



EB-2013-0010
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 amendments to the
market rules and referring the amendments back to
the Independent Electricity System Operator for
further consideration.

PROCEDURAL ORDER NO. 2

February 4, 2013

On January 24, 2013, a number of entities that have renewable energy supply procurement contracts with the Ontario Power Authority (the “OPA”) 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”).

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 were given until February 1, 2013 to notify the Board of their intention to intervene in this proceeding.

On January 29, 2013, the Board issued its Procedural Order No. 1 establishing the process for the hearing of a motion by the Applicants for the production of evidence from the IESO. In Procedural Order No. 1, the Board also noted that it would address

requests for intervention and requests for cost award eligibility in a later Procedural Order.

A. Interventions and Observers

Notices of intervention were received from the following by the deadline established for that purpose in the Notice: the IESO; the Building Owners and Managers Association of Greater Toronto ("BOMA"); Energy Probe; Hydro One Networks Inc.; Ontario Power Generation Inc.; and the Power Workers' Union. 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. In order to meet the statutory deadline, the Board will vary its customary intervention process and will grant intervenor status to all those who requested it. A list of the parties to this proceeding is set out in Appendix A to this Procedural Order.

The following have requested observer status in this proceeding: the Association of Power Producers of Ontario; Bruce Power; the Canadian Wind Energy Association; E2 Energy Inc.; Entegrus Transmission Inc.; HQ Energy Marketing Inc.; Mainstream Renewable Power Ltd.; the Ministry of Energy; NextEra Energy Canada, ULC; the Ontario Waterpower Association; and TransCanada Energy Ltd.

B. Cost Awards

The Board will make cost awards available in this proceeding to eligible parties.

BOMA and Energy Probe have requested an award of costs in this proceeding. Based on BOMA's request, it appears that the position that BOMA intends to take in this proceeding may be fully aligned with that of the Applicants. Energy Probe's request does not explain its interest in this proceeding, nor does it identify the issues that it intends to address. It is not clear to the Board how these interventions will, in the context of this proceeding, contribute to a better understanding of the issues.

In their Application, the Applicants have also requested that they be eligible for an award of costs in this proceeding. The Application does not expressly identify by whom the Applicants' costs, or those of any other party or of the Board, should be paid. The implication, however, is that the costs of this proceeding should be borne by the IESO.

In the normal course, cost awards in a proceeding commenced by application are recovered from the applicant. In the Notice, however, the Board stated as follows:

The Board notes that it has not yet determined what party or parties will be assessed the costs of this proceeding. The Board may ultimately determine that costs be borne by one or more of (i) the Applicants; (ii) the Independent Electricity System Operator, or (iii) some other entity or entities.

In support of their request for cost award eligibility, the Applicants make reference to the record of the only prior proceeding in which the Board has reviewed a market rule amendment (the “Ramp Rate Review”).¹ In the Ramp Rate Review proceeding, the Board solicited written submissions on the issue of cost awards and determined that cost awards should be recovered from the IESO. The Board stated as follows:

This is the first application of its nature that will be heard by the Board, and appears to raise legitimate issues for the Board’s consideration in relation to the criteria set out in section 33(9) of the [Electricity] Act. The Board also notes that, as market participants, members of [the Association of Major Power Consumers in Ontario] are in fact participating in the funding of cost awards in this matter through their payment of the IESO’s administrative costs in accordance with the market rules. As such, the Board considers that this is an appropriate case in which to exercise its discretion in a manner that differs from the more typical approach of stipulating that costs be recovered from the applicant. The fact that costs are to be recovered from the IESO in relation to this proceeding should not, however, be understood as tacit recognition that this should necessarily be the case in relation to all future market rule amendment review applications that may come before the Board.²

The Board notes the caveat set out in the last sentence of this excerpt, and also observes that there are elements that appear to distinguish this proceeding from the Ramp Rate Review. First, the Applicants are entities that are *prima facie* ineligible for an award of costs under section 3.05 of the Board’s *Practice Direction on Cost Awards*. As noted by the Applicants, however, in the Ramp Rate Review the Board did extend

¹ EB-2007-0040. This was an application filed by the Association of Major Power Consumers in Ontario to review a market rule amendment pertaining to the operation of the “three times” ramp rate.

² Ramp Rate Review, Procedural Order No. 2 dated March 9, 2007, at page 5.

cost award eligibility to an intervenor representing generators (the Association of Power Producers of Ontario). Second, the extent to which the Applicants might be “participating in the funding of cost awards in this matter through their payment of the IESO’s administrative costs” appears to be more limited than would have been the case with the members of the Association of Major Power Consumers in Ontario (the applicant in the Ramp Rate Review). This is because, under the market rules, the IESO’s administrative costs are recovered from market participants on the basis of the volume of their withdrawals from the IESO-controlled grid and not on the basis of the volume of their injections into the IESO-controlled grid.³

The Board has determined that any costs awarded in this proceeding, as well as any Board costs, will be recovered from the Applicants, the IESO or a combination of the two. The Board would benefit from submissions by the parties as to which of these two entities should most appropriately bear the costs of this proceeding and, if both, in what proportion. The Applicants and the IESO should include in their submissions any objections they might have to any of the cost award eligibility requests made in this proceeding.

The Board will determine all requests for cost eligibility at the end of this proceeding.

C. Production of Evidence by the IESO

As noted in Procedural Order No. 1, 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”).⁴ 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 (the “Letter of Direction”). The proceeding relating to the Section 21 Application is associated with, and has relevance only in the context of, the Application that is the subject matter of this proceeding. The Board noted in Procedural Order No. 1 that filings made in respect of the Section 21 Application would be placed on the record of this proceeding. As described immediately below, the adequacy of the IESO’s filing has now been raised as an issue. The Board confirms that it is combining the Section 21 Application proceeding with this one.

³ See “IESO Charge Types and Equations”, item 9990 at page 160.

⁴ EB-2013-0010.

In response to the Letter of Direction, the IESO filed an initial set of documents on January 29, 2013. A revised set of documents that included a supplementary document was filed on January 31, 2013.

On January 31, 2013, the Applicants filed a letter with the Board taking issue with the IESO's filing in relation to the two following categories of materials listed in the Letter of Direction (using the numeration from that Letter):

- 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.

These are materials that the IESO had, on a without prejudice basis, indicated a willingness to produce in its submission filed on January 16, 2013.

In their January 31, 2013 letter, the Applicants noted the following:

- of the 455 pages of materials filed by the IESO in respect of the above-noted categories, 342 are fully or partially redacted;
- the IESO did not indicate that it would be redacting the documents when it offered to produce them; and
- the IESO has not followed the Board's *Practice Direction on Confidential Filings*, which requires the filing of an un-redacted version of a document along with reasons why any information should not be on the public record.

The Applicants requested that the Board reiterate its direction to the IESO to provide all of the information captured by the two above-noted categories on an un-redacted basis by no later than 5 p.m. on February 1, 2013.

In its February 1, 2013 letter (the “IESO Letter”) filed in response to the Applicants’ letter, the IESO stated as follows:

- The 7 documents listed in Schedule A to the IESO Letter were redacted on the basis that they contain information that is non-responsive and irrelevant to the categories of documents listed in the Letter of Direction. The IESO has no objection to producing the entirety of these documents if the Board is of the view that they should be produced in their entirety.
- The 9 documents listed in Schedule B to the IESO Letter are documents over which the OPA has advised that it intends to assert confidential treatment. The document listed in Schedule C to the IESO Letter, which is also listed as item 9 in Schedule B, is a document over which both the OPA and the Ministry of Energy intend to assert confidential treatment. The IESO did not want to prejudice the OPA’s or the Ministry’s ability to assert confidential treatment by producing un-redacted copies of the documents in question. The IESO takes no position in respect of any confidentiality issues associated with the documents listed in Schedules B and C.

For convenience of reference, the IESO Letter is attached as Appendix B to this Procedural Order.

1. Documents listed in Schedule A of the IESO Letter

The Board notes that there is no overlap as between the documents listed in Schedule A of the IESO Letter, on the one hand, and those listed in Schedules B and C, on the other. The Board therefore understands that there are no confidentiality concerns associated with the documents listed in Schedule A to the IESO Letter.

As noted by the Applicants in their February 1, 2013 letter, the Board has confirmed that if any part of a document is considered relevant, then the whole document should

generally be produced unless there are confidentiality issues to be addressed.⁵ The Board finds no reason to depart from that approach in this proceeding.

The Board will therefore require the IESO to produce un-redacted versions of the documents listed in Schedule A of the IESO Letter. The materials filed by the IESO in response to the Letter of Direction are voluminous. To facilitate document retrieval and document management for the Board and for all of the parties, the Board will require the IESO to re-file all of the materials that it filed on January 31, 2013 (which includes all of the documents filed on January 29, 2013) with the exception that un-redacted versions of the documents listed in Schedule A to the IESO Letter will be included in that filing in lieu of the redacted version. If it is impossible for the IESO to do so by the filing deadline established in this Procedural Order, the IESO shall file un-redacted versions of the documents listed in Schedule A to the IESO Letter by that deadline, and shall re-file all of the materials as soon thereafter as possible in accordance with the above.

2. *Documents listed in Schedule B and C of the IESO Letter*

Of the documents identified in Schedule B of the IESO Letter, 5 appear to have been prepared jointly by the IESO and the OPA, while 3 bear only the OPA's name. The document that is identified in both Schedules B and C of the IESO Letter is completely redacted such that the originator of the document is not ascertainable.

The Board understands from the IESO Letter that the IESO does not itself assert any claim to confidentiality in respect of the redacted documents identified in Schedules B and C to its letter. However, it also appears from the IESO Letter that the IESO has had discussions with the OPA and the Ministry of Energy, as applicable, in respect of the redacted documents listed in those Schedules. The IESO should be well aware of the Board's *Practice Direction on Confidential Filings*, and it should have acted in accordance with that *Practice Direction* when making its filing. Not doing so undermines regulatory efficiency, particularly given the timeframes applicable to this proceeding.

Nonetheless, given that the OPA is the entity that has confidentiality concerns in respect of all of the documents listed in Schedules B and C of the IESO Letter, the Board

⁵ Decision and Order issued June 8, 2011 regarding the production of documents in proceeding EB-2010-0184 (Consumers Council of Canada).

considers it expedient to direct the OPA to produce those documents, and to do so in accordance with Rule 10 of the Board's *Rules of Practice and Procedure* and the *Practice Direction on Confidential Filings*. The OPA should indicate in its filing whether it objects to confidential un-redacted versions of the documents being provided to any counsel for a party that has filed a Declaration and Undertaking in the form set out in the *Practice Direction on Confidential Filings*. In the meantime, parties that wish to file a Declaration and Undertaking should do so promptly. If the Ministry of Energy wishes to make a submission in respect of the confidential treatment of the document listed in Schedule C of the IESO Letter, it may do so directly within the same timelines as set out for the OPA in this Procedural Order, or it may do so through the OPA.

D. The Hearing of the Applicants' Motion and Confidentiality Issue

In accordance with Procedural Order No. 1, the Applicants' motion for the production of materials from the IESO is scheduled to be heard on February 11, 2013. In advance of that hearing, any supplementary submissions by the Applicants are due on February 5, 2013, submissions in response are due on February 7, 2013 and a Settlement Conference is scheduled for February 8, 2013. The Board will not adjust this schedule given the statutory 60-day period within which the Board is required to issue an order in this proceeding. The Board understands that some parties may be limited in their ability to file completely comprehensive submissions on the scheduled dates given the timelines established in this Procedural Order for the further production of materials by the IESO and for the production of materials by the OPA. However, the Board anticipates that concerns in this regard can be addressed by allowing parties to make any further submissions they may have during the hearing of the Applicants' motion on February 11, 2013. The Board expects parties to act responsibly and to make their written submissions as comprehensive as they can based on the documents that are available to them at the relevant time.

The Board also expects that the parties will include the issue of the confidential treatment of materials filed by the OPA on the agenda for the February 8, 2013 Settlement Conference, and that the OPA will attend and participate in the portion of the Settlement Conference that deals with the confidentiality issue. Failing settlement, the Board will hear submissions on that issue during the hearing of the Applicants' motion on February 11, 2013. If required, the Board may make provision for the filing of written submissions thereafter.

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. Any party or Board staff that wishes to make a submission on the issue of cost awards shall file such submission with the Board and deliver it to all other parties on or before **Tuesday, February 12, 2013**.
2. Any party that wishes to make a reply submission in response to a submission filed by any other party or Board staff on the issue of cost awards shall file such reply submission and deliver it to all other parties on or before **Friday, February 15, 2013**.
3. On or before **Tuesday, February 5, 2013**, the IESO shall:
 - (a) re-file with the Board all of the materials that it filed on January 31, 2013, with the exception that un-redacted versions of the documents listed in Schedule A of the IESO Letter shall be included in that filing in lieu of the redacted version. The IESO shall provide the Board with 9 copies of its re-filing on disc; and
 - (b) deliver that re-filing on disc to all other parties.

If it is impossible for the IESO to comply with the above by the stipulated deadline, the IESO shall file with the Board and deliver to all other parties the un-redacted versions of the documents listed in Schedule A of the IESO Letter by that deadline, and shall comply with the above as soon thereafter as possible.

4. On or before **Wednesday, February 6, 2013**, the OPA shall:
 - (a) file with the Board the documents listed in Schedules B and C to the IESO Letter in accordance with Rule 10 of the Board's *Rules of Practice and Procedure* and the *Practice Direction on Confidential Filings*; and
 - (b) deliver to all parties a non-confidential redacted version or a non-confidential description or summary, as applicable, of each document in respect of which the OPA is requesting confidential treatment, together

with the OPA's letter setting out the reasons for that request in respect of each such document.

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, except as noted above, shall 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.

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, February 4, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Attachments: Appendix A: Applicants and List of Intervenors
 Appendix B: IESO letter dated February 1, 2013

APPENDIX A

TO

PROCEDURAL ORDER NO. 2

Renewable Energy Supply Generators

Board File No: EB-2013-0029

February 4, 2013

Applicants and List of Intervenors

[see separate document attached]

**Renewable Energy Supply Generators
EB-2013-0029**

APPLICANT & LIST OF INTERVENORS

February-04-13

APPLICANT

Rep. and Address for Service

**Renewable Energy Supply
Generators**

George Vegh

Renewable Energy Supply Generators
Toronto Dominion Bank Tower
Box 48, Suite 4700
Toronto, ON M5K 1E6

Tel: 416-601-7709
Fax: 416-868-0673
gvegh@mccarthy.ca

INTERVENORS

**Building Owners and
Managers Association
Toronto**

Rep. and Address for Service

Thomas Brett

Partner
Fogler, Rubinoff LLP
77 King Street West
Suite 3000
P.O. Box 95, TD Centre
Toronto ON M5K 1G8
Tel: 416-941-8861
Fax: 416-941-8852
tbrett@foglers.com

Marion Fraser

President
Fraser & Company
33 Harbour Square
Suite 502
Toronto ON M5J 2G2
Tel: 416-941-9729
Fax: 416-941-8852
Marion.Fraser@rogers.com

**Renewable Energy Supply Generators
EB-2013-0029**

APPLICANT & LIST OF INTERVENORS

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February-04-13

**Energy Probe Research
Foundation**

Roger Higgin

Sustainable Planning Associates Inc.
15 Malabar Place
Toronto ON M5B 1A4
Tel: 416-391-0738
Fax:
spainc@rogers.com

David MacIntosh

Case Manager
Energy Probe Research Foundation
225 Brunswick Avenue
Toronto ON M5S 2M6
Tel: 416-964-9223 Ext: 235
Fax: 416-964-8239
DavidMacIntosh@nextcity.com

Hydro One Networks Inc.

Jamie Waller

Senior Regulatory Coordinator
Hydro One Networks Inc.
483 Bay Street
8th Floor - South Tower
Toronto ON M5G 2P5
Tel: 416-345-6948
Fax: 416-345-5866
regulatory@HydroOne.com

**Renewable Energy Supply Generators
EB-2013-0029**

APPLICANT & LIST OF INTERVENORS

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February-04-13

**Independent Electricity
System Operator**

Alan Mark

Counsel
Norton Rose Canada LLP
Toronto Dominion Centre
TD Waterhouse Tower, Suite 2300
79 Wellington St. West, P.O. Box 128
Toronto ON M5K 1H1
Tel: 416-203-6511
Fax: 416-360-8277
Alan.Mark@nortonrose.com

Jennifer Teskey

Counsel
Norton Rose Canada LLP
Toronto Dominion Centre
TD Waterhouse Tower, Suite 2300
79 Wellington St. West, P.O. Box 128
Toronto ON M5K 1H1
Tel: 416-203-6511
Fax: 416-360-8277
jennifer.teskey@nortonrose.com

Ontario Power Generation Inc. Pankaj Sardana

Vice President
Ontario Power Generation Inc.
700 University Avenue, H18-G1
Toronto ON M5G 1X6
Tel: 416-592-4584
Fax: 416-532-8519
pankaj.sardana@opg.com

**Renewable Energy Supply Generators
EB-2013-0029**

APPLICANT & LIST OF INTERVENORS

- 4 -

February-04-13

Ontario Power Generation Inc. David Barr

Senior Advisor
Ontario Power Generation Inc.
700 University Avenue, H18-F1
Toronto ON M5G 1X6
Tel: 416-592-8541
Fax: 416-592-8519
david.barr@opg.com

Power Workers' Union

John Sprackett
Staff Officer, President's Office
Power Workers' Union
244 Eglinton Avenue E.
Toronto ON M4P 1K4
Tel: 416-322-4787
Fax: 416-481-7914
sprackettj@pwu.ca

Judy Kwik
Senior Consultant
Elenchus Research Associates Inc.
34 King Street E. Suite 610
Toronto ON M5C 2X8
Tel: 416-348-8777
Fax: 416-348-9930
jkwik@elenchus.ca

Richard Stephenson
Counsel
Paliare Roland Rosenberg Rothstein LLP
250 University Av. Suite 510
Toronto ON M5H 3E5
Tel: 416-646-4325
Fax: 416-646-4335
richard.stephenson@paliareroland.com

APPENDIX B

TO

PROCEDURAL ORDER NO. 2

Renewable Energy Supply Generators

Board File No: EB-2013-0029

February 4, 2013

IESO Letter of February 1, 2013

[see separate document attached]

Note: Page 2 of the attached letter refers to the Ministry of the Environment. By e-mail dated February 1, 2013, the Board was advised by the IESO that the reference should be to the Ministry of Energy.

February 1, 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

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 Ms. Walli:

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.

Board File No.: EB-2013-0029

We write further to the Renewable Energy Supply Generators' submission of January 31, 2013 respecting the Independent Electricity System Operator's ("IESO") January 29, 2013 document production, as amended on January 31, 2013 (the "IESO Production").

The IESO Production in part contains documents that have been redacted on the basis that they contain information that is non-responsive and irrelevant to the categories of documents ordered producible by the Board in the Board's Procedural Order No. 1 issued on January 22, 2013 in EB-2013-0010 ("PO1"), as set out in the attached Schedule A. Rather than producing only the relevant pages, the entirety of all documents were produced in the IESO Production (with the irrelevant pages in redacted form) to enable all parties the opportunity to address issues of responsiveness. Notwithstanding, if the Board is of the view that the irrelevant portions of these documents should nonetheless be produced, then the IESO has no objection to producing the entirety of such documents, subject to any claims of confidentiality, as described below.

The IESO Production also contains certain documents over which the Ontario Power Authority ("OPA") has advised that it intends to assert confidential treatment, as set out in the attached Schedule B. Given the OPA's stated intention to seek confidential treatment over these documents, the IESO did not want to prejudice the OPA's ability to do so by producing unredacted copies of these documents. As this is an issue to be determined between the Applicants, the OPA and the Board, the IESO takes no position in the matter.

DOCSTOR: 2616064\1

Ms. Kirsten Walli
February 1, 2013



Finally, the IESO Production contains one document (bates no. IESO0003910 to IESO0003930) over which both the OPA and the Ministry of the Environment ("MOE") intend to assert confidential treatment, as set out in Schedule C. Given the OPA's and the MOE's stated intention to seek confidential treatment over this document, the IESO did not want to prejudice either the OPA's or the MOE's ability to do so by producing an unredacted copy of this document. As this is an issue to be determined between the Applicants, the OPA, the MOE and the Board, the IESO takes no position in the matter.

Yours very truly,

A handwritten signature in black ink, appearing to read "Alan Mark".

Alan Mark

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

Enclosures

Schedule A

No.	Docid	Doctitle	Pages Redacted
1.	IESO0003318	Integrating Renewable Generation - Meeting with Deputy Minister of Energy – December 17, 2010	IESO0003320-IESO0003330 and IESO0003332-IESO0003335
2.	IESO0003525	Integrating Renewable Generation - Bruce Campbell, Vice President of Resource Integration - Presentation to CanWEA Connections Networking Series 2012 – May 30, 2012	IESO0003526-IESO0003540 and IESO0003544-IESO0003545
3.	IESO0003589	Addressing Dispatch and Curtailment of Renewable Facilities - Joint OPA and IESO Presentation – July 13, 2010	IESO0003590-IESO0003595 and IESO0003599-IESO0003600
4.	IESO0003634	Integration of Renewables: RES and FIT – October, 2010	IESO0003635-IESO0003644, IESO0003646, and IESO0003648-IESO0003686
5.	IESO0003741	Minutes of Meeting - Topic: Wind Integration Issues	IESO000003741 and IESO0003742
6.	IESO0003810	Wind and the Electrical Grid: Mitigating the Rise in Electricity Rates and Greenhouse Gas Emissions	IESO0003810-IESO0003843 and IESO0003745-IESO0003853
7.	IESO0003897	Integrating Renewable Generation - Bruce Campbell, Vice President of Resource Integration - Presentation to the Ontario Society of Professional Engineers	IESO0003898-IESO0003908

Schedule B

No.	Docid	Doctitle	Bates Range
1.	IESO0003497	Renewable Dispatch - Ministry of Energy – October 11, 2011	IESO0003497-3503
2.	IESO0003503.1	Renewable Dispatch Ministry of Energy – October 11, 2011	IESO0003503.1-IESO0003503.22
3.	IESO0003548	Integration of Renewables and Recommendations for Dispatch Management - Update to Ministry of Energy – August 13, 2012	IESO0003548-IESO0003585
4.	IESO0003602	Integration of Renewables: RES and FIT- Ministry of Energy Update – October 29, 2010	IESO0003602-IESO0003633
5.	IESO0003687	Integration of Renewables: RES and FIT Contracts - Ministry of Energy Update – November 25, 2010	IESO0003687-IESO0003700
6.	IESO0003786	Potential Surplus Energy: A Summary - Briefing jointly prepared by IESO and OPA – March 1, 2012	IESO0003786-IESO0003809
7.	IESO0003854	Integration of Renewables and Recommendations for Dispatch Management - Update to Ministry of Energy – August 15, 2012	IESO0003854-IESO0003896
8.	IESO0003701	Integration of Renewables: RES and FIT Contracts - Ministry of Energy Update – November 29, 2010	IESO0003701-IESO0003732
9.	IESO0003910	Managing Surplus Generation – May 14, 2012	IESO0003910-IESO0003930

Schedule C

No.	Docid	Doctitle	Bates Range
1.	IESO0003910	Managing Surplus Generation – May 14, 2012	IESO0003910-IESO0003930