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Ontario

BY E-MAIL

August 31, 2016

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

Dear Ms. Walli:

**Re: Ontario Power Generation Inc.
2017-2021 Payment Amounts
Ontario Energy Board File Number EB-2016-0152**

In accordance with Procedural Order No. 1, please find attached OEB staff's submission relating to the issues list and confidential treatment of certain documents in the above noted proceeding. OPG and all intervenors have been copied on this filing.

Yours truly,

Original signed by

Violet Binette
Project Advisor, Applications

Attach

ONTARIO POWER GENERATION INC.
2017-2021 PAYMENT AMOUNTS
EB-2016-0152

Ontario Energy Board
Staff Submission -
Issues List and Confidential Filings

August 31, 2016

Introduction

Ontario Power Generation Inc. (OPG) filed an application with the Ontario Energy Board (OEB) on May 27, 2016, seeking approval for changes in payment amounts for the output of its nuclear generating facilities and most of its hydroelectric generating facilities. The request seeks approval for nuclear payment amounts to be effective January 1, 2017 and for each following year through to December 31, 2021. The request seeks approval for hydroelectric payment amounts to be effective January 1, 2017 to December 31, 2017 and approval of the formula used to set the hydroelectric payment amount for the period January 1, 2017 to December 31, 2021.

In Procedural Order No. 1, issued on August 12, 2016, the OEB made provision for submissions on the draft issues list at Exh A1-10-1 of the application, and reproduced as Schedule B of the Procedural Order. The OEB also made provision for submissions on OPG's request for confidential treatment of certain information in the 2016-2018 Business Plan, Business Planning Instructions, Revenue Comparison Tables, Business Case Summaries, and the Darlington Refurbishment Program (DRP) Attachments.

Issues List

OEB staff has reviewed the non-prioritized draft issues list and has the following submission on issues related to Capital Projects, Rate Base, Operating Costs, Deferral and Variance Accounts, Reporting and Record Keeping Requirements, and Methodologies for Setting Payment Amounts. The OEB staff submission is also reflected in highlighted text in the draft issues list attached as Schedule A to this submission.

Capital Projects

The draft issues list proposes two in-service addition issues, one issue for nuclear projects excluding the DRP, and another issue for DRP in-service additions. OEB staff submits that a parallel structure for capital expenditures is appropriate. The proposed revisions are as follows:

- 4.2 Are the proposed nuclear capital expenditures and/or financial commitments (excluding those for the Darlington Refurbishment Program) reasonable?
- 4.3 Are the proposed nuclear capital expenditures and/or financial commitments for the Darlington Refurbishment Program reasonable?
- 4.4 Are the proposed test period in-service additions for nuclear projects (excluding those for the Darlington Refurbishment Program) appropriate?

- 4.5 Are the proposed test period in-service additions for the Darlington Refurbishment Program appropriate?

Rate Base

OEB staff submits that the rate base issues should have a structure that is parallel to the capital projects issues. The proposed revisions are as follows:

- 2.1 Are the amounts proposed for nuclear rate base (excluding those for the Darlington Refurbishment Program) appropriate?
- 2.2 Are the amounts proposed for nuclear rate base for the Darlington Refurbishment Program appropriate?

Operating Costs

The draft issues list proposes a separate OM&A issue for DRP. OEB staff submits that, for consistency, the first issue proposed under operating costs should exclude DRP to be consistent with the Capital Projects section, but also to be consistent with issue 6.4. OEB staff also submits that issue 6.2 should include reference to benchmarking methodology. This is consistent with previously approved issues lists for OPG proceedings, and is particularly relevant in the current proceeding as the nuclear payment amounts are filed under a five year Custom IR framework. The proposed revisions are as follows:

- 6.1 Is the test period Operations, Maintenance and Administration budget for the nuclear facilities (excluding that for the Darlington Refurbishment Program) appropriate?
- 6.2 Is the benchmarking methodology reasonable? Are the benchmarking results and targets flowing from OPG's nuclear benchmarking reasonable?
- 6.3 Is the forecast of nuclear fuel costs appropriate?
- 6.4 Is the test period Operations, Maintenance and Administration budget for the Darlington Refurbishment Program appropriate?

Deferral and Variance Accounts

OEB staff submits that clarity on the reference values for determining additions to hydroelectric deferral and variance accounts is required during the 2017-2021 period when IRM is based on EB-2013-0321 payment amounts. OEB staff has revised issue 9.1 of the draft issues list as follows:

- 9.1 Are the nature or type of costs, as well as the methodologies for recording costs in the deferral and variance accounts appropriate?

Similar to OEB's staff submission regarding issues under the topics of rate base, capital projects and OM&A, OEB staff likewise submits that the issue regarding the establishment of new deferral and variance accounts be separated into those which relate to DRP and those which relate to other elements of OPG's business. The proposed revisions are as follows:

- 9.6 Is the rate smoothing deferral account related to the Darlington Refurbishment Program that OPG proposes to establish appropriate?
- 9.7 Are any other new deferral or variance accounts that OPG proposes to establish appropriate?

Reporting and Record Keeping Requirements

In the EB-2010-0008 payment amounts decision, the OEB directed OPG to file certain financial and operating information including financial statements, deferral and variance account balances, nuclear unit capability factors, hydroelectric availability and full time equivalent summaries.

In the current application, OPG proposes to report OPG's annual hydroelectric and nuclear performance measures. OPG proposes to file the prior year's performance and identify targets for the following year. OEB staff submits that the performance measures proposed by OPG are subsumed in the broad "reporting and record keeping" requirement. However, as this is the first hydroelectric IRM and nuclear Custom IR application, OEB staff submits that additional issues specifically related to performance reporting for the hydroelectric facilities and the nuclear facilities are required. The proposed revisions are as follows:

- 10.1 Are the proposed reporting and record keeping requirements appropriate?
- 10.2 Is the monitoring and reporting of performance proposed by OPG for the regulated hydroelectric facilities adequate?
- 10.3 Is the monitoring and reporting of performance proposed by OPG for the nuclear facilities adequate to determine whether the planned productivity and efficiency gains are achieved?

Methodologies for Setting Payment Amounts

In [correspondence](#) issued on February 17, 2015, the OEB set out its expectations for an IR framework for OPG's regulated hydroelectric facilities and a Custom IR framework for OPG's nuclear facilities based on the principles outlined in the Renewed Regulatory Framework for Electricity.

OEB staff submits that the issues under section 11 of the issues list should be grouped by hydroelectric and nuclear as the rate setting processes for 2017-2021 differ. This was also anticipated in the *Report of the Board on Incentive Rate-making for Ontario Power Generation's Prescribed Generation Assets* (EB-2012-0340), March 28, 2013, wherein the OEB noted that different approaches to rate-setting for the two generating technologies would be likely.

In the EB-2013-0321 payment amounts decision, the OEB approved payment amounts for previously regulated hydroelectric facilities and for newly regulated hydroelectric facilities. The approved payment amounts in the EB-2013-0321 proceeding reflected an adjustment related to the treatment of tax losses. In the current proceeding, all of the regulated hydroelectric facilities have been grouped together. OEB staff submits that a specific finding on the base rate for applying IRM over the 2017-2021 period is required, and an issue has been drafted for the OEB's consideration.

OPG proposed the single issue, "Has OPG responded appropriately to OEB direction on establishing incentive regulation?" OEB staff submits that the single issue is too broad and additional issues, particularly for nuclear Custom IR, are appropriate. OEB staff has referred to the OEB approved issues lists for recent Custom IR proceedings and has drafted additional issues for the OEB's consideration. The proposed issue 11.4 aligns with elements of the Renewed Regulatory Framework for Electricity. OEB staff also submits that the issue, "Is the design of the regulated hydroelectric and nuclear payment amounts appropriate?" is not required. The proposed revisions are as follows:

Hydroelectric

- 11.1 Has OPG responded appropriately to OEB direction on establishing incentive regulation for the regulated hydroelectric facilities?
- 11.2 Are OPG's hydroelectric payment amounts arising from EB-2013-0321, as adjusted, appropriate as base rates for applying the hydroelectric incentive regulation mechanism over the 2017-2021 period?

Nuclear

- 11.3 Has OPG responded appropriately to OEB direction on establishing incentive regulation for the nuclear facilities?
- 11.4 Does the nuclear Custom IR application adequately account for productivity and efficiency gains in its forecasts? Does the Custom IR application adequately include expectations for productivity and efficiency gains relative to benchmarks and establish an appropriately structured incentive-based rate framework?
- 11.5 Are OPG's proposed nuclear off-ramps and mid-term review appropriate?

Confidential Filings

Background

As noted in Procedural Order No. 1, OPG has requested confidential treatment for portions of the following documents:

- 1. The 2016-2018 Business Plan
- 2. 2016-2018 Business Planning Instructions
- 3. Revenue Comparison Tables
- 4. Concentric Cost of Capital Engagement Letter
- 5. Nuclear Business Case Summaries (BCS)
- 6. DRP Attachments
 - a. DRP Contract Summaries
 - b. DRP Contracts
 - c. DRP Reports
 - d. D2O BCS
 - e. Concentric DRP Engagement Letter
 - f. Pegasus-Global Engagement Letter
- 7. 2014 Income Tax Returns

In accordance with the OEB's *Practice Direction on Confidential Filings* (the Practice Direction), OPG explained (in a letter filed with its May 27, 2016 application for 2017-2021 payment amounts, and in another letter accompanying its July 29, 2016 update to the application) the reasons for the confidentiality request, including the reasons why it considers the information at issue to be confidential and the reasons why public disclosure of that information would be detrimental.

In Procedural Order No. 1, the OEB granted OPG's request for confidentiality in respect of the 2014 Income Tax Returns, and established a process for parties to make submissions on the remaining documents (other than submissions on those portions of the Business Plan and the Business Planning Instructions that OPG has proposed for permanent redaction – Procedural Order No. 1 provides that the OEB "will address this matter at a later date"). This process included an opportunity for OPG's counterparties on certain DRP Contracts, namely Babcock & Wilcox Canada Ltd. (BWXT), Candu Energy Inc. (Candu), and the SNC Lavalin Nuclear Inc. and Aecon Construction Group Inc. Joint Venture (SNC/Aecon JV), to make submissions on confidentiality.

In response to Procedural Order No. 1, Candu filed a confidentiality request on August 24, 2016 in respect of certain parts of one of the DRP Contracts: the Engineering, Procurement and Construction Agreement for the Darlington Refurbishment Steam Generator Project dated December 30, 2013. Candu seeks confidential treatment only for those portions of the agreement that were found to be exempt from public disclosure under the *Freedom of Information and Protection of Privacy Act* by the Information and Privacy Commissioner of Ontario (IPCO) in Order PO-3311 dated February 25, 2014, and for portions containing "equivalent or analogous information". Candu also requests confidential treatment for the related parts of the contract summary.

The SNC/Aecon JV filed a similar confidentiality request on August 24, 2016, but in respect of three of the other DRP Contracts. Like Candu, the SNC/Aecon JV asks that only those parts of the agreements that were found to be exempt from disclosure by the IPCO in Order PO-3311, and "equivalent or analogous information", be treated as confidential in this proceeding.

BWXT did not make any submissions.

OEB Staff Submission

OEB staff does not object to the requests for confidentiality filed by OPG, Candu or the SNC/Aecon JV. Each document is addressed in turn in the submission below.

Business Plan and Business Planning Instructions (items 1 and 2)

OPG's seeks confidential treatment for those parts of the Business Plan and the Business Planning Instructions that relate to information on the combined regulated and unregulated assets of OPG. OEB staff agrees with OPG that this information, when combined with publicly available information on OPG's regulated assets, could allow for the disclosure of information pertaining to the unregulated business. As noted by OPG,

the OEB granted OPG's request for confidential treatment of similar combined information in its last payment amount application, EB-2013-0321.

In accordance with Procedural Order No. 1, OEB staff makes no submission on the permanent redactions proposed by OPG, which relate solely to OPG's unregulated business.

Revenue Comparison Tables (item 3)

The redacted information in the Revenue Comparison Tables relates to OPG's sales and proceeds from its heavy water sales business. OEB staff agrees with OPG that the information is of a commercially sensitive nature.

As noted by OPG, such information was treated as confidential in the last two payment amount proceedings, EB-2010-0008 and EB-2013-0321.

Concentric Cost of Capital Engagement Letter (item 4)

The redacted information relates to the consultant's billing rates. The information is of a commercially sensitive nature and could prejudice the consultant's competitive position. OEB staff notes that Appendix A of the Practice Direction favours the confidential treatment of this type of information. As noted by OPG, similar information was treated as confidential in EB-2013-0321.

Nuclear Business Case Summaries (item 5)

The redacted information in the BCS relates to information on costs for contingencies, costs for contracted or purchased work and materials, and aggregate costs. OEB staff agrees with OPG that the information is commercially sensitive and its disclosure could be detrimental to OPG in future negotiations, by allowing parties insight into OPG's budgeting assumptions. As noted by OPG, similar information was treated as confidential in EB-2010-0008 and EB-2013-0321.

DRP Contracts and DRP Contract Summaries (items 6a and 6b)

Candu and the SNC/Aecon JV seek confidential treatment for those portions of the DRP Contracts (and related DRP Contract Summaries) that were found to be exempt from public disclosure by the IPCO in Order PO-3311, and for portions containing "equivalent or analogous information". As Candu and the SNC/Aecon JV both note, Order PO-3311 was upheld by the Divisional Court in *Aecon Construction Group Inc. v. IPCA*, 2015 ONSC 1392. Candu and the SNC/Aecon JV argue that full disclosure of the contracts would prejudice their respective competitive positions in the marketplace, as the information in the contracts could be "unfairly exploited by a competitor". (OPG asks

that the same treatment be afforded to its DRP Contracts with contractors other than Candu and the SNC/Aecon JV.)

OEB staff notes that Appendix A, section (e) of the Practice Direction states that one of the factors that the OEB may consider in addressing the confidentiality of filings before the OEB, is “whether the Information and Privacy Commissioner or a court of law has previously determined that a record should be publicly disclosed or kept confidential”. In light of the IPCO’s Order PO-3311, which held that parts of the contracts at issue were exempt from disclosure, and which was upheld by the Divisional Court, OEB staff submits that it would be appropriate for the OEB to accept the proposed redactions. OPG is also proposing certain redactions to its Extended Services Master Services Agreement with SNC/Aecon that are unrelated to the SNC/Aecon JV request. These redactions pertain to pricing information in the agreement. OPG explained that it uses three contractors who compete amongst each other for this type of work. OEB staff therefore agrees that the pricing information is of a commercially sensitive nature and disclosure would damage OPG’s competitive position. Similarly, OEB staff agrees with OPG’s request for confidential treatment of pricing information in its steam generator contract with Candu.

DRP Reports (item 6c)

The DRP Reports include the (i) BMcD/Modus Report on Release Quality Estimate, (ii) KPMG Report on Release Quality Estimate, (iii) Expert Panel Report on Class 2 Estimate and (iv) BMcD/Modus Final Quarterly Report Oversight Report to the OPG Board of Directors.

OPG is seeking confidential treatment for the following: information consistent with redactions in the SNC/Aecon JV contracts; information concerning commentary on the performance of contractors; and, in respect of the KPMG Report on Release Quality Estimate, the work-stream 2 report in its entirety as it contains estimating methodologies throughout and contains commercially sensitive contractor information. OEB staff submits that OPG’s request is reasonable, as disclosure could prejudice the competitive position of OPG’s contractors.

D2O BCS (item 6d)

OPG relies on the same reasons for redacting the D2O BCS as it does for redacting the nuclear BCS. OEB staff agrees that the information is commercially sensitive and its disclosure could be detrimental to OPG by allowing parties insight into OPG’s budgeting assumptions, and could harm future negotiations. OPG adds that the information in the D2O BCS contains comments relating to the performance of vendors that are currently

participating in the DRP. OEB staff agrees that this information may prejudice the competitive position of the noted vendors.

Concentric DRP Engagement Letter and Pegasus-Global Engagement Letter (items 6e and 6f)

OPG's proposed redactions relate to its consultants' billing rates. As OPG notes, such information was treated as confidential in EB-2013-0321. For the same reasons OEB staff does not object to the confidential treatment of such pricing information in respect of item 4, OEB staff does not object to the confidential treatment of the pricing information in these engagement letters.

All of which is respectfully submitted

Schedule A

Ontario Power Generation Inc. 2017-2021 Payment Amounts for Prescribed Generating Facilities EB-2016-0152

DRAFT ISSUES LIST (NON-PRIORITIZED)

1. GENERAL

- 1.1 Has OPG responded appropriately to all relevant OEB directions from previous proceedings?
- 1.2 Are OPG's economic and business planning assumptions appropriate for the nuclear assets?
- 1.3 Is the overall increase in nuclear payment amounts reasonable given the overall bill impact on customers?

2. RATE BASE

- 2.1 Are the amounts proposed for nuclear rate base (excluding those for the Darlington Refurbishment Program) appropriate?
- 2.2 Are the amounts proposed for nuclear rate base for the Darlington Refurbishment Program appropriate?

3. CAPITAL STRUCTURE AND COST OF CAPITAL

- 3.1 Are OPG's proposed capital structure and rate of return on equity appropriate?
- 3.2 Are OPG's proposed costs for the long-term and short-term debt components of its capital structure appropriate?

4. CAPITAL PROJECTS

- 4.1 Do the costs associated with the nuclear projects that are subject to section 6(2)4 of O. Reg. 53/05 and proposed for recovery meet the requirements of that section?
- 4.2 Are the proposed nuclear capital expenditures and/or financial commitments (excluding those for the Darlington Refurbishment Program) reasonable?
- 4.3 Are the proposed nuclear capital expenditures and/or financial commitments for the Darlington Refurbishment Program reasonable?
- 4.4 Are the proposed test period in-service additions for nuclear projects (excluding those for the Darlington Refurbishment Program) appropriate?
- 4.5 Are the proposed test period in-service additions for the Darlington Refurbishment Program appropriate?

5. PRODUCTION FORECASTS

- 5.1 Is the proposed nuclear production forecast appropriate?

6. OPERATING COSTS

- 6.1 Is the test period Operations, Maintenance and Administration budget for the nuclear facilities (excluding that for the Darlington Refurbishment Program) appropriate?
- 6.2 Is the nuclear benchmarking methodology reasonable? Are the benchmarking results and targets flowing from OPG's nuclear benchmarking reasonable?
- 6.3 Is the forecast of nuclear fuel costs appropriate?
- 6.4 Is the test period Operations, Maintenance and Administration budget for the Darlington Refurbishment Program appropriate?
- 6.5 Are the test period expenditures related to extended operations for Pickering appropriate?

Corporate Costs

- 6.6 Are the test period human resource related costs for the nuclear facilities (wages, salaries, benefits, incentive payments, FTEs and pension costs) appropriate?
- 6.7 Are the corporate costs allocated to the nuclear businesses appropriate?
- 6.8 Are the centrally held costs allocated to the nuclear business appropriate?

Depreciation

- 6.9 Is the proposed test period nuclear depreciation expense appropriate?

Income and Property Taxes

- 6.10 Are the amounts proposed to be included in the test period nuclear revenue requirement for income and property taxes appropriate?

Other Costs

- 6.11 Are the asset service fee amounts charged to the nuclear businesses appropriate?

7. OTHER REVENUES

Nuclear

- 7.1 Are the forecasts of nuclear business non-energy revenues appropriate?

Bruce Nuclear Generating Station

- 7.2 Are the test period costs related to the Bruce Nuclear Generating Station, and costs and revenues related to the Bruce lease appropriate?

8. NUCLEAR WASTE MANAGEMENT AND DECOMMISSIONING LIABILITIES

- 8.1 Is the revenue requirement impact of the nuclear liabilities appropriately determined?

9. DEFERRAL AND VARIANCE ACCOUNTS

- 9.1 Are the nature or type of costs, as well as the methodologies for recording costs in the deferral and variance accounts appropriate?
- 9.2 Are the balances for recovery in each of the deferral and variance accounts appropriate?
- 9.3 Are the proposed disposition amounts appropriate?
- 9.4 Is the disposition methodology appropriate?
- 9.5 Is the proposed continuation of deferral and variance accounts appropriate?
- 9.6 Is the rate smoothing deferral account related to the Darlington Refurbishment Program that OPG proposes to establish appropriate?
- 9.7 Are any other new deferral and variance accounts that OPG proposes to establish appropriate?

10. REPORTING AND RECORD KEEPING REQUIREMENTS

- 10.1 Are the proposed reporting and record keeping requirements appropriate?
- 10.2 Is the monitoring and reporting of performance proposed by OPG for the regulated hydroelectric facilities adequate?
- 10.3 Is the monitoring and reporting of performance proposed by OPG for the nuclear facilities adequate to determine whether the planned productivity and efficiency gains are achieved?

11. METHODOLOGIES FOR SETTING PAYMENT AMOUNTS

Hydroelectric

- 11.1 Has OPG responded appropriately to OEB direction on establishing incentive regulation for the regulated hydroelectric facilities?

11.2 Are OPG's hydroelectric payment amounts arising from EB-2013-0321, as adjusted, appropriate as base rates for applying the hydroelectric incentive regulation mechanism over the 2017-2021 period?

Nuclear

11.3 Has OPG responded appropriately to OEB direction on establishing incentive regulation for the nuclear facilities?

11.4 Does the nuclear Custom IR application adequately account for productivity and efficiency gains in its forecasts? Does the Custom IR application adequately include expectations for productivity and efficiency gains relative to benchmarks and establish an appropriately structured incentive-based rate framework?

11.5 Are OPG's proposed nuclear off-ramps and mid-term review appropriate?

11.6 Is OPG's proposal for smoothing nuclear payment amounts consistent with O. Reg. 53/05?

12. IMPLEMENTATION

12.1 Are the effective dates for new payment amounts and riders appropriate?