



March 12, 2025

Ontario Ministry of Energy

Attention: Constantine Dmitriev

Sent by email: Constantine.dmitriev@ontario.ca

Re: Proposal to amend Ontario Regulation 53/05 in relation to Pickering B Extension Variance Account

Comment on ERO Posting 025-0130 Advancing Nuclear Opportunities in Ontario

Posted Jan. 28, 2025; deadline for comments March 14, 2025

The Canadian Environmental Law Association writes to provide comments in relation to ERO Posting 025-0130. This posting relates to proposed regulatory amendments to allow Ontario Power Generation to recover the costs of engineering, design, and costing work for potential Pickering refurbishment from ratepayers. This is accomplished by payment by the Integrated Electric System Operator (IESO) to OPG pursuant to order of the Ontario Energy Board.

The proposal described under this ERO posting would allow for this recovery by way of amending *Ontario Regulation 53/05 – Payments under Section 78.1 of the Act*.

O. Reg 53/05 (referred to hereafter as “Reg 53/05” establishes the categories of costs that can or must be included in “variance accounts” under section 78.1 of the *Ontario Energy Board Act* (referred to hereafter as “OEB Act”). That section provides for “payments to prescribed generators.” The prescribed generators are listed in Reg 53/05 and are facilities owned and operated by Ontario Power Generation, including the listed hydroelectric and nuclear facilities.

The amounts of the payments to be made are to be determined by the Ontario Energy Board in accordance with rules prescribed by the regulations, so long as it finds the amounts applied for by OPG to be just and reasonable.

(These payments cannot include any amounts related to clean energy credits under Part II.1 of the *Electricity Act, 1998*.)

Hearings are held by the OEB from time to time as to the payments to be made by the IESO to OPG for the prescribed hydroelectric and nuclear facilities, and the OEB issues an Order in respect of these payments.

Reg 53/05 set out provisions for “Deferral and Variance Accounts” for the prescribed facilities. OPG was required to record “capital and non-capital costs incurred and revenues earned or

Canadian Environmental Law Association

T 416 960-2284 • 1-844-755-1420 • F 416 960-9392 • 55 University Avenue, Suite 1500 Toronto, Ontario M5J 2H7 • cela.ca

foregone” as against a defined date of April 1, 2005. These costs are to be established based on deviations from forecasts as of Quarter 3, 2004. These original deferral and variance accounts as described in the first version of Reg 53/05 covered differences in hydroelectric electricity production due to differences between forecast and actual water conditions; unforeseen changes to nuclear regulatory requirements or unforeseen technological changes which directly affect the nuclear generation facilities, and other matters related to ancillary services, acts of God, including severe weather events, and transmission outages and restrictions.

A calculation of “revenues earned or foregone” is to be based on a rate of \$33. per megawatt hour from the listed hydroelectric generation facilities and \$49.50 per MWH from the prescribed nuclear generation facilities. Interest is recorded on these accounts on the net balance at 6% per annum.

By amendments from time to time, Reg 53/05 has established additional categories of “Deferral and Variance Accounts” for the prescribed facilities. In 2021, Reg 53/05 was amended to add a “Nuclear Development Variance Account” and this records the revenue requirements from “actual non-capital and capital costs incurred and firm financial commitments made” for “new nuclear facilities.” These could encompass new nuclear facilities at Darlington, or Pickering. The specified revenue requirements include (but are not limited to) “planning and preparation”; “technology identification” and “design, development and construction” of the new facilities.

In relation to the current proposal, a government media release in early 2025, as linked to the current posting related to potential refurbishment of Pickering B, indicated that

“The government is supporting OPG’s \$4.1 billion budget for this phase of work, bringing the total investment to date in the project to \$6.2 billion.”

<https://news.ontario.ca/en/release/1005620/ontario-advancing-plan-to-refurbish-pickering-nuclear-generating-station>

However, CELA’s concern is that the result of the regulatory proposal described in this ERO posting may put this entire cost onto Ontario ratepayers. This because they would be included in the revenue requirements described in Reg 53/05. An additional “Pickering B Extension Variance Account” was added by amendment to Reg 53/05 in 2022 to account for additional costs and revenues of operating some of the Pickering B units longer than had been planned up to 2026. As CELA reads the current Reg 53/05 together with this proposal, it would now add those costs related to planning and preparation, technology identification, and design, development and construction of the new facilities.

The ERO proposal states that it is:

“Clarifying the scope of what can be recorded in the existing Pickering B Extension Variance Account (PEVA) to ensure that OPG can recover prudently incurred Pickering station-level and corporate costs for 2024-2026 which allow it to retain the capacity and readiness to operate the Pickering B units post-refurbishment, pending a final government approval and nuclear regulatory approvals of the refurbishment of Pickering units 5 through 8. (Ontario Power Generation)”.

However, the posting does not clarify that the planning, engineering, design costs incurred in relation to potential Pickering B refurbishment would be excluded from the Pickering B Extension Variance Account. These costs do not fit into the current exclusions provided in Reg. 53/05 for that PEVA which are those related to nuclear liabilities and Pickering closure costs. Nor do they fit into the other provisions of Reg 53/05 as currently provided, and since no draft of the new Regulation is provided with the posting it is not clear that they would NOT be included otherwise in a revised provision related to the Nuclear Development Account, or even a newly titled variance account specific to Pickering B Refurbishment.

Accordingly, in the event that the government of Ontario determines at any point that the project for refurbishment of Pickering B should not proceed due to cost, desire to pursue other options, for safety or regulatory reasons, unless clarified there is a risk that this cost would be entirely recovered from Ontario's electricity ratepayers.

We submit that this any result that sees the planning, design, and budgeting costs of a potential Pickering B refurbishment in a Variance Account under Reg 53/05 would be inappropriate. It would result in OPG corporately bearing no risk whatsoever for its recommendations to proceed with the potential Pickering refurbishment according to this arrangement. The government of Ontario similarly would bear no risks because this regulatory amendment means the costs are inevitably borne by the ratepayer.

CELA submits that Pickering is an inappropriate location for further operations of large scale nuclear power generation, due to population density, proximity to the City of Toronto and the source of all of the GTA's drinking water as a result of accident and emergency planning readiness issues. CELA has previously submitted that the International Atomic Energy Agency site selection criteria should be applied in light of current populations and suitability, but such a review has not happened as the province denied this request. Ontario also has not applied its own environmental assessment legislation to nuclear projects for many decades. Furthermore, Ontario removed any public hearing scrutiny of long term energy generation decisions. This question of site suitability will also likely not be part of future nuclear safety regulatory assessments by the Canadian Nuclear Safety Commission either as the Commission has stated in the past that the question of siting and generation choice is up to the province.

CELA submits that it may well be the case after further review and consideration, that the Ontario government could decide against proceeding with refurbishment of the Pickering B reactors or any large scale future operation at that site once the current reactors are shut down. CELA submits that this ERO proposal should therefore avoid inappropriately putting any or all of the six billion dollar expenditure related to the "Project Definition Phase" of a potential Pickering refurbishment into the Pickering B Extension Variance Account, or any other part of Reg 53/05 regardless of whether the project ever proceeds or not. CELA submits that it should not proceed in any event. CELA submits that the risks of detailed design and engineering assessments should remain with OPG and the Ontario government. The OEB process to determine the costs "prudently incurred" and subject to inclusion in the variance accounts are constrained by the regulation and it will not then be open to the OEB to deny these costs if the regulation is amended, regardless of the wisdom of this project or whether it ever proceeds.

CELA RECOMMENDATION: Reg. 53/05 should not be amended to include the “planning and preparation”; “technology identification” and “design, development and construction” as well as any costs related to regulatory approval preparation or safety studies related to potential refurbishment of Pickering B. These costs should remain with OPG and the government of Ontario.

CELA would be pleased to meet with you or discuss our concerns in respect of this proposal.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Theresa McClenaghan
Executive Director

Cc: Tyler Schulz, Environmental Commissioner, Auditor General of Ontario, by email