



EB-2010-0279

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 requirement for the year 2011.

BEFORE: Paul Sommerville
Presiding Member

Karen Taylor
Member

DECISION AND ORDER

Application

On November 2, 2010, the Ontario Power Authority (the "OPA") filed with the Ontario Energy Board (the "Board") its proposed 2011 expenditure and revenue requirement and fees for review pursuant to subsection 25.21(1) of the *Electricity Act, 1998* (the "Electricity Act"). Pursuant to subsection 25.21(2) of the Act, the OPA is seeking the following approvals from the Board:

- approval of a net revenue requirement comprised of the proposed 2011 operating budget of \$64.1 million and a number of adjustments that result in a net amount of \$79.861 million;
- approval of a \$0.523/MWh usage fee, which is a decrease from the approved usage fee of \$0.551/MWh for 2010 and to recover its usage fees from export customers, in addition to Ontario customers;

- if necessary, interim approval of the usage fee described above, or such further or other interim orders as the Board may deem appropriate;
- approval of registration fees of up to \$10,000 per proposal for electricity supply and capacity procurements;
- approval of non-refundable application fees for the Feed-in-Tariff program of \$0.50/kW of proposed Contract Capacity, having a minimum of \$500 and to a maximum of \$5,000;
- approval of proposed 2011 capital expenditures of \$2.2 million;
- approval of its proposal to recover through fees the balances of the 2010 Forecast Variance Deferral Account;
- approval to continue to recover the balance of Retailer Settlement Deferral Accounts over three years;
- approval of establishment of the 2011 Retailer Contract Settlement Deferral Account, of the 2011 Retailer Discount Settlement Deferral Account, of the 2011 Government Procurement Costs Deferral Account and of the 2011 Forecast Variance Deferral Account, and approval or continuation of such further or other deferral accounts as the Board may deem appropriate; and
- all necessary orders and directions, pursuant to the *Ontario Energy Board Act, 1998* and the Board's Rules of Practice and Procedure, as may be necessary in relation to this submission, and execution of the approvals requested in the Business Plan.

The Board issued a Notice of Application dated November 24, 2010 with respect to this proceeding. The Board received intervention requests from the Association of Power Producers of Ontario ("APPRO"), HQ Energy Marketing Inc. ("HQEM"), the Independent Electricity System Operator ("IESO"), Manitoba Hydro, Ontario Power Generation ("OPG"), and Shell Energy North America (Canada) Inc. ("Shell Canada"). The Board also received two requests for observer status. The Board approved the intervention requests from APPRO, HQEM, IESO, Manitoba Hydro, OPG and Shell Canada and the two requests for observer status.

The Board also received requests for intervention and cost eligibility from Electricity Distributors Association (“EDA”), Energy Probe Research Foundation (“Energy Probe”), Green Energy Coalition (“GEC”), Low-Income Energy Network (“LIEN”), Ontario Sustainable Energy Association (“OSEA”), Pollution Probe, Vulnerable Energy Consumer Coalition (“VECC”), Canadian Energy Efficiency Alliance (“CEEA”), Canadian Manufacturers and Exporters (“CME”), School Energy Coalition (SEC”) and the Consumers Council of Canada (“CCC”).

The Board determined that Energy Probe, GEC, LIEN, Pollution Probe, CEEA, CME, SEC, CCC and VECC are eligible for an award of costs in this proceeding. The Board made no finding with respect to the cost eligibility request submitted by the EDA. The Board stated that it would address the EDA’s cost eligibility if the EDA requests an award of costs.

The Board accepted OSEA’s participation as an intervenor in this proceeding. However, the Board determined that OSEA is not eligible for a cost award.

On November 24, 2011, the Board issued its Draft Issues List and notified parties that December 17, 2010 would be Issues Day. Submissions on the issues list were received from Board staff, the OPA, LIEN, Energy Probe, APPrO, CEEA, and Pollution Probe. The Board received one letter of comment.

On December 13, 2010, the Board issued its original Decision on intervenor requests and Cost Eligibility. Supplemental Board Decisions on intervenor requests and Cost Eligibility were issued on December 14, 16 and 21, 2010.

On December 17, 2010, the Board approved an interim usage fee for 2011 of \$0.551/MWh, effective January 1, 2011 pending the final decision in this proceeding.

On January 11, 2011, the Board issued its Board Approved Issues List and Procedural Order No. 2. Procedural Order No. 2 outlined the dates for written interrogatories and a Settlement Conference.

On January 20, 2011, the Board issued Procedural Order No. 3 that outlined the dates for the filing of intervenor evidence and interrogatories on the intervenor evidence.

On February 8, 2011, the Board issued Procedural Order No. 4 that outlined the dates for filing interrogatories and subsequent responses as well as the Settlement Conference.

From March 30, 2011 to March 31, 2011, parties participated in the Settlement Conference. On April 1, 2011, the OPA filed a letter notifying the Board that no settlement was reached. The OPA did mention however, that no party had any issues with respect to Deferral and Variance Accounts (Issues 8.1 and 8.2 in the Issues List).

On March 28, 2011, the OPA filed an update to its application which reflected audited 2010 actual results and an update to the IESO's 2011 forecast. The OPA reduced the usage fee to \$0.514/MWh and the revenue requirement amount to \$78.882 million.

An oral hearing was held on May 9, 10, 12 and 13, 2011. At the oral hearing, the Board set out dates for arguments by Board staff, intervenors and the OPA's reply argument.

Arguments were received from Board staff, APPrO, CEEA, CME, CCC, Energy Probe, GEC, HQEM, LIEN, Manitoba Hydro, OSEA, Pollution Probe, SEC and VECC on a variety of issues from the Board's approved Issues List. The OPA filed reply argument.

The Legislative Framework

The Board's power to review the OPA's proposed fees is set out in section 25.21 of the Electricity Act:

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 under section 25.22.

Board's powers

(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.

Same

(3) In reviewing the OPA's proposed requirements and proposed fees, the Board shall not take into consideration the remuneration and

benefits of the chair and other members of the board of directors of the OPA.

Changes in fees

(4) The OPA shall not establish, eliminate or change any fees without the approval of the Board.

Hearing

(5) The Board may hold a hearing before exercising its powers under this section, but it is not required to do so.

In considering the approval of the OPA fees, the Board is also guided by its electricity objectives under section 1 of the *Ontario Energy Board Act, 1998* (the “OEB Act”):

Board objectives, electricity

1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer’s economic circumstances.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

Facilitation of integrated power system plans

(2) In exercising its powers and performing its duties under this or any other Act in relation to electricity, the Board shall facilitate the implementation of all integrated power system plans approved under the *Electricity Act, 1998*.

Issues Decision

The Issues Decision that was issued on January 11, 2011, included a significant discussion on the scope of this proceeding. The Board stated the following:

The Board finds that its mandate in relation to the review of the OPA's fees application comes from section 25.21 of the Electricity Act. The Board agrees that section 1 of the OEB Act informs the Board in the exercise of that mandate. However, Section 1 is not, in the Board's view, a source of independent or incremental responsibility that can override the direction that has been provided by the legislature in relation to the Board's mandate as set out in section 25.21 of the Electricity Act. This is confirmed by the wording of section 1 itself, which refers to the objectives as guiding the Board "in carrying out its responsibilities under" the OEB Act or any other Act.

The Board finds that its mandate in this case is limited to approval of the OPA's administrative fees, which comprise approximately 3% of the OPA's total annual spending. However, the Board is of the view that an assessment of the OPA's administrative fees must require an examination and evaluation of the management, implementation, and performance of the OPA's charge-funded activities. This is necessary because the OPA's administrative and non-administrative activities that are funded by fees and charges, respectively, are unavoidably linked. It is the Board-approved fees that give the OPA the means to acquire and allocate the resources (e.g., staff) that are required to undertake its various responsibilities, resulting in charge-funded activities. The Board finds that an assessment of the performance of the OPA's charge-funded activities is a necessary, legitimate and reasonable tool for determining the effectiveness of the OPA's utilization of its Board approved fees.

Issues 1.0 to 6.0, 9.0

As discussed above, the Board's jurisdiction in this case is more limited than in, for example, a section 78 or section 36 rates case. Although the Issues List as approved by the Board includes reference to the six strategic objectives from the OPA's Business Plan, the Board's order in this case relates only to approving (or declining to approve) the OPA's proposed revenue requirement and fees. Although the evidence and argument relating to the six strategic objectives can be relevant in considering the

proposed revenue requirement and fees, the Board does not actually “approve” the objectives or the Business Plan itself. The Board will therefore make direct reference to evidence and arguments relating to issues one through six only to the extent that they are directly relevant to the Board’s decision on the proposed revenue requirement and fees. The Board has reviewed and considered the complete record, but refers directly only to the portions of the record that are within the scope of the proceeding and bear directly on the proposed revenue requirement and fees.

Positions of the Parties

Transparency and Stakeholder Engagement

The OPA’s 2011 Business Plan states that one of its guiding principles of transparency is that its communications both internally and externally are clear, candid, open and reliable.

The OPA submitted that its webcasts, teleconferences and other stakeholder engagement sessions provide an opportunity for stakeholders to bring forward their views and questions to the OPA.

The OPA submitted that intervenors that made submissions about stakeholder engagement did not address the evidence regarding the efforts of the OPA to engage stakeholders. The OPA also stated that it will strive to enhance further the effectiveness of its communications with stakeholders.

The OPA stated that in addition to the establishment of the stakeholder advisory group, the OPA will hold a session prior to the filing of its next revenue requirement submission. At this session, intervenors in the 2011 proceeding will be able to discuss their views and questions with the OPA. The OPA expects that the timing of the session to be likely during August 2011.

A number of intervenors and Board staff had concerns regarding the OPA’s transparency and stakeholder engagement. One party stated that it appeared that the OPA did not feel, as rate-regulated entities normally do, as much of a pressing need to ensure that the Board was provided with the fullest possible information. Other parties submitted that the OPA should enhance its communication systems, website and vastly improve the degree of transparency with which it operates.

Some parties argued that the Board should place conditions on its approval of the revenue requirement submission requiring certain organizations to be represented on the stakeholder advisory group that was discussed in the evidence.

Metrics and Milestones

The OPA's 2011 Business Plan includes efficiency metrics measuring performance in two areas of its operations: conservation and generation. The metrics are tracked on a per-employee and per-\$million of operating budget basis. The OPA submitted that the metrics showed that it was delivering its mandate with improved efficiency. The Business Plan also includes milestones the OPA expects to achieve by year-ends 2011 and 2013 respectively for each strategic objective.

The OPA submitted that intervenors that had made submissions on efficiency metrics expressed the view that they do not believe that the OPA's current metrics are adequate for the purposes of the Board's review.

The OPA submitted a proposal to consult with intervenors on metrics or other methods of assessing the OPA's budget, stating that it expected to schedule consultations during August of 2011.

The OPA also submitted that it will aim to provide more clarity regarding progress towards milestones in its next revenue requirement submission.

Board staff and a number of intervenors had concerns regarding the OPA's efficiency metrics and reporting on milestone achievement. Many parties submitted that the OPA's current efficiency metrics are inadequate for the purposes of the Board's review of its revenue requirement. Parties submitted that the OPA should develop a comprehensive set of efficiency metrics, using both qualitative and quantitative measures, to give a more accurate picture of the OPA's performance. In addition, some parties submitted, with respect to milestones, that the OPA should report more comprehensively on the extent to which milestones have been achieved.

Board Findings

For the purposes of considering the fiscal 2011 proposed expenditure and revenue requirement and fees application by the OPA, the Board expanded the scope of the

issues that had traditionally been considered, the purpose of which was to recognize, as set out above, that the OPA's administrative and non-administrative activities that are funded by fees and charges, respectively, are unavoidably linked. While the Board's mandate in this case is limited to approval of the OPA's administrative fees, which comprise approximately 3% of the OPA's total annual spending, an assessment of the performance of the OPA's charge-funded activities is a necessary, legitimate and reasonable tool for determining the effectiveness of the OPA's utilization of its Board approved fees.

The Board has considered the full record of the proceeding and the submissions of the OPA, Board staff and parties to the proceeding and makes the following findings.

The Board is of the view that the OPA has not, as per Issue #9, responded appropriately to previous Settlement Agreements and Decisions. In particular, the Board notes that in Decision and Order dated April 27, 2010 (EB-2009-0347), the Board directed the OPA, with respect to:

- workforce hiring practices to make appropriate adjustments to its staffing practices, including overall staffing levels in light of the organization's mandate and be prepared to demonstrate that it has done so in future revenue requirement filings; and
- test year milestones, the Board directed the OPA to include more precise and informative documentation of its performance metrics for review through the fees case process. The OPA was also directed to report on its achievement of its metrics, sorted by Strategic Objective.

These issues were discussed during the proceeding, and it is evident that the filing deficiencies these directions were intended to remedy remain unresolved as it relates to the 2011 Fees case.

The OPA addressed the submissions of Board staff and parties by grouping the issues raised and recommendations made based on major themes. For convenience, the Board will also deliver its findings based on similar themes.

Scope of the Revenue Requirement Proceeding, Metrics and Milestones, Budgeting

The OPA argued that the Electricity Act empowers the Board to review the proposed expenditure and revenue requirement and fees of the OPA and that the Electricity Act does not in any way contemplate that the Minister's approval of activities and milestones in the Business Plan could be overturned by the Board. The OPA argues that the Board's review is relevant to determine whether the OPA's expenditure and revenue requirements and fees are appropriate for fulfillment of the Business Plan approved by the Minister.

The Board notes that while the Electricity Act provides that the Minister must approve the Business Plan, the Electricity Act is not prescriptive with respect to the content of the Business Plan. Moreover, the information that must be contained in the business plan for the purpose of the Minister's approval is not necessarily the same as that required for the Board's purposes in considering the OPA's expenditure and revenue requirement and the consequential fee.

Adequate performance and efficiency measurement tools and milestones are essential to the Board's determination of whether an applied-for expenditure and revenue requirement for the fiscal year and the fees resulting therefrom are prudent, cost effective and whether the OPA is, in fact, capable of fulfilling the Business Plan approved by the Minister. The Board notes that in its reply argument dated June 6, 2011, the OPA concurs. The OPA also acknowledges that meaningful metrics will produce information that will assist the Board in its review of the expenditure and revenue requirements.

The Board is mindful of the limitations of its jurisdiction in its consideration of the applied-for expenditure and revenue requirement and the consequential fees. The Board does not consider that it has the authority to place conditions on its approval of the revenue requirement or fees. It does however believe that it has the authority to direct the OPA with respect to the evidence it requires in order to come a determination as to the appropriateness of the revenue requirement. The Board notes that previous panels have directed the OPA with respect such issues.

The Board does not accept that the mandate of the OPA is so unique and so vulnerable to change during a fiscal period so as to preclude the development and implementation

of effective performance and efficiency metrics and milestones that will be meaningful for the Board's purposes pursuant to the Electricity Act.

The Board is of the view that the performance and efficiency metrics and milestones filed in conjunction with this application were of little or no assistance to the Board in its determination of whether the applied-for Net Revenue Requirement, as adjusted, was appropriate, nor whether the OPA is achieving a reasonable standard of effectiveness and efficiency in performing the functions it is mandated to undertake.

Put simply, the metrics proposed by the OPA and presented, presumably in response to the panel's direction in EB-2009-0347 do not measure productivity or efficiency. They record performance, but do not provide any insight with respect to the efficiency or effectiveness with which the OPA is completing its work

The OPA's evidence with respect to its efficiency metrics appears at exhibit A – 2 – 1, page 48. This chart was updated to include data from 2008 to 2010. Efficiency metrics for generation are expressed in terms of generation capacity contracted in megawatts as a function of total OPA budget and as a function of total full-time equivalent employees. The number of megawatts under contract in a given year is a cumulative figure, which includes contracted capacity from previous years. Incremental annual contracted capacity is not shown, and cannot be reliably inferred from the data without the knowledge of what capacity from previous years is no longer included in the total. This use of cumulative procurement figures ensures that the metric calculation is performed by the OPA is not informative about current productivity.

Another flaw in the OPA's efficiency metric calculation arises from the fact that OPA uses total full-time employees and the total OPA budget in the calculation, instead of only that portion of the budget and the full-time employee force actually associated with the procurement and contract administration activities. The majority of OPA staff is not involved in any meaningful degree in these activities, and including them can simply mask inefficiency in the procurement and contract administration process. As was pointed out in the submissions of Energy Probe, this approach could yield misleading information.

Similarly, the fact that the metric calculation does not include temporary employees undermines its credibility. Circumstances could exist where no new procurement was

developed during the course of a year, but the efficiency calculation would remain the same. This same analysis applies to the OPA's conservation activities.

The Board directs the OPA to develop a more complete and informative set of performance and efficiency metrics, cost benchmarking, and program milestone tools in order to assist the Board with its determination that the applied-for Net Revenue Requirement is appropriate. The Board expects improved performance and efficiency measurement, cost benchmarking, and program milestones to be part of the evidentiary material filed in conjunction with the OPA's 2012 expenditure and revenue requirement and fees application. As part of this activity, the Board expects the OPA to develop the capability of assessing with a reasonable degree of confidence the actual costs associated with the execution of individual initiatives. While the witnesses suggested that the OPA operates on a "matrix" basis, it is necessary to have an appreciation of the costs associated with specific initiatives so that informed operational decisions can be made by OPA leadership.

The Board acknowledges that the OPA has proposed to consult with intervenors on the subject of metrics or other methods of assessing the OPA's budget. In particular, the Board notes that the OPA has undertaken to:

- consult with intervenors on the subject of metrics or other methods of assessing the OPA's budget; and
- endeavour to develop a capability to allocate internal staff costs for the purposes of its next revenue requirement, taking into account the cost and dedicated staff resources required to implement such an initiative.

Absent adequate performance and efficiency measurement tools and milestones, the Board may find itself unable to approve future OPA expenditure and revenue requirement and fees applications, as it may not have a sufficient evidentiary base to determine whether the applied-for expenditure and revenue requirement and fees are appropriate.

Stakeholder Engagement and Transparency, Program Verification

The Board also has concerns respecting the OPA's stakeholder engagement processes and organizational transparency, both in terms of program design and communication.

For example, as part of its evidence in the oral portion of this proceeding, the OPA witness suggested that this hearing process was part of the consultation process respecting extension of OPA fees to exporters. Board hearings are adjudicative processes, not consultative processes. The Board is of the view that many of the recommendations of parties with respect to the design of OPA programs and subsequent program performance and measurement, were fundamentally based on the non-transparent and exclusionary manner in which the OPA has designed, implemented, and plans to measure its own performance as it relates to its core strategic objectives, being Power System Planning, Supply Procurement and Contract Management, Conservation, and Communication. The Board appreciates that the organization is often in a reactive mode, responding to pressing Directives from the Government. However, the Board is of the view that appropriate consultation can result in improvements in program design, implementation and measurement and is likely to increase the acceptance and credibility of OPA programs.

The Board is of the view that the OPA would be well-served by refining its stakeholder consultation processes to increase transparency and inclusiveness at all stages of program design. The Board is of the view that the OPA should provide evidence of how its processes have evolved in conjunction with its 2012 expenditure and revenue requirements and fees application.

Issue 7.0 – Proposed Fee

Revenue Requirement

Board Findings

Notwithstanding the findings of the Board set out in this Decision, the Board will approve the OPA's applied-for Net Revenue Requirement of \$78.882 million, as updated on March 28, 2011. The Board notes that the Net Revenue Requirement is comprised of a proposed 2011 operating budget of \$64.1 million and a number of adjustments that result in the net amount approved by the Board.

The Board is of the view that at this juncture, it would be impractical to refer the Net Revenue Requirement back to the OPA for further consideration with the Board's recommendations. Even if the OPA were to adopt all of the findings of the Board, it is unlikely that they could be implemented during fiscal 2011 and would therefore not likely

have a material effect on the OPA's 2011 Net Revenue Requirement. Although the Board has concerns regarding the OPA's efficiency metrics and the transparency of some of its processes, it is satisfied that for the test year the proposed Net Revenue Requirement is appropriate. For this reason, the Board approves the Net Revenue Requirement, as updated on March 28, 2011.

The Board also finds the applied-for registration fees, non-refundable application fees and 2011 capital expenditures to be reasonable and appropriate. The Board notes that Board staff and parties to the proceeding raised no issues with respect to these amounts.

Usage Fee – Export Customers

The OPA proposes to recover its 2011 Net Revenue Requirement by establishing a usage fee to consumers of Ontario electricity to be effective January 1, 2011. The usage fee is derived by dividing the Net Revenue Requirement by the Ontario electricity forecast, less line losses, plus electricity exports. In past years, the OPA has recovered its fees from Ontario customers only. In this application, the OPA proposes to recover its fees from export customers as well. Table 1 sets out the derivation of the fee as per the OPA's initial filing and the update.

Table 1. OPA Fee Calculation

	2010 Budget	2011 Budget – As Filed	2011 Budget – Updated
Net Revenue Requirement	\$76,027,000	\$79,861,000	\$78,882,000
Ontario Electricity Forecast (TWh)		142.9	143.7
Line Losses (TWh)		(3.1)	(3.1)
Exports (TWh)		<u>12.9</u>	<u>13.4</u>
Total IESO Energy Forecast (TWh)	138.0	152.6	153.5
OPA Fee (\$/MWh)	\$0.551	\$0.523	\$0.514
Fee Exclusive of Export Volumes (\$/MWh)	\$0.551	\$0.571	\$0.563

Net Revenue Requirement – updated March 28, 2011

Updated Total IESO Energy Forecast from Undertaking No. J1.9 dated May 12, 2011. Page 1.

Positions of the Parties

The OPA proposes to recover the 2011 usage fee from export customers in addition to Ontario customers. The OPA indicated that it was appropriate since export customers benefit from the planning, conservation and procurement activities undertaken by the OPA. The OPA also stated that recovering the fees from export customers is consistent with the practice of the IESO. Concentric Energy Advisors, Inc. ("Concentric") prepared evidence on behalf of the OPA. The Concentric evidence indicated that the OPA's proposal is consistent with the OPA's fundamental responsibilities that provide benefits to both domestic and export customers and is consistent with the IESO's cost recovery from domestic and export customers.

VECC supported the OPA's proposal to recover the usage fee from export customers. VECC submitted that export customers receive significant benefits from OPA conservation spending and programs and should contribute to OPA costs. VECC indicated that it would also be satisfied if the Board directed the OPA to engage in a study that would be presented in a future application. CCC also supported the OPA's proposal since it is consistent with the methodology established by the IESO. SEC submitted that it supports the OPA's position and that creating a fee structure that is equal to all consumers of electricity in Ontario, recognizes that export customers, like domestic customers benefit from the activities of the OPA. GEC submitted that if the Board is persuaded that an allocation approach should be used, the recovery of the usage fee from exporters should not be delayed pending further study.

Energy Probe submitted that there is some merit in the OPA argument that its activities result in some benefit to exporters, however there is insufficient evidence to support the proposal to impose the same tariff to exporters that it does to domestic consumption. Energy Probe also submitted that the Board cannot make a decision to impose the export tariff as proposed without further study.

HQEM submitted that the proposed extension of the OPA's fee to exporters is unjust, unreasonable and inappropriate. It is the view of HQEM that the OPA's proposal would have external loads pay twice through utility bills in home jurisdictions and through the occasional purchases from the Ontario market through exporters. HQEM indicated that Ontario consumers would receive a subsidy by not having to pay the full OPA costs that belong to them. HQEM recommended that the Board require the OPA to initiate a proper stakeholder process on the issue, that a simple cost allocation study be

undertaken and the study should be filed at the OPA's next fees case. Elenchus Research Associates Inc. ("Elenchus") prepared evidence on behalf of HQEM. The evidence indicated that costs should be recovered from customers in a manner consistent with Generally Accepted Regulatory Principles which include the principle of cost causality and that a cost allocation study is required.

APPrO submitted that the Board should not approve the usage fee as proposed and to refer the submission back to the OPA and recommend that the 2011 usage fee exclude export volumes. APPrO also recommended a study should be conducted if the Board is of the view that exporters should pay a portion of the fee or if the Board is not clear if the fee should be extended to exporters. Manitoba Hydro submitted that it also did not support the OPA's proposal and that the OPA failed to show how its activities benefit exporters.

Board Findings

The Board will not approve the OPA's proposal to recover the 2011 usage fee from export customers for a number of reasons.

First, the Board is of the view that the mandate of the OPA is not comparable to that of the IESO. Even the most cursory examination of the relevant sections of the Electricity Act is illustrative of the distinct nature of the two organizations. Section 5(1)(e) of the Electricity Act, which sets out the objects of the IESO, clearly states that the IESO is to work with the responsible authorities outside Ontario to co-ordinate the IESO's activities with their activities. In contrast, section 25.2(1) which is the section of the Electricity Act that describes the objects of the OPA, expresses the OPA's fundamental responsibilities as being "for Ontario" and "in Ontario".

Second, the Board is not convinced that, in executing its objectives pursuant to the Electricity Act that the OPA creates benefits for export customers in the manner asserted by the parties supporting the extension of the fee to exporters. In particular, by engaging in power system planning that meets the reliability and self-sufficiency goals of the government of Ontario, the OPA's activities have the consequence of creating potential export capability. It does not necessarily follow that this "unintended" consequence is a benefit for which exporters should pay. The Board is also reticent to create the linkage that necessarily follows this argument, which is because exporters

“pay for this benefit” the OPA is obligated to engage in system planning in a manner that ensures export capability exists.

Third, the Board agrees with the submissions of parties that the proposed fee has not been supported by empirical evidence. The OPA proposal rests primarily on the IESO example, and a rather cursory benefits analysis. The extension of fees to market participants should generally be conducted on a firm empirical and principled basis. There is no such basis in the evidence before the Board. In this case, if the OPA intends to reintroduce this approach in this or a future expenditure and revenue requirement and fees case, it should be prepared to demonstrate a coherent rationale, quite possibly based on an allocation study, as suggested by Mr. Todd from Elenchus.

Finally, the Board notes that the OPA did not undertake any meaningful or substantive consultation with stakeholders regarding this proposal. Should the OPA choose to reintroduce this approach now or in the future, the Board expects the OPA to have engaged the stakeholder community in a relevant and substantive manner and will require that evidence of this consultation be filed in conjunction with the associated revenue requirement and fees application.

For these reasons, the Board is referring the calculation of the usage fee back to the OPA for reconsideration. The Board recommends that the OPA choose one of the following three alternatives.

First, the OPA may apply to the Board for approval of the Usage Fee based on the approved Net Revenue Requirement and a Total IESO Energy Forecast that is exclusive of exports. As per Table 1, the resulting Usage Fee is \$0.563/MWh. Should the OPA pursue this approach, the Board is prepared to approve it pursuant to an expedited and administrative process.

Second, the OPA may choose to re-apply to the Board to recover the 2011 Usage Fee from export customers in addition to Ontario customers, provided that application is accompanied by an appropriate evidentiary foundation as discussed above and evidence of stakeholder consultation.

Third, the OPA may choose to continue with the current Usage Fee of \$0.551/MWh which was set for fiscal 2010 and declared interim by the Board for fiscal 2011 on December 17, 2010. In this alternative, the Board would make the current interim rate

final. The Board notes this alternative would likely result in a larger than forecast balance in the 2011 Forecast Variance Deferral Account.

The Board directs the OPA to advise the Board within 30 days of the issuance of this Decision and Order as to its approach with respect to the 2011 usage fee.

Issue 8.0 – Deferral and Variance Accounts

Board Findings

The Board finds that the proposal to recover the balances of the 2010 forecast Variance Deferral Account through fees to be reasonable and appropriate. The Board also approves the continued recovery of the balance of the Retailer Settlement Deferral Accounts over three years and finds that it is appropriate to establish the 2011 Deferral and Variance Accounts as proposed by the OPA. The Board notes that Board staff and parties to the proceeding raised no issues with respect to the existing and proposed Deferral and Variance Accounts.

COST AWARDS

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.

DATED at Toronto, July 8, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary