

**From:** [Vellone, John](#)  
**To:** [Patrick Duffy](#); [Canales, Maira](#); [Office of the Registrar](#); [Nancy Marconi](#)  
**Cc:** [Boyle, Colm](#); [Andrew.Bishop@IESO.ca](#); [james.hunter@ieso.ca](#); [Glenn Zacher](#); [Lesley Mercer](#); [fleury.marc-antoine4@hydroquebec.com](#); [cayer.marieeve@hydroquebec.com](#); [colin.anderson@appro.org](#); [reena.goyal@blakes.com](#); [Jay Shepherd](#); [mark@shepherdrubenstein.com](#); [SEC@oesc-cseo.org](#); [jgirvan@uniserve.com](#); [lawrie.gluck@northendconsulting.ca](#); [Lillian Ing](#); [Michael Bell](#)  
**Subject:** RE: Confirmation of Supporting Document Submission for NQS Generation Group, Case Number: EB-2024-0331  
**Date:** Thursday, February 20, 2025 2:06:35 PM  
**Attachments:** [2009-01-16\\_0488.pdf](#)

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This time with the cited attachment.

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**From:** Vellone, John  
**Sent:** February 20, 2025 2:02 PM  
**To:** Patrick Duffy <PDuffy@stikeman.com>; Canales, Maira <MCanales@blg.com>; Office of the Registrar <Registrar@oeb.ca>; Nancy Marconi (Nancy.Marconi@oeb.ca) <Nancy.Marconi@oeb.ca>  
**Cc:** Boyle, Colm <CBoyle@blg.com>; Andrew.Bishop@IESO.ca; james.hunter@ieso.ca; Glenn Zacher <GZacher@stikeman.com>; Lesley Mercer <LMercer@stikeman.com>; fleury.marc-antoine4@hydroquebec.com; cayer.marieeve@hydroquebec.com; colin.anderson@appro.org; reena.goyal@blakes.com; Jay Shepherd <jay@shepherdrubenstein.com>; mark@shepherdrubenstein.com; SEC@oesc-cseo.org; jgirvan@uniserve.com; lawrie.gluck@northendconsulting.ca; 'Lillian Ing' <Lillian.Ing@oeb.ca>; 'Michael Bell' <Michael.Bell@oeb.ca>  
**Subject:** RE: Confirmation of Supporting Document Submission for NQS Generation Group, Case Number: EB-2024-0331

Dear Ms. Marconi,

We write to request that Mr. Duffy's email of February 19, 2025 be struck from the record as it does not comply with the OEB's Rules of Practice and Procedure and is impermissible sur-reply.

The email is neither a motion nor a request to file a rebuttal, but simply a bald request that the Board "disregard substantial portions of the Applicants' Reply Argument". For the reasons set out below, we submit that this request should be struck .

1. Regarding the boundaries of Reply Argument, the IESO makes frequent claims throughout its submission that NQS has not provided evidence to support NQS's assertions. NQS should be permitted to clarify or amplify relevant earlier submissions, especially where the IESO has misconstrued NQS's assertions or where a previously minor issue has taken on greater importance because of the IESO's response. Each section of NQS's reply is predicated on a statement in the IESO's or other parties' submissions.
2. Preparing the Reply is the first time that NQS has received the entirety of the IESO's and other parties' submissions. NQS could not reasonably anticipate what arguments the IESO (or any other party) would make, as a party's position often evolves through the course of a proceeding. It is appropriate for NQS's Reply to address such issues and arguments once it has the complete position of the parties.
3. It is not clear what "new evidence" the IESO is referring to in the email below. In any case, the material submitted by NQS with its Reply are the IESO's own records.
4. This request to "disregard" substantial portions of NQS's Reply Argument is consistent with

the IESO's litigation strategy to constrain NQS throughout the proceeding while at the same time asserting that NQS holds the burden of proof. In addition to this request, the IESO has objected to information requests in the application, the scope of the proceeding, the content of the application, an expert report, and questions at the Technical Conference.

5. The case cited as authority for the IESO's request ([Johnson v. North American Palladium Ltd., 2018 ONSC 4496 at para 13 \(CanLII\)](#)) is not relevant to the present circumstances because that case relates to the striking of reply **evidence**, and not reply submissions or argument. A more relevant authority is the attached 2009 decision of the Alberta Utilities Commission (attached) in *ENMAX Power Corporation's 2007-2016 Distribution and General Tariff Application (No. 1550487)*. The Commission considered a request to reject reply argument concerning intervenor evidence where the applicant had not specifically addressed that intervenor evidence in argument. The Commission denied this narrow framing of reply argument noting that "...it is trite to state that Argument and Reply Argument must be drawn from the evidence on the record of the proceeding. Parties must be able to advance their position and know the case they have to meet in order to do so, based on the record of the application including the interrogatory process and the hearing process....Reply Argument should be confined to responding to the argument of other parties and again must be supported and grounded by the evidence record of the proceeding."
6. The length of NSQ's Reply Argument at 49 pages is proportionate in the context of 89 pages filed by the IESO and intervenors, collectively.
7. Finally, the IESO does not specify in its email below what technical or commercial challenges it may encounter, but, regardless, this is not the matter addressed in the Reply Argument. NQS is simply noting to the OEB panel that it has the authority to set the date upon which the market rules would be revoked in direct response to concerns raised by other parties around the impacts of revoking MRP as a whole before it can be implemented.

For the reasons set out above, NSQ respectfully requests that the IESO's request as set out in Mr. Duffy's email of February 19, 2025, be struck from the record.

Sincerely,

**John Vellone**

Partner and National Leader, Energy, Resources & Renewables

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**From:** Patrick Duffy <[PDuffy@stikeman.com](mailto:PDuffy@stikeman.com)>

**Sent:** February 19, 2025 6:45 PM

**To:** Canales, Maira <[MCanales@blg.com](mailto:MCanales@blg.com)>; Office of the Registrar <[Registrar@oeb.ca](mailto:Registrar@oeb.ca)>; Nancy Marconi <[Nancy.Marconi@oeb.ca](mailto:Nancy.Marconi@oeb.ca)>

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<GZacher@stikeman.com>; Lesley Mercer <LMercer@stikeman.com>; Vellone, John <JVellone@blg.com>; fleury.marc-antoine4@hydroquebec.com; cayer.marieeve@hydroquebec.com; colin.anderson@appro.org; reena.goyal@blakes.com; Jay Shepherd <jay@shepherdrubenstein.com>; mark@shepherdrubenstein.com; SEC@oesc-cseo.org; jgirvan@uniserve.com; lawrie.gluck@northendconsulting.ca; 'Lillian Ing' <Lillian.Ing@oeb.ca>; 'Michael Bell' <Michael.Bell@oeb.ca>

**Subject:** RE: Confirmation of Supporting Document Submission for NQS Generation Group, Case Number: EB-2024-0331

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Ms. Marconi,

We are writing to address the Applicants' Reply Argument filed yesterday and ask that this email be provided to the panel.

The 49-page Reply Argument goes well outside of the boundaries of the rules that govern reply submissions and constitutes case-splitting. Reply submissions must be limited to addressing new issues that were raised in the other parties' responding submissions, or issues that could not reasonably have been anticipated at the time the Applicants delivered their Argument-in-Chief: [Johnson v. North American Palladium Ltd., 2018 ONSC 4496 at para 13 \(CanLII\)](#). Instead, the Applicants' Reply Argument largely re-argues and expands on submissions made by the Applicants' Argument-in-Chief. The Applicants make submissions on issues that were expressly addressed in the IESO's pre-filed written evidence and in testimony at the hearing, which the Applicants chose not to address or to lightly address in their Argument-in-Chief. The Reply Argument introduces new evidence that was not led at the hearing by the Applicants.

The Reply Argument also raises new issues, including the IESO's alleged role and responsibilities on a section 33 application, and "recommends" new relief – that "the OEB set a date that is 24 months in the future to effect revocation of the MRP amendments [to] provide sufficient time for the IESO to address the OEB's findings on unjust discrimination". The recommended relief does not appear in the application nor was it addressed in the Applicant's evidence or Argument-in-Chief. There would be considerable technical and commercial challenges for the IESO and other market participants if the OEB were to require the IESO to revert to the current Market Rules two years after the implementation of the Market Renewal Program. If it had been raised previously, the IESO would have had an opportunity to lead evidence on the recommendation and to cross-examine the Applicants' witnesses on that matter. At this stage in the proceeding, the IESO and other parties have no ability to meaningfully respond to these new positions.

The IESO respectfully requests that the Board disregard the substantial portions of Applicants' Reply Argument that constitute impermissible reply and case-splitting.

Regards,

**Patrick Duffy**

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**From:** Canales, Maira <MCanales@blg.com>

**Sent:** Tuesday, February 18, 2025 5:16 PM

**To:** Office of the Registrar <[Registrar@oeb.ca](mailto:Registrar@oeb.ca)>

**Cc:** Boyle, Colm <[CBoyle@blg.com](mailto:CBoyle@blg.com)>; [Andrew.Bishop@ieso.ca](mailto:Andrew.Bishop@ieso.ca); [james.hunter@ieso.ca](mailto:james.hunter@ieso.ca); Patrick Duffy

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**Subject:** Confirmation of Supporting Document Submission for NQS Generation Group, Case Number: EB-2024-0331

Hi all,

Please find attached, NQS Generation Group's Cover Letter and Reply Argument. Due to file size the Brief of Authorities will be available on the OEB's RDS or upon request.

Thank you,



**Maira Canales**

**Administrative Assistant (she/her/hers)**

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