



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)

May 10, 2019

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

**Re: EB-2019-0002 – IESO revenue requirement application – SEC notice of motion and answers to APPrO interrogatories**

Dear Ms. Walli:

We are counsel to the Association of Power Producers of Ontario (“**APPrO**”). APPrO has reviewed SEC’s notice of motion dated May 6, 2019 seeking full and adequate responses to interrogatories and supports SEC’s motion for the reasons provided in this letter.

Moreover, APPrO hereby requests that as part of the SEC motion, the Board direct the IESO to provide answers to the four APPrO IRs which have not been answered by the IESO. The IESO’s unresponsive answers to these four APPrO IRs are described below.

It is contrary to the Board’s *Rules of Practice and Procedure* for the IESO to refuse to provide an answer or information requested in an interrogatory by disregarding the request for information and/or referring parties to an interrogatory response which does not in fact respond to the interrogatory (the “**Unresponsive Approach**”). Rule 27.02 of the Board’s *Rules of Practice and Procedure* requires as follows:

27.02 A party who is unable or unwilling to provide a full and adequate response to an interrogatory shall file and serve a response:

(a) where the party contends that the interrogatory seeks information that is not relevant, setting out specific reasons in support of that contention;

(b) where the party contends that the information necessary to provide an answer is not available or cannot be provided with reasonable effort, setting out the reasons for the unavailability of such information, as well as any alternative available information in support of the response; or

(c) otherwise explaining why such a response cannot be given.

A party may request that all or any part of a response to an interrogatory be held in confidence by the Board in accordance with Rule 10.

Contrary to Rule 27.02, the IESO's Unresponsive Approach provides no reasons for not answering an interrogatory and instead disregards the request for information requested and/or refers to another interrogatory response which does not include the information requested.

### ***SEC interrogatories and motion***

SEC-11 requested that the IESO provide, for material<sup>1</sup> 2019 core operating capital project/initiatives, a copy of the business case, project plan or similar document.<sup>2</sup> In response, the IESO referred to its reply to an AMPCO IR which does not address 2019 initiatives in any detail.<sup>3</sup> APPrO submits that the IESO's response is unresponsive. Moreover, neither the Board nor parties can assess whether proposed spending is reasonable without business plans or similar documents explaining material initiatives.

SEC-21 requested a detailed breakdown of the \$38 million proposed by the IESO to be spent on capital for the Market Renewal Program ("**MRP**"). For each material component, SEC-21 also requested a copy of the business case, project plan, or similar document.<sup>4</sup> In response, the IESO refers to two IR responses which do not contain the detailed breakdown requested or any business case, project plan or similar document regarding the material components of MRP capital.<sup>5</sup>

---

<sup>1</sup> "Materiality" was defined by SEC per Board guidelines, see SEC motion dated May 6, 2018 para. 6 and SEC IR 11.

<sup>2</sup> SEC IR 11.

<sup>3</sup> IESO response to AMPCO IR 18. The table the IESO is refers to simply lists the proposed 2019 spending for each "change initiative/project". It does not provide any information whatsoever in relation to each project itself.

<sup>4</sup> SEC IR 21.

<sup>5</sup> The IESO refers to Staff IR 26 a), in which the IESO's answer states that \$25.9 million of the capital budget is allocated to Energy detailed design and \$10 million of this capital budget is allocated to an initial payment for the Dispatch and Scheduling and Optimization Engine. The answer also states that \$12.1 million of the capital budget is allocated to Capacity detailed design. This is not a detailed breakdown. The IESO also refers to SEC-16 which as noted by SEC, contains documents which provide scheduling and budgeting reports regarding the MRP. These documents do not contain business cases or similar information.

In other words, the IESO is requesting \$38 million for MRP capital spending<sup>6</sup> – an amount which, as noted by SEC, is more than double what the IESO spent on all capital spending in 2018<sup>7</sup> – but has not provided business cases, project plans or any similar documents for material components of this proposed capital spending. APPrO submits that it is not possible for the Board to be confident the \$38 million in capital proposed for the MRP for 2019 is appropriate if the IESO cannot provide a business plan or equivalent for material components of this proposed amount.

Moreover, APPrO agrees with SEC and AMPCO<sup>8</sup> that if the reason the IESO has refused to provide business plans or equivalents in relation to material initiatives is because they do not exist, then this is relevant and important information for the Board and for parties to know.

### ***APPrO IRs where the IESO has taken the Unresponsive Approach***

APPrO notes that the IESO took the Unresponsive Approach in answer to the following four APPrO interrogatories:

1. APPrO IR 6 asks various questions about a statement on page 23 of the IESO Business Plan which states that a “cost efficiency” risk is that “The Market Renewal Program is adversely affected by system dependencies, and/or a lack of resources with market design and implementation expertise”. (Emphasis added)

The IESO’s answers refer repeatedly to Staff IRR 12, which does not address the “system dependencies” aspect of the risk in any way.

2. APPrO IR 6(e) requests all documents relating to the MRP resulting from the process the IESO has undertaken with KPMG working jointly with the IESO’s MRP and Enterprise risk teams regarding the IESO’s risk assessment framework. (Emphasis added)

The IESO’s answer does not provide any documents, nor any reason that documents have not been provided. Instead, the IESO provides a short chart which it describes as an excerpt of KPMG recommendations with IESO responses “related to integration of the IESO’s enterprise risk management practices across strategic, operation and project risks, including MRP-related risks.”

3. In APPrO IR 7(i), APPrO asks as follows:

Has the IESO conducted a review of its responsibility for the inefficiencies in the operation of the current market so that it can ensure that it does not repeat the problems

---

<sup>6</sup> Exhibit C-2-1 pg. 11.

<sup>7</sup> Per Exhibit B-2-1 pg 2 table 4: (i) the IESO spent \$15.6 million on capital in 2018 (estimate prior to 2018 audited financial statements).

<sup>8</sup> AMPCO letter dated May 7, 2019, page 1.

that led to the need to expend hundreds of millions of dollars to fix the inefficiencies in the market? (Emphasis added)

In response, the IESO refers to OEB Staff IR 25(d). OEB Staff IR 25(d) asks why the IESO considers it reasonable to hire and spend prior to the finalization of the MRP's business case and the IESO answer explains why the IESO considers it reasonable to hire and spend prior to the finalization of the MRP's business case. This answer has nothing to do with the question which APPrO asked, i.e., whether the IESO has conducted a review of its responsibility for the inefficiencies in the operation of the current market so that it can ensure that it does not repeat the problems that led to the need to expend hundreds of millions of dollars to fix the inefficiencies in the market.

4. APPrO IR 11 d) asks "What is the amount of resources that the IESO has committed to investment in Market Renewal to-date despite the lack of a business case?"

In response the IESO refers to Staff IR 14, which is about Staffing levels and does not address the amount of resources that the IESO has committed to investment in Market Renewal to-date despite the lack of a business case.

APPrO notes that unlike SEC, APPrO did not contact the IESO in advance of this letter to inquire as to whether any of the above responses to APPrO interrogatories were in error. If these responses were in fact in error, APPrO would appreciate if the IESO could advise of such and correct these errors. Otherwise, as indicated above APPrO requests that as part of the SEC motion, the Board direct the IESO to provide answers to the four above APPrO IRs.

Finally, APPrO notes that as a result of the Unresponsive Approach, it is necessary to "comb through" IR responses to assess whether an answer has been provided. If the IESO were clear and transparent in answering IRs, the process would run more efficiently.

Yours Truly,



George Vegh

cc: David Butters, President & CEO, APPrO  
Parties in EB-2019-0002