# Feedback Form

## Expedited Long-Term RFP Feedback – September 30th 2022

### Feedback Provided by:

Name: James Selbie

Title: Senior Associate, Origination

Organization: Invenergy Renewables Canada Development ULC

Email: [redacted]

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Following the Independent Electricity System Operator's ("IESO") release of the Draft E-LT1 RFP and Draft E-LT1 Contract on September 15th, Invenergy Renewables Canada Development ULC ("Invenergy") is pleased to provide the following feedback and questions to the IESO, which we believe will allow for a more competitive and cost-effective procurement of resources for Ontario rate-payers. We thank the IESO for the opportunity to provide feedback on this procurement and would be pleased to meet with the IESO to discuss any of the issues or ideas raised in this submission.

## High Priority: Treatment of Emission Performance Standards Program Compliance Costs

| Feedback | Question |
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| Given the IESO's stated needs for capacity, it appears that the IESO has identified a need to procure emitting thermal generation in this procurement to meet reliability requirements. In the past, contracts with the IESO such as the CES have included provisions that have made compliance costs associated with government carbon regulations to price emissions a pass-through cost to the IESO. In contrast, the draft E-LT1 RFP contract seems to be unclear on this point.<br><br>There is also significant regulatory uncertainty surrounding what future compliance costs will be over the contract term. Given the IESO's unique position in the market they are in a much better position to manage this risk than developers. If this risk was solely placed on developers, we would need to incorporate conservative assumptions into our price. As result, Ontarians would likely be paying more for firm capacity over the course of the contract term, than they otherwise would if this was a treated as a pass-through cost to the IESO. Additionally, if planned GHG regulations didn't materialize, Ontarians would be paying additional costs to comply with a program that doesn't exist. Conversely, if this was treated as a pass-through cost to the IESO, the costs to ratepayers of this policy would rise (or fall) in step with the changes in compliance costs rather than being permanently incorporated into a fixed 20-year contract price. | Can a mechanism be included in the contract to allow Emission Performance Standards compliance costs (or superseding legislation) be passed through to the IESO? |

## High Priority: Regulatory Uncertainty associated with Federal Government's proposed 2035 Clean Electricity Standard

| Feedback | Question |
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| As currently drafted, the IESO has provided no guidance on how developers are expected to deal with draft regulations proposed by the federal government that would likely require natural gas plants coming online after January 2025 to either significantly curtail their operations or carry out capital-intensive Hydrogen blending or CCS upgrades by 2035.<br><br>Given the emerging nature of these technologies, the regulatory uncertainty that currently exists (with many parameters in the draft regulations still undefined), and the 10+ year gap between when bids will be due and when the upgrades might be required to be online according to current proposed legislation, it is essentially impossible for developers to accurately determine what the cost of these upgrades will be. Further, the regulatory framework for one of the compliance mechanisms (Carbon Capture and Storage) doesn't exist in Ontario yet. As result, it will be difficult for developers to put forward prices that will accurately reflect the true costs they will end up paying to carry out these upgrades.<br><br>While the IESO may argue that these costs can be recouped through higher prices offered in the wholesale market, it will be difficult for the proponent to secure financing for such a capital investment based entirely on a merchant revenue stream.<br><br>Given that drafting of these regulations are ongoing and the state of the technology is evolving, the effect on the project cost is highly uncertain at this time. This is a source of significant risk to the project beyond the proponent's control. Putting such regulatory risk entirely on the developer is untenable and will make it very difficult to secure financing for the contract without significant increases to the bid price to account for this risk. | We implore the IESO to develop provisions in the contract to better manage and allocate this considerable risk. Is the IESO willing to mitigate the risk associated with any government mandated upgrades with Market Rule Change protection and provisions that include an option to renegotiate the FCP at a future date, once regulatory requirements and upgrade costs that use an emerging technology to be deployed in 10+ years time are better understood? |

## High Priority: Force Majeure

| Feedback | Question |
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| Considering current supply chain constraints are beyond a Supplier's control and affect its ability to perform its obligations under the Contract, the Force Majeure provisions should be expanded to include such occurrences. | Can the IESO expand the Force Majeure provisions to account for macroeconomic challenges such as schedule delays or price increases due to supply chain? |

## High Priority: Overly Burdensome Bid Security and a lack of Contractual Offramps

| Feedback | Question |
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| As currently drafted, proponents are expected to post significant security of $60,000/MW at the time of bid submission and would have no recourse if circumstances changed that rendered the proponents' ability to meet the terms of its bid untenable. This is particularly concerning given the degree of macroeconomic volatility that has recently been seen in the market. While the proposed Materials Cost Index adjustment based on metal prices is partially helpful in mitigating this, this doesn't fully address the risk of price increases. Additionally, given the very short timeframe of this procurement and the likelihood that securing stakeholder approvals and finalizing costs will extend beyond the 20 December submission date, we think that having a mechanism that would also us to withdraw our proposal at a lower penalty after submission, more accurately reflects IESO value at risk at this stage and would lead to a more competitive procurement for Ontarians. | Would the IESO consider extending the deadline for bidders to withdraw their bid until after the submission deadline without penalty? Or alternatively, would the IESO consider a lower bid security, or even a non-refundable bid fee to compensate the IESO for time spent evaluating a proposal in lieu of a $60,000/MW bid security. Furthermore, would the IESO consider a series of contractual offramps that would protect the proponent in the event that certain permits and or approvals are denied? |

## High Priority: Entity Eligibility Requirements

| Feedback | Question |
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| Operational facilities are typically owned by a project entity that is registered as a market participant. These entities usually have a capital structure in place that would obligate them to seek approval from its creditors before it could carry out the major capital expansion contemplated in this RFP. Given that not all lenders to an existing project may be interested in funding this latest expansion or comfortable with the risks inherent in this new contract, this represents a significant project execution risk that could be avoided if proponents were permitted to bid the expansion under an affiliated project entity. Furthermore, being restricted in this way to a small set of lenders may also drive up the cost of capital by limiting financing options for projects leading to a higher priced power project for Ontarians. | Would the IESO be willing to allow for an affiliated project entity to participate in this process as a proponent if they could demonstrate common ownership between the operational registered participant entity and the new entity (in a manner like what was done in the recent RFQ process)? |

## High Priority: Double penalization for being late on MCOD and termination pre-Longstop Date

| Feedback | Question |
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| Delay Liquidated Damages are an appropriate mechanism to disincentive delay by the Supplier and to compensate the Buyer. By also shortening term, the Buyer is essentially duplicating damages of the Supplier. Delay Liquidated Damages should be a sufficient mechanism on their own to meet the Buyer's objectives.<br><br>The "time is of the essence" language is of significant concern as it has been interpreted to permit the IESO to terminate the Contract prior to the Longstop Date. The Contract should make clear that Delay Liquidated Damages (and shortening of term if the duplicative damages remain) are the sole and exclusive remedy of the IESO if COD is not achieved prior to the Longstop Date.<br><br>As written, this exposes the project to significant risk of termination immediately following the MCOD, that could render the contract unfinancial | Will the IESO revisit the language in section 2.3( c ) to address these concerns? |

## High Priority: Unclear consequences associated with delayed reporting to buyer

| Feedback | Question |
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| Section 2.4(b): For the avoidance of doubt and the same reason indicated above regarding "time of the essence" in respect of achieving MCOD, failure to deliver a Project Status Report should expressly be stated not be a terminable event and the liquidated damages the Buyer's sole remedy. | Will the IESO revisit the language in section 2.4 (b ) to address these concerns? |

## Stage 1 Evaluation Process overly strict

| Feedback | Question |
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| As written in the RFP document, proponents will not be given an opportunity to rectify any sections deemed incomplete after bid submission. Given the urgency and size of the procurement, the IESO should not limit its pool of proposals by eliminating otherwise compelling offers over immaterial clerical errors. The IESO should notify applicants if any section is missing information and clearly identify the deficiency, providing all proponents with an opportunity to correct the mistake rather than disqualifying them outright. | Can the IESO provide proponents an opportunity to correct their bid, if the IESO determines in Stage 1 of the evaluation process that a bid is incomplete? |

## Security

| Feedback | Question |
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| In the past, CES contracts have reduced the performance security requirements throughout the term. In contrast, the draft contract proposed maintains a flat security requirement of $25,000/MW throughout the term. It is unclear to us why the IESO views this new contract as requiring more security over its term than previous procurements. | Would the IESO consider aligning its security requirements with previous procurements that saw security requirements declining over the term of the contract? |

## Other requested term changes

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In addition to the aforementioned higher priority issues, Invenergy would encourage the IESO to consider the following changes to terms:

- General: Request that all liability for termination Pre-COD be capped at the Performance Security.

- Delay Damages: Force Majeure, Buyer Delay and delays from the Transmission Operator or Interconnection provider should be excused event on paying LDs – to which the MCOD is extended day for day, up to [545] days.

- Capacity check Tests should be limited to once annually, at Buyer's cost with retest capability at Seller's cost. Termination threshold should be lower and an ability for Supplier to buy down Contract Capacity before termination.

- 16.6 Change of Control: Supplier requires ability to effectuate a change of control to a qualified operator, without Buyer consent.

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