



Ontario Power Generation Inc.

**Application for payment amounts for the period from
January 1, 2022 to December 31, 2026**

**DECISION ON CONFIDENTIALITY – PERMANENT REDACTIONS
April 15, 2021**

Ontario Power Generation Inc. (OPG) filed an application dated December 31, 2020, with the Ontario Energy Board (OEB) under section 78.1 of the *Ontario Energy Board Act, 1998* seeking approval for changes in payment amounts for the output of its nuclear generating facilities in each of the five years beginning January 1, 2022 and ending on December 31, 2026. OPG also requested approval to maintain, with no change, the base payment amount it charges for the output of its regulated hydroelectric generating facilities at the payment amount in effect December 31, 2021 for the period from January 1, 2022 to December 31, 2026.

As part of its pre-filed evidence, OPG requested confidential treatment of documents, or certain portions thereof. In its request, OPG also sought permanent redactions, without disclosure except to the OEB, of certain information in the Amended 2020-2026 Business Plan¹ (Business Plan), the Amended 2020-2026 Business Planning Instructions² (Business Planning Instructions), and personal information under the *Freedom of Information and Protection of Privacy Act* (FIPPA).

OPG stated that redactions in the Business Plan and Business Planning Instructions related solely to OPG's unregulated business and information that, pursuant to applicable securities law, it is not permitted to disclose. OPG noted that such redactions were similar in nature to permanent redactions accepted by the OEB in its last three payment amounts proceedings.³

The redactions of personal information, as stated by OPG, included banking information, tax registration numbers, Workplace Safety and Insurance Board

¹ Exhibit A2 / Tab 1 / Schedule 2 / Attachment 1.

² Exhibit A2 / Tab 1 / Schedule 2 / Attachment 2.

³ EB-2016-0152, EB-2013-0321, and EB-2010-0008.

registration numbers, and names of individuals in the Darlington Refurbishment Program attachments⁴ (collectively, *DRP Attachments*). OPG noted that the OEB approved permanent redactions of such information in OPG's payment amounts proceeding for the 2017-2021 period.⁵

On April 13, 2021, the OEB issued a decision on the confidential treatment of OPG's pre-filed evidence. The decision approved the confidential treatment of certain information, but a decision with respect to OPG's request for permanent redactions in the Business Plan, the Business Planning Instructions and the *DRP Attachments* was deferred to a later date.

Findings

There are three document "types" with proposed permanent redactions, itemized as follows:

1. Business Plan
2. Business Planning Instructions
3. *DRP Attachments* (six *DRP contracts*)

The OEB approves the proposed permanent redactions to the *DRP Attachments* (item #3). The OEB finds that the redactions contain personal information under FIPPA such as banking information, tax / registration numbers and individual names.

Typically, confidential information is made available in unredacted form to individuals who sign the OEB's Declaration and Undertaking. Permanent redactions, by contrast, are not made available to any party, even if their representatives sign the Declaration and Undertaking.

The OEB is not approving the proposed permanent redactions to the Business Plan and Business Planning Instructions (items #1 and #2) at this time. The OEB requests OPG to re-submit these documents with additional supporting rationale for the panel to consider. For each proposed permanent redaction or redacted section, OPG is to provide the specific reason such that this panel may consider the need for permanent redactions. To be clear, these unredacted documents in this proceeding have been

⁴ Exhibit D2 / Tab 2 / Schedule 4 / Attachments 4, 7, 8, 13, and 21, and Exhibit D2 / Tab 2 / Schedule 10 / Attachment 2(d).

⁵ EB-2016-0152.

made available only to the panel and not “the OEB” in general as implied in correspondence from OPG.⁶

OPG indicated that “these permanent redactions relate to OPG’s unregulated business and information that pursuant to applicable securities law OPG is not permitted to disclose”.⁷ OPG also referenced three prior OPG proceedings in which permanent redactions had been approved.⁸

The OEB’s filing guidelines for OPG indicate that the onus is on OPG to demonstrate that confidential treatment is warranted. It is the OEB’s expectation that OPG 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.⁹ The OEB’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 OEB’s view that its proceedings should be open, transparent, and accessible.¹⁰

The OEB does not find that “unregulated business” is a sufficient rationale to justify permanent redactions from the public record. Despite the OEB’s prior approvals in previous OPG proceedings, the OEB must ensure this prior practice is justified in order to approve permanent redactions in this proceeding given OPG’s application and requested approvals. In addition, the OEB is not clear which permanent redactions were made pursuant to applicable securities law prohibitions. Information that is commercially sensitive, yet not subject to FIPPA or securities law could be afforded confidential treatment through public redactions, rather than permanent elimination from the evidentiary record.

The scope of the proceeding is a relevant consideration when the OEB is considering redactions. While the scope of this proceeding has yet to be defined and an issues list is yet to be approved, the OEB does not want to prejudice the scope by prematurely approving permanent redactions to the evidentiary record. For example, to the extent that OPG’s unregulated businesses leverage the infrastructure and expertise of OPG’s regulated businesses, cost allocation among businesses could be affected. Also, OPG’s

⁶ EB-2020-0290 / Decision on Confidentiality – Pre-filed Evidence / April 13, 2021.

⁷ EB-2020-0290 / OPG letter dated December 31, 2020 / p. 3.

⁸ EB-2016-0152, EB-2013-0321, and EB-2010-0008.

⁹ OPG Filing Guidelines / November 11, 2011 / p. 8.

¹⁰ OEB’s Practice Direction on Confidential Filings / February 17, 2021 / p. 1.

unregulated businesses could affect the context for assessing OPG's nuclear business risk and its capital structure proposal.

The OEB notes similarities in the information proposed for permanent redaction to information available to the public on OPG's corporate website, such as:

<https://www.opg.com/strengthening-the-economy/invest-with-opg/>

<https://www.opg.com/reporting/financial-reports/>

<https://www.opg.com/news-and-media/media-releases/>

Information that is in the public domain will not be considered confidential.¹¹ The OEB is committed to conducting a fair, transparent proceeding for all participants. The OEB strives to eliminate the potential for any perception of unfairness by the OEB panel having access to information not available to other participants in this proceeding.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. OPG's request for permanent redaction of the personal information contained in the DRP Attachments is approved.
2. The proposed permanent redactions to the Business Plan and Business Planning Instructions are not approved; OPG shall re-submit these documents, with additional supporting rationale for the need for such permanent redactions, by April 30, 2021.

DATED at Toronto, April 15, 2021

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar

¹¹ See Appendix A to the OEB's Practice Direction on Confidential Filings / February 17, 2021.