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December 7, 2020

Delivered by Email & RESS

Ms. Christine Long, Registrar  
Ontario Energy Board  
P.O.Box 2319, 27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Ms. Long:

**Re: Oshawa PUC Networks Inc. 2021 Rates Application  
Oshawa PUC Networks Inc's ("OPUCN") Reply Submissions on  
Confidentiality  
Board File No. EB-2020-0048**

In accordance with Procedural Order No. 3 dated November 23, 2020, please find attached OPUCN's reply submissions on confidentiality in the above noted proceeding.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

Per:

A handwritten signature in black ink, appearing to read 'Flora Ho', is written over a horizontal line.

Flora Ho

cc: All Parties to EB-2020-0048

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, as amended;

**AND IN THE MATTER OF** an Application by Oshawa PUC Networks Inc. under Section 78 of the Act for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2021.

**OSHAWA PUC NETWORKS INC.**

**REPLY SUBMISSIONS ON CONFIDENTIALITY**

**Filed: December 7, 2020**

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Counsel to the Applicant

## Introduction

1. By letter dated November 16, 2020 and pursuant to the Ontario Energy Board's ("**OEB**" or the "**Board**") *Practice Direction on Confidential Filings*<sup>1</sup> ("**Practice Direction**"), Oshawa PUC Networks Inc. ("**OPUCN**") requested confidential treatment for the information contained in the following documents in their interrogatory responses:
  - (i) IRR 4-EP-21(c) – CEO Compensation ("**Item 1**"); and
  - (ii) IRR 1- DRC-7(a) - Taking A.I.M. Operational Plan for Oshawa PUC Networks Inc. by UtilityPULSE ("**Item 2**").
2. In its Partial Decision on Confidentiality and Procedural Order No. 3<sup>2</sup> ("**Partial Decision**"), the Board considered OPUCN's request for confidentiality of the abovementioned documents. The OEB found that the personal information contained in Item 1 consisting of the 2019 total compensation information of OPUCN's CEO was properly considered personal information pursuant to *Freedom of Information and Protection of Privacy Act* ("**FIPPA**")<sup>3</sup> and the Board has made a similar finding in another proceeding<sup>4</sup>. Therefore, similarly in this proceeding, the Board agreed that the information redacted in Item 1 is confidential information and in accordance with section 4.3.1<sup>5</sup> of the Practice Direction and Rule 9A.02 of the OEB's Rules of Practice and Procedure<sup>6</sup> will not be provided to any party, including a person who has provided a Declaration and Undertaking pursuant to the Practice Direction.
3. In the Partial Decision, the Board made provisions for filing of submissions on OPUCN's request for confidential treatment of Item 2. It ordered for OEB Staff and intervenors who wish to make written submissions on OPUCN's confidentiality request to file submissions by December 2, 2020.
4. On December 2, 2020, OPUCN received OEB Staff's written submissions on confidentiality.

## OEB Staff Submission

5. OEB Staff is partially supportive of OPUCN's request for confidentiality for Item 2. OEB Staff submits that there are two aspects to which confidential treatment is requested in Item 2:
  - (i) A price quotation provided by a third party (UtilityPULSE) for their customer engagement services ("**Price Quotation**"); and
  - (ii) Information consisting of the names, positions and responsibilities of individuals employed at UtilityPULSE ("**Individual Information**").

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<sup>1</sup> Ontario Energy Board Practice Direction On Confidential Filings Revised October 28, 2016.

<sup>2</sup> EB-2020-0048 – Partial Decision on Confidentiality & Procedural Order No. 3 dated November 23, 2020.

<sup>3</sup> R.S.O. 1990, c.F.31

<sup>4</sup> EB-2018-0165, Decision on Issues List, Partial Decision on Confidentiality and Procedural Order No. 3, February 5, 2019.

<sup>5</sup> 4 Practice Direction on Confidential Filings, October 28, 2016, Page 6.

<sup>6</sup> Ontario Energy Board – Rules of Practice and Procedure, (Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012, January 17, 2013, April 24, 2014 and October 28, 2016) Page 7.

6. OEB Staff supports the confidential treatment of the Price Quotation. OEB Staff agrees that pricing information is considered “financial information” which is generally protected from disclosure under section 17(1) of FIPPA.
7. OEB Staff does not support the request for confidentiality for the Individual Information. OEB Staff relies on 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 and therefore submits that the Individual Information is not “personal information” and should not be treated as confidential and redacted from the document.<sup>7</sup>

### **OPUCN’s Reply**

8. OPUCN submits that its request for confidentiality treatment of the redacted information in Item 1 and Item 2 are consistent with the Board’s Practice Direction.
9. In determining a request for confidentiality the OEB used a three-part test in Halton Hills Hydro Inc. (“**Halton Hills**”) (EB-2017-0045). In that proceeding, Halton Hills filed a Memorandum of Agreement regarding Pay Equity Maintenance (“**Pay Equity Memo**”) in confidence with its Responses to Interrogatories<sup>8</sup>. Halton Hills submitted that the Pay Equity Memo contained personal information, as defined in FIPPA, as the information included the names of individuals and would reveal personal information about those individuals<sup>9</sup>.
10. In its Decision<sup>10</sup>, the OEB addressed three matters that it was determining with respect to Halton Hills’ request for confidential treatment of its Pay Equity Memo:
  1. Whether the document is relevant to this proceeding.
  2. Whether there is personal information that must be redacted.
  3. Whether the document should be treated as confidential.
11. Since there is no debate on the confidential treatment of the Pricing Information, OPUCN will use this three part test when assessing the Individual Information.

#### *Part 1 - Whether the information is relevant to this proceeding*

12. OPUCN submits that the Individual Information offers little or no probative value in respect of the matters at issue in this proceeding.
13. OEB Staff acknowledge in their submissions that “OEB staff does not believe that the subject information has significant probative value to the issues in the proceeding.”<sup>11</sup>

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<sup>7</sup> EB-2020-0048 – OEB Staff Submissions on Confidentiality, December 2, 2020, Page 3.

<sup>8</sup> EB-2017-0045 Interrogatory Response to SEC 7 Confidential Filing, February 21, 2018.

<sup>9</sup> EB-2017-0045 Reply Submission in relation to Confidential Filing, March 7, 2018, Page 2.

<sup>10</sup> EB-2017-0045 – Decision on Confidentiality Request and Procedural Order No. 4 dated March 9, 2018, Page 4.

<sup>11</sup> EB-2020-0048 – OEB Staff Submissions on Confidentiality, December 2, 2020, Page 3.

14. In Halton Hills, the OEB determined that the pay adjustments for specific job positions and the job descriptions for those positions is not relevant to the OEB's determination of whether costs will be recoverable and need not be filed.<sup>12</sup>
15. A similar decision was made in Kitchener-Wilmot Hydro Inc. (EB-2019-0049) where the OEB found that it did not need to make a determination on whether the information in question was personal information or not because the OEB had concluded that such information was not relevant to that proceeding.<sup>13</sup>
16. OPUCN submits the Individual Information is not relevant to the matters at issue in this proceeding. OPUCN submits that the information currently filed on the public evidentiary, inclusive of the redactions of the Individual Information, is sufficient to meet the general principle that all **relevant** materials should be placed on the public record.
17. Finally, OPUCN submits there is no reason to proceed to Parts 2 or 3 of the test.

*Part 2- Whether there is personal information that must be redacted*

18. In the unlikely event the OEB determines that it must also consider Parts 2 or 3 of its test, OPUCN agrees with OEB Staff's submissions that the Individual Information does not constitute "personal information" under FIPPA.

*Part 3 – Whether the document should be treated as confidential*

19. In the unlikely event the OEB determines that it must also consider Parts 2 or 3 of its test, the OEB has repeatedly held information substantially similar to the Individual Information as confidential even though that information also did not technically constitute "personal information" under FIPPA.
20. This suggests that the OEB takes into consideration a broader set of considerations when assessing confidentiality requests under the Practice Direction, which supports the confidentiality request in this instance.
21. In this instance, OPUCN's November 16, 2020 request for confidentiality contains the information necessary to support confidential treatment of the Individual Information. Specifically:
  - The Individual Information pertains to employees of UtilityPULSE, which is a third party to this proceeding.
  - UtilityPULSE is a customer research firm that provides customer engagement activities and services, which is a competitive business activity.

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<sup>12</sup> EB-2017-0045 – Decision on Confidentiality Request and Procedural Order No. 4 dated March 9, 2018, Page 4.

<sup>13</sup> EB-2019-0049 – Decision on Confidentiality, July 10, 2019, Page 2.

22. OPUCN submits that given the lack of relevance of the Individual Information to the matters at issue in this proceeding, the balance of convenience should favour confidential treatment of the information.
23. OPUCN is concerned that disclosure of the third party's Individual Information may be prejudicial not only to the third party, UtilityPULSE, which is not a party to this proceeding, but it may also be prejudicial to the individuals so named.
24. The OEB has in the past supported confidentiality requests of individual names in a similar situation – even when the information was not technically personal information because of the exemptions noted by OEB Staff under FIPPA.
25. For example, in Energy+ Inc.'s<sup>14</sup> (“**Energy+**”) request for confidentiality in EB-2018-0028. Energy+ requested the individual information contained in its Appendix A – Space Needs Analysis<sup>15</sup> to be kept confidential, where the redacted information appeared to be individual names only. In its Decision<sup>16</sup>, the OEB found that the redacted information in the Appendix should be treated as confidential to the extent it contains information about employees and Energy+ does not have the individuals' consents to the public release of the information.<sup>17</sup>
26. In this proceeding, OPUCN does not have the individuals' consents to the public release of the Individual Information.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7TH DAY OF DECEMBER, 2020.

**BORDEN LADNER GERVAIS LLP**

**Per:**



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Flora Ho

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<sup>14</sup> EB-2018-0028

<sup>15</sup> EB-2018-0028 – Exhibit 2 - Appendix 2-1 Appendix N of the DSP, April 30, 2018, Page 1091.

<sup>16</sup> EB-2018-0028 - Decision on Confidentiality Request, September 14, 2018.

<sup>17</sup> Ibid, Page 6.