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 AND ORDER ON CONFIDENTIALITY

January 31, 2017

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 this decision the OEB addresses OPG's request for the following information to be treated as confidential:

1. Information in Darlington Refurbishment Program (DRP) contracts, contract summaries and reports.
2. Information in certain interrogatory responses and undertaking responses.
3. Portions of the technical conference transcript from November 16, 2016.
4. Information in Exhibit N1-1-1 (Impact Statement).

INFORMATION IN DARLINGTON REFURBISHMENT PROGRAM (DRP) CONTRACTS, CONTRACT SUMMARIES AND REPORTS (ITEM 1)

In Procedural Order No. 1, the OEB made provision for OPG and the parties to its contracts, namely Candu Energy Inc. (Candu) and the SNC Lavalin Nuclear Inc. /Aecon Construction Group Inc. Joint Venture (SNC/Aecon JV), respectively, to request confidential treatment for information of concern to them that was contained in the

contracts (DRP Contracts), associated contract summaries (DRP Contract Summaries) and certain reports (DRP Reports).

The DRP Contracts comprise:

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

The DRP Contract Summaries comprise:

(i) Summary of EPC for RFR
(ii) Summary of ES MSA
(iii) Summary of EPC for Steam Generators

The DRP Reports comprise:

(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

In its Decision on Confidential Filings and Procedural Order No. 3, dated November 1, 2016, the OEB granted confidentiality for information relating to Workplace Safety and Insurance Board (WSIB) registration numbers, tax registration numbers, banking information, names of individuals and certain pricing information in the DRP Reports and indicated that it did not have sufficient information to decide on other matters. Accordingly, the OEB directed OPG, the SNC/Aecon JV and Candu to provide additional information in respect of their confidentiality requests. 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 confidential treatment for 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 24 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.

In keeping with the Decision on Confidential Filings and Procedural Order No. 3, the OEB received the requested information from OPG, the SNC/Aecon JV and Candu.[1] The OEB received submissions from OEB staff on the requests for confidentiality. The OEB did not receive any submissions from other parties. OPG and the SNC/Aecon JV filed their respective reply submissions on November 18, 2016.

In response to the OEB's question, the SNC/Aecon JV set out its reasons explaining why in its view the information in the contracts should continue to be treated as confidential even after contract negotiations had ended. The SNC/Aecon JV submitted that the subject information should continue to be treated as confidential given the fierce competition in Ontario's nuclear industry. It indicated this is primarily because of the industry's small size in terms both of clients and of companies that service them. The SNC/Aecon JV submitted that given the fierce competition, information related to pricing

[1] The submissions of Candu were filed on November 29, 2016, following a request for extension that was granted by the OEB.

methodologies and mechanisms if disclosed could severely undermine its ability to negotiate and participate in future work. The SNC/Aecon JV also noted that the DRP is not the only project that it is participating in and that it continues to bid on other opportunities and expects to be involved in the upcoming Bruce Power refurbishment contracts. The SNC/Aecon JV submitted that its request to protect information is "a function not only of the competitiveness of the supplier overall, but their creativity and effectiveness in structuring and delivering on contractual arrangements that match the characteristics of the particular contractual opportunity presented by a client in terms of risk, return, performance, reliability, and a host of other factors relevant to that engagement."[2]

In respect of the specific redactions that are requested in the DRP contracts and for which the OEB had asked for detailed reasons, the SNC/Aecon JV grouped the information under the categories noted below.

- Productivity
- Fixed Fees
- Tooling Performance
- Cost Adjustment and Escalation
- Allowed and Disallowed Costs
- Incentives and Disincentives
- Mark-up on Sub-contracts

For each category, the SNC/Aecon JV provided reasons explaining why the information should be treated as confidential and why public disclosure of the information would be detrimental to it.

Candu adopted the submissions of the SNC/Aecon JV, noting that the information in the EPC Contract for Steam Generators for which it was seeking confidential treatment was similar to the information in the EPC Contract for RFR.

In respect the ESES Contract for Turbine Generators, OPG submitted that confidential protection is being sought by OPG to be consistent with the redactions requested by the SNC/Aecon JV and Candu. OPG submitted that if the OEB grants the request of those parties then similar information in the ESES for Turbine Generators should also be treated as confidential.

Only OEB staff filed submissions on this matter.

[2] Witness Statement of the SNC/Aecon JV dated November 11, 2016, paragraph 11.

OEB staff submitted that it did not object to the SNC/Aecon JV's request for confidentiality, but invited the SNC/Aecon JV to comment on whether certain sections in the contracts could be more selectively redacted.

In reply the SNC/Aecon JV submitted that the redactions have been applied on a selective basis and that it is open to participating in an OEB process to consider further refinements to certain redactions.

FINDINGS

OPG and its vendors have agreed on approaches to address risk, rewards and continuous improvement. These approaches impact factors such as the cost, schedule and risks of the project that the OEB would find appropriate to explore. It is always the OEB's preference to have evidence on the public record. However, the OEB accepts the argument that to reveal the specific numbers involved could be detrimental to commercial interests. Accordingly the OEB directs that the specific numbers be kept confidential but that the other information concerning the approach to costs, schedule and risks under the contracts be public. In the OEB's view the proposed approach strikes a reasonable balance between the commercial interests of the parties, and the OEB's objectives of transparency and openness, for the benefit of ratepayers.

Accordingly, the following section identifies the information in the DRP Contracts, DRP Contract Summaries and DRP Reports that shall be treated as confidential and the information that shall be disclosed on the public record.

(i) EPC Contract for RFR and Contract Summary (SNC/Aecon JV)

The OEB grants confidential treatment for information in the following schedules:

- Exhibit 1.1 (jjjjjjj) – Tooling Fixed Price Reduction Methodology
- Exhibit 1.1 (qqqqqqq) – Tooling performance Guarantee
- Exhibit 3.11 – Illustration: Productivity Gains
- Attachment 1 to Exhibit 6.1 – Pricing – Execution Phases Fixed Fee Worksheet and Attachment 2 to Exhibit 6.1 – Pricing – Execution Phases Fixed Fee Worksheet
- Exhibit 8.2(a) Illustration and Examples: Execution Phase Target Cost – Incentives/Disincentives
- Amendment # 2 – Attachment 1 to Exhibit 6.1 – Pricing – Execution Phases Fixed Fee Worksheet and Attachment 2 to Exhibit 6.1 – Pricing – Execution Phases Fixed Fee Worksheet

- Amendment # 3 – Attachment 1 to Exhibit 6.1 – Pricing – Execution Phases Fixed Fee Worksheet (pdf page 1463) and Attachment 2 to Exhibit 6.1 – Pricing – Execution Phases Fixed Fee Worksheet
- Amendment # 4 – Exhibit 3.11 – Baseline Outage Durations and Productivity Gains Illustrative Examples
- Amendment # 4 – Exhibit 6.1 – Pricing
- Amendment # 4 – Exhibit 6.1 – Pricing – Definition Phase Fixed Fee Matrix
- Amendment # 4 – Attachment 1 Exhibit 6.1 – Pricing – Execution Phase Fixed Fee Matrix
- Amendment # 4 – Exhibit 8.2(a) Illustration and Examples: Execution Phase Target Cost – Incentives/Disincentives
- Amendment # 5 – Exhibit 6.1 – Pricing
- Amendment # 5 – Attachment 1- Exhibit 6.1 – Pricing – Execution Phase Fixed Fee Matrix
- Amendment # 5 – Attachment 2 to Exhibit 6.1 – Pricing – Definition Phase Fixed Fee Worksheet
- Amendment # 5 – Attachment 3 to Exhibit 6.1 – Pricing – RWPB Fixed Fee Worksheet

The OEB denies confidential treatment for information in the following schedules in the EPC Contract for RFR and requires that the information be disclosed on the public record:

- Exhibit 4.7 – Economic Cost Adjustments (pdf pages 980 – 989)
- Exhibit 6.3(a) – Cost Allocation Table (pdf pages 994 – 1009)
- Amendment # 3 - Exhibit 4.7 – Economic Cost Adjustments (pdf pages 1450-1459)

The OEB grants confidential treatment for only portions of the information in following schedules as described below:

- Section 3.11 Productivity Gain Expectations and Experience-Based Schedule Adjustments (pdf pages 100 to 102)
    - Only the percentage values in the paragraph titled “Productivity Gain Percentage” shall be treated as confidential. The remaining information in the paragraph shall be disclosed on the public record.
    - All of the information in parts (b) and (c) shall be disclosed on the public record.
    - Only the percentage value in Bullet 1 (Neutral Band – Late Side) shall be treated as confidential. The remaining information in Bullet 1 shall be disclosed on the public record.

  - Only the percentage values in Bullet 2 (Late) shall be treated as confidential. The remaining information in Bullet 2 shall be disclosed on the public record.
  - Only the percentage values in Bullet 3 (Later) shall be treated as confidential. The remaining information in Bullet 3 shall be disclosed on the public record.
  - Only the percentage value in Bullet 4 (Neutral Band – Early Side) shall be treated as confidential. The remaining information in Bullet 4 shall be disclosed on the public record.
  - Only the percentage values in Bullet 5 (Early) shall be treated as confidential. The remaining information in Bullet 5 shall be disclosed on the public record.
  - Part (f) shall be treated as confidential.

- Section 4.6 – Adjustment to Fixed Fees (pdf pages 106-107)
  - The first sentence shall be disclosed on the public record (Except...Amendment.). The reminder of the paragraph shall be treated as confidential.

- 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) (pdf pages 1477-1478)
  - Only the percentage value noted in part (b) shall be treated as confidential. The remaining information in part (b) shall be disclosed on the public record.
  - Only the percentage values noted in part (d) shall be treated as confidential. The remaining information in part (d) shall be disclosed on the public record.

<u>Contract Summary – EPC for RFR</u>
In respect of the redactions noted on page 5 of the contract summary the OEB denies confidential treatment for the noted information, except for the six percentage values noted in the contract summary. The OEB requires that the information excluding the noted percentage values be disclosed on the public record.

As set out later in this decision, the OEB requires that OPG file revised versions (public and confidential) of the contract and contract summary reflecting the OEB's decision.

(ii) EPC for Turbine Generators (SNC/Aecon JV)

The OEB grants confidential treatment for information in the following schedules:

- Attachment 7.1(6) – Definition Phase Fixed Fee
- Attachment 7.1(9) – Execution Phase Fixed Fee
- Attachment 7.1(10) - Execution Phase SS&E Target Cost

The OEB denies confidential treatment for information in the following schedules and requires the information be disclosed on the public record.

- Schedule 5.7 Economic Cost Adjustments (pdf pages 369-376)
- Attachment 7.1(13) – Cost Allocation Table (pdf pages 409-421)

The OEB grants confidential treatment for portions of the information as described.

- Section 5.6 – Adjustment to Reimbursable Work Fixed Fee (pdf page 134-135)
    - Only the first sentence (Except…Amendment) shall be disclosed on the public record. The remaining information in Section 5.6 shall be treated as confidential.

As set out later in this decision, the OEB requires that OPG file revised versions (public and confidential) of the contract reflecting the OEB's decision.

(iii) ES MSA and Contract Summary (SNC/Aecon JV)

In its earlier decision on confidentiality (Decision on Confidential Filings and Procedural Order No. 3), the OEB granted confidential treatment for information in the ES MSA, except for Schedule 5 - Reimbursable Non-Labour Cost Tables (pdf pages 316-324). Consistent with its findings in respect of the other DRP Contracts, the OEB denies confidential treatment for the information in Schedule 5 - Reimbursable Non-Labour Cost Tables (pdf pages 316-324).

Contract Summary – ES MSA
The OEB grants confidential treatment for the percentage values that are noted on pages 5 and 7 of the ES MSA contract summary.

As set out later in this decision, the OEB requires that OPG file revised versions (public and confidential) of the contract reflecting the OEB's decision.

(iv) ESES for Turbine Generator (Alstom)

The OEB denies confidential treatment for information in the following schedules:

- Schedule 5.6 – Economic Cost Adjustment (pdf page 302-304)
- Amendment #1 – 7. Change to Schedule 5.6 – Economic Cost Adjustment Section 2 – Table 2.1 and Table 2.2 (pdf page 417)

As set out later in this decision, the OEB requires that OPG file revised versions (public and confidential) of the contract reflecting the OEB's decision.

(v) EPC for Steam Generator and Contract Summary (Candu)

The OEB grants confidential treatment for information in the following schedules:

- 10.1 Limitation of Liability
- 7.1(1) Contract Price Escalated and Amendment #1
- 7.1(3) Fixed Price Work & Firm Price Work – Primary Side and Amendment #1
- 7.1(4) Cost Flow for Fixed Price Work and Firm Price Work – Primary Side and Amendment #1
- 7.1(5) Target Cost for Reimbursable Work – Primary Side
- 7.1(6) Cost Flow for Reimbursable Work Target Cost – Primary Side
- 7.1(7) Reimbursable Work Fixed Fee – Primary Side
- 7.1(10) Target Cost for Reimbursable Work – Secondary Side
- Cost Flow for Reimbursable Work Target Cost - Secondary
- 7.1(14) Contingency Work
- 7.1(15) Target Cost for Reimbursable Work for Support Services and Equipment
- 7.1(17) Reimbursable Costs with No Mark Up
- 7.1(18) Milestone Payment Schedule for Fixed Price Work and Firm Price Work – Primary (pdf page 394-397) and Amendment #1
- 7.1(19) Milestone Payment Schedule for Reimbursable Work Fixed Fee – Primary and Secondary Side
- Project Change Directive 008, Item 3 – Revise Schedule 7.1(18)

The OEB denies confidential treatment for information in the following schedules:

- Schedule 5.7 Economic Cost Adjustment (pdf page 345-346) and Amendment #1 (pdf page 491)
- 7.1(24) Cost Allocation Table (pdf page 425-439)

The OEB grants confidential treatment for portions of the information in the following schedules:

- 5.6 Adjustment to Reimbursable Work Fixed Fee (pdf page 125-126)

- The first sentence (Except…Amendment.), shall be disclosed on the public record. The remaining information in the paragraph shall be treated as confidential.

Further and with respect to the information in Section 8 Incentives and Disincentives (pdf pages 149-155), the OEB denies confidential treatment for portions of the information in Section 8 because similar information in the EPC for RFR is on the public record and Candu has not provided any reasons as to why the information in its contract should be treated differently. The OEB grants confidential treatment for certain information in section 8.3 as noted below.

- Section 8 Incentives and Disincentives (pdf pages 149-155).
  - Only the information in the table in section 8.3, part (b), page 153 shall be treated as confidential. All other information in Section 8 for which confidential protection is requested shall be disclosed on the public record.

<u>Contract Summary – EPC Contract for Steam Generators:</u>
Consistent with the OEB's decision with respect to the DRP Contracts, the OEB grants confidential treatment for the percentage values and dollar values noted in the summary at pages 2, 3, 4 and 5 of the contract summary. The request for confidential treatment for the remaining information in the noted pages is denied and shall be disclosed on the public record.

As set out later in this decision, the OEB requires that OPG file revised versions (public and confidential) of the contract and contract summary reflecting the OEB's decision.

DRP Reports
Consistent with the OEB's decision in respect of the DRP Contracts, the OEB grants confidential treatment for the percentage values noted on page 66 of the KPMG Report on Release Quality Estimates, as these deal with Contract Risk Sharing percentages.

The OEB denies confidential treatment for the information on Unit over Unit Improvements on page 24 of the Expert Panel Report on Class 2 Estimate.

<u>INFORMATION IN CERTAIN INTERROGATORY RESPONSES AND UNDERTAKING RESPONSES (ITEM 2)</u>

Pursuant to the *Practice Direction on Confidential Filings* (Practice Direction), OPG requests that information in certain interrogatory responses and undertaking responses and related attachments, be treated as confidential.

In letters dated October 27, 2016 and November 1, 2016, OPG requests that certain information in 18 interrogatory responses and 55 attachments[3] be treated as confidential. Further, in letters dated November 21, 2016 and November 30, 2016, OPG requests that certain information in two undertaking responses and 26 attachments be treated as confidential. OPG requests that certain documents be treated as confidential in their entirety and others be partially protected through redactions.
OPG also requests permanent redactions in certain planning documents that were provided as part of the interrogatories and undertakings. These documents were only provided to the OEB and under cover of a separate letter.

In accordance with the Practice Direction, OPG has filed redacted versions of the documents as part of its public filing and un-redacted versions as part of its confidential filing.

In Procedural Order No. 4, the OEB made provision for submissions from OEB staff and intervenors on OPG's request for confidentiality in respect of the interrogatory responses and attachments. The OEB received submission from OEB staff and the School Energy Coalition (SEC). OEB staff did not object to the request for confidentiality for the majority of the interrogatory responses and sought additional information on L-0.3-2 AMPCO 045, L-06.6-1 Staff 157, L-04.3-15 SEC 023, L-06.3-2 AMPCO 116, L-06.6-15 SEC 85, L-06.7-2 AMPCO 115, L-07.12-1 Staff 205, L-04.3-15 SEC 022, L-04.3-15 SEC 25 and L-04.3-15 SEC 014. SEC objected to the request for confidentiality in respect of L-06.6-19 SEP 013, L-06.6-1 Staff 147 and L-04.3-15 SEC 014. In its reply submission, OPG addressed the matters raised by OEB staff and SEC.

In Procedural Order No. 5 the OEB made provision for submissions from OEB staff and intervenors on OPG's request for confidentiality in respect of the undertaking responses and attachments. The OEB received submissions from OEB staff and SEC on this matter. OEB staff did not object to the request for confidentiality. SEC objected to the request for confidentiality in respect of Attachment 2 to JT1.7. In its reply submission, OPG addressed the matter raised by SEC.

OPG's request for confidentiality for information in the interrogatory and undertaking responses is provided below.

[3] In subsequent letters and in its reply submission, OPG withdrew and/or modified its original request.

(a) Information on performance of OPG's vendors and contractors and commercially sensitive information on vendors and contractors.

OPG requests confidential treatment for information on the performance of contractors/vendors in the DRP and third-party commercially sensitive information, that is included in certain third party and internal oversight reports. The subject information is in the following interrogatory responses and attachments:

- L-06.6-1 Staff 149
- L-04.3-15 SEC 029 (1 Attachment)
- L-04.3-15 SEC 037 (2 Attachments)
- L-04.5-8 GEC 13 (1 Attachment)
- L-06.6-1 Staff 072 (13 Attachments)

The attachments include oversight reports from Modus/Burns & McDonnell, CALM Management Consulting and OPG Internal Audit. OPG states that public disclosure of the information could potentially prejudice the competitive positions of the contractors and could negatively impact its existing contractual relationships.

OPG also requests confidential treatment for information relating to the performance of vendors and contractors in L-04.3-15 SEC 031 (4 Attachments), L-04.3-15 SEC 025 (1 Attachment) and in the certain attachments to undertaking JT1.8. OPG states that the information includes commentary on the performance of contractors and their prior experience. OPG argues that the public disclosure of the information could potentially prejudice the competitive positions of the contractors and affect OPG's existing and future contractual relationships with the contractors.

FINDINGS

The OEB grants confidential treatment for the information in the above noted interrogatories and undertakings. The OEB accepts that the public disclosure of the commercially sensitive information and the information on contractor performance could potentially prejudice the competitive positions of the contractors and affect OPG's existing and future contractual relationships with the contractors.

(b) Commercially sensitive information in Business Case Summaries and internal OPG DRP Documents; commercially sensitive information related to third parties

OPG requests confidential treatment for certain information in the Business Case Summaries that have been filed as attachments to the following interrogatory responses:

- L-04.2-1 Staff 028 (1 Attachment)

- L-04.2-1 Staff 040 (1 Attachment)
- L-04.2-1 Staff 041 (1 Attachment)
- L-04.2-1 Staff 043 (1 Attachment)
- L-04.2-13 PWU 006 (2 Attachments)
- L-04.4-15 SEC 048 (1 Attachment)
- L-06.1-1 Staff 093 (1 Attachment)

OPG also requests confidential treatment for information in a number of other interrogatory responses and attachments that is similar in nature to the information contained in the Business Case Summaries (Similar Documents). The specific interrogatories are:

- L-04.2-2 AMPCO 17 (1 Attachment)
- L-04.4-15 SEC 46 (2 Attachments),
- L-01.2-5 CCC 008 (1 Attachment)
- L-04.2-13 PWU 006 (1 Attachment).

The attachments to AMPCO 17 and SEC 46 contain information on contingencies or similar types of information. The attachment to CCC 008 is a Comprehensive Post-Implementation Review of a particular project and the attachment to PWU 006 is a Project Change Request Authorization Form for a particular project.

In respect of the information in the Business Case Summaries and in the Similar Documents, OPG submits that the information should be protected as confidential because it includes OPG commercially sensitive information such as project cost contingencies, certain costs for contracted or purchased work or materials, and aggregate information that would allow determination of commercially sensitive information. Some of the information also includes commentary on the performance of contractors that are participating in the DRP. OPG states that public disclosure of the information could prejudice OPG's competitive position and disclosure of the commentary could adversely impact existing relationships and future negotiations.

OPG also requests confidential treatment for commercially sensitive information relating to third-parties. Some of this information relates to third party commercially sensitive information such as vendor pricing, labour rates, profit and overhead levels, project cost contingencies, discount rates and unit pricing under contracts, and aggregate information that would allow determination of such commercially sensitive information that has been provided in certain interrogatories and undertakings as noted below .

- L-04.3-15 SEC 22 (2 Attachments)
- L-04.3-15 SEC 26 (2 Attachments)
- L-04.3-15 SEC 32 (2 Attachments)

- L-04.3-1 Staff 73 (1 Attachment)[4]
- JT1.4 – Attachment 1
- JT2.10 – Attachment 1
- JT1.8 – Attachments

FINDINGS

The OEB grants confidential treatment for information in the above noted interrogatories and undertakings, except for the information noted on page 146 of L-04.3-1 Staff 73 (1 Attachment).

The OEB accepts that the information on contingencies and costs for contracted or purchased work or materials, aggregate information and other third party related information (such as vendor pricing, labour rates, profit and overhead levels, project cost contingencies, discount rates and unit pricing under contracts) is of a commercially sensitive nature and that public disclosure of this information could be detrimental to OPG and/or the relevant parties.

In regards to Staff-073, the OEB rejects OPG's request for confidential treatment for information on page 146 of the noted attachment because it relates to performance of OPG and should therefore be disclosed on the public record.

(c) <u>Information on Collective Bargaining Strategies</u>

OPG requests confidential treatment for collective bargaining related information that has been provided in certain interrogatory responses and undertaking responses.

OPG requests confidential treatment for information on collective bargaining strategies in the following interrogatory responses and attachments. OPG requests that the attachments be protected as confidential in their entirety and that the interrogatory responses be partially protected using redactions. The interrogatories and attachments comprise:

- L-06.6-1 Staff 147
- L-06.6-1 Staff 157
- L-06.6-1 Staff 160
- L-06.6-2 AMPCO 122
- L-06.6-2 AMPCO 145
- L-06.6-3 CME 005
- L-06.6-13 PWU 016

[4] See OPG's October 31, 2016 Letter to the OEB requesting confidential treatment.

- L-06.6-15 SEC 070
- L-06.6-15 SEC 072
- L-06.6-15 SEC 079
- L-06.6-19 SEP 013
- L-06.6-1 Staff 147 (2 Attachments)[5]
- L-06.6-1 Staff 157 (2 Attachments)
- L-06.6-15 SEC 074 (2 Attachments)

OPG is also requesting confidential treatment for similar information in the following undertaking responses:

- JT2.26
- JT2.34 – Attachment 1
- JTX3.17 – Attachment 1
- JT3.20 – Attachment 1

OPG states that the information in the interrogatories and undertakings pertains to OPG's collective bargaining strategies and the disclosure of the information could potentially interfere with future collective bargaining negotiations between OPG and the unions that represent its employees.

SEC objected to OPG's request to treat as confidential portions of Table 2 in L-6.6-19 SEP 13, which shows forecast attrition over the application term by representation. SEC's grounds for objection are that Table 2 was only for the regulated nuclear organization and that OPG had in Table 1 of the same interrogatory provided the forecast total employee count per year without any redactions. OPG disagreed with SEC's objection in relation to SEP 13, indicating that the nature of information provided in Table 2 is different than that of Table 1.

With respect to L-6.6-1 Staff 147 – Attachments 1 and 2 (letters from the Minister of Energy to the CEO of OPG in relation to collective bargaining), OPG accepted SEC's objection and withdrew its request for confidentiality for both attachments.

Further, in response to submissions from OEB staff, OPG also filed partially redacted versions of the reports filed in L-06.6-1 Staff 157 (2 Attachments).

FINDINGS

The OEB grants confidential treatment for information in the noted interrogatories and undertakings, including SEP 13 and Staff 157, as revised. The OEB requires that OPG

[5] In its reply submission OPG withdrew its request for confidentiality in relation to L-06.6-1 Staff 147, attachment 1 and Attachment 2.

update its response to Staff 147 reflecting its decision to withdraw its confidentiality request in respect of the noted attachments. Specifically the OEB directs OPG to file updated responses to Staff 147 removing the description of the letters in attachment as confidential in response part (c).

(d) Information for which OPG's DRP contractors have specifically requested confidential treatment in this proceeding

OPG requests confidential protection for information in the following interrogatories and undertakings that is related to the request for confidentiality by the SNC Aecon JV and Candu.

The interrogatory responses and attachments include:

- L-04.3-15 SEC 23
- L-04.3-2 AMPCO 044
- L-04.3-2 AMPCO 045
- L-04.3-15 SEC 22 (3 Attachments)
- L-04.3-15 SEC 34 (2 Attachments)
- L-04.3-7 ED 004 (1 Attachment)[6]

The undertakings and attachments include:

- JT1.6 – Bullet 1, 2 and 4
- JT1.13 – Attachment 2, 3 and 4
- JT1.20 – Attachment 1

The request for confidentiality for information in SEC 22, SEC 34 and ED 004 and AMPCO 045 is due to the request made by SNC/Aecon JV for confidential protection for certain portions of the DRP contracts. Portions of the information in ED 004 is redacted due to the request for confidentiality by Candu.

FINDINGS

The OEB grants confidential treatment for the information in the above noted interrogatories and undertakings, except for the information as described below.

L-4.3-15 SEC 023

The OEB understands that the redactions in the noted interrogatory are requested due to one of OPG's DRP contract parties having specifically requested that the information or type of information be protected. The OEB has reviewed the redactions and will not

[6] OPG filed a revised request for confidentiality, per its letter dated November 25, 2016.

accept the redactions noted in the first paragraph (lines 23 to 33). In the OEB's view the information is a general commentary on the reimbursable target cost model, which provides incentives to contractors to reduce costs and realize efficiency gains.

L-4.3-15 SEC 22 Attachment 2 Tab 3

Consistent with the OEB's decision in respect of the DRP Contracts, the OEB denies confidential treatment for the information on page 10 of L-4.3-15 SEC 22 Attachment 2 Tab 3. The OEB requires that the subject information be placed on the public record.

L-04.3-15 SEC 34 (2 Attachments)

The OEB denies confidential treatment for information in SEC 34, except for the information on page 17 (of SEC 34, Attachment 2) as this relates to vendor performance.

JT1.6

The OEB grants confidential treatment for the information in JT1.6, except for certain information under Section 4 – Steam Generators (SG) EPC, as described below.

With respect to Section 4, the OEB grants confidential treatment for only the numerical values (dollar values and percentage values) in Section 4. The remainder of the information shall be disclosed on the public record. The OEB notes that the redactions proposed to Section 4 of JT1.6 are not consistent with the redactions in the remainder of the response to JT1.6.

JT1.13 Attachments 2 and 3

Consistent with the OEB's findings in respect of the DRP Contracts, the OEB denies confidential treatment for the information on page 10 of JT1.13 – Attachment 2 and on pages 5, 6 and 82-94 of JT 1.13 – Attachment 3.

JT1.20 Attachment 1 and L-04.3-7 ED 004 – Attachment 1

The schedules in the noted interrogatory and undertaking response contain information on cost overrun scenarios in respect of the DRP Contracts. The schedule in JT1.20 is an update of the schedule provided in response to ED 004. The OEB denies confidential treatment for information related to EPC for Steam Generators in the tables and in the footnotes noted on both schedules. The OEB grants confidential treatment for information related to the ES MSA in JT1.20 and ED-004.

(e) Proprietary information belonging to third parties and third party names of individuals

OPG is requesting that information in the noted undertakings and attachments be treated as confidential because they contain information that is proprietary to third parties or contain names of OPG employees and third party individuals. The information is in the following undertaking responses and attachments:

- JT3.4
- JT1.6 – Bullet 5
- JT1.4 – Attachment 2 and 3
- JT1.7 – Attachment 2
- JT1.8 – Attachments

OPG states that it is not authorized to publicly disclose the third party proprietary information but has obtained permission to provide the information on a confidential basis. OPG states that disclosure of this information on the public record would cause OPG to breach its obligations to the third parties, which could cause harm to the third parties and could adversely impact OPG's ability to obtain or rely upon such information from these parties in the future.

SEC objected to OPG's request to keep the entire document in Attachment 2 to undertaking JT1.7 confidential. The document in question is a guideline produced by AACE International Inc. (AACE) and titled: *Cost Estimate Classification System – As applied in Engineering, Procurement, and Construction for the Process Industries (AACE International Recommended Practice No. 18R-197)* (AACE Guidelines). OPG's reason for requesting confidential treatment for the entire document was that it contained proprietary information from AACE and was produced with consent from AACE. Following SEC's submission OPG once again contacted AACE. In response to OPG's inquiry AACE clarified that it does not view the document as being "confidential" but rather as "copyright protected" and noted:

> AACE asks that the document not be posted online or become available to the public. AACE believes it would violate copyright to provide copies at no charge to all parties to the proceeding. It is up to the OEB how they classify the document to protect AACE International's copyright.
>
> In the letter from counsel to the School Energy Coalition, signed by Mark Rubenstein and Jay Shepherd, AACE responds that only the document itself is copyright protected. Therefore it is permissible for parties, during cross-examination, to discuss with the witnesses on the public record the detailed descriptions of the estimate classes that are detailed in the document. Parties can view the document, hold a copy

of the document, reference the document; we just ask that the full RP not become a part of the proceedings that become available to the general public with no revenue being returned to AACE.

FINDINGS

The OEB grants confidential treatment for the information in the above noted undertakings, except for the information as described below.

JT1.7 – Attachment 2

In light of the concerns expressed by AACE the OEB has determined that it will offer some protection to the AACE Guidelines but will not treat it as confidential in the normal sense. That means, the AACE Guidelines will remain a part of the confidential materials and while all parties will have access to the document it will only be provided to parties that request it. Intervenors will not be required to execute the OEB's Declaration and Undertaking to receive the document. Parties are permitted to hold a copy of the document, and refer to the document in cross examination and in submissions. Parties are not permitted to post the document online or use it for any other purpose other than in this proceeding. The OEB is authorizing use of the document specifically for the purposes of this proceeding. Therefore at the end of this proceeding parties that are in possession of the document are directed to destroy all copies of the document.

JT1.8 – Attachment 12

The OEB denies confidential treatment for certain information in Attachment 12 of undertaking JT1.8. Specifically, the OEB will not accept the following proposed redactions:

i. Redactions on page 3 starting with the second sentence that reads: "Deloitte's … processes".
ii. Redactions to the first sentence on page 4 and the two bullets that immediately follow the first sentence.
iii. Redaction noted in the second bullet under section 1.3 on page 4.
iv. Redactions to the first sentence under section 1.4 on page 4 that reads: "Subsequent ... 2015".
v. Redaction of the date in the first paragraph on page 5 and the sentence in the second paragraph that reads: "The delays…negotiations".

(f) Permanent Redactions

OPG requests confidential protection for certain information in L-01.2-1 Staff 003 (related to Business Planning Instructions) and in JT3.1 (related to key performance results of its unregulated businesses). OPG requests that this information be permanently redacted from the public record.

FINDINGS

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 the noted information as it relates to OPG's unregulated businesses and facilities.

(g) Other

OPG requests confidential treatment for information contained in the following interrogatories and undertakings: L-06.3-2 AMPCO 116; L-06.6-15 SEC 85; L-06.7-2 AMPCO 115; L-06.10-1 Staff 184; L-07.12-1 Staff 205; L-04.5-5 CCC 022; L-1.2-2 AMPCO 001 (1 Attachment); L-04.3-15 SEC 14 (1 Attachment); and, JT1.8 – Attachment 6. This final category represents documents that do not fall into any of the above categories. OPG's request is summarized below.

- OPG requests confidential treatment for historic and forecast nuclear fuel processing costs in L-06.3-2 AMPCO 116. OPG states that the information is commercially sensitive because the disclosure of the actual and forecasted amounts allows for the determination of unit pricing being paid to the vendors. OPG states disclosure would be substantially prejudicial to the vendors as it would allow their competitors to infer information about their contracts with OPG, which could be used unfairly against the vendors. Further, it would prejudice OPG's competitive position and significantly interfere with its negotiations in future like contracts.
- OPG requests confidential treatment for long-term returns for each asset class of the OPG registered pension plan, calculated by AON Hewitt (AON) in L-06.6-15 SEC 85.OPG states that the information should be protected as confidential because it is proprietary to AON and that OPG is not authorized to disclose this information publicly, but has obtained permission to provide this information on a confidential basis. OPG states that disclosure on the public record would cause OPG to breach its obligation to AON. OPG also states that public disclosure would also separately prejudice and cause harm to AON's business and could adversely impact OPG's ability to obtain or rely upon such information from AON in the future.
- OPG requests confidential treatment for information on forecast and actual OM&A Purchased Services Support Services for 2013 to 2021 by vendor in L-06.7-2 AMPCO 115.OPG states that disclosure of the information allows for inference of contract pricing information and is likely to prejudice vendor and OPG's competitive positions and significantly interfere with their future negotiations.

- OPG requests confidential treatment for certain income tax related information in L-06.1-1 Staff 184.
- OPG requests confidential treatment for information on used fuel volumes in L-07.12-1 Staff 205. OPG states the information was collected by OPG from Bruce Power on a confidential basis and is Bruce Power's proprietary information.
- OPG requests confidential treatment for information in L-04.5-5 CCC 022. This includes a report to OPG's Board of Directors on the DRP cost and schedule.
- OPG requests confidential treatment for information in attachment to L-1.2-2 AMPCO 001 (1 Attachment). This document includes the scope of work related to a nuclear staffing study and includes third party confidential information such as hourly rates of the consulting company employees.
- OPG requests confidential treatment for information in JT1.8 – Attachment 6 that includes references to sensitive locations of OPG's Controlled Access Storage Areas and other security matters. OPG states that if the information is disclosed it could be used to cause harm to OPG's property.
- OPG requests confidential treatment for information in attachment to L-04.3-15 SEC 14 (1 Attachment). This document is a benchmarking report and includes confidential third party information.

OEB staff submitted that there were several interrogatories in this category for which OPG had not provided adequate reasons in support of its request. In its reply submission, OPG addressed the matters identified by staff.

SEC objected to OPG's request to treat L-4.3-15 SEC 14 – Attachment 1 (a report prepared by Faithful+Gould and titled "Benchmarking Report on Contracts Strategy and Overhead & Profit Levels for Large-Scale International Projects" confidential in its entirety. In its reply submission OPG noted that it was withdrawing its request for confidentiality for the entire document and re-filed the attachment with redactions.

FINDINGS

The OEB grants confidential treatment for the information in the noted interrogatories and undertakings. The OEB also accepts the redactions in the revised version of L-4.3-15 SEC 14 – Attachment 1 that was filed by OPG as part of its reply submission.

PORTIONS OF THE TECHNICAL CONFERENCE TRANSCRIPT FROM NOVEMBER 16, 2016 (ITEM 3)

Under cover of letter dated November 24, 2016, and pursuant to section 6.2.4 of the Practice Direction, OPG requests confidential treatment for portions of the transcript of the technical conference held on November 16, 2016. OPG states that the redacted

portions of the transcript contain information relating to OPG's collective bargaining strategies and if disclosed could potentially interfere with future negotiations with unions that represent OPG employees. The redactions appear on pages 95 to 118 of the noted transcript.

In Procedural Order No. 5 the OEB made provision for SEC and OEB staff to make submissions on OPG's request. OEB staff submitted that it does not object to OPG's request. SEC made no submissions on the matter.

FINDINGS
The OEB grants OPG's request for confidentiality in respect of the information in the transcript dated November 16, 2016 with the exception of page 118 lines 3 to 5. This sentence about the relative position of OPG based on benchmarking information has no numbers or any listing of other parties. The OEB will not accept this redaction.

INFORMATION IN EXHIBIT N1-1-1 (IMPACT STATEMENT) (ITEM 4)

OPG is requesting confidential treatment for its 2017-2019 Business Plan which is included as attachment 1 to an Impact Statement found at Exhibit N1-1-1. Specifically OPG is requesting that certain information in the 2017-2019 Business Plan be treated as confidential while other information that is related to OPG's unregulated business and facilities be permanently redacted from the record. Under cover of a separate letter OPG provided the OEB with a fully un-redacted version of the Business Plan.

Given that the information in the 2017-2019 Business Plan that is the subject of the confidentiality request is very similar to the type of information that the OEB has previously treated as confidential specifically in respect of OPG's business plans, the OEB did not make provision for submissions from parties on this matter.

FINDINGS
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 redactions for information in the 2017-2019 Business Plan. The OEB also grants confidential treatment for the information other than the permanent redactions referenced above.

THE ONTARIO ENERGY BOARD THEREFORE ORDERS THAT:

1. OPG shall file with the OEB revised versions (public and confidential) of the documents at issue (interrogatory responses and attachments, undertaking responses and attachments, DRP Contracts, the DRP Contract Summary and the DRP Reports), reflecting the OEB's decision, by **February 10, 2017**. OPG shall provide the revised public versions of all documents to all parties and revised confidential versions of all documents to intervenors that have executed the OEB's Declaration and Undertaking and affidavit, as applicable. Pursuant to section 5.1.12 of the Practice Direction, OPG, the SNC Aecon JV and Candu may request that the information be withdrawn within five business days of the date of this decision. Pursuant to section 5.1.14 of the Practice Direction, if a party wishes to appeal or seek review of this aspect of the OEB's decision, it shall advise the OEB of its intent to do so within five business days from the date of this decision.

2. The OEB has determined that information on page 118, lines 3 to 5, in the technical conference transcript dated November 16, 2016, shall be disclosed on the public record. Pursuant to section 5.1.14 of the Practice Direction, if OPG wishes to appeal or seek review of this aspect of the OEB's decision, it shall advise the OEB of its intent to do so within five business days of the date of this decision. 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, **January 31, 2017**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary