



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. 4**

March 21, 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 (the “Act”) 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.

On December 20, 2013, the Board issued Procedural Order No. 1 which made provision for submissions on OPG’s request for confidential treatment of certain documents. Subsequently, on February 19, 2014, the Board issued Procedural Order No. 3 which made provision for submissions on OPG’s request for confidential treatment of certain documents filed on February 6, 2014.

Confidential Filings

OPG seeks confidential treatment for the following documents:

- Concentric Energy Advisors Engagement Letter
- 2012 Income Tax Returns
- Revenue Comparison Tables
- Business Case Summaries
- Darlington Refurbishment Contracting Strategies
- Business Plans
- Business Planning Instructions

Redacted versions of these documents were included with the application filed on September 27, 2013. Confidential versions were filed with the Board on October 2, 2013, and subsequently on December 10, 2013, OPG re-filed these documents in accordance with section 5.1.4(b) of the Board's *Practice Direction on Confidential Filings* (the "Practice Direction").

On December 18, 2013, OPG requested confidential treatment for certain business plan documents related to the impact statement filed on December 6, 2013. In correspondence filed with the confidential documents, OPG provided the reasons why it requested confidential treatment and the reasons why public disclosure of the information would be detrimental to OPG.

On February 19, 2014, the Board issued Procedural Order No. 3 which made provision for submissions on Exh D2-2-1 Attachment 5, *Darlington Business Case Summary* ("updated Darlington BCS"), as updated on November 14, 2013 and filed with the Board on February 6, 2014 in redacted form and on February 24, 2014 in confidential form.

Redacted versions of all documents for which OPG seeks confidential treatment have been filed for the public record.

Counsel and consultants for intervenors that wished to review the information for which OPG seeks confidential treatment could do so after signing a copy of the Board's Declaration and Undertaking (which is found at Appendix C of the Practice Direction), and filing it with the Board.

Submissions were filed by Board staff, the Association of Major Power Consumers in Ontario ("AMPCO"), the School Energy Coalition ("SEC") and Environmental Defence.

AMPCO's submission was limited to stating that it took no position on OPG's request for confidential treatment for any of the documents.

Concentric Energy Advisors Engagement Letter and 2012 Income Tax Returns

The Board has reviewed the Concentric Energy Advisors Engagement Letter and the 2012 Income Tax Returns. No submissions were received objecting to confidential treatment for these documents. The Board agrees with OPG that certain information in the Concentric Letter should be protected as it refers to commercially sensitive information relating to a third party. The Board also agrees that the 2012 Income Tax Returns contain information related to OPG's unregulated business and shall receive confidential treatment.

Revenue Comparison Tables

The redacted information relates to heavy water sales and proceeds and information that would allow determination of the sales and proceeds. OPG requested confidential treatment as disclosure of the information would prejudice its competitive position and interfere with future negotiations. Board staff submitted that the information is commercially sensitive due to the limited market and number of potential transactions. While information related to revenue is typically on the public record, the Board grants confidential treatment for the revenue comparison tables as it may be possible to determine commercially sensitive information if the redacted information in the revenue comparison tables was disclosed.

Business Case Summaries and Darlington Refurbishment Contracting Strategies

OPG seeks confidential treatment for thirty business case summaries ("BCS") and four Darlington Refurbishment Contracting Strategies. OPG has redacted contingencies, expected efficiency gains, certain costs for contracted or purchased work and materials, and aggregate information that would allow determination of commercially sensitive information. OPG notes that Appendix A of the Practice Direction favours the confidential treatment of this type of information. Further, this type of information received confidential treatment in the previous cost of service proceeding, EB-2010-0008.

Board staff, SEC and Environmental Defence filed submissions on confidential treatment of certain information related to the Darlington Refurbishment Project BCS.

SEC submitted that there is no reason why information on nuclear refurbishment at non-OPG facilities in the BCS at Exh D2-2-1 Attachment 5 (as originally filed on September 27, 2013) should be redacted as presumably the information was obtained from non-confidential sources. In reply, OPG agreed that the third party information should not be confidential, but the Darlington Refurbishment Project information should be afforded confidential protection. The updated Darlington BCS (as filed on February 6, 2014) reflects this change.

Environmental Defence objected to redactions related to the cost of the Darlington Refurbishment Project, assessment of alternatives and the contracting process. Even if the redacted information was commercially sensitive, Environmental Defence submitted that the data is at such a high level that it cannot be commercially sensitive, and that any concerns are outweighed by factors supporting public disclosure. On March 3, 2014, Environmental Defence stated that in order to focus on the updated Darlington BCS, it no longer objected to the redacted information in the contracting strategies. The data that Environmental Defence has identified as “key” includes: estimates of total cost, cost comparison between refurbishment and an alternative of new natural gas generation and estimates relating to the risk of cost overruns.

In its reply submissions on January 31, 2014 and March 10, 2014, OPG restated its position that disclosure of cost data could prejudice OPG’s competitive position. The data is not at a high level, as claimed by Environmental Defence, but provided on a project-by-project basis. Disclosure could provide a significant advantage to sophisticated suppliers in negotiations with OPG. OPG argued that Environmental Defence’s claim that cost comparison of the Darlington Refurbishment Project with gas fired generation is at such a high level it cannot be commercially sensitive is incorrect. The redacted information includes project contingency amounts for the Darlington Refurbishment Project and OPG proprietary calculations for new combined cycle gas turbines.

On March 3, 2013, Board staff queried whether the contingency data in the updated Darlington BCS was based on industry guidelines or OPG experience and therefore already known by suppliers, and how knowledge of contingency affected a competitive multi-supplier bidding process. OPG replied that contingency numbers are developed specifically for the Darlington project and site configuration. Disclosure of the contingency would likely increase the price of a supplier’s bid for work. Even for work that has already been awarded, contingency amounts are heavily negotiated with

suppliers. OPG noted that, “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.” OPG also replied that there are a sufficient number of suppliers to allow for competitive bidding. OPG is using a target price structure with selection of suppliers based in part on target price estimates. Negotiation of final price would be affected by disclosure of contingency and point estimate amounts.

OPG observed that while the Minister of Energy has asked OPG to manage Darlington Refurbishment in a transparent manner, OPG has also been asked to manage the project in an efficient and cost-effective manner.

The Board agrees that overall project costs must be made available to the public, and notes that the \$10 billion cost estimate (\$12.9 billion including capitalized interest and future escalation) is not redacted. In its reply submission filed on March 10, 2014, OPG described its complex contractor negotiation process and how knowledge of contingency amounts could affect contract price. The Board will grant confidential treatment for the updated Darlington BCS. If the issues related to Darlington Refurbishment are deemed priority issues and are not settled, the Board will make provision for *in camera* examination of the details of the Darlington Refurbishment Project including contracting strategies and costs of the project.

The Board’s finding on confidential treatment applies not just to the updated Darlington BCS, but to all Business Case Summaries and Darlington Refurbishment Contracting Strategies and the redacted contingencies, efficiency gains, vendor references, and specific and aggregate costs therein.

Business Plans and Business Planning Instructions

OPG seeks confidential treatment for 6 documents:

- 2013-2015 OPG Corporate Business Plan
- 2013-2015 Hydro Thermal Business Plan
- 2013-2015 Nuclear Business Plan
- 2013-2015 Business Planning Instructions
- 2014-2016 OPG Corporate Business Plan
- 2014-2016 Hydro Thermal Business Plan

The redacted information in the 2013-2015 Nuclear Business Plan relates to a staffing arrangement with a third party. OPG does not seek confidential treatment for the 2014-2016 Nuclear Business Plan.

The redacted information in the Corporate and Hydro Thermal Business Plans and the Business Planning Instructions relate to information that combines the regulated and unregulated business.

No submissions were filed on these documents. The Board grants confidential treatment for these documents. The Board notes, however, that some of the redacted information is now in the public domain, e.g. certain savings and headcount reductions related to Business Transformation. The Board expects OPG to amend the redacted information during the proceeding as required as an on-going obligation to disclose as much information on the Board's public record as possible.

Prioritization of Issues List

The Board made provision for interrogatories on all issues listed in the final un-prioritized issues list that was appended to Procedural Order No. 3 and issued on February 19, 2014. OPG has now filed the response to the majority of those interrogatories. As outlined in [correspondence](#) issued on November 11, 2011, with the *Filing Guidelines for Ontario Power Generation Inc. in Setting Payment Amounts for Prescribed Generation Facilities*, the Board is now making provision for submissions on categorizing issues into primary and secondary issues. Any unsettled primary issues will proceed by way of oral hearing. Any unsettled secondary issues will proceed by way of written hearing. OPG provided a categorization with the draft issues list filed at Exh A1-10-1. OPG proposed in its application that the following issues be identified as primary issues: 2.1, 4.1, 4.3, 4.4, 4.5, 4.8, 4.9, 4.10, 4.11 and 6.8. These numbers correspond to the format of the final un-prioritized issues list.

In proposing primary issues, parties should provide justification and give consideration to whether the issue requires an oral hearing. After reviewing these submissions, the Board will issue a final prioritized issues list.

Scheduling of Next Procedural Steps

The Board is making provision for a technical conference on all issues. The Board is in the process of scheduling the settlement conference (on all issues) and oral hearing (on unsettled primary issues). Parties are requested to contact Board staff and OPG regarding their intentions to file intervenor evidence by March 26, 2014.

Dates for the filing of intervenor evidence (if any), the settlement conference and any other steps that may need to be established, will be communicated at a later date. At this time, the Board estimates that the oral hearing of unsettled primary issues will commence in early June.

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

THE BOARD ORDERS THAT:

1. OPG, Board staff and intervenors may make submissions on the prioritization of the issues list and shall file any submissions with the Board and deliver them to all parties no later than **March 31, 2014**.
2. OPG, Board staff and intervenors may respond to the submissions of other parties. Those responses shall be filed with the Board and delivered to all parties no later than **April 7, 2014**.
3. A transcribed Technical Conference shall be convened on **April 22, 2014**, starting at 9:30 a.m. If necessary, the Technical Conference will continue on **April 23, 2014**. The Technical Conference will be held in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto. Parties participating in the Technical Conference are requested to file with the Board and copy OPG and all other parties, by **April 14, 2014**, confirmation of the issues they seek to address or seek clarification on at the Technical Conference.
4. OPG shall respond to any undertakings given at the Technical Conference on or before **May 2, 2014**.

All filings to the Board must quote the file number, **EB-2013-0321**, be made through the Board's web portal at <https://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 <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 and Board Counsel, Michael Millar at michael.millar@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto, **March 21, 2014**

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary