

February 13, 2013

Ms. Kirsten Walli
Ontario Energy Board
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Dear Ms. Walli:

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

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

Board File No.: EB-2013-0029

Please find enclosed the Cost Submissions of the Independent Electricity System Operator. Two (2) copies of the attached have been sent via courier.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Alan Mark", written over a horizontal line.

Alan Mark

Copy to: Jennifer Teskey, Norton Rose Canada LLP
All Parties

DOCSTOR: 2632018\1

ONTARIO ENERGY BOARD

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

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

COST SUBMISSIONS OF THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR ("IESO")

1. The Independent Electricity System Operator ("IESO") makes these submissions with respect to costs pursuant to the Board's Procedural Order No. 2 issued February 4, 2013 ("PO2").
2. In PO2, the Board determined as follows:

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

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

Applicants' Costs

3. As the Board recognized in PO2, the applicants in this proceeding are entities that are *prima facie* ineligible for an award of costs under section 3.05 of the Board's *Practice Direction on Cost Awards*. Indeed, the IESO has not sought its costs of this proceeding for this very reason, and there is no reason for the Board to apply a different standard to permit cost recovery by the applicants from the IESO. Accordingly, they should be required to bear their

own costs of this proceeding. Market participants are expected to bear their regulatory costs without passing them on to others, save only in exceptional circumstances. The Market Rule amendment process, and the review process with respect thereto, are not exceptional events and are properly viewed as the regulatory costs which may reasonably be foreseen by market participants.

4. While costs were awarded to the applicant in the only other proceeding in which the Board has reviewed a Market Rule amendment (in EB-2007-0040, the "Ramp Rate Review"), that decision was in part made based on the fact that the applicant (the Association of Major Power Consumers in Ontario ("AMPCO")) was participating in the funding of the cost awards in the case through payment by its members of the IESO's fees.
5. Such is not the case here. The applicants in this proceeding do not pay the fees that fund the IESO's administrative costs. The IESO is a public agency whose costs, including the costs of participating in this proceeding and any cost awards against it, are recovered through OEB-approved fees. As the Board recognized in PO2, the IESO's administrative costs are recovered on the basis of the volume of withdrawals by market participants from the IESO-controlled grid and not on the basis of the volume of their injections into the IESO-controlled grid. Therefore, generators do not fund those costs.
6. In the circumstances, the IESO submits that the nature of this proceeding does not warrant a departure from the Board's general rule that costs awards in a proceeding commenced by application should be borne by the applicant.
7. Further, in its decision regarding costs in the Ramp Rate Review, the Board specifically provided that its decision to order costs payable to AMPCO by the IESO should not be seen as a recognition that this result should necessarily be the case in future Market Rule amendment cases, specifically, the Board held:

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.¹

8. Given the nature of this proceeding, and for the reasons outlined above, the IESO submits that the Board should order that the applicants are not eligible for a cost award from the IESO, and should bear their own costs. Alternatively, a decision respecting the Applicants' cost claim should be deferred until the proceeding is concluded and all matters regarding the conduct of the hearing which could be relevant to costs are known.

Intervenor and Board Costs

9. As the Board recognized in PO2, in the normal course, cost awards in a proceeding commenced by application are recovered from the applicant(s).

¹ Ramp Rate Review, Procedural Order No. 2 dated March 9, 2007, at page 5.

10. It would be manifestly unjust if the effective “respondent” in the proceeding, the IESO, is forced to defend its market rules, pay all cost awards and receive no contribution to its costs regardless of the outcome of the proceeding. With respect to the Board's ruling on costs in the Ramp Rate Review, the Board relied on special circumstances (namely, that AMPCO was participating in the funding of the cost awards in the case through payment by its members of the IESO's fees) to order the IESO to pay all intervenors costs. If the Board makes a similar order in this case where no such special circumstances exist, the Board will have effectively established a practice that the IESO will pay all intervenor and Board costs in a Market Rule amendment review. The IESO submits that such a practice would be inappropriate and would establish incentives which could encourage unmeritorious applications for review.
11. The IESO submits that the nature of this proceeding, instead, warrants a “costs follow the cause” approach in regard to responsibility for the payment of intervenor cost awards and Board costs. The IESO respectfully requests that the Board defer the determination of the appropriate party from whom the costs awarded to intervenors will be recovered until the merits of the application are decided and all matters regarding the conduct of the hearing which could be relevant to costs are known.
12. Regarding intervenor requests for cost eligibility, the IESO finds it difficult to make any determination at this point in the proceedings regarding this issue. The IESO therefore reserves the right to make further submissions on eligibility as well as on the quantum of such claims in light of the nature of their interest and their participation in the proceedings as they may ultimately appear.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: February 13, 2013

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