Ontario Energy Board

Commission de l'énergie de l'Ontario

EB-2016-0152

Ontario Power Generation Inc.

Application for payment amounts for the period from January 1, 2017 to December 31, 2021.

DECISION ON CONFIDENTIAL FILINGS AND PROCEDURAL ORDER NO. 3

November 1, 2016

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.

OPG is requesting confidential treatment for certain information that has been provided as part of its application. OPG's request for confidentiality was set out in letters dated May 27, 2016 and July 29, 2016 and specifically involves 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
6. Darlington Refurbishment Project (DRP) Attachments
    a. DRP Contract Summaries
    b. DRP Contracts
    c. DRP Reports
    d. D2O Business Case Summary
    e. Concentric DRP Engagement Letter
    f. Pegasus-Global Engagement Letter
7. 2014 Income Tax Returns

With respect to the Business Plan and Business Planning Instructions, OPG is also proposing to make certain permanent redactions without any disclosure except to the OEB (the OEB Review Only Documents). OPG also proposed redactions to the Technical Conference transcript dated July 9, 2014 from the last payment amounts proceeding, EB-2013-0321. These matters are addressed later in this Decision.

In Procedural Order No. 1, the OEB made provision for OPG's counterparties on certain DRP Contracts, namely Babcock & Wilcox Canada Ltd. (BWXT), Candu Energy Inc. (Candu), and SNC Lavalin Nuclear Inc. and Aecon Construction Group Inc. Joint Venture (SNC/Aecon JV), to request confidential treatment for information of concern to them. The OEB also granted OPG's request for its 2014 Income Tax Returns to be treated as confidential in their entirety. The Procedural Order set out a schedule for submissions on confidentiality. The OEB also noted that it would not accept any submissions on the OEB Review Only Document redactions and the 2014 Income Tax Returns.

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 contract containing "equivalent or analogous" information to those which were found to be exempt from public disclosure under the *Freedom of Information and Protection of Privacy Act* (FIPPA) by the Information and Privacy Commissioner of Ontario (IPCO) in Order PO-3311 dated February 25, 2014.

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 for confidential treatment for only those parts of the contracts that have been recognized by the IPCO Order PO-3311 to be exempt from public disclosure and for portions containing "equivalent or analogous information" in provisions of the contracts that were not at issue at the time Order PO-3311 was made.

The OEB received submissions from the School Energy Coalition (SEC), Environmental Defence and OEB staff.

OEB staff submitted that it does not object to the requests for confidentiality filed by OPG, Candu or the SNC/Aecon JV.

SEC submitted that based on a preliminary review, OPG's request for confidentiality appears consistent with its requests in previous proceedings, except as it relates to the

DRP Contracts and related Summaries. In respect of the redactions proposed in the DRP Attachments, SEC submitted that based on the adequacy of the information provided, SEC is unable to properly assess what information should be accorded confidential treatment. SEC submitted that the SNC/Aecon JV and Candu should be required to remedy this deficiency in their reply submissions and parties should have further opportunity to comment on those submissions. SEC's arguments in relation to the DRP Attachments are addressed later in this Decision.

Environmental Defence submitted that the redactions are "extensive" and that it does not agree with them. Using the Business Case Summaries as an example, Environmental Defence submitted that it is unable to assess if the redactions are appropriate because OPG has not provided sufficient information to assess each specific redaction and that the reasons explaining why the redactions are needed are inadequate.

The OEB received reply submissions from OPG and the SNC/Aecon JV. The submissions of the SNC/Aecon JV and OPG on the DRP Attachments are addressed later in this Decision. In response to the submissions of Environmental Defence, OPG submitted that it disagreed with the submissions and that the information it has provided in support of its request for confidentiality is consistent with what it has provided in prior proceedings and has previously been regarded as sufficient. OPG also submitted that the redactions are minimal and adequately detailed.

OPG maintains that the information it has provided is sufficient and consistent with what the OEB has accepted in the past. This Panel would have been better assisted if OPG had provided more detailed reasons as to why certain information is being redacted. In future, OPG should consider including a table as part of its confidential filings that identifies, with respect to each document, the page numbers where the redactions are located and the specific reasons for confidentiality alongside it.

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

OPG is requesting 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. OPG states 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. OPG also notes that the OEB granted OPG's request for confidential treatment of similar combined information in its last payment amounts application, EB-2013-0321.

The OEB grants confidential treatment for the noted sections in the Business Plan and Business Planning Instructions. The OEB has reviewed the redactions and is satisfied that the redactions relate to the combined regulated and unregulated assets of OPG. The OEB agrees that this information when combined with other publicy available information could result in the disclosure of information pertaining to the unregulated business.

OEB Review Only Documents

OPG is also proposing that certain information in the Business Plan and the Business Plan Instructions be permanently redacted and only be disclosed to the OEB. OPG states that the redactions relate solely to OPG's unregulated business and facilities and reflect no aspect of its regulated business. OPG also states that the OEB has previously treated this information as confidential.

With respect to the OEB Review Only Documents, the OEB has reviewed the permanent redactions and is satisfied that they relate to OPG's unregulated business and facilities and are therefore not relevant to this proceeding. The OEB therefore grants confidential treatment in the form of permanent redaction for information in the Business Plan and Business Planning Instructions as it relates to OPG's unregulated businesses and facilities.

Revenue Comparison Tables (item 3)

OPG is seeking confidential treatment for information in the Revenue Comparison Tables that relates to "sales and proceeds from its heavy water sales business or aggregate information that would allow determination of such information". OPG maintains that the redacted information is commercially sensitive and that its disclosure would prejudice OPG's competitive position and would interfere significantly with any future negotiations. OPG also notes that this information was treated as confidential in OPG's last two payment amounts proceedings, EB-2010-0008 and EB-2013-0321.

OEB staff stated that it agreed with OPG that the information is of a commercially sensitive nature and submitted that the information should be treated as confidential as it has been in the two prior proceedings.

The OEB grants confidential treatment for the Revenue Comparison Tables on the grounds that public disclosure of the redacted information could prejudice OPG's competitive position and could impact future negotiations being carried out by OPG.

Concentric Cost of Capital Engagement Letter (item 4)

OPG is seeking confidential treatment for information in the engagement letter that relates to the firm's billing rates and maintains that it is commercially sensitive information in relation to a third party. OPG states that the public disclosure of the redacted information could prejudice the firm's competitive position and also notes that similar information was treated as confidential in its last payment amounts proceeding, EB-2013-0321.

OEB staff did not object to OPG's request and submitted that Appendix A of the OEB's Practice Direction on Confidential Filings ("Practice Direction") favours the confidential treatment of this type of information.

The OEB grants confidential treatment to the Concentric Cost of Capital Engagement Letter on the grounds that the information is of a commercially sensitive nature relating to a third party. The OEB accepts that the disclosure of billing rates could prejudice the consultant's competitive position.

Nuclear Business Case Summaries (item 5)

OPG is requesting confidential treatment for sections in the nuclear Business Case Summaries that it maintains is commercially sensitive information, such as "contingencies, certain costs for contracted or purchased work or materials, or aggregate information that would allow determination of commercially sensitive information". OPG states that the public disclosure of redacted information could prejudice OPG's competitive position and significantly interfere with negotiations and existing relationships. OPG also notes that this information was previously treated as confidential by the OEB.

OEB staff did not object to OPG's request and submitted that it agreed with OPG that the information is commercially sensitive and its disclosure could be detrimental to OPG and could adversely affect future negotiations.

The OEB grants confidential treatment for the Business Case Summaries. The OEB notes that the request for confidentiality relates to three types of information – contingencies, costs for contracted or purchased work or materials, and aggregate information that could allow for disclosure of commercially sensitive information. The OEB accepts that the information on contingencies and costs for contracted or purchased work or materials is of a commercially sensitive nature and that public disclosure of this information could be detrimental to OPG in future negotiations.

With respect to the third category of redactions, while the OEB will accept these types of redactions, it is of the view that in some limited instances, OPG may have redacted more than is necessary. For example, in the Business Case Summary at Tab 17 of the Confidential Binder Vol. 1, OPG has redacted information on OPG Project Management Costs in the table titled "Summary of Estimates" on page 10. This table appears in almost every Business Case Summary but the information on OPG costs has consistently not been redacted. In the OEB's assessment, only one number related to OPG Project Management Costs needs to be redacted in the referenced table. While, the OEB will not require OPG to re-file the Business Case Summaries, OPG should consider addressing this comment in future fees case filings.

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

OPG and its counterparties are requesting confidential treatment for sections in five DRP Contracts and three Contract Summaries. 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)

The three 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

In response to Procedural Order No. 1, Candu filed a confidentiality request on August 24, 2016 in respect of certain parts of the EPC Contract for Steam Generators. The SNC/Aecon JV filed a similar confidentiality request on August 24, 2016, but in respect of three contracts it has entered into with OPG. Alstom Power and Transport Canada Inc. (Alstom) and BWXT did not file submissions on the matter.

Candu seeks confidential treatment only for those portions of the EPC Contract for Steam Generators containing "equivalent or analogous" information to those which were

found to be exempt from public disclosure in accordance with section 17(1) and section 18(1) of FIPPA by the IPCO in Order PO-3311 dated February 25, 2014. Like Candu, the SNC/Aecon JV asks for confidential treatment for only those parts of the contracts that have been recognized by the IPCO Order PO-3311 to be exempt from public disclosure and for portions containing "equivalent or analogous information" in provisions of the contracts that were not at issue at the time Order PO-3311 was made.

Candu and the SNC/Aecon JV both note that 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 if the OEB grants confidential treatment for parts of the Candu and SNC/Aecon JV contracts, the same treatment be afforded to its DRP Contracts with contractors other than Candu and the SNC/Aecon JV.

OPG is also proposing certain redactions to the ES MSA that are unrelated to the SNC/Aecon JV request. These redactions relate to pricing information in the contract. OPG submitted that it uses three contractors who compete amongst each other for this type of work and therefore the disclosure of pricing information would damage OPG's competitive position.

OEB staff noted 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 submitted that it would be appropriate for the OEB to accept the proposed redactions that are covered by IPCO's Order.

SEC's submissions on the DRP Contracts and DRP Contract Summaries were primarily in relation to the SNC/Aecon JV's and Candu's request for confidentiality. SEC submitted:

> For the purposes of this proceeding, SEC takes no position on the appropriateness of using an IPC decision as the sole basis for the Board granting confidential treatment to certain information. SEC does take issue with how that decision is being applied to the information that SNC/AECON JV and Candu are seeking confidential treatment in this proceeding. It is not sufficient to simply say the information is consistent with that identified as not requiring disclosure under FIPPA. SNC/AECON JV and Candu must show directly how it is consistent,

> and how they specifically (as opposed to OPG) would be able to utilize the FIPPA exemption themselves.

SEC argued that section 18(1)(c) of FIPPA cannot be a basis for the OEB granting confidentiality status since it is the SNC/Aecon JV and Candu that are seeking the confidentiality over most of this information and not OPG. SEC explained that section 18(1)(c) is about protecting the disclosure of information that would harm the economic interests or competitive position of a government institution which is an entity under the purview of FIPPA (i.e. OPG). Section 18(1)(C) does not address the interests of a third party (i.e. the SNC/AECON JV or Candu). The interests of third parties are covered under 17(1)(a) or (c) of FIPPA.

Specifically, with respect to the DRP Contracts, SEC submitted that some of the information may no longer be confidential due to the passage of time and that the SNC/Aecon JV and Candu have not explained why the information should continue to be treated as confidential. SEC also submitted that the SNC/Aecon JV has not explained why certain aspects of the Re-tube and Feeder Replacement contract can be disclosed while other sections cannot.

In respect of the DRP Contract Summaries, SEC submitted that the link between the confidential information in the DRP Contracts and DRP Contract Summaries is not obvious and no reasons were provided other than that the redactions are consistent with the redactions in the related contract. SEC submits that the request for confidentiality in respect of the DRP Contract Summaries should be denied.

In response, OPG submitted that the redactions that it is seeking are independent of those sought by the SNC/Aecon JV or Candu under section 17(1)(a) and (c) of FIPPA. OPG further stated:

> OPG is not independently seeking, except as OPG has previously submitted with respect to the information in the Extended Services Master Service Agreement, any protections related to section 18 of FIPPA per the IPC decision or otherwise. OPG takes no position on whether protection of the subject information as claimed by the SNC/Aecon JV or Candu is available to them under section 18 of FIPPA or otherwise.

In response to the objections raised by SEC, the SNC/Aecon JV reiterated its position that if any party were to challenge the findings of the IPCO in Order PO-3311, then the OEB should make provision for the filing of additional evidence and submissions. Further, the SNC/Aecon JV submitted that the OEB should address “the propriety of the SNC/Aecon JV’s reliance on Order PO-3311”.

The starting point for the OEB's consideration of a request for confidentiality is the Practice Direction. The decision of the IPCO is not binding on the OEB, and the OEB's decision will be made in accordance with its own practices and after considering previous OEB decisions.

That is not to say that the IPCO decision is irrelevant to this consideration. The language of section 17 of FIPPA closely mirrors the language of part (a) of Appendix A in the Practice Direction ("Considerations in Determining Requests for Confidentiality"). Part (e) of Appendix A further notes that "whether the Information and Privacy Commissioner … has previously determined that a record should be publicly disclosed or kept confidential" is a relevant consideration for the Board in assessing confidentiality requests. The OEB has therefore considered the IPCO decision, but is not bound by it.

Having determined that the OEB must make its own determinations on confidentiality, the OEB is of the view that it does not have sufficient information to make a determination on all matters in the DRP Contracts. Therefore, the OEB has considered those aspects of the request that it has sufficient information to decide and with regards to the rest, it is making provision for the filing of additional information.

The OEB grants confidentiality for banking information, tax registration numbers and WSIB registration numbers. The OEB notes that Appendix B, section 1 of the Practice Direction favours confidential treatment of this type of information. The OEB also grants confidentiality for names of individuals, wherever they appear in the DRP Contracts. The OEB notes that section 4.3.1 of the Practice Direction allows for the confidential treatment of this type of information.

The OEB grants confidentiality for the pricing information in the ES MSA that is specifically requested by OPG[1]. The OEB accepts that the pricing information is commercially sensitive given that OPG has three ES MSA-type contractors who compete for work offered by OPG at its nuclear facilities.

Using the information provided in the requests for confidentiality submitted by the SNC/Aecon JV, Candu and OPG, the OEB has prepared the table below that identifies the sections for which confidentiality is granted.

[1] OPG Reply Argument dated September 9, 2016, p.13 and OPG's May 27, 2016 letter to the OEB, page 5.

EPC CONTRACT FOR RFR WITH SNC/AECON JV

ITEM NO.	SECTIONS OF CONTRACT FOR WHICH CONFIDENTIALITY IS GRANTED	PDF PAGE NOS.
1	Section 2.15(g) - WSIB No. only	82
2	Section 7.7(a) - Tax Filing account numbers only	126
3	Section 7.4(a) - Tax Filing account numbers only	350
4	Project Organization and Key Personnel	708
5	Exhibit 6.1 – Banking Information only	991
	AMENDMENT #2	
5	Exhibit 6.1 – Banking Information only	1225
	AMENDMENT #3	
6	Exhibit 6.1 – Banking Information only	1462
	AMENDMENT #4	
7	Exhibit 6.1 – Banking Information only	1628
	AMENDMENT #5	
8	Exhibit 6.1 – Banking Information only	1805

EPC CONTRACT FOR TURBINE GENERATOR WITH SNC/AECON JV

ITEM NO.	SECTIONS OF CONTRACT FOR WHICH CONFIDENTIALITY IS GRANTED	PDF PAGE NOS.
1	Section 2.14(g) - WSIB No. only	83
2	Section 7.6(a) – Goods and Services Tax/Harmonized Sales Tax No. only	151
3	Schedule 2.2(a) – Organizational Chart	209

ES MSA WITH SNC/AECON JV

ITEM NO.	SECTIONS OF CONTRACT FOR WHICH CONFIDENTIALITY IS GRANTED	PDF PAGE NOS.
1	Section 3.9(f) - WSIB No. only	44
2	Section 8.12(a) – Tax information only	82
3	Section 1.1(ggg) - Overhead percentages only) [Requested by OPG & SNC/Aecon JV]	14
4	Section 1.1 (rrr) – [Requested by OPG & SNEC/Aecon JV]	14
5	Section 8.1 (f), (g) and (i) - Agreed to administrative fees in respect of goods, subcontracts and equipment rental [Requested by OPG & SNC/Aecon JV]	72, 73
6	Schedule 4 Reimbursable labour cost table [Requested by OPG & SNC/Aecon JV]	314, 315

EPC CONTRACT FOR STEAM GENERATOR WITH CANDU/BWXT JV

ITEM NO.	SECTIONS OF CONTRACT FOR WHICH CONFIDENTIALITY IS GRANTED	PDF PAGE NOS.
1	2.14(g) - WSIB No. only	78
2	7.6(a) - GST/HST Registration No. only	139
3	2.2(a) – Organizational Chart names of individuals only	207

ESES FOR TURBINE GENERATOR WITH ALSTOM

ITEM NO.	SECTIONS OF CONTRACT FOR WHICH CONFIDENTIALITY IS GRANTED	PDF PAGE NOS.
1	Section 2.12(e) - WSIB No. only	58
2	Section 7.6(a) - Tax Registration No. only	114

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 Asltom 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.

The OEB requires additional information on the following matters related to the DRP Contracts.

EPC Contract for RFR with SNC/Aecon JV

- Section 3.11
- Section 4.6
- Exhibit 1.1(jjjjjjj) – Tooling Fixed Price Reduction Methodology
- Exhibit 1.1(qqqqqqq) – Tooling Performance Guarantee
- Exhibit 3.11 – Illustration: Productivity Gains
- Exhibit 4.7 – Economic Cost Adjustment
- Attachment 1 to Exhibit 6.1 – Pricing – Execution Phase Fixed Fee Worksheet
- Attachment 2 to Exhibit 6.1 – Pricing – Definition Phase Fixed Fee Worksheet
- Exhibit 6.3(a) – Cost Allocation Table
- Exhibit 8.2(a) Illustration and Examples

Amendment #2:

- Attachment 1 to Exhibit 6.1 – Pricing – Execution Phase Fixed Fee Worksheet
- Attachment 2 to Exhibit 6.1 – Pricing – Definition Phase Fixed Fee Worksheet

Amendment #3

- Exhibit 4.7 – Economic Cost Adjustment
- Attachment 1 to Exhibit 6.1 – Pricing – Execution Phase Fixed Fee Worksheet
  Attachment 2 to Exhibit 6.1 – Pricing – Definition Phase Fixed Fee Worksheet

Amendment #4

- Bullet 9: Changes to Section 3.11 (Productivity Gain Expectations and Experience-Based Schedule Adjustments) and Exhibit 3.11 (Sample Calculation for Productivity Gains Formula)
- Bullet 11: Changes to Section 8.2(a)(2) (Execution Phase Target Cost) and Exhibit 8.2 (a) (Illustration and Examples: Execution Phase Target Cost – Incentives/Disincentives)
- Bullet 12: Change to Section 8.2(b)(2) (Calculation of Execution Phase Cost Incentive) and Section 8.2(c)(2) (Calculation of Execution Phase Cost Disincentives)
- Exhibit 3.11
- Exhibit 6.1 – Pinpoint redactions

Amendment #5

- Bullet 5 – Changes to Article 8 – Incentives and Disincentives – Cost and Schedule
- Bullet 7 – Change to Section 8.6 (Sub-Caps and Overall Limits on Incentives and Disincentives)
- Exhibit 6.1 – Pinpoint redactions

EPC Contract for Turbine Generators with SNC/Aecon JV

- Section 5.6 – Adjustment to Reimbursable Work Fixed Fee
- Schedule 5.7 – Economic Cost Adjustment; Attachment 7.1(6) – Definition Phase Fixed Fee
- Attachment 7.1(9) – Execution Phase Fixed Fee
- Attachment 7.1(10) – only with respect to the Overhead and Profit component
- Attachment 7.1(13) – Cost Allocation Table

ES MSA with SNC/AECON JV

- Section 1.1(jjj)
- Section 5.2(a)
- Section 8.1(g)
- Section 8.12(a)
- Schedule 5 – Reimbursable Non Labour Costs Tables

(The OEB has excluded the schedules which overlapped with the schedules approved by the OEB earlier in this decision.)

EPC Contract For Steam Generator Candu/BWXT

- Section 5.6 – Adjustment to Reimbursable Work Fixed Fee
- Section 8 – Incentives and Disincentives
- Section10.7 – Limitation of Liability; Schedule 5.7 – Economic Cost Adjustment

Attachments (to Schedule 7.1):

- 7.1(1) – Contract Price (Escalated)
- 7.1(3) - Fixed Price Work &Firm Price Work – Primary Side
- 7.1(4) – Cost Flow for Fixed Price Work – Primary Side
- 7.1(5) – Target Cost for Reimbursable Work – Primary Side
- 7.1(6) – Cost Flow for Reimbursable Work – Primary Side
- 7.1(7) – Reimbursable Work Fixed Fee – Primary Side
- 7.1(14) – Contingency Work [for Primary Side Cleaning only]
- 7.1(17) – Reimbursable Costs with No Mark Up [estimated costs only]
- 7.1(18) - Milestone Payment Schedule for Fixed Price Work and Firm Price Work – Primary Side [payment breakdown only]

ESES For Turbine Generator with ALSTOM

- Schedule 5.6 Economic Cost Adjustments
- Amendment No 1, Section 7 Change to Economic Cost Adjustment

DRP Reports (item 6c)

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

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.

SEC submitted that the OEB should not grant the request for confidentiality in relation to the DRP Reports. SEC submitted that the reasons for the request are not clear and that

the SNC/Aecon JV and Candu did not even reference the DRP Reports in their request for confidentiality. OEB staff submitted that OPG's request is reasonable, as disclosure could prejudice the competitive position of OPG's contractors. In its reply submissions, OPG identified the specific redactions that it was seeking.

As noted above there are two types of redactions that are proposed for the reports. First, OPG is requesting confidential treatment for information in the DRP Reports as it relates to the performance of vendors. The specific information that OPG is proposing to redact is noted in its reply submission. The OEB grants confidential treatment for the noted information in the DRP Reports. The OEB agrees that information on the performance of vendors could potentially prejudice the competitive position of the parties involved. Public disclosure of the commentary on vendor performance could damage contractual relationships and cause reputational harm to contractors.

OPG is proposing to file in confidence the full Work-stream 2 report which is part of the KPMG Report on Release Quality Estimates. OPG states that the report consists of commercially sensitive information regarding contractors and contains estimating methodologies throughout. Redacting the information would render the report unhelpful. The OEB accepts the concerns noted in relation to the Work-stream 2 Report and will treat it as confidential in its entirety.

The second category of redactions relates to information that OPG has redacted stating it is consistent with information that SNC/Aecon JV has requested to be treated confidential as part of its August 31, 2016 submissions. These redactions are summarized below:

- Exhibit D2-2-8, Attachment 3 (KPMG Report), page 66
- Exhibit D2-2-8, Attachment 4 (Expert Panel Report), page 24

The information in the KPMG Report relates to specific percentages for contract risk sharing. The information in the Expert Panel Report pertains to information related to Unit-over-Unit Improvements. Given that this information is related to the SNC/Aecon JVs request for confidentiality, the OEB will decide this matter after it has received the additional information that is requested in this Decision and Order.

D2O Business Case Summary (item 6d)

As with the nuclear Business Case Summaries, OPG is requesting confidential treatment for sections in the D2O Business Case Summary that it maintains is commercially sensitive information, such as "contingencies, certain costs for contracted or purchased work or materials, or aggregate information that would allow determination of commercially sensitive information". OPG states that the public disclosure of redacted

information could prejudice OPG's competitive position and significantly interfere with negotiations and existing relationships. OPG is also requesting confidential treatment for information in the D2O Business Case Summary that contains comments relating to the performance of vendors that are currently participating in the DRP and notes that this information was previously treated as confidential by the OEB.

OEB staff submitted that public disclosure of the redacted information would be detrimental to OPG and agreed that it could harm future negotiations.

The OEB grants confidential treatment for the D2O Business Case Summary, for the same reasons as the other Business Case Summaries. In respect of information related to the performance of vendors, the OEB will treat this information as confidential as public disclosure of this information could harm future negotiations and could potentially cause reputational harm to the vendors involved.

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

OPG is seeking confidential treatment for information in the engagement letters that relates to the billing rates at the respective firms and maintains it is commercially sensitive information in relation to a third party. OPG states that the public disclosure of the redacted information could prejudice the respective firms' competitive position and notes that similar information was treated as confidential in EB-2013-0321.

OEB staff did not object to OPG's request and submitted that Appendix A of the Practice Direction favours the confidential treatment of this type of information.

The OEB grants confidential treatment for the two referenced engagement letters on grounds that the information is of a commercially sensitive nature relating to a third party.

Technical Conference Transcript in EB-2013-0321, dated July 9, 2014

The SEC filed correspondence on August 23, 2016 requesting that the OEB make available unredacted copies of certain transcripts[2] from the last payment amounts proceeding (EB-2013-0321) related to the DRP. In response, OPG states that the two oral hearing transcripts can be fully disclosed on the public record and that the

[2] The transcripts comprise:
Technical Conference Transcript, Day 4, July 9, 2014
Oral Hearing Transcript, Vol. 15, July 17, 2014
Oral Hearing Transcript, Vol. 16, July 18, 2014

Technical Conference transcript can be disclosed on the public record except for certain sections noted at pages 73, 133, 134 and 165.

OPG states that the redactions requested on page 165 relate to information that the SNC/Aecon JV has requested be treated as confidential in its August 24, 2016 submissions to the OEB. The other redactions pertain to information in the transcript that comments on the performance of a particular contractor in the DRP, or is information that could identify the particular contractor.

With respect to the commentary on the performance of the contractor, OPG states that public disclosure of this information could potentially prejudice the competitive position of the contractor and could adversely impact relations with the contractor. OPG also notes that in EB-2013-0321, the OEB found that the public disclosure of this type of information could cause reputational harm to the contractor.

The OEB did not receive any submissions on this matter.

The OEB will grant confidential treatment for the information contained at pages 73, 133 and 134 of the technical conference transcript. This information relates to the performance of a specific vendor and disclosure of this information could affect the reputation of the vendor, as well as OPG's future negotiations and relationship with this vendor.

The OEB will not grant confidentiality to the section on page 165 for which confidentiality is sought. The information contained therein is of a general nature and is information that exists on the public record of this proceeding. As such the information is not of a confidential nature. Therefore, the OEB has determined that pursuant to section 5.1.10 of the Practice Direction, the redacted information on page 165, lines 4 to 14, of the Technical Conference Transcript in EB-2013-0321, dated July 9, 2014 will be disclosed on the public record. Further, in keeping with section 5.1.14 of the Practice Direction, if OPG or the SNC/Aecon JV wishes to seek review of the OEB's decision, they have five business days from the date of this decision to advise the OEB of their intent to do so. If no such notice is received the OEB will release a revised version of the Technical Conference Transcript reflecting the OEB's decision.

THEREFORE, THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Pursuant to section 5.1.4 (a) of the Practice Direction, the SNC/Aecon JV shall file with the OEB, on or before November 11, 2016, its reasons for the confidentiality request relating to the sections identified in this decision pertaining to the contracts it has entered with OPG, including the reasons why the information should be treated as confidential and the reasons why public disclosure of that information would be detrimental. The SNC/Aecon JV shall also address the additional matters as set out in the OEB's decision.
2. Pursuant to section 5.1.4 (a) of the Practice Direction, Candu shall file with the OEB, on or before November 11, 2016, its reasons for the confidentiality request relating to the sections identified in this decision pertaining to the contract it has entered with OPG, including the reasons why the information should be treated as confidential and the reasons why public disclosure of that information would be detrimental. Candu shall also address the additional matters as set out in the OEB's decision.
3. OPG shall file with the OEB on or before November 11, 2016, its reasons explaining (i) why the information in the ESES for Turbine Generators with Alstom should be treated confidential when Asltom has not claimed confidentiality for the information? and, (ii) why the information for which it is seeking confidential treatment in the noted contracts (ESES for Turbine Generators with Alstom, the ES MSA with the SNC/Aecon JV and the EPC Contract for Steam Generators with Candu/BWXT) should be treated as confidential considering that all of the major DRP Contracts have been negotiated?
4. If intervenors or OEB staff wish to make submissions on the request for confidential treatment by OPG, SNC/Aecon JV and Candu, they shall file such submissions with the OEB and deliver them to and all other parties on or before November 18, 2016.
5. If the party (i.e. OPG, SNC/AECON JV or Candu) requesting confidential treatment wishes to respond to the submissions directed to it, it shall file such submissions with the OEB and deliver them to all other parties on or before November 25, 2016.
6. The information contained at page 165, lines 4 to 14, in the Technical Conference Transcript dated July 9, 2014, shall be disclosed on the public record. Pursuant to section 5.1.14 of the Practice Direction, if OPG or the SNC/Aecon JV wishes to seek review of this aspect of the OEB's decision, they have five business days from the date of the decision to advise the OEB of their intent to do so. If no such notice is received the OEB will release a revised version of the Technical Conference Transcript reflecting the OEB's decision.

DATED at Toronto, **November 1, 2016**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary