

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*.

REPLY SUBMISSIONS

OF THE

SCHOOL ENERGY COALITION

Pursuant to Procedural Order #3, these are the submissions of the School Energy Coalition in reply to the Submissions of the Applicant dated May 17, 2019. In preparing this reply, SEC continues to rely on the submissions in our Notice of Motion, but we have not repeated them here. We have instead responded only to the arguments set forth in the Applicant's Submissions.

GENERAL

1. The Submissions of the Applicant start by emphasizing repeatedly the unusual "business model" of the IESO, and the "unique approval process" it undergoes. With respect, those factors, to the extent that they are relevant to anything in this proceeding, are not relevant to whether the IESO should provide full disclosure of material and relevant facts and evidence to allow the Board to carry out its statutory function under section 25 of the Electricity Act to approve, or refuse to approve, the Applicant's "*proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year*".

2. The Applicant appears to imply that its disclosure requirements are less because it is different from other entities regulated by the Board, and/or that somehow the Board's scrutiny

should be less because the Minister has already reviewed and approved the Applicant's Business Plan.

3. In fact, the OEB Act makes clear, in section 1(1), that the Board must be guided by the objectives in the Act "*in carrying out its responsibilities under this or any other Act in relation to electricity*". Thus, the obligation to protect consumers with respect to price, for example, applies in exactly the same way to an application for fees approval by IESO as it does for the parallel application for rates approval by Toronto Hydro in EB-2018-0165. Further, unless the Applicant is proposing that its fees should be set on some other basis than cost of service, the Board's role must necessarily be to review the prudence and reasonableness of the IESO's spending proposals.

4. In this regard, SEC notes that currently only Alectra, Hydro One, Toronto Hydro, Enbridge and Ontario Power Generation have higher revenue requirements than the IESO.

5. Further, SEC notes that virtually every application before the Board is based on a budget or business plan that has already been approved by somebody else. For years, the Minister approved the Hydro One and OPG budgets before they came before the Board, and today OPG still does not submit an application without a prior Ministerial review. For other regulated entities, their budgets and business plans are reviewed a great length, in some cases, by Boards of Directors, municipal government shareholders, parent companies, and others.

6. None of that changes the statutory obligation of the Board to do its own review, and to ensure that the evidence before the Board is sufficient to do that review independently and thoroughly.

7. SEC therefore submits that the Applicant's argument that it should somehow be treated differently has no legal, policy, or practical basis, and should be ignored.

8. The following are our specific comments on the individual interrogatory responses in dispute.

SEC Interrogatory 11

9. ***What is the Board Approving?*** The Applicant submits that somehow the Board has made a determination that it is only considering the capital “envelope” of the IESO, and is not looking at individual capital projects to see if they are reasonable or prudent, with the sole exception of the Market Renewal Project (MRP). This is wrong on two counts:

10. First, the draft issues list includes the standard wording for capital budgets used in many cases before the Board: “*Is the IESO’s Capital Expenditure budget for Fiscal Year 2019 appropriate?*” The Board accepted this issue, in part because all parties accepted it. Its scope was not debated.

11. The Applicant argues that, by providing more detail for MRP, the Board was implicitly saying that it did not need to review individual projects in the rest of the budget. We have been unable to find any place where the Board says this and, given the Board’s statutory responsibilities and longstanding practices, it would be surprising.

12. Second, the Applicant objects to review of individual capital projects, but does not propose an alternate approach that the Board can use to determine whether the capital budget “envelope” is reasonable. In a cost of service regime, there is typically at least some review of the capital expenditures to see if each is reasonable, and if the total is reasonable.

13. ***Is the Filed Information Sufficient?*** The Applicant also submits that it has already provided sufficient information for the Board to carry out what it feels is a relatively limited review. In SEC’s submission, it has not.

14. There are two main sources of information on capital projects: AMPCO 18, and Appendix 3 of the Business Plan. They are similar to each other, except that in the case of AMPCO 18 it includes 2017 and 2018 and variance explanations for those years, and the Business Plan includes short project explanations. Most of this material was in the prefiled evidence.

15. By way of example only, the Applicant plans to replace its settlement systems over 2019-2023 at a cost of at least \$12.5 million (we do not have the figures for 2022 and 2023, and budgets in 2017 and 2018 were not spent), but has given only a six-line explanation, with no details, in the Business Plan. In particular, although there is obvious overlap with MRP, there is no discussion of that. Or, for a more mundane example, the Applicant underspent in 2017 and 2018 by one-third on day to day software and hardware costs (called “Infrastructure Refresh”), but proposes a further budget increase in 2019 with no supporting evidence.

16. SEC submits that, for these and other capital projects in 2019, the Board does not have sufficient information to determine if the amount being budgeted is appropriate.

17. ***Business Cases and Project Plans.*** The Applicant appears to misunderstand the purpose of a business case. It is not a process of proving that a project has more benefits than costs. That is a “cost/benefit analysis”. In fact, for regulated entities many projects have net costs in excess of benefits.

18. A business case, in the sense that is normally used at the Board, is a disciplined analysis of a “need”, showing the nature of the need, the options for meeting that need, and the costs and benefits associated with each of those options. It is, in short, a rigorous approach to selecting the best course of action.

19. Given the Applicant’s comments on the MRP business case (see below), it may be that they simply do not do the kind of rigorous planning that the Board sees in other regulated entities. If that is the case, they should just say so. On the other hand, if these projects in the current business plan are based on business cases, the Board should be able to see them. Otherwise, how can the Board know whether the approach being taken by the Applicant is prudent, and there is not an alternate approach that would be more reasonable and save the customers money?

20. ***Conclusion.*** SEC therefore submits that the Applicant should be required to provide a full response to SEC-11 as requested.

SEC Interrogatory 21

21. The MRP is a multi-year, \$247 million project, the biggest the IESO has undertaken. Almost \$50 million is proposed for 2019 (of which \$38 million is capital), even though in 2017 and 2018 the Applicant did not spend its budgeted amounts. 2019 is the first year in which the Applicant proposes significant spending on this project.

22. ***Amount of Budget.*** SEC-21 asked for more detail on the MRP budget. Even with the minimal additional detail provided in the revised answer, the Board is not in a position to assess whether the spending is prudent. The revised answer basically tells the Board that IESO will spend, in 2019,

- a. \$21.00 million on internal labour costs,
- b. \$12.20 million on consultants,
- c. \$10.92 million on IT costs (with no explanation as to whether any of that is internal labour or consultants, and no reference to the \$10 million software payment referred to in OEB Staff-26(a)),
- d. \$1.54 million on “other administrative”, and
- e. \$4.00 million on contingency.

There is no information on the subsequent year budgets, so the Board has no context.

23. In SEC’s submission, no other regulated entity would be allowed to present a budget for their biggest project at that level of granularity and have that evidence accepted as sufficient by the Board.

24. ***Business Case.*** Even more shocking, in our submission, the Applicant wants the Board to approve spending almost \$50 million this year, while blithely stating that it will draft, circulate and stakeholder a business case in time for the end of the year. As noted earlier, this approach to a business case is not consistent with the rigorous planning model the Board normally sees.

25. The Applicant claims that the Cost Report (Ex. C/2/1) is their project plan. This rudimentary document essentially restates the same categories, over and over again, interspersed

with high level verbiage unconnected with the actual dollar figures. It incorporates their six page “project plan” from January 2nd, which has even less detail on budgets.

26. More important, though, none of the information provided shows that the Applicant ever did an analysis of the “needs” to be addressed, the options available to meet each of those needs, and detailed budgeting for the best of the options.

27. SEC’s interrogatory actually assumes that individual components of this \$247 million project will have been analysed in a disciplined way, and a business case created for each. (We were aware, from the pre-filed evidence, that an overall business case had not yet been done.) For example, the MRP includes the Incremental Capacity Auction (ICA), the details of which are being worked out this year through a stakeholder process. The Application includes no evidence on the options that were considered to secure incremental capacity. Further, even if the ICA is the assumed choice, the Application includes no evidence to show that the Applicant has reviewed the various possible ways of implementing that choice, and the costs and benefits of each.

28. In short, the evidence before the Board at this time does not demonstrate to the Board that any rigorous analysis has been carried out. If that is in fact the case, and the Applicant has decided to go ahead without that disciplined approach, the Board should be told.

29. In those circumstances, SEC notes it may be that the Board cannot approve this the budget for \$50 million project and, given its high materiality, therefore cannot approve the revenue requirement and fees for the Applicant.

30. **Conclusion.** SEC thinks it highly unlikely that the IESO’s management and Board of Directors has approved spending \$50 million this year on MRP without having more information than has been provided to the Board. Assuming that to be true, SEC submits that the Board should be able to see at least what management and directors of the IESO have seen, which is, in effect, what SEC-21 requests.

APPrO Interrogatory 6

31. No submissions.

APPrO Interrogatory 7

32. While SEC will leave the primary submissions on this to APPrO, we wish to add one comment.

33. The MRP is designed to deal with a problem (“inefficiencies”) that has arisen in the design of the market. APPrO-7(i) appears to be asking for details of any review by the IESO analysing how that problem arose.

34. SEC believes that best practice in solving difficult problems starts with understanding why they arose in the first place, and this appears to be the intent of the APPrO question. Otherwise, the Applicant’s position on MRP appears to boil down to “Let’s spend \$247 million to solve a problem when we don’t understand why it happened in the first place.” While that may not be what the Applicant intended with its non-response, that is the necessary implication.

APPrO Interrogatory 11

35. No submissions. This is already partially dealt with in our submissions on SEC-21.

All of which is respectfully submitted this May 21, 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