

June 5, 2024

Ms. Nancy Marconi
Registrar
Ontario Energy Board
27th Floor – 2300 Yonge Street
Toronto, Ontario M4P 1E4

Dear Ms. Marconi,

**Re: REASCWA Submissions on Independent Electricity System Operator's Request to Amend Licence
EI-2013-0066 (EB-2024-0128)**

Please find enclosed the joint submission of the Canadian Renewable Energy Association, Energy Storage Canada, and the Ontario Waterpower Association (collectively, "REASCWA") in this matter.

Sincerely,



Jason Chee-Aloy
Managing Director
Power Advisory

REASCWA Submissions
Independent Electricity System Operator's Request to Amend Licence EI-2013-0066 (EB-2024-0128)
June 5, 2024

On March 25, 2024, the Independent Electricity System Operator (IESO) filed an application (with a correction filed on May 29, 2024) with the Ontario Energy Board (OEB) under section 74 (1)(b) of the Ontario Energy Board Act, 1998, S.O. 1998, c. 15 (Schedule B), seeking approval to update certain sections of its licence regarding documents that the IESO is required to file in response to an application to review a Market Rule Amendment (MRA).

Specifically, the IESO made the following request:

The IESO requests that the OEB amend the IESO's licence to: (i) include a new definition, "Market Rule Amendment Proposal"; (ii) streamline the filing requirements in sub-sections 6.3 i., ii., iii., and v. by removing the need to file preliminary or outdated designs and related documents; (iii) update the name of the "Stakeholder Advisory Committee" to the "Strategic Advisory Committee" in sub-section 6.3 iii.; and (iv) delete sub-section 6.3 iv.

The IESO further states that:

As currently worded, the licence conditions would require the IESO to file preliminary design documentation and stakeholder engagement documents that would not necessarily reflect the final MRA before the OEB, which would reduce the efficiency of the OEB's review process. In the context of initiatives that involve a large set of MRAs that have evolved and been stakeholdered over time, such as the IESO's Market Renewal Program, a failure to properly scope the filed documents could inundate the proceeding with documents that are unhelpful to the OEB's review, while not contributing to its understanding of the MRA before it. In any case, the amendments will create enduring efficiency in the OEB's review of an MRA regardless of the duration leading up to the MRA or the scale of it.

[...]

The requested amendments will have two effects: first, they will remove the requirement that the IESO file large volumes of materials related to preliminary designs that are not necessary to the OEB's understanding of the final MRA before it; second, they will focus the filed documents on the stakeholder engagement and feedback materials packages that were provided to the Technical Panel and the IESO's Board of Directors to support their consideration of the final MRA package.

Section 74(1)(b) of the Act permits the OEB to amend a licence if it considers the amendment to be in the public interest, having regard to the objectives of the OEB and the purposes of the Electricity Act, 1998. The IESO submits that the requested amendments meet this requirement because they will facilitate a more efficient review process and reduce costs for ratepayers by removing unnecessary work filing, and reviewing, excess documentation. Further, if the OEB ultimately determines that certain preliminary documents would be helpful to its review, the proposed licence amendments do not preclude the OEB from requiring the IESO to file them.

Under section 33 of the *Electricity Act, 1998*, any person may apply to the Board to review an amendment to the market rules within 21 days after the amendment is published, and the Board is required to issue an order that embodies its final decision within 120 days after receiving an application.¹

REASCWA has approximately 50 companies within CanREA, ESC, and OWA that operate renewable generation and energy storage facilities as registered wholesale market participants within the IESO-administered markets. These members are subject to the IESO's market rules. REASCWA members have actively participated in IESO stakeholder engagement initiatives that directly relate to upcoming IESO market rule amendments (i.e., Market Renewal Program (MRP)). As a result, REASCWA and its member companies have a direct interest in ensuring that the IESO files appropriate and complete information in response to an application to review a market rule amendment made to the OEB.

The OEB's authority to review market rule amendments upon an application to review is an important accountability mechanism of Ontario's electricity sector governance framework. Given the upcoming market rule amendments related to the MRP – particularly their scope that results in the most far-reaching overhaul of the market rules since market opening – it is critical that any amendments related to reducing and/or limiting the information provided by the IESO be grounded by sound reasoning and evidence.

REASCWA notes that sub-section 6.3 (including sub-sections 6.3 i., ii., iii., and v.) that the IESO is requesting to alter was added to the IESO's licence conditions during its licence renewal in 2013 (EB-2013-0066).² Critically, section 6.3 was added based on submissions by OEB staff, who submitted “that the Board and parties to a market rule amendment review proceeding would be assisted by the production of relevant information as early as possible following the filing of an application to review.”³

OEB staff's proposal was grounded in experience with market rule amendment review proceedings. Specifically, OEB staff cited market rule amendments regarding the “three-times ramp rate” review (EB-2007-0040) and market rule amendments dealing with the dispatching of, and the establishment of floor prices for, variable generation facilities (EB-2013-0010/EB-2013-0029)). Board staff noted their view was “that the two proceedings demonstrate that the document production process can be time-consuming, which is of particular concern in the context of a proceeding that must be completed within a challenging statutory timeline.” The statutory timeline in 2013 was 60 days, but was extended to 120 days in 2017.

REASCWA notes further that in the 2013 licence renewal proceeding the IESO did not object to OEB's staff proposal. The IESO's reply submission stated:

¹ *Electricity Act, 1998*: <https://www.ontario.ca/laws/statute/98e15#BK89>

² EB-2013-0066 proceeding: <https://www.rds.oeb.ca/CMWebDrawer/Record?q=CaseNumber=EB-2013-0066>

³ OEB Staff Submission (EB-2013-0066): <https://www.rds.oeb.ca/CMWebDrawer/Record/398951/File/document>

The IESO does not object to a licence condition obligating the IESO to produce items (i) – (vi) within seven days after the filing of an application to review a market rule amendment.

Board Staff submitted that the Board and parties to a market rule amendment review proceeding would be assisted by the production of relevant information as early as possible following the filing of an application to review. In light of the Board's statutory requirement to issue an order that embodies its final decision within sixty days after receiving an application [as was then the case], the IESO is prepared to post this information within seven days of the date of the filing of an application for review. *The IESO agrees that this body of information, together with the applicant's filing initiating the review, will provide the Board with a good base of contextual information should it be requested to make procedural rulings at the initial stages of the proceeding.*⁴ (emphasis added)

The OEB decision on the matter agreed with the proposal (i.e., the addition of sub-section 6.3) by OEB staff, stating:

I agree with Board staff that based on the Board's experience with prior market rule amendment review proceedings, and given the statutory timeline for completing such proceedings, *it would be of assistance to the Board and to parties that information in the IESO's possession that is relevant to such proceedings be made available as early as possible in the process. If this information were in the possession of the party requesting the review, this would likely be a minimum filing requirement in terms of prefiled evidence.* Therefore, I agree that it is appropriate for the IESO to be required to produce certain information shortly after an application for a review has been filed, and that a deadline of seven days from the date of the filing of such application is reasonable.⁵ (emphasis added)

Therefore, REASCWA submits that the introduction of sub-section 6.3 of the IESO's licence was intended to *facilitate* reviews of market rule amendments by the OEB – in short, it was intended to improve the efficiency of the regulatory process. In fact, in 2013, the IESO explicitly did not object to the addition of the filing requirements in sub-sections 6.3 i., ii., iii., and v., and, as noted above, stated that it would provide the OEB a “good base of contextual information.”

However, in its application in the present proceeding, the IESO appears to have reversed its previous view on the utility of sub-section 6.3, and is arguing that “As currently worded, the licence conditions would require the IESO to file preliminary design documentation and stakeholder engagement documents that would not necessarily reflect the final MRA before the OEB, *which would reduce the efficiency of the OEB's review process.*” The IESO has now taken the view that preliminary design documents are not relevant to the final market rule amendment – importantly, not just in this case but presumably for future amendments as well – but has not provided reasoning why the OEB and other stakeholders do not need to understand the evolution of a market rule amendment from its early stages to final proposal.

⁴ IESO reply submission (EB-2013-0066): <https://www.rds.oeb.ca/CMWebDrawer/Record/400716/File/document>

⁵ Decision and Order (EB-2013-0066): <https://www.rds.oeb.ca/CMWebDrawer/Record/411056/File/document>

Further, REASCWA points out that the IESO's request to amend its licence makes no reference to the EB-2013-0066 proceeding. For example, the IESO's request for wording changes does not argue that the amendments made in EB-2013-0066 failed to achieve their intended purpose, that the 2013 licence amendments have resulted in increased ratepayer costs, and/or excessive documentation. The IESO's application does not raise any concrete examples of a market rule amendment review by the OEB hindered by the current licence conditions; for example, the application makes no reference to the 2019 application for review (EB-2019-0242) made by the Association of Major Power Consumers in Ontario related to market rule amendments to implement a transitional capacity auction.⁶

In summary, REASCWA submits that the IESO's application, as currently proposed, has provided neither clear rationale nor solid evidence that the changes it is proposing to the wording of sub-section 6.3 of its licence are necessary or improve efficiency of the regulatory process. The changes will reduce transparency. The IESO also does not explain how or why the IESO has concluded that the 2013 licence amendments now hinder rather than facilitate the OEB's review. No estimates of ratepayer costs or process efficiencies are provided in the application.

In the absence of compelling and credible evidence from the IESO in support of its proposal in this application, there is no reason for the OEB to depart from current practice as set out in the IESO's existing licence (practices which were put in place to facilitate OEB review). Unsupported assertions of efficiency, ratepayer costs, and excessive documentation are not prudent reasons to make licence amendments that will impact a critical accountability mechanism of Ontario's electricity sector governance framework. This is especially the case given the forthcoming market rule amendments related to MRP, which will fundamentally change Ontario's wholesale electricity market. Maintaining the current standards will also maintain transparency related to future market rule amendments.

All of which is respectfully submitted.

⁶ EB-2019-0241 proceeding: <https://www.rds.oeb.ca/CMWebDrawer/Record?q=casenum:EB-2019-0242>