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December 11, 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
Reply to OEB Staff and SEC Submissions on Confidentiality**

PUC Distribution has reviewed submissions filed by OEB Staff and School Energy Coalition (“SEC”) on December 7, 2020. PUC Distribution agrees with OEB Staff submissions and has provided the comments noted below in response to the SEC submissions.

Response to OEB Staff Submissions

PUC Distribution is in agreement with all of OEB Staff’s submissions, which is summarized in the below table:

Document	OEB Staff agrees to following redactions:	OEB Staff disagrees with following redactions:	PUC Distribution Submissions
Appendix AA3-6: EPC Pricing Summary	Pricing amounts for each individual component of the project.	Breakdown of each step/task of the SSG Project.	PUC Distribution agrees with the approach proposed by OEB Staff on all of the documents in question.
Appendix AA3-7: EPC Appendix B – Compensation	Each individual cost component which makes up the maximum price. Information in Schedule 1 – Rate Sheet.	The first two columns of the Payment Milestones Table.	

Appendix AA3-7: EPC Contract	Guarantor name should be treated as confidential. Liquidated damages calculations in the EPC contract.	Representatives and notice addresses.	
Appendix AA3-7: EPC Appendix H – Key Personnel	None.	Names and positions of key personnel for the upfront engineering services.	
Appendix AA3-7: EPC Appendix E – Form of Parent Guaranty	Agrees that this document should be treated as confidential in its entirety.	None.	

For the redactions that OEB Staff disagrees with, PUC Distribution will file updated redacted versions of the relevant documents consistent with the table set out above by December 14, 2020.

Response to SEC Submissions

SEC generally supports the submissions of OEB Staff, but expressed concerns that there is not a public review of the details of the transaction by the ratepayers who will be paying for it.¹

SEC submits that the Board should ensure that the evidence is as public as possible and limit the redactions to the narrowest possible scope.²

The Board's Practice Direction seeks to strike a balance between the objectives of transparency and openness and the need to protect information that has been properly designated as confidential³. As set out in Appendix A of the Practice Direction, a factor that the Board considers when addressing confidentiality of filings is the potential harm that could result from the disclosure of the information.

PUC Distribution understands SEC's concern that ratepayers may want to review the details of the transaction. PUC Distribution submits that the documents on the public evidentiary record inclusive of the updated redactions contains all the necessary details of the transaction and that the few remaining redactions, such as those related to third party pricing, have been made to avoid potential harm to the relevant third party, to PUC Distribution and ultimately to ratepayers.

¹ EB-2020-0249 – SEC Submissions on Revised Confidentiality Request filed December 7, 2020, Page 1.

² Ibid, Page 2.

³ Ontario Energy Board Practice Direction On Confidential Filings Revised October 28, 2016, Page 2.

As mentioned in PUC's Revised Confidentiality Request, while the EPC Contract is now in place, detailed negotiations have yet to occur between the EPC Contractor and the various sub-contractors. PUC Distribution is concerned that if the various sub-contractors are able to access the detailed pricing in the EPC Contract – they can use this to extract concessions that would otherwise result in the project costing more than it would otherwise. Since such an increase in cost will be subject to the maximum price in the EPC Contract, the result will most likely be a reduced scope of the overall project – less distributed automation work will get completed. In this instance, the risk of harm to ratepayers by disclosing the information at this time outweighs the benefits of public disclosure.

SEC also acknowledges that “the customers also benefit if third parties dealing with utilities can rely on reasonable competitive protections.”⁴

In keeping with the Practice Direction, PUC Distribution has endeavoured to place as many documents and information on the public record in order to be as transparent as possible without causing any harm to third parties and ratepayers in the process of doing so.

To ensure that ratepayers will be able to review the details of the transaction, PUC Distribution is willing to disclose the pricing information in relation to the SSG Project after negotiations have been completed with relevant sub-contractors, at which time the harm as abovementioned would no longer be an issue. PUC Distribution suggests that the OEB include as a condition in its approval of the ICM that the disclosure of pricing information be filed on public record after the relevant negotiations with sub-contractors have been completed, so that the material is visible to all.

With respect to the Guaranty – the public disclosure that the guarantor is willing to agree to certain terms and conditions in a guarantee could reasonably be expected to prejudice that guarantor in future negotiations of future guarantees (as third parties would know what concessions the guarantor has made in the past). In this instance, the risk of harm to a third party outweighs the benefit of public disclosure.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:



Flora Ho

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

⁴ EB-2020-0249 – SEC Submissions on Revised Confidentiality Request filed December 7, 2020, Page 2.