

ASSURANCE OF VOLUNTARY COMPLIANCE

**Pursuant to s. 112.7 of the
*Ontario Energy Board Act, 1998***

**Orangeville Hydro Limited
Licence No. ED-2002-0500**

OEB File No. EB-2024-0275

DECEMBER 19, 2024

I. INTRODUCTION AND SUMMARY

On September 17, 2018, Orangeville Hydro Limited (OHL) submitted an incentive rate-setting mechanism (IRM) application to the Ontario Energy Board (OEB) requesting to recover the GA Underbilling Error (as defined in section II(i) below) in OEB application EB-2018-0060 from its Class B customers (2019 IRM Proceeding). The OEB did not approve this request. Instead, the matter was referred to the OEB's compliance review process in the OEB's Decision and Order dated March 28, 2019.¹

As a result of concerns raised during OHL's 2019 IRM Proceeding, the OEB initiated an inspection in December 2021 on OHL's Global Adjustment (GA) charges on affected Class A customer electricity bills and the GA charges paid to the Independent Electricity System Operator (IESO) for compliance with O. Reg. 429/04. The inspection revealed that OHL did not comply with sections 5(1), 14(5) and 20 of O. Reg. 429/04.

In order to address the noncompliance and resolve any outstanding matters related to the inspection, OHL has agreed to provide this Assurance of Voluntary Compliance to the OEB under section 112.7 of the OEB Act.

II. STATEMENT OF FACTS

i. GA Underbilling Error

The Industrial Conservation Initiative (ICI), as set out under O. Reg. 429/04, provides incentives to large electricity consumers to reduce their consumption and lower their electricity costs during peak hours by establishing an alternative method of determining GA payments for "Class A" customers. In 2010, eligibility was initially restricted to facilities with average peak demand greater than 5 MW. However, effective January 1, 2017, the Government of Ontario expanded the ICI to include all electricity users with an average monthly peak demand over 1 MW.

¹ OEB Decision and Order EB-2018-0060 at pages 10-11.

Under section 6.1.1(1.1) of O. Reg. 429/04 a customer may elect to become a Class A customer if its maximum hourly demand for electricity at a load facility in a month exceeds an average of 1 MW but is less than or equal to an average of 5 MW for the applicable base period.² Prior to the June 15, 2017 deadline, five customers of OHL elected to become Class A customers in the 2017-2018 adjustment period because of this expansion of the ICI program. However, OHL failed to notify the IESO of the election by the initial five Class A customers. OHL did not have any Class A customers prior to 2017 and the ICI process was brand new to OHL at the time, resulting in OHL misunderstanding the IESO's processes in relation to the ICI program.

As a result, the IESO was unaware that OHL had any Class A customers, and therefore billed OHL the GA based on the kWh consumption of the affected customers as if they were Class B customers. OHL billed the affected customers for GA based on their respective peak demand factors as though they were Class A customers. OHL notified the IESO of the issue, which was then rectified, and starting September 2017, began settling with the IESO for Class A GA on a go-forward basis.

Hence, for the months of July and August 2017, OHL correctly billed the affected customers at Class A GA rates but was in turn billed by the IESO at Class B GA rates for those same affected customers. The resulting GA billing discrepancy for the two months, when corrected for loss adjustment, was \$363,226, meaning that OHL paid the IESO \$363,226 more than it collected from the affected customers (the "**GA Underbilling Error**").

ii. **Loss Adjustment Error**

Class A customers pay GA based on their percentage contribution (i.e., the quantity of energy withdrawn from the IESO controlled grid or distribution system of a local distribution company) to the top five peak hours over a 12-month base period (May 1 – April 30), which is known as the Peak Demand Factor (PDF).

² Under section 6.1.1(1.1) of O. Reg. 429/04, certain 500 kW to 1 MW customers may also opt in to the ICI.

At the end of each base period,³ the IESO will publish the top five peak hours. The IESO then collects coincident peak data from distributors in order to calculate the total system-wide consumption during the top five peak hours. The IESO publishes this total in early May. Once the total is published, the IESO and distributors will then use this total to calculate the PDFs for all their customers.⁴

Under sections 1(2) and 14(5) of O. Reg. 429/04, “total losses” must be included in the volume of electricity attributed to the distributor’s Class A customers when calculating PDFs.

The OEB’s inspection revealed that OHL failed to include losses in the volume of electricity when calculating PDFs for its Class A customers for four of the five adjustment periods between July 2017 and June 2022 (the **Loss Adjustment Error**). This resulted in a lower PDF calculation for these Class A customers, which meant that the customers underpaid the GA and OHL in turn under-remitted GA amounts to the IESO.

iii. Inspection by OEB

On March 28, 2023, the OEB issued its inspection report (the Inspection Report). The objective of the inspection was to assess the accuracy of the Class A GA billing discrepancy for the amount of the GA Underbilling Error as well as the distributor’s compliance with O. Reg. 429/04.

Through the inspection, OEB staff discovered that OHL failed to comply with sections 5(1), 14(5) and 20 of O. Reg. 429/04, which are enforceable provisions under section 3 of the *Ontario Energy Board Act, 1998*. Specifically, the inspection found that:

- i. Regarding section 20, OHL did not submit the revised coincident peak data to the IESO by the IESO’s deadline of June 23, 2017 upon the receipt of the five customers’ election forms.

³ Per the ICI Backgrounder and FAQs, July 2022 at page 4, “Base Period” means a 12-month period which lasts between May 1 to April 30 of the following calendar year. A customer’s consumption and demand data during this period are used to determine if a customer is eligible to participate in the ICI program. If eligible, the customer’s consumption during the top five peak hours (which also occur during the same base period) is used to calculate the customer’s PDF.

⁴ ICI Backgrounder and FAQs, July 2022 at page 9.

- ii. Regarding section 14(5), OHL did not “loss adjust” the volume of the electricity in the calculation of customer’s PDFs over multiple billing periods between July 2017 and June 2022.
- iii. Regarding section 5(1), OHL used the 12-month period beginning April 1, 2016, instead of May 1, 2016 as prescribed in Section 5(1) of O. Reg 429/04, as the base period for determining if a customer was eligible to participate in the ICI program for the 2016-2017 adjustment period. This did not affect any customer’s eligibility for that adjustment period and was rectified for subsequent adjustment periods.

Upon being notified by OEB staff of the contraventions, OHL undertook further review of its processes and records, cooperated with the OEB’s investigation, and admitted to the contraventions.

III. ASSURANCE

Regarding the GA Underbilling Error, OHL acknowledges that distributors have a responsibility to ensure that proper reporting is provided to the IESO in accordance with O. Reg. 429/04 and that it failed to do so.

However, OHL asserts that if it had to absorb the \$363,226 of the GA Underbilling Error, its profitability, future cash flows and future viability would be materially affected. Following the issuance of the Inspection Report, OHL notified the OEB that based on its most recent audited year at that time (2022), OHL’s Return on Equity (ROE) would have dropped to 2.83% if it had to write off \$363,226, well below its deemed ROE of 9.36%. While OHL’s financial performance has improved in 2023, this does not change the fact that to OHL, \$363,226 represents a significant percentage of its net income and cash balances, relative to its size.

OHL corrected the GA Underbilling Error as of September 2017. OHL hereby assures the OEB that, for future adjustment periods, it will continue to provide the necessary customer data in respect of customers opting in to Class A to the IESO within the submission window.

OHL acknowledges that the recently introduced two-year limitation period for resettling GA amounts with the IESO would normally preclude it from recovering the \$363,226 from the IESO.

However, OHL understands that, as part of a global resolution of the GA-related errors, the OEB will direct the IESO under section 36.1.1(7)(c) of the *Electricity Act, 1998* to credit to OHL the amount of \$363,226. OHL will forgo interest on the GA Underbilling Error in the amount of \$67,660. OHL maintains that an exception to the limitation period is warranted in the circumstances, having regard to the financial impact of the \$363,226 on a small utility and the fact that OHL brought the GA Underbilling Error to the OEB's attention in the first IRM rate case after it was discovered.

Regarding the Loss Adjustment Error, OHL acknowledges that distributors have a responsibility to ensure that GA for Class A customers is calculated in accordance with O. Reg. 429/04. OHL corrected the Loss Adjustment Error for the adjustment period commencing July 1, 2022. OHL hereby assures the OEB that it will continue to account for losses in calculating the PDF.

OHL will not seek to recover the underbilled GA amounts from the affected customers. Such recovery is now barred by the two-year limitation period in the Retail Settlement Code and in any event could be seen as unfair, given the passage of time and the fact that the customers are blameless. OHL therefore has not asked the OEB to make a direction to the IESO under section 36.1.1.(7)(c) of the *Electricity Act, 1998* in relation to the Loss Adjustment Error.

IV. FAILURE TO COMPLY

OHL acknowledges that this Assurance of Voluntary Compliance has the same force and effect as an order of the OEB pursuant to section 112.7(2) of the OEB Act and any failure to comply with its terms shall be deemed to be a breach of an order of the OEB.

V. ADMINISTRATIVE PENALTY

OHL agrees to pay an administrative penalty to the OEB in the amount of \$40,000. Payment will be made to the Registrar, within four weeks of the acceptance of this Assurance of Voluntary Compliance by the OEB.

VI. EXECUTION OF ASSURANCE

I have the authority to bind OHL to the terms set out in this Assurance of Voluntary Compliance.



Name: Rob Koekkoek
Title: President and CEO
Company: Orangeville Hydro Limited
Dated this 19th day of December, 2024