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Ms. Barbara Ellard
Director, Resource & System Adequacy
IESO

By Email

July 13, 2023

Re: Feedback and recommendations on the June 29th LT1 RFP Procurement Update

I am writing on behalf of the Association of Power Producers of Ontario (“APPRO”) to provide feedback and recommendations on the IESO’s *Long-Term Request for Proposals (LT1 RFP) Procurement Update*, dated June 29, 2023. This letter is consistent with our previous feedback submission dated May 18, 2023, referred to throughout.

APPRO is a non-profit organization representing companies involved in the generation of electricity in Ontario, including generators and Suppliers of services, equipment and consulting. APPRO members produce power from nuclear, hydroelectric, natural gas, wind, solar and other sources.

Capitalized terms used in this letter but not defined herein have the meaning ascribed to those terms in the draft LT1 Contract.

A. LT1 RFP Timelines and Commercial Operation Date

While APPRO acknowledges the IESO’s response to stakeholder feedback by extending the Commercial Operation Date (COD) for the LT1 RFP from May 1st, 2027, to May 1st 2028, APPRO reiterates its concern that Suppliers will be exposed to liability for procurement process delays that are entirely within the IESO’s control.

APPRO recommends that the IESO reconsider the allocation of risk associated with setting a *fixed date* for COD. By extending the COD by one-year (from May 1st 2027 to 2028), the IESO maintains a *fixed date* approach, instead of a *fixed period of time* approach.

A fixed period of time or floating milestone date was recommended in APPRO’s May 18, 2023 feedback for the following reasons that are restated below for emphasis:

- it accommodates for delays attributed to IESO stakeholder engagement, planning and procurement processes, and ensures Suppliers are not unduly penalized;
- it takes into account the experience of proponents in the recent E-LT1 RFP, such as notification delays, projects being stuck in limbo, long-lead equipment not being ordered (in a climate of acute global supply chain delay), and the postponement of

deliverability testing, detailed engineering work, permitting, regulatory approvals and community engagement;

- it is not uncommon, as the IESO has used the fixed period of time approach with a floating milestone date in the CHP, RESOP, CHPSOP, ERSOP, HESOP, IEI, LRP and most recently for the Oneida Energy Storage Facility Agreement;
- it provides Suppliers with a guaranteed minimum period of time over which to develop, finance and construct the facility; and
- it reflects the IESO's responsibility for managing the procurement process schedule, as the party best positioned to manage risk arising from timeline uncertainty and delay.

APPPrO requests the IESO to accept these recommendations and to revise the LT1 RFP to reflect a fixed period of time with a floating milestone date, which is both consistent with past practice and reflective of present Supplier challenges.

Recommendation 1: *Revise Section 2.3(c) of the LT1 Contract so that liquidated damages will not kick in until 365 days after the Commercial Operation Date and revise the Longstop Date so that it does not occur until 33 months after the Commercial Operation Date. In the alternative, and at a minimum, revise Section 2.3(c) of the LT1 Contract so that liquidated damages will not kick in until 270 days after the Commercial Operation Date and revise the Longstop Date so that it does not occur until 30 months after the Commercial Operation Date.*

Recommendation 2: *Revise the definition of the Commercial Operation Date so that it is tied to a fixed period of time after the Contract Date, rather than a specific fixed date. Make similar changes to the trigger dates for the Early COD multiplier.*

B. GHG Laws and Regulations

APPPrO restates the concerns submitted in its feedback dated May 18, 2023, that the GHG provisions may undermine the policy objective of any future greenhouse pricing requirements that may be imposed by the Government of Ontario or the Government of Canada.

Specifically, to the extent a Supplier cannot recover the impact of any greenhouse gas pricing through the HOEP, Section 2.15 of the LT1 Contract would ensure that any future greenhouse gas price signal will not be seen in full by the ultimate electricity consumer in the Province of Ontario. Consequently, it will not properly incent the behaviour change amongst consumers that is necessary to achieve zero emissions in the electricity sector, and will result in an undue loss to Suppliers.

The LT1 Contract assumes the HOEP is an adequate mechanism for Suppliers to recover the impact of new GHG laws – this is not the case. A recent example is the experiences of Union Gas and Enbridge following the 2017 Cap and Trade Order, and the related uncertainty regarding GHG variance accounts. While the IESO, APPPrO and the OEB were initially aligned on the process for clearing variance accounts, it was ultimately necessary to negotiate the *IESO Proposal for Addressing Balances in Gas Distributor GHG Variance Accounts*, which further provided for contingency with the following language: “If the OEB chooses an approach that has not been contemplated by the terms of the GHG Agreement, then further discussions and/or amendments may be required”. The current GHG laws and regulations language does not allow for similar flexibility.

As previously recommended by APPrO, a discrete reopener process would preserve Supplier economics and ensure that any incremental costs arising from changes to greenhouse gas policy (not otherwise contemplated under the agreement) would not economically harm the position of the Supplier.

Recommendation 3: *Delete Section 2.15(b) of the LT1 Contract and replace it with similar protections as those provided to OPG in Subsections 2.7(b) and (c) of the December 8, 2021 Lennox Energy Supply Agreement (the “LESA”), but amended to conform with the LT1 Contract settlement mechanism to ensure that Supplier’s economics are protected.*

C. Planned Outage Capacity Reduction Factor

APPrO restates the concerns submitted in its feedback dated May 18, 2023, that by creating an incentive for all Suppliers to schedule Planned Outages within the same four months of the year (April, May, October or November), it is reasonably foreseeable that multiple capacity resources would plan overlapping outages, where the IESO may be forced to refuse some outage requests. The IESO would know when making this decision which Supplier would incur a penal Planned Outage Capacity Reduction Factor, and which would not (the LT1 Contract will be in the public domain).

APPrO is concerned that Section 15.3(i)(A) and (B) may require a Supplier to amend its Annual Operating Plan in accordance with Section 15.3(b)(iii) every time the IESO rejects a Sole Annual Planned Maintenance Month or Split Annual Planned Maintenance Month.

APPrO recommends that the form of Annual Operating Plan in Exhibit L of the LT1 Contract be revised to include a further option for outages, by including language that captures additional outage months (outside the designated four-month window) as “otherwise directed or requested by the System Operator”.

Recommendation 4: *If a Planned Outage occurs in a Settlement Month other than a Sole Annual Planned Maintenance Month or a Split Annual Planned Maintenance Month because the System Operator refused a Supplier’s outage request in accordance with the IESO Market Rules, and the Supplier used commercially reasonable efforts to try to reschedule the Planned Outage with the System Operator to occur in the Sole Annual Planned Maintenance Month or a Split Annual Planned Maintenance Month, as applicable, then the Planned Outage Capacity Reduction Factor should be calculated as if the Planned Outage occurred in the Sole Annual Planned Maintenance Month or the Split Annual Planned Maintenance Month, as applicable.*

Recommendation 5: *The IESO should expressly incorporate the following language from its LT1 FAQ responses into the LT1 Contract: “For greater certainty, if a Supplier must take a Sole Annual Planned Maintenance month or a Split Annual Planned Maintenance month outside of the four designated months (April, May, October or November) due to System Operator direction, they will not be financially impacted under the LT1 Contract”.*

D. Discriminatory Action

APPrO restates the concern submitted in its feedback dated May 18, 2023, that Section 13.1(c)(ii)(B) of the LT1 Contract could be interpreted as being inadvertently broad and overbearing, and that a simple solution would be to clarify the carve out to read: “has been

made public in a discussion paper or consultation paper...” which better aligns with the true intention of the carve out.

Recommendation 6: *Revise Section 13.1(c)(ii)(B) of the LT1 Contract to provide additional clarity to the carve out of what is not considered a Discriminatory Action.*

E. Market Rule Changes

APPPrO restates the concerns submitted in its feedback dated May 18, 2023, that Section 1.6 of the LT1 Contract misallocates risk arising from an IESO Market Rule change by not protecting Supplier economics. Specifically, the misallocation of risk onto the Supplier results in increased costs for capacity, as Suppliers must price-in this uncertainty. Consequently, ratepayers will pay for this error for the duration of the LT1 Contract term, which is not in the public interest.

As the IESO’s market renewal initiative advances to the market rules amendment stage (recent publication of high-level design and detailed design documents), changes will involve the introduction of a single schedule market and a day-ahead market. Suppliers also anticipate that recent Government of Ontario announcements in support of new nuclear resources and rate regulated long-duration storage resources may trigger further market rule amendments. At this time, the implications of these market design changes on the specific facts associated with Supplier economics is very difficult to forecast or accurately predict.

Prior changes to the market rules have triggered the Section 1.6 equivalent within IESO contracts, such as the IESO’s introduction of dispatch and curtailment requirements into the market rules as part of the SE-91 initiative. As drafted, Section 1.6 of the LT1 Contract does not provide meaningful protections for the Supplier against the balance of these risks.

Recommendation 7: *Revise Section 1.6 of the LT1 Contract so that it protects the Supplier’s economics in the same way the IESO did in Section 1.6 of the CHP Contract, or Section 1.7 of various iterations of FIT Contracts.*

In conclusion, APPPrO appreciates the opportunity to provide this feedback on the ongoing considerations and design decisions pending LT1 RFP topics. We are hopeful that the IESO finds this input both thoughtful and productive. We have worked hard to canvass our many members and consolidate their input into a series of discrete revisions that we hope will serve to improve the LT1 procurement process and result in better outcomes for all Ontarians.

Sincerely,

A handwritten signature in black ink, appearing to read "David Butters", enclosed within a large, hand-drawn oval. The signature is fluid and cursive.

David Butters
President & CEO

CC: John Vellone, Borden Ladner Gervais LLP