

700 University Avenue, Toronto, ON M5G 1X6

Tel: 416-592-3326 Fax: 416-592-8519
colin.anderson@opg.com

June 2, 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 – Application by Ontario Power Generation Inc.
for 2014-2015 Payment Amounts**

In its letter dated May 15, 2014, OPG requested confidential treatment of certain responses to its technical conference undertakings (“Undertaking Responses”) under the OEB’s Practice Direction on Confidential Filings.

Procedural Order No. 9 provided parties an opportunity to make submissions on whether the information should be designated as confidential by the OEB. Submissions on confidentiality were made by Environmental Defence (“ED”) and the School Energy Coalition (“SEC”).

Response to ED’s Submissions

ED submitted that none of OPG’s proposed confidential information in Undertaking Response JT2.2, being information relating to the Darlington Refurbishment Project (“DRP”), should be afforded confidential treatment by the OEB, specifically information concerning cost overrun scenarios. ED stated that similar information was released in response to ED Interrogatory #11, and that since ED will be asking questions relating to this response during the hearing, confidential treatment thereof “will cause hassle and delay”. ED did not object to any of OPG’s other proposed confidential information being treated as confidential.

As stated in OPG’s letter dated May 15, 2014, on hearing some intervenors’ submissions on Motions Day, and on further review by OPG, OPG publically disclosed some of the information it initially protected in Undertaking Response JT2.2. The revised Undertaking Response (attached hereto again as Attachment “A” for ease of reference) did not claim confidential treatment of those cost overrun scenarios referred to in ED’s submission, as found in part (c) of this response. The redactions maintained in the revised Undertaking Response are consistent with ED Interrogatory #11 and

relate primarily to information previously ordered to be treated as confidential information pursuant to Procedural Orders No. 4 and No. 8. As such, OPG believes that ED's submissions are incorrectly based on the original Undertaking Response JT2.2, as opposed to the revised version filed on May 15, 2014.

Response to SEC's Submissions

SEC objects to confidential treatment of Attachment 1 to Undertaking Response JT2.34, being information relating to the net costs and savings resulting from the Power Worker's Union ("PWU") settlement. In its submissions, SEC suggested that the content of Attachment 1 did not qualify as "advice or recommendations" to government, and therefore did not fall within the exemption provided in section 13(1) of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). Furthermore, SEC submitted that based on information received, it was not clear that disclosure of Attachment 1 would prejudice future negotiations with the PWU. SEC did not object to any of OPG's other proposed confidential information being treated as confidential.

OPG submits that the purpose of FIPPA is to provide a right of access to information under the control of institutions. However, FIPPA recognizes that some exemptions are necessary. One such exemption is for records which include advice to government as provided in section 13(1). SEC argues that information contained in Attachment 1 to JT2.34 does not qualify for this exemption since it is only titled "Confidential Advice to Government" but contains solely "factual material". OPG does not agree with this assertion since Attachment 1 contains projected cost savings and strategic information presented to government to satisfy its direction that OPG achieve "net zero" in its settlement. Advice to government encompasses material that permits the drawing of inferences with respect to a course of action, but which itself does not make a specific recommendation. SEC's interpretation is too narrow.

Admittedly, the advice to government exemption under FIPPA is complicated with a substantial body of case law decided under the legislative provisions of FIPPA. OPG asserts that the exemption applies, but it also asserts that there are additional valid reasons to protect the subject information. The protection of the subject information need not be decided solely on the advice to government exemption under FIPPA.

In furtherance of the foregoing, under Appendix B to the OEB's Practice Direction, the OEB may consider all matters relating to FIPPA and whether the information is required by legislation to be kept confidential. In this regard, OPG submits that despite the purpose of FIPPA being to make information available to the public, FIPPA recognizes that certain records should not fall within its disclosure regime. Specifically, in section 65(6)2 of FIPPA, it recognizes that FIPPA should not apply to records collected, prepared, maintained or used in connection with negotiations or anticipated negotiations relating to labour relations. Attachment 1 was marked confidential in order to protect collective bargaining costing information from public disclosure which clearly demonstrates the value, worth or importance of particular items to OPG. The disclosure of this information would have a prejudicial effect in respect of future negotiations with the unions if disclosed. Disclosing the value, worth or importance of an issue of one party to an opposing party to a set of negotiations provides the opposing party a negotiating advantage. Equipped with the importance of an issue, an opposing party is able to extract greater value in its demands. Clearly, this is the type of prejudice that is contemplated by the legislated exclusion of labour relations sensitive information from the FIPPA disclosure regime. This exemption from

disclosure under FIPPA should be honoured by the OEB in its implementation of the Practice Direction.

In addition to the above, the information contained in Attachment 1 is of the same type of commercially sensitive information otherwise protected by the OEB under the Practice Direction. The information reveals costing information which can be used to determine the value, worth or importance of particular items to OPG. As such, OPG believes public disclosure of this commercially sensitive information would significantly prejudice OPG's future negotiating position by allowing the unions to extract concessions from OPG, and serve to increase costs to ratepayers.

Conclusion

OPG submits that for the reasons stated above, and set out in its submission of May 15, 2014, confidential treatment should be ordered for Undertaking Response JT2.2, and Attachment 1 to Undertaking Response JT2.34.

At the conclusion of the proceeding or in the event this confidentiality request is refused, OPG requests that the information be withdrawn in accordance with the OEB's Practice Direction, and that all persons in possession of the information be required to destroy or return to the OEB Secretary for destruction such confidential information.

Respectfully Submitted,

[Original signed by]

Colin Anderson
Director, Ontario Regulatory Affairs
Ontario Power Generation

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

ATTACHMENT “A” – PUBLIC VERSION OF UNDERTAKING RESPONSE JT2.2

UNDERTAKING JT2.2**Undertaking**

To provide additional information with respect to Environmental Defence interrogatory 11, issue 4.12, as set out in Mr. Elson's letter.

Response

- a) The table below provides the requested break-out based on the amounts included in Exhibit D2-2-1, Attachment 5 for OPG's high confidence estimate (excluding interest and escalation) in 2013 and 2014 dollars.

\$M		2013\$	2014\$
RFR	OPG Project Management	690	704
	Contractor Cost		
	Contingency		
Fuel Handling	OPG Project Management	83	85
	Contractor Cost		
	Contingency		
Steam Generators	OPG Project Management	63	64
	Contractor Cost		
	Contingency		
Turbine Generator	OPG Project Management	195	199
	Contractor Cost		
	Contingency		
Balance of Plant	OPG Project Management	216	220
	Contractor Cost		
	Contingency		
Other Costs	Islanding		
	System Shutdown		
	Operations & Maintenance Support	863	880
	Facilities & Infrastructure	560	571
	Waste Management	10	10
	New Fuel	132	135
	Insurance	114	116
	Regulatory, i.e. ISR, EA, IIP	80	82
	Licensing (CNSC Fees)	73	74
	Contingency		
	Retube Waste Containers (Provision)	220	224
	Management Reserve	828	845
		\$10,000	\$10,200

Notes:

1. 2013\$ estimate based on Exhibit D2-2-1, Attachment 5
2. 2014\$ assumed 2% inflation
3. OPG Project Management includes both Program and Project level

b) At a 50% cost overrun, applied to the selected projects, and through the application of the contract model used in each of the contracts, the estimated point-estimate for the DRP, is less than \$10.0 billion due to contingency and management reserve contained within OPG's high confidence estimate. At a 100% cost overrun, the project related contingency and management reserve are exhausted resulting in a projected cost overrun of \$200 million above OPG's high confidence estimate. Note that for all scenarios, OPG maintains approximately [REDACTED] in Program level contingency (as noted in note 3 of Part C) of IR ED-011).

c) Cost overrun scenarios including interest and escalation are provided below.

	Total DRP Cost			Total LUEC (1)	
	2013\$B	2014\$B	Incl. Interest & Esc.(\$B)	2013\$ ¢/kWh	2014\$ ¢/kWh
50%	10.0	10.2	12.9	7.8	7.9
100%	10.2	10.4	13.1	7.9	8.0
150%	11.1	11.3	14.3	8.1	8.2
200%	12.1	12.3	15.5	8.4	8.5
250%	13.1	13.3	16.8	8.7	8.9

Notes:

1. LUEC excludes fixed Corporate Overheads for Pension and Other Post Employment Benefits, base estimate is 7.8 ¢/kWh (2013\$) or 7.9 ¢/kWh (2014\$).