

February 15, 2013

Ms. Kirsten Walli
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON
M4P 1E4

NORTON ROSE

Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose Canada LLP
TD Waterhouse Tower, Suite 2300
Toronto-Dominion Centre
79 Wellington Street West, P.O. Box 128
Toronto, Ontario M5K 1H1 CANADA

F: +1 416.360.8277
nortonrose.com

On January 1, 2012, Macleod Dixon joined
Norton Rose OR to create Norton Rose Canada.

Direct line
+1 416.216.4865

Our reference
01006736-0122

Email
Alan.Mark@nortonrose.com

Dear Ms. Walli:

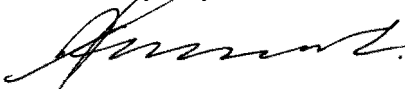
IN THE MATTER OF the Electricity Act, 1998, S.O. 1998, c. 15, Schedule A;

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

Board File No.: EB-2013-0029

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

Yours very truly,



Alan Mark

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

DOCSTOR: 263426711

Norton Rose Canada LLP is a limited liability partnership established in Canada. Norton Rose Canada LLP together with Norton Rose LLP, Norton Rose Australia, Norton Rose South Africa (incorporated as Deneys Reitz Inc) and their respective affiliates constitute Norton Rose Group, an international legal practice with offices worldwide, details of which, with certain regulatory information, are at nortonrose.com.

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.

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

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

Should Costs be Paid by the IESO

2. Both the applicants and intervenors make "public interest" arguments in support of their assertion that the IESO should pay their costs. They say that this is not simply a dispute between private parties, but one that raises issues of public significance. They claim that their participation will assist the Board's process and that their participation is therefore in the public interest.
3. While Market Rule amendments may involve some questions of interest beyond the parties, the *Electricity Act*, 1998 does not create a regime whereby all Market Rule amendments are required to undergo public review. It is an application process, which triggers a review on an exceptional basis, and in many cases, as here, to be utilized by persons who have a commercial interest in the amendments.
4. As such, the Board should not proceed to award costs on the basis that Market Rule amendment reviews are always conducted under a public interest mandate, with costs falling on the IESO as if it were the applicant or required to submit to a public review process as part of its mandate and the costs of which should be anticipated and accounted for in its rate applications before the Board, as suggested by the applicants.
5. Rather, as recognized by the Board in PO2, applicants seeking relief bear the costs of the application in the normal course. The fact that generators were awarded costs in EB-2007-0040 (the "Ramp Rate Review"), where they were not the applicants, does not assist the applicants in this case.
6. Whether the IESO should have budgeted for these costs is irrelevant to the issue of determining who is eligible for a cost award. The question is whether the ratepayers who pay the IESO's fees should have to bear the burden of funding the costs of the applicants or the intervenors.

Conduct of the Parties

7. The conduct of the parties, to the extent that the Board determines that it is relevant to any determination of cost eligibility, can only be assessed and addressed at the end of the hearing when the totality of the conduct of each party can be considered.
8. The applicants assert that the conduct of the IESO to date in responding to documentary production warrants an order that the IESO should pay the costs for all parties. The IESO submits there is no basis whatsoever for such an assertion. As well, the applicants' submissions ignore the fact that since December 2012, the IESO has been asking the applicants to meet to agree on a timely process for the early resolution of production issues and to set a workable schedule for the proceeding.
9. On the subject of production, the IESO made timely production in compliance with the Board's January 22, 2013 letter of direction and was substantially successful on the production motion. Any delay in the proceedings (and, in the IESO's view, there has been none), is because the applicants' overreached in their production requests.
10. While one can debate how the IESO dealt with the confidentiality issue in the circumstance when it was not the party making the request, there is no basis upon which to assert that the timeline for disposition of the confidentiality issue would have been any different.

Intervenor Eligibility

11. Regarding intervenor requests for cost eligibility and that this matter be determined now, contrary to PO2, the IESO respectfully requests that the Board defer this issue until the merits of the application are decided and all matters regarding the interest of the parties and the conduct of the hearing which could be relevant to costs are known. If the intervenors wanted cost eligibility to be determined by the Board in advance of the hearing, they should have already determined what their interests are and articulated them (in this proceeding or in the preceding extensive stakeholdering process), which they easily could have done from the material available through the stakeholdering process and on the IESO's SE-91 webpage. Having not done so, the intervenors should not be afforded any alternative but to wait until the end of the proceeding to determine the issue of cost eligibility.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: February 15, 2013

Alan Mark
Jennifer Teskey
Norton Rose Canada LLP
Suite 2300
Toronto-Dominion Centre
TD Waterhouse Tower
79 Wellington Street West
Toronto, Ontario M5K 1H1

Tel: 416.360.8511
Fax: 416.360.8277