

PUC Distribution Inc.

**Application for electricity distribution rates
and other charges effective May 1, 2022**

DECISION ON REVISED CONFIDENTIALITY REQUEST
December 15, 2020

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 a smart grid project, 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 this proceeding, EB-2020-0249, however this application is a continuation of an originally filed application for the same project. This proceeding has been combined with the initial application, EB-2018-0219.¹

In its cover letter accompanying its application, PUC Distribution filed several documents that are part of the Engineering Procurement and Construction contract for the SSG Project (EPC Documents) for which it requested confidential treatment in their entirety (Original Confidentiality Request).²

Procedural Order (PO) No. 6³, noted that PUC Distribution made a similar request in the initial application for confidential treatment of certain documents and that the OEB had

¹ 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 following the filing of a letter on June 28, 2019 by PUC Distribution indicating its intent to amend the ICM portion of the application.

² EB-2020-0249, Cover Letter, Pages 2-3

³ Issued November 16, 2020

already considered a confidentiality request for similar types of documents in that proceeding (Decision on Confidentiality).⁴ The OEB directed PUC Distribution to make meaningful redactions to the EPC Documents filed in the current proceeding based on the guidance provided in the Decision on Confidentiality and submit a revised request for confidentiality. The OEB noted that it will make a decision on the revised request for confidentiality following the filing of a submission by OEB staff on its position as to whether the revised confidentiality request is consistent with the OEB's Decision on Confidentiality.

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 of the EPC Documents from the Original Confidentiality Request on the public record.

The table below summarizes the Revised Confidentiality Request:

Table 1: Revised Confidentiality Request for EPC Documents

APPENDIX		REVISED CONFIDENTIALITY REQUEST
1	Appendix AA3-1: SSG Scope Overview Summary	On record in its entirety
2	Appendix AA3-2: SSG Physical Scoping Diagram	On record in its entirety
3	Appendix AA3-3: SSG Logical Scoping Diagram	On record in its entirety
4	Appendix AA3-4: Responsibility Matrix	On record in its entirety
5	Appendix AA3-5: Project Schedule	On 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 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 record in its entirety
11	Appendix AA3-7: EPC Appendix D – Warranty Items Procedure	On 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 record in its entirety
14	Appendix AA3-7: EPC Appendix G – Dispute Resolution Procedure	On record in its entirety
15	Appendix AA3-7: EPC Appendix H – Key Personnel	Specific redactions

⁴ EB-2018-0219, Decision on Confidentiality, issued June 27, 2019

OEB staff's submission⁵ agreed with the placement of 10 of the EPC Documents on the public record in their entirety.⁶ OEB staff agreed that similar types of documents were previously placed on the public record in the EB-2018-0219 proceeding.

OEB staff's submission on the remaining five EPC Documents is summarized in the table below.

Table 2: Summary of OEB Staff Submission

APPENDIX		MAIN POINTS OF SUBMISSION
1	Appendix AA3-6: EPC Pricing Summary	<ul style="list-style-type: none"> Pricing information is considered "financial information" which is generally treated as confidential under section 17(1) of the <i>Freedom of Information and Protection of Privacy Act</i> (FIPPA).⁷ The breakdown of what constitutes each step is not confidential as similar information is being made public as part of PUC Distribution's revised confidentiality request.
2	Appendix AA3-7: EPC Contract	<ul style="list-style-type: none"> 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 <i>Practice Direction on Confidential Filings</i> (Practice Direction)⁸ and FIPPA. Liquidated damages calculations should be redacted as it commercially sensitive financial information of a third party and disclosure would be contrary to the Practice Direction and FIPPA. With respect to the individual information, this is not "personal information" as defined by section 2(3) of FIPPA.⁹ 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.
3	Appendix AA3-7: EPC Appendix B – Compensation	<ul style="list-style-type: none"> Individual cost components which make up the maximum price should be redacted as it is considered "financial information" in accordance with FIPPA. With respect to the payment milestones table, agreed with the revised redactions for column three, however, not for the first

⁵ Filed December 7, 2020

⁶ As noted in PUC Distribution's Revised Confidentiality Request under the title "EPC Documents – Public Record"

⁷ R.S.O. 1990, c.F.31

⁸ Practice Direction on Confidential Filings, October 28, 2016

⁹ Section 2(3) of FIPPA states: "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."

		two columns which seem to 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.
4	Appendix AA3-7: EPC Appendix E – Form of Parent Guaranty	<ul style="list-style-type: none"> 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.
5	Appendix AA3-7: EPC Appendix H – Key Personnel	<ul style="list-style-type: none"> The disclosure of the information contained in this document does not fit within the ambit of personal information, and therefore does not warrant confidential treatment. Names and titles of an employee should not be considered personal information, as per Section 2(3) of the FIPPA.

The School Energy Coalition (SEC) filed a submission supporting the submissions of OEB staff with one overriding caveat.¹⁰ SEC stated that it accepts that commercial sensitivity is an important consideration, however, since the confidential items are likely to be central to the consideration of the issues in this proceeding, there is a possibility that the public will see too little of the analysis that the OEB undertakes in determining whether this project should be approved. SEC urged the OEB to limit redactions to the narrowest scope possible.¹¹

In PUC Distribution's reply submission, it agreed with the submissions of OEB staff on all the EPC Documents.¹² PUC Distribution filed updated redacted versions of the EPC Documents consistent with OEB staff's submission.¹³

In response to SEC's submission, PUC Distribution submitted that the updated versions of the EPC Documents contain the necessary details of the transaction. PUC Distribution stated that detailed negotiations have yet to occur between the EPC Contractor and the various subcontractors and if the sub-contractors have access to the detailed pricing in the EPC Contract they can use this to extract concessions that would result in the project costing more than it would otherwise.

PUC Distribution stated that, in order to ensure that ratepayers will be able to review the details of the transaction, it is willing to disclose the pricing information in relation to the

¹⁰ EB-2020-0249, SEC Confidentiality Submission, Page 1

¹¹ Ibid, Page 2

¹² EB-2020-0249, PUC_ReplySUB_Confidentiality_20201211, December 11, 2020, Pages 1-2

¹³ Filed on December 14, 2020

SSG Project after negotiations have been completed. PUC Distribution suggested that the OEB include as a condition in its approval of the ICM that the disclosure of pricing information be filed on the public record after the relevant negotiations with subcontractors have been completed so that the material is visible to all.¹⁴

Findings

For the reasons provided below, the OEB agrees with both OEB staff's December 7, 2020 submission and PUC Distribution's December 11, 2020 reply submission regarding the confidential treatment of the EPC Documents.

Appendix AA3-6: EPC Pricing Summary

The OEB finds that the list of project steps in the EPC contract shall not be classified as confidential information as it simply shows how the project is planned. Similar information has been placed on the public record as part of PUC Distribution's Revised Confidentiality Request. However, the OEB finds that the pricing information for each of these steps can be considered "financial information" as defined in the Practice Direction and FIPPA and shall remain redacted. The disclosure of this information can prejudice the economic and financial interests of the EPC Contractor.

Appendix AA3-7: EPC Appendix B – Compensation

The OEB finds that the following information is commercially sensitive, the disclosure of which could reasonably be expected to prejudice the economic interest and competitive position of the EPC Contractor. This information shall remain redacted:

- The Contractor's Fee (Paragraph 1.1(a))
- The individual cost components which make up the maximum contract price in Table 1
- Schedule 1 – Rate Sheet
- EPC Contractor payment milestones (Table 2) but only for the third column in the table which contains the percentage payment of the total price for each milestone

Appendix AA3-7: EPC Contract

The OEB finds that the name of the Guarantor, liquidated damages calculations and the signatures and corporate seals of the Owner's Representative and the Contractor's

¹⁴ EB-2020-0249, PUC_ReplySUB_Confidentiality_20201211, December 11, 2020, Pages 2-3

Representative shall be treated as confidential information as this is commercially sensitive third party information the disclosure of which would be contrary to the Practice Direction and FIPPA. This information shall remain redacted.

The OEB, however, finds that the names and notice addresses of the Owner's Representative and the Contractor's Representative do not constitute "personal information" as defined in FIPPA. FIPPA states that "Personal information does not include the name, title, contact information or designation of an individual that identifies this individual in a business, professional or official capacity."¹⁵ The OEB, therefore, finds that this information shall be placed on the public record of this proceeding.

Appendix AA3-7: EPC Appendix H – Key Personnel

This Appendix contains names and positions of the EPC Key Personnel for the upfront engineering services. The OEB finds that names and positions of these individuals do not constitute "personal information" as defined in FIPPA. FIPPA states that "Personal information does not include the name, title, contact information or designation of an individual that identifies this individual in a business, professional or official capacity."¹⁶ The OEB, therefore, finds that this information shall be placed on the public record of this proceeding.

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

The OEB finds the information contained in this Appendix regarding the guarantor and the negotiated terms and arrangements between PUC Distribution and the guarantor in relation to the EPC contract to be commercially sensitive, third-party information, the disclosure of which could be prejudicial to the third party. This information, therefore, shall remain redacted in its entirety.

In response to SEC's submission on PUC Distribution's confidentiality request, the OEB concludes that this Decision appropriately balances the goal of transparency of information with the requirement to protect personal and commercially sensitive information.

¹⁵ *Freedom of Information and Protection of Privacy Act* Section, 2(3)

¹⁶ Ibid

DATED at Toronto, **December 15, 2020**

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar