

EB-2024-0331
 HQ Energy Marketing Inc.
 Submission
 February 3, 2025

1. On December 2, 2024, the Ontario Energy Board (“OEB”) issued Decision and Procedural Order No. 2 (“PO2”)¹ in an application (EB-2024-0331) by NQS Generation Group to review, revoke and refer back to Ontario’s Independent Electricity System Operator (“IESO”) recent Market Rules amendments (“MRP Amendments”)².
2. In PO2³, the OEB i) granted intervenor status to HQ Energy Marketing Inc. (“HQEM”), ii) determined the scope of this proceeding, notably excluding contractual matters as well as issues regarding the consultation process leading up to the MRP Amendments, and iii) required the IESO to file a document providing context for the MRP Amendments (“Descriptive Evidence”)⁴, among other findings.
3. In support of their application (“NQS Application”)⁵, NQS Generation Group filed an expert report prepared by Power Advisory (“PA Report” or “PA Experts”)⁶ and the IESO responded to that evidence with a document prepared internally (“Responding Evidence”)⁷.
4. As noted by the OEB in PO2 (p. 2), the issue in this application is “whether the [MRP] Amendments: (i) are inconsistent with the purposes of the [Electricity] Act; or (ii) unjustly discriminate against or in favour of a market participant or class of market participants.”
5. The OEB further noted (p. 6) that the “rules themselves must avoid unjust discrimination, and the remedy does not lie in a contractual arrangement with a market participant.”
6. It is HQEM’s position that the NQS Application should be denied because the applicants, NQS Generation Group, have not met the burden of proof to demonstrate that the MRP Amendments themselves discriminate against them.
7. This submission provides the rationale supporting that position.

Initial Concern with the NQS Application

8. At the Pre-Hearing Conference⁸ held November 26, 2024, HQEM indicated it had specific concerns with paragraphs 31.b. and 33 of the NQS Application. Those paragraphs of the NQS Application, as well as paragraph 30, essentially state that the MRP Amendments should not have been moved forward by the

¹ EB-2024-0331, [OEB Decision and Procedural Order No. 2](#), December 2, 2024.

² MRP means Market Renewal Program.

³ See, respectively, i) page 7, ii) pages 5-6 and iii) pages 10-11 of PO2.

⁴ IESO, [Market Rule Description Evidence in Response to Procedural Order No.2](#), December 11, 2024.

⁵ NQS Generation Group, [Application for Review of Amendments to the Independent Electricity System Operator Market Rules](#), November 7, 2024.

⁶ Power Advisory, [Expert Evidence in Appeal](#), December 18, 2024.

⁷ IESO, [Market Renewal Program Rule Amendments Review Responding Evidence](#), January 6, 2025.

⁸ [Pre-Hearing Conference Transcript](#), page 37, lines 24 to 27.

IESO “prior to” or “without first” resolving contractual concerns the NQS Generation Group have with their Deemed Dispatch Agreements.

9. Our concern was that such an argument could result in any party with a generation contract with the IESO having a veto right over Market Rules amendments and provide them with an advantage not afforded to Market Participants without a contract.
10. That concern is moot given the OEB’s ruling in PO2. However, in our view, the fundamental premise underlying the NQS Application remains the unamended Deemed Dispatch Agreements the NQS Generation Group have with the IESO.

No Evidence to Demonstrate Discrimination

11. It is HQEM’s position that the PA Report filed by NQS Generation Group does not support their claims of unjust discrimination or of inconsistency with provisions of the Electricity Act.
12. The PA Report compares how a proxy generator could fare under MRP as opposed to the current market were the NQS Generation Group’s Deemed Dispatch Agreements remain unamended and concludes that gas-fired NQS generators will suffer “financial harm”⁹.
13. That exercise is of limited relevance to the current proceeding and does not demonstrate whether and how the Market Rules unjustly discriminates.
14. First, a backward-looking analysis has inherent limitations and those limitations are further compounded by the fact that the MRP Amendments introduce a fundamentally different electricity market in Ontario. A backward-looking analysis would have had slightly more relevance if the amendment under review had been incremental to the current market as opposed to amendments as significant as those introduced by MRP.
15. Furthermore, the IESO’s Responding Evidence (section 2.8) has illustrated how the PA Report is deficient by ignoring that a commitment not going to the proxy generator would likely go to another NQS generator.
16. Second, the PA Report almost exclusively looks at the perspective of NQS generators under the current market versus MRP¹⁰ but makes claims regarding other suppliers without providing similar examples or demonstrations to support those claims¹¹.
17. The only exception to this is the comparison¹² of parameters subject to mitigation between NQS generators and some hydroelectric resources which is of limited probative value.

⁹ See paragraphs 16 and 17 and Appendix C at page 63 of the PA Report.

¹⁰ PA Report, paragraph 20: “The intent of our analysis was to highlight the financial impacts of the MRP Amendments on NQS Generators compared to the current Market Rules.”

¹¹ See paragraphs 2, 19, 27, 52 and section 6.2 of the PA Report.

¹² See paragraphs 64 and 65 and Figure 13 of the PA Report at pages 39 and 40.

18. Third, regarding the comparison of the RT-GCG program under the current market and the RT-GOG program under MRP, it is important to recall that both programs are bespoke for gas-fired NQS generators and that the latter will account for revenues that the previous one did not. That, in itself, is not sufficient to demonstrate discrimination.
19. The IESO has other cost guarantee programs (such as the Intertie Offer Guarantee) but the PA Report has not looked at how they work when compared to those exclusive to NQS generators. Such an exercise would have helped in determining whether the differences in cost guarantee programs under MRP are supported by differences in circumstances for other suppliers.
20. Finally, the PA Experts were not even tasked with providing evidence or an opinion on whether the MRP Amendments are inconsistent with the Electricity Act or whether they unjustly discriminate¹³. In the absence of evidence that would try to do so, the only logical conclusion is that there is no demonstration of either on the record.

Remedy is Amended Contracts

21. In our view, the PA Experts have clearly articulated what the fundamental issue is for the applicants under MRP at paragraph 80 (pages 44-45) of their Report¹⁴:

*The IESO's propose[d] **contract amendment term sheet** does not address the additional complexity and risk to which the NQS Generators are exposed under MRP:*

- a. *Commitments under MRP will be determined by the economics of three-part offers, **whereas the term sheet** continues to determine assumed operations based on incremental energy offers only. [...]*
- b. *Commitments under MRP will be determined based on the NQS Generators economics over a 24-hour period, **whereas the term sheet** continues to determine assumed operations based on an hour-by-hour assessment. [...]*
- c. *Commitments under MRP will incorporate the impact of physical constraints elsewhere on the grid, **whereas the term sheet** does not consider such constraints. [...]. (Emphasis added.)*

22. At the hearing, the PA Experts have also made clear that the fundamental issue is the unamended Deemed Dispatch Agreements¹⁵:

¹³ [Hearing Transcript, Volume 3 \(January 17, 2025\)](#), from page 34, line 21 to page 35, line 5.

¹⁴ See also paragraphs 21, 66 and 67 of the PA Report for "contract amendments".

¹⁵ [Hearing Transcript, Volume 2 \(January 16, 2025\)](#), from page 126, line 22 to page 127, line 12. See also, Hearing Transcript, Volume 3 (January 17, 2025), page 20, from line 24 to line 28; page 22, from line 20 to line 23; and page 24, from line 14 to line 22.

EB-2024-0331
HQ Energy Marketing Inc.
Submission
February 3, 2025

*There are **financial incentives in contracts**. We don't need to talk about contracts in particular, but there are financial incentives to participate in the wholesale market in a certain way and that is on incremental energy. That is their financial incentive. That is not changing as a part of the MRP amendments, but the way they commit and dispatch is. So there is going to be a wedge that is going to occur between how they are [...] financially incented to participate in the wholesale market and how they will actually participate to it. And that wedge is very important to understand because that is a financial risk. It is included in our report. **It is largely a contract risk**. We don't have to talk about that, but we do need to talk about **the incentive that is buried in the contracts** or how they participate in the wholesale market. And I think it is important to note that it assumes they operate on an incremental energy offer basis that no longer will exist in the future. (Emphasis added.)*

Concluding Remarks

23. HQEM is of the position that there is simply no probative evidence to support the NQS Application's claims that the MRP Amendments discriminate against NQS generators.
24. NQS Generation Group have filed evidence (the PA Report) that only illustrates how a hypothetical gas-fired NQS generator could fare under MRP should its Deemed Dispatch Agreement remain unamended.
25. HQEM believes that revoking the MRP Amendments and referring them back to the IESO will not solve the issues NQS Generation Group have with their Deemed Dispatch Agreements.
26. Accordingly, the NQS Application should be denied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON FEBRUARY 3, 2025.

HQ Energy Marketing Inc.