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BY EMAIL

March 2, 2021

Ms. Christine E. Long
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Long:

**Re: Ontario Energy Board (OEB) Staff Submission – Confidential Filings
Ontario Power Generation Inc.
2022-2026 Payment Amounts
OEB File Number: EB-2020-0290**

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 1.

Yours truly,

Original Signed By Lawrie Gluck

Lawrie Gluck
Project Advisor, Generation & Transmission

Encl.

cc: All parties in EB-2020-0290



ONTARIO ENERGY BOARD

OEB Staff Submission – Confidential Filings

Ontario Power Generation Inc.

2022-2026 Payment Amounts

EB-2020-0290

March 2, 2021

Background

Ontario Power Generation Inc. (OPG) filed an application dated December 31, 2020 with the Ontario Energy Board (OEB) under section 78.1 of the *Ontario Energy Board Act, 1998* seeking approval for changes in payment amounts for the output of its nuclear generating facilities in each of the five years beginning January 1, 2022 and ending on December 31, 2026. OPG also requested approval to maintain, with no change, the base payment amount it charges for the output of its regulated hydroelectric generating facilities at the payment amount in effect on December 31, 2021 for the period from January 1, 2022 to December 31, 2026.

In Procedural Order No. 1, issued on February 17, 2021, the OEB made provision for submissions on OPG's request for confidential treatment of certain information included in its pre-filed evidence. OPG requested confidential treatment for the following documents, or certain portions thereof (the confidentiality requests):

1. The Amended 2020-2026 Business Plan located at Exh. A2-2-1 (Business Plan)
2. The Amended 2020-2026 Business Planning Instructions located at Exh. A2-2-1, Attachment 2 (Business Planning Instructions)
3. The revenue comparison tables located at Exh. G2-1-1, Table 1 and G2-1-2, Table 1 (Revenue Comparison Tables)
4. The engagement letters with third party advisors located at Exh. C1-1-1, Attachment 2, Exh. D2-2-11, Attachment 2, and Exh. D2-2-11, Attachment 4 (collectively, Expert Engagement Letters)
5. The nuclear business case summaries found at Exh. D2-1-3, Attachment 1 and Exh. F2-3-3, Attachment 1 (collectively, Nuclear BCSs)
6. The Darlington Water Treatment Plant business case justification memorandum located at Exh. D2-1-3, Attachment 2 (WTP Memorandum)
7. The Darlington Refurbishment Program attachments (collectively, DRP Attachments), comprised of:
 - a. Contract summaries at Exh. D2-2-4, Attachments 3, 14, 18, and 20 (Updated DRP Contract Summaries):
 - i. Summary of Retube and Feeder Replacement (RFR) Engineering, Procurement and Construction (EPC) Contract
 - ii. Summary of Turbine Generators (TG) EPC
 - iii. Summary of Steam Generators (SG) EPC

- iv. Summary of Extended Service (ES) Master Services Agreement (MSA)
 - b. Major DRP contract amendments at Exh. D2-2-4, Attachments 4, 7, 8, 9, 13, 15, 16, 17, 19, and 21 (DRP Contract Amendments):
 - i. RFR EPC Amendment 7
 - ii. RFR EPC Amendment 10
 - iii. RFR EPC Amendment 11
 - iv. RFR EPC Amendment 12
 - v. TG Engineering Services, Equipment Supply and Field Services Agreement (ESESFSA) Amendment 5
 - vi. TG EPC Amendment 3
 - vii. TG EPC Amendment 4
 - viii. TG EPC Amendment 5
 - ix. SG Amendment 3
 - x. ES MSA, SNC-Lavalin Nuclear Inc. and Aecon Construction Group Inc. (SNC / Aecon JV), Amended and Restated
 - c. The Burns & McDonnell Canada and Modus Strategic Solutions Canada Company (McD / Modus) Report on Unit 3 Execution Estimate at Exh. D2-2-7, Attachment 3 (DRP Report)
 - d. The business case summary for the Heavy Water Storage and Drum Handling Facility at Exh. D2-2-10, Attachment 2(k) (D2O BCS)
 - e. The Black & McDonald Ltd. (B&M) Purchase Order located at Exh. D2-2-10, Attachment 2(f)
 - f. The B&M ES MSA located at Exh. D2-2-10, Attachment 2(d)
 - g. The original ES MSA, SNC / Aecon JV and Amending Agreement #2 located at Exh. D2-2-10, Attachments 2(g)&(i) (Original JV ES MSA Documents)
- 8. OPG's 2019 income tax returns and tax information located at Exh. F4-2-1, Attachment 1 and Exh. F4-2-2-1, Table 4 (2019 Income Tax Returns and Tax Information)
- 9. The Planning Phase Clarington Corporate Campus business case summary located at Exh. D3-1-2, Attachment 2 (Planning Phase BCS) and certain related information contained in the following tables (collectively, Planning Phase BCS Information):
 - a. Capital Projects – Support Services located at Exh. D3-1-2
 - b. Capital Projects Tables located at D3-1-1 Table 1, D3-1-1 Tables 2a and 2b, D3-1-2 Tables 1a and 1b, D3-1-2 Table 4, and D3-1-2 Tables 5a and 5b

10. The Willis Towers Watson Report located at Exh. F4-3-1, Attachment 3 (Willis Towers Watson Report)
11. The Report on the Estimated Accounting Cost for Post-Employment Benefit Plans for Fiscal Years 2021 to 2026 located at Exh. F4-3-2, Attachment 1 (Aon Report)

In accordance with the OEB's *Practice Direction on Confidential Filings* (Practice Direction), OPG explained the reasons for the confidentiality requests, including why it considers the information at issue to be confidential and why public disclosure of that information would be detrimental.

In Procedural Order No. 1, the OEB granted OPG's request for confidentiality in respect of the 2019 Income Tax Returns and Tax Information (Confidentiality Request 8), and established a process for parties to make submissions on the remaining documents (other than submissions on those portions of the Business Plan and Business Planning Instructions that OPG has proposed for permanent redaction). The OEB also requested OPG to file a letter regarding the confidential treatment of the Willis Towers Watson Report (Confidentiality Request 10). By letter dated February 26, 2021, OPG confirmed that the Willis Towers Watson Report no longer required confidential treatment. As such, OEB staff is not making submissions on the confidential treatment of the 2019 Income Tax Returns and Tax Information, the permanently redacted information, or the Willis Towers Watson Report.

OEB Staff Submission on Confidentiality

OEB staff does not object to the requests for confidentiality filed by OPG, with the exception of the Aon Report.

Most of OPG's requests are similar in nature to those that were granted by the OEB in the previous payment amounts proceeding (2017-2021 Payment Amounts Proceeding)¹. OEB staff notes that some of the requests are novel, but appear to be in line with the Practice Direction. However, OEB staff objects to the proposed confidential treatment of the Aon Report as it is not clear to OEB staff why the information needs to be treated as confidential in this proceeding when similar information was not redacted in the 2017-2021 Payment Amounts Proceeding. Each document is addressed in turn.

Business Plan and Business Planning Instructions (Confidentiality Requests 1 & 2)

OPG seeks confidential treatment for those parts of the Business Plan and Business Planning Instructions that relate to information reflecting the combined regulated and unregulated assets and business of OPG. Confidential treatment is requested as the disclosure of this aggregated information, combined with information regarding the regulated business already disclosed, would allow for information related to OPG's unregulated business and facilities to be determined. OEB staff does not object to the request and reasoning provided by OPG for the confidential treatment of portions of the Business Plan and Business Planning Instructions.

OEB staff notes that the OEB granted a similar confidentiality request made by OPG for parts of its Business Plan and Business Planning Instructions in the 2017-2021 Payment Amounts Proceeding. In its decision, the OEB agreed that the "...information when combined with other publicly available information could result in the disclosure of information pertaining to the unregulated business".²

Revenue Comparison Tables (Confidentiality Request 3)

The redacted information in the Revenue Comparison Tables pertains to OPG's sales and proceeds from its heavy water sales and processing, and its isotope sales business, or aggregate information that would allow determination of such information. OPG submits that disclosure of this information would prejudice OPG's competitive position and interfere significantly with any future negotiations being carried out by OPG. OEB staff does not have any objections to the nature of OPG's confidentiality request regarding the Revenue Comparison Tables and notes that the OEB has

¹ EB-2016-0152.

² EB-2016-0152 / Decision on Confidential Filings and Procedural Order No. 3 / November 1, 2016 / p. 4.

approved such requests in the last three payment amounts proceedings.³

Expert Engagement Letters (Confidentiality Request 4)

The information redacted in the Expert Engagement Letters pertains to each expert's fees and / or rates. OPG states that this information should be treated as confidential as this includes commercially sensitive information in relation to a third party. Furthermore, the fees and / or rates of experts retained by OPG have previously been treated as confidential in OPG's last two payment amounts proceedings.⁴ As such, OEB staff submits that the information redacted in the Expert Engagement Letters should receive confidential treatment, as requested.

Nuclear BCSs (Confidentiality Request 5)

OPG seeks confidential treatment for the redacted portions of the Nuclear BCSs as they include commercially sensitive information. This includes information related to contingencies, certain costs for contracted or purchased work or materials, or aggregate information that would allow determination of commercially sensitive information. OPG states that disclosure of the redacted information in portions of the Nuclear BCSs would prejudice its competitive position and significantly interfere with its negotiations and existing relationships in a variety of aspects of its business.

Similar information was treated as confidential in OPG's three previous payment amounts proceedings.⁵ As the disclosure of the redacted information in the Nuclear BCSs could prejudice OPG's competitive position, and the OEB has previously granted such confidential treatment, OEB staff does not have any objections to the request made by OPG.

WTP Memorandum (Confidentiality Request 6)

OPG seeks confidential treatment of the redacted portions of the WTP Memorandum as they include commercially sensitive information related to an open procurement process. As stated by OPG, disclosure of this information would prejudice its competitive position and significantly interfere with negotiations with prospective vendors and other third parties for the purposes of the Darlington Water Treatment Plant Project.

The OEB has not previously granted confidential treatment for information in the WTP Memorandum. However, OEB staff notes that Appendix A of the Practice Direction states, when addressing the confidentiality of filings made with the OEB, factors that the

³ EB-2010-0008, EB-2013-0321, and EB-2016-0152.

⁴ EB-2013-0321 and EB-2016-0152.

⁵ EB-2010-0008, EB-2013-0321, and EB-2016-0152.

OEB may consider, include, but are not limited to, whether the information could interfere significantly with negotiations being carried out by a party. As the redacted information relates to an open procurement process, OEB staff does not object to the request made by OPG to treat the redacted portions of the WTP Memorandum as confidential.

DRP Attachments (Confidentiality Request 7)

Updated DRP Contract Summaries and DRP Contract Amendments (Confidentiality Requests 7a & 7b)

Since the 2017-2021 Payment Amounts Proceeding, OPG and its counterparties have amended the original DRP agreements. OPG is seeking approval for redactions of information included in the Updated DRP Contract Summaries and the DRP Contract Amendments. OPG states that the redacted portions of the Updated DRP Contract Summaries and the DRP Contract Amendments are of the same nature as the redactions granted by the OEB in the 2017-2021 Payment Amounts Proceeding. Specifically, redactions relating to labour rates and pricing information. OEB staff does not have concerns with OPG's request for the confidential treatment of the redacted information in the Updated DRP Contract Summaries and DRP Contract Amendments. OEB staff notes that this request is in line with the nature of the redactions granted in the 2017-2021 Payment Amounts Proceeding.

OPG also seeks redaction of additional pricing information that was not included in OPG's request in the 2017-2021 Payment Amounts Proceeding. The redactions pertain to information in Amendment Agreements 3, 4 and 5 of the EPC Agreement for the TG Refurbishment Project. OPG states that disclosure of this information would reveal commercially sensitive information and would prejudice OPG's competitive position and significantly interfere with current and future negotiations. OEB staff does not object to OPG's request for confidential treatment of pricing information in Amendment Agreements 3, 4 and 5 of the EPC Agreement for the TG Refurbishment Project as it is similar in nature to information previously granted confidential treatment.

DRP Report (Confidentiality Request 7c)

The redacted portions in the DRP Report pertain to the performance of the vendor. OPG states that this information should be treated as confidential as information regarding the performance of vendors could potentially prejudice the competitive position of the parties involved. OEB staff notes that in the 2017-2021 Payment Amounts Proceeding, the OEB granted the confidential treatment of certain information provided in reports regarding the DRP and found that information on the performance of vendors could potentially prejudice the competitive position of the parties involved. The OEB stated that "...disclosure of the commentary on vendor performance could damage

contractual relationships...”⁶ As such, OEB staff does not object to OPG’s request for the confidential treatment of the redacted portions of the DRP Report.

D2O BCS (Confidentiality Request 7d)

OPG seeks confidential treatment for portions of the D2O BCS – such as certain costs for contracted or purchased work or materials, or aggregate information that would allow determination of commercially sensitive information – as the information is commercially sensitive. OPG states that disclosure of such information would prejudice its competitive position and significantly interfere with its negotiations and existing relationships in a variety of aspects of its business. Similar information was treated as confidential by the OEB in OPG’s three previous payment amounts proceedings.⁷ OEB staff does not object to the confidentiality request from OPG regarding the D2O BCS.

B&M Purchase Order (Confidentiality Request 7e)

OPG states that the redacted portions of the B&M Purchase Order contain commercially sensitive information related to pricing. As such, OPG states that disclosure of such information would prejudice its competitive position and significantly interfere with its negotiations and existing relationships in a variety of aspects of its business. Similar information was treated as confidential by the OEB in OPG’s three previous payment amounts proceedings.⁸ OEB staff does not object to the confidential treatment of the redacted portions of the B&M Purchase Order.

B&M ES MSA (Confidentiality Request 7f)

OPG is seeking approval for the redaction of certain information that pertains to commercially sensitive pricing information. OPG states that it is seeking approval of the redacted information in the B&M ES MSA in a manner consistent with the OEB’s decision in OPG’s 2017-2021 Payment Amounts Proceeding with respect to the original DRP agreements.

In its decision, the OEB granted confidential treatment of information in the original DRP agreements that could be detrimental to OPG and the contracting parties’ commercial interests. In particular, the OEB granted confidential treatment of labour rates and pricing information. OPG states that the redacted portions of the B&M ES MSA are of the same nature of the information redacted in the original DRP agreements previously accepted by the OEB in the 2017-2021 Payment Amounts Proceeding. As such, OEB staff does not object to the confidential treatment of this information as it is similar in

⁶ EB-2016-0152 / Decision on Confidential Filings and Procedural Order No. 3 / November 1, 2016 / p. 15.

⁷ EB-2010-0008, EB-2013-0321, and EB-2016-0152.

⁸ EB-2010-0008, EB-2013-0321, and EB-2016-0152.

nature to information previously granted confidential treatment.

Original JV ES MSA Documents (Confidentiality Request 7g)

In the 2017-2021 Payment Amounts Proceeding, OPG requested redactions to certain portions of the Original JV ES MSA Documents that were filed. The OEB granted confidential treatment of the requested redactions. OPG is requesting approval of the same redacted portions of the Original JV ES MSA Documents. OPG states that the redactions pertain to pricing information that is commercially sensitive and would prejudice OPG's competitive position and significantly interfere with negotiations and existing relationships.

OEB staff notes that the redactions are not exactly the same as those in the 2017-2021 Payment Amounts Proceeding as additional information is unredacted in the current proceeding. Specifically, Schedule 5 (Reimbursable Non-Labour Costs Tables) is unredacted in Exhibit D2-2-10, Attachment 2(g) in the current proceeding, however, was redacted in Exhibit D2-2-3, Attachment 10 in the 2017-2021 Payment Amounts Proceeding.⁹

OEB staff is of the view that the information in Schedule 5 (Reimbursable Non-Labour Costs Tables) is not confidential and does not object to OPG's approach of not redacting this information in the current proceeding. OEB staff does not have any concerns regarding the other redactions as proposed by OPG in the Original JV ES MSA Documents, and these redactions should be granted confidential treatment by the OEB.

Planning Phase BCS Information (Confidentiality Request 9)

The redacted information in the Planning Phase BCS Information pertains to contingencies, as well as aggregate information, that would allow determination of commercially sensitive information. OPG also states that it has not commenced the tendering process for the Clarington Corporate Campus, and disclosure of the redacted information would prejudice OPG's competitive position and significantly interfere with its negotiations with prospective contractors and other third parties. OEB staff does not object to the request as the disclosure of the redacted information in the Planning Phase BCS Information is commercially sensitive.

OEB staff notes that the OEB granted a similar confidentiality request made by OPG in its 2017-2021 Payment Amounts Proceeding for parts of the D2O BCS that were deemed to contain commercially sensitive information. In its decision, the OEB stated

⁹ OEB staff notes that Schedule 5 (Reimbursable Non-Labour Costs Tables) in Exhibit D2-2-10, Attachment 2(d) of the current proceeding contains the same first two pages as those in Schedule 5 of Exhibit D2-2-10, Attachment 2(g) and is similarly unredacted.

that the "...public disclosure of this information could harm future negotiations..."¹⁰

Aon Report (Confidentiality Request 11)

OPG seeks confidential treatment of certain portions of the Aon Report. OPG states that the Aon Report includes assumptions that underpin certain cost estimates that are labour-relations sensitive. OPG states that the disclosure of such information could prejudice OPG's position in upcoming rounds of collective bargaining with the Power Workers' Union (PWU) and Society of United Professionals (Society).

OEB staff notes that OPG filed a report in its 2017-2021 Payment Amounts Proceeding¹¹ that is similar to the Aon Report filed in the current proceeding. OPG did not seek confidential treatment of the report filed in the 2017-2021 Payment Amounts Proceeding. It is unclear to OEB staff as to what has changed since the 2017-2021 Payment Amounts Proceeding that now warrants the requested information in the Aon Report to be treated as confidential in this proceeding. It is also unclear as to how exactly such information being unredacted could impact upcoming rounds of collective bargaining with the PWU and Society. As such, OEB staff objects to the requested confidential treatment of the Aon Report.

~All of which is respectfully submitted~

¹⁰ EB-2016-0152 / Decision on Confidential Filings and Procedural Order No. 3 / November 1, 2016 / pp. 15-16.

¹¹ EB-2016-0152 / Exhibit F4 / Tab 3 / Schedule 2 / Attachment 1.