

BY EMAIL

December 2, 2020

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

Dear Ms. Long:

**Re: Oshawa PUC Networks Inc.
Application for 2021 Electricity Distribution Rates
OEB Staff Submission on Confidentiality
OEB File No. EB-2020-0048**

In accordance with the OEB's Partial Decision on Confidentiality and Procedural Order No. 3, please find attached OEB staff's submission in the above proceeding.

Yours truly,

Original Signed By

Georgette Vlahos
Advisor, Electricity Distribution: Major Rate Applications & Consolidations

Encl.

ONTARIO ENERGY BOARD

STAFF SUBMISSION ON CONFIDENTIALITY

OSHAWA PUC NETWORKS INC.

2021 COST OF SERVICE APPLICATION

EB-2020-0048

December 2, 2020

**OEB Staff Submission on Confidentiality
Oshawa PUC Networks Inc.
2021 Cost of Service Application
EB-2020-0048**

Oshawa PUC Networks Inc. (Oshawa PUC Networks) filed a cost of service application with the Ontario Energy Board (OEB) 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 Oshawa PUC Networks charges for electricity distribution, beginning January 1, 2021. The application was accepted by the OEB as complete as of August 19, 2020.

On November 16, 2020, Oshawa PUC Networks filed its interrogatory responses which included a confidentiality request pursuant to the OEB's *Practice Direction on Confidential Filings* (Practice Direction).¹

Oshawa PUC Networks requested confidential treatment of certain information contained in two interrogatory responses:

1. 4-EP-21(c) (Document 1)
 - Information pertaining to the 2019 total compensation for the CEO of Oshawa PUC Networks
2. 1-DRC-7(a), Appendix Q – Taking A.I.M Proposal - Operational Plan (Document 2)
 - Information consisting of the names, positions and responsibilities of individuals employed at UtilityPULSE, as well as the price quotation provided by UtilityPULSE to Oshawa PUC Networks for customer engagement services

The OEB's Partial Decision on Confidentiality and Procedural Order No. 3² (PO3) found that the personal information contained in Document 1 consisting of the 2019 total compensation information of the CEO is properly considered personal information pursuant to the *Freedom of Information and Protection of Privacy Act*³ (FIPPA). In accordance with section 4.3.1 of the OEB's Practice Direction⁴ and Rule 9A.02 of the OEB's Rules of Practice and Procedure⁵, the OEB determined that the information contained in Document 1 regarding CEO compensation will be treated as confidential and will not be provided to any party, including a person who has provided a Declaration and Undertaking pursuant to under the OEB's Practice Direction. PO3 also made

¹ Practice Direction on Confidential Filings, October 28, 2016

² Issued on November 23, 2020

³ R.S.O. 1990, c.F.31

⁴ Practice Direction on Confidential Filings, October 28, 2016, Page 6

⁵ Ontario Energy Board – Rules of Practice and Procedure, Page 7

provision for the filing of submissions on Oshawa PUC Networks' request for confidential treatment of Document 2.

In its request for confidential treatment with respect to Document 2, Oshawa PUC Networks stated that the document contains employment information of individuals at UtilityPULSE which would be considered personal information, and public disclosure of the information would be contrary to FIPPA.

In addition, Oshawa PUC Networks stated that Document 2 contains commercially sensitive information, namely a price quotation provided by a third party (UtilityPULSE) for its customer engagement services which is protected by FIPPA and should be redacted. Oshawa PUC Networks stated that UtilityPULSE is a customer research firm that provides customer engagement services and disclosure of pricing information 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 UtilityPULSE.⁶

OEB staff has reviewed the request for confidentiality and does not agree with all of the redactions to Document 2 as proposed by Oshawa PUC Networks.

OEB staff notes that the information in Document 2 for which confidential treatment is requested has 2 aspects:

1. A price quotation provided by a third party (UtilityPULSE) for their customer engagement services; and
2. Information consisting of the names, positions and responsibilities of individuals employed at UtilityPULSE.

With respect to the first type of information, OEB staff agrees that pricing information is considered "financial information" which is generally protected from disclosure under section 17(1) of FIPPA. Accordingly, OEB staff supports the confidentiality request for this portion of Document 2.

With respect to the second type of information (names, positions and responsibilities of individuals employed at UtilityPULSE), OEB staff does not agree that this type of information, absent other accompanying information about an individual, constitutes "personal information" as defined in section 2(1) of FIPPA. Furthermore, section 2(3) of FIPPA provides that, "Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity."

⁶ EB-2020-0048, Cover Letter, November 16, 2020, Page 2

OEB staff notes that there have been several decisions of the Information and Privacy Commissioner of Ontario (IPC) which have found that information regarding the names, job titles and responsibilities of individuals in their professional capacity does not constitute “personal information” under FIPPA.⁷

Accordingly, OEB staff submits that information in Document 2 consisting of the names, positions and responsibilities of individuals employed at UtilityPULSE is not “personal information” about an individual in their personal capacity and therefore should not be treated as confidential and redacted from the document filed on the public record of this proceeding.

OEB staff submits that information in Document 2 consisting of the names, positions and responsibilities of individuals employed at UtilityPULSE is not “personal information” and does not warrant confidential treatment by either the Practice Direction or FIPPA.

While OEB staff does not believe that the subject information has significant probative value to the issues in the proceeding, OEB staff notes that the principle that underlies the Practice Direction is that the placing of materials on the public record is the rule, and confidentiality is the exception.

All of which is respectfully submitted

⁷ See for example, IPC Decision PO-3186 (2013) at para. 24:

[24] ... The appellant consents to release the names and job titles of the individuals, which accords with section 2(3) of the Act, under which this information does not qualify as personal information. However, the appellant opposes disclosure of the listing of roles and responsibilities. In my view, this information does not qualify as personal information under section 2(1) of the Act because it is not information about these individuals in a personal capacity, but rather in their professional capacity, as members of the appellant's team for this project. Accordingly, I find that the names of the individuals who are intended to work on the project, their job titles, and the general descriptions of their assigned tasks or responsibilities for the project does not qualify as personal information under the definition in section 2(1).

APPENDIX

Excerpts from the *Freedom of Information and Protection of Privacy Act*,

R.S.O. 1990, CHAPTER F.31

Definitions

2 (1) In this Act,

....

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; (“renseignements personnels”)

.....

Business identity information, etc.

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity. 2006, c. 34, Sched. C, s. 2.

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