

**John A.D. Vellone**  
T (416) 367-6730  
F 416.367.6749  
jvellone@blg.com

**Flora Ho**  
T (416) 367-6581  
F 416.367.6749  
fho@blg.com

Borden Ladner Gervais LLP  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada M5H 4E3  
T 416.367.6000  
F 416.367.6749  
blg.com



November 26, 2020

**Delivered by Email & RESS**

Ms. Christine Long  
Registrar  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
Toronto, ON  
M4P 1E4

Dear Ms. Long:

**Re: EB-2020-0249 EB-2018-0219 – PUC Distribution Inc. (“PUC Distribution”)  
SSG ICM Application (“ICM Application”)  
Revised Confidentiality Request**

Pursuant to Procedural Order No. 6, PUC Distribution is filing this revised confidentiality request with specific redactions to documents for which it is seeking confidential treatment enclosed and explanation provided below.

PUC Distribution is filing this information in confidence pursuant to the Ontario Energy Board’s (the “Board”) Practice Direction on Confidential Filings (the “Practice Direction”).

The following documents were filed in confidence in their entirety with the ICM Application on October 28, 2020 (“Original Confidentiality Request”).

- Appendix AA3-1: SSG Scope Overview Summary
- Appendix AA3-2: SSG Physical Scoping Diagram
- Appendix AA3-3: SSG Logical Scoping Diagram
- Appendix AA3-4: Responsibility Matrix
- Appendix AA3-5: Project Schedule
- Appendix AA3-6: EPC Pricing Summary
- Appendix AA3-7: EPC Contract
- Appendix AA3-7: EPC Appendix A – SSG Scope of Work
- Appendix AA3-7: EPC Appendix B – Compensation
- Appendix AA3-7: EPC Appendix C – Owner’s Policies
- Appendix AA3-7: EPC Appendix D – Warranty Items Procedure
- Appendix AA3-7: EPC Appendix E – Form of Parent Guaranty
- Appendix AA3-7: EPC Appendix F – Forms

- Appendix AA3-7: EPC Appendix G – Dispute Resolution Procedure
- Appendix AA3-7: EPC Appendix H – Key Personnel

(collectively, the “EPC Documents”).

In accordance with the requirements in Procedural Order No. 6, PUC Distribution has reviewed the EPC Documents and is keeping its redactions analogous to those made in the original ICM Application (EB-2018-0219) during the interrogatories phase, which were found to be confidential by the OEB in its Decision on Confidentiality Request<sup>1</sup>. In addition, PUC Distribution has made specific redactions particular to certain EPC Documents with reasons set out below.

### **1. EPC Documents – Public Record**

The following are certain EPC Documents that PUC Distribution submits can be placed in their entirety on public record:

- Appendix AA3-1 SSG Scope Overview Summary
- Appendix AA3-2 SSG Physical Scoping Diagram
- Appendix AA3-3 SSG Logical Scoping Diagram
- Appendix AA3-4 Resp Matrix
- Appendix AA3-5 Project Schedule
- Appendix AA3-7 – EPC Appendix A – SSG Scope of Work
- Appendix AA3-7 -EPC Appendix C Owner's Policies
- Appendix AA3-7 -EPC Appendix D Warranty Items Procedure
- Appendix AA3-7 - EPC Appendix F Forms
- Appendix AA3-7 -EPC Appendix G Dispute Resolution Procedure

(collectively, “Documents for Public Record”)

PUC Distribution submits that the Documents for Public Record can be disclosed in its entirety. Similar documents were previously disclosed in the original ICM Application (EB-2018-0219) so in keeping with what is already on the public record, PUC Distribution finds it appropriate to disclose these documents in its entirety. In addition, although some of the Documents for Public Record are new EPC Documents that have not been disclosed in the original ICM Application, PUC Distribution submits that these are mostly standard documents to an EPC Contract and do not contain any commercially sensitive information that require confidential treatment (unlike the items listed in the following section 2).

---

<sup>1</sup> EB-2018-0219 – PUC Distribution Inc. – Decision on Confidentiality Request dated June 27, 2019.

## **2. EPC Documents – Confidential Treatment**

### **(i) Redacted Documents**

PUC Distribution submits that the following documents are the EPC Documents that require specific redactions to confidential information contained therein:

- (a) Appendix AA3-6 - EPC Contract Pricing
- (b) Appendix AA3-7 - EPC Contract
- (c) Appendix AA3-7 - EPC Appendix B Compensation
- (d) Appendix AA3-7 - EPC Appendix H Key Personnel

Reasons for these redactions are addressed individually below.

#### **(a) Appendix AA3-6 - EPC Contract Pricing**

The breakdown of the EPC Contract Pricing has been redacted. This information is commercially sensitive as it shows how much the EPC Contractor, Overland Contracting Canada Inc. (“OCCI”) is charging for each of its services under the EPC Contract. OCCI, as an EPC Contractor, engages in competitive business activities. EPC Contractors like OCCI participate in competitive tenders in order to secure an EPC Contract. Disclosure of this third party information of OCCI in Appendix AA3-6 - EPC Contract Pricing 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 the third party, OCCI. By disclosing OCCI’s pricing information on the public record, it will enable other EPC Contractors to gain a competitive advantage over OCCI by adjusting their prices according to this information and thereby securing EPC Contracts (i.e. business opportunities) at the loss of OCCI. Meanwhile, these competitors can keep their own pricing information confidential. In addition, OCCI will engage in negotiations with sub-contractors for work on the ICM project, therefore by disclosing OCCI’s pricing information on public record, it would affect these negotiations by allowing the sub-contractors to use the pricing information as leverage in their negotiations and extract concessions. Therefore, such third party information of OCCI should not be disclosed on public record.

#### **(b) Appendix AA3-7 - EPC Appendix B Compensation**

Similar to Appendix AA3-6 - EPC Contract Pricing, the breakdown of the maximum price for the EPC Contract and OCCI’s personnel rates charged has been redacted due to the abovementioned reasons in section 2(a) above. The payment milestones have also been redacted as these are commercially sensitive and are terms that were negotiated between OCCI and PUC Distribution. By disclosing payment milestones, other potential companies that OCCI is engaged or will be engaged in negotiations with will be able to see the arrangement between PUC Distribution and OCCI and use it as leverage when negotiating for payment terms. Placing the payment milestones on public record would directly affect those negotiations between OCCI and other companies who intend to enter into EPC Contracts with them. In addition, OCCI will engage in negotiations with sub-contractors for work on the ICM project, therefore by disclosing OCCI’s pricing information and payment terms on public record, it would affect these negotiations by allowing the sub-contractors to use such information as leverage in their negotiations and extract concessions.

(c) Appendix AA3-7 - EPC Contract

Sections in Appendix AA3-7 - EPC Contract related to liquidated damages and its calculation have been redacted. These were similarly redacted in the original ICM Application in - Appendix 11 - LOI Amendment and the OEB agreed that the redacted information could be used by the third party's competitors and potentially prejudice its economic interest<sup>2</sup>.

Information related to the representatives and notice addresses as well as signatures is information related to identifiable individuals and has been redacted. The corporate seals have been redacted as that information is commercially sensitive.

(d) Appendix AA3-7 - EPC Appendix H Key Personnel

The names and positions of the Key Personnel for the upfront engineering services has been redacted as this is information related to identifiable individuals.

(ii) Confidential in its entirety

PUC Distribution submits that Appendix AA3-7 -EPC Appendix E Form of Parent Guaranty should be treated as confidential in its entirety.

The Parent Guaranty document contains information on the guarantor and the negotiated terms and arrangement between PUC Distribution and the guarantor in relation to the EPC Contract, which is commercially sensitive information. In addition, the guarantor is engaged in a highly competitive business and will have to negotiate guaranties from time to time. By disclosing the Parent Guaranty on the public record, it will affect future negotiations by the guarantor and allow future guarantees to extract concessions in these future negotiations. Therefore, PUC Distribution submits that the Parent Guaranty should be treated as confidential in its entirety.

**Board's Practice Direction**

The Practice Direction recognizes that the abovementioned are among the factors that the Board will take into consideration when addressing the confidentiality of filings<sup>3</sup>.

Appendix "A" to the Practice Direction sets out the Board's considerations in determining requests for confidentiality. Among those considerations are the following:

- (a)(i) prejudice to any person's competitive position;
- (a)(iii) whether the information could interfere significantly with negotiations being carried out by a party;
- (a)(iv) whether the disclosure would be likely to produce a significant loss or gain to any person; and
- (g) any other matters relating to FIPPA (the *Freedom of Information and Protection of Privacy Act*) and FIPPA exemptions.

---

<sup>2</sup> Ibid.

<sup>3</sup> Appendix A - Ontario Energy Board *Practice Direction on Confidential Filings*, Revised October 28, 2016.

With respect to item (g) above, the Board has provided a summary of pertinent FIPPA provisions at Appendix C of the Practice Direction. That summary provides, in part, as follows:

“Under section 17(1), the Board must not, without the consent of the person to whom the information relates, disclose a record where:

- (a) the record reveals a trade secret or scientific, technical, commercial, financial or labour relations information;
- (b) the record was supplied in confidence implicitly or explicitly; and
- (c) disclosure of the record could reasonably be expected to have any of the following effects:
  - i. prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization;  
[...]
  - iii. result in undue loss or gain to any person, group, committee or financial institution or agency.”

In keeping with the requirements of the Practice Direction, PUC Distribution has already filed confidential unredacted versions of the documents with the Registrar along with the ICM Application. For the purpose of this revised confidentiality request where redactions were made to certain documents, PUC Distribution has re-filed those documents marked “Confidential” and identified portions of the documents in respect of which confidentiality is claimed through the use of sidebars (“|”). PUC Distribution requests that the unredacted documents be kept confidential.

### **3. Confirmation from Overland Contracting Canada Inc.**

In addition, PUC Distribution has reached out to OCCI, a party to the EPC Contract, and received confirmation from them that they are supportive of the filing of the Documents for Public Record on the public record, subject to the following disclaimer (which has been included in Appendix AA3):

#### ***DISCLAIMER FOR CONTRACT RELEASED UNDER OPEN RECORDS REQUEST***

*Overland Contracting Canada Inc. (“OCCI”) acknowledges the Ontario Energy Board (“OEB”) may be compelled to release the attached contract documents in order to comply with its governing laws and/or regulations. However, the attached contract, estimating and design documents represent the unique and specific negotiations between the PUC Distribution Inc. and OCCI related to the SSG Project and they are not intended to be modified or represented to be suitable for reuse by any other entities for any other uses. OCCI specifically disclaims any and all liability for any such modification or reuse by another entity without prior written approval, and verification or adaptation by OCCI. Any such use will be at the sole risk, responsibility and liability of such entity and without liability or legal exposure to OCCI.*

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

Per:

A handwritten signature in black ink, appearing to read 'Flora Ho', with a stylized, cursive script.

Flora Ho

cc: Parties to EB-2020-0249 EB-2018-0219