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January 22, 2013

BY E-MAIL AND WEB POSTING

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RE: Letter of Direction to Produce Evidence
Board File No.: EB-2013-0010

On January 11, 2013, a number of entities that own and/or operate wind generation facilities (the "Wind Generators") together filed an application with the Board under section 21 of the *Ontario Energy Board Act, 1998* (the "Act") asking the Board to give directions to the Independent Electricity System Operator (the "IESO") to prepare evidence (the "Application").

A. Details of the Application

The evidence being sought by the Wind Generators is set out in Schedule B to their Application (the "Requested Evidence"). According to the Application, the Requested Evidence is relevant to, and necessary to prepare, an appeal of certain amendments to the market rules that the Wind Generators state that they intend to file (the "Pending Appeal").

The market rule amendments in question deal with the dispatching of, and the establishment of floor prices for, variable generation facilities (primarily wind)[1] (the "Renewable Integration Amendments").[2] The Renewable Integration Amendments were developed over a two-year IESO-initiated stakeholdering process (referred to as "SE-91"), were passed by the IESO Board of Directors on November 29, 2012 and were posted on the IESO's website on January 3, 2013. In accordance with section 33(4) of the *Electricity Act, 1998* (the "Electricity Act"), the time for filing an application to review the Renewable Integration Amendments expires on January 24, 2013. As of the date of this letter, no such application has been filed with the Board. In accordance with sections 33(4) and 33(5) of the Electricity Act, the Board also has until January 24, 2013 to commence a proceeding on its own motion to review the Renewable Integration Amendments. As set out in section 33(6) of the Electricity Act, the Board is required to issue an order that embodies its final decision within 60 days after receiving an application to review an amendment to the market rules or commencing a review on its own motion, as applicable.

All of the Wind Generators have renewable energy supply procurement contracts (the "RES Contracts") with the Ontario Power Authority (the "OPA"). According to the Application, the RES Contracts require the Wind Generators to deliver their electricity to the IESO-controlled grid in order to receive payment. Insofar as the Renewable Integration Amendments operate to limit the amount of electricity delivered to the IESO-controlled grid by the Wind Generators, they estimate that this will come at a cost to them that they estimate as potentially in the order of $100 million over the next five years.

The Wind Generators assert that the Renewable Integration Amendments are discriminatory and inconsistent with the purposes of the Electricity Act. Specifically, the grounds of appeal that the Wind Generators have identified in the Application are that the Renewable Integration Amendments:

i. unjustly discriminate against the generators that are subject to them by "selectively exposing them to uncompensated and involuntary curtailment in

[1] "Variable generation" is defined as all wind and solar photovoltaic resources with an installed capacity of 5MW or greater, or all wind and solar photovoltaic resources that are directly connected to the IESO-controlled grid.
[2] The market rule amendments are denoted as MR-00381-R02, MR-00381-R03, MR-00381-R04, MR-00381-R05 and MR-00381-R06.

order to provide societal benefits that the IESO believes would result from a preferred dispatch order";

ii. unjustly discriminate in favour of the OPA by transferring wealth directly from the Wind Generators to the OPA as their contractual counter-party; and

iii. are inconsistent with three of the purposes of the Electricity Act; namely, the promotion of cleaner energy sources, the provision of non-discriminatory access to transmission and distribution systems and the facilitation of the maintenance of a financially viable electricity industry (Electricity Act, sections 1(d), 1(e) and 1(i), respectively).

The Requested Evidence pertains generally to materials regarding the following: (a) compensation for the curtailment or manoeuvering of facilities and market participant expectations in that regard; (b) the way in which the Renewable Integration Amendments may affect the extent of curtailment of the Wind Generators' facilities and the impact on amounts owing by the OPA to the Wind Generators; and (c) the IESO's consideration of the matters addressed in sections 1(d), 1(e) and 1(i) of the Electricity Act, including the development and consideration of alternative options.

The Application notes that the statutory 60-day period applicable to market rule amendment reviews is the shortest decision-making time frame under which the Board conducts a full hearing, and refers to the record of the only prior proceeding in which the Board has reviewed a market rule amendment (the "Ramp Rate Appeal").[3] The Wind Generators urge the Board to move proactively under section 21 of the Act so that materials can be produced in an orderly and timely fashion and specifically in time for the filing of the Pending Appeal by January 24, 2013, and to ensure that relevant information is on the record. The Wind Generators assert that no party will be prejudiced by the Application, as the Requested Evidence is relevant to the Pending Appeal and must be provided in any event.

According to the Application, the Wind Generators have advised the IESO of their intention to appeal the Renewable Integration Amendments, and had requested that the IESO provide the Requested Evidence. In its response to that request, the IESO noted that its view has been and remains that contractual issues between the Wind

[3] EB-2007-0040. This was an application by the Association of Major Power Consumers in Ontario to review a market rule amendment pertaining to operation of the "three times" ramp rate.

Generators and the OPA are outside the scope of the Renewable Integration Amendments and, therefore, of any appeal in relation to same.

B. The IESO's Response

On January 16, 2013, the IESO filed a submission in response to the Application. In that submission, the IESO requested that the Board dismiss the Application for the following reasons:

i. A large portion of the Requested Evidence (going to the grounds of appeal referred to in (i) and (ii) above) does not exist within the IESO and thus cannot be produced by the IESO. Moreover, the IESO has no ability to compel information or documentation from another government agency, as contemplated by the Wind Generators in the Requested Evidence.

ii. That same portion of the Requested Evidence pertains to matters outside of the IESO's mandate, to matters that were not the subject of analyses conducted by the IESO, and to matters that would be irrelevant to any review of the Renewable Integration Amendments.

iii. The balance of the Application is premature, as no application for review of the Renewable Integration Amendments has been filed and neither the parties nor the issues in dispute have crystallized.

Many of the factual assertions made in the IESO's submissions were supported by an affidavit sworn by the IESO's Vice President, Resource Integration.

In its submission, the IESO proposed that the Board and the parties arrive at a schedule for the orderly filing of the application for review and the evidence to be filed in support of same, the filing of evidence in response thereto by the IESO, and the exchange of interrogatories and the production of further documents if required thereafter.

The IESO also submitted that, if the Board is inclined to make a production order at this juncture, such proposed production should be focussed on the following:

i. analysis conducted by the IESO relating to the environmental benefits, cost savings and system operational efficiencies that could be gained through the Renewable Integration Amendments; and

ii. information relating to the consistency of the Renewable Integration Amendments with the purposes of the Electricity Act, including all materials relating to the development and consideration of options that involved alternatives to imposing the Renewable Integration Amendments on variable generators.

This submission was made by the IESO expressly without waiving any of its rights or accepting the relevance of the materials to the proceeding.

C. The Wind Generators' Reply

On January 21, 2013, the Wind Generators filed a reply submission in response to the IESO submission. In that reply submission, the Wind Generators reiterated that the Application is necessary because of the very tight timelines for the completion of a review under section 33 of the Electricity Act and because the IESO has refused to provide the Requested Evidence on a voluntary basis. The reply submission also articulates the Wind Generators' response to, and disagreement with, certain portions of the IESO's submission.

The Wind Generators proposed in their reply submission that the issue of the production of the Requested Evidence be addressed as follows:

i. they request that the IESO immediately and without a Board order provide the limited information that the IESO proposed be the subject of a production order if the Board is inclined to make one, as discussed in section B above; and

ii. that the Board conduct an oral hearing to address the production of evidence and other preliminary matters as soon as possible after the filing of materials initiating the Pending Appeal.

D. The IESO's Further Reply

The IESO filed a further submission dated January 22, 2013. The letter addresses points that were noted in the IESO's first submission, expands on earlier submissions regarding information sought to be obtained from other government agencies and

reiterates submissions as to the appropriate process to be adopted in the event an application to review the Renewable Integration Amendments is made.

E. Board Direction

The Application requests the Board to exercise its discretion under section 21(1) of the Act, which states as follows:

> The Board may at any time on its own motion and without a hearing give directions or require the preparation of evidence incidental to the exercise of the powers conferred upon the Board by this or any other Act.

As noted in the Application, section 21 of the Act was used by the Board in ordering the production of information from the IESO in the Ramp Rate Appeal.[4] However, in that case an application to review had been filed and the Board acted on its own motion. There is in the Board's view considerable doubt as to the ability of a person to apply for relief under section 21(1) of the Act, which by its terms refers to the Board acting on its own motion. However, as the Board does see merit in directing the IESO to produce evidence as discussed below, the Board will proceed on its own motion to do so.

The Board is hesitant to require the production of evidence prior to the commencement of a proceeding when the proceeding in question is one to be initiated by a third party and not by the Board. The Board does not do so lightly, and does so in this case largely on the basis of the Wind Generators' stated intention to file an application to review the Renewable Integration Amendments. The Board also acknowledges the challenges associated with the conduct of a full hearing within the 60-day time frame set out in section 33(6) of the Electricity Act. While the Ramp Rate Appeal proceeding demonstrates that those challenges are not insurmountable even where all procedural and evidentiary issues are addressed after the filing of an application to review, the Board considers it appropriate in this case to direct limited production by the IESO in the interests of efficiency.

Specifically, the Board sees merit in directing the IESO to produce the information that the IESO has, on a without prejudice basis, indicated a willingness to produce. The Board also sees merit to requiring the production of evidence that the Board anticipates, based on the Ramp Rate Appeal, will likely be of relevance to the Pending Appeal.

[4] Procedural Order No.1 dated February 16, 2007.

The Board is therefore directing the IESO to file the following with the Board by **January 29, 2013**, with a view to same being placed on the record of the Pending Appeal proceeding:

i. all Market Rule Amendment Submissions relating to the Renewable Integration Amendments, including any covering memoranda;

ii. all written submissions received by the IESO in relation to the Renewable Integration Amendments;

iii. minutes or meeting notes of all stakeholder meetings (including meetings of the IESO's Stakeholder Advisory Committee and any stakeholder meetings conducted under the auspices of the SE-91 initiative) and all IESO Technical Panel meetings at which the Renewable Integration Amendments or the subject matter of the Renewable Integration Amendments were discussed;

iv. a list of all materials related to the Renewable Integration Amendments or the subject matter of the Renewable Integration Amendments tabled before any stakeholders (including the IESO's Stakeholder Advisory Committee and in respect of any consultations conducted under the auspices of the SE-91 initiative) or before the IESO's Technical Panel;

v. a list of all materials tabled before the Board of Directors of the IESO in relation to the Renewable Integration Amendments or the subject matter of the Renewable Integration Amendments, and a copy of all such materials other than those already captured by item (i) above;

vi. a copy of the decision of the Board of Directors of the IESO adopting the Renewable Integration Amendments;

vii. the analysis conducted by the IESO relating to the environmental benefits, cost savings and system operational efficiencies that could be gained through the Renewable Integration Amendments, to the extent not already captured by any of the items above; and

viii. information relating to the consistency of the Renewable Integration Amendments with the purposes of the Electricity Act, including all materials relating to the development and consideration of options that involved alternatives to imposing the Renewable Integration Amendments' dispatch and floor price requirements on variable generators, to the extent not already captured by any of the items above.

The evidence referred to in items (i) to (vi) is similar to the evidence that the Board directed be provided by the IESO in the early stages of the Ramp Rate Appeal. The Board notes that, in their Application, the Wind Generators state that they intend to seek the production of that evidence upon the commencement of the Pending Appeal.

Given the Wind Generators' proposal that issues regarding the production of any other portion of the Requested Evidence be determined after the filing of materials initiating the Pending Appeal, the Board will not further address the production of that Requested Evidence at this time.

Yours truly,

Original Signed By

Kirsten Walli
Board Secretary