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APPRO
ASSOCIATION OF
POWER PRODUCERS
OF ONTARIO

March 2, 2017

Ms. Candice Trickey
Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, ON M5H 1T1

Dear Ms. Trickey

Re: Generator Cost Guarantee Market Rule Amendment

Please accept these comments on behalf of the Association of Power Producers of Ontario (APPRO) members participating in the Real-Time Generator Cost Guarantee (RT-GCG) Program.

As you know, the restructuring of this program has been a contentious issue. Our members, who constitute the vast majority of the participants in the RT-GCG Program, have participated in the RT-GCG Stakeholder Engagement process over the last several years to attempt to bring their perspectives and information to the IESO's consideration. Some generators have also engaged in one-on-one meetings with IESO staff so that they can start to understand how the amendment may affect them. Given how the rule is structured, it is impossible to have such an understanding based on the text of the rule itself, without the one-on-one meeting.

On February 14th, the Technical Panel (TP), at the request of IESO staff agreed to post the Market Rule Amendment (MRA) for stakeholder comment, despite the concerns expressed by both engaged generators and the generator TP representatives that the promised one-on-one discussions with the IESO have (i) yet to be finalized and (ii) in some the cases, have yet to be scheduled. These resource-specific discussions with the IESO will allow generators to understand the IESO's interpretation of the RT-GCG MRA in terms of eligible, recoverable costs under the program, specifically as it relates to the incremental operating and maintenance costs - the most significant cost item under the RT-GCG program. As such, these meetings are essential for generators to better understand the resource-specific impacts of the proposed MRA. Until these discussions are complete, comment on the MRA is difficult if not impossible.

Initially, the IESO suggested that these resource-specific discussions were expected to be completed in February. However, as of today a number of program participants have not yet met with the IESO. Despite this delay and the resulting inability of generators to understand the

impact of the MRA, the IESO continues to move ahead with the Technical Panel process, with comments due on March 2.

The primary role of the TP is to provide advice and recommendations directly to the IESO Board on market rule amendments to ensure that the rule language meets the final design intent of the proposed change. In doing so, the TP should be informed by the views of market participants. Given that the RT-GCG program is only of interest to a certain class of generators, it seems premature to not only move this forward to a vote at the March 21 TP meeting but also to the subsequent IESO Board meeting in April, given that program participants have yet to conclude or in some cases, even begin their resource-specific discussion. These discussions with the IESO need to be finalized to better understand the impacts of the proposed changes on each generator's operations and economics.

Under the circumstances, APPrO is concerned that the stakeholdering in this process falls well short of the IESO's legal obligations.

First, the IESO's stakeholder engagement principles require the IESO to "facilitate a process that provides relevant, accurate and timely information." It is hard to see how this process has met that undertaking given that the most directly affected stakeholders are not in a position to understand how they will be impacted. The IESO's representations on stakeholdering are legally binding. As a result, the failure to meet that obligation is therefore legally vulnerable. Second, it should be remembered that the reason why these one-on-one meetings are necessary in the first place is that the proposed market rule does not, on its face, provide sufficient guidance. Instead, it effectively delegates decision making from the IESO Board (where it legally resides) to IESO staff in the preparation of market manuals. As APPrO has advised the IESO Board previously, this delegation is not authorized under the *Electricity Act, 1998*. Although leaving rule-making to staff may be more convenient for the IESO Board approving detailed rules, that is not a justification for this practice. As the Divisional Court stated in *Ainsley Financial Corporation v. Ontario Securities Commission*¹:

"Resort to convenience and practicality can only be justified, however, when the measures adopted by the administrative agency in question fall within the scope of its statutory mandate. Were it otherwise, the carefully constructed legislative schemes governing the power and conduct of the O.S.C., and other such agencies, would be rendered meaningless. The rule of law, a central concept in our legal system, would be undermined."

APPrO members have participated in good faith to try to understand the impacts of the proposed amendments. However, so far, it is impossible to do so. Instead, the rule would delegate rule making authority to staff and staff will simply have broad discretion to impose whatever cost recovery it considers reasonable, unconstrained by principles or facts. This is obviously an unacceptable basis for voting on a market rule.

APPrO is therefore of the view that until the one-on-one discussions have been concluded with each program participant, the comment period should remain open and the IESO should consider postponing the March 21 TP vote, should discussions still be outstanding at that time.

¹(1993), 14 O.R. (3d) 280 (Div. Ct.); affirmed by Court of Appeal: (1994), 21 O.R. (3d) 104.

Given that this process began in 2014, and given that the IESO has been auditing GCG costs since 2012, it is remarkable that the IESO cannot now even advise what the impacts of the rule would be. It is even more remarkable that the TP is prepared to let the proposed rule go forward under these circumstances. Clearly a few weeks or more would have no appreciable impact on the implementation of a new cost recovery framework.

Sincerely,

A handwritten signature in black ink, consisting of a large, loopy initial 'D' followed by a series of connected loops and a final horizontal stroke ending in a small dot.

David Butters
President & CEO