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BY EMAIL

June 5, 2024

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission
Independent Electricity System Operator
Licence Amendment Application
OEB File Number: EB-2024-0128**

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 2.

Yours truly,

Natasha Gocool
Advisor, Transmission Policy & Compliance

Encl.

cc: All parties in EB-2024-0128



ONTARIO ENERGY BOARD

OEB Staff Submission

Independent Electricity System Operator

Licence Amendment Application

EB-2024-0128

June 5, 2024

Ontario's Independent Electricity System Operator (IESO) administers several electricity markets which are governed by Market Rules. Under section 32 of the [Electricity Act, 1998](#) (Electricity Act) the IESO has the authority to make rules governing the IESO-controlled grid, establishing and governing markets related to electricity and ancillary services and establishing and enforcing standards and criteria relating to the reliability of electricity service or the IESO-controlled grid. Collectively these rules are known as the "Market Rules".

Amendments to the Market Rules are approved by the IESO Board of Directors and are required to be published by the IESO and filed with the Ontario Energy Board (OEB) at least 22 days before they come into force.¹

Sections 33, 34 and 35 of the Electricity Act provide the OEB with oversight in relation to the Market Rules. Among other things, section 33(6) of the Electricity Act contemplates that any person may apply to the OEB to review an amendment to the Market Rules, and the OEB is required to issue an order that embodies its final decision within 120 days after receiving an application.

Paragraph 6.3 of the IESO's OEB licence² sets out the information that the IESO is required to provide to the OEB within seven days of the date of the filing of an application to review a Market Rule amendment (MRA). That section was added to the IESO's licence in 2013 to assist the OEB and parties to any MRA review proceeding by ensuring that a minimum level of relevant information is filed as early as possible following the filing of an application for review.³ This need was informed by past experience with MRA proceedings and the statutory timeline for completing such proceedings.⁴

Under section 74(1)(b) of the [Ontario Energy Board Act, 1998](#) (OEB Act) the OEB may, on the application of any person, 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.

On March 25, 2024, the IESO filed a licence amendment application (Application) under section 74(1)(b) of the OEB Act, to amend paragraph 6.3 of its licence for the purpose of streamlining the documents that the IESO is required to file in response to an application to review an MRA.

¹ Electricity Act, sections 33(1)-(2)

² [EI-2013-0066](#)

³ [EB-2013-0066](#), Decision and Order issued September 26, 2013

⁴ Ibid. At the time, the statutory timeline was 60 days.

The OEB issued a Notice of Hearing on April 26, 2024, and Procedural Order No.1 (PO 1) on May 14, 2024, which provided for submissions and reply submissions on the Application. Procedural Order No. 2 (PO 2) was issued on May 27, 2024, requesting the IESO provide an updated Application to clarify a discrepancy in the Application material between the use of the terms “Market Rule Amendment Proposal” and “Market Rule amendment” in the proposed amendments to paragraph 6.3(iii) of the licence. The OEB requested the IESO to file an update to the Application to address the discrepancy and adjusted the dates for the filing of written submissions. On May 29, 2024, the IESO filed a correction to its Application to address the discrepancy.

Licence Amendments Proposed by the IESO

The Application, as corrected, seeks to amend the IESO's licence to include the following new definition:

“Market Rule Amendment Proposal” means a set of Market Rule amendments that were the subject of a formal stakeholder engagement, reviewed by the Licensee's Technical Panel and approved by a vote of the Licensee's Board of Directors.

The Application also requests that paragraph 6.3 of the IESO's licence be amended as follows:

6.3 The Licensee shall file with the Board, within seven days of the date of the filing of an application to review a Market Rule amendment under section 33 of the *Electricity Act*, the following in respect of that Market Rule amendment:

- i. ~~A copy of the~~ Market Rule ~~a~~Amendment ~~Submissions relating to the amendment that is the subject of the application,~~ including any covering memoranda;
- ii. all written submissions received by the Licensee ~~in relation to the~~ with respect to the Market Rule aAmendment Proposal;
- iii. minutes, ~~or meeting notes, of and relevant materials from~~ of all stakeholder meetings (including meetings of the Licensee's Strategic Stakeholder Advisory Committee) and of all meetings of the Licensee's Technical Panel ~~at which the amendment or the subject matter of the amendment was discussed~~ concerning the Market Rule Amendment Proposal;
- iv. ~~a list of all materials related to the amendment or the subject matter of the amendment tabled before any stakeholders (including the Licensee's~~

~~Stakeholder Advisory Committee) or before the Licensee's Technical Panel;~~
[NTD: Covered in requirement above]

~~v. iv. a list of all materials tabled before the Board of Directors of the Licensee in relation conjunction with the Market Rule to the a Amendment Proposal or the subject matter of the amendment, and a copy of all such materials other than those already captured by item (i) above;~~

...

The Application states that the requested licence amendments would scope the documents that need to be filed with the OEB in an MRA review application to only those that pertain to the final MRA that is the subject of the review and remove the requirement to file preliminary designs and related documents that are not part of the final MRA. The Application states that the proposed amendments to paragraph 6.3 provide the OEB with the context of the MRA while substantially 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. The Application notes 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.

The Application states that, in the context of initiatives that involve a large set of MRAs that have evolved and been stakeholdered over time, such as the Market Renewal Program (MRP)⁵, the currently worded licence conditions would require the IESO to file documents that would not necessarily reflect the final MRA before the OEB and would reduce the efficiency of the OEB's review process.

The amendment to paragraph 6.3 as proposed by the IESO is not, however, limited to MRAs related to MRP or to initiatives that involve a large set of MRAs.

OEB Staff Submission

OEB staff supports the IESO's proposed licence amendments in principle as a means of scoping the materials that will be of greatest relevance and use to the OEB and

⁵ The IESO has been working on the MRP since 2016. The market design process has consisted of three main stages: 1) the [high-level design stage](#), completed in 2019, identified key concepts and high-level decisions; 2) the [detailed design stage](#), which was completed in 2021, added the detail required to design system tools and processes; and 3) the current [final stage](#) which consists of the IESO producing the market rule amendments that will implement the renewed market design. The IESO expects the IESO board of directors to approve these market rule amendments in October 2024. The IESO has conducted formal stakeholder engagement throughout each stage of market renewal. [Completed Market Renewal Engagements \(ieso.ca\)](#)

participants in any MRA proceeding in terms of an initial information filing. OEB staff generally does not take issue with the wording of the proposed amendments to the IESO's licence but does note that they are not limited to MRP-related MRAs but would apply to all future MRAs.

OEB staff submits that it is important for the OEB, the IESO, market participants and other interested stakeholders to have a clear, common understanding of what information the IESO would be required to file as a result of the proposed licence amendments and that is not clear from the Application as filed or updated.

OEB staff submits that it would be helpful for the IESO in its reply to clarify the application of certain aspects of the proposed amendments as detailed further in this submission.

Proposed amendments in context of MRP

OEB staff notes that the MRP has evolved over the course of a lengthy design and engagement process which has resulted in the creation of significantly more early-stage design and engagement records than would typically exist for MRAs that pertain to a market design that is currently in use. Much of this MRP-related material is associated with the high-level design and detailed design stages that preceded the drafting of the MRAs. The high-level design and detailed design materials, by nature, encompass combinations of market design issues.

OEB staff's understanding of the effect of the requested licence amendments is that, for MRP-related MRAs, most high-level design and preliminary design materials would not have to be filed by the IESO within seven days of an application for an MRA review being filed with the OEB.

OEB staff generally agrees that, in the context of an MRP-related MRA, it would be more efficient to require the IESO to file an initial set of documents, within the seven-day time requirement, that are related to the final, implementation-stage MRA that is the subject of an application to review rather than requiring it to file all documents related to preliminary MRP market design documents. Given the breadth of the MRP work and length of the MRP engagement, the high-level design and preliminary design materials are older and organized thematically, which would make it more difficult to parse them and to isolate sections related to the specific MRAs that are the subject of an MRA review application. Requiring the IESO to produce all of the preliminary design documents would result in a filing that is voluminous and not necessarily helpful to the OEB in the context of the review of a particular MRA.

OEB staff also notes that the majority of materials from the preliminary market design stages are publicly available on the IESO's website and therefore available to any person that may wish to file an MRA review application.

Proposed New Definition of "Market Rule Amendment Proposal"

OEB staff agrees in principle with the addition of the definition of "Market Rule Amendment Proposal". That term is consistent with the IESO's naming and content of MRA material that it produces for submission to its Technical Panel and for approval by its Board of Directors, as listed on the [IESO's website](#).⁶ The IESO has used this terminology consistently for both MRP related amendments and other Market Rule amendments.

However, it is not clear to OEB staff what material would be included under the proposed definition of a "Market Rule Amendment Proposal" and whether the level of information that makes up the IESO's initial information filing with the OEB would be considerably less material and more narrowly scoped information than under the current licence provisions.

As stated in the Application, the IESO's proposed amendments *"would scope the documents that need to be filed with the OEB in a MRA review application to only those that pertain to the **final MRA** that is the subject of the review and **remove the requirement to file preliminary designs and related documents** that are not part of the final MRA."* (emphasis added)

At this time, there is no example of what a final "Market Rule Amendment Proposal" consists of. In the MRP context, all of the MRP-related MRAs will be presented to the IESO Board of Directors at the same time in October 2024. According to the Application, the package would not include *"preliminary or outdated designs and related documents"* (emphasis added). In OEB staff's view, detailed design stage documents in general are neither preliminary nor outdated because the detailed design is the last and final design that is being implemented and therefore, the documents related to the detailed design stage should not be excluded from the IESO's initial information filing in an MRA review application if the information is relevant to the review application. Aspects of the detailed design stages of the MRP-related MRAs (including comments from stakeholders and Technical Panel members) may be relevant to an MRA review application and should not be excluded by the proposed licence amendments. This is especially important where market participants may have provided feedback at the detailed design stage but not provided further input at the final implementation stage,

⁶ [Proposed Market Rule Amendments \(ieso.ca\)](#)

i.e. the final “Market Rule Amendment Proposal”, and the issues on which feedback was provided at the detailed design stage are related to the issues on an MRA review application.

OEB staff notes the type of information that has been presented to the IESO Board of Directors for *provisional approval* of an MRP-related MRA including:⁷

- the MRA or package of related MRAs
- memo from the Technical Panel to the IESO Board of Directors’ “Markets Committee”
- IESO staff memo to the Technical Panel
- Technical Panel vote and rationale
- Summary of stakeholder and Technical Panel member comments
- Consumer Impact Statement⁸
- Draft Resolution

OEB staff’s expectation is that, if the proposed licence amendments are approved by the OEB, the initial information that would be filed by the IESO within seven days of an MRA review application, for a *final* “Market Rule Amendment Proposal” would include at a minimum the type of information that was (or will be) filed with the IESO Board of Directors for a *provisional* approval of an MRP-related MRA as listed above.

In its reply submission, the IESO should identify the materials that would be included in its initial information filing with the OEB under paragraph 6.3 of its licence as proposed to be amended.

Other Proposed Licence Amendments

The IESO proposes to consolidate paragraphs 6.3(iii) and (iv) of the licence by amending paragraph 6.3(iii) and deleting paragraph 6.3(iv) of the licence. According to the Application, the content of paragraph (iv) is captured by paragraph 6.3(iii) as it is proposed to be amended.

The IESO proposes that paragraph 6.3(iii) be amended to require the IESO to file “minutes, meeting notes, and relevant materials from all stakeholder meetings (including meetings of the Licensee’s Strategic Advisory Committee) and of all meetings of the Licensee’s Technical Panel concerning the Market Rule Amendment Proposal”

⁷ [Proposed Market Rule Amendments \(ieso.ca\)](#) For example, a package of MRP-related MRAs with respect to “Market System Operations and Calculation Engines” consists of 8 MRAs that were considered by the Technical Panel and provisionally recommended to the IESO Board.

⁸ As required by section 33(2) of the Electricity Act and section 7 of [O. Reg. 610/98 \(The IESO\)](#).

(emphasis added in italicized text).

It is not clear to OEB staff how “relevant materials” would be determined nor whether or the extent to which the proposed amendments would result in **less** information being filed with the OEB than under the current licence provisions. As noted above, there is no example of a **final** MRP-related MRA, and it is not clear from the Application whether relevant materials from the detailed design stage would be captured by the proposed definition and amendment to paragraph 6.3(iii). As noted above, in OEB staff’s view, relevant material from the detailed design stage **would be included** in the IESO’s initial information filing in an MRA review application. However, it would be helpful if the IESO could, in its reply, clarify how “relevant” materials would be determined and what material it proposes would be included in its initial filing in the context of the proposed definition of “Market Rule Amendment Proposal” and MRP-related MRAs.

Statutory Timeline and Importance of Timely Information Filing

When the OEB receives an application to review an MRA, the proceeding will include the opportunity for the applicant and OEB staff (among possible others) to request that additional information be added to the record, or to submit evidence, based on the publicly available information regarding the MRP design process. OEB staff also notes that nothing in the IESO’s licence, either currently or if amended as proposed in the Application, limits the power of the OEB to order the IESO to produce additional materials in the context of an application or pending application to review a market rule amendment.

However, as noted above, section 33 of the Electricity Act imposes a 120-day timeline for the OEB to issue an order that embodies its final decision on an MRA review application. Based on past experience, OEB staff notes that the tight statutory timeline

for the OEB to conclude its review may be exacerbated by disagreements between the parties in respect of materials to be filed in the proceeding and by procedural issues.⁹

Due to the 120-day legislated timeline for the OEB to determine an MRA review application, the critical requirement for the IESO’s initial filing is for it to produce the information required to form an initial record to inform the review process, while limiting the production of extraneous information that could distract from the MRA issue before

⁹ See for example [EB-2013-0010 /0029](#) where the prospective applicants sought an order of the OEB requiring the IESO to produce evidence in advance of the date of filing of the application to review. The application was made under section 21 of the *Ontario Energy Board Act, 1998*. Acting on its own motion, the OEB directed the IESO to produce certain of the materials that the prospective applicants had requested in their section 21 application.

the OEB and delay the process.

Proposed amendment in non-MRP context

OEB staff's submission is focused on the proposed licence amendments in the context of MRP-related MRAs and in that context, and subject to the requested clarifications set out above, OEB staff generally supports the proposed amendments. However, as also noted above, the proposed amendments would apply to all other MRAs as well. It is not clear to OEB staff how the proposed definition of "Market Rule Amendment Proposal" as a "set of Market Rule amendments" applies to a non-MRP MRA which is not part of a "set" of amendments. The IESO may want to provide further clarification in its reply submission. Furthermore, non-MRP MRAs are typically narrower in scope and may not have undergone the extensive development and stakeholdering that the MRP-related MRAs have, so it may not be appropriate to unduly narrow the scope the information that the IESO should be required to file on an application to review a non-MRP MRA. It is not obvious to OEB staff that the proposed licence amendments, in the context of non-MRP MRAs, are a significant improvement relative to the current licence provisions. However, at this time OEB staff does not have concerns that the proposed amendments, in the context of non-MRP MRAs would be contrary to the public interest. The OEB may revisit this aspect in the future after MRP implementation if experience indicates that the proposed amendments are not in the public interest, in the context of non-MRP MRAs.

Conclusion

OEB staff submit that it is in the public interest for the IESO's initial filing in the context of a proceeding on an MRA application to consist of the information that is most closely relevant to the MRA(s) that is/are the subject of the MRA review application. Subject to the clarifications requested of the IESO in this submission, it appears to OEB staff that the information that has been reviewed by the IESO's Technical Panel and tabled before the IESO's Board of Directors, as described in the IESO's proposed licence amendments, would be appropriate as an initial filing for an MRP-related MRA review proceeding.

~All of which is respectfully submitted~