant team can quickly flip to another referenced document that other parties may not have readily available to project onto the screens. Intervenors and the OEB panel will nevertheless be able to request any documents to be shown through the applicant team, which is the same as the current hearing process.
- **In Camera Sessions**: OPG’s proceedings have typically required some *in camera* sessions in order to protect the confidentiality of commercially sensitive information, the disclosure of which would harm OPG or another third party. *In camera* sessions are harder to monitor and administer in a virtual environment. The OEB should consider:
  - *Encrypted and Password Protected Session*: The technology chosen for virtual hearings should have the ability to create a separate encrypted and password protected “meeting room” where only those that have signed the confidentiality declaration and undertaking would be able to access.
  - *Video Conference*: With a reduced number of attendees, the OEB may also consider requiring that all participants in an *in camera* session have their video on to ascertain that all parties participating in the *in camera* session have signed the undertaking.
  - *Confidentiality Declaration and Undertaking*: The standard form confidentiality declaration and undertaking should be revised to include a provision that recognizes virtual hearings and the importance of ensuring that any audio or video is not broadcasted, recorded or otherwise shared with or disseminated to any person that has not signed the declaration and undertaking.

- **Hearing Efficiency:** Moving to virtual hearings will inevitably present challenges that will tend to erode hearing time. In this new environment, the efficient conduct of oral hearings will assume even greater importance.
  - *Settlement Conferences:* OPG has had successes in its recent proceedings working with parties to resolve issues, which have resulted in OEB-approved settlement agreements, including a partial settlement in OPG's last payment amounts proceeding in EB-2016-0152 and a full settlement in EB-2018-0243. In order to preserve hearing time for material issues, OPG recommends that the OEB continue to encourage parties to settle issues where appropriate.
  - *Direction on Issues Going to Oral Hearings (Issues List Prioritization):* Issue prioritization will assume even greater importance in a virtual hearing environment to preserve hearing time for the most material issues.
  - *Written Hearings:* Similarly, OPG recommends that the OEB consider designating more issues to go a written hearing where possible to preserve oral hearing time.
  - *Duplicative Cross Examination:* To ensure that virtual hearing time is used efficiently, the OEB should require that all parties who intend to cross examine be present in the virtual hearing room when cross examination begins and remain in attendance until their cross examination. The OEB should clearly indicate that parties will be expected to listen to the cross examination that precedes their own and adjust their questioning to avoid duplication.
- **Transcripts:** Transcripts are an important element of the record that are relied upon by all parties. The OEB should consider:
  - *Clean transcripts:* In order to keep transcripts clean and a searchable record, the OEB may consider, as a rule, that discussions on technological issues will not form part of the transcript.
  - *Final Record – Prohibition of Audio/Visual Recording:* The transcripts issued by the OEB should serve as the final record on the hearings. To that end, other than providing for the audio recording needed by the transcriptionist, the OEB should consider prohibiting parties from video recording, audio recording, photographing and screen capturing the proceeding, which may also cause privacy concerns. If this is a feature that can be turned off by the OEB in the selected technology, that would be an effective means to enforce this.
- **Training Sessions and Tech Support:** It will be critical that parties have guidance on how to address the technical challenges and other difficulties that may arise during the transition to virtual hearings. Training, technical support and establishment of protocols will help mitigate issues when they arise:
  - *Hearing Protocols for Technical Challenges:* It would be helpful if there were established protocols in place prior to the virtual hearings, such as the procedures to be employed if an active speaker cannot be heard by the OEB Panel or the parties, difficulties with rejoining the virtual hearing after disconnecting, or if someone is unable to signal its interest in interjecting.

- *Tech Support*: The OEB should also consider appointing a contact for technical support throughout the hearing, such that participants have a designated contact they can message or email if they are experiencing any issues with either hearing or seeing materials. This person should be available to participants throughout the duration of the virtual hearings. Parties should also provide their phone and email details to the appointed technical support contact (and/or moderator) to ensure that they can be reached quickly if they disconnect from the proceeding while they are cross-examining or witnessing.
- *Training Session*: The OEB should consider setting up one or more sessions to train stakeholders on how to use the hearing tools in advance and for parties to test the system. It would also be helpful in advance of this session for the OEB to set out any established hearing protocols so parties can seek clarification if necessary. Parties should be encouraged to attend this training session from the same location that they plan to be in for the virtual hearing so that any potential issues (e.g., sounds, lighting, and connectivity) can be discovered in advance.
- **Hearing Timeline**: In setting the schedule and timeline for the proceeding, below are some additional considerations that the OEB may wish to account for:
  - *Opening the Virtual Hearing Room in Advance*: The OEB should consider “opening” the virtual hearing room at least 30 minutes in advance of each hearing day so that parties can join and test mics and connectivity prior to the start of the hearing day.
  - *Breaks*: Lengthy virtual meetings can be quite tiring for participants. It may be necessary to schedule more frequent, shorter breaks in a virtual hearing environment.
  - *Schedule*: A virtual hearing may be, by definition, longer given that there will be a need to allot time to setting up and resolving technical issues/disruptions. In addition to the above recommendations on encouraging hearing efficiency, the OEB should consider building some contingency into the hearing schedule at the outset.

**2. Are there any technical obstacles which would prevent you from participating in a virtual hearing?**

OPG is supportive of virtual hearings and believes that, with the right technology and preparation, they can be employed effectively to protect the safety of all participants.

OPG would require more specific details on hearing process and requirements prior to determining whether there are technical obstacles that would prevent OPG from participating in a virtual hearing. Some technical considerations based on the OEB’s letter are below:

- **Minimum technical requirements**: Any minimum technical requirements for the selected hearing technology, including any specific microphone requirements, should be communicated to all parties early in the process to ensure effective participation in the hearings.

- **Firewalls:** OPG's networks have a firewall in place to protect its digital information. This has from time to time caused issues with using third-party technological solutions for meetings. Once the selected technology has been identified, the OPG Information Technology team will need time to develop and establish firewall solutions/rules for OPG participants.
- **Zoom Technology:** OPG has had experience with and lessons learned from using Zoom for another regulatory proceeding. Below are some lessons learned:
  - *Security:* OPG currently considers all materials shared on Zoom to be public due to its encryption model. Subject to further security protocols being developed, there may be concerns for using Zoom for *in camera* discussions. If Zoom is the selected technology, OPG would encourage the OEB to procure a licence for the proceeding, which allows for greater security protections.
  - *Firewall:* As noted above, OPG's firewall can present an obstacle for technologies that are not service providers to OPG. Zoom did require significant internal set up prior to OPG participants being able to access the proceeding. This obstacle was ultimately resolved, and OPG believes that, with proper time for preparations, it similarly could be resolved for an OEB proceeding.
- **Alternative Technology:** OPG would recommend that the OEB also consider the use of Microsoft Teams as an alternative technological solution for virtual hearings.
- **Contingency Plan:** The OEB should consider establishing a contingency plan if the selected technology is not available or functioning on any particular day. Additionally, any selected technology should still permit parties to dial-in by regular phone in the event that internet stability becomes a concern.
- **Audio and Video Quality:** Audio and video quality are paramount in a virtual hearing. The selected technology will need to be tested for audio and visual clarity when there are a large number of parties, and the public, participating in the proceeding. In order to limit draws on bandwidth, the OEB should consider providing guidance on when participants should have their cameras on.

**3. Are there matters you think should be specifically discussed at a pre-hearing conference in advance of a virtual hearing?**

OPG agrees with the OEB that a pre-hearing conference to seek input from parties and establish procedures specific to each case's virtual hearing would be helpful. In addition to setting out hearing procedures, OPG believes that the pre-hearing conference can also be an opportunity to establish hearing schedules, including order of cross-examination, pending procedural matters, and the scheduling of witnesses, including experts. Early identification of cross-examination on confidential material will also help set the *in camera* virtual hearing schedule, which will require additional coordination.

OPG believes that the above-referenced training/technology testing session would be very helpful for an efficient virtual proceeding. This session should be held in advance of the pre-hearing conference to give parties the opportunity to test the hearing procedures as well as the selected technology tool.

If there are any questions with respect to these submissions, please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read 'Evelyn Wong', with a long horizontal flourish extending to the right.

Evelyn Wong

Cc:

B. MacDonald, Ontario Power Generation Inc. (by email)

A. Collier, Ontario Power Generation Inc. (by email)