

June 14, 2024

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

Dear Ms. Marconi,

**Re: Independent Electricity System Operator's (IESO) Reply Submission
Application to Amend the IESO's Licence EI-2013-0066
Board File No.: EB-2024-0128**

On March 25, 2024, the IESO filed an application under section 74(1)(b) of the *Ontario Energy Board Act, 1998*¹ to amend section 6.3 of the IESO's licence for the purpose of streamlining the documents that the IESO is required to file in response to an application to review a market rule amendment (MRA) under section 33 of the *Electricity Act, 1998*.² On May 27, 2024, the Ontario Energy Board ("OEB" or "Board") issued Procedural Order No. 2, which provided dates for submissions and reply submissions on the IESO's application. Board Staff, Power Advisory (representing jointly the Canadian Renewable Energy Association, Energy Storage Canada and Ontario Waterpower Association as REASCWA) and the Association of Power Producers of Ontario (APPRO) filed submissions. The IESO's summary of, and response to, their submissions is below.

Clarifying the IESO's Proposed Amendments

Section 6.3 of the IESO's licence requires it to file certain documents with the Board within seven days of the filing of an application to review an MRA. This requirement was first introduced to the IESO's licence on the basis of an application filed by the IESO itself on March 1, 2013 and in response to Board Staff submissions.

The intent of this specific filing requirement is to provide the Board with some initial context with respect to the nature of an MRA under review, including insight into any concerns that may have been raised previously by stakeholders through the IESO's MRA engagement process. The IESO submits that the current filing requirements do not effectively satisfy this intent. The purpose of the IESO's licence amendment application is to revise the documents required to be filed under section 6.3 so as to better realize the original intent of the provision.

¹ S.O. 1998, c. 15, Sched. B ["*OEB Act*"].

² S.O. 1998, c. 15, Sched. A ["*Electricity Act*"].

The current filing requirements include, amongst other documents:

- (i) all written submissions received by the IESO related to a given MRA; and
- (ii) all materials tabled before stakeholders and the Technical Panel (TP) related to that MRA.

These requirements encompass preliminary design documents setting out high level versions of concepts that may have changed substantially from, or at a minimum reflect less detailed versions of, the relevant MRA under review by the Board. The requirements also encompass materials that concern issues outside the scope of the Board's review, including editorial recommendations, clarifying questions, and iterative draft amendment proposals that may not be pertinent to the concerns of the applicant. None of these documents are likely to contribute to the Board's understanding of the ultimate MRA or prepare it to consider the questions that required by section 33(9) of the *Electricity Act*: whether the MRA is (1) *inconsistent with the purposes of the Electricity Act*; or (2) *unjustly discriminatory against a market participant or class of market participants*.³ Rather, the IESO submits that the overbroad scope of documents entailed by the current licence requirement would obscure the materials most relevant to preparing the Board for its review.

The IESO's application aims to focus the scope of pre-filed evidence to documents that would most efficiently achieve the objective of the section 6.3 filing requirement. These documents would consist of the same materials submitted to TP and the IESO Board of Directors in connection with their votes to recommend and approve, respectively, the ultimate MRA.

In contrast to 2013, when section 6.3 was first added to the IESO's licence, the IESO's stakeholder engagement processes for market rule amendments has been significantly enhanced and these materials are now publicly available on the IESO's website, and would be familiar to relevant stakeholders. They include descriptions of the design implemented by the MRA proposal, as well as summaries of the relevant stakeholder engagement initiatives, copies of submitted stakeholder questions and IESO responses, and presentations highlighting the most material questions and issues raised by stakeholders, along with the IESO's responses. The IESO submits that a review of these documents would most efficiently orient the Board with respect to the subject matter of the MRA and prepare them to proceed to a more detailed review of a section 33 application.

Importantly, section 6.3 does not prescribe the entire scope of evidence that may be filed in connection with a section 33 application. Evidence may also be filed by the applicant to support the reasons for their application, or in support of a stay motion, or in connection with responses to interrogatories. As such, the IESO's licence amendment application to amend the section 6.3 pre-filed evidence licence requirement does not prevent relevant evidence from being filed in connection with an MRA for review. It merely refines the scope of evidence pre-filed for the narrow purpose of providing initial context to the Board. Given that section 33(6) of the *Electricity Act* requires the Board to render a decision on an application within 120 days, the IESO submits that it is in the interest of the Board, the applicant, and the IESO that the limited time available be used efficiently.

Board Staff Submission

Board Staff stated that it 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 Board and

³*Electricity Act*, s. 33(9).

participants in any MRA review proceeding in terms of an initial information filing.⁴ Board Staff stated it generally did not take issue with the wording of the proposed amendments to the IESO's licence and that it was important for the Board, the IESO, and market participants to have a clear, common understanding of what information the IESO would be required to file because of the proposed licence amendments.⁵ Board Staff requested that the IESO clarify its application in its reply submission with respect to:

- 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 Board would be considerably less material and more narrowly scoped information than under the current licence provisions;⁶
- The materials that would be included in its initial information filing with the Board under section 6.3 of its licence as proposed to be amended;⁷ and
- How "relevant" materials would be determined, how this would reduce the information filed, 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 Market Renewal Program (MRP)-related MRAs.⁸

REASCWA Submission

REASCWA submitted that the IESO had not provided a clear rationale or supporting evidence that the changes it proposed to the wording of sub-section 6.3 of its licence were necessary or would improve the efficiency of the regulatory process and reduce excessive documentation.⁹ REASCWA also raised the question of how or why the IESO concluded that the 2013 licence amendments did not facilitate the Board's review as the IESO did not provide concrete examples of an MRA review hindered by the current licence conditions.¹⁰

APPrO Submission

APPrO submitted that the existing language under subsection 6.3(iv) was appropriate and should be retained¹¹ and supported REASCWA's view that the 2013 amendment properly scoped the MRA review process.¹² APPrO proposed that the IESO seek an exemption from the relevant IESO licence requirements solely for the purposes of MRAs related to MRP implementation.¹³

APPrO further submitted that not all IESO market rule amendment proposals are subject to the same scope or nature of stakeholder engagement, if at all. As such, it was unclear which types of stakeholder engagement were "a formal stakeholder engagement" for the purposes of the IESO's proposed changes.¹⁴ APPrO also requested clarity on whether the scope of "stakeholder

⁴ EB-2024-0128, OEB Staff Submission, dated June 5, 2024 [OEB Staff Submissions], at pages 3-4.

⁵ OEB Staff Submissions at page 4.

⁶ OEB Staff Submissions at pages 5-6.

⁷ OEB Staff Submissions at page 7.

⁸ OEB Staff Submissions at pages 6-7.

⁹ EB-2024-0128, REASCWA Submissions on Independent Electricity System Operator's Request to Amend Licence EI-2013-0066, dated June 5, 2024 [REASCWA Submissions], at page 5.

¹⁰ REASCWA Submissions at page 5.

¹¹ EB-2024-0128, Written submissions of the Association of Power Producers of Ontario, dated June 5, 2024 [APPrO Submissions], at paragraph 13.

¹² APPrO Submissions at paragraph 21.

¹³ APPrO Submissions at paragraph 23.

¹⁴ APPrO Submissions at paragraphs 4-8.

meetings” included IESO working group meetings and/or one-on-one meetings with participants or participant groups.¹⁵

APPrO further submitted that the IESO’s proposed amendments would unduly inhibit the Board’s ability to meet its statutory obligations under section 33(8) of the *Electricity Act*.¹⁶

Response to Board Staff

Relevant Materials and Volume of Documentation

The IESO submits that the information filed with the Board under the proposed licence amendments would be more closely aligned with the scope of the Board’s review of an MRA under section 33 of the *Electricity Act*. Consequently, the IESO submits that less material would be filed within the first seven days of the date of a filing of an application to review an MRA than under the current licence provisions.

The materials to be included under the proposed definition of a “Market Rule Amendment Proposal” and the proposed revisions to subsections 6.3(i)-(v) are as follows:

- A “Market Rule Amendment Proposal” refers to the actual market rule amendment proposal document that sets out the proposed amendments to the market rules.¹⁷
 - These are the documents that have been reviewed by the TP and approved by the IESO’s Board of Directors.
- Proposed subsection 6.3(i) requires the IESO to file only the Market Rule Amendment Proposal that is the subject of the application to review.
- Proposed subsection 6.3(ii) requires the IESO to file all written submissions it received with respect to the Market Rule Amendment Proposal.
 - Written submissions received regarding preliminary design documents or stakeholder engagements that preceded the Market Rule Amendment Proposal would not be filed.
- Proposed subsection 6.3(iii) requires the IESO to file all relevant materials from stakeholder meetings (including the Strategic Advisory Committee) and the TP concerning the Market Rule Amendment Proposal.
 - “Relevant” here means related to the Market Rule Amendment Proposal. Stakeholder and TP meetings often include discussions of multiple subjects, not all of which will necessarily relate to a Market Rule Amendment Proposal. Documents that do not relate to the Market Rule Amendment Proposal would not be filed.
- Proposed subsection 6.4(iv) requires the IESO to file a list of all material tabled before its Board of Directors and a copy of all such materials that have not otherwise been filed.

To illustrate how these amendments would have affected the information filing in the last MRA review application, EB-2019-0242, the IESO considered which documents would not be filed

¹⁵ APPrO Submissions at paragraph 11.

¹⁶ APPrO Submissions at paragraph 17.

¹⁷ As an example, in the last MRA review application heard by the OEB, EB-2019-0242, these are the documents filed with filenames *IESO_RO1 - Auction Parameters and Publication_20191003.pdf*, *IESO_RO2 - Participant Authorization and Facility Registration_20191003.pdf*, *IESO_RO3 - Energy Market Participation_20191003.pdf*, *IESO_RO4 - Non-Performance Charges and Settlements_20191003.pdf*, and *IESO_RO5 - Removal of DR Pilots and CBDR Sections_20191003.pdf*.

under the proposed licence amendments within the first seven days of an MRA review application. The IESO assessed that the documents that would not have been filed include:

- Meeting notes or minutes from stakeholder engagements with the Demand Response Working Group, Meeting Ontario's Capacity Needs, and Stakeholder Advisory Committee that pre-date the introduction of the MRAs under review;
- Meeting notes and materials presented to the TP that pre-date the introduction of the MRAs under review; and
- Agenda item summaries and presentations to the IESO Board of Directors and other IESO Board of Director materials that pre-date the MRA under review.

The IESO submits that the reduction of materials to those most relevant to the subject of the review at the outset of an MRA review is constructive as it focuses the proceeding on the materials that are directly related to the MRA. The IESO acknowledges that context matters, and as the IESO stated in its application, there is nothing preventing information excluded from the initial filing from entering the record if deemed relevant during the review.

To further illustrate the effects of the proposed amendments, Tables 1 and 2 below show how the proposed amendments would affect the documents filed for an MRA review in the context of MRP.

MRP was a long-term initiative organized under three phases: high level design, detailed design, and implementation. Each phase of MRP included consultation with stakeholders on key concepts, high level and detailed design decision-making, within which stakeholder's provided feedback, and the IESO provided responses. In addition, materials for all MRP design phases, including high level design,¹⁸ detailed design,¹⁹ and implementation²⁰ have been posted for stakeholder review and comment to the IESO's website.

Table 1 below provides an estimate of the volume of documents, which are already publicly available on the IESO's website, for each of the MRP design phases that would be filed in an MRA review proceeding in accordance with current licence provisions for an MRA related to MRP:

¹⁸ High-level design documents are available at: <https://www.ieso.ca/Market-Renewal/Energy-Stream-Designs/High-Level-Designs>

¹⁹ Detailed design documents are available at: <https://www.ieso.ca/Market-Renewal/Energy-Stream-Designs/Detailed-Design>

²⁰ Implementation phase documents are available at: <https://www.ieso.ca/Market-Renewal/Energy-Stream-Designs/Implementation-phase-documents>

Table 1 - Documents Related to MRP Market Rule Amendment Review

High Level Design	Detailed Design	Implementation ²¹
Design documents and related documents – 21	Design documents and related documents – 30	Market Rules and Manuals – 14 Market Rules documents and 22 Market Manuals
Stakeholder engagement documents – 160	Stakeholder engagement documents – 81	Stakeholder engagement documents – 190
Stakeholder feedback and IESO response documents – 197	Stakeholder feedback and IESO response documents – 112	Stakeholder feedback and IESO response documents – 89
		TP materials – 100
		IESO Board Materials – 100 (some materials maybe duplicative)

Under the IESO's current licence, all of the documents in Table 1 would be required to be filed as part of the initial information filing in an MRA review application, despite the majority of those documents having been obsoleted or superseded by the MRA proposal under review.

Table 2 shows the effect the proposed licence amendments would have on the volume of documents that would be filed as part of the initial information filing in an MRP-MRA review application:

Table 2 – Illustrative Impact of Proposed Amendments

High Level Design	Detailed Design	Implementation
Design documents and related documents – 21	Design documents and related documents – 30	Market Rules and Manuals – 14 Market Rules documents and 22 Market Manuals
Stakeholder engagement documents – 160	Stakeholder engagement documents – 81	Stakeholder engagement documents – 190
Stakeholder feedback and IESO response documents – 197	Stakeholder feedback and IESO response documents – 112	Stakeholder feedback and IESO response documents – 89
		TP materials – 100
		IESO Board Materials – 100 (some materials maybe duplicative)

²¹ As implementation of the Market Renewal Program is on-going, the numbers provided in the "Implementation" column in Tables 1 and 2 are the IESO's estimates.

As illustrated above, the proposed amendments for an MRP-MRA proposal review would result in a reduction of at least 601 documents that are outdated and not directly related to the MRA under review. The proposed licence amendments eliminate the need to provide early market design documents that include content not reflected in the MRA and this significantly reduces the volume of initial design documents, stakeholder engagement materials, and feedback and feedback responses filed. While they reduce the volume of documents filed at the outset of a proceeding, they still preserve the relevant materials for the Board to have the necessary context on the MRA that is the subject of a review.

Relevancy Determinations

Board Staff also requested clarification as to how “relevant” materials would be determined, how this would reduce the information filed, and what material would be included in the IESO’s initial filing in the context of the proposed definition of “Market Rule Amendment Proposal”.

The IESO submits that relevant materials are those directly related to the MRA under review. Filing only those documents directly related to an MRA proposal will reduce the volume of documentation filed by excluding preliminary design documents and stakeholder engagement materials on the design. The *Electricity Act* sets out the issues for the Board to decide in an MRA review as to whether the amendment is: (1) inconsistent with the purposes of the *Electricity Act*; or (2) unjustly discriminates against a market participant or a class of market participants.²² The question before the Board in an MRA review application is not whether the market rule implements the preliminary design, but whether the MRA meets either of these criteria. While materials such as preliminary market design documents may provide useful context, their disclosure is more efficiently situated within the proceeding when they are deemed relevant.

As the examples set out above, and within the definition of a Market Rule Amendment Proposal, the documents filed would focus on stakeholder engagement materials and materials provided to TP and the IESO’s Board of Directors. The IESO submits that the effect of these amendments will streamline the initial filing of an MRA by focusing the proceeding on the evidence that pertains to the final MRA before the Board.

Response to APPrO and REASCWA

The IESO will address below the points raised by APPrO’s and REASCWA’s submissions that have not already been addressed by the IESO’s reply to Board Staff’s submissions.

APPrO

APPrO submitted that it was “unclear which types of stakeholder engagement constitute a “formal stakeholder engagement” for the purposes of the IESO’s proposed [Market Rule Amendment Proposal] definition”.²³ The IESO considers a “formal stakeholder engagement” to be any stakeholder engagement where the MRAs that are intended to become part of a Market Rule Amendment Proposal have been presented to stakeholders for information or comment. This could include, but is not limited to, engagements with the Strategic Advisory Committee, IESO working groups, and the TP.

²² *Electricity Act*, s. 33(9).

²³ APPrO Submissions at paragraph 8.

APPrO further submitted that the proposed licence amendments should apply solely for the purposes of MRAs related to MRP implementation submitted to the Board prior to the MRP go-live date. The IESO submits that the amendments provide an efficient process for any future MRA proposals and that focusing a proceeding on the directly relevant materials at the outset, while still preserving the right of parties to request additional information during the proceeding, is a sound practice irrespective of the subject matter of the MRA.

The IESO acknowledges that the efficiency gained with the proposed amendments is more pronounced because of the scale of the MRP MRAs, but APPrO's assertion that the duration and scale of MRP is the factor driving the need for the amendment looks past the principled reason to file directly relevant materials, which is to assist with the Board's review of the MRA under section 33 of the *Electricity Act*. While the Board may determine otherwise, the IESO reiterates its request that the Board approve the IESO's proposed licence amendments without exception to its applicability.

APPrO further submitted that the IESO's proposed amendments "would unduly inhibit the Board's ability to properly evaluate the mandatory considerations under subsection 33(8) of the *Electricity Act*".²⁴ However, experience demonstrates that the full suite of documents produced as part of the initial information filing are not required for the Board to properly evaluate the subsection 33(8) considerations. Subsection 33(8) sets out the factors the Board must consider when deciding to stay the operation of an amendment. In EB-2019-0242, the Board's Decision and Order staying the operation of the market rule amendments did not cite any documents from the IESO's initial information filing.²⁵ If anything, the IESO's proposed amendments operate opposite to what APPrO suggests by enhancing the Board's ability to properly evaluate a motion to stay by reducing the volume of irrelevant or unhelpful documents to be considered.

APPrO also submitted that the current scope of the document to be filed within seven days of an application is appropriate because the OEB does not know which documents exist and, therefore, the burden then shifts to intervenors and stakeholders "to comb through their respective records to ascertain relevant materials and seek leave from the OEB to submit them into evidence". When a person makes an application to the Board for review of a market rule amendment, they are asserting that the amendments are (1) inconsistent with the purposes of the *Electricity Act* or (2) unjustly discriminatory against a market participant or class of market participants, with rationale for the assertion. This means that the applicant must already have relied on public documents to support their argument and has access to and is aware of information relevant to their claim.

APPrO was also of the view that the existing language under subsection 6.3(iv) is appropriate and should be retained.²⁶ This subsection includes the provision for the IESO to provide a list of materials which APPrO submits is "neither unduly onerous nor procedurally inefficient".²⁷ The IESO agrees that this provision is not onerous and submits that the existing language in 6.3(iv) is captured within the additions and revisions to subsection 6.3(v) which state:

²⁴ APPrO Submissions at paragraph 17.

²⁵ See EB-2019-0242, Decision and Order On Motion to Stay the Operation of the Amendments to the Market Rules, dated November 25, 2019.

²⁶ APPrO Submissions at paragraph 13.

²⁷ APPrO Submissions at paragraph 15.

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

The IESO submits that the list of materials tabled before the Board of Directors in conjunction with the defined Market Rule Amendment Proposal provides the requisite evidence that the earlier subsection 6.3(iv) requires.

REASCWA

REASCWA submitted that the IESO's request to amend its licence made no reference to the EB-2013-0066 proceeding²⁸ and that the IESO failed to raise examples of an MRA review by the Board being hindered by the current licence provisions.²⁹

The IESO submits that applicants are not required to establish that prior licence amendments failed to achieve their intended purpose; the sole question before the Board is whether the requested amendments are in the public interest, having regard to the Board's objectives and the purposes of the *Electricity Act*.

For the reasons stated above in response to Board Staff and APPrO's submissions, the IESO submits that the proposed amendments improve on the current licence provisions and are in the public interest because they streamline the Board's initial review of an MRA by focusing the documents filed on those that pertain to the final MRA before the Board.

All of which is respectfully submitted.

Yours truly,



Devon Huber
Director, Regulatory Affairs and Market Rules

²⁸ REASCWA Submissions at page 5.

²⁹ REASCWA Submissions at page 5.