

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 Electricity System
Operator for further consideration.

BOMA SUBMISSIONS ON CONFIDENTIALITY

The Board places great importance on openness and transparency in its proceedings. In its Practice Direction on Confidential Filings, it states that:

"The approach that underlies the Practice Direction is that the placing of materials on the public record is the rule and the confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case" (p1).

One of the important aspects of this case is the financial and economic impacts of the market rule changes, part of which consist of the impact of the rule change on the costs to ratepayers. The IESO has provided some data which indicates what the "system benefits" would be on the assumption that the renewable generators continue to receive the compensation under the RES I and RES II contracts. However, there is no information on the record to date about the impact on ratepayers of the proposed rule changes.

The OPA has severely redacted many of the documents for which it claims confidential treatment. In fact, they have removed any sections which deal with the amounts the OPA proposes to pay the generators in aggregate, as compensation in the event of curtailment, and the amount it would have paid under the RES contracts.

This reduction in payment per hour curtailed has been obviously removed from the documents. Further, the IESO has not estimated the number of likely hours the generators in the aggregate will likely be curtailed, given the projection for surplus baseload. The OPA has also removed any information on the economic and financial impacts of any of alternative curtailment strategies (nuclear, hydro).

The underlying rationale of the IESO rule change is that curtailing wind and solar creates higher "system benefits" than curtailing nuclear or hydro, which (nuclear) can only be done by increasing relatively expensive gas production during the ramp up and down of nuclear assets.

The intervenors need to see data on ratepayer impacts, both for Class A and Class B customers, to assess the system benefits. However, the OPA has not only redacted the documents beyond recognition, it does not want to produce the unredacted version at all to the counsel for the intervenors, on the grounds that the applicants' counsel is also assisting the applicants (or some of them) in their discussions with the OPA. The OPA claims "settlement privilege".

BOMA does not believe that "settlement privilege" has application to the intervenors in this case, even if it has application to Mr. Vegh.

Moreover, to characterize the OPA discussions with the various generators as private commercial discussions related to settling a dispute mischaracterizes the nature of their relationship, and the activities.

First, had the OPA continued to pay the RES contract amounts to the generators (each generator's price is different under the RES I and II tenders), there would be no disputes. While each RES I and RES II generator's circumstances are different, eg. some have financing, some

may not, presumably the basic offer from the OPA is similar. Moreover, the information sought is not the individual generator data, but the impacts of the payments to the generators in the aggregate; and even if those may change slightly, in the future, the current "offer" is the best information available with which to judge the economic/financial impacts of the rule change.

Second, even a cursory reading of the documents reveal that the IESO and the OPA have been working in tandem and with the Ministry on the proposed rule change, including the economic consequences thereof for over two years. A letter from the OPA on "renewable integration" dated December 9, 2010 is attached as Appendix A.

The change in the market rules and any changes made by the OPA to payments under the various procurement contracts to incent behaviour which the OPA and IESO believes to be in the public interest must be considered together. The IESO and the OPA have attempted to maintain a "two silos" approach, in their public position, when in fact they have been closely collaborating with each other, and with the Ministry to restructure the OPA's procurement operations in conjunction with IESO's market rule change. The combined effect of their actions have financial and economic effects which need to be disclosed in order for the Board to determine whether the rule changes are in compliance with the Electricity Act and/or unjustly discriminate in favour of a market participant or class of market participants.

Moreover, in the last analysis, financial negotiations between individual generators with the OPA will be conducted by them directly with their own counsel, and not through a group effort.

With respect to Ministry of Energy's confidentiality claim with respect to the document entitled Managing Surplus Generation, identified as IESO0003910 in the IESO email dated February 13,

2013, I have been unable to find the document among the redacted materials submitted by the IESO or the OPA, so I am unable to make submissions on their claim.

All of which is respectfully submitted.

February 14, 2013

A handwritten signature in blue ink that reads "Tom Brett" followed by a stylized flourish.

Tom Brett

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TO : RESOP, RES I and RES II Suppliers
FROM : JoAnne Butler, Vice President, Electricity Resources, Ontario Power Authority
DATE : December 9, 2010
RE : IESO's "Integrating Renewable Resources – Design Principles"

Building on the principles laid out in the Green Energy and Green Economy Act (GEA), the Long Term Energy Plan highlights Ontario's commitment to renewable generation being an important part of the province's supply mix. To facilitate this rapid expansion of renewable generation, the IESO is considering modification of the current Market Rules. These modifications will be guided by the "Integrating Renewable Resources - Design Principles" paper that was developed and which has recently been released for comment through the SE-91 initiative¹.

The OPA recognizes that some or all of the potential modifications to the IESO Market Rules may impact OPA contracted facilities and that the efficient integration of renewables into Ontario's electricity system may depend on how any revised Market Rules and OPA contracts interact. As a result the OPA is working alongside the IESO and all stakeholders to achieve such efficient integration.

To facilitate a productive stakeholder engagement process, the OPA is committed to working with Suppliers to accomplish the goals of efficiently and reliably integrating renewable generation into the system. The OPA will consider appropriate treatment of RESOP, RES I and RES II Contracts consistent with the OPA's commitment to working with the IESO and all stakeholders.

A handwritten signature in dark ink, appearing to read "JoAnne C. Butler", written over a horizontal line.

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

¹ For further details, please refer to the SE-91 page on the IESO website: http://www.ieso.ca/imoweb/consult/consult_se91.asp