



PUBLIC INTEREST ADVOCACY CENTRE  
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

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July 31, 2018

VIA E-MAIL

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge St.  
Toronto, ON

Dear Ms. Walli:

**Re: EB-2018-0028**  
**Energy + Inc. 2019 Distribution Rates**  
**VECC Reply to Claim of Confidentiality in Certain Documents by Energy+**

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VECC provides the following submissions with respect to the request for confidentiality of Energy + filed on 30 April 2018 and 16 July 2018 and noted in the Board's Procedural Order No. 1.

As a general matter VECC opposes the filing of confidential information in a public proceeding to set monopoly distribution rates. In our view there are very few occasions on which such treatment is truly necessary. The Board's Practice Direction on Confidential Filings requires that where an exception to the normal course is requested that the Applicant provide *"the reasons for the confidentiality request, including the reasons why the information at issue is considered confidential and the reasons why public disclosure of that information would be detrimental."* VECC notes that insufficient reasons have been given as to why the public disclosure would be detrimental to the point of outweighing the public interest in its disclosure (which would allow the public and interveners to properly scrutinize this rate application).

Instead Energy+ simply has categorized its requests under two broad ambits – those items related to potentially competitive information (category 1) and those matters related to personal information (category 2). Under neither category does the Energy + properly explain the nature of the harm engendered by the making public of the information being sought to be held in confidence. We note that the Applicant has, as of 16 July 2018, filed redacted public versions of some of these documents. However, in its cover letter describing the reasons for confidentiality, Energy+ only includes this single explanation for redacted information relating to a single large customer (with this rationale for redacting competitive information):

For the information in the Responses, the third party whose information has been redacted is engaged in competitive business activities. The information that has been redacted is consistently treated in a confidential manner. Disclosure of the third party information in the Responses 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 the applicable third party.

We agree that the Board's Practice Direction on Confidential Filings (the "Practice Direction") allows the Board to have regard to the sensitivity of competitive information of third parties. However, we submit that such third party confidentiality should be accorded less weight in relation to a confidentiality claim of the regulated utility when that third party confidentiality claim obscures what is usually filed by the utility in the regular course of a rate application.

Regarding other information sought to be kept confidential, the Applicant has failed in its duty to explain "the reasons why public disclosure of that information would be detrimental". As it presently stands there is no information upon which to understand why Energy + would need to have any matters with respect to its Tax Returns held in confidence. It is, in our experience highly unusual for any part of such evidence to be granted confidential treatment. These are the remit of the corporate entity and any personal information should be limited to the names of officers filing these returns.

With respect to information on its engagement with industrial customers there again is insufficient detail as to what is being redacted. For example it is unclear whether Energy+ seeks to redact information about a specific customer or all customers in the class. From a cursory review of the redacted version one might assume that at least some of the information being sought to be held in confidence is with respect to Utility-owned assets (for example wood pole and transformer information). This type of information is not typically treated as confidential. Nor is, in our view, the name of a large industrial client. The only information we believe might be considered confidential is the monthly billing information of a specific customer.

The same is true of interrogatories filed and answered by the large use customer. In our view if the customer is filing information requests of the utility in this proceeding those requests and their responses should be made public. It is unclear as to whether the authoring party is seeking to have these interrogatories treated in confidence or whether the Applicant is seeking this treatment of its own volition.

The request for confidentiality with respect to the Utility's facilities plans is even more problematic as it pertains to a significant investment in general plant. As the Board is aware, office and other building costs are often contentious issues in cost of service applications. In this case what appears to be redacted are market valuations (again since no detailed information was provided, this is only an assumption). It would also appear that most of these valuations were completed in 2015 making it unlikely there is significant market value to that information in 2018. In any event, market valuations are generally purchased by the client (Energy+) and remain their property.

For these reasons we submit that the Board refuse the claims of confidentiality and place all of the redacted information on the public record.

These are our respectful submissions.

Yours truly,

*John Lawford*

Counsel for VECC

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All parties – via email