

John A.D. Vellone
T: 416-367-6730
jvellone@blg.com

Colm Boyle
T: 416-367-7273
cboyle@blg.com

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto ON M5H 4E3
Canada
T 416-367-6000
F 416-367-6749
blg.com



File No. 061604.000048

September 6, 2022

BY EMAIL AND RESS

Nancy Marconi
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Generic Proceeding on UTR-Related Issues and the Export Transmission Service Rate Association of Power Producers of Ontario (“APPrO”) Submission
OEB File Number: EB-2021-0243**

We are counsel to APPrO. Please find attached APPrO’s submission in the above referenced proceeding, pursuant to Procedural Order No. 3.

Yours Truly,

A handwritten signature in black ink that reads 'J Vellone'.

John A.D. Vellone

cc: All Parties (email)
David Butters (APPrO)
Brady Yauch and Travis Lusney (Power Advisory LLC)

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15 (Sched. B)*, as amended (the “OEB Act”).

AND IN THE MATTER OF a Generic Hearing on Uniform Transmission Rates Related Issues and the Export Transmission Service Rate.

**SUBMISSIONS OF THE
ASSOCIATION OF POWER PRODUCERS OF ONTARIO**

FILED: September 6, 2022

APPrO
PO Box 756,
Toronto, ON M5C 2K1

David Butters
President
Tel: (416) 322-6549, x231
Facsimile: (416) 481-5785
Email: david.butters@appro.org

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide St W.
Toronto ON M5H 4E3

John A.D. Vellone
Tel: (416) 367-6730
Facsimile: (416) 367-6749
Email: jvellone@blg.com

Colm Boyle
Tel: (416) 367-7273
Facsimile: (416) 367-6749
Email: cboyle@blg.com

I. INTRODUCTION

1. On August 5, 2021, Hydro One Networks Inc. (“**Hydro One**”) filed an application with the Ontario Energy Board (the “**Board**” or “**OEB**”) under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the rates that Hydro One charges for electricity transmission and distribution, beginning January 1, 2023 and for each following year through to December 31, 2027 (OEB File No. EB-2021-0110).¹
2. In that application, Hydro One filed evidence respecting setting an Export Transmission Service (“**ETS**”) rate, including an updated cost allocation study by Elenchus Research Associates, an updated jurisdictional review by Charles River Associates, and a commentary on market implications of the ETS rate prepared by the Independent Electricity System Operator (“**IESO**”).
3. As part of Procedural Order No. 1 in EB-2021-0110, the OEB commenced a separate, generic proceeding on its own motion to deal with the ETS rate, as part of various other issues related to Ontario’s Uniform Transmission Rates (“**UTR**”). The OEB stated that addressing the ETS in the generic UTR hearing will lend focus to the issue and facilitate participation by transmitters and other stakeholders without requiring them to intervene in the much broader EB-2021-0110 proceeding. The OEB also requested that Hydro One and the IESO submit their views on what ETS rate should be adopted, and the requested that Hydro One clarify whether it proposes to adopt any of the cost allocation options identified in its ETS evidence.
4. On October 15, 2021, the OEB issued the Notice of Hearing for EB-2021-0243 in respect of a generic hearing on UTR-related issues, the first phase of which will focus on reviewing and setting the ETS Rate (this first phase will be referred to herein as the “**ETS Proceeding**”).
5. APPrO would like to acknowledge the OEB for considering the ETS rate issue by way of a generic proceeding. APPrO is supportive of generic proceedings when they deal with matters of the broader public interest that fall outside the four corners of a typical revenue requirement application (such as the Hydro One JRAP). With this generic proceeding, the

¹ EB-2021-0110

OEB has created an opportunity to have a more fulsome exploration of evidence around not only the costs, but also the broad range of benefits exports provide to Ontario consumers. As DERs and new technological developments continue to challenge our regulatory assumptions in new and interesting ways, APPrO believes that these types of generic proceedings will provide an excellent forum for broader evidentiary discovery and public interests debates to take place.

6. On January 28, 2022, the OEB issued its decision on the issues list and described the fundamental issue to be determined in the ETS Proceeding:

“...this proceeding will determine whether there will continue to be an ETS rate, given the presence of the ICP charges in the market, and if so, how and when that ETS rate would be set.”

7. On April 1, 2022, the OEB issued Procedural Order No. 2 directing that any written submissions from OEB staff and intervenors shall be filed with the OEB and served on all parties by September 2, 2022. On August 26, 2022, the OEB issued Procedural Order No. 3 and revised the deadline for submissions to September 6, 2022.
8. The Association of Power Producers of Ontario ("APPrO") makes these written submissions with respect to this ETS Proceeding. APPrO has organized its submissions in accordance with the Approved Issues List.

II. EXECUTIVE SUMMARY

9. APPrO's principal position is that the ETS rate be discontinued given the presence of the ICP charges in the market. Electricity exporters' use of the Ontario transmission system is subject to competition through the ICP mechanism sufficient to protect the public interest, and therefore the OEB should refrain from establishing any rate for exports use of the transmission system pursuant to section 29(1) of the OEB Act.
10. Electricity trading over the interties is an active, competitive marketplace, making intertie capacity a scarce and valuable resource. The evidence demonstrates that exports on the

transmission system are competitive and no single trader has market power, particularly: (1) transmission system capacity in all instances will include the use of capacity on the interties for exports; (2) geographic markets for exports are diverse, including NYISO, ISO-EN, MISO, Manitoba Hydro and Hydro Quebec; (3) no concerns, either past, present or future, have been raised by the IESO over the past decade about market share or concentration measures related to ICP; and (4) there are few barriers to entry to participate in ICP.

11. Forbearance also protects the public interest. Competition will generally serve to minimize the private and social costs of providing service to consumers who are willing and able to pay the cost of rendition. The IESO Evidence as well as the Power Advisory Report both demonstrate that regulation, by way of imposing any non-zero ETS rate, results in an increased transaction cost that serves to prevent some otherwise economically efficient exports from flowing thereby reducing the overall value that exports create for Ontario's domestic consumers. By contrast, the competitive ICP mechanism dynamically adjusts to changing market conditions, ensuring that Ontario ratepayers gain the most value possible from exports.
12. Comparisons with other jurisdictions analyzed by Charles River Associates ("CRA") are not helpful to address whether it is appropriate to continue to rely on an ETS rate and ICP to charge for export service. CRA acknowledged that none of those other jurisdictions have anything equivalent to Ontario's market-based ICP mechanism and the existence of ICP makes Ontario's circumstance unique.
13. Finally, and in the alternative, should the OEB determine that an ETS should continue to exist alongside ICP, APPrO submits that a principled cost-based approach reflects an appropriate starting point to establishing an appropriate ETS rate. Since both mechanisms are intended to offset intertie infrastructure costs to Ontario consumers, exporters are required to pay twice for use of capacity on the transmission system, once through the ETS rate and again, for intertie capacity, through the ICP mechanism. APPrO submits that a cost-based ETS rate should be based on the following:

- Assets dedicated to interconnect should be allocated to both exports and imports using the intertie 12CP allocator as recommended by Elenchus in Section 6.2 of the Elenchus Study.
- ICP revenues collected by the IESO for use of intertie capacity from both imports and exports should be accounted for in the cost-allocation model in the manner set out in the updated response to JT-2.4 to ensure that intertie users are not paying twice for the same service (i.e. use of intertie capacity).
- Because exports receive a significantly lower level of service than other domestic customers,² because of the significant other economic and operational benefits associated with exports, and because the network is not designed to accommodate exports, a maximum of 20% of shared network costs should be allocated to export customers in the cost allocation model. This approach ensures that exporters are not “free riders” but also ensures that the principles of cost causality, and similar cost for similar level of service are respected.
- Finally, in the event a cost allocation model produces a proposed ETS rate that is less than zero, APPrO recommends that the ETS rate be set at \$0/MWh for that period so that surplus funds from the ICP will continue to go to benefit domestic consumers.

III. ISSUE #1: Is it appropriate to continue to rely on an Export Transmission Service (ETS) rate and on Intertie Congestion Pricing (ICP) to charge for export service?

14. APPrO submits that it is not appropriate to continue to rely on an ETS rate and on ICP to charge for export services.
15. The OEB first considered competing arguments in support of both the ETS rate and ICP in its RP-1999-0044 Decision with Reasons issued May 26, 2000 (the “**RP-1999-0044 Decision**”). After considering competing proposals and submissions made by Ontario Power Generation and Ontario Hydro (as it then was), the OEB at that time determined that:

² As shown in Table 6 of the Elenchus Report, exports were curtailed in 35% of hours in 2016, reducing to 22% of hours in 2019.

“The Board notes the general expectation that, under the Market Rules, the congestion management system of the IMO will yield some net revenue that will be credited to transmission customers (market participants). Assuming these expectations are fulfilled, at this point it is not possible for the Board to assess whether the net revenue arising from the congestion management will be greater or less than the revenue from the \$1/MWh flat rate proposed by OHNC or the ceiling proposed by OPG, also \$1/MWh. Given all of the other many market opening issues, the Board’s preference for OHNC’s revised proposal of a flat rate is mainly because of its simplicity.”³

16. At that time, the OEB panel struggled to assess whether the net revenue arising from ICP would be greater than or less than the proposed ETS rate. We now have the benefit of years of historical experience with exports paying both an ETS rate and an ICP market based mechanism.
17. In this context:
 - Hydro One and the IESO have provided an account of how the ETS rate has evolved since this original decision in Sections 2 and 3 of their joint ETS Rates Submission filed October 14, 2021 (the “**Joint ETS Rates Submission**”).
 - The IESO has provided an account of the market design changes impacting the ICP mechanism at pages 10-11 of the IESO’s evidence (the “**IESO Evidence**”),⁴ including a recent change in 2021 to the Transmission Rights Clearing Account (“**TRCA**”) disbursement methodology that serves to increase the TRCA disbursements to domestic loads to 98%.
18. This OEB panel now has the benefit of clear and compelling historical evidence that demonstrates that with the ICP mechanism in place electricity exporters’ use of the Ontario transmission system is subject to competition sufficient to protect the public interest.

³ The RP-1999-0044 Decision at para. 3.8.24.

⁴ IESO Evidence titled Market Implications of the Export Transmission Service Rate dated July 2021 and included at Attachment 3 to the Joint ETS Rates Submission [**IESO Evidence**].

19. It is on the basis of this historical evidence and their recognized expertise in energy markets and energy policy analysis that Power Advisory LLC (“**Power Advisory**”) provided their expert report on the market impacts of changes to the ETS Rate filed in this proceeding on May 27, 2022 (the “**Power Advisory Report**”).
20. As stated by the IESO, electricity trading over the interties is an active, competitive marketplace, making intertie capacity a scarce and valuable resource.⁵

“Intertie trading is a competitive marketplace: As part of the regular operation of the electricity market, Ontario efficiently imports and exports electricity on an hour-by-hour basis delivered across interties with two Canadian provinces (Manitoba and Quebec) and three U.S. states (Minnesota, Michigan, and New York). Electricity trading over the interties is a competitive marketplace driven by profit-seeking traders transacting based on the expected electricity price differences between jurisdictions. These factors make intertie capacity a scarce resource resulting in traders competing for access to these resources.”⁶

21. In this context, the role played by the ETS rate in this competitive marketplace is summarized by Power Advisory as follows:

“In Power Advisory’s view, the current market design used to set prices at the province’s intertie supports the overall economic efficiency of the grid by providing a transparent and competitive value on Ontario’s energy supply. Increasing the ETS rate – which acts as a transactional cost – reduces the overall efficiency of energy trading and the province’s electricity sector as a whole. All of the evidence in this proceeding is clear that export customers do not impose a cost on Ontario’s electricity grid. Given that energy exports are a net benefit for Ontario ratepayers and do not impose

⁵ HONI IR Responses, Energy Probe 3(f); EB-2021-0243, Technical Conference Transcript (Day 1), page 170 online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/752216/File/document>> [**Technical Conference Transcript (Day 1)**]

⁶ IESO Evidence at page 2.

any costs on Ontario ratepayers, the ETS rate should continue to be set at a low level to further enable the economic efficiency of energy trading.”⁷

22. Power Advisory’s opinion is entirely consistent with the position and rationale set out by the IESO at pages 12-13 of the Joint ETS Rate Submission.
23. In this context, APPrO submits that electricity exporters’ use of the Ontario transmission system is subject to competition through the ICP mechanism sufficient to protect the public interest.
24. When considering the public interest, APPrO’s makes reference to the following OEB statutory objectives:⁸
 1. To inform consumers and protect their interests with respect to prices and the adequacy, reliability and quality of electricity service.
 2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
25. With respect to the first objective, the OEB has stated that in a competitive market, customers have choices, resources are distributed efficiently, and there are incentives to innovate and respond to customer needs.⁹ This is true of the ICP, which provides exporters with a choice to adjust their bids to attempt to gain access to limited intertie capacity on the transmission system. This is not true of the ETS rate, which serves to function as a fixed transaction cost on all transactions – making some transactions uneconomic.
26. With respect to the second objective, the OEB statutory mandate is quite broad as it relates to economic efficiency and cost effectiveness. It is not limited in scope to transmission (or to a cost allocation exercise for transmission costs). Rather, it encompasses generation, transmission, distribution, sale and demand management of electricity. As a consequence,

⁷ Power Advisory Report at para. 22.

⁸ *Ontario Energy Board Act, 1998*, SO 1998, c 15, Sch B, s.1.

⁹ OEB Decision EB-2005-0551, Natural Gas Electricity Interface Review Proceeding, November 7, 2006, at page 48, online: <https://www.oeb.ca/documents/cases/EB-2005-0551/Decision_Orders/dec_reasons_071106.pdf> [**NGEIR Decision**]

when assessing the public interest, APPrO submits that the OEB must factor into its consideration all of the broader benefits associated with electricity exports, not only the benefits associated the ETS rate.

27. When considering the public interest, it is important to note the following compelling evidence:

- Exports from Ontario have historically contributed to reduce fixed system costs for domestic consumers through the ICP, ETS, uplifts, and avoided system costs, and that the value attributable to the ETS rate component was less than 12% of the total economic value that exports contributed to Ontario between 2017 and 2020.¹⁰
- The Power Advisory Report provides a simplified, easy to understand, model based on their expertise and available historical data that demonstrates empirically that decreasing the ETS rate to \$0/MWh would increase the net economic value received by domestic consumers from exports, and conversely that increasing the ETS rate to \$6.54/MWh would decrease the net economic value received by domestic consumers from exports.¹¹
- The IESO “directionally agrees with the analysis and conclusions that Power Advisory undertook”¹² and the IESO noted that the Power Advisory analysis was conservative.¹³
- Exports also provide the IESO with operational benefits, providing flexibility that enables system operators to address power system needs and reliably manage the grid during changing conditions.¹⁴ This includes reducing the risk of the IESO having to take costly control actions such as curtailing nuclear units.
- The IESO believes that “reducing the ETS rate to zero would best encourage the efficient use of electricity and promote economic efficiency in the Ontario

¹⁰ IESO Evidence at Table 1 at page 9 of 17.

¹¹ Power Advisory Evidence at Table 1 at page 10.

¹² TC Transcript dated July 28, 2022 at page 115, lines 19-21.

¹³ TC Transcript dated July 28, 2022 at page 116, line 24 – page 119, line 1.

¹⁴ IESO Evidence at pages 8-9.

market.”¹⁵ APPrO agrees.

28. Because electricity exporters’ use of the Ontario transmission system is subject to competition through the ICP mechanism sufficient to protect the public interest, APPrO submits the OEB has a positive obligation to refrain from establishing any rate for exports use of the transmission system pursuant to section 29(1) of the OEB Act.

29. Section 29(1) of the OEB Act provides:

Refrain from exercising power

29 (1) On an application or in a proceeding, the Board shall make a determination to refrain, in whole or part, from exercising any power or performing any duty under this Act if it finds as a question of fact that a licensee, person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest.

30. In the *Natural Gas Electricity Interface Review* (“**NGEIR**”) proceeding, the OEB set out a two part test for exercising forbearance under section 29 of the OEB Act.¹⁶ The first part requires an assessment of whether there is competition in the relevant market. The second part requires an assessment of whether the level of competition is or will be “sufficient to protect the public interest”.¹⁷ In this context, it is not necessary to find that there is perfect competition in a market to meet the statutory test of “competition sufficient to protect the public interest”; what economists refer to as a “workably competitive” market may well be sufficient.¹⁸ If the factual record indicates that there is or will be competition sufficient to protect the public interest, the OEB must refrain from regulating the activity.¹⁹

31. In consideration of the first part of the NGEIR test, APPrO submits that:

¹⁵ Joint ETS Rates Submission at Section D titled “IESO Position and Rationale” at pages 12-13.

¹⁶ NGEIR Decision

¹⁷ Energy Regulation in Ontario at § 2:27

¹⁸ NGEIR Decision at page 26.

¹⁹ OEB Decision EB-2014-0012, Union Gas Limited, April 9, 2015, at page 5, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/473354/File/document>> [**Union Gas Decision**]

- The relevant product market is the use of transmission capacity for exports. Unlike domestic loads, exporters' use of transmission system capacity will in all instances include the use of capacity on the interties. Because of this, exports will always be subject to the operation of the market based ICP mechanism.
- The relevant geographic market relates to exports from the Province of Ontario to neighbouring jurisdictions where physical intertie capacity exists. This currently includes the grids operated by NYISO, ISO-NE, MISO, Manitoba Hydro and Hydro Quebec.²⁰
- The ICP has been carefully designed and effectively operated by the IESO for more than a decade to facilitate healthy competition and like all aspects of the IESO-administered markets is subject to effective and continuous oversight by the OEB's Market Surveillance Panel ("MSP"). Neither the IESO, nor the MSP, have expressed any concerns with regards to market share and concentration measures related to the ICP. In addition, because the MSP continuously monitors the operation of the ICP in their semi-annual monitoring reports, the OEB can be assured that, however unlikely, any future issues relating to market share and concentration would be quickly identified and addressed by the IESO.
- There are few barriers to entry to participate in the ICP and export electricity from Ontario. In Ontario, an entity would need to register as an "energy trader", which is a type of IESO market participant, in accordance with Market Manual 1.5 and obtain a wholesaler license from the OEB. The IESO publishes a list of registered market participants which demonstrates that, as of the date of these submissions, there are more than 50 entities registered as energy traders in Ontario.²¹ In addition, an entity may also need to comply with applicable legal requirements for trading in electricity in the applicable neighbouring jurisdiction depending on the nature of the trade.

32. In respect of the second part of the NGEIR test, APPrO submits that the evidence in this

²⁰ Power Advisory Report at paras 54 & 55; EB-2021-0243, IESO – Market Implication of the Export Transmission Service Rate, July 2021, Attachment 'C' at page 2, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/728429/File/document>> [**IESO Report**]

²¹ <https://www.ieso.ca/en/Sector-Participants/Registered-Participants>

proceeding, as already summarized above, supports a conclusion that exporters' access to transmission capacity is subject to a competitive ICP market based mechanism that is sufficient to protect the public interest.

33. J.C. Bonbright believed that competition will generally serve to minimize the private and social costs of providing service to consumers who are willing and able to pay the cost of rendition.²² Regulation should only be put in place when there is good evidence to show that, without regulation, policy objectives will not be met.²³ Regulation, in Bonbright's view, is a very poor substitute when an industry is naturally competitive.²⁴ At most, regulation is a supplement or partial alternative to competition, resorted to on a largely *ad hoc* basis to secure particular objectives which it is thought cannot be obtained by competition:²⁵

Regulation, at best, is a pallid substitute for competition. It cannot prescribe quality, force efficiency, or require innovation, because such action would invade the sphere of management. But when it leaves these matters to the discretion of industry, it denies consumer the protection that competition would afford. Regulation cannot set prices below an industry's costs however excessive they may be. Competition does so, and the high-cost company is compelled to discover means whereby its costs can be reduced. Regulation does not enlarge consumption by setting prices at the lowest level consistent with a fair return. Competition has this effect. Regulation fails to encourage performance in the public interest by offering rewards and penalties. Competition offers both.²⁶

34. Bonbright's words ring true in the context of the evidence filed in this proceeding. The IESO Evidence as well as the Power Advisory Report both demonstrate that regulation, by way

²² J.C. Bonbright, *Principles of Public Utility Rates*, (Public Utilities Reports: 1988), at page 29 [Bonbright]

²³ Government of Canada, Competition Bureau of Canada, Balancing regulation and competition, online: <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04141.html>>

²⁴ Bonbright at page 30.

²⁵ Lee Loevinger, quoted in C.F. Phillips, Jr., *The Regulation of Public Utilities* (Arlington: Public Utilities Reports, Inc., 1993), at page 49.

²⁶ C. Wilcox, *Public Policies Toward Business*, (Illinois 1966) at page 476.

of imposing any non-zero ETS rate, results in an increased transaction cost that serves to prevent some otherwise economically efficient exports from flowing thereby reducing the overall value that exports create for Ontario's domestic consumers. By contrast, the competitive ICP mechanism dynamically adjusts to changing market conditions, ensuring that Ontario ratepayers gain the most value possible from exports.

35. Some parties may argue that the ICP, by design, will result in zero dollars in intertie congestion revenue in hours when there is no congestion on a particular intertie. Those exporters, it might be argued, are “free riders” in that they benefit from use of the transmission system without paying for it.
36. APPrO disagrees. This alone is not sufficient reason to justify the imposition of an ETS rate when the evidence demonstrates that Ontario consumers would, in the aggregate, be economically worse off by doing so. In addition, since exports are systematically curtailed prior to any domestic load,²⁷ they will never prevent a paid use of the transmission system. Rather, as explained by Power Advisory, exports are an “opportunity service” that will only utilize excess transmission capacity that is inefficiently being used by domestic customers.²⁸ The needs and activities of competitive exporters (e.g., volume and direction of transactions) as a result of normal market conditions are not considered by the IESO when planning the transmission system, and so are not a driver of investment decisions.²⁹ Put another way, there is no cost causation.
37. The OEB itself has cited two principle reasons in its own prior decisions under Section 29 of the OEB Act for adopting a light-handed approach to regulation. First, competition rather than regulation could produce better outcomes in terms of the quantity and prices of goods and services, all of which would maximize social welfare. Second, regulatory costs are not limited to the financial burden on utilities and ultimately customers, but also include reducing the firm's ability to react rapidly to the changing market conditions, dampening incentives to innovate and wasting resources through the regulation of firms that have no

²⁷ TC Transcript dated July 28, 2022 at page 177, line 16 to page 178, line 2.

²⁸ Power Advisory Report at para 49.

²⁹ HONI IR Responses at OEB Staff 10; Power Advisory Report at para. 47.

market power.³⁰

38. In this proceeding the evidence supports, and indeed the IESO agrees, that by forbearing the OEB would best encourage the efficient use of electricity and promote economic efficiency in the Ontario market. In addition, by forbearing the OEB would be avoiding future regulatory costs associated with the need to establish a new ETS rate from time to time.
39. While the U.S. jurisdictions considered by CRA have largely recovered costs for use of the transmission system on a cost-basis,³¹ CRA also acknowledged that none of those other jurisdictions have anything equivalent to Ontario's market-based ICP mechanism.³² As a result, a comparison to those other jurisdictions is not helpful to address this first issue. The existence of ICP makes Ontario's circumstance unique. And a unique approach is required.
40. Finally, APPrO respectfully requests that the IESO consider and respond to this final aspect of its submissions in reply. In light of the fact that it is likely that exports will change into the future as markets and supply mix within Ontario and neighbouring jurisdictions continue to evolve, should the OEB decide to forebear and not set an ETS rate would the IESO be willing to undertake to (1) monitor developments in export and associated benefits as they change over time; and (2) report back to the OEB if the IESO is no longer of the view that reducing the ETS rate to zero would best encourage the efficient use of electricity and promote economic efficiency in the Ontario market.
41. If the OEB decides to forebear under Section 29(1) of the OEB Act, then the term of that decision should continue for an indefinite term until such time as the IESO is no longer of the view that reducing the ETS rate to zero would best encourage the efficient use of electricity and promote economic efficiency in the Ontario market.

³⁰ OEB Decision EB-2005-0551, Natural Gas Electricity Interface Review Proceeding, November 7, 2006, at pages 24-26, online: <https://www.oeb.ca/documents/cases/EB-2005-0551/Decision_Orders/dec_reasons_071106.pdf> [NGEIR Decision]

³¹ TC Transcript dated July 28, 2022 at page 73, lines 6-12.

³² TC Transcript dated July 28, 2022 at page 54, line – page 55, line 1.

IV. **ISSUE #2: If an ETS rate were to continue to exist alongside ICP, what approach should be used to set the ETS rate?**

42. It is APPrO's principal position that electricity exporters' use of the Ontario transmission system is subject to competition through the ICP mechanism sufficient to protect the public interest, and therefore the OEB should refrain from establishing any rate for exports use of the transmission system pursuant to section 29(1) of the OEB Act.
43. In the alternative, should the OEB determine that an ETS should continue to exist alongside ICP, APPrO submits that a principled cost-based approach reflects an appropriate starting point to establishing an appropriate ETS rate. In-fact, APPrO was alone in arguing in EB-2019-0082 that the OEB should adopt the cost-based results of the Elenchus cost allocation study that was filed at that time.³³
44. APPrO further submits that the following key principles should be weighed by the panel when establishing an appropriate methodology to set an ETS rate:
- **Simplicity and certainty** in the ETS rate is of paramount importance to exporters, who must factor this particular transaction cost into a complex series of market-based decisions that ultimately inform their market behaviour. Forebearing and not setting an ETS rate, as well as a fixed and stable ETS rate are both simple and certain. Alternative proposals – such as complex formulas that frequently change the ETS rate or those that may propose variance accounts to retroactively adjust the ETS rate – should be rejected. By giving exporters certainty on what their transaction costs will be prior to participating in a market, the OEB will facilitate more economic exports in the market. If exporters need to estimate what those transaction costs may be, they will most likely include a risk premium associated with that estimate, and some otherwise economic exports may as a result not flow.
 - To avoid creating windfall winners or losers, **the timing of any changes** to the ETS rate should account for the impact on the economics of market transactions that have already closed based on the date of the OEB's final Decision and Order. As of the

³³ Available online: <https://www.rds.oeb.ca/CMWebDrawer/Record/662629/File/document>

date of these submissions, auctions have already closed for financial transmission rights for the period ending September 30, 2023, and assuming the OEB is able to issue a decision in this proceeding by the end of 2022, TRs will have been sold for the period ending Dec. 31, 2023.³⁴

- **Exports drive broader economic and operational benefits beyond ETS revenues.** APPrO has already discussed this evidence at length in response to issue 1 above, and it is fully explored in both the IESO Evidence and the Power Advisory Report. When factoring in these broader economic and operational benefits, any increase in the ETS rate will make domestic ratepayers worse off.
- **The inimitable nature of exports should inform the setting of an ETS rate.** The following are two of the unique features of exporters that should inform the setting of an ETS rate:
 - Exports receive a lower level of service than other transmission customers – they are curtailed prior to any domestic load so that they will never prevent a paid domestic use of the transmission system.³⁵ As a result, exports are an opportunity service that only utilize excess transmission capacity that is being inefficiently used by domestic customers.³⁶
 - The needs and activities of competitive exporters (e.g., volume and direction of transactions) as a result of normal market conditions are not considered by the IESO when planning the transmission system, and so are not a driver of investment decisions.³⁷

45. Exporters are required to pay twice for use of capacity on the transmission system, once through the ETS rate and again, for intertie capacity, through the ICP mechanism.

46. It is the undisputed evidence of the IESO that “[b]oth mechanisms are intended to offset

³⁴ The current TR auction schedule is available online at: <https://www.ieso.ca/en/Sector-Participants/Calendars/Market-Calendars/2022-Transmission-Rights-Auction-Schedule>

³⁵ TC Transcript dated July 28, 2022 at page 177, line 16 to page 178, line 2.

³⁶ Power Advisory Report at para 49.

³⁷ HONI IR Responses at OEB Staff 10; Power Advisory Report at para. 47.

intertie infrastructure costs to Ontario consumers.”³⁸

47. However, the revenues collected through the ICP are never actually remitted to Hydro One transmission to offset those intertie infrastructure costs. Instead, TRCA balances above disbursed primarily to the benefit Ontario consumers.³⁹
48. APPrO sought to explore what might happen if this situation were to be corrected. APPrO asked Elenchus to re-run their cost allocation model assuming that, in one scenario ICP revenues, and in a second scenario TRCA balances, were instead remitted directly to Hydro One transmission in the same way that other transmission service revenues (such as ETS rates collected) are remitted to Hydro One. In the updated responses to JT2.4 and JT2.5 filed August 11, 2022, Elenchus updated their cost allocation study to appropriately apportion the ICP (and TRCA balance) revenue streams between exporters and domestic customers to reflect the source of each such revenue stream. The response is summarized in Table 1 below.

Table 1: A Revised Cost-Based Approach with ICP / TRCA Revenues Being Appropriately Accounted For.

Cost-Based ETS Rate	JT-2.4 (ICP revenues)	JT-2.5 (TRCA balances)
Fully Allocated (100% 12 CP)	\$1.19	(\$3.37)
Hybrid Model (50% 12 CP)	(\$1.48)	(\$6.04)
Curtailement Model (80% 12 CP)	\$0.16	(\$4.40)

49. The approach explored by APPrO in JT-2.4 and JT-2.5 is not entirely novel. As explained by CRA in their March 29, 2021 updated jurisdictional review that in New York:

³⁸ Exhibit I, Tab 1, Schedule 34, page 2 (Response to OEB Staff 34(b))

³⁹ Exhibit JT-1.3.

“As per the NYISO OATT Schedule H, the wholesale transmission service charge (TSC) recovers each Transmission Owner’s embedded costs, as well as the transmission component of their control area costs, and is determined separately for each load zone. **The TSC is adjusted to account for revenues from grandfathered agreements, financial transmission rights, and congestion payments.** The net of all these quantities for each Transmission Owner is divided by the total annual billing quantities (MWh) to give a \$/MWh rate.”⁴⁰

50. For the foregoing reasons, APPrO submits that a cost-based ETS rate should be based as follows:

- Assets dedicated to interconnection should be allocated to both exports and imports using the inertia 12CP allocator as recommended by Elenchus in Section 6.2 of the Elenchus Study.
- ICP revenues collected by the IESO for use of inertia capacity from both imports and exports should be accounted for in the cost-allocation model in the manner set out in the updated response to JT-2.4 to ensure that inertia users are not paying twice for the same service (i.e. use of inertia capacity).
- Because exports receive a significantly lower level of service than other domestic customers,⁴¹ because of the significant other economic and operational benefits associated with exports, and because the network is not designed to accommodate exports, a maximum of 20% of shared network costs should be allocated to export customers in the cost allocation model. This approach ensures that exporters are not “free riders” but also ensures that the principles of cost causality, and similar cost for similar level of service are respected.
- Finally, in the event a cost allocation model produces a proposed ETS rate that is less than zero, APPrO recommends that the ETS rate be set at \$0/MWh for that period so that surplus funds from the ICP will continue to go to benefit domestic

⁴⁰ Joint ETS Submissions at Attachment 2, Section 3.2.

⁴¹ As shown in Table 6 of the Elenchus Report, exports were curtailed in 35% of hours in 2016, reducing to 22% of hours in 2019.

consumers.

51. APPrO submits that a settlement-based approach should not be used to set the ETS rate. As discussed above, certainty in the ETS rate is of paramount importance to exporters and a settlement-based approach introduces significant uncertainty to setting the ETS rate. Exporters need to understand, in advance, what their transaction costs will be prior to participating in a market. However, if a settlement-based approach is desired, the ICP already accomplishes this and a settlement based ETS rate is not necessary.
52. APPrO does not have any submissions in respect of what other methods for setting the ETS rate should be considered.
53. APPrO submits that the ETS rate should be set every five years in a generic proceeding.

V. OTHER MATTERS

54. At the conclusion of the presentations on August 4, 2022, the OEB Panel requested additional submissions on what types of information should be made public by the IESO in the future (PD-1, Export bids p-q pairs, etc.).⁴²
55. The OEB should not prescribe disclosure of any market information as part of this proceeding as the IESO is best equipped to conduct a more comprehensive process to consider all of the relevant factors, competing views, potential risks, and scope of such disclosure through its stakeholding processes, if necessary.

VI. CONCLUSION

56. For the reasons above, the elements set out by the Board in NGEIR for an application under section 29(1) of the OEB Act have been met. Electricity exporters' use of the Ontario transmission system is subject to competition through the ICP mechanism sufficient to protect the public interest.
57. Accordingly, APPrO respectfully requests that the OEB grant an Order pursuant to section

⁴² Presentations Transcript at pages 143-145.

29 of the OEB Act and refrain from regulating and approving the terms, conditions and rates for the ETS rate.

58. In the alternative, APPrO respectfully requests that the OEB set the ETS rate in accordance with the methodology proposed in “Issue 2” above, pursuant to Chapter 10, Section 4.5 of the IESO Market Rules.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6th DAY OF SEPTEMBER, 2022.

BORDEN LADNER GERVAIS LLP

Per:



John A.D. Vellone