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APPRO
ASSOCIATION OF
POWER PRODUCERS
OF ONTARIO

March 9, 2018

Ms. Barbara Ellard
Director, Markets and Procurement
Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, ON M5H 1T1

Dear Barbara,

Re: Decision Making in the Market Renewal Project from Design to Market Rules and Manuals

APPRO is pleased to make this submission on the need to work early in 2018 on “improved governance structures”, in this case the decision making processes which lead from key design decisions through high-level design to market rules and manuals.

Introduction

Governance and decision making has been an issue for market renewal since this initiative was first discussed in 2016. At that time, APPRO and others pointed out that moving away from the current Ontario design to a form of US Standard Market Design (SMD) would not be successful if it did not address and resolve market participant concerns about governance, primarily about decision making processes and recourse. Stakeholders made the point that the accountability model for the IESO should generally follow the pattern of other ISOs and RTOs in North America: i.e., that the terms and conditions of services be reviewed on the basis of a just and reasonable standard by an independent regulator (in the US, FERC and Texas Public Utility Commission, in Alberta, the Alberta Utilities Commission; in Ontario, it would be the OEB). APPRO has reiterated its concerns about governance and decision-making over the course of the more focused discussions on the energy and capacity streams as well as at SAC and the Market Renewal Working Group (MRWG) throughout 2017.

In APPRO’s discussions with its member companies, many of whom do business in the US, in Alberta and in other jurisdictions, the consensus was that, absent a FERC and the Federal Power Act¹ (or an Ontario equivalent approach) a US SMD approach to market renewal, particularly for capacity auctions, would be ineffective. This holds true as well for energy stream improvements

¹ The Federal Power Act (or its predecessors) have been in place since 1920. The certainty that it and organized energy and capacity markets have provided over the long haul seems to go a long way to address the risk issue.

such as locational pricing, DAM and ERUC, given all contracts for generators are based on the current market design. In fact, market renewal program (MRP) design components are all interrelated and present a suite of market risks, market opportunities, and contract risks for supplier operations and revenues.

In fact this was specifically referenced in the Brattle Group's study² for the IESO:

“Ontario’s power system operates in an environment of regulatory risk that is arguably higher than in many other jurisdictions. Some stakeholders suggested that most U.S. markets offer more competitive electricity markets with lower regulatory risks and more transparent governance structures, which serves to increase investor confidence. This issue has been raised with respect to many aspects of Market Renewal, but is most important in the context of the capacity auction that the IESO intends to rely on for attracting and retaining resources. We agree with stakeholders that governance and regulatory risks are critical components of the capacity auction workstream, and discuss the similarities and differences between Ontario and other jurisdictions. Based on this comparison, we recommend that the IESO and stakeholders explicitly address these risks through a combination of improved governance structures and market design elements that address Ontario’s unique challenges and environmental policies as discussed in Section V.”

While the Brattle report does not address all the risks, these include important considerations such as:

- Market revenues necessary to enable continued facility operations and to ensure that the certainty of the revenue flows under contracts is preserved (those contracts support many billion dollars of financing from major banks and financial institutions).
- Market power mitigation rules;
- Must-offer rules and obligations; and
- Target capacity, demand curves, and facility delisting or deregistration, etc.
- There are obviously many other issues of significance. Most are interrelated.

Therefore, how decisions are made is not just important, it is vital to the MRP success. If these processes are deficient suppliers and their lenders³ will not support MR and/or future investment will not take place without significant risk premiums, and the value of an ICA will be eroded.

Decision-making and US Standard Market Design

In the US, under the Federal Power Act, the Federal Energy Regulatory Commission (FERC) is allowed to regulate “the sale of electric energy at wholesale in inter state commerce”, including

² The Future of Ontario’s Electricity Market: A Benefits Case Assessment of the Market Renewal Project; the Brattle Group, April 2017

³ In many cases, under the terms of financing arrangements, lenders who provided debt financing for projects must consent to any amendments to the provisions of the related power contracts.

any activities that affect the wholesale price of electricity. Generally, this can be described as a “bottom up” approach to decision making, where FERC and the Courts are the ultimate arbiters.

In a study⁴ prepared for the Alberta Department of Energy (“Alberta Energy”), Charles River Associates (CRA) outlined key aspects of the US approach to market design processes. APPrO encourages the IESO to review this report, as it highlights the various ways market participants in the US markets participate in the market design and market rule amendment process. The CRA study also reviews Alberta’s approach to market design. As Alberta is embarking on implementing a capacity market – similar to Ontario’s ICA – this study is timely and instructive. Alberta recognizes the need for change to their processes in light of a capacity market.

Ontario approach

Given that market renewal in Ontario is generally following a US SMD, APPrO has proposed that the governance and decision-making model for the IESO should similarly follow the pattern of every other ISO and RTO in North America: that the terms and conditions of services be reviewed on the basis of a just and reasonable standard by an independent regulator (in the US, FERC and Texas Public Utility Commission, in Alberta, the Alberta Utilities Commission; in Ontario, it would be the OEB).

But this would also mean that stakeholders should review MR proposals (to quote CRA) through “...institutionalized voting processes at different committee levels, culminating in a senior stakeholder body...” and “for parameters that are not directly contained in the market rules – such as reliability-related parameters contained in the resource adequacy study, which must be updated for each auction – stakeholders should participate in committees that oversee the assumptions and methodologies that ISO staff use to conduct the study.”

Critical principles for decision making processes:

CRA points to key principles which should underlie market design processes:

- **Accountability:** Responsiveness of agencies to stakeholders and rule of law; clear definitions of processes and mandates.
- **Openness and Transparency:** Clear and accessible documentation of process and outcomes
- **Independence:** Independence of referees (ISOs and regulators) from market participants and from political influence.
- **Engagement, Inclusivity, and Participation:** Encouragement and opportunity for stakeholders to present views and be provided due consideration.
- **Flexibility:** Provide ability to change with experience while avoiding high levels of regulatory uncertainty.

⁴ Governance Institutions and Processes for Electric Capacity Markets: A Jurisdictional Review; Charles Rivers Assocs., October 2017

- **Administrative Efficiency:** Balance administrative burden – including cost and timeliness – with achievement of other governance principles.

These principles should be applied to either a top-down (Canadian-type) or bottom-up (US-type process) approach, including the overarching statutory construct, and they can inform thinking about the way in which decisions on design options, high-level designs and detailed design work leading to the way Market Rules and Market manuals should be made and implemented.

APPrO submits that an important priority for 2018 is to develop clear and accessible definitions and documentation of market renewal decision making processes, and mandates that are efficient in their application (i.e., decisions which are practical, on point and timely).

A Market Renewal Subcommittee or workstream addressing this matter should be put in place now, since these issues will arise relatively quickly in 2018. It is preferable that this be done soon, since the consequential decisions around MR are likely to involve differences that must be reconciled before a high-level design can be accepted and market rules are amended or market manuals are produced. Work on contract amendments must flow from these decisions.

This is an opportunity to improve stakeholder involvement in decision making and bring it in line with US organized markets – as far as may be possible given the difference between US and Canadian constitutional and regulatory frameworks. Not only will this provide an important and so far, absent framework for decision-making, it will add credibility to the MR process in the sense that it will be truly “stakeholder” led.

The process should be representative of market participants and be independently resourced by the IESO. The remit is to develop a clear decision-making process that aligns with the current regulatory and legal framework in Ontario. The subcommittee should have access to resources in order to develop and document a draft decision-making process for market renewal, including Technical Panel (TP) and other aspects.

Areas for consideration should include:

- What is an appropriate process? Is the current system clear, open and transparent, and do market participants have adequate opportunity to assess and decide on critical elements of market design? Is this process clearly documented?
- Does it reflect the CRA principles noted above? Are there other principles to consider?
- What is the relationship between market renewal design directions, design choices, a high-level design, detailed design issues, stakeholder decision-making processes, the development of market rule amendments/market manuals, the Technical Panel and the IESO Board?
 - Is the TP adequately representative and does it have the technical skill to assess materials?
 - Does the current IESO approach to market manual development require examination?
- Who should decide and how?
 - E.g., “committee of the whole”, specific workstream committees, rules subcommittee, etc.

- What recourse should there be in the event of disagreements?

Although APPrO has been a leading voice in the need for a comprehensive review of governance, especially decision-making processes since market renewal was first discussed, others have also voiced their opinions around the need for a reformed decision-making process. In light of these and any other comments the IESO receives on governance and decision-making, APPrO trusts that the IESO will take account of stakeholder feedback on this critical issue and begins an engagement to review its internal decision-making processes in order to make market renewal a success.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Butters', is written over a horizontal line. The signature is stylized and cursive.

David Butters
President & CEO