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May 21, 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 – APPrO reply submission re SEC motion and APPrO interrogatories

Dear Ms. Walli:

Pursuant to Procedural Order No. 3, these are the reply submissions of the Association of Power Producers of Ontario (“**APPrO**”) to the IESO’s letter (the “**IESO Submissions**”) responding to SEC and APPrO’s requests that the IESO provide answers to certain SEC and APPrO interrogatories.

At the outset, APPrO notes that the IESO Submissions state that in the IESO’s cover letter enclosing interrogatory responses, the IESO noted that “the fact that the IESO has provided answers to interrogatories should not be taken as any indication that the IESO considers these areas of enquiry to be appropriate for the revenue requirement proceeding.”¹

As the IESO knows, it is common practice before the Ontario Energy Board (the “**OEB**” or the “**Board**”) for information to be provided in answer to an interrogatory even when the party answering that interrogatory also believes the interrogatory does not request information relevant to the issues in the proceeding. However, if an answer is not provided or not fully provided on the basis of relevance, this fact must be stated in order to be compliant with Rule 27.02 of the Board’s Rules of Practice and Procedure, which states as follows:

¹ See IESO Submissions page 2, referring to the IESO’s cover letter enclosing interrogatory responses.

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. [...]

Contrary to Rule 27.02, the IESO's approach was to provide no indication that an interrogatory was not being answered on the basis of relevance and no reasons for not answering an interrogatory. Instead, the IESO either ignored part or all of the request for information requested and/or referred to another interrogatory response which did not include the information requested. In the IESO Submissions, the IESO only now indicates that in fact it did not answer some interrogatories and only now provides reasons as to why.

The IESO Submissions explain this approach as follows at page 2:

When intervenors request documentation that is overly broad, based on a materiality threshold which has no relevance to the IESO's business model, the IESO provides a response to be of assistance at the level of detail required for the OEB to assess the IESO's revenue requirement within the consideration of the OEB approved Issues List.

APPrO has included submissions below on the IESO's assertion that the proposed materiality threshold (almost \$1 million dollars) has no relevance to the IESO business model. Regarding the rest of the above quotation in the IESO Submissions, APPrO submits that the Board should be very concerned that the IESO appears to believe that Rule 27.02 does not apply to it – i.e., when the IESO thinks a request is “overly broad”, it need not state this and will simply provide a response “at the level of detail” the IESO thinks is required.

APPrO submits that the Board should order the IESO to adhere to the Board's *Rules of Practice and Procedure*. APPrO is unaware of any reason that the IESO would be permitted not to follow the same rules that must be followed by all applicants before the Board. In this regard, APPrO addresses the IESO's various statements about its “distinctly different role and business model” and “unique” government approval process below.

SEC interrogatories

SEC-11 requested that the IESO provide, for material² 2019 core operating capital project/initiatives, a copy of the business case, project plan or similar document.³ 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 component proposed to cost more than \$954,000, SEC-21 also requested a copy of the business case, project plan, or similar document.⁴

In regards to the above two SEC interrogatories, the IESO has re-answered SEC-21 with only a slightly more detailed breakdown of MRP spending for 2019⁵ and has not provided any business case, project plan or similar document.

The IESO Submissions state that “The broad nature of the request by SEC in SEC Interrogatory 11, based on a materiality threshold with no basis, raises difficulty for the IESO to be responsive.” The submission that SEC’s proposed materiality threshold has “no basis” appears to be solely based on the fact that it was calculated using the Board’s guidelines applicable to electricity distributors. APPrO submits that this misses the point – the point is that SEC requested a business plan or equivalent for projects which are proposed to cost a significant amount of money. The IESO should be required to explain to ratepayers and the Board why it believes that it should be allowed to spend on projects which cost more than \$954,000 – almost \$1 million dollars – without providing a business case, project plan or similar document.

The IESO Submissions do not propose an alternative materiality threshold which the IESO believes would be appropriate for itself. Instead, the IESO Submissions state as follows:

The issue of materiality was addressed in the development of the issues list. In its Decision on the Issues List the OEB deemed the MRP a significant project and expanded the issues on the MRP. The IESO did not oppose additional issues related to the MRP. No similar identification was made for any other individual core capital project, all of which were available to intervenors and the OEB.

In other words, the IESO Submissions argue that because the OEB deemed the MRP a significant project, no other project – regardless of proposed cost – is significant because the OEB or intervenors did not propose to make it a separate issue. APPrO submits that the IESO Submissions have misunderstood the purpose of an issues list in an OEB proceeding: the issues list is not intended to identify every significant project which an applicant is proposing in order to make it a distinct issue on the proceeding’s issues list.

² “Materiality” was defined by SEC per Board guidelines, see SEC motion dated May 6, 2018 para. 6 and SEC IR 11. The result was a materiality threshold of \$954,000.

³ SEC IR 11.

⁴ SEC IR 21.

⁵ See updated answer to SEC-21 filed along with the IESO Submissions.

The IESO Submissions also argue that unlike other applicants, the IESO does not need to provide business cases or project plans:

The IESO understands that in some cases rate-regulated entities provide business cases or project plans as evidence before the OEB. However, the IESO is an entity with a distinctly different role and business model than rate regulated entities in the energy market, and a unique approval process with the Minister of Energy, Northern Development and Mines, and the OEB.⁶

APPrO notes that the IESO's revenue requirement is reviewed by the Board under section 25 of the *Electricity Act, 1998* and that under section 24 of the *Electricity Act* the IESO must submit its proposed business plan to the Minister of Energy, Northern Development and Mines for approval. However, the IESO has not provided reasons as to why it has "a distinctly different" business model than rate regulated entities in the energy market" and why its "unique" approval process should result in the IESO being allowed to spend millions of dollars on projects without providing business plans or equivalents for these projects. APPrO submits that there is no reason to support the assertion that the IESO has a different business model than other entities regulated by the Board.

It is true that under the *Electricity Act, 1998*, the Minister approves the IESO's business plan, but only the OEB can approve expenditure and revenue requirements. Presumably, the Minister's approval is provided on the premise that the Board will conduct a substantive review of expenditures. In other words, the OEB should assume that the Minister expects the OEB to do its job in accordance with the OEB's statutory mandate, including its mandate to protect the interests of consumers. The IESO is effectively asking the Board to abdicate its legal responsibility to protect ratepayers by reviewing IESO expenditures. The suggestion that the IESO should be given a free pass to spend millions of dollars demonstrates little understanding of or respect for the Board's oversight role.

In effect, the IESO Submissions indicate that the IESO believes that the IESO is a special case when it comes to Board review of IESO proposed expenditure and revenue requirements. The IESO Submissions imply that while other applicants have to provide business cases and project plans, the IESO does not⁷. The IESO Submissions indicate that the IESO does have some business plans, but that the IESO decides when these are helpful information to be provided in an OEB proceeding.⁸ Moreover, it appears from the IESO Submissions that in regards to MRP

⁶ See IESO Submissions page 2, para. 6.

⁷ See IESO Submissions page 2, para. 6 (quoted in full in text above).

⁸ See first paragraph of page 4 of the IESO Submissions: "Business cases have the most relevancy and validity in the context of the point in time in which they are created and projects are initiated. As business operations continue, priorities change and operational decision making evolves. The IESO submits that the information provided in response to SEC Interrogatory 11, provides the most current and relevant information to assess its total capital"

projects, the IESO simply does not have the business plans or equivalent requested by SEC, but refuses to state this. APPrO submits that the Board should order the IESO to provide all the business plans or equivalents that it has and otherwise indicate when it does not have these.

APPrO interrogatories

APPrO IR 6

APPrO IR 6 asks various questions about a statement on page 23⁹ of the IESO Business Plan which states that in relation to “cost efficiency”, a “key 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 Submissions state that APPrO is re-writing its interrogatory because it did not mention “system dependencies” specifically. This is incorrect – APPrO asked throughout its IR about the “risk” identified which, according to the IESO Business Plan, was that the MRP is adversely affected by two elements: one, system dependencies [emphasis added], and/or two, a lack of resources. Since APPrO asked throughout its IR about the risk identified, it is clear that it was asking about the two components of this risk as enumerated in the IESO Business Plan.

APPrO IR 6(e)

In regards to APPrO IR 6(e), the IESO Submissions provide some additional details about the IESO’s answer but otherwise refuse to provide any of the documentation requested on the basis of relevance. As noted above, APPrO submits that the IESO should have indicated in its original answer to the interrogatory that no documentation was being provided because the IESO alleges the documentation is not relevant.

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. The IESO Submissions do not explain why the IESO alleges that this documentation is not relevant other than to state that the “inner workings” of the IESO’s work with KPMG is out of scope¹⁰.

APPrO submits that the documents requested in this IR are in fact very relevant, for the following reasons:

- Issues 6.2 and 6.3 in this proceeding examine the amounts that the IESO has spent and proposes to spend on the MRP. APPrO has requested only documents related to the MRP which result from the work the IESO has done with KPMG regarding risk assessment.

project expenditure in 2019.”

⁹ Page 23 of Exhibit A-2-2 which is page 21 of the IESO Business Plan.

¹⁰ IESO Submissions page 7.

- The MRP is an uncertain project whereby the IESO is, in many cases, seeking to fix issues which have been repeatedly raised as problems since market opening and which the IESO has been unable or unwilling to fix. APPrO submits that understanding the work and issues regarding the IESO's risk assessment process as it relates to the MRP only is crucial to assessing whether the significant amounts of spending proposed for the MRP are reasonable. If the IESO has not adequately assessed or set up risk management frameworks in relation to the MRP, this is important information for the board and parties to know.

APPrO IR 7(i)

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

The IESO Submissions state that the IESO "attempted to answer to the best of its ability by referencing OEB Staff Interrogatory 25 d), which speaks to the reports that document benefits and reduction in market inefficiencies expected from MRP."

This response mischaracterizes these reports. These reports identify the market inefficiencies that have resulted from the IESO's operation of the market for the last twenty years. These inefficiencies are significant and beg the question of why the market has been operated so inefficiently. Without understanding why this is the case, it is impossible to have any confidence that these mistakes will not just be repeated. Only an objective business case that demonstrates why things will be different this time can provide the Board with confidence that the IESO has learned from its mistakes and will operate the market more efficiently in the future.

The IESO Submissions also state that the IESO "is of the view that assigning blame with regard to specific inefficiencies in the market is not helpful to this proceeding". APPrO submit that its question was not about "assigning blame", but it is fair to assign responsibility and accountability. The questions asks whether the IESO has considered why, in the past, it has not been able to resolve many inefficiencies that have been noted repeatedly since market opening. If there is no review conducted as to why these issues have not been resolved in the past, how can the Board be confident that the IESO will be in a position to resolve these issues now? This is the purpose of APPrO's question and it is clear from the question itself, which does not mention blame but asks if the IESO has conducted a review of these matters. Unless otherwise advised, APPrO will assume the IESO has not conducted such a review.

Further, OEB Staff Interrogatory 25 d) explains why the IESO considers it reasonable to hire and spend prior to the finalization of the MRP's business case. This does not address 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 these problems. Again, nowhere in the IESO's answer is it stated that the IESO has decided that it will not answer the interrogatory.

APPrO IR 11 d)

APPrO's premise that a business case has not yet been completed is based on the IESO's own evidence that the first business case being prepared for the MRP is scheduled to be completed this year. The IESO Submissions now claim that the Brattle Group work completed in 2017 (the "**2017 Report**") was "like a business case" and that the 2017 Report "undertook a cost benefit analysis prior to the initiation of the [MRP]".¹¹

APPrO notes that a list of claimed benefits is not a cost-benefit analysis. A cost-benefit analysis includes the following steps:

1. Define the set of alternative projects
2. Determine which benefits and costs are within scope
3. Identify the impact categories and select metrics for their evaluation
4. Predict the impacts quantitatively over the project timeframe
5. Monetize all impacts
6. Discount benefits and costs to obtain present values
7. Calculate the net present value of each alternative
8. Perform sensitivity analysis
9. Make a recommendation¹²

APPrO's IR was intended to request an updated total dollar investment amount in the MRP. With the current total 2019 MRP spend number provided in the IESO Submissions, APPrO can now calculate total MRP spend to March 2019 as being \$29.2 million¹³ – i.e., almost \$30 million – with no business plan having been presented to-date.

Yours Truly,



George Vegh

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

¹¹ Page 8, IESO Submissions.

¹² See Boardman, A. et al. Cost-Benefit Analysis: Concepts and Practice, 2017.

¹³ Per the IESO Submissions: \$8.1M in 2017 + \$16.3 M in 2018 + \$4.8M in Q1 2019.