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Independent Electricity System Operator (IESO) -Application for 2024 and 2025 Fees

EB-2024-0004

Submission of the
Vulnerable Energy Consumers Coalition
(VECC)

May 21, 2024

Vulnerable Energy Consumers Coalition

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Overview

1. The Application is for incremental expenditure and revenue requirements for 2024 and 2025 of $4.5 million and $5.4 million respectively. These amounts represent an increase of 2.0%, and 2.4% as compared to the expenditure and revenue requirements previously approved for 2024 and 2025 in the OEB's Decision and Order in EB-2022-0318. For context the IESO's internal materiality threshold for reporting to the Executive Leadership Team and Board of Directors is any variance of +/- 2%.[1]

2. Decision and Order EB-2022-0318 allowed IESO to seek OEB approval to adjust the approved expenditures, revenue requirement, and fees in the event of a material unforeseen change. A specific mechanism was approved which would allow for this only if the balance of the Forecast Variance Deferral Account (FVDA) was less than zero in Year 1 of the three-year cycle, and any adjustment would be for Year 3. This application does not rely on the adjustment mechanism described in the OEB-approved Settlement Agreement in EB-2022-0318.

3. The forecast incremental costs are directly related to the Government of Ontario's policy "Power Ontario's Growth: Ontario's Plan for a Clean Energy Future (aka the "POG Plan"). The associated requirements were set out in a letter from the Minister of Energy to the IESO dated July 10, 2023. The Settlement Conference in the EB-2022-0318 Proceeding took place the week of June 26, 2023. The IESO filed the settlement proposal on July 21, 2023. Staff filed its submissions on the agreement were filed on July 28, 2023. The IESO's board of directors approved the Business Plan Amendment incorporating the POG requirements on August 30, 2023.[2] The OEB Board Decision approving the Settlement Agreement was issued on August 29, 2023. The IESO did not notify parties to the Settlement Proposal until December 8, 2023 after receiving Minister approval of the IESO's Amendment to its 2023-2025 Business Plan.[3]

4. VECC submits the Board should deny the requested relief and send the matter back to the IESO with a recommendation that the IESO improve its budgeting process. Our submissions are based on the following observations:

    i. the proposal violates the agreed to, and Board approved, mechanism to adjust fees during a three year fee period;
    ii. the proposal does not represent a material change to forecasted costs;

[1] Exhibit G, Tab 1, Schedule 2, AMPCO-2
[2] Exhibit G, Tab 1, Schedule 1, OEB Staff 2-1
[3] Exhibit G, Tab 1.1, Schedule 3, SEC-2

iii. the IESO is sufficiently able to adjust its hiring activity to incorporate the incremental requirements within its current budget; and,

iv. the IESO is unable to provide evidentiary support for a budget for its POG related activities.

The Regulatory Compact

5. The IESO's application EB-2022-0318 represented an innovative break from the past practice of annual (and substantially late) fee applications. VECC supported this initiative as a way to reduce regulatory burden while providing the IESO the flexibility to do the important work in electricity system planning and work on other government energy initiatives. Clearly, in moving from annual to multi-year fee setting a difficult issue was how to deal with uncertainty during the "three year fee period". In fact, the issue was clearly in the mind of the Board when it amended its draft issues list in response to submissions of the parties. In doing so the Board stated:

   The OEB finds it appropriate to add a new Issue 3.3 regarding the IESO's offramp proposal in the event of a material unforeseen change. The OEB finds that the amended wording proposed by the IESO is insufficiently clear – it is not evident what "adjustments" are captured. The OEB will use the following wording, which reflects the wording of section 25 of the Electricity Act, 1998: "Is the IESO's proposal for seeking OEB approval to adjust its previously approved expenditures, revenue requirement and fees in the event of a material unforeseen change appropriate?"[4]

6. The additional issue directly addressed IESO evidence in EB-2022-0318 for a "Process for "Usage Fees Adjustment[5]." In this proceeding IESO agrees that the provision of the adjustment mechanism have not been met.[6] In explaining why the agreed to adjustment mechanism should not be applied the IESO states:

   ….*the approved Settlement Proposal in EB-2022-0318 does not by its terms state that the adjustment mechanisms was to be the sole means by which the IESO's fees could be adjusted during the 3-year period. The adjustment mechanism was designed as a guardrail that identified specific circumstances under which the IESO was required to consider an adjustment to its fees*.

   …..

   The IESO considers the Minister's direction to the IESO to support Powering Ontario's Growth plan a material change. However, this material change creates a deficit balance in the FVDA in Year 2 and Year 3, which is why the IESO considers the current application to be outside of the adjustment mechanism[7].

[4] Decision on Confidentiality and Issues List, May 19, 2023, EB-2022-0318, page 3
[5] EB-2022-0318, Exhibit F, Tab 1, Schedule 1 page 5
[6] See Exhibit G, Tab 1.0, Schedule 1, VECC-4
[7] Exhibit G, Tab 1.0, Schedule 1, VECC-4

7. The IESO fees are affected by only two things- changes in revenues and changes in costs. It is axiomatic to say that changes in costs are driven by changes in the cost of doing existing things or by changes in what is needed to be done. The IESO's duties are determined by the Government of Ontario as evidenced by the requirement to have its business plan approved by the Minister of Energy. It is obvious therefore that any adjustment mechanism would address changes demanded by direction from the Minister of Energy. If this were not the case then the adjustment mechanism would in practice only apply to changes in revenues. It is clear that this is not the case since this limitation is not mentioned in the agreement.

8. In hindsight the IESO makes various interpretations of the applicability of the adjustment mechanism. None of which are supported by a plain reading of section 3.3 of the approved settlement agreement. In fact, quite the opposite is true. The adjustment mechanism in Section 3.3. is prefaced by the statement that [T]*he IESO's proposal, as set out in the Application and clarified through IRs, for adjustment due to a material change in circumstances is as follows*:

9. What follows is the text of the agreement without the limitation now argued by the IESO that the mechanism is not the sole way to adjust fees provided it deems the matter material enough. With respect to the agreements reference to clarification of the mechanism through EB-2022-0318 interrogatories we would commend to the Board to revisit Exhibit H, Tab 3.0, Schedule 11..2 – OEB Staff 22. In that IR the IESO responds in detail to Board Staff's query as to the risks of the adjustment mechanism. No where in that detailed discussions does it indicate that the mechanism does apply where the Minister has written to the IESO. What is does say is that "[T]*he IESO does not plan to annually revise its business plan and seek Minister approval during the interim years after OEB approval."*

10. That IR response was filed on June 15, 2023. Three weeks later the IESO would receive a letter that it now claims had such shattering implications as to do precisely what it had just said it did not plan on doing. It begs credibility to think that senior officials of the Ministry of Energy and the IESO were not in discussion about the POG prior to the Minister's letter of July 10. Yet even, or perhaps especially, if one holds otherwise, and that the Minister's letter, a letter now described as "*significant events that will have cascading effects to the organization*"[8] came like lightning out of the blue, it begs the question as why the IESO remained silent for another six weeks. Six weeks while the settlement agreement was finalized, filed, Board Staff submissions made and a Board decision rendered at the end of August 2023. The day after that Board Decision the IESO board of directors approved the Business Plan Amendment.

[8] Argument in Chief, IESO, May 6, page 1

11. The IESO makes the claim that is unique among entities regulated by the OEB.[9] No doubt this is true. Like the OEB itself, it is a government agency whose costs are recovered from Ontario ratepayers. Like the Board it submits business plans to the Ontario Government. Unlike the Board its plans are reviewed by another regulatory agency. Meaning the Government of Ontario relies on the OEB to provide oversight as to how efficiently the IESO carries out the activities assigned to it generally under the Electricity Act and more specifically under for those tasks directed by the Minister of Energy. In this sense it is no more special than any other entity regulated by the OEB.

12. The IESO claims that "*as a matter of law, the Settlement Proposal could not restrain the provisions governing the establishment of the IESO's annual fee following the Minister's approval of an amended Business Plan under Section 25 of the Electricity Act, 1998.*[10] It is unclear precisely what provision of Section 25 is being relied upon. The IESO declined to clarify this claim in response to VECC IR 5 (Exhibit G, Tab 1.0, Schedule 4). In any event the matter is not whether the IESO can amend its business plan – it certainly can do that. The question is whether it can apply to adjust its fees if it has not met the criteria of an adjustment mechanism that it not only willingly agreed to, but was also the author of. Clearly the IESO, like any other business, through its general management, senior executives and board of directors regularly contractually binds itself in the course of doing business.

13. The settlement agreement includes the following statements:

This document is called a "Settlement Proposal" because it is a proposal by the Parties to the OEB to settle the issues in this proceeding. It is termed a proposal as between the Parties and the OEB. However, as between the Parties, and subject only to the OEB's approval of this Settlement Proposal, this document is intended to be a legal agreement, creating mutual obligations, and binding and enforceable in accordance with its terms.

In entering into this agreement, the Parties understand and agree that, pursuant to the Ontario Energy Board Act, 1998, the OEB has exclusive jurisdiction with respect to the interpretation or enforcement of the terms hereof.

None of the Parties can withdraw from the Settlement Proposal except in accordance with Rule 30 of the OEB`s Rules of Practice and Procedure.

14. A settlement agreement therefore takes on two forms. Upon acceptance by the Board, it is both an agreement among the parties and a decision of the Board. Prior to the agreement's expiry (usually on the next complete application) the Board may change its decision at some point due to changing circumstances. It might do this on its volition or it might respond to a petition by a person <u>who is not a party to the settlement agreement</u>. However, the parties to the agreement are bound by their agreement. Meaning that neither VECC or the IESO are in the position to seek to nullify a settlement provision

[9] Ibid, page 4
[10] Exhibit G, Tab 1.0, Schedule 1 VECC-4

prior to its natural expiry. For example, as noted above the IESO clarified aspects of the adjustment mechanism in response to interrogatories in EB-2022-0318 including stating that "[*The*] *IESO is not proposing to adjust its usage fees in the event of a surplus*[11]." Should the Board find that the adjustment mechanism does indeed apply to the current circumstances and then agrees to allow the IESO application it would be open for VECC and other parties to EB-2022-0318 to also resile from the agreement when circumstances suit their interests. If that becomes the case then the settlement agreement is meaningless.

15. The IESO's application rests on the premise that the POG requirements lie outside of what was contemplated by the adjustment mechanism. There is no evidence or any agreement to that effect. The entire proposition is counter to an understanding of the drivers of IESO costs. If the adjustment mechanism does not apply in these circumstances when does it apply? A decision of the Board to approve this application in light of those facts risks unravelling the entire premise of the distinguishing feature of a Board Decision with and without an approved settlement agreement.

Materiality and FTEs

16. The requested revenue requirement adjustment represents about 2% change in the overall revenue requirement of the IESO. This can hardly be considered overwhelming and in fact barely triggers the IESO own internal reporting to executive management and its Board. The request for an adjustment is immaterial if also considered in the sense of the typical error in forecasting. For example, the 2023 year-end balance in the FVDA is $10.2 million compared to $2.6 million in the Interim Year Business Outlook.[12]

17. In the last full year the IESO's OM&A expenses were volatile by about 5% as shown in the table below

[11] EB-2022-0318, Exhibit H, Tab 3.0 Schedule 1.322 OEB Staff 22
[12] Exhibit G, Tab 2.0, Schedule 2 AMPCO-5

Summary OM&A Expenses

	2023 Approved Budget	2023 Forecast	2023 Actual
Markets & Reliability	37.4	40.6	41.7
Planning, Conservation and Resource Adequacy	24.4	29.3	28.2
Corporate Relations, Stakeholder Engagement and Innovation	15.1	17.1	15.6
Information and Technology Services	46.8	52.4	53.2
Legal Resources and Corporate Governance	28.2	32.8	30.9
Market Assessment and Compliance Division	2.4	2.7	2.2
CEO	1.5	1.6	1.7
Corporate Services	29.3	32.9	34.1
Human Resources	6.2	7.2	7.1
Corporate Adjustment[1]	0.7	0.2	(0.0)
Market Renewal	5.3	4.6	4.7
Total OM&A Expenses	197.3	221.5	219.4
Interest, Amortization and Registration Fees	11.1	0.2	(1.2)
Total Expenses	$208.4	$221.7	$218.2

18. This "forecast error" in 2023 is almost double in the incremental POG requirements.

19. Another perspective on materiality can be considered by the forecast errors with respect to employees/contractor numbers and compensation. The POG related increment is 30 FTEs.

..**Employee Costs**

	2024 OEB Approved	Incremental 2024 Budget per Amendment	Revised 2024 Budget Per Amendment
Average Number of Employees (Capital and Operating expenses FTEs)			
Executive	8	0	8
Management	155	0	155
Non-Management Regular	660	22	682
Non-Management Temporary	103	0	103
Total	**926**	**22**	**948**

Exhibit D, Tab1, Schedule 3

Employee Costs

	2024 YTD Average Actual
Average Number of Employees (Capital and Operating FTEs)	
Executive	8
Management	159
Non-Management Regular	657
Non-Management Temporary	70
Total	894

Exhibit G, Tab 2.0, Schedule 4 VECC-8

20. In its application IESO forecast a total FTE for 2024 of 948. Now nearly 6 months into the year the actual compliment is 894, or 54 FTEs less than forecast. Using the assumed burden rate of $150k[13] and making the highly unlikely assumption that the entire 54 are hired on July 1, 2024 the savings vis-à-vis the forecast is in the order of $4 million ((54 x 150k)/2). In other words, nearly half of the incremental needs in this application are likely already recovered in the lower than forecast FTEs.

21. In reality it is unlikely that an organization with as specialized needs as that of the IESO could increase its FTEs by around 5% in the course of 6 months. This is especially true of the "POG related" incremental positions for which the IESO was unable in this application to provide any detail as to the job position or its requirements. In addition, for the POG related positions the IESO projected the incremental resources to be regular as opposed to temporary FTEs.[14] It is reasonable to expect permanent position hiring will take longer than if contract or other temporary position were used to address the need.

22. The only area the IESO shows it can add FTEs quickly is in the Management category. This is likely because management positions are often drawn from current experienced pool of workers. It is also noteworthy that in the revised 2025 budget the IESO forecast 152 management. In other words, the only area in which it is succeeding to quickly add new positions is in the area that it should be reducing them from the 155 positions in 2024[15].

[13] See Exhibit G, Tab 2.0, Schedule 4 VECC-3/2.0 OEB Staff 2-5 b) for a description of IESO's $140-160k estimated of POG related burdened compensation
[14] Exhibit G, Tab 2.0, Schedule 4, VECC-8
[15] See Exhibit D, Tab 1, Schedule 3 as compared to Exhibit G, Tab 2, Schedule 4 – VECC-8

Budgeting and Efficiencies

23. Our final objection to the proposal is with respect to the IESO's willingness to engage in a meaningful budgeting exercise. In response to questions as to how the IESO estimated the cost of the POG requirements it has continually stated that its budgeting is not done by activity and therefore it cannot respond to detailed questions.[16]

24. This deficiency in the IESO's budgeting process was identified by intervening parties in EB-2022-0318. The issue was addressed through an agreement with the IESO to present (with provisos) forecast and historic spending on major activities and initiatives in the next revenue submission planned for the 2026-2028 period. The current proposal highlights the IESO's existing budgeting process deficiencies.

25. The current budgeting process in essence relies on querying business units/divisions for their best estimate of the incremental costs – largely in the form of FTEs – to address any incremental requirements[17]. Yet it should be remembered that the "POG" requirements are a discrete set of initiatives. The Minister asked that the following six tasks be undertaken:

- Undertaking pre-development work on new nuclear generators;
- Decision making and supporting initiatives that would lower costs to consumers;
- Designing future competitive procurements to acquire new clean electricity resources including wind, solar, hydroelectric, storage and bioenergy;
- Advancing assessment of the advanced long-duration pumped storage projects in Meaford and Marmora and preparing for a future procurement for additional long duration storage;
- Supporting the development of local markets for distributed energy resources(DERs); and
- Accelerating the development of new transmission infrastructure in Northern Ontario, the Ottawa Region and Eastern Ontario.

26. Since these are largely unrelated tasks it is reasonable to ask what are the incremental requirements for each the initiatives. For example, what does planning for pre-development work on nuclear generators entail? What is the scope of work to be done? What are the types of skills will be required? What are the number of hours of work expected? These are all reasonable questions that should be answered before one has any confidence in the budget estimates. Yet the IESO is unable to provide any detailed justification for the costs based on even an outline of a plan for each initiative. In fact, it presented no evidence as to how it intends to address any of the individual new requirements. Nor is their evidence on how the number of FTEs in each business unit were derived.

[16] IESO Clarification Questions – All Intervenors Clarification Question 1, page 4 of 7
[17] The "POG Budgeting process" is described in Exhibit G, Tab 2.0, OEB Staff 2-5

27. Typical of this form of budgeting was the derivation of an “average FTE” cost.

    Although the IESO did not have detailed information on job levels for each of the FTEs planned to be hired to execute the IESO’s work associated with POG, the IESO recognized that the successful candidates would require a range of skills and experience. Therefore, based on the latest IESO compensation structure the IESO assumed a reasonable average range of $140-$160 thousand per FTE to reflect the different levels of skills and experience.

28. That is, the IESO costed 30 FTEs without understanding what skills it actually will need. All it seems to know is that it will need permanent and not contract workers. Why that should be the case? It’s hard to know -since there are no plan on how to complete each of the six tasks. We submit that were this a any other regulated entity utility it would fail to meet the evidentiary requirement to support its proposal.

Conclusions

29. VECC submits the Board should deny the application and send it back for review by the IESO. I should do so because:
    i. the proposed change is not material and the costs fall within normal budgeting forecast variances;
    ii. there is insufficient evidence to support the budgeted estimates for the POG incremental requirements;
    iii. the new requirements fall within the ambit of the approved adjustment mechanism and fail to meet the requirements for applying that adjustment.

30. Finally, VECC has had the opportunity to review the submissions of the School Energy Coalition (SEC). SEC presents an articulate argument with respect to the requirement of the IESO to follow the agreed upon adjustment mechanism. We are in agreement with those submissions and commend them to the Board.

VECC submits that it has acted responsibly and efficiently during this proceeding and requests that it be allowed to recover 100% of its reasonably incurred costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED