

October 25, 2019

Our File No.: 19.2201

**Via Courier, Email and RESS**

Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
P.O. Box 2319  
Toronto, Ontario M4P 1E4

**Attention: Kristin Walli, Board Secretary**

Dear Ms. Walli:

**Re: Resolute FP Canada Inc.'s Application Pursuant to Section 35 of the *Electricity Act*, 1998. Ontario Energy Board: File No.: EB-2019-0206 (the "Application")**

Further to its Procedural Order No.1, while the Ontario Energy Board (the "**Board**") Panel hearing this Application will make a determination at a future date regarding the cost eligibility requests of Resolute FP Canada Inc. ("**Resolute**") and the Association of Major Power Consumers in Ontario ("**AMPCO**"), the Board has nonetheless requested that any party objecting to these requests file their objections with the OEB at this time. The Independent Electricity System Operator (the "**IESO**") objects to both Resolute and AMPCO's eligibility to recover costs in respect of this Application.

As acknowledged by the Board, the IESO has already noted (in its letter of September 6, 2019) its objection to Resolute's claim to recover costs in this Application. Pursuant to Sections 3.05 and 3.07 of the Board's *Practice Direction on Costs Awards*, an Applicant, such as Resolute, is presumptively ineligible for a costs award absent "special circumstances". In its Application, Resolute has not demonstrated any "special circumstances" for departing from this general rule. Resolute has simply referenced the two prior market rule review proceedings before the Board<sup>1</sup> and suggests that these decisions necessarily support a determination that the IESO ought to be responsible for the costs of this Application. This submission, though, ignores the fact that in the Renewable Energy Suppliers' Appeal, the Board ultimately determined that the Applicants were

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<sup>1</sup> EB-2007-0040 (the "**Ramp Rate Appeal**"), Procedural Order No. 2 and EB-2013-0029/EB-2013-0010 (the "**Renewable Energy Suppliers' Appeal**"), Procedural Order No. 4 and No. 6

not eligible for a costs award and noted that “market participants should generally be expected to bear their regulatory costs associated with the market rule amendment process”.<sup>2</sup> Similarly in the Ramp Rate Appeal, despite determining that costs of that particular application were to be borne by the IESO, the Board stated that this determination should not “be understood as tacit recognition that this should necessarily be the case in relation to all future market rule amendment review applications that may come before the Board.”<sup>3</sup> Resolute has failed to discharge the burden imposed under Section 3.02 of the *Practice Direction* and establish any entitlement to a costs award.

With respect to AMPCO’s submission on costs eligibility, it is AMPCO’s position that it is eligible for costs because it represents the direct interests of consumers in relation to services provided by the IESO. Given the early stages of this Application, it is premature to determine whether AMPCO’s participation in this proceeding is primarily as a representative of ratepayers’ interests or on behalf of its members’ commercial self-interest (the latter of which would weigh strongly against any entitlement with respect to costs), or whether their intervention is deserving of a costs award.

Given that the Board is not making a determination at this time on Resolute or AMPCO’s eligibility for costs, or with respect to which party is required to pay the costs in this Application, the IESO respectfully requests the opportunity to make additional submissions on costs at a later stage in this proceeding.

Yours truly,

**Goodmans LLP**

*signed in original*

Alan H. Mark

*cc: Service List in Schedule “A” to Procedure Order No. 1*

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<sup>2</sup> Renewable Energy Suppliers’ Appeal, Procedural Order No. 6 at pg. 3-4.

<sup>3</sup> Ramp Rate Appeal, Procedural Order No. 2 at pg. 5.