

April 17, 2014

To: IESO

From: Brookfield Renewable Power Inc.

RE: MR-00407-R00 & R01: General Conduct Rule (GCR)

Brookfield Renewable Power Inc supports the position of the Association of Power Producers of Ontario (APPRO) with respect to **MR-00407-R00 & R01: General Conduct Rule (GCR)**, as filed with the IESO on April 14th, 2014.

Brookfield Renewable Power Inc notes that APPRO has sought to accommodate the development of the GCR in a number of areas. However, there are two remaining issues where the GCR is unbalanced and fundamentally flawed, namely:

- The lack of an explicit “legitimate business purpose” defence for market participants; and
- The exclusion of IESO rule making from the scope of the rule.

Legitimate Business Purpose Defence:

- The very broad list of offences in the rule makes it necessary to ensure that appropriate business activity is not caught within its scope. Otherwise, a market participant who engages in behaviour for business reasons unconnected to electricity market incentives (including steam host, or gas transmission issues) could find themselves fighting an allegation of non-compliance.
- Having a Legitimate Business Purpose Defence allows market participants (in Federal Energy Regulatory Commission (FERC) language) to “have the opportunity to show that their actions were not designed to distort prices or otherwise manipulate the market.”¹
- The IESO’s position on this radically changed. It initially argued that the legitimate business purpose defence was implicit and an explicit defence was therefore not necessary. At the very end of the March 25th Technical Panel meeting, it reversed itself and argued that a legitimate business purpose defence would justify any profit

¹ See: FERC’s Market Behaviour Rules, November 17, 2003, p. 14. Note, subsequent to this decision the FERC changed its conduct rule to prohibit “fraudulent” behaviour. In that context, there is, of course, no legitimate business purpose defence.

seeking. The IESO provided no authority for this and it completely contradicts FERC jurisprudence on this topic.²

Exclusion of IESO Rule Making

- The IESO has given no reason why all market participants should be bound but it should not be.
- Every other conduct rule in North America is binding on ISOs in their rule making capacity.
- FERC oversees ISO compliance with conduct rule and non-FERC regulated entities (AESO and ERCOT) expressly covered in their home jurisdictions' rules.

Regards,



Vincent Francoeur
Chief Operating Officer, BEMI

²“ The FERC has never permitted a defence as described by the IESO. As it stated in the Market Behaviour Rules decision (at p. 14):

“However, an action or transaction which is anticompetitive (even though it may be undertaken to maximize seller’s profits), could not have a legitimate business purpose attributed to it under our rule.”