Independent Electricity System Operator Licence

EI-2013-0066

Valid Until

September 25, 2033

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Ontario Energy Board

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LIST OF AMENDMENTS

OEB File No.	Date of Amendment
EB-2014-0216	July 31, 2014
EB-2015-0045	March 19, 2015
EB-2018-0198	July 19, 2018
EB-2020-0186	August 10, 2020
EB-2020-0163	March 3, 2021
EB-2023-0120	July 18, 2023
EB-2024-0128	July 23, 2024

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1 Definitions

In this Licence:

"**Act**" means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

"Agreement" means an agreement as defined in section 8.1 of this Licence.

"**ancillary services**" means services necessary to maintain the reliability of the IESO-controlled grid, including, but not limited to, frequency control, black start capability, voltage control, reactive power, operating reserve and any other such services established by the Market Rules;

"**Board**" means the Ontario Energy Board;

"**Board of directors**" means the Licensee's board of directors referred to in section 10 of the *Electricity Act*;

"GCR" means the general conduct rule set out in Market Rule Chapter 1, section 10A (or any successor provision);

"**Electricity Act**" means the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

"**IESO-controlled grid**" means the transmission systems with respect to which, pursuant to agreements, the IESO has authority to direct operations;

"**Licensee**" means Independent Electricity System Operator established under the *Electricity Act*, and IESO has the same meaning;

"**Market Rules**" means the rules made under section 32 of the *Electricity Act*;

"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.

"**Market Surveillance Panel**" means the Market Surveillance Panel continued under Part II of the Act;

"**OPGI**" means Ontario Power Generation Inc.;

"**Regulations**" means regulations made under the *Act* or the *Electricity Act*;

"**reliability standard**" means a standard or criterion, including an amendment to a standard or criterion, relating to the reliable operation of the integrated power system that is approved by a standards authority;

"**sanction order**" means an order issued under Market Rule Chapter 3, section 6.2.7 (or any successor provision);

"**standards authority**" means the North American Electric Reliability Corporation or any successor thereof, or any other agency or body designated by regulation that approves

standards or criteria applicable both in and outside Ontario relating to the reliability of transmission systems;

"**transmission system**" means a system for transmitting electricity, and includes any structures, equipment or other things used for that purpose;

"**transmit**" with respect to electricity, means to convey electricity at voltages of more than 50 kilovolts;

"**transmitter**" means a person who owns or operates a transmission system.

2 Interpretation

2.1 In this Licence words and phrases shall have the meaning ascribed to them in the Act or the *Electricity Act*. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of the licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this licence where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens. Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

3 Authorization

3.1 The Board, in the exercise of the powers conferred by Part V of the Act, licenses the Licensee to direct the operation of the transmission system(s) in accordance with Agreements and the Market Rules, subject to the conditions set out in this Licence.

3.2 The Board, in the exercise of the powers conferred by Part V of the Act, also licenses the Licensee, to exercise its powers and perform its duties under the *Electricity Act*, and to operate the IESO administered markets and to do such things as may be permitted by the Market Rules or required to be done by the Licensee in furtherance of the establishment and operation of the market(s) to be administered by the Licensee, subject to the conditions set out in this Licence.

4 Licence Fees and Assessment

4.1 The Licensee shall pay any fees charged by the Board or amounts assessed by the Board.

5 Term of Licence

5.1 This Licence shall take effect on September 26, 2013 and terminate on September 25, 2033. The Board may extend the term of this Licence.

6 Provision of Information to the Board

6.1 The Licensee shall provide, in the manner and form determined by the Board, such information as the Board may require from time to time.

6.2 Without limiting the generality of paragraph 6.1, the Licensee shall, unless a Market Rule or other condition of this Licence otherwise requires:

6.2.1 provide such information as the Board may require from time to time to enable the Board to monitor the Licensee's compliance with the conditions of this Licence and any other legislative or regulatory requirements set out in this Licence;

6.2.2 notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the Licensee's ability to comply with this Licence, its financial integrity, or its ability to carry out its responsibilities under the *Electricity Act*, as soon as practicable after the occurrence of any such change, but in any event within fifteen days of the date upon which such change becomes known to the Licensee;

6.2.3 provide the Board with a copy of the annual report of the Licensee as submitted to the Minister pursuant to subsection 25.3(1) of the *Electricity Act*;

6.2.4 post the annual report of the Licensee as submitted to the Minister pursuant to subsection 25.3(1) of the *Electricity Act* and the Licensee's quarterly financial statements on its public website;

6.2.5 provide the Board, on or before the end of each calendar year, with the status of actions taken by the Licensee further to all recommendations addressed to the Licensee in any report issued by the Market Surveillance Panel in that year and the preceding four calendar years to the extent that they remain outstanding and, where no action has been taken in relation to a recommendation, the rationale for not taking action. The Licensee's response to recommendations in any report issued by the Market Surveillance Panel within 30 days of the end of the calendar year will be included in the succeeding report;

6.2.6 provide the Board, on or before the end of each calendar year, with a summary of any significant activities related to the development of reliability standards undertaken by the Licensee pursuant to subsections 6(1)(d) or (e) of the *Electricity Act* to the extent that such information has not already been provided under section 6.4 below;

6.2.7 provide the Board with any By-law amending the Licensee's Governance and Structure By-law, as referred to in section 22.(3) of the *Electricity Act*, and any notice given by the Minister under section 22.(4) of the *Electricity Act* within 15 days of the date on which the By-law is made by the Board of directors, and within 15 days of the date written notice is given to the Board of directors, as applicable;

6.2.8 provide the Board with a description of any material changes to processes established by the Licensee under section 18 of the *Electricity Act*;

6.2.9 provide the Board with any directions to the Licensee from the Minister, whether contained in a Ministerial directive or other document; and

6.2.10 provide the Board with the verified results of each Distributor's Province-Wide Distributor CDM Programs and Local Distributor CDM Programs.

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 amendment that is subject of the application, including any covering memoranda;

ii. all written submissions received by the Licensee with respect to the Market Rule Amendment Proposal;
iii. minutes, meeting notes, and relevant materials from all stakeholder meetings (including meetings of the Licensee's Strategic Advisory Committee) and of all meetings of the Licensee's Technical Panel concerning the Market Rule Amendment Proposal;
iv. a list of all materials tabled before the Board of Directors of the Licensee in conjunction with the Market Rule Amendment Proposal and a copy of all such materials other than those already captured by item (i) above;
v. a copy of the decision of the Board of Directors of the Licensee adopting the amendment;
vi. any final report conducted or commissioned solely by the Licensee, and not subsequently circulated outside of the IESO, comprising an analysis relating to the costs and benefits of the amendment to the extent not already captured by any of the items above;
vii. all materials (excluding correspondence and draft materials) relating to the development and consideration of options that involved alternatives to the amendment, to the extent not already captured by any of the items above, which are authored or commissioned solely by the Licensee and not subsequently circulated outside of the IESO; and
viii. any materials (excluding correspondence and draft materials) relating to the consistency of the amendment with the purposes of the *Electricity Act*, to the extent not already captured by any of the items above, which are authored or commissioned solely by the Licensee and not subsequently circulated outside of the IESO.

6.4 The Licensee shall provide the Board, within seven business days of the posting of a reliability standard under section 36.2(1) of the *Electricity Act*, with:

i. a summary that describes the purpose of the standard;
ii. the class(es) of Ontario market participants to which the standard will apply;
iii. the anticipated technical impact in Ontario;
iv. the magnitude of costs associated with implementation, if known by the Licensee;
v. the level of IESO support for the reliability standard including any Ontario market participant opposition, if known by the Licensee, and the result of the final vote of the Registered Ballot Body of NERC or NPCC; and
vi. any salient history including identification of a non-ANSI standard.

6.5 The Licensee shall notify the Board promptly upon becoming aware that the Federal Energy Regulatory Commission has issued an order approving a reliability standard or remanding it back to the relevant standards authority.

6.6 Where the Licensee engages in a consultation regarding a non-ANSI standard, the Licensee shall provide the Board with a copy of the notice of its determination pursuant to section 1.2.7 of Chapter 5 of the Market Rules immediately after it is published, and that includes:

i. a description of the consultation process, including the identity of the market participants that were consulted;
ii. a summary stakeholder feedback expressed during the consultation;
iii. the outcome of the consultation; and
iv. where the outcome is the rejection of the non-ANSI standard, an indication of whether a "made in Ontario" standard is being considered in lieu of the non-ANSI standard.

7 Obligation to Comply with Legislation and Market Rules

7.1 The Licensee shall comply with all applicable provisions of the Act, the *Electricity Act* and Regulations.

7.2 The Licensee shall comply with all applicable provisions of the Market Rules.

7.3 Where the Licensee is satisfied that the GCR has been breached, prior to making a sanction order and if the market participant under investigation so elects, the Licensee shall apply to the Board to:

7.3.1 make a determination as to whether the GCR has been breached; and

7.3.2 make findings of fact relevant to the imposition of one or more sanction orders by the Licensee.

Where the Board determines that the GCR has been breached, subject to any rights of appeal or review, the Board shall return the matter to the Licensee to determine a sanction order.

8 Transmission System Agreement

8.1 The Licensee may enter into an agreement ("Agreement") with any transmitter providing for the direction by the Licensee of the operation of the transmitter's transmission system. Following a request by the Licensee to enter into an Agreement, the Licensee and the transmitter shall enter into an Agreement within a period of 90 days, unless extended with leave of the Board. The Agreement shall be filed with the Board within 20 days of its completion.

8.2 The agreements referred to in paragraph 8.1 shall cover all such transmission assets and facilities as may, in the opinion of the Licensee, be necessary to enable the Licensee to meet its obligations under the *Electricity Act* and the Market Rules.

8.3 Where necessary for the purpose of the agreements referred to in paragraph 8.1, and upon request by the Licensee, the Board may in the exercise of the powers conferred by section 84 of the Act determine that a system, or part of a system, that is or forms part of a distribution system is a transmission system or part of a transmission system.

8.4 Where the Licensee and any party referred to in paragraph 8.1 are unable to reach agreement upon the terms and conditions of a proposed Agreement, or an amendment to an Agreement, the matter shall be determined by the Board.

9 Transmission System Access

9.1 The Licensee shall take all reasonable steps to ensure non-discriminatory access is provided to the IESO-controlled grid for all generators, retailers, and consumers, in accordance with the Licensee's responsibility for directing the operation of the transmission systems, the Market Rules, applicable reliability standards and the conditions of this Licence.

9.2 In directing the operation of the IESO-controlled grid, the Licensee may give direction to market participants and other persons in accordance with Agreements and the Market Rules.

10 Must Run Contracts

10.1 The Licensee shall, as needed, identify in accordance with the Market Rules facilities that it may require to operate in specific ways for reasons of system reliability, other than for reasons of a lack of overall adequacy of the IESO-controlled grid, regardless of whether dispatch data has been submitted with respect to such facilities.

10.2 The Licensee shall, as needed, negotiate and conclude agreements ("reliability must-run contracts") with the persons licensed by the Board in respect of the facilities identified pursuant to paragraph 10.1.

10.3 Where the Licensee and any party referred to in paragraph 10.2 are unable to reach agreement upon the terms and conditions of a proposed Agreement, or an amendment to an Agreement, the matter shall be determined by the Board.

11 Ancillary Services Contract

11.1 The Licensee shall, as needed, identify in accordance with the Market Rules the facilities that it may require to provide contracted ancillary services.

11.2 The Licensee shall, as needed, negotiate and conclude agreements ("ancillary services contracts") with the persons licensed by the Board in respect of the facilities identified pursuant to paragraph 11.1.

11.3 Where the Licensee and any party referred to in paragraph 11.2 are unable to reach agreement upon the terms and conditions of a proposed Agreement, or an amendment to an Agreement, the matter shall be determined by the Board.

12 Procuring Ancillary Services Through Markets

12.1 The Licensee may, as needed, procure any category of ancillary services in accordance with the Market rules when it determines that, based on any number of independently controlled and competing alternatives and other circumstances at it discretion, such services may be provided more efficiently and cost-effectively through a market-based process for that category of ancillary services.

12.2 (Note: Market based ancillary services are currently comprised of Operating Reserves only, but the principles outlined herein suggest a framework that could be used for other market based ancillary services.)

Unless the IESO has determined, based on the number of independently controlled competing alternatives and other circumstances in its discretion, that a competitive market for any category of operating reserves (i.e. 10-minute and 30-minute) exists, OPGI shall be required to comply with the following requirements:

12.2.1 subject to (a.1), the price to be offered by OPGI associated with each category of OPGI operating reserve services will not exceed a cap to be contained in an agreement to be negotiated between OPGI and the IESO, which cap will be designed, taking into account the relevant IESO market rules, to compensate OPGI for its actual cost of providing such operating reserve services, including additional operating and maintenance costs, additional fuel costs, additional opportunity costs associated with providing such operating reserve services from OPGI hydroelectric generation units, and a reasonable rate of return on incremental capital needed to provide such operating reserve services, and which agreement shall require OPGI to offer the maximum available amount of each category of operating reserve services, consistent with good utility practices, for each OPGI generation unit capable of providing such services;

(a.1) notwithstanding (a) above, save and except where the IESO has advised OPGI that specific units are required to offer in for reliability, OPGI may offer less than the maximum available amount of any category of operating reserve where this is necessary in order for OPGI to satisfy its obligations under, or to give effect to, any shareholder declaration or resolution of the Minister of Energy in effect at the relevant time relating to, or any Regulation made under the Environmental Protection Act (Ontario) relating to, carbon dioxide (CO2) emissions arising from the use of coal at OPGI's coal-fired generation stations;

12.2.2 subject to (a.1), in the event that the agreement referred to in (a) above cannot be reached, the terms of such agreement shall be determined through binding commercial arbitration by a mutually agreed independent arbitrator on agreed terms of arbitration;

12.2.3 subject to (a.1), in the event that either OPGI or the IESO subsequently determines that the operation of the market is such that the intent of the agreement referred to in (a) or (b) above is materially frustrated, then OPGI and the IESO shall negotiate amendments (which may be retroactive) to the terms of such agreement with a view to correcting such situation and, in the event that they cannot agree on such amendments, the amendments, if any, shall be determined through binding commercial arbitration by a mutually agreed independent arbitrator on agreed terms of arbitration;

12.2.4 subject to (a.1), OPGI shall comply with the terms of the agreement referred to in (a) or (b) above, as it may be amended under (c) above;

12.2.5 subject to (a.1), pending reaching an agreement, or pending the resolution of any dispute, the IESO may at any time set the price cap and terms on which OPGI must provide any category of operating reserve services, subject to later adjustment upon final agreement or final resolution of the dispute with interest at the Prime Rate, calculated and accrued daily; and

12.2.6 subject to (a.1), if the IESO's market rules at any time are such that the market clearing price for a category of operating reserve services does not include both the offer price and the opportunity cost of the marginal unit providing the service, and the agreement referred to in (a) or (b) above has not taken such factors into account, then the agreement referred to in (a) or (b) above shall be considered to have been materially frustrated for purposes of (c) above.

12.3 Notwithstanding paragraph 12.1, the Licensee shall honour all existing agreements entered into prior to the issuance of this licence, with respect to the provision of an ancillary service, until such time that the agreement expires or is terminated by the mutual consent of the parties thereto.

13 Fees and Charges

13.1 The Licensee may impose fees and charges to recover the cost of its activities in accordance with an order of the Board, or as permitted by law.

14 Books of Accounts and Financial Reporting

14.1 The Licensee shall maintain proper books of account and adhere to generally accepted accounting practices, and shall maintain such financial records or accounts as the Board may require from time to time. The Licensee shall notify the Board of any material change to its accounting procedures.

14.2 Unless otherwise provided by law, the Licensee shall establish and maintain, in accordance with the direction or orders of the Board where applicable, such variance accounts as may be necessary to record all amounts payable or receivable by it under the *Act* or the *Electricity Act*.

14.3 Unless otherwise provided by law, the Licensee shall, no less than 60 days before the beginning of the Licensee's fiscal year submit the Licensee's proposed expenditure and revenue requirements for the following fiscal year and the fees it proposes to charge during that year to the Board for review and approval. The Licensee's submission shall include a copy of the Licensee's annual business plan for the fiscal year as approved by the Minister under section 24 of the *Electricity Act.*

15 Administration Rates[1]

15.1 The IESO shall enter into and comply with a settlement agreement with OPGI consistent with the provisions in Schedules A and B to this licence.

16 Access to Other Markets

16.1 The IESO shall use all reasonable efforts consistent with the purposes of the *Electricity Act*, including by seeking to make appropriate amendments to the Market Rules related to transmission service and connection and access to the IESO-controlled grid, to ensure that Ontario generators have access to customers in interconnected jurisdictions equivalent to the access afforded to generators in those other jurisdictions.

[1] This licence condition, including Schedules A and B, originated from a Ministerial Directive dated March 16, 1999 and approved by Order in Council 600/99 dated March 24, 1999. The rebate mechanism referred to in the Schedules was effective until April 30, 2009.

17 Market Power Mitigation Monitoring[2]

17.1 The Market Surveillance Panel of the IESO shall, in carrying out its duties under the *Electricity Act*, and the Market Rules, have due regard to the conditions of licence of OPGI and, in particular, Paragraph 3 of Part 3 of the licence of OPGI.

18 Maintaining Confidentiality[3]

18.1 Subject to the Market Rules and applicable law, the IESO shall use its reasonable efforts to ensure that it maintains all data contained in the Model Output Data that represents q^i_h data or $FMRC_h$ data in confidence (with all such terms having the meanings ascribed thereto in paragraph 1 of Part 3 of OPGI's licence).

19 Communication

19.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.

19.2 All official communication related to this Licence must be in writing.

19.3 All written communication is to be regarded as having been given by the sender and received by the addressee:

19.3.1 when delivered in person to the addressee by hand, by registered mail or by courier;

19.3.2 10 business days after the date of posting by regular mail; and

19.3.3 when received by facsimile or electronic transmission by the addressee, according to the sender's transmission report.

20 Copies of the Licence

20.1 The Licensee shall:

20.1.1 post this Licence on its website and make a copy of this Licence available for inspection by members of the public at its office during normal business hours; and

20.1.2 provide a copy of this Licence to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

[2] This licence condition originated from a Ministerial Directive dated March 16, 1999 and approved by Order in Council 600/99 dated March 24, 1999. The Market Surveillance Panel was transferred to the Ontario Energy Board effective January 1, 2005.
[3] This licence condition originated from a Ministerial Directive dated March 16, 1999 and approved by Order in Council 600/99 dated March 24, 1999. The corresponding provision is in Part 2 of OPGI's licence, and not Part 3.

21 Regional Planning

21.1 For the purposes of this section 21:

"Integrated Regional Resource Plan" means a document prepared by the Licensee that identifies the appropriate mix of investments in one or more of conservation and demand management, generation, transmission facilities or distribution facilities, or other electricity system initiatives in order to address the electricity needs of a region in the near- (up to 5 years), mid- (5 to 10 years), and long-term (10 to 20 years);

"integrated regional resource planning process" means a planning process led by the Licensee for the purpose of preparing an Integrated Regional Resource Plan for a region;

"lead transmitter" means a licensed transmitter that is leading a regional planning process in a region;

"region" means an area within which the lead transmitter's transmission system is located, in whole or in part, and that has been designated as such by the lead transmitter, in consultation with the Licensee, under section 3C.2.2(a) of the Transmission System Code, for regional planning purposes;

"Regional Infrastructure Plan" means a document prepared by the lead transmitter that identifies investments in transmission and/or distribution facilities that should be developed and implemented on a coordinated basis to meet the electricity infrastructure needs within a region;

"regional infrastructure planning process" means a planning process led by the lead transmitter in accordance with section 3C of the Transmission System Code for the purpose of preparing a Regional Infrastructure Plan for a region; and

"regional planning" means a planning process involving licensed transmitter(s), licensed distributor(s), and the Licensee for the purpose of determining whether a Regional Infrastructure Plan and/or an Integrated Regional Resource Plan is required for a region and, where required, developing or updating a Regional Infrastructure Plan and/or an Integrated Regional Resource Plan.

21.2 Regional Planning Obligations

21.2.1 The Licensee shall, in consultation with licensed transmitters and licensed distributors in a region, carry out its regional planning obligations.

21.2.2 For the purposes of section 21.2.1, the Licensee shall:

(a) Complete a scoping assessment to determine the appropriate regional planning approach, for a region, within 90 days of being notified by the lead transmitter that regional planning is necessary; specifically, whether an integrated regional resource planning process is required first or a regional infrastructure planning process should proceed immediately. The Licensee shall provide the scoping assessment outcome report to all licensed distributors and licensed transmitters in the region and post it on its website upon completion;

(b) Complete an Integrated Regional Resource Plan, within 18 months of determining that an integrated regional resource planning process is necessary for a region, and inform the lead

transmitter and participating distributors of any potential investment in transmission and/or distribution facilities that are required to meet the electricity needs of the region over the next twenty years. The Licensee shall provide the Integrated Regional Resource Plan to all licensed distributors, licensed transmitters and municipalities in the region and post it on its website upon completion. Where an Integrated Regional Resource Plan has not been completed within 18 months, the Licensee shall take no longer than two years to complete the Integrated Regional Resource Plan and shall notify the Board in writing explaining the reason(s) an Integrated Regional Resource Plan could not be completed within 18 months, identify the applicable region and the additional time required, up to a maximum of six additional months;

(c) Where the Licensee has not completed an Integrated Regional Resource Plan and has determined an urgent investment in transmission and/or distribution facilities needs to be advanced from the integrated regional resource planning process to meet a near-term need, the Licensee shall immediately complete an Urgent Letter that notifies the lead transmitter and participating distributors of any investment in transmission and/or distribution facilities that are necessary to meet the electricity needs of the region over the next five years;

(d) Participate in the regional infrastructure planning process, as required by the lead transmitter, where a Regional Infrastructure Plan is determined to be necessary for a region;

(e) Provide the lead transmitter with any information that the transmitter requests for regional planning purposes, within 30 days of a request or a period of time that the Licensee and the lead transmitter agree upon;

(f) In consultation with the lead transmitter, review the boundaries of the regions in the Province no less than once every five years to determine whether they need to be modified;

(g) Provide an annual report to the lead transmitter, on October 1st of each year, identifying the status of any investments in conservation and demand management, generation and/or other electricity system initiatives, for each region, in the lead transmitter's transmission system, where an Integrated Regional Resource Plan has been completed; and

(h) Where there is a consensus among the Licensee, the lead transmitter and the applicable licensed electricity distributors in a region that a material change has occurred during the Regional Infrastructure Planning process, the Licensee shall complete an expedited Integrated Regional Resource Plan for the region or sub-region, as applicable, within 12 months of reaching that consensus and provide a report to all licensed transmitters and licensed distributors in the region, in a form that can be used by the lead transmitter as an Addendum to the applicable Regional Infrastructure Plan. The Licensee shall also post the report on its website upon completion. Where an expedited Integrated Regional Resource Plan has not been completed within 12 months, the Licensee shall notify the Board in writing explaining the reason(s) it could not be completed within 12 months, and identify the applicable region and the additional time required, up to a maximum of three additional months.

22 Cyber Security Information Sharing

22.1 For the purposes of section 22:

Cyber Security refers to measures protective of the integrity of networks, systems, and electronic data from attack, damage, or unauthorized use or access.

Cyber Security Situational Awareness refers to the accurate perception of the elements of a cyber-threat, in the time and environment in which it operates, the associated risks and impact, the adequacy of available risk mitigation measures, and the ability to project the status of the cyber threat into the near future, enabling effective decision making and risk resiliency.

21.3 Cyber Security Information Sharing Obligations

22.2.1 The Licensee shall, in consultation with licensed transmitters and licensed distributors in the province, carry out the services, referred to as Cyber Security Information Sharing services, outlined in 22.2.2 a) and b).

22.2.2 The Licensee shall:

(a) Provide and promote centralized Cyber Security Information Sharing services, accessible to all licensed transmitters and distributors, including, without limitation:

i. Cyber Security Situational Awareness **–** provide consolidated and easily understood information about, and analyses of, potential cyber security risks and events that may impact the electricity sector. Establish metrics to assess effectiveness of delivery of information.

ii. Information exchange **–** develop and maintain a centralized mechanism for sharing cyber security best practices. Establish metrics to assess the improvement in sector understanding of cyber security risks and solutions.

(b) Provide the Board, in the manner and form determined by the Board, a status report on its Cyber Security Information Sharing services, highlighting the impact of measures taken, their contribution to the adoption of best practices, and participation and engagement levels from licensed transmitters and distributors. In its first status report, the Licensee shall identify and explain the metrics it has established pursuant to paragraph 22.2.2(a). In subsequent status reports, the Licensee shall describe its performance against those metrics.

23 Settlement of COVID-19 Energy Assistance Plan Funding

23.1 For the purposes of paragraphs 23.1 to 23.7:

“CEAP” means the COVID-19 Energy Assistance Program as described in the Board’s Decision and order dated January 18, 2021 (EB-2020-0163),

“Utility” means an electricity distributor or a unit sub-meter provider licensed by the Board

23.2 Subject to paragraph 25.1, the Licensee shall distribute to Utilities the funds it receives from the Government of Ontario for the purposes of CEAP in accordance with paragraphs 23.3 to 23.6.

23.3 Subject to paragraph 23.6, the Licensee shall reimburse each Utility for any credits provided by the Utility to eligible residential customers on account of CEAP , and shall do so on a monthly basis commencing in August 2020 and in accordance with paragraph 23.4.

23.4 Reimbursement shall be made to a Utility following receipt of a claim submitted in accordance with such settlement instructions as the Licensee may reasonably provide, and in accordance with such settlement processes as the Licensee may reasonably apply having regard to efficiency and the time limited nature of CEAP.

23.5 The Licensee is not required to independently verify the claims for reimbursement submitted by a Utility, and may rely on the information contained in such claims for the purposes of making reimbursement.

23.6 The Licensee shall not reimburse a Utility an amount greater than the total aggregated amount of CEAP and CEAP-SB funding that has been allocated to that Utility by the Board.

23.7 The Licensee shall:

(a) keep complete records of its settlement activities under paragraphs 23.1 to 23.6 for a period of two years following the date on which the last report is made to the Board under paragraph 23.7(b), and provide them to the Board on request; and

(b) report the following information to the Board, in such form as may be required by the Board, on the 20th day of each month starting August 20, 2020 and until such time as the funds provided to the Licensee by the Government of Ontario on account of CEAP have been expended and the Licensee has fully reported to the Board thereon:

(i) The amount of CEAP funding (on both a monthly and total basis) claimed by each Utility; and

(ii) The amount of CEAP funding (on both a monthly and total basis) distributed by the Licensee to each Utility.

24 Settlement of COVID-19 Energy Assistance Plan – Small Business Funding

24.1 For the purposes of paragraphs 24.1 to 24.7:

“CEAP-SB” means the COVID-19 Energy Assistance Program – Small Business as described in the Board’s Decision and Order dated January 18, 2021 (EB-2020-0186).

“Utility” means an electricity distributor or a unit sub-meter provider licensed by the Board

24.2 Subject to paragraph 25.1, the Licensee shall distribute to Utilities the funds it receives from the Government of Ontario for the purposes of CEAP-SB in accordance with paragraphs 24.3 to 24.6.

24.3 Subject to paragraph 24.6, the Licensee shall reimburse each Utility for any credits provided by the Utility to eligible customers on account of CEAP-SB, and shall do so on a monthly basis commencing in October 2020 and in accordance with paragraph 24.4.

24.4 Reimbursement shall be made to a Utility following receipt of a claim submitted in accordance with such settlement instructions as the Licensee may reasonably provide, and in accordance with such settlement processes as the Licensee may reasonably apply having regard to efficiency and the time limited nature of CEAP-SB.

24.5 The Licensee is not required to independently verify the claims for reimbursement submitted by a Utility, and may rely on the information contained in such claims for the purposes of making reimbursement.

24.6 The Licensee shall not reimburse a Utility an amount greater than the total aggregated amount of CEAP-SB and CEAP funding that has been allocated to that Utility by the Board.

24.7 The Licensee shall:

(a) keep complete records of its settlement activities under paragraphs 24.1 to 24.6 for a period of two years following the date on which the last report is made to the Board under paragraph 24.7(b), and provide them to the Board on request; and

(b) report the following information to the Board, in such form as may be required by the Board, on the 20th day of each month starting October 20, 2020 and until such time as the funds provided to the Licensee by the Government of Ontario on account of CEAP-SB have been expended and the Licensee has fully reported to the Board thereon:

(i) The amount of CEAP-SB funding (on both a monthly and total basis) claimed by each Utility; and

(ii) The amount of CEAP-SB funding (on both a monthly and total basis) distributed by the Licensee to each Utility.

25 Settlement of CEAP and CEAP-SB From Pooled Funds

25.1 Subject to paragraphs 23.6 and 24.6, further to a claim by a Utility the Licensee shall reimburse the Utility:

(a) for credits provided by the Utility under CEAP from funds the Licensee receives from the Government for the purposes of CEAP-SB; and

(b) for credits provided by the Utility under CEAP-SB from funds the Licensee receives from the Government for the purposes of CEAP.

Defined terms used in this paragraph have the meanings given to them in paragraphs 23.1 and 24.1.

SCHEDULE A
TERMS AND CONDITIONS OF SETTLEMENT AGREEMENT BETWEEN IMO & OPGI

For these purposes, terms with initial capitals not otherwise defined herein shall have the meanings ascribed thereto in paragraph 1 of Part 3 of the licence conditions of OPGI or the IMO's Market Rules, as applicable.

OPGI will be required to rebate annually to the IMO. As soon as practicable and preferably within 15 days following the final settlement of transactions which occurred during each Settlement Period, the IMO shall calculate the Rebate and notify OPGI of such calculated Rebate.

If OPGI agrees with the IMO's calculation then, within 30 days of being notified, OPGI will be required to pay such Rebate, if any, to the IMO. If OPGI does not
agree with the IMO's calculation and the parties can agree within a further 30 days on a revised Rebate, then, within 30 days of so agreeing, OPGI will be required to pay the agreed revised Rebate, if any, to the IMO. If OPGI does not agree with the IMO's calculation and the parties cannot agree on a revised Rebate within such further 30 day period, then the matter shall be finally determined by arbitration by the Dispute Resolution Panel of the IMO, and, within 30 days of such final determination, OPGI will be required to pay the finally determined Rebate, if any, to the IMO. The initially calculated, agreed revised, or finally determined Rebate, as applicable, shall be the Rebate in respect of such Settlement Period for all purposes hereof. Unless the Rebate is paid within 30 days of the IMO notifying OPGI, interest at the Prime Rate, calculated and accrued daily, from such 30th day until the date of payment to the IMO will in all cases be added to (and based upon) the final Rebate owing.

Following payment of the Rebate by OPGI to the IMO, the IMO shall pay or apply
the Rebate as follows:

a) representing interest or GST, the IMO shall pay the Rebate, including GST and interest, to all persons who were Market Participants in Ontario during the Settlement Period and who pursuant to the Market Rules had attributed to them during the Settlement Period an allocated quantity of energy withdrawn at a Delivery Point (the "Ontario Payees"). The IMO shall pay the Rebate to Ontario Payees by the next IMO Payment Date for the real-time market following the end of the month in which the payment from OPGI is received and the IMO shall distribute payment of the Rebate to Ontario Payees in proportion to the allocated quantities of energy withdrawn at a Delivery Point which were attributed to each Ontario Payee during the Settlement Period. The IMO may, to the extent practicable, pay the Rebate to all or some Ontario Payees by applying a Rebate settlement credit to the Ontario Payees' applicable Settlement Statements; and

b) Where the Rebate is less that $10 million, exclusive of any amounts representing interest or GST, the IMO shall retain and apply the Rebate, inclusive of any amounts representing interest or GST, to offset the IMO Administration Charge imposed on Market Participants in accordance with section 4.5, Chapter 9 of the Market Rules, during the period in which the first order of the OEB approving the IMO Administration Charge made:

   (i) pursuant to subsection 19(2) of the *Electricity Act*, 1998, and

   (ii) subsequent to the date on which payment of the Rebate is received by the IMO, is in effect.

Where paragraph (a) applies, if by the date upon which the IMO is required to pay the Rebate to Ontario Payees, the IMO cannot locate an Ontario Payee, or a successor or other representative of the said Ontario Payee to whom the IMO is permitted or required by law to pay the said Ontario Payee's share of the Rebate, the IMO shall retain the said Ontario Payee's share of the Rebate for a period of 90 days from the date upon which the Rebate is otherwise payable to all other Ontario Payees, and during this period the IMO will make commercially reasonable efforts to locate and payout the applicable share of the Rebate to the said Ontario Payee or his successor or other legal representative. If the IMO is unable to locate the said Ontario Payee or his successor or other legal representative within this 90 day period, the IMO shall retain the said Ontario Payee's share of the Rebate and apply it to the IMO Administration Charge in accordance with paragraph (b), as set out herein.

Nothing shall preclude agreements that require the purchaser to return the rebate or any portion thereof to OPGI or any other party.

The Settlement Agreement may also include the following terms:

- Definitions and Interpretation
- Notice by OPGI to IMO of Payment and Non-Payment
- Appropriate limitations of liability
- IMO shall recover its reasonable rebate administration expenses through its fees
- Appropriate indemnification provisions
- IMO to act on its own behalf and as agent for Ontario Metered Market Participants entitled to rebates to the extent of their interests, and such Metered Market Participants are entitled, provided that they give a satisfactory funded indemnity to the IMO, to enforce, by arbitration, the Settlement Agreement directly against OPGI if desired, with reasonable assistance to be provided by IMO at their expense
- IMO may assign agreement to a qualified replacement upon approval of OEB. No other assignments without consent of other party and OEB
- IMO may subcontract any duties required of it
- Fund transfer instructions, which may be changed on notice to OPGI by IMO
- Arbitration clause with Dispute Resolution Panel as arbitrator
- Recipient registrants responsible for all taxes, if any
- Any interest earned on funds by IMO shall be paid to recipient registrants similarly to other funds
- IMO not to be viewed as in conflict in any respect as a result of its participation in the Settlement Agreement
- IMO may hold funds on deposit with a Canadian financial institution or in short-term obligations of the federal or Ontario government or any Canadian financial institution
- IMO may, but shall not be obliged to, retain and refrain from distributing any funds in the event of any dispute, and may seek advice from the Dispute Resolution Panel
- Termination of agreement when OPGI Rebate obligations terminate and all funds distributed or applied. OPGI/IMO indemnification obligations and third party enforcement rights to survive termination, former indefinitely and latter for 2 years only
- IMO may rely on any document which it believes to be genuine and on the advice of counsel, if it acts in good faith
- IMO not responsible for any non-payment by OPGI
- Binding on successors and permitted assigns
- Notice Clause
- Only may be amended in writing
- Governed by the laws of Ontario

- Counterparts clause
- Further assurances clause

SCHEDULE B
ADDITIONAL TERMS AND CONDITIONS OF SETTLEMENT AGREEMENT BETWEEN IMO & OPG

The following sets out the procedure for calculating, allocating and passing through the Market Power Mitigation Agreement (MPMA) Rebate. Where there is a conflict between Schedule A in the Minister's Directive dated March 24, 1999, as amended or replaced by a subsequent Ministerial Directive dated February 25, 2003 which relates to Order-in-Council 654/2003 (dated March 19, 2003), and subsequent Orders-in-Council including Order-in-Council No. 843/2003 (dated April 2, 2003), Order-In-Council No. 207/2005 (dated February 16, 2005), Order-in-Council No. 1909/2005 (dated December 7, 2005), Order-in-Council No. 141/2006 (dated February 3rd, 2006), Order-in-Council No. 1062/2006 (dated May 17, 2006) and this Schedule B, then this Schedule B prevails.

For the First Settlement Period (May 1, 2002 to April 30, 2003)

1) The first MPMA Rebate is to be paid out for the 9-month period ending January 31, 2003. This is the amount, as calculated by the IMO and agreed to by OPG, that OPG is required to rebate for the nine month period, based on OPG's MPMA license conditions, less the interim payment already made by OPG of approximately $335 million and amounts relating to decontrol applications pending before the Ontario Energy Board. OPG is to pay this net amount to the IMO by May 9, 2003.

2) The second MPMA Rebate will cover the three-month period February 1, 2003 to April 30, 2003 inclusive. This is the amount, as calculated by the IMO and agreed to by OPG, that OPG is required to rebate for the three month period, based on OPG's license conditions, adjusted for any true-up required to ensure that the sum of the two rebates for the first settlement period, including the interim payment, is equal to OPG's full rebate requirements for the first Settlement Period under the OPG's MPMA license conditions. OPG is to pay this amount to the IMO by August 12, 2003.

3) The IMO will pay the pro rata share of the first MPMA Rebate and the second MPMA Rebate based on the allocated quantity of energy withdrawn during the applicable period by market participants who are receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act*, *1998* to the Ontario Electricity Financial Corporation.

4) The IMO will pay the pro rata share of the first MPMA Rebate and the second MPMA Rebate based on the allocated quantity of energy withdrawn during the applicable period by market participants who are not distributors and are not receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998* directly to those market participants or their assignees that are market participants where the market participants have assigned their MPMA rebate.

5) The IMO will pay to distributors who are market participants, including host distributors on behalf of their embedded distributors, the pro rata share of the first MPMA Rebate and the second MPMA Rebate based on the share of energy withdrawn during the applicable period by consumers in the distributor's or embedded distributor's respective service areas who are not receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998* and by customers of retailers who have assigned all or a portion of their entitlement to an MPMA Rebate to that retailer. In making these calculations and payments the IMO will rely on the information reported by the distributors to the IMO as required under Appendix D. Once the IMO has received the information from the distributors and disbursed the first MPMA Rebate or the second MPMA Rebate in accordance with this Schedule B, there shall be no opportunity to

correct any such information or provide any additional information and all amounts paid shall be final and binding and not subject to any adjustment.

6) After making the payments set out in 3), 4), and 5), the IMO is to pay any remaining Rebate to the Ontario Electricity Financial Corporation to offset in whole or in part the cost of providing the fixed price of 4.3 cents per kilowatt hour to consumers who are eligible to receive, are receiving or have received the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998*. Any amounts returned to the IMO by distributors in accordance with their license conditions shall be paid over to the Ontario Electricity Financial Corporation.

For the Settlement Periods (May 1, 2003 to January 31, 2005)

7) For each Settlement Period or partial Settlement Period from May 1, 2003 to January 31, 2005, OPG is to make quarterly MPMA Rebate payments to the IMO, consistent with OPG's MPMA license conditions, as calculated by the IMO and agreed to by OPG. The IMO and OPG may agree to appropriate true-up and carry forward mechanisms provided that these are consistent with forwarding the Rebate as soon as practicable.

8) For each Settlement Period or partial Settlement Period from May 1, 2003 to January 31, 2005 the MPMA rebate payments to market participants will be calculated and determined by the IMO as follows:

BPPR = [(WAP – CAP) x 0.5 x TAQEW]

Where:
"**Business Protection Plan Rebate**" or "**BPPR**" is the MPMA Rebate paid out to consumers who are not receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998*. The BPPR is to rebate half of the amount by which the weighted average commodity price of electricity exceeds 3.8 cents per kilowatt- hour.

"**Weighted Average Price**" or "**WAP**" is the average Hourly Ontario Electricity Price weighted by load over the Settlement Period as determined by the IMO.

"**Total Allocated Quantity of Energy Withdrawn**" or "**TAQEW**" is the total electricity withdrawn from the IMO-controlled grid for use in Ontario during the Settlement Period.

9) The IMO will make quarterly MPMA payments to market participants based on the applicable Settlement Period to the end of the previous quarter, and taking into account all prior quarterly MPMA payments made with respect to the applicable Settlement Period. The IMO will adjust the payment for the final quarter of each Settlement Period to ensure that the sum of the quarterly MPMA payments for the applicable Settlement Period does not exceed the BPPR entitlement for the Settlement Period. If there is an overpayment of quarterly payments over a Settlement Period based on the BPPR entitlement for that Settlement Period, any such overpayment can be carried over to successive Settlement Periods to be offset against future payments.

10) The IMO will pay the pro rata share of the BPPR based on the allocated quantity of energy withdrawn for the applicable period by market participants who are receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act*, *1998* to the Ontario Electricity Financial Corporation.

11) The IMO will pay the pro rata share of the BPPR based on the allocated quantity of energy withdrawn for the applicable period by market participants who are not distributors and are not

receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998* directly to those market participants or their assignees that are market participants where the market participants have assigned their MPMA Rebate.

12) The IMO will pay to distributors who are market participants, including host distributors on behalf of their embedded distributors, the pro rata share of the BPPR based on the share of energy withdrawn for the applicable period by consumers in the distributor's or embedded distributor's respective service areas who are not receiving the fixed price under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998* for the MPMA Rebate and by customers of retailers who have assigned all or a portion of their entitlement to an MPMA Rebate to that retailer. In making these calculations and payments the IMO will rely on the information reported by the distributors to the IMO as required under Appendix D. Once the IMO has received the information from the distributors and disbursed the BPPR for that quarter in accordance with this Schedule B, there shall be no opportunity to correct any such information or provide any additional information and all amounts paid shall be final and binding and not subject to any adjustment.

13) For the quarterly periods from May 1, 2003 to January 31, 2005, after making the payments set out in 10), 11), and 12), the IMO is to pay any remaining Rebate to the Ontario Electricity Financial Corporation to offset in whole or in part the cost of providing the prices established under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998* to consumers who are eligible to receive the prices established under sections 79.4 and 79.5 of the *Ontario Energy Board Act, 1998.* Any amounts returned to the IESO by distributors in accordance with their license conditions shall be paid over to the Ontario Electricity Financial Corporation.

For the Payment for the Period (February 1, 2005 to March 31, 2005)

14) For the Payment for the Period from February 1, 2005 to March 31, 2005, OPG is to make an MPMA Rebate payment to the IESO, consistent with OPG's MPMA license conditions, as calculated by the IESO and agreed to by OPG. The IESO and OPG may agree to appropriate true-up and carry forward mechanisms provided that these are consistent with forwarding the Rebate as soon as practicable.

15) For the Payment for the Period from February 1, 2005 to March 31, 2005 the MPMA rebate payments to market participants will be calculated and determined by the IESO as follows:

BPPR = [(WAP – CAP) x 0.5 x TAQEW]

Where:
"**Business Protection Plan Rebate**" or "**BPPR**" is the MPMA Rebate paid out to consumers who are not receiving the fixed price under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act, 1998*. The BPPR is to rebate half of the amount by which the weighted average commodity price of electricity exceeds 3.8 cents per kilowatt hour.

"**Weighted Average Price**" or "**WAP**" is the average Hourly Ontario Electricity Price weighted by load over the Settlement Period as determined by the IESO.
"**Total Allocated Quantity of Energy Withdrawn**" or "**TAQEW**" is the total electricity withdrawn from the IESO-controlled grid for use in Ontario during the Settlement Period.

16) The IESO will make the MPMA payment to market participants for the two month period ending March 31, 2005 taking into account all prior MPMA payments made in that Settlement Period.

17) The IESO will pay the pro rata share of the BPPR based on the allocated quantity of energy withdrawn for the applicable period by market participants who are receiving the prices established under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act*, *1998* to the Ontario Electricity Financial Corporation.

18) The IESO will pay the pro rata share of the BPPR based on the allocated quantity of energy withdrawn for the applicable period by market participants who are not distributors and are not receiving the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act, 1998* directly to those market participants or their assignees that are market participants where the market participants have assigned their MPMA Rebate.

19) The IESO will pay to distributors who are market participants, including host distributors on behalf of their embedded distributors, the pro rata share of the BPPR based on the share of energy withdrawn for the applicable period by consumers in the distributor's or embedded distributor's respective service areas who are not receiving the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board, Act 1998* for the MPMA Rebate and by customers of retailers who have assigned all or a portion of their entitlement to an MPMA Rebate to that retailer. In making these calculations and payments the IESO will rely on the information reported by the distributors to the IESO as required under Appendix D. Once the IESO has received the information from the distributors and disbursed the BPPR for that quarter in accordance with this Schedule B, there shall be no opportunity to correct any such information or provide any additional information and all amounts paid shall be final and binding and not subject to any adjustment.

20) After making the payments set out in 17), 18), and 19), the IESO is to pay any remaining Rebate to the Ontario Electricity Financial Corporation to offset in whole or in part the cost of providing the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act, 1998* to consumers who are eligible to receive the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act, 1998.* Any amounts returned to the IESO by distributors in accordance with their license conditions shall be paid over to the Ontario Electricity Financial Corporation.

Replacement of the MPMA Rebate With A New Payment for the Period (April 1, 2005 to December 31, 2005)

21) For the Payment for the Period from April 1, 2005 to December 31, 2005, OPG is to make a single payment to the IESO, calculated as follows:

Payment = Sum over all hours [(HOEP - $47) x (ONPA (output) x 0.85)]

Where:
ONPA or OPG's Non-Prescribed Assets are those generation assets operated and controlled by Ontario Power Generation, excluding Lennox Generating Station, that are not prescribed assets under section 78.1 of the *Ontario Energy Board Act, 1998* as amended by the *Electricity Restructuring Act, 2004*.

HOEP is the Hourly Ontario Energy Price as determined by the IESO.

ONPA (output) is the generation output from OPG's Non-Prescribed Assets generation assets over each hour of the period adjusted to take account of volumes sold through Transitional Rate Option contracts and forward contracts in effect as of January 1, 2005.

22) For the Payment for the Period from April 1, 2005 to December 31, 2005 the single payment to market participants will be equal to the payment calculated in 21) above.

23) The IESO will pay the pro rata share of the Payment based on the allocated quantity of energy withdrawn for the applicable period by market participants who are receiving the prices established under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act*, *1998* to the Ontario Power Authority to be applied to the variance account established under section 25.33 (5) of the *Electricity Act, 1998* as amended by the *Electricity Restructuring Act, 2004.*

24) The IESO will pay the pro rata share of the Payment based on the allocated quantity of energy withdrawn for the applicable period by market participants who are not distributors and are not receiving the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act, 1998* directly to those market participants or their assignees that are market participants where the market participants have assigned their Payment.

25) The IESO will pay to distributors who are market participants, including host distributors on behalf of their embedded distributors, the pro rata share of the Payment based on the share of energy withdrawn for the applicable period by consumers in the distributor's or embedded distributor's respective service areas who are not receiving the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act, 1998* for the Payment and by customers of retailers who have assigned all or a portion of their entitlement to a Payment to that retailer. In making these calculations and payments the IESO will rely on the information reported by the distributors to the IESO as required under Appendix D. Once the IESO has received the information from the distributors and disbursed the Payment for the period in accordance with this Schedule B, there shall be no opportunity to correct any such information or provide any additional information and all amounts paid shall be final and binding and not subject to any adjustment.

26) After making the payments set out in 23), 24), and 25), the IESO is to pay any remaining amount of the Payment to the Ontario Power Authority to be applied to the variance account established under section 25.33 (5) of the *Electricity Act, 1998* as amended by the *Electricity Restructuring Act, 2004*.

27) With respect to its non-prescribed generating facilities, OPG shall maximize their value to the people of Ontario by operating those facilities in response to the price signals of the IESO-administered markets. OPG's conduct in the IESO-administered markets under this direction is subject to review by the Market Surveillance Panel of the Ontario Energy Board.

Replacement of the MPMA Rebate With A New Payment for the Period (January 1, 2006 to April 30, 2006)

28) For the Payment for the Period from January 1, 2006 to April 30, 2006, OPG is to make a single payment to the IESO, calculated as follows:

Payment = Sum over all hours [[(HOEP - $47) x (ONPA (output) x 0.85)] + [(PA (price) - $52) x (PA (amount))]]

Where:
ONPA or OPG's Non-Prescribed Assets are those generation assets operated and controlled by Ontario Power Generation, excluding Lennox Generating Station, that are not prescribed assets under section 78.1 of the *Ontario Energy Board Act, 1998* as amended by the *Electricity Restructuring Act, 2004*.

HOEP is the Hourly Ontario Energy Price as determined by the IESO.

ONPA (output) is the generation output from OPG's Non-Prescribed Assets generation assets over each hour of the period adjusted to take account of volumes sold through Transitional Rate Option contracts and forward contracts in effect as of January 1, 2005 and volumes sold through the Pilot Auction administered by the Ontario Power Authority in the first half of 2006 with sales volumes commencing on April 1, 2006.

PA is the Pilot Auction administered by the Ontario Power Authority in the first half of 2006, which includes a limited amount of output from OPG's non-prescribed assets, with sales to commence on April 1, 2006.

PA (amount) is the hourly volume in MWh of OPG non-prescribed assets output sold through the Pilot Auction administered by the Ontario Power Authority in the first half of 2006 with sales commencing on April 1, 2006.

PA (price) is the weighted average auction price in $/ MWh realized in each hour of the Period for the output of the limited amount of OPG non-prescribed assets output volume sold through the Pilot Auction administered by the Ontario Power Authority in the first half of 2006 with sales volumes commencing on April 1, 2006.

29) For the Payment for the Period from January 1, 2006 to April 30, 2006 the single Payment to market participants will be equal to the Payment calculated in 28) above.

30) The IESO will pay the pro rata share of the Payment based on the allocated quantity of energy withdrawn for the applicable period by market participants who are receiving the prices established under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act*, *1998* to the Ontario Power Authority to be applied to the variance account established under section 25.33 (5) of the *Electricity Act, 1998* as amended by the *Electricity Restructuring Act, 2004.*

31) The IESO will pay the pro rata share of the Payment based on the allocated quantity of energy withdrawn for the applicable period by market participants who are not distributors and are not receiving the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act, 1998* directly to those market participants or their assignees that are market participants where the market participants have assigned their Payment.

32) The IESO will pay to distributors who are market participants, including host distributors on behalf of their embedded distributors, the pro rata share of the Payment based on the share of energy withdrawn for the applicable period by consumers in the distributor's or embedded distributor's respective service areas who are not receiving the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act, 1998* for the Payment and by customers of retailers who have assigned all or a portion of their entitlement to a Payment to that retailer. In making these calculations and payments the IESO will rely on the information reported by the distributors to the IESO as required under Appendix D. Once the IESO has received the information from the distributors and disbursed the Payment for the period in accordance with this Schedule B, there shall be no opportunity to correct any such information or provide any additional information and all amounts paid shall be final and binding and not subject to any adjustment.

33) After making the payments set out in 30), 31), and 32), the IESO is to pay any remaining amount of the Payment to the Ontario Power Authority to be applied to the variance account established

under section 25.33 (5) of the *Electricity Act, 1998* as amended by the *Electricity Restructuring Act, 2004*.

34) With respect to its non-prescribed generating facilities, OPG shall maximize their value to the people of Ontario by operating those facilities in response to the price signals of the IESO-administered markets. OPG's conduct in the IESO-administered markets under this direction is subject to review by the Market Surveillance Panel of the Ontario Energy Board.

OPG Rebate for the Period (May 1, 2006 to April 30, 2009)

35) For the Period from May 1, 2006 to April 30, 2009, OPG is to make quarterly Payments to the IESO, as calculated by the IESO and agreed to by OPG as follows:

Payment = Sum over all hours [(HOEP – ORL) x (ONPAO x 0.85 – PAA) + (PAP – PAORL) x PAA)]

Ontario Power Generation's quarterly payments will be based on a cumulative calculation commencing May 1, 2006 to the end of each quarter less the same cumulative calculation to the end of the previous quarter. This will continue until the final quarter ending April 30, 2009. For greater certainty, where the payment formula results in an amount owing to OPG for any quarter, no such payment will be made to OPG by the IESO and any such amount will be carried forward into subsequent quarters.

Where:

ONPA or OPG's Non-Prescribed Assets are those generation assets operated and controlled by Ontario Power Generation assets in service as of January 1, 2006, excluding Lennox Generating Station and excluding stations whose generation output is subject to a contract with the Ontario Power Authority (OPA) in the form of a hydroelectric energy supply agreement [entered into by the OPA and OPG pursuant to a ministerial direction made under section 25.32 of the *Electricity Act, 1998*], that are not prescribed assets under section 78.1 of the *Ontario Energy Board Act, 1998* as amended by the *Electricity Restructuring Act, 2004*.

HOEP is the Hourly Ontario Energy Price as determined by the IESO.

ONPAO is the generation output from OPG's Non-Prescribed Assets, over each hour of the quarter adjusted to take account of volumes sold through forward contracts in effect as of January 1, 2005. For greater certainty, any output from ONPA resulting from fuel conversion by Ontario Power Generation in ONPA, or incremental output from ONPA resulting from refurbishment or expansion, or is subject to a contract with the OPA in the form of a hydroelectric energy supply agreement, [entered into by the OPA and OPG pursuant to a ministerial direction made under section 25.32 of the *Electricity Act, 1998*] is to be excluded from ONPAO.

Incremental Output is defined as:
generation output x (new total installed capacity – installed capacity as of January 1, 2006) / new total installed capacity.

ORL is the Ontario Power Generation Revenue limit.
For the period May 1, 2006 to April 30, 2007 ORL is equal to $46/ MWh.
For the period May 1, 2007 to April 30, 2008 ORL is equal to $47/ MWh.
For the period May 1, 2008 to April 30, 2009 ORL is equal to $48/ MWh.

PA is the Pilot Auction administered by the Ontario Power Authority in the first half of 2006.

PAA is the volume in MWh over each hour in the quarter that is sold by Ontario Power Generation through the PA.

PAORL is the Pilot Auction Ontario Power Generation Revenue limit.
For the period May 1, 2006 to April 30, 2007 PAORL is equal to $51/ MWh.
For the period May 1, 2007 to April 30, 2008 PAORL is equal to $52/ MWh.
For the period May 1, 2008 to April 30, 2009 PAORL is equal to $53/ MWh.

PAP is the weighted average auction price in $/ MWh over each hour of the quarter realized for the PAA by Ontario Power Generation.

36) For the Payment for the Period from May 1, 2006 to April 30, 2009 quarterly payments made by the IESO to market participants will be equal to the quarterly Payment calculated in 35) above. In the event of any quarterly Payment calculated in 35) above being negative, no quarterly payment will be made by the IESO to market participants.

37) The IESO will pay the pro rata share of the Payment based on the allocated quantity of energy withdrawn for the applicable quarter by market participants who are receiving the prices established under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act*, *1998* to the Ontario Power Authority to be applied to the variance account established under section 25.33 (5) of the *Electricity Act, 1998* as amended by the *Electricity Restructuring Act, 2004.*

38) The IESO will pay the pro rata share of the Payment based on the allocated quantity of energy withdrawn for the applicable quarter by market participants who are not distributors and are not receiving the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act, 1998* directly to those market participants.

39) The IESO will pay to distributors who are market participants, including host distributors on behalf of their embedded distributors, the pro rata share of the Payment based on the share of energy withdrawn for the applicable quarter by consumers in the distributor's or embedded distributor's respective service areas who are not receiving the prices established under sections 79.4, 79.5, and 79.16 of the *Ontario Energy Board Act, 1998* for the Payment. In making these calculations and payments the IESO will rely on the information reported by the distributors to the IESO as required under Appendix D. Once the IESO has received the information from the distributors and disbursed the Payment for the quarter in accordance with this Schedule B, there shall be no opportunity to correct any such information or provide any additional information and all amounts paid shall be final and binding and not subject to any adjustment.

40) After making the payments set out in 37), 38), and 39), the IESO is to pay any remaining amount of the Payment to the Ontario Power Authority to be applied to the variance account established under section 25.33 (5) of the *Electricity Act, 1998* as amended by the *Electricity Restructuring Act, 2004*.

41) With respect to its non-prescribed generating facilities, OPG shall maximize their value to the people of Ontario by operating those facilities in response to the price signals of the IESO-administered markets. OPG's conduct in the IESO-administered markets under this direction is subject to review by the Market Surveillance Panel of the Ontario Energy Board.

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

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

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

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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~~ll~~ Market Rule a~~A~~mendment ~~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 ~~a~~Amendment Proposal;
>
> iii. minutes~~, or~~ meeting notes, ~~of~~ and relevant materials from ~~of~~ all stakeholder meetings (including meetings of the Licensee's Strategic ~~Stakeholder~~ Advisory Committee) and of all meetings of the Licensee's Technical Panel ~~at which the amendment or the subject matter of the amendment was discussed~~ concerning the Market Rule Amendment Proposal;
>
> ~~iv. a list of all materials related to the amendment or the subject matter of the amendment tabled before any stakeholders (including the Licensee's Stakeholder Advisory Committee) or before the Licensee's Technical Panel;~~[NTD: Covered in requirement above]
>
> ~~v.~~iv. a list of all materials tabled before the Board of Directors of the Licensee in ~~relation~~ conjunction with the Market Rule ~~to the a~~Amendment Proposal ~~or the subject matter of the amendment,~~ and a copy of all such materials other than those already captured by item (i) above;

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 authority[1] 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

APPrO 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] APPrO 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] APPrO 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

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

EB-2019-0242

Association of Major Power Consumers in Ontario

Application to Review Amendments to the Market Rules made by the Independent Electricity System Operator

DECISION AND ORDER ON MOTION TO STAY THE OPERATION OF THE AMENDMENTS TO THE MARKET RULES

November 25, 2019

On September 26, 2019, the Association of Major Power Consumers in Ontario (AMPCO) filed a Notice of Appeal (Application) asking the Ontario Energy Board (OEB) to review and issue an order revoking amendments to the market rules made by the Independent Electricity System Operator (IESO) (MR-00439-R00 to -R05) (Amendments), and referring the Amendments back to the IESO for further consideration. The Application was filed under section 33 of the *Electricity Act*, *1998*, S.O. 1998, c. 15, (Schedule B) (Act).

The Amendments, which were published by the IESO on September 5, 2019 and took effect on October 15, 2019, enable the evolution of the IESO's Demand Response Auction (DRA) into a Transitional Capacity Auction (TCA), including allowing participation by generators that have come off power purchase agreements. The IESO is planning to hold the first TCA in early December 2019, with key milestone dates scheduled in the interim period.

AMPCO also filed a Notice of Motion requesting an order of the OEB staying the operation of the Amendments pending the completion of the OEB's review (Motion).

The OEB issued a Notice of Hearing on October 1, 2019.

On October 4, 2019, the OEB issued Procedural Order No.1 indicating that it expects the IESO to participate in this proceeding and directing AMPCO to file all affidavit material on which it intends to rely in support of the Motion and the Application by October 11, 2019. AMPCO filed affidavit material on that day.

On October 18, 2019, the OEB issued Procedural Order No. 2 which set out dates for the proceeding and granted intervenor status to all parties that requested it. In Procedural Order No. 3, issued October 22, 2019, the OEB modified some of the procedural steps and timeline for the hearing of the Motion. In Procedural Order No. 4, issued November 8, 2019, the OEB extended the time for AMPCO's filing of its reply submissions on the Motion to November 11, 2019 and reiterated the hearing schedule for the Application. On November 12, 2019, the OEB issued its Decision on Cost Responsibility & Cost Eligibility.

The Application

The Application was filed by AMPCO, an organization that represents major power consumers in Ontario, some of whom participate in the IESO-administered markets as Demand Response Resources (DR Resources). Participation of DR Resources takes the form of electricity use curtailment. The Application requests that the OEB find that the Amendments are: i) inconsistent with the purposes of the Act; and / or ii) unjustly discriminatory to DR Resources and, having so found, that the OEB must revoke the Amendments and refer them back to the IESO for reconsideration.

The Application concerns the IESO's new capacity market. The IESO has developed a capacity auction to secure capacity commitments to participate in that market. Both DR Resources and dispatchable generating facilities that are neither under contract nor rate regulated are eligible for participation in the auction. This auction builds on the IESO's former DRA, which has been in place since December 2015, in which only DR Resources were procured.

Under the TCA, all resources that clear the capacity auction receive an availability payment for providing capacity. However, DR Resources, if called on to activate that capacity, will curtail their use of electricity, but will not receive a payment for activation under the market rules. In contrast, generators which successfully clear the TCA will receive an availability payment for making capacity available and, if called on to activate capacity by generating electricity, will be paid for that energy at the prevailing market price.

AMPCO's concern is that the inequity in treatment regarding payment terms for DR Resources and generation resources is unjustly discriminatory to the DR Resources, and will result in outcomes that are inconsistent with the Act. AMPCO's allegation is that their capacity bids in the auction will not be able to compete with those of generation resources, since the latter receive an availability payment as well as an energy payment if dispatched.

The IESO has decided to implement the TCA as a means for addressing the capacity gap it has forecast at nearly 4,000 MW in 2023. The Amendments constitute the first phase in the IESO's plan to evolve the DRA into a more competitive capacity acquisition mechanism over time. The IESO's reason to hold the first TCA in December 2019 is to permit multiple rounds of auctions to secure capacity before 2023, with a plan for increasing the diversity of capacity eligible for participating in succeeding auctions. This will allow the IESO and market participants time to learn and adjust before the need for resources becomes critical. The IESO also sees this current iteration of the TCA as an opportunity to secure commitments from generation capacity no longer under contract and which might otherwise close.

The IESO has committed to study energy payments for DR Resources but will not have that completed until June 2020.

The Motion to Stay

The Motion requests an order of the OEB staying the operation of the Amendments pending completion of the OEB's review of the Application.

Evidence was filed by AMPCO, the IESO and Kingston CoGen Limited Partnership (KCLP). Submissions were filed by AMPCO, the IESO, KCLP, the Association of Power Producers of Ontario (APPrO) and OEB staff.

DECISION

The OEB has considered the factors identified in section 33(8) of the Act, and the evidence and submissions filed by the parties and OEB staff. The OEB is satisfied that the operation of the Amendments should be stayed and, therefore, grants AMPCO's Motion pending completion of the OEB's review of the Amendments.

The following sections address the OEB's mandate in deciding the Motion, followed by a detailed assessment of each of the factors listed in section 33(8) of the Act.

The OEB's Mandate in Deciding the Motion

In their submissions, some parties made arguments that go to the nature of the IESO's role or status as a public agency and to how different factors set out in section 33(8) of the Act should be applied by the OEB as a result. The OEB considers it appropriate to address those arguments at the outset.

The IESO submitted that it is a public authority impressed with public interest, and that it has primary legislative responsibility to make market rules in accordance with its

legislative mandate and objectives. The IESO argued that the OEB should show deference to its decisions as, absent evidence to the contrary, they are entitled to deference and must be presumed to be in the public interest.

The IESO pointed to the general principles governing interlocutory stays and injunctions in the context of public law as being applicable in the context of section 33(8) of the Act. Specifically:

- a stay or injunction is an extraordinary remedy that should be granted sparingly
- applications for stays that seek to enjoin actions by public agencies acting within their jurisdiction – including the implementation and operation of legislation or other regulations – are on a different footing because the public interest is engaged, and the impugned legislation or regulations are legally presumed to be in the public interest
- as such, the Amendments are presumed to be in the public interest, the OEB must assume that this is the case, the IESO does not have to justify this and a high evidentiary burden rests on AMPCO to overcome this legal presumption

APPrO and KCLP also argued that, on a motion to stay the implementation of a validly enacted law or regulation, it is presumed that the law will produce a public good, and the Amendments are to be assumed to be in the public interest.

AMPCO disagreed with the proposition that, because the IESO is a public agency, the OEB must assume that the Amendments are in the public interest. AMPCO submitted that the cases cited by the IESO, which are decisions of courts being asked to stay the effect of actions of public agencies, provide no guidance to the exercise by the OEB of its express legislative mandate to oversee the IESO's market rule making function. AMPCO further submitted that the legislation expressly contemplates that the market rule amendments may be stayed pending the OEB's consideration of them in its capacity as a highly specialized public interest economic regulator and that, in this statutory context, the stay does not have the kind of extraordinary character described in the constitutional cases or the cases challenging the authority of law enforcement agencies. AMPCO further submitted that the IESO's promulgation of the Amendments is not a "legislative" function of the kind engaged in the cases cited by the IESO and APPrO.

Findings

The OEB finds that the IESO's role as a public agency must be considered in the context of the statutory scheme in which the Application has been made.

The Application has been made under section 33 of the Act, which provides that a market rule amendment may be revoked by the OEB and sent back to the IESO for further consideration either on the OEB's own motion or on the application of any party if the OEB finds that the amendment is inconsistent with the purposes of the Act or unjustly discriminates against or in favour of a market participant or class of market participants. Moreover, the Act contemplates that the OEB may stay the operation of the amendment pending the completion of its review, and specifically calls on the OEB to consider the public interest, among other factors.

In this context, the OEB does not agree with the IESO that a stay is an extraordinary remedy, nor that the IESO's implementation of the Amendments must be presumed to be in the public interest or its judgment or actions granted deference. The OEB finds that there would be no purpose in having the authority to review market rule amendments if the OEB had to defer to the IESO when undertaking that statutorily mandated review in response to an application, or to stay the operation of market rule amendments pending completion of that review.

The factors to consider in respect of a stay are also clearly articulated in section 33(8) of the Act. The OEB finds that it must consider these specific factors and does so in the context of the statutory scheme set out in the Act, rather than the context applicable to the courts in their review of actions of public bodies.

Factors to be Considered in Motions to Stay Market Rule Amendments

Section 33(7) of the Act allows the OEB to order a stay of the operation of a market rule amendment pending the completion of the OEB's review of the amendment.[1]

The factors to be considered by the OEB in determining whether to stay the operation of a market rule amendment are set out in section 33(8) of the Act as follows:

> (8) In determining whether to stay the operation of an amendment, the Board shall consider,
>
> (a) the public interest;
> (b) the merits of the application;
> (c) the possibility of irreparable harm to any person;
> (d) the impact on consumers; and
> (e) the balance of convenience.

[1] Section 33(7) of the Act states as follows: "No application for review of an amendment under this section shall stay the operation of the amendment pending the completion of the Board's review of the amendment unless the Board orders otherwise."

Most of the parties addressed each of the factors set out in section 33(8) separately, although there is some overlap, as the impact on consumers can be considered an aspect of the public interest, and many of the factors have an impact on the balance of convenience.

a) Public Interest

AMPCO submitted that the public interest is a factor in favour of a stay because:

- there are no system reliability issues that need to be addressed between now and January 24, 2020, when the Application must be decided, and there are no system reliability issues anticipated between now and the summer of 2023
- the evolution of the TCA is a multi-phase process and there is no evidence that deferring expansion of the first auction indicates any material harm to the public interest
- the DRA could still proceed in December 2019, under the pre-existing market rules, and the TCA is just one of several options open to the IESO to meet capacity needs
- proceeding with the December 2019 TCA as planned will inhibit, rather than enhance, competition by displacing one category of market participant (DR Resources) with another (generators)

The IESO argued that it is prudent to initiate the TCA in December 2019 and imprudent to risk waiting to implement a capacity auction until closer to the eve of the projected capacity gap in the summer of 2023.

APPrO submitted that the public interest will be better served if the stay is denied and the TCA proceeds as scheduled as by expanding the pool of potential auction participants, the TCA will increase competition and decrease auction clearing prices. APPrO also argued that the December 2019 TCA will afford the IESO important experience with respect to integrating and administering new resource types into the Ontario capacity market, within the short timeframe in which the IESO must be prepared for the forecast 2023 capacity gap. Attempting to integrate several different resources into the TCA in close proximity to that gap will, in APPrO's view, put the capacity auction process at risk and has the potential to undermine confidence in the TCA.

KCLP's submissions on the public interest were along similar lines, focusing on the benefits that KCLP sees as flowing from the Amendments and the TCA.

OEB staff submitted that the core aspect of the public interest is ensuring that needed capacity is obtained and that a viable and effective framework is developed that ensures reliable supplies and cost-effective outcomes for customers. OEB staff submitted that a stay is more likely to support such an objective and will reduce uncertainty and mitigate risks regarding obtaining capacity commitments.

Findings

The OEB acknowledges that it is helpful for the IESO and market participants to have as much experience as possible to make the transition to a broader capacity auction. However, the OEB is not persuaded that it is essential to run the December 2019 TCA, and finds that the public interest is better served by making a decision on AMPCO's Application before the TCA is implemented.

In its submission on irreparable harm, APPrO expressed the view that if the Amendments are ultimately revoked by the OEB, the results of the December 2019 TCA will be rendered moot. The OEB notes that, by contrast, if the Amendments are stayed it remains open to the IESO to conduct another DRA. The OEB finds that uncertainty about the results of the TCA if it is held but the Amendments are subsequently revoked is not likely to enhance market participant confidence in the market nor ensure that capacity is available for the commitment period associated with the December 2019 TCA if needed.

b) Merits of the Application

OEB's Standard of Review of the Merits

The first issue raised by the parties is what standard the OEB should apply to the consideration of "the merits of the application".

AMPCO submitted that Ontario case law establishes that the threshold for determining whether the Application has merit is a low one, and that the OEB must simply be satisfied that the Application is not frivolous and vexatious.

The IESO argued that when the granting of a stay will, as a practical matter, determine the rights of the parties, the applicant must meet a higher standard and show that its application has a strong likelihood of success. The IESO noted that if the stay is granted, the IESO will be unable to implement the TCA in December 2019 and will revert to running the DRA for the May 1, 2020 to April 30, 2021 commitment period. Success by the IESO in respect of the Application would be moot, as the IESO would

not be able to unwind the DRA and implement the TCA. In practical terms, a stay will determine whether the TCA will be implemented in December 2019 or not.

Along similar lines, KCLP submitted that, because the stay will in effect amount to a final determination of the Application, AMPCO must meet a higher threshold test on the merits of a strong *prima facie* case and not just the threshold of a serious issue to be tried.

AMPCO in reply disagreed with the assertion that determination of the Motion will finally determine the rights of the parties, stating that it will simply determine the nature of the December 2019 auction (expanded or not).

OEB staff submitted that the 'merits of the application' component of section 33(8) of the Act embodies the 'serious question to be determined' test established by the courts, rather than the higher *prima facie* threshold, and does not require an extensive review of the merits.

Findings

The OEB finds that the standard to be applied in relation to the merits of the Application is that the Application is not frivolous or vexatious, and that there is a serious question to be determined.

If granted, the motion to stay will determine whether the December 2019 TCA is run, but it will not determine whether the Amendments should be revoked. The Amendments do not deal only with the December 2019 TCA; unless revoked, the Amendments will continue to be in effect. The IESO's evidence is that several auctions are expected before 2023. The Amendments will support all of them.

The question to be determined on the Application is whether the Amendments are unjustly discriminatory or inconsistent with the purposes of the Act, not merely whether the December 2019 TCA should run.

Is the Standard Met?

The IESO submitted that AMPCO's evidence does not demonstrate there is a strong likelihood that its Application will succeed, nor even that there is a serious issue to be tried. According to the IESO, the Application has three fundamental flaws and weaknesses that cannot be overcome:

- first, the Application does not challenge the substance of the actual Amendments, which cannot be said to discriminate between DR and supply

resources, but rather challenges the market rules which provide that DR Resources do not receive energy payments, rules that have been in place since market opening. The IESO argued that the OEB has no jurisdiction to entertain such a challenge given that Minister-made market rules are excluded from OEB review by reason of section 35(3) of the Act.

- second, AMPCO's pre-filed evidence is woefully insufficient to discharge its burden under section 33(9) of the Act, as it consists entirely of vague, speculative and unattributed hearsay about the alleged unjust impact of the Amendments on DR Resources, and does not include any financial information or economic analysis to substantiate or quantify the impact. The evidence filed to-date is insufficient for the OEB to evaluate whether the Amendments result in unjust economic discrimination. Moreover, the IESO's position is that the Amendments do not treat suppliers and DR Resources differently and so are not even *prima facie* discriminatory, but even if they were that is not grounds for review.
- third, the foundation of AMPCO's case is the Federal Energy Regulatory Commission's (FERC) Order No. 745[2], which is not binding on the IESO and may be of little application in Ontario. AMPCO has not submitted evidence analyzing the appropriateness and impact of importing the FERC framework into Ontario.

With respect to the IESO's jurisdictional argument, AMPCO responded that the Amendments provide for an expanded capacity auction, with the direct result that generators will have an unjust competitive advantage over DR Resources. The fact that this advantage results from energy payments available to generators through another market rule in no way diminishes the discriminatory impact of expansion of the current DRA to include generation resources. According to AMPCO, its focus on the Amendments is both legislatively and factually supported and the relief sought on this motion is wholly within the jurisdiction of the OEB to grant.

AMPCO also disagreed with the IESO's assertion that FERC Order 745 is the foundation of AMPCO's case. Rather, the foundation of AMPCO's case is that the Amendments would result in unfair competition. The importance of FERC Order 745 is that it is a finding on this very topic by one of the pre-eminent economic energy regulators in the world made after an exhaustive and hotly contested public review process. AMPCO again pointed to the fact that the IESO is studying this issue, and also noted that the IESO has, in analogous circumstances, recognized that failure to compensate DR Resources could potentially increase the cost of capacity and that, in

[2] 134 FERC ¶ 61,187, 18 CFR part 35, Docket No. RM10-17-000; Order No. 745, *Demand Response Compensation in Organized Wholesale Energy Markets*, March 15, 2011

the context of the proposed capacity auctions, how these costs are recovered will potentially impact market efficiency.
AMPCO further submitted that its evidence and the Application indicate an issue to be heard that is clearly not frivolous or vexatious, and in fact is a serious one as contemplated by section 33(9) of the Act.

AMPCO argued that the impact of proceeding with the TCA prior to resolving the issue of energy payments for DR Resources is that DR Resources will be at a competitive disadvantage in, and likely excluded from, the TCA, an outcome which in AMPCO's view raises very serious questions of discrimination against market participants and inconsistency with the purposes of the Act.

KCLP stated that AMPCO has not filed evidence to substantiate its assertion that the Amendment would stifle competition and drive up prices for consumers. KCLP submitted that it is premature to determine whether the lack of utilization payments is discriminatory against DR Resources and that the IESO should have the opportunity to continue to study the issue.

OEB staff noted that the Amendments are a significantly contentious matter with diverging positions and competing claims of potential harm, all of which indicates that there is a serious question to be heard.

Findings

The OEB finds that the Application is neither frivolous nor vexatious and raises a serious question to be determined.

The OEB finds that the fact that there are different payment schemes applicable to participants in the TCA raises a legitimate question as to whether the Amendments will result in unjust discrimination.

With respect to the IESO's claim that the OEB lacks jurisdiction to grant the relief sought in the Application, the OEB notes that section 33(4) of the Act provides the OEB with the authority to review an application from any person requesting a review of an amendment to the market rules. AMPCO's Application was filed within the time allowed by the Act. The fact that the lack of energy payments for DR Resources may be a circumstance that results in the Amendments being discriminatory does not mean that, in reviewing the Amendments, the OEB is conducting a review of the market rules relating to energy payments.

c) Possibility of Irreparable Harm to Any Person

The IESO submitted that the burden rests on AMPCO to establish that irreparable harm will result from not granting a stay. The IESO further submitted that evidence of irreparable harm must be clear and not speculative, that minimal weight should be given to hearsay evidence and that AMPCO must demonstrate a high degree of probability that irreparable harm will occur if a stay is not granted.

KCLP submitted that the onus is on AMPCO to prove, on a balance of probabilities, that irreparable harm will result, and that AMPCO has not discharged that onus with clear and compelling evidence that its interests will be harmed and that the harm cannot be remedied.

APPrO submitted that AMPCO must establish that failure to grant the stay could so adversely affect DR Resources that the harm could not be remedied.

AMPCO argued in reply that, in stating that the Act means that irreparable harm *will* result from not granting a stay of the Amendments, the IESO is misquoting the Act, as section 33(8)(c) of the Act states that the OEB shall consider the *possibility* of irreparable harm to any person. As such, AMPCO needs only to establish the possibility of irreparable harm to any person in order for the OEB to exercise its authority to order a stay of the Amendments, and not clear, unequivocal proof of it.

AMPCO submitted that irreparable harm is identified by its nature, rather than its magnitude; specifically, it is harm that either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. The submissions of APPrO and OEB staff were along the same lines.

AMPCO further submitted that the harm to DR Resources if the December 2019 TCA auction proceeds would be harm that could not be cured in the specific, statutory context in which it arises. According to AMPCO, if the December 2019 TCA proceeds, it would result in driving DR Resources out of the fledgling Ontario capacity market. DR Resources would be deprived of the opportunity to provide capacity to the market during the delivery period of the December 2019 TCA and to obtain capacity payments, a loss for which DR Resources would have no obvious or effective legal recourse. In that sense, according to AMPCO, the harm is incurable (and thus irreparable).

AMPCO also argued that in the absence of a stay, the December 2019 TCA will have already occurred and DR Resources will already have suffered unfair competition and undue discrimination.

According to the IESO, AMPCO's evidence only provides hearsay evidence speculating about vague possibilities that harm could result if the TCA proceeds in December 2019, and AMPCO's claims regarding their inability to compete with generators are belied by the fact that there has been very limited economic activation of DR Resources in the past and no expectation that the likelihood of economic dispatch of DR Resources will increase in the commitment period associated with the December 2019 TCA.

The IESO also submitted that its commitment to undertake a stakeholder engagement and a third party study of energy payments and to make a final decision by June 2020 mitigates any possible harm alleged by AMPCO.

APPrO submitted that DR Resources will not suffer irreparable harm if the TCA proceeds as scheduled in December 2019 because of the timing of the hearing of the Application and the OEB's obligation to render a decision by January 24, 2020. If the December 2019 TCA proceeds, availability payments to successful participants will not be paid until May 2020. If the Amendments are revoked by the OEB, the December 2019 auction process will be rendered moot and there will be no harm to AMPCO members.

KCLP argued that AMPCO has not demonstrated that there would be harm to DR Resources if the TCA proceeds as scheduled, pointing among other things to the following:

- AMPCO has provided no evidence of the type of costs or materiality of loss or harm that DR Resources would actually incur if activated ('avoidable costs')
- based on evidence provided by the IESO, the potential harm to Hourly DR Resources is insignificant
- the most likely conclusion to draw from the behavior of dispatchable loads in the market is that they do not incur an avoidable cost on economic activation; as such, they cannot suffer harm if they do not receive an energy payment
- it is not sufficient for AMPCO to merely assert loss of market share, and in any event there is nothing in AMPCO's evidence that demonstrates that this will cause irreparable harm that it could not recover from in the future
- a negative inference should be drawn from the fact that no member of AMPCO or any DR Resource has provided specific evidence of harm

KCLP also argued that its evidence demonstrates that it would be harmed if the stay is granted and it is unable to participate in the TCA. KCLP stated that, if the stay is granted, an off-contract generator will be denied the opportunity to compete to earn an availability payment of approximately $85,643.60 per MW per year. An off-contract

generator that decides to incur that amount as a loss will have difficulty recovering it over time. KCLP submitted that, given its current circumstances, it is likely that its parent company will decide to discontinue facility operations if KCLP is prevented from competing in the upcoming TCA.

Findings

The OEB finds that the clear wording of section 33(8)(c) is "the possibility of irreparable harm to any person", not that there *will be* irreparable harm, or even that it is likely that there will be irreparable harm.

The OEB accepts AMPCO's evidence that under the TCA, the fact that some participants would receive energy payments on activation and others would not raises the *possibility* of irreparable harm to those who would not, and it is not readily apparent that there is a mechanism available to compensate DR Resources for such harm in the event that the December 2019 TCA is run. As the results of the proposed TCA and the frequency of activation are unknown, the extent of the harm is necessarily uncertain.

The OEB acknowledges the possibility of harm to potential participants such as KCLP if the TCA is not run in December 2019; this is addressed under the balance of convenience factor below.

d) Impact on Consumers

AMPCO argued that if the Amendments are not stayed and the TCA is permitted to proceed prior to determination of the Application, the resulting exclusion of DR Resources from the competition to provide capacity is likely to result in higher costs for consumers and a less reliable electricity system.

APPrO submitted that the interests of consumers will be better served if the stay is denied and the TCA proceeds as scheduled. By expanding the pool of potential auction participants, the TCA will result in a greater number of resources participating and thereby increase competition with the likely result that auction clearing prices will decrease, resulting in reduced costs for the IESO and therefore lower electricity rates. APPrO pointed out that higher participation rates in the DRA have resulted in auction clearing prices decreasing by 42%.

The IESO submitted that a stay is contrary to the interests of consumers for the following reasons:

- the evolution of the DRA into a more competitive capacity acquisition mechanism will allow for increased competition, which will benefit Ontario customers
- allowing supply resources to compete in the December 2019 TCA will also reduce the likelihood that generation facilities coming off contracts will be shut down. These assets can play a role in addressing the future capacity gap and increasing competition in future auctions
- the IESO needs time to implement an enduring capacity auction in a phased manner that will allow it to learn, adapt as necessary and build confidence of market participants in the auction process, and allow TCA participants to test their processes and also learn and adapt

OEB staff submitted that an issue to be considered is the effect a stay of the operation of the Amendments might have on the procurement of forecasted resource needs. This could have a direct impact on customers, who ultimately bear the consequences of ineffective or inefficient procurement activities through lower reliability, higher costs, or both. OEB staff was of the view that, if resources are required in the upcoming commitment period, they are more likely to be achievable through a repeat of the DRA process than the first execution of the TCA in current circumstances. OEB staff was also of the view that a stay of the operation of the Amendments is more likely to protect the interests of consumers relative to the alternative.

The IESO argued that the OEB should give no weight to OEB staff's assertion that a stay is justified by the uncertainty around the TCA and the risk of lower participation by DR Resources, as there are no evidentiary grounds for this assertion and it is at odds with the IESO's uncontested evidence that the prospect of activation of DR Resources is extremely unlikely, that preparations are underway for the TCA and that, in addition to DR Resources, market participants representing generators have registered for participation in the December 2019 TCA.

Findings

The OEB recognizes that it is in the interests of consumers for capacity to be available as needed. Based on the evidence, the projected capacity gap will not arise until 2023, and the OEB is not persuaded that the failure to run the TCA in December 2019 will render the IESO incapable of ensuring that capacity will be available to meet that projected gap.

The OEB also finds that, as a matter of principle, consumers are likely to benefit in the longer term from a market that promotes open competition. If the auction attracts more participants, it is reasonable to expect that auction prices will be lower which would benefit consumers.

On the other hand, the OEB finds that consumer interests may not be served by the uncertainty surrounding the TCA pending completion of the OEB's review of the Amendments, similar to the OEB's finding on this point in relation to the public interest.

e) Balance of Convenience

AMPCO submitted that, in assessing the balance of convenience, the OEB must determine which of the parties will suffer the greater harm from either the granting of, or refusal to grant a stay, and consider the impact on third parties. AMPCO argued that the case law holds that the status quo should be preserved when possible.

AMPCO submitted that the evidence filed by the IESO and KCLP fails to demonstrate any harm to the market, to system reliability or to generators that would result from staying the Amendments on an interim basis, let alone harm that would outweigh that which will be suffered by DR Resources and the functioning of the market should the December 2019 TCA proceed. Specifically:

- there is no evidence that granting the stay would preclude the gradual evolution of the capacity auction process that the IESO is seeking to have, given that there are additional auctions planned before the forecasted capacity gap arises in the summer of 2023
- the IESO has a variety of tools to enable it to ensure that sufficient capacity exists, including the DRA
- KCLP concedes that there is no guarantee that it would secure a capacity obligation through the December 2019 TCA
- the potential harm cited by KCLP of having to shut down operations does not flow from granting the stay, but rather results from the fact that KCLP has been unable to recover its fixed operating costs in the market since its contract expired in 2017

AMPCO argued that, in contrast, its evidence establishes that implementing the TCA now would be harmful to the functioning of the market, harmful to DR Resources and harmful to the public interest. AMPCO submitted that, as such, the balance of convenience favours granting the stay.

The IESO argued that it is imprudent to wait to implement a capacity auction until closer to the eve of the projected capacity gap, and that the arguments put forward by AMPCO and OEB staff amount to second-guessing the IESO's judgment in the absence of evidence to the contrary. The IESO argued that the OEB should accept its evidence on this point as the IESO has the responsibility to advance the evolution of the market and

ensure sufficient capacity is available to serve Ontario's needs, which are highly complex matters.

The IESO submitted that the competition benefits and the risk of shuttering off-contract generators outweigh the potential harm to AMPCO's members' narrow commercial interests.

The IESO also submitted that OEB staff's references to preserving the status quo and this tilting the balance of convenience in favour of a stay are misguided, as Canadian courts have largely dispensed with consideration of the status quo. To the extent that the status quo has any application, it favours preserving the IESO's status quo authority to make and implement market rules. KCLP made a similar submission.

AMPCO submitted that the IESO has misapplied the case law on preserving the status quo as the decision cited refers specifically to constitutional law cases. AMPCO submitted that recent cases, including cases to stay exercises of power by public agencies, have held that the status quo is a relevant factor to consider where all else is equal from a balance of convenience perspective, and that the status quo should be preserved when possible.

APPrO submitted that DR Resources will suffer no harm if the December 2019 TCA proceeds as scheduled while, on the other hand, granting the stay will cause harm including:

- depriving the IESO of important information and jeopardizing the IESO's ability to implement an enduring capacity auction
- potential for off-contract generators ceasing operations

KCLP also submitted that the balance of convenience favours dismissing the Motion, referring as well to the IESO's evidence of need to move forward in order to properly prepare for 2023 and also reiterating the lack of evidence of harm to AMPCO.

OEB staff addressed the competing claims of harm based on the stay being granted or not. OEB staff submitted that maintaining the status quo of the DRA appears to be preferable in order to prevent harm to DR Resources that cannot later be remedied with damages. OEB staff also stated that:

- it is not convinced that running three versions of the TCA by 2020 is essential to avoiding harm to the goal of meeting the 2023 capacity deficit
- there is little evidence to judge the magnitude of the risk of generator exit from the market if there is a delay to the TCA

OEB staff submitted that, on a balance of convenience, maintaining the status quo is the preferable option and that a stay will allow an orderly determination of the Amendments preceding any procurement activity under a TCA.

Findings

The OEB acknowledges that staying the implementation of the Amendments would result in a corresponding delay in the participation of non-committed dispatchable generators coming off contract. However, this needs to be balanced against the potential harm that can be caused to DR Resources as a result of unequal treatment in relation to payments.

As noted above, it is also unclear what would happen if the December 2019 auction is allowed to proceed and the Amendments are later revoked by the OEB. The OEB finds that this potential uncertainty is avoidable by staying the operation of the Amendments pending completion of the OEB's review. According to section 33(6) of the Act, the OEB is required to issue an order that embodies its final decision in this matter within 120 days of the date of receipt of the application (i.e. January 24, 2020). Beyond that date, the IESO plans to run two capacity auctions, in June 2020 and December 2020, before the IESO undertakes the auction for the summer of 2023, when the capacity gap is projected to occur. The OEB finds that the benefits of avoiding this potential market uncertainty outweigh the potential short delay in the TCA first auction.

THE ONTARIO ENERGY BOARD ORDERS THAT:

The operation of the Amendments to the market rules identified as MR-00439-R00, MR-00439-R01, MR-00439-R02, MR-00439-R03, MR-00439-R04 and MR-00439-R05 on the subject of the Transitional Capacity Auction, adopted by the Board of Directors of the IESO on August 28, 2019, is hereby stayed pending completion of the OEB's review of those Amendments and issuance by the OEB of its order embodying its final decision on AMPCO's application for review of those Amendments.

DATED at Toronto, **November 25, 2019**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar and Board Secretary

Ontario Energy Board

Commission de l'énergie de l'Ontario

EB-2013-0010
EB-2013-0029

IN THE MATTER OF the *Electricity Act, 1998*, S. O. 1998, c.15, Schedule A;

AND IN THE MATTER OF an Application made collectively by entities that have renewable energy supply procurement contracts with the Ontario Power Authority in respect of wind generation facilities for an Order revoking amendments to the market rules and referring the amendments back to the Independent Electricity System Operator for further consideration.

DECISION ON MOTION FOR THE PRODUCTION OF EVIDENCE AND PROCEDURAL ORDER NO. 3

February 12, 2013

On January 24, 2013, a number of entities that have renewable energy supply procurement contracts with the Ontario Power Authority ("OPA") in respect of wind generation facilities (the "Applicants") collectively filed with the Ontario Energy Board an application under section 33(4) of the *Electricity Act, 1998* seeking the review of certain amendments to the market rules made by the Independent Electricity System Operator ("IESO"). The market rule amendments in question (the "Renewable Integration Amendments") deal with the dispatching of, and the establishment of floor prices for, variable generation facilities, defined as all wind and solar photovoltaic resources with an installed capacity of 5MW or greater,[1] or all wind and solar photovoltaic resources that are directly connected to the IESO-controlled grid.

[1] Wind and solar photovoltaic resources that are embedded (i.e., not directly connected to the IESO-controlled grid) are captured by the Renewable Integration Amendments only if they are registered market participants.

On January 28, 2013, the Board issued its Notice of Application and Oral Hearing in relation to the Application.

The Board issued its Procedural Order No. 1 on January 29, 2013 and its Procedural Order No. 2 on February 4, 2013.

Letter of Direction to the IESO to Produce Evidence

As noted in Procedural Order No. 1, the Applicants previously filed an application with the Board under section 21 of the *Ontario Energy Board Act, 1998* asking the Board to give directions to the IESO to prepare evidence (the "Section 21 Application").[2] The Applicants and the IESO both filed submissions in respect of the Section 21 Application. Acting on its own motion, the Board issued a Letter of Direction to the IESO on January 22, 2013 to produce certain evidence by January 29, 2013 (the "Letter of Direction"). The IESO filed voluminous materials on January 29, 2013, and filed a revised set of documents that included a supplementary document on January 31, 2013. These materials were later re-filed on February 6, 2013 in response to Procedural Order No. 2.[3]

The Applicants' Motion

As part of the current Application, the Applicants re-filed their request for the production of materials from the IESO, which the Board has treated as a motion. Procedural Order No.1 established the process for the hearing of that motion; namely, the filing of submissions and an oral hearing. Submissions were filed by the Applicants, the IESO and the School Energy Coalition ("SEC"). Those submissions, together with the submissions of the Applicants and the IESO in respect of the Section 21 Application and the transcript of the oral hearing held on February 11, 2013, are available for review at the Board's offices and on its website.

Submissions of the Parties

In their written and oral submissions, the Applicants reiterated their request for the production by the IESO of all of the materials identified in their Section 21 Application,

[2] EB-2013-0010. As noted in Procedural Order No. 2, the Board has combined the Section 21 Application proceeding with this one.

[3] As required by Procedural Order No. 2, the re-filing was to include un-redacted versions of a number of documents that the IESO had redacted for reasons of relevance.

as reproduced in Schedule A to their February 5, 2013 submissions (the "Requested Evidence"). For convenience of reference, the Requested Evidence is listed in Appendix A to this Decision and Procedural Order.

The Applicants submitted that all of the Requested Evidence may be relevant to the issues in this proceeding, and noted that the Board has taken a broad view of relevance for the purpose of ordering the production of evidence. The Applicants also stated that the Board has previously highlighted the importance of fairness in Board proceedings, and has in other proceedings ordered parties to make best efforts to obtain information from third parties. Further, the Applicants noted that the IESO has long been aware of the potential for their Application, and that the Applicants asked the IESO for the Requested Evidence in November 2012. Hence, in the Applicants' view, the IESO should be in a position to provide the Requested Evidence in a timely manner. The Applicants, for their part, are prepared to proceed to an oral hearing on March 7, 2013.

In their February 7, 2013 submissions, the IESO expressed reliance on the submissions that it made for the Section 21 Application. The IESO reiterated its position that certain portions of the Requested Evidence go to an issue that is outside the scope of the IESO's mandate and outside the scope of the review of market rule amendments as set out in section 33 of the Electricity Act. Specifically, the IESO submits that the impact of the Renewable Integration Amendments on the Applicants' payment rights under their contracts with the OPA, and how those payment rights compare to the payment rights of other dispatchable generators who have contracts with third parties, is clearly out of scope for this proceeding. The IESO invited the Board to first determine the scope of the issues in this proceeding, and to address the issue of evidence thereafter.

During the oral hearing, counsel for the IESO also submitted that the discovery process in relation to the Application should not be used for the collateral purpose of gaining an advantage in negotiations that are ongoing between the OPA and the Applicants. Noting that the Applicants have indicated that they do not intend to file evidence, counsel for the IESO also expressed concern that the production obligations of the parties should be contemporaneous and symmetrical, as is typically seen in applications (i.e. the filing of evidence by the parties followed by interrogatories as required), rather than proceeding by way of ordering the IESO to produce additional

materials. Counsel for the IESO confirmed that the IESO intends to produce evidence, and that the IESO proposes to do so by March 4, 2013.

In their February 7, 2013 submissions, SEC stated that the Board must have sufficient evidence on which to make a decision in this proceeding, and agreed with the Applicants that the test for determining relevance must be broad. In SEC's view, the IESO takes too narrow a view of the issues in this proceeding. Noting that the Board and the parties have little experience or jurisprudence to guide a review under section 33 of the Electricity Act, SEC did not favour the Board staging this proceeding and making determinations on relevance at this time. According to SEC, such determinations should only be made on the basis of a complete evidentiary record. Moreover, SEC submitted that while the Applicants' focus is on how they are affected by the Renewable Integration Amendments, the Board must consider a much broader range of considerations to ensure that other purposes of the Electricity Act are not ignored at the expense of those specifically raised by the Applicants. In SEC's view, the Board should err on the side of broader rather than narrower production, and should order the production of all documents in the possession of the IESO that relate to the Renewable Integration Amendments except where the documents are clearly not relevant to any possible issue in this proceeding.

Board Findings

The Board must accommodate two imperatives in this proceeding; namely, to treat the parties fairly and to issue an order that embodies the Board's final decision no later than March 25, 2013. As counsel for the Applicants pointed out, this places obligations on all of the parties. The Board's *Rules of Practice and Procedure* provide for a thorough process for the filing of evidence and the exchange of interrogatories. While the Board is guided by the principles reflected in those *Rules,* the Board concludes that the process must be adapted in this case to ensure fairness while respecting the statutory timeframe. As well as being time constrained, this proceeding differs from the Board's more customary proceedings. In their Application, the Applicants seek to overturn the action of another party; they are not seeking approval for an action on their part. In this proceeding, the Board must make a determination about the IESO's market rule amendments; the Board therefore expects that initial material necessary for the Board's review will originate with the IESO.

The Board will therefore order the IESO to produce the following materials, being a subset of the Requested Evidence, to the extent that the materials have not already been produced pursuant to the Letter of Direction:

i. all materials (including reports, presentations and analyses but excluding correspondence) in the possession of the IESO with respect to how the IESO or any other government agency compensates market participants for curtailing or maneuvering their facilities to address: (a) actual or forecast instances of surplus energy; or (b) efficiency of the IESO-administered markets or reliability of the IESO-controlled grid to the extent that the existence and nature of such compensation is not discernible from the market rules or associated market manuals;

ii. all materials (including reports, presentations and analyses but excluding correspondence) in the possession of the IESO relating to the way in which the Renewable Integration Amendments may impact the extent of curtailment to which variable generators may be subject, including any analysis of historical data, forecasts, projections or estimates of curtailments under ranges of scenarios, and including the underlying methodology, assumptions and calculations;

iii. all materials (including reports, presentations and analyses but excluding correspondence) in the possession of the IESO respecting the way in which the Renewable Integration Amendments may have an impact on amounts owing by the OPA to variable generators in respect of their procurement contracts; and

iv. all materials (including reports, presentations and analyses but excluding correspondence) in the possession of the IESO in respect of the matters addressed in any of the purposes set out in section 1 of the Electricity Act in relation to the Renewable Integration Amendments process, including all materials relating to the development and consideration of options that involved alternatives to imposing dispatch and floor price requirements on wind generators.

The Board is satisfied that the above materials may be relevant to the issues before the Board; namely, whether the Renewable Integration Amendments are inconsistent with

the purposes of the Electricity Act or unjustly discriminate against or in favour of a market participant or class of market participants. It remains to be determined to what extent the underlying information was considered by the IESO, or to what extent it should have been considered by the IESO. To be clear, the IESO is required to produce all materials captured by the items above irrespective of whether or not the IESO considers the materials to be relevant.

Item (iv) is very similar to item (viii) in the Board's Letter of Direction. However, there was some uncertainty during the hearing as to whether any distinction had been made between "information" and "material". The Board expects the IESO to confirm whether what it has already filed under the Letter of Direction fully meets item (iv) and to file any additional material if necessary to comply with item (iv).

The Board agrees with SEC that all of the purposes of the Electricity Act should be considered, and this is reflected in item (iv) above.

The Board will not order the IESO to request information of other government bodies. The Board finds that the appropriate information for the IESO to provide is the information that it has in its possession. The Board rarely requires a party to request information from third parties, and given the constraints applicable to this proceeding the Board concludes that such an approach would not assist the Board.

The Board will also not order the IESO to produce any further correspondence beyond correspondence that was captured by the Board's Letter of Direction. The production of correspondence has the potential to be particularly onerous for the IESO but of relatively limited incremental value in assisting the Board. The Board's focus in this proceeding is on the impact or effect of the Renewable Integration Amendments, which the Board believes can be understood from the other materials to be produced under the above items and from the IESO's filings pursuant to the Letter of Direction.

The Applicants also requested that the IESO produce all materials with respect to the expectations that market participants would be compensated with respect to the Renewable Integration Amendments. This request is adequately covered in item (i) above.

As noted above, the IESO argued that the scope of this proceeding should be established by the Board so as to exclude any consideration of the consequential impacts of the Renewable Integration Amendments on the Applicants (or other market participants) arising from their contracts with the OPA. The IESO maintained that it did not, and should not, consider those impacts in the market rule amendment process. The Board is not prepared to make the requested determination at this time in the absence of seeing the materials in the possession of the IESO. If this proceeding were not under a statutory time constraint, the Board might take the approach of conducting a preliminary enquiry into the scope of the issues prior to the filing of evidence and the exchange of interrogatories. However, given the time constraint the approach proposed by the IESO could result in disclosure being completed only a very short time before the Board is required to issue its order in this proceeding. That would be unfair to the Applicants, and would compromise the ability of the Board to appropriately consider the evidence and the issues before issuing its order. In the Board's view, the alternative of requiring early disclosure on a range of issues, even though some may eventually be found to be out of scope, does not unduly harm the IESO. The Board accepts that there is an administrative burden associated with the production of materials on a compressed schedule. However, as noted above the Board is only ordering the production of materials that are already in the possession of the IESO. The Board is not requiring production from third parties via the IESO, nor is it requiring the IESO to produce correspondence or new analyses.

Confidentiality Claims

During the oral hearing on the Applicants' motion, the Board confirmed the schedule for the filing of submissions on the confidentiality claims being made by the OPA and the Ministry of Energy in respect of certain of the materials filed by the IESO in response to the Letter of Direction. The process for addressing those confidentiality claims is proceeding in parallel with the further production of materials by the IESO that is being ordered under the terms of this Decision and Procedural Order.

The Board is concerned that any confidentiality issues associated with the materials to be produced by the IESO under the terms of this Decision and Procedural Order not engender any further delay in this proceeding. The Board expects that, in making this further production, the IESO will comply with the Board's *Rules of Practice and Procedure* and the *Practice Direction on Confidential Filings*. If considered appropriate by the relevant parties, any material in respect of which a confidentiality claim is being

made may be filed by the IESO, the OPA or the Ministry of Energy, provided again that the filing is in accordance with the above-noted Board regulatory requirements. To the extent that a confidentiality claim is being made on the same basis as applies to the current confidentiality claims, it will be sufficient to simply state that.

Remaining Steps in this Proceeding

As noted above, the IESO has stated that it intends to file evidence. The IESO has also indicated that it would like to pose interrogatories to the Applicants. The Applicants have not indicated that they intend to file any evidence, but they have stated that they are prepared to answer interrogatories to the extent that the Board considers them relevant and to the extent that the Applicants have the information in question.

The Board will make provision for the IESO to file evidence if it so chooses, and to pose interrogatories to the Applicants. The Board will allow all other intervenors to do the same. The Board will also make provision for the Applicants to file evidence if they choose. All of this evidence and interrogatories will be due on February 22, 2013. This is sooner than the IESO had proposed. However, the Board has already indicated that it must achieve fairness to the parties within the context of the statutory deadline.

The Board will not make provision for the filing of interrogatories on the IESO's evidence, or on the evidence of any other party (including the Applicants) which is filed on February 22, 2013. The Board is aware that the schedule outlined above will not allow parties to ask interrogatories of the Applicants on any evidence that the Applicants may file. The Board believes that any issues in this regard can be adequately addressed through cross-examination at the oral hearing. In addition, the Board will make provision for a Technical Conference should the parties want the opportunity to ask questions of a technical nature on the evidence.

The hearing of the Application will commence on March 7, 2013 and continue on March 8, 2013 if required. The Board will issue further direction in due course on the conduct of the hearing.

The Board considers it necessary to make provision for the following procedural matters. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. On or before **Friday, February 22, 2013,** the IESO shall file with the Board and deliver to all parties all materials in its possession that are captured by the list set out in this Decision and Procedural Order under the heading "Board Findings". Where applicable, that filing shall comply with Rule 10 of the Board's *Rules of Practice and Procedure* and the *Practice Direction on Confidential Filings* as set out in this Decision and Procedural Order under the heading "Confidentiality Claims". If the IESO's filing is voluminous, it may be filed and served on disc only. Nine discs shall be filed with the Board.

2. Any party that wishes to file evidence in this proceeding shall file that evidence with the Board and deliver a copy to all other parties on or before **Friday, February 22, 2013**.

3. Any party or Board staff that wishes to ask interrogatories of the Applicants shall file the interrogatories with the Board and deliver a copy of the interrogatories to all other parties on or before **Friday, February 22, 2013.**

4. Responses to interrogatories shall be filed with the Board and delivered to all other parties on or before **Friday, March 1, 2013.**

5. A Technical Conference will be held to review the evidence filed by the parties. The Technical Conference will commence at 9:30 a.m. on **Monday, March 4, 2013** in the Board's West Hearing Room on the 25th Floor at 2300 Yonge Street, Toronto.

6. The oral hearing of the Application will commence at 9:30 a.m. on **Thursday, March 7, 2013** in the Board's West Hearing Room on the 25th Floor at 2300 Yonge Street, Toronto. The hearing is currently scheduled for up to 2 days.

All filings to the Board must quote file number EB-2013-0029, be made through the Board's web portal at https://www.pes.ontarioenergyboard.ca/eservice/ and, except as noted above, shall consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties shall use the document

naming conventions and document submission standards outlined in the RESS Document Guideline found at http://www.ontarioenergyboard.ca/OEB/Industry.

If the web portal is not available, parties may e-mail their documents to the address below. Those who do not have internet access are required to submit all filings on a disc in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Edik Zwarenstein at Edik.Zwarenstein@ontarioenergyboard.ca and the Board's Associate General Counsel, Martine Band at Martine.Band@ontarioenergyboard.ca.

ADDRESS
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary
E-mail: Boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto, February 12, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Attachments: Appendix A: Requested Evidence (reproduced from the Applicants' February 5, 2013 submissions)

APPENDIX A

TO

DECISION ON MOTION FOR THE PRODUCTION OF EVIDENCE AND PROCEDURAL ORDER NO. 3

Renewable Energy Supply Generators

Board File No: EB-2013-0010/EB-2013-0029

February 12, 2013

Requested Evidence

(reproduced from the Applicants' February 5, 2013 submissions)

b) Information relating to discrimination against Affected Generators by exposing them to uncompensated and involuntary curtailment, including:

- All Materials (defined as including internal correspondence and modelling, and all communications with Government Agencies (defined as including the OPA and Ontario Electricity Finance Corporation ("OEFC")), and all Market Participants) with respect to how the IESO or any other government agency compensates market participants for curtailing or manoeuvring their facilities to address actual or forecasts instances of surplus energy or for other purposes;

- All Materials with respect to the expectations that market participants, including but not limited to Affected Generators, would be compensated with respect to the SE-91 Amendments; and

- For greater certainty, satisfying this request includes the requirement that the IESO specifically request Government Agencies to provide all of their Materials with respect to:

    - compensation of market participants for curtailing or manoeuvring their facilities to address actual or forecasts instances of surplus energy; and

- with respect to the expectations that market participants, including but not limited to Affected Generators, would be compensated with respect to the SE-91 Amendments.

c) Information relating to discrimination in favour of the OPA:

- All Materials relating to the way in which the SE-91 Amendments may impact the extent of curtailments to which the Affected Generators may be subject, and, in particular, all forecasts, projections or estimates of curtailments under ranges of scenarios, identifying who prepared them, and including the underlying methodology, assumptions and calculations of such forecasts, projections or estimates;

- All Materials respecting the way in which the SE-91 Amendments may have an impact on amounts owing by the OPA to Affected Generators in respect of their procurement contracts; and

- For greater certainty, satisfying this request includes the requirement that the IESO specifically request Government Agencies to provide all of their Materials with respect to:

  - the way in which the SE-91 Amendments may impact the amount that the Affected Generators may be subject to curtailment, and, in particular, a forecast of curtailments; and

  - the expectations that market participants, including but not limited to Affected Generators would be compensated with respect to the SE-91 Amendments.

d) Information relating to the consistency of the SE-91 Amendments with the purposes of the *EA*, including:

All Materials considered by the IESO in respect of the matters addressed in ss. 1(d), (e) and (i) of the *EA* in the SE-91 Amendment process, including all Materials relating to the development and consideration of options that involved alternatives to imposing dispatch and floor price requirements on wind generators.