

**IN THE MATTER OF** the *Ontario Energy Board Act*, 1998, S.O. 1998,  
c.15, (Scheduled B);

**AND IN THE MATTER OF** an Application by Brantford Power, Inc.  
to the Ontario Energy Board for an Order or Orders approving or  
fixing just and reasonable distribution rates and other service  
charges to be effective January 1, 2020.

**REPLY SUBMISSIONS of BRANTFORD POWER Inc.**

**Filed: December 20, 2019**

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## **Introduction**

In accordance with the Ontario Energy Board's (OEB's) Procedural Order No. 2, dated November 15, 2019, these are the submissions of Brantford Power Inc. (BPI) with respect to its requests for an order of the OEB approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2020. The OEB assigned the case number EB-2019-0022 to this application, and in its Procedural Order No.1, dated October 4, 2019 decided that the case would be heard together with a case submitted by Energy+ Inc. (Energy+), which was assigned case number EB-2019-0031.

BPI makes these submissions in reply to the submissions of OEB Staff (OEB Staff) and the School Energy Coalition (SEC), which were dated December 6, 2019 and those of the Consumers Council of Canada (CCC) and the Vulnerable Energy Consumers Coalition (VECC) which were dated December 9, 2019. OEB Staff, SEC, CCC and VECC are collectively referred to as the "Parties".

The parties have each made submissions on the following topics in the ICM funding requests, which can be summarized in the following three key topics:

1. The evidence supporting the need of the ICM claim;
2. The evidence supporting the prudence for the ICM project;
3. The Materiality of the Request; and
4. Methodology for the Disposition of Rate Riders.

Additionally, OEB Staff made submissions on the following topics:

5. Group 1 Deferral and Variance Accounts (DVAs) ;
6. New Variance Account for Lost Revenues – Collection of Account; and
7. Foregone Revenue.

BPI's reply submissions are organized to correspond with each of these key topics.

## 1. Need for ICM Claim/ICM Project

### *The Means Test*

All parties submitted that BPI's claim satisfies the means test as set out in the ACM report as BPI's regulated return on equity (ROE) has not exceeded 300 basis points above the approved ROE in the last three years. The means test prevents a distributor whose ROE has exceeded 300 basis points from making an ICM claim.<sup>1</sup>

The table below shows BPI's achieved and deemed ROE in the past 3 years<sup>2</sup>.

	2016	2017	2018
Approved ROE	8.98%	8.78%	8.78%
Actual ROE	6.53%	11.38%	7.90%
Variance	-2.45%	2.60%	-0.88%

BPI agrees it has met the requirements of the means test and therefore is eligible to make an ICM claim.

### *Need for the Project*

All parties have submitted that BPI's evidence appropriately demonstrates the need for the project.

The parties referred to the letter provided by BPI indicating the leases for its 3 current facilities would not be renewed beyond 2022<sup>3</sup>. The parties further referred to the expected operating efficiencies occurring as a result of being located together with Energy+, as well as the improved internal operating efficiencies related to the consolidation of all BPI staff at one location (vs. 3 locations currently).

BPI similarly submits that it has met the means test as well as demonstrated through its evidence the need for the new facility and thus the OEB should approve the project as requested.

BPI currently rents or leases three locations from the City of Brantford. In its 2017 COS application, these costs were treated as OM&A<sup>4</sup>, consistent with the accounting requirements related to leases in effect at that time. In its 2017 COS, BPI had initially proposed to include capital funding for a facility relocation however it withdrew this request when it became evident a new facility would not be in service in 2017.

OEB Staff submitted that the ICM request represents a discrete project for BPI and is clearly outside the base upon which rates were derived<sup>5</sup>. VECC similarly submitted that the leases payable to the

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<sup>1</sup> ACM Report, p. 17

<sup>2</sup> IRM Attachment A p. 6 of 40

<sup>3</sup> ICM Appendix B

<sup>4</sup> IR Response B-Staff-27

<sup>5</sup> OEB Staff Submission, p. 9-10

city were excluded from BPI's rate base<sup>6</sup>. CCC made no specific submissions however supported that BPI met the overall need criteria<sup>7</sup>. SEC submitted that BPI met the need requirement for a solution to its administration and operations requirement.<sup>8</sup>

BPI agrees it has met the various considerations under the requirement to demonstrate project need, and as such the project is eligible for an ICM claim.

## **2. Prudence of the ICM Project/Claim**

In general all parties supported the prudence of the ICM project.

SEC noted the significant amount of due diligence performed by BPI in determining the most cost-effective option, including the review of available properties<sup>9</sup>. SEC further commended BPI on making arrangements to right-size the facility to meet its needs by making excess space available for rent<sup>10</sup>. SEC also commented that the updated cost per square foot was well below the comparator average<sup>11</sup>.

CCC also submitted BPI had established prudence, and cited, among other points, BPI's efforts to mitigate the costs of the project including choosing Savannah Oaks after concluding that another option it had purchased would be too expensive<sup>12</sup>, as well as BPI's limitation of its request to the components of the facility that will benefit customers<sup>13</sup>.

VECC submitted that BPI has satisfied the prudence criterion, making reference to multiple aspects of BPI's selection process, including the length of the facility relocation planning process, a thorough review of the options in the pursuit of a consolidated facility, the purchase of the facility below market value, the reduction to the revenue requirement for the value of land to be severed, securing social permission for the project, and a favourable benchmarking analysis. VECC made specific mention of the innovative approach of sharing a facility with a neighbouring utility in its submission that BPI met the prudence criterion<sup>14</sup>.

OEB Staff also submitted that the amounts incurred in the facility project are prudent. On the whole OEB Staff believes BPI's decisions were justified, however OEB Staff noted some shortfalls<sup>15</sup>. Specifically, OEB staff submitted that BPI should have further analyzed the option of leasing a facility, however OEB Staff accepted that owning the facility would better enable additional efficiencies. Additionally, OEB staff made reference to the customer engagement conducted by BPI

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<sup>6</sup> VECC submissions, p2.

<sup>7</sup> CCC Submission, p3.

<sup>8</sup> SEC Submission, p3.

<sup>9</sup> *ibid.*

<sup>10</sup> SEC Submission, p4.

<sup>11</sup> *ibid*

<sup>12</sup> CCC Submission, p2

<sup>13</sup> CCC Submission, p3.

<sup>14</sup> VECC Submission, p6-7

<sup>15</sup> OEB Staff Submission, p 15

Submitted: December 20, 2019

in 2016 indicating that customers preferred that BPI own a new facility (compared to leasing)<sup>16</sup>. OEB staff also noted the increased space allocation at 150 Savannah Oaks, as compared to the minimum space requirements determined earlier in the planning process. Ultimately, OEB staff accepted that the allocated space is reasonable, based on benchmarking analysis showing that the gross square feet per employee is in line with the average of applicable comparators. OEB Staff accepted BPI's explanation that BPI had less ability to right-size the facility under a purchase and refurbish project, and further noted the favourable cost per square foot benchmarking metrics<sup>17</sup>.

BPI notes that several of the parties have shown their support for the innovative approach selected by Brantford Power with respect to its new facility. BPI notes the most innovative aspect of the project is its partnership with Energy+, which BPI believes will be the first instance of two neighbouring utilities operating from the same facility. BPI has collaborated closely with Energy+ with respect to the new facility (both at Savannah Oaks and before this at the Garden Avenue project), sharing information frequently as the project has progressed to ensure the needs of both utilities are met.

For the various reasons referenced by the parties, BPI believes that it has shown that the decisions made with respect to the facility are prudent, and as such the OEB should approve the project.

### 3. Materiality of Request

The ACM Report and Filing requirements define the formula which distributors must employ in determining whether a project is material. This materiality threshold is also compared against the Distributor's planned capital spending to determine the maximum eligible capital<sup>18</sup>.

BPI completed these calculations in the ICM model filed with its Application, updating the model to correspond with its "Class C" updates in response to B-Staff-20 on November 26, 2019. In this model, the total capital spend for 2020 was \$19,553,670, the materiality threshold was calculated at \$5,927,906, resulting in a maximum eligible capital level of \$13,625,764. With total facility spending expected at \$15,028,188, the revenue requirement was calculated based on the maximum eligible capital, and amounted to \$1,261,112.

OEB Staff submitted that the ICM revenue requirement should be adjusted for a mechanistic update for the ICM threshold calculation<sup>19</sup>. The Application calculations used a placeholder Price Cap Index, with the anticipation that the calculation would be updated. The inflationary adjustment was updated to 2% and was issued by the OEB on November 28<sup>20</sup>, 2019 and OEB staff updated the models accordingly. OEB staff used the stretch factor for cohort III in the calculation of the IRM adjustment, consistent with the IRM framework and the stretch factor assigned to BPI for 2020

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<sup>16</sup> OEB Staff Submission, p 12-13

<sup>17</sup> *Ibid*, p14-15.

<sup>18</sup> Report of the Board in EB-2014-0219 dated September 18, 2014, p 16-19.

<sup>19</sup> OEB Staff Submission, p.8

<sup>20</sup> Decision and Rate Order, OEB Case No. EB-2019-0280, dated November 28, 2019.

rates. OEB Staff used the stretch factor of 0.3% for the calculation of the ICM threshold as well, which is consistent with the ICM framework. That model included an unchanged total capital spend for 2020 of \$19,553,670, with an updated materiality threshold of \$6,347,953, resulting in a maximum eligible capital amount of \$13,205,717, and corresponding to a Revenue Requirement of \$1,222,235<sup>21</sup>.

CCC similarly submitted the OEB should approve the project, subject to the updated threshold calculations consistent with those provided by OEB Staff.<sup>22</sup>

BPI submits the updates provided by OEB Staff are consistent with OEB policy and should be reflected in the OEB's Decision.

#### **4. ICM Rate Rider Methodology**

##### ***Quantum of ICM Revenue Requirement***

The OEB's standard policy is that changes in OM&A are not considered in an ICM request. This approach has been recently reinforced in the OEB's decision in Halton Hills Hydro's ICM Request in EB-2018-0328<sup>23</sup>.

Consistent with the OEB's policy, BPI did not propose to make any adjustments to OM&A related to the building in this Application.

SEC has submitted that the OEB should reduce the ICM rate riders by the amount of avoided lease payments included in base rates<sup>24</sup>.

In its interrogatory B-Staff-15, OEB Staff requested the annual OM&A savings BPI expected from moving out of the leased facility. In its interrogatory responses, BPI has presented the anticipated savings of \$144k in 2020 and \$595,946 in 2021<sup>25</sup>. Despite being labeled as "rent" in the response, BPI notes that these amounts represent the total OM&A savings associated with the 3 existing facilities (as requested by OEB staff) and include not only the lease/rent costs, but also a significant level of facility management fees and property taxes<sup>26</sup>, with the non-rent elements amounting to \$304,414 in 2021.

In its responses to Interrogatories, BPI also quantified an expected net OM&A increase of \$566,012<sup>27</sup>, in 2020 including \$162,500 in one-time OM&A<sup>28</sup>. The corresponding increase for 2021

<sup>21</sup> OEB Submission, p 8.

<sup>22</sup> CCC Submission, p.3

<sup>23</sup> *Decision and Rate Order*, EB-2018-0328, released April 4, 2019, p.9.

<sup>24</sup> SEC Submission, p6.

<sup>25</sup> B-Staff-15 a)

<sup>26</sup> A review of BPI's Evidence in EB-2016-0058, Exhibit 4 ( specifically, Table 4.5-A and Appendix 4-B) will confirm the savings amount in 2021 is in line with the total for Rental of Facilities and Facility Asset Management together, and Table 4.10.2-B indicates the level of Property Taxes incurred. Note 2017 values in these tables were forecasted at \$0 as BPI expected to have moved at that time; however the 2016 values are an appropriate proxy.

<sup>27</sup> B-Staff-15 e)

was estimated at roughly \$11k<sup>29</sup>. These amounts consider the savings associated with the current facility leases and facility maintenance, as well as expected BPI allocations of one-time and ongoing facility expenses.

BPI does not agree with SEC's submission to reduce the ICM rate riders, on the basis that the OEB policy with respect to OM&A treatment in an ICM request is clear. BPI submits that if the OEB were to consider reductions to OM&A associated with the new facility, any increases to OM&A should also be considered, however this approach would lead to an increase in the ICM request.

Consistent with the submission by OEB Staff<sup>30</sup>, BPI intends to closely monitor the operating efficiencies associated with the new facility, particularly those arising from operating together with Energy+.

OEB Staff also made submissions supporting BPI's proposed accounting treatment for the facility, specifically to reflect the value of the portions of the facility to be leased and the portions of land to be sold as non-utility assets<sup>31</sup>. OEB staff also supported BPI's proposal not to reflect the impacts of accelerated CCA in the calculation of ICM rate riders, and instead reflecting this in Account 1592. OEB Staff noted that in this way, all the impacts due to changes in the CCA rule would be treated consistently, including those related to other affected assets<sup>32</sup>.

### ***Timing of Rate Riders***

OEB Staff supported BPI's request for the provision of foregone revenues back to January 1, 2020 in the event the timing of the OEB Decision in this matter does not enable implementation for a January 1 effective date<sup>33</sup>.

SEC, VECC, and CCC proposed that the rate riders should be effective in October or November of 2020.

VECC cited that the operations staff are expected to move in Q4, following the completion of the garages and TDC renovations, expected to be complete on October 15, 2020 and as a result, that the rate riders should be effective November 1, 2020 to align with the completion of the renovations and moving. VECC submitted that under this policy, ratepayers would be paying for a facility in advance of its in-service date<sup>34</sup>.

SEC submitted that the expected move-in date for BPI is expected to be October 2020 and the project would not be in-service for 75% of the year as a result. SEC proposed an implementation

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<sup>28</sup> B-Staff-15 b): \$25,000 for project management booked to OM&A+ \$87,500 in Move costs for BPI + \$50,000 estimated allocation of Facility Manager allocated to BPI.

<sup>29</sup> B-Staff-15 e)

<sup>30</sup> OEB Staff Submission, p 13.

<sup>31</sup> *ibid*, p 15-16

<sup>32</sup> *Ibid*, p. 17

<sup>33</sup> *Ibid*, p,17

<sup>34</sup> VECC Submission, p 7.

date of October 2020. SEC indicated this would ensure customers only pay for the new facility when it is providing them with benefits<sup>35</sup>.

CCC submitted that the evidence in the case shows the facility will not be occupied until October 2020 and as a result submitted that the rate riders should start to be collected in October 2020<sup>36</sup>.

#### OEB Policy

The OEB's policy with respect to rate consideration for capital assets has generally been to approve rate relief for those assets if they are "in-service", also sometimes referred to as "used and useful" or "used or useful" in the rate year in question. BPI has filed its Application and Evidence consistent with this policy and submits the rate riders should be effective January 1, 2020 as requested.

Should the OEB not agree with the submissions of Brantford Power on the basis of the OEB's policy, BPI believes the OEB should additionally consider the evidence regarding the timing of the in-service date for the facility, discussed below.

#### Project Plan

Several of the parties have proposed a delayed implementation date based on the interpretation that the facility is not scheduled to be in service prior to October 15, 2020.

BPI submits it has presented evidence to show that this is not so. BPI has planned a phased approach to its occupancy of the facility, with administrative staff, which amounts to roughly two thirds of BPI's staff, occupying the office areas in Q1 of 2020<sup>37, 38</sup>, followed by Operations staff following the completion of additional construction, expected in October 2020<sup>39</sup>. BPI provided project plans in its original Application<sup>40</sup>, as well as an updated plan with interrogatory responses which showed no material changes to this plan. Note the project plan below from Interrogatory response SEC-BPI-12/ IR-Attachment F, which confirms BPI's planned move- in in 1st quarter 2020.

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<sup>35</sup> SEC Submission, p. 6

<sup>36</sup> CCC Submission, p.4

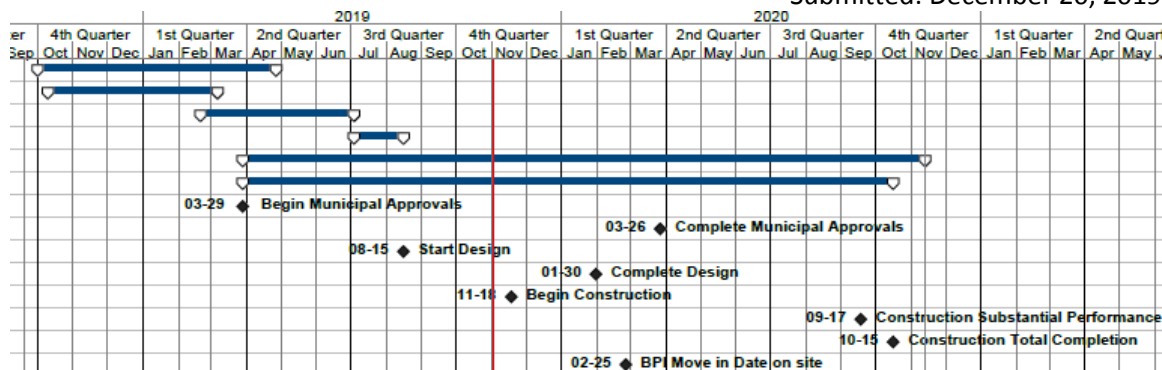
<sup>37</sup> B-Staff-20 f)

<sup>38</sup> IRM Attachment A, p 13/40 shows 23 staff located at 84 Market Street and 19 at 220 Colborne for a total of 42/66 or 64% expected to move in Q1 2020.

<sup>39</sup> B-Staff-11 b)i.

<sup>40</sup> ICM Appendix G, p 287/400 in Application.





The submissions from SEC, VECC and CCC were based on the notion that the facility would not be in-service for more than half of the year. This notion conflicts with the evidence presented by BPI.

BPI submits that the OEB should approve rate riders effective January 1, 2020 as requested and in keeping with OEB policy. BPI has presented evidence that the new facility will be occupied, in service and “used and useful” early in 2020, contrary to the submissions of SEC, VECC and CCC.

## 5. Group 1 Deferral and Variance Accounts

BPI’s Group 1 DVA balances as at December 31, 2018 have been audited and therefore would have been eligible for disposition in this Application, consistent with the Filing Requirements. The Filing Requirements also set out the standard policy that Group 1 DVA balances are eligible for disposition if the total balance in those accounts exceeds the OEB’s disposition threshold. The balance in BPI’s accounts does not meet the threshold and as a result BPI has not proposed any DVA disposition at this time<sup>41</sup>. BPI had previously disposed of balances to December 31, 2017 on an interim basis.

OEB Staff agreed that the Group 1 DVA balances should not be disposed of as the threshold has not been met. No other party commented on the DVA disposition.<sup>42</sup>

BPI submits the OEB should not require the disposition of the Group 1 DVAs at this time, consistent with OEB policy vis-à-vis the disposition threshold.

## 6. Variance Account for Lost Revenues- Collection of Account

In its Application, BPI requested the establishment of a Variance Account for the lost revenues associated with the Collection of Account Charge, which has been affected by the Winter

<sup>41</sup> IRM Application, p 13/400

<sup>42</sup> OEB Staff Submission, p 2

Disconnection Ban introduced in 2017, and more recently by the removal of the \$30 fee associated with Collection of Accounts.<sup>43</sup>

The Filing Requirements indicate that a distributor requesting a new DVA must demonstrate prudence, materiality and causation in its request.

BPI proposed that lost revenues be recorded to this account annually based on the variance between the OEB-Approved amount in its 2017 COS and the actual revenues collected which are expected to be 0 following the removal of the charge on July 1, 2019. The amount approved in BPI's 2017 COS was \$440,889.<sup>44</sup>

The Winter Disconnection Ban was introduced in 2017 and now prevents Brantford Power from issuing a disconnection notice between November 15<sup>th</sup> and April 30<sup>th</sup> of each subsequent year<sup>45</sup>. This amounts to 5.5 months of the year that BPI is not allowed to issue a disconnection notice, compared to the full 12 months in the period prior to the introduction of this change in law, including during November 2016<sup>46</sup> when the 2017 COS case was settled and approved by the OEB.

This change in law has had a material impact on the volume of notices BPI is able to issue.

In 2019, the OEB introduced regulatory changes which eliminated the \$30 collection of account charge<sup>47</sup>. As a result of this regulatory change, BPI is no longer able to collect any of the revenue offsets associated with the Collection of Account charge.

OEB Staff submitted that the proposal for the new Variance Account met the criteria of materiality and causation and supported the establishment of a new account<sup>48</sup>. OEB Staff did not agree with the methodology suggested by BPI on the basis that a different approach would better meet the prudence criteria in establishing an account<sup>49</sup>.

OEB Staff agreed that Collection of Account revenue underpinning current rates is \$440,889, however this number appeared too high as the 3 years prior to 2017 had not reached that level. OEB Staff noted that the \$440,889 included in the COS was not guaranteed and would have fluctuated with BPI's collections activities, and that DVA entries based on the number of collection of account notices issued would be the preferred DVA methodology, capped at the COS-approved level<sup>50</sup>.

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<sup>43</sup> IRM Application, p.28-29/400

<sup>44</sup> *Ibid*, p. 32/400

<sup>45</sup> OEB Decision in EB-2017-0318, dated November 2, 2017 and BPI License ED-2003-0060 .

<sup>46</sup> Decision in EB-2016-0058 was issued on November 24, 2016, almost a year prior to the Winter Disconnection Ban.

<sup>47</sup> OEB Notice of Amendment to various Codes, Board File No. EB-2017-0183, dated March 14, 2019.

<sup>48</sup> OEB Staff Submission, p.3

<sup>49</sup> *Ibid*, p. 3-4

<sup>50</sup> *Ibid*, p3

**BPI Submission:**

BPI submits that the methodology proposed by OEB does not consider the impacts of the Winter Disconnection Ban, which clearly also has a direct and causative impact on the number of Disconnection Notices BPI is able to issue. The winter disconnection ban prevents BPI and other distributors from issuing a disconnection notice for over 5.5 months of the year.

The OEB Staff submission that the pre-ban Collection of Account revenues never reached the level underpinning the 2017 rates is technically correct, however the Collection of account revenue in 2015 was only \$330 (the equivalent of 11 notices) lower than the amount considered in the rates<sup>51</sup>. BPI presented the historical actual Collection of Account charge revenue in its interrogatory responses, recreated below<sup>52</sup>. The average post-ban revenues were 46% lower than those in the pre-ban period presented in the table below<sup>53</sup>.

2014	2015	2016	2017 COS	2017	2018
\$ 333,900	\$ 440,550	\$ 313,393	\$ 440,889	\$ 169,765	\$ 160,466

BPI submits that the winter disconnection has clearly caused a decrease in disconnection notices, and the level of offset revenues considered in BPI's 2017 COS base revenue requirement calculations were not unreasonable given the recent history at the time of the Decision. Additionally, at that time there was no indication that the regulations influencing the volume and price for the disconnection notices would change.

BPI submits that the originally presented methodology should be accepted as it accounts for the change in law limiting BPI's ability to issue disconnection notices.

**7. Effective Date and Foregone Revenue**

In its Application, BPI requested that the OEB declare its rates interim and approve foregone revenue rate riders in the event that the decision in this case is not issued at a timing which allows for a rate implementation for January 1, 2020 rates<sup>54</sup>.

OEB Staff noted that BPI met all deadlines issued in this application and that one month's recovery of the ICM revenue requirement exceeds BPI's materiality threshold. As a result OEB Staff supported the approval of foregone revenue rate riders.<sup>55</sup>

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<sup>51</sup> B-Staff-29 a); see table recreated below.

<sup>52</sup> B-Staff-29 a)

<sup>53</sup> Average in 2014-2016 is \$362,614 vs. average of \$165,116 in 2017 and 2018.

<sup>54</sup> IRM Application, p5/400

<sup>55</sup> OEB Staff Submission, p17

Submitted: December 20, 2019

On December 12, 2019 the OEB issued an Interim Rate Order in this Case, deeming BPI's rates interim effective January 1, 2020. In this document the OEB indicated it intends to issue a partial Decision and Order in the non-ICM portion of the application in time to implement the associated new rates on January 1, 2020.

BPI requests that, should the implementation of the non-ICM rates not be possible in time for January 1<sup>st</sup> due to unforeseen circumstances, that the OEB approve foregone rate riders which also include a consideration for the IRM rate adjustments effective January 1, 2020 in addition to the ICM foregone revenue. Otherwise, BPI submits the OEB should approve foregone revenue rate riders which reflect the impact of ICM rate riders effective January 1, 2020.

*All of which is respectfully submitted.*