

October 24, 2017

BY COURIER (2 COPIES) AND RESS

Ms. Kirsten Walli

Board Secretary

Ontario Energy Board

2300 Yonge Street, Suite 2700, P.O. Box 2319

Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**Re: EB-2017-0150 – Independent Electricity System Operator (IESO)
Revenue Requirement**

I am writing to provide Environmental Defence's response to the submissions of the IESO dated October 23, 2017, regarding Environmental Defence's motion for better interrogatory responses and related relief.

Relevance of Transmission Losses

The IESO argues that the reporting requirements sought by Environmental Defence are outside of the Board's jurisdiction and mandate in this proceeding.¹ That would mean that (a) Environmental Defence cannot even explore whether additional reporting regarding the IESO's management of transmission losses (worth hundreds of millions of dollars annually) is warranted and (b) the Board cannot order the IESO to take steps to improve its reporting or performance with respect to transmission losses.

In support of this position the IESO provides arguments against adding a transmission losses metric to its regulatory scorecard. However, those are arguments for the hearing in this matter, not for this preliminary motion. The preliminary question for this motion is relevance, and whether additional reporting regarding transmission losses is something that can even be explored in this proceeding.

The IESO relies on submissions by Board Staff noting that this hearing is meant to "assess the IESO's 'organizational budget.'" That term was used to differentiate between revenue generated by the IESO through board-approved rates versus other "charges," with only the former being under the Board's jurisdiction.² The comments by Board Staff have no bearing on the transmission losses issue. The measures available to the IESO to manage transmission losses would be paid for via revenue from the IESO's board-

¹ IESO Submissions, October 23, 2017, p. 2.

² Board's Decision on Issues List, August 4, 2017, p. 7

approved rates. The Board is completely within its jurisdiction to make orders relating to the IESO's rates and its performance in spending the revenues raised from those rates.

The IESO quotes a portion of the Elenchus report noting factors to consider in deciding whether to include transmission losses in the IESO scorecard in the future, including "the degree of control that the IESO has over transmission losses."³ This supports Environmental Defence's position. It shows both that transmissions losses should potentially be reported on (i.e. they are at least *relevant*) and that there are factual issues that need to be addressed (i.e. the degree of IESO control).

The IESO states that "there is nothing in the Hydro One decision to support the position that the matters raised in ED's motion are relevant to the OEB's consideration of the IESO's 2017 RSS."⁴ However, in the Hydro One case the Board held that transmission losses were relevant, considered the transmission losses issue, approved Environmental Defence's proposal to commission evidence on that issue, heard cross-examination on the issue, and made a specific order relating to that issue.⁵ Like Hydro One, the IESO submitted a revenue requirement submission and is seeking approval of a regulatory scorecard. Reporting on transmission losses is at least as relevant to the IESO's case as it was to Hydro One's case, if not more so.

Timely

Lastly, the IESO argues that Environmental Defence's motion is "untimely" and should have been made after the interrogatory responses were released in September. However, a motion would have been premature at that time and potentially unnecessary. For example, the issue could have been resolved during the settlement conference, additional information could have been filed as a result of settlement conference discussions, or additional information could have been available via cross-examinations during a hearing. Any of those possibilities could have rendered a motion moot.

Whether a step in legal proceedings is timely generally depends on whether prejudice would result. In this case there is no prejudice to the IESO. It is in no worse a position to respond to this motion now than it would have been in September.

The IESO argues that it is "very disruptive" for Environmental Defence to file this motion after the Board's decision that this hearing be heard in writing. However, *before* that decision was made, Environmental Defence asked the IESO to voluntarily provide better interrogatory responses and gave notice to the Board and all parties that it may be bringing a motion for better interrogatory responses.

This motion would have been premature and a potential waste of the Board's and parties' time in September. Finding this motion to be untimely as the IESO suggests would set a negative precedent that encourages parties to immediately make procedural motions

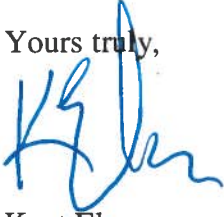
³ *Ibid.* p. 3.

⁴ *Ibid.*, p. 3.

⁵ Decision, EB-2016-0160 (see excerpts in the Motion Record).

before exhausting ways to potentially avoid them. We believe Environmental Defence followed the preferred practice of attempting to avoid a motion, including through collaboration and compromise, rather than immediately moving to have the Board resolve the matter.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Kent Elson', with a stylized, cursive script.

Kent Elson

Cc: Parties in the above matter