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DECISION AND ORDER

EB-2024-0128

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Application to Amend Licence EI-2013-0066

BEFORE: Pankaj Sardana
Presiding Commissioner

July 23, 2024



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1 OVERVIEW AND PROCESS

The Independent Electricity System Operator (IESO) filed an application (the Application) with the Ontario Energy Board (OEB) on March 25, 2024, under section 74(1)(b) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Schedule B) (OEB Act). The Application requested amendments to the IESO's OEB licence EI-2013-0066 related to the material that the IESO is required to file with the OEB in response to an application to review a Market Rule Amendment (MRA) under section 33 of the *Electricity Act, 1998* (Electricity Act). The Application requested the following changes to the IESO licence:

- i) addition of a new definition for “Market Rule Amendment Proposal”
- ii) amendments to paragraph 6.3 i., ii., iii. and v. and deletion of paragraph 6.3 iv. for the purpose of streamlining the documents that the IESO is required to file to the OEB in response to a request to review an MRA
- iii) Updating the name of the “Stakeholder Advisory Committee” to the “Strategic Advisory Committee” in paragraph 6.3 iii. of the licence.

A Notice of Hearing was issued on April 26, 2024. The Association of Power Producers of Ontario (APPrO), and the Canadian Renewable Energy Association, Energy Storage Canada and Ontario Waterpower Association, jointly referred to as “REASCWA” (REASCWA), applied for intervenor status and cost eligibility. The OEB granted APPrO and REASCWA intervenor status and cost award eligibility in [Procedural Order No. 1](#) on May 14, 2024.

Procedural Order No. 1 outlined the procedural steps and defined the scope of the submissions as being limited to the proposed wording changes in the draft license amendments that were filed by the IESO in the Application.

On May 27, 2024, the OEB issued [Procedural Order No. 2](#) ordering the IESO to submit an updated Application to clarify a discrepancy in the proposed amendments to paragraph 6.3 iii of the licence and amending the timeline of the procedural steps. On May 29, 2024, the IESO filed an updated Application to clarify the discrepancy.

Submissions were received from APPrO, REASCWA and OEB Staff on June 5, 2024. The IESO's reply submission was received on June 14, 2024.

The Application

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 requested 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 aAmendment 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 aAmendment Proposal or the subject matter of the amendment, and a copy of all such materials other than those already captured by item (i) above;

Under section 74(1)(b) of the 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.

2 CONTEXT

The IESO administers several Ontario electricity markets and has the authority¹ to make rules that govern the IESO-controlled grid and IESO-administered markets and define the roles and obligations of the IESO and participants operating in Ontario’s electricity market.² Collectively these are known as the “Market Rules”.

The IESO Board of Directors has the authority to make and approve Market Rules and MRAs.

To make MRAs, the IESO uses a consultative process, which includes a Technical Panel, comprised of stakeholder representatives.³ The Technical Panel reviews proposed MRAs and submits its recommendations to the IESO Board of Directors. If an MRA is approved by the IESO Board, the IESO is required to publish the MRA and file it with the OEB at least 22 days before it comes into force.⁴

Sections 33, 34 and 35 of the Electricity Act provide the OEB with oversight in relation to the Market Rules and MRAs. Under section 33 of the Electricity Act, any person may apply to the OEB to review an MRA within 21 days after the MRA is published and the OEB is required to issue an order that embodies its final decision within 120 days after receiving an application.⁵

In its review of an MRA, the OEB must apply the statutory test set out in section 33(9) of the Electricity Act. If the OEB finds that the MRA is “inconsistent with the purposes of the Electricity Act or unjustly discriminates against or in favour of a market participant or class of market participants”, the OEB must make an order:

- (a) revoking the amendment on a date specified by the OEB; and
- (b) referring the amendment back to the IESO for further consideration.

Paragraph 6.3 of the IESO’s licence 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 an MRA. This requirement was added to the IESO’s licence in 2013 to assist the OEB

¹ Electricity Act, section 32

² IESO, Overview, Amending the Market Rules and Related Documents (<https://www.ieso.ca/Sector-Participants/Change-Management/Overview>)

³ [IESO, Overview of the Market Rule Amendment Process.](#)

⁴ Electricity Act, sections 33(1)-(2)

⁵ Electricity Act, sections 33(4) and 33(6). The OEB also has the authority to revoke the MRA and refer the amendment back to the IESO for further consideration under section.

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.⁶

The Application is made in the context of the IESO's Market Renewal Program (MRP) although the proposed licence amendments would apply to all MRAs and not just MRAs related to the MRP. The MRP is a long-term IESO initiative over several years that has proceeded through three phases: high level design, detailed design and implementation – and is expected to “go live” in May 2025. Each phase of the MRP has included engagement with stakeholders on key concepts and decisions. Materials for all MRP design phases, including high level design, detailed design and implementation were posted for stakeholder review and comment on the IESO's website.⁷

⁶ [EB-2013-0066](#), Decision and Order issued September 26, 2013.

⁷ High-level design documents are available at: <https://www.ieso.ca/Market-Renewal/Energy-Stream-Designs/High-Level-Designs> Detailed design documents are available at: <https://www.ieso.ca/Market-Renewal/Energy-Stream-Designs/Detailed-Design> Implementation phase documents are available at: <https://www.ieso.ca/Market-Renewal/Energy-Stream-Designs/Implementation-phase-documents>

3 DECISION

For reasons set out further in this decision, the OEB approves the IESO's application to amend paragraph 6.3 of its licence. The OEB has considered the submissions of the IESO, intervenors and OEB staff, the salient points of which are discussed below.

Submissions

In their submissions, APPrO and REASCWA opposed the IESO's proposed licence amendments. OEB staff's submission supported the proposed licence amendments in principle but requested clarification as to what information the IESO would be required to file as a result of the proposed licence amendments.

REASCWA Submission

REASCWA submitted that the Application did not provide clear rationale or evidence that the changes proposed by the IESO are necessary or improve the efficiency of the review process. REASCWA noted that paragraph 6.3 was added to the IESO's licence during its licence renewal in 2013 and was intended to facilitate reviews of MRAs and to improve the efficiency of the regulatory process. REASCWA also noted that the IESO did not provide any concrete examples of a market rule amendment review by the OEB hindered by the current licence conditions.⁸

In its reply submission, the IESO stated that, when the filing requirement was added to its licence in 2013, the intent was to provide the OEB 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.⁹ The IESO stated that, in contrast to 2013, when the filing requirement in paragraph 6.3 was first added to the licence, the IESO's stakeholder engagement processes for MRAs has been significantly enhanced and materials are now publicly available on the IESO's website, and would be familiar to relevant stakeholders.¹⁰

The IESO also submitted that applicants were not required to establish that prior licence amendments failed to achieve their intended purpose and that the sole question before the OEB on a licence amendment application, is whether the requested amendment is in the public interest, having regard to the OEB's objectives and the purposes of the Electricity Act.¹¹

⁸ REASCWA Submission, p.5.

⁹ IESO Reply Submission, p.1.

¹⁰ *Ibid.* p. 2

¹¹ IESO Reply Submission, p.9.

APPrO Submission

APPrO submitted that the Application should not be granted in its current form and that implementation of the proposed licence amendments, as currently drafted, raises potential procedural fairness and evidentiary issues and is unnecessary in any event.¹²

Definition of “Market Rule Amendment Proposal” (MRAP)

Regarding the IESO’s proposed definition of a “Market Rule Amendment Proposal” (MRAP) as a set of market rule amendments that were the “subject of a formal stakeholder engagement”, APPrO submitted that it was unclear what “a formal stakeholder engagement” entailed and noted that not all IESO market rule amendment proposals were subject to the same scope or nature of stakeholder engagement.¹³

In its reply submission, the IESO clarified that it considered 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 [Technical Panel].¹⁴

OEB Staff Submission

OEB Staff’s submission supported the proposed licence amendments in principle as a means of scoping the materials that will be of greatest relevance and use to the OEB and participants in any MRA proceeding in terms of an initial information filing. OEB staff submitted that it is important for parties to have a clear, common understanding of what information the IESO would be required to file as a result of the proposed licence amendments.¹⁵ OEB staff requested that, in its reply submission, the IESO provide a more detailed description of the materials that would be included in its initial information filing.¹⁶

OEB staff also highlighted the statutory requirement for the OEB to render its decision on an application under section 33 of the Electricity Act within 120 days of the filing of an application to review an MRA and that the tight timeline may be exacerbated by

¹² APPrO Submission, para 26

¹³ *Ibid.* paras 4 and 8

¹⁴ IESO Reply Submissions dated June 14, 2024, p.7.

¹⁵ Staff Submission, page 4

¹⁶ OEB Staff Submission, pages 5-6

disagreements among parties regarding procedural issues and the material to be filed by the IESO.

There were some common themes raised in some of the intervenor and OEB staff submissions, and IESO responses to those, which are combined below.

Materials filed under Proposed Licence Amendments

APPPrO submitted that it was unclear whether the “written submissions” (that would be filed pursuant to proposed amendment to paragraph 6.3 ii) would include those made by stakeholders during the design and development phases of the MRAP.¹⁷ Similarly, it was unclear whether the “relevant materials from all stakeholder meetings” (that would be filed pursuant to proposed amendment to paragraph 6.3 iii) would include materials presented by IESO and/or discussed during stakeholder meetings prior to the introduction of the MRAP.¹⁸ APPPrO noted that much of the stakeholder concerns were provided during the design and preliminary stages of the MRA proposals that are subsequently brought to the IESO’s Technical Panel and Board of Directors.¹⁹

OEB staff raised a similar concern. Noting the IESO’s statement in the Application that the IESO’s filing (under the proposed amendments to paragraph 6.3 of its licence) would not include “preliminary or outdated designs and related documents”, OEB staff submitted that detailed design documents are neither preliminary nor outdated because the detailed design is the last and final design that is being implemented. 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. Further, OEB staff stated that 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. OEB staff noted that 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, 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.²⁰

OEB staff noted the type of information that has been presented to the IESO Board of Directors for *provisional approval* of an MRP-related MRA. OEB staff submitted that, if the proposed licence amendments are approved by the OEB, the initial information that

¹⁷ APPPrO Submission, para 10

¹⁸ *Ibid.* para 11

¹⁹ *Ibid.* para 18

²⁰ OEB Staff Submission, June 5, 2024, p. 6.

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.²¹

OEB staff also submitted that it was not clear how “relevant materials” would be determined and suggested that the IESO could, in its reply submission, clarify how “relevant” materials would be determined and what material would be included in the IESO’s initial filing.²²

In response to APPrO and OEB staff submissions, the IESO stated that “relevant materials” are those directly related to the MRA under review and described these as being materials that are needed for the OEB to address the criteria of section 33(9) of the Electricity Act and determine whether the MRA is: (1) inconsistent with the purposes of the Electricity Act or (2) unjustly discriminates against a market participant or a class of market participants.”²³ As such, the scope of the documents filed would “focus on stakeholder engagement materials and materials provided to [the Technical Panel] and the IESO Board of Directors.”²⁴

In response to OEB staff’s request for more detailed description of the material that would be included in the IESO’s initial information filing (on an application under section 33 of the Electricity Act), the IESO provided a detailed list of the materials that would be included under the proposed definition of a “Market Rule Amendment Proposal” and the proposed revisions to paragraph 6.3.²⁵

The IESO’s reply submission also provided two tables that compared the MRP design and implementation materials that the IESO anticipated would be filed based on the current licence provisions with those that would be filed should the Application be approved. The comparison showed that the IESO would file the high-level design and detailed design documents based on the current licence requirements but would exclude them under the proposed licence amendment. The IESO noted that the materials for all MRP design phases were posted for stakeholder review and comment and are publicly available on its website.

In its Application, the IESO stated, if the OEB ultimately determined that certain preliminary documents would be helpful to its review, the proposed licence amendments

²¹ *Ibid.* p. 6

²² *Ibid.* p. 7

²³ IESO Reply Submission, p. 7.

²⁴ *Ibid.* p.7

²⁵ Reply Submission, pages 4-6

do not preclude the OEB from requiring the IESO to file them.²⁶ On this point, APPrO submitted that the OEB may not know what documents exist and should be filed and that the burden then shifts to interveners and stakeholders to try to ascertain relevant materials and seek leave from the OEB to submit them into evidence.²⁷ In response to APPrO, the IESO argued that a person making an application for review of a MRA is asserting that 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, with rationale for the assertion. That means 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.²⁸

Application of Proposed Licence Amendments in MRP and non-MRP Context

OEB staff, APPrO and REASCWA each noted that the IESO's proposed licence amendments would apply to all future MRAs.

APPrO proposed that, for the purpose of MRAs related to the MRP, the better approach is for the IESO to seek an exemption from the relevant licence requirements solely for the purpose of MRAs related to MRP implementation prior to the MRP go-live date, instead of proposing a licence amendment.²⁹

In response to APPrO's suggestion, the IESO submitted that the proposed amendments provide an efficient process for any future MRA proposals.³⁰

Other Proposed Licence Amendment

As noted above, the Application also proposed amending the name of the "Stakeholder Advisory Committee" to the "Strategic Advisory Committee" ("SAC") in paragraph subsection 6.3 of the licence. None of the intervenors or OEB staff objected to this proposed amendment.

Findings

The OEB approves the IESO's application to amend section 6.3 of the IESO's licence. The IESO's amendments aim to streamline the process for reviewing market rule amendments made under section 33 of the Electricity Act.

²⁶ Application, page 3

²⁷ APPrO Submission, para 20

²⁸ IESO Reply Submission, page 8

²⁹ APPrO Submission, para 3

³⁰ IESO Reply Submission, page 8

The OEB is persuaded that the IESO's plan to submit the same documents provided to its Technical Panel and Board of Directors, in connection with their votes to recommend and approve the ultimate MRA will give the OEB and stakeholders sufficient information to review the proposed MRA.

The OEB notes that the IESO's MRA process typically involves a thorough stakeholder engagement process. Therefore, the proposal to focus the filing of information for review under section 33 of the Electricity Act to materials that directly pertain to the ultimate MRA is logical.

As the IESO has highlighted, paragraph 6.3 of its licence does not restrict the entire scope of evidence that can be filed in a section 33 application. Further, information not included in the initial filing can still be introduced if deemed relevant during the OEB's review of an MRA under section 33 of the Electricity Act. Moreover, if the OEB or intervenors require additional information regarding a proposed MRA, they are not precluded from requesting this information.

The OEB considered APPrO's suggestion to limit the IESO's licence amendment request only to MRAs pertaining to the Market Renewal Program. APPrO also pointed out that not all MRAs undergo the same rigorous stakeholder process. While these concerns are valid, the OEB is confident that the IESO's proposal to file documents directly relating to any MRA will ensure a thorough and transparent review process. The OEB is aware that not all MRAs are subject to the extensive stakeholder process that was applied to the MRP-related MRAs. However, the OEB also notes that the IESO's stakeholder engagement processes for all types of MRAs has improved significantly. Accordingly, the OEB is of the view that the IESO's proposed approach will allow for adequate scrutiny by the OEB and other stakeholders, ensuring that all relevant issues are appropriately addressed. The OEB believes that limiting the licence amendment request to the MRP is an unnecessary constraint.

Lastly, the OEB approves the IESO's requested change to paragraph 6.3 (iii) which proposes a change to the name of its advisory committee, which change is intended to better reflect the committee's significance to the IESO and market participants.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The Independent Electricity System Operator's Licence Amendment Application is granted. The amended licence is attached as Appendix A to this Decision and Order.
2. The cost eligible intervenors shall file with the Ontario Energy Board, and forward to the Independent Electricity System Operator, their cost claim by **July 30, 2024**.
3. The Independent Electricity System Operator shall file with the OEB, and forward to the cost eligible intervenors, any objection to the claimed costs by **August 6, 2024**.
4. The cost eligible intervenors shall file with the Ontario Energy Board, and forward to the Independent Electricity System Operator, any response to the objection to claimed costs by **August 13, 2024**.
5. The Independent Electricity System Operator shall pay the Ontario Energy Board's costs of and incidental to this proceeding upon receipt of the Ontario Energy Board's invoice.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2024-0128** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All

participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto July 23, 2024

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar

APPENDIX A