E-LT1 RFP: Comments on key changes to the draft E-LT1 RFP and Contract, and potential Canada Infrastructure Bank investment

October 21, 2022

Thank you for the opportunity to provide comments on the key changes to the draft E-LT1 RFP and Contract documents and the proposed Canada Infrastructure Bank (CIB) financing opportunity. The Canadian Renewable Energy Association (CanREA) gratefully acknowledges the IESO's willingness to engage with stakeholders, and we support many of the adjustments that have been made thus far to the RFP and contract documents. However, a number of key issues CanREA and other stakeholders had raised remain unresolved. Recognizing the urgency of Ontario's resource adequacy needs and the importance of avoiding further delays to the procurement schedule, we offer the following comments:

1. Penalty for termination pre-COD

Whereas in the LRP contract, the penalty for termination pre-COD had been limited to Completion & Performance security, in the E-RFP, (10.2 d), the IESO would retain the security and exercise all other remedies available to the Buyer, including pursuing a claim for damages, creating an effectively unlimited liability risk for the Supplier. This is in CanREA's view a fatal flaw with the contract, and the inclusion of this provision in the final version of the Contract will jeopardize the success of this procurement. CanREA would strongly recommend that the IESO replace the current wording of (10.2 d) with the LRP contract provisions for pre-COD termination.

2. Market rule changes and discriminatory action

Market rule protection provisions remain significantly weaker in the updated E-LT1 as compared to previous IESO contracts: Whereas proponents would have had the right to contract amendments to restore Supplier's economics in the event of a rule change under LRP contract, this critically important protection is absent from the E-LT1 contract.

Similarly, the Discriminatory Action provisions (13.1(c), 13.2 and 13.3(a)(iii)) are unreasonably restrictive, and should be expanded to encompass not only changes that would increase costs that Suppliers would be expected to incur in connection with the development, construction, operation and maintenance of the Facility, but also the coming into force of any statute, order-in-council or regulatory change that materially affects the Supplier's Economics, including any reduction of the Monthly Capacity Payment.

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The extremely limited protections afforded to Suppliers under the current wording of the IESO Market Rules and Statutes (1.6) and Discriminatory Action (13) provisions significantly increase Supplier risk and will thus drive up capacity payment requirements, thereby eroding any energy market signal and adversely impacting ratepayer value.

3. Materials Cost Indexation Adjustment (MCIA)

CanREA welcomes the changes that have been made to the MCIA in the updated E-LT1 Contract, however, further refinement is required to appropriately balance risk for Suppliers and ratepayers while recognizing the importance of these projects to near term reliability:

- In response to questions raised during the October 18 stakeholder Q&A webinar, we would take this opportunity to further emphasize the fact that the SMM Lithium Carbonate (99.5% Battery Grade), RMB/mt index is a widely recognized and highly credible BESS industry benchmark.

- The proposed weighting of the components of the MCIA does not adequately account for lithium as a proportion of total CAPEX and does not reflect actual project costs as currently constructed. CanREA would propose an MCIA approach whereby proponents would be able to select materials cost weighting factors of their choice from among the three indexes proposed.

- CanREA would submit that these comments apply specifically to the Expedited MW RFP, and that for energy storage projects with later target in-service dates, and likely tracking for 2027 COD via LT 1, many other storage technologies are likely to be under consideration. As such, we would propose to revisit the MCIA for subsequent procurement rounds.

- The lack of floor/ceiling on the MCIA remains a significant concern for CanREA. Given the level of volatility in key commodity prices and overall market conditions, we would regard this as a critically important off-ramp for the benefit of both Suppliers and the IESO, as an opportunity for both parties to carefully consider different options following sudden and unforeseeable CAPEX changes. Price floor and ceiling concepts are typically a key feature in OEMs’ agreements with their customers, so to have comparable conditions built into an agreement between the IESO and developers would be a reasonable protection.

4. **Force Majeure**

CanREA supports the addition of delays or disruptions in the construction of any Transmission System or Distribution System assets that are required for the Facility to Deliver Electricity (11.3 (e)) as being within the definition of Force Majeure. However, this provision does not in CanREA's view adequately encompass the risk to suppliers of any delays in connecting their assets to either the Transmission or Distribution system. Interconnection risk is unequivocally beyond the affected Party's reasonable control and should be recognized as such within the definition of Force Majeure. The IESO should therefore include FM protections against undue connection delays in obtaining interconnection approvals or delays caused by Hydro One / LDC.

5. Canada Infrastructure Bank financing opportunity

CanREA commends the IESO and CIB on their work to make this proposed financing product available to proponents in the E-LT1 RFP, and going forward we hope to see further opportunities to make use of CIB resources to support the delivery of infrastructure to meet Ontario's energy system needs, in line with the Bank's mandate to invest $5 billion in Clean Power, including renewables, district energy, storage, interties and transmission.

During the October 18 Stakeholder Q&A meeting, there was discussion to the effect that the CIB Royalty and Contribution Agreement in the recently completed Nova Scotia Rate Base Procurement (NS RPB) would be analogous to the proposed Royalty Financing Product for E-LT1 RFP. CanREA would note that there are very important differences between the E-LT1 RFP and the Nova Scotia procurement, specifically:

- The NS RBP was a simple take-or-pay contract for renewable energy, whereas energy storage resources procured through the E-LT1 RFP are inherently far more complex, and it would be challenging for proponents to incorporate CIB investment exclusively in the capacity contract component of a revenue stack that would also encompass energy market revenues

- The NS RBP had no bid security requirements, whereas the bid security requirements in the E-LT1 RFP are significant.

    - The proposal as presented on October 18 would create significant additional risk for proponents: in the event that a proponent is successful in the RFP with a bid that incorporates the proposed CIB Royalty and Contribution Agreement, but the proponent then fails to obtain the CIB financing, they will require an off-ramp such that the contract is terminated with the return of the Completion & Performance security. If this off-ramp is not made available, it is doubtful that proponents will be able to make use of the Royalty Financing Product.

6. **Change of control**

CanREA strongly supports the IESO's update to the contract specifying that change of control would only be limited to COD as opposed to the first anniversary of COD. As currently worded, Sections 16.6 (b) sets out that the Change of control restrictions would not apply in the case of a change in ownership of any shares or units of ownership for a publicly traded company. This is in CanREA's view potentially discriminatory toward privately owned companies, who should be afforded the same flexibility.

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