



**BY EMAIL and RESS**

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March 15, 2024  
Our File: EB20240004

**Attn: Nancy Marconi, Registrar**

Dear Ms. Marconi:

**Re: EB-2024-0004 – IESO 2024 and 2025 – Customer Groups Correspondence**

We are counsel to the School Energy Coalition (“SEC”). SEC writes on its own behalf, as well as on behalf of the Association of Major Power Customers in Ontario (“AMPCO”), Canadian Manufacturers and Exporters (“CME”), the Vulnerable Energy Customers Coalition (“VECC”) and Energy Probe Research Foundation (“Energy Probe”) (collectively the “Customer Groups”). We are in receipt of a letter from the Independent Electricity System Operator (“IESO”) outlining its view on how the OEB should adjudicate its application to adjust its fees for 2024 and 2025.

The Customer Groups strongly disagree with the IESO’s proposal.

As referenced in Procedural Order No. 1, less than 7 months ago, the OEB approved a full Settlement Proposal entered into between the IESO and intervenors (which included each of the Customer Groups) that approved its proposed revenue requirement and fees for each of 2023, 2024, and 2025.<sup>1</sup> As part of the Settlement Proposal, there was an agreement on a mechanism for when fees could be adjusted in the event of a material unforeseen change in circumstances.<sup>2</sup> The agreed-upon mechanism was proposed by the IESO as part of its application.<sup>3</sup> Yet, as the IESO admits, it is not relying on it to seek an increase in its fees whose terms it would not meet. Essentially, it seeks to ignore or override certain aspects of the agreement it entered into and that the OEB approved and incorporated into a decision and order.

Given that context, we are troubled that the IESO is requesting the OEB to approve the application without a hearing. In making such a request, it seems to rely on the fact that the incremental revenue requirement represents a small portion of its approved revenue requirements. If that is the case, then why is it even seeking additional funding, contrary to the terms of the approved Settlement Proposal?

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<sup>1</sup> [Decision and Order \(EB-2022-0318\), August 29, 2023](#)

<sup>2</sup> [Decision and Order \(EB-2022-0318\), August 29, 2023](#), Schedule B, Settlement Proposal, p.17-18

<sup>3</sup> EB-2022-0318, F-1-1, p.4-5

The IESO has an existing approved Forecast Variance Deferral Account which captures all variances in costs and revenues.<sup>4</sup>

From the Customer Groups' perspective, the issues in this proceeding are not whether the initiatives the Government has asked the IESO to undertake in furtherance of *Powering Ontario's Growth* are important — they are and must be completed. Rather, it is whether the IESO has appropriately budgeted the additional expenses, it needs the additional funding at this time, and most importantly, if the requested relief is permitted or appropriate considering the OEB approved Settlement Proposal in EB-2022-0318. If the IESO is correct, that notwithstanding the clear terms of a Settlement Proposal it may have entered into and the OEB approved, it can bring forward an application to increase its fees that covers the same period of time, then it raises a fundamental question regarding what, if any purpose, there is to the settlement process, the EB-2022-0318 decision, and OEB oversight of the IESO expenditures and fees.

The OEB should hear the matter in the normal course, including the ability, at the very least, for intervenors to submit interrogatories and receive responses from the IESO. At that point, it should seek submissions from parties to determine if further procedural steps are required, and if not, proceed to written arguments.

Different Customer Groups have questions regarding how the IESO forecast incremental expenditures and its actual need for incremental funding. The opportunity to ask pre-settlement conference clarification questions is not an adequate substitute to asking interrogatories. In addition, just last week, it was announced that the Federal Government was to provide the IESO with up to \$16.7M to fund its Enabling Resource Program<sup>5</sup>, which is already being funded by approved fees.<sup>6</sup> There are questions regarding the impact of this new funding that it is requesting approval for from the OEB. Furthermore, the Customer Groups understands that the 2024 Annual Planning Outlook will be issued imminently, and may impact the IESO's load forecast used to calculate its fees.

Full argument from the parties (Argument-in-Chief, Intervenor Argument, and Reply Argument) is also required as there is a clear difference of opinion on the implications of the OEB's approval of the EB-2022-0318 Settlement Proposal on the requested relief.

The Customer Groups are also concerned with the actions undertaken by the IESO on May 14<sup>th</sup> and proposed in Appendix B. The IESO filed with the OEB a copy of clarification questions received prior and during the settlement conference, and the corresponding responses which we all provided during the settlement conference. Information that is exchanged in the context of a Settlement Conference is both strictly confidential and covered by settlement privilege.<sup>7</sup> This is a fundamental tenet of OEB Settlement Conferences and settlement discussions more broadly. We are not aware of any agreement among the participants to put that information on the record. While the Customer Groups would have consented if asked (which we were not), unless there is agreement among all the participants, then the IESO cannot place that information on the record.

With respect to the Draft Issues List contained in Appendix A of the IESO's letter, the wording of proposed Issue 1.1 should be changed to: "Is the IESO's requested relief permitted considering the approved Settlement Proposal in EB-2022-0318? If it is permitted, is it appropriate?" While the IESO may claim to know what parties may argue, the issue is broader than simply the view from some intervenors that the requested relief requires consent of parties to the Settlement Proposal in EB-2022-0318. It is about the legality of seeking the requested relief, considering the previously approved

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<sup>4</sup> [Decision and Order \(EB-2022-0318\), August 29, 2023](#), p.4

<sup>5</sup> [Natural Resources Canada Provides up to \\$16.7 million to the IESO's Enabling Resources Program](#)

<sup>6</sup> See for example. EB-2022-0318, D-1-1, p.7, E-2-1, Attachment 3

<sup>7</sup> [Practice Direction on Settlement Conferences](#), p.5; [Sable Offshore Energy Inc. v. Ameron International Corp., 2013 SCC 37](#), para.13



settlement, and even if the OEB is legally permitted to grant the relief, whether it is appropriate for it to do so.

Yours very truly,

**Shepherd Rubenstein P.C.**

Mark Rubenstein

cc: Brian McKay, SEC (by email)  
AMPCO, CME, VECC, Energy Probe (by email)  
IESO and intervenors (by email)