

## ONTARIO ENERGY BOARD

**In the Matter of** the *Electricity Act, 1998*, c.15, Schedule A;

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

**And in the Matter of** an Application made collectively by entities that have renewable energy supply 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.

### Submissions on Cost Awards

1. On January 24, 2013, the Applicants, (collectively the “Renewable Energy Supply Generators”) applied to the Ontario Energy Board (the “OEB” or the “Board”) for an order revoking the Market Rules passed by the Independent Electricity System Operator (the “IESO”) on November 29, 2012<sup>1</sup> and referring them back to the IESO for further consideration (the “Application”).
2. These submissions are in response to Procedural Order No. 2, which directed parties to make submissions “on the issue of cost awards” by today’s date.<sup>2</sup>

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<sup>1</sup> The Renewable Access Amendments are:  
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 (CMSC) for Variable Generation  
MR-00381-R05: Tie Breaking for Variable Generation  
MR-00381-R06: Publication Requirements: 5-Minute Forecast for Variable Generation.

The Appeal relates only to the dispatch and floor price provisions of the Renewable Access Amendments as they relate to renewable facilities. The Appeal does not address any of these amendments as they relate to dispatch or floor prices for nuclear facilities.

<sup>2</sup> EB-2013-0029 Procedural Order No. 2, pg. 9. The original date of Tuesday, February 12, 2013 was subsequently changed by the Board to Wednesday, February 13, 2013.

3. The Renewable Energy Supply Generators make the following submissions with respect to cost eligibility in this proceeding:
- That the Renewable Energy Supply Generators be eligible for the recovery of their costs in this proceeding from the IESO (as a corollary of this, the applicants should not be required to pay for the costs of any other party); and
  - That the IESO be required to pay its own costs as well as the costs of intervenors.
4. The reasons for this submission are as follows:
- This application, like that of AMPCO in the “Ramp Rate” Appeal, raises “legitimate issues for the Board’s consideration in relation to the criteria set out in section 33(9) of the [Electricity] Act.”<sup>3</sup>
  - The Board has granted cost eligibility to generators where generators are directly affected by the outcome of a proceeding and where they provide a useful perspective on the Board’s consideration of issues;
  - The Renewable Energy Supply Generators have acted responsibly and with a view to minimizing costs in all circumstances and events leading up to, and since the beginning of, this proceeding;
  - The IESO has known for several years that an appeal of the Market Rule amendments was likely. It would therefore have been prudent to budget for the costs of both the IESO and other parties in the appeal; and
  - The IESO has not conducted itself in a way so as to minimize costs or otherwise contribute to an orderly operation of this proceeding.

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<sup>3</sup> “Ramp Rate Appeal”, Procedural Order No. 2, March 9, 2007, at p. 5 (EB-2007-0040).

***The Applicants Should be Eligible for Cost Recovery***

**Legitimate Public Interest Issues Raised in this Appeal**

5. The Renewable Energy Supply Generators have brought before Board an application that raises, to use the words of the Board in the Ramp Rate Appeal, “legitimate issues for the Board’s consideration in relation to the criteria set out in section 33(9) of the [Electricity] Act.”<sup>4</sup> Specifically, the important public interest issues raised in this appeal are how the IESO, in passing market rules, should take into account:
  - the purposes of the *Electricity Act, 1998*;
  - the interaction between market rules and procurement contracts; and
  - its responsibilities to market participants in light of its relationship with the OPA, who is a contractual counter-party to most generation market participants.
6. While the parties to this proceeding are likely to take different positions on how these issues should be resolved, they are important areas for consideration and the Renewable Energy Supply Generators have a unique perspective to bring to them, one that will hopefully provide benefit to the Board.
7. For example, with respect to the purposes of the *Electricity Act, 1998*, one issue raised in this appeal is how the IESO should take into account, in particular, the purpose of promoting the use of renewable energy sources, “in a manner consistent with the policies of the Government of Ontario.”<sup>5</sup>
8. The application of this purpose has not been reviewed by the Board in the Market Rules context, and is particularly worth reviewing in light of the IESO’s position is that it is primarily concerned with technical matters only. Thus, in its submission on production, counsel for the IESO stated: “So the restricted mandate

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<sup>4</sup> “Ramp Rate Appeal”, Procedural Order No. 2, March 9, 2007, at p. 5 (EB-2007-0040).

<sup>5</sup> EA, s. 1(d).

of the IESO is to operate those markets and the grid. It has no broader or other authority.”<sup>6</sup> Similarly, in approving the Market Rules in this case for IESO Board consideration, the IESO Technical Panel described its mandate in purely technical terms. In response to a discussion on the range of matters that can be considered in assessing a market rule, and whether this could include policy issues, the Minutes of the Meeting report that, “The Chair responded that Article 6 of the Governance and Structure By-Law states that the Panel is to advise the IESO Board on technical issues relating to proposed rule amendments.”<sup>7</sup>

9. This case thus raises the issue of how the IESO’s understanding of its market rule mandate as a purely technical exercise aligns with the Board’s statutory mandate to review market rules by reference to, among other things, the purpose of the *EA* which includes promoting the use of renewable energy sources, “in a manner consistent with the policies of the Government of Ontario.”<sup>8</sup>
10. While parties will likely have different positions on how this provision should be interpreted and whether the IESO adequately considered this purpose, it raises important public interest issues that go beyond the commercial impacts on generators. Further, having the perspective of renewable generators on this issue should provide benefit to the Board.
11. Similarly, the issue of how market rules should interact with procurement contracts raises important public interest concerns. This is relevant to both the claim that the Market Rules unjustly discriminate against the Renewable Energy Supply Generators and that they discriminate in favour of the OPA.
12. The IESO has recognized the public interest issues that are raised by the interaction of procurement contracts and market rule amendments. In a memorandum to the IESO Board of Directors for the meeting in which it

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<sup>6</sup> Transcript of Submissions on Production , February 11, 2013, p. 58.

<sup>7</sup> Minutes of IESO Technical Panel Meeting, October 23, 2012, p. 3 (IESO Bates No. 000679).

<sup>8</sup> *EA*, s. 1(d).

approved the Market Rule, Mr. Campbell, the IESO's Vice-President, Resources Integration, addressed this as an "Emerging Issue: the Interplay between OPA Contract Provisions and Market Rule Amendments."<sup>9</sup> The memo noted that the way in which OPA procurement contracts interact "with market and operational changes can arise in different ways" and provided a number of examples, including the Market Rule Amendment at issue here. The memo concluded:

"These examples raise a fundamental question as to what extent, if at all, the IESO should (either directly or through input from the OPA) assess and include potential contract impacts in decision-making."

...

"Regardless of the forum, *the issue of the breadth of considerations* to be assessed by the IESO when stakeholding and *evaluating market rule amendments* is now the focus of considerable stakeholder attention, and *needs to be addressed.*"

13. This is an important public interest issue and it is directly raised in the appeal. Again, one can expect the parties to have different perspectives on this point, and the Board will ultimately determine whether, and to what extent its review may inform these matters. However, at this stage, it is submitted that the perspective that renewable generators can bring to these issues is something that would benefit the Board's deliberations in this regard.

#### **Cost Eligibility for Generators**

14. The Board has granted cost eligibility to generators where generators are directly affected by the outcome of a proceeding and where they provide a useful perspective on the Board's consideration of issues.

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<sup>9</sup> Memorandum to IESO Board of Directors, November 19, 2012. (IESO Bates No. 0002304) (emphasis added).

15. In the Ramp Rate Appeal, the Board found that generators should be eligible for recovery of their costs notwithstanding that they are otherwise ineligible under the Board's *Practice Direction*:<sup>10</sup>

“Generators constitute a class of participants in the IESO-administered markets that will be directly affected by the outcome of this proceeding. The Board believes that the views of generators with respect to the Amendment will be important to the Board's determination of how the Amendment may fare relative to the criteria set out in section 33(9) of the Act.”

16. The Board has granted cost eligibility to generators in other proceedings as well. For example, the Board has granted cost eligibility to the Canadian Wind Energy Association, the Ontario Sustainable Energy Association, and the Ontario Waterpower Association because “these generators will bring a unique perspective” to a proceeding.<sup>11</sup> In another proceeding, the Board noted that the Ontario Sustainable Energy Association consisted mainly of “commercial service providers and generators” and that although it was thus *prima facie* not eligible for an award of costs, the Board believed it to be appropriate to grant it costs in the circumstances.<sup>12</sup>
17. The Renewable Energy Supply Generators do recognize that industrial consumers – who were the applicants in the Ramp Rate Review – ultimately pay IESO costs and therefore are in a different position than generators with respect to the ultimate recovery of cost awards. Having said this, it is important to bear in mind that “any person” may bring an application under s. 33 of the *EA* and it would not be appropriate for a systematic bias in favour of consumers in bringing these appeals. Otherwise, some market participants would effectively have more ability to challenge market rules than others. In this regard, it is worth noting that industrial consumers are commercial entities no less than generators. Industrial

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<sup>10</sup> “Ramp Rate Appeal”, Procedural Order No. 2, March 9, 2007, at p. 6 (EB-2007-0040).

<sup>11</sup> See EB-2007-0930, Letter from OEB to Counsel dated August 27, 2008, pp. 1-2.

<sup>12</sup> See EB-2011-0004, Decision on Cost Eligibility dated April 4, 2011, pg. 2.

consumers ultimately pursue their own commercial interests, not a public interest. There is therefore no public interest reason to prefer them over generators.

### **Conduct of the Applicants in Bringing the Appeal**

18. Finally, in the Ramp Rate Appeal, the Board noted that granting costs to an applicant could theoretically lead to an inappropriate increase in “the number and frequency of challenges to rule amendments.” It therefore took the opportunity “to remind all of the parties that, as in all cases, parties are expected to act responsibly...”<sup>13</sup> As a result, the Board put the burden on an applicant who seeks costs of an appeal to demonstrate that it has acted responsibly.
19. The Renewable Energy Supply Generators have acted responsibly and with a view to minimizing costs in all circumstances and events leading up to, and since the beginning of, this proceeding. This includes:
  - Providing the IESO with early and public disclosure of the issues that would be addressed in an appeal, thereby avoiding any “surprise” tactics;<sup>14</sup>
  - Clarifying at an early stage the types of materials for which production would be sought, thereby providing the IESO the opportunity to at least prepare those materials in advance (even if the IESO would ultimately object to producing them);<sup>15</sup>
  - Applying to the Board to request it to exercise its discretion to order accelerated production of materials pursuant to s. 21 of the *OEB Act*, (which the Board decided was appropriate);<sup>16</sup> and

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<sup>13</sup> “Ramp Rate Appeal”, Procedural Order No. 2, March 9, 2007, at p. 5 (EB-2007-0040).

<sup>14</sup> See letter from RES Generators to IESO Board of Directors, November 20, 2012. (See Application to OEB dated January 11, 2013, Exhibit D.)

<sup>15</sup> See letter from RES Generators to IESO Board of Directors, November 28, 2012. (See Application to OEB dated January 11, 2013, Exhibit E.)

<sup>16</sup> See Application to OEB dated January 11, 2013 and Letter of Direction from the OEB dated January 22, 2013.

- Filing a detailed and substantiated application for review which allowed the Board and all parties to have a clear understanding of the Applicants' positions and the basis for those positions and thus facilitate an orderly review of the application.
20. For these reasons, the Renewable Energy Supply Generators submit that they should be eligible for the recovery of their costs in this proceeding from the IESO and for the reasons below, the costs of the IESO and intervenors should be borne by the IESO.

***The IESO Should Bear the Costs of this Proceeding***

21. The Renewable Energy Supply Generators are cognisant of the Board's indication, in the Ramp Rate Appeal, that the recovery of costs from the IESO in that proceeding should not be understood as a recognition that the IESO would be responsible for costs in all future market rule amendment review applications. However, there are compelling reasons which support a finding that the IESO should bear one hundred percent of the costs of this proceeding.

**The IESO Should have Budgeted the Costs of the Review**

22. The IESO has known for several years that an appeal of the Market Rule amendment was likely.<sup>17</sup> It would therefore have been prudent to budget for the costs of both the IESO and other parties in the appeal. Those costs, like the costs of a utility in an appeal of a regulatory decision, should have been included in their application to the OEB for administrative fees.<sup>18</sup> The Applicants do not know whether the IESO did or did not budget these costs. However, given their expectation for an appeal, it would be imprudent for it not to have incorporated those costs into its administrative costs.

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<sup>17</sup> For example, the joint October 11, 2011 IESO/OPA presentation to the Ministry (IESO Bates No. 0003503.1) states at pg. 3, as the last point of a slide entitled "Bottom Line," "Going Forward – assume we will not get wind dispatch rules through without a contract amendment offer, without a fight at the technical panel and the OEB."

<sup>18</sup> See, for example, EB-2006-0034, Decision with Reasons – Phase 1, July 5, 2007, pp. 51-52.



### **Conduct of the IESO in Responding to the Appeal**

23. As indicated, the Renewable Energy Supply Generators have taken an approach which provided the IESO with the opportunity to have this matter proceed in an orderly and efficient manner. Unfortunately, the IESO has not taken these opportunities and, instead, has taken steps to increase the costs and resources for all participants, including the Board.

- Although it received the request from the Renewable Energy Supply Generators in November 2012 that it produce materials, the IESO apparently took no steps to collect those materials to have them ready in case they were ordered to produce them. Rather, counsel for the IESO said in argument as late as February 11, 2013 that the IESO would start collecting that information *only* after it was ordered to.<sup>19</sup>
- It was not until January 16, 2013, after the Renewable Energy Supply Generators applied to the Board for an order directing the IESO to produce evidence, that the IESO identified *any* information that it was prepared to provide to the Board (the “Volunteered Information”). Even here, while the IESO stated that it would provide the Volunteered Information, it also stated that it would only provide this information *if ordered to* by the Board. The Board finally did have to make that order in its Direction dated January 22, 2013.
- The January 22 Direction required the IESO to provide the information by January 29, 2013. Materials were provided to the Applicants on January 30 and 31, 2013.
- The Volunteered Information consisted of a package of 455 pages of documents of which 342 were fully or partially redacted. The IESO

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<sup>19</sup> The full exchange on this point between the Presiding Member and counsel for the IESO is attached as schedule B hereto.

provided no explanation for the redaction and followed neither the Board's *Practice Directions on Confidential Filings* nor the Board's practice with respect to redacting parts of documents.

- Accordingly, on January 31, 2013, the Applicants had to specifically apply to the Board to direct the IESO to comply with the Board's requirements.
- In Procedural Order No. 2, the Board noted the IESO's non-compliance and stated that "[T]he IESO should have be well aware of the Board's *Practice Direction on Confidential Filings*, and it should have acted in accordance with the *Practice Direction* when making its filing. *Not doing so undermines regulatory efficiency, particularly given the timeframes applicable to this proceeding.*"<sup>20</sup>
- In responding to this Board issuance, the IESO's only statement was that, other parties, the OPA and the Ministry of Energy, had confidentiality concerns with respect to some of the Volunteered Documents. Given that the request for information had been made over two months prior to the IESO's self-identification of the Volunteered Documents, one would have thought that the IESO could have communicated with the OPA and the Ministry to ensure that claims for confidentiality could be addressed in an orderly manner. Instead, it apparently did nothing to assist the Board in the resolution of the confidentiality claims.
- As a consequence of the IESO non-compliance with the Practice Directions, the Board had to design a procedural order and set a schedule to address concerns of confidentiality. *Submissions* on confidentiality are now scheduled to be completed on February 20, 2013 – a full month after the IESO stated that it would produce the Volunteered Information.

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<sup>20</sup> EB-2013-0029 Procedural Order No. 2, pg. 7, emphasis added.

## **Conclusion**

24. In light of all of the foregoing, the Renewable Energy Supply Generators respectfully request that the Board order:

- That the Renewable Energy Supply Generators be eligible for the recovery of their costs in this proceeding from the IESO (as a corollary of this, the applicants should not be required to pay for the costs of any other party); and
- That the IESO be required to pay its own costs as well as the costs of intervenors.

### **ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated: February 13, 2013

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**SCHEDULE LIST**

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**Schedule A**



**EB-2007-0040**

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

**AND IN THE MATTER OF** an Application by the Association of Major Power Consumers in Ontario under section 33 of the *Electricity Act, 1998* for an Order revoking an amendment to the market rules and referring the amendment back to the Independent Electricity System Operator for further consideration, and for an Order staying the operation of the amendment to the market rules pending completion of the Board's review.

## **PROCEDURAL ORDER NO. 2**

On February 9, 2007, the Association of Major Power Consumers in Ontario ("AMPCO") filed with the Ontario Energy Board (the "Board") an Application under section 33(4) of the *Electricity Act, 1998* seeking the review of an amendment to the market rules made by the Independent Electricity System Operator (the "IESO") on January 18, 2006. The Board has assigned file number EB-2007-0040 to the Application.

The amendment that is the subject matter of the Application is identified as MR-00331-R00: "Specify the Ramping Capability in the Market Schedule" and relates to the ramp rate assumption used in the market dispatch algorithm within the IESO-administered markets (the "Amendment").

On February 9, 2007, the Board issued its Notice of Application and Oral Hearing in relation to the Application. By Order dated February 9, 2007, the Board stayed the operation of the Amendment pending completion of the Board's review of the Amendment.

On February 16, 2007, the Board issued its Procedural Order No. 1. In addition to establishing the process and timelines for this proceeding, Procedural Order No. 1 also:

- identified the issues to be considered in this proceeding;
- indicated that cost awards would be made available in this proceeding to eligible intervenors, and solicited written submissions on the issue of the party from whom cost awards should be recovered; and
- directed the IESO to file materials associated with the development and adoption of the Amendment.

#### **Cost Awards: Party From Whom Cost Awards Should be Recovered**

In response to Procedural Order No. 1, four parties made submissions in relation to the issue of the party from whom cost awards should be recovered. The submissions may be summarized as follows.

The IESO submitted that the nature of this proceeding warrants a "costs follow the cause" approach, particularly in regard to responsibility for payment of intervenor cost awards. Both the merits of the application and the conduct of the parties throughout the proceeding are relevant considerations in assessing cost responsibility and eligibility of both the IESO and AMPCO. Accordingly, the Board should defer determination of the appropriate party from whom costs will be recovered until the merits of the application are decided:

- If the Board were to determine that the Amendment is deficient relative to the criteria listed in the *Electricity Act, 1998* (the "Act"), it may be appropriate for the IESO to be responsible for cost awards to eligible intervenors and there may in that case be "special circumstances" under which the Board could make AMPCO eligible for an award of costs and perhaps make the IESO responsible for payment of a cost award in AMPCO's favour. However, such an award should only be made in exceptional circumstances, as ordinarily the review process before the Board should be considered part of the customary regulatory costs which participants in the market incur and which are not passed along to others.

- If the Board were to uphold the Amendment, the normal rule that the applicant pays costs to eligible intervenors should prevail. The process undertaken by the IESO in relation to the Amendment was comprehensive and led to a fair result. Market participants have already paid for this review and ought not to have to pay again through cost awards against the IESO in favour of intervenors, and certainly not unless and until the amendment is found to be inconsistent with the objectives of the Act or unjustly discriminatory.

The IESO also submitted that, given the nature of this proceeding and the lack of prior experience with applications to review market rule amendments, the Board should leave open the possibility of ordering that each of the IESO and AMPCO bear its own costs.

AMPCO relied on the submissions made in its Application in relation to its request for eligibility for an award of costs and for those costs to be recovered from the IESO. AMPCO also expressed its objections to the IESO's approach, mentioned initially in the IESO's notice of intervention and more fully articulated in its written submissions as described above. Specifically, AMPCO argued as follows:

- cost awards are critical to AMPCO's ability to participate in Board proceedings affecting its membership;
- AMPCO's role in this proceeding is identical to its role as an intervenor in proceedings commenced by other parties and in relation to which it is normally eligible to apply for an award of costs; namely, to represent the direct interests of Ontario's large industrial consumers in relation to regulated services. However, in the instant case AMPCO had no choice but to proceed as an applicant to challenge the Amendment;
- the IESO is more akin to an applicant than to an intervenor in proceedings of this nature;
- the IESO's approach to cost awards will have the effect of stifling legitimate dissent and alternatives in an evolving wholesale market, particularly in cases where effective consultation was not achieved or carried out in a manner consistent with the IESO's own policies, and should be recognized by the Board as little more than an attempt to intimidate market participants into not questioning the actions of the IESO;



- the IESO's approach to cost awards is inconsistent with the accessibility inherent in the administrative tribunal structure, as tribunals for the most part do not find winners or losers but find what best serves the public interest;
- the IESO is not normally eligible for an award of costs under the Board's *Practice Direction on Cost Awards*; and
- the IESO already recovers its costs through Board-approved fees, and these costs (which are paid by market participants including AMPCO members) presumably include costs associated with the defence of market rule amendments, such that a cost award in favour of the IESO would appear to represent double recovery.

The Vulnerable Energy Consumers Coalition ("VECC") submitted that cost awards should be recovered from the IESO in a case such as this where the applicant would otherwise be considered eligible under the Board's *Practice Direction on Cost Awards* and where the subject of the application (the IESO) would not normally be considered eligible. To defer a decision on cost responsibility until after the determination of the application, as suggested by the IESO, would be unreasonable as AMPCO (or others that have no ability to recover the costs of a proceeding from ratepayers or market participants) would be exposed to the risk of unbearable costs. To defer a decision on the matter could also be seen to discourage parties from initiating applications to bring legitimate concerns to the Board. AMPCO can still ultimately be denied its costs, or held responsible for the costs of others, if the Board determines that AMPCO has been frivolous and/or vexatious in initiating the review. This should be sufficient to discourage parties from initiating wasteful applications.

The Association of Power Producers of Ontario ("APPRO") submitted that the costs of the application should be borne by the IESO and AMPCO equally. There should be a balance between a stakeholder's right to be heard on market rule amendments and the IESO's rights and obligations to develop market rules in the context of the applicable legislative framework. The Board should exercise its discretion in a way that does not inhibit market participants from challenging a rule amendment of considerable import and impact and that does not thwart the efficient operation of the sector by encouraging numerous and specious applications that frustrate the role of the IESO in developing and implementing market rules for the efficient operation of the sector. If the applicant

is required to pay where numerous parties intervene, costs may act as a prohibitive deterrent and frustrate the checks and balances of the Board's market rule review process. If the IESO is required to pay all of the costs, the number and frequency of challenges to rule amendments may increase and frustrate the intended processes and IESO operations for an efficiency and reliability sector. Such inefficiencies would ultimately be borne by consumers and generators that are required to pay the IESO's costs through uplift.

The Board has considered the submissions of the parties and has determined that it is not appropriate in this case to defer its decision on cost awards as requested by the IESO. The Board has also determined that cost awards in this proceeding should be recovered from the IESO. 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 Act. The Board also notes that, as market participants, members of AMPCO 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. The Board also takes this opportunity to remind all of the parties that, as in all cases, parties are expected to act responsibly and that the Board retains discretion to address irresponsible or inappropriate participation through the cost award process.

#### **Cost Awards: Eligibility**

In addition to the IESO's submission that it should receive an award of costs in the event that AMPCO's application is unsuccessful, requests for cost eligibility have been received from AMPCO, VECC and APPrO. TransAlta Energy Corp. and TransAlta Cogeneration L.P. have reserved their right to apply for an award of costs should special circumstances arise in the proceeding.

VECC represents the interests of consumers and, as such, is normally eligible for an award of costs under the Board's *Practice Direction on Cost Awards*. The Board has determined that VECC is eligible for an award of costs in this proceeding.

AMPCO represents the interests of consumers and, on that basis and as an intervenor, would also normally be eligible for an award of costs under the Board's *Practice Direction on Cost Awards*. In this proceeding, however, AMPCO's status as the applicant would make it *prima facie* ineligible absent special circumstances. The Board has determined that, for the same reasons as expressed above in relation to the issue of cost recovery from the IESO, AMPCO is eligible for an award of costs in this proceeding.

APPrO represents the interests of generators and, on that basis, would normally not be eligible for an award of costs under the Board's *Practice Direction on Cost Awards* absent special circumstances. In support of its request for cost eligibility, APPrO noted that:

- it represents a critical public interest relative to the Board's mandate in ensuring sufficient reliable electricity supply;
- its members represent a distinct stakeholder group with a direct interest in the IESO markets and the Amendment;
- its participation will facilitate review of the Amendment and its impact on the matters referred to in the Board's objectives; and
- it has previously been found to be eligible to receive an award of costs.

APPrO has also reserved the right to apply for cost eligibility in light of any special circumstances that may arise as this proceeding develops. Generators constitute a class of participants in the IESO-administered markets that will be directly affected by the outcome of this proceeding. The Board believes that the views of generators with respect to the Amendment will be important to the Board's determination of how the Amendment may fare relative to the criteria set out in section 33(9) of the Act. Thus, the Board has determined that APPrO is eligible for an award of costs in this proceeding.

The Board's determinations as to the eligibility of VECC, APPrO and AMPCO for an award of costs is subject to any objections that the IESO may wish to make for consideration by the Board, in accordance with the deadline set out below for this purpose.

### **Adequacy of the IESO's Filing**

In Procedural Order No. 1, the Board directed the IESO to file materials associated with the development and adoption of the Amendment. The IESO made its filing by the date required.

By letter dated March 2, 2007, AMPCO alleged that the IESO's filing is deficient in a number of respects. Specifically, according to AMPCO the following material appears to be missing from the IESO's filing:

- i. all of the material in the IESO's possession, whether in the context of the ramp rate initiative, other initiatives such as the Day Ahead Commitment Process ("DACP"), the Day Ahead Market ("DAM"), or generally, that either supports or which the IESO has relied upon in suggesting that generators are currently under-compensated in Ontario's wholesale markets;
- ii. material prepared by the IESO in the context of the DAM and/or the DACP initiative that directly relates to ramp rate;
- iii. copies of all e-mail exchanges and other written communication between the IESO, stakeholders and their associations in relation to the Amendment or the subject matter of the Amendment;
- iv. internal memos, e-mail and other written communication among IESO staff and between staff and the IESO Technical Panel and/or Board of Directors, stakeholders, their respective associations, the Ontario Energy Board, the Ontario Power Authority and the Province of Ontario; and
- v. the transcript of Mr. David Butters presentation during the September 13, 2006 meeting of the Stakeholder Advisory Committee.

By letter also dated March 2, 2007, the IESO replied to the allegations contained in AMPCO's letter, stating that there is no merit to AMPCO's allegations and that the IESO has produced all of the materials required by the Board's Procedural Order No. 1. The IESO also provided a response with respect to each category of alleged deficiency identified by AMPCO.

*Items (i) and (v)*

In seeking the production referred to in item (i), AMPCO noted that the IESO has suggested that the ramp rate change is justified because it will, among other things, provide necessary extra revenue to generators that incur costs to provide ramping service, and provide incentives to generators to retain existing capabilities and invest in new ramping capabilities. In response, the IESO has stated that AMPCO's allegations misstate the IESO's position regarding justification for the Amendment, but that in any event it has no documentation that addresses the issue.

With respect to item (v) above, while denying the relevance of the transcript in question the transcript has now been provided by the IESO.

Accordingly, the Board does not believe that anything further is required in relation to these two items.

*Item (ii)*

In seeking the production referred to in this item, AMPCO noted that it is clear from both its own materials and from materials prepared by the IESO that generators or their association have linked their support for the IESO's DACP initiative to the removal of the 12x ramp rate. Generator support for the Amendment having been linked to the DACP, material prepared by the IESO in the context of the DAM and/or the DACP initiative that relates to ramp rate should also be produced. In response, the IESO denied the existence of a "conspiracy" in which the IESO has proposed the Amendment as a *quid pro quo* for generator support on another initiative, and further stated that the IESO has no materials in connection with the DAM or DACP "that are relevant to this proceeding".

In Procedural Order No. 1, the Board directed the IESO to file, among other things, "all materials prepared by the IESO in relation to the Amendment or the subject-matter of

the Amendment". The Board notes that materials prepared by the IESO in the context of the DAM or the DACP and that refer to the ramp rate issue fall within the ambit of materials "in relation to the subject matter of the Amendment" and should therefore be produced by the IESO if they exist. The Board recognizes, however, that the relevance of these materials to the criteria set out in section 33(9) of the Act, which form the basis of the issues list set out in Procedural Order No. 1, is not clear. Given the statutory deadline for making a determination on AMPCO's application and the imminence of the next steps in this proceeding, it is not feasible for the Board to hear submissions on and make a ruling with respect to the relevance of these materials prior to ordering their production. The Board would, however, like to receive written submissions on this issue in advance of the date of the oral hearing, which is scheduled to commence on March 29, 2007.

*Items (iii) and (iv)*

In seeking the production referred to in these items, AMPCO submitted that "materials prepared by the IESO in relation to the Amendment or the subject matter of the Amendment" includes internal memos, e-mail and other written communications. AMPCO also noted that the IESO's filing includes few if any copies of e-mail exchanges between the IESO and other stakeholders. Among other things, these exchanges could provide insight as to the origins of the Amendment and the considerations taken into account by the IESO to advance the Amendment as the preferred outcome. In response, the IESO stated that it is entirely inconsistent with the test set out in the Act, the issues list established by the Board and the 60-day timeline established by legislation for AMPCO to attempt to embark on a full-blown discovery exercise to obtain every individual note or e-mail created or received by an IESO staff member that mentions the ramp rate issue in any context. The IESO further stated that such material is entirely irrelevant to the merits of this proceeding, even if it was possible to locate.

The Board considers that the materials referred to in these items do, to the extent that they were prepared by the IESO and relate to the development or adoption of the Amendment, fall within the ambit of the production required by Procedural Order No. 1 and should therefore be produced by the IESO.

The Board considers it necessary to make provision for the following procedural matters. Further procedural orders may be issued from time to time.

**THE BOARD ORDERS THAT:**

1. Any written objections that the Independent Electricity System Operator may wish to make in relation to the eligibility of the Association of Major Power Consumers in Ontario, the Association of Power Producers of Ontario or the Vulnerable Energy Consumers Coalition for an award of costs shall be filed with the Board and delivered to all parties on or before **Friday, March 16, 2007**.
2. The Independent Electricity System Operator shall file with the Board and deliver to all parties on or before **Friday, March 16, 2007**:
  - i. a copy of any further materials that have not been produced to date and that are captured under headings "*Item (ii)*" or "*Items (iii) and (iv)*" above; or
  - ii. written confirmation that no such further materials exist, if that is the case.
3. Any party that wishes to make written submissions on the issue of the relevance to this proceeding of materials that are captured under the heading "*Item (ii)*" above, and more specifically to the criteria set out in section 33(9) of the Act and the issues list set out in Procedural Order No. 1, shall file those submissions with the Board and deliver a copy to all other parties on or before **Friday, March 23, 2007**.

All filings to the Board noted in this Procedural Order must be in the form of 8 hard copies and must be received by the Board Secretary by **4:45 p.m.** on the stated date. The Board requests that parties also submit an electronic copy of their filings in searchable, accessible Adobe Acrobat (PDF), if available, or MS Word. Electronic copies should be sent to [boardsec@gov.on.ca](mailto:boardsec@gov.on.ca), with a copy to the case manager Harold Thiessen at [harold.thiessen@oeb.gov.on.ca](mailto:harold.thiessen@oeb.gov.on.ca).

**DATED** at Toronto, March 9, 2007.

ONTARIO ENERGY BOARD

*Original signed by*

Peter H. O'Dell  
Assistant Board Secretary

**Schedule B**





# ONTARIO ENERGY BOARD

**FILE NO.:** EB-2013-0029

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**VOLUME:** Motion Hearing

**DATE:** February 11, 2013

**BEFORE:** Cynthia Chaplin                      Presiding Member and Vice Chair  
Paula Conboy                                      Member  
Cathy Spoel                                        Member

1 is as complete and comprehensive as it can be.

2 Filing that evidence on March 4th, in my submission,  
3 provides the Board and the parties with sufficient time to  
4 consider that evidence and be in a position to ask  
5 interrogatories, get responses to interrogatories, so that  
6 the record is complete when we get to a hearing on the  
7 18th. And that will leave the Board, as it did in the ramp  
8 rate proceedings, a number of days, limited absolutely - I  
9 understand that - to come to its decision.

10 But bear in mind that the grounds set out in the  
11 statute are very specific as to the grounds that the Board  
12 must consider.

13 But even -- I mean, to be frank, Madam Chair, I don't  
14 see a way of avoiding the 18th as the hearing date. The  
15 Board gave the parties two options, March the 7th or March  
16 18th, and March 7th, with respect, is not feasible.

17 MS. CHAPLIN: Sorry, we didn't give them as options.  
18 We put you on notice those were the potential dates.

19 MR. MARK: I understand that. I understand that.

20 In my submission, March 7th is not feasible.

21 MS. CHAPLIN: Well, we will I guess address that in  
22 due course.

23 MR. MARK: Right. And if the Board, after considering  
24 scheduling issues, determines that March 7th should be the  
25 hearing date, then that doesn't change my submissions on  
26 the order in which we should proceed with respect to  
27 production, because there is one thing that can't happen if  
28 we're to have any hope of meeting a March 7th hearing date,

1 is the IESO cannot be engaged in the process of preparing  
2 its evidence in this proceeding and responding to omnibus  
3 production requirements at the same time.

4 In my submission, it would be even more important,  
5 with a March 7th hearing date, to proceed in a fashion  
6 which sought the filing of the evidence, and then  
7 consideration of very specific and targeted interrogatory  
8 requests which raised issues that the Board considered were  
9 relevant in the context of its review and which could be  
10 fairly accommodated in the context of the time the parties  
11 and the Board have.

12 Proceeding now with making open-ended and broad  
13 production orders, especially when some of the issues may  
14 ultimately be determined to be irrelevant, and expecting  
15 the IESO to proceed to prepare its evidence at the same  
16 time is not a fair and realistic way of proceeding.

17 At this point, there is no need for further production  
18 to be made to permit any other party to file its evidence.  
19 We should focus on the preparation of the IESO's evidence,  
20 and then deal with interrogatories, by the way, with  
21 respect to all parties, so -- after the evidentiary record  
22 is before the Board.

23 MS. CHAPLIN: But the IESO has known for quite some  
24 time that this issue was quite likely to end up here.

25 So I fail to see why that evidence -- why isn't that  
26 evidence already prepared?

27 MR. MARK: Sorry, the evidence that the IESO --

28 MS. CHAPLIN: Intends to file and rely on.

1 MR. MARK: Well --

2 MS. CHAPLIN: Why is another three weeks required for  
3 that? I guess I am trying to understand -- I mean, I  
4 understand the issues of fairness for all parties, but  
5 under your formulation, it seems to grant a fairly -- in a  
6 very constrained timetable, grants a fairly significant  
7 proportion of time to the IESO to prepare evidence on an  
8 issue which it has known will be potentially --

9 MR. MARK: Well --

10 MS. CHAPLIN: Bear with me, please, Mr. Mark. Then  
11 also seems to assume there will then be no dispute on  
12 interrogatories and no dispute on further production if we  
13 have this March 4th date, and no further disputes on  
14 relevance, which I find very optimistic that there might  
15 not be further -- and then with the material being filed  
16 only a very limited amount of time in advance of an oral  
17 hearing.

18 So it seems that the result of that is not the result  
19 of that potential unfairness to the applicants with the  
20 limited amount of time they will have to review that  
21 material.

22 MR. MARK: It had been our anticipation, Madam Chair,  
23 as with all hearings, that the next step in the proceeding  
24 would be the filing of evidence by the applicants,  
25 following which the IESO would file its evidence, and that  
26 we would prepare evidence that would be responsive, at  
27 least to some extent, to the evidence filed by the  
28 applicants. We don't have that.

1           So now we will proceed to finalize our evidence in  
2 light of the fact that we are not getting any evidence from  
3 the applicants. But it is not going to happen in a week or  
4 ten days.

5           MS. CHAPLIN: All right. Well, please proceed.

6           MR. MARK: So putting to the side for the moment the  
7 schedule that the Board may want to set in terms of the  
8 timing for these events, in our submission, we should deal  
9 with the requests for further productions in that order  
10 once the evidence has been filed.

11           The other consideration for the Board on this issue is  
12 this, Madam Chair. You know from the submissions by the  
13 OPA and the MOE that they have concerns about the request  
14 for certain production issues, and I leave it to them to  
15 deal with that.

16           I simply say this, that the Board should prefer a  
17 production schedule where, if there are to be  
18 interrogatories submitted to all of the parties, that  
19 process should take place in such a way such that the  
20 production obligations of the parties proceed  
21 contemporaneously and are symmetrical.

22           Let me turn now to the scope issues. And, Madam  
23 Chair, I want to address this for a number of reasons, but  
24 specifically, as well, to deal with your concern with  
25 whether there is enough time in the process to defer the  
26 scope issues.

27           I agree with you, Madam Chair, that there is some  
28 merit in determining, to the extent you can at this point,

1 standards authority of standards and criteria  
2 relating to the reliability of transmission  
3 systems;

4 "(e) to work with the responsible authorities  
5 outside Ontario to co-ordinate the IESO's  
6 activities with their activities;

7 "(f) to collect and provide to the OPA and the  
8 public information relating to the current and  
9 short-term electricity needs of Ontario and the  
10 adequacy and reliability of the integrated power  
11 system to meet those needs."

12 So the restricted mandate of the IESO is to operate  
13 those markets and the grid. It has no broader or other  
14 authority.

15 Its responsibilities do not extend to resource  
16 planning for the province. It does not extend beyond the  
17 operation of the grid in a manner consistent with the  
18 objectives, but it is restricted to how it can operate the  
19 grid in an efficient and reliable way.

20 It is the OPA which has the authority with respect to  
21 the procurement of power, including renewables power and  
22 the contracting for that power.

23 The authorities of the OPA is found in section 25 of  
24 the Electricity Act, and in particular in section 25.2. It  
25 says:

26 "The objects of the OPA are,  
27 "(a) to forecast electricity demand and the  
28 adequacy and reliability of electricity resources

**Schedule C**

**Final Minutes of Meeting**

Date held: October 16, 2012	Time held: 9:00 am	Location held: Minto Boardroom
Invited/Attended:	Constituency Represented or Company Name:	Attendance Status: (A)ttended; (R)egrets; (S)ubstitute
<b>Panel Members</b>		
Brian Bell	Generator Representative	A
Edith Chin	Natural Gas Industry Rep.	A
Shelley Cunningham	Distributor Representative	A
David Curtis	Transmitter Representative	A
Darren Finkbeiner	IESO Representative	A
William Houston	Commercial Consumers Rep.	A
Brian Kelly	Generator Representative	A
Robert Lake	Residential Consumers Rep.	A
Martin Longlade	Industrial Consumers Rep.	A
Paul McCuaig	Retailers and Wholesalers Rep.	A
George Mychailenko	Distributor Representative	A
Rob Nicholson	Financial Services Rep.	A
Doug Thomas	Chair	A
<b>Stakeholder Observers</b>		
David Brown	Ontario Energy Board	A
Rob Cary	Robert Cary & Associates Inc.	A
Perry Cecchini	OPA	A
Jason Chee-Aloy	Power Advisory	A
Pascal Cormier	Brookfield Power	A
Alison Cumming	OPA	A
Gordon Drake	IESO	A
Susan Harrison	IESO	A
Jay Jayaraman	Enbridge	A
Sasa Maljukan	Hydro One Inc.	A
Mathieu Plante	Hydro Quebec	A
Robert Roberti	Capstone	A
Indi Sharma	IESO	A
Mark Tinkler	Customized Energy Solutions	A
Samira Viswanathan	Bruce Power	A



Bill Wilbur	Ontario Power Generation	A
<b>Secretariat</b>		
Tabatha Bull	IESO	A
Reena Goyal	IESO	A
Dawn Robertson	IESO	A
Roy Stewart	IESO	A

All meeting material will be posted on the IESO web site at:  
[http://www.ieso.ca/imoweb/amendments/tp\\_meetings.asp](http://www.ieso.ca/imoweb/amendments/tp_meetings.asp)

**Agenda Item 1 – Administration**

Agenda: The agenda was approved.

Minutes and Action Items: The Panel unanimously approved the draft minutes of the TP 264 meeting with a minor revision.

Chair Remarks: The Chair asked Panel members if there was adequate time to review the numerous comments submitted in regards to MR-00381-R02-R06 including those from Rob Cary & Associates and Bruce Power that were more recently distributed to the Panel. The Panel members indicated that they had reviewed all of the materials distributed.

**Agenda Item 2 – 2013 Technical Panel Meeting Dates Revised**

IESO staff informed the Panel that the dates for the 2013 meetings have been revised to reflect a five week rolling schedule, with a few variations due to statutory holiday schedules. The 2013 Panel dates will be set prior to the November meeting after all members have had a chance to review and respond with any conflicting dates.

**Agenda Item 3**

<b>MR-00381: Renewable Integration –Dispatching Variable Generation, Floor Prices for Variable &amp; Nuclear Generation, Market Schedule and CMSC, Tie Breaking, and Publication Requirements: 5-minute Forecast for Variable Generation</b>	
IESO Support Staff	Jo Chung
Stakeholder Plan	SE-91

The purpose of this discussion was to seek the Panel’s recommendation on draft amendment proposals MR-00381: Renewable Integration –Dispatching Variable Generation, Floor Prices for Variable & Nuclear Generation, Market Schedule and CMSC, Tie Breaking, and Publication Requirements: 5-minute Forecast for Variable Generation, for IESO Board approval (refer to documents IESOTP 265-3a - h).

The Chair noted that although the natural gas representative is employed by Enbridge and Enbridge (as a renewable generator with an OPA contract) has submitted comments in regards to MR-00381-R02-R06, that portion of the business is completely separate, the natural gas representative has no

involvement in that portion of the business, and there are processes in place to ensure independence. The natural gas representative's vote will be strictly as a representative of the natural gas sector.

The Chair then noted that Bruce Power had submitted minor edits to the floor price rule language, which were acceptable to the IESO. The Panel agreed to consider the new language as part of the material.

The industrial consumer representative asked whether the Panel should be considering only the technical merits of the rules, or whether other issues such as financial or contract issues should also be considered. The Chair responded that Article 6 of the Governance and Structure By-Law states that the Panel is to advise the IESO Board on technical issues relating to proposed rule amendments. The IESO secretariat added the Panel should consider the technical merits of the rules, and that the Stakeholder Advisory Committee (SAC) has taken over advising on policy issues.

The commercial consumer representative noted that the IESO has stated that the OPA contract issues are out of the scope of SE-91. The IESO secretariat responded that he believes this should be the case (although he recognizes not all parties share his views as indicated by submitted comments) as the IESO is not a direct party to OPA contracts and although the initial plan several years ago was to move the rules and contract negotiations along in parallel, the OPA changed their mind and the IESO cannot wait for contract resolution.

A generator representative stated that he is struggling with the fact that OPA contract issues which could have significant financial implications to stakeholders should be disregarded and not considered by the Panel. The other generator representative stated that it was his belief that the Technical Panel was bound to only consider the market rules and market manuals until such time as the Technical Panel becomes a hybrid panel. The transmitter representative agreed and stated that he was of the opinion that pushing the rules process forward is required for OPA contract negotiations to occur.

The natural gas representative noted that contract implications for Bruce Power and OPG were taken into account when discussing MR-00393: Limiting Payments to Exports during Negative Prices, and asked how those contract implications were different, and whether different standards are being applied in this case. A generator representative stated that in the case of MR-00393 we were looking at the effect that current contracts have on the market, where with MR-00381 an efficiency change is being made to the market that may affect contract finances. The IESO representative responded that if the IESO as the market administrator sees contract outcomes that result in inappropriate market or system operation it will fix them if required through a rule amendment. He added that the IESO did take the contracts into account in its analysis of potential savings in SE-91 by assuming that all contract holders were fully compensated. For MR-00393, it was a situation where contracts were causing inefficiency and operational problems that had to be addressed.

The natural gas representative then commented on AI-262-1, requesting a footnote on the assumptions made on CES contracts (i.e. payments were assumed to be the same under the over-curtailment scenario versus the scenario which dispatches wind). The IESO representative agreed with the suggestion to include a footnote to that extent.

The industrial consumer representative asked how the IESO will be asking the Panel to make their decision on MR-00381 when the OPA has delayed contract negotiations. The IESO responded that the IESO and the OPA are not a common organization at this time and that certainty with the rules will enable other parties to negotiate their contracts based on approved market rules. The IESO can begin to build systems but only on the basis that these rules will be passed. If different rules are passed the IESO will have built the wrong systems.

A distributor representative asked how the Chair decides who is allowed to or not allowed to present to the Panel, citing the request by Rob Cary & Associates to present their arguments to the Panel. The Chair responded that stakeholders who are sponsoring a market rule amendment are allowed to present to the Technical Panel. The Chair noted that there were a number of written submissions for MR-00381 with differing views, and that the process of submitting these views clearly in writing should be sufficient – the IESO wants to avoid a process where stakeholders present to the Technical Panel reiterations of those same written comments.

A generator representative requested information from the RES and FIT observers on what the status of their contract negotiations were. The RES observer responded that no negotiations have taken place thus far with the first negotiation scheduled for the afternoon of October 16<sup>th</sup>. When asked if the RES group knew why negotiations were delayed last year, he responded that an OPA representative had noted that time was needed to educate the new Energy Minister. An observer representing FIT contract holders responded that meetings are scheduled to begin October 17<sup>th</sup>. The IESO representative responded that contract negotiations with all three counterparties; RES, Samsung and FIT have either started or are starting in the near future.

The financial industry representative expressed some concern on the written comments received from OPG and the Ontario Waterpower Association (OWA) who were of the opinion that the proposed floor prices (-\$5 for flexible nuclear, -\$10/-15 for variable generators) were a subjective selection and asked if there was extensive analysis done. The IESO representative responded that the final numbers will not be part of the market rules and that they will be further stakeholdered. He continued to note that many variables have been taken into account but would not expect that a single value would ever be perfect and the IESO does plan to review those values once they have been in place for six months. The IESO representative was clear that there is no scientific approach available to determine exactly what these numbers should be and noted that they are not permanent based on the vote to recommend these rules to the IESO Board. The financial industry representative stated that those generators impacted by floor prices should put forth marginal costs that are specific and supportable. The IESO representative stated his support for that comment.

A generator representative asked about the timing necessary for the rules to be presented to the IESO Board and what type of impact a one month delay could have. The IESO representative responded that the IESO needs certainty of the timing in order to begin building the required systems, as systems will need to be ready by the latest October 2013.

The industrial consumer stated that the IESO would not have any certainty because the OPA could make contract changes which would also require a system change. The IESO representative responded that he believes there is a small risk of that happening as the IESO has been and will continue to work

collaboratively with the OPA to ensure they understand what the IESO is trying accomplish from a system build perspective.

The industrial consumer representative asked what the one-time cost represented in the AI-262-1 example was and if the IESO was taking annual savings into account for their decision making. The IESO representative responded that the annual savings were previously presented during the IESOTP 260-3 presentation and in the analysis, the IESO assumed 8,000 MW of wind coming online and the potential to at times have 95% of that capacity utilized. The IESO representative reiterated it was impossible to accurately forecast potential savings due to the variability of wind and difficulty in forecasting SBG, however the IESO does feel that the expected savings are reasonable based on the analysis available at the time. The IESO would move forward with these rules regardless of the exact value of the annual savings as they are also important for maintaining the system's operability and accounting for the changing resources and development within the fleet.

The transmitter representative stated that these rules are important from a transmission perspective for efficient operation of the system which in turn will reduce cost and be a benefit to the ratepayer. The natural gas representative added that this will significantly change operations and that should incite more dialogue because of the long term implications to which the IESO representative agreed.

The retailers and wholesalers representative requested that the generator representatives give their opinion on the technical language of the rules. The generator representative requested that the RES group observer respond. The RES group observer stated that he had made specific comments with respect to the rule language which were mostly addressed. The other generator representative responded that he had not heard of any technical concerns with the rules language.

The IESO representative walked the Panel through the changes to MR-00381-R03 made in response to the comment received from Bruce Power. The agreed upon change is a clarification to ensure that by interpretation the IESO does not assume an entire nuclear unit is flexible and only the portion offered as flexible should be deemed as such. The IESO representative also explained that the request to include floor price values into the market rules has not been accepted and the IESO will continue to stakeholder those values and include them in the applicable market manual.

The residential consumer representative asked if the treatment for the 5-minute forecast discriminated based on location. The IESO representative responded that the rule is a broad application and the IESO is indifferent to location.

The retailers and wholesalers representative stated that since the goal is to create a more efficient market, that he approves of this rule from a technical perspective but believes the comment submitted by Robert Cary & Associates are valid in that the OPA has held up the process. He continued to state that he believes the OPA's inactivity with the contract negotiations has damaged the IESO's reputation within the stakeholder community. The industrial consumer representative agreed with these comments.

The Chair asked for the Panel's vote of recommendation on MR-00381-R02-R06 with the aforementioned inclusion of clarification language requested by Bruce Power through their written submission. Ten Panel members voted in favour, two Panel members abstained and one Panel member

voted against recommending MR-00381-R02-R06 to the IESO Board. The one member voting against recommending the rule was a generator representative and the two members who abstained from recommending the rule were the natural gas representative and the financial industry representative.

The Chair requested that the generator representative who voted against recommending the rule to the IESO Board and the financial industry representative and natural gas representative who abstained from recommending the rule to the IESO Board provide their rationale.

A generator representative stated that he believes the Panel should be assessing the market rule with a view of broader issues and the implications to RES and FIT contract holders should be discussed in good faith.

The financial industry representative complimented the IESO for undertaking this difficult process and believes the original plan to move forward with the market rules and contract negotiations in parallel was acceptable but the plan was changed due to delays by the OPA. Although he believes the technical merits of these rules are good, he cannot in good conscience support rules that could cause third party harm. He noted his agreement with the comments made by the generator representative and retailers and wholesalers representative.

The natural gas representative does not believe the necessary time or information was provided to completely gauge the impact to the natural gas industry.

**Agenda Item 4**

<b>Proposed Market Rule promoting conduct which supports market and reliability objectives</b>	
IESO Support Staff	Tabatha Bull & Glenn McDonald
Stakeholder Plan	N/A

The purpose of the discussion was to introduce the concept of a new market rule the IESO is contemplating which is intended to promote conduct which supports market and reliability objectives (refer to documents IESOTP 265-4a, 4b).

Panel members asked a number of questions of clarification and a few members were supportive of the general concept. However, Panel members indicated the need for more detail as follows:

- What this "general market rule" will look like;
- Evidentiary thresholds: How this rule will be enforced, and what are the guiding principles, commercial/monetary or behavioural thresholds (e.g. intent to harm with malice, lack of due diligence) – market participants must have a transparent and clear understanding of what types of behaviour will result in IESO action under this proposed rule;
- Whether the IESO will recover monies as part of the enforcement of this rule and, if so, how it will determine the dollar amount that would be recovered; and
- More information as to whether neighbouring ISOs (PJM, MISO, NYISO) have similar rules, and if so, what the rules are and what their processes entail, and if not, why not – a generator representative requested this be an official action item – AI 265-1.

Several Panel members asked why this rule is needed, and why current market rule processes (e.g. urgent rule amendment process, etc) or informal processes, where the IESO makes a request to a market participant to stop certain market behaviours are insufficient. IESO staff responded that the proposed rules would complement existing processes and market rules, not supplant them, recognizing that market rules which address specific scenarios are still required, but that a rule which covers certain market behaviours which are outside of the purpose of the Electricity Act or the intent of the Market Rules does not exist today. It is also felt that the non-transparency of informal processes and the absence of retrospective accountability, where rule amendments are conducted as part of the remedy, are deficiencies in the present framework.

The transmitter/generator representatives asked if this proposed rule would overlap the authority of the Market Surveillance Panel (MSP). IESO staff responded that the MSP has a reporting function on market participant conduct and overall market design, but it is not clear what, if any, enforcement mechanisms exist with respect to its investigations mandate.

The retailers and wholesalers representative had concerns that the proposed rule would give the IESO a 'catch all' rule which would allow the IESO to implement its own fix to a problem which would not involve stakeholdering. The IESO representative responded that this rule would not eliminate the need for corrective rules, but would be a final back-stop for any market rule deficiencies that are being taken advantage of.

A generator representative asked whether this rule would give the IESO the ability to retroactively recover funds in situations that the IESO deems 'inappropriate' – for example, if the rule is effective June 1, 2013 and inappropriate market participant behaviour occurs in July, then in August the IESO could recover the funds. IESO staff responded that the IESO is looking at whether any sanctions different from those which are already in place may be needed to enforce this rule.

A generator representative requested a list of every urgent market rule amendment to date and how much money this proposed market rule could have recovered. The IESO representative responded that the mention of urgent market rule amendments was only illustrative of the type of process which is in place today to address conduct contrary to market design or rule intent. Similarly, informal processes where the IESO asks market participants to stop certain behaviour and to voluntarily return funds, as well as non-urgent rule amendments, would be relevant. A list of every urgent market rule amendment alone would not be an accurate representation of the magnitude of issues this market rule would seek to address, nor would it be possible to quantify payments or market impacts that would have been retrospectively avoided via a rule of this nature. IESO staff questioned whether the absence of such a rule in Ontario, in comparison to every other organized electricity market could be justified, regardless of the ability to precisely quantify impacts.

**Agenda Item 5**

<b>MR-00396: HE1 Day-Ahead Production Cost Guarantees Triggered by Ramping Limitations</b>	
IESO Support Staff	Tabatha Bull
Stakeholder Plan	SE-102

The purpose of this discussion was to seek the Panel's recommendation on draft amendment proposals MR-00396: HE1 Day-Ahead Production Cost Guarantees Triggered by Ramping Limitations, for IESO Board approval (refer to documents IESOTP 265-5a & b).

To conclude, the Chair asked for the Panel's vote of recommendation and the Panel unanimously agreed to recommend MR-00396-R00 to the IESO Board for approval.

**Agenda Item 6**

<b>MR-00389: Ancillary Service Contract Terms</b>	
IESO Support Staff	Jo Chung
Stakeholder Plan	N/A

The purpose of this discussion was to seek the Panel's recommendation on draft amendment proposals MR-00389: Ancillary Service Contract Terms, for IESO Board approval (refer to documents IESOTP 265-6a & b).

To conclude, the Chair asked for the Panel's vote of recommendation and the Panel unanimously agreed to recommend MR-00389-R00 to the IESO Board for approval.

**Agenda Item 7**

<b>MR-00397: Identification of Reliability Standards</b>	
IESO Support Staff	Josh Duru & Scott Berry
Stakeholder Plan	N/A

The purpose of this discussion was to seek the Panel's recommendation on draft amendment proposals MR-00397: Identification of Reliability Standards, for IESO Board approval (refer to documents IESOTP 265-7a & b).

A distributor representative asked how market participants would know which categories to select for each of their facilities as that information is not shown within the NERC Reliability Standards Mapping Tool. IESO staff responded that the IESO has committed to provide each market participant with key attribute information regarding their facilities which will be the information necessary to input into the tool and that is consistent with the process detailed in the "Applicability Criteria for Compliance with NERC Reliability Standards and NPCC Criteria."

The other generator representative asked if updating the tool on quarterly baselines was appropriate and if it would be sufficient for standards which change between baselines. IESO staff responded that they would baseline the tool each time a reliability standard was changed.

To conclude, the Chair asked for the Panel's vote of recommendation and the Panel unanimously agreed to recommend MR-00397-R00 to the IESO Board for approval.

**Agenda Item 8: Other Business**

The Chair opened the discussion to any further issues that Panel members wished to discuss. There were no issues brought forth.

Next Panel meeting: Tuesday, November 20<sup>th</sup>, 2012

**Action Items**

Action Item Summary				
#	Date	Action	Status	Comments
AI 250-1	17-May-11	The IESO will address the centralized forecasting publication requirements for embedded generation and local distribution companies at a later date.	Open	Amended at TP 262
AI 262-1	17-July-12	IESO will provide the Panel with a detailed example of how the savings are generated under RII.	Closed	
AI 262-2	17-July-12	IESO will consider the development of a cross-reference between the market manuals and market rules and investigate if the resources are available to do so.	Open	The IESO representative indicated that the IESO will look to develop a market rules to manuals cross-reference by the end of the year.
AI 263-1	21-Aug-12	IESO will assess market participants offer behaviour in the chronically congested areas and report back to the Panel no later than one year after the effective date of MR-00395-R00.	Open	
AI 265-1	16-Oct-12	IESO will provide the Panel with information as to whether neighbouring ISO's have similar rules for promoting conduct which supports market and reliability objectives.	Open	



**Schedule D**

# Memorandum

To: THE BOARD OF DIRECTORS  
of the Independent Electricity System Operator

From: Bruce B. Campbell  
Vice-President, Resource Integration

Date: November 19, 2012 (for November 29, 2012 meeting)

Re: Emerging Issue: Interplay Between OPA Contract Provisions and  
Market Rule Amendments

Independent Electricity  
System Operator  
655 Bay Street  
Suite 410, PO Box 1  
Toronto, Ontario M5G 2K3  
t 416 596 2800  
www.ieso.ca

Over the past several months there has been increasing interest amongst both SAC and Technical Panel members on whether, and if so how to address the interplay between OPA contract provisions and market rule amendments.

These issues often appear as a matter of commercial interest. For instance, there are a number of OPA contracts which contain clauses that protect the contract holders from economic harm should a market rule amendment change the economic expectations under which the original contracts were signed. Over the past few years the Technical Panel has reviewed a few key rules which have triggered or have had the potential to trigger this clause; namely, MR00356 – RT-GCG changes (December 2009) and more recently MR-00381 – Renewable Integration.

In the latter case, at the Technical Panel meeting on October 16<sup>th</sup>, 2012 there was considerable discussion as to what consideration the Technical Panel should give to the financial or contract implications for suppliers of the renewable integration rules. “Why else am I here?” was the question asked by the financial representative. But traditionally the view has been that the mandate of the Panel is simply to ensure that the language of a proposed rule is technically correct in achieving the purposes of the amendment regardless of external considerations.

The focus on OPA contract provisions when dealing with market and operational changes can arise in different ways. For example:

- Where the IESO as the market administrator sees contract driven outcomes that result in inappropriate market or system operation we have moved to remedy the situation - as was the case with MR-00393 - Limiting Payments to Exports during Negative Prices, and MR-00381 R03 –Floor Prices for Variable and Flexible Nuclear Generation. In these situations the contract provisions were relevant to the Technical Panel as they were the very cause of the efficiency and/or operational problems that needed to be addressed.

Bruce B. Campbell  
Vice President,  
Resource Integration  
bruce.campbell@ieso.ca  
t 416 596 2800

IESO0002304

- On the other hand, when the IESO is amending market rules to make necessary changes to the market, as is the case in MR-00381 R02 – Dispatching of Variable Generators, the view, shared with some stakeholder representatives, has been that the potential consequential impact on contract economics is outside the scope of Technical Panel considerations. The premise here is that the IESO focus should be on improving efficiency and reliability of market and system operations – potential contract impacts are part of the regulatory risk in commercial transactions and it is not the role of the IESO to re-allocate commercial risks amongst the contracting parties as changes occur over a twenty year term. However this perspective becomes more complicated where the contract provides rule amendment protection. In these cases, improvements to market efficiencies and consumer benefits that are expected to result from market rule amendments could be eroded through subsequent contract amendments.

These examples raise a fundamental question as to what extent, if at all, the IESO should (either directly or through input from the OPA) assess and include potential contract impacts in its decision-making.

In addressing the potential tension between contract impacts and the need to address market and system issues, the roles of our various stakeholder bodies may also need better definition. The formal mandate of the Technical Panel, as set out in Section 6 of the Governance and Structure By-Law<sup>1</sup>, is not as tightly focussed on “technical issues only” as actual practice would indicate. On the other hand, there does need to be adequate differentiation between the role of the Technical Panel and the mandate of the SAC, which is seen as the principal forum for stakeholder input to the Board on broader “policy” issues. Regardless of the forum, the issue of the breadth of considerations to be assessed by the IESO when stakeholdering and evaluating market rule amendments is now the focus of considerable stakeholder attention, and needs to be addressed.

This topic will be further discussed with the Technical Panel at its December meeting and as noted earlier has also been raised at the SAC. The point of this memo is to flag this emerging issue for an initial discussion of views with the Board, anticipating these upcoming meetings, and bearing in mind that we expect this to be a popular topic of discussion at the joint Board and Technical Panel lunch in February.



Bruce B. Campbell

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<sup>1</sup> “The duties of the Technical Panel are to review and propose amendments to the market rules on an on-going basis and advise the Board on such specific technical issues as may be referred to the Technical Panel.”

**Schedule E**

Ontario Energy  
Board  
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27th Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416- 481-1967  
Facsimile: 416- 440-7656  
Toll free: 1-888-632-6273

Commission de l'énergie  
de l'Ontario  
C.P. 2319  
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Toronto ON M4P 1E4  
Téléphone; 416- 481-1967  
Télécopieur: 416- 440-7656  
Numéro sans frais: 1-888-632-6273



**BY E-MAIL ONLY**

August 27, 2008

Jennifer Tuer  
Ogilvy Renault LLP  
Suite 3800, PO Box 84  
Royal Bank Plaza, South Tower  
200 Bay Street  
Toronto ON M5J 2Z4

Dear Ms. Tuer:

**Re: Hydro One Networks Inc.'s Application for an Interim Exemption from  
Certain Requirements of the Distribution System Code  
Board File Number EB-2007-0930  
Notice of Intervention of Ontario Waterpower Association**

The Board confirms Ontario Waterpower Association ("OWA") as an intervenor in the above noted proceeding.

OWA has applied for cost award eligibility. OWA's letter of intervention indicates that some of its members may be generators. As general rule, generators, and groups of generators, are explicitly excluded from eligibility for costs under section 3.05 of the Board's Practice Direction on Cost Awards (the "Practice Direction"). However, under section 3.07 of the Practice Direction, the Board may, in special circumstances, find an otherwise ineligible party to be eligible for a cost award. The issue is whether there are special circumstances in the current case which would warrant a departure from the specific exclusion in the Practice Direction.

This proceeding is in relation to a request by Hydro One for exemptions from certain sections of the Distribution System Code, namely to be exempt from required timelines in connection process for certain generation facilities. On April 3, 2008, the Board allowed two other parties in this proceeding, the Canadian Wind Energy Association and the Ontario Sustainable Energy Association, to be eligible for cost awards in this proceeding. The Board granted cost eligibility to these two parties under the special circumstances clause of the Practice Direction because of the impact that the Board's decision in this proceeding may have on prospective generators and because these generators will bring a unique perspective to this proceeding.

Since that time, the Practice Direction has been amended. The changes took effect on August 14, 2008. Prior to the amendments, parties would be told at the outset of the proceeding whether or not they were eligible for a cost award. Under section 4.03 of the revised Practice Direction, the Board makes the eligibility determination at the end of the proceeding. More detailed information regarding cost eligibility and the cost claims process is found under sections 4 and 10 of the Practice Direction.

The Board has decided to depart from the rules in the revised Practice Direction and determine cost eligibility at this time as opposed to waiting until the end of the proceeding. The Board is departing from its new practice only for this specific case for the following reasons. In this particular case, OWA applied for cost eligibility on August 1, 2008, which is before the amendments to the Practice Direction were publicized and took effect. Furthermore, two other parties in this proceeding were found eligible for a cost award under the very same circumstances as OWA and that decision was made at the beginning of the proceeding. Lastly, as was stated above, generators bring a unique perspective to this proceeding and the Board feels that in this particular case, the generators should know upfront if they will be eligible for cost awards. Therefore, the Board finds that OWA is eligible for a cost award under the special circumstances clause of the Practice Direction.

Please note that even if the Board determines that a party is eligible for a cost award, the party should not assume that it will recover 100% of its costs. Section 5 of the Practice Direction sets out some of the factors the Board may consider in determining the amount of costs awarded to a party.

The Board expects co-operation among parties with similar interests and will consider any lack of co-operation when determining the amount of a cost award.

The Practice Direction and related forms are available on the Board's website at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca).

Yours truly,

*Original signed by*

Kirsten Walli  
Board Secretary

cc: Paul Norris, OWA  
Glen MacDonald, Hydro One Networks

**Schedule F**



Ontario

EB-2011-0004

**IN THE MATTER OF** the *Ontario Energy Board Act*,  
1998, S.O. 1998, c. 15, Schedule B;

**AND IN THE MATTER OF** cost award eligibility for  
interested parties in a consultation process to  
develop guidance to the electricity industry in  
relation to establishment, implementation and  
promotion of a smart grid in Ontario.

**BEFORE** Ken Quesnelle  
Presiding Member

### **DECISION ON COST ELIGIBILITY**

On January 13, 2011, the Board issued a letter announcing a consultation to develop guidance to electricity distributors, transmitters and other regulated entities for which the Board regulates fees and expenditures that propose to undertake smart grid activities in Ontario. The consultation is part of the Board's response to a directive (the "Directive") issued by the Minister of Energy pursuant to section 28.5 of the *Ontario Energy Board Act, 1998* (the "Act"). The Board's January 13, 2011 letter indicated that cost awards would be available to eligible persons under section 30 of the Act in relation to their participation in this consultation, and that the costs awarded would be recovered from all rate-regulated licensed electricity distributors and transmitters. The due date for the filing of cost eligibility requests was January 24, 2011.

The Board received requests for cost eligibility from the following participants on or before January 24, 2011:

- Building Owners and Managers Association of the Greater Toronto Area ("BOMA")
- Kinectrics
- London Property Management Association ("LPMA").



- Ontario Sustainable Energy Association (“OSEA”)
- REGEN Energy

Electricity distributors and transmitters were given until February 4, 2011 to file any objections that they might have in relation to the eligibility of the above-noted participants for an award of costs. The Board did not receive any objections from distributors or transmitters.

Based on the criteria set out in section 3 of the Board’s *Practice Direction on Cost Awards* (the “Practice Direction”), the Board has determined that the following participants are eligible for an award of costs in this consultation: BOMA and LPMA.

With regard to the request by Ontario Sustainable Energy Association (OSEA) the Board has found it eligible for an award of costs in this consultation due to the particular circumstances of this consultation. In assessing the cost eligibility of an association such as OSEA, the Board has previously stated that it will consider the association’s membership, rather than considering the association as a distinct entity separate and apart from its members.<sup>1</sup> The Board notes that OSEA is an association whose membership consists predominantly of commercial service providers and generators. The Board finds that OSEA is, by virtue of its membership, *prima facie* not eligible for an award of costs under the Practice Direction. It has been the Board’s practice that commercial entities such as commercial service providers are ineligible for an award of costs. Commercial entities primarily represent their own commercial interests rather than “primarily representing” a public interest, even if they may be in the business of providing services that can be said to serve a public interest relevant to the Board’s mandate. Furthermore, section 3.05 of the Practice Direction provides that generators, among other regulated entities, are generally not eligible for a cost award.

While OSEA would therefore normally be ineligible for an award of costs, the Board believes that it is appropriate to grant cost award eligibility to OSEA in the circumstances of this consultation. This exercise of discretion is in keeping with sections 3.04 and 3.07 of the Practice Direction. The former contemplates that the Board may consider any other factor the Board considers relevant to the public interest

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<sup>1</sup> See the Decision on Issues and Cost Eligibility issued on March 22, 2011 in the Toronto Hydro CDM proceeding (EB-2011-0011). Specifically, the Board stated as follows: “To the extent that an entity’s membership is comprised largely of organizations that would themselves be ineligible for cost awards, so too should the entity be considered ineligible absent special circumstances.”

in determining cost award eligibility, and the latter contemplates that regulated entities may be found eligible if special circumstances so warrant.

The Board finds that OSEA provides important and unique perspectives in relation to the Board's mandate in this consultation. The Directive that is the impetus for this consultation directs that the Board, in developing guidance in relation to smart grid, and in evaluating the smart grid plans and activities undertaken by regulated entities, shall be guided by, and adopt where appropriate, particular objectives of a smart grid including customer participation in renewable generation and power system flexibility that enables distributed renewable generation. As indicated above, OSEA's membership includes several entities that are involved in renewable generation and commercial service providers which are active in the renewable generation sector, in particular in relation to consumer-based generation. The Board has determined that efficiency will be served by granting cost award eligibility to OSEA given the diversity of its membership. Therefore, based on OSEA's unique perspectives and the inherent efficiencies gained as a result of its association structure the Board has determined that OSEA should be eligible for an award of costs in the context of this consultation.

The Board has determined that Kinectrics, and REGEN Energy are not eligible for cost awards. Kinectrics is a consultancy and REGEN Energy provides building control automation and demand response services. In the view of the Board these participants do not meet the criteria for eligibility set out in section 3.03 of the Practice Direction. As indicated above, participants whose members represent primarily commercial interests are not eligible to apply for an award of costs. The Board does not believe that there are factors that would warrant granting cost award eligibility to these two participants in the context of this consultation.

The Board will require co-operation among participants with similar interests, and will consider any lack of co-operation when determining the amount of a cost award.

**ISSUED** at Toronto, April 4, 2011

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

**Schedule G**



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# Renewable Dispatch

## Ministry of Energy

October 11, 2011

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## **Agenda**

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- **Recap**
- **Required Timeline**
- **SBG Scenarios, Solutions and Their Costs**
- **OPA Contract Curtailment Provisions**
- **OPA Proposed Contract Amendment**
- **Next Steps**



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## Bottom Line

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- Last spoke in Spring 2011
- Without wind dispatch to manage SBG, we have incurred significant market and operational inefficiencies and contract costs
- SBG will persist and is expected to increase
- The occurrence and management of SBG will remain a prevalent story and will be highlighted going forward
  - Auditor General Report
  - FIT Review
  - IPSP
- SE-91 is continuing but wind dispatch is required before it will be completed
- We are targeting hourly wind dispatch for the December holiday period
- Going Forward – assume we will not get wind dispatch rules through without a contract amendment offer, without a fight at the technical panel and the OEB



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# Timeline for Wind Dispatch by December

Date	OPA	IESO
October	OPA/IESO to meet with Ministry OPA to gain approval from Ministry on contract amendments	OPA/IESO to meet with Ministry
Nov 6		Post rules for Stakeholder comment
Dec 1		Seek IESO Board approval
Dec 22		Provided Rules are not challenged at the OEB, Market Rule amendment goes into effect. IESO begins hourly dispatch



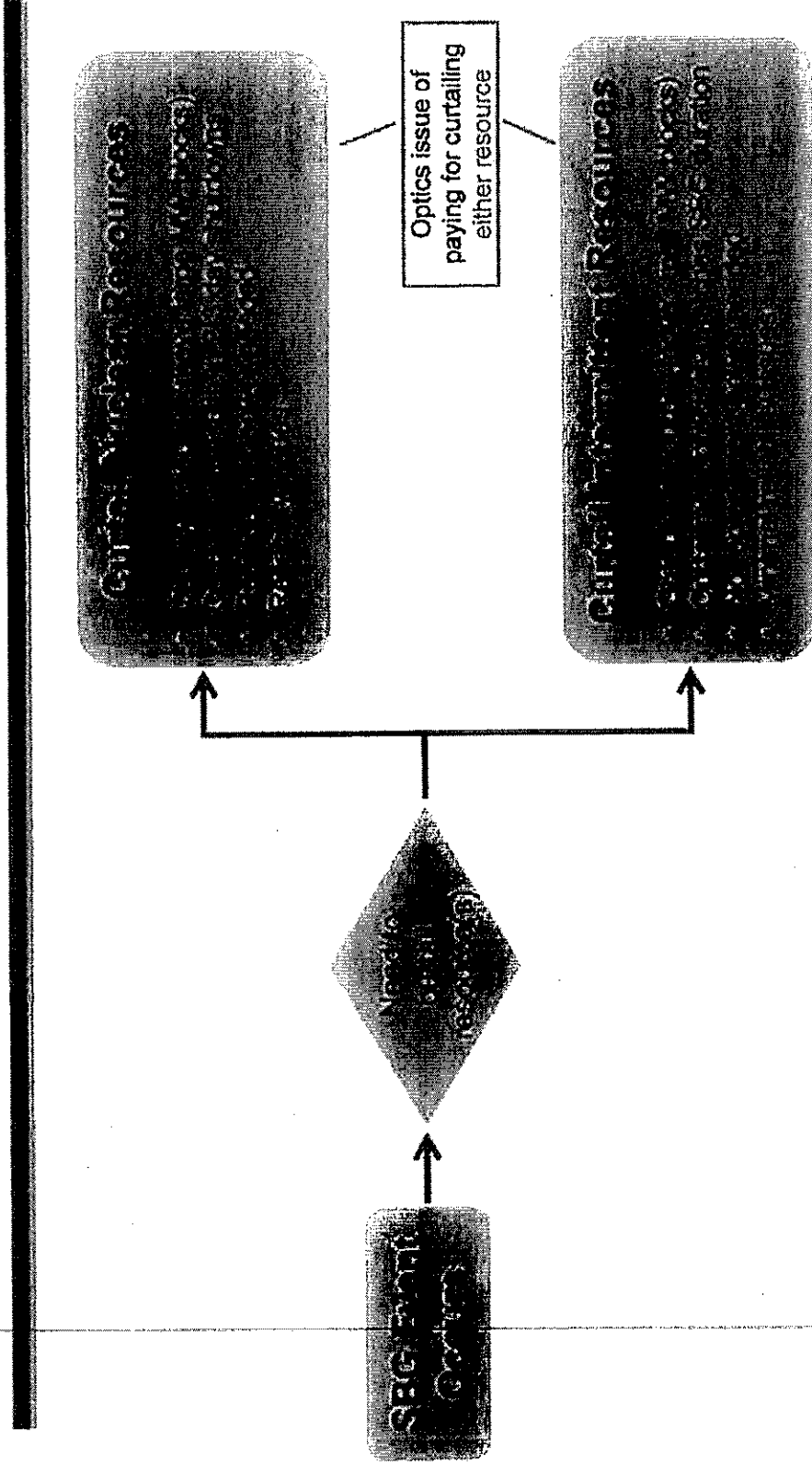
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# SBG Event



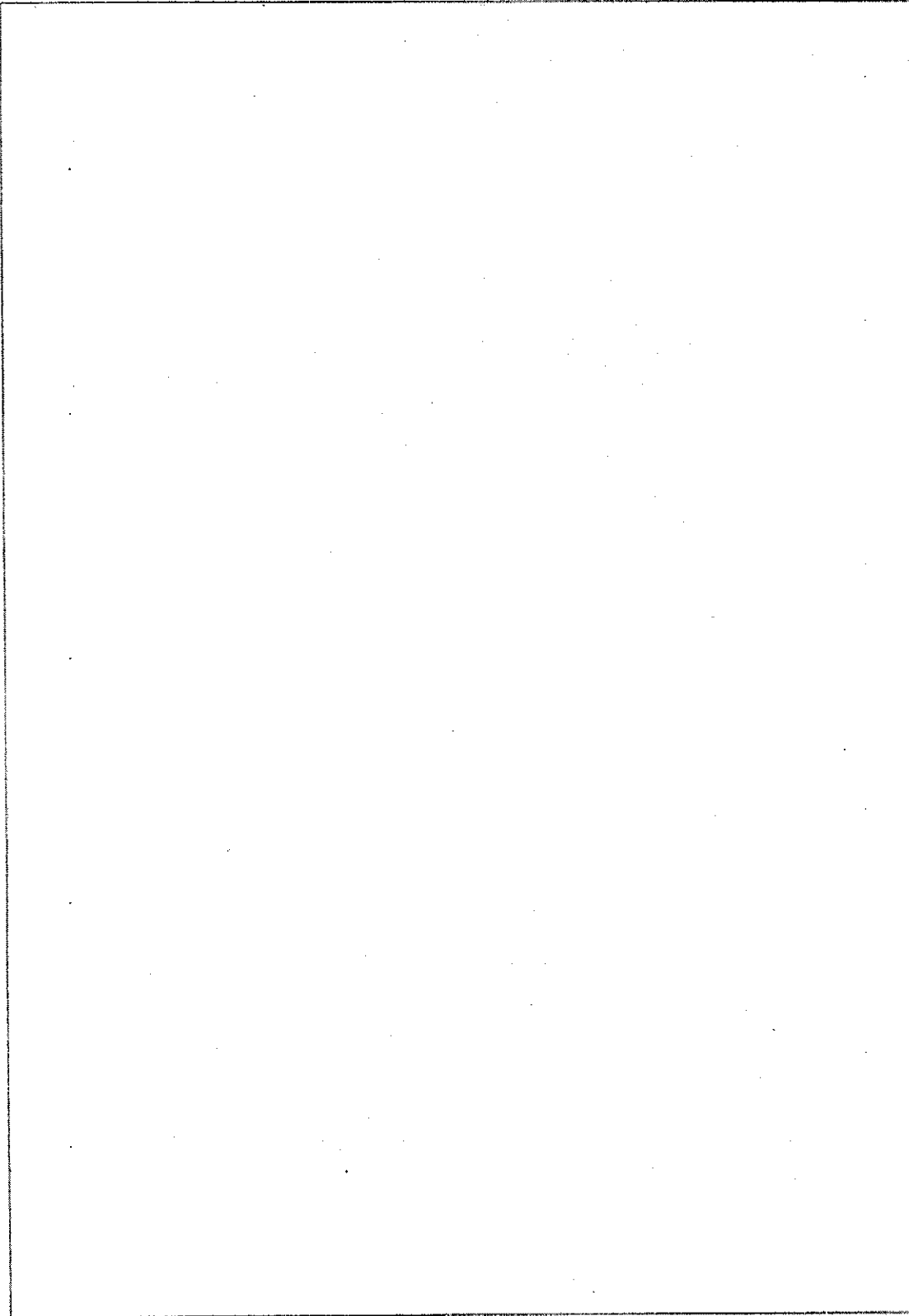
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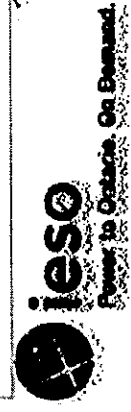
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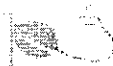
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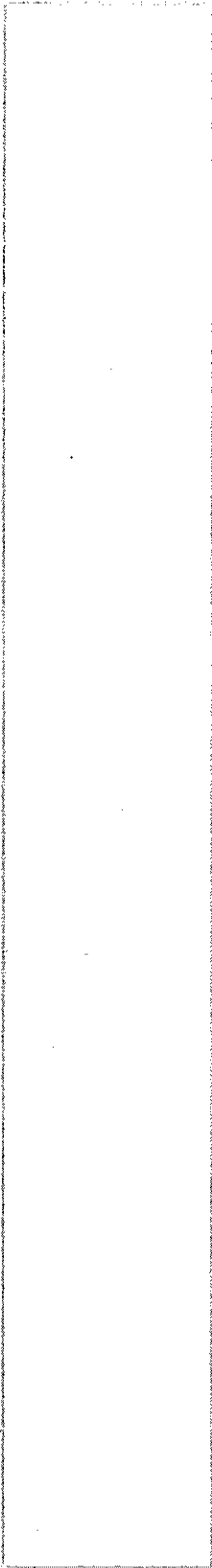
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# OPA Contract Cost Comparison of Nuclear vs Wind Dispatch for SBG > 900 MW



- The following table outlines the curtailment costs under each scenario, if wind was available to dispatch and was paid their contract price for their foregone energy.
- The calculation is based on an average weighted contract price of the current RES fleet

Nuclear Shutdown	
Wind Dispatch	
Difference in OPA Cost	
Difference in OPA Cost per Year	



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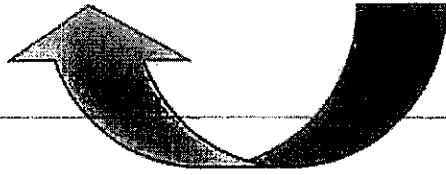
**OPA Contracts**



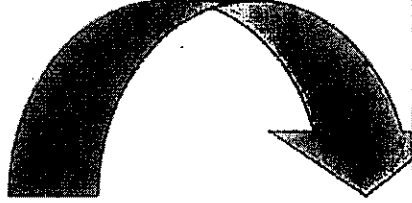
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# OPA RES Contracts

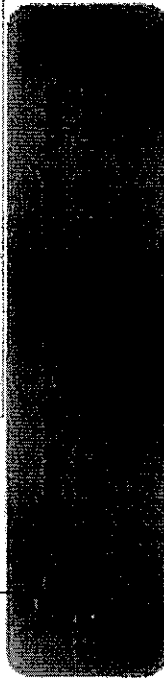
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**OPA, IESO and RES I & II Suppliers have been engaged in discussions as to the intent, meaning and enforceability of these 3 components**



**No common ground -- we have agreed to disagree**



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## OPA FIT Contract Provisions

- FIT suppliers get paid for every MW that they generate
  - There are contract provisions which incent them to curtail during global SBG and negative prices.
    - When FIT suppliers operate during a negative priced hour, their contract price is reduced by the negative market price
    - If they change their offer price to signal a willingness to go off and are curtailed they will receive their contract price.
  - There is currently no provision in the contract for curtailment during times of local SBG, when the market price is positive.
- 
- This proposal remains significantly more efficient then the current state of dispatching nuclear



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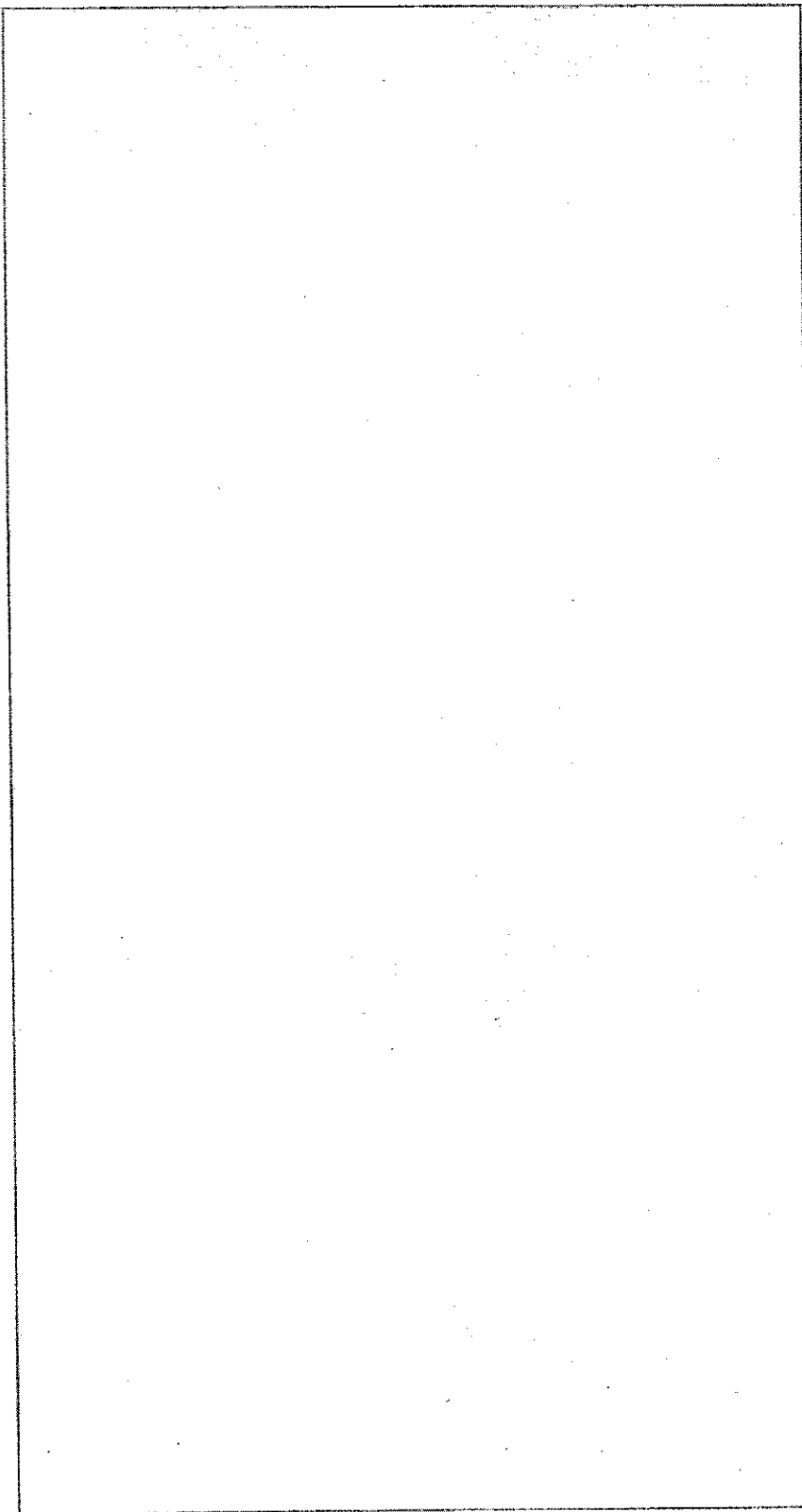
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# Contract Amendment Recap

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## Next Steps



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## Mitigation Options for Increasing Future SBG

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The following options are still being considered and pursued to manage increasing SBG in the future, but are not a solution to the current operational state

- IESO Integrating Renewables (SE-91)
- Planned Outages to preserve nuclear life
- Re-contracting NUGS
- Load Management
- Timing of new wind contracts

# Timeline for Wind Dispatch by December

Date	OPA	IESO
October	OPA/IESO to meet with Ministry	OPA/IESO to meet with Ministry
October	OPA/IESO to meet with Ministry. OPA to gain approval from Ministry on contract amendments	OPA/IESO to meet with Ministry
October	IESO contract amendment offers to RES Suppliers. IESO to meet with Ministry on amendments	IESO to meet with Ministry
Nov 8		Post rules for Stakeholder comment
Nov	Need to meet with Suppliers	
Dec 1		Seek IESO Board approval
Dec 2		21 day OEB Review Period

Dec 22  
 Provided Rules are not challenged at the OEB, Market Rule amendment goes into effect, IESO begins hourly dispatch



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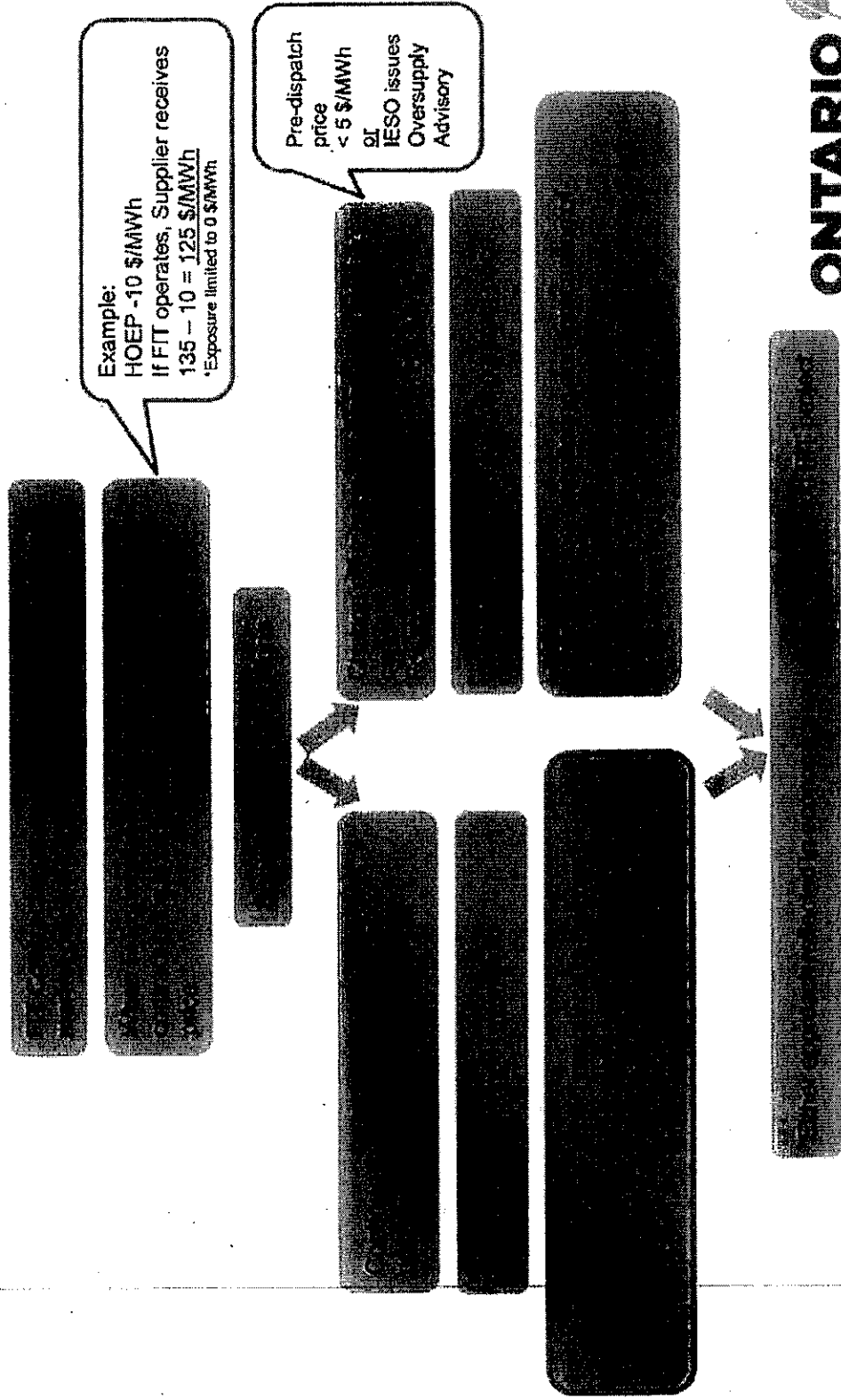
# Appendix



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# FIT Contract Provides Incentives to Curtail During Global Oversupply or Negative Prices



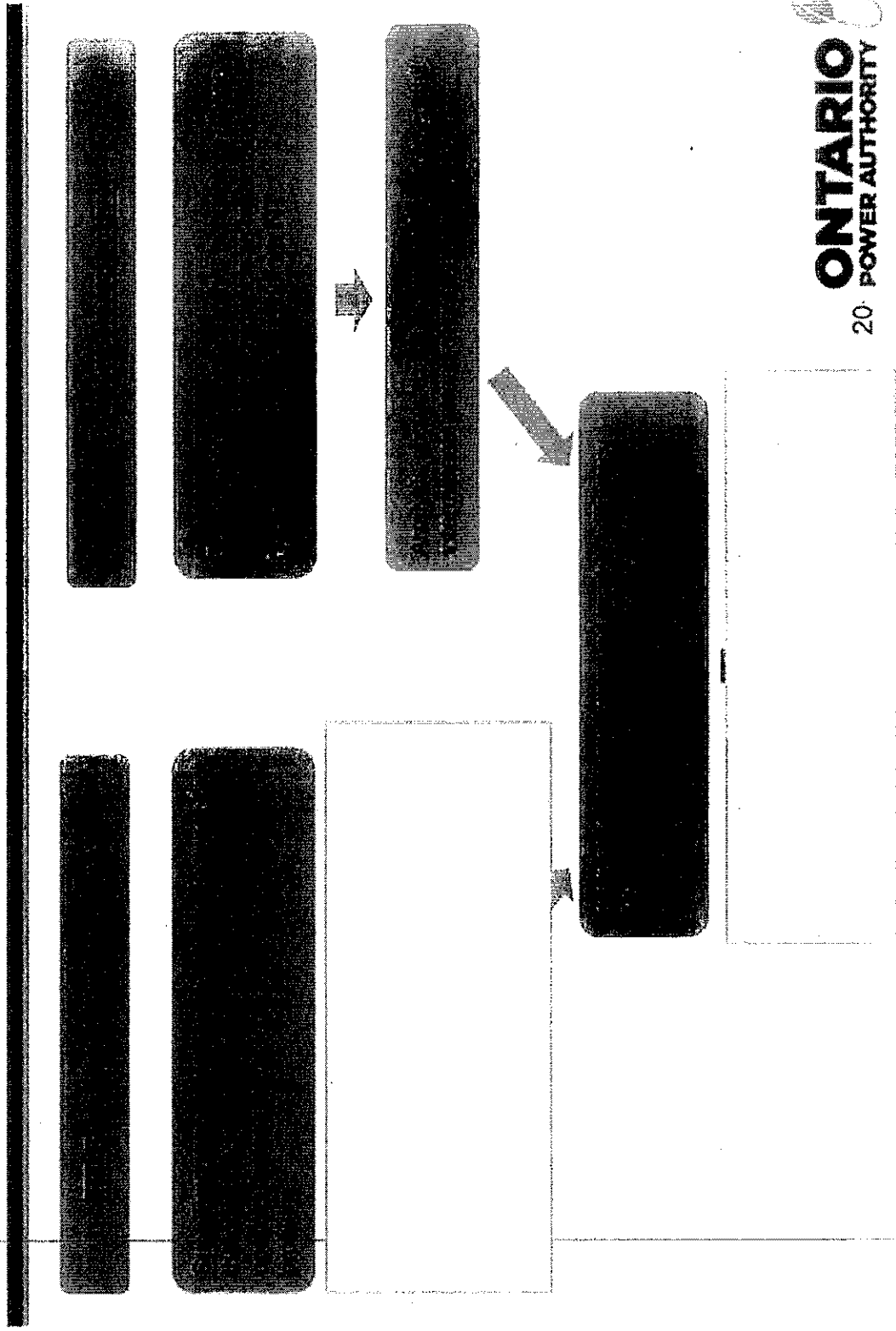
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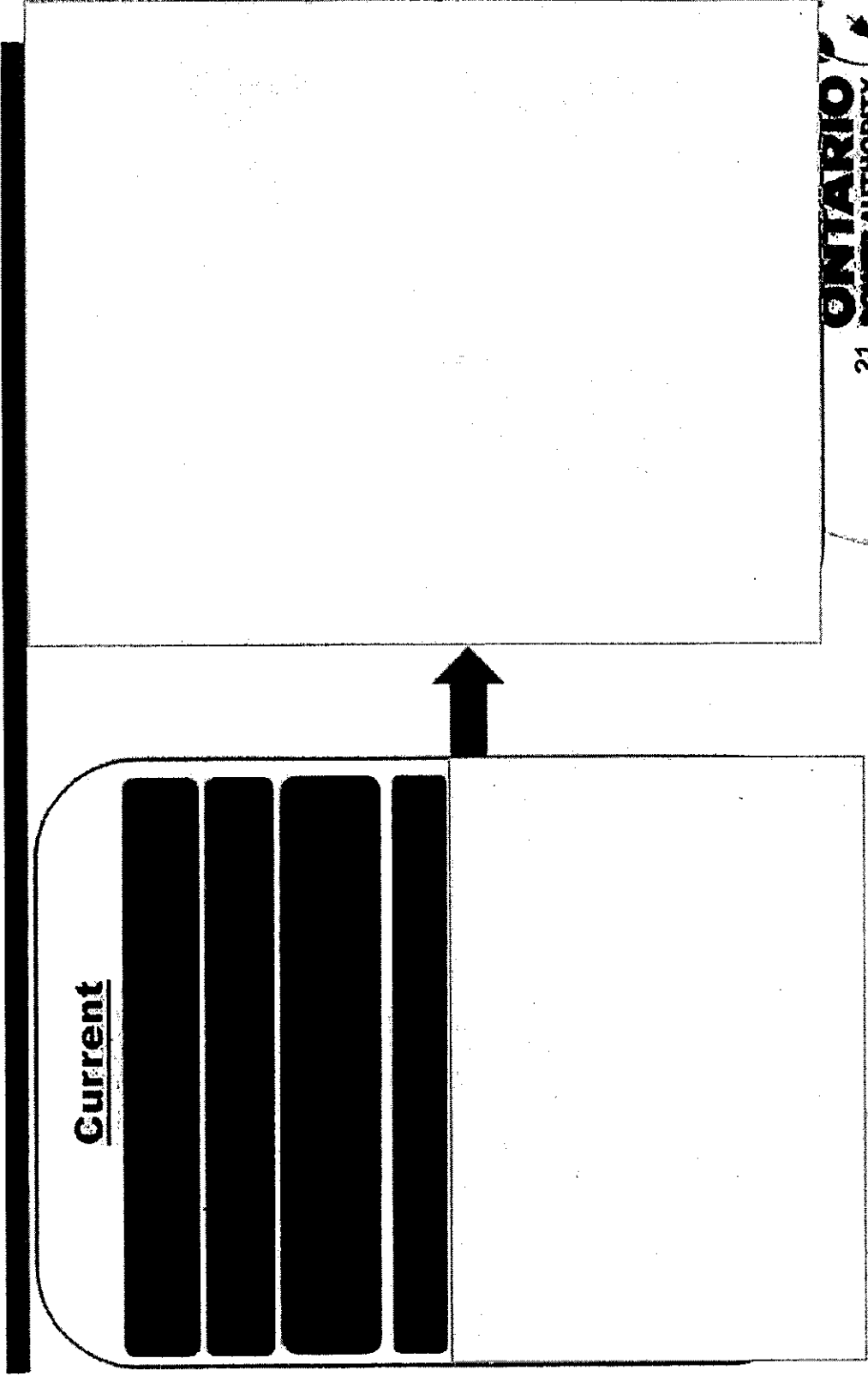


# FIT Operation: Local Perspective





# FIT Economics: Current vs. Future



**Schedule H**

Ontario Energy  
Board

Commission de l'énergie  
de l'Ontario



**EB-2006-0034**

**IN THE MATTER OF AN APPLICATION BY:**

**ENBRIDGE GAS DISTRIBUTION INC.**

**2007 RATES**

**DECISION WITH REASONS – PHASE 1**

July 5, 2007

The Board notes that no party objected to the clearance of the balance in this account as proposed by the Company. The Board also finds the Company's proposal reasonable and approves it.

***2006 Alliance Vector Appeal Cost Deferral Account (AVACDA)***

In RP 2002-0032, the Board ruled that Enbridge could not recover some \$11 million in costs arising from a contract to transport gas on the Alliance/Vector pipeline system. Enbridge appealed that ruling to the Divisional Court, which found that the Board had erred. The Board sought and was granted leave to appeal the decision by the Divisional Court to the Ontario Court of Appeal, which found that the Divisional Court had erred. Enbridge sought but was denied leave to appeal to the Supreme Court of Canada.

The Company has recorded costs of \$529,000 plus interest in this Board-approved account. All of the costs, according to the Company, are external legal fees and disbursements associated with the Company's actions on the Board's application for leave to appeal to the Court of Appeal and the Company's application for leave to appeal to the Supreme Court, and none of the claimed costs are related to its own appeal to the Divisional Court.

During the 2006 rate case, the Company had planned to record relevant costs and seek approval for clearing these costs to rates by means of the Ontario Hearing Costs Variance Account. The Board, however, in its 2006 Decision, directed the Company to apply for a new deferral account specifically to capture the costs associated with the Alliance Vector appeal. The Company subsequently requested and received approval, under docket EB-2006-0144, to establish the account. The Board in its 2006 rates decision (EB-2005-0001) commented about some of the considerations that should apply when it is asked to consider disposition of costs relating to an appeal of a Board decision. Specifically, the Board stated:

The rate structure in Ontario is predicated on a just and reasonable standard. Where a utility acting in good faith regards a Board decision to be unsound, it should be open to bring a Judicial

Review action, and to have prospect of recovery of the associated costs.

In addition, the Board also had the following to say in that decision about determining the prudence of expenditures for appeals:

In our view, the question of the prudence of the expenditure is not dependent on the success or failure of the review pursued by the Company; nor is the primary consideration whether the aspect appealed from inures to the benefit of the shareholder or the ratepayer. The determination of the prudence of the expenditure will turn on the reasonableness of the grounds for the review, the reasonableness of the costs incurred, including the relationship of the costs incurred to the likely outcome (which includes such intangibles as precedent, clarification of the law and corporate reputation), and the extent to which the Company can show that it prosecuted its case diligently and efficiently.

The Company submits that it clearly meets all tests which the Board stated are appropriate during its consideration of costs incurred by the Company on an appeal of a Board decision.

First, in respect of the Alliance Vector Pipeline disallowance by the Board, the amount was significant, being approximately \$11 million. The appeal did not involve a frivolous amount.

Second, the Company was successful on its appeal to the Divisional Court and that this is clear evidence of the reasonableness of it undertaking the appeal. It also confirms that the Company acted in good faith launching the appeal. While the Company agrees with the Board that the prudence of appeal expenditures is not dependent on the success or failure of the review, the fact that an independent judicial body agreed with the Company, is irrefutable proof of the reasonableness of the grounds for the review and hence the appropriateness of it launching the appeal.

Third, as to whether the costs incurred were reasonable, the Company is not seeking to recover any of the costs it incurred associated with the original appeal to the Divisional Court.