

July 12, 2011

VIA RESS FILING AND COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli

**Re: Market Surveillance Panel Proposed Monitoring Document –
Generator Offer Prices Used to Signal an Intention to Come Offline**

The Power Workers' Union ("PWU") represents a large portion of the employees working in Ontario's electricity industry. Attached please find a list of PWU employers.

The PWU is committed to participating in regulatory consultations and proceedings to contribute to the development of regulatory direction and policy that ensures ongoing service quality, reliability and safety at a reasonable price for Ontario customers. To this end, please find the PWU's comments on the *Market Surveillance Panel Monitoring Document: Generator Offer Prices Used to Signal an Intention to Come Offline*.

The PWU's comments are guided by our energy policy statement:

Reliable, secure, safe, environmentally sustainable and reasonably priced electricity supply and service, supported by a financially viable energy industry and skilled labour force is essential for the continued prosperity and social welfare of the people of Ontario. In minimizing environmental impacts, due consideration must be given to economic impacts and the efficiency and sustainability of all energy sources and existing assets. A stable business environment and predictable and fair regulatory framework will promote investment in technical innovation that results in efficiency gains.

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(1934 - 2006)

We hope you will find the PWU's comments useful.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Original signed by

Richard P. Stephenson

RPS;jr

encl.

Doc 794529v1

List of PWU Employers

Algoma Power
AMEC Nuclear Safety Solutions
Atomic Energy of Canada Limited (Chalk River Laboratories)
BPC District Energy Investments Limited Partnership
Brant County Power Incorporated
Brighton Beach Power Limited
Brookfield Power – Mississagi Power Trust
Bruce Power Inc.
Capital Power Corporation Calstock Power Plant
Capital Power Corporation Kapuskasing Power Plant
Capital Power Corporation Nipigon Power Plant
Capital Power Corporation Tunis Power Plant
Coor Nuclear Services
Corporation of the City of Dryden – Dryden Municipal Telephone
Corporation of the County of Brant, The
Coulter Water Meter Service Inc.
CRU Solutions Inc.
Ecaliber (Canada)
Electrical Safety Authority
Erie Thames Services and Powerlines
ES Fox
Great Lakes Power Limited
Grimsby Power Incorporated
Halton Hills Hydro Inc.
Hydro One Inc.
Independent Electricity System Operator
Inergi LP
Innisfil Hydro Distribution Systems Limited
Kenora Hydro Electric Corporation Ltd.
Kincardine Cable TV Ltd.
Kinectrics Inc.
Kitchener-Wilmot Hydro Inc.
Lake Superior Power Inc. (A Brookfield Company)
London Hydro Corporation
Middlesex Power Distribution Corporation
Milton Hydro Distribution Inc.
New Horizon System Solutions
Newmarket Hydro Ltd.
Norfolk Power Distribution Inc.
Nuclear Waste Management Organization
Ontario Power Generation Inc.
Orangeville Hydro Limited
Portlands Energy Centre
PowerStream
PUC Services
Sioux Lookout Hydro Inc.
Sodexo Canada Ltd.
TransAlta Generation Partnership O.H.S.C.
Vertex Customer Management (Canada) Limited
Whitby Hydro Energy Services Corporation

Market Surveillance Panel
Proposed Monitoring Document: Generator Offer Prices Used to
Signal an Intention to Come Offline

Comments of the Power Workers' Union

On June 16, 2011 the Market Surveillance Panel (“MSP” or “Panel”) issued for comment the *Proposed Monitoring Document: Generator Offer Prices Used to Signal an Intention to Come Offline* (the “Document”). The Document sets out “evaluative criteria that the Panel will use in monitoring for anomalous or inappropriate market conduct by generators that could constitute gaming, specifically in relation to prices offered by generators in order to signal an intention to take their units offline”. The Document identifies two potential concerns related to increases in generator offers in order to signal a generator’s intention to come offline:

If a generator’s offer price exceeds its marginal or opportunity cost, this may constitute an exercise of market power and will be assessed according to the Panel’s monitoring criteria related to market power issues. In addition, since the magnitude of the shut down offer price affects the magnitude of the congestion management settlement credit (CMSC) payment to the generator, gaming concerns could arise where offer prices are higher than necessary to achieve the operational objective of coming offline – thereby generating unnecessarily large CMSC payments. This Monitoring Document focuses on the potential gaming issues.

In the MSP’s August 2010 Monitoring Report it noted that some generators were using much higher prices (up to \$2,000/MWh) than needed to signal intent to come offline and ensure that the generating unit was dispatched off. While the Panel recommended that the self-induced CMSC payments be eliminated, and the IESO’s discussions with market participants has led to reductions, the Document states that some generators are still using offer prices considerably higher than required to come offline.

The MSP notes that while the IESO consulted with stakeholders on recommended changes to the CMSC rules applicable to generators, including during ramp down, it is uncertain whether or when changes might be made. The MSP therefore believes it is useful to issue guidance at this time in relation to the monitoring and possible

investigation of offer price levels used to signal intent to come offline. The Document states that the Panel would apply the proposed evaluative criteria to assess whether gaming is occurring where a generator does not have *bona fide* business reasons for choosing to come offline, or raises its offer price beyond its incremental costs.

The Document states that “the Panel regards gaming as the exploitation of opportunities to profit or benefit from defects in the design of the market, from poorly specified rules or procedures, or from circumstances that are not expressly covered by Market Rules or procedures”. Offer prices that are higher than necessary to ensure a generator comes offline, could constitute gaming activity and the Panel proposes to identify offer price levels that normally would not trigger an investigation as follows:

..., where there are bona fide business reasons for a generator to come offline, an offer price that is the higher of either (i) the generator’s marginal cost, or (ii) 130% of the 3-hour ahead constrained schedule pre-dispatch price, normally would not be regarded by the Panel as gaming.

While the Document states that based on historical pricing patterns, the Panel has concluded that offer prices no more than 30% above a generator’s 3-hour ahead pre-dispatch shadow price normally provide an extremely high degree of certainty that the facility will come offline, the analysis has not been shared with stakeholders. The PWU’s concern is monitoring criteria that are overly restrictive and risk MSP monitoring and investigation of an entity that is not involved in gaming activity. To be monitored by the MSP for gaming, regardless of whether gaming activity occurred, is deleterious to a generator’s public image. In the case where the generator is not involved in gaming activity, by virtue of the MSP’s monitoring activity, they are under suspicion of gaming. For a generator that is regulated (i.e. Ontario Power Generation) this could taint the perception and trust of intervenors that participate in the regulated entity’s rate proceedings and prejudice the outcome of the regulatory review. In the PWU’s view this points to the need for the MSP to exercise a high degree of caution in ensuring that guidelines, even though only applicable to monitoring activity, are sufficiently broad and clear. This is particularly the case in the absence of IESO amendments to the CMSC rules that are developed in consultation with generators and other stakeholders including customer representatives.

The PWU submits that the MSP has not provided any rationale nor analysis for determining the 130% of the 3-hour ahead constrained schedule criterion that it intends to use. It therefore appears that the 130% is an arbitrary cut-off point. The MSP must be sensitive to OPG's unique circumstance and absent a rational basis for selecting the cutoff point, the MSP should raise the threshold to ensure that the level is not overly restrictive as an evaluative criterion for monitoring and investigation of gaming.

Therefore rather than setting an arbitrary low threshold which could create increased generator risk and false damaging impressions, the MSP should institute a higher evaluative criterion related to the 3-hour ahead constrained schedule (i.e. > 130%) so that generators have higher operating decision certainty. Alternatively, the MSP should await the outcome of the IESO's ongoing stakeholder process on amendments to the CMSC rules in developing the evaluative criteria to be used in its monitoring function.

All of which is respectfully submitted.