

**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.

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**POWER WORKERS' UNION  
DOCUMENT COMPENDIUM**

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May 8, 2014

**Paliare Roland Rosenberg Rothstein LLP**  
155 Wellington Street West  
35<sup>th</sup> Floor  
Toronto, ON M5V 3H1

**Richard P. Stephenson** (LSUC #28675D)  
Tel.: 416.646.4325  
email: richard.stephenson@paliareroland.com

Fax: 416.646.4301

Tab 1



## Jay Shepherd

Professional Corporation  
2300 Yonge Street  
Suite 806, Box 2305  
Toronto, ON M4P 1E4

**BY EMAIL and RESS**

May 1, 2014  
Our File: EB20130321

Ontario Energy Board  
2300 Yonge Street  
27th Floor  
Toronto, Ontario  
M4P 1E4

**Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

**Re: EB-2013-0321– OPG 2014-15 – Notice of Motion**

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Rule 27.03 of the Board's *Rules of Practice and Procedure*, please find enclosed SEC's Notice of Motion seeking full and adequate responses to certain interrogatories. SEC acknowledges that OPG's forthcoming undertaking responses may have an effect on some of the relief sought in the Notice of Motion. If they do, SEC will file an Amended Notice of Motion by May 6<sup>th</sup>.

Yours very truly,  
**Jay Shepherd P.C.**

*Original signed by*

Mark Rubenstein

cc: Wayne McNally, SEC (by email)  
Applicant and Intervenor (by email)

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

**AND IN THE MATTER OF** an Application Ontario Power Generation  
Inc. for an order or orders approving payment amounts for prescribed  
generating facilities commencing January 1, 2014.

**AND IN THE MATTER OF** Rule 27 of the Board's *Rules of Practice  
and Procedure*.

## NOTICE OF MOTION

The School Energy Coalition ("SEC") will make a motion to the Ontario Energy Board ("the Board")  
at its offices at 2300 Yonge Street, Toronto, on a date and at a time to be fixed by the Board.

### PROPOSED METHOD OF HEARING:

SEC requests this motion be dealt with orally.

### THE MOTION IS FOR:

1. An order requiring Ontario Power Generation Inc. to provide a full and adequate response to the  
following interrogatories:<sup>1</sup>
  - 1.1-CME-1
  - 1.2-AMPCO-5
  - 1.2-SEC-3
  - 1.2-SEC-4
  - 1.4-SEC-20
  - 3.1-SEC-25
  - 6.2-SEC-84
  - 6.8-SEC-116/1.2-CCC-5
  - 6.8-SEC-118
2. Such further and other relief as the SEC may request and the Board may grant.

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<sup>1</sup> See Appendix A

**THE GROUNDS FOR THE MOTION ARE:**

1. The Board issued a Notice of Proceeding on an application by Ontario Power Generation Inc. (“OPG”) pursuant to section 78.1 of the *Ontario Energy Board Act, 1998* for an order or orders approving just and reasonable payment amounts for prescribed generating facilities commencing January 1, 2014.
2. SEC is an intervenor in this proceeding. Pursuant to Procedural Order #1 issued December 20<sup>th</sup> 2013, SEC delivered written interrogatories to OPG.
3. Rule 27.03 of the Board’s *Rules of Practice and Procedure* provides that a party may bring a motion seeking direction from the Board if it is not satisfied that a party has provided “full and adequate response to an interrogatory.”<sup>3</sup> SEC brings this motion because OPG has not provided full and adequate responses to a number of interrogatories that requested information relevant to the issues to be decided in this proceeding.

***Refusals Based on No Impact on the Test Period***

4. OPG has refused to answer a number of interrogatories on the basis that the information sought relates to costs that go beyond the test period, and therefore the information is not relevant. SEC submits that this is an inappropriate and unduly narrow interpretation of relevance in payment amounts proceedings. While OPG is only seeking approval of payment amounts for 2014-15, for the Board and intervenors to determine the reasonableness of those forecast costs, those costs must be put within the broader context of OPG’s longer term business planning. Long-term planning and other information beyond the test period is regularly provided to the Board.<sup>4</sup>
5. ***1.2-AMPCO-5*** The interrogatory seeks information about OPG’s 10 year business outlook. This information is important to understanding whether OPG’s proposed 2014-2015 capital and operating expenditures are appropriately paced. Further, this is particularly important with respect to OPG’s hydroelectric facilities, as this payment amount application will be the base year for OPG’s first hydroelectric incentive regulation application.<sup>5</sup>

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<sup>3</sup> Ontario Energy Board, *Rules of Practice and Procedure* (as revised on April 24, 2014)

<sup>4</sup> See for example Enbridge Gas Distribution’s Strategic Plan (EB-2012-0459, J1.4-Attachment 1)

<sup>5</sup> *Report of the Board: Incentive Rate-making for Ontario Power Generation’s Prescribed Generation Assets* (EB-2012-0340) at p.8. Also see Issue 11.1, “Has OPG responded appropriately to Board direction on establishing incentive regulation?”

6. **6.8-SEC-118** SEC sought a copy of the OPG's 2011 review of its pension and benefits plan. OPG refused to provide it on the basis that the "review results in no cost implications for the test period 2014-2015 as none of the elements of the review form part of the current plan." While OPG may not propose to implement any potential changes to its pension and benefits plan in the test period, it may ultimately be appropriate for them to have done so. There is little doubt that pension costs will be an important issue in this proceeding, so this information is clearly relevant.

### ***Refusals to Produce Benchmarking Information***

7. The Board has recognized the importance of benchmarking in applications for payment amounts. Three issues on the Approved Issues List<sup>6</sup> explicitly involve benchmarking, and OPG itself has accepted benchmarking as an important way to measure the reasonableness of its costs.<sup>7</sup> While OPG has provided some benchmarking information in its Application, SEC sought additional benchmarking information. OPG has not provided that information.
8. **6.2-SEC-84** OPG has presented certain hydroelectric benchmarking information in its application.<sup>8</sup> SEC sought all documents, reports, presentations and other analysis of that benchmarking, so that SEC and the Board could review the entire information, not just the selected information provided in OPG's application. In its response, OPG stated that it does not actually have any benchmarking reports prepared specific to its hydroelectric facilities by third parties. All that it has is data provided confidentially to OPG by those parties.
9. At the Technical Conference, counsel for SEC followed up and asked in what format the information from three specific benchmarking surveys<sup>9</sup> referenced in the interrogatory were provided to OPG.<sup>10</sup> OPG's witness responded that they are provided with the data by way of a spreadsheet. SEC sought a copy of those spreadsheets, but OPG refused on the basis that the information is confidential, and that approval was required by the different third-party benchmarking providers.<sup>11</sup>

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<sup>6</sup> Issue 6.2 "Is the benchmarking methodology reasonable? Are the benchmarking results and targets flowing from those results for the regulated hydroelectric facilities reasonable?" Issue 6.4 "Is the benchmarking methodology reasonable? Are the benchmarking results and targets flowing from those results for the nuclear facilities reasonable?" Issue 11.1 "Has OPG responded appropriately to Board direction from the previous proceeding regarding benchmarking of generation performance with an intention to establishing incentive regulation?"

<sup>7</sup> For example see: Nuclear staffing (Ex. F5/1/1), Compensation (Ex.F5/4/Attachment 1), Information Technology (Ex.F3/1/1/p.6), Finance corporate costs (Ex.F3/1/1/p.11-12)

<sup>8</sup> Ex.F1/1/p.11-22

<sup>9</sup> EUCG Inc., Navigant Consulting (GKS Hydro Benchmarking), Canadian Electricity Association

<sup>10</sup> Technical Conference Transcript, Vol 1, pages 67-68 (See Appendix B)

<sup>11</sup> *Ibid*

10. A contractual agreement between a utility and a third-party is not a valid reason for non-disclosure of relevant information. The Board has on numerous occasions<sup>12</sup> stated that it is not bound by confidentiality agreements between utilities and third-parties, most recently in EB-2013-0115:

Distributors cannot limit or exclude the Board's jurisdiction by private agreements amongst themselves or with third parties. The Board has often stated that distributors must be cognizant of this when entering into confidentiality agreements with third parties that extend to the provision of information and documents that the utility knows or ought to know may be reasonably required to be produced as part of the regulatory process.<sup>13</sup>

11. The fact that the OPG has a confidentiality arrangement with third-parties restricting disclosure is only relevant to its potential confidentiality treatment under the Board's rules. OPG has the ability to seek to have any document it is asked to produce treated as confidential pursuant to the *Practice Direction on Confidential Filings*. The appropriate response, in those circumstances, is not a refusal. It is a full and complete response, coupled with a request to the Board for confidentiality treatment.

***Refusal to Produce the KPMG Efficiency Review Report***

12. **6.8-SEC-116/1.2-CCC-5** Both of these interrogatories sought disclosure of a report undertaken by the Ministry of Energy and relied upon by OPG. This report (the "KPMG Efficiency Review") apparently assesses OPG's existing benchmarking studies, and identifies organizational and structural opportunities for savings. In its response to the interrogatory, OPG refused to provide the report on the basis that it does not own it. It also stated that it had made a request to the Ministry of Energy for permission to submit the report as part of these proceedings. SEC followed up at the Technical Conference, and OPG maintained its objection to producing it.<sup>14</sup>
13. SEC submits that if a party possesses a copy of a relevant document, which OPG stated it presumes it does<sup>15</sup>, then it must provide a copy of it regardless of ownership. The information is important information to help parties and the Board determine the adequacy of OPG's benchmarking studies, and if there are potential organizational and structural opportunities for cost savings. OPG itself relies on the information in its application and even quotes directly from it.<sup>16</sup> It also relies on the report for the purposes of its response to the Auditor General's Report.<sup>17</sup>

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<sup>12</sup> Also see *Decision on Phase 1 Partial Decision and Order: Production of Documents* (EB-2011-0140), dated June 14 2012, at p.3. Motion Hearing Transcript, dated October 23 2012 (EB-2012-0031) at p. 28. *Decision on Confidentiality* (EB-2011-0123), dated August 19, 2011 at p. 3

<sup>13</sup> *Procedural Order No. 4* (EB-2013-0115), dated March 19 2014 at p.4

<sup>14</sup> Technical Conference Transcript Vol 2, p.76-77 (See Appendix C)

<sup>15</sup> *Ibid*

<sup>16</sup> Ex.A4/1/1/p.2

<sup>17</sup> Auditor General's 2013 Annual Report at p.162 (KT2.4)

14. The KPMG Efficiency Review goes directly to the issue of the reasonableness of OPG's costs, and therefore is a relevant and material document in this proceeding. Ownership of a relevant specific document in the possession of a utility may be a reason for the Board to treat it as confidential, but it is not a reason to refuse to produce it.

***Refusals Related to Relevant Communications with its Board of Directors and Shareholder***

15. ***1.1-CME-1*** The interrogatory sought information provided to OPG's Board of Directors, and resulting comments and directions provided back to OPG management regarding the 2013 Auditor General's Report. OPG refused to provide the information on the basis that since the Auditor General's Report was issued after OPG's Application and Impact Statement, therefore there is no link between that information and the Application.
16. SEC submits that the information is relevant to this proceeding and should be provided. The 2013 Auditor General's Report makes significant observations and recommendations about OPG's compensation costs. Parties and the Board must determine if the steps OPG is taking are appropriate, and what effect they actually may have on its 2014-2015 forecasted costs. A key aspect of that is to understand what information management provided to the Board, and what information and direction were provided back to management.
17. ***1.2-SEC-4*** Pursuant to its Memorandum of Understanding with its shareholder, OPG and its shareholder are required to provide "timely reports and information on major developments and issues" to each other. In its interrogatory, SEC sought the last five of these reports provided by OPG to the shareholder and the last five reports provided to the shareholder by OPG. OPG refused to provide that information on the basis that the information was not relevant since the documents form no part of the Application and to the "extent that any of the major developments and issues have impacted OPG's test period revenue requirement, they are fully discussed in OPG's Application." OPG maintained its refusal at the Technical Conference.<sup>18</sup>
18. SEC submits the information is both relevant and probative. OPG's spending responds not just to formal shareholder Directives, but also to information provided by its shareholder through this method of formalized communication, and developments identified by OPG that were sufficiently major to report to its shareholder.

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<sup>18</sup> Technical Conference Transcript Vol 2, p.98-99 (see Appendix D)



19. Both of OPG's objections to producing this information are without merit. First, failure by OPG to include major developments in its Application is not determinative of whether they should have been addressed in this Application, and in the operating plan for 2014-2015. That should be determined by the Board. Second, to the extent that OPG did include descriptions of major developments in its Application, it is neither normal practice, nor appropriate, for the Board to simply accept the Applicant's descriptions at face value. The Board has an obligation to look beyond those explanations and descriptions, testing them against external data and other sources. Original source documents, such as this kind of report, are an important method for the Board to test key aspects of the Application. They are a fundamental part of the Board's process.
20. *1.4-SEC-20* SEC sought a copy of all documents provided to OPG's Board of Directors in approving this Application. OPG has refused on the basis of relevance and litigation privilege. In doing so it quoted the decision of the Board on a motion brought in EB-2010-0008. SEC notes that the circumstances and the request in this interrogatory are different than the basis for the Board's decision in EB-2010-0008. In this case, an increase of almost 30% is being proposed, and there are a number of increasingly material issues surrounding the Applicant's cost control initiatives. The integration of cost control successes and failures with a request for increased rates will be a central element in the Board's consideration of this Application. The relevant trade-offs between cost control and price increases will likely be described in the materials provided to the Board of Directors, and can be just as much of assistance to this Board as it is to the OPG directors.
21. The information is important to parties and intervenors in understanding, not just how OPG's Board of Directors provide oversight and what information is provided to do so, and not just for individual line items, but also the ultimate payment amounts. This Application contains a significant increase in payment amounts for OPG's prescribed facilities, driven by a very significant increase in forecast costs. Information provided to OPG's Board of Directors about its approval of the overall increase is relevant and will assist the Board.
22. SEC is not seeking information on hearing strategy or "likely prospects for success analysis", and would not object to that information being redacted.

***Refusal Related to Actual Capital Structure***

23. *3.1-SEC-25* SEC sought documents related to OPG's expected, planned or forecasted debt/equity ratio for the period of 2014-2018. OPG's response provides only information regarding its regulatory debt/equity ratio. SEC submits OPG should be required to provide information not just about its

regulatory debt/equity ratio but also its actual planned debt/equity ratio. A material issue in this proceeding is the impact, if any, of the inclusion of the newly-regulated hydroelectric facilities on the appropriate equity thickness for the Applicant. Internal analysis of how the change of those assets from unregulated to regulated will impact actual financial strategy and will assist the Board in understanding the appropriate equity thickness that should be included for the purpose of calculating revenue requirement.

24. Such further and other grounds as counsel may advise and the Board permits.

**THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON  
AT THE HEARING OF THE MOTION:**

1. The Record in EB-2013-0321
2. Such further and other material as counsel may advise and the Board may permit.

**May 1, 2014**

**Jay Shepherd Professional Corporation**  
2300 Yonge Street  
Suite 806  
Toronto, Ontario M4P 1E4

**Jay Shepherd**  
jay.shepherd@canadianenergylawyers.com  
**Mark Rubenstein**  
mark.rubenstein@canadianenergylawyers.com  
Tel: 416-483-3300  
Fax: 416-483-3305

Counsel to the School Energy Coalition

**TO: Ontario Energy Board**  
2300 Yonge Street, Suite 2701  
Toronto, ON M4P 1E4

Tel: 416-481-1967  
Fax: 416-440-7656

**AND TO: Ontario Power Generation**  
H18 G2  
700 University Avenue  
Toronto ON M5G 1X6

**Colin Anderson**  
Tel: 416-592-3326  
Fax: 416-592-8519

**AND TO: Torys LLP**  
79 Wellington St. W  
PO Box 270  
Toronto Dominion Centre Toronto  
Toronto ON M5K 1N2

**Charles Keizer/Crawford Smith**  
Tel: 416-865-0040  
Fax: 416-865-7380

Counsel to the Applicant

**AND TO: Intervenors**

A

**CME Interrogatory #001**

**Ref:** 2013 Annual Report of the Office of the Auditor General of Ontario (December 10, 2013)

**Issue Number:** 1.0

**Issue:** General

**Interrogatory**

CME wishes to better understand the process undertaken by OPG following the release of the Annual Report of the Office of the Auditor General of Ontario on December 10, 2013. To this end:

(a) Please provide all presentations, PowerPoint slides, briefing notes, or other written memoranda prepared by OPG for OPG's Board of Directors relating to that Report of the Auditor General; and

(b) Please provide all written questions, comments or directions provided by OPG's Board of Directors to OPG relating to that Report of the Auditor General.

**Response**

Attachment 1 summarizes OPG's ongoing actions in response to the Auditor General's Report.

The Auditor General's Report was issued months after OPG filed its Application and after the filing of OPG's Impact Statement.

Therefore, any attempt to link the potential outcomes from these responsive actions to changes in OPG's 2014 -2015 costs would be speculative at this point. Many of the actions are still being developed. Moreover, full implementation of these actions would require changes in OPG's collective agreements. Even for non-represented employees, notice may be required before the most significant changes could be made. Thus, OPG declines to produce the requested materials on grounds of relevance.

Dec. 10, 2013

### OPG SUMMARY OF KEY ACTIONS 2013 AUDITOR GENERAL REPORT ON HUMAN RESOURCES POLICIES

The Auditor General's report covers a 10-year time period. In some cases the report highlights areas which OPG already had identified and has since addressed, or is currently addressing. In other areas it provides insights into issues the company will act upon and will report back openly and quickly.

In 2010 OPG initiated a business transformation to address culture and process change to ensure OPG meets the expectations and needs of the ratepayers. Since December 2012 the number of senior managers has gone down by six per cent, and since 2010, there's been a nine per cent drop in total base salary costs for management. We will also save an estimated \$1 billion over six years (2011-2016) by reducing the overall headcount, from ongoing operations, by 2,330 or 20 per cent of 2011 levels. The departure of 1,500 people since January 2011 has already saved \$275 million.

We are continuing that transformation, which was recognized by KPMG as the right way to address the needed change. The Ministry of Energy engaged KPMG to assess OPG's existing benchmark studies and to identify organization and structural opportunities for cost savings. KPMG's report validated OPG's business transformation initiative and its objectives.

*"KPMG believes that OPG has employed a systematic and structured approach to developing a company-wide transformation plan. OPG has incorporated many leading practices for implementing a large business transformation such as assigning dedicated staff to implement the transformation, establishing a program management office, incorporating change management with a focus on cultural change and incorporating business transformation milestones into executive performance plans."* KPMG Dec. 6, 2012.

The following is a summary of key actions OPG is taking (or has taken) to address the findings. A more detailed list of actions will be posted on our website later this week. In the coming weeks and months it will be updated to show our progress.

ACTIONS – PLANNED AND UNDERWAY	PLANNED COMPLETION DATE
<b>Executive and Senior Management Staffing Levels</b> <ul style="list-style-type: none"> <li>Decrease senior management headcount in proportion to overall headcount reductions. (Reduced by 6% since Dec. 2012).</li> <li>New senior executives continue to receive lower</li> </ul>	<p>2016</p> <p>Ongoing</p>

<p>compensation than their predecessors. Hiring of all director and above positions will require CEO approval.</p> <ul style="list-style-type: none"> <li>Reduce headcount by a further 830, for a total reduction of 2,330 and \$1B savings by 2016.</li> </ul>	<p>2016</p>
<p><b>Benchmarking of Staffing Levels at Nuclear Facilities</b></p> <ul style="list-style-type: none"> <li>Business plans to define continuing actions to move from current 8% over benchmark to benchmark (down from 17% over in Feb. 2012).</li> <li>CNSC and other external peer groups confirm OPG continues to ensure strong nuclear safety and operational performance.</li> </ul>	<p>2016</p> <p>Ongoing</p>
<p><b>Recruitment Practices and Requirements</b></p> <ul style="list-style-type: none"> <li>Centralized recruitment function to improve controls, compliance and efficiency of hiring processes.</li> <li>Amend Code of Conduct to clarify expectation regarding hiring policies. Failure to follow policy will result in disciplinary action.</li> <li>Conduct compliance reviews for internal/external vacancies.</li> <li>Reviewed all groups with same addresses to ensure valid hiring process was followed.(reviewed 284 files from 2011, 2012; no documentation retained for others beyond two years; found 4 cases without proper documentation).</li> </ul>	<p>Complete</p> <p>Q1 2014</p> <p>Ongoing</p> <p>Complete</p>
<p><b>Compensation and Incentive Awards</b></p> <ul style="list-style-type: none"> <li>Implement outcomes of government legislation to regarding broader public sector executive compensation.</li> <li>Reduce headcount by additional 830 for total reduction of 2,330 and \$1B savings by 2016 (already achieved 1,500 reduction since Jan. 2011);</li> <li>Reduce all management AIP for 2013 by 10%. Board to review AIP program for 2014 and beyond.</li> <li>Continue to seek collective agreements that reflect OPG business objectives and government compensation constraints.</li> <li>Reduced base salary costs for management by 9%</li> </ul>	<p>Contingent on government legislation</p> <p>2016</p> <p>Q1 2014</p> <p>Ongoing</p> <p>Completed. Further reductions ongoing.</p>

<p>compared to 2010.</p> <p>Attachment 1</p>	
<p><b>Employee Housing and Moving Allowance</b></p> <ul style="list-style-type: none"> <li>• Adopt Ontario Public Service Relocation policy for management employees.</li> <li>• Conduct review of practices and controls related to employee relocation, including a review of practices for guarantee house values.</li> <li>• Review OPS relocation policy against collective agreements to determine what if any changes are required.</li> </ul>	<p>Q1 2014</p> <p>Q1 2014</p> <p>Coterminous with collective bargaining</p>
<p><b>Security Clearance Requirements</b></p> <ul style="list-style-type: none"> <li>• Review security clearance requirements for non-nuclear employees to ensure appropriate levels in place.</li> <li>• Implement enhanced compliance monitoring method.</li> <li>• Implemented controls to ensure immediate security clearance compliance for new hires and ongoing compliance for existing employees.</li> <li>• CNSC, CSIS audits validate that OPG has an industry-leading nuclear security clearance program. All employees who require access to nuclear site or sensitive nuclear information have appropriate clearance. All board members at the time of the AG audit now have security clearance.</li> </ul>	<p>Q1 2014</p> <p>Q3 2014</p> <p>Complete</p>
<p><b>Pensions and Benefits</b></p> <ul style="list-style-type: none"> <li>• Begin implementation of Board directed management pension and benefits reforms.</li> <li>• Participate in Province's review of electricity sector pension plan reforms.</li> <li>• Any changes to pension and benefits for unionized staff will be a matter for future rounds of collective bargaining.</li> </ul>	<p>Q1 2014</p> <p>TBC – dependent on Ministry of Finance</p> <p>Coterminous with collective bargaining</p>
<p><b>Managing Contractors and Overtime</b></p> <ul style="list-style-type: none"> <li>• Conduct comprehensive assessment of contractor control framework, including contract structures, time capture and approval processes and tools.</li> <li>• Implement time tracking system for contractors at nuclear sites.</li> </ul>	<p>Q2 2014</p> <p>Q1 2014</p>



<ul style="list-style-type: none"><li>• Implemented enhanced management approvals and controls to limit individual overtime in Nuclear.</li></ul>	Completed
<b><i>Use of Non Regular Staff and Contract Resources</i></b> <ul style="list-style-type: none"><li>• Strengthen business case requirements and approvals for hiring retirees as contractors.</li><li>• Strengthen succession planning and develop knowledge transfer plans for critical roles.</li></ul>	 Q2 2014  Q4 2014

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For more information, please contact:

Ontario Power Generation  
Media Relations  
416-592-4008 or 1-877-592-4008  
Follow us @ontariopowergen

**AMPCO Interrogatory #005**

**Ref:** Exhibit A2, Tab 2, Schedule 1, Page 2

**Issue Number:** 1.2

**Issue:** Are OPG's economic and business planning assumptions for 2014-2015 appropriate?

**Interrogatory**

**Preamble:** OPG indicates its overall generation capacity will decline by 25 per cent between 2015 and 2020 as the remaining coal units retire and the Pickering nuclear plant ceases operations around 2020.

In considering the above, please discuss OPG's longer term 10 year business plan outlook including emerging issues and proposed spending levels beyond 2016 and include any supporting materials such as memorandums, reports and presentations to OPG's Board of Directors that address this issue.

**Response**

Information beyond the 2014 / 2015 test period does not impact the setting of rates for this application and, therefore, is not relevant.

**SEC Interrogatory #003**

**Ref:** A1-4-1/p.3

**Issue Number:** 1.2

**Issue:** Are OPG's economic and business planning assumptions for 2014-2015 appropriate?

**Interrogatory**

Please provide the most recent "3-5 year investment plan" referred to. Please provide all presentations, memoranda or other documents used to explain that investment plan to the Applicant's Board of Directors, to the Shareholder, or to the Minister of Finance.

**Response**

See Ex. L-01.2-17 SEC-002.

**SEC Interrogatory #004**

**Ref:** A1-4-1/p.3

**Issue Number:** 1.2

**Issue:** Are OPG's economic and business planning assumptions for 2014-2015 appropriate?

**Interrogatory**

Please provide the last five "timely reports and information on major developments and issues" provided by OPG to the Shareholder pursuant to section E1. Please provide the last five reports under that section provided by the Shareholder to OPG.

**Response**

OPG declines to produce the requested documents on the basis of relevance. These documents formed no part of OPG's Application and have no probative value in deciding it. To the extent that any of the major developments and issues have impacted OPG's test period revenue requirement, they are fully discussed in OPG's Application.

**SEC Interrogatory #020**

**Ref:**

**Issue Number:** 1.4

**Issue:** Is the overall increase in 2014 and 2015 revenue requirement reasonable given the overall bill impact on customers?

**Interrogatory**

Please provide a copy of all documents provided to the Board of Directors in approving this application.

**Response**

OPG declines to provide the requested documents on the basis of relevance and litigation privilege. The same type of material was requested in EB-2010-0008. The OEB Panel in that proceeding decided that the requested material was not relevant, stating:

The Board has decided not to order production of the materials sought in the CME and CCC motions. In the Board's view, these materials are not relevant to the determination of the issues before the Board in this proceeding. The Board will make its decision on the application and supporting materials filed by the applicant and the evidence of intervenors, all of which is subject to cross-examination.

This evidence goes to the financial and operational impacts of the application and of the alternatives which have been considered.

The material which has been sought through the motions includes the communication between OPG's management and its board of directors, seeking approval to file the application, delegated authority to deal with the proceeding, and the analysis of "likely prospects for success." This material does not form part of the application and does not enhance nor detract from the merits of the application. The evidence is that no changes to the business plans and budgets which underpin the application were sought or made as a result of the board of directors' meeting. These plans and budgets have been filed.

Intervenors can explore, through the witness, whether alternatives to the application should have been considered, and the impacts of OPG's choices. None of this relies on what management presented to the board of directors.

Having found that the materials are not relevant and need not be produced, the question of privilege will not be addressed.

That concludes the Board's decision, and subject to any questions, we can continue with the cross-examination. **EB-2010-0008, Tr. Vol. 1, pages 113-114.**

**SEC Interrogatory #025**

**Ref:** A1-2-2/p.1

**Issue Number:** 3.1

**Issue:** What is the appropriate capital structure and rate of return on equity for the currently regulated facilities and newly regulated facilities?

**Interrogatory**

Please provide all studies, analyses, forecasts, presentations or other documents relating in whole or in part to the Applicant's expected, planned or forecast debt/equity ratio over the period 2014-2018.

**Response**

For regulatory accounting, reporting and ratemaking purposes the expected/planned/forecast debt/equity ratio is the 53/47 debt/equity ratio approved by the OEB. The only document related to OPG's approved debt/equity ratio was provided in Ex. L-03.1-17 SEC-024.

**SEC Interrogatory #084**

**Ref:** F1/1/1/p.12

**Issue Number:** 6.2

**Issue:** Is the benchmarking methodology reasonable? Are the benchmarking results and targets flowing from those results for the regulated hydroelectric facilities reasonable?

**Interrogatory**

Please provide copies of all documents, reports, presentations, and any other analysis for hydroelectric benchmarking undertaken by OPG, including without limitation those conducted by:

- (a) EUCG Inc.
- (b) Navigant Consulting (GKS Hydro Benchmarking)
- (c) Canadian Electrical Association ("CEA")

**Response**

OPG does not have any benchmarking reports prepared specific to OPG's hydroelectric facilities by third parties as contemplated by this interrogatory. OPG conducts benchmarking specific to its hydroelectric facilities using data provided confidentially by these parties. The result of this work is reflected in OPG's evidence.

One of the most important factors in successful benchmarking is the ability to collect significant number of data points (plants) to ensure conclusions derived from the data are representative. OPG's participation in EUCG, Navigant and CEA benchmarking programs ensures comparisons with a broad representative population and data. All three organizations extensively vet the data submitted by utilities for consistency, continuity and reasonableness.

Additional value of participation in the programs comes from interfacing with other utilities at annual or semiannual meetings. It not only allows for better insight into the reported numbers, but also for comparing maintenance or operational best practices that may be applicable to their utilities to reduce costs and/or improve reliability.

The following is additional information to what has already been provided respecting the benchmarks provided by OPG in the Ex. F1-1-1 evidence:

- We have shown costs at the top level of aggregation (i.e., total OM&A) since accuracy is generally better when costs are aggregated at the higher levels (due to allocations required for the more granular analyses), and total OM&A cost best correlates to electricity rates and overall cost metrics used by most utilities. Notwithstanding this, OPG also examines subcategories of total OMA such as operations, maintenance, and administration.

- 1 • We have presented costs per unit of energy because this cost is most closely linked to  
2 electricity rates.
- 3
- 4 • We have excluded Gross Revenue Charge and water rental fees as these costs are not  
5 under OPG control, are not applicable in other jurisdictions, vary with production, and would  
6 overshadow controllable costs.
- 7
- 8 • In Chart 4, we created "OPG data points" by combining appropriate costs for all six or five  
9 OPG plants and dividing it by the sum of MWh generation, to provide overall comparisons.  
10 This is consistent with the past two applications.
- 11
- 12 • We have used availability factor ("AF") and equivalent forced outage rates ("EFOR") to rank  
13 reliability of OPG plants. The reason is that these are standard measures used in the  
14 industry.
- 15
- 16 • Since there are often "trade offs" between cost efficiency and reliability performance, we  
17 have prepared Chart 6 from the data. This shows OPGs previously and newly regulated  
18 plants in availability versus cost quadrants (four quadrants are created by appropriate  
19 medians).
- 20
- 21 • With regard to employee safety, we have shown standard Canadian industry safety  
22 measures: All Injury Rate ("AIR") and Accident Severity Rate ("ASR") (from CEA Incident  
23 Statistics Report).



**SEC Interrogatory #116**

**Ref:** Auditor General's 2013 Annual Report/p.162

**Issue Number:** 6.8

**Issue:** Are the 2014 and 2015 human resource related costs (wages, salaries, benefits, incentive payments, FTEs and pension costs) appropriate?

**Interrogatory**

In response to Recommendation 1, OPG stated that: "In 2012, the Ministry of Energy engaged a consulting firm to assess OPG's existing benchmarking studies, and to identify organization and structural opportunity for savings". Please provide a copy of the referenced report.

**Response**

OPG does not own the referenced report. A request has been made to the Ministry of Energy for permission to submit the report as part of these proceedings. The response to that request is pending.

**CCC Interrogatory #005**

**Ref:** Ex. A4/T1/S1/p. 2

**Issue Number:** 1.2

**Issue:** Are OPG's economic and business planning assumptions for 2014-2015 appropriate?

**Interrogatory**

Please provide a copy of the KPMG Efficiency Review of OPG.

**Response**

Please see Ex L-6.8-17 SEC-116.

**SEC Interrogatory #118**

**Ref:** Auditor General's 2013 Annual Report/p.171

**Issue Number:** 6.8

**Issue:** Are the 2014 and 2015 human resource related costs (wages, salaries, benefits, incentive payments, FTEs and pension costs) appropriate?

**Interrogatory**

Please provide a copy of the 2011 review of OPG's pension and benefit plan.

**Response**

OPG declines to provide the review requested on the basis that it is not relevant to the Application. The review results in no cost implications for the test period 2014 – 2015 as none of the elements of the review form part of the current plan.

**B**

1           RE: WHETHER AN MNR-APPROVED AMOUNT WOULD BE CREDITED  
2           TO RATEPAYERS AND HOW THAT CREDIT WOULD WORK WITHIN A  
3           POTENTIAL HYDROELECTRIC IRM.

4           MR. RUBENSTEIN: If I could just ask sort of one more  
5 question, you will probably want to work it into the  
6 undertaking.

7           I would also ask: How would that work, if OPG is  
8 expecting to credit that to ratepayers? How would that  
9 work within a potential hydroelectric IRM?

10          MR. SMITH: Well, sure, we can consider that. I don't  
11 think we know the answer, but we can certainly consider  
12 what we don't know.

13          MR. MILLAR: So that will be wrapped up in the same  
14 undertaking?

15          MR. SMITH: Yes.

16          MR. RUBENSTEIN: If I could take you to SEC 84, this  
17 is 6.2.17.SEC84. In the interrogatory, we asked you to  
18 sort of provide the reports or the documents with respect  
19 to three benchmarking studies that OPG refers to in its  
20 evidence.

21          And OPG essentially says they don't have any reports  
22 that were prepared specific to OPG's hydroelectric  
23 facilities by third parties as contemplated by the  
24 interrogatories.

25          I was wondering, what format do you receive the  
26 information for these three benchmarking surveys or  
27 studies?

28          MR. MAZZA: Well, the information that we get is

1 masked. So we have data, data and spreadsheets, and  
2 basically that information is masked, so you don't know  
3 which utility relates to what piece of information.

4 MR. RUBENSTEIN: But you receive -- they come in a  
5 spreadsheet format, essentially?

6 MR. MAZZA: Basically a spreadsheet format.

7 MR. RUBENSTEIN: And are you able to provide those  
8 spreadsheets?

9 MR. MAZZA: As mentioned, the information is  
10 confidential. We would have to get approval from the  
11 different benchmarking companies to release any  
12 information.

13 MR. RUBENSTEIN: Can you please provide those  
14 spreadsheets?

15 MR. SMITH: No, we're not going to do that.

16 MR. RUBENSTEIN: Thank you. Those are my questions.

17 MR. MILLAR: Thank you, Mr. Rubenstein.

18 I think we are moving to Staff now, and we will start  
19 with Mr. Battista.

20 **QUESTIONS BY BOARD STAFF:**

21 MR. BATTISTA: I guess it is afternoon now, so good  
22 afternoon, panel. I would like to take you to Exhibit L,  
23 tab 4.2, Staff 19.

24 MR. SMITH: Before we go to Staff, I take it  
25 Sustainability Journal doesn't have any questions, then?

26 MR. MILLAR: Yes, Mr. Tolmie, can you confirm you  
27 don't have questions for this panel?

28 MR. TOLMIE: Yes.

---

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C

1           UNDERTAKING NO. JT2.11: TO IDENTIFY THE CHANGES TO  
2           SURVEY METHODOLOGY MADE AS A RESULT OF STAKEHOLDER  
3           INPUT BETWEEN THE FIRST AND LAST SURVEYS.

4           MR. SHEPHERD: The next one is 6.8, SEC 116. So this  
5 is the KPMG report, right? This is referring to --

6           MR. BARRETT: Yes, that's right.

7           MR. SHEPHERD: And you said that you can't -- we can't  
8 have it. Do you have a copy of it?

9           MR. BARRETT: Personally, no.

10          MR. SHEPHERD: No, no. The company. Does OPG have a  
11 copy of it?

12          MR. BARRETT: I'm not certain of that. I presume so.

13          MR. SHEPHERD: Okay. So then we're asking you to  
14 provide that copy to us. I understand you don't own it.  
15 That's fine. But you have it in your possession.

16          Under the Board's Rules, you have to give it to us.  
17 You can ask for it to be confidential if you want.

18          MR. SMITH: And as you will see from the answer, Mr.  
19 Shepherd, it is OPG's position that it is not in a position  
20 to give you the report. It has made a request of the  
21 Ministry of Energy, who owns the report, for permission to  
22 file the report as part of these proceedings, and we  
23 haven't received a response yet from the Minister of  
24 Energy, but if we do, we will certainly advise the Board of  
25 that answer.

26          MR. SHEPHERD: No. I understand that. And obviously,  
27 on any question of whether it is confidential, the Ministry  
28 is going to have to -- they're going to have some comments

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1 on that.

2 My question is not whether you put it on the public  
3 record. My question is: Will you provide it to the Board?  
4 You have a copy of it. It is relevant. Will you provide  
5 it?

6 MR. SMITH: And I think you have our position in  
7 relation to that.

8 MR. SHEPHERD: Well, sorry. I wouldn't have asked the  
9 questions if I thought I had your position. Just say no,  
10 if you are not going to provide it.

11 MR. SMITH: Okay. No.

12 MR. SHEPHERD: Thank you.

13 My next question is on 118, 6-8-118. This is with  
14 respect to a review that was done of your pension and  
15 benefit plans -- or one of them, I guess.

16 And your answer is it doesn't have any impact on the  
17 amounts you are asking for in the test period. I don't  
18 understand that.

19 So can you help explain why it doesn't have any  
20 impact? What is it about this report that makes it  
21 completely irrelevant now?

22 [Witness panel confers]

23 MR. BARRETT: After some discussion, we've concluded  
24 as a panel that we haven't seen this report, and aren't in  
25 a position to provide much beyond what is in the  
26 interrogatory response.

27 MR. SHEPHERD: So if you haven't seen it, then  
28 presumably you will undertake to provide the answer to the

---

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D

1 approved as your targets is the same as what's in your  
2 business plans, and so I want that document to do the  
3 verification.

4 Can I have that, please?

5 MR. SMITH: No.

6 MR. SHEPHERD: Okay. So that is a refusal? On what  
7 basis, Mr. Smith?

8 MR. SMITH: On the basis that you already have the  
9 information reflected in the application.

10 MR. SHEPHERD: So we can't have the verifying  
11 document?

12 MR. SMITH: You have our position, sir.

13 MR. SHEPHERD: All right. Then the next one is 1.2,  
14 SEC 4. And this asked -- you are required in your  
15 shareholder memorandum to provide reports and information  
16 on major developments and issues.

17 And so we asked, well, can you give us the last five  
18 of those, and you said they're not relevant. So my  
19 question is: Are you spending any money on any of the  
20 things you reported in your last five reports in 2014 and  
21 2015? Is there any money included in this application for  
22 any of those things?

23 MR. SMITH: And the relevance of that is?

24 MR. SHEPHERD: Because if you are spending money and  
25 asking for the ratepayers to pay for it, then we're  
26 entitled to see your reports on those issues.

27 MR. SMITH: I don't agree with the premise of that.

28 MR. SHEPHERD: You don't?

1 MR. SMITH: You are entitled to the evidentiary  
2 support in the application and to ask questions in relation  
3 to the application.

4 MR. SHEPHERD: Sorry, I can't hear you.

5 MR. SMITH: You are entitled to probe the evidence in  
6 the application and to ask questions in relation to it. I  
7 think you are a step removed from it at this stage.

8 MR. SHEPHERD: Sorry, sorry, are you taking the  
9 position, Mr. Smith, that we're not allowed to ask for  
10 documents in the applicant's possession that are relevant  
11 to the application that they filed because you didn't put  
12 them in the application?

13 MR. SMITH: No. Mr. Shepherd, I don't see this as  
14 qualitatively different than the Board Decision in the 0008  
15 case, where the request was made for presentations made by  
16 management to the board of directors of OPG about the  
17 application, and the Board determined that those  
18 presentations were not relevant, as reflected in one of the  
19 other interrogatories, which we will no doubt come to.

20 And I don't see this as qualitatively different. This  
21 is -- you are simply asking, instead of to the board of  
22 directors, to the shareholder, but I don't see that as  
23 being a distinction to depart from the Board's prior  
24 Decision in the 0008 case.

25 MR. SHEPHERD: All right. So it is a refusal, right?

26 MR. SMITH: It is a refusal.

27 MR. SHEPHERD: Thank you.

28 I am now going to your presentation, which is 1.2, SEC

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*(613) 564-2727*

*(416) 861-8720*

Tab 2

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700 University Avenue, Toronto, ON M5G 1X6

Tel: 416-592-3326 Fax: 416-592-8519  
colin.anderson@opg.com

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 Intervenors even though representatives of the Excepted Intervenors 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."

Tab 3



**EB-2007-0063**

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

**AND IN THE MATTER OF** applications by electricity  
distribution companies for approval of a smart meter rate  
adder;

**AND IN THE MATTER OF** a combined proceeding  
initiated by the Ontario Energy Board pursuant to  
sections 19(4), 21(1), 21(5) and 78(3.03) of the *Ontario  
Energy Board Act*, 1998 to determine issues related to  
the recovery of costs incurred by distributors and  
associated with authorized discretionary metering  
activities.

**BEFORE:** Gordon Kaiser  
Vice Chair, Presiding Member

Ken Quesnelle  
Member

Cathy Spoel  
Member

**DECISION WITH REASONS**

August 8, 2007

This combined proceeding was initiated to review costs incurred by thirteen electricity distributors for certain smart metering activities. For the reasons stated below the Board finds that the costs were prudently incurred and allows recovery of the costs. These costs are set out in Appendix "A" to this decision. Not all of the applicants have requested rate increases at this time.

This proceeding serves not only to determine cost recovery, but also to provide guidance to other Ontario utilities that will be installing smart meters in the near future. For reasons of confidentiality discussed later in this Decision, not all costs are itemized. The Board believes that aggregate costs offer sufficient disclosure. The costs allowed are based upon the actual costs incurred year-to-date, notwithstanding the fact that some utilities requested recovery of forecasted costs.

## Background

**The Combined Proceeding:** In January of 2007, twelve licensed distributors authorized by Ontario Regulation 427/06 to conduct discretionary metering activities filed applications pursuant to section 78 of the *Ontario Energy Board Act, 1998* for the approval of distribution rates. These applications included a smart metering rate adder to be effective as of May 1, 2007.

The twelve distributors are Chatham-Kent Hydro Inc., Enersource Hydro Mississauga Inc., Horizon Utilities Corporation, Hydro One Brampton Networks Inc., Hydro One Networks Inc., Hydro Ottawa Limited, Middlesex Power Distribution Corporation, Milton Hydro Distribution Inc., PowerStream Inc., Tay Hydro Electric Distribution Co. Inc., Toronto Hydro-Electric System Limited, and Veridian Connections Inc.

On March 26, 2007, the Board received an application from Toronto Hydro-Electric System Limited pursuant to section 78 of the Act for rate adjustments related to smart metering activities and Conservation and Demand Management ("CDM") programs. The Board has decided to consider Toronto's smart metering costs in this Combined Proceeding. The Board issued a Notice of Combined Proceeding establishing this proceeding to determine the prudence and recovery of costs associated with smart

metering activities for the twelve licensed distributors referred to above, and a thirteenth licensed distributor, Newmarket Hydro Limited, that has been authorized by regulation to conduct discretionary metering activities. These thirteen licensed distributors are deemed to be applicants in this Combined Proceeding.

On June 1, 2007 the Board heard submissions from the parties on contested issues and proposed minimum filing requirements. The Board issued its oral Decision with respect to these matters on June 1, 2007<sup>1</sup>. On June 5, 2007 the Board issued Procedural Order No. 3 which set out the final Issues List, the Minimum Filing Requirements and the Exhibit List. Procedural Order No. 4 issued on June 11, 2007 granted parties an opportunity to object to the applicants' requests for confidentiality with respect to certain evidence. The Board also gave the applicants an opportunity to reply to any such objections and attached a timetable for the examination of witness panels.

On July 10, 2007 the Board issued Procedural Order No. 5 calling for oral submissions on the issue of confidentiality and oral reply submissions by the applicants.

**The Smart Metering Initiative:** Before proceeding to consider the relief sought by the thirteen applicants, it is important to put the smart metering initiative ("SMI") in context. This is a Government mandated program. The Ontario Government has committed to install 800,000 smart meters in homes and small businesses by 2007 and throughout Ontario by 2010. The Government's policy, as evidenced through recent legislative amendment and regulatory initiative has clearly been to use electricity distributors to deploy smart meters in Ontario.

The evidence submitted by the thirteen utilities in support of their cost recovery requests indicates that over one million smart meters will be installed by the end of 2007. The number for each utility is set out in Appendix "B".

Ten utilities<sup>2</sup> included specific expenditures on smart meters in their 2006 electricity distribution rate ("EDR") applications. The spending was over and above the spending

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<sup>1</sup> Transcript Volume: Issues Day, page 57 line 28 to page 58 line 6

<sup>2</sup> These are: Bluewater Power Distribution, ELK Energy, Enersource Hydro Mississauga, Essex Powerlines, Festival Hydro, Horizon, Kingston Electricity Distribution, Hydro Ottawa, Toronto Hydro, and Veridian Connections. A further 11 utilities who are not named as applicants in this proceeding have also submitted smart meter plans with their 2006 rate applications.

on pilot programs previously approved as part of the CDM 3<sup>rd</sup> tranche initiatives<sup>3</sup>. Of these 10 utilities, four also requested variance accounts to track any differences between planned and actual spending on smart meters.

In its Decision of March 21, 2006<sup>4</sup>, the Board determined that utilities that had installed meters and requested rate relief should be allowed \$3.50 per meter for each month during the rate year that the meter was installed (that is, \$3.50 per meter per installed month).

The Board also ruled that utilities that had not proposed any expenditures for smart meters in 2006 should include the amount of \$0.30 per residential customer per month in their 2006 rates. The Board concluded that given the increased need for electricity and the importance of conservation, specific funding should be included in 2006 rates for all Ontario utilities, stating that this would be an important step in the development of smart metering technology and would increase the effort and commitment by both utilities and technology suppliers.

Subsequently, the Government enacted regulations under the *Electricity Act, 1998* to prescribe the class of consumers and criteria for the smart meters, to authorize specific distributors to conduct discretionary metering activities, and to identify priority installations. Regulations were also made under the *Ontario Energy Board Act, 1998* prescribing conditions for cost recovery.

In January 2007, the Board provided filing information for smart meter funding to be included in 2007 electricity distribution rates. The Board also approved the continuation in 2007 rates of \$0.30 per residential customer per month for utilities not authorized to conduct smart metering activities in 2007. For those 13 utilities authorized by regulation to incur expenditures for smart meters in 2007, the Board approved 12 applications for a rate adder equal to the returns that would be earned on an equivalent fixed asset if that

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<sup>3</sup> In previous individual Decisions for 2005 rates, the Board approved spending on CDM programs that was linked to each distributor's third installment (or tranche) of the allowed Market Based Rate of Return.

<sup>4</sup> EB-2005-0529, March 21, 2006



asset were, in fact, added to rate base<sup>5</sup>. The rate orders indicated that the Board would hold a combined proceeding to consider appropriate recovery of smart meter costs.

As a result of the funding through 2006 and 2007 rates, a number of utilities in this proceeding will not require rate increases to cover smart meter costs incurred to date. In such cases, the costs have been effectively “pre-funded” through Orders for 2006 and 2007 rates. The funding received to date broken down by utility is set out in Appendix “C”. The Board has received requests for rate increases by only three utilities, Toronto Hydro, Chatham-Kent and Middlesex.

### **Confidentiality**

At the beginning of this hearing the Board heard motions on the need to maintain confidentiality on the prices paid for smart meters, as well as deployment costs. A similar request was made regarding the contractual provisions. The requests were made by the major suppliers to the thirteen utilities, Elster Metering, a Division of Canadian Metering Co. Inc. (“Elster”), Ozz Corporation and Trilliant Networks Canada Inc. (“Ozz/Trilliant”), Sensus Metering Systems Inc. (“Sensus”) and Tantalus Systems Corp. (“Tantalus”). Submissions were also made by some of the suppliers that were not successful in securing orders for equipment or services from the thirteen applicant utilities.

To a large degree the utilities supported the requests of their suppliers. Many of them admitted, however, that their contracts provided that such information would be released if required by a Board Order.

As a general rule, the Board is reluctant to receive information on a confidential basis, particularly where the prudence of large capital expenditures is involved. It is significant however, that the request for confidentiality was not opposed by the intervenors. 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

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<sup>5</sup> All utilities except Newmarket applied for a smart metering rate adder in accordance with the Addendum for Smart Metering Rates to the Report of the Board on 2<sup>nd</sup> Generation Incentive Regulation for Ontario’s Electricity Distributors dated January 29, 2007

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.

The Board heard further submissions on confidentiality on July 12<sup>th</sup>, the final day for arguments. The general consensus was that the public interest could be met by bundling smart meter costs on a cost per installation basis and publicly disclosing only these bundled costs.

While disclosure on the public record was limited during the proceeding, the Board notes that there was a wide ranging examination by a number of intervenor groups on smart meter costs throughout the hearing. Four customer groups were involved in the hearing.

It is rare for an entire proceeding to be held *in camera*, but this proceeding faces unusual circumstances. As this Decision indicates, the purchase of smart meters by the thirteen utilities involved a complicated competitive tendering process. The Board was advised that a similar competitive tendering process will likely be employed by the rest of the Ontario utilities. This process may, of course, be expedited by the experience gained with the first thirteen utilities. However, the Board heard that the competitive positions of the suppliers would be eroded if the prices charged to the thirteen utilities were disclosed. The Board accepts this position. It is important that the tendering and bidding processes continue to be competitive. The Board also recognized that none of the intervenors opposed maintaining confidentiality for the evidence and that intervenors representing four major consumer groups had access to all of the information. The Board finds that it is in the public interest that the prices charged to the applicants, including unit prices, installation costs and the contractual terms, be kept confidential. However, the aggregated per unit installed prices will be part of the Decision.

## **The Issues**

On June 1, 2007, the Board issued a Decision defining the issues in this case. Those issues are set out in Appendix "A" to the Procedural Order of June 5, 2007 and include

cost recovery related to Minimum Functionality pursuant to Ontario Regulation 426/06, including the cost recovery timeline. The other issues include the prudence of costs incurred, the mechanism for resetting rates to recover costs found to be prudent and the regulatory treatment of stranded meter costs. These issues also included certain accounting procedures such as the mechanism for clearing variance accounts and the mechanism for resetting smart meter costs on a go-forward basis.

This Decision also deals with the mechanism for dealing with certain costs that are not otherwise part of this combined proceeding, such as the prudence of Toronto Hydro's costs associated with smart meter deployment for certain mid-size commercial customers. This last issue was unique to Toronto Hydro and arose from a separate application that the utility filed with the Board. That application, as previously indicated, was combined in this proceeding.

## **Relief Requested**

All of the applicants in this proceeding requested orders approving:

1. The Applicants' interpretation of Minimum Functionality.
2. The Applicants' prudence in the purchasing of smart meters.
3. The Applicants' proposed methodology for dealing with stranded smart meter costs.
4. The Applicants' proposed methodology for recovering smart meter costs through rates.
5. The Applicants' proposed accounting procedures related to the smart meter costs.

Each of these matters is dealt with in turn in this Decision. Certain other issues unique to certain utilities are dealt with later in the Decision.

## Minimum Functionality

On August 10, 2006 the Government of Ontario issued Ontario Regulation 425/06 (Criteria and Requirements for Meters and Metering Equipment, Systems and Technology) made under the *Electricity Act, 1998* which sets out the minimum functionality for advanced metering infrastructure ("AMI") in the Province of Ontario for residential and small general service customers. With one exception (as noted above), the consideration of cost recovery for the SMI in this proceeding was limited to the recovery of smart meter costs relating to functionality that does not exceed the minimum functionality adopted in Ontario Regulation 425/06.

In the case of capital costs, the Board has determined that there are fourteen cost categories in relation to smart meter minimum functionality. These are set out in Appendix "A" to this Decision. The evidence provided to the Board in this proceeding shows that the majority of the costs relating to smart metering are capital costs. There was also evidence, however, of some operation, maintenance and administration ("OM&A") costs. The categories of OM&A costs are also identified in Appendix "A" to this Decision.

As indicated, this proceeding relates only to the recovery of smart meter costs associated with minimum functionality. Costs in addition to minimum functionality can be recovered as part of distribution rates in an individual utility's next rate case. Those costs may include web presentment, the Customer Information System integration with the Meter Data Management/Meter Data Repository, consumer education, re-engineering business practices and integration with retailers. A diagram which was provided in evidence in this proceeding that describes the Ontario Smart Metering System is set out in Appendix "D" to this Decision. The Board heard from several parties that the area within the box titled "Advanced Metering Infrastructure (AMI)" defines minimum functionality. The Board agrees.

## **The Procurement Process**

A number of utilities were asked by intervenors if they had conducted a cost benefit study regarding their smart meter installation. In all cases utilities responded that they had not because this is a Government mandated program. The Board accepts that response.

The Board is required however, to perform a prudence analysis regarding the expenditures incurred. The Board conducted a combined hearing in part to allow the Board to examine the different technologies deployed by different utilities, as well as the different cost implications. At a high level the Board found that the evidence provided by the utilities demonstrates that they acted in a professional manner and exercised the necessary due diligence in their smart meter purchasing decisions. The evidence provided shows that in many cases the utilities have maximized buying economies through buying groups and in all cases where buying groups were used, the members of the buying group received the same price, regardless of their size.

A prudence analysis relates not only to the price paid for goods and services purchased, but also to the procurement process itself.

The procurement process with respect to the purchase of smart meters and related equipment and services in this Province has been unique. The Government was extensively involved. A number of regulations were enacted circumscribing the activities of the utilities including Ontario Regulations 425/06, 426/06 and 427/06. Among other things, these regulations identify the thirteen utilities authorized to undertake smart metering activities in the Province as well as the minimum functionality of the smart meter system.

The thirteen distributors authorized to purchase smart meters in the first phase of the Government's initiative ultimately formed four different buying groups as set out in Appendix "B". The four successful suppliers were Elster, OZZ/Trilliant, Sensus and Tantalus. Appendix "B" also describes the smart meter technology offered by each of these suppliers.

The largest of the buying groups was formed by the members of the Coalition of Large Distributors ("CLD") consisting of Toronto Hydro, Hydro Ottawa, Horizon, PowerStream, Veridian and Enersource.

The procurement process followed by each of the buying groups as provided in the evidence is identified in the following sub-sections. The Board accepts this evidence.

**The CLD Group:** The CLD Group stated that the Government, through the Ministry of Energy, was heavily involved in the procurement process. The Ministry of Energy had representation at CLD meetings and retained final approval before the release of any procurement specifications. The Government determined by Regulation that each of the CLD members was authorized to conduct its smart meter program pursuant to this procurement process.

Each CLD member assigned a metering representative to develop the technical requirements of a document that came to be called the Request for Pre-qualification ("RFPQ"). The Ministry recommended a procurement specialist (Partnering and Procurement Inc. or "PPI") to assist the CLD and Ministry with the development of the RFPQ. The primary objective of this exercise was to develop a procurement process that would be fair and transparent to potential vendors and allow for comprehensive review of all potential technical options. The PPI, with input from the CLD and Ministry, developed the score sheets that were used to conduct the evaluations of the various bidders into the process.

Enersource took the lead in developing the RFPQ document and the CLD and PPI continued to review the requirements established by the Ministry and to identify their own implementation requirements. This work continued through April, 2006, with the PPI and the Ministry participating on a regular basis culminating in a draft RFPQ document at the end of April.

The CLD agreed with the Ministry request to have a Fairness Commissioner review the RFPQ and retained Knowles Consultancy Services for this purpose. This company was already under retainer to the Province of Ontario. The role of the Fairness Commissioner was to ensure that the AMI proponents disclose all actual or potential conflicts of interest, and that the RFPQ process was managed and completed in an

open, fair and transparent manner. The CLD developed a Code of Conduct to be signed by all potential vendors to address these considerations.

On May 2, 2006 the RFPQ document was released and posted on the MERX website (a website designed to invite bids on public sector competitive procurement processes). In total, 22 submissions were received by the CLD. The other members of the core CLD team reviewed the submissions for compliance and some vendors were rejected as non-compliant. The Elster smart meter system was ultimately chosen by five of the six CLD members.

As noted above, PowerStream, as a CLD member, participated fully in the RFPQ process. PowerStream testified that it then entered into negotiations with three of the qualified suppliers to satisfy its individual requirements and secure the best pricing. PowerStream ultimately selected Sensus as most closely matching all of its requirements for both technology and price.

**Newmarket and Tay:** Newmarket and Tay were not directly involved with the CLD's RFPQ process, but adopted that process once the five suppliers were qualified. Like PowerStream, Newmarket and Tay entered into negotiations with three of the qualified suppliers. Newmarket and Tay also ultimately selected Sensus as the preferred technology. Although PowerStream and Newmarket and Tay did not formally combine to negotiate with Sensus, they were able to achieve a commitment from the supplier to offer each utility the same price based on the combined volumes for PowerStream, Newmarket and Tay. Newmarket and Tay met with the Ministry of Energy staff to discuss their ability to rapidly deploy smart metering technology and were subsequently named as priority installations in Ontario Regulation 428/06. Their deployment plans were filed with the Minister on June 26, 2006. Ontario Regulation 427/06 authorized Newmarket and Tay to undertake smart meter deployment. They filed their smart meter deployment plans with the Minister of Energy.

**Hydro One Networks Inc. and Hydro One Brampton Networks Inc.:** Hydro One Networks' procurement process began with a request for proposal ("RFP") issued in March 2005. Hydro One's RFP requested proposals for the provision of smart meters for all or a part of Hydro One's smart meter deployment. Hydro One evaluated the responses to the RFP based on the following criteria: quality of the solution, capability of

the proponent, qualification of the vendor personnel and pricing. Hydro One indicated that Ozz/Trilliant achieved the highest overall evaluation score of all suppliers.

Ontario Regulation 427/06 authorized Hydro One to conduct a smart meter program as long as it did so in accordance with the March 2005 RFP. The regulation also authorized Hydro One Brampton to conduct smart metering activities. Both companies followed the March 2005 RFP process as required.

**Milton:** Milton began installing smart meters on all new residential building in 2003 using the only technology approved by Measurement Canada at the time. That technology is now provided by Ozz/Trilliant. Milton reviewed additional technologies as they received Measurement Canada approval, but chose to remain with Ozz/Trilliant. Milton indicated that they were able to obtain the same volume discount pricing Ozz/Trilliant offered to Hydro One.

Milton testified that it will also buy meter reading services from Ozz/Trilliant rather than buying the meter reading software purchased by Hydro One. Milton was named as a priority installation in Ontario Regulation 428/06, and filed its deployment plans with the Minister in June 2006. Ontario Regulation 427/06 authorized Milton to undertake smart meter deployment in accordance with the plan filed with the Ministry.

**Chatham-Kent and Middlesex:** Chatham-Kent and Middlesex, like Milton, Newmarket and Tay, are priority installations named in Ontario Regulation 428/06. Like Milton, Chatham-Kent began to assess smart meter technologies in 2004 prior to the Government's pronouncements with respect to the SMI. Chatham-Kent testified that it assessed four technologies before selecting Tantalus as the technology supplier for a pilot project. As part of its evidence, Chatham-Kent provided a study by Deloitte Inc. that reviewed the costs and benefits of the pilot, and calculated the cost estimates for full implementation. The results of this analysis were provided to the Ministry of Energy to demonstrate Chatham-Kent's ability to rapidly deploy the full complement of smart meters in its service areas. The deployment plans were provided to the Minister in August 2006. Chatham-Kent indicated that it negotiated a high volume discount with Tantalus to achieve significant price reductions from the pilot project pricing for both Chatham-Kent and Middlesex.



## **The Costs**

The central issue before the Board in this proceeding relates to an examination of the costs that the thirteen utilities incurred for the acquisition and installation of smart meters and related equipment. As indicated, the Board has found that the procurement processes undertaken by the thirteen utilities met a very high standard. The Government has authorized these thirteen utilities to install smart meters on the basis of these procurement processes.

Some intervenor groups claim that the prudence analysis conducted by the Board at this time should be preliminary and the matter should be revisited in a subsequent proceeding. The Board does not believe that this is desirable. This combined proceeding has resulted in adequate evidence and a careful examination of all relevant factors. Although this Panel is aware that it is not making any determinations on prudence of future spending on smart meters by utilities, this Decision can and should provide guidance to utilities making future purchasing decisions on smart meters in the remaining areas of the province.

The actual cost per installation for each of the applicant utilities is set out in Appendix "A". The Board heard evidence that the per unit installation costs can vary depending on the geographical nature of the service area and the extent to which meters have been deployed. This makes cost comparisons difficult.

The Board accepts that it is more expensive to install smart meters in a rural area than an urban area. The Board also accepts the evidence that it is more expensive to install meters in areas characterized by older construction as opposed to new subdivisions. In fact, a number of utilities have chosen to focus on new subdivisions for their initial deployment. As a result, their initial cost per installation may well be lower than the average for the entire system once full deployment is completed.

Other factors can materially impact per unit installation costs such as the number of meters installed to date and the degree of upfront costs. Hydro One's costs, for example, are high compared to others. Hydro One testified that this reflects the rural nature of their territory, high upfront costs and the fact that Hydro One has installed relatively few meters. This means that the installation cost in the first phase of this initiative is relatively high. The Board agrees that there is reason to believe that once

the Hydro One program is completed the average cost per installation will be substantially lower.

The Board feels that a special comment is warranted with respect to the Hydro One expenditures on the Capgemini contract for project management. Regarding the price of that contract, Counsel for the School Energy Coalition says "this is so far out of whack with all the other applicants to warrant special scrutiny". SEC added that Hydro One has substantial internal management resources and is likely the most experienced utility in dealing with big projects. Accordingly, it is hard to understand why the Company had to retain Capgemini at such a large fee. SEC suggests that the costs should be deferred and Hydro One should be required to come back to the Board in its 2008 rate application with further and better evidence.

The Board has some sympathy with the submissions of the School Energy Coalition on this issue. The Capgemini contract represents a substantial cost. The Board recognizes that this is an up-front cost, but that is also true of project management costs for most utilities.

Hydro One will only install half the number of meters that Toronto Hydro is required to install. Toronto Hydro will, by the end of 2007, install 400,000 smart meters, one-half the entire Provincial target. But the Hydro One up-front project management costs are three times the project management costs of Toronto Hydro.

The Board will allow half of Hydro One's project management costs incurred to date with an invitation to Hydro One to apply for the remaining amount with further and better evidence to justify the prudence of this cost at the time of its 2008 rate application.

In the case of all the utilities the Board finds that the external costs incurred were the result of a vigorous, successful and detailed procurement program. We also find that the internal costs were assigned in a manner consistent with standard rate making procedures.

There were a number of questions on internal utility costs related to smart meters, including suggestions that the utilities were double counting. That is, that internal personnel used for smart meter installations were existing employees whose costs were already included in rates. The utilities explained that these costs were capitalized and

assigned to different projects and that the treatment used for the smart meter capital program is no different than any other capital program. In other words, to the extent the costs were being allocated to the smart meter program they were removed from other programs. The Board accepts the utility evidence that costs have not been double counted.

A related concern was the “mark up” that some utilities apply to the procurement of goods and services from third parties, including management overheads and inventory costs. The utilities’ evidence was that these were standard procedures in their capital programs. None appear to be unique to the smart meter program and the Board has accepted these markups in previous proceedings.

There were also concerns regarding installation costs and particularly whether the utilities had compared the cost of outsourcing this service as opposed to using internal resources. The majority of utilities did conduct a tender for installation services, even if they ultimately chose not to outsource the installation. The utilities that did not contract out argued that it was better to use internal personnel because they were highly experienced meter installers. Other utilities cited contract limitations in their labour agreements. And still other utilities stated that a combination of internal and external resources provided the preferred installation method.

It appears at first glance that the costs incurred by the utilities that out-source were less than the costs of those using internal resources. However, the Board has considered each individual utility’s circumstances and accepts that each utility acted prudently in determining whether to install the meters using third party contractors or internal resources. The Board is also satisfied that the costs incurred to date for installation were prudently incurred.

Subject to the qualification regarding Hydro One’s project management costs, the Board concludes that the costs incurred by the thirteen utilities as set out in Appendix “A” to this Decision are prudent. We find that the purchasing decisions were conducted with the necessary due diligence and that the best possible prices were obtained through volume buying groups.

In accepting the costs outlined in Appendix “A” for the thirteen utilities the Board has relied on a number of findings. First, the purchasing process itself was carried out in a

professional and diligent manner. Second, the costs allowed in all cases meet the definition of minimum functionality. Third, the costs allowed relate to meters installed (i.e., the costs incurred) as opposed to forecasted costs.

Restricting cost recovery to installed meters is consistent with the Board's Decision on the methodology to recover costs in rates. This Decision allows the utilities to incorporate the capital costs for installed smart meters in rate base, and to calculate the revenue requirement on that basis. It is true as pointed out by some that even installed meters are not necessarily operational in the sense that they are not integrated with the network and that utilities are not calculating bills on the basis of time-of-use pricing. However, they are installed as opposed to sitting in inventory, and they are being used to calculate bills. In the circumstances, the Board believes this to be an appropriate approach.

It is also worth noting that none of the costs include any costs recovered through CDM activities (i.e., third tranche CDM funding authorized by the Board). The costs of pilots, initially claimed by several of the utilities, have also been removed in response to Board requests.

## **Stranded Costs**

Considerable time in this hearing was devoted to the issue of stranded costs. There is no question that in the majority of cases, the installation of smart meters means that older meters will have to be retired earlier than planned. In other words the costs of the older meters will not be fully depreciated.

The degree of stranded costs will vary from utility to utility, but it can be significant. The utilities have indicated that they want assurance from this Board that they can recover the stranded costs and rely upon the statements of the former Minister of Energy to that effect<sup>6</sup>. The Board also accepts that stranded costs, properly calculated, are recoverable. The question is when this exercise should be undertaken.

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<sup>6</sup> Exhibit A12, Tab M (Letter dated December 1, 2005 from D. Cansfield to H. McCallion)

The evidence indicates that stranded costs can vary significantly between different utilities. Some utilities operate in areas dominated by new construction while others are in more mature markets. Many of the utilities suggested that at the present time, the stranded costs associated with existing meters should stay in rate base. The Board accepts this proposition.

Utilities can, if they choose, bring forward applications for the recovery of stranded costs in their 2008 rates. However, there are several reasons why the Board is deferring the decision at this time. First, the roll-out of smart meters will occur over four years. Second, the undepreciated amounts are unknown. Finally, the cost savings are unknown, as are the rate impacts.

Once each of the thirteen utilities reaches full smart meter deployment, the Board and the parties will have better information on the offsetting benefits such as the reduced meter reading costs. The preliminary evidence in this proceeding suggests that these may be substantial and may go a large way to offsetting stranded meter costs.

The Board also heard evidence regarding the Hydro One depreciation study that found that Hydro One had in fact been over depreciating certain assets and under depreciating others. Hydro One testified that it was able to use this information to offset over depreciated assets against other assets to the significant benefit of ratepayers.

The Board also heard evidence on the timing of stranded costs recovery. In particular, Hydro Ottawa testified that the appropriate timing for any rate adder to recover stranded costs was April 2008, at which time its rate adder relating to regulatory assets will cease. Hydro Ottawa indicated that any rate adder related to stranded costs, will likely be less than the rate adder currently in place with respect to regulatory assets. It was suggested that if the stranded cost recovery is linked to the rate adder for regulatory assets there may, in fact, be no need for a rate increase.

The Board has determined that all utilities should continue to track the costs associated with stranded meters. Enersource was the only utility in this proceeding asking for recovery of stranded costs. For the reasons stated above, the Board is not granting this request at this time.

## **Replacement and Repair Costs**

There was considerable discussion in the hearing on replacement or repair costs of customer owned equipment and whether those costs should form part of the cost recovery in this proceeding. There is evidence that the repair and replacement of customer owned equipment may have increased as a result of the installation of smart meters. On the other hand, this type of expense is not unusual and to a degree occurs in situations where smart meters are not installed.

Some of the utilities wish to treat repair and replacement cost as being part of smart meter costs. Others such as Newmarket argued that these costs are part of normal distribution costs. SEC argued that the costs are relatively minor and should be included in the SMI.

The Board believes that a common approach to the accounting treatment of these costs is appropriate. Many of the applicants sought direction from the Board in this regard. On balance, the Board believes that while these costs may have been accelerated by the smart meter program, they should not be part of minimum functionality. These costs therefore have been removed from the allowable cost categories described in Appendix "A" to this Decision.

The Board considers that the costs of repairing or replacing the meter base extend the useful life of the service asset. Therefore all labour and associated costs incurred, with the exception of material and parts costs for customer owned equipment, shall be capitalized and tracked in a sub-account of the Smart Meter Capital and Recovery Offset Variance Account 1555. The actual material costs to repair or replace any customer owned equipment shall be expensed and also tracked separately in a different sub-account of the Smart Meter OM&A Variance Account 1556 until disposition is ordered by the Board. As the meter base will remain the property of the customer, it would not be appropriate to have it form part of the utility's rate base. Since there are cost allocation considerations, the capitalized costs of repairs, replacements and labour etc. should be recorded by customer rate class just as the smart meter costs will be recorded by customer rate class.

This direction on accounting procedures should not be considered a direction by the Board to perform this work. The Board expects individual distributors to consider their

particular circumstances and to deal with their customers in a cost effective and prudent manner. This direction simply provides distributors with a common accounting approach to similar work. Disposition of the account at a later date will be accompanied by a prudence review of the nature of the expenses as well as the manner in which they were incurred.

### **The Rate Increase Methodology**

The Board has in Appendix "A" to this Decision calculated the amount of costs to be recovered by each of the thirteen utilities for their smart meter installation. The question remains, what rate methodology should be employed?

Only three utilities, Toronto Hydro, Chatham-Kent and Middlesex are asking for recovery through rates at this time. The others propose to defer the matter until the next rate case.

The Board will allow each utility to recover its costs as set out Appendix "A" by including those costs in rate base for the 2006 and 2007 rate years and calculating a revenue requirement on that investment in the manner set out in Appendix "E". Before calculating a rate increase from this revenue requirement, however, the utility must first deduct the amount of money previously collected in rate adders pursuant to the Orders of March 21, 2006.

Toronto Hydro, Chatham-Kent and Middlesex are directed to file with the Board a draft rate Order based upon these financial calculations. Both Toronto Hydro and Chatham-Kent are requesting that rate increases be implemented in the six month period November 1, 2007 to April 30, 2008. The Board grants that request.

Draft orders reflecting the Board's decision are to be filed with the Board within 15 days of the Decision being issued. All parties to the *in camera* proceeding shall have 10 days in which to make submissions on the draft orders. Applicants shall have five days in which to file any reply submissions. The Board will issue the orders once it has reviewed the submissions of the parties.

Utilities that are not requesting rate increases may, however, wish to draw down funds previously collected through the smart metering rate adders. They are authorized to do so in order to meet costs approved in this Decision, and will file draft orders with the Board to that effect.

A number of the applicants also requested guidance from the Board in terms of future rate making with respect to the SMI. Six of the applicants<sup>7</sup> are part of the first tranche of cost of service rate applications for 2008 rates. These applicants can apply to recover their smart meter costs for the balance of 2007 and 2008 in those proceedings.

For those applicants that are not part of the first tranche of cost of service applications, the incentive rate mechanism process will recognize the costs approved in this Decision. This will allow distributors to include costs related to minimum functionality, as approved in this Decision, in their incentive rate adjustment.

### **Toronto Hydro Claims for General Service Meters**

None of the utilities with the exception of Toronto Hydro have made any claims for costs relating to additional optional features beyond the minimum functionality requirements adopted in Ontario Regulation 425/06.

Toronto Hydro is however claiming costs associated with 560 smart meters that it has installed for general service and immediate customers and states:

"It would be completely inefficient to replace these meters with conventional mechanical meters only to replace them again with smart meters a short while later. The most efficiently cost effective approach was to replace these meters with smart meters at the time of a customer resealing or when one of these customers was requesting a new service."

There are those who oppose the Toronto Hydro claim on the basis that it exceeds the regulation in terms of minimum functionality. No one, including Toronto Hydro questions that proposition. The Board however has some sympathy with the Toronto Hydro

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<sup>7</sup> Horizon Utilities, Hydro One Networks, Hydro Ottawa, Enersource, Toronto Hydro, Newmarket Tay Power



request for several reasons. First there is some logic to the argument that Toronto advances. It would seem unreasonable for the Board to sanction wasteful practices. More importantly however, this Board in a previous order granted a rate adder to Toronto Hydro to cover costs relating to these types of meters. Toronto was entitled to infer from that Order authorization to proceed and install the meters and it did so.

Finally, Ontario Regulation 425/06 was enacted relatively late in 2006. Toronto Hydro is claiming expenses relating to the entire calendar year. For the reasons expressed, the Board will allow Toronto Hydro to calculate a revenue requirement relating to the 560 meters on the same basis as the residential meters. The Board is explicitly not finding that the costs associated with these meters fall into the minimum functionality costs. The Board approval of these costs is ancillary to the smart meter decision.

## **Summary**

In summary, the Board finds that the purchasing decisions of the thirteen utilities involved in this proceeding have been implemented with the necessary due diligence. The terms of contracts each has concluded with suppliers, including the pricing, are prudent.

The evidence also discloses that all thirteen utilities are likely to meet their goals with respect to installed smart meters by the end of 2007. The Board believes that the cost comparisons outlined in Appendix "A" to this Decision will provide sufficient guidance to other utilities when they make their purchasing decisions with respect to smart meters. This table is provided in both confidential and non-confidential format. The confidential format is available only to those that parties that have signed the Board approved Declaration and Undertaking as identified in Appendix "F".

The Board wishes to take this opportunity to thank the utilities and the intervenor groups that participated in this process, all of which are listed at Appendix "G". The analysis was detailed. The Board recognizes that this was an unusual proceeding and the workload resulting from the real time undertakings from the Board and the other parties was extensive. The results of this procurement process are impressive. The Local Distribution Company community has fully supported the Government's initiative in accomplishing an important conservation goal. The smart meter deployments

undertaken by the thirteen utilities considered in this proceeding will result in the installation of over one million meters by the end of 2007, well beyond the 800,000 target set by the Province for this initiative.

## **Cost Awards**

A decision regarding cost awards will be issued at a later date. Parties that were found eligible for an award of costs in this proceeding shall submit their cost claims by August 22, 2007. Two copies of the cost claim must be filed with the Board Secretary and one copy is to be served on the Applicants. The cost claims must be done in accordance with section 10 of the Board's *Practice Direction on Cost Awards*.

Applicants shall have until September 5, 2007 to object to any aspect of the costs claimed. Again two copies of the objection must be filed with the Board Secretary and one copy must be served on the party against whose claim the objection is being made.

The party whose cost claim was objected to will have until September 19, 2007 to make a reply submission as to why its cost claim should be allowed. Again, two copies of the submission must be filed with the Board Secretary and one copy is to be served on each of the Applicants.

The Applicants shall pay the Board's costs of the proceeding immediately upon receipt of the Board's invoice.

All filings with the Board must be in the form of two hard copies and received by the Board by 4:45 p.m. on the stated date. The Board requires all correspondence to be in electronic form as well as paper. Therefore, all parties must also e-mail an electronic copy of their filings preferably in searchable PDF format to the Board Secretary at [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca).

**DATED** at Toronto, August 8, 2007

*Original signed by*

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Gordon Kaiser  
Presiding Member and Vice Chair

*Original signed by*

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Ken Quesnelle  
Member

*Original signed by*

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Cathy Spoel  
Member

**APPENDIX A**  
**TO THE DECISION WITH REASONS**  
**DATED AUGUST 8, 2007**  
**BOARD FILE NO.**  
**EB-2007-0063**

**Recovery of Costs Incurred for Installed Units (Minimum Functionality)**  
**Cost Breakdown of Functional Specification for an Advanced Metering Infrastructure**

CAD \$ MILLIONS	TORONTO HYDRO		HYDRO ONE NETWORKS		HYDRO ONE BRAMPTON	
CAPITAL COSTS						
	\$	Qty	\$	Qty	\$	Qty
<b>ADVANCED METERING COMMUNICATION DEVICE (AMCD)</b>						
1. Smart Meter						
2. Installation Cost						
3. Workforce Automation						
<b>ADVANCED METERING REGIONAL COLLECTOR (AMRC) (includes LAN)</b>						
4. Collectors						
5. Repeaters						
6. Installation						
<b>ADVANCED METERING CONTROL COMPUTER (AMCC)</b>						
7. Computer Hardware						
8. Computer Software						
9. Computer Software Licence & Installation						
<b>WIDE AREA NETWORK (WAN)</b>						
10. Activation Fees						
<b>OTHER AMI CAPITAL COSTS RELATED TO MINIMUM FUNCTIONALITY</b>						
11. AMI Interface to CIS						
12. Professional Fees						
13. Integration						
14. Program Management						
<b>TOTAL CAPITAL COST (CAD \$ Millions)</b>	<b>23.896</b>	<b>192,294</b>	<b>21.799</b>	<b>62,914</b>	<b>0.940</b>	<b>6,401</b>
<b>TOTAL OM&amp;A COST (CAD \$ Millions) <sup>see NOTE</sup></b>	<b>0.398</b>		<b>8.366</b>		<b>0.008</b>	
<b>TOTAL COST (CAD \$ Millions)</b>	<b>24.294</b>		<b>30.165</b>		<b>0.948</b>	
<b>Total Cost per Unit \$ (Total Cost / Quantity of Smart Meters)</b>		<b>\$126.34</b>		<b>\$479.47</b>		<b>\$148.04</b>
Costs Incurred to:	31-Dec-06		31-May-07		31-May-07	
Source:	Ex A12 Tab G adjusted		Ex A5 adjusted		Ex A4 adjusted	
Commitment re Quantity of Units Installed by December 31, 2007	400,000		240,000		35,000	

NOTE: **OM&A Costs include the following:**  
 AMCD Maintenance  
 AMRC/LAN Maintenance  
 AMCC Hardware and Software Maintenance  
 WAN  
 Other (Business Process Redesign/Customer Communication/Program Management/Change Management)

\*The Board will allow half of the program management costs that are included in the total capital

**Recovery of Costs Incurred for Installed Units (Minimum Functional)  
Cost Breakdown of Functional Specification for an Advanced Meter**

CAD \$ MILLIONS	HYDRO OTTAWA		HORIZON		POWERSTREAM	
CAPITAL COSTS						
	\$	Qty	\$	Qty	\$	Qty
<b>ADVANCED METERING COMMUNICATION DEVICE (AMCD)</b>						
1. Smart Meter						
2. Installation Cost						
3. Workforce Automation						
<b>ADVANCED METERING REGIONAL COLLECTOR (AMRC) (includes LAN)</b>						
4. Collectors						
5. Repeaters						
6. Installation						
<b>ADVANCED METERING CONTROL COMPUTER (AMCC)</b>						
7. Computer Hardware						
8. Computer Software						
9. Computer Software Licence & Installation						
<b>WIDE AREA NETWORK (WAN)</b>						
10. Activation Fees						
<b>OTHER AMI CAPITAL COSTS RELATED TO MINIMUM FUNCTIONALITY</b>						
11. AMI Interface to CIS						
12. Professional Fees						
13. Integration						
14. Program Management						
<b>TOTAL CAPITAL COST (CAD \$ Millions)</b>	<b>15.293</b>	<b>114,432</b>	<b>0.816</b>	<b>0</b>	<b>0.074</b>	<b>0</b>
<b>TOTAL OM&amp;A COST (CAD \$ Millions)</b> <sup>see NOTE</sup>	<b>0.221</b>		<b>0.239</b>		<b>0</b>	
<b>TOTAL COST (CAD \$ Millions)</b>	<b>15.514</b>		<b>1.055</b>		<b>0.074</b>	
<b>Total Cost per Unit \$ (Total Cost / Quantity of Smart Meters)</b>		<b>\$135.58</b>		n/a		n/a
Costs Incurred to:	30-Apr-07		30-Apr-07		31-Dec-06	
Source:	Ex A6 adjusted		Ex A3 adjusted		Ex A10	
Commitment re Quantity of Units Installed by December 31, 2007	175,000		50,000		80,000	

**NOTE: OM&A Costs include the following:**

AMCD Maintenance  
 AMRC/LAN Maintenance  
 AMCC Hardware and Software Maintenance  
 WAN  
 Other (Business Process Redesign/Customer Communication/Program Manage

**Recovery of Costs Incurred for Installed Units (Minimum Functional)  
Cost Breakdown of Functional Specification for an Advanced Meter**

CAD \$ MILLIONS	VERIDIAN		ENERSOURCE		CHATHAM-KENT		MIDDLESEX	
CAPITAL COSTS								
	\$	Qty	\$	Qty	\$	Qty	\$	Qty
<b>ADVANCED METERING COMMUNICATION DEVICE (AMCD)</b>								
1. Smart Meter								
2. Installation Cost								
3. Workforce Automation								
<b>ADVANCED METERING REGIONAL COLLECTOR (AMRC) (includes LAN)</b>								
4. Collectors								
5. Repeaters								
6. Installation								
<b>ADVANCED METERING CONTROL COMPUTER (AMCC)</b>								
7. Computer Hardware								
8. Computer Software								
9. Computer Software Licence & Installation								
<b>WIDE AREA NETWORK (WAN)</b>								
10. Activation Fees								
<b>OTHER AMI CAPITAL COSTS RELATED TO MINIMUM FUNCTIONALITY</b>								
11. AMI Interface to CIS								
12. Professional Fees								
13. Integration								
14. Program Management								
<b>TOTAL CAPITAL COST (CAD \$ Millions)</b>	<b>0.043</b>	<b>0</b>	<b>1.514</b>	<b>12,528</b>	<b>2.862</b>	<b>17,052</b>	<b>0.557</b>	<b>3,063</b>
<b>TOTAL OM&amp;A COST (CAD \$ Millions) <sup>see NOTE</sup></b>	<b>0</b>		<b>0.293</b>		<b>0.367</b>		<b>0.025</b>	
<b>TOTAL COST (CAD \$ Millions)</b>	<b>0.043</b>		<b>1.807</b>		<b>3.229</b>		<b>0.582</b>	
<b>Total Cost per Unit \$ (Total Cost / Quantity of Smart Meters)</b>		<b>n/a</b>		<b>\$144.20</b>		<b>\$189.34</b>		<b>\$189.96</b>
Costs Incurred to:	31-Dec-06		30-Apr-07		30-Apr-07		30-Apr-07	
Source:	Ex A13 Tab B		Ex A2 Updated Adj		K7.2 and Ex A1		K7.2 and Ex A1	
Commitment re Quantity of Units Installed by December 31, 2007	40,000		60,000		28,000		6,000	

NOTE: OM&A Costs include the following:

AMCD Maintenance  
AMRC/LAN Maintenance  
AMCC Hardware and Software Maintenance  
WAN  
Other (Business Process Redesign/Customer Communication/Program Manage

**Recovery of Costs Incurred for Installed Units (Minimum Functional)  
Cost Breakdown of Functional Specification for an Advanced Meter**

CAD \$ MILLIONS	MILTON		NEWMARKET		TAY	
CAPITAL COSTS						
	\$	Qty	\$	Qty	\$	Qty
<b>ADVANCED METERING COMMUNICATION DEVICE (AMCD)</b>						
1. Smart Meter						
2. Installation Cost						
3. Workforce Automation						
<b>ADVANCED METERING REGIONAL COLLECTOR (AMRC) (includes LAN)</b>						
4. Collectors						
5. Repeaters						
6. Installation						
<b>ADVANCED METERING CONTROL COMPUTER (AMCC)</b>						
7. Computer Hardware						
8. Computer Software						
9. Computer Software Licence & Installation						
<b>WIDE AREA NETWORK (WAN)</b>						
10. Activation Fees						
<b>OTHER AMI CAPITAL COSTS RELATED TO MINIMUM FUNCTIONALITY</b>						
11. AMI Interface to CIS						
12. Professional Fees						
13. Integration						
14. Program Management						
<b>TOTAL CAPITAL COST (CAD \$ Millions)</b>	<b>0.697</b>	<b>5,494</b>	<b>2.111</b>	<b>19,000</b>	<b>0</b>	<b>0</b>
<b>TOTAL OM&amp;A COST (CAD \$ Millions)</b> <sup>see NOTE</sup>	<b>0</b>		<b>0.237</b>		<b>0</b>	
<b>TOTAL COST (CAD \$ Millions)</b>	<b>0.697</b>		<b>2.348</b>		<b>0</b>	
<b>Total Cost per Unit \$ (Total Cost / Quantity of Smart Meters)</b>		<b>\$126.83</b>		<b>\$123.59</b>		<b>n/a</b>
Costs Incurred to:	30-Apr-07		08-Jun-07		08-Jun-07	
Source:	Ex A8		Ex A9 Confidential		Ex A11 Confidential	
Commitment re Quantity of Units Installed by December 31, 2007	16,000		26,000		4,000	

**NOTE: OM&A Costs include the following:**

AMCD Maintenance  
AMRC/LAN Maintenance  
AMCC Hardware and Software Maintenance  
WAN  
Other (Business Process Redesign/Customer Communication/Program Manage



**APPENDIX B**  
**TO THE DECISION WITH REASONS**  
**DATED AUGUST 8, 2007**  
**BOARD FILE NO.**  
**EB-2007-0063**

## Appendix "B"

### Advanced Metering Infrastructure Technologies

Supplier <sup>(1)</sup>	Buying Group	Quantity Installed 2007	
		Actual (YTD)	Planned
Elster	Enersource	12,528	60,000
	Horizon	0	50,000
	Ottawa	114,432	175,000
	Toronto	192,914	400,000
	Veridian	0	40,000
Ozz/Trilliant	Hydro One Brampton	6,401	35,000
	Hydro One Networks	62,914	240,000
	Milton	5,494	15,000
Sensus	Newmarket	19,000	26,000
	PowerStream	0	80,000
	Tay	0	4,000
Tantalus	Chatham-Kent	17,052	28,000
	Middlesex	3,063	6,000
<b>TOTALS</b>		<b>433,798</b>	<b>1,160,000</b>

(1) Description of the technologies attached.

## **Description of the Technologies**

### **(a) Elster EnergyAxis® AMI**

The Elster EnergyAxis® AMI system is a controlled mesh network consisting of three main components:

- Elster EnergyAxis® Metering Automation Server (MAS) is the advanced metering control computer (AMCC) component of the system for data collection and system management.
- Elster A3 ALPHA Meter/Collectors are the advanced metering regional collectors (AMRCs) for local RF (Radio Frequency) LAN management and data collection. These communicate to the MAS system via commercial WAN networks. In addition to being a collector, the A3 ALPHA is also a residential or commercial meter.
- Elster REX and A3 ALPHA meters with unlicensed spread spectrum, two-way 900 MHz RF LAN communications are the advanced metering communication devices (AMCDs).

The system uses a multi-level network. At the first level, communications between the A3 ALPHA collectors and the MAS are via a commercial WAN. At the second level, a repeating peer-to-peer unlicensed 900 MHz LAN is used for communications between the A3 ALPHA collectors and nearby electric meters located on residential and commercial facilities. Elster's 900 MHz technology allows each RF network meter to be a repeater, with up to eight communications 'hops' possible. Data from any meter or meters can be retrieved by the MAS data collection system either from the collector or directly from a meter.

In the Elster EnergyAxis® system, normal consumption data and meter statuses are stored in the electronic registers in each meter. The A3 ALPHA Meter/Collectors automatically set up their local RF networks and poll each meter six times daily. The incoming data from the individual meters is stored in the Meter/Collector. Elster's LAN technology also supports both broadcast outbound and inbound capabilities as required for realtime meter reads or remote reprogramming.

The MAS server provides central system management to support both scheduled and on-request meter readings. Data from the reads is output in industry-standard XML file formats for import into enterprise or MDM/R applications.

This technology is being deployed by Enersource Hydro, Horizon Utilities, Hydro Ottawa, Toronto Hydro-Electric and Veridian Connections. It has been deployed in the following jurisdictions:

- Alaska Village Electric Cooperative;
- Salt River Project; and
- Empresa Nacional de Energia Electrica (Honduras).

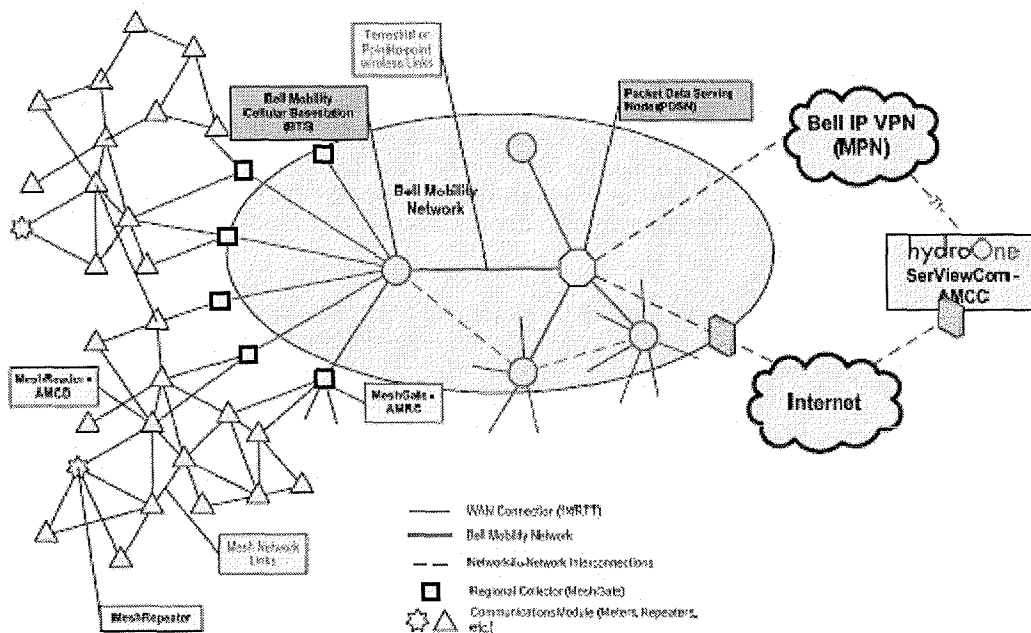
### (b) Ozz/Trilliant AMI

The Ozz/Trilliant solution is based on controlled mesh technology in which meters (MeshReader or Advanced Metering Communication Device [AMCD]) cluster together and talk to or through other meters and repeaters (MeshRepeater) to find their way to a takeout point in the mesh cluster, known as collector (MeshGate or Advanced Metering Regional Collector [AMRC]). From the collector, using cellular technology, data is backhauled (Wide Area Network or WAN) to the facility hosting the Advanced Metering Control Computer (AMCC).

If a communication path is lost, the meter will try to re-establish the communication path, and if unsuccessful will immediately begin searching for a new path. The endpoints have approximately 10.5 months (300 days) of interval storage, and there is approximately 60 days of storage in the MeshGate AMRC.

The AMCD is a standards-based product (ANSI and IEEE) using open (IP) protocols supporting full two way communications and over-the-air firmware upgrade capability.

Overall Mesh Network Smart Metering Architecture



10

This technology is being deployed by Hydro One Brampton, Hydro One Networks and Milton Hydro. It is also deployed in the following jurisdiction:

- o Louisville Gas and Electric.

### **(c) Sensus Metering Systems AMI**

Sensus is a point-to-point long range radio system utilizing towers as the Advanced Metering Regional Collectors (AMRCs). The number of towers needed is dictated by topography, the density of deployment, and the frequency of transmission from the meter to the towers. One tower can cover from 75 to 300 square miles. The tower-based, long range licensed radio system makes Sensus technology well suited to collecting data in utilities that have a combination of urban and rural territories.

Sensus is a fixed network system where radio frequency (RF) modules in meters communicate directly to receivers installed at towers; it is a single tier system. From the tower receiver, the data goes directly back to the utility, not a remote collection facility. The system operates on a mass deployed utility system on primary-use Industry Canada protected radio spectrum.

The data collection network is made up of two parts; the local RF network and the regional network operating centre. The operating centre contains the utility information platform software that manages the meter reading data received from the network.

The RF network consists of radio transmitters and transceivers located at each meter and a network of Tower Gateway Basestations. The transmitters and transceivers transmit the meter consumption and status information at regular intervals. These transmissions are then received by one or more basestations. The basestation forwards the data to the operating centre, and also stores the information locally in the event of operating centre communications path interruption.

This technology is being deployed by Newmarket Tay Power and PowerStream. It has been deployed in the following jurisdictions:

- Alabama Power;
- Potomac Electric Power Company (PEPCO);
- Southern Company; and
- Hawaiian Electric.

**(d) Tantalus Systems AMI**

The Tantalus product (TUNet® technology) is a Hybrid Wireless communication system that operates on a variety of meter manufacturers device types that capture the various functions that the meter provides and transmits the information back to a central server Advanced Metering Control Computer (AMCC).

The Tantalus module is an Advanced Metering Communications Device (AMCD) that allows the utility to retrofit existing electromechanical meters that still have a useable un-depreciated life. These modules fit under the glass of the meter and collect hourly cumulative energy usage to 1/100th of a KWh with the storage capacity of 21 days.

The data is communicated in a self healing mesh-network configuration using unlicensed 900MHz spread-spectrum frequencies with an Effective Radiated Power of 0.5 watts. Each device has a unique frequency identifier, unique utility assigned device identifier, a system assigned business identifier which along with the channel hopping nature of spread-spectrum provides several layers of security from the meter register.

The Local Area Network (LAN) is comprised of the actual modules in the meters at the customers' properties. The meters in the LAN can use each other to hop back to the source meter at the Wide Area Network (WAN) portal and the LAN has the routing depth capability of 16 devices that will lead to solid communication in sparsely populated areas rural areas. The LAN devices communicate back to a source meter on a WAN portal which is installed as part of the meter base.

The WAN portal does not store any data; it acts as a gateway to pass the data through a licensed 220MHz frequency, back to the central network controller which eliminates the possibility of any data overlapping. This frequency range is desirable as it is not heavily utilized and it has very good propagation characteristics, wide area of coverage, to follow the earth terrain and penetrate buildings as well as the wide coverage footprints. This enables the user to minimize the amount of infrastructure and antennas that are required to communicate over a wide area. The WAN is managed by the Network Controller that acts as a single regional collector or Advanced Metering Regional Collector (AMRC).

This system is being deployed by Chatham-Kent and Middlesex. It has been deployed in the following jurisdictions:

- Northeastern Rural Electric Membership Corp.;
- Saint John Energy;
- Anaheim Public Utilities Department; and
- Appalachian Electric Cooperative.

**APPENDIX C**  
**TO THE DECISION WITH REASONS**  
**DATED AUGUST 8, 2007**  
**BOARD FILE NO.**  
**EB-2007-0063**

## Appendix "C"

### Funds Collected Through Smart Meter Rate Adder

Utility	Revenue (CAD \$000)
Toronto Hydro <sup>1</sup>	2,966
Hydro One Networks <sup>2</sup>	4,830
Hydro One Brampton <sup>3</sup>	431
Hydro Ottawa <sup>4</sup>	1,011
Horizon Utilities <sup>5</sup>	1,056
PowerStream <sup>6</sup>	700
Veridian Connections <sup>7</sup>	401
Enersource Hydro <sup>8</sup>	676
Chatham-Kent <sup>9</sup>	145
Middlesex <sup>10</sup>	31
Milton <sup>11</sup>	70
Newmarket <sup>12</sup>	0
Tay <sup>13</sup>	22

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<sup>1</sup> Tab K, Ex 4, pg 8 of 12

<sup>2</sup> K5.7

<sup>3</sup> K6.4

<sup>4</sup> Ex A6, pg 26 of 44

<sup>5</sup> K7.14

<sup>6</sup> Vol June 26, p 43, I 1-5

<sup>7</sup> K8.14

<sup>8</sup> K7.7

<sup>9</sup> A1 Reply Arg Updated Rev Req't

<sup>10</sup> A7 Reply Arg Updated Rev Req't

<sup>11</sup> 21575 customers at \$0.27/month for 12 months

<sup>12</sup> has not made an application for a smart metering rate adder

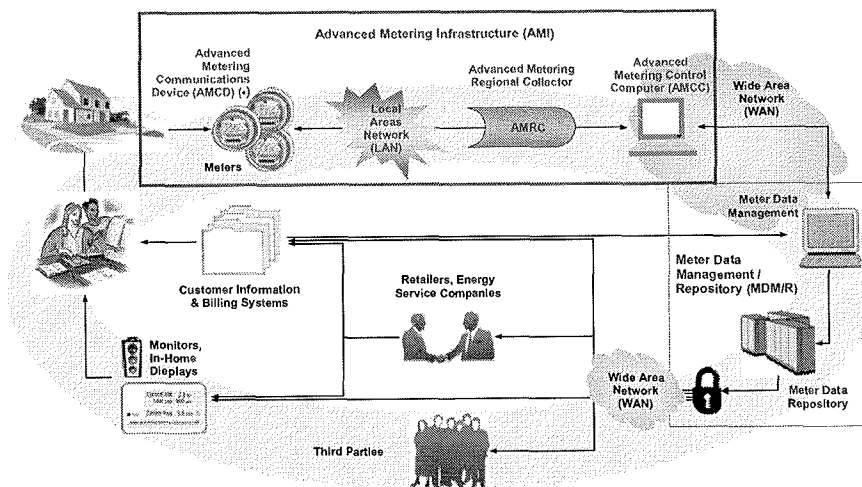
<sup>13</sup> K9.2



**APPENDIX D**  
**TO THE DECISION WITH REASONS**  
**DATED AUGUST 8, 2007**  
**BOARD FILE NO.**  
**EB-2007-0063**

## APPENDIX "D"

# Smart Metering System



**APPENDIX E**  
**TO THE DECISION WITH REASONS**  
**DATED AUGUST 8, 2007**  
**BOARD FILE NO.**  
**EB-2007-0063**

## Appendix "E"

### Smart Meter Revenue Requirement - Summary

*Name of Applicant*

Summary of Actual Costs claimed in this application	2006 Actual	2006 Plus	2007 Actual	Total Actual	Perm Adjust
<b>Capital Costs</b> <i>(must be installed, and used and useful)</i>					
Smart Meters					
Computer Hardware					
Computer Software					
Tools & Equipment					
Other Equipment <i>(please specify)</i>					
<b>Total Capital Costs</b>					
<b>O M &amp; A</b>					
2.1 Advanced metering communication device (AMCD)					
2.2 Advanced metering regional collector (AMRC) (includes LAN)					
2.3 Advanced metering control computer (AMCC)					
2.4 Wide area network (WAN)					
2.5 Other AMI OM&A costs related to minimum functionality					
<b>Total O M &amp; A Costs</b>					
<b>Summary of Revenue Requirement Calculation</b>					
<b>Net Fixed Assets</b>					
Net Fixed Assets Beginning of Year					
Net Fixed Assets End of Year					
<b>Average Net Fixed Asset Values</b>					
Working Capital Allowance					
Operation Expense					
Working Capital Allowance XX % <i>(from approved 2006 EDR application)</i>					
<b>Smart Meters Rate Base</b>					
<b>Return on Rate Base</b> <i>(from approved 2006 EDR application)</i>					
Deemed Debt XX% Times Weighted Debt Rate X.XX%					
Deemed Equity XX% Times ROE X.XX%					
<b>Return on Rate Base</b>					
<b>Operating Expenses</b>					
Incremental Operating Expenses					
Amortization Expenses <i>(please provide details)</i>					
<b>Total Operating Expenses</b>					
	<b>2006 Actual</b>	<b>2006 Plus</b>	<b>2007 Actual</b>	<b>Total Actual</b>	<b>Perm Adjust</b>
Revenue Requirement Before PILs					
Grossed up PILs					
<b>Revenue Requirement for Smart Meters Installed</b>					

Rate Rider to Clear Actual Expenses to MMM 200X <sup>(1)</sup>	Rate Adder	Metered Customers per 2006 EDR	No. of Mths	Amount Recovered
Revenue Requirement for Smart Meters Installed				
Carrying costs				
The last available Board prescribed interest rate for approved accounts to be applied against deferral accounts is assumed to continue without change for the completion of recovery of actual costs.				
Less Smart Meter Adder Recovery				
May 2006 to April 2007				
May 2007 to October 2007				
November 2007 to April 2008 (proposed to clear actual balance)				

Rate Adder for Capital and Operating Exp April 2007 to December 2007 <sup>(2)</sup>	Rate Adder	Metered Customers per 2006 EDR	No. of Mths	Amount Recovered
November 2007 to April 2008 (new deferral account)				

Permanent Capital Rate Adjustment <sup>(3)</sup>	Rate Adder	Metered Customers per 2006 EDR	No. of Mths	Amount Recovered
May 2008				

**1) Actual Cost Recovery Rate Rider**  
Calculate the revenue requirement for approved reporting period actual costs incurred including the revenue requirement for prior period capital assets to be recovered in current reporting period (2006 Plus) and the related carrying costs. For this calculation it is assumed that all monies recovered through the applicants' rate adder to date of adjustment will be used to offset the revenue requirement. Upon completion of collection this rate rider will expire and the applicant will close the related deferral account.

**2) Future Cost Offset Rate Adder**  
Calculate a rate adder for offsetting future costs from the first month after actual cost recovery to the end of 2007. This is similar in nature to the rate adder calculation approved in the April 12, 2007 EDR decision.

**3) Permanent Capital Rate Adjustment**  
Calculate the revenue requirement for actual capital cost that would be normally added to rate base in a cost of service application. This will be the prior and current reporting period assets to date of approval. This rate adjustment will be a permanent addition to rates and will not expire. This allows the utility to collect the ongoing revenue requirement for the capital assets employed. *(Note this amount does not include any incremental operating costs)*



**APPENDIX F**  
**TO THE DECISION WITH REASONS**  
**DATED AUGUST 8, 2007**  
**BOARD FILE NO.**  
**EB-2007-0063**

## APPENDIX "F"

EB-2007-0063

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

AND IN THE MATTER OF applications by electricity distribution companies for approval of a smart meter rate adder;

AND IN THE MATTER OF a combined proceeding initiated by the Ontario Energy Board pursuant to sections 19(4), 21(1), 21(5) and 78(3.03) of the *Ontario Energy Board Act, 1998* to determine issues related to the recovery of costs incurred by distributors and associated with authorized discretionary metering activities.

Following is a list of individuals who have completed a Declaration and Undertaking in the above proceeding:

NAME	DESIGNATION	AFFILIATION
Jay Shepherd	Counsel	School Energy Coalition
Rachel Chen	Consultant	School Energy Coalition
Robert Warren	Counsel	Consumers Council of Canada
Julie Girvan	Consultant	Consumers Council of Canada
Phil Tunley	Counsel	Newmarket-Tay Power
Aaron Dantowitz	Counsel	Newmarket-Tay Power
Tom Brett	Counsel	Chatham-Kent Hydro/Middlesex Power/Milton Hydro
Tom Adams	Consultant	Energy Probe
David MacIntosh	Consultant	Energy Probe
Mark Rodger	Counsel	Toronto Hydro
Mike Buonaguro	Counsel	Vulnerable Energy Consumers' Coalition
Roger Higgin	Consultant	Vulnerable Energy Consumers' Coalition
Andrew Taylor	Counsel	Enersource Hydro/Horizon Utilities/Hydro Ottawa/PowerStream/Veridian
Patrick Moran	Counsel	Enersource Hydro/Horizon Utilities/Hydro Ottawa/PowerStream/Veridian
Michael Engelberg	Counsel	Hydro One Networks/Hydro One Brampton
Richard Stephenson	Counsel	Power Workers Union
Bayu Kidane	Consultant	Power Workers Union
Judy Kwik	Consultant	Power Workers Union
James Douglas	Consultant	PowerStream/Newmarket-Tay
Colin McLorg	Employee	Toronto Hydro
Susan Davidson	Employee	Toronto Hydro
Eduardo Bresani	Employee	Toronto Hydro
Ivano Labricciosa	Employee	Toronto Hydro
Steve MacDonald	Employee	Toronto Hydro
Lynne Anderson	Employee	Hydro Ottawa
Colin Macdonald	Employee	PowerStream
Owen Mahaffy	Employee	Hydro Ottawa
Doug Shannon	Employee	Hydro Ottawa
Jim Hogan	Employee	Chatham-Kent Hydro
Chris Buckler	Employee	Horizon Utilities
George Armstrong	Employee	Veridian Connections

NAME	DESIGNATION	AFFILIATION
Sarah Griffiths	Employee	PowerStream
Paula Conboy	Employee	PowerStream
Kathi Litt	Employee	Enersource Hydro
Rick Stevens	Employee	Hydro One Networks
Pankaj Sardana	Employee	Toronto Hydro
Phil Dubeski	Employee	Toronto Hydro
Dave Kenney	Employee	Chatham-Kent Hydro
Hugh Bridgen	Employee	Chatham-Kent Hydro
Cheryl Decaire	Employee	Chatham-Kent Hydro
Don Thorne	Employee	Milton Hydro
Harvey Houle	Intervenor	none
Iain Clinton	Employee	Newmarket-Tay Power
Paul Ferguson	Employee	Newmarket-Tay Power
Cameron McKenzie	Employee	Horizon Utilities
Ruth Greey	Employee	Hydro One Networks
Ian Innis	Employee	Hydro One Networks
Laurie Stickwood	Employee	Veridian Connections
Terry Robertson	Employee	Veridian Connections
Rob Scarffe	Employee	Veridian Connections
Sarah Hughes	Employee	Horizon Utilities
Scott Miller	Employee	Hydro One Brampton
Tony Paul	Employee	Hydro One Brampton
James Macumber	Employee	Enersource Hydro
Sonja Potocnik	Employee	Enersource Hydro
Tom Wasik	Employee	Enersource Hydro
Ramona Hendry	Employee	Enersource Hydro
Frank Fabiano	Employee	Horizon Utilities
Edward Chatten	Employee	PowerStream Inc
Mary-Jo Corkum	Employee	Milton Hydro
John Banadie	Employee	Enersource Hydro



**APPENDIX G**  
**TO THE DECISION WITH REASONS**  
**DATED AUGUST 8, 2007**  
**BOARD FILE NO.**  
**EB-2007-0063**

**APPENDIX "G"**

**EB-2007-0063  
COMBINED PROCEEDING - SMART METERS  
LIST OF NAMED PARTIES AND INTERVENORS**

**NAMED PARTIES**

**CONTACT INFORMATION**

1. **Chatham-Kent Hydro Inc.**  
**EB-2007-0517**

Chatham-Kent Hydro Inc.  
320 Queen Street  
P.O. Box 70  
Chatham, ON N7M 5K2  
Attn: Mr. David Kenney, President  
Tel: 519-352-6300  
Fax: 519-352-9860  
E-mail: [davekenney@ckhydro.com](mailto:davekenney@ckhydro.com)

**AND**

Mr. Jim Hogan  
Chief Financial and Regulatory Officer  
320 Queen Street  
P.O. Box 70  
Chatham, ON N7M 5K2  
Tel: 519-352-6300 x 277  
Fax: 519-352-9860  
E-mail: [jimhogan@ckenergy.com](mailto:jimhogan@ckenergy.com)

**AND**

*(May 23, 2007)*

Mr. Tom Brett  
Gowling, Lafleur, Henderson LLP  
1 First Canadian Place, Suite 1600  
Toronto, ON M5X 1G5  
Tel: 519-352-6300 x 277  
Fax: 519-352-9860  
E-mail: [tom.brett@gowlings.com](mailto:tom.brett@gowlings.com)

2. **Middlesex Power Distribution Corporation**  
**EB-2007-0544**

Middlesex Power Distribution Corporation  
351 Frances Street  
Strathroy, ON N7G 2L7  
Attn: Dave Kenney, President  
Tel: 519-352-6300  
Fax: 519-351-4059  
E-mail: [davekenney@ckhydro.com](mailto:davekenney@ckhydro.com)

**AND**

*(May 23, 2007)*

Mr. Tom Brett  
Gowling, Lafleur, Henderson LLP  
1 First Canadian Place, Suite 1600  
Toronto, ON M5X 1G5  
Tel: 519-352-6300 x 277  
Fax: 519-352-9860  
E-mail: [tom.brett@gowlings.com](mailto:tom.brett@gowlings.com)

3. **Coalition of Large Distributors (CLD)**

**Legal Counsel for CLD**

*(May 18, 2007)*

Mr. Andrew Taylor  
Ogilvy Renault LLP  
Suite 3800  
Royal Bank Plaza, South Tower  
200 Bay Street  
P.O. Box 84  
Toronto ON M5J 2Z4  
Tel: 416 216-4771  
Fax: 416 216-3930  
Email: [ataylor@ogilvyrenault.com](mailto:ataylor@ogilvyrenault.com)

**Enersource Hydro Mississauga Inc.**  
**EB-2007-0523**

and

Enersource Hydro Mississauga Inc.  
3240 Mavis Road  
Mississauga, ON L5C 3K1  
Attn: Kathi Litt, Rates & Regulatory  
Tel: 905-283-4247  
Fax: (905)566-2737  
E-mail: [klitt@enersource.com](mailto:klitt@enersource.com)

**Horizon Utilities Corporation**  
**EB-2007-0538**

and

Horizon Utilities Corporation  
55 John Street North  
P.O. Box 2249, Station LCD 1  
Hamilton ON L8N 3E4  
Attn: Cameron McKenzie, Director  
Regulatory Affairs  
Tel: 905-317-4785  
Fax: 905-552-6570  
E-mail: [chmckenzie@hamiltonhydro.com](mailto:chmckenzie@hamiltonhydro.com)

**Hydro Ottawa Limited**  
**EB-2007-0542**

and

Hydro Ottawa Limited  
3025 Albion Road N., P.O. Box 8700  
Ottawa, ON K1G 3S4  
Attn: Paul Hughes, Corporate Secretary  
and General Counsel  
Tel: 613-738-5499  
Fax: 613-738-5486  
E-mail: [paulhughes@hydroottawa.com](mailto:paulhughes@hydroottawa.com)

## LIST OF NAMED PARTIES AND INTERVENORS

Page 3 of 11

**PowerStream Inc.**  
**EB-2007-0573**

and

PowerStream Inc.  
2800 Rutherford Road  
Vaughan, ON L4K 2N9  
Attn: Paula Conboy, Director of  
Regulatory & Government Affairs  
Tel: 905-417-6900  
Fax: 905-303-2006  
E-mail: [paula.conboy@powerstream.ca](mailto:paula.conboy@powerstream.ca)

**Veridian Connections Inc.**  
**EB-2007-0583**

Veridian Connections Inc.  
55 Taunton Road East  
Ajax, ON L1T 3V3  
Attn: George Armstrong, Manager of  
Regulatory Affairs & Key Projects  
Tel: 905-427-9870  
Fax: 905-619-0210  
E-mail: [garmstrong@veridian.on.ca](mailto:garmstrong@veridian.on.ca)

4. **Hydro One Brampton Networks Inc.**  
**EB-2007-0538**

Hydro One Brampton Networks Inc.  
175 Sandalwood Pkwy West  
Brampton, ON L7A 1E8  
Attn: Scott Miller  
Regulatory Affairs Manage  
Tel: 905-840-6300  
Fax: 905-840-0967  
E-mail: [smiller@hydroonebrampton.com](mailto:smiller@hydroonebrampton.com)

5. **Hydro One Networks Inc.**  
**EB-2007-0541**

Hydro One Networks Inc.  
8<sup>th</sup> Floor, South Tower  
483 Bay Street  
Toronto, ON M5G 2P5  
Attn: Glen MacDonald  
Senior Advisor – Regulatory Affairs  
Tel: 416-345-5913  
Fax: 416-345-5866  
E-mail: [regulatory@HydroOne.com](mailto:regulatory@HydroOne.com)

LIST OF NAMED PARTIES AND INTERVENORS

Page 4 of 11

6. **Milton Hydro Distribution Inc.**  
**EB-2007-0555**

Milton Hydro Distribution Inc.  
55 Thompson Road South  
P.O. Box 189  
Milton, ON L9T 6P7  
Attn: Don Thorne, President & CEO  
Tel: 905-876-4611  
Fax: 905-876-2044  
E-mail: [donthorne@miltonhydro.com](mailto:donthorne@miltonhydro.com)

7. **Newmarket Hydro Ltd.**  
**EB-2007-0557**

Newmarket Hydro Ltd.  
590 Steven Court  
Newmarket, ON L3Y 6Z2  
Attn: Gaye-Donna Young  
Chief Operating Officer  
Tel: 905-953-8548  
Fax: 905-895-8931  
E-mail: [nmhydro@nmhydro.ca](mailto:nmhydro@nmhydro.ca)

*(May 25, 2007 – email change)*

**AND**

Attn: Iain Clinton  
Chief Financial Officer  
Tel: 905-953-8548, ext 2300  
Fax: 905-895-8931  
Email: [iclinton@nmhydro.ca](mailto:iclinton@nmhydro.ca)

*(May 2007)*

**AND**

M. Philip Tunley  
Stockwoods LLP  
Suite 2512 - 150 King Street West  
Toronto ON M5H 1J9  
Tel: 416 593-3495  
Cell: 647 500-3495  
Fax: 416 593-9345  
E-mail: [philt@stockwoods.ca](mailto:philt@stockwoods.ca)

*(May 2007)*

## LIST OF NAMED PARTIES AND INTERVENORS

Page 5 of 11

8. **Tay Hydro Electric Distribution Co. Inc.**  
**EB-2007-0578**

Tay Hydro Electric Distribution  
Company Inc.  
489 Finlayson Street, P.O. Box 160  
Port McNicoll, ON L0K 1R0  
Attn: Jim Crawford, President  
Tel: 705-534-7281  
Fax: 705-534-4470  
E-mail: [Jim@tayhydro.com](mailto:Jim@tayhydro.com)

AND

(May 2007)

M. Philip Tunley  
Stockwoods LLP  
Suite 2512 - 150 King Street West  
Toronto ON M5H 1J9  
Tel: 416 593-3495  
Cell: 647 500-3495  
Fax: 416 593-9345  
E-mail: [philt@stockwoods.ca](mailto:philt@stockwoods.ca)

9. **Toronto-Hydro-Electric Systems Limited**  
**EB-2007-0582**

Toronto Hydro-Electric System Limited  
Regulatory Services, 6<sup>th</sup> Floor  
14 Carlton Street  
Toronto, ON M5B 1K5  
Attn: Colin McLorg, Manager  
Regulatory Affairs  
Tel: 416-542-2513  
Fax: 416-542-2776  
E-mail: [regulatoryaffairs@torontohydro.com](mailto:regulatoryaffairs@torontohydro.com)

Mr. J. Mark Rodger  
Borden Ladner Gervais LLP  
Scotia Plaza  
40 King Street West  
Toronto ON M5H 3Y4  
Tel: 416 367-6190  
Fax: 416 361-7088  
Email: [mrodger@blgcanada.com](mailto:mrodger@blgcanada.com)

**LIST OF NAMED PARTIES AND INTERVENORS**

Page 6 of 11

**INTERVENORS**

1. **Consumers Council of Canada  
(the "Council")**

**CONTACT INFORMATION**

Mr. Robert B. Warren  
Counsel for Consumers Council of Canada  
WeirFoulds LLP  
Barristers & Solicitors  
The Exchange Tower, Suite 1600  
P.O. Box 480  
130 King Street West  
Toronto ON M5X 1J5  
Tel: 416-947-5075  
Fax: 416-365-1876  
Email: [rwarren@weirfoulds.com](mailto:rwarren@weirfoulds.com)

**AND**

Ms. Julie Girvan  
Consultant for the Council  
2 Penrose Road  
Toronto ON M4S 1P1  
Tel: 416-322-7936  
Fax: 416-322-9703  
Email: [jgirvan@ca.inter.net](mailto:jgirvan@ca.inter.net)

2. **Direct Energy Marketing Inc.  
(Direct Energy)**

Ms. Christine Dade  
Manager, Government & Regulatory Affairs – Eastern  
Canada  
Direct Energy  
2225 Sheppard Avenue East  
Toronto ON M2J 5C2  
Tel: 416 758-8700  
Fax: 416 758-4272  
Email: [Christine.Dade@directenergy.com](mailto:Christine.Dade@directenergy.com)

3. **Electricity Distributors Association (EDA)**

Mr. Maurice Tucci  
Senior Analyst  
Electricity Distributors Association  
370 Steeles Avenue West  
Suite 1100  
Vaughan ON L4L 8K8  
Tel: 905 265-5300  
Fax: 905 265-5301  
Email: [mtucci@eda-on.ca](mailto:mtucci@eda-on.ca)

## LIST OF NAMED PARTIES AND INTERVENORS

Page 7 of 11

4. **Enbridge Electric Connections Inc. (EECI)**

Mr. Allen Maclure  
Director Administration  
Enbridge Electric Connections Inc.  
30 Leek Crescent  
Suite 103  
Richmond Hill ON L4B 4N4  
Tel: 905 747-5572  
Fax: 905 881-1732  
Email: [allen.maclure@enbridge.com](mailto:allen.maclure@enbridge.com)

AND

Dennis M. O'Leary  
Aird & Berlis LLP  
Barristers and Solicitors  
BCE Place, Suite 1800  
Box 754, 181 Bay Street  
Toronto ON M4J 2T9  
Tel: 416 865-4711  
Fax: 416 863-1515  
Email: [doleary@airdberlis.com](mailto:doleary@airdberlis.com)

5. **Energy Cost Management Inc.  
(ECMI)**

Mr. Roger White  
President  
Energy Cost Management Inc.  
1236 Sable Drive  
Burlington ON L7S 2J6  
Tel: 905 639-7476  
Fax: 905 639-1693  
Email: [rew@worldchat.com](mailto:rew@worldchat.com)

6. **Energy Probe Research Foundation  
(Energy Probe)**

Mr. Thomas Adams  
c/o Energy Probe  
225 Brunswick Ave.  
Toronto ON M5S 2M6  
Tel: 416 964-9223 ext. 239  
Fax: 416 964-8239  
Email: [TomAdams@nextcity.com](mailto:TomAdams@nextcity.com)

AND

Mr. David MacIntosh  
c/o Energy Probe  
225 Brunswick Ave.  
Toronto ON M5S 2M6  
Tel: 416 964-9223 ext. 235  
Fax: 416 964-8239  
Email: [DavidMacIntosh@nextcity.com](mailto:DavidMacIntosh@nextcity.com)

7. **Federation of Ontario Cottagers'  
Associations Inc. (FOCA)**

(May 22, 2007)

Mr. John S. McGee  
Federation of Ontario Cottagers' Association  
36 Grouse Glen  
Barrie ON L4N 7Z7

Tel: 705-726-0707  
Fax: 705-726-0541  
Email: [mcgeejs@csolve.net](mailto:mcgeejs@csolve.net)



LIST OF NAMED PARTIES AND INTERVENORS

Page 8 of 11

8. **Grimsby Power Incorporated**

Mr. Brian Weber  
President  
Grimsby Power Incorporated  
231 Roberts Road  
Grimsby ON L3M 5N2  
Tel: 905-945-5437 ext 221  
Fax: 905-945-9933  
Email: [brianw@grimsbypower.com](mailto:brianw@grimsbypower.com)

9. **Power Workers Union (PWU)**

*(correction-email address  
June 12, 2007)*

Mr. John Sprackett  
Staff Officer, President's Office  
Power Workers' Union  
244 Eglinton Avenue East  
Toronto ON M4P 1K2  
Tel: 416 322-4787  
Fax: 416 481-7914  
Email: [spracket@pwu.ca](mailto:spracket@pwu.ca)

**AND**

*(correction - name – June 12, 2007)*

Ms. Judy Kwik  
Senior Consultant  
Elenchus Research Associates (ERA)  
34 King Street East, Suite 610  
Toronto ON M5C 2X8  
Tel: 416 348-8777  
Fax: 416 348-9930  
Email: [jkwik@era-inc.ca](mailto:jkwik@era-inc.ca)

**AND**

Mr. Richard Stephenson  
Paliare Roland  
250 University Avenue, Suite 510  
Toronto ON M5H 3E5  
Tel: 416 646-4325  
Fax: 416 646-4335  
Email: [Richard.Stephenson@paliareroland.com](mailto:Richard.Stephenson@paliareroland.com)

## LIST OF NAMED PARTIES AND INTERVENORS

Page 9 of 11

10. **Rogers Cable Communications Inc.  
(Rogers Cable)**

*(Rogers Cable withdrew June 15, 2007)*

Mr. John Armstrong  
Manager, Municipal & Utility Relations  
234 Newkirk Road  
Richmond Hill ON L4C 3S5  
Tel: 905 780-7077  
Fax: 905 780-7110  
Email: [john.armstrong@rci.rogers.com](mailto:john.armstrong@rci.rogers.com)

AND

Ms. Paula Zarnett  
BDR NorthAmerica Inc.  
Email: [pzarnett@bdrenergy.com](mailto:pzarnett@bdrenergy.com)

AND

Mr. Robert Frank/ Ms. Heather Landymore  
MacLeod Dixon LLP  
Toronto Dominion Centre  
Email: [robert.frank@macleoddixon.com](mailto:robert.frank@macleoddixon.com)  
Email: [heather.landymore@macleaddixon.com](mailto:heather.landymore@macleaddixon.com)

11. **School Energy Coalition  
(Schools)**

Mr. Bob Williams  
Co-ordinator  
Ontario Education Services Corporation  
c/o. Ontario Public School Boards' Association  
439 University Avenue, 18<sup>th</sup> Floor  
Toronto ON M5G 1Y8  
Tel: 416 340-2540  
Fax: 416 340-7571  
Email: [bwilliams@opsba.org](mailto:bwilliams@opsba.org)

## LIST OF NAMED PARTIES AND INTERVENORS

Page 10 of 11

AND

Mr. Jay Shepherd  
Counsel  
Shibley Righton LLP  
Barristers and Solicitors  
250 University Avenue, Suite 700  
Toronto ON M5H 3E5  
Tel: 416 214-5224  
Fax: 416 214-5424  
Email: [jay.shepherd@shibleyrighton.com](mailto:jay.shepherd@shibleyrighton.com)

AND

Ms. Rachel Chen  
Institutional Energy Analysis, Inc.  
250 University Avenue, Suite 700  
Toronto ON M5H 3E5  
Tel: 416 214-5298  
Fax: 416 214-5498  
Email: [Rachel.chen@ieai.ca](mailto:Rachel.chen@ieai.ca)

12. Union

Mr. Pat McMahon  
Manager, Regulatory Research and Records  
Union Gas Limited  
50 Keil Drive North  
Chatham ON N7M 5K2  
Tel: 519 436-5325  
Fax: 519 436-4641  
Email: [pmcmahon@uniongas.com](mailto:pmcmahon@uniongas.com)  
Link EB-2007-0517 Chatham-Kent

13. Vulnerable Energy Consumer's Coalition  
(VECC)

Mr. Michael Buonaguro  
Counsel  
Vulnerable Energy Consumer's Coalition  
c/o Public Interest Advocacy Centre  
34 King Street East, Suite 1102  
Toronto ON M5C 2X8  
Tel: 416 767-1666  
Fax: 416 348-0641  
Email: [mbuonaguro@piac.ca](mailto:mbuonaguro@piac.ca)

AND

Mr. Roger Higgin  
Econalysis Consulting Services  
34 King Street East, Suite 1102  
Toronto ON M5C 2X8  
Tel: 416 348-9391  
Fax: 416 348-0641  
Email: [rhiggin@econalysis.ca](mailto:rhiggin@econalysis.ca)

14. Mr. Harvey Houle

Mr. Harvey Houle  
Box 192  
Utterson ON P0B 1M0

15. Elster Metering

*(Late Intervention-June 12, 2007)*

Mr. Jack Robertson  
Elster Metering  
110 Walkers Line, Suite 101  
Burlington ON L7N 2G3  
Tel: 905 634-4895  
Fax: 905 634-6705

## LIST OF NAMED PARTIES AND INTERVENORS

Page 11 of 11

Email: [jack.d.robertson@ca.elster.com](mailto:jack.d.robertson@ca.elster.com)

AND

Mr. John Koch  
Counsel for Elster Metering  
Blake, Cassels & Graydon LLP  
Suite 2800, 199 Bay Street  
Commerce Court West  
Toronto ON M5L 1A9  
Tel: 416 863-4159  
Fax: 416 863-2653  
Email: [John.Koch@blakes.com](mailto:John.Koch@blakes.com)

16. **Sensus Metering Systems**

*(Late Intervention, June 12, 2007-update  
address/email June 15, 2007)*

Mr. Tim Harringer  
Director, Corporate Affairs  
Sensus Metering Systems Canada  
33 Isaacson Cres  
Aurora ON L4G 3H5  
Fax: 905-727-8807  
Tel: 416-816-6941  
Email: c/o Chris Teehan at [cteehan@ktild.on.ca](mailto:cteehan@ktild.on.ca)

17. **Tantalus Systems Corporation**

*(Pending – Late Intervention-June 12, 2007+)*

Mr. David Crocker  
Davis LLP  
1 First Canadian Place  
Suite 5600 P.O. Box 367  
100 King Street West  
Toronto ON M5X 1E2  
Tel: 416 941-5415  
Fax: 416 777-7431  
Email: [dcrocker@davis.ca](mailto:dcrocker@davis.ca)

Withdrawn: Ms. Avic Kirchlechner (remove from lists as of March 25, 2007)

Withdrawn: Rogers Cable (June 15, 2007)

Tab 4



EB-2013-0321

**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 ISSUES LIST  
AND CONFIDENTIAL FILINGS AND  
PROCEDURAL ORDER NO. 7**

**April 17, 2014**

Ontario Power Generation Inc. ("OPG") filed an application, dated September 27, 2013, 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 its nuclear generating facilities and the currently prescribed hydroelectric generating facilities, to be effective January 1, 2014. The application also seeks approval for payment amounts for newly prescribed hydroelectric generating facilities, to be effective July 1, 2014.

**Issues List**

On April 10, 2014, the Board issued Procedural Order No. 6 which made provision for submissions on an issue proposed by Sustainability Journal on December 16, 2013, and rephrased by the Board as: *Could the storage of energy improve the efficiency of hydroelectric generating stations?*

Submissions were filed by OPG and Board staff. OPG opposed the inclusion of the issue, stating that the prescribed facilities, pursuant to section 78.1 of the Act, do not include energy storage facilities as described in documentation filed by Sustainability Journal. OPG also noted that it has no plans to build such facilities and has not filed any evidence on the subject. In OPG's view, the consideration of energy storage, as proposed by Sustainability Journal, is part of a broader consultation on the energy supply mix.

Both OPG and Board staff referred to the *Long-Term Energy Plan* ("LTEP") in their submissions. Board staff referred to sections of the LTEP specifically related to energy storage and suggested that the Board consider these references as well as recent communication between the Minister of Energy and the Ontario Power Authority ("OPA") and the Independent Electricity System Operator ("IESO") regarding procurement of energy storage. Board staff submitted that the draft issue is not within the scope of the current proceeding and the 2014-2015 test period.

Sustainability Journal replied that while OPG has no plans to build energy storage facilities such as those proposed by Sustainability Journal, OPG's position is not reasonable and is a principal driving factor in OPG's proposal for the price increases. Sustainability Journal would like to explore the matter in this proceeding. While energy storage indirectly influences energy supply mix, in Sustainability Journal's view, the principal impact of energy storage is on the pricing of power and should be considered by the Board.

The Board will add the issue to the issues list approved on February 19, 2014, as issue number 5.1(a). The Board acknowledges OPG's submission regarding regulation of "prescribed assets" under section 78.1 of the Act. The Board also acknowledges OPG's submission which states that OPG has no plans to build energy storage facilities as described in the documentation filed by Sustainability Journal. However, the Board finds that OPG has a responsibility to optimize the usage of all of its assets, and in that regard, storage may have benefits. Notwithstanding the energy storage initiatives undertaken by the OPA and IESO, including energy storage on the issues list may further the exploration and understanding of that issue.

## Confidential Filings

In correspondence filed on April 4, 2014, OPG requested review by the “Board only” of certain information contained within the following interrogatory responses. OPG seeks permanent redaction for this information.

- Board staff Interrogatory #4 Attachment 1 (Exh L-1.2-Staff-4)
- Association of Major Power Consumers in Ontario Interrogatory #4 Attachment 1 (Exh L-1.2-AMPCO-4)
- School Energy Coalition (“SEC”) Interrogatory #17 (Exh L-1.2-SEC-17)
- Society of Energy Professionals Interrogatory #4 (Exh L-6.1-SEP-4)

The Board has reviewed these documents and is satisfied that the redacted information relates solely to OPG’s unregulated business. The information will be permanently redacted for this proceeding.

OPG also requested review by the “Board only” of the response to SEC Interrogatory #119, Attachment 1 (Exh L-6.8-SEC-119). OPG requested confidential treatment of Exh L-6.8-SEC-119 Attachment 1 in entirety, to be disclosed to persons who have signed the Declaration and Undertaking (that is Appendix C of the *Practice Direction on Confidential Filings*) but not the Power Workers’ Union (“PWU”) or the Society of Energy Professionals (“Society”). As an interim measure, prior to final determination by the Board, OPG requested that this interrogatory response be reviewed by the Board only.

The Board has reviewed Exh L-6.8-SEC-119 Attachment 1 and finds that the analysis of overtime costs is relevant to the proceeding and should receive confidential treatment. However, the Board finds that part of the document should be on the public record to provide context to all parties. Specifically, the header, date, title and first two paragraphs should be on the public record. The rest of the document and to whom the document is addressed shall receive confidential treatment and be made available to persons who have signed the Declaration and Undertaking, but will not be made available to the PWU or the Society, as doing so may have detrimental impacts on future union negotiations. Any cross examination on this document will be conducted *in camera* and will exclude the PWU and Society representatives, and any persons who have not signed the Declaration and Undertaking.



The Board considers it necessary to make provision for the following matters related to this proceeding.

**THE BOARD ORDERS THAT:**

1. The issues list set out in Procedural Order No. 3 issued on February 19, 2014 shall be amended to include issue 5.1(a): *Could the storage of energy improve the efficiency of hydroelectric generating stations?*
2. OPG shall file a redacted copy of Exh L-6.8-SEC-119 Attachment 1 for the public record. OPG shall file confidential copies of Exh L-6.8-SEC-119 Attachment 1 with the Board and to all persons who have signed the Declaration and Undertaking (that is Appendix C of the *Practice Direction on Confidential Filings*) but not the Power Workers' Union or the Society of Energy Professionals.

**DATED at Toronto, April 17, 2014**

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

Tab 5

**SEC Interrogatory #119**

**Ref:** Auditor General's 2013 Annual Report/p.175

**Issue Number:** 6.8

**Issue:** Are the 2014 and 2015 human resource related costs (wages, salaries, benefits, incentive payments, FTEs and pension costs) appropriate?

**Interrogatory**

In response to Recommendation 4, OPG stated that it, "will conduct a cost-benefit analysis to explore various ways, including schedule and hiring staff and/or contractors, to minimize overtime costs". Please provide a copy of all cost-benefit analyses OPG has conducted to minimize overtime costs.

**Response**

OPG completed a high level, preliminary cost benefit analysis in March 2014. In order to address the issue, collective agreements may have to be changed and as such, the analysis contains information that may be used by OPG during the next round of collective bargaining. Therefore, the cost benefit analysis referenced as an attachment has been provided on a confidential basis since its public production would prejudice OPG's negotiating position.

In addition, OPG notes that while these materials may inform OPG's proposed negotiating position, this does not in any way guarantee a specific outcome in collective bargaining. The negotiations must play out fully before the outcome is determined. Accordingly, the materials are not, in and of themselves, determinative of any savings.

MEMORANDUM

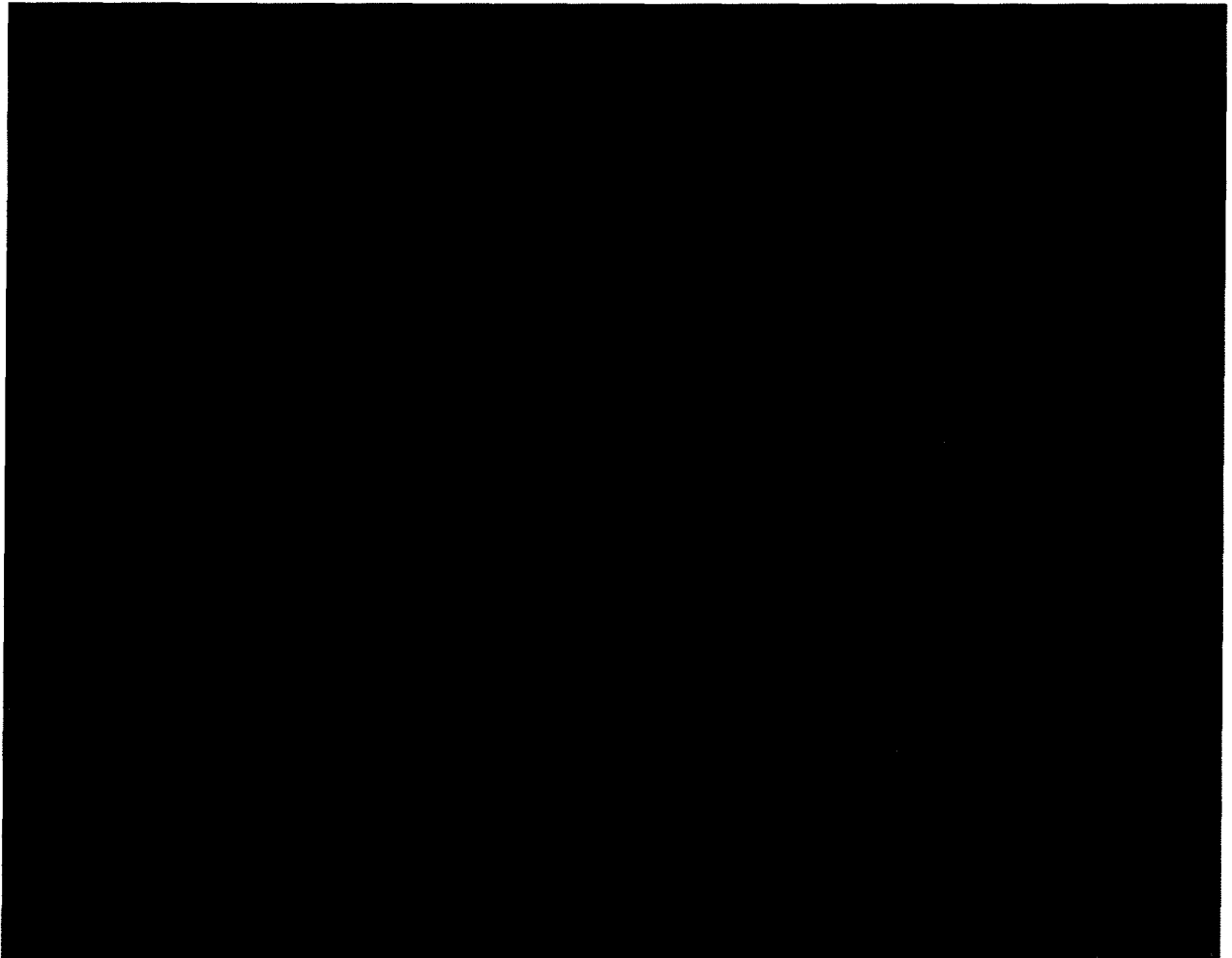
Date: February 12<sup>th</sup>, 2014



IMS Overtime Usage: Economic Analysis and Recommendations

As part of OPG's response to the Auditor General's findings on overtime usage, IMS committed to perform a simplified economic assessment to understand whether overtime costs can be minimized by scheduling their staff in a more cost-beneficial manner.

The AG report noted that Inspection and Maintenance (I&M) technicians have traditionally worked significant overtime to support the critical path of planned outages. They also noted that this overtime is typically paid at a rate of 1.5x-2x the I&M technician's base hourly wage.



Tab 6





EB-2013-0321

**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. 8**

**May 6, 2014**

Ontario Power Generation Inc. ("OPG") filed an application, dated September 27, 2013, with the Ontario Energy Board under section 78.1 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15, Schedule B seeking approval for increases in payment amounts for the output of its nuclear generating facilities and the currently prescribed hydroelectric generating facilities, to be effective January 1, 2014. The application also seeks approval for payment amounts for newly prescribed hydroelectric generating facilities, to be effective July 1, 2014.

**Confidential Filings**

In correspondence filed on April 4, 2014, OPG requested confidential treatment for certain information that was requested in 18 interrogatories. Confidential copies of the responses to the 18 interrogatories were provided to the Board on April 8, 2014. The specific interrogatory responses are:

1. Board staff Interrogatory #4 Attachment 1(Exh L-1.2-Staff-4)
2. Board staff Interrogatory #49 (Exh L-4.9-Staff-49)
3. Board staff Interrogatory #50 (Exh L-4.9-Staff-50)

4. Board staff Interrogatory #139 Attachment 1 (Exh L-6.10-Staff-139)
5. Association of Major Power Consumers in Ontario ("AMPCO") Interrogatory #4 Attachment 1 (Exh L-1.2-AMPCO-4)
6. AMPCO Interrogatory #71 Attachment 1 (Exh L-6.10-AMPCO-71)
7. Environmental Defence ("ED") Interrogatory #11 (Exh L-4.12-ED-11)
8. Consumers Council of Canada Interrogatory #22 (Exh L-6.8-CCC-22)
9. School Energy Coalition ("SEC") Interrogatory #13 (Exh L-1.2-SEC-13)
10. SEC Interrogatory #17 (Exh L-1.2-SEC-17)
11. Society of Energy Professionals Interrogatory #4 (Exh L-6.1-SEP-4)
12. Board staff Interrogatory #76 (Exh L-6.3-Staff-76)
13. Board staff Interrogatory #176 (Exh L-7.1-Staff-176)
14. Board staff Interrogatory #181 (Exh L-8.2-Staff-181)
15. AMPCO Interrogatory #81 (Exh L-8.1-AMPCO-81)
16. ED Interrogatory #3 Attachment 2 (Exh L-2.1-ED-3)
17. SEC Interrogatory #51, Attachments 1-5 (Exh L-4.7-SEC-51)
18. SEC Interrogatory #119, Attachment 1 (Exh L-6.8-SEC-119)

In accordance with section 5 of the Board's *Practice Direction on Confidential Filings* ("Practice Direction"), OPG provided the reasons why it requested confidential treatment and the reasons why public disclosure of the information would be detrimental to OPG. In Procedural Order No. 6, issued on April 10, 2014, the Board made provision for submissions on the request for confidential treatment for these interrogatory responses. The School Energy Coalition ("SEC") filed a submission with respect to responses 12 and 17 in the list above, and OPG filed a reply.

The Board has reviewed interrogatory responses 1 to 11 in the list above and is satisfied that the information for which OPG seeks confidential treatment is similar to information for which the Board granted confidential treatment in the Decision and Procedural Order No. 4 issued on March 21, 2014. The Board has also reviewed responses 14 and 15 relating to Bruce Power information and response 16 which relates to financial information which is still to be negotiated. The Board grants OPG's request for confidential treatment with respect to responses 1 to 11 and 14 to 16 in the list above.

SEC submitted that the response to Board staff Interrogatory #76 (Exh L-6.3-Staff-76) which is number 12 in the list above should be placed on the public record in fully unredacted form. SEC noted that the nuclear fuel related costs for which OPG seeks



confidential treatment are part of a 10 year supply contract that runs until 2021, and that it cannot be asserted that public disclosure would prejudice future negotiations. OPG replied that disclosure of the costs would allow for determination of unit prices paid to the vendors and would disadvantage the vendors in negotiations with other customers. Further OPG is under a contractual obligation to keep this type of information confidential.

The Board has determined that it would like further explanation of the rationale for the confidential treatment of response 12 in the list above and the potential for harm in the event of public disclosure. Similarly, the Board would like further explanation of response 13 (Exh L-7.1-Staff-176) relating to hydroelectric ancillary services revenue which OPG states it is bound to maintain in confidence according to its contracts with the IESO. The Board will require OPG to provide that rationale at the motion hearing scheduled on **May 9, 2014**.

The response to SEC Interrogatory #51, Attachments 1-5 (Exh L-4.7-SEC-51) which is number 17 in the list above, relates to project management audits completed by OPG's Internal Audit Department. OPG has requested confidential treatment for these attachments in their entirety as it is their position that public disclosure would likely discourage OPG employees from disclosing problems in future audits. SEC submitted that the audit reports appear to be regular audits conducted by OPG Internal Audit, not whistleblower type audits. SEC submitted that the audit reports provide important information and should not be confidential. OPG replied that employees whose areas are being audited may feel reluctant to participate if the reports were publicly disclosed. Even though individual employee names are not disclosed, employees may be concerned that individual or small group attribution could be inferred. The Board has reviewed the audit reports filed as Attachments 1-5 and proposes that it is possible to file public versions of these audit reports that are free of potential attribution. OPG shall file such documents for the Board's consideration on **May 8, 2014** and/or address the matter at the motion hearing scheduled on **May 9, 2014**. The Board will only permit redactions that are designed to prevent attribution; all other elements of the documents are to be made public.

In the Decision and Procedural Order No. 7 issued on April 17, 2014, the Board found that response 18 in the list above (Exh L-6.8-SEC-119 Attachment 1) should receive confidential treatment, but that some of the information relating to the overtime cost analysis should be placed on the public record for context. On April 24, 2014, OPG filed

a version of the attachment that complied with the decision issued on April 17, 2014, for the public record. The full confidential version of Exh L-6.8-SEC-119 Attachment 1 will be made available to persons who have signed the Declaration and Undertaking under the Practice Direction, but will not be made available to the Power Workers' Union or the Society of Energy Professionals.

### **Motions**

On May 1, 2014, SEC filed a notice of motion seeking full and adequate response to nine interrogatories. SEC requested that the motion be dealt with orally.

Environmental Defence filed a notice of motion on May 5, 2014 seeking full and adequate response to eight interrogatories and three technical conference undertakings. The Association of Major Power Consumers in Ontario also filed a notice of motion on May 5, 2014. It seeks full and adequate response to two interrogatories.

The Board will not order the production of the documents at this time. The Board will make provision for submissions on these matters, and will hear the motions on **May 9, 2014**.

The Board considers it necessary to make provision for the following matters related to this proceeding.

### **THE BOARD ORDERS THAT:**

1. Parties that are in support of the motions shall file their submissions and motion materials on the matters with the Board and deliver them to all other parties on or before **May 6, 2014**.
2. Parties that oppose the motions shall file their submissions and motion materials on the matters with the Board and deliver them to all other parties on or before **noon on May 8, 2014**.
3. The motions will be heard in the Board's hearing room at 2300 Yonge Street, 25<sup>th</sup> Floor, Toronto, on **May 9, 2014**, starting at 9:30 a.m.
4. OPG shall file redacted versions of SEC Interrogatory #51, Attachments 1-5 (Exh L-4.7-SEC-51) by **May 8, 2014**.

All filings to the Board must quote the file number, **EB-2013-0321**, be made through the Board's web portal at [www.pes.ontarioenergyboard.ca/eservice/](http://www.pes.ontarioenergyboard.ca/eservice/), 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 must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca/OEB/Industry](http://www.ontarioenergyboard.ca/OEB/Industry). 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.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Violet Binette at [violet.binette@ontarioenergyboard.ca](mailto:violet.binette@ontarioenergyboard.ca) and Board Counsel, Michael Millar at [michael.millar@ontarioenergyboard.ca](mailto:michael.millar@ontarioenergyboard.ca).

**ADDRESS**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4  
Attention: Board Secretary  
E-mail: [boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)  
Tel: 1-888-632-6273 (Toll free)  
Fax: 416-440-7656

**DATED** at Toronto, May 6, 2014

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

Tab 7

**PALIARE  
ROLAND**

B A R R I S T E R S

May 7, 2014

**Richard P. Stephenson**

T 416.646.4325 Asst 416.646.7419

F 416.646.4301

E richard.stephenson@paliareroland.com

[www.paliareroland.com](http://www.paliareroland.com)

File 22332

**VIA EMAIL: boardsec@oeb.gov.on.ca**

Ms. Kirstin Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**Re: OPG Application re Payment Amounts for Prescribed Generating  
Facilities (EB-2013-0321) – Procedural Orders Nos. 7 and 8**

I am writing concerning the Board's decision and order on Confidential Filings and Procedural Order No. 8 issued May 6, 2014. At page 4 of that Decision, the Board makes the following order:

The full confidential version of Exh L-6.8-SCC-119 Attachment 1 will be made available to persons who have signed the Declaration and the Undertaking under the Practice Direction, but will not be made available to the Power Workers' Union or Society of Professional Engineers.

As I read it, this Order will preclude me from receiving copies of the document in question, notwithstanding the fact that I have executed the Board's Declaration and Undertaking.

Needless to say the compensation cost issue (including the overtime issue) is of central importance to my client. The effect of the Board's order is to limit my ability to represent my client's interests in this proceeding and raises serious issues regarding the Board's duty of fairness and natural justice. I note that my client was not asked for its position on this matter prior to the Board making the order in question.<sup>1</sup>

I have given an undertaking to the Board that I will not disclose any confidential information to any person not having executed the Confidentiality Undertaking.

<sup>1</sup> This ruling first arose in P.O. No. 7. The PWU was not participating in any of the confidentiality matters that led to that ruling, and as a result, P.O. No. 7 did not come to my attention. That was an oversight on my part.

**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**

155 WELLINGTON STREET WEST 35TH FLOOR TORONTO ONTARIO M5V 3H1 T 416.646.4300

Chris G. Paliare  
Ian J. Roland  
Ken Rosenberg  
Linda R. Rothstein  
Richard P. Stephenson  
Nick Coleman  
Margaret L. Waddell  
Donald K. Eady  
Gordon D. Capern  
Lily I. Harmer  
Andrew Lokan  
John Monger  
Odette Soriano  
Andrew C. Lewis  
Megan E. Shortreed  
Massimo Starnino  
Karen Jones  
Robert A. Centa  
Nini Jones  
Jeffrey Larry  
Kristian Borg-Olivier  
Emily Lawrence  
Denise Sayer  
Tina H. Lie  
Jean-Claude Killey  
Jodi Martin  
Michael Fenrick  
Nasha Nilhawan  
Jessica Latimer  
Debra Newell  
Lindsay Scott  
Alysha Shore  
Gregory Ko

**COUNSEL**

Stephen Goudge, Q.C.  
Robin D. Walker, Q.C.

**HONORARY COUNSEL**

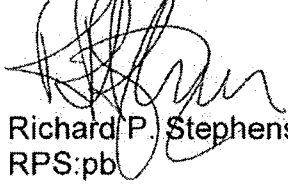
Ian G. Scott, Q.C., O.C.  
(1934 - 2006)

No internal representative of my client has executed the Undertaking. Implicit in the Board's ruling must be a conclusion that there is a real risk that I will violate my undertaking. Having practiced before the Board for the past 20 years I find this implication distressing to me at a personal and professional level.<sup>2</sup> However, more important is the fact that my client's rights in this proceeding are compromised by the order in question.

As a result, I am requesting the opportunity to address the Board at the earliest opportunity, seeking to have it revisit this matter. I am hoping that I can address this issue without disturbing the Board's schedule for this proceeding. I am available to address the Board at the scheduled motion on May 9 if that is convenient. In the alternative, I am prepared to defer the matter to the hearing panel, to be dealt with at the commencement of the oral hearing. I await your direction in that regard.

Yours very truly,

**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**



Richard P. Stephenson  
RPS:pb

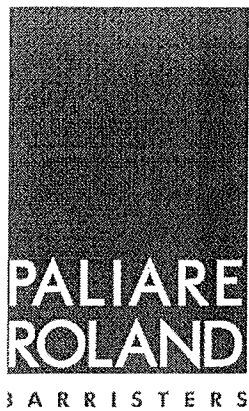
c: Applicant (*via email*)  
Intervenors (*via email*)

Doc 1133592 v1

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<sup>2</sup> Note that I do not act as counsel to the PWU in collective bargaining with OPG or any other employer.

Tab 8



Chris G. Paliare  
Ian J. Roland  
Ken Rosenberg  
Linda R. Rothstein  
Richard P. Stephenson  
Nick Coleman  
Margaret L. Waddell  
Donald K. Eady  
Gordon D. Capern  
Lily I. Harmer  
Andrew Lokan  
John Monger  
Odette Soriano  
Andrew C. Lewis  
Megan E. Shortreed  
Massimo Starnino  
Karen Jones  
Robert A. Centa  
Nini Jones  
Jeffrey Larry  
Kristian Borg-Olivier  
Emily Lawrence  
Denise Sayer  
Tina H. Lie  
Jean-Claude Killey  
Jodi Martin  
Michael Fenrick  
Nasha Nijhawan  
Jessica Latimer  
Debra Newell  
Lindsay Scott  
Alysha Shore  
Gregory Ko

COUNSEL  
Robin D. Walker, Q.C.

HONORARY COUNSEL  
Ian G. Scott, Q.C., O.C.  
(1934 - 2006)

**Richard P. Stephenson**

T 416.646.4325 Asst 416.646.7417  
F 416.646.4301  
E richard.stephenson@paliareroland.com  
[www.paliareroland.com](http://www.paliareroland.com)

File 22332

February 3, 2014

**VIA EMAIL and COURIER**

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

Dear Ms. Walli:

**Re: Ontario Power Generation Inc. 2014-2015 Payment Amounts for  
Prescribed Generating Facilities, EB-2013-0321**

Attached please find the Declaration and Undertaking for each of Bayu Kidane, Alfredo Bertolotti, and Richard Stephenson for the above proceeding.

Yours very truly,

**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**

A handwritten signature in black ink, appearing to read "R. Stephenson", is written over the printed name and initials.

Richard P. Stephenson  
RPS:pb

Encl.

c: John Sprackett  
Kim McKenzie

Doc 1054189 v1



**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.

**DECLARATION AND UNDERTAKING**

I, Richard Stephenson, am counsel of record or a consultant for the Power Workers' Union.

**DECLARATION**

I declare that:

1. I have read the *Rules of Practice and Procedure* of the Ontario Energy Board (the "Board") and all Orders of the Board that relate to this proceeding.
2. I am not a director or employee of a party to this proceeding for which I act or of any other person known by me to be a party in this proceeding.
3. I understand that this Declaration and Undertaking applies to all information that I receive in this proceeding and that has been designated by the Board as confidential and to all documents that contain or refer to that confidential information ("Confidential Information").
4. I understand that execution of this Declaration and Undertaking is a condition of an Order of the Board, that the Board may apply to the Superior Court of Justice to enforce it.

**UNDERTAKING**

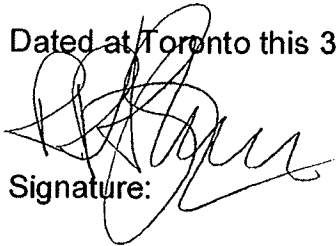
I undertake that:

1. I will use Confidential Information exclusively for duties performed in respect of this proceeding.

2. I will not divulge Confidential Information except to a person granted access to such Confidential Information or to the Board.
3. I will not reproduce, in any manner, Confidential Information without the prior written approval of the Board. For this purpose, reproducing Confidential Information includes scanning paper copies of Confidential Information, copying the Confidential Information onto a diskette or other machine-readable media and saving the Confidential Information onto a computer system.
4. I will protect Confidential Information from unauthorized access.
5. With respect to Confidential Information other than in electronic media, I will, promptly following the end of this proceeding or within 10 days after the end of my participation in this proceeding:
  - a) return to the Board Secretary, under the direction of the Board Secretary, all documents and materials in all media containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information; or
  - b) destroy such documents and materials and file with the Board Secretary a certification of destruction in the form prescribed by the Board pertaining to the destroyed documents and materials.
6. With respect to Confidential Information in electronic media, I will:
  - a) promptly following the end of this proceeding or within 10 days after the end of my participation in this proceeding, expunge all documents and materials containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information, from all electronic apparatus and data storage media under my direction or control and file with the Board Secretary a certificate of destruction in the form prescribed by the Board pertaining to the expunged documents and materials; and
  - b) continue to abide by the terms of this Declaration and Undertaking in relation to any such documents and materials to the extent that they subsist in any electronic apparatus and data storage media under my direction or control and cannot reasonably be expunged in a manner that ensures that they cannot be retrieved.
7. For the purposes of paragraphs 5 and 6, the end of this proceeding is the date on which the period for filing a review or appeal of the Board's final order in this proceeding expires or, if a review or appeal is filed, upon issuance of a final decision on the review or appeal from which no further review or appeal can or has been taken.

8. I will inform the Board Secretary immediately of any changes in the facts referred to in this Declaration and Undertaking.

Dated at Toronto this 3<sup>rd</sup> day of February, 2014.

  
Signature:

Name: Richard Stephenson

Company/Firm: Paliare Roland Rosenberg Rothstein LLP

Address: 155 Wellington Street West, 35th Floor, Toronto, Ontario, M5V 3H1

Telephone: (416) 646-4325

Fax: (416) 646-4335

E-mail: [Richard.Stephenson@paliareroland.com](mailto:Richard.Stephenson@paliareroland.com)

**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.

**DECLARATION AND UNDERTAKING**

I, Alfredo Bertolotti, am counsel of record or a consultant for the Power Workers' Union.

**DECLARATION**

I declare that:

1. I have read the *Rules of Practice and Procedure* of the Ontario Energy Board (the "Board") and all Orders of the Board that relate to this proceeding.
2. I am not a director or employee of a party to this proceeding for which I act or of any other person known by me to be a party in this proceeding.
3. I understand that this Declaration and Undertaking applies to all information that I receive in this proceeding and that has been designated by the Board as confidential and to all documents that contain or refer to that confidential information ("Confidential Information").
4. I understand that execution of this Declaration and Undertaking is a condition of an Order of the Board, that the Board may apply to the Superior Court of Justice to enforce it.

**UNDERTAKING**

I undertake that:

1. I will use Confidential Information exclusively for duties performed in respect of this proceeding.

2. I will not divulge Confidential Information except to a person granted access to such Confidential Information or to the Board.
3. I will not reproduce, in any manner, Confidential Information without the prior written approval of the Board. For this purpose, reproducing Confidential Information includes scanning paper copies of Confidential Information, copying the Confidential Information onto a diskette or other machine-readable media and saving the Confidential Information onto a computer system.
4. I will protect Confidential Information from unauthorized access.
5. With respect to Confidential Information other than in electronic media, I will, promptly following the end of this proceeding or within 10 days after the end of my participation in this proceeding:
  - a) return to the Board Secretary, under the direction of the Board Secretary, all documents and materials in all media containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information; or
  - b) destroy such documents and materials and file with the Board Secretary a certification of destruction in the form prescribed by the Board pertaining to the destroyed documents and materials.
6. With respect to Confidential Information in electronic media, I will:
  - a) promptly following the end of this proceeding or within 10 days after the end of my participation in this proceeding, expunge all documents and materials containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information, from all electronic apparatus and data storage media under my direction or control and file with the Board Secretary a certificate of destruction in the form prescribed by the Board pertaining to the expunged documents and materials; and
  - b) continue to abide by the terms of this Declaration and Undertaking in relation to any such documents and materials to the extent that they subsist in any electronic apparatus and data storage media under my direction or control and cannot reasonably be expunged in a manner that ensures that they cannot be retrieved.
7. For the purposes of paragraphs 5 and 6, the end of this proceeding is the date on which the period for filing a review or appeal of the Board's final order in this proceeding expires or, if a review or appeal is filed, upon issuance of a final decision on the review or appeal from which no further review or appeal can or has been taken.

8. I will inform the Board Secretary immediately of any changes in the facts referred to in this Declaration and Undertaking.

Dated at Toronto this 3<sup>rd</sup> day of February, 2014.

Signature:



Name: Alfredo Bertolotti

Company/Firm: Elenchus

Address: 34 King Street East, Suite 600, Toronto, ON M5C 2X8

Telephone: 416-348-9917 x23

Fax: 416-348-9930

E-mail: [abertolotti@elenchus.ca](mailto:abertolotti@elenchus.ca)

**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.

**DECLARATION AND UNDERTAKING**

I, Bayu Kidane, am counsel of record or a consultant for the Power Workers' Union.

**DECLARATION**

I declare that:

1. I have read the *Rules of Practice and Procedure* of the Ontario Energy Board (the "Board") and all Orders of the Board that relate to this proceeding.
2. I am not a director or employee of a party to this proceeding for which I act or of any other person known by me to be a party in this proceeding.
3. I understand that this Declaration and Undertaking applies to all information that I receive in this proceeding and that has been designated by the Board as confidential and to all documents that contain or refer to that confidential information ("Confidential Information").
4. I understand that execution of this Declaration and Undertaking is a condition of an Order of the Board, that the Board may apply to the Superior Court of Justice to enforce it.

**UNDERTAKING**

I undertake that:

1. I will use Confidential Information exclusively for duties performed in respect of this proceeding.

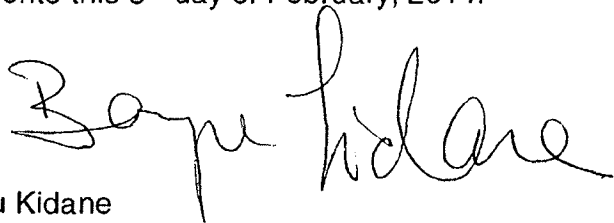
2. I will not divulge Confidential Information except to a person granted access to such Confidential Information or to the Board.
3. I will not reproduce, in any manner, Confidential Information without the prior written approval of the Board. For this purpose, reproducing Confidential Information includes scanning paper copies of Confidential Information, copying the Confidential Information onto a diskette or other machine-readable media and saving the Confidential Information onto a computer system.
4. I will protect Confidential Information from unauthorized access.
5. With respect to Confidential Information other than in electronic media, I will, promptly following the end of this proceeding or within 10 days after the end of my participation in this proceeding:
  - a) return to the Board Secretary, under the direction of the Board Secretary, all documents and materials in all media containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information; or
  - b) destroy such documents and materials and file with the Board Secretary a certification of destruction in the form prescribed by the Board pertaining to the destroyed documents and materials.
6. With respect to Confidential Information in electronic media, I will:
  - a) promptly following the end of this proceeding or within 10 days after the end of my participation in this proceeding, expunge all documents and materials containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information, from all electronic apparatus and data storage media under my direction or control and file with the Board Secretary a certificate of destruction in the form prescribed by the Board pertaining to the expunged documents and materials; and
  - b) continue to abide by the terms of this Declaration and Undertaking in relation to any such documents and materials to the extent that they subsist in any electronic apparatus and data storage media under my direction or control and cannot reasonably be expunged in a manner that ensures that they cannot be retrieved.
7. For the purposes of paragraphs 5 and 6, the end of this proceeding is the date on which the period for filing a review or appeal of the Board's final order in this proceeding expires or, if a review or appeal is filed, upon issuance of a final decision on the review or appeal from which no further review or appeal can or has been taken.



8. I will inform the Board Secretary immediately of any changes in the facts referred to in this Declaration and Undertaking.

Dated at Toronto this 3<sup>rd</sup> day of February, 2014.

Signature:

A handwritten signature in black ink, appearing to read "Bayu Kidane". The signature is fluid and cursive, with the first name "Bayu" and last name "Kidane" clearly distinguishable.

Name: Bayu Kidane

Company/Firm: Elenchus

Address: 34 King Street East, Suite 600, Toronto, ON M5C 2X8

Telephone: 416-348-8777

Fax: 416-348-9930

E-mail: [bkidane@elenchus.ca](mailto:bkidane@elenchus.ca)

Tab 9



# **ONTARIO ENERGY BOARD**

Practice Direction

On

Confidential Filings

Revised April 24, 2014

## ONTARIO ENERGY BOARD

### PRACTICE DIRECTION ON CONFIDENTIAL FILINGS

#### 1. INTRODUCTION AND PURPOSE

The purpose of this Practice Direction on Confidential Filings is to establish uniform procedures for the filing of confidential materials in relation to all proceedings that come before the Ontario Energy Board. This Practice Direction is also intended to assist participants in the Board's proceedings in understanding how the Board will deal with such filings.

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. The Board therefore generally places materials it receives in the course of the exercise of its authority under the *Ontario Energy Board Act, 1998* and other legislation on the public record so that all interested parties can have equal access to those materials. That being said, the Board relies on full and complete disclosure of all relevant information in order to ensure that its decisions are well-informed, and recognizes that some of that information may be of a confidential nature and should be protected as such.

This Practice Direction seeks to strike a balance between the objectives of transparency and openness and the need to protect information that has been properly designated as confidential. The approach that underlies this Practice Direction is that the placing of materials on the public record is the rule, and confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case.

The Board and parties to a proceeding are required to devote additional resources to the administration, management and adjudication of confidentiality requests and confidential filings. In this context, it is particularly important that all parties remain mindful that only materials that are clearly relevant to the proceeding should be filed, whether the party is filing materials at its own instance, is requesting information by way of interrogatory or is responding to an interrogatory. Parties are reminded that, under the Board's *Rules of Practice and Procedure*, a party that is in receipt of an interrogatory that it believes is not relevant to the proceeding may file and serve a response to the interrogatory that sets out the reasons for the party's belief that the requested information is not relevant. This process applies to all interrogatories, and is of particular significance in relation to confidential filings given the administrative issues associated with the management of those filings.

The Board's *Rules of Practice and Procedure* govern the conduct of all proceedings before the Board. Those *Rules* require compliance with this Practice Direction.

The Board will continue to monitor the effectiveness of its approach to confidential filings and will revise this Practice Direction on an as-needed basis.

## **2. APPLICATION**

The procedures set out in this Practice Direction are to be followed by all participants in a proceeding before the Board, unless otherwise directed by the Board. This includes proceedings to be determined under delegated authority (see section 3.3) and proceedings commenced on the Board's own motion.

This Practice Direction is subordinate to existing law and regulations, including the *Freedom of Information and Protection of Privacy Act*, the *Ontario Energy Board Act, 1998*, and the *Statutory Powers Procedures Act*, Board instruments (i.e., licences, codes, rules and Board orders) and the Board's *Rules of Practice and Procedure*.

This Practice Direction does not address the manner in which Board members and Board staff will handle confidential information, which is an issue of the Board's internal processes. The Board has implemented internal procedures that are designed to ensure that confidential information is segregated from other information and is made available within the Board on a limited basis.

## **3. DEFINITIONS AND INTERPRETATION**

### **3.1. Definitions**

#### **3.1.1. In this Practice Direction:**

“**Act**” means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Sched. B);

“**ADR**” means alternative dispute resolution;

“**applicant**” means a person who makes an application to the Board, and includes a person that is filing a notice under section 80 or 81 of the Act;

“**application**” when used in connection with a proceeding commenced by an application to the Board, means the commencement by a party of a proceeding before the Board, and includes a notice filed under section 80 or 81 of the Act;

**"Board"** means the Ontario Energy Board and includes any panels or delegates thereof;

**"Board Secretary"** means the Secretary of the Board and any Assistant Secretary appointed by the Board under the Act;

**"business day"** means any day which is not a holiday;

**"document"** or **"record"** includes a written document, film, audio tape, videotape, file, photograph, chart, graph, map, plan, survey, book of account, transcript, and any information stored by means of an electronic storage and retrieval system;

**"FIPPA"** means the *Freedom of Information and Protection of Privacy Act* (Ontario);

**"hearing"** means a hearing in any proceeding before the Board, and includes an electronic hearing, an oral hearing, and a written hearing;

**"holiday"** means any Saturday, Sunday, statutory holiday, and any day that the Board's offices are closed for observance of a holiday within the meaning of the *Interpretation Act* (Ontario);

**"party"** includes an applicant, an appellant, any person granted intervenor status by the Board and any person ordered to produce information in a proceeding before the Board; and

**"proceeding"** means a process to decide a matter brought before the Board, including a matter commenced by application, notice of motion, notice of appeal, reference, request of the Minister, Order in Council or on the Board's own motion.

- 3.1.2. Except as otherwise defined in section 3.1.1, words and expressions used in this Practice Direction shall have the meaning ascribed to them in the Act and the Board's *Rules of Practice and Procedure*.

### **3.2. Interpretation**

- 3.2.2. In this Practice Direction:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) words importing a person include (i) an individual, (ii) a company, sole proprietorship, partnership, trust, joint venture, association, corporation or

other private or public body corporate; and (iii) any government, government agency or body, regulatory agency or body or other body politic or collegiate;

- (d) where a word or phrase is defined in this Practice Direction, other parts of speech and grammatical forms of the word or phrase have a corresponding meaning;
- (e) a reference to a document (including a statutory instrument) or a provision of a document includes any amendment or supplement to, or any replacement of, that document or that provision; and
- (f) the expression “including” means including without limitation.

### **3.3. Matters Decided Under Delegated Authority**

- 3.3.1. Under the authority of section 6 of the Act, the management committee of the Board has delegated certain powers or duties to an employee of the Board. In such cases, the delegate is responsible for making determinations in relation to confidential filings. The provisions of this Practice Direction otherwise apply in relation to confidential filings made in the context of a proceeding to be decided under delegated authority.

## **4. WHEN REQUEST FOR CONFIDENTIALITY IS NOT REQUIRED**

### **4.1. Information Identified as Confidential in Board Templates and Filing Guidelines**

- 4.1.1. The Board has developed certain templates and filing guidelines to assist applicants in preparing licensing and other applications. Certain of these templates and filing guidelines, including licence application forms for electricity licences and gas marketing licences, identify predefined categories of information that will be considered confidential in the normal course. Where a Board template or filing guideline indicates that information will be treated in confidence, no formal request for confidentiality under Part 5 is required. However, to the extent practicable, any such information should be clearly marked “confidential”.
- 4.1.2. Where a Board template or filing guideline indicates that information will be treated in confidence, the information will not be placed on the public record nor provided to any other party unless another party requests access to that information under section 4.1.4 and the Board rules in favour of that request.

4.1.3. In the absence of a request for confidentiality, all information that is not indicated on a template or in a filing guideline as being confidential will be included on the public record. An applicant that wishes information that would normally be included on the public record to be held confidential must follow the procedure set out in Part 5, and the Board will determine the request in accordance with Part 5.

4.1.4. Where a Board template or filing guideline indicates that information will be treated in confidence, a party may request access to that information by filing a request with the Board Secretary and serving a copy of the request on the applicant and each party. The request must address the matters identified in paragraph (b) of section 5.1.7. The applicant will have an opportunity to object to the request for access to confidential information. The applicant must file its objection with the Board Secretary and serve it on all parties within the time specified by the Board. The Board will determine the request for access to confidential information in accordance with Part 5.

#### **4.2. Information filed Under the Board's Reporting and Record Keeping Requirements ("RRR")**

4.2.1. The Board's *Natural Gas Reporting & Record Keeping Requirements: Rule for Natural Gas Utilities, Natural Gas Reporting and Record Keeping Requirements: Gas Marketer Licence Requirements and Electricity Reporting and Record Keeping Requirements* require that licensees and natural gas utilities file certain information with the Board on a regular basis. Each of these RRR identify information that the Board intends to treat in confidence. No formal request for confidentiality is required in relation to such information when it is filed with the Board as part of a regular RRR filing. However, to the extent practicable, any such information should be clearly marked "confidential". Where such information is filed as part of a regular RRR filing and is subsequently filed in a proceeding, Parts 5 and 6 apply.

#### **4.3 Personal Information under FIPPA**

4.3.1 Subject to limited exceptions, the Board is prohibited from releasing personal information, as that phrase is defined in FIPPA. When a person files a document or record that contains the personal information of another person who is not a party to the proceeding, the person filing the document or record must file two versions of the document or record in accordance with Rule 9A.01 of the Board's *Rules of Practice and Procedure*. As indicated in Rule 9A.02, the confidential, un-redacted version of the document or record will be held in confidence and neither that version of the document or record nor the personal information contained in it will be placed on the public record or provided to any other party, including a person from whom the Board has accepted a Declaration and



Undertaking under section 6.1, unless the Board determines that the information is not personal information or that the disclosure of the personal information would be in accordance with the requirements of FIPPA.

## **5. GENERAL PROCESS FOR CONFIDENTIALITY IN MATTERS BEFORE THE BOARD**

The processes set out in this Part and in Part 6 are intended to allow for the protection of information that has been properly designated as confidential. The onus is on the person requesting confidential treatment to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case.

It is also the expectation of the Board that parties will make every effort to limit the scope of their requests for confidentiality to an extent commensurate with the commercial sensitivity of the information at issue or with any legislative obligations of confidentiality or non-disclosure, and to prepare meaningful redacted documents or summaries so as to maximize the information that is available on the public record. This will provide parties with a fair opportunity to present their cases and permit the Board to provide meaningful and well-documented reasons for its decisions.

The processes set out in this Part and in Part 6 contemplate that the Board will play a central role in directing and managing the exchange of confidential filings and related materials (such as the Declaration and Undertaking). A party that independently serves other parties with documents containing confidential information other than through or at the direction of the Board does so at its own risk.

### **5.1. Process for Confidentiality Requests**

5.1.1. All filings must be made in accordance with the Board's *Rules of Practice and Procedure*, specifically, Rule 10 of the *Rules of Practice and Procedure*, which deals with confidential documents before the Board.

5.1.2. In accordance with Rule 10.01 of the Board's *Rules of Practice and Procedure*, a party may request that all or part of a document be held confidential.

5.1.3. A request for confidentiality must be addressed to the Board Secretary.

5.1.4. A request for confidentiality must include the following items:

- (a) a cover letter indicating the reasons for the confidentiality request, including the reasons why the information at issue is considered confidential and the reasons why public disclosure of that information would be detrimental;

- (b) a confidential, un-redacted version of the document containing all of the information for which confidentiality is requested. This version of the document should be marked "confidential" and should identify all portions of document for which confidentiality is claimed by using shading, square brackets or other appropriate markings. If confidential treatment is requested in relation to the entire document, the document should be printed on coloured paper; and
- (c) either:
  - i. a non-confidential, redacted version of the document from which the information that is the subject of the confidentiality request has been deleted or stricken; or
  - ii. where the request for confidentiality relates to the entire document, a non-confidential description or summary of the document.

5.1.5. A copy of the cover letter requesting confidentiality, together with the non-confidential version or non-confidential description of the document (as applicable) must be served on all parties to the proceeding, and will be placed on the public record. The confidential, un-redacted version of the document will, subject to section 5.1.6, be kept confidential until the Board has made a determination on the confidentiality request.

5.1.6. A party to the proceeding may object to the request for confidentiality by filing an objection with the Board Secretary within the time specified by the Board. The objection must be served on all other parties to the proceeding, including the party that made the confidentiality request. Where the party requires access to the confidential version of the document in order to submit its objection, the party may request that the Board allow access for that purpose under suitable arrangements as to confidentiality. Such request shall be made in writing to the Board Secretary or, where the request is made during an oral hearing, directly to the Board. The party that made the confidentiality request may object to the request for access within the time and in the manner specified by the Board.

5.1.7. An objection to a request for confidentiality must address the following:

- (a) the reason why the party believes that the information that is the subject of the request for confidentiality is not confidential, in whole or in part, by reference to the grounds for confidentiality expressed by the party making the request for confidentiality; and

- (b) the reason why the party requires disclosure of the information that is the subject of the request for confidentiality and why access to the non-confidential version or description of the document (as applicable) is insufficient to enable the party to present its case.

5.1.8. The party requesting confidentiality will have an opportunity to reply to the objection. The replying party must file its reply with Board Secretary and serve it on all parties to the proceeding within the time specified by the Board.

5.1.9. The Board will then assess whether the request for confidentiality should be granted, and may determine that a request for confidentiality is not warranted regardless of whether any party has objected to the request. Some of the factors that the Board may consider in making this assessment are listed in Appendix A, including whether the Board has in the past assessed or maintained the same type of information as confidential. An illustrative list of the types of information that the Board has previously assessed or maintained as confidential is set out in Appendix B, and parties may anticipate that the Board will accord confidential treatment to these types of information in the normal course.

5.1.10. In determining the request for confidentiality, the Board may:

- (a) order the document placed on the public record, in whole or in part;
- (b) order the document be kept confidential, in whole or in part;
- (c) order that the non-confidential redacted version of the document or the non-confidential description or summary of the document (as applicable) be revised;
- (d) order that the confidential version of the document be disclosed under suitable arrangements as to confidentiality (see Part 6); or
- (e) make any other order that the Board finds to be in the public interest.

5.1.11. The Board will notify all parties of its decision in relation to a request for confidentiality.

5.1.12. Where the Board has ordered that information that is the subject of a confidentiality request be placed on the public record or disclosed to another party, in whole or in part, the person who filed the information will, subject to section 5.1.13, have a period of 5 business days in which it may request that the information be withdrawn. Such request shall be made in writing to the Board Secretary or, where the request is made during an oral hearing, directly to the Board. The Board may deny the request where the information is relevant to a

matter in issue and its probative value would outweigh any unfair prejudice, having regard to the record of the proceeding at the time of the request.

5.1.13. The ability to request the withdrawal of information under section 5.1.12 does not apply to information that was required to be produced by an order of the Board.

5.1.14. If the party that made the request for confidentiality indicates, within five business days of the date of receipt of the Board's order, that it intends to appeal or seek review of the decision, the Board will not place the document on the public record until the appeal or review has been concluded or the time for filing an appeal or review has expired without an appeal or review having been commenced. In the absence of such an indication, the Board will deal with the information in the manner set out in its order.

## **5.2. Confidentiality Requests Made Orally During an Oral Hearing**

5.2.1. The provisions of section 5.1 generally apply to requests for confidentiality made in the context of an oral hearing. However, the Panel presiding over the oral hearing may take such action as it considers appropriate to expedite the process when there is an immediate need for information that the Panel needs to hear.

## **5.3. Interrogatories**

5.3.1. A party may request that all or part of a response to an interrogatory be held confidential. The provisions of section 5.1 apply to requests for confidentiality made in relation to a response to an interrogatory, with such modifications as the context may require.

## **6. ARRANGEMENTS AS TO CONFIDENTIALITY**

Where the Board has agreed to a request for confidentiality, the confidential information will not be placed on the public record. Representatives of parties to the proceeding will generally be given access to the confidential information provided that suitable arrangements as to confidentiality are made, although the Board may limit access to confidential information to those parties that the Board has determined require access to the confidential information in order to present their cases. This Part sets out the principal arrangements that the Board will use in allowing limited and conditional access to confidential information by representatives of parties.

The processes set out in this Part require that parties file a Declaration and Undertaking with the Board. Parties to a proceeding will be notified when the Board has accepted a Declaration and Undertaking from a person. Parties should not independently serve a Declaration and Undertaking on other parties.

The Board considers violations of a Declaration and Undertaking given to the Board under this Part to be a matter of very serious concern. Such violations can be, and will continue to be, subject to sanctions imposed by the Board. In appropriate cases, the Board may also refuse to accept further Declaration and Undertakings from persons whose future compliance with a Declaration and Undertaking is in question.

## **6.1 Declaration and Undertaking**

6.1.1. The Board may determine that confidential information should, in whole or in part, be disclosed to one or more persons that have signed the form of Declaration and Undertaking attached to this Practice Direction. The Declaration and Undertaking is a binding commitment by the person: (i) not to disclose the confidential information except as permitted by the Board; (ii) to treat the confidential information in confidence; (iii) to return or destroy the confidential information following completion of the proceeding; and (iv) in the case of confidential information in electronic media, to expunge the confidential information from all electronic apparatus and data storage media under the person's direction or control, and to continue to abide by the terms of the Declaration and Undertaking in relation to such confidential information to the extent that it subsists in an electronic form and cannot reasonably be expunged in a manner that ensures that it cannot be retrieved. A signed Declaration and Undertaking must be filed with the Board and will be placed on the public record.

6.1.2. Subject to section 6.1.4, the Board will, except where there are compelling reasons for not doing so, accept a Declaration and Undertaking from the following:

- (a) counsel for a party; and
- (b) an expert or consultant for a party.

As a general rule, such counsel, expert or consultant cannot be a director or employee of a party.

6.1.3. Subject to section 6.1.4, the Board may accept a Declaration and Undertaking from other persons in appropriate cases. In such a case, a modified version of the form of Declaration and Undertaking will be made available to such person.

6.1.4 The Board shall notify the party that filed the confidential information that would be the subject-matter of a Declaration and Undertaking of the persons from whom a Declaration and Undertaking will be accepted. The party shall have an opportunity to object to the acceptance of a Declaration and Undertaking from such person in the manner and within the time specified by the Board. The

person to whom the objection relates shall have an opportunity to reply to the objection in the manner and within the time specified by the Board. The Board will then decide whether it will accept a Declaration and Undertaking from such person and may, as a condition of acceptance of the Declaration and Undertaking, impose such further conditions in relation to that person's access to the confidential information as the Board considers appropriate. Where the Board accepts a Declaration and Undertaking from a person, the Board will notify the other parties to the proceeding or direct that the other parties be notified accordingly. A person should not serve a Declaration and Undertaking on other parties unless directed by the Board to do so. A party is not required to serve confidential information on a person until such time as the party has been notified that the Board has accepted a Declaration and Undertaking from that person.

6.1.5. Where the Board determines that confidential information should be disclosed to one or more persons that have signed a Declaration and Undertaking, the Board may act as the conduit for the service of confidential information on such persons. In such cases, the confidential information need only be filed with the Board Secretary (in the appropriate number of copies), and the Board Secretary will attend to the distribution of the confidential information to persons that have signed a Declaration and Undertaking.

6.1.6. In accordance with the terms of the Declaration and Undertaking, confidential information must either be destroyed or expunged (as applicable) or returned to the Board Secretary for destruction promptly following the end of the proceeding for destruction. A person that chooses to destroy or expunge confidential information must file with the Board Secretary the form of Certification of Destruction attached to this Practice Direction.

## **6.2. Hearings in the Absence of the Public (*In Camera* Hearings)**

6.2.1. Under section 9 of the *Statutory Powers Procedure Act* (Ontario), oral hearings are required to be open to the public except where the Board is of the opinion that "intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public", in which case the Board may hold the hearing in the absence of the public. It is therefore the Board's normal practice is to hold oral hearings in public to comply with this obligation and to facilitate transparency, openness, and accessibility of the Board's processes.

6.2.2. The Board recognizes that there may be some instances where the proceedings may need to be closed to the public. This situation could arise when there is a possibility that information that the Board has agreed is confidential will be

disclosed during an oral hearing. When this occurs, the Board will exclude from the hearing room all persons other than the following:

- (a) representatives of the Board (i.e., Board staff, Board consultants, etc.);
- (b) representatives of the party that filed the confidential information; and
- (c) persons that have signed and returned to the Board a Declaration and Undertaking, provided that the confidential information at issue is covered by the Declaration and Undertaking and that the Board has determined that the persons require access to the confidential information in order to present their cases.

The hearing will then proceed *in camera* for such time as the confidential information is the subject of the hearing or is being referred to.

6.2.3. When part of a hearing is conducted *in camera*, transcripts of the *in camera* portion of the hearing will be dealt with in the same manner as the confidential information at issue. Subject to section 6.2.5, copies of the transcript of the *in camera* portion of the hearing will only be provided to the party that provided the confidential information and to applicable persons that have signed and returned to the Board a Declaration and Undertaking.

6.2.4. The party that filed the confidential information that is the subject of an *in camera* portion of a hearing shall, within five business days or such other time as the Board may direct, review the transcript of that portion of the hearing and shall file with the Board:

- (a) a redacted version of the transcript that identifies all portions of the transcript for which confidentiality is claimed, using shading, square brackets or other appropriate markings; or
- (b) where the party believes that the entire transcript should be treated as confidential, a letter identifying why the party believes that to be the case and a summary of the transcript for the public record.

6.2.5. The Board will assess the filing made under section 6.2.4 and may, among such other action as the Board may take, do one or more of the following:

- (a) provide a redacted version of a transcript prepared under section 6.2.4(a) or this section to all applicable persons that have signed and returned to the Board a Declaration and Undertaking, or direct that it be so provided;

- (b) direct that the party that filed a redacted version of a transcript under section 6.2.4(a) or this section prepare and file a revised redacted version of the transcript;
- (c) provide a summary of a transcript prepared under section 6.2.4(b) or this section to all parties to the proceeding, or direct that it be so provided;
- (d) direct that the party that filed a summary of a transcript under section 6.2.4(b) prepare and file a revised summary or a redacted version of the transcript;
- (e) direct that any public testimony that is given *in camera* be placed on the public record and provided to all parties to the proceeding; or
- (f) direct that a redacted version of the transcript suitable for being placed on the public record be prepared and provided to all parties to the proceeding.

### **6.3. Other**

- 6.3.1. Where the Board has made arrangements for the disclosure of confidential information, the Board may give further directions to the parties from time to time to protect the confidential information from disclosure to persons that are not entitled to such disclosure. These directions may include the process for the filing and exchange of interrogatories that contain the confidential information and the manner in which confidential information may be addressed as part of closing arguments or final submissions.
- 6.3.2. Parties should make every effort to prepare their written argument such that the entirety of the document can be placed on the public record. Where it is necessary to make specific reference to confidential information in a written argument, the party filing the argument should either:
  - (a) file a public version of the written argument together with a confidential appendix that contains the confidential information; or
  - (b) file both an un-redacted confidential version of the written argument and a public, redacted version of the written argument from which all confidential information has been deleted.
- 6.3.3. Where the Board considers that a confidential appendix to, or a redacted version of, a written argument contains information that has not been determined by the Board to be confidential, the Board may order the party filing the written argument to file a revised appendix or redacted version.



## **7. ADR CONFERENCES**

- 7.1.1. This Practice Direction does not apply to ADR conferences.<sup>1</sup> Confidentiality in the context of ADR conferences shall be governed by the Board's *Rules of Practice and Procedure*, Settlement Guidelines and any other applicable Practice Guidelines.

## **8. INSPECTIONS AND INVESTIGATIONS**

Sections 110 and 111 of the Act contain provisions that address the confidentiality of documents, records and information obtained by an inspector under Part VII of the Act. Sections 112.0.5 and 112.0.6 of the Act are to the same effect in relation to information obtained by an investigator under Part VII.0.1 of the Act.

- 8.1.1. All documents, records and information obtained by an inspector during the course of an inspection under section 107 or 108 of the Act or obtained by an investigator under Part VII.0.1 of the Act are confidential. Generally speaking, such documents, records and information will not be disclosed to anyone other than Board staff or Board members. By way of exception, documents, records and information obtained during an inspection or investigation may be disclosed:

- (a) to counsel for the Board;
- (b) as may be required in connection with the administration of the Act or any other Act that gives powers or duties to the Board;
- (c) in any proceeding under the Act or any other Act that gives powers or duties to the Board;
- (d) with the consent of the owner of the document or record or the person that provided the information; and
- (e) where required by law.

- 8.1.2. No document, record or information obtained by an inspector under section 107 or 108 of the Act or obtained by an investigator under Part VII.0.1 of the Act will be introduced in evidence in a Board proceeding unless the Board has given notice to the owner of the document or record or the person who provided the

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<sup>1</sup> For clarity, an ADR conference does not include a technical conference. Any confidentiality issues arising in relation to a technical conference will be addressed in accordance with Parts 5 and 6 of this Practice Direction.

information, and has given that person an opportunity to make representations with respect to the intended introduction of that evidence.

- 8.1.3. If any document, record, or other information obtained by an inspector or investigator is admitted into evidence in a proceeding before the Board, the Board may determine whether the document, record, or information should be kept confidential and, if so, whether and the extent to which the document, record or information should be disclosed under suitable arrangements as to confidentiality (see Part 6). The Board will determine the matter in accordance with Parts 5 and 6.

## **9. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**

Participants in the Board's processes are reminded that the Board is subject to FIPPA. FIPPA addresses circumstances in which the Board may, upon request, be required to release information that is in its custody or under its control, and generally prohibits the Board from releasing personal information. Accordingly, the Board will have regard to its obligations under FIPPA when making determinations in relation to confidential filings (see section 4.3.1). A brief overview of the more relevant provisions of FIPPA is set out in Appendix C.

## **10. ELECTRONIC INFORMATION**

The Board will not, without the consent of the party that filed the confidential information, transmit materials containing confidential information by electronic mail. Materials containing confidential information, including transcripts of in camera proceedings, may be made available only in paper form or on diskette or other machine-readable media.

## **11. ACCESS TO CONFIDENTIAL INFORMATION OUTSIDE OF PROCEEDING**

Interested persons may wish to see confidential information at times other than during the proceeding in which the confidential information was filed. In such a case, the interested person may request access to that information by filing a request with the Board Secretary. The person that filed the confidential information will have an opportunity to object to the request for access to that information. The objection must be filed with the Board Secretary and served on the person requesting access. The Board will determine the request for access to confidential information in accordance with Part 5.

## **Appendix A**

### **Considerations in Determining Requests for Confidentiality**

The final determination of whether or not information will be kept confidential rests with the Board. The Board will strive to find a balance between the general public interest in transparency and openness and the need to protect confidential information. Some factors that the Board may consider in addressing confidentiality of filings made with the Board are:

- (a) the potential harm that could result from the disclosure of the information, including:
  - i. prejudice to any person's competitive position;
  - ii. whether the information could impede or diminish the capacity of a party to fulfill existing contractual obligations;
  - iii. whether the information could interfere significantly with negotiations being carried out by a party; and
  - iv. whether the disclosure would be likely to produce a significant loss or gain to any person;
- (b) whether the information consists of a trade secret or financial, commercial, scientific, or technical material that is consistently treated in a confidential manner by the person providing it to the Board;
- (c) whether the information pertains to public security;
- (d) whether the information is personal information;
- (e) whether the Information and Privacy Commissioner or a court of law has previously determined that a record should be publicly disclosed or kept confidential;
- (f) if an access request has previously been made for the information under FIPPA, whether the information was disclosed as a result of that request;
- (g) any other matters relating to FIPPA and FIPPA exemptions;
- (h) whether the type of information in question was previously held confidential by the Board; and

- (i) whether the information is required by legislation to be kept confidential.

Information that is in the public domain will not be considered confidential.

## **Appendix B**

### **Types of Information that Have Previously Been Held Confidential**

This Appendix contains an illustrative list of the types of information previously assessed or maintained by the Board as confidential, and parties may anticipate that the Board will accord confidential treatment to these types of information in the normal course.

#### **1. Individual Personal Records**

Personal records of employees or other members of entities seeking licenses that are either filed with the Board or otherwise obtained have previously been held confidential. Individual personal records include police, tax, CPIC, and other personal records.

#### **2. Credit Checks**

Personal credit checks. These are credit checks filed with the Board, or obtained by the Board, from a variety of commercial sources including Dunn & Bradstreet and Standard & Poor's.

#### **3. Information Covered by Solicitor-client Privilege or Litigation Privilege**

Advice with respect to litigation or other legal information protected by solicitor-client privilege or litigation privilege.

#### **4. Tax Related Information**

Information from a tax return or information gathered for the purpose of determining tax liability or collecting a tax.

#### **5. Third Party Information under FIPPA**

Third party information as described in section 17(1) of FIPPA, including vendor pricing information.

#### **6. "Forward Looking" Financial Information**

"Forward looking" financial information that has not been publicly disclosed and that Ontario securities law therefore requires be treated as confidential.

**7. Information Identified as Confidential in Board Templates and Filing Guidelines**

Information identified as being considered confidential in Board templates and filing guidelines, including licence application forms for electricity licences and gas marketing licences.

**8. Information Filed Under the RRR**

Information identified in the Board's *Natural Gas Reporting & Record Keeping Requirements: Rule for Natural Gas Utilities, Natural Gas Reporting and Record Keeping Requirements: Gas Marketer Licence Requirements and Electricity Reporting and Record Keeping Requirements* as being treated as confidential.

## **Appendix C**

### **Summary of Pertinent FIPPA Provisions**

FIPPA allows any person to request access to records or information in the custody or under the control of the Board.

Subject to limited exceptions, the Board is prohibited from releasing personal information.

Following receipt of a request, the Board must release non-personal information that is in its custody or under its control unless the information falls within one of the exemptions listed in the legislation. Some of the exemptions are mandatory (in which case the information must be withheld) and others are discretionary (in which case the information may be withheld). For example, records do not need to be released if disclosure would:

- (a) reveal advice to the government from a public servant or a consultant;
- (b) interfere with law enforcement;
- (c) reveal confidential information received from another government;  
or
- (d) violate solicitor-client privilege.

The exemptions that are likely to be of most relevance in the context of confidential filings with the Board are those contained in section 17 of FIPPA, which relates to commercially sensitive third party information.

Under section 17(1), the Board must not, without the consent of the person to whom the information relates, disclose a record where:

- (a) the record reveals a trade secret or scientific, technical, commercial, financial or labour relations information;
- (b) the record was supplied in confidence implicitly or explicitly; and
- (c) disclosure of the record could reasonably be expected to have any of the following effects:
  - i. prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization;

- ii. result in similar information no longer being supplied to the Board where it is in the public interest that similar information continue to be so supplied;
- iii. result in undue loss or gain to any person, group, committee or financial institution or agency; or
- iv. reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

Before granting a FIPPA request for access to a record that the Board has reason to believe might contain information referred to in section 17(1) of FIPPA, the Board must give written notice to the person to whom the information relates. That person then has an opportunity to make written representations as to why the record (or a part of the record) should not be disclosed. Where the Board subsequently decides to disclose the record (or a part of the record), the Board must again give written notice to the person to whom the information relates. That person then has an opportunity to appeal the decision to the Information and Privacy Commissioner.

Under section 17(2) of FIPPA, the Board must not, without the consent of the person to whom the information relates, disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.