

March 4, 2021

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

Attention: Christine E. Long, registrar@oeb.ca

RE: Amendments to Electricity Generation Licence of Ontario Power Generation Inc. (“OPG”) and
Portlands Energy Centre Inc. on behalf of Portlands Energy Centre L.P. (EB-2019-0258 / EB-2020-0110)

Dear Ms. Long:

Further to our letter to the Ontario Energy Board (the “OEB”) dated November 9, 2020, and further to the discussions between the parties since that time, OPG wishes to clarify its request of the OEB in respect of Part 7 of OPG’s electricity generation licence (EG-2003-0104) (the “Licence”).

In accordance with the Decision and Order dated April 9, 2020 (EB-2019-0258 / EB-2020-0110) and issued under delegated authority without a hearing pursuant to section 6(4) of the *Ontario Energy Board Act, 1998*, the OEB amended the generation licences of both OPG and Portlands Energy Centre Inc. on behalf of Portlands Energy Centre L.P. The OEB’s amendments involved the addition of two conditions to address concerns about market power: a ring-fencing of market functions requirement and a requirement to offer into the IESO-administered markets. OPG seeks certain non-material amendments to Part 7 (Ring-Fencing of Market Function) of the Licence (as amended April 29, 2020); such amendments are aimed to more accurately reflect the organization structure of the entities, the day-to-day operations of OPG and the administration of the ring fence. OPG believes the proposed amendments are aligned with the spirit of the Decision and Order and the Licence (as amended April 29, 2020).

Below we set out a description of the issues and our proposed changes:

1. In paragraph 1, the first sentence reads, in part “with Portlands Energy Centre L.P. (PEC) or any other affiliate that is licensed to generate electricity in Ontario.” This language appears in paragraph 2 as well.

OPG’s concern with this language is that it does not accord with the intent of the ring-fence, which we understand was borne out of the transaction with TC Energy and is described in the OEB Decision and Order (EB-2019-0258 / EB-2020-0110) as “the imposition of conditions on both OPG and PEC LP aimed at ensuring a degree of separation between the two entities, so that they continue to compete with each other in the wholesale electricity market.”

OPG's requests that the wording "with Portlands Energy Centre L.P. (PEC) or any other affiliate that is licensed to generate electricity in Ontario" be replaced with "NV LP or any of NV LP's subsidiaries". NV LP is an intermediate holding company between OPG, on one side, and Portlands Energy Centre L.P. ("**PEC LP**") and Brighton Beach Power L.P. ("**BB LP**", together with PEC LP and NV LP, the "**Atura Entities**") (and their respective general partners), on the other side. NV LP is wholly-owned by OPG. NV LP does not presently own an interest in any other entity or generation facility. Accordingly, for purposes of paragraph 1, the intent would be create and maintain separation or division between employees of OPG and its subsidiaries (other than NV LP and its subsidiaries) who are directly involved in the offer to supply electricity or ancillary services into any of the IESO-administered markets, on one hand, and NV LP and its subsidiaries, on the other hand. Please refer to the organization chart sent by Stephanie Yarmo via email on October 29, 2020 for an illustration of NV LP and its subsidiaries.

2. In paragraph 1, OPG also requests that two groups of OPG employees be specifically identified and be permitted to have access to CSI of the Atura Entities, with the caveat that such employees will be subject to the ring-fencing plan restrictions established in accordance with Part 7 of the Licence. The first group of OPG employees are those captured by "shared corporate services" as defined in the *Affiliate Relationships Code for Electricity Distributors and Transmitters*. For example, certain lawyers on OPG's Legal team will provide legal services and support to the Atura Entities, subject to the ring-fencing restrictions. Certain employees in finance, tax, treasury, risk management, etc. may support the Atura Entities and will need to have access to certain CSI of each of OPG and the Atura Entities in order to fulfill their job duties as part of their role. Also, OPG employees who are in charge of administering the ring-fence and field questions related to the ring-fence rules and what constitutes CSI should be captured by "shared corporate services" as they may obtain Atura CSI in the course of their administrative roles.

The second group we ask to be identified in the Licence are OPG employees (senior executives) who may serve as a director on the board of NV LP's general partner and/or the general partner of PEC LP and/or BB LP and may therefore have access to Atura CSI. To provide the OEB with comfort that OPG senior executives can serve as Atura board members without being at odds with the ring-fence condition, I provide that:

- (i) OPG senior executives are not in a position to provide offer strategy or market advice. For one, senior executives are not involved in creating or approving detailed offer strategies. Second, there are multiple levels of employees between those who approve the detailed offer strategies and the senior executives, so senior executives are not close enough to the activity or the market to be in a position to advise on such matters. Therefore, if an OPG SVP is serving as an Atura board member and involved in Atura board matters, that individual is not likely to influence Atura's offer strategies to create a potential competitive advantage as they don't have detailed knowledge of OPG's detailed offer strategies; and
- (ii) The information that board members receive is often historical in nature, so the information does not qualify as CSI; however, *even if* an OPG SVP while serving as an Atura board member receives Atura CSI, that OPG SVP is in the Atura ring-fence,

meaning they are subject to the ring-fence restrictions, policies, procedures and training that OPG has put in place in compliance with the ring-fence licence condition.

OPG's intention is that any OPG employee who needs access to Atura CSI for their job will become part of the Atura ring-fence and will be subject to confidentiality obligations and CSI sharing restrictions, and will be required to complete certain training, among other things, as is further detailed in OPG's ring-fencing plan. OPG intends to keep this group of "ring-fenced" employees to a minimum.

It is also worth noting that OPG and all of the Atura Entities are distinct legal entities, and OPG is on a separate email system with OPG email addresses, separate and distinct from the email system of the Atura Entities. OPG individuals who fall under "shared corporate services" and may provide support to Atura, as well as OPG senior executives who may serve on the Atura board, have an OPG email address and not an Atura email address, which means that OPG individuals do not have direct access Atura systems, folders or documents (and vice versa).

3. We request certain amendments to paragraph 2 of Part 7, which reads in part, "The Licensee shall implement a ring-fencing plan to ensure that no competitively sensitive information ("CSI") shall be disclosed to or obtained from any employees of PEC...."

We believe the intent of this language is for OPG to put measures and controls in place to ensure that certain of OPG employees do not receive CSI of OPG's competitors (i.e., PEC LP and BB LP). Looking at the Bruce ring-fence condition imposed on OPG vis-à-vis Part 6 of the Licence, this condition says that *Bruce Power CSI* (e.g., Bruce Power outage information) is captured by the ring-fence plan (see paragraph 1(a) of Part 6). Applying to same logic to Part 7, paragraph 2 of the Licence, the PEC ring-fence should capture *Atura CSI*, and therefore prevent Atura CSI from falling into the hands of OPG employees who, at the time of disclosure, are in a role that involves the offer to supply electricity or ancillary services into the IESO-administered markets. OPG employees who require access to PEC CSI will be placed on OPG's PEC ring-fence and be subject to the restrictions and obligations that come along with being on such ring-fence.

We request an amendment that addresses (i) that no OPG employees who are directly involved in the offer to supply electricity or ancillary services into any of the IESO-administered markets do not obtain or have access to CSI pertaining to the Atura Entities, and (ii) no Atura CSI that may be in the hands of OPG employees be used by OPG for the purposes of offering electricity or ancillary services into any of the IESO-administered markets.

4. In paragraph 3, we request that the words "non-confidential and" in subparagraph (iii) be deleted. Although a document may no longer contain any CSI, the document itself may still be confidential (and privileged, if applicable). Our concern is that we didn't want to create some rule that anytime CSI is deleted, redacted, etc. from a document, that such document automatically becomes non-confidential as a result, as that shouldn't be the case.
5. Lastly, in paragraph 3, we suggest including a sentence to the effect of "For clarity, reference to a limited partnership in this Part 7 will include its general partner(s)" given that NV LP and its subsidiaries are limited partnerships.

We thank you for your time in considering the above proposed amendments and we emphasize again that these changes are consistent with the spirit of the OEB's Decision and Order.

Sincerely,

A handwritten signature in black ink, appearing to be 'BM', enclosed in a thin black rectangular border.

Brenda MacDonald

CC: Stephanie Yarmo, Senior Counsel, stephanie.yarmo@opg.com
Margaret Koontz, Manager Market Affairs, margaret.koontz@aturapower.com