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Our File No.: 339583/000003

By electronic filing

June 8, 2026

Ritchie Murray
Registrar
Ontario Energy Board
2300 Yonge Street, 27th floor
Toronto, ON, M4P 1E4

Dear Mr. Murray:

Re: Independent Electricity System Operator ("IESO") Application for Approval of 2026, 2027, and 2028 Revenue Requirements, Expenditures, and Fees
Board File No.: EB-2026-0142

We are counsel to Canadian Manufacturers & Exporters ("**CME**") in the above-noted proceeding. The IESO has applied to the OEB for approval of its 2026, 2027 and 2028 revenue requirements, expenditures, and fees in the above captioned application. In its cover letter dated April 22, 2026, the IESO has requested a "streamlined" process for the OEB's review and determination of this application. In particular, the IESO has requested that the hearing of this matter include the following procedural steps:

1) Approval of the draft issues list attached as Appendix "A" to the cover letter. The stated purpose is to ensure that the process is "limited to the alignment of the proposed expenditures and revenue requirements with the Minister-approved Business Plan and the setting of the appropriate fees";

2) Establish a Board staff-led interrogatory process in which staff will issue their interrogatories based on the Issues List and invite intervenors to review. Intervenors would be allowed to propose additional questions, but those will only be posed if Board Staff determines they should be included in the set to be put to the IESO;

3) After the close of the IESO's direct evidence, no argument would be permitted from Board Staff or intervenors, it would simply be remitted to the panel of OEB Commissioners for determination.

The IESO asserts that these steps are "consistent with the Board's adoption of active adjudication to enable more efficient and cost-effective regulatory proceedings in accordance with Rule 26.01 of the Board's *Rules of Practice and Procedure*."[1]

[1] EB-2026-0142, Letter from P. Duffy to the Ontario Energy Board, April 22, 2026, p. 2.

On May 25, 2026, the Board published its Notice of Hearing in respect of this matter. The Notice of Hearing requested proposed intervenors, to include with their requests for intervenor status, to comment on the draft issues list, and "any additional matters that they believe may assist in the simplification of the proceeding or contribute to the just and most expeditious disposition of the proceeding."[2]

CME is applying for intervenor status through the OEB's Intervention Form online portal. Accordingly, what follows is CME's comments on the IESO's proposed process, and the draft issues list.

The IESO's Proposal Removes the Opportunity for Intervenors to Participate

In a typical hearing before the OEB, the parties, including Board Staff and intervenors, would have the right to a robust discovery process. This includes:

- submitting interrogatories to the applicant to receive further and better information on the application. The applicant is required to answer those interrogatories in good faith, subject to disputing the relevance of the question, in which case such answers may be refused;

- Asking follow-up questions, usually in the context of the settlement conference, where parties require more refined information to come to a position on potential areas of settlement.

The discovery process helps to ameliorate the significant disparity in information between the applicant, who has intimate knowledge of all aspects of their organization, results, forecasts and other information, and Board Staff/Intervenors, who are strangers to the organization.

Subsequently, the Board typically convenes a settlement conference, whereby the parties attempt to come to a resolution on some or all of the outstanding issues in the issues list. If the settlement conference is successful, the parties make a settlement proposal to the Board. If it is not successful, or the Board does not provide for a settlement conference, the parties are free to make submissions on the application to the Board for determination.

The IESO's request for a "streamlined" process would remove the right for intervenors to submit interrogatories for themselves, does not contemplate a settlement conference, and would completely remove the parties' rights to make submissions on the IESO's application prior to the Commissioners making a decision.

The Premise that Intervenor Participation is Inefficient is False

The IESO argues that its proposal is to "streamline" the adjudicative process, would "enable a more cost efficient and cost-effective regulatory proceeding." Given the nature of the "streamlining" proposed by the IESO, the implication of the IESO's proposal, as CME

[2] EB-2026-0142, Notice of Hearing, May 25, 2026, p. 2.

apprehends it, is that the fulsome intervenor participation in the adjudicative process is inefficient and cost ineffective. However, that premise is false.

The Board recently completed a review on intervenor participation in OEB applications. In a September 2024 report, the Board found the following about OEB intervenors:

- Their costs are approximately 0.3% of the revenues of regulated utilities;[3]

- Their costs are lower on both a per customer and per capita basis then any other jurisdiction reviewed. In some cases, they are half or one third as large as costs in other jurisdictions on a per capita or per customer basis;[4]

- They provide value not only with respect to lowered revenue requirements, but in other aspects of applications, such as performance requirements and rule changes;[5]

- Intervenors can support efficient and effective adjudication, by bringing expertise and institutional knowledge to bear;[6] and

- Providing assurance to the Commissioners that outcomes are in the public interest by virtue of the broad cross-section of views provided by intervenors.[7]

This matches the OEB's previous determination on intervenor participation, which found that "Regulators need access to external expertise and a spectrum of perspectives. <u>Intervenors have value, because decision-making will be better informed</u>."[8] (emphasis added)

The value brought by intervenors in previous IESO cases is no exception. While CME acknowledges that the IESO is different from a distributor or other utility because it is a not-for-profit entity, the OEB approved settlement agreements/decisions highlight the value brought by fulsome intervenor participation. In this regard:

- In EB-2022-0318, the Board accepted a settlement proposal between the IESO and the parties (including intervenors). The Board specifically commented on the "substantial commitments" agreed to by the IESO, which included investigation of IESO spending, increased transparency around historical spending, additional transparency around staffing and compensation, and other commitments.[9]

- In EB-2022-0002, the Board accepted a settlement proposal between the IESO and the parties (including intervenors). The settlement included requirements for the IESO to

[3] Ontario Energy Board, Report Back to the Minister: Intervenors and Regulatory Efficiency, September 27, 2024, p. 3 [OEB Efficiency Report].
[4] OEB Efficiency Report, p. 35.
[5] OEB Efficiency Report, p. 5.
[6] OEB Efficiency Report, p. 5.
[7] OEB Efficiency Report, p. 3.
[8] Ontario Energy Board, Top Quartile Regulator Report: Phase 1, March 2021, p. 47.
[9] EB-2022-0318, Decision and Order, IESO, Application for Approval of 2023, 2024, and 2025 Expenditures, Revenue Requirement, and Fees, August 29, 2023, p. 6.

conduct a jurisdictional scan on "types of market and planning information" available in other jurisdictions, and updating the market renewal schedule, and quarterly reporting.[10]

- In EB-2020-0230, the Board accepted a settlement proposal between the IESO and the parties (including intervenors). The settlement included commitments by the IESO to increase the public availability of planning data, provide details of various Audit Reports, like the recommendations and actions taken as a result of those recommendations, and a review of the cost allocation model.[11]

Even though the IESO is a not-for-profit entity, intervenor participation and the use of settlement conferences has significantly increased transparency and accountability for the IESO over each incremental application.

The premise which seems to underlie the IESO's request is therefore demonstrably wrong.

Moreover, the Applicant has not provided any evidence or rationale as to why the Board cannot provide for an efficient and cost-effective process through its traditional adjudicative process. For instance, the Board only allows parties who demonstrate a "substantial interest" in the proceeding to participate, only relevant interrogatories need be answered by the Applicant, and the Board only allows for cost recovery to the extent that an intervenor's participation was determined to be useful to the Board. Given this context, it is difficult to see why intervenor participation would be inefficient or ineffective such that it is appropriate to remove it from this proceeding.

Removing Intervenor Participation Risks Reducing Fairness to Consumers

Adjudicative participation by those with a "substantial interest" in the proceeding is a critical element of the OEB adjudicative process. In this regard:

- Pursuant to the Board's *Rules of Practice and Procedure*, participants in a Board proceeding must satisfy the Board that they have a "substantial interest" in the proceeding in order to be granted intervenor status.[12] A "substantial interest" is one where they have a "material interest that is within scope of the proceeding" such as representing direct interest of consumers.

- Pursuant to Section 4.4 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched B (the "**OEB Act**"), the Board is obligated to establish processes whereby "electricity consumers, distributors, generators, transmitters, any other persons who have an interest in the electricity industry and any other persons who may be prescribed by the regulations may provide advice and recommendations for consideration by the Board."

[10] EB-2022-0002, Decision and Order, IESO, Application for Approval of 2022 Expenditures, Revenue Requirement and Fees, August 11, 2022, p. 5.
[11] EB-2020-0230, Decision and Order, IESO, Application for Approval of 2020 and 2021 Expenditures, Revenue Requirement and Fees, November 18, 2021, pp. 19-20, 25.
[12] Ontario Energy Board, Rules of Practice and Procedure, November 13, 2025, r. 22.02.

The Board has previously held that it discharges that obligation, at least in part, through the inclusion of intervenors in the adjudicative process.[13]

- In the *Environmental Defence Canada Inc.* case, the Divisional Court found that asking interrogatories and making submissions were a large part of what made the OEB's hearing process fair to interested parties:

> "The fact that EDC was allowed to **participate robustly in the hearing** **by making submissions and challenging evidence** by filing hundreds of interrogatories are significant factors militating against finding that OEB's denial of EDC's request to file evidence violated procedural fairness."[14]

The IESO's proposal would remove a significant scope of participation for parties, even though they have a substantial interest in the outcome. This is particularly concerning because the IESO has requested an increase to its usage fees to $2.0486/MWh for 2026, $2.1987/MWh for 2027, and $2.1684 for 2028 for domestic customers. Current usage fees are $1.4492/MWh for domestic customers.[15] Accordingly, the IESO is proposing a 41% increase in usage fees in 2026 alone.

The "Streamlined Proposal" Runs Contrary to the IESO's Stated Values

The IESO is a public, not-for-profit, corporate entity established under the *Electricity Act, 1998*, S.O. 1998, c. 15 Sched. A (the "**Electricity Act**"). The IESO maintains that accountability is a fundamental principle in its governance, management, administration and operations. In this regard:

- The IESO states that, in exercising its duties, it "strives to serve the ratepayers of Ontario in a transparent and inclusive manner."[16]

- Under the "Corporate Accountability" section of its website, the IESO stated that "Accountability is a fundamental principle in the governance, management, administration and operations of the IESO. In exercising its duties, the IESO strives to serve the ratepayers of Ontario in a transparent and inclusive manner."[17] (emphasis added)

- Pursuant to Section 3.2 of the Memorandum of Understanding ("**MOU**") between the IESO and the Ministry of Energy and Mines, the IESO Chair "acknowledges that accountability is a fundamental principle to be observed in the governance, management, administration and operations of the IESO."[18]

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[13] OEB Efficiency Report, p. 6.
[14] *Environmental Defence Canada Inc. v. Ontario Energy Board*, 2026 ONSC 1002 at para. 55.
[15] EB-2025-0302, Exhibit A, Tab 1, Schedule 2, p. 2; EB-2025-0302, Exhibit A, Tab 1, Schedule 3, p. 1; EB-2025-0302, Exhibit A, Tab 1, Schedule 4, p. 1
[16] IESO, "Corporate Accountability", online: <Corporate IESO>.
[17] IESO, "Corporate Accountability", online: <Memorandum of Understanding>.
[18] IESO, "Memorandum of Understanding between Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Energy and Independent Electricity System Operator", April 27, 2022, s. 3.2, online: <Memorandum of Understanding> [MOU].

- Pursuant to Section 3.3 of the MOU, the Chair of the IESO is required to ensure that the IESO conducts itself with, *inter alia*, "fairness…and openness and transparency to the extent permissible by law."[19]

- Pursuant to Section 10.2.5 of the the MOU, the IESO is required to "make financial decisions in a prudent and accountable manner…".[20] (emphasis added)

The IESO's stated values, and the values required of it by the Ministry of Energy and Mines is clear. It is meant to operate in a fashion that is transparent, open, fair and accountable. CME submits that those values do not stop when the IESO interacts with the regulatory process. If anything, those values become even more important.

CME is concerned that the IESO's "streamlined" hearing runs directly contrary to those stated values. Not allowing intervenors to have the leeway to ask relevant interrogatories and depriving them of the ability to make submissions before the Board is not open, fair, transparent, or accountable. It deprives electricity consumers with one of the few forums in which it can increase accountability and transparency from the IESO.

As set out above, the IESO's previous cases have demonstrated this repeatedly. Consumer groups and other intervenor groups have consistently increased the transparency, accountability and availability of information provided by the IESO.

Conclusion Regarding the IESO's Proposal

CME submits that the Board should carefully consider the IESO's proposed "streamline" procedure. "Efficient" is not a synonym with "quick" or "cheap". While removing intervenor participation could make the proceeding quicker or reduce the cost claims requested at the end of the proceeding,[21] that is not the same as efficiency. The value that intervenors provide to the Board throughout the process will be lost. Consumers will also lose the right to be heard.

While the Minister of Energy and Mines has indicated support for a "streamlined" procedure,[22] it is not clear based on the IESO's evidence that it provided the Minister with the specific procedure which it has proposed to the Board. CME therefore submits that the Minister's support should not be taken as supporting any of the specific measures proposed by the IESO.

Accordingly, CME opposes the IESO's proposal and submits that the Board should continue to actively adjudicate this application through the normal process, including interrogatories, a settlement conference (if it's determined to be efficient) and submissions on any unsettled issues.

The Draft Issues List

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[19] MOU s. 3.3.

[20] MOU s, 10.2.5.

[21] Specifically in the sense that the cost of the specific proceeding may be lower, though likely more expensive in the long run as the value provided by intervenors would be lost.

[22] EB-2026-2028, IESO, Application for Approval of 2026, 2027 and 2028 Expenditures, Revenue Requirement and Fees, Tab B-1-3: Minister's Letter to Approving the IESO's 2026-2028 Business Plan.

In previous IESO issues lists, the Board has formulated many of the issues by asking whether the IESO's requested relief is appropriate. For instance, in EB-2022-0318, the Board approved Issues List included the following issues:[23]

- Issue 1.1 - Is the IESO's Fiscal Year 2023 revenue requirement of $208.4 million appropriate?
- Issue 1.4 - Is the IESO's 2023 projected staffing levels and compensation (including salaries, benefits, pensions and other post-employment benefits) appropriate?
- Issue 1.7 - Is the IESO's 2023 capital expenditure budget of $86 million for appropriate?
- Issue 3.1 - Is the IESO's proposal to retain an Operating Reserve of $15 million in the Forecast Variance Deferral Account (FVDA) appropriate?

In contrast, the IESO has submitted a draft issues list for this proceeding which changes many of those questions to whether the IESO's application "aligns" with the Minister's approved business plan. Here are how the equivalent issues in this proceeding have been set out by the IESO:

- Issue 1.1 - Is the IESO's Fiscal Year 2026 revenue requirement of $328.8 million aligned with the Minister's approved Business Plan?
- Issue 1.4 - Is the IESO's 2026 projected staffing levels and compensation (including salaries, benefits, pensions and other post-employment benefits) aligned with the Minister's approved Business Plan?
- Issue 1.7 Is the IESO's 2026 capital expenditure budget of $60.5 million aligned with the Minister's approved Business Plan?
- Issue 4.1 - Is the IESO's proposal for a proposed Operating Reserve of $30 million in the Forecast Variance Deferral Account (FVDA) aligned with the Minister's approval in the Business Plan?

CME is concerned that the proposed change would prevent the Board and parties from conducting a substantive review of the IESO's application. CME submits that a review limited to simply matching the IESO's application with its business plan would not be consistent with the statutory scheme set out in the Electricity Act, nor consistent with the Board's statutory mandate with respect to the regulation of electricity under the OEB Act. In this regard:

- Pursuant to Section 24 of the Electricity Act, the IESO is required to obtain the minister's approval of its business plan. The minister, having received the business plan, can either accept it, or refer it back to the IESO for further consideration.

[23] EB-2022-0318, Procedural Order No.1, May 4, 2023, Appendix B.

- Pursuant to Section 25 of the Electricity Act, the IESO is required to submit "its proposed expenditure and revenue requirements" to the Board for review. The Board may "approve the proposed expenditure and revenue requirements and the proposed fees or may refer them back to the IESO for further consideration with the Board's recommendations."

The Electricity Act therefore contemplates two separate reviews. One by the Minister, and one by the Board. Both are required to review the IESO's submissions.[24] Both are required to satisfy themselves that the IESO's requests are appropriate. There is no language which limits the Board to only reviewing the IESO's application to ensure it "aligns" with the business plan.

In determining whether to approve the IESO's proposed expenditure and revenue requirements, the Board is required to do so in view of its own statutory mandate regarding the regulation of electricity. Section 1(1) of the OEB Act provides that in carrying out its responsibilities under the OEB Act, or *in relation to electricity*, the Board shall be guided by the statutory objectives provided in the act. The Minister is not bound to the same statutory objectives when reviewing the IESO's business plan.

Accordingly, CME submits that the existence of multiple levels of review is the intended process for the IESO filings. Both the Minister and the Board are required to review it, from different perspectives, to ensure it is appropriate to both bodies. It is not sufficient for the Board's review to simply ask whether the IESO's expenditures and revenue requirements are the same as those put before the Minister in the IESO's business plan. The Board must substantively review the IESO's submissions, and determine for itself, with reference to its own statutory mandate, whether the expenditures and revenue requirements are appropriate.

CME therefore opposes the changes made to the wording of the draft issues list and submits that the Board should use the Board approved language from EB-2022-0318.

Yours very truly,

Scott Pollock

SP/LS

cc:

- **Lydia Salgo**: Borden Ladner Gervais LLP, Counsel for CME (lsalgo@blg.com)

[24] The Minister reviewing the business plan and the Board reviewing the proposed expenditures and revenue requirements.

- **Giselle Lopez**: IESO, Senior Advisor, Regulatory Affairs (regulatoryaffairs@ieso.ca)
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