

**EB-2016-0152 - Ontario Power Generation Inc.
Application for payment amounts for the period from January 1, 2017 to
December 31, 2021**

SECOND REPLY OF THE SNC/AECON JV ON ITS CONFIDENTIALITY REQUEST

Background

1. In response to the SNC/Aecon JV's Supplementary Written Submissions on Confidentiality and supporting Witness Statement dated November 11, 2016 submitted pursuant to Procedural Order No.3 dated November 1, 2016, only Board Staff filed a responding Submission on Confidential Filings dated November 18, 2016:.
2. This is the SNC/Aecon JV's Reply to Board Staff's Submission. This Reply also addresses the SHC/Aecon JV's interests in reply to the related issue raised by Board Staff's Submission dated November 21, 2016 pursuant to Procedural Order No. 4, with respect to the redactions applied by OPG to its response to interrogatory Response L-04.3-15 SEC 023.
3. Those Submissions raise three issues of concern to the SHC/Aecon JV, as follows.

Incentives and Disincentives

4. Paragraph 12(f) of the SNC/Aecon JV's November 11 Written Submissions and para. 25 of the supporting Witness Statement advanced a claim to confidentiality with regards to certain provisions in the EPC Contract for RFR related to incentives and disincentives. While this claim was supported in principle, in that this type of information in contracts is normally treated as confidential by the SNC/Aecon JV and its component companies and competitors for the reasons set out, in the specific context of the EPC Contract for RFR the SHC/Aecon JV has agreed with OPG not to maintain the usual claim for confidentiality for this category of information. That agreement with OPG was

inadvertently overlooked at the time of the SNC/Aecon JV's November 11 filings. However, it has been reflected in OPG's filings since May 2016, and as a result (as the Board Staff Submission dated November 18 points out) this information is not redacted in the EPC Contract for RFR and related documents filed by OPG.

5. Accordingly, for the purposes of the EPC Contract for RFR and this proceeding only, the SNC/Aecon JV hereby withdraws its claim for confidentiality protection with respect to this category of information only.

Redactions Applied to DRP Contract Summaries

6. On page 4 of its Submission dated November 18, Board Staff invites the JV to clarify why information in the DRP Contract Summaries is redacted and needs to be treated as confidential.

7. In principle, the reasons for confidential treatment of information are the same, whether the information is found in the DRP Contracts, themselves, or in contract summaries, consultants' reports, or other documents, and those reasons are as set out in the filings by the SNC/Aecon JV. Specifically, the SNC/Aecon JV seeks confidential treatment only for those portions of contract summaries, consultants reports, or other documents that would, if disclosed, either directly reveal to the SNC/Aecon JV's competitors, or enable them to infer, the redacted content of the contractual provisions that have been redacted as identified in the filings by the SNC/Aecon JV.

8. The SNC/Aecon JV believes the redactions to contract summaries, consultants' reports, or other documents have been applied by OPG on that basis, and the SNC/Aecon JV is generally satisfied with the results.

The Extent and Degree of Selectivity of Certain Redactions

9. The same page 4 of Board Staff's Submission dated November 18 also raises a question of the reasonableness of redacting certain pages of the EPC Contract for RFR more selectively, and a similar question is raised by Board Staff's November 21 Submission relating to IR L-04.3-15 SEC 023.

10. As a general point of principle, the SNC/Aecon JV does not accept that any general distinction can properly be drawn on the basis that information consists of "critical numbers" as opposed to "text", as may be suggested by Board Staff. Indeed, as

is repeatedly emphasized in (among others) paragraphs 11, 20, 21, 22, 23 and 24, of the Witness Statement supporting the SNC/Aecon JV's confidentiality requests, it is quite often not the particular numbers, but rather the methodologies, mechanisms, calculations, classifications, technology choices and innovations that lie behind those critical numbers, that are the truly sensitive information deserving of confidentiality protection.

11. Similarly, and for the same reasons, a distinction between information of a general nature and more specific information may not be useful.

12. Again, the SNC/Aecon JV believes the redactions applied by OPG generally reflect an appropriately selective approach, and the SNC/Aecon JV is generally satisfied with the results.

Conclusions – a Process for Refinement of Redactions Made

13. That said, the SNC/Aecon JV does recognize that the extent of redaction in particular cases must reflect a balance of factors, including the generality of the information, the degree of commercial sensitivity involved, the degree of public interest in its content, and the intelligibility of the visible information after appropriate redactions are applied. The SNC/Aecon JV does not believe that public written submissions are an appropriate means to fine tune these issues.

14. However, if there are specific areas where the further refinement of redactions may serve a significant interest without undue sacrifice of its commercial interests, the SNC/Aecon JV is prepared to engage in any further confidential process which may be directed by the Board to address them.

ALL OF WHICH IS RESPECTFULLY SUBMITTED. November 25, 2016



M. Philip Tunley