



Ontario | Commission  
Energy | de l'énergie  
Board | de l'Ontario

---

## **DECISION AND ORDER**

**EB-2019-0258 / EB-2020-0110**

### **PORTLANDS ENERGY CENTRE INC. ON BEHALF OF PORTLANDS ENERGY CENTRE L.P. / ONTARIO POWER GENERATION INC.**

**Amendment to Electricity Generation Licences (Variance of  
Decision and Order Dated April 9, 2020)**

**BY DELEGATION, BEFORE: Brian Hewson**  
Vice President, Consumer Policy &  
Industry Performance

---

**April 20, 2021**

## BACKGROUND

On April 9, 2020, the Ontario Energy Board (OEB) issued a [Decision and Order](#) (April Decision) amending the generation licences held by Portlands Energy Centre Inc. on behalf of Portlands Energy Centre L.P. (PEC LP), and Ontario Power Generation Inc. (OPG). The amendments followed the acquisition by PEC LP of two natural gas power plants formerly run by TransCanada Energy Ltd. (TCE): the Halton Hills Generating Station and the Napanee Generating Station. The April Decision added those two facilities to PEC LP's generation licence and cancelled TCE's generation licence. In addition, to address potential concerns about market power arising from the transaction, the April Decision added conditions to PEC LP's generation licence as well as to the generation licence of its corporate parent, OPG.

There were two elements to the new conditions. The first set of conditions required the establishment of a "ring fence" between OPG and PEC LP to ensure that they continue to compete with each other in the wholesale electricity market. The second set of conditions required OPG and PEC LP to offer their resources into the market and established an auditing mechanism to monitor compliance (the "must offer conditions"). After the April Decision was issued, OPG contacted the OEB to seek clarification of certain aspects of the ring-fencing conditions. Following some discussions between OPG and OEB staff, OPG submitted a [letter](#) to the OEB on March 4, 2021 requesting some revisions to those conditions. For the reasons that follow, the OEB has decided to revise the licence conditions to address the issues raised by OPG. In addition, the OEB has made related revisions to PEC LP's licence. No changes to the must offer conditions in either licence are being made.

The OEB provided a draft of the revised wording of the ring-fencing conditions to OPG and PEC LP for their comments. The revisions have been made pursuant to section 6(6) of the *Ontario Energy Board Act, 1998*, which permits an employee of the OEB who has made an order to vary that order if he or she considers it advisable.

## DECISION

OPG's first request relates to the reference in the new Part 7 of its licence to a ring-fence between OPG and PEC LP "or any other affiliate that is licensed to generate electricity in Ontario". OPG raised the concern that this wording "does not seem to

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.’”

The OEB confirms that these provisions were imposed in response to the transaction with TCE and were meant to establish a ring-fence between OPG and PEC LP; they were not intended to affect OPG’s existing arrangements with other affiliates. The April Decision also noted that OPG had recently acquired the Brighton Beach Generating Station; the ring-fence was also intended to separate OPG’s market offer function from the market offer function of Brighton Beach Power LP (BBP LP). (BBP LP and PEC LP are both held by an intermediate holding company, NV LP, that is wholly owned by OPG; together, OPG refers to BBP LP, PEC LP and NV LP as “the Atura Entities”.) The OEB has revised the wording to better reflect that intent. Reciprocal revisions to PEC LP’s generation licence have also been made. The revised versions of the conditions are set out in the Order section below.

The second request is “that two groups of OPG employees be specifically identified and be permitted to have access to CSI [competitively sensitive information] 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.” One group comprises OPG employees in “shared services” such as legal, finance, tax, treasury and risk management, as well as OPG employees responsible for administering the ring-fence; the other group comprises OPG senior executives who may serve on the board of directors of any of the Atura Entities (or more precisely, the board of the general partner of any of the Atura Entities).

The OEB has revised Part 7 to accommodate this request. OPG employees who are in shared services positions and who require access to CSI of the Atura Entities will be subject to the ring-fence, meaning among other things that such employees would be precluded from using any CSI that may be obtained from the Atura Entities for any purpose related to OPG’s market offer activities, and from disclosing such CSI to anyone in OPG’s market offer group.

To ensure that OPG's ring-fencing plan fully addresses the concern underlying the Part 7 conditions – namely, that OPG and the Atura Entities should compete against each other in the electricity markets – OPG will be required to submit the plan to the OEB. OPG also requested certain other revisions which the OEB considers to be more in the nature of clarifying the ring-fencing provisions than of substantively changing those requirements. For that reason, the OEB will make those changes.

In summary, the OEB has determined that it is advisable to vary the ring-fencing conditions that were added to the OPG and PEC LP generation licences by the April Decision. The revisions provide additional clarity on the scope of the ring-fencing requirements while adhering to the intent behind the conditions as originally drafted; in the OEB's view, they will continue to ensure confidence in the market and to protect consumers.

#### **IT IS ORDERED THAT:**

1. Part 7 of OPG's electricity generation licence (EG-2003-0104) is replaced with the following:

##### **PART 7: RING-FENCING OF MARKET FUNCTIONS**

1. The Licensee shall not share employees that are directly involved in the offer to supply electricity or ancillary services into any of the IESO-administered markets with NV LP or any subsidiary of NV LP including Portlands Energy Centre L.P. and Brighton Beach Power L.P. This shall not preclude (i) the sharing between the Licensee and NV LP or a subsidiary of NV LP of employees in "shared corporate services" as defined in the *Affiliate Relationships Code for Electricity Distributors and Transmitters*, or (ii) employees of the Licensee from serving as a director of NV LP or a subsidiary of NV LP, provided that in both cases such employees are subject to the ring-fencing plan restrictions established in accordance with this Part 7.
2. The Licensee shall implement a ring-fencing plan to ensure that (i) no competitively sensitive information ("CSI") pertaining to the Licensee is disclosed to NV LP or any subsidiary of NV LP, (ii) employees of the Licensee that 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 NV LP or any subsidiary of NV LP, and (iii) no CSI pertaining to NV LP or a subsidiary of NV LP that may be in the possession of the Licensee is used by the Licensee for any purpose relating to the offer to supply electricity or ancillary services into any of the IESO-administered markets.

3. For the purpose of paragraph 2, CSI includes information about electricity bid and offer strategy, electricity offer prices and quantities, gas procurement strategies and outage plans. CSI does not include (i) historical data or information that is no longer competitively relevant, (ii) data or information that is in the public domain, or (iii) documents from which competitive information has been redacted, deleted, aggregated or otherwise dealt with in a manner that renders the document in question not commercially sensitive. For clarity, reference to a limited partnership in this Part 7 shall include its general partner(s).
2. Part 5A of PEC LP's electricity generation licence (EG-2004-0540) is replaced with the following:

#### **5A Ring-fencing of Market Functions**

- 5A.1 The Licensee shall not share employees that are directly involved in the offer to supply electricity or ancillary services into any of the IESO-administered markets with Ontario Power Generation Inc. ("OPG"). This shall not preclude (i) the sharing between the Licensee and OPG of employees in "shared corporate services" as defined in the *Affiliate Relationships Code for Electricity Distributors and Transmitters*, or (ii) employees of OPG from serving as a director of NV LP or a subsidiary of NV LP (including the Licensee), provided that in both cases such employees are subject to the ring-fencing plan restrictions established in accordance with this Part 5A and Part 7 of OPG's generation licence.
- 5A.2 The Licensee shall implement a ring-fencing plan to ensure that (i) no competitively sensitive information ("CSI") pertaining to the Licensee is disclosed to OPG, other than in accordance with this Part 5A and the ring-fencing plan established in accordance with Part 7 of OPG's generation licence, (ii) employees of the Licensee that 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 OPG, and (iii) no CSI pertaining to OPG that may be in the possession of the Licensee is used by the Licensee for any purpose relating to the offer to supply electricity or ancillary services into any of the IESO-administered markets.
- 5A.3 For the purpose of section 5A.2, CSI includes information about electricity bid and offer strategy, electricity offer prices and quantities, gas procurement strategies and outage plans. CSI does not include (i) historical data or information that is no longer competitively relevant, (ii) data or information that is in the public domain, or (iii) documents from which competitive information has been redacted, deleted, aggregated or otherwise dealt with in a manner that renders the document in question not commercially sensitive. For clarity, reference to a limited partnership in this Part 5A shall include its general partner(s).

3. OPG shall submit a copy of its ring-fencing plan the OEB by **May 27, 2021** by e-mail to [registrar@oeb.ca](mailto:registrar@oeb.ca), and indicate whether it would like part or all of the plan to be treated as confidential.

**DATED** at Toronto April 20, 2021

**ONTARIO ENERGY BOARD**

*Original Signed By*

Brian Hewson  
Vice President, Consumer Protection & Industry Performance