



**EB-2010-0008**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S. O. 1998, c. 15, Schedule B;

**AND IN THE MATTER OF** an application by Ontario  
Power Generation Inc. pursuant to section 78.1 of the  
*Ontario Energy Board Act, 1998* for an order or orders  
determining payment amounts for the output of certain of  
its generating facilities.

**DECISION AND ORDER ON CONFIDENTIAL FILINGS  
AND PROCEDURAL ORDER NO. 7**

Ontario Power Generation Inc. ("OPG") filed an application, dated May 26, 2010, with the Ontario Energy Board under section 78.1 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the "Act") seeking approval for increases in payment amounts for the output of certain of its generating facilities, to be effective March 1, 2011.

On June 29, 2010, the Board issued Procedural Order No. 1 which stated that counsel and consultants for intervenors would have the opportunity to execute and submit a Declaration and Undertaking (the "Undertaking") to review unredacted versions of documents for which OPG had requested confidential treatment. The procedural order also set out a schedule for the proceeding. On July 21, 2010, the Board issued Decisions and Orders on Confidential Filings and Issues List.

**Request for Confidential Treatment of Interrogatory Responses**

In correspondence filed with the interrogatory responses on August 12 and 17, 2010, OPG requested confidential treatment for certain information that was provided in the responses to 8 interrogatories. In accordance with section 5 of the Board's *Practice*

*Direction on Confidential Filings*, OPG provided the reasons why it requested confidential treatment and the reasons why public disclosure of the information would be detrimental to OPG. The specific interrogatory responses are:

- Board Staff #25
- School Energy Coalition #47
- Vulnerable Energy Consumers Coalition #20 and #28
- Consumers Council of Canada (“CCC”) #1
- Association of Major Power Consumers in Ontario (“AMPCO”) #26
- Green Energy Coalition #28
- Pollution Probe #11

As an interim measure, OPG filed redacted versions of the responses for the public record and provided full responses only to those persons who have signed the Declaration and Undertaking.

Procedural Order No. 6 made provision for submissions on the request for confidential treatment for these interrogatory responses. Submissions were received from Pollution Probe, Canadian Manufacturers & Exporters (“CME”) and OPG. AMPCO also filed a submission stating that it accepted that the response for AMPCO #26 should receive confidential treatment.

### **Pollution Probe Submission**

Pollution Probe interrogatory #11 related to the economics of Darlington Refurbishment. In its submission, Pollution Probe referred to the Board’s July 21, 2010 decision on the confidential treatment regarding certain aspects of the Darlington Refurbishment. The Board found it appropriate to retain the confidential status, however, the decision stated that the Board might reconsider the protection as the review of CWIP for Darlington Refurbishment progresses. In that event, Pollution Probe submitted that the Board similarly reconsider the confidential protection for the response to its interrogatory #11.

### **CME Submission**

CME’s submission related to the response to CCC interrogatory #1. In response to part (a) of CCC interrogatory #1, OPG provided copies of correspondence between OPG and its shareholder. A paragraph was redacted in one of those items of correspondence. OPG sought confidential treatment on the basis that the redaction relates solely to the unregulated facilities. OPG continued to redact this information in the confidential version filed. OPG stated that its filing is similar to its filing of the

Hydroelectric 2010-2014 Business Plan. CME has no objections to the redacted paragraph in the correspondence between OPG and its shareholder, as long as the Board is satisfied that the redacted information relates solely to the unregulated facilities.

Part (b) of CCC interrogatory #1 requested the filing of all presentations or reports made to the OPG Board of Directors during the period April 1, 2010 and May 26, 2010. OPG replied that the requested presentations and reports are privileged and OPG objects to their production. OPG stated that production of the material, even on a confidential basis, would compromise OPG's ability to litigate the application.

CME stated that OPG has relied on its response to CCC interrogatory #1 to justify its refusal to produce documents CME requested in its interrogatory #10. CME submitted that OPG must provide, in confidence, unredacted copies of all materials that it is refusing to provide in response to CCC interrogatory #1 and CME interrogatory #10, so that matters pertaining to litigation privilege and irrelevance can be argued and determined.

### **OPG Reply**

In correspondence filed on August 25, 2010, OPG noted that no party objected to its request for confidential treatment for certain information that was provided in the responses to 8 interrogatories, and accordingly, OPG had no formal reply submission.

OPG also noted CME's concerns related to the responses to CCC interrogatory #1 and CME interrogatory #10. It is OPG's view that the CME submission does not constitute a motion and that no action is requested of the Board at this time.

### **Board Findings**

The Board finds that Pollution Probe's request for ongoing similar treatment for its interrogatory #11 and Darlington Refurbishment documentation is reasonable.

With respect to the response to CCC interrogatory #1(a), the Board will follow the process it established for the Hydroelectric Business Plan in Procedural Order No. 3. The Board will require OPG to file a fully unredacted version of the correspondence between OPG and its shareholder so that the Board may determine whether the redactions are limited to the unregulated business. This document will not be made

available to the parties. The Board will issue correspondence to all parties following that review, and the Board will return the unredacted copy to OPG.

The balance of CME's submission relating to OPG's response to CCC interrogatory #1(b) and CME interrogatory 10 is not related to OPG's request for confidential treatment of interrogatory responses.

Pending receipt of the unredacted version of the response to CCC interrogatory #1(a), the Board finds that it is appropriate to retain the confidential status of certain information that was provided in the responses to the interrogatories noted above.

**THE BOARD ORDERS THAT:**

1. OPG shall file a fully unredacted version of the response to CCC interrogatory #1(a) by **Monday, August 30, 2010**.

**ISSUED** at Toronto, August 26, 2010

ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli  
Board Secretary