

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER PO-3197

Appeal PA12-167

Ontario Power Authority

May 10, 2013

**Summary:** The requester sought access to the payments made by the OPA to Bruce Power, the operator of a nuclear generating facility, for the costs of fuel for a generating station. The OPA denied access, citing the mandatory third party information exemption in section 17(1). This order upholds the OPA's decision and finds that the public interest override in section 23 does not apply.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 17(1)(a), 23, *Electricity Act*, section 25.13(3).

### OVERVIEW:

[1] The Ontario Power Authority (OPA) received a request under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* for access to payments made by the OPA to reimburse Bruce Power, the operator of a nuclear generating facility, for the costs of fuel for one of its generating stations.

[2] After notifying Bruce Power, the OPA issued a decision denying access to the responsive information pursuant to the mandatory third party information exemption in section 17(1) of the *Act*.

[3] The requester (now the appellant) appealed the OPA's decision.

[4] During mediation, the appellant confirmed that it was raising the possible application of the public interest override provision in section 23 of the *Act*. The OPA also indicated that the information was exempt from disclosure on the basis that the record is subject to a designation by the OPA under section 25.13(3) of the *Electricity Act*.

[5] No further mediation was possible and the file was transferred to the adjudication stage of the appeals process where an adjudicator conducts an inquiry. Representations were exchanged between the OPA, Bruce Power and the appellant, in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[6] In this order, I find that section 25.13(3) of the *Electricity Act, 1998* applies to deem the record exempt under the third party information mandatory exemption in section 17(1). I also find that the public interest override in section 23 does not apply.

## **RECORD:**

[7] The record is a chart with the dates and amounts of payments by the OPA to the Bruce Power. At issue is the amount of the fuel costs paid by the OPA to Bruce Power.

## **ISSUES:**

- A. Does section 25.13(3) of the *Electricity Act, 1998* apply to deem the record exempt under the mandatory third party information exemption at section 17(1)?
- B. Is there a compelling public interest in disclosure of the information at issue in the record that clearly outweighs the purpose of the section 17(1) exemption?

## **DISCUSSION:**

### **A. Does section 25.13(3) of the *Electricity Act, 1998* apply to deem the record exempt under the mandatory third party information exemption at section 17(1)?**

[8] The OPA submits that section 25.13(3) of the *Electricity Act, 1998* (the *EA*) applies to deem the information at issue exempt by reason of section 17(1)(a) of *FIPPA*.

[9] Section 17(1)(a) of *FIPPA* states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

[10] Section 25.13(3) of the *EA* reads:

A record that contains information provided to or obtained by the OPA relating to a market participant and that is designated by the OPA as confidential or highly confidential shall be deemed, for the purpose of section 17 of the *Freedom of Information and Protection of Privacy Act*, to be a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

[11] Bruce Power is a market participant under the *EA*. That term is defined in section 2(1) of the *EA* as follows:

“market participant” means a person who is authorized by the market rules to participate in the IESO<sup>1</sup>-administered markets or to cause or permit electricity to be conveyed into, through or out of the IESO-controlled grid;

[12] The OPA states that the information at issue falls within section 25.13(3) of the *EA* as it is derived from confidential information provided by Bruce Power to the OPA under the Bruce Power Refurbishment Implementation Agreement (BPRIA), which states that the parties:

...agree that such Confidential Information is highly confidential [...] and is supplied in confidence [on that basis and] for greater certainty, for the purposes of subsection 25.13(3) of the *Electricity Act*, the [OPA] hereby designates as confidential or highly confidential the Confidential Information.

[13] The OPA relies on section 7.5 of the BPRIA. In its representations, it provided a copy of this section of the BPRIA, which states:

#### 7.5 FIPPA Records

The Parties acknowledge that the Counterparty [the OPA] is subject to FIPPA. The Counterparty has reviewed the Confidential Information of

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<sup>1</sup> Independent Electricity System Operator.

each Generator [Bruce Power] contained in the Technical Schedule and has considered such Confidential Information to be disclosed to the Counterparty in connection herewith. The Parties agree that such Confidential Information is highly confidential commercial, financial, scientific, technical, and/or labour relations information, and/or contains trade secrets and is supplied in confidence by each Generator to the Counterparty on that basis and, for greater certainty, for the purposes of subsection 25.13(3) of the Electricity Act, the Counterparty hereby designates as confidential or highly confidential the Confidential Information of the Generators provided to the Counterparty up to and including the date of this Agreement and acknowledges that the Generators have advised it that all Confidential Information to be provided to the Counterparty after the date of this Agreement is considered by the Generators to be confidential or highly confidential. The Parties agree that the disclosure of the Confidential Information contained in the Technical Schedule, and the Counterparty acknowledges that the Generator has advised it that disclosure of the Confidential information provided to the Counterparty pursuant to this Agreement, could reasonably be expected to cause irreparable harm and material financial loss to each Generator and significant prejudice to each Generator's competitive position and to interfere with each Generator's contractual arrangements and the negotiations in which the Parties are engaged. Accordingly, the Counterparty acknowledges that each Generator is disclosing its Confidential Information to the Counterparty on the basis that all such Confidential Information is exempt from access by and disclosure to others pursuant to section 17(1) of FIPPA and the Counterparty agrees it will treat all Confidential Information contained in the Technical Schedule as being so exempt from the disclosure requirements under FIPPA; provided, however, that the Parties acknowledge and agree that the refusal of the Chief Executive Officer of the Counterparty to disclose any Confidential information in accordance with section 17(1) of FIPPA may be the subject of an appeal to the Information and Privacy Commissioner as set forth under FIPPA. In the event that the Counterparty is requested to disclose, and the Counterparty is planning to disclose, to others pursuant to FIPPA all or any part of the Confidential Information disclosed to the Counterparty by either Generator, the Counterparty will promptly advise such Generator of such request, so that such Generator will have the opportunity to make detailed representations to the appropriate authority about the nature of the information. The Counterparty agrees to comply with Section 7.4(b) of this Agreement in respect of any request for disclosure of either Generator's Confidential Information pursuant to FIPPA. This Section 7.5 is in addition to, and without limitation of, the obligations of the Counterparty set out in Section 7.2. [emphasis added]

[14] The OPA states that every part of the three-part test relating to section 17(1)(a) of *FIPPA* is, therefore, met as a result of the deeming provision contained in section 25.13(3) of the *EA*.

[15] Bruce Power, relying on section 25.13(3) of the *EA*, states that:

...the fuel cost information within the record is from the Specified Fuel Supply Arrangements that are listed in the Technical Schedule of the BPRIA, and that section 7.5 of the BPRIA affirms that information within the Technical Schedule is designated as "confidential" or "highly confidential" for the purposes of subsection 25.13(3) of the *Electricity Act*; the information that is contained within the record regarding the fuel costs for the Bruce A nuclear generating station meets the requirements that are prescribed by the third party exemption in the FIPPA.

[16] Bruce Power also states that:

...[it] has a reasonable expectation that the financial and commercial information with respect to fuel costs within the record would be maintained in confidence by the OPA by virtue of the provisions of the BPRIA and the provincial *Electricity Act*.<sup>2</sup> The BPRIA requires the OPA to designate as "confidential" or "highly confidential" information that is contained within the Technical Schedule of the BPRIA. Furthermore, the BPRIA confirms that confidential information of Bruce Power within the Technical Schedule is "supplied in confidence" by Bruce Power to the OPA...

[17] The appellant did not provide representations on this issue.

### ***Analysis/Findings***

[18] By way of background, according to the representations of Bruce Power, Bruce Power is the privately owned operator of the Bruce Nuclear Generation Station (BNGS). The BNGS is comprised of, amongst other things, two nuclear generating stations: Bruce A and Bruce B.

[19] On October 17, 2005, Bruce Power entered into BPRIA with the OPA, with respect to refurbishment of part of Bruce A. Under the BPRIA, Bruce Power assumes the operating and construction risks of refurbishment and maintenance, and in exchange is entitled to specified prices for the electricity that is generated.

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<sup>2</sup> Relying on section 7.5 of the BRIA and 25.13(3) of the *EA*, quoted above.

[20] Pursuant to the BPRIA, Bruce Power is entitled to reimbursement from the OPA of the fuel costs it incurs in the generation of Bruce A electricity. These fuel costs are the information at issue in the record.

[21] For section 25.13(3) of the *EA* to apply in this appeal, each part of the following two-part test must be satisfied:

1. the record must contain information provided to or obtained by the OPA relating to a market participant, and
2. the information must have been designated by the OPA as confidential or highly confidential.

[22] Concerning part 1 of the test, I find that the information at issue was provided to the OPA relating to a market participant, Bruce Power. Bruce Power provided the information at issue in the record to the OPA by reason of section 7.2 of the BPRIA.

[23] Concerning part 2 of the test, the information at issue has been designated by the OPA as highly confidential, as highlighted above in section 7.5 of the BPRIA.

[24] Accordingly, the information at issue in this appeal is deemed, by reason of section 25.13(3) of the *EA*, to be a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization for the purpose of section 17(1)(a) of the *FIPPA*.

[25] As the mandatory third party information exemption in section 17(1)(a) applies by reason of section 25.13(3) of the *EA*, the information at issue is, subject to my consideration of the public interest override in section 23, exempt under *FIPPA*.

**B. Is there a compelling public interest in disclosure of the information at issue in the record that clearly outweighs the purpose of the section 17(1) exemption?**

[26] Section 23 states:

An exemption from disclosure of a record under sections 13, 15, **17**, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[27] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[28] I will first consider whether there is a compelling public interest in disclosure of the record. If I find that there is a compelling public interest in disclosure, I will then consider whether this interest clearly outweighs the purpose of the section 17(1) exemption.

### ***Compelling public interest***

[29] In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act's* central purpose of shedding light on the operations of government.<sup>3</sup> Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.<sup>4</sup>

[30] A public interest does not exist where the interests being advanced are essentially private in nature.<sup>5</sup> Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.<sup>6</sup>

[31] The word “compelling” has been defined in previous orders as “rousing strong interest or attention.”<sup>7</sup>

[32] Any public interest in *non*-disclosure that may exist also must be considered.<sup>8</sup> A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of “compelling”.<sup>9</sup>

[33] The OPA states that refusing access to the information at issue does not thwart the appellant’s ability to assess the OPA’s dealings with respect to the BPRIA or to evaluate the “prudence” of the OPA’s supply contract with Bruce Power.

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<sup>3</sup> Orders P-984, PO-2607.

<sup>4</sup> Orders P-984 and PO-2556.

<sup>5</sup> Orders P-12, P-347 and P-1439.

<sup>6</sup> Order MO-1564.

<sup>7</sup> Order P-984.

<sup>8</sup> *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

<sup>9</sup> Orders PO-2072-F and PO-2098-R.

[34] The OPA submits that there is no evidence that any “people of Ontario”, aside from the appellant, have any interest in the record and that the appellant’s interest in the record is private in nature. The OPA states that there is already significant information available to the appellant on the OPA’s website to allow it to adjudge its views on the “prudency” of the BPRIA and its amendments. This site includes the BPRIA itself, as well as related agreements. It also contains fairness reports from an objective third party, CIBC World Markets Inc., regarding the fairness of the financial terms of the BPRIA and its amendment to the OPA.

[35] The OPA also states that there is a public interest in non-disclosure of the record as the legislation which both created the OPA and added section 25.13(3) to the *EA* was the *Electricity Restructuring Act, 2004*. This legislation also amended the *EA* to detail specific “purposes” which include ensuring the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand and promoting economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity.

[36] The OPA states that protection of the information at issue is necessary to further the goals of the *Electricity Restructuring Act, 2004* and the *EA* and, ultimately, to protect the ability of the OPA to enter into commercial agreements with private parties, which is vital to the proper operation of the OPA in carrying out its mandate.

[37] Bruce Power states that the BPRIA between it and the OPA is highly transparent, and the agreements entered into between it and the OPA are published on the website of the OPA. Despite this, as Canada’s only private sector nuclear operator, Bruce Power states that it must ensure that its confidential commercial information is protected in order to ensure the continued economic feasibility of its refurbishment project. For this reason, the BPRIA is structured in such a way so that this confidential commercial information is contained within the Technical Schedule of the Agreement.

[38] Bruce Power submits that once it achieves operation of all eight units at its facility, it will be the world’s largest nuclear facility capable of producing 6,300 megawatts of electricity output. This will account for 25-30% of Ontario’s supply of electricity. Ontario’s Long Term Energy Plan assumes that it will continue to make this contribution to Ontario’s energy supply on an ongoing basis.

[39] Bruce Power states that its refurbishment and operation projects may no longer be economically feasible from its perspective should the information at issue be disclosed. If it was no longer able to continue to undertake these projects, it would result not only in significant harm to it, but also significant harm to the province of Ontario through losses in the generation of jobs, infrastructure development, and the supply of a significant source of energy to the province.



[40] Bruce Power states that the contracted price that it is paid by the OPA, as well as the base price of power generation, is publicly available information. Based upon this available information, the public is able to ascertain a general estimation regarding fuel pass-through costs as well other costs associated with the refurbishment project that are paid by the OPA to Bruce Power. Consequently, it submits that the information that is currently available within the public realm is more than adequate to address any public interest considerations regarding costs of its refurbishment project to the OPA and the Province of Ontario.

[41] The appellant submits that there is a compelling public interest in the disclosure of this information for the following three reasons:

1. To test the prudence of the OPA's electricity supply contract with the Bruce Power for the output of Bruce A Nuclear Station.
2. To create a level playing field between the Bruce Power, Ontario Power Generation [OPG] and renewable power producers.
3. To ensure that any future electricity contracts between the OPA and Bruce Power with respect to the refurbishment of the Bruce B Nuclear Station are in the public interest.

[42] The appellant states that the public must have sufficient information to judge the prudence of the electricity supply contracts that the OPA signs on their behalf, with the most important fact that the people of Ontario need to judge the prudence of the contract is its total cost.

[43] The appellant states that Bruce Power's price received for the output of its nuclear station is at least 24% greater than the OPG. It further states that the people of Ontario need to know the total revenue per kWh that Bruce Power receives for the output of its nuclear generator to enable them to better assess the OPA's competence and diligence on their behalf. It states that:

As recent developments at Queen's Park with respect to the Oakville and Mississauga gas plants have revealed, the people of Ontario are very interested in the prudence of the OPA's contracts with private power producers. There has also been significant public debate in Ontario about prices paid to renewable energy generators under the province's Feed-in Tariff program.

The publication of electricity supply contract prices puts public pressure on the Government to reduce them or to keep them low...

Requiring the OPA to reveal the full payments to Bruce Power for the output of the Bruce A Nuclear Station will help to create greater transparency around the comparative costs of various electricity supply options...

If the OPA knows that it will be required to reveal the full costs of a future nuclear refurbishment contract, it will be highly motivated to ensure that any negotiated price is competitive with the province's alternative base-load electricity supply options (e.g., water power imports from Quebec, combined heat and power projects)...

Specifically, it is not in the public interest for the OPA to negotiate a non-transparent electricity supply contract with Bruce Power if the province's base-load electricity needs could be met at a lower cost by water power imports from Quebec or combined heat and power. The key point is that this is not an "open market" transaction between two commercial enterprises. Rather, this is an out-of-market sole-source agreement between a government agency spending public money and a private power supplier. In no other instance are comparable power costs so opaquely reported or difficult to fully gauge.

[44] In reply, the OPA states that the issue of rates underlies each of the compelling public interests asserted by the appellant. It states that the fact that a record may relate to rates paid by Ontario ratepayers does not create a compelling public interest and, furthermore, that the "Oakville and Mississauga gas plants" issues are unrelated to the issues in this appeal. It states that:

The interests identified by [the appellant] are based on a number of flawed assumptions, which are addressed below:

(a) The [appellant] suggests that the prudence of the OPA's contract for Bruce A can be assessed on a simple price assessment alone. This approach is problematic because it ignores the diversity of elements that constitute good value with respect to the OPA's contracts for resources in Ontario's electricity system;

(b) The [appellant] suggests that disclosure of the information in the record at issue is required to assess "prudence" of the OPA contract in question. This argument ignores the fact that transparency and prudence are already addressed via the OPA's website dedicated to the Bruce Power Refurbishment Implementation Agreement ("BPRIA"), which includes inter alia a fairness report from an objective

third party concerning the fairness of the financial terms of the BPRIA to the OPA;

(c) The [appellant] suggests that disclosure of Bruce Power's confidential information would lead to a reduction in rates for the citizens of Ontario. In fact, disclosure of confidential information may adversely impact the OPA's ability to obtain value for Ontarians. If confidential information is disclosed in this case the OPA may find it difficult to engage in meaningful negotiations with future counterparties in order to effectively carry out its mandate and serve the public interest by ensuring "adequate, reliable and secure electricity supply and resources in Ontario;"

(d) The [appellant] suggests that simple price comparators (i.e. cents/kilowatt hour) are sufficient to judge value between various forms of electricity generation resources. This approach is problematic because it fails to acknowledge the complexity of Ontario's electricity system; its resource mix and the value provided by different elements within the system;

(e) The [appellant] suggests that the OPA does not already seek competitive negotiated or tendered prices on electricity procurement contracts. In fact, the OPA uses robust and objective assessments to ensure value in its procurement initiatives. In particular, as noted above with respect to the BPRIA, an objective and independent fairness review was undertaken to ensure value and maintain accountability...

[45] The OPA also states that disclosure of the information would undermine the OPA's ability to effectively contract for electricity system resources, which may ultimately harm the public interest.

[46] In reply, Bruce Power states that any interest in disclosure which the appellant purports to express on behalf of the public must yield in these circumstances to the legitimate private interests of the third parties that would be harmed through disclosure of the information at issue, including Bruce Power and its fuel suppliers, as well as the public interest that exists in non-disclosure of the information.

[47] Bruce Power states that the financial and substantive terms of the BPRIA, which is OPA's contract with it for the supply of electricity to Ontario, have been objectively reviewed and analyzed in an open and transparent fashion by both the Office of the Auditor General of Ontario and CIBC. The respective reports of these independent third

parties regarding the financial terms of the BPRIA are available to the public. It also states that:

It is not valid for the [appellant] to suggest that the sole objective behind Bruce Power seeking to maintain the confidentiality of the fuel pricing information is to generate profit. To the contrary, maintaining the confidentiality of the information regarding fuel pricing ensures Bruce Power's ability to negotiate favourable agreements with its fuel suppliers for the provision of fuel for the Bruce A and B generating stations, whereas if this information were publicly available, it can be used by other fuel suppliers as a standard or price goal to be obtained from Bruce Power for the supply of fuel in future negotiations.

...it is disingenuous on the part of the [appellant] to suggest that it represents the public interest. The [appellant] is an advocacy group with a very clearly defined anti-nuclear power agenda. The [appellant] has made it abundantly clear that their intention is to subvert the commercial, financial and competitive interests of Bruce Power. Such blatant and specifically-directed advocacy does not represent the broad public interest, nor does it represent a "compelling public interest" for the purposes of the override provision of section 23 of the *FIPPA*...

[48] In sur-reply, the appellant states that the CIBC and auditor general's letters do not support Bruce Power's submission that the OPA/Bruce Power contract is prudent. It points out that the CIBC letter states:

[The CIBC has] not been asked to identify or provide any advice or financial analysis regarding any potential alternative to the Proposed Transaction and our opinion should not be construed as an opinion to the fairness, from a financial point of view or otherwise, of the Proposed Transaction relative to any such potential alternative....

We are not experts about electricity generation, transmission or markets  
...

[49] The appellant also quotes from the auditor general's report, as follows:

[The auditor general's] primary focus [was a review engagement] to assess whether the province's processes were sufficient to ensure that all significant risks and issues were properly considered and addressed and that complete and objective information was available to the decision-makers who were responsible for ensuring the agreement represented good value for Ontario taxpayers.

[50] The appellant states that it is not asking the OPA to conduct its negotiations in public, but asking the OPA to publicly reveal its contracted fuel price.

*Analysis/Findings*

[51] The records do not concern a public safety issues relating to the operation of nuclear facilities,<sup>10</sup> but rather concern the monthly fuel costs charged by third party suppliers to Bruce Power for the operation of the Bruce A nuclear generating station. This cost is passed on to the OPA.

[52] In this appeal, I find that the public interest in disclosure of the information at issue in the record is not sufficiently compelling. The entire BPRIA is publically available, except for the information in the Technical Schedule, which is information provided by Bruce Power to the OPA.

[53] The only information that is in issue in this appeal is the fuel cost charged by a third party supplier to Bruce Power, which fuel cost is passed on to the OPA. The appellant has not provided me with sufficient information to find that this particular information is necessary in order to test the prudence of the OPA's electricity supply contract with the Bruce Power for the output of one of its nuclear generating stations. I find that by reason of the public availability of the BPRIA (except for the Technical Schedule) and the OPA website<sup>11</sup> on this agreement there is another public process or forum to address public interest considerations concerning the prudence of the OPA's electricity supply contract with the Bruce Power for the output of the Bruce A nuclear station.<sup>12</sup> The BPRIA was reviewed for fairness by the CIBC and auditor general. By reason of the BPRIA, a significant amount of information has already been disclosed and I find that this is adequate to address any public interest considerations.<sup>13</sup> As stated by Bruce Power:

...general information is readily available and accessible regarding what the respective percentage of fuel costs are as a component of the total cost of nuclear power. This publicly available information is more than adequate to address any public interest considerations regarding the costs of fuel for the Bruce A nuclear generating station... The publicly available general estimate with respect to fuel costs contained within the Fairness

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<sup>10</sup> As in Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805.

<sup>11</sup> <http://www.powerauthority.on.ca/nuclear/bruce-power-refurbishment-implementation-agreement>.

<sup>12</sup> Orders P-123/124, P-391 and M-539.

<sup>13</sup> Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

Opinion [of the financial terms to the OPA of the BPRIA]<sup>14</sup> is a compromise which balances the public interest and need to maintain the confidentiality of this commercially sensitive information. Enough information regarding the fuel costs for the Bruce A nuclear generating station is currently available in order to satisfy the public interest, while at the same time not compromising the confidentiality that is required by Bruce Power and for the actual fuel costs for the Bruce A nuclear generating station.

[54] As is set out in the appellant's representations, the comparative costs of various electricity supply options are known. The mandate of the CIBC and the auditor general in reviewing the BPRIA was not to assess these comparative costs.

[55] I find that the information at issue in the record does not respond to the applicable public interest raised by appellant in lowering electricity costs for Ontarians.<sup>15</sup> Instead, as set out in Bruce Power's representations, disclosure of the information at issue may result in an increase in rates charged by the third party fuel supplier to Bruce Power. The information can be used by other fuel suppliers as a standard or "floor" for a price goal to be obtained from Bruce Power for the supply of fuel in future contractual negotiations. This will have a direct negative impact on its ability to negotiate favourable agreements for the supply of its fuel. This may also ultimately negatively affect future electricity contracts between the OPA and Bruce Power with respect to the refurbishment of the Bruce B nuclear generating station.

[56] Furthermore, as stated by Bruce Power, fuel suppliers would in all likelihood be reluctant to enter into fuel supply arrangements with it if they are unable to receive an assurance that sensitive pricing information contained within those agreements will be protected from becoming publicly available. Given that the OPA reimburses Bruce Power for fuel costs pursuant to the terms of the BPRIA, the fuel costs incurred by it must be supplied to the OPA in order to verify the reimbursement amount to be paid to it. Public disclosure of information regarding fuel costs supplied to the OPA by Bruce Power would undermine the entire arrangement between it and its fuel suppliers on the one hand, and Bruce Power and the OPA on the other hand, as Bruce Power would not be able to ensure that the confidential pricing information of its suppliers is maintained throughout this process.

[57] Therefore, I find that the public interest in disclosure of the information is not sufficiently compelling. In addition, there is a strong public interest in non-disclosure of the information.

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<sup>14</sup> The contract price and the allotment for fuel pass-through costs are detailed in the *Fairness Opinion Document re: Bruce Power Agreement* ("Fairness Opinion") written by the CIBC on October 17, 2005, and published on the OPA's website.

<sup>15</sup> Orders MO-1994 and PO-2607.

[58] As I have not found that there is a compelling public interest in disclosure of the information at issue in the record, there is no need for me to consider whether this interest clearly outweighs the purpose of the section 17(1) third party information exemption.

[59] In conclusion, I find that the public interest override in section 23 of *FIPPA* does not apply in this appeal and that information at issue is exempt by reason of section 17(1).

[60] **ORDER:**

I uphold the OPA's decision and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ May 10, 2013