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August 2, 2019

**VIA RESS AND COURIER**

**Ms. Kirsten Walli**  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319, 27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Utility Remuneration and Responding to Distributed Energy Resources (DERs)  
Consultation Proceedings (the Proceedings) and the Ontario Energy Board  
Decision on Cost Eligibility dated July 17, 2019 (the Decision)  
EB-2018-0287 and EB-2018-0288**

We are counsel to the Association of Power Producers of Ontario (**APPrO**) in the above-referenced Proceedings. APPrO hereby requests, in accordance with rule 40.01 of the *Rules of Practice and Procedure*, that the Board review and vary its Decision in order to afford APPrO cost award eligibility in the Proceedings. The Board's *Practice Direction on Cost Awards* (the **Practice Direction**) entirely supports this request.

The Board should grant APPrO cost eligibility in accordance with sections 3.03(a), 3.03(b), 3.04(d), 3.06, and 3.07 of the Board's *Practice Direction on Cost Awards* (the **Practice Direction**) on the grounds that:

- (a) APPrO primarily represents electricity producers that are consumers of services that are regulated by the Board. Electricity producers, including those providing DERs, make significant payments to electricity utilities for services ranging from connection costs to impact studies, including rates and charges for distribution services, maintenance costs for specified equipment, communication fees, and payments for 'forced' upgrades when a utility upgrades its systems.<sup>1</sup> APPrO should therefore be afforded cost eligibility in accordance with section 3.03(a) of the Practice Direction.

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<sup>1</sup> This list provides only a partial sample. A complete list is available upon request.

- (b) APPrO is also one of the few registered participants that represents the DERs and distributed generation policy perspective that is relevant to the Board's mandate set out in section 1 of the *Ontario Energy Board Act*, as amended, including as it relates to customer protection, efficiency, and innovation. APPrO should therefore be afforded cost eligibility in accordance with section 3.03(b) of the Practice Direction.
- (c) APPrO's members are electricity producers and DER providers that make significant payments to electricity utilities for Board-regulated services. The Board erred in fact when it found that APPrO's members are commercial entities that are primarily representing their own commercial interests in the Proceedings. Like several of the participants that were granted cost eligibility in the Decision (including the Industrial Gas Users Association, the Building Owners and Managers Association of Toronto, and Canadian Manufacturers & Exporters), APPrO is a non-profit industry association representing members that are consumers of Board-regulated services.<sup>2</sup> Further, and as a result of the DERs trend that the Proceedings expressly set out to address, the independent power producers and related businesses that APPrO represents are increasingly becoming "prosumers". In an era when consumers can realistically install load management, storage, and distributed generation equipment on their side of the meter, it is no longer appropriate to maintain an inflexible distinction between consumers and producers. More types of customers exist than in the past, and their participation in regulatory processes such as the Proceedings should be facilitated. APPrO respectfully submits that facilitating reduced customer costs and increased choice through distributed generation resources constitute factors relevant to the public interest in the Proceeding and support APPrO's request for cost eligibility in accordance with section 3.04(d) of the Practice Direction.
- (d) APPrO's members moreover include DER providers, including embedded and other distributed generators, that are customers of the distributors that are directly in issue in these Proceedings. The Board has previously expressly determined that generators are customers of distributors, who (for cost award purposes) are considered to be the applicants in the context of a consultation.<sup>3</sup> The Board should not depart from its past practice in this respect and APPrO should therefore be afforded cost eligibility in accordance with section 3.06 of the Practice Direction, and notwithstanding any determination that would otherwise be made pursuant to section 3.05.
- (e) Finally, these Proceedings raise unique and unprecedented issues and impacts affecting both electricity distribution system benefits and rate mitigation for embedded or other generation customers. APPrO submits that these impacts and the rapid integration of potentially beneficial DERs constitute special circumstances that warrant a finding that APPrO should be afforded cost eligibility in accordance with section 3.07 of the Practice Direction.

APPrO is not proposing simply to represent its members' interests. APPrO proposes, as it has demonstrated in past proceedings, to make the case for improvements in regulatory policy that will benefit all rate payers, by bringing to bear public interest insights that arise from the policy perspectives of its members in their capacity as consumers of Board-services.

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<sup>2</sup> In this respect, APPrO also wishes to note that the Association of Major Power Consumers of Ontario does not represent DER providers and is expressly excluded from being awarded cost eligibility under section 3.04(b) of the Practice Direction, and yet was granted cost eligibility by the Board in the Decision.

<sup>3</sup> EB-2015-0043, Decision on Cost Eligibility (July 16, 2015), p. 2, available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/487076/File/document>.

All other intervenor groups representing entities that are, or have the ability to act as, DERs have been expressly denied cost eligibility in the Proceedings. APPrO submits that if the Board fails to grant APPrO cost eligibility, it creates more than a reasonable apprehension of bias against DERs and DER providers. This would be in clear contravention of the duty of procedural fairness and the rules of natural justice to which the Board must adhere. Further, it is difficult to imagine how the Board can legitimately review and consider the response to DERs and utility remuneration relating to DERs without the full and active participation, high quality information, and member perspectives of DER interests facilitated by cost eligibility. Finally, the Decision is at odds with the Board's express intention to seek "input from *a broader group of stakeholders* on how it should proceed with initiatives to support the evolution of the sector."<sup>4</sup> The continued exclusion of all DER providers from the Proceedings through the cost eligibility process would seriously call into question the legitimacy of the Board's process and findings in these Proceedings.

APPrO therefore respectfully requests that the Board review and vary its Decision in order to afford APPrO cost eligibility in the Proceedings.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'L' followed by a horizontal stroke that curves upwards and to the right.

Lisa (Elisabeth) DeMarco

c. David Butters, APPrO  
All Parties to EB-2018-0287 / EB-2018-0288

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<sup>4</sup> EB-2018-0287, Invitation Letter from Ontario Energy Board to Stakeholder Forum (November 22, 2018), p. 1, available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/626976/File/document> [emphasis added].