

May 6, 2022

BY EMAIL

Ms. Nancy Marconi
Registrar
Ontario Energy Board
27th Floor - 2300 Yonge Street
Toronto, ON
M4P 1E4

Dear Ms. Marconi:

Re: Ontario Power Generation Inc. (“OPG”) – Clean Energy Credits

This correspondence is in response to the letter of Environmental Defence dated May 2, 2022, in which Environmental Defence requests that the Ontario Energy Board (the “OEB”) reopen proceeding EB-2020-0290 or institute a new proceeding on its own motion to consider the appropriateness of OPG selling environmental attributes, credits or rights (collectively “Clean Energy Credits”) and the treatment of any proceeds arising therefrom. Environmental Defence premised its request on two assertions: (i) in submitting its EB-2020-0290 application, OPG did not comply with the OEB’s Filing Guidelines, as required by OEB Rule 16.02, because it did not include revenues from the sale of Clean Energy Credits in “non-energy revenues,” and (ii) the OEB has jurisdiction under section 78.1 of the *Ontario Energy Board Act* (the “OEB Act”) to impose conditions on the sale of Clean Energy Credits.

In OPG’s view, neither of the above assertions is correct and the OEB should not entertain either of Environmental Defence’s procedural requests.

The determination of how revenues from Clean Energy Credits sales will either flow back to ratepayers or be used to support future clean energy projects will be based on developing government policy direction, which is expected to issue following the conclusion of the Independent Electricity System Operator’s (“IESO”) ongoing stakeholder engagement to develop a Clean Energy Credit registry.

Revenues from Clean Energy Credits sales are currently included in OPG’s overall revenues and are expected to be subject to any registry established by the IESO. OPG’s sales of Clean Energy Credits derived from its hydroelectric assets have yielded immaterial revenues to date (e.g., approximately \$6M in total over the 2019-2021 period).

Given that OPG’s hydroelectric payment amounts were frozen pursuant to O. Reg 53/05, EB-2020-0290 did not consider changes to either hydroelectric costs or revenues. As such, OPG led no evidence on hydroelectric costs or non-energy revenues, including the immaterial revenues derived from Clean Energy Credit sales. Instead, the EB-2020-0290 proceeding addressed the calculation of

OPG's nuclear payment amounts. At no time prior to the resolution of the EB-2020-0290 application and the issuance of the resulting payment amounts order did OPG sell or contemplate selling Clean Energy Credits related to its prescribed nuclear assets. Therefore, the evidence in EB-2020-0290 was proper and complete and no update was required under Rule 11.02.

With respect to the OEB's jurisdiction, Environmental Defence relies on section 78.1(4) of the OEB Act, which provides:

The Board shall make an order under this section in accordance with the rules prescribed by the regulations and may include in the order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment.

Environmental Defence only focuses on the wording that the OEB may impose conditions in a payment amounts order issued under section 78.1. However, these conditions are not limitless and must be consistent with the statutory framework and authority granted to the OEB under the OEB Act. Section 78.1 requires the OEB to establish payment amounts that are just and reasonable. Section 78.1(4) provides the OEB with the broad discretion to "include in the order conditions ... respecting the calculation of the amount of the payment."

If in a future application, OPG forecast revenues from the sale of Clean Energy Credits derived from a prescribed asset that is within the OEB's authority to establish payment amounts, it would be within the ambit of section 78.1(4) to consider these revenue. However, Environmental Defence's request that the OEB consider the merits of Clean Energy Credits in general or the general registration, administration, authorization or permission to sell Clean Energy Credits, is beyond the ambit of section 78.1(4).

Given that there are no payment amount consequences arising from the sale of Clean Energy Credits by OPG related to its hydroelectric business to date and OPG's approved nuclear payment amounts remain just and reasonable, there is no basis to adopt either of Environmental Defence's procedural requests and therefore they should be denied.

Respectfully submitted,



Saba Zadeh

cc: Charles Keizer, Torys LLP
Aimee Collier, OPG