

May 27, 2021

**VIA RESS (LETTER ONLY)**

Ms. Christine Long  
Registrar  
Ontario Energy Board  
27th Floor - 2300 Yonge Street  
Toronto, Ontario M4P 1E4

Dear Ms. Long:

**Re: Application by Ontario Power Generation Inc. for 2022-2026 Payment Amounts (EB-2020-0290) (the "Application") – Reply Submission of the Applicant on Confidentiality of Interrogatory Responses Pursuant to Procedural Order #3**

**Introduction**

In accordance with the Ontario Energy Board's (the "**OEB**") Procedural Order No. 3, this is the reply submission of Ontario Power Generation Inc. ("**OPG**"). In this submission, OPG responds to the submissions of (1) Power Workers' Union ("**PWU**") dated May 20, 2021, (2) School Energy Coalition ("**SEC**") dated May 20, 2021, and (3) Vulnerable Energy Consumers Coalition ("**VECC**") dated May 20, 2021.

OEB staff also made submissions on May 20, 2021 advising that OEB staff did not have any objections to OPG's request for confidential treatment of its interrogatory responses.

**1. OPG Response to Submission of PWU**

PWU objects to OPG's confidentiality claims in its interrogatory responses<sup>1</sup> (the "**Responses**"), on the basis that (a) forecasts of future financial impact of past decisions or of operational actions are overly broad and not legitimate categories for confidential treatment on the basis of labour sensitivity or (b) OPG would otherwise have a legal obligation to disclose such information in collective bargaining, even if the OEB determines such information is labour sensitive. OPG disagrees with PWU's objections for the following reasons:

- a) OPG's claims are not overbroad. The redacted information is consistent with the type of information the OEB has already determined to be labour sensitive and confidential. (EB-2020-0290, Decision on Confidentiality – Pre-filed Evidence). PWU's counsel is also able to access this information by way of Declaration and Undertaking for the purposes of

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<sup>1</sup> See columns named "Financial Impacts of Past Actions" and "Forecast of Future Changes (attrition, closures, movements)" in Appendix "A" to PWU's submission.

participating in this Application, and so there is no prejudice to PWU in treating this information confidentially in the proceeding.

Further, the OEB has recognized the labour sensitivity associated with information that contains cost estimates and underpinning assumptions that depend on or may influence collective bargaining outcomes. The redacted information in the Responses falls within this category and includes forecasts of costs and savings in relation to pensions, benefits, Hydro One share grants negotiated in exchange for pension reforms, employee severance and relocation, and use of Term Employees. Whether such costs or savings arise from past decisions or future operational actions is not relevant to determining whether the information is labour sensitive. Rather, the labour sensitivity arises from the fact that it is financial information relating to costing that OPG may compile or rely upon in its preparation, submissions or assessments in respect of collective bargaining.

For additional context with respect to employee relocation impacts to the Clarington Campus, OPG notes that the proposed redactions, such as in Ex. L-D3-01-Society-005, Ex. L-D3-01-Society-006, Ex. L-D3-01-Society-007 and Ex. L-D3-01-Society-008, can directly relate to its negotiations with the unions on issues pertaining to the implementation of these movements and therefore may influence future collective bargaining outcomes. With respect to redactions of savings associated with the use of PWU Term Employees and Society Extended Temporary Employees, such as contained in Ex. L-F4-03-Staff-276 (b) and L-F4-03-SEC-152, OPG notes that it will be required to renegotiate continued ability to hire these categories of employees in future rounds of collective bargaining. The public disclosure of the employee relocation impacts with respect to Clarington Campus and the savings associated with the availability of the above-referenced employee categories (including on a historical basis from which forward-looking information can be extrapolated) could influence collective bargaining negotiations to the detriment of OPG and ultimately, ratepayers.

In consideration of OPG's submissions in this section (a) and subject to the clarifications set out in section (c) below, OPG requests that the OEB, consistent with its decision in this Application, grant confidential treatment for the proposed redactions in the Responses.

- b) OPG disagrees with PWU's broad proposition that, even if redactions in the Responses are labour sensitive, OPG should nevertheless be required to publicly disclose the information in this proceeding. The proposition that OPG has no legal right in the context of collective bargaining to maintain the confidentiality of information from its union counterparties is incorrect. The Ontario Labour Relations Board (the "**OLRB**") has repeatedly recognized an employer's right to withhold information where the facts support a determination that such information is appropriately labour relations sensitive and/or commercially sensitive,<sup>2</sup> which in OPG's view reasonably includes costing information of previous collective agreement outcomes such as the information contained in the Responses categorized as "Financial Impacts of Past Actions" in Appendix A to PWU's submission. In any event, PWU's right to request production from OPG for collective bargaining only applies in the narrow context of collective bargaining where the PWU is

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<sup>2</sup> *The Society of United Professionals v New Horizon System Solutions*, 2018 CanLII 126010 (OLRB) at para 13(vi).

negotiating terms and conditions of employment on behalf of its members, and only so far as such information pertains to the PWU and its members. It is wholly inappropriate for PWU to import into this Application a disclosure test used by the OLRB for collective bargaining, and similarly inappropriate for an OEB decision on confidentiality in this Application to presuppose any decision by the OLRB relating to collective bargaining between OPG and PWU or OPG and the Society of United Professionals.

c) *Clarifications.*

- i. **Commercially Sensitive Information.** As specified in OPG's submissions<sup>3</sup> ("**Original Submissions**"), the following Responses referenced in PWU's submissions also contain commercially sensitive information, including information that discloses aggregated information for OPG's regulated and unregulated assets. OPG requests that such information be granted confidential treatment for the reasons set out in OPG's Original Submissions<sup>4</sup> and in these submissions (in respect of Ex. L-D3-01-Society-012 and Ex. L-D3-01-Society-007 in Section 2 below).

- Ex. L-F3-02-Energy Probe-059 (page 1)
- Ex. L-D3-01-Society-012, part (a)
- Ex. L-D3-01-Society-007, parts (h) and (n)
- Ex. L-F4-03-Staff-276 (page 1)

- ii. **Future employee attrition.** PWU indicates that forecast future employee attrition such as that contained in Ex. L-F4-03-AMPCO-174, Ex. L-F4-03-Staff-276 and Ex. L-F4-03-PWU-029, Charts 2 and 3 has routinely been put on the public record and cites EB-2016-0152, Ex. L-6.6-2 AMPCO-126. With one exception, OPG disagrees. OPG has consistently requested confidential treatment of the same type of information for which this treatment was granted in EB-2016-0152, as discussed below.

With respect to Ex. L-F4-03-AMPCO-174 (b),<sup>5</sup> Chart 1, the information pertaining to OPG's forward-looking expectations of retirements and other attrition for the regulated business is the same or similar to EB-2016-0152, Ex. L-6.6-19 SEP-013, Table 2. Similarly, proposed redactions in Ex. L-F4-03-Staff-276 (a) for total OPG retirement expectations are similar to information in EB-2016-0152, Ex. L-6.6-2 AMPCO-145, Table 5. In the current proceeding, there is an additional labour sensitivity consideration related to such expectations for the period leading up and through the planned Pickering shutdown, which may inform the company's downsizing plans and associated forecasted costs. OPG notes that PWU has indicated that they do not contest the confidential treatment of this type of information in the context of the

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<sup>3</sup> Letter dated April 30, 2021 (Revised May 11, 2021) re Application by Ontario Power Generation Inc. for 2022-2026 Payment Amounts (EB-2020-0290) – Request for Confidential Treatment re: Interrogatory Responses.

<sup>4</sup> See reasons in Original Submissions set out at: Section j)(iii) for Energy Probe 059; Section j)(vii) for Society 012 part (a); Section j)(vi) for Society-007 parts (h) and (n); and Section f) for Staff-276.

<sup>5</sup> Pursuant to the inadvertent disclosure letter filed on May 27, 2021, OPG is proposing to redact one additional paragraph, for which the same submissions on forward-looking expectations of retirements applies. Additionally, the information in this additional paragraph was similarly redacted in Ex. L-F4-03-Staff-304 and Ex. L-F4-03-Staff-307, which no party objected to.

planned Pickering shutdown, for example in L-F4-03-Staff-304.<sup>6</sup> Furthermore, even if OPG has an obligation to disclose this commingled information to PWU in collective bargaining, it should not be required to do so in the context of this Application, as the OEB has consistently granted confidential treatment for commingled information (EB-2016-0152, EB-2020-0290).<sup>7</sup>

Finally, EB-2016-0152, Ex. L-6.6-2 AMPCO-126 provided retirement eligibility dates for existing employees for the regulated business only; this differs from Ex. L-F4-03-PWU-029 in this proceeding which provides this historical and forward-looking information on a total OPG basis inclusive of the unregulated business. Even if OPG has an obligation to disclose this commingled information to PWU in collective bargaining, it should not be required to do so in the context of this Application, as the OEB has consistently granted confidential treatment for commingled information (EB-2016-0152, EB-2020-0290).

OPG acknowledges that total OPG historical information (2017-2020) was redacted in error in Ex. L-F4-03-PWU-029, Chart 2. A revised version of the proposed confidential redactions is provided in Appendix A and OPG will re-file an updated redacted copy for the public record.<sup>8</sup>

## **2. OPG Response to Submission of SEC**

SEC objects to OPG's proposed redactions in Ex. L-F4-03-SEC-149, Tables 1 and 2, Ex. L-D3-01-Society-007, part (h) and (n), and L-D3-01-Society-012, part (a), Chart 1. OPG's responses to each of these objections are as follows:

- a) *Ex. L-F4-03-SEC-149, Tables 1 and 2.* SEC objects to OPG's proposed redactions on the basis that information of the same type was placed on the public record in the EB-2013-0321 and EB-2016-0152 payment amounts proceedings. This is not correct with respect to Table 1, which contains total OPG forward looking information (2022-2026) inclusive of the unregulated business and is therefore different from what was provided in the previous proceedings. Namely, EB-2016-0152, Ex. JT3.2 contained total OPG historical information only (2015) and did not contain any total OPG forward looking information, while information in EB-2016-0152 Ex. L-6.6-15 SEC-083 and EB-2013-0321 Ex. J9.11 was limited to OPG's regulated business only. OPG notes that certain redacted information in Ex. L-F4-03-SEC-149 should have been referenced in the section of the Original Submissions on confidential treatment of information relating to the combined regulated and unregulated assets and business of OPG. With this clarification, OPG requests that the OEB grant confidential treatment for the reasons set out in our Original Submissions, subject to the following changes:

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<sup>6</sup> See column named "Forecast of Future Collective Bargaining Actions" in Appendix "A" to PWU's submission.

<sup>7</sup> Pursuant to the inadvertent disclosure letter filed on May 27, 2021, OPG is proposing to redact one additional paragraph, for which our submissions on forward-looking expectations of retirements applies. Additionally, the information in this additional paragraph was similarly redacted in Staff-304, which no parties objected to.

<sup>8</sup> For additional context, OPG notes that retirement eligibility dates may differ from OPG's expectations of when employees will actually retire. The former represents factual data based on employees' age and service whereas the latter is a matter of management's forecasts for workforce planning and other purposes, including collective bargaining.

- OPG acknowledges that total OPG historical information (2019) was redacted in error in Table 1. OPG is also withdrawing its proposed redactions for Table 2, which contains information solely related to the nuclear business. A revised version of the proposed confidential redactions is provided in Appendix A and OPG will re-file an updated redacted copy for the public record.
- b) *Ex. L-D3-01-Society-007, part (h) and (n)*. SEC objects to OPG’s redaction of information that responds to the question on the timing of the potential sale of an OPG facility, claiming that the disclosure of such information would not harm any future negotiations. OPG disagrees. Public disclosure of the timing for any such potential sale may adversely affect OPG’s commercial interests. For example, this could signal to potential buyers that OPG is a willing seller seeking to enter into a transaction within a discrete timeframe. Such information may give potential buyers leverage in their negotiations with OPG.
- c) *Ex. L-D3-01-Society-012, part (a), Chart 1*. SEC asks OPG to elaborate further how information on lease termination dates for specific properties is commercially sensitive. This information is commercially sensitive because OPG may engage certain landlords to negotiate new lease termination dates, which may be different from the termination dates set out in the existing lease agreements. OPG has yet to commence such negotiations and therefore disclosure of the desired termination dates may prejudice OPG’s commercial position in these negotiations.

### **3. OPG Response to Submission of VECC**

VECC objects to the proposed redactions in L-C1-01-VECC-015. The information discloses the percentage of the total revenue relating to unregulated assets of OPG. This type of information is similar to other commingled information for which the OEB has consistently granted confidential treatment (EB-2016-0152, EB-2020-0290). In particular, the disclosure of OPG’s forward-looking unregulated revenues may provide indicative information on the extent of unregulated business plans in a competitive environment, beyond the recently completed investments. OPG also does not understand VECC’s claim that the commercial sensitivity of this information specific to OPG’s plans is somehow diminished by the fact that the “the market for generation assets is global and OPG is not even among the largest participants in that market,” and in any event disagrees with the premise that OPG’s relative size in comparison to the global energy industry is a relevant consideration to the determination of confidentiality. OPG also disagrees with VECC’s suggestion that “OPG’s choice to structure itself as intermingling of those businesses” is relevant to the confidential treatment decision.<sup>9</sup> The production of unregulated business information arising from responding to VECC’s interrogatory is not dependent on OPG’s corporate structure.

Confidential information remains accessible to parties for purposes of transparency and for setting rates under this application through the Declaration and Undertaking process established by the OEB, including to the extent it may be relevant to matters of equity thickness cited by VECC. Whether VECC is willing to sign a Declaration and Undertaking should not be a relevant consideration for whether or not the information should be accorded confidential treatment.

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<sup>9</sup> For additional context, OPG notes that certain of its unregulated businesses function as separate subsidiaries (e.g. Ex. A1-4-1, p. 4, lines 24-27).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Evelyn Wong', with a long horizontal flourish extending to the right.

Evelyn Wong

cc: Aimee Collier, OPG  
Charles Keizer, Torys LLP  
Crawford Smith, Lax O'Sullivan Lisus Gottlieb