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PUBLIC REDACTED VERSION

July 9, 2014

BY COURIER (2 COPIES) AND EMAIL

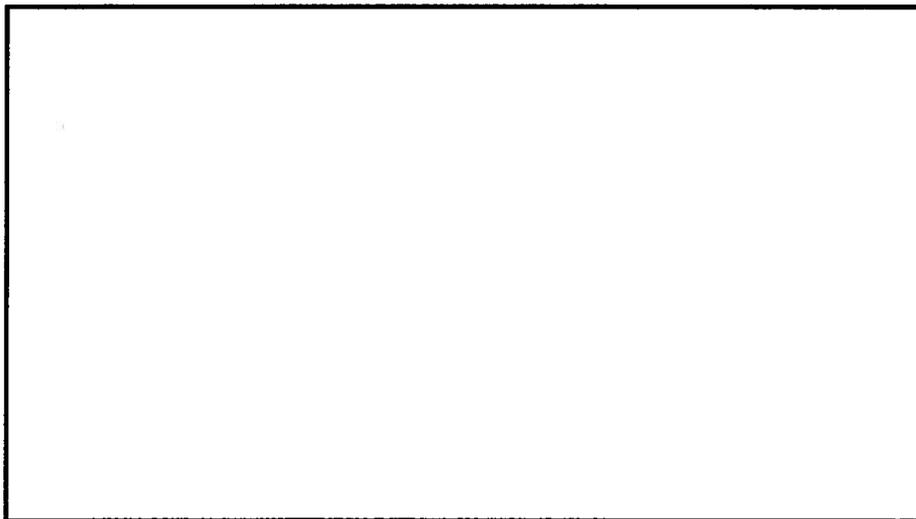
Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
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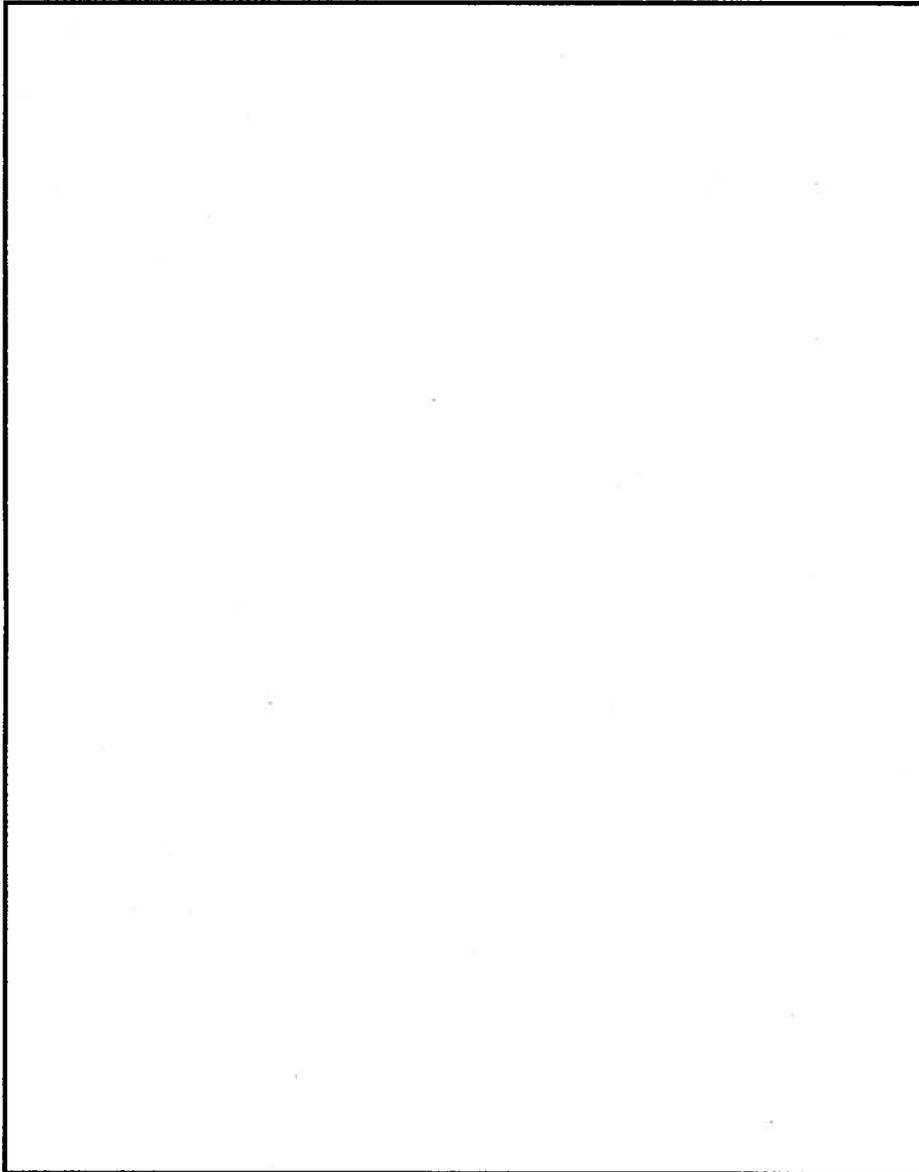
Dear Ms. Walli:

**Re: Environmental Defence Correspondence
EB-2013-0321 – Ontario Power Generation Inc. (“OPG”)
2014-2015 Payment Amounts Application**

I am writing on behalf of Environmental Defence to object to the redactions made by OPG in the recently filed “Modus” reports. We understand that other parties will be making more thorough submissions and therefore we only make the following three broad comments.

First, it appears that OPG has redacted statements simply because they are embarrassing or negatively reflect on OPG or the Darlington Refurbishment project. In our submission, this is not a proper use of the Board’s confidentiality provisions. We see no reason why these comments should be redacted. Some examples of those comments are excerpted below (but redacted in the public version of these submissions).





Again, it appears that OPG has redacted these and other statements simply because they are embarrassing or negatively reflect on OPG or the Darlington Refurbishment project.

Second, based on the large number of redactions in the Modus reports, it appears that OPG is making redactions based on highly remote or speculative concerns. This runs counter to the rules governing both court and Energy Board proceedings. Those rules attach a very significant importance to transparency and openness. For example, the Practice Direction on Confidential Filings states that:

The Board's general policy is that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the

Board's view that its **proceedings should be open, transparent, and accessible.**
(emphasis added)¹

Similarly, the Supreme Court of Canada has adopted the following stringent test to assess whether materials in legal proceedings should be treated as confidential to the public.

It is now well established that court proceedings are presumptively "open" in Canada. **Public access will be barred only when the appropriate court, in the exercise of its discretion, concludes that disclosure would *subvert the ends of justice or unduly impair its proper administration.*** (italics in original)²

...

In any constitutional climate, the administration of justice thrives on exposure to light — and withers under a cloud of secrecy.³

OPG's approach does not appear to be consistent with these accepted principles. There must be a very good reason to overcome the presumption of openness and transparency; remote or speculative concerns will not suffice.

Third, OPG has not provided sufficient information for the Board and parties to assess its claims of confidentiality. OPG's letter provides four broad justifications for confidentiality. However, it does not (1) indicate which justifications apply to which redactions or (2) provide an explanation for each redaction of why harm might result from the public disclosure of that particular piece of information.

In light of the above, Environmental Defence requests that OPG be directed to resubmit the Modus reports without redacting comments that are simply embarrassing to OPG and to make only those redactions that are clearly consistent with the Practice Direction on Confidential Filings.

Please advise if anything further is required or would be of assistance.

Yours truly,



Kent Elson

cc: Applicant and Intervenors

¹ *Practice Direction on Confidential Filings*, p. 2.

² *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41 at para. 4.

³ *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41 at para. 1.