



# **ONTARIO ENERGY BOARD**

## **BOARD STAFF SUBMISSION**

Application for Licence Renewal

Independent Electricity System Operator

EB-2013-0066

May 28, 2013

## THE APPLICATION

The Independent Electricity System Operator (the “IESO”) filed an application with the Ontario Energy Board (the “Board”) on March 1, 2013, under section 60 of the *Ontario Energy Board Act, 1998* (the “OEB Act”) to renew its licence. The Board has assigned file number EB-2013-0066 to the application.

The IESO was established in April of 1999 (when it was known as the Independent Electricity Market Operator), and was continued as a corporation without share capital under section 4 of the *Electricity Act, 1998* effective January 1, 2005. The IESO requires a licence under paragraphs (g) and (h) of section 57 of the OEB Act to enable it to direct the operation of transmission systems in Ontario and operate the market established by the market rules.

The IESO’s current licence was issued with an effective date of July 31, 2008, and will expire on July 30, 2013. The renewal of the licence will enable the IESO to continue to exercise its powers and perform its duties as set out in the *Electricity Act, 1998*.

The Board issued a Notice of Application and Written Hearing on March 26, 2013, making provision for interventions and for the filing of interrogatories and submissions. No requests for intervention were received by the Board, and no interrogatories were filed.

In its application, the IESO has requested that the Board renew its licence for a twenty-year period. The IESO has also proposed a number of changes to its licence, categorized as follows:

1. The removal of section 5.2 of the current licence, which was a condition applicable to interim and transitional licences only;
2. Proposed minor modifications to its current licence, for consistency with legislation or greater internal consistency within the licence; and
3. Amendments to sections 14, 16, 17 of the licence in the event that a Ministerial Directive enables such changes.

The following are Board staff's submissions on the IESO's proposals, as well as a further submission proposing that new conditions be added to the IESO's licence.

## **STAFF SUBMISSIONS**

### **Licence Term**

The IESO has proposed the renewal of its licence for a term of twenty years. Although historically the licence has been issued and renewed for five-year terms, Board staff submits that a twenty-year term is appropriate considering the following:

- the IESO's mandate and core responsibilities have not changed over the past ten years;
- the IESO's objects, as set out in section 5 of the *Electricity Act, 1998*, include directing the operation and maintaining the reliability of the IESO-controlled grid (section 5(1)(c)) and operating the IESO-administered markets (section 5(1)(g));
- the Board issues licences with twenty-year terms for most electricity sector participants, including transmitters, distributors and generators; and
- a longer licence term will reduce the administrative costs associated with the licensing process.

### **Removal of Section 5.2 of the Licence**

As noted by the IESO, the licence condition set out in section 5.2 originates from a Ministerial directive dated March 16, 1999 and approved by Order in Council 600/99 dated March 24, 1999 (the "1999 Directive"). Board staff agrees with the IESO that the 1999 Directive by its terms required the condition to be included only in licences issued under section 129 of the OEB Act, which has now been repealed. Board staff therefore agrees that there is no obligation on the Board to maintain this licence condition, and sees no reason why it should be retained.

## Modifications to the IESO's Licence

The IESO has proposed a number of modifications to its licence that Board staff understands are largely intended for consistency, whether with applicable legislation or internally within the licence itself. Board staff agrees with the IESO's proposals, with the exception of the following:

i. *Section 1, Definitions:*

The IESO has proposed to revise the definition of "Market Surveillance Panel" such that it refers to the panel "established by the Board's management committee pursuant to section 4.3.1 of the *Ontario Energy Board Act, 1998*". While Board staff agrees that this definition needs to be updated to reflect the fact that the Market Surveillance Panel is no longer a panel of the IESO, Board staff submits that a more appropriate revised definition is the one that is found in section 2 of the *Electricity Act, 1998*, namely: "'Market Surveillance Panel' means the Market Surveillance Panel continued under Part II of the *Ontario Energy Board Act, 1998*". Because the licence uses "Act" to refer to the OEB Act, for purposes of the licence the revised definition need not to refer to the full name of the OEB Act.

- ii. The IESO has proposed to revise the definition of "standards authority" by replacing the word "recommends" with the word "approves". Board staff notes that the term "standards authority" is not currently used in the IESO's licence beyond being a defined term. By contrast, the related concept of "reliability standards" is used in paragraph (f) of section 6.2 of the licence but is not defined. Board staff submits that defining both concepts in the licence would be useful to support paragraph (f) of section 6.2 of the licence as well as one of the proposed new licence conditions discussed below (if accepted). Board staff further submits that it would be appropriate to use the following definitions found in section 2 the *Electricity Act, 1998*:

"reliability standard" means a standard or criterion, including an amendment to a standard or criterion, relating to the reliable

operation of the integrated power system that is approved by a standards authority

“standards authority” means the North American Electric Reliability Corporation or any successor thereof, or any other agency or body designated by regulation that approves standards or criteria applicable both in and outside Ontario relating to the reliability of transmission systems

iii. *Section 2, Interpretation:*

The IESO has proposed to revise the latter part of section 2.1 to specify that a holiday is a “statutory” holiday, and to make it clear that where a deadline occurs on a statutory holiday, the act may be done on the next day that is not a statutory holiday. Board staff notes that the *Legislation Act, 2006* uses the term “holiday” (which it then defines), rather than “statutory” holiday. Board staff also notes that other licences issued by the Board similarly also refer to “holiday”. Board staff submits that, if there is ambiguity in respect of the meaning of the term “holiday”, that ambiguity is better resolved by referring to “a holiday within the meaning of the *Legislation Act, 2006*”. Board staff does agree that the end of section 2.1 should be modified to refer to “the next day that is not a holiday”, which is consistent with other licences issued by the Board.

iv. *Section 6, Provision of Information to the Board:*

The IESO has proposed the deletion of paragraph (c) of section 6.2 of the licence. Board staff agrees that the obligation set out in this paragraph is covered by the more general obligation to comply with the market rules that is included in section 7 of the licence. However, the Board may wish to consider whether there is nonetheless merit to retaining a reference to this obligation in section 6.2 of the licence as a useful reminder of it as a specific reporting requirement.

v. *Section 12, Procuring Ancillary Services Through Markets:*

The IESO has proposed corrections to paragraphs (a) and (f) of section 12.2 of the licence. Although these changes are very minor in nature, Board staff understands that section 12.2 of the licence originated with the 1999 Directive and has been modified as required by subsequent Ministerial directive (dated May 21, 2008, approved by Order in Council 696/2008 dated May 14, 2008). Board staff therefore believes that it is appropriate to treat these proposed changes in the same manner as the proposed changes to sections 14, 16 and 17 discussed below.

**Amendments to Sections 14, 16, 17 of the Licence**

In its application, the IESO notes that the licence conditions in sections 14, 16 and 17 originate from the 1999 Directive. Board staff agrees with the IESO that changes to those sections of the licence require a further Ministerial directive to that effect. Specifically, Board staff notes that section 2 of the 1999 Directive states as follows:

The licence conditions referred to in paragraph 1 are not to be subsequently amended, varied, removed, not renewed or stayed, except as expressly contemplated in said licence conditions or in this document. The foregoing shall not prevent the Board from taking or omitting to take any action arising in connection with any review, determination, request, advice or recommendation referred to in said licence conditions or in this document.

Board staff therefore submits that changes to sections 14, 16 and 17 of the IESO's licence should not be made at this time, and further submits that the same approach should apply in respect of the IESO's proposed changes to section 12.2 of the licence (referred to above).

Board staff also submits that, in the event that changes to section 16 of the licence were become permitted, consideration should be given to deleting section 16.1 altogether rather than amending it. Since the Market Surveillance Panel

now resides within the Board rather than being a panel of the IESO, it is not clear that section 16.1 remains appropriate as a condition of the IESO's licence.

### **Proposed New Licence Conditions**

Board staff is proposing that new conditions be added to the IESO's licence to require filings in relation to three matters: the implementation of recommendations of the Market Surveillance Panel ("MSP"); market rule amendments in the context of an application to review; and the development and status of reliability standards. Board staff submits that including these matters as licence conditions will not only be of assistance to the Board, but will also provide greater regulatory predictability for the IESO in terms of the Board's needs.

The context for each of the proposed new licence conditions, as well as Board staff's specific proposals, is set out below.

#### **1. *Annual Reporting on Implementation of Market Surveillance Panel Recommendations***

In his 2011 Annual Report, the Auditor General of Ontario made the following recommendation:

To help ensure that the interests of consumers are protected with respect to those charges not subject to Ontario Energy Board (Board) oversight and regulation, the Board should...work more proactively with the [IESO] to address the high-priority recommendations from the Market Surveillance Panel. (at page 79)

The Board's response to this recommendation was as follows:

The Board supports the objective of enhanced co-ordination among energy-sector agencies, while at the same time respecting both its own mandate and the authority and responsibilities of other agencies. The Board will work with the [IESO] to ensure that high-priority recommendations made by the Market Surveillance Panel are appropriately addressed in a timely manner. (at page 80)

Board staff notes that it has now become standard practice for the Board to request that the IESO advise of the actions it intends to take in response to recommendations made in the MSP's semi-annual monitoring reports. To date, this has been done by means of a letter from the Chair of the Board to the Chief Executive Officer of the IESO, typically issued at the same time as, or shortly after, the posting of any MSP monitoring report on the Board's website. In more recent letters, the Chair of the Board has also requested that the IESO provide a status update on any actions that the IESO may be taking in response to recommendations made in the immediately preceding MSP monitoring report.

Board staff is aware that the IESO has, for many years, posted on its website a document that contains its responses to the recommendations made in MSP monitoring reports. The document is updated to include the IESO's responses to new recommendations as they are made in succeeding MSP monitoring reports. However, to Board staff's knowledge the document is not updated to reflect the current status of older recommendations.

Board staff submits that it would be of assistance to the Board if the IESO were to submit an annual report to the Board indicating the status of the IESO's activities in respect of outstanding MSP recommendations. Board staff therefore proposes that the following new condition be added to the IESO's licence, as a new paragraph in section 6.2:

provide the Board, on or before the end of each calendar year, with the status of actions taken by the Licensee further to all recommendations addressed to the Licensee in any report issued by the Market Surveillance Panel in that year and the preceding four calendar years to the extent that they remain outstanding and, where no action has been taken in relation to a recommendation, the rationale for not taking action.

## **2. *Filing re Market Rule Amendment Review Application***

Under section 33 of the *Electricity Act, 1998*, any person may apply to the Board to review an amendment to the market rules, and the Board is required to issue an order that embodies its final decision within 60 days after receiving an



application.<sup>1</sup> The statutory “test” that applies in relation to such applications, as set out in section 33(9) of the *Electricity Act, 1998*, is whether the market rule amendment is inconsistent with the purposes of the *Electricity Act, 1998* or unjustly discriminates against or in favour of a market participant or class of market participants.

In 2007, the Board completed a review proceeding in respect of an application to review a market rule amendment pertaining to operation of the “three times” ramp rate (EB-2007-0040). More recently, the Board commenced a proceeding on a second application, this one made jointly by a number of entities that own and/or operate wind generation facilities, in respect of market rule amendments that deal with the dispatching of, and the establishment of floor prices for, variable generation facilities (EB-2013-0010/EB-2013-0029). Ultimately, the applicants in this latter proceeding withdrew their application, but not before the issuance of a number of Procedural Orders dealing in part with issues pertaining to document production and confidentiality. In advance of filing their application to review with the Board, the wind generators filed an application under section 21 of the OEB Act asking the Board to give directions to the IESO to prepare evidence. The Board did, on its own motion, direct the IESO to provide some of the materials requested by the wind generators (see the Board’s Letter of Direction to Produce Evidence dated January 22, 2013), and did so prior to the date on which their application to review the market rule amendments was itself filed. The materials that the Board directed the IESO to produce were similar to the materials that the IESO was ordered to produce in the earlier proceeding regarding the ramp rate amendment.

Based on the Board’s experience with these two proceedings, Board staff submits that information pertaining to the development of, and the rationale for, any market rule amendment that is the subject of an application for review under section 33 of the *Electricity Act, 1998* will be relevant to the Board’s hearing of the application and will be required by the Board. The information in question resides with the IESO. Board staff also believes that the two proceedings demonstrate that the document production process can be time-consuming,

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<sup>1</sup> Applications to review urgent market rule amendments are addressed in section 34 of the *Electricity Act, 1998*, and are not subject to the same 60-day statutory timeline.

which is of particular concern in the context of a proceeding that must be completed within a challenging statutory timeline.

Board staff therefore submits that the Board and parties to a market rule amendment review proceeding would be assisted by the production of relevant information as early as possible following the filing of an application to review. Board staff therefore proposes that the following new condition be added to the IESO's licence:

The Licensee shall, within seven days of the date of the filing of an application to review a Market Rule amendment under section 33 of the Electricity Act, file with the Board the following in respect of that Market Rule amendment:

- i. all Market Rule Amendment Submissions relating to the amendment, including any covering memoranda;
- ii. all written submissions received by the Licensee in relation to the amendment;
- iii. minutes or meeting notes of all stakeholder meetings (including meetings of the Licensee's Stakeholder Advisory Committee) and of all meetings of the Licensee's Technical Panel at which the amendment or the subject matter of the amendment was discussed;
- iv. a list of all materials related to the amendment or the subject matter of the amendment tabled before any stakeholders (including the Licensee's Stakeholder Advisory Committee) or before the Licensee's Technical Panel;
- v. a list of all materials tabled before the Board of Directors of the Licensee in relation to the amendment or the subject matter of the amendment, and a copy of all such materials other than those already captured by item (i) above;
- vi. a copy of the decision of the Board of Directors of the Licensee adopting the amendment;

- vii. any analysis conducted by the Licensee relating to the costs and benefits of the amendment, to the extent not already captured by any of the items above;
- viii. all materials relating to the development and consideration of options that involved alternatives to the amendment, to the extent not already captured by any of the items above; and
- ix. any materials relating to the consistency of the amendment with the purposes of the Electricity Act, to the extent not already captured by any of the items above.

### **3. *Filings re Reliability Standards***

Under section 36.2 of the *Electricity Act, 1998*, the Board has authority to review reliability standards in two circumstances; on its own motion or on application by any person. This authority pertains specifically to reliability standards adopted by the North American Electric Reliability Corporation (“NERC”) or the Northeast Power Coordinating Council (“NPCC”). Board staff understands that NPCC develops two types of reliability standards, both of which are intended to meet regional needs and apply on a regional basis: (i) “regional standards”, which are developed under a regional delegation agreement with NERC and are subject to approval by NERC, and (ii) “reliability criteria”, which are not subject to approval by NERC. It is also Board staff’s understanding that NERC standards and NPCC regional standards are subject to approval by the Federal Energy Regulatory Commission (“FERC”), failing which they do not take effect in the United States.

The Board’s authority to review a reliability standard is triggered by the IESO’s receipt of notification of approval of the standard by the applicable standards authority. Within seven days of that notification, the IESO must post the standard on its website. An application for review of a reliability standard must be filed with the Board within 21 days after the posting of the standard by the IESO. The Board, however, has 120 days within which to determine whether or not it will initiate a review of a standard on its own motion. Where the Board reviews a reliability standard, it may “remand” it back to the applicable standards authority for further consideration.

One of the statutory objects of the IESO is “to participate in the development by any standards authority of standards and criteria relating to the reliability of transmission systems” and “to work with responsible authorities outside Ontario to co-ordinate the IESO’s activities with their activities”. Ontario participates in the NERC and NPCC standards development processes principally through the IESO.

*A. Filing at the time of posting of a reliability standard*

There is currently no requirement under the *Electricity Act, 1998* that the IESO provide information to the Board when it posts a reliability standard, although section 36.2(1) of the *Electricity Act, 1998* does contemplate that a regulation may be made prescribing information or materials to be provided by the IESO at the time of posting. Board staff submits that it would be of assistance to the Board for the IESO to provide supporting materials in respect of each reliability standard that is posted for the purposes of section 36.2 of the *Electricity Act, 1998*. Board staff further submits that the IESO’s active participation in the standards development process places it in a unique position to readily provide the requisite materials. Board staff therefore proposes that the following new condition be added to the IESO’s licence:

The Licensee shall, within seven days of the posting of a reliability standard under section 36.2(1) of the *Electricity Act*, file with the Board the following information or such other information as may be determined by the Board from time to time:

- i. a summary of the purpose of the reliability standard;
- ii. the class(es) of market participant to which the reliability standard will apply;
- iii. the anticipated technical impact that the reliability standard will have in Ontario;
- iv. an indication of the magnitude of costs associated with implementation of the reliability standard in Ontario, if known by the Licensee;
- v. a summary of the level of Ontario support for or opposition to the reliability standard during the standards development process,

- including the result of the final vote of the Registered Ballot Body of NERC or NPCC, as applicable; and
- vi. any salient history regarding the reliability standard, including whether the reliability standard has already been the subject of an order issued by the Federal Energy Regulatory Commission.

*B. Filing re FERC review of a reliability standard*

As noted above, it is Board staff's understanding that NERC standards and NPCC regional standards do not take effect in the United States until they are approved by FERC. The *Electricity Act, 1998* does not speak to the coming into force of reliability standards in Ontario. Section 1.2.6 of Chapter 5 of the market rules, however, states that a standard that is subject to FERC approval in the United States does not come into effect in Ontario unless it has been declared in force in the United States. Although it was expected that FERC would complete its review of a reliability standard within the 120-day window allowed under the *Electricity Act, 1998* for the initiation of a review on the Board's own motion, in practice FERC may take longer for its review. A decision by the Board as to whether or not to initiate a review of a NERC standard or an NPCC regional standard on its own motion may therefore need to be made before it is known whether the standard has been approved by FERC (and hence whether the standard will be effective in the United States and in Ontario). Board staff also notes that one of the grounds on which the Board may "remand" a reliability standard is if there is a need to co-ordinate with other jurisdictions or regulatory bodies in other jurisdictions regarding the reliability standard.

Board staff submits that it would be helpful to the Board if the IESO were to notify the Board when the IESO becomes aware that FERC's review of a reliability standard has been completed. It is submitted that the IESO, as a member of NERC and NPCC, will have timely knowledge of FERC's review. Board staff therefore proposes that the following new condition be added to the IESO's licence:

The Licensee shall notify the Board promptly upon becoming aware that the Federal Energy Regulatory Commission has released an order regarding a reliability standard.

*C. Filing re “Non-ANSI” standards*

Board staff understands that a “non-ANSI” standard is a NERC standard that does not have the level of industry support required by NERC’s rules and processes but that has nonetheless been adopted by NERC because NERC has been ordered to do so by FERC. A non-ANSI standard is a “reliability standard” for the purposes of section 36.2 of the *Electricity Act, 1998*. According to section 1.2.7 of Chapter 5 of the market rules, however, a non-ANSI standard is not in force in Ontario unless and until the IESO determines, in consultation with affected market participants, that all or part of the reliability standard is in force in Ontario. Where the IESO rejects a non-ANSI standard altogether, it may choose to develop a “made in Ontario” solution in lieu of it.

Board staff submits that it would be of assistance for the Board to be notified of developments regarding non-ANSI standards on a timely basis. Board staff therefore proposes that following new condition be added to the IESO’s licence:

Where the Licensee engages in a consultation regarding a non-ANSI standard under section 1.2.7 of Chapter 5 of the Market Rules, the Licensee shall promptly upon completion of that consultation provide a report to the Board that includes the following information:

- i. a description of the consultation process, including the identity of the market participants that were consulted;
- ii. a summary of the position of each market participant as expressed during the consultation;
- iii. the outcome of the consultation; and
- iv. where the outcome is the rejection of the non-ANSI standard, an indication of whether a “made in Ontario” standard is being considered in lieu of the non-ANSI standard.

All of which is respectfully submitted.