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June 30, 2017

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, ON
M4P 1E4

Re: EB-2017-0150: APPrO Submissions on Issues List – Independent Electricity System Operator 2017 Expenditure and Revenue Requirement Application

Dear Ms. Walli:

Introduction and Summary of Submissions

We are counsel to the Association of Power Producers of Ontario (“**APPrO**”) an intervenor in Independent Electricity System Operator’s (“**IESO**”) 2017 Expenditure and Revenue Requirement Application (EB-2017-0150) (the “**Application**”) before the Ontario Energy Board (the “**OEB**” or the “**Board**”).

These submissions are in relation to the issues list in this application.

APPrO submits that an issue in this proceeding should include a review of the terms and conditions of IESO programs, including their cost.¹ These amounts are currently collected by distributors from customers as part of the Wholesale Market Service Charge (“**WMSC**”). The Board reviews the collection of these costs by distributors, but has not historically reviewed the

¹ An indicative list of current IESO costs that should be subject to this review is in Appendix A (from Article 490 of the Board’s Accounting Procedures Handbook), attached at Schedule “A” hereto, and includes the services under the headings Net Energy Market Settlement Uplift, Congestion Management Settlement Uplift, Ancillary Services, Other Charges and Non-Competitive Wholesale Market Electricity Service Charges (“**IESO Programs**”). This list will likely have to be refined as the issue is addressed in this proceeding.

incurrence of these costs by the IESO.² APPrO submits that these costs should be treated as “fees” under the *Electricity Act, 1998* and reviewed as such. It therefore proposes the following addition to the Issues List:

- “1. What are the amounts paid by customers for IESO programs?
2. Should these amounts be categorized as a separate IESO fee?
3. Are the terms and conditions of IESO programs, including their cost, appropriate?”

APPrO submits that the terms and conditions of IESO Programs, including the cost, should be reviewed in the normal course as part of the OEB’s review of IESO fees paid by customers. As currently advised, APPrO does not propose to challenge any of these terms and conditions. However, APPrO submits that the public interest is served by having these terms and conditions subject to public oversight. Although the Board has not considered this issue in the past, and this approach is therefore different than previous cases, there are good grounds for such a review.

First, the recovery of these costs fall within the categories of “fees” as that term is used in s. 25.1 of the *Electricity Act, 1998* (the “**EA**”); and second, this review is consistent with principles of open and transparency governance in the electricity sector. Each will be addressed in turn.

Fees and s. 25.1 of the *Electricity Act, 1998*.

Section 25.1 of the *EA* provides as follows:

- 25.1 (1) The IESO may establish and charge fees to recover,
- (a) the costs of anything done in connection with the IESO-controlled grid or the IESO-administered markets;
 - (b) the costs of doing anything the IESO is required or permitted to do under this or any other Act; and
 - (c) any other type of expenditure the recovery of which is permitted by the regulations, subject to any limitations and restrictions set out in the regulations.

² The Board has noted that “The WMS rate-setting process is largely a mechanistic exercise based on forecasts provided by the IESO and other inputs.” The Board has not provided any reason why it does not review these costs. Letter to all Licenced Distributors, Re: Guidance on Wholesale Market Services Accounting for Capacity Based Demand Response (CBDR) and new IESO Charge Type 9920, March 29, 2016); see also: EB-2013-0067, April 12, 2013.

This description of fees clearly includes costs recovered to pay for IESO programs. A plain reading of the legislation is that program costs are not immune from OEB review. They make up a cost of activities “done in connection with the IESO-controlled grid or the IESO-administered markets” and a cost of “anything the IESO is required or permitted to do under this or any other Act” as those terms are used in ss. 25.1(a) and (b) of the *EA* (emphasis added). They are therefore properly collected as one of the fees proposed by the IESO and reviewed by the Board.

Further, the *EA* is explicit about IESO costs that are not to be reviewed by the OEB. Specifically, the OEB is not to review IESO “charges”. “Charges” relate to the costs of government directed procurement contracts.³ The costs of these charges are deemed to be approved by the Board.⁴

There is no similar immunity from OEB review for the costs of IESO programs. To the contrary, IESO programs are provided under IESO rules, though the details of the programs are often addressed in contracts and other arrangements. Subsection 2(1.6) of the *EA* makes it clear that these programs are not to be immune from OEB review. It provides: “A transaction, arrangement or agreement entered into by the IESO based on the market rules is deemed not to be a procurement contract for the purposes of this Act” (emphasis added). As a result, the terms and conditions of programs are expressly not to be considered procurement contracts and therefore not immune from OEB review.

Open and Transparent Governance in the Electricity Sector

APPPrO is proposing that programs be reviewed in the context of fees applications because of its principled commitment to open and transparent governance in the electricity sector. As indicated, as currently advised, APPPrO does not propose to challenge any IESO programs in this application. Rather, in principle, the terms and conditions of programs, including fees, should be included in the normal course of IESO fees cases.

This approach is also consistent with the underlying nature of the IESO and the fees that it charges. In providing programs, the IESO is in a similar position as electric and gas utilities: its programs are provided on a monopoly basis and paid for by rate payers. It is no different than any tariffed service provided by a utility. In fact, in the United States, system operators are treated as utilities offering services at “just and reasonable rates.” This perspective has been characterized as follows:

“the RTOs [i.e., Regional Transmission Organizations, which are regional ISOs] are private entities that must be regulated – similar to utilities and transmission owners that came before them. RTOs have a monopoly over the use of transmission of electricity in

³ *Electricity Act, 1998*, s. 25.1(2).

⁴ *Electricity Act, 1998*, s. 25.1(3).

their region, and via tariffs set by the FERC, pass along the costs of that transmission service to consumers.”⁵

System operators thus have a monopoly service for programs. The terms and conditions of those programs are reviewed and approved by their public utility regulator to provide oversight and prudent use of ratepayer funds. There is no reason why this should not be the practice in Ontario as well. Indeed, as far as APPrO is aware, the cost of IESO programs are the only costs that have been passed through to customers without OEB review (subject to statutory pass through costs discussed above).

Conclusion

For the foregoing reasons, APPrO respectfully submits that the costs of IESO programs should be treated as “fees” under the *Electricity Act, 1998* and reviewed as such. It therefore proposes the following addition to the Issues List:

- “1. What are the amounts paid by customers for IESO programs?
2. Should these amounts be categorized as a separate IESO fee?
3. Are the terms and conditions of IESO programs, including their cost, appropriate?”

Yours Truly,



George Vegh

cc: David Butters, President & CEO, APPrO
Ms. Miriam Heinz, Senior Regulatory Advisor, IESO
Mr. Fred Cass, Counsel for IESO

⁵ “Ensuring Consideration of the Public Interest in the Governance and Accountability of Regional Transmission Organizations” (2007), 28 *Energy Law Journal* 543 at 555

Schedule "A"

Please see attached

Appendix A

LIST OF IESO CHARGE TYPES
To be recorded in Electricity USoA Account 4708, Charges WMS
Revised March 29, 2016

IESO Charge Type Number	IESO Charge Type Name of Non-Competitive Wholesale Market Electricity (WMS) Service Charges
150	Net Energy Market Settlement Uplift <ul style="list-style-type: none"> • Line Losses • Intertie Offer Guarantee (IOG) and Day-ahead IOG
155	Congestion Management Settlement Uplift
201 203 205 250 252 254 450 451 452 454 550	Ancillary Services 10 Minute Spinning Reserve Market Shortfall Rebate 10 Minute Non-spinning Reserve Market Shortfall Rebate 30 Minute Operating Reserve Market Shortfall Rebate 10 Minute Spinning Market Reserve Hourly Uplift 10 Minute Non-Spinning Market Reserve Hourly Uplift 30 Minute Operating Reserve Market Hourly Uplift Black Start Capability Settlement Debit Hourly Reactive Support and Voltage Control Settlement Debit Monthly Reactive Support and Voltage Control Settlement Debit Regulation Service Settlement Debit Must Run Contract Settlement Debit
102 118 163 164 165 166 167 168 169 170 183	Other Charges Transmissions Rights Clearing Account Credit Emergency Energy Rebate Additional Compensation for Administrative Price Debit Outage Cancellation/Deferral Debit Unrecoverable Testing Costs Debit Tieline Reliability Maintenance Debit Emergency Energy Debit Transmission Rights Market Shortfall Debit Station Service Reimbursement Debit Local Market Power Rebate Generation Cost Guarantee Recovery Debit

186	Intertie Failure Charge Rebate
460	IESO Controlled Grid Special Operations Debit
700	Dispute Resolution Settlement Credit
750	Dispute Resolution Settlement Debit
751	Dispute Resolution Board Service Debit
850	Market Participant Default Settlement Debit
851	Market Participant Default Interest Debit
1131	IOG Settlement
1188	Day Ahead Fuel Cost Compensation Debit
1350	Capacity Based Demand Response (CBDR) Program Recovery Amount for Class A Loads
1351	CBDR Program Recovery Amount for Class B Loads
1463	Renewable Generation Connection – Monthly Compensation Settlement Debit
1470	Ontario Electricity Support Program Balancing Amount
1550	Enhanced Day Ahead Commitment – Production Cost Guarantee
1560	Enhanced Day Ahead Commitment - Generation Withdrawal Charge
1650	Forecasting Service Balancing Amount
Administration Fees	
753	Rural Remote Settlement
754	OPA Administration Charge
9920	IESO Adjustment Account
9990	IESO Administration Charge