

December 9, 2019

Christine Long  
Registrar and Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
P.O. Box 2319  
Toronto, Ontario  
M4P 1E4

Dear Ms. Long:

**Re: EB-2019-0022/0031 – 2020 ICM Applications – Energy+ Inc. and Brantford Power Inc.**

We are representing the Consumers Council of Canada in the above-referenced proceeding. Please find, attached, our final argument.

Yours truly,

*Julie E. Girvan*

Julie E. Girvan

CC: All Parties

**BRANTFORD POWER INC. – EB-2019-0022**  
**ENERGY + INC. – EB-2019-0031**

**2020 RATES – INCREMENTAL CAPITAL MODULE REQUESTS**

**FINAL SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA**

**Introduction:**

On August 12, 2019, Brantford Power Inc. (“BPI”) applied to the Ontario Energy Board (“OEB”) for approval of its rates effective January 1, 2020. As part of its Application Brantford is seeking approval of incremental capital module (“ICM”) funding for its capital requirements for a new facility at Savannah Oaks Drive in Brantford (the “Savannah Oaks Facility”).

On August 26, 2019, Energy+ Inc. (“Energy+”) applied to the OEB for approval of rates effective January 1, 2020. As part of its Application, Energy + is seeking approval of ICM funding for its capital lease investment in the same Savannah Oaks Facility.

In its Procedural Order No. 1, dated October 4, 2019, the OEB combined the two Applications. These are the Final Submissions of the Consumers Council of Canada (“Council”) regarding the two Applications.

**Background:**

BPI and Energy+ have made separate ICM Applications that relate to the same facility. The Savannah Oaks Facility will be owned and occupied by BPI with the space leased to several tenants including Energy+, BPI affiliates and a third tenant (or tenants) which is still to be determined.<sup>1</sup> It will function as both an administration and operations facility.

Although the ICM Applications are for the same facility they differ in a significant way. BPI is seeking ICM relief for the capital costs associated with its use of the facility which it owns. Energy+ is seeking ICM relief for lease payments to BPI for its use of the facility. The total cost of the facility is \$26.8 million. The ICM requests deal specifically with the space that BPI and Energy+ will each be exclusively occupying. The OEB requires that any ICM request must meet its established criteria – materiality, need and prudence. In addition, the ICM request is subject to a means test, whereby ICM funding will not be allowed if a distributor’s actual return on equity exceeds the allowed return by 300 basis points.

The Council will set out its submissions for each ICM request below.

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<sup>1</sup> BPI - ICM Application, p. 31

## **BPI ICM Application:**

The total cost of the building as originally filed was \$28.385 million. BPI's allocated portion, which included furniture, fixtures and equipment, was \$16.133 million. This resulted in a proposed ICM annual revenue requirement of \$1.355 million<sup>2</sup>.

On November 26, 2019, BPI filed an updated interrogatory response setting out its Class C updates to the overall project costs. In that response the total project cost is now forecast to be \$26.808 million resulting in an ICM request of \$15.028 million (including furniture, fixtures and equipment)<sup>3</sup>. The Council assumes that represents BPI's current ICM request, as it flows from the new Class C estimate.

As noted above an ICM application must meet the OEB's established criteria. The Council submits that BPI has met the OEB's ICM criteria and the project should be approved for the following reasons:

- The OEB only allows for ICM funding if the project is material in comparison to the overall capital budget of the distributor. The overall capital cost of \$15.028 million is clearly material relative to BPI's 2020 capital budget of \$19.554 million. The overall ICM amount should, however, be capped at the most up to date maximum eligible incremental capital amount, which is derived using the OEB's ICM formula. BPI should provide, in its Argument-in-Chief, an updated calculation of the ICM threshold and the maximum eligible ICM funding amount that results from the OEB's approved 2020 IRM parameters;
- BPI has clearly demonstrated project need. BPI's current facilities, which it leases from the City of Brantford, will no longer be available by the end of 2022<sup>4</sup>. BPI has presented evidence, which demonstrates that it undertook an extensive process that began in 2014, to search for a consolidated facility to replace the three facilities that it had been leasing from the City of Brantford. The current arrangements, with departments located in three locations, have resulted in operational challenges and inefficiencies. The move to a single location will result in operational improvements and improved functionality for BPI;<sup>5</sup>
- In addition, BPI has demonstrated that it has made efforts to mitigate the costs of the project. It chose the Savannah Oaks option after realizing that another option it had pursued, building on Garden Avenue, would be too expensive;

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<sup>2</sup> ICM Application, p. 23-24

<sup>3</sup> B-Staff-20, updated on November 26, 2019

<sup>4</sup> ICM Application, p. 13

<sup>5</sup> ICM Application, p. 8

- BPI’s ICM request is not for the entire building, but only for the components of the facility that will benefit its customers. BPI, not its ratepayers, is taking the risk associated with renting out the surplus space to others; and
- BPI has not exceeded its approved ROE by 300 basis points so it passes the OEB’s means test.

The Council submits that BPI has established materiality, need and prudence with respect to its Savannah Oaks facility. The Council supports OEB approval of the project, subject to the updated calculation of the materiality threshold and the maximum eligible capital amount. The ICM should be capped at the maximum amount.

**Energy+ ICM Application:**

As part of a long-term lease agreement with BPI, Energy+ will occupy dedicated space at the Savannah Oaks facility (owned by BPI) which will function as an Operations Center to service customers in the Brant County Service area. Energy+ and BPI will also enter into a Shared Service Agreement to share inventory, warehousing, a purchasing manager, a stores person, fueling stations, and vehicle maintenance for the Shared Facilities.<sup>6</sup> Through its ICM Application Energy+ is seeking approval to recover the lease payments for its exclusive space. Use of the shared facilities and common space would be treated as an operating contract.<sup>7</sup>

Energy+ is seeking ICM relief to recover the net present value of the lease with BPI. The Council has reviewed the submissions of the School Energy Coalition (“SEC”) regarding Energy+’s request for ICM treatment of its lease payments to BPI. SEC has submitted the following:

- Energy+ is not eligible for an ICM as it should not be allowed for regulatory purposes to capitalize any portion of the lease;
- Under this approach, no capital investment is being incurred;
- Energy+ does not own the property and has no claim to it after the expiry of the lease. If the building is eventually sold Energy+’s ratepayers would not benefit from the sale of the property or gains on the land;
- ICM funding for leases was not the intent of the OEB’s various ICM policies which are meant to fund actual capital investments that the utility will own; and

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<sup>6</sup> Energy+ Application, p. 44/255

<sup>7</sup> Energy+ Application, p. 46

- The lease should be treated as an OM&A expense and not be recoverable through an ICM;

The Council supports the submissions of SEC. Energy+'s proposal to treat its lease payments as an ICM is not appropriate, and not consistent with the OEB's policies. Lease payments should be treated as OM&A expenses. The Council is also of the view that the issue of prudence with respect to the arrangement with BPI is best dealt with at Energy+'s next rebasing application.

**Effective Dates:**

The evidence in both proceedings is that the facility will not be occupied until October 2020.<sup>8</sup> The proposals for both BPI and Energy+ are that the ICM rider begins on January 1, 2020. The Council submits that the riders should only be collected once the facility is used and useful. Although ultimately the amounts will be trued up, it is not appropriate to start collecting the rate rider(s) before the expected in-service date. The rider(s) should not start to be collected until October 2020 consistent with the expected in-service date.

**Costs:**

The Council requests that it should be awarded its reasonably incurred costs for participating in this combined proceeding.

**All of which is respectfully submitted.**

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<sup>8</sup> SEC-BP-13 and SEC-Energy+-17