

Energy+ Inc.

**Application for electricity distribution rates and
harmonizing rates and charges in the Cambridge and
North Dumfries and Brant County service areas
beginning January 1, 2019**

**DECISION ON CONFIDENTIALITY REQUEST
September 14, 2018**

Introduction

Energy+ Inc. (Energy+) filed a cost of service application with the Ontario Energy Board (OEB) on April 30, 2018 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Energy+ charges for electricity distribution, to be effective January 1, 2019. As part of its application, Energy+ requested confidential treatment for certain information in a number of documents and filed redacted versions of those documents on the public record of the proceeding.

On July 26, 2018, the OEB issued Procedural Order No.1, granting Brantford Power Inc. (BPI), Consumers Council of Canada (CCC), Hydro One Networks Inc. (Hydro One), School Energy Coalition (SEC), Toyota Motor Manufacturing Canada Inc. (TMMC), and Vulnerable Energy Consumers Coalition (VECC) intervenor status. CCC, SEC, and VECC are eligible to apply for an award of costs under the OEB's *Practice Direction on Cost Awards*.

Procedural Order No.1 also established dates for OEB staff and intervenors to file submissions on Energy+'s request for confidentiality, and for Energy+ to reply to the submissions.

OEB staff and VECC filed submissions on July 31, 2018. SEC and CCC also filed letters to support VECC's submission. Energy+ filed its reply submission on August 3, 2018.

On August 9, 2018, TMMC filed a submission in response to intervenors' submissions and to support Energy+' request for confidential treatment of certain documents pertaining to TMMC.

In this Decision, the OEB makes a determination solely on the confidentiality request of the applicant.

Request for Confidentiality

Energy+ filed some partially redacted documents and requested confidential treatment for the redacted portions pursuant to the OEB's *Rules of Practice and Procedure* and the *Practice Direction on Confidential Filings* (Practice Direction).

In its confidentiality requests¹ Energy+ stated that the portions of the documents for which it requested confidential treatment fall into two categories:

- Category 1 consists of : information of 3rd parties who are engaged in competitive business activities and disclosure of the redacted information could prejudice the economic interests and competitive position of the third parties
- Category 2 consists of personal information of individuals from whom Energy+ has not obtained consent to publicly release the information.

In particular, Energy+ requested confidential treatment for portions of the following documents:

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

¹ Letters dated April 30, 2018 and July 16, 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)
- 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
- c) Facilities Plan – Appendix D - CBRE June 2015 June Update (Office and Land)

Intervenors' Submissions

VECC opposed the confidentiality request and submitted that Energy+ has not provided sufficient detail or properly explained the reasons for why the redacted information should be granted confidential treatment. SEC and CCC supported VECC's submission.

OEB Staff Submission

OEB staff submitted that the redacted information should be treated as confidential, as requested by Energy+. With respect to the Category 1 documents, OEB staff agreed that information within the documents 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). Disclosure of such information could prejudice the competitive position of those customers and has generally been treated as confidential pursuant to the Practice Direction. OEB staff also submitted that information in the redacted documents pertaining to CBRE appear to contain technical or proprietary analysis that has commercial value such that public disclosure of such information could prejudice that party's competitive position.

With respect to the Category 2 information, OEB staff submitted that information relating to individual, identifiable employees should be treated as confidential and disclosure of such information is restricted by FIPPA. OEB staff also submitted that the PILS Tax Returns for 2016 should be treated as confidential and redacted to the extent that they contain personal information about identifiable employees.

In its submission, OEB staff suggested that Energy+ should clarify, in its reply, the reasons for confidential treatment of both the Category 1 and Category 2 documents.

Energy+ Reply

In its reply, Energy+ responded to the submissions of VECC and OEB staff and provided more details about the redacted information and reasons for why it should be treated as confidential.

Category 1

Energy+ submitted that the some of the information in documents (a) – (g) is specific to commercial or large use customers and disclosure of the information could prejudice the competitive position of those customers.

With respect to document (h) relating to the Facilities Plan, Energy+ submitted that the CBRE valuation update contains data that was provided to Energy+ on a confidential basis and disclosure of such information could be expected to prejudice the economic position of CBRE.

Category 2

Energy+ submitted that documents (a) – (c) in this category contain personal information of either landowners or Energy+ employees for which Energy+ has not obtained consent for public disclosure.

TMMC's Submission

On August 9, 2018 TMMC filed a letter in support of Energy+ confidentiality request with respect to documents (a), (c), (d), (e) and (l) which contains competitive information which, if disclosed, could adversely affect the economic and / or competitive interests of TMMC.

However, TMMC did not object to disclosure of the information that is redacted in documents (f) and (g).

Findings

The OEB's general policy is that all evidence should be on the public record and should be open for inspection by any person unless disclosure of the record is prohibited by law. The Practice Direction seeks to balance the objectives of transparency and accessibility with the need to protect information that has been properly designated as confidential.

In considering these principles, the OEB finds that the redacted information in documents a) to e) and i) listed under Category 1 should remain confidential. The nature of the information is consistent with the factors to be considered by the OEB in addressing the confidentiality of filings, as described in Appendix "A" of the Practice Direction, and the OEB has provided for confidential treatment of this type of information in the past.

With respect to documents, (f) and (g) listed under Category 1, the OEB notes that TMMC did not object to the disclosure of these documents which consist of two letters between Energy+ and TMMC. Given TMMC's consent, the OEB finds that these documents should not be treated as confidential and that un-redacted versions of the documents should be filed on the public record.

Document (h) listed under Category 1 includes an Appendix (CBRE June 2015 Update) portions of which Energy+ submits should be treated as confidential. Energy+ submitted that the document contains details on properties which were provided to CBRE on a confidential basis and contains calculations and analysis which, if publicly disclosed, 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. The OEB does not accept this argument since the redacted information on property prices is publicly available on CBRE's website². Accordingly, the OEB finds that the un-redacted document should be filed on the public record of the proceeding.

With respect to the documents listed under Category 2, the OEB finds that the redacted portions of document (a) which is Energy+ 2016 PILs Tax Return, should be treated as confidential as they contain personal information about individuals in the apprenticeship training program, including names, salaries and other personal information.

² <https://www.commerciallistings.cbre.ca/en-CA/listings/office/search>

The OEB also finds that portions of documents (b) and (c) in Category 2 should be treated as confidential to the extent they contain personal information about employees and Energy+ does not have the individuals' consents to public release of the information. Redactions on property prices in documents (b) and (c) that are publicly available on CBRE's website should be available on the public record.

The OEB expects the applicant to provide un-redacted versions of the documents for which confidential treatment is granted to intervenors that file the Declaration and Undertaking form in accordance with the OEB's Practice Direction on Confidential Filings. With respect to the documents, or portions of such documents, for which confidential treatment has not been granted, the OEB expects Energy+ to file such documents on the public record of this proceeding. All filings to the OEB must quote the file number, EB-2018-0028, be made in searchable / unrestricted PDF format electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Shuo Zhang at Shuo.Zhang@oeb.ca and OEB Counsel, Ljuba Djurdjevic at ljuba.djurdjevic@oeb.ca.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Registrar

E-mail: boardsec@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **September 14, 2018**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary