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October 29, 2019

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Ottawa

Ms Kirsten Walli  
Board Secretary  
Ontario Energy Board  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

Vancouver

New York

Dear Ms Walli:

**AMPCO – Market Rule Amendment Review**  
**Board File No.: EB-2019-0242**

We are counsel to the Association of Power Producers of Ontario (“APPrO”). Please find enclosed APPrO’s costs submissions pursuant to Procedural Order No. 2 in the above-noted proceeding.

Yours very truly,



Evan J. Barz  
EB:hi

Enclosure

c: Ian Mondrow/Laura Van Soelen (Counsel to AMPCO)  
Glenn Zacher/Patrick Duffy (Counsel to IESO)  
James Hunter (IESO)  
Michael Bell (OEB Staff)  
Ljuba Djurdjevic (OEB Staff)  
David Butters (APPrO)  
Richard King (Osler)  
Intervenors of Record

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Electricity Act, 1998*,  
S.O. 1998, c. 15, Sched. A, as amended;

**AND IN THE MATTER OF** an application by the Association of  
Major Power Consumers in Ontario requesting that the Ontario  
Energy Board review a set of Market Rule amendments made by the  
Independent Electricity System Operator (MR-00439-R00 to R05:  
Transitional Capacity Auction).

**EB-2019-0242**

**COSTS SUBMISSIONS PURSUANT TO PROCEDURAL ORDER NO. 2**

**OF**

**THE ASSOCIATION OF POWER PRODUCERS OF ONTARIO**

**October 29, 2019**

1. On October 11, 2019, the Association of Power Producers of Ontario (“**APPrO**”) filed a notice of intervention and request for cost eligibility (“**APPrO’s Notice of Intervention**”) in respect of the application brought by the Association of Major Power Consumers in Ontario (“**AMPCO**”) pursuant to section 33 of the *Electricity Act, 1998* (the “**EAct**”) requesting the Ontario Energy Board (“**OEB**” or “**Board**”) review a set of Market Rule amendments made by the Independent Electricity System Operator (“**IESO**”) (MR-00439-R00 to R05: Transitional Capacity Auction) (the “**AMPCO Review**”).

2. On October 18, 2019, the Board released Procedural Order No. 2, which, *inter alia*, granted intervenor status to APPrO, together with all parties that requested it, and indicated that the OEB intends for the IESO to bear the costs of this proceeding. The Board noted that the IESO bearing the costs of this proceeding “...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” and further noted that “[t]his was the outcome in the two preceding applications to review market rule amendments (EB-2013-0029 / EB 2013-0010 and EB-2007-0040).”

3. Procedural Order No. 2 invited the IESO to make submissions to the Board by October 23, 2019 on whether it should bear the costs of this proceeding and whether it objected to the request of any party for cost eligibility.

4. On October 23, 2019, the IESO objected to APPrO’s request for cost eligibility on the basis that a “...party that participates in proceedings for purposes of pursuing its own commercial interest should, absent special circumstances, not be eligible for a costs award.” Since APPrO is a representative of generators, the IESO submits that APPrO is *prima facie* not eligible for a costs

award. Alternatively, the IESO submits that the Board should defer its determination on cost eligibility until the conclusion of the proceeding.

5. In response to the IESO's October 23, 2019 costs submissions, APPrO confirms and adopts its submissions regarding APPrO's cost eligibility contained in paragraph 7 of APPrO's Notice of Intervention and makes the following additional submissions:

- (a) In granting APPrO costs eligibility in EB-2007-0040 (3x Ramp Rate), one of two earlier Market Rule review proceedings, the Board noted that:

“Generators constitute a class of participants in the IESO-administered markets that will be directly affected by the outcome of this proceeding. The Board believes that the views of generators with respect to the Amendment will be important to the Board's determination of how the Amendment may fair relative to the criteria set out in section 33(9) of the [E]Act. Thus, the Board has determined that APPrO is eligible for an award of costs in this proceeding.”

APPrO submits that the same considerations apply to this proceeding. As noted in APPrO's Notice of Intervention, APPrO is uniquely positioned to provide the OEB with useful context as to how its members view the TCA, their ability to participate in the TCA (if allowed to come into effect), and other issues of asset utilization tied to the TCA. As such, there are special circumstances that warrant a finding that APPrO should be afforded costs eligibility in accordance with section 3.07 of the Board's *Practice Direction on Cost Awards*.

- (b) Deferring a decision on cost responsibility until after the determination of the AMPCO Review, as suggested by the IESO, would be unreasonable as APPrO (and

other entities that have no ability to recover costs of a proceeding from ratepayers or market participants) would be exposed to uncertain cost risk, which will hamper its participation in this proceeding. Determining that APPrO is fully eligible for an award of costs at the outset of this proceeding will provide APPrO with the cost certainty it requires to fully participate in a manner that meaningfully contributes to the AMPCO Review.

- (c) To defer a decision on cost responsibility could discourage intervenors from seeking intervenor status to bring legitimate concerns and important perspectives to the Board in other proceedings.
- (d) Finally, APPrO can still ultimately be denied its costs, if the Board determines that APPrO has engaged in any conduct which the Board considers inappropriate or irresponsible.

6. In light of the foregoing and APPrO's submissions on cost eligibility contained in APPrO's Notice of Intervention, APPrO submits that it is both cost award eligible and should be granted cost award eligibility in accordance with the Board's *Practice Direction on Cost Awards*.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED,**  
this 29<sup>th</sup> day of October, 2019



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**OSLER, HOSKIN & HARCOURT LLP,**  
Counsel for the Association of Power Producers of Ontario  
Per: Evan J. Barz