



BY EMAIL and RESS

Mark Rubenstein
mark@shepherd rubenstein.com
Dir. 647-483-0113

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

May 6, 2019
Our File: EB20190002

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2019-0002 – IESO 2019 Fees – SEC Notion of Motion

We are counsel to the School Energy Coalition ("SEC"). Please find SEC's Notice of Motion seek full and adequate responses to interrogatories. The Notice of Motion also consistent of SEC's initial submissions on the motion.

Yours very truly,
Shepherd Rubenstein P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Applicant and interested parties (by email)

ONTARIO ENERGY BOARD

IN THE MATTER OF subsection 25(1) of the *Electricity Act, 1998*;

AND IN THE MATTER OF a Submission by the Independent Electricity System Operator to the Ontario Energy Board for the review of its proposed expenditure and revenue requirements for the fiscal year 2019 and the fees it proposes to charge during the fiscal year 2019.

AND IN THE MATTER OF Rule 27 of the Board's *Rules of Practice and Procedure*.

NOTICE OF MOTION

The School Energy Coalition ("SEC") will make a motion to the Ontario Energy Board ("the Board") at its offices at 2300 Yonge Street, Toronto, on a date and at a time to be fixed by the Board.

PROPOSED METHOD OF HEARING:

SEC proposes that this motion be heard in writing.

THE MOTION IS FOR:

1. An order requiring the Independent Electricity System Operator ("IESO") to provide full and adequate responses to the following interrogatory questions:
 - a. Interrogatory SEC-11¹
 - b. Interrogatory SEC-21²
2. Such further and other relief as the SEC may request and the Board may grant.

THE GROUNDS FOR THE MOTION ARE:

1. The Board issued a Notice of Hearing on an application by the IESO under subsection 25(1) of the *Electricity Act, 1998* for approval of its proposed expenditure and revenue requirements for the fiscal year 2019 and the fees it proposes to charge during the fiscal year 2019.

¹ Exhibit I, Tab 1.4 Schedule 10.11 SEC 11 (Interrogatory Response SEC-11) [See Appendix A]

² Exhibit I Tab 6.1 Schedule 10.21 SEC 21 (Interrogatory Response SEC-21) [See Appendix B]

2. Included in the IESO's proposed expenditures in 2019 is \$55.3M in capital expenditures, which is more than double its 2018 budgeted and approved amount.³ The amount includes \$17.3M in core operating capital and \$38M in capital related to its Market Renewal Program.⁴

3. SEC is an intervenor in this proceeding. Pursuant to Procedural Order No. 1 issued by the Board, intervenors were to request further relevant information by way of interrogatories to IESO.

4. Rule 27.03 of the Board's *Rules of Practice and Procedure*, provides that a party may bring a motion seeking direction from the Board if it is not satisfied that a party has provided "full and adequate response to an interrogatory."⁵ SEC brings this motion because the IESO has not provided full and adequate responses to certain interrogatories. The information requested is relevant to the issues to be decided in this proceeding.

Interrogatory Response SEC-11

5. The IESO is seeking approval for \$17.3M for what it calls 'core operating capital'.⁶ This involves capital expenditures not-related to its Market Renewal Program (MRP).⁷ The totality of the information provided in the pre-filed evidence regarding details of the 2019 core operations capital expenditures is a list of the projects/initiatives⁸, their budgets and at most, a 2-3 sentence explanation of what the project/initiative consists of.⁹ In SEC's view the amount of information is insufficient to understand what the projects are, if they are needed, and if the costs are reasonable.

6. SEC requested in interrogatory SEC-11 that "[f]or each material 2019 core operating capital project/initiative, please provide a copy of the business case, project plan, or similar document."¹⁰ Since the Board has no filing requirements defining materiality for the purposes of IESO, SEC included a footnote defining materiality in the same, as is done for electricity distributors. For the IESO, this would be any capital project with annual expenditures at or above \$954K.¹¹

³ Exhibit A, Tab 2, Schedule 2, p.17

⁴ *Ibid*

⁵ Ontario Energy Board, *Rules of Practice and Procedure* (as revised on October 28, 2016) ["*Rules of Practice and Procedure*"], Rule 27.03

⁶ Exhibit A, Tab 2, Schedule 2, p.7

⁷ *Ibid*

⁸ Exhibit A, Tab 2, Schedule 2, p.24

⁹ *Ibid*, p.25

¹⁰ Exhibit I, Tab 1.4 Schedule 10.11 SEC 11 (Interrogatory Response SEC-11) [See Appendix A]

¹¹ *Ibid*

7. In response, the IESO simply referred to the response to interrogatory AMPCO-18. The AMPCO interrogatory asks the IESO to recast a certain capital table to include certain 2017 and 2018 capital information, explain certain 2018 cost variances, and provide which 2018 projects have been cancelled, completed or deferred.¹² None of this provides any further information to SEC's interrogatory, or provides further detailed information regarding the 2019 capital projects/initiatives. Due to the unresponsive nature of the response of interrogatory AMPCO-18 to the information requested in SEC-11, SEC assumed the response was made in error and followed up with the IESO.¹³ The IESO confirmed that it meant to provide the response that it did, and that in its view, "the level of detail in AMPCO 18 provides sufficient detail for the OEB and Intervenors to assess the appropriateness of the IESO's proposed capital expenditure budget."¹⁴

8. SEC submits that the Board should order the IESO to provide the requested information. The information is relevant to the issues in the proceeding¹⁵, and is appropriately tailored to only request information related to material capital projects. Without the information, the intervenors and the Board cannot assess the proposed capital expenditures of the IESO. Business case, project plans, or similar documents for material expenditures are routinely requested and provided in proceedings before the Board. They provide intervenors and the Board with information to understand what the project is, why it is being undertaken, and other relevant information.

9. Further, SEC notes that it is not appropriate for the IESO to simply refuse to provide the information requested in an interrogatory by referring parties to another integratory, unless that interrogatory addresses the same or similar question. The Board's *Rules of Practice and Procedure* require a party to provide a full and adequate response to each interrogatory (Rule 27.01).¹⁶ If they are unwilling or unable to do so, they are required to explain why not (Rule 27.02).¹⁷

¹² Exhibit I Tab 1.4 Schedule 13.18 AMPCO 18 (Interrogatory Response-18)

¹³ Emails between M. Rubenstein (SEC) and G. Dimitropoulos (IESO) [See Appendix C]

¹⁴ *Ibid*

¹⁵ Issues 1.4: Is the IESO's Capital Expenditure budget for Fiscal Year 2019 appropriate? (see *Decision on Issues List*, March 28 2019, see Schedule A)

¹⁶ *Rules of Practice and Procedure*, Rule 27.01

¹⁷ *Ibid*, Rule 27.02

Interrogatory Response SEC-21

10. The IESO is seeking approval for \$38M in 2019 related to its MRP. To put the scope of the capital spending on the MRP in perspective, the amount is more than double what the IESO spent on capital expenditures in 2018.¹⁸ As compared to MRP capital spending in 2018, the IESO had forecasted to spend just \$4M on capital related to the MRP¹⁹, and actually only spent \$1.3M.²⁰

11. While there is more information in the IESO's pre-filed evidence related to the MRP capital costs than core operating capital, there was still very limited information to support \$38M in capital spending.

12. SEC asked in its interrogatory SEC-21 for the IESO to "[p]lease provide a detailed breakdown of the \$38M of proposed MRP capital. For each material component of the MRP capital, please provide a copy of the business case, project plan, or similar document."²¹ SEC included a footnote defining material in the same way it had in SEC-11 discussed above.

13. In its response, the IESO simply refers to two other interrogatory responses, OEB Staff-26(a) and SEC-16. SEC submits that neither interrogatory provides a response to the information requested, or at the very least, the information contained in those responses is insufficient.

14. The response to Interrogatory OEB Staff-26(a) does not provide a detailed breakdown of the \$38M proposed MRP capital, nor a business case, project plan, or similar document related to each of the material components of MRP capital. The response to interrogatory SEC-16 similarly does not provide the requested information.²² The response contains a number of documents provided to either IESO senior management or the Board of Directors that provides schedule and budgeting reports regarding the MRP. Those documents do not provide any details, such as capital breakdowns, business cases, project plans, or similar information.

15. While SEC understands that the IESO is not expected to complete the overall MRP business case until Q4 2019²³, one would assume that it has done a business case, or some similar type of exercise, with respect to significant capital projects that it is undertaking within the overall MRP. For

¹⁸ Exhibit C, Tab 2, Schedule 1, Table 2; Exhibit A, Tab 2, Schedule 2, p.24

¹⁹ *Ibid*

²⁰ Exhibit C, Tab 2, Schedule 1, Table 2

²¹ Exhibit I, Tab 6.1, Schedule 10.21 SEC 21 (SEC Interrogatory Response 21)

²² Exhibit I, Tab 6.1, Schedule 10.16 SEC 16 (SEC Interrogatory Response 16)

²³ Exhibit C, Tab 2, Schedule 1, p.14

example, the IESO references that \$10M of the \$38M capital budget is expected to go to “an initial payment for the Dispatch Scheduling and Optimization (DSO) Engine”.²⁴ SEC would assume that if \$10M is simply the initial payment of this tool, there would be some business case, plan or similar document. At the very least, if not, then the IESO should be clear to the Board and intervenors of that fact.

16. SEC requests that the Board order IESO to provide a full and adequate response to interrogatory SEC-21. The information is clearly relevant to the issues in this proceeding²⁵, and was tailored to include only material components of the MRP capital expenditures. If the IESO cannot provide a detailed breakdown, or does not have the requested material related to its MRP capital expenditures, then that in itself, is relevant information for intervenors and the Board to have.

THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE MOTION:

1. The Record in EB-2019-0002
2. Such further and other material as counsel may advise and the Board may permit.

May 6, 2019

Shepherd Rubenstein P.C
2200 Yonge Street
Suite 1302
Toronto, Ontario M4S 2C6

Jay Shepherd
Mark Rubenstein

Tel: 416-483-3300
Fax: 416-483-3305

Counsel to the School Energy Coalition

TO: Ontario Energy Board
2300 Yonge Street, Suite 2701
Toronto, ON M4P 1E4

Tel: 416-481-1967
Fax: 416-440-7656

²⁴ Exhibit I, Tab 6.2 Schedule 1.26 OEB Staff 26 (Interrogatory Response OEB Staff-26(a))

²⁵ Issue 6.3: Are the IESO's forecast 2019 capital costs for the Market Renewal Program appropriate in the context of the scope and timing of the overall project? (see *Decision on Issues List*, March 28 2019, see Schedule A)

AND TO: **Independent Electricity System Operator**
1600-120 Adelaide St. W.
Toronto, ON M5H 1T1

Miriam Heinz
Tel: 416-969-6045
Fax: 416-969-6383

AND TO: **Aird & Berlis LLP**
Suite 1800, Brookfield Place
181 Bay Street
Toronto ON M5J 2T9

Fred Cass
Tel: 416-865-7742
Fax: 416-863-1515

Counsel to the Independent Electricity System Operator

AND TO: **All Intervenors**

A

SEC INTERROGATORY 11

1.1-SEC-11

INTERROGATORY

[Ex. A-2-2, p.2; 2-AA] For each material¹ 2019 core operating capital project/initiative, please provide a copy of the business case, project plan, or similar document.

RESPONSE

Please see the response to AMPCO Interrogatory 18, at Exhibit I, Tab 1.4, Schedule 13.18.

¹ Materiality defined as \$954K. (0.05% of IESO revenue requirement (190.8M) consistent with Board's Filing Requirement For Electricity Distribution Rate for distributors with revenue requirement less than \$200M.

B

1 **SEC INTERROGATORY 21**

2 **1.1-SEC-21**

3 **INTERROGATORY**

4 [Ex. A-2-2, p.2; 2-AA] Please provide a detailed breakdown of the \$38M of proposed MRP
5 capital. For each material 2 component of the MRP capital, please provide a copy of the business
6 case, project plan, or similar document. 5

7 **RESPONSE**

8 Please see the response to OEB Staff Interrogatory 26 a), at Exhibit I, Tab 6.2, Schedule 1.26 and
9 SEC Interrogatory 16, at Exhibit I, Tab 6.1, Schedule 10.16.

C

Mark Rubenstein

From: George Dimitropoulos <George.Dimitropoulos@ieso.ca>
Sent: May 2, 2019 11:01 AM
To: Mark Rubenstein
Cc: jay@shepherdhubenstein.com; Miriam Heinz; fcass@airdberlis.com; Devon Huber
Subject: RE: IESO Interrogatory Responses - 2019 Revenue Requirement Submission (EB-2019-0002) - Batch 4 Issues 6.0 through 6.3

Hi Mark,

Thank you for your email. The IESO can confirm the response to SEC-11 was intended. The IESO's response provides details on the budget for capital projects, as well as actual expenditure, variance against budget and status updates. In the IESO's view the level of detail in AMPCO 18 provides sufficient detail for the OEB and Intervenors to assess the appropriateness of the IESO's proposed capital expenditure budget.

If you have any questions or comments please let me know. Thanks.

Regards,

George Dimitropoulos | Senior Advisor, Regulatory Affairs

Independent Electricity System Operator (IESO) | T: (416) 969-6269 | C: (647) 528-8654
120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1
Web: www.ieso.ca | Twitter: [IESO Tweets](#) | LinkedIn: [IESO](#)

From: Mark Rubenstein <mark@shepherdhubenstein.com>
Sent: May 1, 2019 11:43 AM
To: Miriam Heinz <Miriam.Heinz@ieso.ca>; fcass@airdberlis.com; 'regulatoryaffairs' <regulatoryaffairs@torontohydro.com>; Devon Huber <Devon.Huber@ieso.ca>; George Dimitropoulos <George.Dimitropoulos@ieso.ca>
Cc: jay@shepherdhubenstein.com
Subject: RE: IESO Interrogatory Responses - 2019 Revenue Requirement Submission (EB-2019-0002) - Batch 4 Issues 6.0 through 6.3

CAUTION: This email originated from outside of the organization. Exercise caution when clicking on links or opening attachments even if you recognize the sender.

Hi Miriam,

Can the IESO confirm that the response to SEC-11 (Exhibit I Tab 1.4 Schedule 10.11 SEC 11) is what was meant to be the response. The IESO's response to that IR is the same as provided to SEC-10, which points to AMPCO IR. The AMPCO IR does respond to SEC-10 but entirely unresponsive to SEC-11 and I want to make sure that this was not simply an error.

Thanks,
Mark

From: Miriam Heinz [<mailto:Miriam.Heinz@ieso.ca>]

Sent: May 1, 2019 12:27 AM

To: BoardSec

Cc: fcass@airdberlis.com; Andrew.Bishop@oeb.ca; Michael.Lesychyn@oeb.ca; Ian.Richler@oeb.ca; Janet.Sakauye@oeb.ca; shelley.grice@rogers.com; david.butters@appro.org; hapesteguyreux@mccarthy.ca; gvegh@mccarthy.ca; tbrett@foglers.com; Marion.Fraser@rogers.com; spollock@blg.com; alex.greco@cme-mec.ca; eb Blanchard@blg.com; jrangooni@eda-on.ca; kfarmer@eda-on.ca; tom.ladanyi@rogers.com; spainc@rogers.com; Cossette.helene@hydro.qc.ca; Belanger.Frederic2@hydro.qc.ca; karen.cooke@opg.com; mel.hogg@opg.com; opgregaffairs@opg.com; jvince@willmsshier.com; mgardner@willmsshier.com; Marion.Fraser@rogers.com; preece@pwu.ca; richard.stephenson@paliareroland.com; bkidane@elenchus.ca; kmckenzie@elenchus.ca; jay@shepherdubenstein.com; mark@shepherdubenstein.com; wmcnally@opsba.org; grahamc@thesociety.ca; boh dan.dumka@gmail.com; hastingsm@thesociety.ca; lawford@piac.ca; markgarner@rogers.com; Devon Huber; Regulatory Affairs; George Dimitropoulos

Subject: RE: IESO Interrogatory Responses - 2019 Revenue Requirement Submission (EB-2019-0002) - Batch 4 Issues 6.0 through 6.3

Attached are the IESO's interrogatory responses to Issues 6.0 through 6.3. This is the final batch of responses.

I will endeavour to have the responses filed through the OEB's e-filing system again tomorrow.

Miriam

From: Miriam Heinz

Sent: May 1, 2019 12:21 AM

To: 'BoardSec' <BoardSec@oeb.ca>

Cc: 'fcass@airdberlis.com' <fcass@airdberlis.com>; 'Andrew.Bishop@oeb.ca' <Andrew.Bishop@oeb.ca>; 'Michael.Lesychyn@oeb.ca' <Michael.Lesychyn@oeb.ca>; 'Ian.Richler@oeb.ca' <Ian.Richler@oeb.ca>; 'Janet.Sakauye@oeb.ca' <Janet.Sakauye@oeb.ca>; 'shelley.grice@rogers.com' <shelley.grice@rogers.com>; 'david.butters@appro.org' <david.butters@appro.org>; 'hapesteguyreux@mccarthy.ca' <hapesteguyreux@mccarthy.ca>; 'gvegh@mccarthy.ca' <gvegh@mccarthy.ca>; 'tbrett@foglers.com' <tbrett@foglers.com>; 'Marion.Fraser@rogers.com' <Marion.Fraser@rogers.com>; 'spollock@blg.com' <spollock@blg.com>; 'alex.greco@cme-mec.ca' <alex.greco@cme-mec.ca>; 'eb Blanchard@blg.com' <eb Blanchard@blg.com>; 'jrangooni@eda-on.ca' <jrangooni@eda-on.ca>; 'kfarmer@eda-on.ca' <kfarmer@eda-on.ca>; 'tom.ladanyi@rogers.com' <tom.ladanyi@rogers.com>; 'spainc@rogers.com' <spainc@rogers.com>; 'Cossette.helene@hydro.qc.ca' <Cossette.helene@hydro.qc.ca>; 'Belanger.Frederic2@hydro.qc.ca' <Belanger.Frederic2@hydro.qc.ca>; 'karen.cooke@opg.com' <karen.cooke@opg.com>; 'mel.hogg@opg.com' <mel.hogg@opg.com>; 'opgregaffairs@opg.com' <opgregaffairs@opg.com>; 'jvince@willmsshier.com' <jvince@willmsshier.com>; 'mgardner@willmsshier.com' <mgardner@willmsshier.com>; 'Marion.Fraser@rogers.com' <Marion.Fraser@rogers.com>; 'preece@pwu.ca' <preece@pwu.ca>; 'richard.stephenson@paliareroland.com' <richard.stephenson@paliareroland.com>; 'bkidane@elenchus.ca' <bkidane@elenchus.ca>; 'kmckenzie@elenchus.ca' <kmckenzie@elenchus.ca>; 'jay@shepherdubenstein.com' <jay@shepherdubenstein.com>; 'mark@shepherdubenstein.com' <mark@shepherdubenstein.com>; 'wmcnally@opsba.org' <wmcnally@opsba.org>; 'grahamc@thesociety.ca' <grahamc@thesociety.ca>; 'boh dan.dumka@gmail.com' <boh dan.dumka@gmail.com>; 'hastingsm@thesociety.ca' <hastingsm@thesociety.ca>; 'lawford@piac.ca' <lawford@piac.ca>; 'markgarner@rogers.com' <markgarner@rogers.com>; Devon Huber <Devon.Huber@ieso.ca>; Regulatory Affairs <regulatoryaffairs@ieso.ca>; George Dimitropoulos <George.Dimitropoulos@ieso.ca>

Subject: RE: IESO Interrogatory Responses - 2019 Revenue Requirement Submission (EB-2019-0002) - Batch 3 Issues 2.1 through 5.3