

**BY EMAIL**

December 7, 2020

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

Attention: Ms. Christine E. Long, Registrar

Dear Ms. Long:

**Re: PUC Distribution Inc.  
2022 Incremental Capital Module Application – Sault Smart Grid Project  
OEB Staff Submission on Revised Confidentiality Request  
OEB File No. EB-2020-0249/EB-2018-0219**

In accordance with Procedural Order No. 6, 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 REVISED CONFIDENTIALITY REQUEST**

PUC Distribution Inc.

2022 Incremental Capital Module –  
Sault Smart Grid Project

EB-2020-0249/EB-2018-0219

**December 7, 2020**

**OEB Staff Submission on Confidentiality  
PUC Distribution Inc.  
2022 Incremental Module Application – Sault Smart Grid Project  
EB-2020-0249/EB-2018-0219**

PUC Distribution Inc. (PUC Distribution) filed an amended Incremental Capital Module (ICM) application with the Ontario Energy Board (OEB) on October 29, 2020 seeking approval for rate riders to be effective May 1, 2022. PUC Distribution has requested OEB approval to recover incremental capital to implement the Sault Smart Grid (SSG Project).

As noted in the OEB's completeness letter issued on November 12, 2020, for administrative purposes the OEB assigned a new file number for the amended ICM application (EB-2020-0249). However, as this application is a continuation of an originally filed application for the same project it has been combined with the initial application (EB-2018-0219).<sup>1</sup>

In its cover letter accompanying the amended ICM application, PUC Distribution filed several documents for which it requested confidential treatment in their entirety (Original Confidentiality Request).<sup>2</sup>

In Procedural Order (PO) No. 6<sup>3</sup>, the OEB noted that PUC Distribution made a similar request in the initial application for confidential treatment of certain documents and that the OEB had already considered a confidentiality request for similar types of documents in that proceeding (Decision on Confidentiality).<sup>4</sup> The OEB directed PUC Distribution to make meaningful redactions to the documents filed in the current proceeding based on the guidance provided in the Decision on Confidentiality and submit a revised request for confidentiality. PO No. 6 also directed OEB staff to file a submission on the revised request for confidentiality filed by PUC Distribution.

In accordance with PO No. 6, PUC Distribution filed a revised confidentiality request on November 26, 2020 (Revised Confidentiality Request) and filed 10 out of 15 documents from the Original Confidentiality Request on the public record.

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<sup>1</sup> PUC Distribution filed an incentive rate-setting mechanism (IRM) application with the OEB on January 31, 2019 seeking approval for changes to its electricity distribution rates to be effective May 1, 2019. As part of its 2019 IRM application, PUC Distribution applied for an ICM to recover costs associated with the implementation of the Sault 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. The ICM portion was placed in abeyance pending the filing of an amended ICM application.

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

<sup>3</sup> Issued November 16, 2020

<sup>4</sup> EB-2018-0219, Decision on Confidentiality, issued June 27, 2019

For ease of reference, OEB staff outlines the Revised Confidentiality Request in the table below:

**Table 1: Revised Confidentiality Request**

APPENDIX		REVISED CONFIDENTIALITY REQUEST
1	Appendix AA3-1: SSG Scope Overview Summary	On public record in its entirety
2	Appendix AA3-2: SSG Physical Scoping Diagram	On public record in its entirety
3	Appendix AA3-3: SSG Logical Scoping Diagram	On public record in its entirety
4	Appendix AA3-4: Responsibility Matrix	On public record in its entirety
5	Appendix AA3-5: Project Schedule	On public record in its entirety
6	Appendix AA3-6: EPC Pricing Summary	Specific redactions
7	Appendix AA3-7: EPC Contract	Specific redactions
8	Appendix AA3-7: EPC Appendix A – SSG Scope of Work	On public record in its entirety
9	Appendix AA3-7: EPC Appendix B – Compensation	Specific redactions
10	Appendix AA3-7: EPC Appendix C – Owner’s Policies	On public record in its entirety
11	Appendix AA3-7: EPC Appendix D – Warranty Items Procedure	On public record in its entirety
12	Appendix AA3-7: EPC Appendix E – Form of Parent Guaranty	Confidential in its entirety
13	Appendix AA3-7: EPC Appendix F – Forms	On public record in its entirety
14	Appendix AA3-7: EPC Appendix G – Dispute Resolution Procedure	On public record in its entirety
15	Appendix AA3-7: EPC Appendix H – Key Personnel	Specific redactions

With respect to the documents now filed on the public record in their entirety, PUC Distribution noted that similar documents were previously disclosed in the initial application in their entirety.<sup>5</sup> PUC Distribution stated that these are mostly standard documents contained within an EPC Contract and do not contain commercially sensitive information.<sup>6</sup>

OEB staff agrees with the placement of the noted 10 documents (non-highlighted line items in the table above) on the public record in their entirety. OEB staff agrees that similar types of documents were previously placed on the public record<sup>7</sup>, that they are standard EPC contract documents and do not contain commercially sensitive information.

<sup>5</sup> In the EB-2018-0219 proceeding

<sup>6</sup> EB-2020-0249, PUC Revised Confidentiality Request, November 26, 2020, Page 2

<sup>7</sup> In the EB-2018-0219 proceeding

OEB staff has reviewed the remaining five documents (highlighted) for which either specific redactions are requested, or for which the request is to treat the entire document as confidential. OEB staff provides its observations and submissions on each individual document below.

## **Documents with Specific Redactions**

### *Appendix AA3-6: EPC Pricing Summary*

This document consists of a breakdown of the project steps and associated contract pricing. PUC Distribution stated that this information is commercially sensitive as it shows how much the EPC Contractor is charging for each of its services under the EPC Contract and that public disclosure of this information could reasonably be expected to prejudice the economic interest and competitive position of the EPC Contractor.<sup>8</sup> Additionally, the EPC Contractor will engage in negotiations with sub-contractors for work on the ICM project, therefore by disclosing 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.<sup>9</sup>

OEB staff agrees that the pricing amounts for each individual component of the project should be redacted as this would be considered “financial information” which is generally treated as confidential under the Practice Direction on Confidential Filings<sup>10</sup> (Practice Direction) and section 17(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).<sup>11</sup>

The OEB’s Decision on Confidentiality stated that redactions that could be used by an EPC Contractor’s competitors and that could potentially prejudice an EPC Contractor’s economic interest should be redacted.<sup>12</sup>

However, OEB staff does not agree that the breakdown of each step/task of the SSG Project should be treated as confidential.

OEB staff submits that similar information (i.e. project breakdown) has been placed on the public record as part of the Revised Confidentiality Request under Appendices AA3-4: Responsibility Matrix and AA3-7: EPC Appendix B – Compensation. Therefore, OEB staff does not agree that this portion of the redaction follows the guidance provided by

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<sup>8</sup> *Ibid*, Page 3

<sup>9</sup> *Ibid*

<sup>10</sup> Practice Direction on Confidential Filings, October 28, 2016

<sup>11</sup> R.S.O. 1990, c.F.31

<sup>12</sup> EB-2018-0219, Decision on Confidentiality Request, June 27, 2019, Page 3

the OEB in the Decision on Confidentiality and therefore should not be redacted.

Appendix AA3-7: EPC Appendix B – Compensation

The Revised Confidentiality Request for this document proposes redactions to the following portions:

1. The breakdown of the components which make up the maximum price for the EPC Contract (Table 1) and;
2. The Payment Milestones (Table 2)

With respect to Table 1, PUC Distribution stated that, this information is commercially sensitive and disclosure of this information could reasonably be expected to prejudice the economic interest and competitive position of the EPC Contractor.<sup>13</sup>

OEB staff submits that each individual cost component which makes up the maximum price in Table 1 should be redacted as it is considered “financial information” in accordance with FIPPA. Similarly, the information in Schedule 1 – Rate Sheet also contains the EPC Contractor’s financial information and should be treated as confidential. OEB staff submits that these redactions follow the guidance provided in the Decision on Confidentiality, which found that this type of information could be used by an EPC Contractor’s competitors and potentially prejudice an EPC Contractor’s economic interest.

With respect to Table 2 (payment milestones), PUC Distribution stated that if this information is disclosed, it could be used as leverage by other potential companies that the EPC Contractor is engaged with or will be engaging in negotiations, such as sub-contractors for the SSG Project. Disclosing pricing information and payment terms on the public record would affect these negotiations by allowing the subcontractors to use such information as leverage in their negotiations and extract concessions.<sup>14</sup>

The Decision on Confidentiality allowed redactions that could be used by an EPC Contractor’s competitors and potentially prejudice an EPC Contractor’s economic interest.<sup>15</sup>

OEB staff submits that Table 2 is likely not confidential in its entirety. OEB staff agrees with proposed redactions for column three. However, the first two columns seem to

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<sup>13</sup> *Ibid*, Page 3

<sup>14</sup> *Ibid*

<sup>15</sup> EB-2018-0219, Decision on Confidentiality Request, June 27, 2019, Page 3

consist of information that is already on the public record in some form and is not likely to cause prejudice or harm if made public. It appears that similar information has been placed on the public record in the revised Confidentiality request as set out in Appendix AA3-4: Responsibility Matrix.

#### Appendix AA3-7: EPC Contract

The portions of this document that have been redacted relate to the name of the Guarantor, liquidated damages calculations, information relating to the representatives and notice addresses of those representatives, as well as signatures and corporate seals.

OEB staff notes that the Decision on Confidentiality did not address these types of information.

OEB staff agrees that the Guarantor name should be treated as confidential as this is commercially sensitive third party information, disclosure of which could be prejudicial to the third party and contrary to the Practice Direction and FIPPA.

OEB staff also agrees that the liquidated damages calculations in the EPC contract should be redacted as it also commercially sensitive financial information of a third party (EPC Contractor) and disclosure would be contrary to the Practice Direction and FIPPA.

With respect to the information related to representatives and notice addresses, OEB staff does not agree that this is 'personal information' as defined by FIPPA. 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."

OEB staff agrees that images of the signatures of the representatives as well as corporate seals could be considered personal information or commercially sensitive information, respectively, and should be redacted from the public version of the document.

#### Appendix AA3-7: EPC Appendix H – Key Personnel

This Appendix is a one-page document which sets out key project personnel for the SSG Project. PUC Distribution stated that the names and positions of key personnel for the upfront engineering services has been redacted as it relates to identifiable

individuals.<sup>16</sup>

The Decision on Confidentiality did not address personal information but OEB staff does not agree that this type of information constitutes personal information. As indicated above, information such as the name and position / role of an individual in a business or professional capacity is not personal information under FIPPA, and therefore does not warrant confidential treatment.

### **Document that is Confidential in its Entirety**

#### *Appendix AA3-7: EPC Appendix E – Form of Parent Guaranty*

PUC Distribution states that this Appendix 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.

OEB staff agrees this is commercially sensitive information of a third party, disclosure of which could be prejudicial to the third party and should be treated as confidential in its entirety.

*All of which is respectfully submitted*

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<sup>16</sup> EB-2020-0249, PUC\_Ltr\_Revised Confidentiality Request\_20201126, Page 4



## **APPENDIX**

### **Excerpts from OEB Practice Direction on Confidential Filings, Appendix A - Considerations in Determining Requests for Confidentiality**

“The final determination of whether or not information will be kept confidential rests with the Board. The Board will strive to find a balance between the general public interest in transparency and openness and the need to protect confidential information. Some factors that the Board may consider in addressing confidentiality of filings made with the Board are:

(a) the potential harm that could result from the disclosure of the information, including:

(i) prejudice to any person’s competitive position;

...

(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.

### **Excerpts from OEB Practice Direction on Confidential Filings, Appendix C - Summary of Pertinent FIPPA Provisions**

“The exemptions that are likely to be of most relevance in the context of confidential filings with the Board are those contained in section 17 of FIPPA, which relates to commercially sensitive third party Information.

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;

**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;”)

.....

**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.

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