

October 23, 2017

VIA Email, Courier and RESS



Ms. Kirsten Walli
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Dear Ms. Walli:

**Re: Independent Electricity System Operator
2017 Expenditure and Revenue Requirement Submission
Ontario Energy Board File No.: EB-2017-0150**

On October 16, 2017, Environmental Defence (“ED”) filed a motion in the IESO’s 2017 Revenue Requirement Submission (“RRS”) proceeding, EB-2017-0150. In their motion, ED is seeking to have the Ontario Energy Board (“OEB”) issue an order that:

- a. Requires the IESO to provide full and adequate responses to ED interrogatories 1 to 6, 9 to 11, and 13 to 14;
- b. Grants an extension of the August 25, 2017 deadline to inform the OEB that an intervenor wishes to submit evidence in this proceeding to two weeks from the date of any order on this motion; and
- c. Requires a technical conference to be held in this matter.

On October 18, 2017, the OEB issued Procedural Order 4 setting out dates for the IESO to respond to ED’s motion and for ED to file its reply submission. The IESO hereby provides its response to ED’s motion.

In its motion, ED includes the following reasons as grounds for the motion:

1. The relevance of transmission losses in the IESO’s RRS proceeding;
2. The need for ED to file additional evidence;
3. The need for a technical conference; and
4. Procedural fairness.

The IESO will address each of these issues in the sections that follow.

1. The relevance of transmission losses in the IESO's RRS proceeding

In its motion, ED makes a number of arguments regarding the relevance of transmission losses in this proceeding including:

- The OEB's jurisdiction and mandate;
- The IESO's position conflicts with the IESO's expert; and
- The IESO's position is inconsistent with the OEB's recent decision in Hydro One's rate case (EB-2016-0160).

Each of these arguments are further addressed below.

The OEB's Jurisdiction and Mandate

In its motion, ED states that the OEB "has the jurisdiction and mandate to require the IESO to report on its efforts to manage transmission losses"¹ and further, that "this issue is central to the Board's consumer-protection mandate".² In their July 27, 2017 further submission on the draft issues list, OEB staff stated:

The OEB added in the 2008 fees case that "The Board's role in a fees proceeding is to assess whether the proposed organizational budget is reasonable."

*In OEB staff's view, these observations from the 2008 fees case remain apt today. Although changes were made to the Electricity Act, 1998 to facilitate the merger of the IESO and the OPA, the Act retains the distinction between fees and charges. **The OEB's role in a fees proceeding is still to assess the IESO's "organizational budget"**.³ (emphasis added)*

While the OEB staff submission was made with respect to the fees vs charges argument, their argument that the OEB's role in an IESO fees proceeding is to assess the IESO's "organizational budget" applies equally well in this situation. Further, and as described in the OEB-approved 2016 RRS settlement agreement, the scorecard is intended "as a tool for the Board and intervenors to use in evaluating the IESO's proposed expenditure and revenue requirement". The IESO is of the view, as stated in the IESO's pre-filed evidence and in its interrogatory responses, that a measure related to transmission losses "is not an indicator of the cost effectiveness of IESO activities".⁴

The IESO's Position Conflicts with the IESO's Expert

ED states that "the IESO's position that transmission losses are irrelevant to its performance conflicts with the expert report it filed regarding scorecard best practices".⁵ The IESO does not agree with ED's assertion. In making this argument, ED has misconstrued the Elenchus report.

¹ ED Motion, October 16, 2017, page 2

² Ibid

³ OEB Staff Further Submission, EB-2017-0150, July 27, 2017, page 4

⁴ Exhibit C-1-1, page 4 and Exhibit I, Tab 5.1, Schedule 4.01

⁵ ED Motion, October 16, 2017, page 3

ED provides selective quotations from the Elenchus report to reinforce its argument but does not include all conditions or parameters. While quotations from the Elenchus report in the motion may appear to reinforce ED's argument, they do not fully and fairly represent the thrust of the quotations, nor does ED provide context to allow the quotation to be properly understood.

For example, ED states that the Elenchus report "discussed the possibility of including a transmission loss metric into the IESO scorecard in the future after further research in the area".⁶ ED is correct; the Elenchus report does discuss this but the Elenchus report goes further to state that there are "factors to consider" when assessing this possibility which ED does not acknowledge in its motion. The factors to consider as described in the Elenchus report include:

*...the degree of control that the IESO has over transmission losses and the division of responsibilities between the IESO and transmission owner/operators. In addition, further work would be needed to develop an acceptable methodology for calculating transmission loss metrics that factors in cost optimization.*⁷

In addition, the IESO submits that while the Elenchus report included discussions related to transmission losses, Elenchus did not in fact include any transmission losses measures in the draft Proposed IESO Regulatory Scorecard included in its report. The IESO's position related to transmission losses is consistent with this. In the evidence filed by the IESO, both in its application and in response to interrogatories, there are no proposed metrics regarding transmission losses. The IESO submits that its reasons for not including such a metric are sound and, contrary to the position put forward by ED, supported by the Elenchus report.

The IESO's Position is Inconsistent with the OEB's Recent Decision in Hydro One's Rate Case (EB-2016-0160).

In its motion, ED states that the "IESO's position is also inconsistent with the Board's recent decision in Hydro One's rates case (EB-2016-0160)".⁸ ED continued to state that "transmission losses are relevant to the IESO rates case for the same reasons that the Board not only found them relevant to Hydro One's case, but found them important enough to be the subject of a specific order".⁹ However, ED does not explain the relevance of transmission losses in the Hydro One case or how these apply in the IESO's 2017 RRS beyond this blanket statement. In fact, the IESO submits that there is nothing in the Hydro One decision to support the proposition that the matters raised in ED's motion are relevant to the OEB's consideration of the IESO's 2017 RRS.

⁶ Ibid

⁷ Exhibit C-1-1, Attachment 1, page 36

⁸ ED Motion, October 16, 2017, page 3

⁹ Ibid

2. The Need for Additional Evidence

In its motion, ED states its reasoning for appealing to the OEB at this late date in the hearing to be allowed to file expert evidence is due to the “IESO’s lack of responses to interrogatories and the decision not to hold an oral hearing”.¹⁰ To ED’s first point regarding the need for ED to file expert evidence as a result of the “IESO’s lack of responses to interrogatories”, in Procedural Order 2, the OEB outlined that parties were to inform the OEB by August 25th if they intended to file expert evidence. If ED was not able to ascertain the need for it to file expert evidence by this date, they should have been able to make this determination soon after interrogatory responses were filed on September 7th, nearly 6 weeks before ED filed this motion, or at least by September 14th when the settlement conference began.

While ED argues that the need to file expert evidence is driven by the OEB’s decision in Procedural Order 3 not to hold an oral hearing, this argument cannot be reconciled with the decision itself, where the OEB found that neither further evidence nor an oral hearing is required. Specifically, the decision indicates that:

*Having reviewed all the submissions, the OEB has decided to proceed with a written hearing. The OEB is not persuaded by the intervenors seeking an oral hearing that further evidence or cross-examination is required in respect of either of the unsettled issues. It would appear that both issues are appropriate for argument, and the OEB would prefer to receive those arguments in writing.*¹¹ (emphasis added)

The OEB determining that parties, including ED, will not have the opportunity to cross-examine IESO witnesses during an oral hearing does not give rise to a need for an intervenor to file its own evidence. A party having the opportunity to examine IESO witnesses during an oral hearing does not equate to the opportunity to file new evidence.

The OEB’s decision that no further evidence or cross-examination is required in respect of either of the unsettled issues confirms that there is no need for any of the relief sought by ED in its motion for the OEB to consider the scorecard issue.

3. The Need for a Technical Conference

In its motion, ED states that a technical conference “would allow the parties the opportunity to gain information from the Applicant while still avoiding the need for an oral hearing before the Board”.¹² In stating this, it appears that ED’s purpose for the technical conference is to allow for examination of the IESO on new evidence to be filed by ED. The IESO does not see that either new evidence or a technical conference at this late stage in the hearing will assist the OEB in its decision making on this issue. The IESO submits that the OEB’s decision to proceed by way of a

¹⁰ ED Motion, October 16, 2017, page 5

¹¹ EB-2017-0150, Procedural Order 3, page 2

¹² ED Motion, October 16, 2017, page 6

written hearing as “both issues are appropriate for argument”¹³ further supports the IESO’s position.

4. Procedural Fairness

In its motion, ED states that “this motion engages procedural fairness as it relates to important information that Environmental Defence would use to make its case” and that “If no orders are made as a result of this motion, Environmental Defence may be denied an opportunity to properly make its case”.¹⁴

The IESO finds ED’s interpretation of procedural fairness to be unreasonable and disruptive. The OEB’s Rules of Practice and Procedure allow for parties to file motions seeking full and adequate responses to interrogatories or requesting a technical conference and Procedural Order 2 in this proceeding allowed for parties to file expert evidence by August 25th. Neither ED nor any party exercised these rights prior to this motion. If any party were to have exercised these rights, the IESO reasonably expects they should have done so prior to the start of the settlement conference so as to allow the parties to participate effectively in the settlement negotiations. As no party filed a motion or expert evidence in advance of the settlement conference, the IESO reasonably assumed that ED and parties were satisfied with the evidentiary record. The opportunities afforded to ED and other parties to file motions seeking full and adequate responses to interrogatories, request a technical conference or to file intervenor evidence are consistent with the concept of procedural fairness. The IESO further submits that it is very disruptive to the OEB’s hearing process for ED to file a motion such as this after the OEB issued a procedural order that provided for written submissions as the final steps in the proceeding.

In addition, the IESO submits that ED was provided with numerous opportunities to file this motion earlier than it did and, as previously stated, ED could have filed this motion after interrogatory responses were filed on September 7th, almost six weeks prior to the filing of this motion.

The IESO submits that ED’s untimely filing of this motion gives ED no basis to assert procedural unfairness, as ED *chose* to file this motion after the OEB had already issued a procedural order with respect to final submissions in the proceeding. There is no reason why ED could not have brought its motion as soon as it received the interrogatory responses.

For the above reasons, the IESO respectfully submits that the OEB should dismiss ED’s motion and proceed with written submissions in this proceeding.

All of which is respectfully submitted.

¹³ EB-2017-0150, Procedural Order 3, page 2

¹⁴ ED Motion, October 16, 2017, page 6

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Yours truly,

A handwritten signature in blue ink, appearing to read "Tam", with a long horizontal flourish extending to the right.

Tam Wagner
Senior Manager, Regulatory Affairs

cc: Mr. Fred Cass, Aird & Berlis (email)
Intervenors to EB-2017-0150 (email)
Michael Lesychyn, Case Manager, OEB (email)