EDF Renewables North America
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Barbara Ellard
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1600-120 Adelaide Street West
Toronto, ON M5H 1T1

October 21, 2022

To: Barb,

This submission has been prepared under extremely short timelines, following the updates to the Independent Electricity System Operator's (IESO's) release of the draft E-LT 1 RFP ("the RFP") and draft E-LT 1 Contract ("the Contract") shared with stakeholders in the evening of Monday October 14, and presented via webinar in the afternoon of Tuesday October 15, 2022. evening.[1]

EDF Renewables Canada Inc (EDF Renewables) would like to acknowledge that EDF Renewables does note various improvements to this latest draft. We also appreciate the effort the IESO has taken throughout the engagement process related to the development of these draft documents. However, EDF Renewables is disheartened to see that there remain some very significant contractual, counterparty risks that we sincerely hope the IESO finds a way to reasonably address in the final version of the RFP and Contract on November 1, 2022.

In that spirit, we provide the IESO with the following comments to outline the most significant issues, as they all significantly impact EDF Renewables ability to price and submit a project in the E-LT1 RFP procurement process.

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

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General Comments on E-LT1 RFP

10.2 d) Remedies of the Buyer	*(d) If the Buyer terminates this Agreement pursuant to Section 10.2(a) or this Agreement is terminated pursuant to Section 10.2(c), the Buyer shall have the option, exercisable in the sole and absolute discretion of the Buyer, to retain all Completion and Performance Security provided by or on behalf of the Supplier* ***and exercise all other remedies available to the Buyer including pursuing a claim for damages****, as contemplated in Section 10.5.*	As it is written, the Supplier's liability under the Contract is uncapped and this is a fatal flaw for EDF Renewables. **EDF Renewables strongly recommends that the IESO's remedy for a pre-COD Supplier Event of Default be limited to termination of the Contract, and the forfeiture of the Supplier's Completion and Performance Security only. To provide greater certainty to proponents we recommend that this be made explicit in the PPA as in the IESO's LRP PPA.**
Absence of Contractual Offramps i.e. clear 'walk away' right for both parties	Unlike previous power contracts in Ontario, there appear to be no contractual offramps for Suppliers. EDF Renewables understands the IESO wants reasonable risk to be borne by the Proponent. At the same time, ensuring that each contract awarded will be delivered at lowest cost, on time and on budget, with low attrition of the selected resources, is critical to reliability. We also note the high bid security requirements and EDF Renewables favours high security and qualifications to ensure projects can and will be delivered on time. However, in various instances throughout the contract, EDF Renewables is very concerned that risks being placed onto bidders are significant and potentially prohibitive, and many are outside of the proponent's control i.e., perceived uncapped liability, limited market rule protections, Indexation, interconnection timelines (LDCs, approval authorities), Community Support Resolutions as an Event of Default, etc. In this final review of the RFP and Contract, **EDF Renewables encourages the IESO to consider how the Contract can build in reasonable 'off ramps'** that balances developer risk, while also drafting clear 'walk away' provisions	

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	for situations that are not in full control of the project developer, including, but not limited to, macroeconomic issues like inflation, global supply chain constraints, revocation of permits via municipal council vote, interconnection costs, or upcoming market rule changes that may damage project economics.	
1.6 – IESO Market Rules and Statutes	*(b) To the extent that the board of directors of the IESO has given final approval to an amendment to the IESO Market Rules following the Contract Date, unless such amendment is stayed by the OEB, and* ***as a result of such amendment, the Supplier is or would be unable to comply with the Must-Offer Obligation without incurring material costs, where the Supplier would not reasonably incur such material costs if the Facility were operating in the IESO-Administered Markets without this Agreement being in place****, then:*	EDF Renewables is increasingly concerned that the IESO did not amend, in any way, Section 1.6 of the Contract. It is still limited only to the Must-Offer Obligation. Given the vast market changes about to be implemented by the IESO via the to be implemented Market Renewal, as well as Ontario's unique market structure with a higher level of governance risk compared to other markets, **EDF Renewables strongly recommends the IESO maintain historic protections against disruptive market changes that would erode project economics.** EDF Renewables supports, in principle, the proposal from the Consortium: "***Exhibit – Proposed Revised Section 1.6***".
Canada Infrastructure Bank Financing Product	EDF Renewables agrees with the comments submitted by CanREA and the Consortium. There must be a clear linkage between the RFP/Contract, and the CIB product. There is no guarantee that a Proponent and the CIB will come to terms on the agreement post contract award. At the same time, to be competitive, Proponents will bid a binding price with a high bid security assuming the terms of the financial product will be agreed to – which, also at time of writing this submission, it is not yet fully defined. EDF Renewables request that an off-ramp or make make-whole adjustment be built into the contract in the case that the CIB Product or Contribution is not available to the Supplier. (e.g. a condition 'subsequent').	

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<td>Proposal Security / Letter of Credit</td>
<td colspan="2">EDF Renewables urges the IESO to give proponents more time, perhaps fifteen (15) to twenty (20) business days (due to the holiday season immediately following the Bid Submission Date), to submit the Proposal Security.

Under the current timeline, proponents will only know the results of the Deliverability Test on November 30th – it is at this point that each Supplier can finalize project size and therefore the size of Bid Security required. With a very limited window for banks to issue Letters of Credit it may not be possible to deliver a correctly sized Letter of Credit/Security in time. A reasonable option would allow proponents to submit firm proposals at the bid deadline and then follow up with required Letters of Credit/Security shortly afterwards. Due various Statutory Holidays we recommend the IESO consider allowing a maximum of 15-20 business days post bid deadline within which proponents must follow up with any required Letters of Credit/Security or the IESO would reject the bid.</td>
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<td>2.2 – f) Materials Cost Index Adjustment</td>
<td>Where the Proposal elects for it to apply, on the eighteen (18) month anniversary of the Contract Date, there will be a one-time adjustment to the FCP set out in the E-LT1 Contract, referred to as the "Materials Cost Index Adjustment" to account for changes in materials and services costs between the Proposal Submission Deadline and the eighteen (18) month anniversary of the Contract Date. Proposals for Electricity Storage Facilities electing to apply such adjustment will be able to select one of two (2) options for the Materials Cost Index Adjustment, either the MCIAli or the MCIAnli.</td>
<td>EDF Renewables appreciates that the IESO has now incorporated Lithium into the Materials Cost Adjustment Factor.

We note that the IESO is specifically seeking feedback on public indices. EDF previously recommended the following indices that we feel are stable and reliable indices to support the duration of the E-LT1 process.
- Lithium carbonate: China lithium carbonate 99.5% DEL, Shanghai Metals Market (SMM)
    o https://www.metal.com/Chemical-Compound/201102250059
    o Chinese Renminbi / US Dollar Exhange rate (RMB:USD) will also be accounted for as described in the formula below
- Ocean Transportation: Freightos Baltic Index (FBX)
    o https://fbx.freightos.com/</td>
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	Proposals for Non-Electricity Storage Facilities electing to apply such adjustment will be subject to the MCIAnli. *(A) For Electricity Storage Facilities applying the MCIAli, twenty-five percent (25%) of the FCP will be indexed to the lithium carbonate (99.5% battery grade) set out in the □ [NTD: Lithium index reference to be confirmed.], thirty percent (30%) of the FCP will be indexed to the CPI and forty-five percent (45%) of the FCP will be indexed to the major product group price for primary ferrous metal products and primary non-ferrous metal products set out in the IPPI; and* *(B) For Non-Electricity Storage Facilities or Electricity Storage Facilities that have elected to apply the MCIAnli, thirty percent (30%) of the FCP will be indexed to the CPI and seventy percent (70%) of the FCP will be indexed to the major product group price for primary ferrous metal products and primary non-ferrous metal products set out in the IPPI.* *This Materials Cost Index Adjustment will be calculated in accordance with Section 2.13 of the E-LT1 Contract.*	EDF Renewables is not clear as to how the IESO arrived at the weightings proposed. We heard on the webinar and understood why IESO is hesitant to allow bidders to select a weighting that specifically fits the project size and configuration. As a suggestion, **EDF Renewables would propose IESO explore a 'low' at the 0.25, and some 'high' lithium weighting option concept to attempt to both standardize the process yet allow for some flexibility to allow projects of different configurations determine the weighting**. EDF Renewables was not able to run sensitivities to propose a number for the 'high' weighting option, but still wanted to propose the concept for consideration EDF Renewables notes the change to 18 months. We feel this is too long after the bid submission date. The more exposed the project is to market volatility the more supplier side risk the Project will bear. Therefore, **EDF Renewables would recommend that Projects index their FCP from bid submission date, up to the date of invoice from the supplier.** This information can be easily shared during the regular meetings between IESO and Supplier for any contract awarded Project.