

**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**

**AMPCO REPLY TO SUBMISSIONS  
ON MOTION FOR STAY**

**Factual and Legal Context**

1. In considering the submissions of the various parties in respect of AMPCO's motion for a stay of the impugned Market Rule amendments it is instructive, and necessary to bear in mind the factual and legal context for this motion.

**Factual Context**

2. Reading the submissions by the IESO, APPRO and KCLP in response to AMPCO's motion, one might think that AMPCO is advocating an interim shutting down of the IESO Administered Market (IAM) in order to stymie competition.
3. Of course, AMPCO is advocating no such thing.
4. The IESO has promulgated market rule amendments which expand the pre-existing and well-functioning Demand Response Auction (DRA) platform by inviting uncommitted (i.e. off contract) generators to participate alongside demand response resources in an auction to be held December 4<sup>th</sup>, 2019. The order which AMPCO seeks through this motion would suspend the amendments, and thus effectively suspend this first of 4 currently planned expanded auctions (which have collectively been referred to as the Transitional Capacity

Auction, or TCA) until the merits of AMPCO's application can be determined by the Board. That application asserts that the expanded auction platform results in unjust discrimination in favour of generators and against demand response resources as a result of an inequity currently embedded in the IAM energy market, an inequity which the IESO is now evaluating and intends to resolve, one way or the other, prior to the second scheduled TCA.

5. The Board is legislatively required to make a final determination on AMPCO's application, and the veracity of the impugned amendments, by January 24<sup>th</sup>, 2020, well before the second of the 4 currently planned auctions intended to take place in June 2020, and more than 3 years prior to the time at which, according to the IESO, reliability becomes a concern (i.e. summer, 2023).
6. From the market's perspective, the sky is not falling, and there is no burning need to go to market for more additional capacity right now.
7. AMPCO, like the other parties who have filed submissions on this motion, is in favour of expanding the DRA to include other resources, including generators, and thus enhancing competition in the IAM.
8. The essence of AMPCO's motion for a stay is that for that outcome of enhanced competition to obtain – for competition to be enhanced rather than undermined, both actually and perceptually - the IESO must resolve the issue of the appropriateness of energy payments for demand response resources before launching a broadened auction platform.

## **Legal Context**

9. The order which AMPCO seeks through this motion is authorized by subsection 33(7) of the Ontario *Electricity Act*, 1998 (*EL Act*). The test for granting the order sought is directed by subsection 33(8) of the *EL Act*.
10. The order sought is one to be issued by the Ontario Energy Board. The OEB is not a court. It is not adjudicating a litigation.

11. The OEB is a highly specialized public interest economic regulator. It is considering an application, and this attendant motion, brought pursuant to the provisions of the *EL Act* which mandate regulatory oversight by this highly specialized public interest economic regulator of the IESO's market rule making process.
12. To effect that regulatory oversight, the legislature has set the test to be applied by the Board on a motion to stay a market rule amendment pending determination by the Board of an application under *EL Act* subsection 33(4) for review of the impugned market rule amendments.

### **The Applicable Tests for a Stay**

13. The IESO's submission in response to the motion makes much of the common law tests for granting a stay. In particular, the IESO's submission asserts that the stay should be denied on the basis that;
  - (a) AMPCO must demonstrate that its application has a high likelihood of success, rather than meeting the usual lower standard of presenting a serious issue to be tried (i.e. not being "frivolous and vexatious").<sup>1</sup>
  - (b) Because the impugned market rule amendments were made by the IESO as a public agency, there are legal presumptions that:
    - (i) the impugned amendments are in the public interest<sup>2</sup>; and
    - (ii) irreparable harm to the public interest will result from staying the rules<sup>3</sup>.
  - (c) AMPCO must demonstrate that irreparable harm will result absent the stay.<sup>4</sup>
14. The IESO's assertions ignore the regulatory context for this matter, as noted above, including in particular the wording of the statute.

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<sup>1</sup> *IESO Submissions in Response to AMPCO's Request for a Stay*, November 5, 2019, paragraph 52.

<sup>2</sup> *IESO Submissions in Response to AMPCO's Request for a Stay*, November 5, 2019, paragraph 54.

<sup>3</sup> *IESO Submissions in Response to AMPCO's Request for a Stay*, November 5, 2019, paragraph 55.

<sup>4</sup> *IESO Submissions in Response to AMPCO's Request for a Stay*, November 5, 2019, paragraph 86.

## Merits Test

15. The legislation provides that the Board shall consider “*the merits of the application*”<sup>5</sup>.
16. The IESO concedes that ordinarily this is a relatively low standard of a serious issue to be tried.<sup>6</sup> However, the IESO asserts that in this instance, because granting of the stay would, as a practical matter, determine the rights of the parties, a higher standard applies; i.e. a strong likelihood of success.
17. It is not in dispute that the December 2019 TCA is the first of 4 planned auctions in an evolution of the IAM capacity auction platform. It is also not in dispute that AMPCO’s application must be determined by the Board by January 24<sup>th</sup>, 2020, which is approximately 6 months prior to the next planned auction, and more than 3 years prior to the last of the currently planned auctions.
18. Whether the admission of off-contract generators into the IAM capacity auction platform occurs in December, 2019 or June, 2020 will not finally determine the rights of the parties in respect of IAM capacity auction participation. Whether AMPCO’s application will be successful or not in requiring that the IESO reconsider the amendments on the basis that they are found to be unjustly discriminatory or contrary to legislative objectives will be determined within the next 2 months. If the application is not successful, the amendments will stand, the TCA will proceed in June, 2020, and KCLP and other off-contract generators will be able to participate.
19. The determination of this motion will not finally determine the rights of the parties, simply the nature of the December 4<sup>th</sup> auction (expanded or not). There is no basis upon which to require a greater onus than normal on AMPCO to demonstrate the merits of its application.
20. As we have previously argued<sup>7</sup>, the application is meritorious, in that it reflects a serious issue to be determined, one that is grounded in precedent, one that is the subject of ongoing study by the IESO, one that has now prompted the filing of extensive and detailed

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<sup>5</sup> *EL Act*, paragraph 33(8)(b).

<sup>6</sup> *IESO Submissions in Response to AMPCO’s Request for a Stay*, November 5, 2019, paragraph 69.

<sup>7</sup> *AMPCO Submissions for Motion for Stay*, October 29, 2019, paragraphs 43 – 49.

evidence (yet to be tested and amplified through discovery and examination) to assist the Board in considering it, and one that is thus clearly not frivolous or vexatious.

21. The IESO cites the Ontario Divisional Court's decision in the one judicial consideration of the OEB's oversight of IESO's market rule making power (the appeal of the OEB's ramp rate decision) as authority for the proposition that something more than the conventional, low, "serious issue to be tried" test applies on this motion.<sup>8</sup> The IESO is mistaken, for three reasons. First, what that Court actually determined, at paragraph 19 of the decision<sup>9</sup>, was:

*The threshold of determining whether there is a serious issue to be tried, is a low one.*

Second, the Court in that case was considering the test to apply on its own consideration of a motion to stay brought before it, and not the statutory test applicable to this Board's consideration of the instant motion. Third, that Court was considering a test to apply to stay a market rule amendment following the OEB's own determination that the impugned market rule should stand; that is following the exercise of the regulatory oversight of the IESO's rule making process with which the OEB is charged.

22. Put in its proper context, the judicial consideration cited by the IESO is of no assistance. Indeed, if anything, it illustrates that the merits test properly applied by the Board pursuant to its legislative mandate, including the direction provided by the tests for a stay enumerated in *EL Act* subsection 33(8), should be of a lower threshold prior to the OEB's review of the impugned market rule (as is the case here) than after that review has been undertaken and completed (as in the Divisional Court case).

## Public Interest Presumptions

23. The IESO and APPrO assert that because the IESO is a public agency the Board must assume that the amendments are in the public interest and that staying the amendments

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<sup>8</sup> *IESO Submissions in Response to AMPCO's Request for a Stay*, November 5, 2019, paragraph 88, citing *Association of Major Power Consumers in Ontario (Appellant) v. Ontario (Energy Board)*, paragraph 19, *Brief of Authorities to AMPCO's Submissions for Motion for Stay*, Tab A.

<sup>9</sup> *Brief of Authorities to AMPCO's Submissions for Motion for Stay*, Tab A.

would result in irreparable public harm. The premise for these assertions is decisions of courts being asked to stay the effect of actions of public agencies.

24. Again, the instant motion is brought pursuant to legislative authority granted to this Board, as an expert economic regulator, to oversee the IESO's market rule-making function. Pursuant to that legislative authority the Board has been expressly mandated to consider "*the public interest*", "*the impact on consumers*" and "*the balance of convenience*".<sup>10</sup> The law cited by the IESO developed in two completely different contexts:
- (a) On constitutional challenges: These are applications in which laws have been passed by the legislature and applicants have challenged their constitutionality.<sup>11</sup> In this context, the court has noted that a stay or injunction is an extraordinary remedy, which is apt given that the legislation has been passed and, absent the constitutional challenge, would not be subject to further review.
  - (b) On challenges to the authority of law enforcement agencies: These are applications in which steps taken by law enforcement agencies have been challenged on jurisdictional bases.<sup>12</sup>
25. Thus understood, these cases provide no guidance to the exercise by this Board of its express legislative mandate to oversee the IESO's market rule making function. The legislation expressly contemplates that the market rule amendments may be stayed pending the OEB's consideration of them. In this statutory context, the stay does not have the kind of extraordinary character described in the constitutional cases or the cases challenging the authority of law enforcement agencies referenced in the other parties' submissions.
26. Both the IESO<sup>13</sup> and the APPrO<sup>14</sup> submissions refer to the "legislative" function of the IESO in respect of the market rules, in support of their assertions that this function effectively raises the bar on the AMPCO's burden in respect of the stay. Those rules are

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<sup>10</sup> *EL Act*, paragraphs 33(8)(a),(d) and (e).

<sup>11</sup> *Johnson v. Ontario (Attorney General)*, 2003 CanLII 20401 (ON SC), cited by the IESO, *IESO Submissions in Response to AMPCO's Request for a Stay*, November 5, 2019, paragraphs 3 and 52, *IESO Brief of Authorities*, Tab 1; See also underlying case referenced in Johnson, which is *Falkiner v. Ontario*, 1996 Carswell Ont 62, paragraph 13, *AMPCO's Supplementary Brief of Authorities*, Tab A.

<sup>12</sup> *Ainsley v. Ontario (Securities Commission)*, [1993] OJ No 1830, cited by the IESO, *IESO Submissions in Response to AMPCO's Request for a Stay*, November 5, 2019, paragraph 54, *IESO Brief of Authorities*, Tab 11.

<sup>13</sup> *IESO Submissions in Response to AMPCO's Request for a Stay*, November 5, 2019, paragraph 58.

<sup>14</sup> *APPrO Submissions on Motion for Stay*, November 1, 2019, paragraph 22.

promulgated pursuant to the IESO's mandate under section 32 of the *EL Act*. That promulgation is not a "legislative" function of the kind engaged in the cases cited by the IESO and APPrO.

### Irreparable Harm Test

27. In respect of the "irreparable harm" test, the IESO submissions misquote the statute.

28. The IESO states<sup>15</sup> (our emphasis):

*Paragraph 33(8)(c) of the Electricity Act, 1998 requires the Board to consider whether irreparable [sic] will result from not granting a stay of the Amendment.*

29. What paragraph 33(8)(c) actually says is (our emphasis):

*In determining whether to stay the operation of an amendment, the Board shall consider.*

...

*(c) the possibility of irreparable harm to any person;*

30. That the legislature set this test, rather than the arguably more onerous common law test, is consonant with the role of the Board in regulatory oversight of the IESO, expressly including oversight of the IESO's rule-making function in the broader public interest and the mandate and expertise of the Board in respect of Ontario's energy sector in general and the appropriate balancing of all interests thereby affected.

31. Given the express, and expressly different, statutory test for the possibility of harm set out in the *EL Act*, the numerous cases cited by the IESO and others in support of their assertions of the evidentiary burden to prove irreparable harm are simply inapplicable in the matter before the Board. The legislature expressly chose to depart from the common law irreparable harm standard when it passed section 33(8) of the *EL Act*. That policy choice must be effected, and the proper way to effect it is to recognize that AMPCO need only establish the possibility of irreparable harm to any person in order for the Board to

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<sup>15</sup> *IESO Submissions in Response to AMPCO's Request for a Stay*, November 5, 2019, paragraph 86.

exercise its authority to order a stay, and not “*clear, unequivocal proof*” of it. To find otherwise would be to effectively re-write the *EL Act* so as to remove the words “*the possibility of*” from section 33(8). The law holds that legislation is deemed to be well drafted, and to express completely what the legislator wanted to say<sup>16</sup>, and that this Board is to interpret and apply the legislation, not create it.

### **Jurisdiction of the Board**

32. The IESO further asserts that the Board lacks the jurisdiction to grant the relief sought, because the impugned market rule amendments in and of themselves (i.e. in isolation) treat all TCA participants the same.
33. The assertion is that AMPCO’s application for review of the TCA market rule amendments “*is, in essence, a disguised and indirect challenge to long-standing market rules governing energy payments in the IESO market*”<sup>17</sup> – i.e. the market rules which provide for energy payments to generators, but not to demand response resources. The submission then goes on to characterize these longstanding rules as “Minister-made”, which means that they were made by Ontario’s Minister of Energy at the time of market opening and are legislatively immune from challenge under section 35 of the *EL Act*.
34. All of this is a distraction. AMPCO’s application is not so nefarious.
35. The impugned amendments provide for an expanded capacity auction. It is uncontested that the expanded auction will allow uncommitted generators, which are eligible for energy payments upon activation, to register for and bid into a capacity auction against demand response resources, which are not eligible for energy payments upon activation. The direct result of the rule is that generators will have an unwarranted (because the energy services provided are the same) – and AMPCO thus submits “unjust” - competitive advantage over demand response resources in capacity auctions.

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<sup>16</sup> *R. v. McIntosh* [1995] 1 SCR 686 at paragraph 28, citing with approval Pierre-André Côté, *The Interpretation of Legislation in Canada* (2<sup>nd</sup> ed. 1991) at page 231, *AMPCO’s Supplementary Brief of Authorities*, Tab B.

<sup>17</sup> *IESO Submissions in Response to AMPCO’s Request for a Stay*, November 5, 2019, paragraph 6.



36. The fact that this advantage results from energy payments made available to generators through another market rule in no way diminishes the discriminatory impact of expansion of the current demand response auction through the inclusion of generation resources. Without the expansion, the auction as among qualifying demand response resources would not be discriminatory.
37. While the issue of whether the competition is unfair and thus unjust will be determined upon deliberation of the application, for present purposes AMPCO's focus on the amendments in its challenge is both legislatively and factually supported and appropriate and the relief sought on this motion for a stay under subsections 33(7) and (8) of the *EL Act* is wholly within the Board's jurisdiction to grant.
38. AMPCO has applied for an order revoking the rule. Revocation of the rule would effectively reinstate the DRA platform where demand response resources compete with each other on a level playing field.
39. AMPCO's application is no more complicated than that. AMPCO has been very clear that it is in favour of expanded competition for the provision of capacity to the IAM, as long as that competition is fair and non-discriminatory.<sup>18</sup>

## The Status Quo

40. The IESO asserts that reference to the status quo, as part of assessing the balance of convenience, is misguided because, "the Supreme Court of Canada has described [consideration of the status quo] as being of limited value in private law cases and having no merit in public law cases."<sup>19</sup> The IESO cites to Justice Sharpe's text as authority for this proposition.
41. In fact, Justice Sharpe's text makes no reference to "public law cases" generically. Rather it refers specifically to constitutional law cases, noting that consideration of the status quo has, "*no merit in constitutional cases*". That is, after all, what the Supreme Court of Canada

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<sup>18</sup> *AMPCO Submissions for Motion for Stay*, October 29, 2019, paragraphs 5-7.

<sup>19</sup> *IESO Submissions in Response to AMPCO's Request for a Stay*, November 5, 2019, paragraph 110.

said in *RJR-Macdonald*: “as a general rule it has no merit as such in the face of the alleged violation of fundamental rights.”<sup>20</sup>

42. This is not a constitutional case. Fundamental rights (i.e. Charter rights) are not at stake. The mis-quoted statement from Justice Sharpe’s text has no application to this Board’s consideration of the exercise of its regulatory oversight authority under section 33 of the *EL Act*.
43. Recent Canadian cases, including cases seeking to stay exercises of power by public agencies, hold that the status quo is a relevant factor to consider where all else is equal from a balance of convenience perspective<sup>21</sup>, and that the status quo should be preserved when possible<sup>22</sup>.

### **The Accepted Facts**

44. The IESO’s submissions make much of the nature and quality of AMPCO’s affidavit evidence.
45. The IESO asserts<sup>23</sup> that the application has “*no realistic prospect of succeeding since it is bereft of the necessary economic analysis that the Board stated in the Ramp Rate case is required to demonstrate ‘unjust economic discrimination’*”. No such statement by the Board can be found in its decision in the ramp rate case.
46. The ramp rate case was about the impact of changing ramp rate assumptions for payments to generators, and the central issue was the impact of that change on consumer prices, taking into account the market efficiency benefits asserted by the IESO and other proponents of the change. Consideration of that matter necessarily engaged relatively in

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<sup>20</sup> *RJR- Macdonald v. Canada (Attorney General)*, [1994] 1 SCR 311, paragraph 75, *AMPCO Brief of Authorities*, Tab B.

<sup>21</sup> *Amormino v. Ontario (Police Services Board)*, 2015 ONSC 7165, paragraph 68, *AMPCO’s Supplementary Brief of Authorities*, Tab C; *Martel v. Canada (Attorney General)*, 2019 FC 737, paragraph 52, *AMPCO’s Supplementary Brief of Authorities*, Tab D.

<sup>22</sup> *AMPCO Submissions for Motion for Stay*, October 29, 2019, paragraph 57 and authorities there cited.

<sup>23</sup> *IESO Submissions in Response to AMPCO’s Request for a Stay*, November 5, 2019, paragraph 7.

depth economic analysis and theory, and the Board's determination of that case centred on such analysis<sup>24</sup>.

47. In the course of its reasoning in that matter the Board accepted the view put forward in that case by the IESO that "unjust discrimination" in the context of section 33 of the *EL Act* means unjust "*economic discrimination*". While the Board did not define what it meant by "*economic discrimination*", the IESO had raised and labeled the issue as requiring that in order to be "unjust" there must be more than an economic advantage accruing to one party rather than another<sup>25</sup> (in that case, the relevant parties were generators vs. ratepayers as represented by AMPCO).
48. Nowhere in its reasoning in the ramp rate decision does the Board address the nature or extent of evidence required by an applicant under section 33 of the *EL Act*, other than to find, in determining the burden of proof to apply, that<sup>26</sup> [our emphasis]:

*In applications before the Board, the burden of proof is typically on the applicant to satisfy the Board that the requested relief should be granted. The Board certainly expects that the IESO will participate fully in proceedings relating to applications under section 33 of the Act in support of the amendment that is under review. However, the Board has heard no compelling reason that would cause it to take a different approach and place the burden of proof on the IESO in the circumstances of this case.*

49. The only two instances in which the ramp rate decision talks about the concept of "economic discrimination" are found at page 14 of the decision, where the Board references the IESO's position on this (as noted above), and page 26 where the Board endorses that position (as noted above).
50. In the instant matter, as outlined below, the essential facts demonstrating the merits of the application and of the motion are much simpler than those engaged in the ramp rate case, and are not in dispute. Rather their implications are in dispute.
51. The IESO further challenges AMPCO's case on the basis that "*the foundation of AMPCO's case*" is FERC Order 745<sup>27</sup>. The IESO then refers to findings from a study conducted for

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<sup>24</sup> Ramp Rate Decision, pages 22 bottom to 23 top and page 26, top.

<sup>25</sup> Ramp Rate Decision, page 15.

<sup>26</sup> Ramp Rate Decision, page 18.

<sup>27</sup> *IESO Submissions in Response to AMPCO's Request for a Stay*, November 5, 2019, paragraph 81.

it in 2017 by Navigant as evidence that the FERC Order 745 findings are of questionable applicability in Ontario.<sup>28</sup> Again, these assertions are proffered in support of the IESO's assertion that AMPCO has not met the burden for a stay of demonstrating that its case has merit.

52. FERC Order 745 is not "*the foundation*" of AMPCO's case. The foundation of AMPCO's case is the simple and obvious fact that the amendments would result in unfair competition for the provision of capacity as a result of different IAM payment streams to different classes of market participants for the same services. The importance of FERC Order 745 is that, as the IESO acknowledges<sup>29</sup>, it is a finding on this very topic by one of the pre-eminent economic energy regulators in the world made after an exhaustive and hotly contested public review process. Through such process FERC determined basic economic energy regulatory principles which indicate the possibility (AMPCO asserts, the reality) that the circumstances created by the impugned IESO amendments result in unjust and unreasonable discrimination of demand response resources in Ontario. FERC's detailed and informed reasoning is, without doubt, a relevant consideration for this Board (as acknowledged by the IESO Board of Directors<sup>30</sup>).
53. The Navigant conclusions cited by the IESO in support of the assertion that FERC Order 745 is unlikely to apply in Ontario are expressly premised on generators participating in Ontario capacity auctions being under contract (and thus being compensated for otherwise unrecovered fixed costs through the Global Adjustment).<sup>31</sup> Of course, the generators who are now, by virtue of the impugned market rule amendments, permitted to participate in the capacity auction are off-contract. Indeed, the whole point of the expanded capacity auction, as KCLP has taken pains to point out, is that off-contract generators are no longer receiving capacity payments!

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<sup>28</sup> IESO Submissions in Response to AMPCO's Request for a Stay, November 5, 2019, paragraph 83.

<sup>29</sup> IESO Submissions in Response to AMPCO's Request for a Stay, November 5, 2019, paragraph 82.

<sup>30</sup> Affidavit of David Short sworn October 25, 2019, sub-paragraph 18a) and Exhibit D, page 4, top paragraph.

<sup>31</sup> IESO Submissions in Response to AMPCO's Request for a Stay, November 5, 2019, paragraphs 32 and 83.

54. Given that the IESO itself has since 2017 been studying, and continues to study, the issue of energy payments for demand response resources, it is apparent that this topic is very much a live issue in Ontario.
55. Indeed, the IESO itself, in analogous circumstances, has recognized that failure to compensate demand response resources (in that instance for test activations) could “potentially increase[ ] the cost of the capacity”, and “[i]n the context of the proposed capacity auctions, where [Hourly Demand Response] will be competing against other resource types, how these costs are recovered will potentially impact market efficiency”.<sup>32</sup> The IESO reports having concluded that providing Hourly Demand Response resources with cost recovery for out-of-market activations is appropriate, and “consistent with energy market and existing design treatment of other resources”. This is exactly the same concept that is engaged by AMPCO’s application! It is inexplicable to us how the IESO can continue to “suck and blow” on the applicability of this issue in Ontario, which has been, and remains, under formal and active consideration by it since at least 2017!
56. The veracity and sufficiency of AMPCO’s evidence versus the IESO’s evidence versus KCLP’s evidence and, now, the additional detailed third party expert evidence filed, and the implications of all of this evidence for the fairness, competitiveness and likely impact on consumers of the TCA, will no doubt be subject to further testing and debate as the application proceeds. There are, however, certain undisputed, and undisputable, facts ascertainable now which clearly support the granting, in the interim, of a stay. These simple and obvious facts are:
- (a) Enhancing competition, including through expansion of the capacity auction platform, is a good thing and in accord with the objects of the *EL Act*, and compromising it is not.<sup>33</sup>
  - (b) Generators get energy payments, DR resources don’t.

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<sup>32</sup> Demand response Working Group Meeting Materials, June 19, 2019 (IESO Licence Filings, copy attached), pages 39-41.

<sup>33</sup> *IESO Submissions in Response to AMPCO’s Request for a Stay*, November 5, 2019, paragraph 40; *APPrO Submissions on Motion for Stay*, November 1, 2019, paragraphs 17 and 19.

- (c) The IESO has been aware of, and has been considering, energy payments for demand response resources since at least 2017.<sup>34</sup> This remains an issue which the IESO continues to actively examine.<sup>35</sup>
- (d) The DRA has been successful, with increasing demand response resource participation and declining prices since 2015, and has been a valuable and reliable tool for the IESO to obtain capacity commitments to provide for cost effective reliability.<sup>36</sup>
- (e) The TCA is but one of the available tools for securing resources to address reliability.<sup>37</sup>
- (f) The December 4<sup>th</sup> TCA would be the first step in an evolutionary process, with 3 additional phases currently planned between June 2020 and the end of 2021.<sup>38</sup>
- (g) The reliability issues of concern to the IESO are forecast for summer, 2023.<sup>39</sup>
- (h) If the TCA is implemented in December 2019, pursuant to the impugned amendments;
  - i. generators will be able to offer into the auction taking into account their anticipated energy payments, which would allow them to set their “offer price” factoring in the anticipated value of the energy payment stream that they will receive when dispatched; and
  - ii. demand response resources will not have the benefit of such anticipated energy payments, and so will not have an anticipated energy payment stream to factor in when setting their offer price.<sup>40</sup>
- (i) The IESO itself, in analogous circumstances<sup>41</sup>, has recognized that failure to compensate demand response resources (in that instance for test activations) could “*potentially increase[ ] the cost of the capacity*”, and “[i]n the context of the proposed capacity auctions, where [Hourly Demand Response] will be competing against other resource types, how these costs are recovered will potentially impact market efficiency”. The IESO reports having concluded that providing Hourly Demand Response resources cost recovery for out-of-market activations is

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<sup>34</sup> Affidavit of Colin Anderson sworn October 11, 2019, paragraphs 8-9; IESO Submissions on Motion, paragraph 30.

<sup>35</sup> IESO Submissions in Response to AMPCO’s Request for a Stay, November 5, 2019, paragraphs 35-36.

<sup>36</sup> Affidavit of Colin Anderson sworn October 11, 2019, paragraph 10 and Exhibit C.

<sup>37</sup> AMPCO Submissions in Response to Motion for Stay, October 29, 2019, paragraph 61.

<sup>38</sup> IESO Submissions in Response to AMPCO’s Request for a Stay, November 5, 2019, paragraphs 17-20 and 25-27.

<sup>39</sup> IESO Submissions in Response to AMPCO’s Request for a Stay, November 5, 2019, paragraphs 21 and 24.

<sup>40</sup> Affidavit of Colin Anderson sworn October 11, 2019, paragraph 14.

<sup>41</sup> Demand response Working Group Meeting Materials, June 19, 2019 (IESO Licence Filings, copy attached), pages 39-41.

appropriate, and “consistent with energy market and existing design treatment of other resources”.

- (j) 4 off-contract generators have registered to participate in the December 4<sup>th</sup> TCA. One of these has evidenced an expectation for “millions of dollars” of benefit from that auction.<sup>42</sup>

### **Application of the Accepted Facts to the Statutory Tests**

57. Applying these simple and uncontested facts to the applicable statutory considerations for a stay of the impugned market rule amendments leads to the conclusion that the requested stay should be granted.

58. ***The public interest and the interests of consumers*** are served by preserving, and not undermining, competition in the IAM. There are undisputed facts that;

- (a) generators get energy payments and DR resources don't;
- (b) the two types of resources would compete in the TCA;
- (c) the appropriateness of energy payments for demand response resources has been, and continues to be, under active consideration by the IESO;
- (d) the IESO has recognized that the lack of analogous out of market activation payments for demand response resources could impact the efficiency of the capacity market;
- (e) the pre-existing IAM capacity auctions (the demand response auctions) have been competitive, successful and in the best interests of the public and consumers;
- (f) at least 4 off-contract generators have registered for the December 4<sup>th</sup> TCA; and
- (g) one of these generators anticipates the potential for “millions of dollars” of benefits from successful participation in the December 4<sup>th</sup> TCA, obviously at the expense of its competitors in the auction.

All of these facts indicate the potential for negative competitive impacts should the December 4, 2019 expanded auction proceed, which negative impacts would be contrary to the public interest and the interest of consumers.

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<sup>42</sup> Affidavit of David Short sworn October 25, 2019, paragraph 28; Affidavit of John Windsor sworn October 25, 2019, paragraph 22.



59. **The merit of AMPCO's application (i.e. that it is not frivolous or vexatious)** is indicated by the facts that;
- (a) the TCA introduces generators, who get energy payments, into competition with demand response resources, who do not; and
  - (b) the equity and efficiency of this circumstance has been, and is, a live issue for the IESO.
60. Facts which favour a stay in a **balance of convenience** analysis, a factor in consideration of which is the appropriateness of retaining, in the interim, the status quo, are;
- (a) the December 4<sup>th</sup> TCA would be one of 4 auctions between now and the period in which the IESO forecasts a reliability issue which commences more than 3 years from now;
  - (b) the TCA is but one tool for addressing reliability concerns, and there are others;
  - (c) if AMPCO's application is not successful, off-contract generators will be able to participate in subsequent auctions currently planned for June 2020, December, 2020 and 2021, and any others that are scheduled; and
  - (d) the current DRA has worked well, furthering the interest of the public and consumers in a competitive wholesale electricity market.
61. The assertions by the IESO<sup>43</sup>, KCLP<sup>44</sup> and APPrO<sup>45</sup> that the IESO Board of Directors has determined that it would be imprudent to delay the December 4<sup>th</sup> iteration of the multi-phase evolution of the TCA are overstatements. What the IESO Board of Directors actually said is<sup>46</sup> (our emphasis):
- A phased approach will reduce risk, while ensuring continued evolution of the market through the phased inclusion of new resources. This is a more prudent approach than attempting to implement a new capacity auction mechanism just prior to the time when there is a more significant capacity need.*
62. No one has suggested, and granting an interim stay would not result in, attempting to implement a new capacity auction mechanism “*just prior to the time when there is a more significant capacity need*”. That time, the summer of 2023, is more than 3 years away.

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<sup>43</sup> IESO Submissions in Response to AMPCO's Request for a Stay, November 5, 2019, paragraph 62.

<sup>44</sup> KCLP Submissions on Motion for Stay, November 1, 2019, paragraph 4.

<sup>45</sup> APPrO Submissions on Motion for Stay, November 1, 2019, paragraph 34.

<sup>46</sup> Affidavit of David Short sworn October 25, 2019, Exhibit D, page 3, paragraph numbered 2.



63. Mr. Short in his evidence on behalf of the IESO uses the term “imprudent” only once, at paragraph 30, in reference to the notion also reflected in the rationale provided by the IESO’s Board of Directors, that *“it would be impractical and imprudent to attempt to introduce the full suite of changes required on the eve of the significant capacity need the auction would be required to address”* [our emphasis].
64. In consideration of the view of AMPCO and others that the amendments would unjustly discriminate against demand response resources, the IESO Board concluded that<sup>47</sup>:
- ...delaying the auction in order to complete the analysis would be detrimental to the market overall. Specifically, delaying the auction would delay the introduction of increased competition, create an unnecessary delay in the phased approach to developing the auction in advance of substantial future capacity needs, and risk failing to retain access to existing generation assets coming off contract. A delay would therefore result in decreased competition in Ontario and give rise to potential negative impacts on reliability.*
65. In respect of this reasoning:
- (a) AMPCO’s position, and evidence, is that proceeding with the December 4<sup>th</sup> TCA without first resolving the issue of energy payments for demand response resources will result in decreased competition, the opposite of the objective intended by the IESO Board of Directors, while deferring commencement of the TCA pending resolution of AMPCO’s application will prevent the undermining of confidence and competition in the IAM; and
  - (b) the threat of the loss of future resources from an interim delay of the TCA is tenuous at best (as addressed below), and there is no evidence provided as to the basis for the IESO Board’s information or belief in this respect.
66. Mr. Short’s evidence on this point on behalf of the IESO<sup>48</sup> is that the IESO (not Mr. Short) believes that allowing supply resources to compete in the TCA *“will reduce the likelihood”* that the operation of generation facilities coming off contracts will be shut down, and that the IESO (not Mr. Short) is concerned that *“some of these generation resources may cease operations if the TCA is delayed”*. There is no information provided on how much generation may be affected, nor is Mr. Short’s evidence specific to the December 4<sup>th</sup> iteration of the TCA.

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<sup>47</sup> Affidavit of David Short sworn October 25, 2019, Exhibit D, page 4, 2<sup>nd</sup> last full paragraph *et seq.*

<sup>48</sup> Affidavit of David Short sworn October 25, 2019, paragraph 35.

67. APPrO asserts in its submissions on the motion<sup>49</sup> that staying the operation of the December 4<sup>th</sup> auction “has the potential to result in some off-contract generators ceasing operations”. APPrO bases its assertion on the evidence from KCLP which APPrO characterizes<sup>50</sup> as indicating that “there is a real likelihood that the parent company of KCLP may decide to discontinue operation” if it cannot compete in the December 4<sup>th</sup> auction. APPrO goes on to suggest “severe consequences” “if other off-contract generators similarly decide to shutter operations”, but cites no evidence at all in support of this suggestion. With the emphasis which we have added to these excerpts, the equivocation in these assertions jumps out.
68. The only direct evidence on this point is from KCLP. None of the other 3 generators apparently registered for the December 4<sup>th</sup> auction have provided evidence, nor any other generators that have, or will be, coming off contract. Without explanation of why this is, it might be inferred that the threat of the loss of resources is not as dire as the submissions in response to this motion make it out to be.
69. KCLP’s evidence on the point can be found at paragraph 20 of John Windsor’s affidavit, in which Mr. Windsor states (our emphasis):
- KCLP has been operating for almost three years where it is not recovering its fixed operating costs via market-based mechanisms available to it. The parent company of KCLP has indicated that it is not willing to continue losing money without some indication that a mechanism will become available to recover sufficient revenues to keep the facility operating. If KCLP is prevented from competing in the upcoming TCA, I believe that it is likely that the parent company will decide to discontinue facility operations.*
70. Mr. Windsor’s provides no basis for his belief, though we assume that he has ready access to those at “the parent company” who would make such a decision. Careful attention to Mr. Windsor’s statement highlights that this generator, which has already been operating for 3 years off-contract and without access to a capacity auction, is (understandably) looking for some indication of a future opportunity to recover capacity costs. There is no reference in this statement to the December 4<sup>th</sup> auction in particular, but rather to the future TCA (of which the December 4<sup>th</sup> iteration is but one of 4 planned).

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<sup>49</sup> APPrO Submissions on Motion for Stay, November 1, 2019, paragraph 36.

<sup>50</sup> APPrO Submissions on Motion for Stay, November 1, 2019, paragraph 36.

71. In short, Mr. Windsor's evidence is vague and equivocal in respect of the December 4<sup>th</sup> auction in particular, and all of the other submissions on the point seem to hinge exclusively on this evidence.
72. Mr. Short in his affidavit filed on behalf of the IESO repeats the reasoning of the IESO's Board of Directors noted above<sup>51</sup>, apparently adopting it as his own, and then proceeds to imbue it with a sense of "criticality"<sup>52</sup>. In doing so, however, Mr. Short provides no independent evidence or analysis as a basis for his statement.
73. The evidence currently before this Board is clear, however, that there are 3 more rounds for the TCA currently scheduled over the coming 2.5 years prior to the "*significant capacity need*" cited by Mr. Short and, in any event, the TCA is only one of the several tools available to address such needs when they occur. The IESO has clearly committed to expanding the current capacity auction platform to include off-contract generators and other resources, over time. KCLP's parent has the indication that it seeks. Mr. Windsor's evidence, fairly read, provides no basis for the spectre of "*severe consequences*" (quoting APPrO's submission) from deferral until January 24<sup>th</sup> of the start of this evolutionary process which all concerned, including AMPCO, have confirmed that they support.
74. Facts indicating the **possibility of irreparable harm** are;
- (a) Absent a stay, at least 4 generators, who will factor energy payments into their auction bids, plan to participate in the auction in competition with the demand response resources who will not be able to factor energy payments into their bids; and
  - (b) the indication from the one of these generators who has offered evidence is that they stand to gain "millions of dollars" in benefits in this auction, which by definition would be at the expense of their competitors

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<sup>51</sup> Affidavit of Short Affidavit sworn October 25, 2019, paragraphs 29-30.

<sup>52</sup> Affidavit of David Short sworn October 25, 2019, paragraph 32.

75. The necessary result of these facts are that demand response resources will not be able to compete on an equal footing with generators in the December 4<sup>th</sup> auction. AMPCO's evidence on this point merely restates the obvious.<sup>53</sup>
76. In its submissions in opposition to this motion KCLP provides some numerical analysis that, as far as AMPCO understands it, is intended to demonstrate that energy payments for DR resources would be, in any event, *de minimus*.<sup>54</sup> KCLP's calculations are based, in turn, on the IESO's evidence that demand response resources have rarely been activated.
77. The assumptions and relationships underlying KCLP's calculations have yet to be tested, and thus understood. (For example, at paragraph 46 KCLP asserts that "*the highest HOEP has never exceeded \$100/MWh*". AMPCO's information is that since January 2017 HOEP has been above \$100 a total of 189 times, and in 2016 HOEP was above \$100 an additional 61 times. Since January 1, 2017, HOEP has exceeded \$200 35 times, and in 2016 HOEP exceeded \$200 an additional 19 times.) Pending such clarification, however, the entire *de minimus* argument premised on the lack of energy market activations of demand response resources is of questionable significance in a context in which those resources incur activation costs<sup>55</sup> without any possibility of compensation.

## Conclusion

78. APPrO in its submissions in opposition to an interim stay asserts<sup>56</sup> that should AMPCO ultimately be successful on its application, the impugned amendments will be revoked prior to the start of the May 1, 2020 commitment period for the successful auction participants, and that "*under this scenario, DR resources cannot be harmed because generators cannot compete against DR resources*".

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<sup>53</sup> Affidavit of Colin Anderson sworn October 25, 2019, paragraph 14. See also paragraphs 15-20.

<sup>54</sup> KCLP *Submissions on Motion for Stay*, November 1, 2019, paragraphs 43-47.

<sup>55</sup> AMPCO Response to Board Staff Interrogatory #1.

<sup>56</sup> APPrO *Submissions on Motion for Stay*, November 1, 2019, paragraph 27.

79. The IESO in its submissions suggests that<sup>57</sup> the IESO's undertaking of a stakeholder engagement and a third party study of energy payments which it intends to complete by June 2020 "*mitigates any possible harm alleged by AMPCO*".
80. Both of these submissions miss the entire point; the December 4<sup>th</sup> auction will have already occurred, and the demand response resources will have already suffered unfair competition and undue (given the equivalence of the resources provided to the market) discrimination. Further, this action by the IESO presents the possibility of harm to the confidence of current and future market participants which is key to the robust, competitive market which is in the public interest and the interest of Ontario's electricity consumers.
81. This is precisely the type of circumstance for which interim stays are contemplated.
82. AMPCO repeats and relies on its October 29<sup>th</sup> submissions in support of its motion, and asks that the Board order an interim stay of the impugned amendments pursuant to sub-sections 33(7) and (8) of the *EL Act*.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED by:**

*Cathy Hall*

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**GOWLING WLG (CANADA) LLP, per:**

*for:* Ian A. Mondrow  
Counsel to AMPCO

November 11, 2019

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<sup>57</sup> *IESO Submissions in Response to AMPCO's Request for a Stay*, November 5, 2019, paragraph 92.

# Demand Response Working Group Meeting Materials

Demand Response Working Group

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June 19, 2019

# Meeting Agenda

Time	Agenda Item
9:00am	Welcome
9:05am	DRWG Update
9:10am	Presentation - Revised DRWG 2019 Work Plan
9:40am	Presentation & Discussion - Capacity Obligation Transfer in the TCA
10:00am	Presentation – HDR Resource Testing Results
10:15am	Presentation & Discussion – HDR Resource Testing Proposal
10:35am	Break
10:50am	Presentation & Discussion – Cost Recovery for Out-of-Market Activation Payments - HDR Resources Proposal
11:40am	Presentation & Discussion - Energy Payments for Economic Activation of Demand Response Resources Research Plan
12:10pm	Wrap-Up & Next Steps
12:20pm	Adjourn

# Revised Demand Response Working Group 2019 Work Plan - Proposal

Demand Response Working Group

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June 19, 2019



# Revised DRWG 2019 Work Plan

- The following slides identify the items the IESO proposes to include in an update of the 2019 DRWG work plan:
  - Includes items from existing DRWG work plan, more recent items raised by stakeholders and/or identified by the IESO
  - Each item is presented as an objective and includes the immediate next step(s) proposed by the IESO
  - This list is not intended to be in order of priority, rather each item is to be progressed to meet the timelines proposed in the objective

# Items Proposed for Revised Work Plan

## Items

- Cost Recovery for Out-of-Market Activation of HDR Resources
- Energy Payments for Economic Activation of DR Resources
- Testing of HDR Resources
- Transfer of DR Auction Obligations
- Contributor Management, Measurement Data Submission and DR Audit
- Separating Virtual and Physical HDR Resources

# Cost Recovery for Out-of-Market Activation of HDR Resources

## Objective:

- Develop and implement a solution to provide HDR resources cost recovery for out-of-market activations (e.g. testing or emergency activations) before the May 2020 commitment period

## Next Steps:

- Stakeholders to provide feedback on concept and input to questions provided by the IESO
- The IESO to develop a detailed proposal for review by DRWG before the September meeting

# Energy Payments for Economic Activation of DR Resources

## Objective:

- Determine whether there is a net benefit to electricity ratepayers if DR resources are compensated with energy payments for economic activations before end of 2020

## Next Step:

- Obtain input from stakeholders, including DRWG and the Market Development Advisory Group, on approach to conducting the analysis required to make this determination

# Testing of HDR Resources

## Objective:

- By end of 2019, identify opportunities to simplify the testing process and criteria for HDR resources while ensuring testing achieves goal of confirming that resources are capable of meeting their dispatch obligations

## Next Steps:

- Stakeholders to provide feedback on the IESO testing protocol which provides the discretion for IESO to allow testing duration to be reduced from 4 hours for HDR resources that passed the previous test in all 4 hours
- The IESO to review proposals from stakeholders related to DR Auction testing and develop response/proposal for review by DRWG before the September meeting

# Transfer of DR Auction Obligations

## Objective:

- Enable transfer of DR Auction obligations between uncongested zones in the design of the Transitional Capacity Auction (TCA)

## Next Step:

- Stakeholders can provide feedback on this proposal through the Technical Panel and Market Manual change process

# Contributor Management, Measurement Data Submission and DR Audit Processes

## Objective:

- Identify opportunities to introduce efficiencies and enhancements to the Contributor Management, Measurement Data Submission and DR Audit processes by end of 2019

## Next Steps:

- Review of the Contributor Management process will include but is not limited to:
  - Record of installation requirements
  - Submission of Single Line Diagram (SLD)
  - Contributor interdependencies
  - On line IESO enhancements
  - IESO to provide recommendations at September DRWG meeting

# Contributor Management, Measurement Data Submission and DR Audit Processes

## Next steps continued:

- Identify opportunities to enhance the Measurement Data Submission to ensure that measurement data submitted is on time, accurate and complete. Review to include:
  - Measurement Data Submission requirements
  - Introduce provision to accommodate contributor meter data issues which are outside of the DRMP's control
  - IESO to provide recommendations at September DRWG
- Update Market Manual 12.0 to include proposed changes to Contributor Management, Measurement Data Submissions and DR audit process including audit protocols
  - IESO target by end of 2019
- The IESO will also review the comments put forth by DR participants from the April DRWG meeting and will provide a response at the September DRWG meeting



# Separating Virtual and Physical HDR Resources

## Objective:

- By end of 2019, assess feasibility of allowing DRMP to register virtual and physical HDR contributors into separate aggregates within a zone

## Next Step:

- The IESO to discuss with stakeholders to clarify goal of this stakeholder request before September DRWG meeting

# Transitional Capacity Auction & Incremental Capacity Auction

- Both TCA and ICA have separate stakeholder engagement streams to discuss project design
- TCA issues that are specific only to DR participants may be brought to the DRWG
- ICA will also bring design elements to DRWG, this may include but is not limited to:
  - Qualified capacity process for ICA
  - Dispatch charge
  - Evolution of performance obligations

# Questions for DRWG

Stakeholders are asked to review the revised DRWG work plan and identify:

- Items missing from the revised work plan; either specific issues to be addressed within the more general work plan items (e.g. simplify testing process) or areas to address that are missing altogether
- Concerns with proposed next steps and alternatives for consideration
- Concerns with timelines proposed and preferred timeline including rationale for why alternate timeline is needed

# Capacity Obligation Transfers in the Transitional Capacity Auction – Recap of TCA Proposal

Demand Response Working Group

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June 19, 2019

# What we heard

“Participants should be allowed to transfer capacity both within a given market participant or between market participants across equally priced zones. The IESO should also examine the ability for the transfer of MWs between different-priced zones as long as you pay for the difference in price.” - AEMA

“Transferring like-for-like should be allowed as long as it does not impact auction supply limitations.” - Enel X

“Allowing like-for-like transfers will increase efficiency in the auction clearing process and maximize the ability for customers to access the market.” - Enel X

# Phase I Design: Unchanged Transfer Eligibility Rules

1. **The capacity must already be qualified:** the quantity to be transferred does not exceed the difference between the *capacity transferee's qualified capacity*, and its existing *capacity obligation* for the applicable *obligation period*;
2. **There must be consent:** the *capacity transferor* provides written confirmation to the *IESO* from the *capacity transferee* of its willingness to accept the transfer of a *capacity obligation* from the *capacity transferor*;
3. **Like for Like Requirement:** the *capacity obligation* transfer shall consist of the same attributes (e.g. physical or virtual) and be of the same resource type, as detailed in the applicable *market manual*, as the *capacity transferor's capacity obligation*;
4. **Increment Size Requirement:** the quantity to be transferred is in increments of 0.1MW, and the resulting *demand response capacity obligations* for both the *capacity transferor* and *capacity transferee* following the transfer shall be 0 MW, or greater than or equal to 1 MW;

# Phase I Design: Changes to Allow Inter-Zonal Transfers

## **1. Must be either in the same zone or between zones only if both zones cleared at the Ontario-wide clearing price:**

the *capacity obligation* to be transferred is within the same zone; or if the *capacity obligation* was acquired through a *transitional capacity auction*, the *capacity obligation* may be transferred between zones where the *transitional capacity auction clearing prices* in the two respective zones are equal to the Ontario-wide *transitional capacity auction clearing price*;

## **2. Cannot exceed zonal constraints:** *capacity obligation* transfers must not result in the receiving zone reaching a *capacity auction zonal constraint*.

**Note that transfers within an organization are permitted as long as all aforementioned requirements are met.**

## Next Steps

- Applicable Market Rules and Market Manuals were posted for TCA stakeholder comment on May 18, 2019
- Comments were due on June 5, 2019
- Stakeholders were supportive of the proposal
- On June 14<sup>th</sup>, the IESO hosted a stakeholder webinar to respond to feedback and consider any subsequent changes to the posted rules and manuals
- IESO will submit draft Market Rules to the Technical Panel on June 25<sup>th</sup>
- Additional input opportunity through the Technical Panel process



# DR Testing Results

Demand Response Working Group

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June 19, 2019

# Purpose

- DR Testing Overview
- DR Testing Requirements for HDR and DL
- DR Testing Results
- Sample Advisory Notification
- Recent HDR Dispatch Issues

# DR Testing Overview

- As per Market Rules *Chapter 7, 19.4.11* and *19.5.7*, IESO may activate DR resources up to a maximum of two test activations per commitment period
- Testing allows IESO to verify that a capacity obligation is deliverable by the DR resource
- All DR resources are tested in each commitment period
- DR resources receive non-performance charges for failing a test activation (Capacity and/or Dispatch Charge)
- IESO may choose to not test a DR resource twice within a commitment period based on its successful historical performance in test and in market activations
- DR resources are notified about testing one day in advance via advisory notice. Additionally, for HDR, stand-by notice is issued day-ahead

# DR Testing Requirements

## Hourly Demand Response (HDR)

- Test activation lasts for 4 hours
- A test is deemed a success if the HDR is able to:
  - deliver capacity, measured as the average load reduction over a 4-hour test period, within a 20% dead-band compared to its registered demand response capacity. Failure to deliver capacity results in **Capacity Charge**; and
  - follow dispatch, measured as HDR resource's consumption against its dispatch signals in each interval, within a 15% dead-band. Failure to follow dispatch results in **Dispatch Charge**

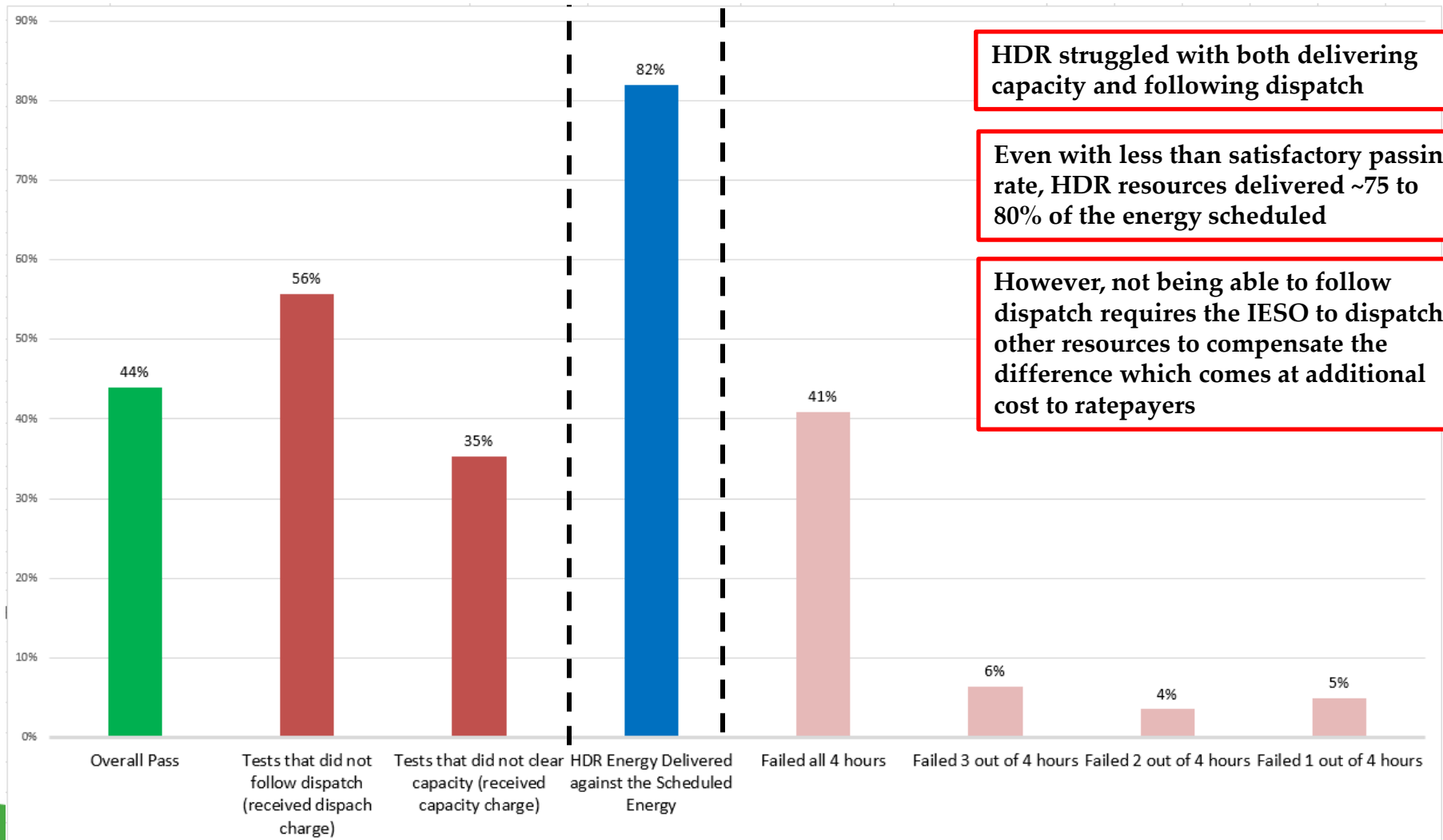
## Dispatchable Loads (DL)

- Test activation lasts for **three** 5 – minute intervals
- A test is deemed a success if the resource demonstrates a reduction in energy withdrawal (as measured by operational meters) that is equal to the registered demand response capacity (i.e. no deadband)
- Failure to deliver capacity during testing results in **Capacity Charge**

# DR Testing Results Follow Up

- At the last DRWG, stakeholders requested further details on HDR testing performance
- In this update, the IESO will cover the following:
  - Summary of both HDR & DL test performance for the period between Winter 2016 and Winter 2019
    - In total 147 test activations, across 26 different days, were conducted by IESO during this period (includes both HDRs and DLs)
    - Pass rate for DLs was 100% whereas for HDR it was 44%
  - Overall HDR failure rates by charge type and percentage of energy delivered
  - Percentage of HDR failures that were (i) one time versus (ii) repeat

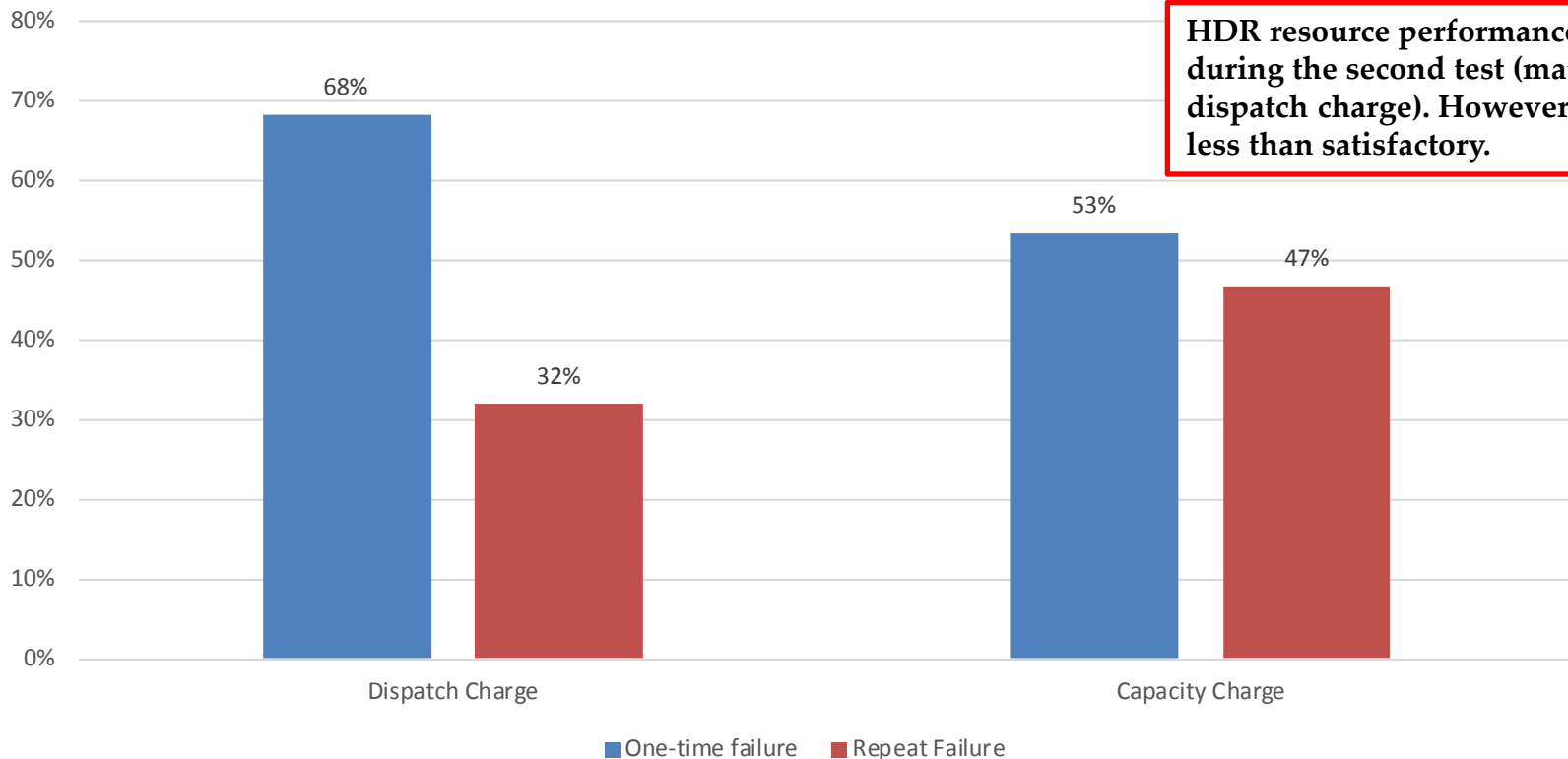
# HDR Testing Results (Winter 16/17 – Winter 18/19)



# HDR Testing Results (Winter 17/18 – Summer 18)

This chart highlights the percentage of time the same HDR participant received a dispatch or capacity charge for testing (repeat failure on dispatch or capacity)

## One-time Failure vs Repeat Failure



HDR resources that fail to deliver capacity in the first test tend to fail more often during second test compared to resources that fail to follow dispatch

HDR resource performance improves during the second test (materially for dispatch charge). However, it is still less than satisfactory.

Data set only includes the commitment periods where two test activation were conducted.

# Advisory Notification Sample

- From May 1<sup>st</sup>, 2019 onwards, IESO has removed day-ahead notification regarding test activation via phone call
- The IESO now issues an Advisory Notice in advance of the standby notification to confirm test activation
- Any DR related advisory notice will be posted on the IESO's "[Day 0 Advisory Notices Summary](#)" public webpage
- The following sample advisory notice was shared with DRMPs on May 17, 2019 via email

*"The IESO will be conducting test activations for demand response auction (DRA) participants on [Month Day, Year] from HH:MM to HH:MM EST (four hour window). Hourly demand response participants impacted by this testing will be provided appropriate stand-by (day-ahead) and activation notices. Dispatchable loads will receive their dispatch instructions between HH:MM to HH:MM (one hour window) EST. Please contact IESO Customer Relations if there are any questions"*



# HDR Dispatch Issues

- In last few months, IESO has experienced some issues with HDR dispatch:
  - **April 24<sup>th</sup>** : DR testing was cancelled as IESO was unable to release activation notifications in time
  - **May 7<sup>th</sup> & May 15<sup>th</sup>**: DR participants received false standby notifications
- IESO recognizes that false notification and failed test activation cause significant inconvenience and cost to impacted participants
- In response, the IESO will be implementing additional controls to mitigate a re-occurrence/impact of such events in the future:
  - Improving awareness within the IESO of triggers that can result in the release of false standby and activation notices
  - Issuance of advisory notices in the event test activation is cancelled or false notification has been released
- Over longer term, IESO will also explore the feasibility of developing an alternate mechanism to dispatch HDR for testing
  - This would only impact internal IESO process for testing and should not impact DRMPs

# Appendix A

**Dispatch Charge** is applied only to HDR resource when it fails to meet its dispatch instruction within the specified dead-band (15%) for any 5-minute interval within the DR dispatch hour.

This is calculated as:

$$\text{Baseline}_i - \text{Actual Consumption}_i < 85\% \times (\text{Total Bid Qty}_i - \text{Schedule}_i)$$

**Capacity Charge** is applied when HDR Resources that fail to deliver capacity in the energy market. HDR's ability to deliver capacity is measured as the average load reduction over a 4-hour test period, within the specified dead-band (20%).

This is calculated as:

$$\text{Average} (\text{Baseline}_i - \text{Actual Consumption}_i) < 80\% \times \text{Average} (\text{Total Bid Qty}_i - \text{Schedule}_i)$$

*Where*

"Baseline" is the average of the highest fifteen (15) measurement data values for the same hour that was activated in the last twenty (20) suitable business days prior to the activation.

"Actual Consumption" is measured data for each interval

"Total Bid Qty" is the maximum quantity of the DR energy bid converted to an interval equivalent.

"Schedule" is the real-time dispatch determined by our dispatch algorithm.

"i" is an interval of the DR dispatch hour within the DR activation event.

# Testing of HDR Resources - Proposal

Demand Response Working Group

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June 19, 2019

# HDR Testing

- Currently all HDR resources are tested at least once during each commitment period and each test lasts for four hours
- Stakeholders have asked IESO to review the need for this duration given changes to activation criteria
- IESO may choose to reduce test duration for HDR resources from 4 hours for HDR resources that have passed the previous test in all 4 hours

# HDR Testing

## Stakeholder Feedback:

- Stakeholders have suggested that the IESO reduce test activation duration in light of recently implemented DR enhancements (under which HDR can be activated for up to 4 hours as opposed to firm 4 hour block). Stakeholders expressed the following positions as rational for this change:
  - No added value to the IESO for having a test to the maximum dispatch length (4 hours) but the cost to customers who have to shut down for 4 hours is substantial
  - IESO uses testing to determine the ability to follow dispatch instructions and demonstrate ability to curtail/meet commitment. This can be done through a 1 hour test
  - IESO may still choose to test a HDR resource even if it has demonstrated its capacity through in market or test activation

# HDR Testing

- **IESO Response:**

- Current requirement to qualify as a HDR resource is to be able to provide a 4 hour response
- Even with the recent DR enhancements in place, HDR resources can still be activated for up to 4 hours
- Certain resources may have technical limitations in providing demand response beyond one hour
- With infrequent in market activation of HDR resources, test activations are the most effective way to build confidence and provide assurance of HDR resource capability
- Past HDR test activation performance (56% failure rate) does not give the IESO sufficient confidence to definitively reduce the duration of test period
- Future capacity qualification may be based on testing results

# HDR Testing

- Considering stakeholder feedback and balancing that with IESO's objective for conducting test activations, the following changes to HDR activation are being proposed:
  - If HDR resources successfully demonstrates performance through a four-hour test or in market activation, it can be subsequently tested for less than a four hour duration; this could be as little as one-hour
  - HDR resources can be tested for a reduced duration until failing a test or activation upon which another re-qualifying four-hour test would be required
  - IESO will maintain discretion to increase the test duration for an HDR resource to up to 4 hours to assess HDR's response at any time (i.e. a spot check)

# Next Steps/Timelines

- Stakeholders to provide feedback on proposal by July 5
- Timeline
  - Implement changes for next commitment period (November 2019 to April 2020)
  - Subject to future change depending on design of Phase II of TCA and/or ICA



# Cost Recovery for Out-of-Market Activation of Hourly DR Resources - Proposal

Demand Response Working Group

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June 19, 2019

# Purpose

- Discuss a proposal to provide HDR resources cost recovery for out-of-market activations (i.e. testing or emergency activations) consistent with treatment of other resource types

# HDR Activations

- There are two ways an HDR resource can be activated

## In-Market

- Based on market economics
- HDR energy bids intended to reflect the maximum they are willing to consume at given price
- HDR will be “activated” when the price for electricity is greater than their willingness to consume

## Out of Market

- HDR resources can be activated outside of market economics to respond to a:
  - 1.Capacity test, or
  - 2.Emergency Control Action
- HDR will be activated even if the electricity price is lower than their bid price

- Observed bid prices and stakeholder feedback indicate that activation costs (explicit and opportunity) can be significant for HDR resources

# Out Of Market Costs

- When other resource types (dispatchable load, generator, import) are dispatched out-of-market they are eligible for some form of “make-whole-payment”
  - A make-whole payment may apply when a participant faces a shortfall between their resource bid/offer price and the revenue earned through market clearing prices
  - The payment restores the participant to the financial situation they would have been in as implied by their bids/offers
- HDR resources do not receive a make-whole payment for out of market activations
- These costs may be reflected in their capacity offers potentially increasing the cost of the capacity

# Implications for ICA and TCA Participation

- In the Demand Response Auction, HDR participants could reflect the expected cost of out-of-market activations in DR Auction offer prices
  - Since the DR Auction was for DR only, all HDR resources were impacted equally
- In the context of the proposed capacity auctions, where HDR will be competing against other resource types, how these costs are recovered will potentially impact market efficiency

# Proposal

- IESO's initial assessment concludes that providing HDR resources cost recovery for out-of-market activations is:
  - appropriate as testing or emergency activations can occur at a price below bid price of an HDR
  - consistent with energy market and existing design treatment of other resources (including dispatchable load)

# Potential Design Considerations/Issues

IESO requests feedback from stakeholders on potential design considerations, including:

- Most appropriate method for determining compensation; for example:
  - Using energy bids as representative costs
  - Historical precedents, such as CBDR activation payments
  - Identify costs on individual or type of resource basis
- Undue administrative burden of potential options
- Operational impacts on market participants, for example measurement data requirements
- Other considerations that should be assessed

## Next Steps/Timelines

- Stakeholders to provide feedback on concept and design considerations by July 5
- Work with stakeholders on design details of this concept and initiate market rule amendment process during Q3, 2019
- Timeline
  - Implement changes for May 2020 TCA obligation period to enable DR participants to incorporate change to offers in December TCA



# Energy Payments for Economic Activation of DR Resources - Proposal

Demand Response Working Group

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June 19, 2019

# Purpose

- Obtain input from stakeholders on approach to conducting the analysis required to determine whether there is a net benefit to electricity ratepayers if DR resources are compensated with energy payments for economic activations

# Questions

- What is the appropriate analysis to complete?
  - Is a net benefit to ratepayers test appropriate?
- Who is best to complete the analysis?
  - IESO? Consultant?
- Who else should be consulted?
  - Market Development Advisory Group? OEB?
- When is a decision required by?

# Next Steps

- IESO would like to receive proposals from stakeholders on how best to proceed by July 19

# Recap

Action Items	Timeline
<ul style="list-style-type: none"> <li>Revised DRWG 2019 Work Plan - General Feedback from Stakeholders</li> </ul>	July 5, 2019
<ul style="list-style-type: none"> <li>Cost Recovery for Out-of-Market Activation of HDR Resources – Stakeholder feedback to IESO concept and input to questions</li> </ul>	July 5, 2019
<ul style="list-style-type: none"> <li>Energy Payments for Economic Activation of DR Resources Research Plan – Stakeholder feedback to IESO</li> </ul>	July 19, 2019
<ul style="list-style-type: none"> <li>Testing of Hourly DR Resources               <ul style="list-style-type: none"> <li>Stakeholder feedback</li> <li>IESO response to stakeholder proposals</li> </ul> </li> </ul>	July 5, 2019 September DRWG meeting
<ul style="list-style-type: none"> <li>Transfer of DR Auction Obligations</li> </ul>	June 25, 2019 Technical Panel

# Recap - continued

Action Items	Timeline
<ul style="list-style-type: none"> <li>Contributor Management, Measurement Data Submission and DR Audit               <ul style="list-style-type: none"> <li>IESO to provide recommendations on Contributor Management process</li> <li>IESO to provide recommendations on Measurement Data Submission</li> <li>IESO to provide response to DR participant comments from April DRWG</li> <li>Update Market Manual 12.0</li> </ul> </li> </ul>	September DRWG meeting September DRWG meeting September DRWG Meeting By end of 2019
<ul style="list-style-type: none"> <li>Separating Virtual and Physical HDR Resources               <ul style="list-style-type: none"> <li>IESO to discuss with stakeholders</li> </ul> </li> </ul>	Before September DRWG meeting

# QUESTIONS & COMMENTS

