

January 31, 2014

RESS, EMAIL AND COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: EB-2013-0321 - Ontario Power Generation Inc. ("OPG") Reply
Submissions Regarding Confidential Information**

OPG has requested that certain information be treated as confidential in its payment amounts case. Procedural Order No. 1 provided parties an opportunity to make submissions on whether the information should be designated as confidential by the OEB. Procedural Order No. 1 also provided that counsel and consultants for intervenors who wished to review the information for which OPG seeks confidential treatment may do so by signing the OEB's usual form of Declaration and Undertaking.

School Energy Coalition ("SEC") has signed the Declaration and Undertaking. OPG has provided SEC with the proposed confidential information. Retail Council of Canada ("RCC") signed a form of declaration and undertaking, but OPG's review of it indicated that it was materially different from the OEB's form of Declaration and Undertaking. OPG notified RCC of this and RCC has recently resubmitted the form in the appropriate format. Confidential documents have been sent to RCC in unredacted form.

Submissions as to whether confidential treatment should be afforded to the information proposed by OPG were made by Environmental Defence ("ED"), SEC, and the Association of Major Power Consumers in Ontario ("AMPCO"). AMPCO had no objections to OPG's request for confidential treatment of the proposed information.

ED submitted that none of OPG's proposed confidential information in Exhibit D, Tab 2, Schedule 1 ("Ex. D2-2-1"), being information relating to the Darlington Refurbishment Project ("DRP"), should be afforded confidential treatment by the OEB. ED did not object to any of OPG's other proposed confidential information being treated as confidential.

SEC did not object to any of OPG's proposed confidential information being afforded confidential treatment except for the information indicated on page 10 of Ex. D2-2-1, Attachment 5. OPG has further reviewed the sources for this proposed confidential information and has since determined that the third party related information is in the public domain. As a result, OPG agrees with SEC that this third party information should not be afforded confidential treatment by the OEB. However, whereas Attachment 5 also contains confidential costs amounts for the DRP, this information is commercially confidential and should be afforded confidential protection by the OEB.

The following is OPG's response to ED's submissions.

General Redactions to Darlington Refurbishment Project Evidence

ED's submission acknowledges that the presumption of openness and transparency with respect to documents in OEB proceedings can be overcome if there is good reason. OPG submits that with respect to the particular DRP evidence that it seeks to protect, there is good reason to overcome the presumption and maintain confidentiality. OPG also notes that ED has not signed the Declaration and Undertaking. ED has not itself reviewed the information that OPG proposes be treated as confidential in order to specifically evaluate whether it overcomes the presumption.

In its submissions, ED takes the position that it objects to redactions made by OPG in the evidence on the DRP found in Ex. D2-2-1, particularly, redactions relating to:

1. Cost of the project;
2. Assessment of alternatives; and
3. Contracting process.

Redacted documents in Ex. D2-2-1 include the Darlington Refurbishment Project Detailed Planning – 2013 Definition Phase – Partial Release (the "Partial Release"), business case summaries, contracting strategies, and documentation relating to the engagement of Concentric Energy Advisors ("CEA"). As summarized in OPG's letter of October 2, 2013 relating to the confidential treatment of certain of its pre-filed evidence (the "October Letter"), the redacted portions of the business case summaries and contracting strategies include commercially sensitive information such as contingencies, expected efficiency gains, certain costs for contracted or purchased work or materials, or aggregate information that would allow determination of commercially sensitive information. The contracting strategies also contain certain information regarding potential suppliers and/or contractors which, if disclosed, could prejudice OPG's competitive position and significantly interfere with its negotiations and existing relationships in a variety of aspects of its business. All of this type of information has previously been ordered to be afforded confidential treatment by the OEB¹. The redacted portion of the CEA engagement letter relates only to the firm's hourly rates charged to OPG and is considered by OPG as commercially sensitive information related to a third party.

In this regard, and as stated in the October Letter, the considerations enumerated in Appendix A to the Practice Direction, subsections (a), i and ii, (c) and (h), apply in protecting this information as confidential.

¹ See EB-2010-0008, Procedural Order No. 3 dated July 21, 2010.

Specific Redactions to Darlington Refurbishment Project Evidence

Ex. D2-2-1, Attachment 5

In addition to its general objection to the redactions made by OPG in the evidence in Ex. D2-2-1, ED provides two specific examples of redactions it believes should not be retained in Ex.D2-2-1, Attachment 5, the Partial Release.

First, on pages 4 and 5 of the Partial Release, ED questions redactions of figures comparing current Darlington costs with post-refurbishment costs and also cost comparisons between the DRP and new natural gas generation stations ("New CCGT"). ED claims that these figures are at such a high level that they cannot be commercially sensitive or otherwise fit within the criteria of Appendix A of the Practice Direction.

Contrary to ED's submission, the redacted figures referenced by ED are OPG project contingency amounts for the DRP and OPG proprietary calculations for the New CCGT. Disclosure of this information would give potential or current suppliers to OPG a clear understanding of costing aspects of the DRP. It would give them an unfair advantage, and prejudice OPG's ability to achieve value-for-money in future bids or contract negotiations as between such suppliers and OPG. The subsections of Appendix A to the Practice Direction, as set out above, favour protecting this information as confidential. Additionally, this type of information has been previously held confidential by the OEB in EB-2010-0008 (see: Procedural Order No. 3).

Ex. D2-2-1, Attachment 6-3

In its submissions, ED also raises concerns regarding redactions made by OPG to the DRP contracting strategy for turbine generators found at Ex. D2-2-1, Attachment 6-3 (the "TG Contracting Strategy"). Specifically, ED points to redactions on pages 7, 13 and 20.

First, OPG has not made any redactions on page 13 of the TG Contracting Strategy.

Second, similar to the Partial Release referenced above, the information redacted on page 7 of the TG Contracting Strategy is the amount classified as contingency for this particular project. The redacted information on page 20 of the TG Contracting Strategy relates to specific risks identified in relation to one or more suppliers. Again, the disclosure of project contingency amounts would give potential suppliers a clear understanding of costing aspects of the project and this would unfairly prejudice OPG in any future negotiations with potential suppliers. The disclosure of the statements contained on page 20 would likely prejudice OPG's relationship with such suppliers and provide OPG with a disadvantage in future dealings with such suppliers. It would also likely prejudice the suppliers' existing or potential arrangements with others. Public disclosure of the subject information would significantly interfere with OPG's ability to achieve value-for-money in respect of those aspects of its business. OPG therefore submits that the this information should be treated as confidential - as was previously ordered by the OEB regarding similar information in EB-2010-0008.

Conclusion

With respect to most of the information for which OPG has sought confidential treatment from the OEB, OEB staff and intervenors have no objection. OPG agrees

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that the third party information sought by SEC for disclosure on the public record should be made public in this proceeding. However, the DRP costs information on page 10 of Ex. D2-2-1, Attachment 5 should still be protected as confidential.

With respect to the information that ED objects to being treated as confidential, OPG submits that the public disclosure of it would be unfairly prejudicial to OPG and give an unfair advantage to potential future suppliers of OPG. With respect to this information, there is good reason to overcome the presumption of its public disclosure and indeed, similar information has previously been ordered to be kept confidential by the OEB.

Best Regards,

[Original signed by]

Colin Anderson
Director, Ontario Regulatory Affairs
Ontario Power Generation

cc: Carlton Mathias OPG
Charles Keizer Torys LLP
Intervenors of Record (EB-2013-0321)