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April 4, 2014

**RESS, EMAIL (non-confidential information only) AND OVERNIGHT COURIER**

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

Dear Ms. Walli:

**Re: EB-2013-0321 – Application by Ontario Power Generation Inc.  
for 2014-2015 Payment Amounts**

On March 19 and 26, 2014, OPG filed written answers to interrogatories. Approximately 1200 questions, including sub-questions, were asked. Substantially all of the answers were filed on the public record. However, as set out below, OPG seeks confidential treatment of a small portion of its interrogatory evidence under the OEB's Practice Direction on Confidential Filings.

**A. Confidential information ordered protected under Procedural Order No. 4**

In Procedural Order No. 4, the OEB approved OPG's request for confidential treatment of certain tax information and redacted information found in business case summaries, Darlington refurbishment project contracting strategies, business plans, business planning instructions, revenue comparison tables, and the Concentric Energy Advisors engagement letter (collectively "Confidential Information").

Additionally, in its letter dated March 5, 2014, the OEB confirmed that certain redacted information in the above-referenced documents relates solely to OPG's unregulated business and that this information would be permanently redacted for this proceeding (collectively "Permanent Redactions").

In its written answers to interrogatories, the following interrogatory responses include Confidential Information and/or Permanent Redactions:

- Board Staff Interrogatory #4 Attachment 1, found at Ex.L-1.2-1 Staff-004 Attachment 1
- Board Staff Interrogatory #49 found at Ex. L-4.9-1 Staff-049
- Board Staff Interrogatory #50 found at Ex. L-4.9-1 Staff-050
- Board Staff Interrogatory #139 Attachment 1, found at Ex. L-6.9-1 Staff-139 Attachment 1
- AMPCO Interrogatory #4 Attachment 1, found at Ex. L-1.2-2 AMPCO-004 Attachment 1
- AMPCO Interrogatory #71 Attachment 1, found at Ex. L-6.10-2 AMPCO-71 Attachment 1
- ED Interrogatory #11, found at Ex. L-4.12-6 ED-011
- CCC Interrogatory #22, found at Ex. L-6.8-4 CCC-022
- SEC Interrogatory #13, found at Ex. L-1.2-17 SEC-013
- SEC Interrogatory #17, found at Ex. L-1.2-17 SEC-017
- SEP Interrogatory #4, found at Ex. L-6.1-19 SEP-004

Six copies of the confidential, un-redacted interrogatory responses and related attachments are being provided to the OEB with this letter as Attachment "A". The confidential versions of the above responses will be disclosed, subject to any conditions the OEB may find appropriate, to only those persons that filed the OEB's Declaration and Undertaking. Non-confidential versions of these responses have already been filed on the public record.

For Board Staff Interrogatory #4, AMPCO Interrogatory #4, SEC Interrogatory #17, and SEP Interrogatory #4, which contain Permanent Redactions, three fully unredacted copies of the interrogatory response and relevant attachments are sent to the OEB Panel in a sealed envelope marked for the OEB's Consideration Only as Attachment "B". OPG requests that upon the OEB's review of the documents and confirmation that the information constitutes Permanent Redactions, the OEB return the unredacted originals to OPG. In aid of returning the documents to OPG, the documents may be returned to the attention of:

Carlton D. Mathias  
Assistant General Counsel, Law Division  
Ontario Power Generation  
700 University Avenue  
H18G25  
Toronto, ON M5G 1X6

**B. Confidential Information consistent with information protected under Procedural Order No. 4**

OPG requests confidential treatment of certain information filed in interrogatory responses, which is confidential and is similar in sensitivity to information that the OEB has already protected. Specifically, OPG seeks confidential treatment of its written response and the attachments, with respect to:

- Board Staff Interrogatory #76, found at Ex. L-6.3-1 Staff-076
- Board Staff Interrogatory #176, found at Ex. L-7.1-1 Staff-176
- Board Staff Interrogatory #181, found at Ex. L-8.2-1 Staff-181
- AMPCO Interrogatory #81, found at Ex. L-8.1-2 AMPCO-081
- ED Interrogatory #3 Attachment 2, found at Ex. L-2.1-6 ED-003 Attachment 2
- SEC Interrogatory #51, Attachments 1-5, found at Ex. L-4.7-17 SEC-051 Attachments 1-5
- SEC Interrogatory #119, Attachment 1, found at Ex. L-6.8-17 SEC-119 Attachment 1

In accordance with section 5 of the Practice Direction, the reasons for these confidentiality requests are set out below, including:

- (a) the reasons why OPG considers the written responses and/or attachments as confidential;
- (b) the reasons why public disclosure of the information would be detrimental to OPG; and
- (c) for SEC interrogatory #119, the reasons why disclosure to representatives in this proceeding of OPG's unionized employees, namely the Power Workers' Union and Society of Professional Engineers, would be detrimental to OPG even if they were to sign the usual Declaration and Undertaking (the "**Excepted Intervenors**").

In addition, with the exception of SEC Interrogatory #119, six copies of the confidential, un-redacted interrogatory responses and related attachments are being provided to the OEB with this letter as Attachment "C". Non-confidential versions of these responses have been filed on the public record.

As an interim measure, prior to the OEB making its final determination on OPG's request for confidential treatment of Board Staff Interrogatories #76, #176, #181, AMPCO Interrogatory #81, ED Interrogatory #3, and SEC Interrogatory #51, as set out below, OPG is content that the OEB makes provision that intervenors proceed as though OPG's request has been granted as described in Section A of this letter.

For SEC Interrogatory #119, for the reasons that OPG has set out below, OPG requests that the confidential information be first provided to the OEB panel only. This is so that the Panel can determine whether it will grant OPG's request that the subject information be shielded from the representatives of the Excepted Intervenor even though representatives of the Excepted Intervenor have signed the OEB's Declaration and Undertaking. A fully unredacted copy of SEC Interrogatory #119, Attachment 1, is included in Attachment "B".

Board Staff Interrogatory #76

Information redacted in Board Staff Interrogatory #76 found at Ex. L-6.3-1 relates to costs for (i) domestic suppliers of uranium conversion services, and (ii) domestic CANDU fuel bundle manufacturers, for the period 2013 to 2015. This information has been redacted as its content is confidential and commercially sensitive. Its public disclosure would prejudice OPG's competitive position and significantly interfere with its negotiations of future like contracts. The subject information is similar in nature to that which has been protected under Procedural Order No. 4.

Board Staff Interrogatory #176

Information redacted in Board Staff Interrogatory #176, found at Ex. L-7.1-1, is commercially sensitive information relating to OPG's ancillary services revenue contracts with the Independent Electricity System Operator. OPG is bound by confidentiality obligations to the IESO under these contracts and may only disclose the information to other persons if they agree to keep it confidential.

Board Staff Interrogatory #181 and AMPCO Interrogatory #81

Information redacted in Board Staff Interrogatory #181 and AMPCO Interrogatory #81, found at Ex. L-8.2-1 and Ex. L-8.1-2 respectively, relates to low-level waste and intermediate-level waste storage and disposal volumes and rates for third party nuclear facilities. This information was collected by OPG from Bruce Power on a confidential basis and is its proprietary information. According to the terms under which OPG was able to obtain the subject information, OPG is only able to disclose the information if it is protected as confidential by those to whom it is disclosed.

ED Interrogatory #3

ED Interrogatory #3, Attachment 2 found at Ex. L-2.1-6 provides a table showing 2013 values for assets and liabilities of the newly regulated hydroelectric facilities. Long term accrued charges have been redacted from this table since the table includes provisions for amounts still to be negotiated in the future which OPG consistently treats as commercially sensitive information. Disclosure of this information is likely to produce

a significant loss to OPG and interfere with its future negotiations. The OEB previously ordered confidential treatment of this type of information in EB-2010-0008<sup>1</sup>.

SEC Interrogatory #51

SEC Interrogatory #51, Attachments 1-5, found at Ex. L-4.7-17, are internal audit assessments of OPG's project management process and procedures. These audits provide significant benefits to OPG including:

- confirmation that control systems to mitigate business risks are satisfactory
- identification of controls that need improvement
- early detection of problems before they come to the attention of others.

Public disclosure of these audits would very likely discourage OPG employees from candidly disclosing problems or proposing areas for improvement in future audits. This would produce a significant loss to OPG, and ultimately to ratepayers.

SEC Interrogatory #119

SEC Interrogatory #119, found at Ex. L-6.8-17, requests OPG to provide copies of all cost-benefit analyses OPG has conducted to minimize overtime costs. In March 2014, OPG completed the "IMS Overage Usage: Economic Analysis and Recommendations" memo (the "**Analysis**"), a high level preliminary cost benefit analysis in response to the Auditor General's findings on overtime usage.

Based on the information collected and reviewed as part of the Analysis, OPG has listed certain recommendations to help address issues regarding overtime usage. The information contained in the Analysis is likely to be used by OPG in negotiating and seeking future changes necessary to collective bargaining agreements to implement its recommendations. As such, OPG believes the content of the Analysis to be commercially sensitive and disclosure of this commercially sensitive information, to the public in general and to the Excepted Intervenors in particular, would prejudice OPG's competitive position in relation to future negotiations, including collective bargaining efforts.

In previous requests for confidential treatment, OPG has asked that as an interim measure the OEB make provision that intervenors proceed as though OPG's request has been granted.

In this instance, since OPG believes that disclosure of the Analysis to the Excepted Intervenors, even on a confidential basis, would be detrimental to OPG, OPG asks that as an interim measure, and prior to final determination by the OEB, the information for which confidentiality is being requested remain for the OEB's consideration only.

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<sup>1</sup> See letter from Board Secretary dated December 2, 2010 in respect of Undertaking J10.8.

On a final determination, should the OEB grant OPG's request for confidentiality, OPG proposes that the OEB order that the confidential information be disclosed, subject to any conditions the OEB may find appropriate, to those persons that have signed the Declaration and Undertaking, but excluding the Excepted Intervenors. OPG notes that the OEB has previously applied its confidentiality procedures so as to specifically protect certain information from disclosure to certain classes of persons while permitting disclosure to all others involved in the proceeding.<sup>2</sup>

Furthermore, OPG requests that any reference to confidential information contained in the Analysis be conducted *in camera*, in the absence of the Excepted Intervenors, so as to preserve its confidential nature.

### **C. Conclusion**

At the conclusion of the proceeding or in the event that all or part of this confidentiality request is refused, OPG requests that accordingly, the information be withdrawn in accordance with 5.1.12 of the Practice Direction, and that all persons in possession of the information be required to destroy or return to the OEB Secretary for destruction the confidential information in accordance with 6.1.6 of the Practice Direction.

Respectfully submitted,

[Original signed by]

Colin Anderson  
Director, Ontario Regulatory Affairs  
Ontario Power Generation

cc: Carlton Mathias OPG  
Charles Keizer Torys LLP  
Intervenors of Record (EB-2013-0321)

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<sup>2</sup> See EB-2007-0063, Decisions with Reasons, dated July 21, 2010:

"In order to proceed in an efficient fashion, at the outset of the proceeding after hearing all parties' submissions on the issue of confidentiality, the Board ruled that it would hear all of the evidence in camera and make a decision after hearing all of the evidence as to what information should be disclosed publicly. The Board specifically excluded vendors of smart meter systems and all utilities other than the thirteen applicants. All other parties were eligible to attend the in camera proceeding and have access to confidential transcripts, provided that they signed the Board's standard form of Declaration and Undertaking for maintaining confidentiality."