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# DECISION AND ORDER

## EB-2024-0331

**CAPITAL POWER CORPORATION,  
THOROLD COGEN L.P., PORTLANDS  
ENERGY CENTRE L.P. DOING BUSINESS  
AS ATURA POWER, ST. CLAIR POWER L.P.,  
TRANSALTA (SC) L.P.**

**Application to review amendments to the market rules  
made by the Independent Electricity System Operator**

**BEFORE:**     **Robert Dodds**  
                  Presiding Commissioner

**Anthony Zlahtic**  
Commissioner

**Patrick Moran**  
Commissioner

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**March 6, 2025**

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# 1 INTRODUCTION AND SUMMARY OF DECISION

Under the *Electricity Act, 1998* (Act), the Independent Electricity System Operator (IESO) is responsible for:

- making market rules for the establishment and operation of the Ontario electricity markets, and
- administering those markets in accordance with the market rules.<sup>1</sup>

For the past several years, the IESO has been implementing the Market Renewal Program, intended to address longstanding concerns about the economic efficiency of the Ontario electricity markets under the existing market rules. On October 18, 2024, the IESO published amendments to the wholesale electricity market rules (Amendments) that are the result of this program. The Amendments have been approved by the IESO and the resulting market changes are scheduled to go live in May 2025.

The applicant, a group of non-quick start (NQS) gas-fired generators collectively referred to as the NQS Generation Group, is opposed to the Amendments, alleging that they unjustly discriminate against NQS generators, and are inconsistent with the purposes of the Act.

On November 7, 2024, the applicant filed an application which requested that the Ontario Energy Board (OEB) revoke the Amendments and refer them back to the IESO for further consideration, in accordance with section 33(9) of the Act (Application).

The OEB denies the Application on the basis that the applicant has failed to establish that the Amendments unjustly discriminate against NQS generators or are inconsistent with the purposes of the Act. The Amendments increase the economic efficiency in the wholesale electricity market, without discriminating against the ability of NQS generators to compete with other market participants in the market.

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<sup>1</sup> [Electricity Act, 1998, S.O. 1998, c. 15, Sch. A](#), s. 32.

## 2 CONTEXT AND PROCESS

### 2.1 The Application

The NQS Generation Group consists of Capital Power Corporation, Thorold CoGen L.P., Portlands Energy Centre L.P. doing business as Atura Power, St. Clair Power L.P., and TransAlta (SC) L.P., all of whom participate in the IESO-administered energy and operating reserve markets.

The Application requests that the OEB revoke the Amendments and refer them back to the IESO for further consideration on the grounds that the Amendments are (i) inconsistent with the purposes of the Act and (ii) unjustly discriminatory to the NQS generators that comprise the NQS Generation Group.

As addressed in section 4 of this Decision, the Market Renewal Program is intended to bring foundational changes required to address documented existing challenges in the energy and operating reserve markets. Among other things, these changes include three key components: replacing the two-schedule market with a single-schedule market, introducing the Day-Ahead Market (DAM) and improving optimization through the Enhanced Real-Time Unit Commitment (ERUC). The Amendments at issue in this proceeding enable these changes.

As argued by the NQS Generation Group in its Application, the changes introduced by the Market Renewal Program would disproportionately affect the NQS Generation Group and lead to unjustly discriminatory outcomes that are inconsistent with the Act. The NQS Generation Group asserts that implementation of the Amendments prior to resolving amendments to the agreements between the IESO and the NQS Generation Group members (Deemed Dispatch Agreements) results in an unequal bargaining position in favour of the IESO. The NQS Generation Group asserts that other supply-side market participants will not encounter a similar level of financial risk stemming from the Market Renewal Program.

The NQS Generation Group contends that the alleged unjust discrimination is due to the changes within the Market Renewal Program that would significantly alter the participation, commitment, dispatch, and settlement of non-quick start resources, resulting in fewer commitments and reduced revenues, including out-of-market payments from the energy and operating reserve markets.<sup>2</sup>

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<sup>2</sup> EB-2024-0331, [NQS Generation Group, NQS Application](#), dated November 7, 2024, para. 9.

## 2.2 Notice of Hearing, Interventions, Cost Responsibility and Cost Award Eligibility

A Notice of Hearing was issued on November 13, 2024. The IESO attended to service of the Notice of Hearing on all market participants participating in the IESO Administered Market.

On November 19, 2024, the OEB issued Procedural Order No. 1 (PO1), which established a date for a transcribed virtual pre-hearing conference that all parties were required to attend, and provided for matters to be addressed at the pre-hearing conference.<sup>3</sup> PO1 also proposed that the NQS Generation Group would be responsible for its own costs of the proceeding as well as intervenor costs, and that the IESO would be responsible for its costs and the OEB's costs of the proceeding.

On November 26, 2024, the OEB convened the pre-hearing conference and heard submissions from parties on the issues list, the scope of the proceeding, intervention requests, costs, disclosure requests, proposed evidence, and the procedural schedule.

After considering the parties' submissions at the pre-hearing conference as well as the written materials filed by some parties, the OEB issued Decision and Procedural Order No. 2 (PO2) on December 2, 2024.<sup>4</sup>

Among other things, PO2 established the scope, procedures and timelines<sup>5</sup> for dealing with the Application and granted intervenor status to all those that requested it, namely:

- HQ Energy Marketing Inc. (HQEM)
- Association of Power Producers of Ontario (APPrO)
- FirstLight Holdings Inc. (FirstLight)<sup>6</sup>
- School Energy Coalition (SEC)
- Consumers Council of Canada (CCC)

Only SEC and CCC applied for cost eligibility. Both requests were granted.

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<sup>3</sup> EB-2024-0331, [Procedural Order No.1](#), dated November 19, 2024.

<sup>4</sup> [Pre-Hearing Conference Transcript](#), dated November 26, 2024 (PHC Transcript); EB-2024-0331, Decision and [Procedural Order No. 2](#), dated December 2, 2024 (Decision and PO2).

<sup>5</sup> Subsequent Procedural Orders amended, revised or supplemented the procedures and timelines established in Procedural Order No. 2.

<sup>6</sup> On February 10, 2025, FirstLight filed a [letter](#) with the OEB to indicate and request a withdrawal of its participation in the proceeding. By [letter](#) on February 12, 2025, the OEB accepted FirstLight's request.

In PO2, the OEB determined that it is appropriate for the NQS Generation Group to bear its own costs in addition to intervenor costs. The OEB found that the NQS Generation Group is pursuing a commercial interest in bringing the Application, and the OEB typically requires such parties to bear costs. The OEB found that the NQS Generation Group should bear intervenor costs on the same basis.

PO2 instructed the IESO to file a document describing the objectives of the Amendments, providing a detailed overview of the Amendments, describing how those objectives are met, and describing key changes to the current market rules and the expected impacts on market participants (Market Rule Description Evidence). The IESO filed the Market Rule Description Evidence on December 11, 2024.<sup>7</sup>

PO2 also instructed the NQS Generation Group to file all evidence on which it intended to rely in support of its Application by December 18, 2025. The NQS Generation Group subsequently filed its evidence which consisted of an expert report from Power Advisory (Power Advisory Report).<sup>8</sup>

Finally, PO2 provided for a Technical Conference, which was held on January 9 and 10, 2025.

## 2.3 Hearing of the Application

The hearing of the Application commenced on January 15, 2025, and continued on January 16 and 17, 2025.

The NQS Generation Group filed its argument-in-chief on January 27, 2025.<sup>9</sup> Intervenors filed their submissions on February 3, 2025,<sup>10</sup> followed by the IESO's closing argument, which was filed on February 10, 2025.<sup>11</sup> The NQS Generation Group filed its reply argument on February 18, 2025.<sup>12</sup>

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<sup>7</sup> [IESO Market Rule Description Evidence](#), filed December 11, 2024.

<sup>8</sup> [NQS Generation Group Expert Evidence](#), dated December 18, 2024, (Power Advisory Report).

<sup>9</sup> [NQS Generation Group Argument-in-Chief](#), dated January 27, 2025 (NQS Argument-in-Chief).

<sup>10</sup> [HQEM Submission](#); [SEC Submission](#); [CCC Submission](#).

<sup>11</sup> [IESO Closing Argument](#), dated February 10, 2025.

<sup>12</sup> [NQS Generation Group Reply Argument](#), dated February 18, 2025 (NQS Reply).

### 3 SCOPE OF PROCEEDING AND EVIDENCE

From the outset of the Application, there was significant divergence between the views of the NQS Generation Group and the IESO with respect to the proper scope of a section 33(4) application and what evidence is relevant. These matters were advanced in the pre-hearing conference and subsequent motions by the IESO and the NQS Generation Group.

#### 3.1 Scope of Proceeding

In the NQS Generation Group's view, the OEB has broad jurisdiction in conducting its review of the Amendments, and anything underlying the IESO's decision to implement the Amendments is reviewable by the OEB, including the Deemed Dispatch Agreements and the IESO's stakeholder and decision-making processes.<sup>13</sup>

However, the IESO submitted that section 33 limits the OEB's jurisdiction in conducting its review and restricts the OEB's jurisdiction to engage in a broader review of the IESO's rulemaking process. The IESO further argued that the OEB's review under section 33(4) does not extend to reviewing out-of-market contract<sup>14</sup> processes.<sup>15</sup> The IESO relied on the statements in a previous OEB decision (Ramp Rate decision) in support of its view that section 33(9) is a "jurisdiction limiting" provision.

OEB staff submitted that the OEB's jurisdiction is not limited as strictly as suggested by the IESO and that the Ramp Rate decision finding on the OEB's limited jurisdiction in a section 33 application was on a relatively narrow question about procedural fairness in the IESO rule-making process and should not be applied more broadly to limit the OEB's jurisdiction.<sup>16</sup> However, OEB staff agreed with the IESO that the OEB should not make determinations about the contracts between the IESO and the NQS Generation Group members.

In PO2, the OEB determined that its review under section 33 of the Act would be limited to the Amendments themselves, without regard to contractual matters or the IESO's stakeholder process for the Market Renewal Program, to determine if the Amendments

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<sup>13</sup> [NQS Pre-Hearing Conference Written Submissions](#), dated November 25, 2024, para. 2.

<sup>14</sup> These refer to generation contracts that the IESO entered into through competitive procurements to secure supply under directives from the Ministry of Energy and Electrification.

<sup>15</sup> [IESO Pre-hearing Conference Written Submissions](#), dated November 22, 2024, paras. 2, 5, 9 and 25.

<sup>16</sup> PHC Transcript, at pp. 103-104; [IESO Document Brief](#) at p. 40: EB-2007-0040 (Ramp Rate Case).

are inconsistent with the purposes of the Act or unjustly discriminate against a market participant or class of market participants.<sup>17</sup>

### 3.2 NQS Generation Group Request for Information

As part of its application, the NQS Generation Group attached a schedule listing various types of information and documents that the IESO should be required to produce.

The NQS Generation Group argued that the Amendments should not be reviewed in a vacuum and that they require context that the document disclosure would provide.

The IESO opposed the NQS Generation Group's requests on the basis that the documents requested are either contract-related or related to the IESO's decision-making processes and, therefore, should be outside of the scope of the proceeding.

In PO2, based on its conclusion regarding the scope of the proceeding, the OEB decided that it did not require disclosure from the IESO as requested by the NQS Generation Group.<sup>18</sup>

### 3.3 IESO and NQS Motions on Evidentiary Matters

#### (a) IESO Motion

On December 18, 2024, the NQS Generation Group filed evidence in support of its Application in the form of an expert report prepared by Power Advisory LLC (Power Advisory Report).<sup>19</sup>

On December 23, 2024, the IESO filed a Notice of Motion seeking an order to strike certain portions of the Power Advisory Report on the basis that it contained references to contracts which are irrelevant, out of scope, and contrary to the scoping decision in PO2.<sup>20</sup>

In its response to the IESO Motion, the NQS Generation Group stated that in order to meet the burden of proof to demonstrate unjust economic discrimination, it had a right to have the entirety of its application and evidence heard by the OEB.<sup>21</sup>

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<sup>17</sup> Decision and PO2 at pp. 5-6.

<sup>18</sup> Decision and PO2, at p. 10.

<sup>19</sup> [Power Advisory Report](#).

<sup>20</sup> [IESO Motion to Strike](#), dated December 23, 2024.

<sup>21</sup> [NQS Generation Group Reply to IESO's Motion](#), dated December 30, 2024, para. 10.



**(b) NQS Motion**

Also on December 23, 2024, the NQS Generation Group filed a Notice of Motion seeking a review and variance of portions of PO2 and requested the OEB to reconsider its findings regarding the scope of the proceeding, cost responsibility and evidentiary disclosure as decided in PO2.<sup>22</sup>

**(c) OEB Decision on IESO and NQS Motions**

On January 3, 2025, the OEB issued its Decision on both the IESO and NQS Motions in which it granted the IESO's motion and dismissed the NQS Generation Group's motion.<sup>23</sup> In its Decision on Motions, the OEB determined that the OEB would disregard portions of the Power Advisory Report, as requested by the IESO. However, the OEB did not strike the impugned evidence, as requested by the IESO, and allowed it to remain on the record for context.

The Decision on Motions also confirmed the OEB's decision in PO2 regarding cost responsibility and denied the NQS Generation Group's request to reconsider the decision that the NQS Generation Group would be responsible for its own costs of the proceeding and any costs awarded to SEC and CCC.

**3.4 NQS Motion for Answers to Questions from Technical Conference**

On January 14, 2025, the NQS Generation Group filed a motion requesting an order for the IESO to produce certain information requested at the Technical Conference, which the IESO refused to provide.<sup>24</sup> In its Decision and Procedural Order No. 4 (PO4), also issued on January 14, 2025, the OEB directed the IESO to provide answers to certain refusals from the Technical Conference (JT1.4 and JT1.7) and that the request for answers to JT1.1 would be addressed at the beginning of the oral hearing.<sup>25</sup>

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<sup>22</sup> [NQS Generation Group Motion to Review](#), dated December 23, 2024.

<sup>23</sup> [Decision on Motions by IESO and NQS Generation Group](#), dated January 3, 2025.

<sup>24</sup> [NQS Motion](#) for Preliminary Matters and Disclosure, dated January 14, 2025; see also [JT1.1, JT1.4 and JT1.7](#).

<sup>25</sup> [Decision and Procedural Order No. 4](#), dated January 14, 2025 (Decision and PO4).

### 3.5 Dispute regarding the IESO and NQS Generation Group Witnesses

At various points in the proceeding, both the NQS Generation Group and the IESO raised objections to the other parties' witnesses.

#### (a) Submissions on NQS Witnesses

For its part, the IESO made submissions questioning the independence of the witnesses for the NQS Generation Group.<sup>26</sup> In PO4, the OEB did not accept the IESO's arguments seeking to disqualify the Power Advisory witnesses as experts on the basis of alleged lack of independence. The OEB stated that it was satisfied that the Power Advisory witnesses were qualified as experts and would be allowed to give evidence as expert witnesses at the oral hearing.<sup>27</sup>

#### (b) Submissions on IESO Witnesses

In its January 14 motion for answers, the NQS Generation Group questioned the qualifications of the IESO witnesses. The motion requested that the OEB require the IESO to clarify whether its witnesses are expert or fact witnesses, detail their areas of expertise in the case of expert witnesses, and requested that if the witnesses are fact witnesses, then their opinion evidence should be given limited or no weight by the OEB.<sup>28</sup>

In PO4, the OEB stated that it was not making any determination at that time on whether the IESO witnesses are qualified to give expert evidence and that parties would have an opportunity to make submissions that include what weight is to be given to any of the evidence heard by the OEB, as part of the written argument process.<sup>29</sup>

In its Argument-in-Chief, the NQS Generation Group submitted that the IESO's witnesses are unqualified fact witnesses that provided opinion evidence, lack independence and provided inconsistent and evasive testimony.<sup>30</sup> The NQS Generation

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<sup>26</sup> [IESO's Submissions on Documents for Expert Witness Cross-Examination](#), dated January 13, 2025.

<sup>27</sup> Decision and PO4, at pp. 5-6.

<sup>28</sup> NQS Motion for Preliminary Matters and Disclosure, at p. 6.

<sup>29</sup> Decision and PO4, at p. 7.

<sup>30</sup> NQS Argument-in-Chief, paras. 31, 34, 38.

Group argued that the evidence of the IESO witnesses should be given limited or no weight.<sup>31</sup>

In its closing argument, the IESO described its witnesses as “fact witnesses” employed by the IESO who gave evidence on matters within their specialized knowledge.<sup>32</sup> The IESO referred to case law in support of its argument that a fact witness may provide opinion evidence on relevant matters that fall within the witness’s knowledge and expertise.<sup>33</sup>

The IESO also noted that IESO fact witnesses frequently provide opinion evidence in OEB proceedings that bears on their specialized areas of knowledge and experience and their employment at the IESO, and that this does not render their evidence biased or untrustworthy.<sup>34</sup>

In its reply argument, the NQS Generation Group reiterated its concerns that the IESO’s witnesses are not independent, are unqualified fact witnesses who are providing opinion evidence and, are alleged to be evasive and inconsistent in their testimony.<sup>35</sup>

The NQS Generation Group contended that the IESO witnesses lack independence insofar as their job performance is evaluated in relation to Market Renewal Program targets and key performance indicators. The NQS Generation Group requested that the OEB weigh this lack of independence when considering evidence from the IESO witnesses.<sup>36</sup>

With respect to the qualification of the IESO witnesses, the NQS Generation Group contended that the scope of the witnesses’ firsthand engagement with the matter at hand is limited. As explained in the NQS Generation Group Argument-in-Chief, the testimony of the IESO witnesses goes to the central issues that the OEB must decide, yet these witnesses were not qualified as experts and have limited participation in the history of the Market Renewal Program.<sup>37</sup>

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<sup>31</sup> NQS Argument-in-Chief, paras. 28-29.

<sup>32</sup> IESO Closing Argument, para. 72.

<sup>33</sup> *Ibid.*, at paras. 73-76

<sup>34</sup> *Ibid.*, at paras. 77-78.

<sup>35</sup> NQS Reply, para. 153.

<sup>36</sup> NQS Argument-in-Chief, paras. 34-37.

<sup>37</sup> *Ibid.*, at paras. 31-32.

### **Findings on Witness Qualifications**

The IESO witnesses, Darren Matsugu and Stephen Nusbaum, are both employed by the IESO. The NQS Generation Group witnesses, Jason Chee-Aloy and Brady Yauch, are employed by Power Advisory LLC, a consultancy. Both were previously employed by the IESO, or the former Ontario Power Authority, now part of the IESO. Having regard to the CVs of all four witnesses, it is clear to the OEB that all four witnesses have knowledge and experience regarding how the current market rules operate and the changes that will occur under the Amendments. Having regard to the testimony given by all four witnesses, the OEB is satisfied that their evidence falls within the scope of their stated experience. All four of the witnesses have assisted the OEB in understanding the issues to be decided in this proceeding. The OEB sees little value in determining to what extent the evidence of the two NQS Generation Group witnesses or the two IESO witnesses turns necessarily on a question of expertise given the knowledge and experience demonstrated by all four witnesses.

## 4 THE ISSUES

In its Argument-in-Chief, the NQS Generation Group submitted that the Amendments would result in economic discrimination against NQS generators that is unjust, and that the Amendments are inconsistent with the purposes of the Act.

In its argument, the IESO requested that the OEB dismiss the Application, arguing that the Amendments are not inconsistent with the purposes of the Act and do not unjustly discriminate against the NQS Generation Group.<sup>38</sup> The IESO noted that the Applicant bears the burden of proof in this proceeding and that the IESO has no obligation to disprove harm or discrimination.<sup>39</sup>

In their arguments submitted on February 3, 2025, SEC, CCC and HQEM each submitted that the NQS Generation Group's request should be denied, arguing that the Amendments bring about long-needed market efficiencies and are not unjustly discriminatory or inconsistent with the purposes of the Act.

### The Statutory Test

All parties agreed that the applicable statutory test is as set out in section 33(9) of the Act. Section 33(9) requires the OEB to determine whether a market rule amendment: (i) is inconsistent with the purposes of the Act; or (ii) unjustly discriminates against or in favour of a market participant or class of market participants.

In two prior OEB decisions under section 33 of the Act, the OEB determined that unjust discrimination in the context of section 33 of the Act means unjust *economic* discrimination.<sup>40</sup> The decisions also established that the burden of proof in demonstrating whether market rule amendments pass or fail the statutory test is on the applicant.<sup>41</sup> All parties agreed that these principles are applicable in the current proceeding.

In the most recent of those two decisions, the OEB provided further clarification that three elements are required for a finding of unjust discrimination:

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<sup>38</sup> IESO Closing Argument, para. 11.

<sup>39</sup> *Ibid.*, at para. 70.

<sup>40</sup> [EB-2007-0040, Decision and Order](#), at p. 26; [EB-2019-0242, Decision and Order](#) at pp. 9-10.

<sup>41</sup> [EB-2007-0040, Decision and Order](#), at p. 18.

- (i) there must be evidence of economic discrimination in the form of different treatment;
- (ii) it must be shown that the different treatment is being applied to market participants despite an absence of material and relevant differences in their circumstances; and
- (iii) the economic impact of the different treatment must be quantified – it cannot be purely qualitative.<sup>42</sup>

In their submissions, all parties agreed on the applicable statutory test and that the above-mentioned three elements are required to establish unjust discrimination. However, parties differed in their conclusions as to whether the statutory test was met, i.e. whether the Amendments are unjustly discriminatory or inconsistent with the purposes of the Act.

## 4.1 Whether the Amendments are Unjustly Discriminatory

### Introduction

The IESO operates several markets, including an energy market and three markets for various types of operating reserves. Supply-side market participants submit offers to produce, while demand-side market participants submit bids to consume energy. In a competitive environment, each supply resource is expected to offer at, or close to, its short-run marginal cost, i.e., the additional cost that it would incur to produce one more unit of electricity.<sup>43</sup> The IESO then dispatches the lowest cost resources that reliably and efficiently meet electricity demand.

Supply-side market participants include nuclear, hydroelectric, natural gas, biomass, wind, and solar fueled generation resources, along with energy storage resources and imported energy. On the demand side, market participants include residential, commercial and industrial customers, as well as export demand.

NQS generators are a subset of gas-fired generators that have specific operational characteristics that distinguish them from quick start resources. The NQS Generation Group resources require, in most cases, one to six hours to start up and synchronize with the grid.<sup>44</sup> Each generator also has characteristics including a minimum loading

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<sup>42</sup> EB-2019-0242, at p. 25.

<sup>43</sup> [IESO Single Schedule Market High Level Design Executive Summary](#), August 2019, p.1.

<sup>44</sup> [Oral Hearing Day 1 Transcript](#), at p. 35, lines 8-9.

point, thermal state, a maximum number of starts per day, and a minimum generation block runtime that limit when and how often each generator can be started up or shut down. Furthermore, each generator incurs costs during the start-up period, which must be recovered from the market.

The NQS Generation Group submitted that the Amendments unjustly discriminate against NQS generators by causing financial harm that deprives the NQS generators (as a class) from earning revenue associated with participation, commitment, dispatch and settlement in the IESO-administered market.<sup>45</sup> The NQS Generation Group submitted that the effect of the Amendments is to disadvantage NQS generators compared to other supply resources in the IESO-administered market, and the Amendments will have unjust discriminatory financial impacts on the NQS generation class.<sup>46</sup>

The NQS Generation Group's submissions provided an analysis using the three elements of unjust discrimination set out in a previous OEB decision.<sup>47</sup>

The NQS Generation Group argued that interpreting section 33 of the Act involves a consideration of the "impact or effect" of the Amendments and that a section 33 review must ensure there is no unjust discrimination "for or against" any class of market participants.<sup>48</sup> The NQS Generation Group further asserted that "the priority" is to ensure that there is no unjust discrimination for or against any class of market participants, and includes all forms of compensation including out-of-market payments and other forms of energy payments.<sup>49</sup>

The NQS Generation Group set out four aspects of the Amendments that it alleges cause economic discrimination against NQS generators:<sup>50</sup>

- the introduction of the Day Ahead Market and Enhanced Real-Time Unit Commitment to replace the Day Ahead Commitment Process and the pre-dispatch commitment process, respectively;
- the replacement of the Real-Time Generator Cost Guarantee program with the Generator Offer Guarantee program;

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<sup>45</sup> NQS Argument-in-Chief, para. 15.

<sup>46</sup> *Ibid.*, at paras. 15-16.

<sup>47</sup> *Ibid.*, at paras. 16 and 41-46, citing EB-2019-0242 Decision and Order.

<sup>48</sup> *Ibid.*, at paras. 41-42.

<sup>49</sup> *Ibid.*, at para. 42.

<sup>50</sup> *Ibid.*, at para 49.

- the introduction of an expanded market power mitigation framework; and
- the elimination of Congestion Management Settlement Credit payments.

Each of these are addressed below:

## **Introduction of the Day-Ahead Market and Enhanced Real-Time Unit Commitment**

### **Overview**

The current Day-Ahead Commitment Process schedules and commits NQS generators and imports a day in advance in return for a financial guarantee. Although participation in the process is mandatory, the schedules and prices generated are non-binding.

The Amendments change this to a financially binding day-ahead market that will require all supply resources, including NQS generators, to submit their expected production one day in advance. This information will be used to generate binding schedules and prices for the following day.

Under the Amendments, the real-time market will be used to balance actual demand and system constraints with the purchase commitments made in the day-ahead market. In keeping with the current market design, the pre-dispatch process will continue to manage deviations in supply and demand between the day-ahead and real-time markets to efficiently and reliably meet the real-time demand.

The renewed market design is also adopting locational marginal prices for both the day-ahead and real-time markets that will align with local system conditions, such as congestion. Locational marginal prices will be set at thousands of locations across the province. These locations are typically the points where generators, significant loads, and interties connect to the grid. Most generators will receive payment based on the locational marginal price specific to their location.

The Enhanced Real-Time Unit Commitment (ERUC) process that is being introduced in the pre-dispatch process is intended to optimize the scheduling of NQS resources<sup>51</sup> over multiple hours<sup>52</sup>, whereas in the existing market design, the dispatch for each hour is determined individually. The ERUC will account for key characteristics of each NQS

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<sup>51</sup> Some generation forms (e.g. non-quick-start natural gas) can take, in most cases, one to six hours to start and synchronize to the grid. During this period, they incur start-up costs and including them in scheduling decisions improves economic efficiency. See Oral Hearing Day 1 Transcript, p. 35, lines 8-9.

<sup>52</sup> Under ERUC, the optimization will happen over a minimum of 4 hours and a maximum of 27 hours.



resource, including minimum loading point, thermal state, lead time, maximum number of starts per day, and minimum generation block runtime, among others.<sup>53</sup>

## Submissions

The NQS Generation Group submitted that NQS generators will receive fewer commitments and reduced dispatch because of the replacement of the existing day ahead commitment process with the day ahead market and the existing pre-dispatch commitment process with the ERUC.<sup>54</sup>

The NQS Generation Group further highlighted the introduction of the ERUC and ex-ante market power mitigation, arguing that these changes are specifically aimed at NQS generators and would push them out of the IESO-administered markets.<sup>55</sup>

The IESO responded that NQS generators will likely not receive fewer commitments because Ontario has limited energy supply options to substitute for NQS generators. As explained, if an NQS generator is not committed under the renewed market rules, it is likely because a more efficient NQS generator is being committed instead.

Further, the IESO stated that NQS generators are not being treated differently than other supply resources because they will continue to have the option to participate in the market on the same basis as all other generators, by submitting energy-only offers. However, the IESO acknowledged that by exercising this option, NQS generators would not be eligible for cost guarantees.<sup>56</sup>

SEC and CCC agreed with the IESO's position and added that reduced scheduling and dispatch that might be experienced by NQS generators under the renewed market design results from more efficient market operations rather than economic discrimination.<sup>57</sup>

SEC further argued that if financial harm, as measured by reduced margins, were the criterion for discrimination, most market rule amendments would be unacceptable, given

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<sup>53</sup> These operational characteristics for non-quick start resources need to be respected to avoid damage to generation equipment.

<sup>54</sup> NQS Argument-in-Chief, paras. 50-51.

<sup>55</sup> *Ibid.*, at para. 58.

<sup>56</sup> IESO Closing Argument, paras. 107(a)-(c).

<sup>57</sup> SEC Submission, paras. 16-19, 39-41 and 48; CCC Submission, at p. 4.

that any efficiency improvements would inherently benefit some participants over others.<sup>58</sup>

SEC contended that the market's purpose is to efficiently match supply and demand, and more efficient resources should receive more commitments than less efficient ones. SEC maintained that the design changes made through the Amendments now account more fairly for the total commitment costs of NQS generators when determining their dispatch and overall revenue received to qualify for cost guarantee payments.<sup>59</sup>

In its reply argument, the NQS Generation Group asserted that the IESO and SEC have provided no evidence to support their claims regarding competition among NQS resources. They pointed to the IESO's own business case, which they argue indicates that commitments for NQS generators would decrease. They further contend that the number of commitments matters, as a decrease in commitments would result in lower net revenue for NQS generators.<sup>60</sup>

The NQS Generation Group also contended that an energy-only offer strategy is not commercially viable for NQS generators, and that cost guarantees are essential, necessitating three-part offers.<sup>61</sup>

## Findings

The intent of the IESO market rules is to establish an electricity market that provides all market participants with the opportunity to compete with one another to meet the demand for electricity in every hour. The objective is to achieve an efficient price for that electricity, in other words, a price that reflects the marginal cost of the market participant to provide the electricity. The market rules are not intended to guarantee any particular result or outcome for a market participant or class of market participants.

In a perfectly competitive market, the price for electricity would match the market participant's marginal cost. In the real world, perfect competition does not exist, and the result is an inefficient price – a price that recovers more than the market participant's marginal cost, allowing the market participant to extract economic rent from electricity consumers. Under those conditions, the consumers will pay more than they need to.

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<sup>58</sup> SEC Submission, para. 47.

<sup>59</sup> *Ibid.*, at para. 50.

<sup>60</sup> NQS Reply, paras. 52, 67, 74(c), 101 and 103(d).

<sup>61</sup> NQS Reply, paras. 103 (a) and (b).

The current rules have been subject to that criticism and the IESO has responded by developing the Amendments. The NQS Generation Group has not contradicted the criticism of the existing rules. Nor has it asserted that the Amendments fail to address the criticism.

Instead, the NQS Generation Group has presented an analysis that looks at how often NQS generators might be committed under the Amendments compared to the existing rules, calculates the difference in revenue they would receive under the two sets of rules and asserts that the difference is evidence of economic discrimination.

However, what the NQS Generation Group has failed to establish is that its opportunity to compete in the market has changed in a way that is different from the opportunity of other market participants. Rather, its argument is based on entitlement to a specific type of outcome, solely on the basis that this was the type of outcome it was accustomed to receiving under the existing rules, an outcome that contributed to inefficient pricing to the detriment of electricity consumers. There is no evidence that, under the Amendments, NQS generators are unable to place offers, or are prevented from placing offers, on the same basis as any other market participant. There is also no evidence that, under the Amendments, NQS generators would be required to operate at a loss.

If NQS generators were committed more often under the existing rules, contributing to inefficient pricing, the existing rules are arguably discriminatory in favour of NQS generators, and as a result, discriminatory against other market participants. If the Amendments address the inefficiency, thereby reducing the discriminatory impact, and the result is a change in how often NQS generators are committed, that cannot constitute discrimination for or against NQS generators, any more than a change in the type and number of market participants resulting in fewer commitments of NQS generators constitutes discrimination for or against them. More efficient dispatch and more resources competing both contribute positively toward the objective of a perfect market and the reduction of economic discrimination in favour of NQS generators.

## **Replacement of the Generation Cost Guarantee Program with the Generator Offer Guarantee Program**

### **Overview**

Under the existing rules, the Real-Time Generation Cost Guarantee (RT-GCG) is an out-of-market<sup>62</sup> payment program that provides financial and operational guarantees for

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<sup>62</sup> They are called out-of-market payments because the payments are not reflected in the market price for energy.

NQS generators with start-up costs to be available on days when they may not be able to recover their costs through prevailing energy prices.<sup>63</sup>

To be eligible for cost guarantees under the Amendments, NQS generators will need to provide offers for the three costs they incur to generate: the cost of providing incremental energy (energy costs), the cost of starting up to be available to provide energy (start-up costs), and the cost of remaining connected to the IESO-controlled grid while generating net-zero active power (speed no-load costs). This is referred to as a three-part offer.<sup>64</sup>

As documented in Market Surveillance Panel reports, the non-competitive nature of the RT-GCG leads to productive inefficiencies in the short run when demand is not met using the lowest cost resources, as offers do not accurately reflect generation costs. The RT-GCG program also suppresses market prices below efficient levels by removing the incentives for these generators, who are frequently market price-setters, to incorporate fixed start-up costs into their offer prices. The result is a weakened price signal and a reduction of incentives for other market participants to be available at these times.<sup>65</sup>

In conjunction with the introduction of the ERUC, the Amendments replace the RT-GCG program with a Real-Time Generator Offer Guarantee Program (RT-GOG). The new program will continue compensating NQS generators for certain start-up and fuel costs. However, it also takes into account revenues received in excess of the generator's offer price when the market price is higher and revenues received from participation in the operating reserve markets when calculating out-of-market payments.

## Submissions

The second source of economic harm alleged by the NQS Generation Group is that the net margins of NQS generators would be reduced because of the replacement of the existing RT-GCG with the RT-GOG, which will account for all revenues earned, including in the operating reserve markets. The NQS Generation Group also stated that under the renewed market design, NQS generators will lose the second commitment opportunity in pre-dispatch currently allowed under the RT-GCG program.<sup>66</sup>

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<sup>63</sup> IESO Market Rule Description Evidence, at pp. 18-20.

<sup>64</sup> IESO Market Rule Description Evidence, at pp. 17, 21.

<sup>65</sup> [Market Surveillance Panel, State of the Market Report 2023](#), at p. 43.

<sup>66</sup> NQS Argument-in-Chief, paras. 52, 53 and 101-103.

The IESO stated that replacing the existing RT-GCG with the RT-GOG remedies a feature of the current market design, in line with the recommendations of the Market Surveillance Panel and the Auditor General.<sup>67</sup> The IESO also stated that the replacement cost guarantees would continue to apply only to NQS resources and, therefore, do not change how NQS generators are treated relative to other resources.<sup>68</sup>

HQEM, SEC and CCC supported this position.<sup>69</sup> SEC and CCC also noted that the current market rules and the RT-GCG are actually discriminatory in favour of NQS generators and that the Amendments will correct the market flaws identified by the Market Surveillance Panel.<sup>70</sup>

In its reply argument, the NQS Generation Group stated that the fact that the current RT-GCG program is not revenue-neutral is undisputed by parties. They argue that while the replacement RT-GOG remains specific to NQS generators, the changes in what revenues are accounted for in calculating cost guarantee payments would reduce their net revenues, which is economic discrimination.<sup>71</sup>

The NQS Generation Group pointed to the 2016 Market Surveillance Panel analysis, which indicates that the recommended changes to the RT-GCG program would have generated \$81.6 million in savings for Ontario consumers between 2010 and 2016. The NQS Generation Group asserts that this is clear evidence of economic discrimination, as the savings for consumers would arise from a decrease in the NQS generator's net revenues.<sup>72</sup>

## Findings

The NQS Generation Group's assertion that net margins of the NQS generators would be reduced because of the replacement of the existing RT-GCG with the generator RT-GOG constitutes economic discrimination must, by necessity, fail for the following reasons.

Firstly, under the existing rules, an NQS generator may be reimbursed for start-up costs greater than what it incurred. This is an example of economic inefficiency in the

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<sup>67</sup> [Auditor General 2017 Annual Report, Section 3.06](#), subsection 4.3.5.

<sup>68</sup> IESO Closing Argument, para. 108.

<sup>69</sup> HQEM Submission, para 18.

<sup>70</sup> SEC Submission, paras. 5, 15-19 and 52; CCC Submission, at pp. 3-4.

<sup>71</sup> NQS Reply, paras 81, 104-105.

<sup>72</sup> NQS Reply, paras. 106-107.

electricity market that allows a generator to extract economic rent, over and above its marginal cost, to the detriment of electricity consumers.<sup>73</sup>

Secondly, under the existing rules, the RT-GCG payment is not offset by all of the revenue received by the NQS generator in relation to the event for which the cost guarantee payment is being made. This is also economically inefficient, representing another example of a generator being able to extract economic rent to the detriment of electricity consumers.

The Amendments address this inefficiency. The NQS Generation Group complaint simply amounts to an objection to the loss of access to an outcome that on its face was a clear contributor to inefficient pricing at the expense of electricity consumers. The loss of this opportunity cannot constitute economic discrimination against NQS generators since there is no entitlement to extract economic rent in the first place. The fact that it is possible to extract economic rent under the existing rules is a flaw in those rules that is being corrected by the Amendments. Any reference to savings for consumers is simply a reflection of a more efficient price to be paid by electricity consumers and not evidence of economic discrimination.

## Expanded Market Power Mitigation Framework

### Overview

The Amendments also introduce an ex-ante or “before the fact” market power mitigation framework, which aims to mitigate any potential exercise of market power before prices and schedules are determined.<sup>74</sup>

Under the Amendments, one or more parameters in a market participant’s energy or operating reserve offer may be replaced with reference values that are pre-agreed between the market participant and the IESO. The reference values are applied if the participant’s offer does not pass a pre-defined “conduct and impact test.”<sup>75</sup>

The new market power mitigation framework is designed to prevent a market participant from benefiting from its market power. It does this by decreasing the market

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<sup>73</sup> [Technical Conference Transcript Day 2](#), at p. 62, lines 1-10; [Auditor General 2017 Annual Report, Section 3.06](#), subsection 4.3.5.

<sup>74</sup> IESO Market Rule Description Evidence, at pp. 24-25.

<sup>75</sup> IESO Market Rule Description Evidence, at p. 25.

participant's revenue while still allowing it to recover its marginal costs where the market participant's offer is higher than a pre-defined level.

## Submissions

As a third source of alleged economic harm, the NQS Generation Group submitted that the new ex-ante market power mitigation framework is fundamentally different from the current regime and pointed out that the new framework will apply to more operational and financial parameters for NQS generators than other supply resources. The NQS Generation Group submitted that the new market power mitigation will allow the IESO to unilaterally adjust an NQS generator's offer to a reference level, leading to lower revenues for NQS generators and interfering with a competitive electricity market.<sup>76</sup>

The NQS Generation Group asserted that, because of the Amendments, NQS generators would no longer be “on equal footing with other supply resources”.<sup>77</sup> It further stated that contract amendments for wind and solar resources and concessions on market power mitigation parameters were provided by the IESO to mitigate risks specific to these resources.<sup>78</sup>

The IESO argued that the NQS Generation Group misstated and exaggerated the changes made by the Amendments to the market power mitigation framework. The IESO stated that it has had market power mitigation since the market opened, and the Amendments shifted the approach from an ex-post to an ex-ante approach. The IESO further argued that the new market power mitigation framework would impact market participants only once the necessary conditions for a potential exercise of market power are met and the exercise of such market power was demonstrated to have a material impact on prices.<sup>79</sup>

In particular, the IESO submitted that the new market power mitigation framework under the Amendments would subject offers to an industry-standard “conduct and impact test”, if necessary conditions are met.<sup>80</sup> The conduct test considers whether a market participant makes an offer that is above a certain threshold when measured against established reference levels. If a market participant is found to have offered significantly above what was expected under competitive conditions, then the impact test, which considers the difference in market outcome (i.e. prices and out-of-market payments)

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<sup>76</sup> NQS Argument-in-Chief, para. 54.

<sup>77</sup> *Ibid.*, at para. 68.

<sup>78</sup> *Ibid.*, at paras. 62-72.

<sup>79</sup> IESO Closing Argument, para. 54 (a)-(b).

<sup>80</sup> Oral Hearing Transcript Day 1 at pp. 67-68.

between the higher offer and the reference level offer, is applied. If the impact exceeds a material threshold, the mitigation framework would intervene to replace the offer with reference levels. As submitted, the intent of the ex-ante mitigation framework is to return participants back to the situation that would have prevailed had there been full competition.

The IESO also disagreed that NQS generators will face different treatment and greater impact from market power mitigation compared to other market participants. The IESO argued that the new market power mitigation framework applies to all dispatchable resources, and there is no reliable evidence supporting a claim of disproportionate impact on NQS generators.<sup>81</sup>

The IESO stated that the alleged differences in the application of market power mitigation between hydroelectric and NQS resources reflect the fact that both resource types possess different operational and other characteristics. The IESO noted that NQS generators have operational characteristics that allow a greater ability to exercise market power and materially impact prices.<sup>82</sup>

The IESO contended that the only discrimination claim pertains to alleged differential treatment between NQS and hydroelectric generators in the revised market power mitigation framework, which it considers exaggerated and a reflection of the distinct operational characteristics of both NQS and hydroelectric resources. Different treatment that is justified by different circumstances is not unjust discrimination.<sup>83</sup>

SEC and CCC supported the IESO's position.<sup>84</sup>

SEC further argued that if the new market power mitigation framework has any unintended consequences, the IESO has agreed to establish a Market Power Mitigation Working Group, which should address any outstanding concerns.<sup>85</sup>

In its reply submission, the NQS Generation Group stated that the IESO's responses at the technical conference provided clear evidence that the purpose of market power mitigation is to reduce revenues. They further argued that NQS generators would be unfairly targeted with additional parameters subject to mitigation, even though hydroelectric resources also set prices for a significant portion of time.

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<sup>81</sup> IESO Closing Argument, para. 54(c).

<sup>82</sup> *Ibid.*, at paras. 7 and 109.

<sup>83</sup> *Ibid.*, at para. 7.

<sup>84</sup> SEC Submission, paras. 26, 28 and 61; CCC Submission, at p. 4.

<sup>85</sup> SEC Submission, para. 27.



The NQS Generation Group acknowledged that hydroelectric resources have specific operational parameters that face legitimate operational and regulatory constraints. However, they asserted that these parameters could be employed to suppress market prices and undermine competitors, therefore, making the IESO's "selective enforcement" discriminatory.<sup>86</sup>

## Findings

In the absence of a perfect market, market power mitigation is a necessary feature of a competitive wholesale electricity market. This has always been a feature of the Ontario electricity market under the existing rules and will be enhanced and automated under the Amendments. The evidence shows that NQS generators are frequently price setters. Depending on the state of the market, there are occasions where other market participants may also be able to recognize the opportunity to be a price setter. The ability to do so can give rise to an opportunity to exercise market power and achieve prices that are higher than one's marginal cost, leading to economically inefficient prices.

The IESO's changes to the market power mitigation mechanism apply to all market participants. By necessity, the mechanism must take into account specific operational parameters of market participants, and that is certainly the case for NQS generators. However, the NQS Generation Group has failed to establish that the set of operational parameters of NQS generators are inappropriate or that the conduct and impact test would result in adverse, let alone, discriminatory treatment of NQS generators.

Furthermore, the reference values used for market power mitigation related to those operational parameters are subject to a process of negotiation, an independent review process, and if necessary, a dispute resolution process. The NQS Generation Group has not provided any evidence as to why that process is not appropriate. The use of operational parameters specific to a type of market participant is not, in and of itself, evidence of discrimination.

In conclusion, the OEB finds that the NQS Generation Group has not provided any evidence that the market power mitigation mechanism in the Amendments will result in unjust discriminatory treatment of NQS generators.

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<sup>86</sup> NQS Reply, paras. 108-112.

## Elimination of Congestion Management Settlement Credit Payments

### Overview

Unlike the current two-schedule market, the renewed market design is based on a single-schedule market, which factors in grid constraints. This is expected to reduce out-of-market payments, such as Congestion Management Settlement Credits, which are used in the existing market to compensate generators that are dispatched for reliability reasons, despite being uneconomic, after the second market dispatch schedule applies grid constraints. These credits were also the subject of Market Surveillance Panel reports, which criticized them as inefficient and subject to gaming.<sup>87</sup>

Under the Amendments, Congestion Management Settlement Credits will be eliminated because the congestion on the system will be reflected in locational marginal prices. A new make-whole payment will be paid if a resource is scheduled in an uneconomic manner or if an IESO dispatch instruction causes a resource to operate uneconomically.<sup>88</sup>

### Submissions

The NQS Generation Group submitted that NQS generators will receive lower revenues due to the replacement of Congestion Management Settlement Credits with lower make-whole payments.<sup>89</sup>

The IESO responded that the NQS Generation Group provided no evidence that they would be discriminated against due to lower revenues resulting from the combination of make-whole payments<sup>90</sup> and the locational marginal price, compared to the current market combination of Congestion Management Settlement Credit payments and the uniform market clearing price.<sup>91</sup>

SEC and CCC also supported the IESO's position and argued that the elimination of Congestion Management Settlement Credits applies uniformly to all dispatchable resources and does not single out NQS generators for different treatment.<sup>92</sup> SEC further argued that any decrease in revenue the NQS generators may experience due to the

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<sup>87</sup> [Market Surveillance Panel, State of the Market Report 2023](#), at p. 42.

<sup>88</sup> Oral Hearing Day 1 Transcript, p. 152, lines 12-14.

<sup>89</sup> NQS Argument-in-Chief, paras. 55-56.

<sup>90</sup> Make whole payments refers to out-of-market payments made to a market participant to keep them financially whole if IESO dispatches a resource uneconomically for reliability reasons.

<sup>91</sup> IESO Closing Argument, para. 110.

<sup>92</sup> SEC Submission, para. 49; CCC Submission, at p. 3.

implementation of the single schedule market and locational marginal prices through the Amendments results from more efficient prices that better align with dispatch and eliminate “unwarranted” Congestion Management Settlement Credit payments.<sup>93</sup>

In its reply argument, the NQS Generation Group submitted that the evidence demonstrates clear scenarios in which, compared to the current Congestion Management Settlement Credits, the replacement make-whole payments will be reduced or, in some cases, eliminated. They argued that there is potential financial harm to NQS generators due to the reduced revenues.<sup>94</sup>

## Findings

The complaint by the NQS Generation Group is based on the assumption that the market is intended to provide specific outcomes rather than an opportunity to participate in the market along with the other market participants. The IESO is eliminating Congestion Management Settlement Credit payments to address a longstanding criticism that those payments contribute to market inefficiencies. This change applies to all market participants. The fact that any market participant may receive lower revenue as a result of more efficient dispatch leading to more efficient pricing does not constitute economic discrimination against NQS generators.

## Deemed-Dispatch Agreements

In addition to the four issues addressed above, the Application also alleges that the Amendments discriminate against the NQS Generation Group members due to the unique “deemed dispatch model” included in the contracts between the IESO and NQS Generation Group market participants (Deemed Dispatch Agreements).

In PO2, the OEB determined that consideration of the contracts was beyond the scope of the proceeding. As the OEB found, the contracts themselves and the ability of generators to seek amendments to such contracts are separate from the issue of whether the Amendments are inconsistent with the purposes of the Act or will result in unjust discrimination.<sup>95</sup> More directly, the OEB found that “the rules themselves must avoid unjust discrimination, and the remedy does not lie in a contractual arrangement with a market participant”.<sup>96</sup>

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<sup>93</sup> SEC Submission, para. 23.

<sup>94</sup> NQS Reply, paras. 113 and 114.

<sup>95</sup> Decision and PO2, at pp. 4-5.

<sup>96</sup> *Ibid.*, at p. 6.

## Conclusion on Unjust Discrimination

The OEB finds that the NQS Generation Group has not established that the Amendments are unjustly discriminatory towards the NQS Generation Group or NQS generators as a class or individually. The application therefore does not meet the requirements of the statutory test for the OEB to revoke the Amendments on the grounds that the Amendments are unjustly discriminatory.

The Amendments aim to correct long-documented market inefficiencies. The changes in market design contained in the Amendments affect all market participants and do not single out NQS generators. The OEB finds that to the extent that market participants experience different outcomes in the market, those differences will arise due to a more efficient market resulting from a reduction of the economic discrimination that exists under the existing rules, and more efficient pricing to the benefit of consumers. The NQS Generation Group has failed to establish how those outcomes result in economic discrimination against NQS generators.

## Quantifying Economic Discrimination

Since the NQS Generation Group has failed to establish that the Amendments result in unjust economic discrimination against NQS generators, there is no resulting economic harm to NQS Generators to be quantified. The OEB makes no findings regarding the impact analysis presented by Power Advisory's evidence in support of the NQS Generation Group other than that on its own, it is not evidence of unjust economic discrimination. A change in net revenue for any particular market participant resulting from rule changes addressing market inefficiency will inevitably occur.

## 4.2 Whether the Amendments are Inconsistent with the Purposes of the Act

NQS Generation Group submitted that the Amendments are inconsistent with several purposes contained in section 1 of the Act, specifically sections (a), (g) and (i), which pertain to the economic sustainability of supply resources, section (f), which pertains to protecting the interests of consumers and section (d), which pertains to promoting cleaner energy sources and technologies, consistent with policies of the Government of Ontario.<sup>97</sup>

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<sup>97</sup> NQS Argument-in-Chief, para. 79.

With respect to inconsistencies in sections 1 (a), (g), and (i) of the Act, the NQS Generation Group contended that the evidence clearly demonstrates the financial harms resulting from the Amendments, which will threaten the economic sustainability of NQS generators, which is inconsistent with the purposes of the Act.<sup>98</sup>

Regarding being inconsistent with 1(f) of the Act, the NQS Generation Group stated that the IESO has mismanaged the Market Renewal Program, resulting in benefits that are lower than the implementation costs incurred to date, which is inconsistent with protecting the interests of consumers. The NQS Generation Group asserts that its analysis reveals that while the Market Renewal Program will save Ontario consumers over \$700 million in the first decade, the net present value of these benefits is only \$266 million compared to the implementation and operational costs of \$268 million. They argue that when adjusted for the time value of money, the total cost rises to approximately \$360 million, resulting in a net loss of about \$94 million.<sup>99</sup>

The IESO argued that the NQS Generation Group has not provided any evidence that shows that the Amendments are inconsistent with the purposes of the Act.<sup>100</sup>

The IESO submitted that the Act contains a number of varied objects and that the test under section 33 is whether a market rule amendment is inconsistent with the purposes of the Act, not whether it is inconsistent with a single purpose or object. Therefore, consideration of whether an amendment is inconsistent with the purposes of the Act requires a contextual analysis.<sup>101</sup>

The IESO contended that the new argument of being inconsistent with 1(a) of the Act, presented by the NQS Generation Group during the hearing and in its written submissions, is improper, as it was not previously raised. The IESO further stated that the assertions from the NQS Generation Group lack substantiation from the evidence on the record. The SEC and CCC also supported this position.<sup>102</sup>

The IESO argued that the NQS Generation Group's claim that Market Renewal Program implementation will cost more than the projected benefits is misleading and improper, as it was not raised previously. The IESO argues that the \$226 million in benefits cited in the NQS Generation Group's analysis are actually net benefits and

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<sup>98</sup> Ibid., at paras. 85-86.

<sup>99</sup> Ibid., at paras 80-84.

<sup>100</sup> IESO Closing Argument, para. 99.

<sup>101</sup> IESO Closing Argument, para. 61.

<sup>102</sup> SEC Submission, para. 70; CCC Submission, at p. 4.

include the \$268 million in implementation costs forecasted by the IESO.<sup>103</sup> SEC and CCC supported this position.<sup>104</sup>

SEC further asserted that even if the NQS Generation Group's claim holds true, the costs related to Market Renewal Program implementation are already sunk, and revoking the Amendments would eliminate the proposed benefits, exacerbating the net loss further.<sup>105</sup>

The IESO maintained that evidence does not support the NQS Generation Group's argument that the Amendments will reduce natural gas-fired generation.<sup>106</sup> SEC and CCC supported this position and argued that the Amendments are consistent with promoting cleaner energy sources. Both SEC and CCC contended that the Amendments aim to integrate diverse resources into the market, including cleaner and more efficient energy sources.<sup>107</sup>

In its reply argument, NQS Generation Group disagreed with assertions that the Amendments are justified as they will improve overall market efficiency. They argue that there is clear evidence that the NQS generators will suffer disproportionate, unjust economic discrimination compared to other resources, which is not permitted under the Act.<sup>108</sup> They further contend that it is unjust for NQS generators to have built their facilities with the expectation of a compensation framework outlined in market rules that is now being changed in an unjustly discriminatory manner.<sup>109</sup>

## Findings

The OEB finds that the NQS Generation Group has not provided sufficient evidence to support the claim that the Amendments are inconsistent with the purposes of sections 1(a), (g) and (i) of the Act.

Section 1(a) concerns adequacy, safety, sustainability and reliability of supply in Ontario. Section 1(g) concerns economic efficiency and sustainability in generation, transmission, distribution and sale of electricity. Section 1(i) concerns the maintenance of a financially viable electricity industry.

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<sup>103</sup> IESO Closing Argument, para. 101.

<sup>104</sup> SEC Submission, paras. 67-69; CCC Submission, at p. 1.

<sup>105</sup> SEC Submission, para. 68.

<sup>106</sup> IESO Closing Argument, paras. 104, 105 and 119.

<sup>107</sup> SEC Submission, paras. 73-74; CCC Submission, p. 4.

<sup>108</sup> NQS Reply, paras. 125-131.

<sup>109</sup> Ibid., at para. 134.

As outlined above, the Amendments aim to correct long-documented market inefficiencies, and the changes in market design contained in the Amendments affect all market participants. The fact that the Amendments result in the loss of access by NQS Generation Group to an outcome that was a clear contributor to inefficient pricing does not render the Amendments inconsistent with the purposes outlined in sections 1 (a), (g) or (i) of the Act. Rather, to the extent that the Amendments address known issues and inefficiencies within the market, the Amendments are consistent with sections 1(a), (g), and (i) to the extent that they promote a more efficient market for electricity in Ontario. This is also clear to the extent that the changes proposed in the Amendments apply to all market participants.

Section 1(d) of the Act concerns the promotion of “cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario.” There was no evidence adduced on this issue. Accordingly, the OEB makes no finding on the allegation by the NQS Generation Group that the Amendments are inconsistent with Section 1(d) of the Act.

Section 1(f) concerns the protection of consumer interests with respect to pricing and the adequacy, reliability and quality of electricity service. Considering that the economic efficiencies brought about by the Amendments are expected to yield cost benefits for consumers, the Amendments align with the purpose of section 1(f) of the Act.

The OEB notes that the purposes of the Act are broad and largely concern the electricity market as a whole in Ontario. It is not sufficient, therefore, to show inconsistency by adducing evidence regarding specific effects of the Amendments on a particular group within the market. Furthermore, as found earlier in this decision, the effects outlined by the NQS Generation Group were not sufficient to show unjust discrimination, in any event.

The application therefore does not meet the requirements of the statutory test for the OEB to revoke the Amendments on the grounds that the Amendments are inconsistent with the purposes of the Act.

## 5 ORDER

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The Application by the NQS Generation Group for an order under section 33 of the *Electricity Act, 1998* revoking the market rule amendments identified as MR-00481-R00 to R013: “Market Renewal Program - Final Alignment” and referring the amendments back to the IESO for further consideration is denied.
2. Consumers Council of Canada and School Energy Coalition shall submit their cost claims by March 21, 2025. A copy of the cost claim must be filed with the OEB and one copy is to be served on the NQS Generation Group. The cost claims must comply with section 10 of the OEB’s Practice Direction on Cost Awards.
3. The NQS Generation Group will have until March 28, 2025 to object to any aspect of the costs claimed. A copy of the objection must be filed with the OEB and one copy must be served on the party against whose claim the objection is being made.
4. A party whose cost claim was objected to will have until April 4, 2025 to make a reply submission as to why its cost claim should be allowed. A copy of the submission must be filed with the OEB and one copy is to be served on the NQS Generation Group.
5. The Independent Electricity System Operator shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.
6. Parties in receipt of confidential information shall either return the subject information to the Registrar and communicate to the Applicant that they have done so or destroy the information and execute a Certificate of Destruction, following the end of this proceeding. The Certificate must be filed with the Registrar and a copy sent to Applicant.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB’s [Rules of Practice and Procedure](#).

Please quote file number, **EB-2024-0331** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB’s online filing portal](#).



- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Michael Bell at [michael.bell@oeb.ca](mailto:michael.bell@oeb.ca) and OEB Counsel, Ljuba Djurdjevic at [ljuba.djurdjevic@oeb.ca](mailto:ljuba.djurdjevic@oeb.ca).

Email: [registrar@oeb.ca](mailto:registrar@oeb.ca)

Tel: 1-877-632-2727 (Toll free)

**DATED** at Toronto **March 6, 2025**

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar