

PUC Distribution Inc.

**Application for electricity distribution rates and other
charges effective May 1, 2019**

**DECISION ON CONFIDENTIALITY REQUEST
June 27, 2019**

PUC Distribution Inc. (PUC Distribution) filed an incentive rate-setting mechanism (IRM) application with the Ontario Energy Board (OEB) on January 31, 2019 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) seeking approval for changes to its electricity distribution rates to be effective May 1, 2019.

As part of its 2019 IRM application, PUC Distribution also applied for an Incremental Capital Module (ICM) to recover costs associated with the implementation of the Sault Smart Grid (SSG) project.

On May 31, 2019, PUC Distribution filed its responses to OEB staff and intervenor interrogatories on the ICM portion of the application. In the cover letter accompanying the responses, PUC Distribution stated that it filed the following documents in confidence pursuant to the OEB's *Practice Direction on Confidential Filings*:

Appendix 9 - Letter of Intent between PUC and Energizing, LLC (now named Infrastructure Energy LLC) (IE)

Appendix 11 - Amendment to Letter of Intent in No. 1 above

Appendix 13 - Current working draft version of the main Project Agreement between PUC and Project Co. (SSG Inc.)

Appendix 12 - Schedule to Project Agreement in No. 3 above

The above four documents are collectively referred to as the Documents.

PUC Distribution stated that IE engages in competitive business activities, including the development of smart grid initiatives across North America, and that disclosure of the Documents on the public record would allow IE's competitors to gain access to valuable confidential information and 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 IE.¹

Procedural Order No. 4, issued on June 4, 2019, made provision for written submissions on PUC Distribution's request for confidential treatment of the Documents.

OEB staff and the School Energy Coalition (SEC) wrote detailed submissions on each of the Documents.

OEB staff provided various reasons for not supporting PUC Distribution's request for confidential treatment of all of the Documents, in their entirety. OEB staff noted that there may be some parts of certain documents that could be redacted but otherwise the entire redacted documents should be placed on the public record of this proceeding.

SEC submitted that no component of any of the Documents should be confidential.

In its reply, PUC Distribution noted that it forwarded the submissions of SEC and OEB staff to IE, the third party whose confidential information is the subject of dispute by both SEC and OEB staff. IE noted that it is willing to disclose most of the information contained in the Documents and has limited and narrowed the request for confidential treatment to very specific redactions in two of the Documents.

The revised Documents were provided as part of PUC Distribution's reply submission.

Findings

For the reasons set out below, the OEB accepts PUC Distribution's request for confidentiality as modified in its reply submission.

Appendix 9

The OEB finds that this original 2013 letter of intent between IE and PUC Distribution contains standard provisions and information that is already on the public record. In its letter of June 17, 2019, IE's counsel agreed that IE is prepared to disclose this document on the public record in full. The OEB agrees and directs PUC Distribution to place Appendix 9 in its entirety on the public record in this proceeding.

Appendix 11

The OEB finds that, similar to the original letter of intent, the information contained in this 2015 amended letter is conventional and is either already on the public record or, in

¹ EB-2018-0219, Interrogatory Responses, Page 2

the OEB's opinion, is not likely to cause prejudice or harm to IE if made public. The only exception are parts of Schedule D which the IE counsel proposed to redact in the June 17, 2019 letter. The OEB agrees that these redacted portions contain information that could be used by IE's competitors and potentially prejudice IE's economic interest. The OEB directs PUC Distribution to place Appendix 11 on the public record in this proceeding with these redactions applied as proposed by IE.

Appendix 12

The OEB finds that Appendix 12 is a standard document which contains definitions to support Appendix 13. There is nothing in this document that warrants confidential treatment. The IE counsel's June 17, 2019 letter offered to place this document on the public record. The OEB agrees and directs PUC Distribution to place Appendix 12 in its entirety on the public record in this proceeding.

Appendix 13

The OEB finds that Appendix 13 contains mostly general standard provisions and terminology for similar agreements. The document does not include any specific provisions that are particularly unique to the UDM project. The only exception is the notes and comments shown on the draft document by other parties which the OEB finds to be of a confidential nature based on the information provided by PUC Distribution as part of its reply submission. In the June 17, 2019 letter accompanying PUC Distribution's reply submission, IE's counsel proposed six short redactions in Appendix 13. The OEB agrees with these redactions and directs PUC Distribution to place Appendix 13, with those redactions applied, on the public record of this proceeding.

The OEB notes that, during the Technical Conference, PUC Distribution inadvertently disclosed publicly a small part of the redacted portion of this Appendix.² PUC Distribution conceded that this portion could no longer remain confidential as it was disclosed on the record in a public forum. The OEB agrees and directs PUC Distribution to place this portion on the public record. In addition, parties discussed an associated note in the draft Project Agreement which should also be placed on the record given its interrelatedness.³ In summary, the portion to be placed on the public record is Section 3.1 of the Project Agreement with the exception of the second paragraph of that section.

The OEB considers it necessary to make provision for the following matters related to this proceeding.

² Transcript Day 1, p. 112, line 7 to page 113, line 20

³ Transcript Day 1, p. 113, line 2 and lines 14 to 20

THE ONTARIO ENERGY BOARD THEREFORE ORDERS THAT:

1. PUC Distribution Inc. shall prepare a revised un-redacted version of Appendix 13 in accordance with the findings set out in this Decision, and shall file it with the OEB by **July 4, 2019**, for placement on the public record of this proceeding.

All filings to the OEB must quote the file number, EB-2018-0219, be made in searchable / unrestricted PDF format electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. 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.oeb.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 USB memory stick 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.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Georgette Vlahos at georgette.vlahos@oeb.ca and OEB Counsel, Ljuba Djurdjevic at ljuba.djurdjevic@oeb.ca.

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DATED at Toronto, **June 27, 2019**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary