

25 Adelaide St. E
Suite 1602
Toronto ON, M5C 3A1



APPRO

ASSOCIATION OF
POWER PRODUCERS
OF ONTARIO

July 18, 2016

Dr. Timothy O'Neill
Chair
Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, ON M5H 1T1


Dear Dr. O'Neill

Re: Generator Cost Guarantee Market Rule Amendment

This letter is written on behalf of Association of Power Producers of Ontario (APPRO) members participating in the Generator Cost Guarantee (GCG) Program. As you know this has been a contentious issue. Our members (the vast majority of the participants in the GCG Program) have participated in the GCG Stakeholder Engagement process to bring their perspectives and information to the IESO's consideration and APPRO will not comment on the substance of the IESO's position.

However, one matter of more general and fundamental concern is with respect to the delegation of the IESO Board's rule making authority to IESO staff through staff's preparation of market manuals.

The Electricity Act, 1998 provides that market rules must be passed by the IESO Board. It does not contemplate or refer to IESO staff creating market manuals. Under the common law, an administrative agency may issue non-binding guidelines, but it does not have the authority to issue binding rules: See *Ainsley Financial Corporation v. Ontario Securities Commission* (1993), 14 O.R. (3d) 280 (Div. Ct.); affirmed by Court of Appeal: (1994), 21 O.R. (3d) 104.

The role for market manuals contemplated in the proposed market rule goes well beyond non-binding guidelines. It includes:

- The mandatory requirement to create and maintain data "data that may be required by the IESO to determine pre-approved cost values and methodologies" (s. 2.2B.4);
- Authorizing the IESO determine eligible costs (s. 2B.4);
- The authorization to revise pre-approved cost values and methodologies (s. 2B.5); and

- Authorizing the IESO, "at its sole discretion" to allow a registered market participant to submit non-pre-approved costs" (s. 2B.6).

The proposed market rule is thus very much an "enabling provision" which delegates and authorizes rule making authority to staff through the development of market manuals. 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 Blair J stated in Ainsley:

"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."

APPPrO believes that maintaining the transparency and integrity of the rule making process is not just a legal requirement but a minimum component of good governance and is very concerned about this practice of unauthorized delegation. APPPrO therefore requests that the IESO Board review and specifically determine whether to approve the market manuals that are being proposed. At the very minimum, the market manuals should be completed and constitute part of the record upon which the technical panel makes its decision. Given that IESO staff has been working on these rules (and their predecessor, the Interpretation Bulletin) for a considerable period now, it is not asking too much that they be presented in a form that can be voted upon.

Sincerely,

A handwritten signature in black ink, appearing to read "David Butters", with a large, sweeping underline that loops back under the first part of the signature.

David Butters
President & CEO

cc. Bruce Campbell

25 Adelaide St. E
Suite 1602
Toronto ON, M5C 3A1



APPRO
ASSOCIATION OF
POWER PRODUCERS
OF ONTARIO

6 September 2016

Dr. Tim O'Neill, Chair
Mr. Bruce Campbell, President & CEO
Mr. Chuck Farmer, Technical Panel Chair
IESO

Dear Sirs,

Re: Generator Cost Guarantee Market Rule Amendment

Further to my letter to you of July 18, 2016, this letter is written on behalf of the Association of Power Producers of Ontario ("APPRO") to express our serious concern with the way in which the market amendment process is being used in respect of the Generator Cost Guarantee (GCG) Program.

Specifically, the GCG rule amendment process is being used in a way that lacks transparency and may be misleading.

The Summary of the Market Rule Amendment in the Market Rule Amendment Proposal (the "Amendment Proposal") that the purpose of the amendment is to:

"...enable a new cost recovery framework for the real-time generation cost guarantee (RT-GCG) program. The changes are expected to increase the transparency of costs eligible to be submitted by market participants for recovery under the program, as well as reduce the scope and frequency of audits. This proposal is based on the RT-GCG Program Cost Recovery Framework stakeholder engagement" (emphasis added).

Thus, the information that is being provided to the Technical Panel on the proposed amendment states that the GCG Program continues to be based on "cost recovery" and that the changes are meant to "increase transparency" and "reduce the scope of audits." The Rule itself does not shed light on these points. Rather, it says that "incremental operating and maintenance cost" include costs for "operating consumables" and "planned maintenance costs" which will be determined as "adders" under market manuals.

Despite the statements in the Amendment Proposal, IESO staff has made it clear that the costs that are eligible for recovery will not be based on actual costs and, in fact, will provide participants considerably less than actual costs. Staff's approach is that the purpose of the market rule amendment is to reduce payments to program participants. This is not a part of the Amendment Proposal and therefore not consistent with the information provided to the Technical Panel. Rather than being transparent, the

approach of saying one thing in the Amendment Proposal and another thing when designing market manuals that are allegedly authorized by the Market Rule is misleading and obscures the process. Further, staff's attempt to use the market manual process as a way to reduce payments to participants will inevitably raise issues of necessary contract amendments to restore project economics as a result of market rule changes. However, that is also not addressed in the Amendment Proposal.

As I advised in my July 18 letter, APPrO believes that maintaining the transparency and integrity of the rule making process is not just a legal requirement but a minimum component of good governance and is very concerned about this practice of unauthorized delegation. The experience here demonstrates that the very concerns that APPrO raised are now being realized.

APPrO therefore requests that the IESO Board review and specifically determine whether to approve the market manuals that are being proposed.

Further, APPrO proposes that the Technical Panel direct IESO staff to meet with impacted market participants in good faith to work on market manuals so that they are consistent with the purposes of the amendment as set out in the Amendment Proposal. This includes providing interested parties the opportunity to put forward their own independent information that will be available for the Technical Panel to consider at the same time that it considers IESO staff's proposals. The Technical Panel can thus review both the Market Rule and the Market Manual in light of that information so that it can provide an informed recommendation to the IESO Board on whether or not the rule should be passed.

This is the only way for this process to have the integrity and transparency that market participants are entitled to expect from the rule amendment process.

Sincerely,

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

25 Adelaide St. E
Suite 1602
Toronto ON, M5C 3A1



APPrO
ASSOCIATION OF
POWER PRODUCERS
OF ONTARIO

September 20, 2016

Dr. Timothy O'Neill
Chair
Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, ON M5H 1T1

Mr. Bruce Campbell
President & CEO
Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, ON M5H 1T1

Dear Dr. O'Neill and Mr. Campbell

Re: Generator Cost Guarantee Market Rule Amendment

This letter is further to my letters to you of July 17 and September 6, 2016 (attached) on behalf of the Association of Power Producers of Ontario ("APPrO"). Those letters, (for which we have had no response) express our concerns with the way in which the market amendment process is being used in respect of the Generator Cost Guarantee (GCG) Program. This program, which has its origins in the Spare Generation On-Line Program (SGOL), is a program used by the IESO to incent participants to offer generation facility resources to the market in real-time for reliability purposes, by guaranteeing recovery of certain costs incurred as a result of starting up, to the extent that those costs are not recovered through market revenues.

To reiterate our previous correspondence, in our opinion the GCG rule amendment process is being used in a way that lacks transparency and is misleading. The IESO's Staff prepared a Market Rule Amendment Proposal (the "Amendment Proposal") which provides that the purpose of the amendment is to "enable a new cost recovery framework" for the GCG Program in a way that will increase the transparency of costs". However, IESO staff has made it clear that the costs that are eligible for recovery will not be based on actual costs and, in fact, will provide participants considerably less than actual costs.

Rather than being transparent, the approach of saying one thing in the Amendment Proposal and another thing when designing market manuals that are allegedly authorized by the Market Rule results in a misleading and non-transparent process. Further, IESO staff's attempt to use the market manual process as a way to reduce payments to participants will inevitably raise issues of necessary contract amendments

to restore project economics as a result of market rule changes. However, that is also not addressed in the Amendment Proposal.

This approach is only made possible because the rule amendment that IESO staff drafted provides no meaningful constraint on IESO staff's actions. It is merely an enabling rule which effectively grants IESO staff *carte blanche* to impose whatever requirements they please. As APPrO has advised, the IESO Board does not have the authority to delegate its rule making authority to staff in this manner.

As you are aware, on September 13, 2016, the Technical Panel voted to not recommend the Amendment Proposal to the IESO Board. In taking this almost unprecedented step, the Technical Panel obviously shared many of the same concerns that have been raised by APPrO and its members.

In our view, the credibility of this process requires a demonstration of leadership by the IESO to rehabilitate this matter before any market rule amendment proposal is made to the IESO Board.

APPrO therefore repeats its request that IESO staff be directed to meet with impacted market participants in good faith to work on market manuals that can be presented to the Technical Panel and the IESO Board as a package, so that the proper decision makers can determine whether they are consistent with the purposes of the amendment as set out in the Amendment Proposal and are based on fact. This includes providing interested parties the opportunity to put forward their own independent information as part of this process and to have access to the information relied upon by expert consultants that are supposedly being relied upon to inform IESO staff's views. APPrO does not understand the IESO's continued resistance to have transparently and objectively informed verification of the facts that are supposed to underlie this cost recovery program.

I look forward to hearing from you.

Sincerely,

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

cc. Chuck Farmer; IESO Board and IESO SAC.