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VIA EMAIL, RESS AND COURIER

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto, ON M4P 1E4

Attention: Christine E. Long
Registrar and Board Secretary

Dear Board Secretary:

Re: FP Resolute Canada Inc. (“Resolute”): Submission on Cost Responsibility and Eligibility
Ontario Energy Board (“OEB”): File No.: EB-2019-0206

Please find attached Resolute’s Submission on Cost Responsibility and Eligibility.

All of which is respectfully submitted.

Sincerely,

George Vegh

c. Parties in EB-2019-0206

IN THE MATTER OF the *Electricity Act, 1998*, s. 35;

AND IN THE MATTER OF an application by Resolute FP Canada Inc. for an order directing the Independent Electricity System Operator to amend the Market Rules relating to the qualifications for participating in Demand Response Auctions dated August 7, 2019.

**SUBMISSIONS OF THE APPLICANT
RESOLUTE FP CANADA INC. ON COST RESPONSIBILITY AND ELIGIBILITY**

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PART I. OVERVIEW

1. These are the submissions of the Applicant Resolute FP Canada Inc. (“**Resolute**”) with respect to which party should bear the costs of these proceedings and Resolute’s eligibility for an award of costs. For the reasons set out below, Resolute submits that the IESO should be responsible for the costs of these proceedings and that Resolute should be eligible for an award of costs.

The IESO’s Responsibility for Costs

2. This application is the fourth proceeding over which the Board has exercised its oversight over IESO market rules. It is the first proceeding under s. 35 of the *Electricity Act, 1998* (the “**EA**”).

3. In all of the other proceedings (collectively the “**MR Reviews**”), the Board has held that the IESO is responsible for the recovery of costs. The findings of the Board the **MR Reviews** with respect to cost eligibility are relevant here. These findings are set out below:

Ramp Rate Appeal (EB-2007-0040):

“The Board has also determined that cost awards in this proceeding should be recovered from the IESO. This is the first application of its nature that will be heard by the Board, and appears to raise legitimate issues for the Board’s consideration in relation to the criteria set out in section 33(9) of the Act. The Board also notes that, as market participants, members of AMPCO are in fact participating in the funding of cost awards in this matter, through their payment of the IESO’s administrative costs in accordance with the market rules.”¹

RES Appeal (EB-2013-0010/EB-2013-0029):

“The IESO shall be responsible for the costs of this proceeding. The Board does not agree that it would be ‘unjust’ for the IESO to bear the cost of defending its market rule

¹ See: EB-2007-0040 (“**Ramp Rate Appeal**”, Procedural Order No. 2, p. 5; and

amendments. Rather, the Board finds that having the IESO bear the costs of this proceeding is consistent with the overall legislative scheme. The review process under section 33 of the Electricity Act is part of the overall market rule amendment process. On that basis, it is appropriate for the IESO, rather than the applicants, to bear the costs of this review. The Board understands the IESO's concerns about unmeritorious applications; however, no such allegation has been made in this proceeding and the Board has a variety of tools to address such a situation should it arise."²

DRA Appeal (EB-2019-0242):

“The OEB has determined that the IESO shall bear the costs of this proceeding. The OEB remains of the view that this is consistent with the overall legislative scheme, which contemplates a review by the OEB as a potential last step in relation to market rule amendments.

The OEB acknowledges that the IESO is responsible for making and amending the market rules, but the fact remains that market rule amendments are subject to oversight by the OEB under section 33 of the Act (among others) and that this oversight is part of the legislative scheme even if as a proceeding separate from the market rule amendment process.”³

4. Applying that here:
 - (a) Like the **Ramp Rate Appeal**, this application, under s. 35 of the EA, “is the first application of its nature that will be heard by the Board”; and
 - (b) Like findings in all three of the **MR Reviews**, the OEB’s review under s. 35 of the EA is part of the overall legislative scheme with respect to the market rule process. Indeed, .35 provides the sole remedy under the legislation for a person seeking a review of the market rules.
5. For these reasons, it is submitted that the Board should continue to hold that the IESO is responsible to the costs of this proceeding.

Resolute’s Cost Eligibility

6. In two of the three **MR Reviews** (the **Ramp Rate Appeal** and the **DRA Appeal**), the Board held that the applicant was eligible for a cost award despite the presumption of ineligibility of an

² EB-2013-0010/EB-2013-0029 (“**RES Appeal**”), Procedural Order No. 4, p. 6

³ EB-2019-0242 (“**DRA Review**”), Decision on Cost Responsibility & Cost Eligibility, 3.

applicant under s. 3.05 of the *Practice Direction on Cost Awards*. In granting these exceptions, the Board noted that the applicants were load-side market participants, and as such, “are participating in the funding of cost awards in this case through their payments of the IESO’s fees in accordance with the market rules.”⁴ Resolute, as a load-side market participant is similarly situated to the applicants in those proceedings.

7. In the one **MR Review** where the Board did not award costs to an applicant, its reason for doing so was that the Applicants (who were generators and not load participants) had withdrawn their application and, as a result, “The Board has therefore received no benefit from the Applicants in that regard.”⁵ This is not the case here.

8. Further, it should be borne in mind that, as the Board is aware, ss. 35(4) of the EA requires an applicant to first make use of the market rules relating to a review of the market rules. Resolute did so at its own cost. It has therefore already borne significant costs of the review process.

9. Finally, Resolute acknowledges that that, even if granted cost eligibility, the Board has the ultimate discretion to determine whether to grant cost awards based on its participation in this process.⁶

10. For the foregoing reasons, Resolute submits that the IESO should be responsible for the costs of these proceedings and that Resolute should be eligible for an award of costs.

11. All of which is respectfully submitted.

⁴ See DRA Review, p. 5 and Ramp Rate Appeal, p. 5.

⁵ RES Appeal, p. 4.

⁶ See Ramp Rate Appeal, p. 5; and DRA Appeal, p. 6.

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