Ontario Energy Board | Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2024-0004

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Application for 2024 and 2025 Incremental Revenue Requirement, Expenditures, and Usage Fees

BEFORE: Michael Janigan
Presiding Commissioner

Lynne Anderson
Chief Commissioner

Pankaj Sardana
Commissioner

August 1, 2024

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1 OVERVIEW

The Independent Electricity System Operator (IESO) filed an application with the Ontario Energy Board (OEB) on January 12, 2024, under section 25(1) of the *Electricity Act, 1998* (Electricity Act), requesting approval for increases of $4.5 million and $5.4 million to its revenue requirements for fiscal years 2024 and 2025 respectively, as well as the resulting updated usage fees (Current Application). The OEB previously approved a settlement proposal for the IESO's 2023, 2024 and 2025 revenue requirement, expenditures, and fees on August 29, 2023 (Previous Application).[1]

The Current Application states that the IESO's incremental funding request for fiscal years 2024 and 2025 is intended to support specific initiatives outlined in the Minister's Letter (the Minister's Letter) to the IESO in support of the Ministry of Energy's Powering Ontario's Growth: Ontario's Plan for a Clean Energy Future plan (the POG Plan).[2] The incremental funding request is also consistent with the IESO's amended 2023-2025 Business Plan (Amended Business Plan), which was approved by the Minister of Energy.[3]

The OEB approves the IESO's request for incremental expenditures for the years 2024 and 2025 to provide support for the POG Plan in accordance with the Minister's Letter to the IESO of July 10, 2023. The OEB approves the application of the revised 2024 usage fees in the next billing cycle following approval in this Decision. The usage fees for 2025 are approved on an interim basis with final OEB approval to be determined following the filing of additional information by the IESO described elsewhere in this Decision.

[1] IESO 2023-2025 Expenditures, Revenue Requirement, and Fees, EB-2022-0318
[2] Minister's Letter to IESO, dated July 10, 2023
[3] Minister's Letter to IESO, dated November 28, 2023

2 PROCESS

The IESO filed the Current Application on January 12, 2024. On February 12, 2024, the OEB issued a combined Notice of Hearing and Procedural Order No. 1, in which the OEB approved all intervenors in the Previous Application as intervenors in the proceeding on the Current Application.[4] In this combined Notice of Hearing and Procedural Order No. 1, the OEB also made provision for a settlement conference to address whether it was appropriate for the OEB to approve the Current Application notwithstanding the Decision and Order on the Previous Application.

A settlement conference was held on February 27 and 29, 2024. The IESO, OEB staff and the following intervenors participated in the settlement conference:

- Association of Major Power Consumers in Ontario (AMPCO)
- Association of Power Producers of Ontario (APPrO)
- Canadian Manufacturers & Exporters (CME)
- Electricity Distributors Association (EDA)
- Environmental Defence Canada Inc. (ED)
- Energy Probe Research Foundation (Energy Probe)
- School Energy Coalition (SEC)
- Society of United Professionals, Local 160 (SUP)
- Vulnerable Energy Consumers Coalition (VECC)

On March 13, 2024, the IESO filed a letter with the OEB advising that the parties participating in the settlement conference were not able settle any aspects of the Current Application, including with respect to further procedural steps in this proceeding.

The OEB issued Procedural Order No. 2 on March 22, 2024, in which it set the timeline for a series of procedural steps and provided an approved issues list.

On April 10, 2024, AMPCO, CME, SEC, VECC and OEB staff filed their written interrogatories. The IESO filed its responses to all interrogatories on April 24, 2024, followed by the Argument in Chief on May 6, 2024. On May 21, 2024, CME, ED, Energy Probe, SEC, SUP, VECC and OEB staff filed their submissions. On May 22, 2024, AMPCO filed its submission. The IESO filed its reply submission on June 4, 2024.

[4] Intervenors that were determined to be eligible for costs in the proceeding on the Previous Application are also eligible for costs in the current proceeding.

3 DECISION ON THE ISSUES

This decision is structured according to the OEB-approved issues list included as Appendix B to Procedural Order No. 2 issued on March 22, 2024.

3.1 Issue 1.0 General

Issue 1.1: What is the effect of the approved settlement proposal for the IESO's 2023-2025 Expenditures, Revenue Requirement, and Fees Application (and associated OEB decision), and the timing of the Minister of Energy's July 10, 2023 Letter upon the relief now sought by the IESO?

The Settlement Proposal and Adjustment Mechanism

In the settlement proposal approved for the Previous Application (the Settlement Proposal or Settlement Agreement), the parties accepted the IESO's proposed revenue requirements for 2023, 2024 and 2025. The parties further agreed to an adjustment mechanism (the Adjustment Mechanism), which was set out in section 3.3 of the Settlement Proposal:

> The IESO's proposal, as set out in the Application and clarified through IRs, for adjustment due to a material change in circumstances is as follows:
>
> If unforeseen expenses or changes in revenues cause the IESO's balance of the FVDA to reduce below zero at the end of Year 1 of the three-year cycle (i.e., in 2023), the IESO proposes that the IESO may choose to re-apply to adjust its fees for Year 3 of the three-year cycle (i.e., for 2025). In this instance, the IESO would review whether it is appropriate and feasible to apply for revised usage fees. The IESO's review would take into account the timing of the Minister's review of a revised Business Plan, the timing of an OEB proceeding, economic conditions, the impact on ratepayers, and the cost of utilizing the IESO's line of credit....[5]

In the Current Application, the IESO stated that it is not relying on the Adjustment Mechanism. In its Argument in Chief, the IESO took the position that "the terms of the Settlement Proposal do not and, as matter of law, could not restrict the IESO's statutory right to request approval of increased usage fees for 2024 and 2025 following the Minister's approval of the amendment to the IESO's 2023-2025 Business Plan (the

[5] EB-2022-0318, Settlement Proposal, July 21, 2023, page 18; FVDA refers to the Forecast Variance Deferral Account

Amendment or Amended Business Plan)". The IESO argued that the Adjustment Mechanism was designed as a guardrail that identified specific triggers that would require the IESO to consider and assess an adjustment to its fees, and the inclusion of the Adjustment Mechanism in the Settlement Proposal in no way precluded the IESO from applying to adjust its usage fees in response to unplanned material operating or capital budget arising from changes in government policy. The IESO also noted that it is distinct from other entities regulated by the OEB in that its activities can be directed by government and, as a not-for-profit corporation without share capital, it does not have a shareholder that can absorb unplanned material operating or capital budget increases arising from government directives.[6]

OEB staff and most intervenors are of the view that the intention of establishing the Adjustment Mechanism was to limit the IESO's ability to seek approval to adjust its fees solely to the circumstances set out in the mechanism, and there is no tenable interpretation of the Adjustment Mechanism terms that would allow for revenue adjustments outside of that mechanism. Nor does the Electricity Act require the OEB to override a multi-year settlement agreement upon request from the IESO.[7]

AMPCO, CME, SEC and VECC noted that the preamble to the Settlement Proposal expressly states that it creates mutual obligations and is binding and enforceable.[8] CME submitted that when interpreting the meaning of the Settlement Agreement, the OEB should have regard to the principles of contractual interpretation.[9] SEC and VECC argued that in agreeing to the Settlement Agreement, the IESO bound itself to not bring forward an application that was inconsistent with its terms.[10]

CME further submitted that the Settlement Agreement does not restrain the requirements of section 25 of the Electricity Act, and the Electricity Act does not require the IESO to propose a usage fee that will exactly match the proposed expenditure. Thus, there is no conflict between the Settlement Agreement and the requirements of the Electricity Act.[11] SEC argued that "considering the OEB's approval of a Settlement Agreement that does not permit this fee adjustment, it would not be appropriate or reasonable to approve the application."[12] SEC further noted that the OEB permits

[6] Argument in Chief, pages 4-5
[7] ED Submission, page 2
[8] EB-2022-0318, Decision and Order, August 29, 2023, Schedule B, Settlement Proposal, page 4
[9] CME Submission, page 5
[10] SEC Submission, page 4; VECC Submission, pages 5-6
[11] CME Submission, pages 6-7
[12] SEC Submission, page 5

utilities to adjust their rates or revenue requirements subject to existing regulatory mechanisms (e.g. Z-factor), or if it was expressly part of the initial approval.[13]

AMPCO, SEC, and VECC expressed a concern related to the legitimacy and integrity of the settlement process, in the situation that the OEB accepts the requested relief.[14] SEC further submitted that since the Settlement Agreement does not permit the IESO's requested relief, the only way it can occur is by way of an amendment to the Settlement Agreement, which requires the agreement of all signatories.[15]

In response to the IESO's argument that it is unique among entities regulated by the OEB, SEC argued that the unique FVDA allows for the opportunity for a full true-up of all costs and revenues to reflect that the IESO has no shareholders.[16] VECC submitted that the Government of Ontario relies on the OEB to provide oversight as to how efficiently the IESO carries out the activities assigned to it, and in this sense the IESO is no more special than any other entity regulated by the OEB.[17]

OEB staff submitted that, as a general rule, the IESO is required to comply with the terms of the settlement that it reached. However, OEB staff agreed with the IESO that in the circumstances of this case it may be incongruous to prevent the IESO from seeking adjustments to its fees when it is forecasting a significant future deficit balance in the FVDA. OEB staff submitted that the OEB can grant relief from the parameters of the Adjustment Mechanism in the particular circumstances of this case and approve the IESO's application to adjust its fees, if it is just and reasonable to do so under section 25(4) of the Electricity Act. Given the characteristics that distinguish the IESO from other OEB-regulated entities (such as the fact that it is a not-for-profit organization without share capital, and that its activities are subject to government direction), OEB staff submitted that it is in the public interest for the OEB to consider the IESO's application to adjust its fees for 2024 and 2025 as a very limited exception to the Order that approved the Settlement Proposal.[18]

AMPCO, CME, Energy Probe, SEC and VECC submitted that the OEB should refer the IESO's proposal back to the IESO under section 25(4) of the Electricity Act.[19] CME further submitted that when referring the matter back to the IESO, the OEB should

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[13] *Ibid.*
[14] AMPCO Submission, page 5; SEC Submission, pages 7-8; VECC Submission, page 6
[15] SEC Submission, page 7
[16] SEC Submission, page 8
[17] VECC Submission, page 5
[18] OEB Staff Submission, pages 3-4
[19] AMPCO Submission, page 5; CME Submission, page 12; Energy Probe Submission, page 2; SEC Submission, page 11; VECC Submission, page 2

recommend that the IESO propose usage fees exclusive of the $9.9 million in incremental revenue, and the IESO can make a proposal about recovery of its incremental costs as part of its next multi-year application.[20] VECC further submitted that the OEB should refer the matter back with a recommendation that the IESO improve its budgeting process.[21]

In its reply submission, the IESO submitted that it does not agree with the view that it intended to limit its ability to seek approval to adjust its fees solely to the circumstances set out in the Adjustment Mechanism.[22] The IESO noted that Exhibit F-1-1 of the Previous Application contains a discussion about the possibility of the IESO applying to adjust its fees in circumstances other than those that would trigger the Adjustment Mechanism.[23] The IESO argued that the intervenors and OEB staff continue to approach its application as if the IESO were a for-profit utility subject to a multi-year incentive rate-setting mechanism.[24] The IESO noted that it rejected this comparison (in its interrogatory responses for the Previous Application) based on its status as a not-for-profit statutory corporation and the need to have its business plan approved by the Minister.[25]

The IESO also submitted that the OEB has the authority in this proceeding to approve the application under subsection 25(4) of the Electricity Act, and as a matter of law, the parties could not limit the OEB's jurisdiction to consider and approve the application through the Settlement Proposal.[26] The IESO noted that a number of intervenors cited language in the preamble of the Settlement Proposal that states it is "a legal agreement, creating mutual obligations, and binding and enforceable in accordance with its terms." The IESO argued that this preambular language did not create an enduring contractual commitment between the parties that survived beyond the conclusion of the proceeding for Previous Application, and accepting the inventors' interpretation of the preambular language would impose a contractually created limit on the OEB's statutory authority.[27] The IESO further submitted that the OEB should reject the position of some intervenors that the Settlement Proposal creates contractual commitments among the parties and

[20] CME Submission, page 4
[21] VECC Submission, page 2
[22] Reply Submission, page 5
[23] Reply Submission, page 6
[24] Reply Submission, page 1
[25] Reply Submission, page 7
[26] Reply Submission, pages 1-2
[27] Reply Submission, pages 9-10

that the application can only be approved if all signatories to the Settlement Proposal agree.[28]

The OEB described its understanding of the Adjustment Mechanism in its reasons for accepting the Settlement Proposal. The IESO submitted that these reasons have no legal effect because they were not included in the Order section of the decision.[29]

Timing of the Minister of Energy's July 10, 2023 Letter (Minister's July 10 Letter)

The IESO received the Minister's Letter outlining the work that the IESO was asked to undertake with respect to the POG Plan on July 10, 2023. The settlement conference was held on June 26-29, 2023 where the parties had reached a tentative agreement on the Previous Application. The IESO filed the Settlement Proposal with the OEB on July 21, 2023. The OEB issued its Decision and Order for the Previous Application on August 29, 2023.

The IESO submitted that the timing of the Minister's July 10 Letter has no bearing upon the relief sought in the Current Application. The IESO submitted that subsection 25(1) of the Electricity Act prohibits the IESO from submitting its expenditure and revenue requirements and proposed usage fees to the OEB for approval "until after" the Minister approves "the IESO's proposed business plan for the fiscal year". The IESO noted that in the months following the receipt of the Minister's July 10 Letter, the IESO conducted an analysis of the work required to support the POG Plan. The IESO submitted the Amendment to the Minister on September 1, 2023 and it was approved by the Minister on November 28, 2023. The IESO expressed that only after the Minister's approval of the Amendment was the IESO in a position to seek recovery of the revised revenue requirements for 2024 and 2025. The IESO also noted that it notified parties to the Settlement Proposal of the Minister's approval on December 8, 2023.[30]

In their submissions, OEB staff and some intervenors noted that the IESO was aware of the situation that there would be work associated with the POG Plan before filing the Settlement Proposal, and it is likely that the IESO could have anticipated the potential financial impact of the POG work at least prior to the OEB's decision.[31]

OEB staff submitted that the IESO could have alerted the parties to the Minister's request so that they could consider whether there were ways to account for the

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[28] Reply Submission, page 11
[29] Reply Submission, page 8
[30] Argument in Chief, page 6
[31] OEB Staff Submission, page 5; CME Submission, page 8; Energy Probe Submission, page 5; AMPCO Submission, page 2

additional work associated with the POG Plan in the Settlement Proposal. However, given that this was the first experience that the IESO has had with a multi-year fees case, OEB staff's position is that the timing of the Minister's July 10 Letter should not be considered a basis for denying the IESO's application.[32]

AMPCO, Energy Probe, SEC and VECC expressed concerns on why the IESO did not bring the issue (with the potential financial implications) to the attention of the intervenors before filing of the Settlement Proposal, or before the OEB issued its decision at the end of August.[33]

In its reply submission, the IESO submitted that it complied with its obligation to disclose the Minister's July 10 Letter pertaining to the POG Plan, and the concerns about fairness due to non-disclosure which underlie and inform that obligation do not arise in this case.[34] The IESO noted that the scope of the Previous Application was limited to the Minister-approved 2023-2025 Business Plan and not potential future amendments to the business plan. The IESO argued that the intervenors in this proceeding have not articulated how the interests they represent have been prejudiced in any tangible way by the alleged non-disclosure. The IESO is of the view that the rights of intervenors have in no way been restricted or compromised by the IESO's conduct.[35]

Findings

The OEB accepts that the IESO may apply pursuant to section 25(1) of the Electricity Act to seek an incremental revenue requirement despite the provisions of the Settlement Proposal. Upon the hearing of such application, in accordance with section 25(4) of the Electricity Act, the OEB:

> "may approve the proposed expenditure and revenue requirements and the proposed fees or may refer them back to the IESO for further consideration with the Board's recommendations."[36]

The OEB has an ongoing responsibility to ensure that the IESO's expenditures, revenue requirements and fees are reasonable and consistent with the purposes of the Electricity Act and the OEB's objectives under the Ontario Energy Board Act, 1998.

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[32] OEB Staff Submission, page 5
[33] AMPCO Submission, page 2; Energy Probe Submission, page 5; SEC Submission, page 7; VECC Submission, page 4
[34] Reply Submission, page 12
[35] Reply Submission, pages 14-17
[36] Electricity Act section 25(4)

However, the OEB's intervention to adjust fees in line with differences in the forecast of expenditures is not simply an automatic exercise.[37]

In the Current Application, the OEB approves the expenditures, revenue requirements and fees requested with conditions discussed under Issue 2.3. The OEB's approval is based on the following:

- The statutory framework supporting the Current Application set out in section 25(1) of the Electricity Act
- The IESO is forecasting a significant future deficit balance in the FVDA. This balance will accrue interest charges, and as a not-for-profit agency, this balance will be disposed of to market participants through the IESO's future usage fees.
- The expenditures that are the subject matter of the Current Application advance the purposes in section 1 of the Electricity Act including:

  > section 1(a) "to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand"; and
  >
  > section1(f) "to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service"

- The OEB recognizes that that the IESO is a non-profit entity established by statute with objectives to advance public interest goals. Its operations must respond to Ministerial directives which require expenditures to carry out.

[37] The OEB Decision on the Ontario Power Generation application for payment amounts for 2014 and 2015 in EB-2013-0321 at page 134 provided the following conclusion:

> However, the Board's power to consider and set what makes a just and reasonable rate is very broad and allows significant flexibility. The obligation to ensure that rates are always just and reasonable does not mean that the Board must examine and adjust a utility's rates on a constant basis. Most utility's rates are set on a forecast basis, for example, and invariably these forecasts turn out to be inaccurate to some extent. Absent extraordinary circumstances, the Board does not intervene to adjust rates simply because actual costs or revenues are different from what was forecast – even though the Board has the power to do so. In other words, there is a measure of "wiggle room" in a just and reasonable rate. (Referenced in *Enbridge Gas Inc v. Ontario Energy Board,* 2020 ONSC 3616 (Divisional Court).)

However, while the OEB approves this application for additional fees to meet the forecast revenue requirement, the regulatory path that the IESO has chosen to follow to obtain approval of the requests is highly questionable.

The Minister's Letter was received by the IESO on July 10, 2023. The Settlement Proposal was filed on July 21, 2023. The CEO's letter to the IESO's Board of Directors setting out the financial implications of compliance with the Minister's Letter was sent out August 28, 2023. The OEB Decision approving the Settlement Proposal was released on August 29, 2023. The Minister was provided with the amendment to the Business Plan on September 1, 2023. Approval by the Minister was secured on November 28, 2023.

The OEB's concern is that a timely disclosure of the Minister's Letter to the OEB and the parties to the Settlement Proposal might have obviated the necessity of this section 25(1) application and the resultant ill will that it appears to have generated reflected in the submissions received. Such a disclosure would likely have provoked efforts to provide for the letter's recognition by way of a delay in the OEB's approval of any Settlement Proposal until the new information with its potential for unanticipated costs was available and addressed by the settlement conference. The OEB further notes that a Settlement Proposal emanating from such a conference could well have provided for an "off-ramp" enabling consideration of the financial impact of the Minister's Letter when the appropriate cost assessments were complete and ministerial approval of the Business Plan was received. Such a course of action would have been consistent with a principal goal of a settlement conference to arrive at a resolution that was in keeping with the public interest and the agreement of all the participating parties.

The IESO has put forward a rebuttal of the contention that the impact of the Minister's Letter should have been addressed in the Settlement Agreement in EB-2022-0318. The statutory requirement for the Minister to approve the amendment to the IESO Business Plan before any financial implications of the Minister's Letter could be included in the Settlement Agreement is cited in support of the necessity to proceed by way of this section 25(1) application. The OEB agrees with the IESO that it was not permitted to file a new application until the Minister approved the Amended Business Plan. However, there was no prohibition on the IESO notifying parties to the Settlement Proposal that the Minister's Letter was likely to require additional expenditures, and it is clear that this was known prior to the OEB issuing its decision on the EB-2022-0318 proceeding.

The IESO, however, additionally submitted that the publication of the Minister's Letter as a news item on the IESO website provided sufficient disclosure. The OEB observes that one of the practical purposes of regulatory proceedings is to consolidate available information touching upon the merits of an application. The assumption that relevant information may also be obtained by ongoing scrutiny of items on applicant websites is a proposition of doubtful validity.

A successful result of settlement conferences that are convened by the OEB depends on full disclosure of all relevant information, a frank discussion of issues (a discussion that cannot be referenced in the proceeding outside of the conference) and a shared understanding of the results by the parties. In this case, the process chosen by the IESO to carry out the initiatives set out in the Minister's Letter may have significant serious consequences for future settlement conferences if parties have lost trust in the transparency and timeliness of information being provided.

Finally, the OEB does not accept the contention by the IESO that the OEB's stated understanding of reasons for the approval of the terms of the Settlement Proposal in the EB-2022-0318 proceeding have no bearing on the legal effect of the implementation of the terms.[38] In the OEB's view, the statements contained in the decision approving the Settlement Proposal form an important element of providing exactly what and why the OEB was approving the Settlement Proposal. If the IESO did not agree that these reasons appropriately described the Adjustment Mechanism, it should have clarified the matter with the OEB. Such clarification would have been particularly relevant because it was clear by this time that the IESO knew the Minister's Letter would have an impact on its 2024 and 2025 expenditures.

Issue 1.2: In the event of the OEB's approval of the relief sought by the IESO, what additional provisions to such approval should be included?

The IESO submitted that it does not believe any additional provisions are warranted as part of the OEB's approval of the relief sought given the IESO's intention to fulfill the commitments in the Settlement Proposal.[39]

OEB staff submitted that the IESO should report its final year-end balance in the FVDA for each of 2024 and 2025 regardless of the value of the balance and provide an explanation if the balance exceeds $5 million. OEB staff is of the view that such reporting will allow the IESO, intervenors and OEB staff the opportunity to scrutinize the details related to the FVDA.[40]

Energy Probe submitted that should the OEB approve the relief sought, the IESO should be directed to file, with its Draft Rate Orders for 2024 and 2025, detailed budgets

[38] Reply Submission, page 8
[39] Argument in Chief, pages 6-7
[40] OEB Staff Submission, page 6

for each of the seven initiatives identified in the Minister's July 10 Letter and then to file variance reports of 2024 and 2025 actual results on the same basis.[41]

In its reply submission, the IESO noted that the final year-end balance in the FVDA, as well as an explanation on the variances in revenues and expenses, is already reported in the IESO's Annual Report, a copy of which is provided to the OEB under section 6.2(c) of the IESO's licence.[42]

Findings

While the OEB is approving the IESO's requested revenue requirement, expenditures and fees for 2024 and 2025, the fees for 2025 are approved on an interim basis, pending an additional filing in 2025. This is explained under Issue 2.3. The OEB agrees with the OEB staff submission that IESO should report its final year-end balance in the FVDA for each of 2024 and 2025 regardless of the value of the balance and provide an explanation if the balance exceeds $5 million. All other terms and conditions of the approved Settlement Proposal remain in force and the IESO shall fulfill all of the commitments in the approved Settlement Proposal in addition to the requirements set out under Issue 2.3.

Issue 1.3: What are the implications of any approval of the IESO request upon the continuation of a three-year term for setting the IESO's fees, expenditures, and incremental revenues?

The IESO submitted that the OEB's approval of the IESO's request for revised 2024 and 2025 usage fees will not interfere with the continued operation of the three year-cycle approved by the OEB, and the key benefits of a three-year structure have been and will continue to be realized. The IESO noted that it is open to reviewing and refining the Adjustment Mechanism and other aspects of the Settlement Proposal in the 2026-2028 revenue requirement submissions based on the experience gained by the parties in implementing a three-year cycle for IESO usage fees. The IESO acknowledged that this is its first attempt at a multi-year approach and there is an opportunity to learn from this experience.[43]

OEB staff submitted that it agrees with the IESO on the benefits of the three-year fee-setting term. OEB staff submitted that in the IESO's 2026-2028 revenue requirement application, the Adjustment Mechanism and rebating mechanism should be reviewed

[41] Energy Probe Submission, page 5
[42] Reply Submission, page 21
[43] Argument in Chief, page 8

and refined based on the parties' experience gained in the Current Application and the current three-year fee-setting term. OEB staff is also of the view that full transparency from the IESO will be important to facilitate an effective fee-setting mechanism.[44]

SEC expressed concern about the impact of an approval of the Current Application on settlement processes for future IESO applications. SEC submitted that if there is never any guarantee that the IESO will not seek incremental increases beyond what has been agreed to, then there is limited utility in the process.[45] Energy Probe submitted that any approval of the IESO's request would immediately end the three-year term for setting the IESO's fees, expenditures and revenue requirements that is covered in the Settlement Agreement.[46] AMPCO also submitted that the IESO's request to amend the usage fees so close to the filing of the Settlement Proposal brings into question whether the three-year term for fee-setting is appropriate.[47]

Findings

The OEB remains in support of a three-year application for the IESO's revenue requirement, expenditures and fees for greater efficiency. The IESO acknowledged that this is the first attempt at a multi-year approach and the approach could be reviewed and refined based on the experience.

The OEB acknowledges the submissions of SEC, Energy Probe and AMPCO to the effect that the current application overrides the perceived customer protections in the EB-2022-0318 Settlement Proposal associated with future requested variances. According to these intervening parties this process has had a chilling effect on their confidence and willingness to participate in future settlement negotiations with the IESO.

It will be the responsibility of the OEB panel hearing the 2026-2028 revenue requirement, expenditure and fees application to decide whether the continuation of a three-year term is appropriate in the current environment of transition. The possibility of further ministerial directions similar to the Minister's Letter in any approval period will need to be considered.

[44] OEB Staff Submission, page 7
[45] SEC Submission, page 8
[46] Energy Probe Submission, page 5
[47] AMPCO Submission, page 2

3.2 Issue 2.0 Incremental Revenue Requirements

The IESO is seeking the OEB's approval of $4.5 million and $5.4 million in incremental expenditure and revenue requirements for 2024 and 2025 respectively – representing increases of 2.0% and 2.4% over the amounts approved by the OEB in the Decision and Order for the Previous Application. The proposed increases are to support specific initiatives outlined in the Minister's July 10 Letter in support of the provincial government's POG Plan.

Issue 2.1: Is the IESO's Fiscal Year 2024 incremental revenue requirement of $4.5 million appropriate?

Issue 2.2: Is the IESO's Fiscal Year 2025 incremental revenue requirement of $5.4 million appropriate?

The IESO submitted that the proposed incremental requirements for 2024 and 2025 are appropriate based on the evidence filed for the Current Application.[48]

OEB staff submitted that it does not oppose the 2024 incremental revenue requirement. One of the reasons noted by OEB staff for its position was the deferral account nature of the FVDA, which ensures the unused surplus (as long as being below the rebating threshold) will go towards the recovery of future operating deficits. However, OEB staff also raised concerns that the additional 2024 funding may be unnecessary and ultimately not needed by the IESO. OEB staff submitted that it took no issue with the proposed 2025 incremental revenue requirement of $5.4 million.[49]

In their submissions, SEC and VECC noted that the IESO could not provide a breakdown of the incremental budget for each of the seven specific initiatives set out for the IESO to undertake in the Minister's July 10 Letter, and the IESO's evidence is that it budgets on a business unit basis instead of on activity basis. VECC noted that the POG Plan initiatives are largely unrelated tasks, and it was reasonable to ask what the incremental requirements were for each initiative. SEC and VECC submitted that there was insufficient evidence to support the budgeted estimates for the POG Plan incremental requirements.[50]

VECC noted that the requested revenue requirement adjustment represents about 2% in the overall revenue requirement of the IESO. VECC also highlighted a few

[48] Argument in Chief, page 8
[49] OEB Staff Submission, pages 7-12
[50] SEC Submission, pages 8-9; VECC Submission, pages 9-10

forecasting variances in the IESO's 2023 FVDA, OM&A (Operating, Maintenance and Administration) expenses and 2024 FTEs. VECC submitted that the proposed incremental revenue requirement is not material and the costs fall within normal budgeting forecast variances.[51]

CME submitted that given the amount at issue, and the fact that the plan term is only three years, requiring the IESO to fund these costs through debt and recovering the costs starting in 2026 was appropriate. CME also submitted that the IESO's updated evidence indicated that there was no need for funding of the POG Plan initiatives.[52]

Energy Probe indicated that the IESO underspent its OEB-approved 2023 budget by $12.9 million yet was able to accomplish its planned 2023 work, noting that $12.9 million is more than the total requested incremental funding for 2024 and 2025. Energy Probe was of the view that the IESO's request was similar to a Z-factor for distribution rate applications, and Energy Probe was not aware of any instance where the OEB has approved a Z-factor that is as low as 2.4% of revenue requirement. Energy Probe also noted that the IESO does not have a work plan to address the seven POG Plan initiatives. Energy Probe submitted that there was insufficient evidence for the OEB to decide if the 2024 and 2025 incremental revenue requirements were appropriate.[53]

SUP submitted that the evidence substantiated that the IESO's 2024 and 2025 incremental revenue requirements were reasonable and required. SUP also submitted that if these incremental revenue requirements were granted, the FVDA will ensure that both ratepayers and IESO are held whole going forward.[54]

ED submitted that it strongly supports additional resources for the IESO and noted that an incremental investment of $9.9 million is inconsequential in light of the massive markets that the IESO administers.[55]

In its reply submission, the IESO submitted that its request for incremental revenue requirements for 2024 and 2025 was justified when the evidence presented in this proceeding is viewed in its entirety. With respect to the underspending of $12.9 million in 2023 noted by Energy Probe, the IESO noted that its 2023 total actual expenses of $218.2 million were higher than the budgeted $208.4 million, and the bottom line was an operating deficit of $4.8 million. The IESO was also of the view that its talent acquisition efforts in 2023 were effective and will continue to be in 2024 and 2025, and it was not

[51] VECC Submission, pages 6-10
[52] CME Submission, pages 9-12
[53] Energy Probe Submission, page 6
[54] SUP Submission, page 2
[55] ED Submission, pages 2-3

expecting to have challenges in filling FTEs by the end of 2024. The IESO also noted that projected FVDA balance for 2024 was based only on updated revenues without accounting for an update to expenses.[56]

The IESO submitted that the budgeting used to estimate costs for the POG Plan tasks was consistent with the IESO's past budgeting practices. The IESO noted that in the Settlement Proposal, the IESO committed to investigating alternative approaches and presenting forecast and historic spending on major activity and initiative basis in its 2026-2028 revenue requirement application, where the parties will have an opportunity to explore the appropriate approach for the IESO's budgeting with the benefit of the IESO's investigation results.[57]

Findings

As SEC and VECC have noted, a detailed description of incremental requirements associated with the IESO's response to the Minister's Letter has not been presented in this application. As well, there was doubt expressed by intervening parties whether the additional amounts were required given previous results of work undertaken by the IESO, for example, that the IESO underspent its OEB-approved 2023 budget. Nevertheless, the OEB approves the incremental revenue requirements for 2024 and 2025. The OEB is satisfied that the FVDA provides sufficient customer protections in the event of surpluses. The OEB also expects that the IESO's commitment to investigating alternative approaches to budgeting will result in better projections of project demands and expenditures in the next application.

Issue 2.3: What are the alternatives to the IESO's proposal to meet the additional revenue requirement? What alternatives did the IESO consider?

The IESO submitted that there are two alternatives to its proposal for increased usage fees for 2024 and 2025:

1) Stopping work outlined in the IESO's 2023-2025 Business Plan
2) Securing additional financing, if available, to fund the incremental POG Plan related work

The IESO noted that the first alternative would introduce risk for the IESO in meeting its strategic objectives and commitments given the 2023-2025 Business Plan remains approved by the Minister; and the second alternative has risks and is ultimately more

[56] Reply Submission, pages 17-19
[57] Reply Submission, pages 19-21

costly than updating the IESO usage fees for 2024 and 2025. The IESO further noted that as it is a not-for-profit corporation without share capital, any interest payments or additional fees incurred to finance its operations are ultimately borne by electricity ratepayers of Ontario.[58]

OEB staff submitted that it agrees with the IESO that additional financing is an alternative to the IESO's current proposal. OEB staff also agrees on the IESO's explanation about the potential future impact of additional financing on ratepayers. OEB staff acknowledged that stopping the work outlined in the 2023-2025 Business Plan is not a viable alternative to the IESO's current proposal.[59]

SEC submitted that one of the potential alternatives the IESO is not considering is finding ways to deliver the work outlined in the 2023-2025 Business Plan more efficiently, to free up additional resources to complete the POG Plan work at a lower incremental cost. SEC noted that the IESO has been able to complete its work under budget in the past. With respect to the IESO's explanation about the alternative of additional financing, SEC submitted that financing is clearly available and there are no risks. SEC compared the revised 2024 and 2025 FVDA balances under the "no fee-adjustment" scenario (updated with 2023 actuals, revised expenses and volume forecasts, and incremental financing costs for POG Plan work)[60] with the results after adjusting usage fees that IESO included in its pre-filed application. SEC noted that a lower deficit for 2024 and a slightly larger deficit for 2025 are good indicators of the lack of risk and the IESO's ability to finance the POG Plan costs if they are included in the FVDA.[61]

Energy Probe argued that any other utility that is required to deal with new initiatives would have re-prioritized all of its initiatives to see if it could meet them by re-deploying existing staff, and there is no evidence that the IESO did that. Energy Probe submitted that the IESO did not adequately consider alternatives.[62]

In its reply submission, the IESO submitted that it will continue to assess the incremental needs and work to find efficiencies to moderate the projected expenses in future years, but it is unrealistic to expect the IESO will be able to find efficiencies to cover incremental revenue requirements totaling $9.9 million over two years. The IESO noted that any additional revenues will ultimately be applied against the IESO's

[58] Argument in Chief, page 9
[59] OEB Staff Submission, page 12
[60] IESO's interrogatory response to 2-OEB Staff 2-2 b)
[61] SEC Submission, pages 10-11
[62] Energy Probe Submission, page 7

projected deficits and will reduce the associated financing costs that need to be collected from future ratepayers.[63]

Findings

Pursuant to Section 25(4) of the Electricity Act, the OEB is approving the 2024 and 2025 expenditures and revenue requirement. The 2025 usage fees are approved on an interim basis. The OEB is referring the 2025 usage fees back to the IESO for further consideration and requires the IESO to file updated information once 2024 financial information is available. The OEB recommends that the IESO consider whether the 2025 fee increase can be avoided in whole or in part. More specifically, the OEB recommends that the IESO consider (a) whether work can be reprioritized in a manner to mitigate 2025 fees, and (b) in the event the actual FVDA balance at the end of 2024 is different than what has been forecasted in this application, whether the requested 2025 fee increase is still necessary.

The OEB agrees that the work from the Minister's Letter must be done. However, it is not clear the extent to which the IESO undertook a reprioritization of its initiatives to determine how much could be accommodated within the current fees approved for 2024. On that basis, while the OEB is not denying the proposed IESO's usage fees caused by the implementation of the initiatives in the Minister's Letter, the OEB is of the view that a number of measures to ensure good regulatory practice with respect to such funding are required:

1. Usage fees are deemed interim for 2025 with final approval to be requested by the IESO within one month following the IESO Board's approval of year-end financial results. The request should be supported by either a newly approved business plan or the current business plan that is inclusive of 2025 fees.

2. As part of the filing in 2025, the IESO should provide:

    - A variance analysis between the forecast FVDA and actual at year end December 31, 2024

    - A variance analysis between 2024 proposed and actual expenditures

    - An updated expenditure forecast for 2025

    - An assessment of its plans to re-prioritize work to mitigate usage fees

[63] Reply Submission, pages 18-19

- Proposed fees for 2025 – either interim fees made final or new proposed fees for 2025
- An assessment of its processes for assessing and re-prioritizing plans to mitigate usage fees to accommodate unexpected work.

The OEB concludes that setting the fees for 2025 interim will permit a review of the balance in the FVDA and revised forecast expenditures before determining whether it is in the public interest to set final usage fees at the interim level or a different level for the remaining part of 2025. This will alleviate concerns expressed by parties that the incremental expenditures are not required. Final usage fees for 2025 would be implemented on a prospective basis. The OEB is not determining the process that a panel of Commissioners will use to hear this matter of final 2025 fees, but it is anticipated that both OEB staff and intervenors will have the opportunity to make submissions before the OEB makes its final decision.

3.3 Issue 3.0 Usage Fees

The IESO proposes the following 2024 and 2025 usage fees with the corresponding effective dates:

- usage fees of $1.4516/MWh for domestic customers including embedded generation (representing an increase of $0.0313/MWh to the currently approved 2024 usage fee) and $1.2549/MWh for export customers (representing an increase of $0.0004/MWh to the currently approved 2024 usage fee) effective on the next billing cycle following the month in which the OEB’s approval is received
- usage fees of $1.4854/MWh for domestic customers including embedded generation (representing an increase of $0.0362/MWh to the currently approved 2025 usage fee) and $1.4333/MWh for export customers (representing a decrease of $0.0065/MWh to the currently approved 2025 usage fee) effective January 1, 2025[64]

The IESO states that the revised usage fees are determined by adding the incremental revenue requirements to those approved through the OEB’s Decision and Order in the Previous Application, allocated by customer class, and dividing by the charge determinants established in the Previous Application.[65]

[64] Exhibit A, Tab 1, Schedule 4, page 4
[65] Exhibit C, Tab 1, Schedule 1, pages 1-2

Issue 3.1: Are the IESO's proposed 2024 and 2025 Usage Fees appropriate?

The IESO submitted that the proposed 2024 and 2025 usage fees will ensure that the initiatives assigned by the Minister are properly defined, staffed and prioritized amongst all the other initiatives in the 2023-2025 Business Plan. The IESO submitted that this approach ensures that the expenses associated with the incremental work are reflected in the usage fees for the year in which they are incurred, avoiding the costs associated with securing additional financing and preventing inter-generational impacts.[66]

OEB staff took no issue with the IESO applying the same methodology and charge determinants approved for the Previous Application. OEB staff submitted that the IESO's proposed 2024 and 2025 usage fees are appropriate.[67]

SEC submitted that the proposed 2024 and 2025 usage fees, which include an adjustment that is inconsistent with the approved Settlement Agreement, are not appropriate.[68]

Energy Probe submitted that "the proposed 2024 and 2025 usage fees are not appropriate since there is insufficient evidence to determine if the 2024 and 2025 incremental revenue requirements are appropriate."[69]

In reply, the IESO reiterated the submissions it made in relation to Issue 3.1 in its Argument in Chief.[70]

Findings

The OEB approves the usage fees that apply the same methodology and charge determinants approved in the EB-2022-0318 proceeding. The decision of the IESO to respond to the Minister's Letter by way of a section 25(1) application and its effect upon the Settlement Proposal has been examined elsewhere in this Decision. The OEB has provided in this Decision for the approved usage fees to be interim for 2025 with final approval to be considered by the OEB following the filing of information and plans described under Issue 2.3 in this Decision.

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[66] Argument in Chief, page 10
[67] OEB Staff Submission, page 13
[68] SEC Submission, page 11
[69] Energy Probe Submission, page 7
[70] Reply Submission, page 21

Issue 3.2: Is the proposed effective date of the next billing cycle following the month in which OEB approval is received for the IESO's 2024 Usage Fees appropriate?

The IESO proposes to continue charging the approved 2024 usage fees until the OEB has approved the revised 2024 usage fees. The IESO confirmed that it remains the IESO's intention to apply its revised 2024 usage fees in the next billing cycle following the OEB's approval, and it is not requesting that the revised 2024 usage fees be applied retroactively for any period of time.[71]

OEB staff submitted that the proposed effective date of the next billing cycle following the month in which OEB approval is received for the IESO's 2024 usage fees is appropriate.[72]

Findings

The OEB approves the application of the revised 2024 usage fees in the next billing cycle following approval in this Decision. There will be no retroactive application of the 2024 revised fees.

[71] Argument in Chief, page 11
[72] OEB Staff Submission, page 13

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The IESO’s proposed incremental expenditure and revenue requirements for 2024 and 2025 are approved.

2. The IESO’s proposed usage fees for 2024 of $1.4516/MWh for domestic customers including embedded generation and $1.2549/MWh for export customers are approved on a final basis, effective on the next billing cycle following the release of this Decision and Order.

3. The IESO’s proposed usage fees for 2025 of $1.4854/MWh for domestic customers including embedded generation and $1.4333/MWh for export customers are approved on an interim basis, effective January 1, 2025.

4. IESO should report its final year-end balance in the FVDA for each of 2024 and 2025 regardless of the value of the balance and provide an explanation if the balance exceeds $5 million.

5. All other terms and conditions of the approved Settlement Proposal remain in force and the IESO shall fulfill all of the commitments in the approved Settlement Proposal in addition to the requirements set out under Issue 2.3 herein.

6. The IESO’s proposed 2025 fees are referred back to the IESO for further consideration in light of the recommendations set out in this Decision and Order. The IESO must file the additional information required above with the OEB no later than one month after the IESO’s Board of Directors approves the year-end financial results for 2024.

7. Cost eligible intervenors shall file with the OEB, and forward to the IESO, their respective cost claims by **August 8, 2024**.

8. The IESO shall file with the OEB, and forward to cost eligible intervenors, any objections to the claimed costs by **August 15, 2024**.

9. Cost eligible intervenors shall file with the OEB, and forward to the IESO, any responses to any objections to cost claims by **August 22, 2024**.

10. The IESO shall pay the OEB’s costs of and incidental to this proceeding upon receipt of the OEB’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-2024-0004** 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 August 1, 2024

ONTARIO ENERGY BOARD

Nancy Marconi Digitally signed by Nancy Marconi
Date: 2024.08.01 11:51:26 -04'00'

Nancy Marconi
Registrar