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BY EMAIL and RESS

February 7, 2013
Our File No. 20130029

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2013-0029 – RESG Market Rules Review – Motion for Production

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No.1, these are SEC's submissions with respect to the motion by the a group of renewable energy supply generators' ("RESG" or the "Applicant") for production of certain documents by the Independent Electricity System Operation ("IESO") in respect to its application for the Board to review certain Market Rules amendments ("Renewable Integration Amendments").

Scope of Evidence in a section 33(4) Review

An application pursuant to section 33(4) of the *Electricity Act* is not an appeal but a review. [1] The Board is statutorily required to review Market Rules amendment(s) upon an application to determine if they either are (a) inconsistent with the purposes of the *Electricity Act*, or b) unjustly discriminates against or in favor of a market participant or class of market participant. To properly review any Market Rules amendment, the Board must have sufficient evidence. Unlike an appeal, that information will be much broader than simply what was before the IESO in coming to its decision to enact the amendments.

In most applications before the Board, the necessary evidence is being held by the Applicant. In this case, it is being held by the IESO and potentially other entities. The Board has recognized this in issuing a direction to prepare evidence pursuant to section 21(1) of the *Ontario Energy Board Act.*

[1] The *Electricity Act, 1998* does provide the Board with separate jurisdiction to hear appeals of orders under the market rules pursuant to section 36.

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The Board may need to require the IESO or another entity, to create and produce further evidence during this proceeding. As an example, the Board may feel it necessary to require the IESO to run certain models or impact scenarios based on a reasonable forecasts or differing assumptions, to help determine if Renewable Integration Amendments are discriminatory in effect or inconsistent with a specific purpose of the *Electricity Act.* Further, like the Rate Ramp proceeding (EB-2007-0040) the Board is likely to require oral evidence to be provided by the IESO and potentially others.

Relevance Test

The Board has in the past described the scope of production of documents as a broad one[2], and includes items that at an early stage of the proceeding simply may be relevant[3]. SEC believes thus principle is applicable in this case as well. The test for relevance has to be broad, considering the public interest mandate of the Board and the inherent asymmetry of information that exists between the Board (and interveners) and the entities it regulates (including the IESO).

Materials to Be Produced

SEC submits the Board should order production of *all* documents, in possession of the IESO, that are relevant to the Renewable Integration Amendments.

The Renewable Integration Amendments are significant changes to the Market Rules that not only affect the Applicant, but how the IESO manages its grid. They also, of course, affect the ratepayers, who ultimately bear the cost of dispatch decisions.

This broader scope of production would encompass the materials sought by the Applicant. It is clear that central to this review will be not only what factors the IESO considered when it designed and issued the Renewable Integration Amendments, but what factors *should* it have considered. While the IESO had stated in its letters to the Board that it does not take into account generators' contractual rights, it would seem that it must consider the terms of the contracts to properly understand the economic incentives of various generators. The scope of this type of analysis is at issue in the proceeding.

SEC submits the information sought by the Applicant is therefore relevant to this proceeding.

While the Applicant's focus is on the financial consequences to itself of the Renewable Integration Amendments, the Board must consider a much broader set of considerations. As an example, while the Applicant claims that the Renewable Integration Amendments are inconstant with purpose (d) and (e) of the *Electricity Act,* section 33(9) must require consideration of other purposes since there is a natural balancing that must take place between the respective purposes.

As a ratepayer group that ultimately bears the costs of the decisions of the IESO, SEC has an interest in making sure that other *Electricity Act* purposes are not ignored at the expense of those raised by the Applicant. They include purposes (a) "to protect the interests of consumers with respect to prices…", (f) "to ensure the adequacy, safety, sustainability and reliability of

[2] Decision and Order on Motion (EB-2007-0050), dated April 7 2008 at p.7 (see RESG Submissions, Schedule B)
[3] Decision and Order (EB-2009-0111), dated August 13 2009 at para 10. (see RESG Submissions, Schedule C)

electricity supply" and, (g) "to promote economic efficiency and sustainability in the generation…of electricity." [4]

The Board's section 21(1) direction does provide a good starting point for the information that should be produced in this proceeding. In its direction, the Board sought production from the IESO of certain information and materials including:[5]

> 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
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> 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.

SEC's concern with the current wording of the Board's direction is that there may be documents in the possession of the IESO relevant to the Renewable Integration Amendments that may not be characterized as "analysis conducted by the IESO under part vii, or "information" under part viii of the Board's direction. By requiring the IESO to provide all documents related to the Renewable Integration Amendments, the Board and all parties will have a necessary evidentiary basis to proceed from.

Further, this is only the second time that the Board has conducted a section 33(4) review. Unlike rate or leave to construct proceedings, parties do not have the necessary experience to know what may be available in the universe of information held by the IESO. Nor does the IESO have the experience determining with the necessary precision what documents under its possession are relevant to this proceeding.

As a result of these factors, SEC believes the Board should err on the side caution and require a wide scope of production.

All of which is respectfully submitted.

Yours very truly,
Jay Shepherd P.C.

Originally signed by

Mark Rubenstein

cc: Applicant and Intervenors (by email)

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[5] Letter of Direction to Produce Evidence, dated January 22 2013 (EB-2013-0010)