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August 13, 2019

**VIA EMAIL, RESS AND COURIER**

Ontario Energy Board  
2300 Yonge Street  
P.O. Box 2319  
Suite 2700  
Toronto, ON M4P 1E4

**Attention: Ms Kirsten Walli**  
**Board Secretary**

Dear Ms. Walli:

**Re: PF Resolute Canada Inc.**  
**Application pursuant to Section 35 of the *Electricity Act, 1998***  
**File No.: EB-2019-0206**

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We are counsel to PF Resolute Canada Inc. ("**Resolute**").

Further to Resolute's Application pursuant to Section 35 of the *Electricity Act, 1998* (the "**Application**"), Resolute encloses with this letter the following additional materials to form part of the record of the Application:

- Resolute's proposed market rule amendment (see Schedule "1")
- Correspondence regarding the IESO Board meeting where the proposed market rule amendment was considered, see paras 50-51 of the Application (see Schedule "2").

Please contact the undersigned if you have any questions in relation to the above.

Sincerely,

*signed in the original*

George Vegh

- c. Jacques Vachon, Senior VP, Corporate Affairs and Chief Legal Officer, PF Resolute Canada Inc.  
Michael Lyle, Vice President, Legal Resources and Corporate Governance, IESO

# Schedule 1



## Revised Market Rule Amendment Submission

This form is used to request an amendment to the *Market Rules*. Please complete the first four parts of this form and submit the completed form by email to the following:

Email Address: [Rule.Amendments@ieso.ca](mailto:Rule.Amendments@ieso.ca)

Attention: Market Rules Group

**Subject: Market Rule Amendment Submission**

All information submitted in this process will be used by the *IESO* solely in support of its obligations under the *Electricity Act, 1998*, the *Ontario Energy Board Act, 1998*, the *Market Rules* and associated policies, standards and procedures and its licence. All submitted information will be assigned the *confidentiality classification* of "Public" upon receipt. You should be aware that the *IESO* will *publish this amendment submission* if the *Technical Panel* determines it warrants consideration and may invite public comment.

Terms and acronyms used in this Form that are italicized have the meanings ascribed thereto in Chapter 11 of the *Market Rules*.

### PART 1 – SUBMITTER'S INFORMATION

Please enter contact information in full.

Name: Jacques Vachon, Senior VP, Corporate Affairs and Chief Legal Officer, Resolute FP Canada Inc.

(if applicable) *Market Participant /*  
*Metering Service Provider* No.<sup>1</sup>: 125299

*Market Participant Class:*  
Demand Response Market Participant

Telephone: 514-394-2296

E-mail Address: jacques.vachon@resolutefp.com

### PART 2 – MARKET RULE AMENDMENT SUBMISSION INFORMATION

Subject: Request for review of market rule pursuant to Chapter 3, section 4.2.4

Title: Demand Response Market Rule unjustly discriminates against a Market Participant / a class of Market Participants

Nature of Request (please indicate with x)

☒ Alteration

☐ Deletion

☐ Addition

<sup>1</sup> This number is a maximum of 12 characters and does not include any spaces or underscore.

**PART 1 – SUBMITTER’S INFORMATION**

Chapter: <u>Market Rule</u>	Appendix: _____	Sections: <u>18.2 and 19.2.1.1</u>
Chapter <u>7</u>		
Sub-sections proposed for amending: _____		

**PART 3 – DESCRIPTION OF THE ISSUE**

Provide a brief description of the issue and reason for the proposed amendment. If possible, provide a qualitative and quantitative assessment of the impacts of the issue on you and the *IESO-administered markets*. Include the Chapter and Section number of the relevant *market rules*.

**BACKGROUND:**

Resolute FP Canada Inc. (“Resolute”) is filing this request for an amendment to Chapter 7, sections 18.2 and 19.2.1.1 of the Market Rules (the “Market Rules”) pursuant to Chapter 3, section 4.2.4 of the Market Rules and ss. 35(1) and 35(4) of the Electricity Act, 1998 (“Electricity Act”).

The purpose of this amendment is to restore the original intention of the Market Rules with respect to the determination of a demand response market participant’s demand response capacity (Chapter 7, s. 18.2) and eligibility to participate as an hourly demand response resource (Chapter 7, s. 19.2.1.1) (collectively, the “Capacity and Eligibility Requirements”).

The original intention of the Capacity and Eligibility Requirements, as expressed in presentations to the Technical Panel and in the Market Rule Amendment proposals in respect of the Market Rules, included transitioning Capacity and Eligibility Requirements under the DR2, DR3 and CBDR programs (as defined below) to the DRA.

In order to ensure that the proposed amendments do not result in unanticipated consequences and do not constitute a design change to the DRA, Resolute has revised its proposed amendment to ensure that the amendment does not result in changes to Capacity and Eligibility Requirements that have not already been considered by the Technical Panel and approved under the DR2, DR3 and CBDR Programs. To achieve this, the revision simply confirms that “nothing in this Rule shall disqualify demand response metering configurations previously approved under the DR2, DR3, or CBDR programs.”

The full text of the proposed amendment is in Part 4.

**BRIEF DESCRIPTION OF THE ISSUE:****Context**

As a Demand Response Market Participant (“**DRMP**”), Resolute has been providing DR to the IESO under the Demand Response 2 (“**DR2**”) and Demand Response 3 (“**DR3**”) programs created by the IESO’s predecessor, the Ontario Power Authority, as well as the Capacity Based Demand Response program (“**CBDR**”) and the current DR auction (“**DRA**”) (collectively, DR2, DR3, CBDR and DRA will be referred to as the “**Demand Response Programs**”).

For the purpose of its participation in the Demand Response Programs, Resolute registered its Thunder

### PART 3 – DESCRIPTION OF THE ISSUE

Bay news-mill manufacturing facility as the Demand Response Program resource (the “**Mill**”). To do this, Resolute made use of two revenue-grade electricity meters: one that measures the consumption of the Mill from IESO-controlled grid (the “**IESO Grid Meter**”), and the other that measures the consumption of the Mill from its cogeneration facility (the “**Mill Revenue Meter**”).

The sum of the data measurements from these two meters accurately identify the total load of the Mill and that Facility’s available capacity for the Demand Response Programs. The total load for the Mill was determined, and continues to be, between 70 – 110 megawatts, depending on manufacturing operations.

The IESO accepted this measurement as accurately reflecting the total available capacity of Resolute’s Mill and approved Resolute’s participation in DR2, DR3, CBDR and the DRA.

#### **Resolute’s Registration For The 2016/2017 Auction**

In registering for the DRA, and with the IESO’s knowledge, guidance, and participation, Resolute understood that the total load of the Mill would be measured using the same aggregated meter data, measured by both the IESO Grid Meter and the Mill Revenue Meter, as was previously relied on to determine Resolute’s total available capacity for the DR2, DR3 and CBDR Programs.

Resolute was successful in both the 2016 and 2017 DRAs, and the IESO awarded it a maximum demand response capacity obligation of between 46 and 51 megawatts under these programs, reflective of its actual total load.

#### **REASON FOR THE REQUESTED AMENDMENT:**

In supporting the Market Rules in 2015, the Technical Panel was advised that the purpose of the Market Rules was to improve the “**integration of existing DR contracts** in the IESO-administered energy market and dispatch proces”.<sup>1</sup>

The first steps involved in achieving this goal were to “implement market rules to **transition DR3 contractual terms** for a market based structure (capacity-based demand response)” and to “implement a DR Auction mechanism **“to replace OPA DR contracts”**”.<sup>2</sup> Similarly, the Technical Panel was advised that the target MW requirement for the DR auction “was based on **the quantity of DR expiring from CBDR to maintain 500 MW target**.”<sup>3</sup>

The Participation and authorization amendment to the Market Rules were described as facilitating the continuance of currently approved facilities and facilitating new DR participation.<sup>4</sup>

“In order to attract the broadest range of potential DR providers, **including current demand response providers** as well as new entrants and new technologies, we have sought to reduce the requirements for participation in the auction.”

Similarly, the Market Rule Amendment Submission in respect of the Market Rules specifically stated that, “In developing the demand response auction, **the approach has been to facilitate participation by current demand response providers**, potential new participants and new technologies.”<sup>5</sup>

<sup>1</sup> Demand Response Auctions – Overview, Presentation to Technical Panel, January 20, 2015.p. 2.

<sup>2</sup> Demand Response Auctions – Overview, Presentation to Technical Panel, January 20, 2015.p. 3.

<sup>3</sup> Demand Response Auctions – Overview, Presentation to Technical Panel, January 20, 2015.p. 7.

<sup>4</sup> Demand Response Auctions – Overview, Presentation to Technical Panel, June 2 20, 2015.p. 8.

### PART 3 – DESCRIPTION OF THE ISSUE

The Market Rules were drafted in a way to facilitate these objectives. Specifically, the Market Rules made no material changes or restrictions to the Capacity and Eligibility Requirements that are set out in the Market Rules respecting the IESO's CBDR Programs.<sup>6</sup>

Despite the approval of the continuation of the existing Capacity and Eligibility Requirements, after the Market Rules were passed, IESO staff took the position that the baseline measurement for Resolute's participation in the DRA will no longer reflect the CBDR Capacity and Eligibility Requirements that are set out in the market rules. Instead, staff's position was that the Capacity and Eligibility Requirements would only take into account measurement data from the IESO Grid Meter. As a result, staff advised that it will not accept or refer to measurement data from the Mill Revenue Meter.

The consequence of IESO Staff's position is that the electricity measured by the Mill Revenue Meter meter will no longer take into account in measuring the Mill's baseline consumption. Consequently, the mill will, for the first time, and contrary to the IESO's approved participation in the DR2, DR3<sup>7</sup> and CBDR Programs, artificially be deemed to only consume electricity from the grid and Resolute will not be able to have its demand reduction measured against the demand served by its self-generation (and measured by the Mill Revenue Meter).

IESO Staff has been unable to identify a Market Rule that supports this position and, and in particular, could not identify how the Market Rules that transitioned the CBDR program to the DRA supported this change.

In discussing Resolute's amendments to the Market Rules with the Technical Panel, Staff raised two concerns. First, that scenarios that involve variations of Resolute's approved Capacity and Eligibility Requirements "could potentially yield unintended consequences if not thoroughly assessed"; and second, that Resolute's proposal is a "design change"<sup>8</sup>

Resolute understands the concerns respecting unintended consequences and has therefore revised its proposed amendment to ensure that it does not result in changes to Capacity and Eligibility Requirements that have not been considered by the Technical Panel and approved under the DR2, DR3 and CBDR Programs.

As to the "design change" point, it does not seem plausible that a configuration that has been in place and unchanged since 2013 has somehow become a design change. In any event, the revised amendment set out in Part 4 makes it clear that the Market Rule does not result in changes to metering configurations previously approved under the DR2, DR3 or CBDR programs.

<sup>5</sup> Demand Response Auctions – Participant Authorization & Facility Registration, Version 5, p. 2 (MR-00416-R00), undated.

<sup>6</sup> See Market Rules, Chapter 7, s. 17.2.1. For a comparison of the Capacity and Eligibility Requirements under the CBDR and the DRA, see Appendix A.

<sup>7</sup> The approvals for DR2 and DR3 were made by the IESO's predecessor organization, the Ontario Power Authority ("OPA"). The approvals for the CBDR were made by the post-merger IESO. Upon the amalgamation of the two organizations, the obligations, etc. of the OPA became obligations of the IESO: See Electricity Act, ss. 25.8(1).3.

<sup>8</sup> IESO Response to Proposed Market Rule Amendment submitted by Resolute, MR-00437: Demand Response – Registration and Metering Requirement, Technical Panel, March 5, 2019.

**PART 3 – DESCRIPTION OF THE ISSUE**

The proposed changes to the Market Rules are set out in Part 4, below (proposed text to market rules is underlined).

If the IESO does not correct this outcome, then the current Market Rules are inconsistent with the purposes of the *Electricity Act* and discriminatory, and should be overturned by the Ontario Energy Board.

**PART 4 – PROPOSAL (BY SUBMITTER)**

Provide your proposed amendment. If possible, provide suggested wording of proposed amendment.

As Resolute believes that the current Market Rules are clear, no specific amendments are required. However, under the circumstances, Resolute believe that the following amendments will restore the original intention of the Market Rules:

Chapter 7, Section 18.2.1.2:

18.2.1 No person may participate in a demand response auction nor receive a demand response capacity obligation unless that person has:

18.2.1.2 submitted and has been approved by the IESO, using forms and procedures as may be established by the IESO in the applicable market manual, the amount of demand response capacity that the demand response auction participant is willing to provide, provided that nothing in this Rule shall disqualify demand response metering configurations previously approved under the DR2, DR3 or CBDR programs;

Chapter 7, Section 19.2.1.1:

19.2.1 A demand response market participant is eligible to participate as an hourly demand response resource provided that the demand response market participant:

19.2.1.1 demonstrates to the satisfaction of the IESO that it can provide the demand response capacity obligation, as specified in the applicable market manual, provided that nothing in this Rule shall disqualify demand response metering configurations previously approved under the DR2, DR3 or CBDR programs;

**PART 5 – FOR IESO USE ONLY**

Technical Panel Decision on Rule Amendment Submission: \_\_\_\_\_

MR Number: \_\_\_\_\_

Date Submitted to Technical Panel: \_\_\_\_\_

Accepted by Technical Panel as: (please indicate with x)

Date: \_\_\_\_\_

☐ General

☐ Urgent

☐ Minor

**PART 5 – FOR IESO USE ONLY**

Criteria for Acceptance: _____
Priority: _____
Criteria for Assigning Priority: _____
Not Accepted (please indicate with x): <input type="checkbox"/>
<i>Technical Panel</i> Minutes Reference: _____
<i>Technical Panel</i> Comments: _____



# Schedule 2

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**George Vegh**

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May 27, 2019

**VIA EMAIL**

Mr. Michael Boll  
Corporate Secretary  
Independent Electricity System Operator (IESO)  
120 Adelaide Street West, Suite 1600  
Toronto, ON M5H 1T1

Dear Mr. Boll:

**Re: MR-00437**

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I understand that the IESO Board will meet on June 12, 2019 to consider MR-00437, Resolute's proposed amendment to the Market Rules that is designed to restore the original intention of the Market Rules respecting demand response qualifications of facilities (the "**Amendment**").

Resolute seeks to ensure that it be able to directly communicate with the Board and not have to do so through IESO staff.

Even prior to Resolute proposing the Amendment, staff said that it would use its position in the amendment process to stop the Amendment from being approved. Consistent with this position, staff used its position as facilitator of the Technical Panel process to undermine the Amendment. This included:

- withholding the Amendment from the Technical Panel;
- misleading the technical panel on the appropriateness of communications with Resolute; and
- using its role in disseminating information to the technical panel to undermine the proposal by questioning the accuracy of the information without specifying any alleged inaccuracies.

In light of this conduct, Resolute does not have confidence that staff can fairly present this to the IESO Board and, therefore, respectfully requests that it be able to do so directly both in writing and in person. Resolute also requests that it be informed of all communications among IESO staff and any Board member so that it can respond to staff's characterization of the Amendment or the process so far.

Please let me know the time and place for the Board meeting and the timelines for providing materials to the Board.

Yours truly,

A handwritten signature in blue ink, appearing to read 'George Vegh', written over a blue circular stamp.

George Vegh

GV:mt

June 4, 2019

George Vegh  
McCarthy Tétrault LLP  
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Toronto ON M5K 1E6

Independent Electricity System Operator  
1600-120 Adelaide Street West  
Toronto, ON M5H 1T1  
t 416.967.7474  
www.ieso.ca

Dear Mr. Vegh:

Re: MR-00437

I acknowledge receipt of your letter dated May 27, 2019, and I have discussed your request with the Chair of the IESO Board.

Your letter identifies that your request to make submissions directly to the IESO Board both in writing and in-person is based on your lack of confidence that IESO staff can fairly present the amendment proposal to the IESO Board. Further, you asked to be informed of all communications among IESO staff and any IESO Board member so that it can respond to staff's characterization of the amendment or the process so far.

The IESO has committed to publishing all of the materials that will be provided to the IESO Board in relation to its deliberations on market rule amendments<sup>1</sup> on its public website. This practice is intended to provide greater transparency into IESO decision-making as it relates to market rule amendments and was recently implemented in accordance with IESO Board-approved recommendations informed by the Advisory Group on IESO Governance and Decision-Making. Accordingly, the IESO will publish all of the materials that will be provided to the Board in relation to Resolute's market rule amendment proposal on the IESO's public website.

A copy of your May 27, 2019 letter together with this responding letter will also be provided to the IESO Board in advance of the June 12 meeting, and will be published on the IESO website with the other materials being provided to the IESO Board in relation to Resolute's market rule amendment proposal.

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<sup>1</sup> Refer to recommendation "1" in the Report available at: <http://www.ieso.ca/-/media/Files/IESO/Document-Library/engage/igdm/igdm-20181206-advisory-group-recommendations-report.pdf?la=en>

The Chair of the IESO Board has agreed to the Board receiving an additional written submission from Resolute, should Resolute wish to make such a submission. Please ensure that Resolute's submission is limited to ten pages, and is submitted to me by no later than **3:00 pm, Friday, June 7, 2019**. This will provide the IESO Board sufficient time to review the submission prior to the June 12 meeting.

Please note that in my role as Corporate Secretary I will not comment on the statements made in your letter. Lack of comment in this letter should not be taken as agreement by the IESO with any of the statements or allegations contained in your May 27 letter.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Michael Boll', written in a cursive style.

Michael Boll  
Corporate Secretary



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June 5, 2019

**VIA EMAIL**

Mr. Michael Boll  
Corporate Secretary  
Independent Electricity System Operator (IESO)  
120 Adelaide Street West, Suite 1600  
Toronto, ON M5H 1T1

Dear Mr. Boll:

**Re: MR-00437**

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I confirm receipt of your letter to me of June 4, 2019, which responded to my enquiry of May 27, 2019 and my follow up on that enquiry on June 4, 2019. My May 27 letter also requested that you advise of all communications among IESO staff and any IESO Board member on the proposed amendment.

Your letter states that the IESO Board will meet to consider Resolute's proposed market rule amendment on June 12, 2019, that various materials respecting the proposed amendment "will be published on the IESO website" and that any written submissions by Resolute must be provided within 3 days of your letter, i.e., by June 7, 2019. Although you characterized the IESO as being committed to providing "greater transparency into IESO decision-making as it relates to market rule amendments", you did not respond to my request for communications among staff and any IESO Board member.

None of your proposed next steps are consistent with the text or purpose of the market rules.

The market rules provide that, following a vote of the technical panel on a proposed amendment, the technical panel shall submit a written report (the "Report") to the IESO Board setting out, among other things (i) the recommendations of the technical panel and the reasons for its recommendations,<sup>1</sup> (ii) a summary of the procedure followed by the technical panel in considering the matter,<sup>2</sup> and (iii) a record of the vote of each member of the technical panel in respect of each of the recommendations made in the report.<sup>3</sup>

The IESO is required to publish the recommendations in the Report and "give notice thereof to ...any person who made an amendment submission". In the notice and publication, the IESO shall, at the request of the technical panel, invite market participants to make "written

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<sup>1</sup> Market Rules, Chapter 3, ss. 4.3.14.1.

<sup>2</sup> Market Rules, Chapter 3, ss. 4.3.14.2.

<sup>3</sup> Market Rules, Chapter 3, ss. 4.3.14.5.

submissions to the IESO Board concerning the subject of the amendment within seven business days” of the notice.<sup>4</sup>

In this case, IESO staff has not published a Report and has not given the opportunity to comment on the Report. Staff has also reduced the comment period from the seven day business day requirement in the market rules to three calendar days. As a result, Resolute is in the position of not being able to review, let alone comment on staff’s Report on Resolute’s proposed market rule amendment. This is clearly inconsistent with both the text of the market rule and any semblance of a fair, reasonable, or transparent process.

This marks the third time in this process that IESO staff has attempted to skirt the market rules.

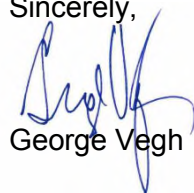
First, IESO staff changed Resolute’s participation requirements in the demand response auction without reference to the market rule requirements for rule amendments.

Second, when Resolute addressed this concern by proposing a market rule amendment that restored its participation requirements, IESO staff initially withheld the proposal from the Board and then, when it finally provided it, IESO staff went out of its way to provide misleading information to the technical panel on how it may communicate with Resolute.

As a market rule proponent, Resolute has the entitlement under the Market Rule to comment on the Technical Panel’s recommendations. This necessarily involves commenting on the Report so that it can address IESO staff’s characterization of, among other things, (i) the recommendations of the technical panel and the reasons for its recommendations,<sup>5</sup> (ii) a summary of the procedure followed by the technical panel in considering the matter,<sup>6</sup> and (iii) a record of the vote of each member of the technical panel in respect of each of the recommendations made in the report.<sup>7</sup>

Please advise how you intend to bring this process into compliance with the requirements under the market rules.

Sincerely,



George Vegh

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<sup>4</sup> Market Rules, Chapter 3, ss. 4.3.14.17.

<sup>5</sup> Market Rules, Chapter 3, ss. 4.3.14.1.

<sup>6</sup> Market Rules, Chapter 3, ss. 4.3.14.2.

<sup>7</sup> Market Rules, Chapter 3, ss. 4.3.14.5.

June 6, 2019

George Vegh  
McCarthy Tétrault LLP  
PO Box 48, Suite 5300  
Toronto-Dominion Bank Tower  
Toronto ON M5K 1E6

Dear Mr. Vegh:

Re: MR-00437

I am writing in response to your letter of June 5, 2019.

With respect to your suggestion that the IESO has acted in violation of the *market rules* by not providing Resolute with the opportunity to comment on the written report of the Technical Panel, I note for you that the *market rules* do not require that the IESO publish the entire report of the Technical Panel, but instead, just the recommendations.<sup>1</sup> In accordance with the *market rules*, the Technical Panel's recommendations were published on May 9, 2019 on the IESO's website (<http://www.ieso.ca/Sector-Participants/IESO-News>) and a Resolute representative was given notice of this recommendation that same day through the IESO's Bulletin weekly email. In addition, both you and representatives of Resolute were present at the meeting of the Technical Panel on May 2, 2019 at which the Technical Panel voted not to recommend the market rule amendment to the IESO Board and at which each panel member articulated his or her reasoning behind their respective votes.

The Technical Panel did not request that the IESO invite market participants or other interested parties to make written submissions to the IESO Board objecting to the Technical Panel's recommendation, and neither you nor Resolute's representatives asked at the time that this be done. For this reason, there was no obligation on the IESO (under Chapter 3, section 4.3.15 of the *market rules* or otherwise) to grant Resolute the opportunity to provide written submissions to the IESO Board. Furthermore, the seven

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<sup>1</sup> Chapter 3, section 4.3.15 of the *market rules*: "The IESO **shall publish the recommendations** contained in the report of the technical panel referred to in section 4.3.14 and give notice thereof to all market participants and to any person who made an amendment submission or written submission to which the recommendations relate. In this notice and publication, the IESO shall, **at the request of the technical panel**, invite market participants and other interested persons to make written submissions to the IESO Board concerning the subject amendment, within seven business days of the date of giving of notice, objecting to the technical panel's recommendation and setting forth the reasons for the objection. [...]" (emphasis added)

day comment period provided for in section 4.3.15 of the *market rules*, which you reference in your letter, relates to submissions in response to that invitation, and thus similarly does not apply here.

Nonetheless, upon further discussion with the Chair of the IESO Board, he has agreed to extend the deadline for Resolute's written submissions, if any, until **4:00 pm on Monday June 10, 2019**. This will provide the IESO Board time to review the submission prior to the June 12 meeting.

I also note your repeated request for copies of all communications among staff and any IESO Board member. The commitment of the IESO, as indicated in my letter of June 4, 2019, is to publish all materials that will be provided to the IESO Board in relation to its deliberations, and the materials were posted today on the website at <http://www.ieso.ca/en/Sector-Participants/Change-Management/Proposed-Market-Rule-Amendments>.

Contrary to your other suggestions in your letter it is IESO staff's position that it has historically complied with the *market rules*.

Yours truly,

A handwritten signature in cursive script, appearing to read 'M. Boll', written in dark ink.

Michael Boll  
Corporate Secretary



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June 10, 2019

**VIA EMAIL**

Independent Electricity System Operator (IESO)  
120 Adelaide Street West, Suite 1600  
Toronto, ON  
M5H 1T1

**Attention: IESO Board of Directors**

Dear Sirs/Mesdames:

**Re: MR-00437**

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**Introduction**

This letter is in support of a proposed market rule amendment filed by Resolute FP Canada Inc. ("Resolute", and the "Proposed Amendment"). Resolute thanks the Board for the opportunity to provide written submissions and reiterates its offer to attend at the June 12 Board meeting in person to answer any questions that the Board may have.

The purpose of the Proposed Amendment is to restore the Demand Response Auction ("DRA") market rules to their original intention with respect to the determination of a DRA market participant's demand response capacity (Chapter 7, s. 18.2) and eligibility to participate as an hourly demand response resource (Chapter 7, s. 19.2.1.1) (collectively, the "Capacity and Eligibility Requirements").

The original intention of the DRA respecting Capacity and Eligibility Requirements rules was to transition the Demand Response 2 ("DR2"), Demand Response 3 ("DR3"), and Capacity Based Demand Response ("CBDR") programs to the DRA program (collectively the "DR Programs"). As staff put it at the time the DRA was proposed, the purpose of the transition to the DRA was, **"to facilitate participation by current demand response providers**, potential new participants and new technologies."<sup>1</sup>

The Proposed Amendment became necessary because, after the DRA was passed and in effect, IESO staff effectively changed the market rules by measuring demand response reductions only by reference to electricity that had been withdrawn from the IESO grid, and no longer recognizing reductions of load that had been served by on-site generation.

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<sup>1</sup> IESO, Market Rule Submission, Demand Response Auctions – Participant Authorization & Facility Registration, Version 5, p. 2 (MR-00416-R00), undated.

As discussed below, since its first participation in various demand response programs in 2013, Resolute's Thunder Bay pulp and paper mill (the "Mill") was served both by the IESO grid and by on-site generation. When Resolute was called upon to reduce load, it met that obligation by shutting the Mill and ceasing to consume electricity. This approach was well known by the IESO and the metering configuration that implemented this approach was approved by the IESO under all of the DR Programs, including the DRA.

However, sometime after the passage of the market rule establishing the DRA, the IESO changed its position and refused to recognize the reduction of load that was supplied by on-site generation. It did this without notice and without seeking a change to the market rules to support its new position.

Resolute is therefore proposing a market rule amendment to restore the original intention of the DRA. The text of the Proposed Amendment is set out below (changes to current rules underlined):

Chapter 7, Section 18.2.1.2:

18.2.1 No person may participate in a demand response auction nor receive a demand response capacity obligation unless that person has:

18.2.1.2 submitted and has been approved by the IESO, using forms and procedures as may be established by the IESO in the applicable market manual, the amount of demand response capacity that the demand response auction participant is willing to provide, provided that nothing in this Rule shall disqualify demand response metering configurations previously approved under the DR2, DR3 or CBDR programs;

Chapter 7, Section 19.2.1.1:

19.2.1 A demand response market participant is eligible to participate as an hourly demand response resource provided that the demand response market participant:

19.2.1.1 demonstrates to the satisfaction of the IESO that it can provide the demand response capacity obligation, as specified in the applicable market manual, provided that nothing in this Rule shall disqualify demand response metering configurations previously approved under the DR2, DR3 or CBDR programs;

Resolute submits that, by passing the Proposed Amendment, the IESO Board can instill confidence in the market rule process by ensuring that market rules will not be changed unless the proper rule amendment process is followed. This is particularly important as the IESO pursues Market Renewal.

Market Renewal involves the transition of contractual protections to a rules-based system. This transition will only be successful if the IESO can credibly commit to following market rules and not changing them mid-stream without following the market rule amendment process. If the integrity of the rules-based approach is not vindicated, then market participants will be unable to confidently invest in a market administered by the IESO. The result will be higher risk and therefore higher costs for all resources and all electricity customers.

It is worth noting in this regard that Technical Panel members who represent commercial market participants voted overwhelmingly in favour of Resolute's proposed amendment. In all, 80% of

the Technical Panel Members who are unregulated market participants supported the Proposed Amendment. This consisted of representatives of directly connected large customers, demand response providers, and wholesalers.

As was stated by Brookfield Energy Marketing, representing wholesale customers:

“As a market participant, Resolute can only rely on the IESO’s approval to make business and investment decisions. **And fact of the matter was that the IESO approved Resolute’s offer configuration in more than one auction.** If Resolute’s configuration was deemed unsatisfactory after the fact, he said, the IESO could have used rules, processes, and notification bulletins to correct the gap between the Market Rules and its original intent, and disqualify Resolute and other similar participants from future auctions. The failure to pursue those processes might have explained the lack of feedback from other DRA participants. **Again, if Resolute’s configuration was approved by the IESO and discovered to be problematic after the fact, the IESO has processes for changing and correcting market rules going forward. The subsequent disqualification of Resolute’s already approved, offered and cleared capacity amounted to retroactive rulemaking. Mr. Wu said he couldn’t support retroactive rulemaking as a market participant.”<sup>2</sup>**

The following discussion addresses (i) Resolute’s participation in the DR programs; (ii) the original intention of transitioning the DR2, DR3, and CBDR programs to the DRA; (iii) IESO Staff’s change in position; and (iv) Resolute’s attempts to bring this amendment through the amendment process.

#### **(i) Resolute’s Participation in the DR Programs**

Resolute’s Thunder Bay pulp and paper mill participated in the DR Programs since 2013. In establishing its participation in the DR Programs, Resolute worked with the Ontario Power Authority (“OPA”) (the predecessor to the IESO) and the IESO. The metering configuration adopted by Resolute was designed by the OPA to ensure that Resolute met its obligations by reducing its load and not by injecting electricity into the IESO-controlled grid. The load and the generator are therefore metered separately. The amount of generation provided to the Mill is, and remains, separately metered and is visible to the IESO.

A diagram of the configuration is attached as Schedule A.

During this entire period, neither the OPA nor the IESO ever identified any issues with the configuration and, did specifically did not raise any reliability concerns with the configuration.

To the contrary, when the DRA was being implemented in November, 2015, in response to an enquiry from Resolute confirming the continuation of its configuration, Resolute’s customer representative, Jason Grabevic advised Resolute that he was having “the right people review and confirm the metering configuration question.” Shortly after this, Resolute reported internally

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<sup>2</sup> Technical Panel Vote and Rationale on MR-00437 (Resolute), May 2, 2019 (Julien Wu).

that “Jason gave me a quick call to let us know metering is okay with using the existing CBDR metering setup for the new DR Auction.”<sup>3</sup>

**(ii) The original intention of transitioning the DR2, DR3, and CBDR programs to the DRA**

The market rules for the transition from the DR2, DR3 and CBDR programs to the DRA was the subject of stakeholder consultation and Technical Panel meetings from late 2014 to the summer of 2015.

The two Technical Panel members who participated in the stakeholdering of the transition to the DRA agreed that the IESO’s current position was not put forward for consideration in that process.

The Technical Panel member representing large customers stated the following:

“As an active participant in the Demand Response Working Group during the evolution of the demand response program, Mr. Forsyth said he represented a large industrial user’s interest by ensuring the rules and procedures were compatible with its operating characteristics and ability to participate after the transition was complete. He recalled a process that included many new and amended rules that would have material effects on DR participants, all of them debated and discussed at length. **But he said he had no recollection and could find no record of discussions about existing DR metering configurations that would be disallowed under the Demand Response Auction.**”<sup>4</sup>

Similarly, the Technical Panel member representing Demand Response providers stated that “she supported Mr. Forsyth’s comments on IESO’s intent, and agreed with his recollection of the DR transition process, in which she was also a participant.”<sup>5</sup>

Not only was there no suggestion that existing configurations would be disallowed in the stakeholdering discussions, IESO staff represented to stakeholders and Technical Panel members that, under the DRA, existing DR resources would continue to be recognized, provided, of course, that they were in merit in the DR auction.

Staff’s representations in its market rule amendment submission for the DRA was that the purpose of the transition was **“to facilitate participation by current demand response providers**, potential new participants and new technologies.”<sup>6</sup>

In its January 20, 2015 presentation to the technical panel on the proposed amendment, IESO staff stated that “the IESO’s goal for demand response” was to:

**“Achieve greater value and economic use of DR through improved integration of existing DR contracts in the IESO-administered energy market and dispatch**

<sup>3</sup> Emails from Jason Grbavac (IESO) to Cara Degelman (Resolute), November 5, 2015, and from Cara Degelman to Tony Ruberto (Resolute) November 17, 2015.

<sup>4</sup> Technical Panel Vote and Rationale on MR-00437 (Resolute), May 2, 2019 (David Forsyth)

<sup>5</sup> Technical Panel Vote and Rationale on MR-00437 (Resolute), May 2, 2019 (Sarah Griffiths)

<sup>6</sup> IESO, Market Rule Submission, Demand Response Auctions – Participant Authorization & Facility Registration, Version 5, p. 2 (MR-00416-R00), undated.

process, and over the longer term through the expansion of DR market participant categories.”<sup>7</sup>

In the same presentation, IESO staff stated that transitioning to the DRA would involve “implement[ing] market rules to **transition DR3 contractual terms to a market structure** (capacity based demand response)”<sup>8</sup>

If anything, the IESO represented that the DRA would *increase* DR participation, not disqualify current providers. For example, in February, 2015, in response to a stakeholder question on the difference between DR under the OPA programs and DR under the DRA, staff stated the following:

“The IESO’s definition of demand response is inclusive of the demand response definition used by the Ministry of Energy and the OPA. However, the IESO’s definition is **intentionally broader to allow the utilization of DR to provide a wide range of services to the electricity market over time.**

This is reflective of the IESO’s mandate in the LTEP to ‘evolve existing DR programs and introduce new DR initiatives.’”<sup>9</sup>

Similarly, in a June 2, 2015 presentation to the technical panel, IESO staff stated:

“In order to attract the broadest range of potential DR providers, **including current demand response providers** as well as new entrants and new technologies, we have sought to reduce the requirements for participation in the auction.”<sup>10</sup>

Based on these representations, the Technical Panel approved the DRA market rule amendments regarding Participant Authorization & Facility Registration on July 7, 2015.<sup>11</sup>

Attached as Schedule B is a comparison of the rules under the CBDR and the rules under the DRA. As appears from that attachment, the rules respecting Capacity and Eligibility Requirements were unchanged in all material ways. There is no reference in the amendment to a required change in metering configurations or to any requirement that the measurement of demand reduction must be measured only as a reduction of demand withdrawn from the IESO-controlled grid.

### (iii) IESO Staff’s change in position

On June 14, 2017, without notice or explanation, the IESO issued a preliminary settlement statement to Resolute that did not follow this approach. That statement contained a ‘claw back’ of capacity payments based on an alleged activation failure. After numerous enquiries by Resolute, staff advised that the reason for the failure is that the configuration that Resolute had used since 2013 and that the IESO approved again in November, 2016 was not acceptable

<sup>7</sup> Demand Response Auctions – Overview, Presentation to Technical Panel, January 20, 2015.p. 2

<sup>8</sup> Demand Response Auctions – Overview, Presentation to Technical Panel, January 20, 2015.p. 3

<sup>9</sup> DR Auction Market Design, Stakeholder Feedback, February 12, 2015.

<sup>10</sup> Demand Response Auctions – Overview, Presentation to Technical Panel, June 2, 2015.p. 8

<sup>11</sup> See Market Rule Amendment Proposal MR-00416-R00 Recommended by Technical Panel and Submitted for IESO Board Approval on July 7, 2015.

because some of the load reduction was served by self-generation and not the IESO-administered grid.<sup>12</sup>

This new approach was not accompanied either by a change in the market rules which disallowed this configuration or a proposed market rule amendment to implement this change. As a result, there was no opportunity for a public and transparent consideration of the costs and benefits of staff's proposed new approach.

As indicated, Resolute believes that this type of unilateral change to market participant requirements causes uncertainty and risk. This is why the Proposed Amendment provides that the current rule should be amended to reflect the original intention; if staff believes that an alternative approach is superior, it should propose that in a subsequent market rule amendment.

#### **(iv) The Technical Panel Process**

On October 11, 2018, Resolute filed the Proposed Amendment. The purpose of the Proposed Amendment is to restore the *status quo* that was approved in the all of the DR Programs before staff's new approach.

As indicated, the only addition to the rule is to confirm that the transition from the CBDR to DRA was not meant to disqualify demand response metering configurations previously approved under the DR2, DR3 or CBDR programs. Given that there was never any suggestion in the stakeholdering process, the technical panel process, or the physical registration process for the DRA that these metering configurations would be disqualified, Resolute is frankly surprised by the extent of resistance to this proposal that staff expressed in the market rule amendment process. Again, this creates investor uncertainty and risk when it comes making an investment on the basis of market rules (as opposed to contracts). Investing on the basis of market rules requires trusting the integrity of market rules and the market rule amendment process; this trust is undermined if staff sees its role in the amendment process as furthering its positions, and not facilitating the Technical Panel's consideration of the issue. Staff's conduct in the amendment process mirrors its conduct in disallowing a previously qualified configuration.

One of the Technical Panel members "expressed concern about the IESO's handling of the process. He said it is evident that the IESO delayed in providing the Technical Panel information when the issue first emerged. Further, the IESO did not provide responses to Resolute in a timely manner in all circumstances. Finally, the IESO appeared to be reluctant at times to disclose information throughout the process to all parties."<sup>13</sup>

There are three areas of concern that Resolute has with the Technical Panel process in this case. These areas all demonstrate the challenges with staff's approach and the need for the IESO Board to protect the integrity of the rule amendment process by passing the Proposed Amendment.

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<sup>12</sup> Resolute also filed a challenge to staff's interpretation under the dispute resolution process. That dispute remains live, although the IESO has not substantively responded to Resolute's email requests since December, 2018. The dispute resolution process and the market rule amendment process are not mutually exclusive. Further, ss. 35(4) of the *Electricity Act, 1998* provides that it is necessary for an applicant to make "use of the provisions of the market rules relating to the review of the market rules" prior to bringing a review of the market rules to the Ontario Energy Board. As a result, using the rule amendment process is not only permissible under these circumstances, it is mandatory.

<sup>13</sup> Technical Panel Vote and Rationale on MR-00437 (Resolute), May 2, 2019 (Ron Collins).



First, IESO staff withheld the Proposed Amendment from the Technical Panel until November 28, 2018. At that time, without advising the Technical Panel of its options under the market rules to consider the submission, IESO staff advised that it had sent the proposed amendment to the Demand Response Working Group (“DRWG”) for its consideration.

In response to concerns raised by Resolute that the proposal was being managed through the DRWG by IESO staff, and not the Technical Panel, IESO staff advised Resolute that “The IESO has not received any objection to date from any Panel members on the proposed approach.” When the Proposed Amendment finally made it to the Technical Panel in January, 2019, Technical Panel members discussed staff’s approach and took issue with the statement that the Technical Panel had not raised an objection. One member stated that “Had Panel members known of McCarthy’s [i.e., Resolute’s] concerns, TP members may have had an issue had they known all the facts.”<sup>14</sup>

Second, instead of providing the materials to the Technical Panel in a neutral way, IESO staff’s practice when forwarding materials to the Technical Panel was to editorialize and criticize Resolute’s position. Staff therefore demonstrated that it is not prepared to facilitate an amendment with which it disagrees. Again, this is not an effective way to operate a market where market rule amendments may be contentious.

For example, when finally providing the proposed market rule to the technical panel, staff stated in a cover note that “The amendment submission represents the views of Resolute and in no way reflects the views of the IESO, nor does the submission reflect the IESO’s agreement with any representations made within the submission.”<sup>15</sup>

Similarly, at the request of the Technical Panel, Resolute sought to meet with staff to consider alternative approaches to framing the rule amendment. When staff would not make itself available, Resolute forwarded the email correspondence, through staff, to the Technical Panel to demonstrate that it had tried to find a solution. Staff forwarded the correspondence with an introduction that stated that staff “does not agree with Resolute’s characterization of staff’s conduct nor some of the correspondence referred to therein.”<sup>16</sup> However, staff did not identify a single statement that it believed to be incorrect.

By way of analogy, Ontario Energy Board (“OEB”) staff makes submissions in disagreement with other parties, but it would be surprising to see correspondence with the Board where OEB staff makes vague and unsubstantiated allegations against a party’s submissions.

Finally, staff treated its role with the Technical Panel as a means to advance its position, not to provide the Technical Panel with neutral technical advice. First, as indicated, staff kept the original proposed Amendment from the Technical Panel and did not advise the Technical Panel of its options on how to proceed with the Proposed Amendment under the Market Rules. Rather, staff tried to divert the proposal to a staff-run working group.

More egregiously, when asked by a Technical Panel member whether it can communicate with Resolute off-line, staff’s response suggested that this was somehow inappropriate: “The IESO

<sup>14</sup> Minutes of Technical Panel Meeting, January 29, 2019.

<sup>15</sup> Memorandum from Josh Duru to the Technical Panel, November 28, 2018 Re: MR-00437: Demand Response – Registration and Metering Requirements.

<sup>16</sup> Email from Jason Grbavac to Technical Panel, April 2, 2019.

does not take a position on the appropriateness of panel members privately discussing the amendment submission with Resolute. However, in the further interest of transparency, the IESO will not be contacting panel members individually on this matter.”<sup>17</sup>

Staff is aware that there is no rule or practice against these kind of discussions. Further, many IESO staff members worked very closely with its Technical Panel member to orchestrate its opposition to the Proposed Amendment.<sup>18</sup> The suggestion that off-line conversations are inappropriate is nothing less than deliberately misleading the Technical Panel on how to carry out its decision-making responsibilities. Resolute reminded staff and the Technical Panel that these communications were consistent with the market rules and past practice and asked staff to advise if it was “aware of any rule that does not permit this.” Staff did not respond.

## Conclusion

Resolute thanks the Board for the opportunity to provide written submissions and reiterates its offer to attend at the June 12 Board meeting in person to answer any questions that the Board may have.

Sincerely,



George Vegh

<sup>17</sup> Email from Robert Doyle to Technical Panel, April 18, 2019.

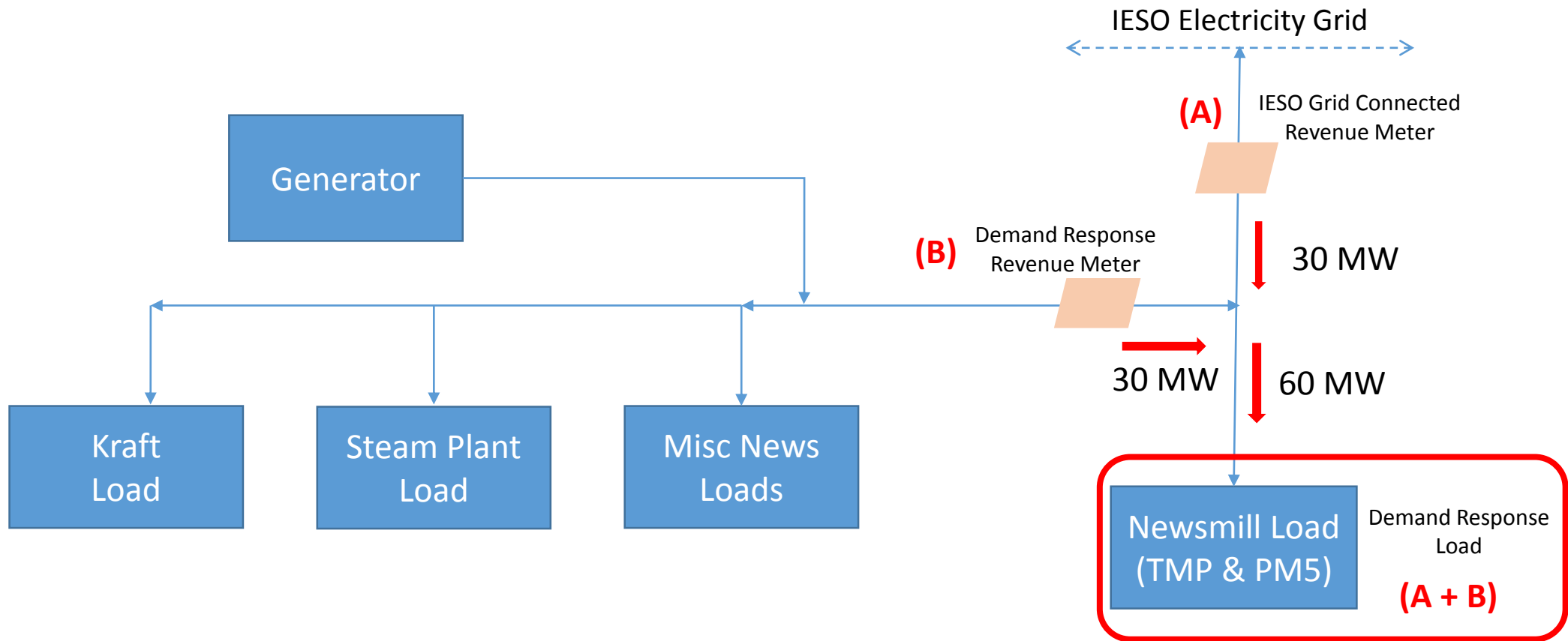
<sup>18</sup> Given Resolute’s concerns with IESO staff’s handling of the market rule amendment process, Resolute filed a request under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) regarding its proposed market rule amendment. It is evident that the Technical Panel member representing the IESO attended at least 7 meetings with staff regarding Resolute’s amendment. The title of some of these meetings indicate a need to develop a “strategy” in regards to Resolute’s proposed amendment: for example, meetings which took place on October 19, 2018 and 23, 2018 entitled “TP Strategy Discussion re: Resolute MR Amendment Submission” at which both IESO Technical Panel member Jessica Savage and IESO Technical Panel Chair Michael Lyle are listed as meeting attendees. Another example is a December 7, 2018 meeting at which both IESO Technical Panel member Jessica Savage and IESO Technical Panel Chair Michael Lyle are listed as attendees where the meeting objective is to “continue the discussion on how we manage the Resolute MR Submission”. The FIPPA response materials are clearly incomplete. By the IESO’s count, it has withheld 215 documents in their entirety. Resolute has filed an appeal as the responding materials do not meet the requirements of the FIPPA.



# **SCHEDULE A**

# SIMPLIFIED OVERVIEW OF RESOLUTE ELECTRICAL DISTRIBUTION

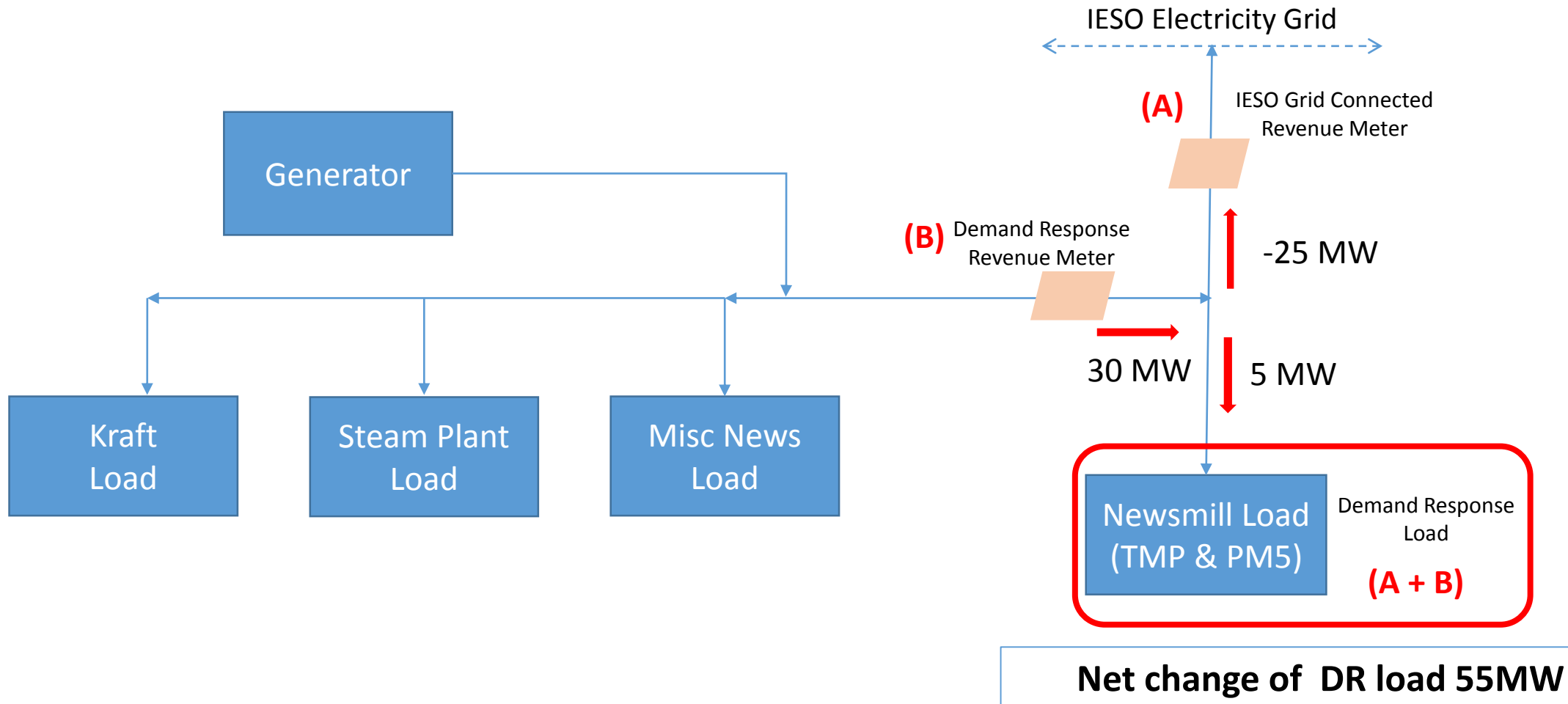
## Normal Operation



**Demand Response (DR) Baseline load: 60 MW**

# SIMPLIFIED OVERVIEW OF RESOLUTE ELECTRICAL DISTRIBUTION

After DR Activation: Actual



## **SCHEDULE B**

**CBDR / DRA eligibility requirements comparison chart**

Capacity Based Demand Response Program (CBDR)	Demand Response Auction (DRA)
<b>Eligibility requirements for the Capacity Based Demand Response Program as set out in IESO Market Rules Chapter 7, s. 17.2.1:</b>	<b>Eligibility requirements for Hourly Demand Response Resources with Demand Response Capacity Obligations as set out in IESO Market Rules Chapter 7, s. 19.2.1:</b>
<p><i>A demand response market participant</i> is eligible to participate in the <i>capacity based demand response program</i> provided that the <i>demand response market participant</i>:</p> <p>17.2.1.1: demonstrates to the satisfaction of the IESO that it can provide a minimum level of <i>demand</i> reduction, as specified in the applicable <i>market manual</i>;</p> <p>17.2.1.2: operates, maintains, and has submitted to the <i>IESO</i> a measurement and verification plan, at the <i>demand response market participant's</i> own expense, in accordance with the applicable <i>market manual</i> and the <i>IESO</i> has approved the plan. The <i>demand response market participant</i> shall not modify, vary or amend in any material respect any of the features or specifications of any project without first requesting <i>IESO</i> authorization and approval in accordance with the applicable <i>market manual</i>;</p> <p>17.2.1.3: registers its <i>facilities</i> or <i>demand response contributors</i> as applicable, to the satisfaction of the <i>IESO</i>, in accordance with the applicable <i>market manual</i>;</p> <p>17.2.1.4: is either: (i) a <i>demand response direct participant</i> who owns each <i>demand response contributor</i> and who will be able to reduce the <i>demand</i> of an eligible project as outlined in the applicable <i>market manual</i>; or (ii) a <i>demand response aggregator</i> with enforceable rights over each <i>demand response contributor</i> that will enable the <i>demand response aggregator</i> to reduce the <i>demand</i> of an eligible project as outlined in the applicable <i>market manual</i>; and</p> <p>17.2.1.5: has provided <i>demand response security</i> in accordance with section 5A of Chapter 2.</p>	<p><i>A demand response market participant</i> is eligible to participate as an <i>hourly demand response</i> resource provided that the <i>demand response market participant</i>:</p> <p>19.2.1.1: demonstrates to the satisfaction of the IESO that it can provide the <i>demand response capacity obligation</i>, as specified in the applicable <i>market manual</i>;</p> <p>19.2.1.2: registers its <i>facilities</i> and <i>demand response contributors</i> as applicable, to the satisfaction of the <i>IESO</i>, in accordance with the applicable <i>market manual</i>. The <i>demand response market participant</i> shall not modify, vary or amend in any material respect any of the features or specifications of any resource without first requesting <i>IESO</i> authorization and approval in accordance with the applicable <i>market manual</i>;</p> <p>[Note: definition of <i>demand response contributor</i> (see next page) is similar but not identical]</p> <p>19.2.1.3: satisfies the <i>connection assessment</i> requirements in accordance with section 6 of Chapter 4, if required by the <i>IESO</i>, in accordance with the applicable <i>market manual</i>;</p> <p>19.2.1.4: has provided <i>prudential support</i> in accordance with section 5 of Chapter 2.</p>

Terms in italics above are defined terms in the IESO Market Rules Ch. 11. Key defined terms are included on next page.

## DRA and CBDR eligibility requirement rules – key defined terms

- *capacity based demand response program* means the temporary program used by the IESO to transition the former OPA's contract based DR3 program into the IESO-administered market
- *commitment period* means the length of time for which a *demand response market participant* is required to fulfill its *demand response capacity obligation* by making its *demand response capacity* available for *dispatch* through the day-ahead commitment process and *energy market*
- *demand* means the rate at which electric *energy* is delivered to or by a system or part of a system, generally expressed in kilowatts or megawatts, at a given instant or averaged over any designated interval of time
- *demand response aggregator* means a person that is not a *demand response direct participant* and aggregates at least one *demand response contributor* to provide a portion of the aggregator's monthly contracted MW for the contracted *dispatch* period as outlined in the aggregator's *demand response schedule*
- *demand response auction* means the auction operated by the IESO to procure *demand response capacity*, in accordance with section 18 of Chapter 7
- *demand response capacity* means the expected quantity of load reduction a *demand* resource can provide during a specified availability window and *commitment period* for a *demand response auction*, and excludes *energy* transacted through the *energy market*
- *demand response capacity obligation* means the amount of *demand response capacity* that a *demand response market participant* is obligated to provide during the applicable availability window and *commitment period*, following a *demand response auction*
- *demand response contributor* means an interruptible load or behind the *meter generator* that is owned by a *demand response direct participant*, or with whom a *demand response aggregator* has enforceable rights, and in either case, who will provide a portion of the monthly contracted MW for the contracted *dispatch* period as outlined in the *demand response schedule*. A *demand response contributor* also means the delivery of a *demand response capacity obligation* with an *hourly demand response resource*, in which case a monthly contracted MW is replaced by a *demand response capacity obligation*
- *demand response direct participant* means a person who is not a *demand response aggregator* and whose *demand response contributors* are owned by the *demand response market participant* and the *facilities* in which the *demand response contributors* reside are controlled by the *demand response market participant*
- *demand response market participant* means a person who is a *market participant* that participates only in the *capacity based demand response program*, the *demand response pilot program*, or is a person with a *demand response capacity obligation*
- *energy* means, in respect of the *market rules* other than Chapter 5 or 6, real *energy* only and may, in respect of Chapter 5 or 6, mean both real *energy* and reactive *energy* if the context so requires
- *energy market* means the *real-time market* for *energy* administered by the IESO pursuant to Chapter 7 in which *energy offers* and *energy bids* are cleared and a *market price* for *energy* is determined
- *facility* means a *generation facility*, a *load facility*, a *transmission system*, a *distribution system*, located within the IESO control area, or any other equipment that is a component or part of the *electricity system*
- *hourly demand response* means the resource type described in section 19 of Chapter 7, that is used by the IESO as a delivery type, on an hourly basis, for a *demand response capacity obligation*

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June 20, 2019

**VIA EMAIL**

Board of Directors  
Independent Electricity System Operator (IESO)  
120 Adelaide Street West, Suite 1600  
Toronto, ON  
M5H 1T1

<b>Attention:</b>	<b>Joe Oliver, Chair</b>	<b>Cynthia Chaplin, Director</b>
	<b>Simon Chapelle, Director</b>	<b>Margaret Kelch, Director</b>
	<b>Deborah S. Whale, Director</b>	<b>Peter Gregg, President and Chief Executive Officer</b>

Dear Sirs/Mesdames:

**Re: MR-00437**

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**Introduction and Context**

This letter is written in respect of the proposed market rule amendment filed by Resolute FP Canada Inc. ("Resolute", and the "Proposed Amendment") and decided upon by the IESO Board at its June 12, 2019 meeting. The IESO Board did not permit Resolute to attend that meeting. As a result, Resolute has very little information about how the Board considered and decided upon the Proposed Amendment.

**Request for Information on the Conduct of the Board Meeting**

Resolute therefore requests the following information with respect to the IESO Board's consideration of the Proposed Amendment:

1. The vote of each Board member and reasons for their vote. This is a mandatory requirement for Technical Panel members.<sup>1</sup> As the Technical Panel only makes recommendations, its requirements for transparency and fairness are less exacting than the requirements for a rule-making body such as the IESO Board. If anything, the IESO Board should be expected to meet a higher level of accountability than the Technical Panel.
2. The names of persons who attended the June 12 Board meeting and what information they provided to the Board. As you are aware, Resolute expressed concerns about IESO staff's management of the Board meeting in light of staff's active opposition to

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<sup>1</sup> Market Rules, Chapter 3, ss. 4.3.14.

Resolute's Proposed Amendment. If IESO staff did attend the meeting, fairness requires that Resolute (and the public at large) be advised of what staff said to the Board.

3. What, if any, discussion or directions did the IESO Board have with respect to the future treatment of the Resolute Proposal or other potential Market Rule amendments. As you are aware, the Technical Panel expressed concerns about staff's compliance with Market Rule processes for considering Market Rule amendments. Staff was frankly dismissive of these concerns. It is therefore important to know whether the IESO Board took these concerns seriously so that staff's conduct may improve.

### Rationale for Request

Resolute appreciates that this request goes beyond the minimum requirements that the IESO has set for itself under the Market Rules. However, as a rule-making body, the IESO Board has obligations respecting honesty, transparency and procedural fairness<sup>2</sup> that go beyond compliance with the minimum requirements of the Market Rules. These obligations are reflected in the requirements of regulatory excellence that have been acknowledged by recent reviews of regulators in Alberta and Ontario.<sup>3</sup> According to the leading text on this topic:

"Excellent regulators understand their audience is the public at large and endeavor to accurately and clearly communicate the underlying analysis to them. Rather than provide the bare minimum required by law, an excellent regulator is committed to transparency that advances the public interest. Accordingly, the excellent regulator will claim deliberative process protections sparingly rather than as a matter of course."

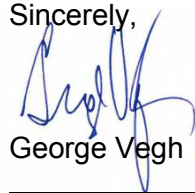
...

Excellent regulators are also completely candid about their internal deliberations, even when they involve compromises. The excellent regulator will thus resist the temptation to misrepresent the role of backroom negotiations if the negotiations played a meaningful role in a decision...the excellent regulator will ensure that the agency's decision-making is explained and linked to the record to ensure that the agency's own processes are not being manipulated or obfuscated."<sup>4</sup>

### Conclusion

Resolute thanks the Board for considering these issues and looks forward to its response.

Sincerely,



George Vegh

<sup>2</sup> See, for example, Kathryn Harrison, "Regulatory Excellence and Democratic Accountability", in Cary Coglianese, ed., *Achieving Regulatory Excellence* (Brookings Institution Press, 2017), p. 69.

<sup>3</sup> To be clear, the definition of "regulator" in the Coglianese text is not confined to adjudicative bodies and includes administrative agencies like the IESO. It defines "regulators" as "public institutions established to solve problems by implementing and enforcing laws or policies, among other tactics, in order to steer the behavior of individuals or organizations" (emphasis added, at p. 3). These are therefore standards that apply to evaluate the IESO's conduct.

<sup>4</sup> Wendy Wagner, "Regulating by the Stars", in Cary Coglianese, ed., *Achieving Regulatory Excellence* (Brookings Institution Press, 2017), p. 47.



June 26, 2019

George Vegh  
McCarthy Tétrault LLP  
PO Box 48, Suite 5300  
Toronto-Dominion Bank Tower  
Toronto ON M5K 1E6

Dear Mr. Vegh:

Re: MR-00437 – Request for Information on the Conduct of Board Meeting

I am writing in response to your letter of June 20, 2019. Your letter and this response have also been provided to the other IESO Directors.

I understand from your letter that Resolute FP Canada Inc. (“Resolute”) has a concern with not having information about how the IESO Board considered and decided upon the proposed market rule amendment MR-00437 (the “Proposed Amendment”). You therefore request information with respect to the IESO Board’s consideration of the Proposed Amendment.

As you know, the IESO Board considered and decided against the adoption of the Proposed Amendment at its June 12, 2019 meeting. I can now inform you that the reasons for the IESO Board’s decision in respect of MR-00437 have been publicly posted to the IESO’s website <http://www.ieso.ca/Sector-Participants/Change-Management/Proposed-Market-Rule-Amendments>. This marks the first time the IESO Board’s reasons for a decision in respect of a market rule amendment have been provided. This implements one of the recommendations arising from IESO’s consultations with the Advisory Group on Market Rule Governance & Decision-Making Processes. In addition, as you are aware, all materials provided to the IESO Board for discussion at its June 12, 2019 meeting were publicly posted to the IESO website at link provided above. This was in satisfaction of another recommendation arising from the Advisory Group on Market Rule Governance & Decision-Making Processes. These steps are designed to enhance transparency regarding the market rule amendment process.

The IESO engaged in consultations last year with the Advisory Group on Market Rule Governance & Decision-Making Processes. The materials relating to this consultation including the IESO Board approved 14 recommendations contained in the “IESO Report & Recommendations Re Consultations with the Advisory Group on Market Rule Governance & Decision-Making Processes” may be found at the following website: <http://www.ieso.ca/Sector-Participants/Engagement-Initiatives/Engagements/Completed/IESO-Governance-and-Decision-Making>.

Resolute was also provided the opportunity to make written submissions to the IESO Board, which the Board reviewed and considered in making its decision.

With respect to specific requests in your letter, I will provide a brief response.

First, you requested the vote of each Director and reasons for their vote. We will not provide this information. The Board of Directors speaks as whole and the vote of individual Directors and reasons are not relevant. On the other hand, the Technical Panel member's votes and reasons for recommendations relating to a proposed market rule amendment are important and relevant to informing the Board when deciding on a proposed amendment.

Second, you requested the names of persons who attended the June 12 Board meeting and what information they provided to the Board. Attached to this letter is a list of the IESO staff who attended the Board meeting in relation to the Proposed Amendment. However, we will not provide you with information on the deliberations that occurred at the Board. There is no transcript of the meeting and more importantly it is not appropriate or necessary to release this information even if it did exist. There is neither a corporate law or governance requirement for the disclosure of Board deliberations, nor any requirement to do so under any regulatory or administrative law principle, even assuming such principles might be applicable. As previously mentioned, the IESO Board's reasons for its decision on the Proposed Amendment have also now been posted on the IESO Website.

Third, you asked about discussion or directions the IESO Board had with respect to future treatment of the Resolute Proposal or other potential Market Rule amendments. You indicated that the Technical Panel expressed concerns about staff's compliance with market rule processes for considering market rule amendments, and indicated IESO staff was dismissive of these concerns. At the outset I want to note it is not clear to me that the Technical Panel expressed concern about IESO staff compliance with market rules although there were comments about process. Regardless, you will see in the IESO Board's reasons that it has noted that Resolute raised some valid Technical Panel process concerns but that these did not impact the IESO Board's decision. The IESO Board has directed IESO staff to prepare a report on what was learned from the Technical Panel process and to identify process changes that will be made going forward. In advance of the IESO Board meeting, I also asked a Director to review the entire Technical Panel record in order to advise the IESO Board whether IESO staff accurately reflected the record in the material provided to the IESO Board. The Director was able to confirm the materials provided to the IESO Board accurately reflected the full Technical Panel record.

I trust that the above addresses your concerns.

Yours truly,



Joe Oliver  
IESO Board Chair

List of IESO Staff Attendees

In addition to Corporate Secretary and all direct reports of the CEO who attend the entire board meeting:

Jessica Savage, Director, Corporate & Regulatory Affairs

Reena Goyal, Senior Manager – Senior Counsel

James Hunter, Senior Counsel

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## Reasons of the *IESO Board* in respect of an *amendment to the market rules*

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Terms and acronyms used herein that are italicized have the meanings ascribed thereto in Chapter 11 of the *market rules*.

The following sets out the *IESO Board*'s reasons for its decision on the proposed *amendment* to the *market rules* identified in Part 1 below (the "**Amendment**").

### **PART 1 – MARKET RULE INFORMATION**

Identification No.:	MR- 00437-R00
Title:	Resolute FP Canada – Demand Response Registration and Metering Requirements

The *IESO Board* convened to consider the Amendment on the date and location set out in Part 2 below.

### **PART 2 – BOARD MEETING INFORMATION**

Date:	June 12, 2019
Location:	120 Adelaide Street, West, Toronto

Prior to considering the Amendment, the Chair of the *IESO Board* enquired whether any director of the *IESO Board* had a conflict of interest to declare, the result of which is set out in Part 3 below.

### **PART 3 – CONFLICTS OF INTEREST**

- |  |
|--|
| <p><input checked="" type="checkbox"/> No conflict was declared.</p> <p><input type="checkbox"/> Any director declaring a conflict of interest abstained from voting on the adoption of the Amendment.</p> |
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The *IESO Board* was presented with the materials in respect of the Amendment identified in Part 4 below (the “**Materials**”), all of which is *published* on the *IESO*’s [website](#) subject to such redactions as *IESO* staff determined reasonably necessary.

#### **PART 4 – MATERIALS**

1. Agenda Item Summary
2. Memorandum from Technical Panel Chair to IESO Board, dated June 4, 2019
3. Resolute Market Rule Amendment Proposal, dated April 16, 2019
4. Background Information, dated May 27, 2019
5. Resolute Presentation to Technical Panel, dated February 12, 2019
6. IESO Cover Memo to Technical Panel, dated April 30, 2019
7. Technical Panel member vote and rationale, dated May 2, 2019
8. Summary of Stakeholder and Technical Panel member comments on price, reliability and quality of service
9. Resolute letter to the IESO Board Secretary, dated May 27, 2019
10. IESO Board Secretary responding letter to Resolute, dated June 4, 2019
11. Resolute letter to IESO Board Secretary, dated June 5, 2019
12. IESO Board Secretary responding letter to Resolute, dated June 6, 2019
13. Resolute Submission to the IESO Board, dated June 10, 2019

Having considered the Amendment and the Materials, the *IESO Board* decided as identified in Part 5 for the reasons set out in Part 6.

#### **PART 5 – DECISION**

- ☐ The *IESO Board* decided in favour of the adoption of the Amendment.
- ☐ The *IESO Board* referred the Amendment back to the *technical panel* for further consideration and vote.
- ☒ The *IESO Board* decided against the adoption of the Amendment.

## PART 6 – REASONS

The *IESO Board* reviewed the materials including the *technical panel* vote of 8 – 4 against recommending to the *IESO Board* the adoption of MR-00437-R00. Following discussion at the June 12, 2019 *IESO Board* meeting the *IESO Board* decided against the adoption of the Amendment for the following reasons:

1. The *market participant* indicated the proposed Amendment is necessary to ensure the original intent of the *market rules* with respect to the determination of *demand response capacity* (Chapter 7, 2. 19.2.1.1) is preserved. This matter is also the subject of a dispute between the *market participant* and the *IESO*. The dispute resolution process is the appropriate place for this matter to be determined as it is a fair, efficient, and well established process to resolve these types of dispute. The *market rule amendment* process is not the appropriate venue to resolve an issue that is the subject of an ongoing dispute.
2. The *technical panel* considered the proposed Amendment and did not recommend that it be adopted.
3. There will be opportunities to address transition issues relating to demand response during the development of *market rules* relating to Transitional Capacity Auction and Incremental Capacity Auction. These are the appropriate fora to discuss and resolve issues affecting demand response within the context of the auction process overall.

The *IESO Board* notes that the *market participant* raised some valid concerns regarding the *technical panel* process. These concerns do not impact the *IESO Board's* decision regarding the substance of the proposed Amendment. Despite the process concerns identified by the *market participant*, the *market participant* was able to present its views and rationale for the proposed Amendment to the *technical panel*. The *technical panel* considered the issues thoroughly and the *market participant* had full ability to make its views known and respond to all questions raised.

The *IESO Board* has directed *IESO* staff to prepare a report which addresses what was learned from the *technical panel* process and to identify process changes that will be made going forward. Preparation of the report is to include input from the *market participant* and the *technical panel*. This report will be made public.

The *IESO Board* would like to acknowledge the *technical panel* for its thoughtful consideration of the proposed Amendment. It was a significant undertaking, involving a variety of complex substantive and process issues. The *technical panel* demonstrated diligence and focus.