

Association of Major Power Consumers in Ontario

**Application to Review Amendments to the Market Rules
made by the Independent Electricity System Operator**

PROCEDURAL ORDER NO. 2

October 18, 2019

On September 26, 2019, the Association of Major Power Consumers in Ontario (AMPCO) filed a Notice of Appeal (Application) asking the Ontario Energy Board (OEB) to review and issue an order revoking amendments to the market rules made by the Independent Electricity System Operator (IESO) (MR-00439-R00 to -R05) (Amendments), and referring the Amendments back to the IESO for further consideration. The Application was filed under section 33 of the *Electricity Act, 1998*, S.O. 1998, c. 15, (Schedule B) (Act).

The Amendments enable the evolution of the IESO's Demand Response Auction into a Transitional Capacity Auction, including allowing participation by certain generators. The Amendments took effect on October 15, 2019. The IESO is planning to hold the first Transitional Capacity Auction in early December 2019, with key milestone dates scheduled in the interim period.

AMPCO also filed a Notice of Motion requesting an order of the OEB staying the operation of the Amendments pending the completion of the OEB's review (Motion).

The OEB issued a Notice of Hearing on October 1, 2019.

On October 3, 2019, the IESO filed certain materials with the OEB, as required by a condition of its licence in respect of an application to review a market rule amendment filed under section 33 of the Act (IESO Licence Filing).

On October 4, 2019, the OEB issued Procedural Order No.1 indicating that it expects the IESO to participate in this proceeding and directing AMPCO to file all affidavits

material on which it intends to rely in support of the Motion and the Application by October 11, 2019. AMPCO filed affidavit material (AMPCO Affidavit) on that day.

The OEB is required by section 33(6) of the Act to issue an order that embodies its final decision on AMPCO's Application within 120 days of receipt of the Application.

Interventions and Cost Awards

In accordance with the Notice of Hearing, interested parties had until October 11, 2019 to apply for intervenor status in the proceeding and to indicate whether they were seeking cost award eligibility.

The Ontario Energy Association requested observer status in this proceeding. The Canadian Manufacturers & Exporters filed a letter indicating that it will be monitoring this proceeding as it unfolds and that it will advise the OEB if it wishes to intervene in this case.

The OEB received intervention requests from the following parties:

- Advanced Energy Management Alliance (AEMA)
- Association of Power Producers of Ontario (APPrO)
- Capital Power Corporation (Capital Power)
- Kingston CoGen Limited Partnership (Kingston CoGen)
- Rodan Energy Solutions Inc. (Rodan)
- School Energy Coalition (SEC)
- TransAlta Corporation (TransAlta)
- IESO (filed on October 17, 2019)

The OEB grants intervenor status to all parties that requested it. The list of parties in this proceeding is attached as Schedule A to this Procedural Order.

AMPCO requested eligibility to seek recovery of its reasonably incurred costs of the Application and the Motion. APPrO and SEC also applied for cost eligibility. Kingston CoGen submitted that, if AMPCO is granted cost eligibility, it should also be eligible for an award of costs.

The OEB will make cost awards available in this proceeding to eligible parties. In the case of applications, cost awards are typically recovered from the applicant and applicants are, absent special circumstances, not eligible for an award of costs. However, the OEB believes that it is appropriate for the IESO to be responsible for the

costs of this proceeding. This is consistent with the overall legislative scheme, which contemplates a review by the OEB as a potential last step in relation to market rule amendments. This was the outcome in the two preceding applications to review market rule amendments (EB-2013-0029 / EB-2013-0010 and EB-2007-0040).

The OEB therefore intends for the IESO to bear the costs of this proceeding, but will allow the IESO an opportunity to make a submission if it wishes to object to bearing those costs, and to also make a submission if it wishes to object to any of the requests for cost eligibility that have been made by AMPCO, APPRO, SEC and Kingston CoGen.

Process for Hearing

The OEB must accommodate two imperatives in this proceeding; namely, to treat the parties fairly and to issue an order that embodies the OEB's final decision within 120 days of the date of receipt of the Application. The OEB will proceed to deal with the Motion and the Application in parallel.

Hearing of Motion

The OEB is mindful that the IESO is planning to hold the first Transitional Capacity Auction in early December 2019, and that there are a number of steps contemplated for the IESO and prospective auction participants in the interim. As such, the OEB will proceed expeditiously on the matter of AMPCO's Motion to stay the operation of the Amendments. The OEB is making provision for written submissions on the Motion to stay, in order to enable a decision to be rendered on timely basis having regard to the timelines for the auction and prior preparatory steps. Parties are reminded that section 33(8) of the Act articulates factors to be considered by the OEB in determining whether to stay the operation of a market rule amendment.

Hearing of Application

Neither AMPCO nor any intervenor indicated a preference for the type of hearing in relation to the Application. The OEB will proceed with its consideration of the Application by way of oral hearing. Given the statutory deadline and the nature of the OEB's regulatory calendar, there will be limited opportunities to schedule an oral hearing of the Application. The OEB wishes to alert the Applicant and intervenors that the hearing of the Application will commence November 25, 2019. The OEB expects that the oral hearing will be devoted to hearing evidence as may be required, and hearing final oral argument potentially supplemented by written summaries.

Issues

The issues with respect to the hearing of the Application have their basis in section 33(9) of the Act; namely, whether the Amendments (i) are inconsistent with the purposes of the Act or (ii) unjustly discriminate against or in favour of a market participant or class of market participants. These were the issues as articulated in the two preceding applications to review market rule amendments (EB-2013-0029 / EB-2013-0010 and EB-2007-0040). The OEB expects parties to limit their filings and argument to these issues.

Interrogatories and Evidence

At this time, there are three filings on the Application record on which parties may submit interrogatories to AMPCO or the IESO (as applicable):

1. AMPCO Application, filed September 26, 2019
2. AMPCO Affidavit and exhibits, filed October 3, 2019
3. IESO Licence Filing, filed October 3, 2019

The OEB will allow an opportunity for parties and OEB staff to submit interrogatories on these filings. Interrogatories and responses to them must be prepared in accordance with Rules 26 and 27 of the OEB's *Rules of Practice and Procedure*.

The OEB will also allow an opportunity for intervenors and OEB staff to file evidence relevant to the issues to be considered in respect of the hearing of the Application as set out above. The Application makes reference to experience in other jurisdictions, notably to markets within the jurisdiction of the U.S. Federal Energy Regulatory Commission. The OEB is particularly interested in receiving evidence that describes the experience with compensation for demand response in markets in other relevant jurisdictions, and the extent to which that experience is informative in the context of the Amendments having regard to any pertinent differences such as differences in market design or structure.

It is necessary to make provision for the following matters related to this proceeding. The OEB may issue further procedural orders from time to time.

THE ONTARIO ENERGY BOARD ORDERS THAT:**Submissions on Costs**

1. If IESO wishes to make a submission on whether it should bear the costs of this proceeding, it shall file a written submission with the OEB and serve it on all parties by **October 23, 2019**.
2. If the IESO wishes to make a submission objecting to the request of any party for cost eligibility, it shall file a written submission with the OEB and serve it on all parties by **October 23, 2019**.
3. If a party, whose request for cost eligibility is the subject of an objection by the IESO, wishes to reply to the IESO's objection, it shall file a written reply submission with the OEB and serve it on all parties by **October 29, 2019**.

Hearing of AMPCO's Motion to Stay the Operation of the Amendments

4. Any party or OEB staff that wishes to make a submission on the Motion shall file a written submission with the OEB and serve it on all parties by **October 25, 2019**.
5. If AMPCO wishes to file a reply to the submissions on the Motion, it shall file a written reply submission with the OEB and serve it on all parties by **October 30, 2019**.

Hearing of the Application

6. Any party that wishes to request any relevant information and documentation from AMPCO in relation to the Application, that is in addition to its evidence already filed, or any relevant information and documentation from the IESO in relation to the IESO Licence Filing, shall file written interrogatories with the OEB and serve them on all parties by **October 28, 2019**.
7. AMPCO and the IESO shall file with the OEB complete written responses to all interrogatories and serve them on all parties by **November 6, 2019**.
8. If any intervenor or OEB staff wishes to file evidence that is relevant to the hearing of the Application, that evidence shall be filed with the OEB and served on all parties by **November 8, 2019**.

9. Any party that wishes to request any relevant information and documentation with respect to any evidence filed by any intervenor or OEB staff shall file written interrogatories with the OEB and serve them on all parties by **November 13, 2019**.
10. Intervenors and OEB staff shall file with the OEB complete written responses to any interrogatories received and serve them on all parties by **November 20, 2019**.
11. The oral hearing on the Application, including evidence as may be required and final argument, will commence on **November 25, 2019** starting at 9:30 a.m. in the OEB's Offices at 2300 Yonge Street, 25th floor, Toronto, Ontario. Additional hearing time will be provided for as necessary from November 26 to December 6.

All materials filed with the OEB must quote the file number, **EB-2019-0242**, be made in a searchable/unrestricted PDF format and sent electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and email address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <https://www.oeb.ca/industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a USB memory stick in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Michael Bell at Michael.Bell@oeb.ca and OEB Counsel, Ljuba Djurdjevic at Ljuba.Djurdjevic@oeb.ca.

ADDRESS

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DATED at Toronto, **October 18, 2019**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar and Board Secretary

SCHEDULE A

LIST OF APPLICANT AND INTERVENORS

ASSOCIATION OF MAJOR POWER CONSUMERS IN ONTARIO

EB-2019-0242

DATED: OCTOBER 18, 2019

Association of Major Power Consumers of Ontario
EB-2019-0242

APPLICANT & LIST OF INTERVENORS

October 18, 2019

APPLICANT

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Association of Major Power Consumers of Ontario
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APPLICANT & LIST OF INTERVENORS

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