



Chuck Farmer
Vice President, Planning, Conservation and Resource Adequacy
Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, ON M5H 1T1

October 21, 2022

Dear Chuck,

This submission responds to the Independent Electricity System Operator's (IESO's) release of the draft E-LT1 RFP (the "RFP") and draft E-LT1 Contract (the "Contract"), dated October 17, 2022.¹ All capitalized terms in this letter have the meanings ascribed to them in the RFP and Contract, as the case may be, unless defined otherwise in this submission.

Power Advisory has coordinated this submission on behalf of a consortium of renewable generators, energy storage providers, the Canadian Renewable Energy Association (CanREA), and Energy Storage Canada (ESC) (the "Consortium").²

We would like to thank the IESO for updating the RFP and Contract and for adopting some of our comments made in our September 30, 2022, submission. We think it is important for the IESO to continue consulting with potential Proponents during the procurement process so that there are no fatal flaws in the RFP of Contract.

We have the following comments on the RFP and Contract.

RFP Comments

Proposal Security

It would be helpful for potential Proponents if the IESO could clarify its position set out in Section 3.7(a)(iv) of the RFP where it states that if a Selected Proponent were to "*... fail to execute and deliver the E-LT1 Contract and all related closing documents required by the IESO Such Selected Proponents will be in breach of this E-LT1 RFP and the IESO may draw upon the Proposal Security*".

We believe that this is the IESO's sole and exclusive remedy for failing to execute and deliver the Contract, but we request that the IESO expressly state that this is its sole and exclusive remedy. Potential

¹ See <https://www.ieso.ca/en/Sector-Participants/Resource-Acquisition-and-Contracts/Long-Term-RFP-and-Expedited-Process>

²The members of the Consortium are: CanREA; ESC; Axiom Infrastructure; BluEarth Renewables; Boralex; Capstone Infrastructure; CarbonFree Technology; Connor, Clark & Lunn; Cordelio Power; EDF Renewables; EDP Renewables; Enbridge; ENGIE; Evolgen (by Brookfield Renewable); H2O Power; Kruger Energy; Liberty Power; Longyuan; NextEra Energy Canada; Pattern Energy; Potentia Renewables; and wpd Canada.



Proponents will be deterred from submitting Proposals if their pre-selection liability is essentially unlimited.

Contract Comments

Pre-COD Termination

We would recommend that the IESO's remedy for a pre-COD Supplier Event of Default in Section 10.2(d) be limited to termination of the Contract and forfeiture of the Supplier's Completion and Performance Security only. As it is drafted now, the Supplier's liability under the Contract is uncapped and prospective. Proponents will not accept this uncapped liability and will not participate in the RFP.

Absence of Contractual Offramps

Unlike previous contracts executed by the IESO, there are no contractual offramps for Suppliers. Given the fact that it is unclear that the IESO has laid the groundwork for the needed distributors, transmitters, and approvals-granting ministries preparedness for the wave of project development that is coming, we think that there needs to be certain contractual offramps. For example, s. 2.1(d) of the FIT contract provided the Supplier with a right to terminate the contract if its Network Upgrade Costs or distributor Connection costs were substantially higher than could have been reasonably foreseen. Section 2.1(e) of the FIT contract provided the Supplier with the right to terminate the FIT contract if the Supplier had provided a declaration of more than 50% Aboriginal participation and was subsequently denied financing by Aboriginal Loan Guarantee Program operated by the province, and such denial had a Material Adverse Effect on the Supplier. We think that offramps in favour of the Supplier for delays in obtaining equipment or cost increases for equipment not accounted for adequately by the Materials Cost Index should be incorporated into the Contract.

Amendment to IESO Market Rules Protection

The protection in Section 1.6 of the Contract is much narrower than in previous IESO contracts relating to amendments to the IESO Market Rules. The contractual protection in the Contract only protects a Supplier from incurring increased costs associated with Must-Offer Obligation compliance because of an amendment to the IESO Market Rules.

This presents a considerable risk for Suppliers, notwithstanding the fact that the IESO is paying for capacity and not energy. For example, the IESO has stated that changes to the power system's network model to fully integrate all energy storage technologies through implementation of respective participation models will not be addressed until after the Market Renewal Program's (MRP's) May 2025 scheduled implementation. Consequentially, for Proponents developing a Battery Energy Storage System (BESS), they have no idea how future changes to the network model, in combination with new MRP related amendments to the IESO Market Rules, will impact how BESS will be scheduled, committed, and dispatched post MRP implementation. In preparing their Proposals, the Proponents will need to assume an operating profile for the purposes of estimating O&M costs and any sustaining



CAPEX for proposed projects. If, post MRP implementation, the BESS is committed and dispatched more, which results in the facility operating more than anticipated, Proponents will incur increased costs without a mechanism for recovering them. Such an outcome could occur if the BESS is located within an IESO determined transmission constrained location on the grid, the IESO determines the BESS is exercising economic withholding (even if the BESS is not doing so) for a prolonged period of time (e.g., over an entire month), and the IESO resets the BESS' offer price lower (based on an established Reference Level) resulting in the BESS injecting energy onto the grid more than anticipated that then pushes its operational capabilities.

We are including a sample revised Section 1.6 to the Contract as an exhibit to this submission, which proposes revisions to address this concern. We are providing this for discussion purposes only and would be pleased to meet to discuss the drafting of any revisions.

Materials Cost Index Adjustment

We thank you for the changes you have made to the Materials Cost Index Adjustment (MCIA). We view these changes in a positive light. We do request, however, that you permit Proponents to determine the weighting factors for each index component (e.g., instead of weighting the lithium carbonate index by 0.25, ferrous and non-ferrous IPPI index by 0.45, and the CPI index by 0.3, allow a Proponent to select these weighting factors in their Proposal).

We further propose that the MCIA have a type of "collar" such that the IESO risk is capped at a certain pre-determined threshold value, but the Proponent can elect to proceed with the project even if the indexing is capped at that value. Conversely, if the index drops below a certain pre-determined threshold value, the Proponent can elect to abandon development and terminate the Contract with the return of its Completion and Performance Security – similar to contract termination in Section 2.13(b) of the Contract. We propose that this be mutual and that the IESO have the ability to abandon projects where the indexing would be above a certain threshold to protect Ontario ratepayers. The rationale for a collar is that an index is a lagging indicator and the Supplier may have locked in a price that is higher than the index with an OEM supplier and a downward adjustment could make a project uneconomical. Conversely, the IESO might want this flexibility, in the event that the index gets above a certain level and where Suppliers have locked in at a lower price so that it can protect ratepayers.

Canada Infrastructure Bank Financing Product

The Canada Infrastructure Bank (CIB) is not pre-qualifying Proponents for this funding. In order for Ontario ratepayers to benefit from this financing product, Proponents will need to incorporate this financing into its Fixed Capacity Payment bid. There is a significant risk for Proponents that they will submit binding Proposals, and then be denied access to the CIB financing product. This may deter them from using the CIB financing product. We request that an offramp be built into the Contract (e.g., a condition subsequent), such that the Contract is terminated with return of the Supplier's Completion and Performance Security. This will permit Proponents to use the CIB financing product.



Supplier Event of Default for Availability

We think the current Performance Event of Default clause is not realistically achievable (i.e., 75% over 24 months on a rolling average, given key component lead times). Instead, we suggest that the Supplier Event of Default be assessed over three consecutive Contract years instead of 24 months.

Reimbursement Reference Efficiency

We believe that the Reimbursement Reference Efficiency (RRE) value of 0.80 is too high relative to what the actual round-trip efficiency will be, which we think will be about 70%. We are concerned this would result in a potential regulatory charge cost instead of a regulatory charge credit under Exhibit R of the Contract, and therefore we think the RRE needs to be no higher than 75%.

Change of Control

We think that the change of Control provision should be relaxed to permit a change of Control at COD with notice being given to the IESO. Currently, Section 16.6(b) excludes transactions where the shares or ownership units of the Supplier are publicly traded or not, from the change of Control prohibition in Section 16.6(a). We think that this treatment needs to be extended to transactions where the shares or units are not publicly traded, too.

The Consortium thanks IESO for on-going stakeholder engagement meetings regarding E-LTI RFP and Contract and other related stakeholder engagement meetings relating to supply procurements and resource adequacy.

We will be pleased to meet with IESO about this submission at a mutually convenient time.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Chee-Aloy", enclosed in a thin black rectangular border.

Jason Chee-Aloy
Managing Director
Power Advisory

cc:

Barbara Ellard (IESO)
Brandy Giannetta (Canadian Renewable Energy Association)
Justin Rangooni (Energy Storage Canada)



Elio Gatto (Axium Infrastructure)
Roslyn McMann (BluEarth Renewables)
Adam Rosso (Boralex)
David Oxtoby (CarbonFree Technology)
Patrick Leitch (Capstone Infrastructure)
Jason Woods (Connor, Clark & Lunn)
Paul Rapp (Cordelio Power)
David Thornton (EDF Renewables)
Nathan Roscoe (EDP Renewables)
Lenin Vadlamudi (Enbridge)
Justin Rangooni (Energy Storage Canada)
Michelle Dueitt (ENGIE)
Julien Wu (Evolugen by Brookfield Renewable)
Stephen Somerville (H2O Power)
JJ Davis (Kruger Energy)
Deborah Langelaan (Liberty Power)
Jeff Hammond (Longyuan)
Cheryl Dietrich (NextEra Energy)
Andrea Garcia (Potentia Renewables)
Rob Campbell (Pattern Energy)
Ian MacRae (wpc Canada)



Exhibit – Proposed Revised Section 1.6

FOR DISCUSSION PURPOSES ONLY

1.6 IESO Market Rules

In the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency. To the extent that there is a change in the IESO Market Rules pertaining to the integration of energy storage Facilities into the IESO-Administered Markets that was not published by the System Operator in its approved form 30 days prior to the Contract Date, which such change has the effect of materially affecting the Supplier's Economics, then:

- (a) either Party may, within 15 days following the date such amendment is published by the System Operator in its approved form, notify the other Party that such change materially affects the Supplier's Economics (a "**Material IESO Market Rule Amendment**"). For greater certainty, if a Party does not provide notice within 15 days following the date such amendment is published by the System Operator in its approved form, then such Party shall not be entitled to any amendments to this Agreement as a result of such IESO Market Rule amendment;
- (b) the Supplier shall, within 60 days following the date of any notice sent pursuant to Section 1.7(a), provide to the Sponsor all such information as may be required or otherwise requested by the Sponsor to assess the impact of such Material IESO Market Rule Amendment on the Supplier's Economics;
- (c) the Sponsor shall, within 60 days following receipt of all information required to be provided by the Supplier and those Other Suppliers that are required to provide information pursuant to Section 1.7(b) of their respective FIT Contracts, but in any event no later than 120 days following receipt of all information required to be provided by the Supplier, either:
 - (i) advise the Supplier that the applicable IESO Market Rule amendment is not a Material IESO Market Rule Amendment; or

- (ii) propose amendments to this Agreement and the respective agreements of any Other Suppliers that are so affected, on the basis that such amendments together with the change in the IESO Market Rules will substantially reflect the Supplier's Economics as contemplated hereunder and, at the Sponsor's discretion, that of such Other Suppliers, prior to the introduction of such change in the IESO Market Rules;

- (d) if by the date that is 60 days following the date that the Sponsor makes a determination or proposes amendments in accordance with Section 1.7(c), as applicable, the Parties do not agree to the amendments proposed pursuant to Section 1.7(c), or do not agree as to whether an IESO Market Rule amendment is a Material IESO Market Rule Amendment, as applicable, then the Parties and, at the Sponsor's discretion, such Other Suppliers who are so affected, that are required by the Sponsor to participate, shall engage in good faith negotiations to reach agreement;

- (e) if by the date that is 120 days following the date that the Sponsor makes a determination or proposes amendments in accordance with Section 1.7(c), as applicable, the Parties fail to reach agreement on the amendments described in Section 1.7(c) or do not agree as to whether an IESO Market Rule amendment is a Material IESO Market Rule Amendment, as applicable, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit C. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel; and