



**EB-2013-0321**

**IN THE MATTER OF** the *Ontario Energy Board Act*,  
1998, S. O. 1998, c. 15, Schedule B;

**AND IN THE MATTER OF** an application by Ontario  
Power Generation Inc. pursuant to section 78.1 of the  
*Ontario Energy Board Act, 1998* for an order or orders  
determining payment amounts for the output of  
certain of its generating facilities.

**DECISION AND ORDER ON CONFIDENTIAL FILINGS  
AND PROCEDURAL ORDER NO. 13**

**August 13, 2014**

Ontario Power Generation Inc. ("OPG") filed an application, dated September 27, 2013, with the Ontario Energy Board under section 78.1 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B seeking approval for increases in payment amounts for the output of its nuclear generating facilities and the currently prescribed hydroelectric generating facilities, to be effective January 1, 2014. The application also seeks approval for payment amounts for newly prescribed hydroelectric generating facilities, to be effective July 1, 2014.

At the oral hearing on July 18, 2014, the Board made provision for the filing of OPG's request for confidential treatment of responses to undertakings, submissions on the request and reply.

**Undertakings**

Request Filed July 22, 2014

In correspondence filed on July 22, 2014, OPG requested confidential treatment for certain information that was provided in response to 14 undertakings. In accordance

with section 5 of the Board's *Practice Direction on Confidential Filings* ("Practice Direction"), OPG provided the reasons why it requested confidential treatment and the reasons why public disclosure of the information would be, in OPG's view, detrimental to OPG.

Confidential versions of the undertaking responses were provided to counsel and consultants for intervenors who signed the Declaration and Undertaking in accordance with the Practice Direction.

No submissions were filed with respect to this confidentiality request. At the oral hearing on July 14, 2014, the Board determined that the response to undertaking Jx11.6 would receive confidential treatment. The Board has reviewed the responses to the remaining 13 undertakings and is satisfied that the information for which OPG seeks confidential treatment is similar to information for which the Board granted confidential treatment previously in this proceeding.

#### Request Filed July 23, 2014

In correspondence filed on July 23, 2014, OPG requested confidential treatment for the responses to undertakings J14.1 and J14.2 in their entirety as the information, in their view, is commercially sensitive. The request was filed one day late as OPG inadvertently omitted reference to these two undertakings in its July 22, 2014 request.

The undertakings were requested by Environmental Defence in its cross examination of OPG's Darlington Refurbishment Panel. Undertaking J14.1 required OPG to populate a table related to Darlington Refurbishment Project costs found at page 24 of exhibit K13.4. Undertaking J14.2 required OPG to populate a table related to Darlington Refurbishment Project costs found at page 2 of exhibit K13.5. OPG filed the responses to the undertakings in confidence.

On July 31, 2014, Environmental Defence filed a submission with respect to confidential treatment of the responses to undertakings J14.1 and J14.2. The submission was filed late as Environmental Defence stated that it had not received the July 23, 2014 correspondence from OPG requesting confidential treatment. Environmental Defence submitted that the entire narrative portion of the undertaking responses should be made public and that the tables contained some information already released publicly in interrogatory responses and previous undertaking responses. Environmental Defence

submitted that only information regarding contractor costs and contingency amounts could be considered commercially sensitive.

OPG replied that the Board should not accept Environmental Defence's late submission. Environmental Defence acknowledged that it inadvertently missed OPG's July 23, 2014 email because the attachment file was mislabeled and submitted that OPG would not be prejudiced by the Board considering its July 31, 2014 submission.

The Board will accept Environmental Defence's submission on confidential filings dated July 31, 2014 and finds merit in its submissions. The Board has reviewed the undertaking responses and finds that the narrative for both undertaking responses should be placed on the public record, except for line 38 and line 48 of J14.2.

In addition, the tables related to these undertaking responses shall be filed in PDF format for the public record in accordance with the following:

- All table headers and major categories shall be visible as set out in exhibits K13.4 and K13.5. Identification of any sub-categories shall be consistent with that provided in previous interrogatory responses and previous undertaking responses.
- The dollar values in the last four rows of all tables entitled "Subtotal", "Interest & Escalation", "Total" and "LUEC for Each Cost Scenario" shall be placed on the public record, except for the Gross Costs values in table J14.1b and table J14.2b.
- To the extent that commercially sensitive information can be inferred by provision of the data in the tables, OPG shall apply minimal incremental redactions to prevent disclosure of that information. All other dollar values shall be redacted and will remain confidential.

### **Redacted Transcripts**

During the course of the oral hearing, there were 5 days on which there were *in camera* sessions. In addition, there was an *in camera* session during the technical conference on July 9, 2014.

Public versions of the 6 transcripts in which the *in camera* sessions were redacted in entirety, were placed on the record. Persons who signed the Declaration and Undertaking received a fully unredacted version of the transcripts.

OPG proposes no redactions for the July 14, 2014 (volume 12) transcript. This fully unredacted transcript will be placed on the public record. OPG has provided proposed redactions for the *in camera* sessions for the remaining 5 transcripts. The Board has now completed its review of the updated redacted versions of the transcripts. These versions are in conformity with the Board's Decisions and Orders on Confidential Filings issued in this proceeding. These updated redacted versions of the transcripts, will be placed on the public record.

## General

The Board takes this opportunity to encourage all parties to prepare their submissions such that there is minimal or no need for redactions or confidential treatment of the submissions. This in turn will assist the Board in issuing a decision that does not require confidential treatment.

The Board considers it necessary to make provision for the following matters related to this proceeding.

### THE BOARD ORDERS THAT:

1. OPG shall file redacted versions of the responses to undertakings J14.1 and J14.2 by **August 15, 2014**.

All filings to the Board must quote the file number, EB-2013-0321, be made through the Board's web portal at [www.pes.ontarioenergyboard.ca/eservice/](http://www.pes.ontarioenergyboard.ca/eservice/), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca/OEB/Industry](http://www.ontarioenergyboard.ca/OEB/Industry). If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Violet Binette at [violet.binette@ontarioenergyboard.ca](mailto:violet.binette@ontarioenergyboard.ca) and Board Counsel, Michael Millar at [michael.millar@ontarioenergyboard.ca](mailto:michael.millar@ontarioenergyboard.ca).

**ADDRESS**

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**DATED** at Toronto, August 13, 2014

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary