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August 3, 2018

**Delivered by Email, RESS & Courier**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
Suite 2701  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: OEB File No. EB-2018-0028  
Energy+ Inc. 2019 Rates Application  
Response to Confidentiality Submissions**

On April 30, 2018 (“**April Letter**”) and July 16, 2018 (“**July Letter**”) Energy+ Inc. (“**Energy+**”) identified evidence in this proceeding for which Energy+ was requesting confidential treatment, and to set out the grounds for that request. In Procedural Order No. 1, issued on July 26, 2018, the Ontario Energy Board (“**OEB**” or “**Board**”) provided for Board Staff and intervenor submissions, and for a reply submission from Energy+.

Pursuant to Procedural Order No. 1 in the above-noted proceeding, Energy+ provides the following response to the submissions of Board Staff and the Vulnerable Energy Consumers Coalition (“**VECC**”) filed July 31, 2018, as well as the submissions of the School Energy Coalition (“**SEC**”) filed on July 31, 2018, and the Consumers Council of Canada (“**CCC**”) filed on August 1, 2018, both of which support VECC’s submissions.

Energy+ has endeavoured to provide as much detail as possible in its Application, balancing open disclosure with the need to maintain confidentiality of third-party personal and commercially sensitive information in its possession. Energy+ has been selective in its redactions, limiting them to specific instances of confidential and sensitive information within each affected document.

The following items were the subject of the Energy+ confidentiality request:

Category 1

- (a) Presentation slides for Customer Meeting dated October 18, 2017;

- (b) Presentation slides for Customer Engagement Meeting dated January 15, 2018;
- (c) Presentation slides for Customer Engagement Meeting dated January 19, 2018;
- (d) Energy+'s Response to customer questions – February 16, 2018
- (e) Interrogatories from customer – April 10, 2018;
- (f) Letter from customer to Energy+ dated April 19, 2018;
- (g) Letter from Energy+ to customer dated April 23, 2018;
- (h) Facilities Plan – Appendix D - CBRE June 2015 June Update (Office and Land); and
- (i) Additional Interrogatory Responses per July Letter.

Category 2

- (a) Energy+'s PILs Tax Returns for 2016;
- (b) Facilities Plan – Appendix A – Space Needs Analysis; and
- (c) Facilities Plan – Appendix D - CBRE June 2015 Update (Office and Land).

Subject to the additional commentary provided in this letter, Energy+ repeats and relies upon its submissions on confidentiality set out in the April Letter and the July Letter and its request that these documents be maintained in confidence pursuant to Rules 10.01 and 10.02 of the Board's *Rules of Practice and Procedure* and the Board's *Practice Direction on Confidential Filings* (the "**Practice Direction**").

**1. Category 1 Documents**

Energy+ is in agreement with Board Staff's submission that information within the documents listed in the April Letter under Category 1 that is specific to Energy+ commercial or large use customers is technical, commercial and / or financial information within the meaning of section 17(1) of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31 ("**FIPPA**"). Energy+ is also in agreement with Board Staff's submission that disclosure of such information could prejudice the competitive position of those customers and has generally been treated as confidential pursuant to the Practice Direction.

Board Staff have requested the reasons for confidential treatment of the Category 1 documents. VECC has requested additional detail as to what has been redacted, including whether the redacted information is about a specific customer or all customers in the class and whether it was Energy+ or the customer who sought confidential treatment of the redacted items.

In respect of the redacted items in Exhibit 1, Appendix 1-16 (items A (a)-(g) above), as well as the additional interrogatory responses filed in the July Letter (item A(i) above), the information which has been redacted pertains to individual customers of Energy+ who operate in a competitive market environment. These redactions have been limited to information explicitly identifying a customer or which, in context with the unredacted items, would effectively identify the customer. Such information includes the name of the customer, the names of individuals employed by the customer, and details identifying the customer's specific electricity usage, load profile, connection specifications and billing details, disclosure of which could reasonably be expected to prejudice significantly the competitive position of the customer.

On May 7, 2018, Energy+ provided one such large user customer with all of the redacted documents forming part of the Application which pertain to or make reference to that customer, requesting input on the redactions made. The customer never responded to Energy+, despite follow-up correspondence from Energy+ to the customer on May 29, 2018. Energy+ submits that it would be open to individual customers to waive the need for redaction of certain details which pertain specifically to those customers, but this remains outside of Energy+'s discretion.

In respect of the Facilities Plan (item A(h) above), VECC argues that most of the valuations presented in redacted Appendix D were completed in 2015 making it unlikely that there is significant market value to that information in 2018. Energy+ respectfully submits that the CBRE June 2015 Update which forms part of the Facilities Plan was prepared for Energy+ as a confidential document and contains details on properties which were provided to CBRE on a confidential basis and were not intended to be made public at the time CBRE prepared the June 2015 Update nor at any subsequent time. The data provided by CBRE also contains calculations and analysis which were provided by CBRE to Energy+ on a confidential basis.

Energy+ reiterates that such third-party information 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 CBRE.

## **2. Category 2 Documents**

Board Staff have requested that Energy+ clarify whether the redacted information in Category 2 relates to personal information of employees and if so, the basis on which it should not be disclosed.

Energy+ submits that, in addition to the potential harm that could result to a third party from the disclosure of redacted information in the Facilities Plan, redactions were made to (1) the CBRE June 2015 Update (item B(b) above) to remove landowner names, and (2) the Space Needs Analysis (item B(c) above) to remove names, photographs and employment related information of individuals employed by Energy+. Energy+ does not have these individuals' consent to the public release of this information.

Board Staff agreed that the PILS Tax Returns for 2016 (item B(a)) should be treated as confidential and redacted to the extent that they contain personal information about identifiable employees, and that Energy+ clarify the specific reason for redactions to the tax return document. VECC submits that in their experience, it is highly unusual for any part of such evidence to be granted conditional treatment. Energy+ notes that the sole redactions in the PILS Tax Return filed as part of the Application were to redact names of individuals who were at a given time employed by Energy+ as part of an apprenticeship training program, along with the corresponding agreement details, salaries, length of employment and associated expenditures. Respectfully, such details clearly fall within the ambit of "personal information" and Energy+ does not have these individuals' consent to the public release of this information.

Energy+ would also note that the redaction of such information is consistent with the Chapter 2 Filing Requirements, Section 2.4.5 Taxes or Payments in Lieu of Taxes whereby it states "*A Scientific Research and Experimental Development return, if filed, may have confidential personal*

*information (e.g. Social Insurance Number, address, hourly rate, etc.) of the people who are apprenticing. All such personal confidential information must be either removed or redacted from the filing. The unredacted version need not be filed.”<sup>1</sup>*

Energy+ is in agreement with Board Staff that the Category 2 information should remain confidential insofar as that information relates to individual, identifiable employees and disclosure of such information is restricted by FIPPA. Energy+ submits that the documents listed in Category 2 include personal information, such as individual and employee names, apprentice names, photographs, salaries, and employment related information.

Energy+ is prepared to provide unredacted copies of the documents listed in Categories 1 and 2 to parties' counsel and experts or consultants provided that they have executed the Board's form of Declaration and Undertaking with respect to confidentiality and that they comply with the Practice Direction, subject to Energy+'s right to object to the Board's acceptance of a Declaration and Undertaking from any person.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3<sup>RD</sup> DAY OF AUGUST, 2018.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

*Original signed by Jessica-Ann Buchta*

Per:

John A. D. Vellone

cc: Interveners of record in EB-2018-0028

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<sup>1</sup> Chapter 2 Filing Requirements, July 12, 2018, Page. 36.