

KM 1

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



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.

Ontario Energy Board	
FILE No.	EB-2013-0326
EXHIBIT No.	KM 1
DATE	July 22/14

**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, 25th 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/, 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. 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 and Board Counsel, Michael Millar at michael.millar@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto, May 6, 2014

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

