



McCarthy Tétrault LLP  
PO Box 48, Suite 5300  
Toronto-Dominion Bank Tower  
Toronto ON M5K 1E6  
Canada  
Tel: 416-362-1812  
Fax: 416-868-0673

**George Vegh**  
Direct Line: (416) 601-7709  
Direct Fax: (416) 868-0673  
Email: [gvegh@mccarthy.ca](mailto:gvegh@mccarthy.ca)

July 27, 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**

These submissions are made on behalf of the Association of Power Producers of Ontario (“**APPrO**”), an intervenor in this application, in accordance with Procedural Order #2. They largely respond to the IESO’s submission on July 10, 2017 which responded to APPrO’s submissions of June 30, 2017.

The original APPrO submissions proposed that the OEB review the terms and conditions of IESO programs, including the costs that are collected from customers through the Wholesale Market Service (“**WMS**”) charge.<sup>1</sup> The reason for this position is that the cost of these programs are collected from customers through “fees” as that term is used in the *Electricity Act, 1998*.

---

<sup>1</sup> Specifically, APPrO proposed adding the following issues:

- “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’s June 30 submissions also acknowledged that the list of IESO programs may have to be refined in this proceeding.

For ease of reference, s. 25.1 (1) of *Electricity Act, 1998* 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.

The WMS is clearly not a charge because it does not relate to the cost of government directed procurements. It is therefore a fee.

### **The IESO's Response to APPrO's Submissions**

The IESO's submissions did not address ss. 25.1(1) of the *Electricity Act, 1998*. In fact, the submissions did not refer to any legislative provisions.

Instead, the IESO argued that the Board should not review these fees because:

- (i) the WMS Charge recovers costs of "essential wholesale market services necessary to ensure the reliability of the grid" that "are a function of number of factors outside of the IESO's control";
- (ii) that the costs are already reviewed:
  - a. as part of the WMS Charge,
  - b. in the Reliability Must Run ("RMR") agreement provisions in the IESO's licence, and
  - c. as part of the Board's oversight over market rules; and
- (iii) oversight of IESO activities is provided through internal IESO processes, i.e., the IESO's Stakeholder Advisory Committee and the IESO's Technical Panel.

Each of these points will be addressed in turn.

#### **(i) Essential Services Beyond the IESO's Control**

The IESO argues that the OEB should not review the cost of programs funded by the WMS because the WMS recovers the cost of "essential wholesale market services necessary to ensure the reliability of the grid". It is true that the IESO's mandate relates to reliability, but so does the mandate of every utility in the province: electricity and gas distributors and transmitters also have reliability mandates. But that is not a reason for not having OEB review of the cost of providing these services. To the contrary, the OEB reviews the prudence of costs

incurred to provide reliability as part of its core mandate. The IESO does not provide any reason why its reliability mandate should make it immune from the cost of providing reliability.

The IESO's statement that its costs "are a function of number of factors outside of the IESO's control" is surprising. It states that programs, including "generator cost guarantee recovery, capacity based demand response, etc. are determined and then passed through to IESO market participants proportional to their consumption." But these programs, and their costs, are not "determined" by factors outside of the IESO's control. The IESO designs these programs. Again, the IESO does not provide any reason why its design of these programs – and the costs that pay for these programs - should be immune from review.

(ii) The Board's Oversight.

The IESO argues that the costs of its services are already reviewed:

- a. as part of the WMS Charge,
- b. in the Reliability Must Run ("RMR") agreement provisions in the IESO's licence, and
- c. through the Board's oversight over market rules.

The Board's review of the WMS Charge

With respect to the WMS charged to customers, the rate for that service is set under s. 78 of the *Ontario Energy Board Act, 1998* to allow distributors to recover that cost from customers. The Board does not review the underlying costs that make up that amount.

The Board has described its role in the WMS process as follows: "The WMS rate-setting process is largely a mechanistic exercise based on forecasts provided by the IESO and other inputs."<sup>2</sup> The Board has not provided any reason why it does not review these costs and it does not appear that this issue has ever been argued.

Reliability Must Run Agreements

With respect to RMR agreements, it is true that the Board has imposed a licence condition providing that, if the parties to a RMR agreement "are unable to reach agreement upon the terms and conditions of a proposed [RMR] Agreement, or an amendment to an Agreement, the matter shall be determined by the Board."<sup>3</sup> Again, this is very limited oversight. It effectively provides an arbitration service to parties negotiating an RMR agreement. Further, the fact that the Board can review RMR agreements as a condition of licence is not a reason for not reviewing the design and costs of other programs.

---

<sup>2</sup> 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.

<sup>3</sup> See IESO Licence, s. 10.3.

### Market Rule Oversight

Finally, the IESO refers to the Board's authority to review market rule amendments. But again, that oversight is limited to a consideration of whether a market rule amendment is consistent with the objectives of the *Electricity Act, 1998* or unjustly discriminates against or in favour of a market participant.<sup>4</sup> Again, this review does not address the costs and other terms and conditions of programs.

Further, the market rules are often enabling and therefore do not provide an opportunity for meaningful review. For example, with respect to contracted ancillary services (which make up much of the cost of the WMS), the market rules provide the IESO with broad discretion over ancillary services, including the authority to enter into contracts for ancillary services. Chapter 5, s. 4.2.1 provides:

“The IESO shall ... contract for ancillary services, including by means or within the scope of an operating agreement or another agreement of similar nature, to ensure that sufficient ancillary services are available to ensure the reliability of the IESO-controlled grid.”

Contracted ancillary services are defined extremely broadly in the market rules as “ancillary services, other than operating reserve, procured by the IESO by contract rather than in the real-time markets in accordance with sections 9.2 to 9.5 of Chapter 7.”<sup>5</sup>

The IESO uses this broad power to enter into contracts for ancillary services largely at its discretion. For example, in its Energy Storage Procurement Framework, the IESO described its authority as follows:

“The IESO has the authority to procure contracted ancillary services including any new ancillary services that may be set forth in the market rules. The IESO will used the ancillary service framework as the means to integrate energy storage services into the IESO-administered markets to maintain system reliability in accordance with the IESO's market objectives.”<sup>6</sup>

It is therefore the terms of the ancillary services contract, not the provisions of the market rules, that address the terms and conditions, including costs, that the IESO pays for the service. The Board's limited authority to review market rules is not relevant to this issue.

---

<sup>4</sup> *Electricity Act, 1998*, s. 35.

<sup>5</sup> IESO Market Rules, chapter 11.

<sup>6</sup> IESO, Energy Storage Procurement Framework, January 31, 2014.

- (iii) Internal IESO processes: the IESO's Stakeholder Advisory Committee and the IESO's Technical Panel.

Finally, the IESO argues that it is subject to review under its internal processes, i.e., the Stakeholder Advisory Committee and the Technical Panel. Again, neither of these bodies has authority to review the terms and conditions of services, including costs.

The Stakeholder Advisory Committee ("**SAC**") is simply that, an advisory committee. According to the IESO, SAC's function is to "provide appointed stakeholder representatives with the opportunity to present advice and recommendations on market development, conservation and planning decisions directly to the IESO's Board of Directors and Leadership Team." This is not an oversight body and it has no oversight authority.

The Technical Panel is part of the market rule amendment process. It provides advice to the IESO Board. Again, it does not provide oversight over the terms and conditions of services, including costs.

## **Conclusion**

For the foregoing reasons, APPrO submits that both the terms of the governing legislative provisions and the need for oversight of the IESO's monopoly provision of system operations services call for OEB review over the terms and conditions of IESO programs, including costs.

APPrO appreciates that the Board has not exercised its authority in the past and that it may therefore be necessary to transition to a meaningful substantive review of these programs. Therefore, should the Board add APPrO's proposed issues to the issues list, APPrO would support an approach that facilitates substantive review in the next IESO fees case. This would involve direction on the production of materials, including the timing for such production, that the IESO should file for its next fees application.

All of which is respectfully submitted.



George Vegh

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