EB-2024-0021
ERTH Power Corporation Inc.
Application for electricity distribution rates and other charges effective May 1, 2025

VECC Final Submissions April 28, 2025

ERTH Power Corporation Inc. (ERTH Power) filed an incentive rate-setting mechanism (IRM) application with the Ontario Energy Board (OEB) on October 11, 2024, under section 78 of the *Ontario Energy Board Act*, *1998*, seeking approval for changes to its electricity distribution rates to be effective May 1, 2025. ERTH Power has also applied for incremental capital funding to support the purchase of property, design, construction, and furnishing of a new administrative and operational facility.

VECC submissions relate to ERTH Power's incremental capital funding (ICM) request.

Background

ERTH Power serves 15 communities and approximately 32,819 customers. ERTH Power is currently in a nine-year cost of service deferral period resulting from a consolidation in 2018 with West Coast Huron Energy Inc.

ERTH Power currently has three operations centers located in Ingersoll, Aylmer and Goderich. ERTH Power rents all three facilities: Ingersoll and Aylmer from ERTH CORP, and Goderich from the City of Goderich.

The Ingersoll (Bell Street) property is the headquarters for ERTH Power. It is a multi-purpose facility that retains all executive, administration, finance, customer service, metering, engineering departments, garage and maintenance services, and it is the primary facility for indoor and outdoor inventory storage. The Ingersoll property is at 100% capacity.[1]

The Aylmer (Elm Street) property serves as a satellite operations centre with an operations centre, administrative offices and equipment storage. The Aylmer property is at 75% capacity.[2]

The Goderich (Huckins Street) property includes operations specific to support customers in the Goderich service territory including maintenance and construction activities.[3] The Goderich property is at 80% capacity.[4]

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[1] VECC-2 (a)
[2] *Ibid*.
[3] Staff-5 (a)
[4] VECC-2 (a)

In its evidence, ERTH Power details the significant challenges with the Ingersoll and Aylmer properties.[5] In 2022, ERTH Power determined that the best way to address these challenges was to consolidate both facilities into a new Operations and Administrative property, the "New Facility".[6]

ERTH Power made the decision to relocate from the Bell Street property and procure a 6 acre property at 385 Thomas Street in Ingersoll, Ontario and construct the New Facility as the new headquarters and centralized administrative and operational facility with the following features:

- 57,170 square feet
- solar photovoltaic system and ground-source heat pump system with incremental costs of $1.716 million[7]
- projected in-service date of Q4 2025
- rental income from ERTH CORP

ERTH Power indicates the New Facility will consolidate two leased facilities (Ingersoll & Aylmer) that are no longer sufficient for the utility's operational, safety, and workforce needs.[8] However, ERTH Power still plans to rent and use 50% of the Aylmer property for storage and operational staging in the area.[9]

Incremental Capital Mechanism (ICM) Request

ERTH Power currently seeks approval of $33.182 million in New Facility costs as detailed in Table 1 below with an incremental revenue requirement of $2.738 million. This cost reflects an update through interrogatories from an initial cost of $33.439 million and a revenue requirement of $2.778 million.[10]

Table 1: New Facility Costs

Component	**Initial Cost ($000's)**	**Updated Costs ($000's)**
Land	$6,217	$6,217
Yard	$462	$462
Building	$13,899	13,843
Furniture, Fixtures & Equipment	$1,784	$1,783

[5] Application Appendix A p. 11-14; AIC p. 5
[6] Application Appendix A p.15
[7] = $1.8 million (Solar = $1.5 million; Geothermal heat pump = $0.3 million) updated to $1.716 million (updated SEC-13 (a)
[8] AIC p. 4
[9] Application Appendix A p.22
[10] SEC-2

Mechanical & Energy Systems	$11,077	$10,877
TOTAL	**$33,439**	**$33,182**
Revenue Requirement	**$2.778**	**$2.738**

The contract to construct the New Facility was awarded to Bronnenco Construction Limited under an industry standard pre-determined fixed price contract (CCDC 2 - 2020 Stipulated Price Contract) subject to change orders.[11] The total construction cost for the project of $23,254,499 includes a contingency of $750 thousand and an additional cash allowance of $3.34 million. As of December 30, 2024 the contingency has been drawn down to $736 thousand and cash allowance reduced to $2.87 million.[12]

ERTH Power has two Rate Zones (RZ): Main RZ and Goderich RZ. ERTH Power proposes to allocate $2.238 million of the revenue requirement for the New Facility to the Main RZ (82%) and $0.501 million (22%) to the Goderich RZ.

The residential customer bill impacts resulting from the New Facility are 17.04% for the Main RZ and 15.87% in the Goderich RZ.[13]

VECC's Position

In VECC's view the New Facility is too expensive and the resulting bill impacts are too high, not justified, and not reasonable, especially for low-income residential customers many of whom are on a fixed income and cannot easily absorb additional costs and bill impacts at this level.

As detailed below, VECC proposes reductions to ERTH Power's ICM request to a more reasonable amount of $23.144 million.

ICM Criteria

In order to qualify for ICM funding, a distributor must satisfy the OEB's eligibility criteria of materiality, need and prudence as follows:[14]

Materiality	A capital budget will be deemed to be material, and as such reflect eligible projects, if it exceeds the OEB-defined materiality threshold. Any incremental capital amounts approved for recovery must fit

[11] SEC-1 Attachment #8
[12] SEC-2 (e)
[13] JT1.1
[14] OEB Report of the Board New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, September 18, 2014 p.17

	within the total eligible incremental capital amount (as defined in this ACM Report) and must clearly have a significant influence on the operation of the distributor; otherwise they should be dealt with at rebasing. Minor expenditures in comparison to the overall capital budget should be considered ineligible for ACM or ICM treatment. A certain degree of project expenditure over and above the OEB-defined threshold calculation is expected to be absorbed within the total capital budget.
Need	The distributor must pass the Means Test (as defined in the ACM Report). Amounts must be based on discrete projects and should be directly related to the claimed driver. The amounts must be clearly outside of the base upon which the rates were derived.
Prudence	The amounts to be incurred must be prudent. This means that the distributor's decision to incur the amounts must represent the most cost-effective option (not necessarily least initial cost) for ratepayers.

Materiality and Need

ERTH Power has met the materiality threshold tests for each RZ. The total cost of the New Facility, $33.182 million, is within the total maximum eligible capital amount of $33.586 million. On this basis, 100% of the costs of the New Facility are eligible for ICM funding.

ERTH Power has demonstrated that the project is material in comparison to its overall planned capital budget for 2025 and significantly greater than the average capital spend for the 2018 to 2023 period. The New Facility passes the project specific materiality test.[15]

ERTH Power has passed the Means Test. ERTH Power's most recent ROE for 2023 (9.32%) does not exceed 300 basis points.[16]

The New Facility is a discrete project that is clearly outside the base upon which current rates were derived. ERTH Power has adequately described the operational, safety and workforce challenges with the existing Ingersoll and Aylmer properties and that they no longer meet ERTH Power's requirements. Most notably size and condition with the Ingersoll property and location in the case of the Aylmer Property.

In summary, with respect to materiality and need, VECC agrees that ERTH Power has satisfied the OEB's ICM requirements. However, with respect to prudence, VECC does not believe ERTH Power has demonstrated the amount for the New Facility is prudent.

[15] Appendix A p. 39; AIC p. 13
[16] 2023 Deemed ROE = 9.02%

Prudence

VECC submits that the ERTH Power's forecast cost of $33.182 million for the New Facility does not meet the OEB's criterion with respect to prudence. VECC makes this determination based on the benchmarking results, an inadequate decision making and options analysis process and complete lack of customer engagement.

Benchmarking

To assess the relative reasonableness and prudence of the New Facility, ERTH Power benchmarked against four new building projects of other mid-sized distributors in Ontario in recent years that ERTH Power identifies as a representative peer group. The OEB Approved capital amounts for each benchmarked utility were inflation adjusted based on a weighted index relying on StatsCan Non-Residential Building Construction Index and StatsCan Value per Acre of Land in Ontario.[17]

Table 2: ERTH Power Benchmarking Results ($/ft^2)

Utility	OEB#	Capital Costs	Total ft^2	$/ ft^2
Algoma Power	EB-2019-0019	$15,361	41,703	$368
Milton Hydro	EB-2015-0089	$24,594	91,828	$268
Waterloo North	EB-2020-0144	$57,839	104,000	$556
InnPower	EB-2014-0086	$19,129	36,172	$529
Average				**$427**
ERTH Power-Solar Panels & Heat Pump		$33,182	57,170	$580
ERTH Power-Conventional[18]		**$31,466**	**57,170**	**$550**

ERTH Power's own evidence demonstrates that the cost of the New Facility is too high. The average cost/ft^2 of ERTH Power's four comparators is $427 whereas ERTH Power's costs are $580/ft^2 including the costs of solar panels and heat pump and $550/ft^2 when conventional heating is used in the analysis.

ERTH Power's costs (using ERTH Power Conventional to appropriately compare to peer group) are 28.8% higher than the average of the peer group. The higher costs per square foot have not been justified.

[17] Application Appendix A p. 29 footnote 9

[18] Excludes $1.716 incremental costs for solar & heat pumps

VECC submits the OEB should disallow costs above the benchmark. This equates to a reduction of $7,031 million.[19]

Decision Making and Options Analysis

Two months after the need for facility alternatives to address the challenges at the Ingersoll and Aylmer properties was identified in June 2022, the ERTH Board of Directors (BOD) began discussing the potential purchase of a property at 277-287 Thomas Street South in Ingersoll. Further discussions took place in September and October 2022 and at the October 2022 BOD meeting the CEO recommended to not proceed with this property. However, at the same October 2022 BOD meeting, a resolution was passed to develop a business plan in 2023 for a new facility for the LDC Hub and continue to explore property/location options for said facility.[20] It seems to VECC that ERTH Power decided early on that purchasing land and constructing a new facility was the preferred outcome without a simultaneous in depth analysis of other alternatives.

By the time ERTH presented the New Facility option at 385 Thomas Street in Ingersoll to its Board on February 16, 2023, the land had already been purchased.[21] In December 2022, the Town of Ingersoll advised ERTH about the possibility to purchase property located at 385 Thomas Street. In January 2023 the subject land at 385 Thomas Street was listed for sale and on February 8, 2023 a conditional offer by ERTH was accepted by the Property Owner.[22] There is no evidence that other potential options were adequately considered during the decision-making process to purchase 385 Thomas Street.

As noted by ERTH Power, the Business Plan for the New Facility prepared by Utilis Consulting Inc. dated November 2023 simply memorializes the options assessment and decisions made to date.[23] ERTH Power considered only one lease option in its options analysis, the only available commercial/industrial space at the time at 100 Newman St which it determined to be sub-optimal. It's unclear when ERTH Power investigated this option. The other options outlined in the Business Plan are the status quo option and the new build at 385 Thomas Street.[24] No cost benefit analysis was done with respect to the consolidation of current facilities into the New Facility.[25] The Business Plan does not adequately demonstrate that the New Facility is the most appropriate response.

In 2023, ERTH Power commissioned POW Engineering on a sole-source basis[26] to produce an engineering design of the New Facility based on certain specifications. No other building design

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[19] ($550-427) x 57,170 Ft2 = $7.031 million
[20] Strategic Goal 1A, Initiative 3, KPI 3; SEC-1 Attachment #3
[21] SEC-1 Attachment #3 p.3
[22] SEC-1 Attachment #3
[23] AIC p.
[24] SEC -1 Attachment #12
[25] VECC-5 (a)
[26] Technical Conference Transcript p. 35-36

options from other firms were considered or costed out for comparison. As a result, there is no evidence that the selected option to build the New Facility based on the design of POW Engineering represents the best design and most cost-effective option.

Customer Engagement

ERTH Power stakeholder engagement focused on its nine municipal shareholders as representatives of its customers (“Stakeholder Group”). Members of the Stakeholder Group included elected officials and their staff. The engagement with the Stakeholder Group included their review of the proposed project, and ultimate endorsement and full support for the project.[27] When asked why ERTH Power did not engage directly with its customers on the New Facility and the ICM application ERTH Power replied that the expenditure is focused on utility operations and indirectly impacts the customer base. The Shareholder, not customers, were informed about the utility operational needs, current challenges and both Distribution and Total Bill impacts from the New Facility. Given the significant bill impacts and the fact that customers will ultimately pay for the New Facility, excluding customers from the process raises questions about whether or not they would have supported the project as planned compared to alternatives.

Allocation to Affiliates

The New Facility will support affiliate FTEs who will operate out of the New Facility. Out of the total occupancy of 54 for the New Facility, ERTH Power expects 8 ERTH Corporation FTEs and 8 ERTH Holdings Inc FTEs to occupy the space.[28]

Through a rental services agreement, ERTH Power plans to rent space to ERTH Corp and will receive rental payments for use of a portion of its new operations and administrative center. Based on a market rate of $25/ft^2$, ERTH Power forecasts that the annual rental revenue will be $46,950. ERTH Power proposes that this revenue be captured in ERTH Avoided Rent Deferral Account for future clearance to the benefit of customers. VECC does not support this approach.

ERTH Power provided the breakdown of regulated and unregulated square footage which underpinned the Business Plan[29] as well as the facility benchmarking presented in ERTH Power’s evidence.[30] ERTH Power allocated 6,546 ft^2 out of a total of 57,170 ft^2 or 11.5% to the unregulated business (ERTH CORP/Holdings) which represents directly allocated space and a share of common space.

VECC submits that the OEB should allocate 11.5% of the New Facility costs to the ERTH shareholders, as it underpins the business plan and benchmarking and represents the most appropriate apportionment of the New Facility to the regulated and unregulated business.

[27] Application Appendix A p. 35
[28] SEC-5 (a)
[29] SEC-1 Attachment #12
[30] JT1.9

Applying 11.5% to VECC's revised New Facility costs to reflect use of the New Facility by affiliates represents a further reduction of $3.007 million to the ICM capital costs.

Summary of VECC's Proposed ICM Adjustments

In considering VECC's analysis discussed above, VECC submits the OEB should reduce the capital costs of for the New Facility to $23.144 million to reflect a more appropriate and reasonable cost and associated bill impacts for the New Facility.

ERTH Power indicates that things are going very well and speculates the project could come in under budget.[31]

Table 3: VECC's Proposed ICM Adjustments

Proposed Adjustments	**$ Millions**
ERTH New Facility Costs	$33,181
Less Cost of Solar and Heat Pumps	-$1,716
Conventional New Facility	**$31,466**
Less Reduction to Reflect Benchmarking Results	-$7,031
Net Conventional New Facility Costs	$24,435
Add Back Cost of Solar and Hear Pumps	$1,716
Revised New Facility Costs	**$26,151**
Less 11.5% Allocation to Unregulated Business	-$3,007
Revised New Facility Costs	**$23,144**

Other Issues

Avoided Rent

By consolidating the two leases of the Ingersoll and Aylmer properties, ERTH Power will avoid $225,640 in rent paid to ERTH CORP that is currently included in base rates.[32] In VECC's view, customers should not be asked to simultaneously pay for the New Facility and continue to pay for facilities that are being relocated which ERTH Power will no longer be paying for.

In this circumstance, VECC submits that the rental savings, an amount which is known, should be applied as an offset to the approved ICM revenue requirement.

ERTH Power seeks approval of a new deferral account: the ERTH Avoided Rent Deferral

[31] Technical Conference Transcript p.101 lines 9-11
[32] VECC-6, SEC-6, KT1.3

Account. VECC does not support a deferral account to capture avoided rent due to the lag in time from when customers receive the benefits of the rent savings compared to when they begin to pay for the New Facility. Customers should receive the benefits now.

Capital Cost Allowance

ERTH Power has elected to take a reduced Capital Cost Allowance (CCA). In total, ERTH Power has reduced its planned full year CCA claim by $375,358 relative to the maximum CCA available. The impact of this choice within the ICM model is annual PILs of $0 for both the Main and Goderich rate zones.[33] Applying the full CCA would result in a credit to ratepayers in 2025.

VECC submits there is no reason to deviate from standard tax treatment. ERTH Power's proposal to reduce its CCA claim and preserve the benefit to ratepayers in the next cost of service rebasing is not appropriate. The OEB should find that ERTH Power is required to apply the maximum allowable CCA deductions in its ICM Models.

In-Service Date

ERTH Power anticipates an occupancy date of November 24, 2025.[34] However, Bronnenco's most recent construction schedule/GANTT Chart indicates the Close out, inspections and the occupancy review will occur December 15, 2025 to January 2, 2026, with no delays in the schedule.[35]

Given the latest timing for the completion of the project and the significant rate impacts on customers resulting from the New Facility, VECC submits in this circumstance the OEB should deviate from its ICM policy and apply a unique solution and approve rate riders that reflect an in-service date of January 1, 2026. Under this approach customers avoid the full cost of the New Facility ($2.738 million in revenue requirement) in 2025.

External Funding

ERTH Power retained Power Advisory LLP (Power Advisory) to provide services related to identification of potential ancillary funding opportunities (including any energy efficiency grants). Power Advisory's assessment included a review of all federal, provincial and municipal funding sources other than tax credits such as grants for each technology type. Power Advisory produced a report on December 11, 2024 (the "Funding Report") which provided an overview of funding amounts, eligibility requirements, and the process required to secure funding.[36]

[33] AIC p. 10
[34] AIC p. 22
[35] JT1.11
[36] Staff-14 (b)

Power Advisory indicates DERs installed at ERTH's operations centre may be eligible for the following federal government funding sources: [37]

- 15% Clean Electricity Investment Tax Credit (if ERTH Corporation is tax-exempt)
- Smart Renewables & Electrification Pathways Program (SREP) Utility Support Stream
- Green Municipal Fund (GMF)

VECC submits that the OEB should require ERTH Power to report back at its next rebasing application on the steps it undertook to secure external funding and the results. ERTH Power indicates that to the extent it receives any grant or other funding it would be accounted for as part of the ICM true-up when the New Facility is added to rate-base.

[37] JT 1.6, Slide 15, Slide 33-39