



PUBLIC INTEREST ADVOCACY CENTRE
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**ENERGY + INC.
EB-2019-0180**

**Motion to Review and Vary the Ontario Energy Board's Decision and
Order dated June 13, 2019 re
Energy+ Inc.'s 2019 Distribution Rate Application**

Submission
Of the
Vulnerable Energy Consumers Coalition
(VECC)

October 17, 2019

Vulnerable Energy Consumers Coalition

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1. Energy + Inc. (Energy + , “the Utility” or “Applicant”) brought a motion to review the Board’s Decision and Order EB-2018-0028 which established distribution rates for the Utility beginning January 1, 2019. The Application was subject to a settlement among the intervening parties and most issues were settled and the Board accepted that settlement as reasonable. Among the unsettled issues was the proposal by Energy + for rate funding of a proposed new office facility known as Southwork under the Board’s Advanced Capital Module (or ACM) mechanism. The Board choose to provide partial though not all the ACM funding sought by the Applicant. Energy+ subsequently filed a motion challenging the correctness of that decision.
 2. VECC has had the opportunity to review the submissions of the School Energy Coalition. We support those arguments made in response to the Applicant’s motion. Specifically we adopt their arguments with respect to the threshold question. In our view the Board may reasonably dismiss the motion and without consideration of the new evidence filed. Rather than repeat SEC’s submissions in this regard we have focused on the merits of the motion as set out below. In this regard we differ materially with SEC in only one aspect. That is the question of whether the Board should admit the evidence of Mr. Kelsey.
 3. SEC argues that the Board should not consider that evidence. However, while we disagree with their position on the admissibility of the evidence, we do not disagree with SEC that if considered, the additional evidence is not persuasive.
 4. It is our view, given the Board allowed in Procedural Order No. 2 for the introduction of this evidence and for parties to question it, that it is reasonable to presume an examination of the evidence is of interest to the Board. It is VECC’s view that the Ontario Energy Board has correctly prioritized the pursuit of “just and reasonable” rates over strict form and procedure. In this way, the Board gives the Applicant every opportunity to make its case.
 5. Nonetheless, we submit that the Board should consider the late evidence with some restraint. The evidence of Mr. Kelsey has not been the subject to full discovery and scrutiny, but only the initial questions of the parties. VECC is not prepared to concede that Mr. Kelsey is in fact an expert in some broadly recognized “estimator of construction cost” discipline. We know of no such widely recognized discipline. We do acknowledge that Mr. Kelsey is a member of various surveying associations and other real estate organizations - though the relevance of that background to the matter at hand is not patently clear to us. In any event, since no hearing or further process of cross-examination is contemplated to resolve our concerns the matter of standing is moot.
 6. We submit that an “expert” opinion which is purchased by the Applicant *ex post facto* to support an existing set of proposals which are already before the Board should be approached with some skepticism.
 7. We would also highlight that VECC asked eight questions of Mr. Kelsey, of which three (VECC-2, VECC-3 and VECC-5) were not in whole or substantively responded to. Other

responses raise more questions than our initial inquiry. We also we note that for those questions for which no substantive response is provided, it is because – in Energy+'s view – the issue of this motion is limited to whether the Board appropriately calculated comparable cost of office space costs. This is not the case. The issue is whether, and how, the Board determined prudence of the Southwork proposal, ex ante and reasonably.

8. In any event, the matters addressed in the additional evidence are relatively minor with respect to the Board's findings. The evidence attempts to provide new information with respect the "comparability" of the Southwork to other projects including the appropriate inflation rate to use for those comparisons. Mr. Kelsey also provides a new cost estimate. Mr. Kelsey's opinion as to the appropriate inflation rate is perhaps interesting but immaterial. For one, as mentioned by SEC, Energy + did not even bother to consider the matter of inflation until it had a decision not to its liking. In addition, as the Board is aware from its various incentive rate application proceedings and other policies, there are numerous ways to calculate an inflator and many contentious issues that go along with that. Inflators are necessarily and by definition estimators and there is no "correct" number to fit a particular circumstance. Even the index chosen by Mr. Kelsey is subject to variation as illustrated below.

Year	Price Indexes	% Difference
2008 Q1	83	
2009 Q1	86.7	4.5
2010 Q1	84.6	-2.4
2011 Q1	87.5	3.4
2012 Q1	90.4	3.3
2013 Q1	91.1	0.8
2014 Q1	91.8	0.8
2015 Q1	93.7	2.1
2016 Q1	95.3	1.7
2017 Q1	98.9	3.8
2018 Q1	102.1	3.2
2019 Q1	107.4	5.2

Source: Statistics Canada. [Table 18-10-0135-01 Building construction price indexes, by type of building](#)

Year	Price Indices	% Difference
2008 Q1	81	
2009 Q1	85.1	5.1%
2010 Q1	85.8	0.8%
2011 Q1	90.0	4.9%
2012 Q1	93.7	4.1%
2013 Q1	94.1	0.4%
2014 Q1	94.2	0.1%
2015 Q1	95.9	1.8%
2016 Q1	97.6	1.8%
2017 Q1	98.9	1.3%
2018 Q1	102.0	3.1%
2019 Q1	109.2	7.1%

9. The first table is that provided by Mr. Kelsey in his evidence and shows the inflation rates using the proposed construction index for Toronto¹. The second table is provided in response to VECC-4. One can observe that there is significant difference in two tables. There is no compelling evidence as to why the estimated construction inflation rates for Toronto should be any more applicable to Cambridge than those of Ottawa. Of course, as noted before, this evidence is any event untested before the Board in a hearing.
10. Having not raised the issue of inflation at all in its application the Applicant now proposes to demonstrate to the Board that its inflation estimate is superior to all others. Not only is this improper but its proffered evidence is clearly not determinative of the matter.
11. We also agree with SEC that the matter of comparable utility space was raised in the hearing in some detail. While Board staff revived other similar information from other utilities, for which Energy+ was appreciative in its original argument, the Board's decision does not rely on this singular submission. The matter being considered by the Board was the issue as to whether the cost of administrative office space encompassed by the Southworks proposal appear inordinately high or if those cost estimates are inherently uncertain. The Board's cautious approach does not rely on any single source of evidence but rather is the sum of its assessment of the evidence as a whole. In fact the Board makes this very point when it states:²

The comparison provided by OEB staff in its final submission was more relevant as it used administration only facilities as comparators. This comparison still showed that the estimated Southworks cost is higher than the comparators, but by a narrower margin (23% to 62% higher).

12. That is, the Board notes that while the Staff's argument provides a more relevant, the comparisons the evidence as filed and tested demonstrate in any event that Southworks is an outlier as compared to similar space. The fact is it the Southwork proposal appears to be costly whether measured by cost comparability to similar projects or by consideration of the alternative of similar type of rental office space. The certainty or accuracy of the estimated costs also caused concern as discussed by the Board:³

The OEB is also concerned about the quality of Energy+'s cost estimates. The initial estimate of \$5.0 million was presented as a Class D estimate with an accuracy of $\pm 30\%$. The revised estimate of \$8.1 million is presented as a Class C estimate with an accuracy of $\pm 20\%$. Given the amount of work that Energy+ did to improve the accuracy of the cost estimate (building and site due diligence, environmental due diligence, 30% completed design, etc.), there does not appear to be a corresponding improvement in the accuracy of the cost estimate in spite of the 62% increase in the actual estimate. Furthermore, the initial \$5.0 million cost estimate included a contingency of \$125,000.

¹ EB-2019-0180, Evidence of Neil Kelsey, September 13, 2019, page 15

² Energy + Decision and Order, EB-2018-0028, page 13

³ Energy + Decision and Order, EB-2018-0028, page 13-14

...there is insufficient evidence to approve a capital budget of \$8.1 million for the Southworks facility as prudent. This finding is reinforced by the comparison to similar facilities developed by other distributors. Energy+ compared the estimated cost of the Southworks facility with the cost of facilities developed by other distributors which had been designed to accommodate a combination of administrative and operations staff. However, the Southworks facility is only intended to accommodate administrative staff with different requirements. The comparison provided by Energy+ showed that the estimated cost for the Southworks facility (in terms of dollars per square foot) is significantly higher than the comparators (29% to 171% higher).

13. Uncertainty is somewhat inherent in the ACM funding mechanism which is a hybrid of the earlier Incremental Capital Module (ICM). While there are numerous policy details the underlying policy objective are clearly summarized below:⁴

The ACM approach should also facilitate regulatory efficiency by placing the requirement to establish the need and prudence for any additional incremental capital spending within a cost of service proceeding. This is well suited to such forms of review and when the five-year DSP is tested.

14. The difficulty of uncertainty arises in the implementation of this policy. It requires the Board assess the prudence of a project's cost for the purpose of inclusion in rates before, and sometimes substantially before, the project is scheduled to go into service. This is contrast to the usual cost of service application where the capital project to be included in the "test" or the year prior to the rate year are considered by the Board. In the normal (non ACM) case the immediacy of the capital program generally will provide the Board better evidence from the perspective of need, cost quantum and in-service timing. This is not the case under ACM where the utility is projecting farther into the future.
15. In this case the Board was faced with a clear conundrum. We think it important that the reviewing panel, before it consider whether it should substitute its view for that of the original panel, the sequence of events. The original application was for an ACM request of \$5 million with an additional \$150,000 per annum in operating and maintenance costs for parking. The building in question was to be part of a renovated redevelopment project and part of a larger inner Cambridge city re-development project⁵. We believe it noteworthy that that the Applicant's shareholder is both the Corporation of the City of Cambridge and the Corporation of the Township of North Dumfries. That application was made April 30, 2018.
16. The cost of the Applicant's proposal for the Southwork project subsequently and substantially increased from \$5.0 million to \$8.1 million between the time of the original application and that of the time of the settlement conference in November 2018. The parties, not surprisingly, had difficulty resolving this abrupt change and the matter was left for the Board to resolve.

⁴ EB-2014-0219 Report of the Board, New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, September 18, 2014, page 11

⁵ EnergyPlus_Exh2_Excl_App2-DSP_20180430.

17. VECC's argument in this case was that the Board either deny the proposal until there was a better resolution of the costs or to cap the cost exposure which customers would pay for in rates. The Board did cap these costs and at \$6.5 million. This of course is a far more favourable outcome than had the Board approved the original ACM application of \$ 5.0 million. Had the Board approved the original application of \$5 million, then, under the existing ACM policy which includes a 30% dead band under which the Utility would subsequently been required to make an extraordinary request to recover the increased costs. Put another way – had the Board's process completed earlier than all else being resolved, the Applicant would today have approval for an ACM of only \$5 million - substantially less than provided by the Board in its decision.

18. Instead the Board (in our view) generously offers the Applicant an additional avenue to recover reasonable incurred cost – provided it can meet its concerns, including the uncertainty as to the likely actual costs for the proposals⁶.

The OEB finds that Energy+ has not provided sufficient evidence in support of the reasonableness of its current cost estimate for the Southworks facility. While acknowledging the need for the facility, the OEB will only approve \$6.5 million for the ACM. This funding envelope is based on reasonable comparisons and the history of the development of the Energy+ estimates. Energy+ will have the opportunity to address any deviation from this amount in its subsequent Price Cap IR application for the year in which the project comes into service.

19. The Southworks project, though defined, may have been ill-defined at the time of application filing. As noted above, this is not surprising given the inherent nature of ACM projects where the time between identification to the Board and the in-service date of that project are long. The arising uncertainty is an issue which the Board must resolve on a case by case basis and with whatever evidence it has before it. That is precisely the exercise the Board carried out in this case.

20. There is a large amount of uncertainty in this case and for two reasons as recognized in the Board's original decision. Part of the uncertainty arises from the unusual nature of the Applicant's proposal. In most similar facilities proposals the Board is faced with the issue of a utility replacing an older facility with a new one or renovating an older facility. The size of the building, its amenities and perhaps the location of the facility are at issue. In this case Energy+ proposes something a bit different. It proposes to bifurcate its "office" or administrative space from its operational space. Moreover, it intends to integrate its office space with an initiative within the Cambridge municipality to revitalize older industrial space. Add to this is the revitalized space is to be coordinated with new high density condominium buildings which would hold the parking space for the new offices. Nothing is inherently wrong with any of this but due to its unique nature the project it naturally attracts greater scrutiny.

⁶ Energy + Decision and Order, EB-2018-0028, page 14

21. Added to the unique nature of the proposal was the obvious significant change in the cost estimates as between the original filing of the Application and when the Board resolved the issue. The Board made note of these incongruities in its decision. This is entirely reasonable. Ultimately the Board could not satisfy to itself the issue of prudence as contemplated under the ACM and it said as much⁷:

The OEB finds there is insufficient evidence to approve a capital budget of \$8.1 million for the Southworks facility as prudent.

22. The Board faced with these challenges provided a reasonable amount of funding and an invitation for the Applicant to apply to recover any costs above this amount. The Board panel made its finding of ACM project prudence based on all of the evidence before it. We can find no error in that decision – only an Applicant unsatisfied with the result.
23. In our submission the Board's decision as to the prudence of the cost of the proposal to be included in rates is entirely reasonable. It is based on as a clear and reasoned assessment of all the evidence before it and not just the issues raised by this motion. Nothing filed in this motion should change that assessment. Therefore we submit there are no merits to the motion and it should be rejected in whole by the Board.

COSTS

24. VECC submits that it has acted responsibly and efficiently during the course of this proceeding and requests that it be allowed to recover 100% of its reasonably incurred costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

OCTOBER 17, 2019

⁷ Energy + Decision and Order, EB-2018-0028, Page 13