

EB-2013-0029

IN THE MATTER OF the *Electricity Act*, 1998, S. O.
1998, c.15, Schedule A;

AND IN THE MATTER OF an Application made
collectively by entities that have renewable energy
supply procurement contracts with the Ontario
Power Authority in respect of wind generation
facilities for an Order revoking certain amendments
to the market rules and referring the amendments
back to the Independent Electricity System Operator
for further consideration.

PROCEDURAL ORDER NO. 1
January 29, 2013

The Application

On January 24, 2013, a number of entities that have renewable energy supply procurement contracts with the Ontario Power Authority in respect of wind generation facilities (the “Applicants”) collectively filed with the Ontario Energy Board an application under section 33(4) of the *Electricity Act*, 1998 (the “Electricity Act”) seeking the review of certain amendments to the market rules made by the Independent Electricity System Operator (the “IESO”) (the “Application”). The Board has assigned file number EB-2013-0029 to the Application.

The market rule amendments that are the subject matter of the Application (the “Renewable Integration Amendments”) were published by the IESO on January 3, 2013 and are as follows:

IESO Market Rule**Amendment Reference**

Number	Title
MR-00381-R02	Dispatching Variable Generation
MR-00381-R03	Floor Prices for Variable and Nuclear Generation
MR-00381-R04	Market Schedule and Congestion Management Settlement Credits for Variable Generation
MR-00381-R05	Tie Breaking for Variable Generators
MR-00381-R06	Publication Requirements: 5-Minute Forecast for Variable Generation

The Renewable Integration Amendments deal with the dispatching of, and the establishment of floor prices for, variable generation facilities, defined as all wind and solar photovoltaic resources with an installed capacity of 5MW or greater,¹ or all wind and solar photovoltaic resources that are directly connected to the IESO-controlled grid. Although certain of the Renewable Integration Amendments also apply to flexible nuclear generation facilities, the Application does not address the Renewable Integration Amendments as they relate to nuclear facilities.

On January 28, 2013, the Board issued its Notice of Application and Oral Hearing (the “Notice”) in relation to the Application. In accordance with the Notice, interested parties have until February 1, 2013 to notify the Board of their intention to intervene in this proceeding. The Board will address requests for intervention and requests for cost award eligibility in a later Procedural Order.

Letter of Direction to the IESO to Produce Evidence and the Applicant’s Motion

On January 11, 2013, and prior to the filing of the Application, the Applicants filed an application with the Board under section 21 of the *Ontario Energy Board Act, 1998* asking the Board to give directions to the IESO to prepare evidence (the “Section 21 Application”).² That application has been placed on the record of this proceeding. The

¹ Wind and solar photovoltaic resources that are embedded (i.e. not directly connected to the IESO-controlled grid) are captured by the Renewable Integration Amendments only if they are registered market participants.

² EB-2013-0010.

Applicants and the IESO filed submissions in respect of the Section 21 Application, all of which have also been placed on the record of this proceeding. Acting on its own motion, the Board issued a Letter of Direction to the IESO on January 22, 2013 to produce certain evidence by January 29, 2013. A copy of the Board's Letter of Direction to the IESO is attached as Appendix A to this Procedural Order. Materials filed by the IESO in response to that Letter of Direction will also be placed on the record of this proceeding.

In their last submission filed in respect of the Section 21 Application, the Applicants proposed 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 their application to review the Renewable Integration Amendments. As noted in the Board's January 22, 2013 Letter of Direction to the IESO, the IESO's position in relation to the Section 21 Application was to the effect that the Board and the parties should arrive at a schedule for the orderly filing of evidence to be filed in support of the Application once filed, and for the exchange of interrogatories and the production of further documents if required.

As part of the current Application, the Applicants have re-filed their request for the production of materials from the IESO, which the Board will treat as a motion. However, the Application does not contain a list of the materials that the Applicants are seeking to have the IESO produce. The Board assumes that the Applicants continue to seek the production of all of the materials listed in Schedule B to their Section 21 Application other than those that the Board has already directed the IESO to produce in its January 22, 2013 Letter of Direction to the IESO. For convenience of reference, the list of materials that appears in Schedule B to the Applicant's Section 21 Application has been reproduced in Appendix B to this Procedural Order. If the Applicants no longer wish the production of any one or more of the materials listed in Appendix B to this Procedural Order, the Applicants should so notify the Board immediately.

The Board will hear the Applicants' motion for the production of materials from the IESO on Monday, February 11, 2013.

Hearing of the Application

As indicated in the Notice, the Board will proceed in this matter by way of oral hearing.

In accordance with section 33(6) of the Electricity Act, the Board is required to issue an order that embodies its final decision in this proceeding within 60 days of receipt of the Application. Given this constraint and the nature of the Board's regulatory calendar, there will be limited opportunities to schedule an oral hearing of the Application. The Board wishes to alert the Applicants and prospective intervenors that the hearing of the Application is expected to be scheduled to commence on either March 7, 2013 or March 18, 2013. Confirmation of the date of the hearing will be provided in due course.

The Board considers it necessary to make provision for the following procedural matters. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. If the Applicants wish to file further submissions in support of their motion beyond the submissions made in their Application and those made in support of their Section 21 Application, the Applicants shall file such submissions with the Board and deliver them to all intervenors no later than **10:00 a.m. on Tuesday, February 5, 2013.**
2. Any intervenor or Board staff that wishes to make submissions in response to the Applicants' motion shall file such submissions with the Board and deliver the submissions to the Applicants and all intervenors no later than **Thursday, February 7, 2013.**
3. A Settlement Conference will be convened on **Friday, February 8, 2013**, starting at 9:30 a.m., with the objective of reaching a settlement among the parties on the evidence to be produced in this proceeding and on the timeline for the filing of that evidence. The Settlement Conference will be held in the Board's ADR room at 2300 Yonge Street, 25th Floor, Toronto.
4. The Applicants' motion for the production of materials from the IESO will be heard on **Monday, February 11, 2013** in the Board's West Hearing Room at 2300 Yonge Street, 25th Floor, Toronto, starting at 9:30 a.m.

All filings to the Board must quote file number EB-2013-0029, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format.

Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>.

If the web portal is not available, parties may e-mail their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date, unless another time is specified in the Order.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Edik Zwarenstein at Edik.Zwarenstein@ontarioenergyboard.ca and the Board's Associate General Counsel, Martine Band at Martine.Band@ontarioenergyboard.ca.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary
E-mail: Boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto, January 29, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Attachments:

Appendix A: January 22, 2013 Letter of Direction to Produce
Evidence

Appendix B: Materials requested by the Applicants in their Section
21 Application

APPENDIX A

TO

PROCEDURAL ORDER NO. 1

Renewable Energy Supply Generators

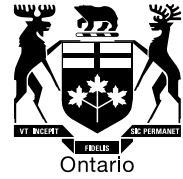
Board File No: EB-2013-0029

January 29, 2013

January 22, 2013 Letter of Direction to Produce Evidence

**Ontario Energy
Board**
P.O. Box 2319
27th. Floor
2300 Yonge Street
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Facsimile: 416- 440-7656
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**Commission de l'énergie
de l'Ontario**
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416-481-1967
Télécopieur: 416-440-7656
Numéro sans frais: 1-888-632-6273



January 22, 2013

BY E-MAIL AND WEB POSTING

TO: Mr. George Vegh
McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto ON M5K 1E6

– and –

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

**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 manoeuvring 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

APPENDIX B
TO
PROCEDURAL ORDER NO. 1
Renewable Energy Supply Generators
Board File No: EB-2013-0029
January 29, 2013

Materials requested by the Applicants in their Section 21 Application

- a) Information relating to discrimination against Affected Generators by exposing them to uncompensated and involuntary curtailment, including:**
- All Materials (defined as including internal correspondence and modelling, and all communications with Government Agencies (defined as including the OPA and Ontario Electricity Finance Corporation (“OEFC”)), and all Market Participants) with respect to how the IESO or any other government agency compensates market participants for curtailing or manoeuvring their facilities to address actual or forecasts instances of surplus energy or for other purposes;
 - All Materials with respect to the expectations that market participants, including but not limited to Affected Generators, would be compensated with respect to the SE-91 Amendments; and
 - For greater certainty, satisfying this request includes the requirement that the IESO specifically request Government Agencies to provide all of their Materials with respect to:
 - compensation of market participants for curtailing or manoeuvring their facilities to address actual or forecasts instances of surplus energy; and
 - with respect to the expectations that market participants, including but not limited to Affected Generators, would be compensated with respect to the SE-91 Amendments.
- b) Information relating to discrimination in favour of the OPA:**
- All Materials relating to the way in which the SE-91 Amendments may impact the extent of curtailments to which the Affected Generators may be subject,

- and, in particular, all forecasts, projections or estimates of curtailments under ranges of scenarios, identifying who prepared them, and including the underlying methodology, assumptions and calculations of such forecasts, projections or estimates;
- All Materials respecting the way in which the SE-91 Amendments may have an impact on amounts owing by the OPA to Affected Generators in respect of their procurement contracts; and
- For greater certainty, satisfying this request includes the requirement that the IESO specifically request Government Agencies to provide all of their Materials with respect to:
 - the way in which the SE-91 Amendments may impact the amount that the Affected Generators may be subject to curtailment, and, in particular, a forecast of curtailments; and
 - the expectations that market participants, including but not limited to Affected Generators would be compensated with respect to the SE-91 Amendments.

c) Information relating to the consistency of the SE-91 Amendments with the purposes of the *EA*, including:

- All Materials considered by the IESO in respect of the matters addressed in ss. 1(d), (e) and (i) of the *EA* in the SE-91 Amendment process, including all Materials relating to the development and consideration of options that involved alternatives to imposing dispatch and floor price requirements on wind generators.,