

January 22, 2013

Ms. Kirsten Walli  
Ontario Energy Board  
P.O. Box 2319, 27th Floor  
2300 Yonge Street  
Toronto, ON  
M4P 1E4



Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose Canada LLP  
TD Waterhouse Tower, Suite 2300  
Toronto-Dominion Centre  
79 Wellington Street West, P.O. Box 128  
Toronto, Ontario M5K 1H1 CANADA

F: +1 416.360.8277  
[nortonrose.com](http://nortonrose.com)

On January 1, 2012, Macleod Dixon joined  
Norton Rose OR to create Norton Rose Canada.

Direct line  
+1 416.216.4865

Our reference  
01006736-0122

Email  
[Alan.Mark@nortonrose.com](mailto:Alan.Mark@nortonrose.com)

Dear Ms. Walli:

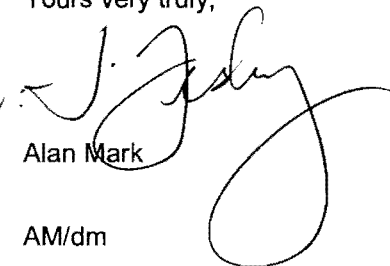
**In the Matter of the Electricity Act, 1998, s. 33;**

**And in the Matter of the Ontario Energy Board Act, 1998, s. 21;**

**And in the Matter of an application by Acconia Wind Energy Canada Inc., Brookfield Power Wind Prince LP, CP Renewable Energy (Kingsbridge) Limited Partnership, Erie Shores Wind Farm Limited Partnership, Greenwich Windfarm LP, Talbot Windfarm, LP, Enbridge Renewable Energy Infrastructure Limited Partnership, Kruger Energy Port Alma LP, Suncor Energy Products Inc., Canadian Renewable Energy Corp., and Canadian Hydro Developers, Inc. (collectively, the "RES Generators") for an order that the Independent Electricity System Operator ("IESO") prepare evidence that is relevant to a pending appeal of a Market Rule Amendment dated November 29, 2012**

Please find enclosed the reply submissions of the Independent Electricity System Operator ("IESO") in the above-noted proceeding. Two (2) hard copies have been sent by courier to your attention.

Yours very truly,

per   
Alan Mark

AM/dm

Copy to: Jennifer Teskey, Norton Rose Canada LLP  
George Vegh, counsel to RES Generators  
Service List

DOCSTOR: 2610508\1

## **ONTARIO ENERGY BOARD**

**In the Matter of** the *Electricity Act*, 1998, s. 33;

**And in the Matter of** the *Ontario Energy Board Act*, 1998, s. 21;

**And in the Matter of** an application by Acconia Wind Energy Canada Inc., Brookfield Power Wind Prince LP, CP Renewable Energy (Kingsbridge) Limited Partnership, Erie Shores Wind Farm Limited Partnership, Greenwich Windfarm LP, Talbot Windfarm, LP, Enbridge Renewable Energy Infrastructure Limited Partnership, Kruger Energy Port Alma LP, Suncor Energy Products Inc., Canadian Renewable Energy Corp., and Canadian Hydro Developers, Inc. (collectively, the "RES Generators") for an order that the Independent Electricity System Operator ("IESO") prepare evidence that is relevant to a pending appeal of a Market Rule Amendment dated November 29, 2012.

### **SUBMISSIONS OF THE IESO IN REPLY TO THE SUBMISSIONS OF THE RES GENERATORS' FILED JANUARY 21, 2013**

1. The Submission of the RES Generators dated January 21, 2013 (the "RES Generators' Submissions") were in response to the Submissions of the IESO filed January 16, 2013. This Submission replies to the RES Generators' Submissions.

#### **The Need for Timely Directions**

2. The IESO has indeed acknowledged the need to deal expeditiously and cooperatively with scheduling and production issues, contrary to the assertions on behalf of the RES Generators. In correspondence dated December 27, 2012, January 9, 2013 (copy attached) and in its January 16, 2013 Submissions the IESO invited meeting and discussion. No response to this invitation has been received apart from this motion. As in all proceedings to which it is a party, the IESO is committed to working cooperatively and constructively with the parties and the Board to ensure the timely and cost effective disposition of the matter in the public interest.
3. The IESO is well aware that in the contemplated proceeding there will be a process for the production of documents by all parties, including the IESO. In anticipation of the proceeding, the IESO has undertaken an internal process of identifying documents which it infers may be relevant based upon correspondence previously received from or on behalf of the RES Generators. However, it is the position of the IESO, as indicated in its submission of January 16, 2013, that production ultimately must be made pursuant to an agreement amongst the parties and/or an order of the Board, which itself can only be made after the appeal is filed and the issues formally identified. While the IESO is preparing to make

production, it serves no purpose, and will lead to waste and delay, to make production in the absence of an appropriate identification of the issues in respect of which production is required.

4. The IESO has not proposed, as stated by the RES Generators in paragraph 18 of the RES Generators Submission, to restrict production to communications materials such as "Power Point Decks" and to not make production of "useful information". There is no basis for this gratuitous assertion. The IESO proposes to make production of relevant documentation, including internal analysis, on relevant issues and is working hard to be in a position to do so.
5. The IESO agrees with the RES Generators, as indicated in the IESO's January 16, 2013 Submission, that forthwith upon the filing of an appeal the parties and the Board should engage in a process to deal with scheduling and production issues for all parties, in light of the scope of the proceeding as determined by the Board.

### **Production From Government Agencies**

6. The Board's Rules of Practice and Procedure, and in particular Rule 28.02(d), contemplate that a party may be required to produce documentation in its possession. While it may be convenient in certain cases to ask a party to make inquiries of a third party for information which would be useful to the proceeding, the RES Generators want production from Government Agencies, including the OPA and OEFC, of broad categories of documents regarding their relationships with RES Generators and all market participants. Aside from issues of relevance, this is clearly in effect a request for production by those agencies and is not contemplated by the Rules. If the Board considers such documents to be relevant, then to the extent the RES Generators believe the Board may have the power to order such production, the RES Generators should move on notice to the Government Agencies. Otherwise, the RES Generators are free to make their own requests to the Government Agencies – there is no need to have those requests made by the IESO on their behalf. In particular, given the ongoing discussions between the RES Generators and the OPA, the RES Generators should make any such requests directly to their counterparty.

### **Scope**

7. It is clear from paragraphs 11, 12 and 13 of the RES Generators Submissions that the basis for the appeal by the RES Generators is that the MR00381 Amendments will "benefit the OPA at the expense of the RES Generators" and that the information the RES Generators are seeking on this motion relates to the "impact of the Renewable Access Amendments on the OPA and RES Generators".
8. Thus, notwithstanding the assertion in paragraph 2 of the RES Generators' Submissions that they are not seeking information regarding contractual issues, these "benefits" and "impacts" clearly are, and can only be, the financial consequences to the RES Generators and the OPA pursuant to their contractual arrangements.
9. The uncontradicted evidence on this motion is that the contractual arrangements between the RES Generators and the OPA are irrelevant to the mandate of the IESO, are irrelevant to the IESO's role in the efficient and reliable operation of the power system and the IESO

administered markets and thus were and are irrelevant to the need for, the analysis of and the adoption of the MR00381 Amendments. There may be all manner of factors exogenous to the IESO administered markets which may affect the impact of the amendments on the RES Generators including, but not limited to, their contractual arrangements with the OPA, but none of these factors are relevant to the IESO's operation of the IESO administered markets and the Market Rules.

10. Similarly, in paragraph 13, the RES Generators contend that the issue of discrimination does not relate to contractual issues but, rather, relates to how other market participants are compensated for changing their market behaviour. Again, however, the uncontradicted evidence on this motion is that it is not within the mandate of the IESO to compensate any market participant with respect to their behaviour in response to Market Rules as such would be irrelevant to the IESO's role in the efficient and reliable operation of the power system and the IESO administered markets. The financial consequences to which the RES Generators are referring can only relate to contracts which RES Generators and other market participants may have with third parties including, but not limited to, the OPA. The differential treatment alleged by the RES Generators clearly relate to such contracts and not the Market Rules and are beyond the mandate of the IESO and the scope of the Market Rules and any review thereof.
11. The IESO notes that an assessment of the relative financial positions of the RES Generators and other market participants as a consequence of dispatch would require a review of the contractual arrangements of all dispatchable generators. This information is likely not available, and if it were available, would require review and analysis not feasible in the context of this proceeding. It is for this reason that this Board ruled, in the Ramp Rate Decision, that its review of the proposed amendments must be confined to the statutory criteria.

Dated: January 22, 2013

Alan Mark  
Jennifer Teskey  
Norton Rose Canada LLP  
Suite 2300  
Toronto-Dominion Centre  
TD Waterhouse Tower  
79 Wellington Street West  
Toronto, Ontario M5K 1H1

Tel: 416.360.8511  
Fax: 416.360.8277

**Teskey, Jennifer**

---

**From:** Medeiros, Danielle  
**Sent:** December 27, 2012 4:17 PM  
**To:** gvegh@mccarthy.ca  
**Cc:** Teskey, Jennifer  
**Subject:** INDEPENDENT ELECTRICITY SYSTEM OPERATOR  
**Attachments:** Letter to G. Vegh December 27, 2012.PDF  
***Sent on behalf of Alan Mark***

Please see attached correspondence from Alan Mark. Thank you.

**Danielle Medeiros**  
Legal Assistant  
to Jennifer Teskey and Guy White

**Norton Rose Canada** LLP / S.E.N.C.R.L., s.r.l.  
TD Waterhouse Tower, Suite 2300  
79 Wellington Street West, P.O. Box 128, Toronto, Ontario, CANADA M5K 1H1  
T: +1 416.216.1923 | F: +1 416.216.3930

December 27, 2012

**Sent By E-mail**

George Vegh  
McCarthy Tétrault LLP  
Box, 48, Suite 5300  
Toronto Dominion Bank Tower  
Toronto, Ontario  
M5K 1E6



Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose Canada LLP  
TD Waterhouse Tower, Suite 2300  
Toronto-Dominion Centre  
79 Wellington Street West, P.O. Box 128  
Toronto, Ontario M5K 1H1 CANADA

F: +1 416.360.8277  
nortonrose.com

On January 1, 2012, Macleod Dixon joined  
Norton Rose OR to create Norton Rose Canada

Direct line  
+1 416.216.4865

Our reference  
01006736-0122

Email  
alan.mark@nortonrose.com

Dear Mr. Vegh:

**MR-00381: Proposed Market Rule Amendments to Integrate Renewable Generation into Economic Dispatch**

We write further to our letter of December 4, 2012 and your letter of November 28, 2012, enclosing a list of materials requested to be produced by the Independent Electricity System Operator ("IESO") in relation to a possible appeal of MR-00381.

The view of the IESO has been and remains that contractual issues between your clients and the Ontario Power Authority are outside of the scope of MR-00381 and, therefore, of any appeal.

I suggest that we have a call in early January to discuss a possible timetable.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Alan Mark', written over a horizontal line.

Alan Mark

AHM/dm

Copy to: Jennifer Teskey, *Norton Rose Canada LLP*

DOCSTOR: 2592480\2

## Teskey, Jennifer

---

**From:** Teskey, Jennifer  
**Sent:** January 9, 2013 11:29 AM  
**To:** gvegh@mccarthy.ca  
**Cc:** Mark, Alan  
**Subject:** FW: INDEPENDENT ELECTRICITY SYSTEM OPERATOR  
**Attachments:** Letter to G. Vegh December 27, 2012.PDF  
George,

Further to Alan's December 27, 2012 letter, please advise as to when you have some availability to discuss the timetable for your client's proposed appeal.

Best regards,

Jennifer

**Jennifer Teskey**  
Partner

---

**From:** Medeiros, Danielle  
**Sent:** December 27, 2012 4:17 PM  
**To:** gvegh@mccarthy.ca  
**Cc:** Teskey, Jennifer  
**Subject:** INDEPENDENT ELECTRICITY SYSTEM OPERATOR

***Sent on behalf of Alan Mark***

Please see attached correspondence from Alan Mark. Thank you.

**Danielle Medeiros**  
Legal Assistant  
to Jennifer Teskey and Guy White

**Norton Rose Canada** LLP / S.E.N.C.R.L., s.r.l.  
TD Waterhouse Tower, Suite 2300  
79 Wellington Street West, P.O. Box 128, Toronto, Ontario, CANADA M5K 1H1  
T: +1 416.216.1923 | F: +1 416.216.3930

December 27, 2012

**Sent By E-mail**

George Vegh  
McCarthy Tétrault LLP  
Box, 48, Suite 5300  
Toronto Dominion Bank Tower  
Toronto, Ontario  
M5K 1E6



Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose Canada LLP  
TD Waterhouse Tower, Suite 2300  
Toronto-Dominion Centre  
79 Wellington Street West, P.O. Box 128  
Toronto, Ontario M5K 1H1 CANADA

F: +1 416.360.8277  
nortonrose.com

On January 1, 2012, Macleod Dixon joined  
Norton Rose OR to create Norton Rose Canada

Direct line  
+1 416.216.4865

Our reference  
01006736-0122

Email  
alan.mark@nortonrose.com

Dear Mr. Vegh:

**MR-00381: Proposed Market Rule Amendments to Integrate Renewable Generation into Economic Dispatch**

We write further to our letter of December 4, 2012 and your letter of November 28, 2012, enclosing a list of materials requested to be produced by the Independent Electricity System Operator ("IESO") in relation to a possible appeal of MR-00381.

The view of the IESO has been and remains that contractual issues between your clients and the Ontario Power Authority are outside of the scope of MR-00381 and, therefore, of any appeal.

I suggest that we have a call in early January to discuss a possible timetable.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Alan Mark', written over a horizontal line.

Alan Mark

AHM/dm

Copy to: Jennifer Teskey, *Norton Rose Canada LLP*

DOCSTOR: 2592480\2