

Ontario Energy Board issues decision on Ontario Power Generation's Motion to Review and Vary the EB-2023-0098 Decision and Order

DECISION

The Ontario Energy Board (OEB) has issued a [Decision and Order](#) denying Ontario Power Generation Inc.'s (OPG) motion to review and vary (Motion) the OEB's June 27, 2023 decision (original decision) denying OPG's application for a variance account. The proposed variance account was intended to record the nuclear revenue requirement impacts resulting from the November 29, 2022 decision by the Superior Court of Justice to strike down, on constitutional grounds, provincial legislation that limited wage increases for the broader public sector (Bill 124).¹

The variance account proposed by OPG would have recorded the difference between the forecast compensation costs included in OPG's 2022-2026 Payment Amounts order and the compensation costs for the nuclear facilities resulting from the overturning of Bill 124.

In the Motion, OPG alleged that the OEB made a number of errors in the original decision. For instance, OPG argued that the OEB was incorrect in finding that OPG should have foreseen at the time of its last payment amounts proceeding that Bill 124, a validly enacted statute, would be declared unconstitutional. Further, OPG argued that the original decision misapplied the established test for approving a variance account by introducing a new requirement for the applicant to demonstrate that without the account, it would suffer "operational hardship."

The review panel concluded that there were no such errors in the original decision. On the first point, the review panel agreed that there was a foreseeable and material risk (although not a certainty) that Bill 124 would be struck down; OPG should have identified and planned for that risk. On the second point, the review panel found no error in how the original decision applied the established test for approving a variance account. The review panel also did not accept OPG's argument that the original decision would have wide-ranging negative impacts such that OPG and other applicants will now have to request an account for every identifiable risk in their rate applications no matter how remote.

BACKGROUND

Bill 124 set a 1% limit on annual wage and total compensation increases for Ontario public sector employees, including employees at OPG, for a three-year moderation period. The limits on compensation set out in Bill 124 were the basis of the forecast compensation costs reflected in OPG's OEB- approved revenue requirements for the 2022-2026 period².

The Ontario Superior Court overturned Bill 124. OPG's affected unions have indicated that they will seek enhanced wages for the periods that their members' compensation had or would have been restrained due to Bill 124.

¹ [EB-2023-0098, Decision and Order, June 27, 2023](#)

² [EB-2020-0290, Decision and Order, November 15, 2021](#)

OPG applied to the OEB for a variance account to allow it an opportunity to recover any such increased compensation costs. In the original decision, the OEB denied that application. As a result, OPG would not be allowed to recover from ratepayers any increased compensation costs resulting from the overturning of Bill 124 over the 2022-2026 period and must instead manage those costs within its current approved revenue requirement.

REGULATORY TERMS

The following is a list of some of the commonly used regulatory terms that appear in this backgrounder, along with a plain language description for each.

Deferral and variance accounts (DVAs) are commonly used regulatory tools that allow a utility an opportunity to address costs that were unknown or uncertain when its rates were set.

A deferral account tracks the cost of a project or program which the utility could not forecast when its current rates were set. When the costs are known, the utility can request OEB approval to recover the costs in future rates.

A variance account tracks the difference between the forecast cost of a project or program, which has been included in rates, and the actual cost. If the actual cost is lower or higher, then the utility can request OEB approval to return the difference to customers as a credit or to recover the difference through rates.

Revenue requirement is the total annual cost for a utility to provide its regulated services. It includes the cost of salaries, equipment, capital projects depreciation, taxes, interest and a return on equity. The OEB approves a utility's revenue requirement when it decides a cost-based application and uses it to set rates that the utility can charge its customers or, in OPG's case, to set payment amounts that are used in compensating OPG for its production of electricity.

About the OEB

The OEB is the independent regulator of Ontario's electricity and natural gas sectors. It protects the interests of consumers and supports the collective advancement of the people of Ontario. Its goal is to deliver public value through prudent regulation and independent adjudicative decision-making which contributes to Ontario's economic, social and environmental development.

Contact Us

Media Inquiries

Phone: 416-544-5171

Email: oebmedia@oeb.ca

Consumer Inquiries

416-314-2455/1-877-632-2727

Ce document est aussi disponible en français.

This Backgrounder was prepared by OEB staff to inform Ontario's energy consumers about the OEB's decision and is not for use in legal or regulatory proceedings. It is not part of the OEB's reasons for decision; those may be found in the Decision and Order issued October 24, 2023, which is the official OEB document.