



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

November 14, 2022

Dear Chuck,

This submission responds to the Independent Electricity System Operator's (IESO's) release of the revised draft E-LT 1 RFP (the "RFP") and draft E-LT 1 Contract (the "Contract"), dated November 8, 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

Improvements to the RFP and Contract

We commend and thank IESO for updating the draft RFP and Contract, and for adopting some of our suggestions made in earlier submissions. We think that IESO's ongoing stakeholder engagement has improved these procurement documents and provided potential Proponents with more certainty than there would have been otherwise. Particularly, we note the following areas of improvement representing positive changes.

1. **Proposal Security** – The revised drafting of Section 3.7(a)(2)(iv) of the RFP stating that forfeiture of Proposal Security is IESO's sole and exclusive option for a Selected Proponent failing to deliver the Completion and Performance Security or failing to execute and deliver the Contract and related closing documents.
2. **Pre-COD Termination** – The revised drafting of Section 10.2(d)(i) of the Contract stating that the Supplier's liability for damages to IESO, for a termination by IESO prior to Commercial Operation, is limited to the quantum of its Completion and Performance Security.

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

² The 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.

3. **Achievement of Commercial Operation** – The clarification in Section 2.3 of the Contract that failure to achieve Commercial Operation by the Milestone Date for Commercial Operation only exposes a Supplier to a liability to pay liquidated damages.
4. **Amendments to IESO Market Rules Protection** – The recent changes to Section 1.6 of the Contract with the addition of subsection (c), specifically catering to energy storage, have evolved considerably from the initial August 25, 2022 release of the Contract.
5. **Materials Cost Indexation** – The change for indexation of material costs in Section 2.13 of the Contract, with the adoption of specific indices for lithium, IPPI and CPI, foreign exchange adjustment, and indexing to the MCIA Effective Date, including indexing to the MCIA Effective Date, will help to minimize risks associated with the time lag between securing equipment orders and indexation of costs of materials.
6. **Change of Control** – The changes to Section 16.6 with regarding changes in Control, as with Section 1.6 of the Contract, have evolved considerably since the initial release of the Contract.
7. **Degradation of Monthly Contract Capacity** – The ability to reduce Summer Contract Capacity and Winter Contract Capacity prior to the seventh anniversary date of the Commercial Operation Date addresses some of the concerns regarding battery degradation.
8. **Round Trip Efficiency** – The reduction of the Reimbursement Reference Efficiency from 0.8 to 0.75 is helpful and addresses, to some extent, concerns raised about being able to achieve a 0.8 round trip efficiency to avoid Global Adjustment and regulatory charges.
9. **Force Majeure** – The revisions made to Article 11 of the Contract, particularly additions to Section 11.2 to address third-party supply contracts and Section 11.3 to address transmission system or distribution system delays or disruptions, help to justifiably protect Suppliers.

Needed Clarity and Further Recommendations for the RFP and Contract

Notwithstanding the positive developments in the revised RFP and Contract, the Consortium still believes that further improvements and clarity can be made to the following aspects of the procurement.

1. **Absence of Contractual Offramps** – As we have noted in our previous submissions, unlike previous IESO contracts, there are no contractual offramps for Suppliers. We understand IESO's desire to not have such offramps; however, we think that such offramps will be prudent. For example, project connection costs to the grid and/or system upgrade costs going beyond any project's connection costs will be unknown until well after execution of contracts. Additional to offramps, the Contract should also include cure or relief provisions as reasonable steps before any offramps are triggered. We believe provisions enabling cure and relief along with offramps

will help to effectively de-risk key aspects of the procurement and hence lower bid Fixed Capacity Payments.

2. **Amendments to IESO Market Rules Protection** – Although we recognize and appreciate that Section 1.6 of the Contract has evolved considerably since the initial release of the Contract, we do not agree with capping any adjustment to the Fixed Capacity Payment to 10%, as is set out in subsection 1.6(c) of the Contract – this is much narrower than in previous IESO contracts. The adjustment to the Fixed Capacity Payment should not be capped and any adjustment needs to reflect the actual amount required to recover the Storage Disincentive Lost Net Revenue.
3. **Canada Infrastructure Bank Financing Product** – We recognize the benefits of the Canada Infrastructure Bank (CIB) financing product. The fact that CIB is not pre-qualifying Proponents for this funding creates a great deal of risk for potential Proponents, in the event they count on this financing and then subsequently cannot secure it from CIB. We request that an offramp be built into the Contract such that the contract is terminated with return of the Supplier's Completion and Performance Security. This will better enable Proponents to use the CIB financing product. We also note that CIB has not been engaging in consultation with Proponents. This has not allowed Proponents to clarify some key provisions (e.g., what is included or excluded in project costs, diligence level and costs if no term loan debt, etc.).
4. **Investment Tax Credit** – In a similar vein to CIB funding, the recently announced federal Investment Tax Credit (ITC) creates uncertainty. Until enabling legislation is enacted, potential Proponents will not know whether they should or should not include this in the calculation of their Fixed Capacity Price bids. An example of uncertainty is labour. That is, the definition of labour, and its associated requirements and components, have implications for a Proponent's capital budget. To address uncertainties, IESO should consider contractual provisions enabling parties to reconvene to renegotiate the Fixed Capacity Price following the passing of legislation. The Consortium notes that similar contract provisions have been effectively used within other jurisdictions.
5. **Quantum of Proposal Security** – The quantum of the Proposal Security in Subsection 3.6(d)(ii) is relatively high, compared to past IESO procurements, and could deter potential Proponents from submitting Proposals. We recommend further discussions with qualified Proponents regarding the level of Proposal Security.

Recommendation Regarding Contract Payment Structure

Regarding the revised Contract payment structure proposed by IESO in Exhibit M to the Contract and described during the November 7, 2022, stakeholder engagement meeting³ (i.e., "CanREA Payment

³ <https://www.ieso.ca/-/media/Files/IESO/Document-Library/engage/long-term-rfp/ltrfp-20221107-presentation.ashx>



Model”), we support the most recent CanREA submission commenting on this aspect of the November 7 meeting – do not implement the rider Contract payment structure and continue with the payment structure within the Contract as is (i.e., continue to allow potential Proponents to bid on a capacity-only price).

We appreciate and welcome IESO’s consideration of stakeholder feedback and its willingness to adopt a flexible approach to aspects of the Contract. However, Consortium members have already spent considerable time and effort in understanding and modelling the payment structure set out in the August 25 and October 17 versions of the Contract (i.e., “Fixed Capacity Payment Model”). Since the November 7 stakeholder engagement meeting, there has been insufficient time to properly assess the CanREA Payment Model versus the Fixed Capacity Payment Model prior to the planned December 6, 2022 finalization of the Contract. Further, the Consortium does not believe that there is sufficient time to undertake necessary due diligence needed to fully understand the CanREA Payment Model and its implications before the revised Proposal Submission Deadline of January 24, 2023 (where IESO should consult with qualified Proponents whether this Deadline is reasonable). We further note that project lenders have been working towards a level of comfort with the Fixed Capacity Payment Model. Going forward within subsequent procurement initiatives, IESO should be open-minded to alternate contract payment models based on learnings from the present E-LTI RFP and Contract stakeholder engagement.

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 (Axiom 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)
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 (wpd Canada)