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June 5, 2024

Via RESS & Email

Nancy Marconi
Board Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Marconi:

Re: EB-2024-0128 IESO Licence Amendment Proceeding

Enclosed please find the written submissions of the Association of Power Producers of Ontario ("**APPrO**") in the above-noted proceeding.

Yours truly,

McCarthy Tétrault LLP

Per:

Reena Goyal

RG/jk

Encl.

cc: David Butters, APPrO

Written submissions of the Association of Power Producers of Ontario (APPrO)

Overview

1. The IESO is seeking to make the following four amendments to its licence EI-2013-0066 ("**IESO Licence**"):

   (i) include a new definition, "Market Rule Amendment Proposal" ("**MRAP**");

   (ii) streamline the filing requirements in subsections 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 and v. by removing the need to file preliminary or outdated designs and related documents;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" ("**SAC**") in subsection 6.3 iii.; and

   (iv) delete subsection 6.3 (iv).[1]

2. APPrO takes no issue with the proposed amendment (iii) above, i.e. updating the name of the SAC. APPrO does, however, have concerns with the IESO's proposed amendments (i), (ii) and (iv) above as currently drafted, for the reasons set out below.

3. APPrO proposes a better approach is for the IESO to seek an exemption from the relevant IESO Licence requirements solely for the purposes of market rule amendments related to MRP implementation submitted to the OEB prior to the MRP go-live date.[2]

Proposed Licence Amendment re: new MRAP definition

4. The new MRAP definition, as proposed by the IESO, means a set of market rule amendments that were the "<u>subject of a formal stakeholder engagement</u>", reviewed by the [IESO's] Technical Panel and approved by a vote of the [IESO's]

[1] IESO Letter dated March 25, 2024 to the OEB (EB-2024-0128) at page 1.
[2] Currently scheduled for May 1, 2025.

Board of Directors" (underlining added).[3] It is unclear, however, what "a formal stakeholder engagement" entails.

5. Some IESO market rule amendments are first developed through a series of comprehensive public stakeholder engagements before being brought to the IESO Technical Panel (e.g. capacity auction enhancements[4], hybrid integration project, etc.).[5] In such instances, the Technical Panel may determine there has been sufficient prior opportunity for stakeholder input and vote to dispense with posting the draft market rule amendments on the IESO's website for further stakeholder comment.[6]

6. Other IESO market rule amendment proposals do not undergo any public stakeholder engagement before being brought to the IESO Technical Panel (e.g. intertie scheduling limit[7]). In such instances, and where the Technical Panel determines the rule amendment proposal warrants consideration, it will vote to post the proposal on the IESO's website for public review and comment.

7. Other IESO market rule amendments are merely introduced to external stakeholders before being brought to the Technical Panel for a vote to approve posting the draft proposed rule amendments on the IESO's website for public review and comment[8] (e.g. uninsured liability risk[9], recent Chapter 3 market rule amendments[10]). Following the end of the posting period, the IESO returns to the Technical Panel for a vote to approve to send the proposed market rule amendments to the IESO Board of Directors for approval.[11] Or, again, the

[3] IESO Letter dated March 25, 2024 to the OEB (EB-2024-0128) at page 2.

[4] IESO MR-00476-ROO (Stream 1) and MR-00477-R00 (Stream 2).

[5] IESO Technical Panel Terms of Reference (updated January 17, 2022) at subsection 3.2.1.

[6] IESO Technical Panel Terms of Reference (updated January 17, 2022) at subsection 3.2.3.

[7] IESO MR-00468.

[8] IESO Technical Panel Terms of Reference (updated January 17, 2022) at subsection 3.2.2.

[9] IESO MR-00448-R00.

[10] See December 5, 2023 IESO Technical Panel Agenda Item 4: IESO Market Rule Amendment, Chapter 3 Administration, Supervision, Enforcement,

[11] There is some concern that stakeholder comments regarding proposed rule amendments are not properly presented to the IESO Board of Directors prior to approval. Stakeholders have repeatedly sought the establishment of a formal mechanism whereby they can communicate their issues regarding proposed IESO rule amendments directly to the IESO Board of Directors, to no avail.

Technical Panel may vote in such instances that sufficient prior stakeholder engagement has been undertaken and proceed immediately with voting on whether the proposal ought to be sent to the IESO Board of Directors for approval.

8. In short, not all IESO market rule amendment proposals are subject to the same scope or nature of stakeholder engagement, if at all. As such, it is unclear which types of stakeholder engagement constitute "a formal stakeholder engagement" for the purposes of the IESO's proposed MRAP definition.

Proposed Licence Amendment re: subsections 6.3 (i)-(v)

9. The IESO's proposes to add to subsection 6.3(i) the words "a copy of the Market Rule amendment that is the subject of the application" (underlining added). But it is unclear whether such market rule "amendment[s]" is limited to those that form part of a MRAP.

10. With respect to the IESO's proposed amendment to subsection 6.3(ii), it is unclear which "written submissions" will be deemed to be made "with respect to the [MRAP]". For instance, it is unclear whether such "written submissions" will include those made by external stakeholders during the design and development phases of what ultimately are brought to the Technical Panel in the form of an MRAP (e.g. transmission rights review, energy storage design project, etc.). It seems unlikely given the IESO's intention to file only those materials that pertain to "the final MRA … and remove the requirement to file preliminary designs and related documents that are not part of the final MRA".[12]

11. Similarly, with respect to the IESO's proposed amendment to subsection 6.3(iii), the scope of "relevant materials from all stakeholder meetings" is unclear and whether it will include materials that are presented by the IESO and/or discussed during stakeholder meetings prior to the introduction of a MRAP. Clarity should

[12] IESO Letter dated March 25, 2024 to the OEB (EB-2024-0128) at page 1.

also be provided on the scope of "stakeholder meetings", i.e. whether it includes IESO working group meetings and/or one-on-meetings with participants or participant groups.

12. As for the proposed amendment to subsection 6.3(v), APPrO suggests the words "in conjunction with" be changed to "in addition to" if that in fact captures the IESO's intention. APPrO takes no issue with the IESO's request for numbering changes as required.

Proposed Licence Amendment re: subsection 6.3(iv)

13. In APPrO's view, the existing language under subsection 6.3 (iv) is appropriate and should be retained[13].

14. The existing language in subsection 6.3 (iv) appropriately requires the IESO to file "a list of all materials related to the amendment or the subject matter of the amendment tabled before any stakeholders (including the IESO's SAC or Technical Panel)" into the evidentiary record for consideration by the OEB.

15. As this requirement pertains only to a "list" of materials, rather than a copy of the materials themselves, it is neither unduly onerous nor procedurally inefficient. Once filed by the IESO, OEB staff, and any interveners or other stakeholders, can review the list to determine if and which materials (that are not already part of the evidentiary record) should be filed by the IESO in order to properly consider a market rule amendment review application under subsection 33 of the Ontario *Electricity Act*.

16. Indeed, it is imperative that the OEB has before it all the requisite evidence needed to properly assess a section 33 application, which requires in part the following considerations:

    a. the public interest;

[13] At least for non-MRP related MRAPs, as discussed further below.

b. the merits of the application;

c. the possibility of irreparable harm to any person;

d. the impact on consumers; and

e. the balance of convenience.[14]

17. The IESO's proposed amendments – that are explicitly aimed to exclude the filing of materials – apply to documents and information that would unduly inhibit the OEB's ability to properly evaluate the mandatory considerations under subsection 33(8) of the *Electricity Act*.

18. Much of stakeholder concerns are provided during the design and preliminary stages of market rule amendment proposals that are subsequently brought to the IESO's Technical Panel and Board of Directors. It is imperative this information be brought before the OEB to properly evaluate market rule amendment review applications brought under subsection 33 of the *Electricity Act*.

19. The IESO may rebut that the amendments are only limited to the preliminary filing of materials. And that "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".[15]

20. However, the OEB cannot request filing of documents from the IESO that the OEB does not know exist; it does not know what it does not know in these circumstances. The burden then shifts to interveners and stakeholders to try to comb through their respective records to ascertain relevant materials and seek leave from the OEB to submit them into evidence.

21. Clearly the IESO is better positioned to identify and file such materials as evidence with the OEB. Hence the nature and scope of the current existing

[14] Subsection 33(8) of the Ontario *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A.
[15] IESO Letter dated March 25, 2024 to the OEB (EB-2024-0128) at page 3.

section 6.3 IESO Licence requirements, which were negotiated with stakeholders and finalized as part of EB-2013-0066. APPrO repeats and relies upon the submissions of REASCWA in this regard.

Concluding remarks

22. APPrO understands the IESO's desire to "lowering the total volume of documents filed at the outset of the application, streamlining the overall process and bringing focus to assist the OEB in carrying out its statutory responsibilities"[16].

23. As such, APPrO proposes a better approach is for the IESO to seek an exemption from the relevant IESO Licence requirements solely for the purposes of market rule amendments related to MRP implementation submitted to the OEB prior to the MRP go-live date.

24. APPrO's suggested approach would address the IESO's desire to refrain from filing "preliminary design documentation and stakeholder engagement documents" relating to MRP "that have evolved and been stakeholdered over time" resulting in documents that "could inundate the proceeding with documents that are unhelpful to the OEB's review" and "not contributing to [the OEB's] understanding of the market rule amendments before it.[17]

25. APPrO is unaware of any other current or pending IESO initiatives that are likely to give rise to a section 33 application and with such a duration or scale requiring the need to "create enduring efficiency in the OEB's review" or IESO market rule amendments, other than the MRP. The IESO's proposed Licence Amendments are therefore both premature and/or unwarranted altogether.

26. For these reasons, APPrO submits the IESO's application should not be granted in its current form. The implementation of the IESO's proposed licence

[16] IESO Letter dated March 25, 2024 to the OEB (EB-2024-0128) at page 1.
[17] IESO Letter dated March 25, 2024 to the OEB (EB-2024-0128) at page 2.

amendments as currently drafted raises potential procedural fairness and evidentiary issues, and is unnecessary in any event.

27. The IESO's objectives can instead be satisfied by granting the IESO an exemption under subsection 70(1.1) of the OEB Act with respect to the relevant requirements under the IESO Licence only with respect to market rule amendments that are required for MRP implementation and brought to the IESO Board of Directors for approval prior to the MRP go-live date.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.