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March 10, 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. On February 6, 2014, OPG filed an updated business case summary for OPG's Darlington Refurbishment Project (the "Updated Darlington Refurbishment BCS") located at Exhibit D2-2-1, Attachment 5. Procedural Order No. 3 provided parties an opportunity to make submissions on the confidentiality status of the Updated Darlington Refurbishment BCS.

Only two parties filed submissions on the proposed confidential treatment of the Updated Darlington Refurbishment BCS, Board Staff and Environmental Defence ("ED").

Board Staff did not object to OPG's request for confidential treatment. In addition, Board Staff submitted that the Ontario Energy Board ("OEB") may be assisted by receiving additional information regarding OPG's rationale for seeking confidential treatment of the subject information. Board Staff submitted that it agrees with OPG's request for confidential treatment for the revenue from its heavy water sales.

ED submitted that OPG's proposed redactions in the Updated Darlington Refurbishment BCS should not be afforded confidential treatment. ED additionally submitted that it no longer objects to redactions in OPG's contracting strategy documents located at Ex. D2-2-1, Attachments 6-1 to 7-5.

The following is OPG's response to Board Staff's and ED's submissions.

### **Reply to Board Staff Submissions on Redactions to Updated Darlington Refurbishment BCS**

Board Staff does not object to OPG's request for confidential treatment of information in the Updated Darlington Refurbishment BCS. Board Staff seeks answers to three questions which it submits may supplement the information OPG has previously provided in support of OPG's request. OPG provides the information sought further below, and relies upon it and OPG's submissions in its letter of February 24, 2014 in support of its request for confidential treatment of the subject information.

Board Staff also submits that the fact that the OEB approved confidential treatment of business cases in previous cost of service proceedings does not relieve OPG of the requirement to provide sufficient rationale for its requests for confidential treatment in this proceeding. OPG, of course, acknowledges this as a correct principle - but confirms that this is not how it has approached this or any request for confidential treatment. OPG has provided specific factual and contextual information in support of each request. As part of its overall submission, where applicable, OPG has identified previous like requests by OPG and decisions by the OEB. OPG expects that this is of assistance to the OEB. Indeed, OPG feels it is its, Board Staff's or other intervenors' role to specifically call out such decisions in that, in addition to other considerations, section (h) of Appendix A of the Practice Directions states that in addressing requests for confidentiality treatment, the Board may consider "whether the type of information in question was previously held confidential by the Board."

In respect of Board Staff's three questions, the following are the questions and the responses to each:

#### Question 1

Are the contingencies based on industry experience and guidelines and/or OPG experience? If yes, staff assumes that suppliers would already know the general range of the contingencies. How would disclosure of contingencies affect the suppliers' bid for work?

#### Response

Contingency numbers for the Darlington refurbishment project are developed specifically for the Darlington project and site configuration, which will require unique and customized solutions that are first of a kind. While OPG's contingencies as indicated in the Updated Darlington Refurbishment BCS do consider industry experience and guidelines, such contingency amounts also incorporate OPG's operational experience and considerations for anticipated risks specifically associated with the Darlington refurbishment project. There is no way that suppliers would be able to accurately determine the range of the contingencies based only on industry experience.

Disclosure of the contingency amounts would likely increase the price of a supplier's bid for work. In addition, even for work that has already been awarded, contingency amounts are heavily negotiated with suppliers, particularly in target price contract models. Whereas a supplier will want to negotiate for a higher project contingency amount, OPG will propose mitigation efforts and solutions to reduce project contingencies so as to achieve value-for-money and to control project costs. As these negotiations have not yet been had with Darlington suppliers, disclosure of the contingency amounts would significantly interfere with OPG's negotiations with the suppliers and prejudice OPG's competitive position.

## Question 2

Are there a sufficient number of suppliers to enable a robust bidding process? If yes, staff assumes that suppliers would strive to be the lowest bidder, within reason, in order to secure the contract. In that case, how would disclosure of contingencies or point estimates affect that bidding process?

## Response

There were a sufficient number of suppliers to allow for competitive bidding. However, the contract structure that OPG has selected as most appropriate is a target price structure, with the target prices still to be negotiated.

OPG has selected most of its prime contractors for the Darlington refurbishment project, with the exception of the fuel handling work package. However, as discussed above, the form of contracting arrangement and how a particular scope of work is finally priced will have an impact on whether the disclosure of contingencies and point estimates at this stage will still negatively affect the remaining procurement process. For instance, proponents of the requests for proposals for certain work packages and components of the re-tube and feeder replacement work, fuel handling work, turbine generator work and balance of plant work were evaluated and selected based on a target price contracting model. As a result, although one key element considered by OPG in selecting suppliers were the proponents' target price estimates provided with their bids, the final target price itself will still need to be negotiated. These negotiations will only take place after detailed planning has been completed to understand and develop the full scope of work, methods for executing the work, schedule implications, resource requirements and all associated risks. Accordingly, disclosure of the contingency and point estimate amounts at this stage will significantly interfere with OPG's negotiations with suppliers and prejudice its competitive position respecting the fuel handling work package which is still to be awarded to a prime contractor and do the same where target price negotiations have not been completed.

## Question 3

Are there risks, other than the ones cited in the OPG correspondence of February 24, 2014, in making the contingencies, point estimates and aggregate information available on the public record?

## Response

In addition to the reasons identified in OPG correspondence of February 24, 2014 and the reasons identified above, the disclosure of contingencies, point estimates and aggregate information on the public record may result in significant loss or gain to third parties. Successful proponents of OPG's bidding processes for each work package become prime contractors for the project. However, such contractors will often need to subcontract work to other suppliers. Thus, even after a procurement process is complete from OPG's perspective, the release of contingencies, point estimates and aggregate information may significantly interfere with the procurement processes and negotiations that OPG's prime contractors may need to undertake. Furthermore, subcontracts that are more expensive than anticipated may result in allowable price increases to target costs. As such, if contingencies, point estimates and aggregate information are made available on the public record, both OPG and its contractors may

suffer a significant loss. Again, the disclosure of this information would be to the detriment to OPG's cost efficiency efforts and ultimately to ratepayers.

**Reply to ED Submissions on Redactions to Updated Darlington Refurbishment BCS**

OPG notes that ED's revised submissions are very similar to its January 24, 2014 submissions relating to the Updated Darlington Refurbishment BCS. To that end, OPG repeats its reply submissions as filed on January 31, 2014.

ED reiterates that it believes the figures in the Updated Darlington Refurbishment BCS to be high level, making it difficult to see how such figures could be used by suppliers to gain an unfair advantage. OPG disagrees with this statement as these figures are not high level, are provided on a project-by-project basis, and represent OPG's best estimates. Disclosure of such commercially sensitive information can provide a significant advantage to sophisticated suppliers in on-going negotiations, and possibly future dealings, with OPG.

With respect to the information that ED objects to being treated as confidential, OPG repeats its previous submission that public disclosure of this information would be unfairly prejudicial to OPG and give an unfair advantage to potential future suppliers of OPG. While ED cites the Minister of Energy's correspondence to OPG to manage the refurbishment process in a "transparent" manner, the Minister's letter also asks that OPG manage the project in an efficient and cost-effective manner. Prudence dictates that OPG take reasonable steps not to allow itself and the ratepayers of Ontario to be inappropriately taken advantage of by actors that are not mandated to reflect public interest considerations. There is, of necessity, a balance that must be struck between transparency and the need to protect commercially sensitive information. OPG's submission is that the balance needs to be struck in favour of protecting the subject information as confidential at this stage of the project.

Yours truly,

[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)