

April 12, 2017

## RESS & OVERNIGHT COURIER

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Application by Ontario Power Generation Inc. for 2017-2021 Payment Amounts (EB-2016-0152) – Confidential Treatment re Hearing Undertaking Responses**

In accordance with Rule 10 of the Ontario Energy Board's ("OEB" or the "Board") *Rules of Practice and Procedure* and section 5.3 of the OEB's *Practice Direction on Confidential Filings* (the "Practice Direction"), OPG requests confidential treatment for 1 response and five attachments to OPG's responses to certain undertakings arising from the March 30, 31 and April 3, 2017 hearing days in EB-2016-0152 as listed in Appendix 'A'. Appendix A also identifies, as requested by the Board in Procedural Order No. 3 dated November 1, 2016, the specific page numbers where the redactions are located in each document and the specific reasons for each request.

The documents with or without redactions that OPG is filing publicly in response to undertakings are non-confidential. This is regardless of whether the documents themselves may be otherwise marked as "Confidential" or "OPG Confidential". Such notations would have been applicable at a prior time in the history of the document.

Below, OPG sets out the reasons for its confidentiality requests, including the potential harm that could result from public disclosure of the relevant information. While most of the requests are for redactions to portions of documents, we note that two of the requests are for the confidential treatment of documents in their entirety.

In respect of the response to J16.6 and in accordance with Procedural Order No. 4, OPG requests that the confidential portion of these undertaking responses not be provided to the consultants or counsel for the Society of Energy Professionals and Power Workers' Union who have not signed the affidavit referenced in Procedural Order No. 4.

Based on the various categories of confidential information requests, OPG has organized the responses and documents into the following attachments, which are included with the hard copy

of this letter. For the electronic copy of this letter, filed through the RESS, only this letter and the non-confidential attachments are included. The attachments are as follows:

**Attachment A:** Non-Confidential, redacted versions of the responses and documents that are the subject of this request (excluding responses and documents that are considered to be confidential in their entirety). These items are intended to be placed on the public record.

**Attachment B:** Confidential, unredacted versions of the responses and documents that are the subject of this request, as well as the items that are to be treated as confidential in their entirety. These items are intended to be treated confidentially, and should only be provided to intervenors or their representatives who sign, or have already signed, a Declaration and Undertaking in the prescribed form in this proceeding. The specific portions of these documents that constitute the confidential information are marked with red boxes.

In this request, OPG references prior Board decisions on the confidential treatment of OPG information. As copies of these referenced materials were included in OPG's May 27, 2016 request for confidential treatment of certain documents forming part of its pre-filed evidence, OPG determined that it is not necessary to file further copies of these materials with the present request.

OPG will provide each intervenor that signs or has already signed a Declaration and Undertaking in the prescribed form and files or has filed it with the Board a copy of the confidential materials that are included in Attachment B, subject to the affidavit requirement for for the Society and PWU counsel and consultants for J16.6.

On a final determination, should the OEB grant OPG's request for confidentiality, OPG proposes that the OEB order the confidential information to be disclosed, subject to any conditions the OEB may find appropriate, to only those persons that by then have signed, or that subsequently sign, a Declaration and Undertaking in the prescribed form in this proceeding.

In addition, consistent with section 6.2 of the Practice Direction, OPG requests that during oral proceedings any reference to information, which the Board has determined to be confidential, be conducted *in camera* so as to preserve its confidential nature.

In the event that the confidentiality request is refused, in whole or in part, and OPG in turn requests that some or all of the information that is the subject of this request be withdrawn in accordance with section 5.1.12 of the Practice Direction, all persons in possession of the said information will be required to promptly destroy or return the information to the OEB Secretary for destruction.

### **Reasons for Requesting Confidential Treatment**

OPG is requesting confidential treatment relating to confidential information contained in a number of documents, which based on their nature can largely be categorized as (a) commercially sensitive information of OPG (b) contractor/vendor or third party references that may lead to reputational harm to those persons (c) collective bargaining documentation. OPG's reasons for requesting confidential treatment are set out below for each of these categories.

The specific rationale for each particular request, listed by page number, is set out in **Appendix 'A'**.

**(a) Commercially Sensitive Information of OPG**

These items should be protected as confidential because they include OPG commercially sensitive information related to project cost contingencies, certain costs for contracted or purchased work or material, or aggregate information that would allow determination of such commercially sensitive information. Disclosure of this information could prejudice OPG's competitive position and significantly interfere with its negotiations and exiting relationships in a variety of aspects of its business. Similar information was treated as confidential by the OEB either in this proceeding as approved in Procedural Order #3, or in OPG's previous applications, EB-2010-0008 and EB-2013-0321.

**(b) Contractor/vendor or Third Party References**

These documents contain certain commentary on the performance of specific contractors in the Darlington Refurbishment Program or OPG's internal assessment of a third party's information. Public disclosure of this information could potentially prejudice the competitive positions of the relevant parties and could also give rise to adverse impacts on existing relationships (contractual or otherwise) that OPG has with the parties or on relationships those parties have with others. In EB-2013-0321, the OEB agreed that disclosure of this type of information could lead to reputational harm to contractors. Accordingly, the OEB ordered this type of information to be treated as confidential (Hearing Transcript, Vol. 12). The OEB also accepted confidential treatment of information relating to performance of vendors in Procedural Order No. 3 of this proceeding.

**(c) Collective Bargaining Documentation**

These items include information relating to OPG's collective bargaining strategies. If disclosed, this information has the potential to interfere with future collective bargaining negotiations between OPG and the unions that represent its employees.

This information is provided in the confidential, unredacted versions of the documents filed in Attachment B, with non-confidential, redacted versions provided in Attachment A.

Respectfully submitted,

[Original signed by]

Barbara Reuber

Cc: John Beauchamp (OPG) via email  
Charles Keizer (Torys LLP) via email  
Crawford Smith (Torys LLP) via email

**APPENDIX 'A'**

**Affected Undertaking Responses and Attachments**

<b>J#</b>	<b>Response or Attachment</b>	<b>Location of Confidential Information</b>	<b>Reason(s) for Confidentiality Request</b>
J15.5	Attachment 1	p. 1-4,7-8,13-14	Commercially Sensitive Information of OPG
	Attachment 2	p. 1-3,6,11-12	Commercially Sensitive Information of OPG
	Attachment 3	p. 1,4,8,9	Commercially Sensitive Information of OPG
J16.6		Table in the Response	Collective Bargaining Documentation (Labour Relations Sensitivity)
J17.1	Attachment 1	Entirely in Confidence	Contractor/vendor or Third Party References
	Attachment 2	Entirely in Confidence	Contractor/vendor or Third Party References

**ATTACHMENT 'A'**

**Non-Confidential, Redacted Documents**

**ATTACHMENT 'B'**

**Confidential, Unredacted Documents**