



**PUC Distribution Inc.**

**Application for electricity distribution rates  
and other charges  
effective May 1, 2022**

**PROCEDURAL ORDER NO. 6**  
**November 16, 2020**

PUC Distribution Inc. (PUC Distribution) filed an incentive rate-setting mechanism (IRM) application<sup>1</sup> 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. The OEB bifurcated the application and issued a Partial Decision and Order on the IRM portion of the application on June 20, 2019. A Final Rate Order was issued on July 9, 2019.

Pursuant to Procedural Order No. 2, a Technical Conference on the ICM portion of the application was held on June 19 and 20, 2019. Following the Technical Conference, PUC Distribution filed a letter on June 28, 2019 indicating its intent to amend the ICM portion of the application, and to make best efforts to complete and file the amendment by the end of September 2019. PUC Distribution also indicated that it wished to preserve the existing record on the SSG project to date and that it will include responses to all outstanding Technical Conference undertakings as part of this amendment.

On July 16, 2019, the OEB issued Decision and Procedural Order No. 5 (PO5) which provided, among other things, that the application would be placed in abeyance until an amended application is filed, including answers to undertakings given at the Technical Conference.

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<sup>1</sup> EB-2018-0219

PUC Distribution filed its restated and amended SSG ICM application on October 29, 2020 (Amended Application). As noted in the OEB's completeness letter issued on November 12, 2020, for administrative purposes the OEB assigned a new file number for this proceeding (EB-2020-0249) and combined this proceeding with the initial application (EB-2018-0219). The OEB also indicated that parties that were granted intervenor status and cost award eligibility in the EB-2018-0219 proceeding are deemed to be intervenors and are eligible for cost awards in this combined proceeding.

### Confidentiality

In its cover letter accompanying the Amended Application, PUC Distribution filed the following documents in confidence in their entirety, pursuant to the OEB's *Practice Direction on Confidential Filings* (Practice Direction):

1. Appendix AA3-1: SSG Scope Overview Summary
2. Appendix AA3-2: SSG Physical Scoping Diagram
3. Appendix AA3-3: SSG Logical Scoping Diagram
4. Appendix AA3-4: Responsibility Matrix
5. Appendix AA3-5: Project Schedule
6. Appendix AA3-6: EPC Pricing Summary
7. Appendix AA3-7: EPC Contract
8. Appendix AA3-7: EPC Appendix A – SSG Scope of Work
9. Appendix AA3-7: EPC Appendix B – Compensation
10. Appendix AA3-7: EPC Appendix C – Owner's Policies
11. Appendix AA3-7: EPC Appendix D – Warranty Items Procedure
12. Appendix AA3-7: EPC Appendix E – Form of Parent Guaranty
13. Appendix AA3-7: EPC Appendix F – Forms
14. Appendix AA3-7: EPC Appendix G – Dispute Resolution Procedure
15. Appendix AA3-7: EPC Appendix H – Key Personnel

The above-noted 15 documents are collectively referred to as the Documents and pertain to the engineering, procurement, and construction (EPC) contract between the EPC contractor and PUC Distribution for the SSG project, namely the EPC contract, the EPC contract appendices or excerpts of the EPC contract.

PUC Distribution stated that public disclosure of the Documents could reasonably be expected to prejudice the EPC contractor's competitive position.<sup>2</sup>

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<sup>2</sup> EB-2020-0249, Cover Letter, Pages 2-3

The OEB notes that PUC Distribution made a similar request in the EB-2018-0219 proceeding for confidential treatment of certain documents, including the project agreement and schedules. PUC Distribution stated that disclosure of those documents 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 a third party.<sup>3</sup>

OEB staff and the School Energy Coalition filed detailed submissions on each of the documents for which confidentiality was requested in the EB-2018-0219 proceeding. In its reply submission, PUC Distribution noted that the third party was willing to disclose most of the information contained in the documents and the request for confidential treatment was revised and limited to very specific redactions to the documents.

In its Decision on Confidentiality, the OEB accepted PUC Distribution's narrowed request for confidentiality, as set out in its reply submission. The Decision on Confidentiality set out reasons for accepting the limited redactions for each document. The OEB also noted that many of the documents contained mostly standard provisions and definitions, information already on the public record and, in some instances, would likely not cause prejudice or harm to the third party if made public.<sup>4</sup>

The OEB notes that, while the Documents filed with the Amended Application are not identical to those that were considered in the Decision on Confidentiality and they pertain to a different third party, they are substantially similar in nature, i.e. project agreement documents (EPC contract and appendices).

In the current proceeding, PUC Distribution has requested confidential treatment for the Documents in their entirety, rather than redacting specific portions of the Documents and filing those redacted versions on the public record.

Given that the OEB has already considered a confidentiality request for similar types of documents (project agreement, etc.) in the EB-2018-0219 proceeding, the OEB is of the view that PUC Distribution should have been guided by the Decision on Confidentiality and made a more focused request for confidential treatment and filed redacted versions of the Documents on the public record.

The OEB's general policy, as set out in the Practice Direction, is that all evidence should be on the public record and should be open for inspection by any person unless

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<sup>3</sup> EB-2018-0219, Interrogatory Responses, Page 2

<sup>4</sup> EB-2018-0219, Decision on Confidentiality Request, June 27, 2019, Pages 2-3

disclosure of the record is prohibited by law.<sup>5</sup> The Practice Direction seeks to balance the objectives of transparency and accessibility with the need to protect information that has been properly designated as confidential. The approach that underlies the Practice Direction is that the placing of materials on the public record is the rule, and confidentiality is the exception, and the onus is on the party requesting confidentiality to demonstrate that confidential treatment is warranted in any given case.

The OEB is of the view that PUC Distribution has not made reasonable efforts to limit the redacted information or demonstrated that confidential treatment for the Documents in their entirety is warranted.

The OEB directs PUC Distribution to make meaningful redactions to the Documents based on the guidance provided in the OEB's Decision on Confidentiality and submit a revised request for confidential treatment. The OEB will make a decision on the revised request for confidentiality following the filing of a submission by OEB staff on its position as to whether the revised confidentiality request is consistent with the OEB's Decision on Confidentiality.

The OEB will designate the Documents as confidential, on an interim basis, and allow intervenors to review the unredacted Documents after signing the OEB's Declaration and Undertaking appended to the Practice Direction.

The OEB finds it is necessary to make provision for the matters set out below related to this proceeding. Further procedural orders will be issued by the OEB.

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<sup>5</sup> OEB Practice Direction on Confidential Filings, October 28, 2016

**THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. Intervenors that wish to review unredacted versions of the Documents for which PUC Distribution Inc. requests confidential treatment will sign and file the OEB's Confidentiality Declaration and Undertaking form by no later than **November 19, 2020**.
2. PUC Distribution Inc. will provide unredacted versions of the Documents to intervenors who signed the OEB's Confidentiality Declaration and Undertaking by no later than **November 23, 2020**.
3. PUC Distribution Inc. shall file a revised confidentiality request with specific redactions to the Documents for which it is seeking confidential treatment. PUC Distribution Inc. shall file the revised confidentiality request on or before **November 26, 2020**.
4. OEB staff shall file a written submission on whether PUC Distribution Inc.'s revised confidentiality request is consistent with the Decision on Confidentiality, and deliver it to all other parties on or before **December 7, 2020**.
5. OEB staff and intervenors shall request any relevant information and documentation from PUC Distribution Inc. that is in addition to the evidence already filed, by written interrogatories filed with the OEB and served on all parties by **December 18, 2020**.
6. PUC Distribution Inc. shall file with the OEB complete written responses to all interrogatories and serve them on all intervenors and OEB staff by **January 11, 2021**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, do not include personal information (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's *Rules of Practice and Procedure*.

All materials filed with the OEB must quote the file number, **EB-2020-0249/EB-2018-0219**, and be submitted in a searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\)](#)

[Document Guidelines](#) found at [www.oeb.ca/industry](http://www.oeb.ca/industry). We encourage the use of RESS; however, parties who have not yet [set up an account](#), may email their documents to [registrar@oeb.ca](mailto:registrar@oeb.ca).

All communications should be directed to the attention of the Registrar 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](mailto:Georgette.Vlahos@oeb.ca) and OEB Counsel, Ljuba Djurdjevic at [Ljuba.Djurdjevic@oeb.ca](mailto:Ljuba.Djurdjevic@oeb.ca).

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Tel: 1-888-632-6273 (Toll free)  
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**DATED** at Toronto, **November 16, 2020**

**ONTARIO ENERGY BOARD**

*Original Signed By*

Christine E. Long  
Registrar