

**ONTARIO ENERGY BOARD**

**EB- 2024-0004**

**IN THE MATTER OF** the *Ontario Energy Board Act*, 1998, S. O. 1998, c. 15, Schedule B;

**AND IN THE MATTER OF** an application by the Independent Electricity System Operator (“IESO”) for 2024 and 2025 fees, expenditure and incremental revenue requirement

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**Submissions of Environmental Defence**

**IESO 2024 and 2025 Expenditures, Revenue Requirement, & Fees**

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**May 21, 2024**

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## Overview

The IESO seeks an additional \$9.9 million in expenditure and revenue over 2024 and 2025. The amount sought is not contentious. The only significant issues relate to the interplay between the relief sought by the IESO and the OEB-approved settlement for the IESO's 2023-2025 revenue requirement. Environmental Defence strongly supports additional resources for the IESO while also strongly supporting the integrity of the settlement process. We have had the opportunity to review the IESO's submissions on its need for additional funding and intervenor positions on around the integrity of the settlement process. We need not repeat those submissions. Instead, we propose that the OEB also consider a third option, whereby it asks the parties to reconvene a settlement conference for at most one day to try to resolve this matter while maintaining the integrity of the settlement process.

## Need

Environmental Defence strongly supports additional resources for the IESO. The IESO's work is incredibly important. An incremental investment of \$9.9 million is inconsequential in light of the massive markets that the IESO administers, which are worth over \$22 million annually.<sup>1</sup> The IESO's work is even more important due to the energy transition. For example, the IESO will play a pivotal role in the ongoing electrification of transportation and space heating, as well as the decarbonization of electricity generation. Consumers benefit if the IESO has the resources to undertake these tasks effectively.

The incremental \$9.9 million will also support a number of important activities. These include the procurement of new renewable energy, a new energy efficiency framework, and support for transmission reinforcement.<sup>2</sup> However, regardless of the merit of certain activities, there is no doubt that the IESO requires funds to carry out directions from the Government of Ontario.

## Settlement Agreement

Unfortunately, the relief that the IESO seeks conflicts with the OEB-approved settlement agreement for the IESO's 2023-2025 revenue requirement. We cannot pretend otherwise. There is no tenable interpretation of the adjustment mechanism terms that would allow for revenue adjustments outside of that mechanism. Such an interpretation would render the adjustment mechanism terms entirely meaningless, which cannot have been any party's or the OEB's intention.

Nor does the *Electricity Act* require the OEB to override a multi-year settlement agreement upon request from the IESO. There are simply no words in the *Electricity Act* that would suggest this.

However, the OEB likely has the jurisdiction to override a previously-approved settlement agreement in certain circumstances and where certain criteria are met. However, the real question is whether the present circumstances warrant overriding a previous settlement

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<sup>1</sup> EB-2022-0318, Exhibit H, Tab 1.0, Schedule 8.02 – ED 2.

<sup>2</sup> EB- 2024-0004, Exhibit D, Tab 1, Schedule 2, pp. 1-2.

agreement and what further outcomes may flow from a decision that overrides a settlement agreement.

It is not obvious how overriding a settlement agreement is warranted here seeing as the IESO can access the \$9.9 million through financing, with the costs recovered as part of the Forecast Variance Deferral Account (“FVDA”). Although there will be financing costs, these will presumably be modest and not out of step with financing costs for other utilities. If we are wrong, and there is some impediment to using the FVDA to recoup these funds, we ask the IESO to explain why in its reply. It is important that the IESO obtain all of the funds it needs through one mechanism or another.

However, there may be a third option aside from outright approving or outright denying the application. In particular, the OEB could consider directing the parties to make a final attempt to resolve the matter through an amendment to the previous agreement. We cannot say whether this would be successful, but we can confirm that Environmental Defence would consent to an amendment to provide the requested \$9.9 million and to replace the deficient adjustment mechanism with one that addresses the current situation.

A revised settlement would be the best result as it would avoid financing costs, maintain the integrity of the settlement process, and avoid complicated questions around the criteria that should be applied when the OEB is considering whether to override a previous settlement. But if a settlement continues to prove impossible, the OEB could proceed to issue a final decision. There are no perfect answers in this situation, and we simply propose this third option for the OEB’s consideration.

All of which is respectfully submitted this May 21, 2024.