EB-2024-0004
May 6, 2024

ONTARIO ENERGY BOARD

IN THE MATTER OF section 25(1) of the Electricity Act, 1998, S.O. 1998, c. 15S

AND IN THE MATTER OF an application by the Independent Electricity System Operator to modify its revenue requirements, expenditures, and usage fees for fiscal years 2024 and 2025

ARGUMENT IN CHIEF OF THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR

May 6, 2024

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A. OVERVIEW

1. The Independent Electricity System Operator ("**IESO**") is requesting that the Ontario Energy Board (the "**OEB**" or "**Board**") approve its Revenue Requirement Submissions for incremental 2024 and 2025 expenditure and revenue requirements and fees that were filed on January 11, 2024 (the "**Submissions**") pursuant to subsection 25(4) of the *Electricity Act, 1998* (the "**Electricity Act**").

2. In its Submissions, the IESO is seeking increases of $4.5 and $5.4 million in incremental expenditure and revenue requirements for 2024 and 2025 respectively – representing increases of 2.0% and 2.4% over the amounts approved by the OEB as part of the Settlement Proposal in EB-2022-0318. The proposed increases are to support specific initiatives in the provincial government's *Powering Ontario's Growth: Ontario's Plan for a Clean Energy Future* plan (the "**POG Plan**") identified in the Minister of Energy's letter to the IESO dated July 10, 2023 (the "**Minister's July 10 Letter**"). The POG Plan outlines early actions to meet the province's growing demand for electricity in the 2030s and beyond while transitioning to a clean electricity system.

3. The IESO views the new initiatives supporting the POG Plan as significant events that will have cascading effects to the organization. To ensure the IESO has the resources needed for the initiatives identified in the Minister's July 10 Letter, the IESO submitted an Amendment to 2023-2025 Business Plan to the Minister for approval pursuant to subsection 24(1) of the Electricity Act (the "**Amendment**") on September 1, 2023. The Minister approved the Amendment on November 28, 2023. Following approval of the Amendment, the IESO applied for OEB approval of its incremental expenditure and revenue requirements, and the associated incremental increases its usage fees, for 2024 and 2025.

4. The IESO intends to fulfill, and is not seeking to modify or revisit, the commitments it made in the approved Settlement Proposal in EB-2022-0318 (the "**Settlement Proposal**"). The

Settlement Proposal established a three-year cycle for the IESO's usage fee (2023, 2024 and 2025) and represented the first time the IESO – with the strong support and encouragement of the intervenors[1] and the Minister – utilized a multi-year revenue requirement and fees application. The IESO continues to be of the view that the three-year cycle established in the Settlement Proposal is the appropriate approach for setting the IESO's revenue requirement, expenditures and fees. The key benefits of using a multi-year approach have been and will continue to be realized. The IESO will be reporting on its progress in meeting the commitments made in the Settlement Proposal as part of the 2026-2028 Revenue Requirement Submissions.

5. The IESO has been clear since the outset of these Submissions that the requested increases were not triggered by and do not rely upon the operation of the adjustment mechanism summarized in section 3.3 of the Settlement Proposal (the "**Adjustment Mechanism**").[2] The Adjustment Mechanism would have required the IESO to review whether it was appropriate and feasible to apply for revised usage fees if the balance of the Forecast Variance Deferral Account ("**FVDA**") was below zero at the end of year 1 (2023) due to a material change. The review required by the Adjustment Mechanism was not triggered because the balance of the FVDA was not below zero at the end of 2023.

6. Nonetheless, following an analysis of the impact of the POG Plan initiatives identified in the Minister's July 10 Letter, the IESO determined it was appropriate to present the Amendment to the Minister and seek revised usage fees for 2024 and 2025.[3] Based on the most recent energy forecast, the IESO is projecting year-end deficit balances in the FVDA of $300,000 in 2024 and $22.4 million in 2025.[4] The IESO does not believe it is good practice, nor management, to operate

[1] EB-2022-0002, Exhibit I-1-1
[2] Exhibit A-1-4, page 3 of 5
[3] Exhibit A-1-4, pages 2 and 3 of 5
[4] Exhibit G-2.0-1 – OEB STAFF 2-2, page 4 of 4

with a fully exhausted operating reserve in the FVDA as a means of funding known/planned work that has been directed and approved by the Minister in support of the POG Plan.[5]

7. The revised usage fees proposed by the IESO will ensure the impact of the incremental work supporting the POG Plan is well-defined and reflected in the fees for the year in which the associated costs are incurred. Assuming the IESO recovers half of the POG Plan-related expenses in 2024 (which is based on the projected timing of an approval of the Submissions), the amounts recovered through the increased usage fees will eliminate the projected deficit balance in the FVDA at the end of 2024 and reduce the projected deficit balance to $14.5 million at the end of 2025.[6] The IESO will continue to assess the incremental needs and work to find efficiencies to moderate, as much as possible, the projected expenses in future years to limit the deficit balance in the FVDA.[7]

B. ARGUMENT

8. The parties were unable to settle any aspects of the Submissions at the Settlement Conference held on February 27 and 29, 2024. As such, the IESO's argument-in-chief addresses each of the issues on the Issues List attached to Procedural Order No. 2 below.

1. General

1.1 What is the effect of the approved settlement proposal for the IESO's 2023-2025 Expenditures, Revenue Requirement, and Fees Application (and associated OEB decision), and the timing of the Minister of Energy's July 10, 2023 Letter upon the relief now sought by the IESO?

9. The IESO appreciates that it is requesting approval to revise its usage fees one year into the three-year cycle established by the Settlement Proposal and that it is doing so without having triggered the review required by the Adjustment Mechanism. However, it is important that the

[5] Exhibit G-2.0-1 – OEB STAFF 2-1, page 2 of 3
[6] Exhibit G-2.0-1 – OEB STAFF 2-2, page 3 of 4
[7] Exhibit G-2.0-4 – VECC-1, Attachment, page 2 of 3

IESO's request not be viewed through the same lens as that of a gas and electric utility regulated by the OEB seeking a "Z-factor" adjustment under a multi-year rate-setting structure.

10. The IESO is distinct from other entities regulated by the OEB in that its activities can be directed by government and, as a not-for-profit corporation without share capital, it does not have a shareholder that can absorb unplanned material operating or capital budget increases arising from such directives. The IESO's unique position is reflected in the requirement in section 24 of the Electricity Act to have its business plan, which forms the basis of its proposed expenditure and revenue requirements and fees, approved by the Minister.

11. It is for these reasons that, as explained in greater detail below, the terms of the Settlement Proposal do not and, as matter of law, could not restrict the IESO's statutory right to request approval of increased usage fees for 2024 and 2025 following the Minister's approval of the Amendment.

12. The Adjustment Mechanism (which was proposed by the IESO in EB-2022-0318 and memorialized in the Settlement Proposal) was designed as a guardrail that identified specific triggers that would require the IESO to consider and assess an adjustment to its fees.[8] In this regard, the Adjustment Mechanism protects ratepayers against the IESO's over-reliance upon additional financing to fund its operations, the costs of which will ultimately be borne by the future electricity ratepayers of Ontario due to the IESO's status as a not-for-profit corporation without share capital.[9]

13. The inclusion of the Adjustment Mechanism in the Settlement Proposal in no way precludes the IESO from applying to adjust its usage fees in response to unplanned material

[8] Exhibit G-1.0-1 – VECC-4, pages 2 and 3 of 3
[9] Exhibit G-2.0-1 – OEB STAFF 2-1(d)

operating or capital budget arising from changes in government policy.[10] The commitments in the Settlement Proposal explicitly recognized this possibility and required the IESO to report on any such changes in the Interim Year Business Outlook:

> The Interim Year Business Outlook will include reporting on the progress on the energy transformation which includes the IESO's response to any changes to government policy, a description of any significant variances in the budgeted/planned operating and capital amounts in the 2023-2025 Business Plan including identification of any unplanned material operating or capital budget increases over the 2023-2025 period and information on the trajectory of these "cumulative" initiatives and a clear indication of year over year changes to that trajectory.[11]

14. The IESO's annual reporting allows the parties to reassess the situation in the event of a change in trajectory as unplanned material operating or capital budget increases can result in the IESO's increased reliance on additional financing – including in situations where the Adjustment Mechanism is not triggered but the IESO is projecting future deficit balances.[12] It would be incongruous to interpret the Settlement Proposal in a manner that would prevent the IESO from acting proactively when it is forecasting a significant future deficit balance in the FVDA.

15. Further, as a matter of law, the Settlement Proposal could not restrain the provisions of the Electricity Act governing the establishment of the IESO's usage fees following the Minister's approval of the Amendment. The IESO has a statutory right under subsection 25(1) to apply for revised usage fees based on the Amendment – the only precondition to submission is the approval of an IESO business plan for the relevant year by the Minister. Reflecting the IESO's unique circumstances, the OEB's authority in reviewing the IESO's application is limited under subsection 25(4) to either approving the IESO's expenditure and revenue requirements and the

[10] Exhibit G-1.0-1 – VECC-4(b), pages 2 and 3 of 3
[11] Settlement Proposal, EB-2022-0318, pages 7 and 8 of 22
[12] Exhibit G-1.0-1 – VECC-4(b), pages 2 and 3 of 3

proposed fees or referring them back to the IESO for further consideration with the Board's recommendations.

16. The timing of the Minister's July 10 Letter has no bearing upon the relief sought by the IESO in these Submissions.[13] Subsection 25(1) prohibits the IESO from submitting its expenditure and revenue requirements and proposed usage fees to the OEB for approval "until after" the Minister approves "the IESO's proposed business plan for the fiscal year". The Minister's July 10 Letter did not approve a business plan. Therefore, in the months following the receipt of the Minister's July 10 Letter, the IESO conducted an analysis of the work required to support the initiatives in the POG Plan, including developing an understanding of the scope of initiatives, the expected deliverables, and their timing.[14] On the basis of that work, the IESO prepared and submitted the Amendment to the Minister on September 1, 2023[15] and it was approved by the Minister on November 28, 2023.[16] Only after the Minister's approval of the Amendment was the IESO in a position to seek recovery of the revised expenditure and revenue requirements and usage fees for 2024 and 2025. The IESO notified parties to the Settlement Proposal of the Minister's approval on December 8, 2023 and filed the Submissions on January 11, 2024.[17]

1.2 In the event of the OEB's approval of the relief sought by the IESO, what additional provisions to such approval should be included?

17. As stated above, the OEB's authority when reviewing the Submissions is subject to the parameters of subsection 25(4) of the Electricity Act. In accordance with that provision, the OEB may recommend measures for the IESO's consideration as part of an approval. The IESO does

[13] Exhibit G-1.0-1 – OEB STAFF 2-1, page 2 of 4
[14] All Intervenors Clarification Question 14; Exhibit G-2.0-1 – OEB STAFF 2-5
[15] Exhibit B-1-2
[16] Exhibit B-1-3
[17] Exhibit G-1.1-3 – SEC-2

not believe any such measures are warranted as part of approval given its intention to fulfill the commitments in the Settlement Proposal.

1.3 What are the implications of any approval of the IESO request upon the continuation of a three-year term for setting the IESO's fees, expenditures, and incremental revenues?

18. The OEB's approval of the IESO request for revised 2024 and 2025 usage fees will not interfere with the continued operation of the three year-cycle approved by the OEB in EB-2022-0318. The key benefits of a three-year structure have been and will continue to be realized as described below:

(a) *Regulatory efficiency* – The current Submissions have been scoped to reflect the Amendment, which is incremental in nature and materially smaller than the prior applications that reviewed all aspects of the IESO's proposed revenue requirement, expenditures and usage fees each year.

(b) *Certainty* – The three-year structure continues to provide the IESO with more certainty on the envelope of operating costs for multiple years in advance.

(c) *Timing of approval* – The three-year structure alleviates key concerns regarding the IESO receiving approval of its usage fees well into the year in which those fees are utilized due to the timing of single-year applications.[18]

19. The IESO is open to reviewing and refining the Adjustment Mechanism and other aspects of the Settlement Proposal in the 2026-2028 Revenue Requirement Submissions based on the experience gained by the parties in implementing a three-year cycle for IESO usage fees for the

[18] Exhibit G-1.0-1 – OEB STAFF 2-1, page 4 of 4. The delay in approving the Submissions has introduced timing implications as it relates to the approval of revised usage fees for 2024 as the IESO is not seeking to apply the revised fee retroactively (see discussion at paragraph 33 below).

first time.[19] The IESO acknowledges this is its first attempt a multi-year approach and there is an opportunity to learn from this experience.

2. Incremental Revenue Requirements

2.1 Is the IESO's Fiscal Year 2024 incremental revenue requirement of $4.5 million appropriate?

20. The IESO's proposed incremental revenue requirement for 2024 of $4.5 million, which represents an increase of 2.0% as compared to the revenue requirement previously approved for 2024 in EB-2022-0318.[20]

21. The IESO submits that the proposed incremental revenue requirement for 2024 is appropriate based on the evidence filed in the Submissions, as supplemented by the IESO's responses to Clarification Questions and Interrogatories.

2.2 Is the IESO's Fiscal Year 2025 incremental revenue requirement of $5.4 million appropriate?

22. The IESO's proposed incremental revenue requirement for 2025 of $5.4 million represents an increase of 2.4% as compared to the revenue requirement previously approved for 2025 in EB-2022-0318.[21]

23. The IESO submits that the proposed incremental revenue requirement for 2025 is appropriate based on the evidence filed in the Submissions, as supplemented by the IESO's responses to Clarification Questions and Interrogatories.

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[19] Exhibit G-1.0-1 – OEB STAFF 2-1, page 3 of 4
[20] Exhibit A-1-2, page 2
[21] Exhibit A-1-3, page 2

2.3 What are the alternatives to the IESO's proposal to meet the additional revenue requirement? What alternatives did the IESO consider?

24. There are two alternatives to the IESO's proposal for increased usage fees for 2024 and 2025:

(a) the IESO could stop work outlined in the 2023-2025 Business Plan; or

(b) the IESO could secure additional financing, if available, to fund the incremental work to support the POG Plan initiatives identified in the Minister's July 10 Letter.[22]

25. The first alternative – stopping work outlined in the 2023-2025 Business Plan – would introduce risk for the IESO in meeting its strategic objectives and commitments given the 2023-2025 Business Plan (including the incremental work to support the POG Plan initiatives identified in the Minister's July 10 Letter) was approved by the Minister.[23]

26. The second alternative – securing additional financing, if available – has risks and is ultimately a more costly alternative than updating the IESO's usage fees for 2024 and 2025.[24] As the IESO is a not-for-profit corporation without share capital, any interest payments or additional fees incurred to finance its operations are ultimately borne by the future electricity ratepayers of Ontario.

27. The IESO considered the options available to it after receiving the Minister's July 10 Letter and submitted a memo to its Board of Directors recommending the incremental budget.[25]

[22] Exhibit G- 2.0-1 – OEB STAFF 2-1, pages 2 and 3 of 3
[23] Exhibit G- 2.0-1 – OEB STAFF 2-1, pages 2 and 3 of 3
[24] Exhibit G- 2.0-1 – OEB STAFF 2-1, pages 2 and 3 of 3
[25] Exhibit G-2.0-4 – VECC-1

3. Usage Fees

3.1 Are the IESO's proposed 2024 and 2025 Usage Fees appropriate?

28. The IESO is proposing 2024 usage fees of $1.4516/MWh for domestic customers including embedded generation (representing an increase of $0.0313/MWh to the currently approved 2024 usage fee) and $1.2549/MWh for export customers (representing an increase of $0.0004/MWh to the currently approved 2024 usage fee).[26]

29. The IESO is proposing 2025 usage fees of $1.4854/MWh for domestic customers including embedded generation (representing an increase of $0.0362/MWh to the currently approved 2025 usage fee) and $1.4333/MWh for export customers (representing a decrease of 12 $0.0065/MWh to the currently approved 2025 usage fee) effective January 1, 2025.[27]

30. The proposed 2024 and 2025 usage fees will ensure that the initiatives assigned by the Minister are properly defined, staffed and prioritized amongst all the other initiatives in the 2023-2025 Business Plan which remains approved. This approach ensures that the expenses associated with the incremental work are reflected in the usage fees for the year in which they are incurred, avoiding the costs associated with securing additional financing and preventing inter-generational impacts.[28]

3.2 Is the proposed effective date of the next billing cycle following the month in which OEB approval is received for the IESO's 2024 Usage Fees appropriate?

31. In its Submissions, the IESO has requested approval for the proposed revised 2024 fees to be effective on the next billing cycle following the month in which the OEB's approval is

[26] Exhibit A-1-4, page 4 of 5
[27] Exhibit A-1-3, page 4 of 5
[28] All Intervenors Clarification Question (During Presentation) 1

received.[29] The IESO proposed to continue charging the approved usage fees in EB-2022-0318 until the OEB had approved the IESO's new 2024 usage fees.[30]

32. Rather than seek an interim rate, the IESO requested that the Submissions be approved by the OEB without a hearing pursuant to subsection 25(7) of the Electricity Act. In the IESO's view, this approach was appropriate as the incremental expenditure and revenue requirements for 2024 and 2025 are directly related to fulfill governmental priorities and represent modest increases as compared to the usage fees previously approved for 2024 and 2025.[31]

33. While the timing for a decision on these Submissions is now mid-2024, it remains the IESO's intention to apply its revised 2024 usage fees in the next billing cycle following the OEB's approval.[32] The IESO is not requesting that the revised 2024 usage fees be applied retroactively for any period of time.[33]

C. RELIEF REQUESTED

34. The IESO's requests that the OEB approve the requested incremental 2024 and 2025 expenditure and revenue requirements and fees pursuant to subsection 25(4) of the Electricity Act.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of May 2024.

Patrick Duffy
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[29] Exhibit A-1-2, page 2; Exhibit A-1-4, page 4
[30] Exhibit A-1-4, page 4
[31] Exhibit A-1-2; Exhibit A-1-3; Exhibit A-1-4
[32] OEB Staff Clarification Question 3
[33] Exhibit G-3.0-1 – OEB STAFF 3-1, page 1 of 1A