

ONTARIO ENERGY BOARD

**ASSOCIATION OF MAJOR POWER
CONSUMERS IN ONTARIO (AMPCO)**

**Application for Review of an Amendment
to the Independent Electricity System Operator Market Rules**

NOTICE OF MOTION

AMPCO WILL MAKE A MOTION to the Ontario Energy Board (Board) at its hearing rooms at 2300 Yonge Street, Toronto, on a date and time to be fixed by the Board.

PROPOSED METHOD OF HEARING: Oral hearing.

THIS MOTION IS FOR:

1. An order staying the operation of the Ontario Independent Electricity System Operator (IESO) Ontario Electricity Market Rule (Market Rule) amendments implementing a transitional capacity auction (TCA) (MR-00439-R00-R05) (Amendments), as published by the IESO pursuant to *Electricity Act, 1998*, , S.O. 1998, c. 15, Sched. A (*EL Act*) section 33(1) on September 5, 2019, pending determination of the Board's review of the Amendments.
2. An order finding AMPCO eligible for recovery from the IESO of its reasonably incurred costs of the motion.
3. Such further and other relief as AMPCO may request and the Board may grant.

THE GROUNDS FOR THE MOTION

Overview of the Amendments and the extant appeal.

4. Demand response (DR) is the changing of electricity consumption patterns by end use consumers in response to market prices.
5. Since 2015 the IESO has been holding annual demand response auctions (DRAs) to acquire demand response (DR) capacity from market participants. The annual DRAs have been successful. In the most recent DRA 38 organizations were registered as auction participants, the highest number since the auction began in 2015, and auction clearing prices have decreased 42% since the first DRA in 2015, with the latest auction resulting in a 30% price decrease over the previous one. According to the IESO, the DRA has been established as a valuable and reliable tool to secure capacity on the system, while benefiting DR participants and lowering prices for all Ontario electricity consumers.
6. The Amendments are intended to facilitate expansion of the existing DRA platform into a Transitional Capacity Auction (TCA) platform, which will allow electricity generators to participate in future capacity auctions alongside DR resources.
7. Generation resources, unlike DR resources, have other revenue opportunities in the IAM, including payments for energy services provided. DR resources do not currently have commensurate revenue opportunities for the energy services they provide to the market.
8. The TCA facilitated by the Amendments is currently scheduled for early December, 2019.
9. The “Phase 1” December, 2019 auction was initially proposed as a first step towards transition to an Incremental Capacity Auction (ICA) to be implemented in 2022 in order to address what had been an identified need for capacity following that date. In July 2019 the IESO announced suspension of work on the ICA in light of an updated forecast indicating sufficient baseload and other resources to ensure reliability for the foreseeable future. As such the first TCA will simply be the first in potentially a series of capacity auction evolutionary steps without any defined end state or particular timing need.
10. While the IESO has indicated that it will address the issue of compensation of DR resources for the value that they provide to the IAM, resolution of this issue is not anticipated prior to the proposed December 2019 implementation of TCA Phase 1.

11. Requiring DR resources to compete against generators without resolving the comparative value of DR resources and generation resources in the energy market, and how to justly and reasonably compensate the former in a manner comparable to the latter, would undermine the current success of the DRA and handicap DR resources from successfully competing within their own existing market platform.
12. Because the operation of the Amendments will unfairly discriminate against DR resources and lead to anti-competitive results contrary to the *EL Act*, AMPCO has applied to the Board under section 33 of the *EL Act* to seek a review of the Amendments (Appeal). AMPCO's material filed on the Appeal includes documents generated by the IESO pertaining to the Amendments and other relevant materials (Appeal Material).
13. Should the first TCA proceed prior to determination by the Board of this application, generators that participate in the new TCA will be provided with an unfair competitive advantage, and DR resources which have historically participated actively and effectively in the DRA will be unduly and unjustly disadvantaged and potentially irreparably harmed.
14. Accordingly, AMPCO brings this motion to stay the operation of the Amendments, pending the outcome of the Appeal. AMPCO submits that the Board should grant this motion having regard to the following factors set out in section 33(8) of the *EL Act*:
 - (a) the public interest;
 - (b) the merits of the application;
 - (c) the possibility of irreparable harm to Ontario DRA participants;
 - (d) the impact on consumers; and
 - (e) the balance of convenience.

The public interest militates in favour of maintaining the status quo.

15. The Phase 1 December, 2019 TCA was initially proposed as a first step towards transition to an ICA to be implemented in 2022 in order to address what had been an identified need for capacity following that date. In July 2019 the IESO announced suspension of work on the ICA in light of an updated forecast indicating sufficient baseload and other resources to ensure reliability for the foreseeable future. As such the first TCA will simply be the first

in potentially a series of capacity auction evolutionary steps without any defined end state or particular timing need.

16. While the IESO has indicated that it will address the issue of compensation of DR resources for the value that they provide to the IAM, resolution of this issue is not anticipated prior to the proposed December 2019 implementation of TCA Phase 1. Commandeering the current DRA to a broader auction platform without first addressing the competitive position of DR resources *vis a vis* generators will unnecessarily damage the existing, highly successful DRA market mechanism, which would be unfair to DR resources and counterproductive to robust evolution of the Ontario electricity market.
17. Without ensuring just and reasonable compensation to DR resources, on a comparable basis with other resources which bring similar value to the IAM, the TCA could result in replacement of one set of capacity providing resources with another. This would not enhance competition, but it may well stifle it.
18. An unfair, inefficient or anti-competitive ICA is inimical to the purposes of the *EL Act*, including:
 - (a) encouraging electricity conservation and the efficient use of electricity in a manner consistent with the policies of the Government of Ontario;
 - (b) facilitating load management in a manner consistent with the policies of the Government of Ontario;
 - (c) promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;
 - (d) protecting the interests of consumers with respect to prices and reliability of electricity service; and
 - (e) promoting economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity
19. An unfair, inefficient or anti-competitive ICA would tend to result in higher costs for consumers and a less robust energy services marketplace.
20. In these circumstances, the public interest is better served by waiting to adopt the Amendments implementing the TCA until such time as they have undergone a review by

the Board, and it has been determined whether the Amendments will hamper the fair, efficient and competitive operation of the IAM.

The application is meritorious.

21. Subsection 33(9) of the *EL Act* requires the Board to consider whether a market rule amendment “*unjustly discriminates against or in favour of a market participant or class of market participants*”, or “*is inconsistent with the purposes of this Act*”. If the Board finds that either of these circumstances exists, then it must make an order revoking the amendment(s), and referring the amendment(s) back to the IESO for further consideration.
22. As set out in the Appeal Material, the pre-eminent North American energy regulator – FERC - has carefully and thoroughly considered the role of DR resources in wholesale energy markets, and the issue of just and reasonable compensation of those resources for their participation, and has concluded that:
 - (a) Failure to compensate DR resources for the value they provide to energy markets in the same manner as compensation is afforded to generation resources for the value which they supply to energy markets results in wholesale prices that are unjust and unreasonable.
 - (b) Fairness of compensation of wholesale energy market participants for energy services provided influences the fairness and efficiency of capacity markets.
23. It follows that expanding the current DRA platform to allow generation resources eligible for energy market compensation to participate in the broadened capacity auction without addressing just and reasonable compensation for DR resources providing energy market services would result in capacity markets that are unfair and inefficient, and effectively anti-competitive and discriminatory. Such a result is contrary to several purposes of the *EL Act*, including:
 - (a) encouraging electricity conservation and the efficient use of electricity in a manner consistent with the policies of the Government of Ontario;
 - (b) facilitating load management in a manner consistent with the policies of the Government of Ontario;

- (c) promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;
 - (d) protecting the interests of consumers with respect to prices and reliability of electricity service; and
 - (e) promoting economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity
24. On this basis, as more fully articulated in the Appeal Material, AMPCO has asked the Board to;
- (a) find that the Amendments are;
 - (i) inconsistent with the objectives of the *EL Act*; and/or
 - (ii) unduly discriminatory to DR resources; and
 - (b) having so found, to revoke the Amendments and refer them back to the IESO for reconsideration.
25. Given these legislative parameters, and for the reasons more fully articulated in the Appeal, the merits of the Appeal support the granting of the stay requested.

Implementation of the Amendments and Phase 1 of the ICA would result in irreparable harm to persons seeking to provide DR resources to the IAM and to the IAM itself.

26. The operation of the Amendments will lead to irreparable harm for persons supplying DR resources because they will be deprived of the opportunity to fairly and successfully compete in their own market platform.
27. Generation resources, unlike DR resources, receive payments for energy services provided. DR resources do not currently have commensurate revenue opportunities for the energy services which they provide to the market.
28. If the TCA is implemented now (through the Amendments), generators will bid into the auction taking into account the energy payments anticipated when they are activated. DR resources will have to compete against these bids without any anticipated energy payments for activation, putting DR resources at a competitive disadvantage to generators in the fledgling Ontario capacity market.

29. Without ensuring just and reasonable compensation to DR resources, on a comparable basis with other resources which bring similar value to the IAM, the TCA will only result in driving the DR resources that have participated in the DRA out of the fledgling Ontario capacity market, and replacing one set of capacity auction participants (DR resources) with another (generators). This would actually be a step backward in evolution of the IESO administered markets, not a step forward, and as such would result in irreparable harm to the functioning of, and participant confidence in, the IAM.
30. It would also deprive the current set of capacity auction participants (DR resources) of the opportunity to provide capacity to the IAM during the delivery period of the subject auction, which in the circumstances would be irreparable harm.

Implementation of the Amendments will have a negative impact on consumers of electricity.

31. The impact of adopting the Amendments will be negative for consumers as well.
32. Driving one set of capacity auction participants (DR resources) out of the fledgling Ontario capacity market would hamper the competitiveness of the marketplace. In a recent decision, FERC recognized that:

A market functions effectively only when both supply and demand can meaningfully participate, and barriers to demand response limit the meaningful participation of demand in electricity markets.

...

Removing barriers to demand response will lead to increased levels of investment in and thereby participation of demand response resources (and help limit potential generator market power), moving prices closer to the levels that would result if all demand could respond to the marginal cost of energy.

...

In Order No. 719, the Commission found that allowing demand response to bid into organized wholesale energy markets “expands the amount of resources available to the market, increases competition, helps reduce prices to consumers and enhances reliability.”

33. If the Amendments are not stayed and the TCA is permitted to proceed prior to determination of the Appeal, the resulting exclusion of DR resources from the competition to provide capacity to the IAM is likely to result in higher costs for consumers and a less reliable electricity system, as noted by FERC.

The balance of convenience favours maintaining the status quo.

34. The balance of convenience favours staying the operation of the Amendments pending determination of whether the Amendments are inconsistent with the objectives of the *EL Act*; and/or unduly discriminatory to DR resources and thus undermine competition to the detriment of the IAM and Ontario's electricity consumers.
35. If the Amendments are stayed pending the outcome of the Appeal, there will not be a void in capacity-acquisition tools available to the IESO. The existing DRA mechanism, which has been functioning successfully and growing since 2015 and securing cost effective capacity resources for the benefit of the IAM and Ontario's electricity consumers, can continue. The IESO has recognized that the DRA is an effective, valuable means of securing capacity on the system.
36. On the other hand, implementing the TCA now would be unjustly discriminatory and would create market conditions that may stifle competition and drive prices up for consumers. Neither result is in the public interest.
37. The Phase 1 December, 2019 auction was initially proposed as a first step towards transition to an Incremental Capacity Auction (ICA) to be implemented in 2022 in order to address what had been an identified need for capacity following that date. In July 2019 the IESO announced suspension of work on the ICA in light of an updated forecast indicating sufficient baseload and other resources to ensure reliability for the foreseeable future. As such the first TCA will simply be the first in potentially a series of capacity auction evolutionary steps without any defined end state or particular timing need. There is thus no urgency to proceed with the TCA now.
38. Further, suspension of the Amendments would not preclude generators from participating in the IAM in the same manner in which they have done so to date. The interim relief

sought by AMPCO will cause no harm to Ontario generators, who can continue to operate and participate in the IAM in the interim in the manner in which they always have.

39. In these circumstances, the balance of convenience favours staying the operation of the Amendments pending determination of the Appeal.

General

40. AMPCO relies upon subsections 33(7) and 33(8) of the *EL Act* and Rules 8 and 17.07 of the Board's *Rules of Practice and Procedure* (Rules) in support of this motion.
41. In respect of its request to be found eligible for recovery of its reasonably incurred costs, AMPCO relies on section 30 of the *Ontario Energy Board Act, 1998*, Rule 39 of the Rules, and the Board's *Practice Direction on Cost Awards*.

THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE MOTION:

42. The following material will be relied upon in support of the motion:
 - (a) The Appeal Material;
 - (b) Affidavit materials which AMPCO proposes to file as and when directed by the Board; and

(c) Such further material as counsel may advise and the Board may permit.

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