

**Ontario Energy
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BY E-MAIL

November 18, 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 the Decision on Confidential Filings and Procedural Order No. 3, please find attached OEB staff's submission. 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 on Confidential Filings

November 18, 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 for the period January 1, 2017 to December 31, 2021.

In Procedural Order No. 1, the OEB made provision for OPG and its counterparties on certain contracts related to the Darlington Refurbishment Project, namely Candu Energy Inc. (Candu), and SNC Lavalin Nuclear Inc. and the Aecon Construction Group Inc. Joint Venture (SNC/Aecon JV), to request confidential treatment for information of concern to them that was contained in the contracts (DRP Contracts)¹, associated contract summaries (DRP Contract Summaries)² and certain reports (DRP Reports)³.

In the Decision on Confidential Filings and Procedural Order No. 3, dated November 1, 2016, the OEB granted confidentiality for certain information in the DRP Contracts and DRP Reports and noted that it did not have sufficient information to make a determination on other matters. Accordingly, the OEB invited further submissions from OPG, SNC/Aecon JV and Candu, in respect of the matters for which it needed additional information. The specific schedules for which the OEB was seeking additional information were identified in the OEB's Decision.

¹ The contracts and counterparties are the following:

- (i) Engineering Procurement Construction Agreement for Re-tube and Feeder Replacement with SNC/Aecon JV (EPC Contract for RFR)
- (ii) Engineering Services and Equipment Supply Agreement for Turbine Generators Refurbishment Project with Alstom Power and Transport Canada Inc. (ESES for Turbine Generators)
- (iii) Engineering Procurement and Construction Agreement for Turbine Generator Refurbishment Project with SNC/Aecon JV (EPC for Turbine Generators)
- (iv) Engineering, Procurement and Construction Agreement for the Darlington Refurbishment Steam Generator Project with Candu/BWXT JV (EPC Contract for Steam Generators)
- (v) Extended Master Services Agreement with the SNC/Aecon JV (ES MSA)

² The DRP Contract Summaries are:

- (i) Summary of EPC Contract for RFR with the SNC/Aecon JV
- (ii) Summary of ES MSA with the SNC/Aecon JV
- (iii) Summary of EPC Contract for Steam Generators with Candu/BWXT JV

³ The DRP Reports include:

- (i) BMCD/Modus Report on Release Quality Estimate
- (ii) KPMG Report on Release Quality Estimate
- (iii) Expert Panel Report on Class 2 Estimate
- (iv) BMCD/Modus Final Quarterly Report Oversight Report to the OPG Board of Directors

Specifically, the OEB stated:

For the remainder of the information in the DRP Contracts, DRP Contract Summaries and DRP Reports for which confidentiality is requested, the OEB requires additional information as set out in section 5.1.4(a) of the Practice Direction before it can make its decision. That is, the OEB requires the parties seeking confidential treatment to elaborate on “the reasons why the information at issue is considered confidential and the reasons why public disclosure of that information would be detrimental.” In addition to the information requested under section 5.1.4(a) of the Practice Direction, the OEB requires that Candu and the SNC/Aecon JV, in their respective submissions, comment on the following: (i) Why should the information in the related DRP Contracts, DRP Contract Summaries and DRP Reports be treated as confidential given that all the major contracts related to the DRP have been executed? In supplying all of this information the OEB expects parties requesting confidentiality will provide clear and detailed reasons that will permit the OEB to make a final determination on these matters.

OPG has requested the redaction of certain information in the ESES for Turbine Generators with Alstom, the ES MSA with the SNC/Aecon JV and the EPC Contract for Steam Generators with Candu/BWXT, largely on basis of the request for confidentiality by the SNC/Aecon JV. The OEB requires that OPG provide detailed reasons explaining (i) why the information in the ESES for Turbine Generators with Alstom should be treated confidential when Alstom has not claimed confidentiality for the information? and, (ii) why the information in the noted contracts should be treated as confidential considering that all of the major DRP Contracts have been negotiated?

In respect of the DRP Reports, the OEB granted confidentiality for the information in the DRP Reports, except for information contained on page 66 of the KPMG Report on Release Quality Estimates and for information contained on page 18 of the Expert Panel Report on Class 2 Estimate, as this information was related to the SNC/Aecon JV's overall request for which the OEB had sought further information.

Pursuant to the OEB's Decision on Confidential Filings and Procedural Order No. 3, the OEB received submissions from OPG and the SNC/Aecon JV. Candu did not file a submission.

OEB Staff Submission

Confidentiality Request of the SNC/Aecon JV

OEB staff does not object to the SNC/Aecon JV's request for confidentiality for information in the three contracts⁴ that it has executed with OPG and the relevant information in the noted reports⁵, except for certain items noted below for which OEB staff requests further clarification.

OEB staff in its submissions dated August 31, 2016 and filed pursuant to Procedural Order No. 1 did not object to the requests for confidentiality in respect of the DRP Contracts, DRP Contract Summaries and DRP Reports. OEB staff submitted that the OEB should grant the request because the subject information had previously been granted confidential treatment by the Information and Privacy Commissioner of Ontario in Order PO-3311, dated February 25, 2014, or was "equivalent or analogous" to information that had been granted confidential treatment in Order PO-3311. The OEB however determined that while it is informed by the IPCO decision, it must make its own determination on confidentiality and ordered OPG, SNC/Aecon JV and Candu to file further information in relation their requests.

OEB staff has reviewed the reasons provided by the SNC/Aecon JV in its submissions dated November 11, 2016, and does not object to the SNC/Aecon JV's request for confidentiality for information in the contracts and the relevant reports. OEB staff accepts the reasons provided by the SNC/Aecon JV with respect to the limited size of the nuclear industry in Ontario, the level of competition in the nuclear industry and the harm that public disclosure of the information may cause to the SNC/Aecon JV. OEB staff also accepts that the redacted information is commercially sensitive and its public disclosure may cause prejudice to the SNC/Aecon JV in its on-going negotiations with other clients, such as Bruce Power LP, which is also undertaking a major refurbishment project.

OEB staff invites the SNC/Aecon JV to clarify its request for confidentiality in respect of the information in Bullets 11 and 12 in Amendment #4 to the EPC Contract for RFR, and

⁴ The contracts and counterparties are the following:

- (i) Engineering Procurement Construction Agreement for Re-tube and Feeder Replacement with SNC/Aecon JV (EPC Contract for RFR)
- (ii) Engineering Procurement and Construction Agreement for Turbine Generator Refurbishment Project with SNC/Aecon JV (EPC for Turbine Generators)
- (iii) Extended Master Services Agreement with the SNC/Aecon JV (ES MSA)

⁵ KPMG Report on Release Quality Estimates, p. 66 and Expert Panel Report on Class 2 Estimate, p. 18.

Bullets 5 and 7 in Amendment #5 to the EPC Contract for RFR, in its reply submission. OEB staff observes that the noted information has not been redacted in the contract

With respect to the information in the related DRP Contract Summaries, OEB staff observes that the SNC/Aecon JV has not explicitly explained why the information in the contract summaries (Summary of EPC Contract for RFR with the SNC/Aecon JV and Summary of ES MSA with the SNC/Aecon JV) needs to be treated as confidential. OEB staff submits that the SNC/Aecon JV may wish to address this matter in its reply submission, especially with respect to the redactions noted at page 5 of the Summary of EPC Contract for RFR with the SNC/Aecon JV.

Lastly, with reference to the redactions at pages 100-102, 106 -107, 969 of 1809 of the EPC Contract for RFR (and in respect of the other two contracts), OEB staff submits that the SNC/Aecon JV may wish to comment on whether it would be reasonable to redact the information on a more selective basis, i.e. only redacting the critical numbers while leaving the text largely un-redacted or very selectively redacted.

Submissions of OPG

OEB staff observes that the redactions proposed by OPG to the ESES Contract for Turbine Generators with Alstom Power and Transport Canada Inc. (Alstom) are limited to the sections that deal with Economic Cost Adjustments. The information identifies the mechanisms by which certain costs are adjusted. While OEB staff understands why such information needs to be treated as confidential in the context of the contracts with the SNC/Aecon JV, where the SNC/Aecon JV has submitted that public disclosure of the information could harm its competitive position in on-going negotiations, OEB staff seeks clarification on why the information on Economic Cost Adjustments should be treated as confidential when Alstom has not claimed confidentiality for the information. Further, OEB staff invites OPG to clarify the following: “OPG submits that if the OEB rules that this type of information relating to the SNC/Aecon JV and Candu should be protected, then it should be protected for the Turbine Generator ESES Contract as well; if not for the SNC/Aecon JV and Candu, then not for the TG ESES Contract either.”

All of which is respectfully submitted