



EB-2013-0066

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

AND IN THE MATTER OF an application by the
Independent Electricity System Operator for renewal
of its licence.

By delegation, before: Theodore Antonopoulos

DECISION AND ORDER
September 26, 2013

BACKGROUND

The Independent Electricity System Operator (“IESO”) filed an application dated March 1, 2013 with the Ontario Energy Board (the “Board”) under section 60 of the *Ontario Energy Board Act, 1998* (the “Act”) to renew its licence.

In its application, the IESO requested that the Board renew its licence for a twenty-year term. The IESO also proposed a number of other changes to its licence, which Board staff categorized as follows in its submissions made further to the Notice of Application and Written Hearing referred to below:

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 and 17 of the licence in the event that a Ministerial Directive enables such changes.

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, and no interrogatories were filed. Board staff filed a submission on May 28, 2013 and the IESO filed its reply submission on June 21, 2013.

In its submission Board staff commented on the IESO's proposed term of the licence and the proposed changes, and also proposed several new conditions for the Board's consideration.

By Decision and Order dated July 26, 2013, the IESO's current licence was extended until the final determination of this matter or September 30, 2013, whichever is earlier. On August 12, 2013, the IESO filed a letter with the Board regarding one of the new licence conditions proposed by Board staff.

SUBMISSIONS AND FINDINGS

I. Changes Proposed by IESO

Section 5.1: Licence Term

In its application, the IESO has proposed the renewal of its licence for a term of twenty years. Historically, the licence has been issued and renewed for five-year terms. In support of its request the IESO stated that considering that the IESO's mandate and core responsibilities have not changed over the past ten years, a longer term of the licence is more appropriate and will reduce administrative costs associated with the licensing process. In addition, the IESO stated that the Board issues licences with twenty-year terms for many market participants. Board staff in its submission supported the IESO's request and stated that a twenty-year term of the licence is appropriate considering the reasons provided by the IESO.

I have determined that it is in the public interest to renew the IESO's licence for a term of twenty years for the reasons provided by the IESO.

Removal of Section 5.2: Condition Related to Interim Licences

The IESO proposed the removal of the licence condition set out in section 5.2 of its licence. As noted by the IESO, this condition originates from a Ministerial Directive dated March 16, 1999 and approved by Order in Council 600/99 dated March 24, 1999 (the “1999 Directive”) and was applicable to interim and transitional licences issued under section 129 of the Act, which has now been repealed. Board staff in its submission stated that there is no obligation on the Board to maintain this licence condition and agreed that this licence condition can be removed.

Considering that the licence condition set out in section 5.2 of the licence ceased to apply once the IESO received a permanent licence in 2003, and the fact that section 129 of the Act to which section 5.2 applies has been repealed, I agree that section 5.2 should be removed from the IESO’s licence.

Minor Modifications

The IESO has proposed a number of largely minor modifications to its licence with the intent of achieving consistency with applicable legislation and within the licence itself. In its submission, Board staff agreed with the IESO’s proposals with a few exceptions for which Board staff proposed alternatives. The IESO supported those alternatives in its reply submission.

I accept the minor modifications to the licence proposed by the IESO as these modifications are administrative in nature and do not affect the authorizations and obligations under the licence. These include changes to sections 4, 7, 9 and 18. I also accept certain of the alternative modifications proposed by Board staff (and supported by the IESO). The relevant findings are as follows:

- *Section 1, Definitions:*
 - The definition of “Market Surveillance Panel” will be revised to read: “means the Market Surveillance Panel continued under Part II of the Act”.
 - A new defined term will be added for “reliability standard”, specifically: “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”.

- The definition of “standards authority” will be revised to read: “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”.
- *Section 2, Interpretation:*
 - The end of section 2.1 will be modified to include a reference to an action being permitted to occur on the next day “that is not a holiday”, which is consistent with other licences issued by the Board.
- *Section 6, Provision of Information to the Board:*
 - Section 6.2(c) of the licence will be deleted as requested by the IESO given that the obligation set out in that section is covered in section 7 of the licence. I find that it is not necessary to retain section 6.2(c) for the purpose of reminding the IESO of its obligations in this regard, given that the requirement is captured in section 7.2.

Amendments to Sections Requiring a Ministerial Directive (Sections 12, 14, 16, and 17)

The IESO identified changes to these sections to address references that either no longer apply or are outdated, or to harmonize wording with other Board-issued licences. The IESO also noted, however, that sections 14, 16 and 17 of the licence originated from the 1999 Directive and that no change can be made to them without the issuance of another Ministerial Directive. The IESO stated that if such a future Directive enabled these changes, the IESO would seek corresponding amendments. In its reply submission, the IESO did not take issue with Board staff’s submission that section 12 of the licence, to which the IESO also proposed changes, also falls into this category.

Board staff agreed that no changes should be made to these sections of the licence in the absence of a further Directive to that effect. Board staff also noted that, in the event that changes to section 16 were to become permitted, consideration should be given to deleting section 16.1 altogether rather than amending it. Board staff observed that 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. In its reply submission, the IESO agreed with Board staff's observation regarding section 16.1.

I agree that no changes should be made to these sections in the absence of a further Ministerial Directive. Although the IESO did not address Schedules A and B of the IESO's licence, the same may be said of these Schedules which also originated with the 1999 Directive.

In the interests of clarity, however, the licence shall include footnotes to sections 14, 16 and 17 that explain that those sections originated from the 1999 Directive and identify relevant changes in circumstance. No similar clarification is required for section 12, as there are no relevant changes in circumstances.

II. New Licence Conditions Proposed by Board Staff

In its submission, Board staff proposed that new conditions be added to the IESO's licence to require filings in relation to three matters:

- Annual reporting on the implementation of Market Surveillance Panel ("MSP") recommendations;
- Filings regarding market rule amendments in the context of an application to review; and
- Filings regarding the development and status of reliability standards.

Board staff submitted 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.

I note that the IESO did not object, as a general matter, to the use of conditions to address these items, nor did it propose alternatives, but rather addressed each proposed condition in turn, and on its own merits.

Annual Reporting on the Implementation of MSP Recommendations

Board staff submitted that although the IESO communicates to the Board, and publicly on its website, on the the actions it intends to take in response to recommendations made in the MSP's semi-annual monitoring reports, 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 proposed 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.

In its reply submission, the IESO did not object to the addition of this proposed licence condition, but suggested that a potential timing issue should be addressed with regards to an MSP monitoring report issued late in a calendar year. The IESO proposed that the following sentence be added to Board staff's proposed licence condition:

The Licensee's response to recommendations in any report issued by the Market Surveillance Panel within 30 days of the end of the calendar year will be included in the succeeding report.

I approve this new condition with the additional sentence proposed by the IESO. As noted above, the IESO did not object to the condition, and formalizing this reporting would be consistent with other areas of the licence where the IESO is obligated to provide certain information to the Board. Unlike section 6.2(c), this reporting requirement is not already captured under section 7.2.

Filings re: Market Rule Amendment Review Application

Under section 33 of the *Electricity Act, 1998* (the "Electricity Act"), 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. Board staff noted 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 will be relevant to the Board's hearing of the application and will be required by the Board. According to Board staff, the

information in question resides with the IESO. Board staff submitted that, based on past experience with market rule amendment review proceedings, the Board and parties to such a proceeding would be assisted by the production of relevant information as early as possible following the filing of an application for review. Board staff therefore proposed to add the following new condition 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.

In its reply submission, the IESO did not object to a licence condition obligating the IESO to produce items (i) to (vi) within the timelines suggested by Board staff. However, the IESO strongly objected to a licence condition that requires the production of the information identified in items (vii) through (ix). The IESO stated that production of this information in advance of any deliberations by the Board denies the IESO's procedural rights to have the Board address production requests that the IESO believes to be excessive, and also denies those rights to third parties whose material may be in the IESO's possession. The IESO also submitted that the statutory timeline for completing market rule amendment review proceedings does not justify a generic requirement to automatically produce, at the outset of every such proceeding, materials that may not be relevant to the issues in the proceeding nor useful to the Board in fulfilling its statutory mandate. In the IESO's view, each application will raise its own issues around the statutory test as set out in section 33(9) of the Electricity Act,¹ and that the parties should have an opportunity to make submissions with respect to the appropriate scope of document production, both by the IESO and others. The IESO submitted, in the alternative, that if the Board decides that it is necessary for the IESO to produce the materials in items (vii) to (ix) at the outset of every market rule amendment review proceeding, then correspondence should be explicitly excluded.

On August 12, 2013, the IESO filed a letter with the Board noting that Board staff and the IESO had engaged in further discussions in relation to items (vii) to (ix) of staff's proposed licence condition, and that agreement had been reached on the following revised versions of those items:

- vii. any final report conducted or commissioned solely by the Licensee, and not subsequently circulated outside of the IESO, comprising an analysis

¹Section 33(9) of the Electricity Act states:

If, on completion of its review, the Board finds that the amendment is inconsistent with the purposes of this Act or unjustly discriminates against or in favour of a market participant or class of market participants, the Board shall make an order,

- (a) revoking the amendment on a date specified by the Board; and
- (b) referring the amendment back to the IESO for further consideration.

relating to the costs and benefits of the amendment to the extent not already captured by any of the items above;

- viii. all materials (excluding correspondence and draft 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, which are authored or commissioned solely by the Licensee and not subsequently circulated outside of the IESO; and
- ix. any materials (excluding correspondence and draft 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, which are authored or commissioned solely by the Licensee and not subsequently circulated outside of the IESO.

I agree with Board staff that based on the Board's experience with prior market rule amendment review proceedings, and given the statutory timeline for completing such proceedings, it would be of assistance to the Board and to parties that information in the IESO's possession that is relevant to such proceedings be made available as early as possible in the process. If this information were in the possession of the party requesting the review, this would likely be a minimum filing requirement in terms of pre-filed evidence. Therefore, I agree that it is appropriate for the IESO to be required to produce certain information shortly after an application for a review has been filed, and that a deadline of seven days from the date of the filing of such application is reasonable.

As for the specific conditions, I approve items (i) through (vi) in the form proposed by Board staff, and which the IESO did not object to. With respect to items (vii) to (ix), I approve the revised versions as agreed to between the IESO and Board staff. In doing so, I am mindful that nothing in this licence condition limits the power of the Board to order the IESO to produce additional materials in the context of an application or pending application to review a market rule amendment.

Filings re: Reliability Standards***A. Filing at the time of posting of reliability standard***

Board staff submitted 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. Board staff further submitted 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 proposed 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.

The IESO submitted that most of the information referred to in the proposed licence condition is already available to the Board through the petition of the North American Electric Reliability Corporation ("NERC") and through information that is publicly available on the IESO website. However, on the understanding that it would be of assistance to the Board for the IESO, the Ontario expert in reliability standard development, to provide a summary that includes the above-mentioned information, the

IESO stated that it is supportive of the intention underlying staff's proposed licence condition. The IESO proposed the following new paragraph to be added to 6.2 of its licence preceding the current section 6.2(f) in lieu of the licence condition proposed by Board staff (differences are denoted in bold font):

provide the Board, within seven business days of the posting of a reliability standard under section 36.2(1) of the *Electricity Act, 1998*, with a summary that describes the purpose of the standard; class(es) of **Ontario** market participants to which the standard will apply; the anticipated technical impact in Ontario; the magnitude of costs associated with implementation, if known by the Licensee; the level of **IESO support for the reliability standard including any Ontario market participant opposition, if known by the Licensee**, and the result of the final vote of the Registered Ballot Body of NERC or NPCC; and any salient history including **identification of a non-ANSI standard**.

I note that the applicant did not provide reasons for some of the revisions that it has proposed relative to the text proposed by Board staff. Nevertheless, I accept the new licence condition with the revised wording proposed by the IESO given that the IESO indicated in its reply submission, its understanding that Board staff would be agreeable to the revised wording.

The items in the paragraph provided by the IESO shall be in the form of a bullet list to be consistent with the market rule amendment review application conditions, and for better clarity.

The IESO also submitted that, with the inclusion of the new licence condition described above, some of the information already provided under section 6.2(f) of its current licence (the annual summary of any significant activities related to the development of reliability standards) would become redundant. Therefore, the IESO proposed the following modification (denoted in bold font below) to section 6.2(f) of its licence:

provide the Board, on or before the end of each calendar year, with a summary of any significant activities related to the development of reliability standards undertaken by the Licensee pursuant to subsections 5(1)(d) or 5(1)(e) of the

Electricity Act, **to the extent that such information has not already been provided under section 6.2(e) above.**

I accept the revision to section 6.2(f) for the reasons noted by the IESO.

B. Filing re: FERC review of a reliability standard

Board staff submitted that given that reliability standards generally do not take effect in the United States until they are approved by the Federal Energy Regulatory Commission (“FERC”), 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. Board staff therefore proposed 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.

In its reply submission, the IESO opposed this licence condition as the information in question should already be reported to the Board by NERC under section 2 of the Memorandum of Understanding (“MOU”) between the Board and NERC. The IESO also submitted that FERC issues orders for many reasons regarding reliability standards, and that the FERC orders of interest to the Board are the final rules approving or remanding a standard.

In the context of the legislative and market rule framework relating to the coming into effect and review of reliability standards, I agree with Board staff that it would be of assistance to the Board for the IESO to notify the Board when it becomes aware that FERC’s review of a reliability standard has been completed. I accept that the proposed licence condition should focus more specifically on FERC orders approving or remanding a reliability standard, which appears to be the intention behind Board staff’s proposal as explained in Board staff’s submission.

I acknowledge that, as noted by the IESO, the information that Board staff proposes be reported by the IESO is also expected to be provided by NERC under the terms of the Board’s MOU with NERC. However, the IESO, and not NERC, is licensed by the

Board. One of the IESO's statutory objectives is to "participate in the development by any standards authority of standards and criteria relating to the reliability of transmission systems".² It is appropriate for the IESO to provide information to the Board that relates directly to that element of the IESO's work.

I therefore accept the new licence condition, modified to clarify that the FERC orders that are to be reported are more specifically those that approve or remand a reliability standard:

The Licensee shall notify the Board promptly upon becoming aware that the Federal Energy Regulatory Commission has issued an order approving a reliability standard or remanding it back to the relevant standards authority.

C. Filing re: "Non-ANSI" standards

Board staff observed 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. Board staff proposed to add a licence condition that addresses developments regarding non-ANSI standards. This Board staff proposal is based on the fact that a non-ANSI standard is a "reliability standard" for the purposes of section 36.2 of the Electricity Act, but under the terms of the market rules the standard is not in force in Ontario unless and until the IESO determines that this should be the case, in consultation with affected market participants.

Specifically, Board staff proposed that the 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:

² Electricity Act, section 5(1)(d).

- 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.

In its reply submission, the IESO supported the intention underlying Board staff’s proposal. However, the IESO stated that it already publishes a report in accordance with the market rules and proposed that a copy of that report be provided to the Board. Furthermore, the IESO noted that it is required by the market rules to publish notice of its determination that all or part of a reliability standard is in force in Ontario in accordance with section 1.2.7 of chapter 5 of the market rules. The IESO stated that this notice would address the items requested by Board staff in its proposed licence condition. Therefore, the IESO proposed the following new condition to be added as a new paragraph to section 6.2 of its licence in lieu of the licence condition as proposed by Board staff (differences are denoted in bold font):

provide the Board, where the Licensee engages in a consultation regarding a non-ANSI standard, **with a copy of the notice of its determination**, pursuant to section 1.2.7 of chapter 5 of the Market Rules, that would include a description of the consultation process, including the identity of the market participants that were consulted; **a summary of stakeholder feedback expressed during the consultation**; the outcome of the consultation; and 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.

On page 10 of its reply submission, the IESO noted that the market rules require it to publish a report that contains the information described in Board staff’s proposed licence condition, and proposed that a copy of that report be provided to the Board. On page 11, however, the IESO proposed a licence condition similar to that proposed by staff, but that refers to the IESO providing the Board with a copy of the notice of the IESO’s determination, which notice would include various pieces of information.

Although not clear from the record, the “notice of determination” that is identified by the IESO in its proposed revised licence condition appears to be (in essence) the report that is referred to by the IESO on page 10.

Also, there is no explanation as to why the IESO prefers a “summary of stakeholder feedback” rather than a “summary of the position of each market participant”. In the absence of an explanation of the pros and cons of each approach, an example of a past report (if one exists), the approximate number of market participants that may be involved, and a discussion on the frequency of such consultations, it is difficult to assess whether the IESO’s revised proposal is reasonable. That said, I am inclined to accept the IESO’s proposal given that it retains the requirement to identify all market participants that were consulted, and it is not clear that the incremental benefit of receiving a summary of the position of each market participant outweighs the potential increased burden of preparing such material. If in future the Board determines that such detail would be of assistance for a particular review, it may request it.

Overall, the revised wording proposed by the IESO for this licence condition is acceptable except for the following two items:

First, I note that the IESO’s revised conditions are silent on timing. I will therefore add the words, “immediately after it is published”, after “pursuant to section 1.2.7 of chapter 5 of the Market Rules ...”

Second, as with the previous conditions, the ones in this section should also be in the format of a bullet list for consistency and greater clarity.

Finally, for greater clarity and flow, the numbering of certain new conditions included in the attached licence has been amended from what was proposed by the IESO and/or Board staff.

IT IS THEREFORE ORDERED THAT:

The application for renewal of the IESO licence is granted, on such conditions as are contained in the attached licence.

DATED at Toronto, September 26, 2013

ONTARIO ENERGY BOARD

Original signed by

Theodore Antonopoulos
Manager, Electricity Rates