



Ontario  
Energy  
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de l'énergie  
de l'Ontario

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# **DECISION AND ORDER ON COST AWARDS**

**EB-2018-0028**

**ENERGY+ INC.**

**Application for electricity distribution rates and other charges  
beginning January 1, 2019**

**BEFORE: Michael Janigan**  
Presiding Member

**Emad Elsayed**  
Member

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**August 20, 2019**

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## INTRODUCTION AND SUMMARY

This is a decision of the Ontario Energy Board (OEB) on cost claims filed with respect to an Energy+ Inc. (Energy+) proceeding.

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.

The OEB granted the Consumers Council of Canada (CCC), School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC) intervenor status and cost award eligibility.

The OEB issued its Decision and Order on June 13, 2019, corrected on June 18, 2019 in which it set out the process for intervenors to file their cost claims, for Energy+ to object to the claims and for intervenors to respond to any objections raised by Energy+. On July 3, 2019, the OEB granted an extension to the date for filing cost claims to July 23, 2019.

The OEB received cost claims from CCC, SEC and VECC. On July 30, 2019, Energy+ filed a letter stating that the total of the three cost claims, excluding HST is \$150,097.15 which is approximately \$50,000 greater than Energy+'s pre-filed estimate for intervenor costs included in the overall participation costs (Appendix 2M Regulatory Costs). Energy+ further submitted that VECC claimed a total of \$73,522.77, which is approximately \$28,404 higher than the amount claimed by SEC and \$28,970 higher than the amount claimed by CCC. Energy+ noted that VECC was represented by two consultants through the course of this proceeding and acknowledged that the attendance costs for CCC, SEC and VECC are similar even though VECC was represented by two consultants. Energy+ raised concern with the amounts claimed by VECC with respect to preparation costs which are more than double what CCC and SEC claimed. Energy+ submitted that the OEB should consider reducing the preparation costs submitted by VECC to a level consistent with the average of CCC and SEC.

On July 31, 2019, VECC replied to Energy+'s objection and stated that an inordinate amount of time was expended on the issues of standby rates and other aspects of larger user rates that might impact residential consumers. VECC noted that one party had not submitted costs in this case because they were not eligible to do so, but had

they provided their costs those would have been similar or likely in excess of VECC's costs in regard to those issues. VECC argued that it had retained Mr. Bill Harper who is one of Canada's acknowledged experts in the issue of rate design and cost allocation. VECC submitted that the cost allocation and rate design issues involved were complex and its consultant played a lead role in addressing them. VECC noted that some of these costs were related to the generic issues regarding cost allocation, standby rates and net and gross billing issues and that these are issues affecting all electricity distribution utilities. VECC further submitted that a fairer solution would be for those costs to be shared more equitably among Ontario Local Distribution Companies.

On August 6, 2019, CCC replied to Energy+'s objection to VECC's cost claim and submitted that VECC's costs should not be reduced. CCC explained that both CCC and SEC relied upon the expertise of Mr. Harper and that CCC adopted many of the submissions made by VECC in its final argument with respect to the cost allocation and rate design issues.

## Findings

The OEB has reviewed the claims filed to ensure that they are compliant with the OEB's *Practice Direction on Cost Awards*. The OEB finds that the cost claims submitted by CCC, SEC and VECC are reasonable and are approved as submitted.

As SEC noted in its correspondence, this was a complex proceeding which included intervenor expert evidence from Toyota Motor Manufacturing Canada Inc. (TMMC), an update to that evidence, additional evidence filed by Energy+, a technical conference, a two-day oral hearing on the unsettled issues, and two rounds of intervenor arguments. There was also a lengthy settlement process that resulted in only a partial settlement. All of this contributed to the total cost of intervenor participation.

VECC has submitted that the incurrence of participation costs was necessitated by the importance of the cost allocation and rate design issues to the consumers it represents and that these issues touched upon matters of generic policy for regulatory purposes larger than their implications for the individual applicant. In brief, it would appear that the total intervenor costs above the Energy+ pre-filed estimate was in large part a product of the multiplicity of intervenor tasks and attendances. This work was necessitated by the challenges posed by the adjudication of the TMMC recommended changes to Energy+'s cost allocation and rate design evidence.

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The comparison of intervenor costs to determine reasonableness of any one claim is complicated in this proceeding by the fact that the three intervenors appear to have taken on different participant roles. As VECC has noted, and CCC confirmed, VECC's consultant, Mr. Harper, advanced the concerns that were shared by VECC with the other two intervenors with respect to the central issues of cost allocation and rate design. In addition to the submissions, Mr. Harper's docketed time shows a number of instances when he conferred with representatives of the other intervenors. The OEB encourages cooperation among intervenors to avoid duplication and to present effective assistance to the hearing OEB panel.<sup>1</sup>

The end result was that VECC's total cost claim has an hourly total that is 42 hours greater than the next highest submitted by SEC.

Energy+ has also noted the differential in preparation hours claimed by VECC in comparison to the other two intervenors. It is to be expected that the assumption of a lead role on issues such as cost allocation and rate design, that had opposing qualified adherents, will mean more hours spent on preparation. Coupled with the additional role taken on by its consultant, the protracted and multiple stage nature of this proceeding is a sufficient argument against assessing VECC's cost claim as excessive by a simple comparison to the total of the other two claims.

The OEB agrees with VECC that the guideline restricting attendance by more than one representative is meant to deter multiple representative claims for the same time of attendance.<sup>2</sup> In this case, there was apparently a division of labour between VECC's two representatives which does not attract cost reduction sanction.

The OEB will accordingly approve VECC's claim, as well as those of SEC and CCC as reasonable and of assistance in the making of its decision.

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<sup>1</sup> Practice Direction on Cost Awards, revised April 24, 2014, s.4.03, page 5

<sup>2</sup> Procedural Order No. 1 dated July 26, 2018, second paragraph, page 3

**THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Energy+ Inc. shall immediately pay the following amounts to the intervenors for their costs:
  - Consumers Council of Canada \$44,553.08
  - School Energy Coalition \$45,118.64
  - Vulnerable Energy Consumers Coalition \$73,522.78
  
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Energy+ Inc. shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

**DATED** at Toronto August 20, 2019

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary