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

EB-2020-0290

Ontario Power Generation Inc.

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

DECISION ON CONFIDENTIALITY
June 8, 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*. OPG's application seeks 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.

Permanent Redactions

As part of its pre-filed evidence, OPG requested confidential treatment of documents, or certain portions thereof. In its request, OPG sought, among other things, permanent redactions, without disclosure except to the OEB ("OEB Review Only"), of certain information in the Amended 2020-2026 Business Plan[1] (Business Plan) and the Amended 2020-2026 Business Planning Instructions[2] (Business Planning Instructions).

In its Decision on Confidentiality – Permanent Redactions, dated April 15, 2021, the OEB did not approve the proposed permanent redactions to the Business Plan and Business Planning Instructions. Instead, the OEB requested OPG to re-submit the two documents with additional supporting rationale for such permanent redactions.

On April 30, 2021, in response to the April 15, 2021 Decision, OPG significantly narrowed the number of permanent redactions being sought in respect of the Business Plan and Business Planning Instructions, and provided additional supporting rationale for the remaining permanent redactions, in a letter for "OEB Review Only". A redacted version of the letter for "OEB Review Only" was filed on the public record on May 3,

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

2021. In the letter, OPG also proposed to permanently redact certain information in a board memo, dated October 19, 2020, prepared in relation to the Business Plan (Board Memo). This board memo was attached to the response provided to interrogatory CCC-015.

OPG also proposed to permanently redact personal information, within the meaning of the *Freedom of Information and Protection of Privacy Act*, in certain interrogatory responses and documents as indicated in the following table:

TABLE 1

Exhibit	Attachment No.	Page(s)
L-D2-02-AMPCO-079	2	1 & 2
L-D2-02-AMPCO-079	40	2
L-D2-02-AMPCO-080	1	1
L-D2-02-AMPCO-080	2	1
L-D2-02-AMPCO-080	3	2
L-D2-02-AMPCO-080	4	2
L-D2-02-AMPCO-080	5	2
L-D2-02-AMPCO-115	1	15 and 32
L-D2-02-SEC-084	17	23, 28, 30, 40, 45, 49, 51, 52, 53, 54, 58, 61 and 62
L-D2-02-SEC-084	18	34
L-D2-02-SEC-084	22	25
L-D2-02-SEC-084	23	52

Findings

The OEB approves OPG's revised proposal for permanent redactions to the Business Plan and the Business Planning Instructions, as well as the proposed permanent redactions to the Board Memo. The OEB finds that this information relates to specific unregulated businesses and is not publicly available. As a reporting issuer under Canadian provincial securities law, OPG indicated that it may be subject to liability (and securities regulatory proceedings) in relation to forward-looking disclosures of financial information. The OEB is of the opinion that sufficient information is available elsewhere

on the record, without this forward-looking financial information, to consider issues in this proceeding.

The OEB also approves the permanent redactions to certain interrogatory responses that contain personal information within the meaning of the *Freedom of Information and Protection of Privacy Act.*

Confidential Filings to Interrogatory Responses

Pursuant to Procedural Order No. 1, OPG provided responses to interrogatories filed by intervenors and OEB staff. In letters dated April 30, 2021 and May 11, 2021 (Confidentiality Request Letters), OPG requested confidential treatment of a number of interrogatory responses, or certain portions thereof.

Procedural Order No. 3, dated May 13, 2021, made provision for intervenors and OEB staff to file objections on OPG's confidentiality request, and for OPG to reply. The Power Workers' Union (PWU), School Energy Coalition (SEC), and Vulnerable Energy Consumers Coalition (VECC) filed letters indicating objections. OEB staff filed a letter stating it did not object to OPG's confidentiality request. OPG filed a reply submission in response to these objections.

The interrogatory responses, or certain portions thereof, and / or documents provided as attachments to interrogatory responses for which confidential treatment was sought, are categorized based on their nature. The objections of parties are referred to, where required, below.

1. *References to Vendor / Contractor Performance*

OPG requested confidential treatment of information related to vendor / contractor performance in the following interrogatories:

TABLE 2

Exhibit	Attachment No.
L-A1-02-SEC-011	Attachment 2
L-D2-02-AMPCO-137	Attachment 132
	Attachment 133
	Attachment 134
	Attachment 135
	Attachment 136
	Attachment 137
	Attachment 138
L-D2-02-SEC-073	Attachment 1
L-D2-02-SEC-084	Attachment 1
	Attachment 2
	Attachment 3
	Attachment 4
	Attachment 5
	Attachment 6
	Attachment 7
	Attachment 8
	Attachment 9
	Attachment 10
	Attachment 12
	Attachment 13
	Attachment 14
L-D2-02-Staff-105	Attachment 2
L-D2-02-SEC-095	Attachment 1
L-D2-02-AMPCO-079	Attachment 2
	Attachment 4
	Attachment 34
	Attachment 40
	Attachment 41
	Attachment 42
L-D2-02-AMPCO-115	Attachment 1

Disclosure of such information, as stated by OPG, could prejudice the competitive positions of the parties involved, damage contractual relationships, and cause reputational harm to vendors / contractors. OPG submitted that the confidential nature of such information had been accepted by the OEB in OPG's previous payment amounts application (2017-2021 Payment Amounts Proceeding)[3] and in this proceeding.

No objection to the confidentiality request was filed.

Findings

The OEB approves confidential treatment of the redacted information related to vendor / contractor performance in Table 2 as the information is commercially sensitive, with the two exceptions of AMPCO-079, Attachment 41 and AMPCO-115, Attachment 1.

With the exception of AMPCO-079, Attachment 41 and AMPCO-115, Attachment 1, the OEB agrees with OPG that disclosure of such information could prejudice the competitive position of the parties involved, damage contractual relationships, and cause reputational harm to vendors / contractors.

The OEB finds that the redacted information is not commercially sensitive to the specific contractor in AMPCO-079, Attachment 41 entitled "Evaluating Organizational Effectiveness Review Detail Report – Quality Review Completed". The OEB finds that some of the redacted information is commercially sensitive to the contractor in AMPCO-115, Attachment 1 entitled "Incident Investigation Report: Delay in D2O Storage Project", while other information is not commercially sensitive.

Regarding AMPCO-079, Attachment 41 and AMPCO-115, Attachment 1, the OEB finds that the information that is not commercially sensitive relates to OPG and OPG's interactions with this contractor. Given OPG's implied involvement and interactions with this contractor, the OEB is not convinced the information will prejudice the competitive position, damage contractual relationships, and cause reputational harm to this contractor. Further, as these documents were issued in 2015 and 2014 respectively, the OEB questions OPG's claim of commercial sensitivity in 2021.

The OEB distinguishes information in AMPCO-079, Attachment 41 and AMPCO-115, Attachment 1 as unique from other documents previously approved for confidential treatment in this proceeding. The OEB must balance the need for transparency with the risk of potentially exposing commercially sensitive information on the public record. As

[3] EB-2016-0152.

the D2O Storage Project is a major capital project with total actual costs of $510 million (including $509.3 million of capital costs), the OEB finds it appropriate for intervenors who do not sign the Declaration and Undertaking to have access to this information to fully participate in this proceeding.

Specific to OPG's request for redactions to AMPCO-115, Attachment 1, the OEB approves the confidential treatment of the proposed redactions on pages 9, 10, 14, 16, 18, 28, 31, 33, 38, and 41 of the 76-page document as commercially sensitive, specific to a third party.

OPG is directed to revise and refile the publicly available versions of documents AMPCO-079, Attachment 41 and AMPCO-115, Attachment 1.

2. *Commercially Sensitive Information in Nuclear Business Case Summaries*

OPG sought confidential treatment of commercially sensitive information in nuclear business case summaries provided in the following interrogatories:

TABLE 3

Exhibit	Attachment No.
L-D2-01-Staff-116	
L-D2-01-AMPCO-027	Attachment 1
L-D2-01-AMPCO-059	Attachment 1
L-D2-01-AMPCO-044	Attachment 1
L-F2-03-AMPCO-151	Attachment 1
L-D2-01-AMPCO-059	Excel file titled "OPG Excel Requested Tables (Confidential)"

OPG submitted that the redacted portions include commercially sensitive information, such as project cost contingencies, certain costs for contracted or purchased work / materials, or aggregate information that would allow for the determination of commercially sensitive information. OPG stated that disclosure of such information could prejudice its competitive position. OPG also noted that some of the nuclear business case summaries include commentary on the performance of specific contractors. Disclosure of such information, as stated by OPG, could significantly interfere with its negotiations and existing relationships in a variety of aspects of its business.

In its submission, OPG noted that similar information was treated as confidential by the OEB in this proceeding, the 2017-2021 Payment Amounts Proceeding, its application for payment amounts in 2014 and 2015 (2014-2015 Payment Amounts Proceeding)[4], and its application for payment amounts in 2011 and 2012 (2011-2012 Payment Amounts Proceeding).[5]

No objection to the confidentiality request was filed.

Findings

The OEB approves confidential treatment of the redacted information related to the nuclear business case summaries in Table 3 as the information is commercially sensitive.

3. *Pricing Information and Labour Rates in Darlington Refurbishment Program Documents*

OPG requested confidential treatment of pricing information and labour rates for various aspects of the Darlington Refurbishment Program in the following interrogatories:

TABLE 4

Exhibit	Attachment No.
L-D2-01-AMPCO-072	Attachment 1
L-D2-02-SEC-084	Attachment 18
L-D2-02-SEC-085	Attachment 1
L-D2-02-SEC-096	Attachment 3
L-D2-02-SEC-084	Attachment 22
L-D2-02-SEC-084	Attachment 23
L-D2-02-SEC-105	Attachment 1

OPG submitted that the document filed in response to SEC-085 contained information relating to the budget of an external advisor and retainer amounts. OPG stated that such information should be treated as confidential as the external advisor budget is commercially sensitive to OPG. In addition, OPG submitted that the information is not relevant to the Darlington Refurbishment Program amounts requested in this proceeding while the retainer amounts are commercially sensitive to a third party.

[4] EB-2013-0321.
[5] EB-2010-0008.

For the documents provided in response to the remaining interrogatories, OPG submitted that the redacted portions relate to labour rates and pricing information. OPG stated that disclosure of such information could be detrimental to its commercial interests as well as the commercial interests of its counterparties. OPG noted that information, similar in nature to its request, was already the subject of confidential treatment in this proceeding.[6]

No objection to the confidentiality request was filed.

Findings

The OEB approves confidential treatment of the redacted information related to pricing information and labour rates in the Darlington Refurbishment Program documents in Table 4 as the information is commercially sensitive.

4. *Collective Bargaining Documentation*

OPG sought confidential treatment of collective bargaining-related information contained in the following interrogatories:

TABLE 5

Exhibit	Attachment No.
L-D3-01-Society-005	
L-D3-01-Society-006	
L-D3-01-Society-007	
L-D3-01-Society-008	
L-D3-01-Society-012	
L-F3-02-Energy Probe-059 (page 2)	
L-F4-01-PWU-029	
L-F4-03-AMPCO-174	
L-F4-03-AMPCO-175	
L-F4-03-Energy Probe-063	
L-F4-03-Energy Probe-064	
L-F4-03-PWU-018	
L-F4-03-PWU-024	

[6] Decision on Confidentiality – Pre-Filed Evidence / April 13, 2021.

L-F4-03-PWU-026	
L-F4-03-PWU-031	
L-F4-03-SEC-145	
L-F4-03-SEC-149	
L-F4-03-SEC-152	
L-F4-03-Staff-276	
L-F4-03-Staff-282	
L-F4-03-Staff-300	
L-F4-03-Staff-304	
L-F4-03-Staff-306	
L-F4-03-Staff-307	
L-F4-03-Staff-309	
L-F4-03-Staff-311	
L-A1-02-SEC-011	Attachment 1

OPG stated that it sought confidential treatment as the document and interrogatory responses contain labour-sensitive information regarding the anticipated Pickering Nuclear Generating Station downsizing exercise and OPG's relocation to the Clarington Corporate Campus. OPG also noted that the information includes details indicative of:

- OPG's collective bargaining strategies
- Estimates of cost savings from pension and benefits reforms
- Planned declines in total regular employee headcount
- Planned share performance plan participation (which may be indicative of forecasted attrition)
- Sick leave targets
- Retirement eligibility forecasts
- Estimated staff demand levels
- Relocation plans and costs related to Clarington Corporate Campus (including plans for vacating certain office leases)

OPG submitted that the information includes estimates and underpinning assumptions that are labour-sensitive because they depend on, and / or may influence, collective bargaining outcomes. Disclosure of such information, as argued by OPG, could potentially interfere with future collective bargaining negotiations it has with unions that represent its employees. OPG noted that the OEB granted confidential treatment for

similar types of labour-sensitive information in this proceeding[7] and the 2017-2021 Payment Amounts Proceeding. SEC and PWU filed objections to OPG's confidentiality request.

OPG further requested that, consistent with the OEB's April 13, 2021 Decision on Confidentiality – Pre-Filed Evidence, this information "be withheld from such experts or consultants who have not also filed an affidavit with the OEB affirming that they are external to and at arms-length from the PWU and Society, as applicable, and that they are not and will not be involved in any collective bargaining-related activities on behalf of PWU or Society."

SEC Objection:

SEC objected to the confidential treatment of Tables 1 and 2 provided in response to SEC-149, submitting that the information is of the same nature as that placed on the public record in the 2017-2021 Payment Amounts Proceeding and 2014-2015 Payment Amounts Proceeding. No similar request for confidential treatment was made by OPG in those proceedings. SEC submitted that OPG did not provide any reason for why the situation in this proceeding is different, and how it will negatively impact labour negotiations. SEC also noted the importance of the information by highlighting the decisions in both the 2017-2021 Payment Amounts Proceeding[8] and 2014-2015 Payment Amounts Proceeding[9] referring to this type of information in determining the appropriate level of compensation costs to be recovered in payment amounts.

OPG disagreed with SEC about the information, with respect to Table 1, being the same as that provided in the 2017-2021 Payment Amounts Proceeding and 2014-2015 Payment Amounts Proceeding. OPG noted that in this proceeding, Table 1 contains forward looking information (i.e., 2022 to 2026) inclusive of the unregulated business whereas in the 2017-2021 Payment Amounts Proceeding, JT3.2 did not contain any total OPG forward looking information. It only contained total OPG historical information. OPG also stated that information contained in J9.11 was limited to OPG regulated business only.

OPG clarified that certain redacted information in SEC-149 should have been referenced in its Confidentiality Request Letters. OPG stated that SEC-149 should have also been referenced in the section relating to the combined regulated and unregulated assets and business of OPG. OPG reiterated its request for confidential treatment of

[7] Decision on Confidentiality – Pre-Filed Evidence / April 13, 2021.
[8] EB-2016-0152 / Decision and Order / December 28, 2017 / p. 82 / citing JT3.2 in footnote 106.
[9] EB-2013-0321 / Decision with Reasons / November 20, 2014 / p. 74 / citing J9.11 in footnote 71.

SEC-149, as outlined in its Confidentiality Request Letters, subject to two revisions. OPG clarified that the 2019 OPG historical information in Table 1 was redacted in error, and that the proposed redactions in Table 2, which contains information solely related to the nuclear business, was being withdrawn.

PWU Objection:

PWU objected to OPG's confidentiality request by submitting that OPG's claims were overbroad and do not reflect any genuine "sensitivity", and that the underlying premise of the request is flawed and should be rejected.

PWU acknowledged that documents containing OPG's collective bargaining strategy, or assumptions regarding future collective bargaining outcomes are appropriately confidential, subject only to information which is mathematically derivable from information which is otherwise on the public record. However, PWU argued that the documents to which OPG was seeking confidentiality were much broader, and that information that does not meet this narrow exception is not properly considered to be confidential. PWU submitted that certain interrogatories fall into either or both of two categories: (1) the forecast future financial impact of past decisions and actions; and / or (2) forecast future operational actions or circumstances, and the financial impacts arising therefrom.

For the first category, PWU submitted that the focus of such questions is about the consequences of past actions, not issues of current or future labour relations sensitivity, whereas the second category pertains to operational actions or circumstances existing independently of future collective bargaining. PWU also argued that forecast future inflation rates and / or labour shortages / surpluses may have an impact on future collective bargaining, but is not confidential information.

PWU stated that the underlying premise of OPG's confidentiality request was that disclosure would cause prejudice to OPG. Specifically, that public disclosure would defeat OPG's ability to maintain the confidentiality over the information and use this information to its advantage in future collective bargaining. PWU submitted that the OEB's task is to determine whether there is a legitimate interest of sufficient importance to override the presumption of public transparency. If the alleged prejudice is the potential use of the "confidential" information in collective bargaining, the question for the OEB is whether the employer has a legitimate entitlement to refuse to disclose such information to its union in collective bargaining. If the answer to the question is "no", the employer has no interest worthy of protection, and no legally cognizable prejudice.

PWU argued that the difficulty with OPG's position is that OPG has no legal right, in the context of collective bargaining, to maintain the confidentiality of the information from its union counterparties. Any attempt to do so, when requested from the union, would be bad faith bargaining, contrary to the provisions on the *Ontario Labour Relations Act*.

PWU submitted that as an employer, OPG has the legal obligation to provide this type of information to its unions and the onus is on OPG to demonstrate the prejudice to its legitimate interests that disclosure would cause. The OEB's task in this regard is essentially identical to when it is faced with refusal to provide otherwise relevant information based on a privilege claim. A valid assertion of privilege is a well-recognized socially protected interest, which overrides disclosure obligations. However, that treatment is dependent upon the privilege claim being a valid one – of which it falls to the OEB to determine that validity.

OPG disagreed with PWU's objection. In response, OPG argued that its confidentiality request was not overbroad as the information is consistent with the type of information the OEB previously determined to be labour sensitive and confidential in this proceeding. OPG also noted that PWU's counsel can access the information, by way of Declaration and Undertaking and, as such, there is no prejudice to PWU in treating such information as confidential. OPG also submitted that the OEB has recognized the labour sensitivity associated with information that contains cost estimates underpinning assumptions that depend on or may influence collective bargaining outcomes – to which OPG stated the redacted information pertained.

OPG further disagreed with PWU's submission about how OPG should be required to publicly disclose the information, even if it is labour sensitive. OPG cited the Ontario Labour Relations Board recognizing 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. OPG further submitted that PWU's right to request production from OPG for collective bargaining only applies in the narrow context of collective bargaining where PWU is negotiating terms and conditions of employment on behalf of its members, and only so far as such information pertains to PWU and its members.

OPG also addressed specific interrogatories that PWU claimed were not confidential. OPG noted that certain responses not only contain collective bargaining information, but also commercially sensitive information, including information that discloses aggregated information for OPG's regulated and unregulated assets. OPG also highlighted that some responses contain information related to future employee attrition, a type of

information for which confidential treatment was provided in the 2017-2021 Payment Amounts Proceeding.

Findings

The OEB approves confidential treatment of the redacted collective bargaining documentation in Table 5, with the exception of SEC-149.

The OEB does not approve the request for confidential treatment of SEC-149 as proposed. The OEB finds that within Table 1, the last three columns with totals shall be made public. The OEB approves confidential treatment of the rest of Table 1 as it provides union-specific information which potentially could be utilized during collective bargaining. The OEB reinforces its April 13, 2021 Decision on Confidentiality that this information be "withheld from such experts or consultants who have not also filed an affidavit with the OEB affirming that they are external to and at arms-length from the PWU and Society, as applicable, and that they are not and will not be involved in any collective bargaining-related activities on behalf of PWU or Society".

For the remaining interrogatory responses in Table 5 related to collective bargaining, the OEB finds that the information could be utilized during collective bargaining. Further, the OEB notes that OPG has filed extensive evidence on its staff resource plans associated with the Pickering shutdown and with its ongoing Darlington Refurbishment Program. The OEB agrees with OPG that the current Custom IR period is a transition period which OPG will need to effectively manage on many fronts, including the impact on human resources, and the release of public information is labour sensitive.

Regarding Society-007, the OEB has also considered the sensitivity of dates associated with end-of-office leases and the potential impact on staff should such information be made public, particularly when OPG's optimization plans are anticipated to result in headcount reductions. As noted above, this information shall be treated as confidential.

5. *Tax Information*

OPG requested confidential treatment of tax information provided in the following interrogatories:

TABLE 6

Exhibit	Attachment No.
L-F4-02-Staff-272	
L-F4-02-Staff-272	Attachment 1

OPG stated that the information should be treated as confidential as it relates to Income Tax Returns for 2014, 2015 and 2019 as well as OPG's unregulated businesses. OPG submitted that tax information is regularly afforded confidential treatment by the OEB, as outlined in the *Practice Direction on Confidential Filings*, and referenced the OEB granting confidential treatment, for information of such nature, in this proceeding.[10]

No objection to OPG's confidentiality request was filed.

Findings

The OEB approves confidential treatment of the redacted information related to tax information in Table 6, consistent with the OEB's *Practice Direction on Confidential Filings*, Appendix B.

6. Combined Regulated and Unregulated Assets and Business of OPG

OPG requested confidential treatment of information related to the combined regulated and unregulated assets and business of OPG in the following interrogatories:

TABLE 7

Exhibit	Attachment No.
L-C1-01-VECC-015	
L-A2-02-CCC-012	
L-F4-03-Staff-276 (page 1)	
L-F4-03-AMPCO-176	Attachment 6

OPG submitted that the information should be granted confidential treatment as disclosure of the aggregated information – combined with information regarding the regulated business already disclosed on the record – would allow for information about OPG's unregulated business and facilities to be known.

OPG provided further reasoning for the confidential treatment of the document filed in response to AMPCO-176. OPG submitted that the document contains aggregated information that could disclose amounts relating to the Earnings, OM&A Expenses, Production and Total In-service Capital for OPG's unregulated business. OPG noted that the response to VECC-015 contains the proportion of total revenues generated from regulated assets which, if disclosed, could enable the calculation and disclosure of unregulated revenue amounts. OPG also further submitted that the response to CCC-

[10] Procedural Order No. 1 / February 17, 2021.

012 requires confidential treatment as it contains information which may disclose annual budgets for Enterprise Operations, Enterprise Strategy and Enterprise Projects for OPG's unregulated business while the response to Staff-276 (page 1) contains information which may disclose a forecast of retirements for the unregulated business.

OPG noted that similar requests for confidential treatment of such combined information were accepted by the OEB in this proceeding, the 2017-2021 Payment Amounts Proceeding,[11] and 2014-2015 Payment Amounts Proceeding.[12]

VECC objected to OPG's confidentiality request for the table provided in response to VECC-015 and submitted that OPG be ordered to provide a response on the public record.

VECC clarified that VECC-015 intended to discover whether there has been, or will be, any material change in the proportion of regulated to unregulated business. As OPG seeks a change to its approved capital structure in this proceeding, VECC argued that changes to the proportion of OPG's regulated and unregulated revenues are germane to the issue of the proposed change in capital structure. VECC further submitted that OPG has provided no evidence for how a forecast of the proportion of revenue from regulated and unregulated services could harm either business and noted that the table in VECC-015 is a generalization and does not distinguish between the type of generation.

In response, OPG submitted that the information in VECC-015 discloses the percentage of the total revenue relating to unregulated assets of OPG and that similar information has previously been granted confidential treatment by the OEB – such as the 2017-2021 Payment Amounts Proceeding. OPG also noted that disclosure of its forward-looking unregulated revenues may provide indicative information on the extent of unregulated business plans in a competitive environment, beyond the recently completed investment.

Findings

The OEB has reviewed the need for confidential treatment of evidence in Table 7 related to the combined regulated and unregulated businesses, within the context of the entire application. The OEB is reserving judgement on the need for confidential treatment of the unregulated business information within these interrogatory responses.

[11] EB-2016-0152 / Decision on Confidential Filings and Procedural Order No. 3 / November 1, 2016.
[12] EB-2013-0321 / Decision and Order on Confidential Filings and Procedural Order No. 4 / March 21, 2014.

The OEB will maintain confidential treatment of this information at this time; however, if any of this information is referenced in a decision, the OEB will consider whether to make this information public to fulfill its transparency obligation but will not do so without providing notice to OPG. In the interim, access to the information is available, in a restricted manner to those that sign the form of Declaration and Undertaking.

7. *Heavy Water Sales Information*

OPG requested confidential treatment of evidence related to heavy water sales information in the following interrogatories:

TABLE 8

Exhibit	Attachment No.
L-G2-01-CCC-053	
L-H1-01-AMPCO-178	Attachment 1
L-I1-01-SEC-159	Attachment 1
L-A1-02-Staff-002	Attachment 1
L-G2-01-SEC-153	Attachment 1

OPG submitted that the information be treated as confidential as it relates to OPG's heavy water sales and processing – an unregulated business activity. OPG noted that the document in response to Staff-002 relates to OPG's sales and proceeds from its heavy water sales and processing, and its isotope sales business or aggregate information, that would allow determination of such information. OPG also highlighted that the documents in response to AMPCO-178 and SEC-159 pertain to margins on surplus heavy water sales as part of Nuclear revenues. Information contained in response to CCC-053 details the forecast and actual amounts, with respect to heavy water sales, for the 2017 to 2021 period on sales of surplus heavy water, as part of Nuclear revenues.

Disclosure of such information, as submitted by OPG, would prejudice its competitive position, and interfere with any future negotiations it carries out. OPG also referenced that the confidential nature of this information was previously approved in this proceeding, the 2017-2021 Payment Amounts Proceeding, and 2014-2015 Payment Amounts Proceeding.

No objection to the confidentiality request was filed.

Findings

The OEB approves confidential treatment of the redacted information regarding heavy water sales information in Table 8 as it is specific to one of OPG's unregulated businesses and may be prejudicial to the competitive position of OPG in the business of heavy water sales.

8. Third Party Rates and Information

OPG sought confidential treatment of evidence related to third party rates and information in the following interrogatories:

TABLE 9

Exhibit	Attachment No.
L-A1-02-CCC-001	
L-A1-02-CCC-001	Attachment 1
	Attachment 2
	Attachment 6
	Attachment 8
	Attachment 9
L-F4-03-Staff-287	Attachment 1

OPG submitted that the redacted portions contained commercially sensitive third-party information that, if disclosed, could prejudice the economic interest and competitive position of the third parties. OPG also noted that similar information was treated as confidential by the OEB in this proceeding,[13] the 2017-2021 Payment Amounts Proceeding,[14] and 2014-2015 Payment Amounts Proceeding.[15]

No objection to the confidentiality request was filed.

Findings

The OEB approves the confidential treatment of the redacted information related to third party rates and information in Table 9 as the information is commercially sensitive.

[13] Decision on Confidentiality – Pre-Filed Evidence / April 13, 2021.
[14] EB-2016-0152 / Decision on Confidential Filings and Procedural Order No. 3 / November 1, 2016.
[15] EB-2013-0321 / Decision and Order on Confidential Filings and Procedural Order No. 4 / March 21, 2014.

9. Clarington Corporate Campus Information

OPG requested confidential treatment of information related to the Clarington Corporate Campus in the following interrogatories:

TABLE 10

Exhibit	Attachment No.
L-D3-01-SEC-111 (pages 1 and 2)	
L-D3-01-Society-009	
L-D3-01-Staff-176	
L-D3-01-Staff-177	
L-A1-02-Staff-002	Attachment 1

OPG submitted that the redacted information is commercially sensitive as it pertains to the total capital costs of the Clarington Corporate Campus Project, as well as the composition of total project costs and project scope for the Clarington Corporate Campus. As the Clarington Corporate Campus Project is yet to be tendered, OPG stated that disclosure of such information could prejudice its competitive position and interfere with negotiations with prospective contractors / other third parties.

OPG highlighted that the information is the same as, or similar, to the information set out in the Planning Phase Clarington Corporate Campus business case summary[16] – which was granted confidential treatment by the OEB in this proceeding.[17]

No objection to the confidentiality request was filed.

Findings

The OEB approves confidential treatment of the redacted information related to the Clarington Corporate Campus in Table 10 as the information is commercially sensitive.

10. Other Responses and Documents that Do Not Fall Within Previous Categories

OPG requested confidential treatment for information contained in the following interrogatories:

[16] Exhibit D3 / Tab 1 / Schedule 2 / Attachment 2.
[17] Decision on Confidentiality – Pre-Filed Evidence / April 13, 2021.

TABLE 11

Exhibit	Attachment No.
L-D2-01-Staff-120	
L-F2-05-Staff-244	
L-D3-01-SEC-111	
L-D3-01-Society-007	
L-D3-01-Society-012	
L-F3-02-Energy Probe-059 (page 1)	
L-A1-02-SEC-011	Attachment 2
L-A2-02-CCC-015	Attachment 1
L-D2-02-AMPCO-106	Attachment 1
L-F4-04-Staff-317	Attachment 2
L-F4-04-Staff-315	Attachment 1
L-F4-04-VECC-035	Attachment 1

i. Staff-315, Attachment 1 and Staff-317, Attachment 2:

OPG requested that the documents provided as attachments to Staff-315 and Staff-317 be redacted in their entirety as they provide breakdowns of "Other" centrally held costs for Nuclear and OPG. OPG submitted that similar information was granted confidential treatment in its 2014-2015 Payment Amounts Proceeding.[18] No objection to the confidentiality request was filed.

ii. AMPCO-106, Attachment 1:

The document filed as an attachment to AMPCO-106 is a conceptual design that contains operating experience relating to a heavy water storage project by Bruce Power. OPG submitted that the information is commercially sensitive to Bruce Power and, thereby, requires confidential treatment. No objection to the confidentiality request was filed.

iii. Energy Probe-059 (page 1):

OPG requested page one of Energy Probe-059 be partially redacted as it contains information regarding the annual capital costs from 2020 to 2026 for the Clarington

[18] EB-2013-0321 / Procedural Order No. 6 / April 10, 2014.

Campus. OPG noted that the annual capital costs were included in the Planning Phase Clarington Corporate Campus business case summary which was granted confidential treatment in this proceeding.[19] No objection to the confidentiality request was filed.

iv. Staff-244:

Information provided in Staff-244 summarizes the annual value of adjustment for cost (or benefit) sharing between 2012 to 2021. As this information impacts the pricing of OPG's uranium conversion services, OPG submitted that its disclosure would prejudice its competitive position and interfere with any future negotiations. OPG noted that similar pricing information was treated as confidential by the OEB in this proceeding, the 2017-2021 Payment Amounts Proceeding, the 2014-2015 Payment Amounts Proceeding, and the 2011-2012 Payment Amounts Proceeding. No objection to the confidentiality request was filed.

v. Staff-120:

Information contained in Staff-120, as submitted by OPG, is commercially sensitive as it relates to an open procurement process. OPG argued that disclosure of such information will prejudice its competitive position and interfere with future negotiations with prospective vendors / other third parties. OPG noted that the confidential nature of this information was approved in this proceeding.[20] No objection to the confidentiality request was filed.

vi. Society-007:

OPG submitted that the response contains commercially sensitive information related to the potential sale of an asset of OPG's unregulated business, including the planned timing of such potential sale. As the asset has yet to be offered for sale, OPG stated that disclosure of such information may prejudice its competitive position and interfere with future negotiations with prospective purchasers / other third parties.

SEC objected to OPG's confidentiality request for Society-007 parts (h) and (n), submitting that the date of a potential sale will not harm any future negotiations, and that OPG provided no basis for such claim. OPG disagreed with SEC's objection. OPG argued that public disclosure of the timing for any such potential sale may adversely affect OPG's commercial interests – such as signaling to potential buyers that OPG is a willing seller seeking to enter into a transaction within a discrete timeframe. OPG further

[19] Decision on Confidentiality – Pre-Filed Evidence / April 13, 2021.
[20] Decision on Confidentiality – Pre-Filed Evidence / April 13, 2021.

submitted that such information may give potential buyers leverage in their negotiations with OPG.

vii. Society-012 and SEC-111 (page 3):

OPG stated that the interrogatory responses contain commercially sensitive information related to the expected date of termination for certain office leases as well as OPG's forecasts of annual savings for leases expiring prior to 2026. Disclosure of such information, as stated by OPG, may interfere with any future landlord-tenant lease negotiations.

SEC objected to OPG's confidentiality request for Society-012 part (a), Chart 1. SEC noted that it did not understand OPG's concern as the various landlords would be aware of when OPG could terminate the leases based on the wording of the specific lease agreements. It was therefore unclear to SEC as to how the information could be commercially sensitive. In response, OPG clarified that it 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 – making the information commercially sensitive. OPG noted that as it has yet to commence such negotiations, disclosure of the desired termination dates may prejudice its commercial position in the negotiations.

viii. VECC-035, Attachment 1:

The document provided in response to VECC-035 was redacted in its entirety as OPG stated it contains commercially sensitive information regarding its insurance policies, including expected increases in insurance costs. OPG submitted that disclosure of such information would interfere with negotiations related to its upcoming policy renewal(s). No objection to the confidentiality request was filed.

ix. CCC-015, Attachment 1:

Information in the document filed in response to CCC-015 contains details reflecting the combined regulated and unregulated assets and business of OPG. OPG submitted that disclosure of the aggregated information – combined with information regarding the regulated business already disclosed – would allow for disclosure of information related to the unregulated business and facilities. OPG noted that similar requests for confidential treatment of combined information were accepted by the OEB in this proceeding, the 2017-2021 Payment Amounts Proceeding, and 2014-2015 Payment Amounts Proceeding. No objection to the confidentiality request was filed.

x. SEC-011, Attachment 2:

OPG requested confidential treatment of information contained in the document as it pertains to internal audit findings regarding OPG's cybersecurity systems and the security of OPG's certain facilities. OPG submitted that disclosure of such information could pose a potential threat to OPG's cybersecurity systems and the security of OPG's facilities. No objection to the confidentiality request was filed.

Findings

The OEB approves confidential treatment of the redacted information in Table 11 as the information is consistent with the *Practice Direction on Confidential Filings*, Appendix A and Appendix B.

Regarding Society-007, the OEB has addressed the scope of this matter as it relates to OPG's application and amended the issues list accordingly.

THE ONTARIO ENERGY BOARD THEREFORE ORDERS THAT:

1. Subject to the exceptions and limitations described in the findings above, OPG's request for confidential treatment is granted. OPG shall provide individuals that have signed and filed a Declaration and Undertaking with the non-redacted, confidential versions of the documents described above for which confidential treatment has been granted, in accordance with the findings above (except in order to have access to the collective bargaining documentation, individuals acting as external consultants to the PWU or the Society of United Professionals must also sign and file an affidavit of the type described herein).

2. OPG shall refile a revised public version of the following documents: (a) SEC-149; (b) AMPCO-079, Attachment 41; and (c) AMPCO-115, Attachment 1.

3. OPG's request for permanent redactions, as described in the findings above, is granted.

DATED at Toronto, **June 8, 2021**

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar