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November 22, 2024

By Email and RESS

File No.: 101926.1173

Ontario Energy Board
2300 Yonge Street, 26th Floor
Toronto ON M4P 1E4

Attention: Nancy Marconi, Registrar

Dear Ms. Marconi:

**Re: Capital Power Corporation, Thorold CoGen L.P., Portlands Energy Centre L.P. dba Atura Power, St. Clair Power L.P., TransAlta (SC) L.P. (collectively, the “NQS Generation Group” or “Applicants”) Application for Review of Amendments to the Independent Electricity System Operator Market Rules
Ontario Energy Board File Number: EB-2024-0331**

We are writing in respect of the Board’s recently issued Procedural Order No. 1 and the letter from counsel for the Applicants dated November 14, 2024.

We thank the Board for scheduling a pre-hearing conference, which in our view will be helpful in ensuring that the application proceeds efficiently and in accordance with section 33 of the *Electricity Act, 1998* (the “**Electricity Act**”).

This letter sets out the IESO’s position on each of the matters identified in Procedural Order No. 1 in advance of the pre-hearing conference.

Intervention Requests

To the IESO’s knowledge, the Board received intervention requests from FirstLight, the Association of Power Producers of Ontario (“**APPrO**”), HQ Energy Marketing Inc. (“**HQEM**”), the School Energy Coalition (“**SEC**”) and the Consumers Council of Canada (the “**CCC**”).

As stated in our letter dated November 11, 2024, it is the IESO’s position that the Board should rigorously apply Rule 22.02 when considering the intervention requests and impose appropriate conditions on the participation of any intervenors that are granted status.

The IESO’s position on each of the intervention requests is as follows:

- *FirstLight* – The IESO opposes the granting of intervenor status to FirstLight. FirstLight seeks to participate so that it can expand the scope of this section 33 review beyond non-quick start gas generators to include “distribution-connected generation facilities” that “supply electricity to the IESO-administered grid (through the LDC/Hydro One) pursuant to energy supply contracts entered into with the Ontario Power Authority (now IESO) under the Feed-in-Tariff (“FIT”) program.” Although it had an opportunity to do so, FirstLight did not commence its own section 33 review of the MRP Amendments. FirstLight should not be permitted to utilize this proceeding to advance issues that are not related to the allegations made by the Applicants and could have been raised in a separate section 33 review. FirstLight’s request cannot be accommodated by restricting its participation in this proceeding.
- *APPrO* – The IESO opposes the granting of intervenor status to APPrO, unless appropriately limited. Most, if not all, of the Applicants are APPrO members and will therefore sufficiently represent the interests of any other non-quick start gas generators that are members of APPrO. APPrO’s stated interest in this section 33 review is that “[t]he interaction of contract language and Market Rules goes well beyond the Non-Quick Start GasFired Generators who filed the current Application.” Any other members of APPrO could have filed their own section 33 review applications but elected not to do so. APPrO should not be permitted to expand the scope of this section 33 review to include other generators. In the event the Board grants intervenor status to APPrO, it should be on the basis that APPrO will not be permitted to expand the scope of the proceeding or file evidence.
- *HQEM* – The IESO opposes the granting of intervenor status to HQEM. HQEM’s intervention request contains generic statements about its participation in the IESO market and does not demonstrate a substantial interest in this proceeding. In the event the Board grants intervenor status to HQEM, it should be on the basis that HQEM will not be permitted to file evidence.
- *SEC and CCC* – The IESO does not oppose the granting of intervenor status to SEC and CCC on the basis that these parties do not propose to expand the scope of this proceeding and will not be filing any evidence as stated in their respective requests.

Cost Responsibility

The IESO agrees with the Board’s proposal for the IESO to be responsible for the Board’s costs of this proceeding and that the Applicants be responsible for their costs and the costs of intervenors that are granted cost eligibility.

Issues List and Scope of Proceeding

As stated in our letter of November 11, 2024, it is the IESO’s view that the only two issues in this proceeding are those identified in Procedural Order No. 1. The IESO opposes the addition of any new issues by the Applicants or any intervenor.

The Applicants’ letter demonstrates that there are significant differences between the IESO and the Applicants with respect to the proper scope and conduct of this proceeding. The Applicants,

maintain their request for extensive document discovery and augment their request with additional context for why the categories of documents are requested. In the circumstances, the IESO thought it would assist the Board and the Applicants to provide in advance of the pre-hearing conference scheduled for November 26, 2024, the IESO's position in writing on why most of the Applicants' claims and requested document discovery are irrelevant and beyond the scope of a section 33 review. We enclose a copy of the IESO's brief written submissions, together with supporting documents.

Evidentiary Matters

The IESO requests that the Applicants, in addition to those intervenors that wish to present evidence, be prepared at the prehearing conference to present an outline of their proposed evidence and its relevance to the issues that are within the scope of the Board's review. The burden of proof in a market rule amendment review is on the applicant and the Applicants have had a long time to prepare their Application and to consider the evidence they intend to file in support of their Application. This will assist the Board in assessing the relevance of the proposed evidence and will assist the IESO and other parties in understanding what responding evidence may be required, which is important given the 120-day timeline and the very short windows for preparing and delivering responding evidence.

With respect to the Applicants' request for additional document disclosure, the Applicants in their letter dated November 14, 2024 supplemented their request under section 21 of the *Ontario Energy Board Act, 1998* by adding "context" to the list of requested items in Appendix A. The added context is replete with references to the IESO's intentions, analysis and considerations – some of which would date back more than five years – and serves to highlight that these requests relate to the process followed by the IESO in making the MRP Amendments and negotiating amendments to the Applicants' out of market contracts. The IESO's position that these materials are irrelevant and out of scope is addressed in the IESO's enclosed written submissions, specifically in Appendix A to the IESO's submissions wherein the IESO responds to each of the document categories requested by the Applicants.

Procedural Schedule

The IESO has reviewed the Board's preliminary schedule. The IESO generally agrees with the Board's preliminary schedule, subject to extending the date for the IESO's evidence from December 31, 2024 to January 6, 2025, and making some minor consequential changes to the proposed dates for the Technical Conference and the hearing. The IESO also proposes adding a day for the presentation of oral argument. The IESO proposed these changes to the Applicants and Board staff on November 20, 2024, but has not received a response from the Applicants. The IESO has attached a revised proposed schedule as an appendix to this letter.

We will be prepared to further address these matters at the prehearing conference scheduled for November 26, 2024.

Yours truly,

A handwritten signature in blue ink, appearing to read "Glenn Zacher", with a stylized flourish at the end.

Glenn Zacher

/sc

cc. Patrick Duffy
Lesley Mercer
John Vellone, Counsel for Applicants
Colm Boyle, Counsel for Applicants
Proposed intervenors

APPENDIX A

Proposed Hearing Schedule – EB-2024-0331

Event	Board's Proposed Preliminary Schedule	IESO's Proposed Schedule
Pre-Hearing Conference	November 26, 2024	November 26, 2024
Applicant Evidence	December 11, 2024	December 11, 2024
OEB staff and intervenor evidence	December 18, 2024	December 18, 2024
IESO's responding evidence	December 31, 2024	January 6, 2025
Technical Conference	January 6 - January 7, 2025	January 9 - January 10, 2025
Hearing	January 13 – January 15, 2025	January 15 – January 17, 2025
Deadline for Undertakings Responses	January 20, 2025	January 20, 2025
Applicant's argument	January 27, 2025	January 27, 2025
Staff and intervenor submissions	February 3, 2025	February 3, 2025
IESO reply argument	February 10, 2025	February 10, 2025
Presentation of Oral Arguments	N/A	February 14, 2025
OEB Final Decision	By March 7, 2025	By March 7, 2025