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October 25, 2019

VIA EMAIL, RESS & COURIER

Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, ON
M4P 1E4
Attention: Registrar

Re: EB-2019-0002 – APPrO Submissions

Dear Sirs/Mesdames:

We are counsel to the Association of Power Producers of Ontario (“**APPrO**”). Pursuant to Procedural Order no. 7, please find enclosed APPrO’s submissions in this proceeding.

Yours Truly,

A handwritten signature in blue ink, appearing to read 'G. Vegh', written over the printed name George Vegh.

George Vegh

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

ONTARIO ENERGY BOARD

IN THE MATTER OF subsection 25(1) of the *Electricity Act, 1998*

AND IN THE MATTER OF a submission by the Independent Electricity System Operator to the Ontario Energy Board for the review of its proposed expenditure and revenue requirements for the fiscal year 2019 and the fees it proposes to charge during the fiscal year 2019

Written Submissions of the Association of Power Producers of Ontario (“APPrO”)

Introduction and Summary

1. These are the written submissions of APPrO. APPrO is a non-profit organization representing more than 100 companies involved in the generation of electricity in Ontario, including generators and suppliers of services, equipment and consulting services. APPrO’s members produce electricity from natural gas, hydro, nuclear, wind, biogas and other sources.
2. APPrO has confined its participation in this proceeding to issues of market renewal and, in particular, the IESO’s proposed Incremental Capacity Auction (“ICA”). As generators, APPrO members are directly impacted by whatever method the IESO uses to procure electricity capacity. The consequences of IESO procurement models also obviously impacts all Ontario electricity consumers.
3. The IESO filed this application in January, 2019. At that time, it justified the ICA by reference to a “Benefits Case” that was provided by its paid consultant, the Brattle Group. The Brattle Group quantified the benefits of the ICA that the IESO had already committed to at over \$2.5 billion.¹
4. The Brattle Group’s report did not consider any alternative procurement mechanisms and was not subject to any type of regulatory review or independent analysis.
5. In June this year the IESO decided to change course and “wind down” the ICA. The IESO now plans to develop new capacity procurement options, under the label of a “Revised Approach.”² However, it is not clear what this Revised Approach consists of. Specifically, it is not clear what options the IESO proposes to consider and how they will

¹ Exhibit I, Tab 6.0 Schedule I-30, OEB Staff Interrogatory 30, p. 2.

² IESO Submissions, October 11, 2019, para. 42.

be evaluated. The IESO described its Revised Approach to capacity procurements as follows in its submissions:

“The Capacity Work stream includes further development of the Capacity Auction [formerly known as the Demand Response auction], as well as other mechanisms, to meet Ontario’s resource adequacy needs.”³

6. APPrO acknowledges that since the Application was filed, the IESO has made a significant change of course to its approach to the procurement of resources, and the proposed stakeholder engagement process is a step in the right direction. Combined with the conditions proposed below, the new stakeholder engagement could lead to a significant improvement in Ontario’s electricity procurements.
7. APPrO’s submissions in this application are restricted to the Revised Approach and its treatment of “other mechanisms” alluded to in the IESO’s evidence. Specifically, APPrO proposes that the Board condition the approval of the IESO’s expenditure and development of its Revised Approach, including the treatment of “other mechanisms” on the requirement that the stakeholder engagement process addressing procurement mechanisms, be open and transparent and, in particular, that the IESO include an independent cost-benefit analysis of all potential procurement approaches.⁴ The OEB should review the effectiveness of the engagement process in the IESO’s next fees case.

Need for an Independent Cost-Benefit Analysis

8. Capacity procurement is an important and resource consuming task – both for the IESO and stakeholders -- and market participants require confidence that the process is carried out in a transparent and fact-based way, one that is not limited to options that the IESO is committed to before going into the process.
9. APPrO submits that the IESO’s proposed approach of committing to subsequent evolutions of a capacity auction, beyond the phase 1 expanded Demand Response Auction, without an independent and neutral review of other methods of capacity procurement does not provide confidence that an optimal approach will be developed.
10. The significant cost consequences to consumers that are driven by electricity procurement, the regulatory risk of course changes, the amount of time and effort invested in procurement mechanisms, and the need for enhanced stakeholder support all result in the need for greater independence in the analysis of costs and benefits and oversight.

³ IESO Submissions, October 11, 2019, para. 42 (emphasis added).

⁴ The IESO would not provide this commitment when requested to in an interrogatory: Exhibit I, Tab 6.0, Schedule 11.16 APPrO 16.

OEB's Oversight of IESO

11. The IESO has resisted oversight over its business plan on the grounds that the business plan is reviewed and approved by the Minister before filing with the OEB.⁵ However, three points should be raised:
12. First, the IESO's evidence is that the decision to "wind down" the ICA was not approved by the Minister.⁶ Indeed, the IESO's business plan that was submitted to and approved by the Minister claimed that the ICA would "drive down costs."⁷ The Board does not owe any deference to the Minister's approval of the business plan or to any "Revised Approach" that the IESO is contemplating.
13. Second, even apart from the foregoing, the Board has a statutory duty to oversee the IESO's expenditure and revenue requirements. The only matter that is immune from OEB review is the remuneration and benefits of the chair and other members of the board of directors of the IESO.⁸ Requiring independent and neutral review is an appropriate role for the Board and consistent with its statutory mandate. As the Alberta Court of Appeal observed, the "legislative safeguard is completely undermined" where the Alberta Utilities Commission granted deference to the Alberta Electricity System Operator "where deference is not due".⁹
14. Finally, there is precedent for OEB oversight over the components of IESO stakeholdering. When the IESO initially proposed a day ahead market to the Board in 2005, the Board expressed concern about the effectiveness of IESO stakeholdering. It directed the IESO to revise its stakeholdering process (i.e., the stakeholder engagement principles currently used by the IESO). The Board then conducted a substantive review of that revised process and concluded that stakeholder concerns "have been substantially met." As the Board noted:¹⁰

"The true test will, however, be in the experience stakeholders and the IESO with the new process. Stakeholders and the Board will have opportunities to review how well the proposals work over time as they are implemented. The Board therefore approves the IESO proposals on stakeholdering processes. It should be noted, however, that this approval relates to the processes that the IESO has proposed. It does not change the Board's obligation to review IESO programs that have implications for IESO fees, expenses, and revenue requirements even when these programs have been subjected to the IESO's stakeholdering processes.
15. The Board has thus reviewed and approved how the IESO conducts stakeholder engagements as part of its review of IESO revenue requirements when it believes that

⁵ *Electricity Act*, 1998, s. 24.

⁶ Exhibit I, Tab 6.0, Schedule 1.28, OEB Staff 28.

⁷ Exhibit A-2-2., p. 10.

⁸ *Electricity Act*, 1998, ss. 25(5).

⁹ *Milner Power Inc. v. Alberta (Energy and Utilities Board)*, 2010 ABCA 236 at para. 52,

¹⁰ OEB Decision on IESO 2005 fees (EB-2004-0477), p. 5 (emphasis added).

such oversight will lead to a better process and better results. Under the circumstances, it is submitted that this is such an occasion.

16. This requirement will provide greater confidence in generation procurement and an enduring mechanism to ensure that cost consequences to consumers, the cost of regulatory risk of course changes, and that the amount of time and effort invested in procurement mechanisms will be mitigated.
17. Further, the IESO indicated that a main reason for the cancellation of the ICA was the lack of stakeholder support. APPrO submits that an independent cost-benefit analysis of all potential procurement approaches with the opportunity for OEB review will be an important component of achieving greater stakeholder support for its procurement methods going forward.

Conclusion

18. In summary, APPrO proposes that the Board condition the approval of the IESO's expenditure and development of its Revised Approach, including the treatment of "other mechanisms" on the requirement that the stakeholder engagement process addressing procurement mechanisms, be open and transparent and, in particular, that the IESO include an independent cost-benefit analysis of all potential procurement approaches.¹¹ The OEB should review the effectiveness of the engagement process in the IESO's next fees case.
19. APPrO respectfully requests that it be awarded costs in this proceeding. It submits that it has participated responsibly, including by focusing its participation to those issues that are important both to its members and to electricity consumers at large.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: October 25, 2019

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Counsel for APPrO

¹¹ The IESO would not provide this commitment when requested to in an interrogatory: Exhibit I, Tab 6.0, Schedule 11.16 APPrO 16.