



**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.

### **PROCEDURAL ORDER NO. 10**

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.

As part of this proceeding the Consumers Council of Canada ("CCC") filed interrogatories. 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 (the "documents"). OPG replied that the requested presentations and reports are privileged and OPG objected to their production. OPG stated that production of the documents, even on a confidential basis, would compromise OPG's ability to litigate the application.

On September 17, 2010, CCC filed a notice of motion for an order requiring OPG to provide the documents requested in CCC interrogatory #1(b) for use at the hearing and an interim order requiring OPG to provide the documents on a confidential basis to counsel for CCC and to the Board. CCC stated that the documents requested in

interrogatory #1(b) are relevant to the Board's responsibility to independently assess the application and objectively decide it based on the evidentiary record.

In correspondence filed on September 21, 2010, OPG submitted that the request for an interim order requiring production of the documents on a confidential basis to counsel for CCC and to the Board in advance of hearing the motion should be denied. OPG stated that, based on well-established procedure, the motion must be decided based up the evidence filed, but the document itself is not produced until an order has been made that the document is relevant.

The Board will not order production of the documents at this time. The Board will make provision for submissions on the matter, and will hear the motion on Thursday, September 30, 2010.

**THE BOARD ORDERS THAT:**

1. If CCC wishes to file any further material in support of its motion, it shall file such material with the Board and deliver that material to all other parties on or before **Thursday, September 23, 2010**.
2. Parties that are in support of the motion shall file their submissions and motion materials on the matter with the Board and deliver them to CCC, OPG and all other parties on or before **Friday, September 24, 2010**.
3. Parties that oppose the motion shall file their submissions and motion materials on the matter with the Board and deliver them to CCC, OPG and all other parties on or before **Monday, September 27, 2010**.
4. The motion will be heard in the Board's hearing room at 2300 Yonge Street, 25<sup>th</sup> Floor, Toronto, on **Thursday, September 30, 2010** starting at 1:00 p.m. OPG shall bring the subject documents, in sufficient quantities, to the motion hearing in the event that the Board orders the production of the documents.
5. The hearing of evidence in this proceeding will begin on **Monday, October 4, 2010** at 9:30 a.m.

All filings to the Board must quote file number EB-2010-0008, be made through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca). If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

### **ADDRESS**

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

E-mail: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)  
Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656

**ISSUED** at Toronto, September 21, 2010

### **ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary