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January 8, 2020

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

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

All of which is respectfully submitted.

Sincerely,

A handwritten signature in blue ink, appearing to read 'George Vegh', written over a light blue circular stamp.

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.

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

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Introduction

1. These are the reply submissions of the Applicant Resolute FP Canada Inc. (“**Resolute**”) with respect to the IESO’s submissions on cost responsibility dated December 18, 2019.

The IESO’s Responsibility for Costs

2. As indicated in Resolute’s initial submissions on cost responsibility, this application is the fourth proceeding over which the Board has exercised its oversight over IESO market rules and the 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.

4. The IESO submits that the Board should not follow this practice because, it argues that while reviews of market rule *amendments* are part of the normal market rule amendment process, an application for a review of a market rule itself, and not an amendment, is “separate, distinct, and exceptional proceeding issued by the applicant.”

5. Resolute submits that regardless of the section under which the Board is requested to review a rule, the same factors weigh in favour of IESO cost responsibility.

6. First, and most importantly, in both cases, the Board is exercising its regulatory authority over IESO market rules. There is no basis for the claim that a review of a market rule is somehow more “exceptional” than a review of a market rule amendment. In both cases, a market participant is exercising a statutory right – the only right there is to challenge and review an IESO market rule before an independent and impartial tribunal. As the OEB stated in the DRA Appeal:

“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 IESO’s market rule amendment process.”¹

This statement is entirely consistent with IESO cost responsibility for statutory reviews of both market rule amendments and market rules.

7. Second, in the Ramp Rate appeal, the Board noted that it was “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.”² This is also the first application of its nature, and it raises legitimate issues in relation to the criteria set out in ss. 35(6) of the Electricity Act.

8. Third, as in previous cases where the IESO was held to be responsible for costs, Resolute, although an applicant, is a consumer whose fees pay for the IESO’s operations. In all of these cases, the IESO is effectively a utility that provides services on a monopoly basis that are paid for by consumers. The fact that a consumer has to apply for a review of a market rule (as opposed to the IESO seeking approval of a market rule) should not be relevant.

9. Fourth, if the Board determines that an applicant should be responsible for the costs of challenging a market rule, then there could be a “chilling effect” on the ability of a market participant to challenge a rule. Further, given that an applicant is responsible for its own costs to conduct the IESO review below, it has no incentive to commence frivolous proceedings.³ Indeed,

¹ EB-2019-0242, (“**DRA Appeal**”), p. 3.

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

³ As well, the fact that the Board always retains control over cost awards ensures that the conduct of a participant who is eligible for costs always remains subject to OEB oversight: see Ramp Rate Appeal, p. 5; and DRA Appeal (EB-2019-0242), p. 6.

the fact that no other market participant has ever commenced such a review indicates that there are financial and other barriers to commencing a review.

10. By contrast, the IESO's response to Resolute's review both at the IESO and in this process has been extremely aggressive and resulted in a very expensive process. Although the Board does not supervise the "procedural details" of the IESO review process, it is clear from the materials respecting that review that IESO staff was uncooperative and did its best to prevent Resolute from presenting its case. Even in the OEB's review process – which is still in its early stages – the IESO has taken steps outside of the OEB's rules of practice and using aggressive tactics aimed at preventing Resolute from obtaining an orderly review of the market rule. These steps include filing detailed and extensive correspondence (and not even a proper motion in response to a procedural order) to which Resolute had to respond, and seeking to depart from the procedural timelines for evidentiary filing almost on the day that the evidence was due. This was despite the fact that the IESO was aware of the substance of Resolute's evidence since the IESO review was initiated in November, 2018. In this regard, the IESO has commenced yet another procedural challenge in this matter.⁴

11. The point is that the IESO has the ability and the incentive to increase the costs to a customer of challenging its rules. That will be mitigated if the IESO is made responsible for the costs of the proceeding.

12. 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.

⁴ See IESO Notice of Motion dated January 6, 2020.

13. All of which is respectfully submitted, January 8, 2020.

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