



EB-2012-0160

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by Peterborough
Distribution Inc. for an order approving just and reasonable
rates and other charges for electricity distribution to be
effective May 1, 2013.

DECISION ON CONFIDENTIALITY AND PROCEDURAL ORDER NO. 3

June 14, 2013

Peterborough Distribution Inc. ("PDI") filed a complete application (the "Application") with the Ontario Energy Board (the "Board") on March 23, 2013 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that PDI charges for electricity distribution, to be effective May 1, 2013. The Board has assigned the application file number EB-2012-0160.

The Board issued Procedural Order No. 1 on April 23, 2013, granting PDI's request to make its existing rates interim on May 1, 2013 and granting intervenor status and cost award eligibility to Energy Probe, School Energy Coalition ("SEC") and the Vulnerable Energy Consumers Coalition ("VECC"). Procedural Order No. 1 also provided for a teleconference among parties for the purposes of clarifying PDI's evidence, to be followed by written interrogatories.

On May 27, 2013, PDI filed its responses to interrogatories. In response to interrogatory number 1-SEC-5, PDI provided, as requested, its 2012 audited financial statements and those for its affiliates Peterborough Utilities Services Inc. ("PUSI") and Peterborough Utilities Commission ("PUC"). PDI requested that the financial statements for its affiliate Peterborough Utilities Inc. ("PUI") be kept confidential (the "Proposed Confidential Material").

PUI and its subsidiaries operate various renewable generation facilities, including hydro, solar and land fill gas hydroelectric generation plants. PUI has several of its own employees and also receives varied corporate, technical and professional services from PUSI. PDI provided the following explanation for its request:

Peterborough Utilities Inc. (PUI) is a corporation engaged in competitive businesses. The public disclosure of its financial statements could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interest of each of these consultants since it would enable its competitors and potential customers and suppliers to ascertain the financial condition of the company.

On May 28, PDI sent a further letter to the Board requesting confidential treatment for the Proposed Confidential Material. In accordance with the Board's Practice Direction on Confidential Filings (the "Practice Direction"), PDI provided a hard copy of the Proposed Confidential Material in unredacted form to the Board and served a copy of its letter requesting confidentiality on all parties to the proceeding.

On May 31 2013, the Board issued Procedural Order No. 2, designating the Proposed Confidential Material as confidential on an interim basis and allowing any external counsel or external consultant for intervenors that wished to review the Proposed Confidential Material to do so after signing a copy of the Board's Declaration and Undertaking, filing it with the Board and serving it on PDI. The Procedural Order provided a schedule for intervenors and Board staff objecting to the request for confidential treatment to provide submissions and for PDI to respond.

On June 4, 2013, Board staff submitted that the Board had previously found that public disclosure of financial statements of a parent holding company and/or its affiliates could create significant potential harm for the affiliate.¹ Board staff generally agreed that, if the Proposed Confidential Material contains financial information about a PDI affiliate which is engaged in competitive business, then public disclosure of these financial statements could prejudice that affiliate's competitive position. Board staff submitted that such information should be treated as confidential and provided only to participants that have

¹ For example EB-2011-0099 ("Decision on Confidentiality and Order", March 1, 2013) and EB-2011-0140 ("Decision and Order on Request for Confidentiality from RES Canada Transmission LP", January 23, 2013)

signed the Board's Declaration and Confidentiality Undertaking in accordance with the Practice Direction.

SEC submitted that renewable generation businesses in Ontario are operated under strict public rules that apply to everyone and that competitors do not in practice "compete" with PUI for business. SEC therefore concluded that the harm associated with the disclosure of competitive information is, in the circumstances of this case, very small.

SEC submitted that the owners of these businesses had made a conscious decision to commingle the regulated and unregulated businesses and must therefore accept that there will be some level of public scrutiny of those unregulated affiliates, as their financial information is relevant in setting rates for the regulated entity. SEC submitted that the Board should opt for enforcement of the principle of transparency, and require that these financial statements be on the public record.

In its reply submission, PDI noted that other renewable generators (including those that are affiliates of licensed distributors) are not required by the Board to publicly file their financial information. PDI submitted that it had grown its renewable generation business through acquisitions of existing renewable generation facilities and through applications for contracts under the Ontario Power Authority's ("OPA") Feed-in-Tariff program. PDI stated that both potential vendors and the OPA would require confidential disclosure of financial information and that public disclosure would put them at a competitive disadvantage in competitive acquisition processes.

PDI provided an expanded description of PUI's activities, which includes among others, the provision of Meter Service Provider (MSP) and Meter Data Management Agency (MDMA) services to Wholesale Market Participants, Generators and retail customers. PDI submitted that there is "no question" that these are competitive services and that public disclosure of the financial information would significantly prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interest of the company, since it would enable its competitors, suppliers and potential customers to ascertain the financial condition of the company.

PDI submitted that it was not refusing to provide the information but that it was not prepared to do so publicly and that the Board contemplates and accommodates various

corporate structures, including those in which the distributor obtains services and resources from other members of its corporate family. PDI stated that it was not aware of a policy where a competitive affiliate would forfeit the confidentiality of its financial information by virtue of its provision of services to a distributor and submitted that this proceeding was not the appropriate place to create such a policy.

Board Findings

The Board finds that the nature of the information described by PDI is consistent with the factors to be considered by the Board in addressing the confidentiality of filings, as described in Appendix “A” of the *Practice Direction on Confidential Filings*, and that the Board has provided for confidential treatment of this type of information in the past. The Board will grant confidential status to the financial statements of PUI.

The Board expects parties to comply with the Board’s *Practice Direction on Confidential Filings* in dealing with the documents for which the Board has provided confidential information.

After reviewing the responses to the interrogatories, the Board has decided that provision should be made for further written interrogatories for the purpose only of clarifying the information provided in some of the responses filed by PDI. The Board encourages parties to use a continuous numbering system that starts from the last number utilized by the intervenor, modified with the addition of the letter “s”. The reference tag for the supplemental interrogatory would be the original tag of the interrogatory in question. For example, a supplemental interrogatory regarding the response to interrogatory “1-Staff-2” would be tagged “**1-Staff-49s**” beneath which “**Ref: 1-Staff-2**” would appear.

The Board has also decided that it will provide for a settlement conference for the purpose of settling the issues in this proceeding.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. The Board grants confidential status to the documents filed by PDI, specifically the PUI 2012 financial statements. Where possible, parties shall frame interrogatories and/or cross examination questions related to the confidential material in a manner that will allow the questions and responses to be placed on the public record.

To the extent possible, parties shall frame submissions related to the confidential material in a manner that will allow the submissions to be placed on the public record. If parties are not able to frame submissions in a manner that allows them to be placed on the public record, those submissions must be marked confidential.

2. Following the end of the proceeding, parties in receipt of confidential materials shall either return the subject information to the Board for destruction, or either destroy or expunge, as applicable, the information and execute a Certificate of Destruction. The Certificate of Destruction, that is Appendix D of the Practice Direction, must be filed with the Board.
3. Intervenors and Board staff who wish to ask questions that relate to the existing interrogatory responses filed by PDI shall file written supplemental interrogatories with the Board and deliver a copy to PDI on or before **June 20, 2013**. Where possible, the questions should reference the existing response and the pre-filed evidence.
4. PDI shall file with the Board complete responses to the supplemental interrogatories and deliver them to the intervenors no later than **July 4, 2013**.
5. A Settlement Conference will be convened on **July 9, 2013** starting at 9:30 a.m., in the **ADR Room** at 2300 Yonge Street, 25th floor, Toronto, with the objective of reaching a settlement among the parties on the issues. If necessary, the Settlement Conference will continue on **July 10, 2013**.
6. Any Settlement Proposal arising from the Settlement Conference shall be filed with the Board no later than **July 24, 2013**. In addition to outlining the terms of any settlement, the Settlement Proposal should contain a list of any unsettled issues, identifying those issues that the parties believe must be dealt with by way of oral or written hearing.

All filings to the Board must quote the file number, EB-2012-0160, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, June 14, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary