

**Application by Resolute FP Canada Inc. for an Order Amending the
Demand Response Qualification Rules passed by the
Independent Electricity System Operator on August 26, 2015**

Reply Submissions of the IESO on Cost Responsibility

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1. These brief reply submissions regarding costs responsibility are submitted in response to the submissions filed by Resolute FP Canada Inc. (“**Resolute**”) and Ontario Energy Board (“**OEB**”) Staff on December 18, 2019 and supplement those submissions delivered by the IESO on October 25, 2019 and December 18, 2019.

Costs Responsibility

2. Relying on the OEB’s prior decisions in cases involving market rule amendments under Section 33 of the *Electricity Act, 1998*, both OEB Staff and Resolute suggest that the IESO ought to similarly be responsible for the costs of this proceeding because a review under Section 35 of the *Electricity Act, 1998* is part of the overall legislative scheme relating to “OEB oversight of the market rules” and “the market rule process” more generally.
3. This approach, however, goes beyond what the OEB held in those prior decisions. In those cases, the OEB found that “the review process under Section 33 of the *Electricity Act* is part of the overall market rule amendment process” because it is “a potential last step in relation to market rule amendments” and because “market rule amendments are subject to oversight by the OEB under Section 33 of the *Electricity Act*”.¹
4. The market rule amendment process in Section 33(1) of the *Electricity Act, 1998* is a process initiated by the IESO. As part of this process, the IESO is required to provide the OEB with a copy of the amendment under Section 33(2) of the *Electricity Act, 1998* for its review. The OEB is entitled to revoke the amendment under Section 33(3) of the

¹ EB-2013-0029, Decision on Costs and Confidentiality Requests and Procedural Order No.4, February 28, 2013 at pg. 6; EB-2019-0242, Decision on Costs Responsibility and Cost Eligibility, November 12, 2019, pg. 3.

Electricity Act, 1998 within 15 days after the amendment is published and refer it back to the IESO for further consideration. In connection with this same amendment, an applicant may also apply to the OEB under Section 33(4) of the *Electricity Act, 1998* for a review of the amendment. Although this application for a review of an amendment is initiated as a separate step by the applicant, the OEB still views this as a last step in the process to amend a market rule, which process the OEB has oversight over given its role in the amendment process under Sections 33(2) and (3) of the *Electricity Act, 1998*. On this basis, the OEB has decided that the IESO should be responsible for costs of those particular applications under Section 33(4) of the *Electricity Act, 1998*.

5. In contrast, an application under Section 35(1) of the *Electricity Act, 1998* is not a step in any other IESO-initiated process and it is not part of a review of a market rule that is already before the OEB. Instead, it is a separate, distinct and exceptional proceeding initiated by the applicant requesting a review of a market rule that had already been approved by the OEB when the market rule was initially introduced. Given the procedural distinctions between market rule reviews under Sections 33 and 35 of the *Electricity Act, 1998*, there is no reason why the costs responsibility principles in the cases decided under Section 33 of the *Electricity Act, 1998* should equally apply here.
6. In addition, contrary to Resolute's submissions, the fact that this application is the first of its kind to be heard under Section 35 of the *Electricity Act, 1998* is not a sufficient reason, in and of itself, to require that the IESO be responsible for the costs of the Application.

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