

Stakeholder Feedback and IESO Response

Q&A Session on the Small Hydro Program (SHP) Draft Documents: Contract & Program Rules

Following discussions with the Small Hydro Community on August 4, 2023, the IESO invited stakeholders to provide comments and feedback on the items presented by August 11, 2023. A summary of this feedback is provided below as information.

Eligibility

Feedback	IESO Response
Stakeholders have asked for clarification that eligibility includes facilities with contracts expiring before April 30, 2043 (not December 31, 2030).	The SHP documents have been clarified to reflect that eligibility includes facilities with contracts expiring before April 30, 2043.
Stakeholders have asked that eligibility for the SHP includes facilities with OEFC Contracts.	<p>In consideration of feedback, the SHP eligibility has been updated to reflect that OEFC Contract holders can now apply with an existing OEFC contract. OEFC Contract holders will need to arrange to have their current OEFC Contracts terminated prior to the execution of the SHP contract and submit a letter to the IESO confirming the termination. The letter is to be provided within twenty Business Days of the SHP Contract Date to the IESO.</p> <p>For clarity, existing terms and conditions from OEFC Contracts will not be carried over into the SHP Contract. OEFC Contract holders will be considered Stream 1 Applicants.</p>

Feedback	IESO Response
<p>Stakeholders have asked that SHP eligibility include:</p> <ul style="list-style-type: none"> a) joint ventures b) behind the meter facilities, and c) facilities with existing IESO contracts that aggregate multiple facilities 	<p>After considering this feedback, the IESO has maintained the eligibility criteria as proposed in the draft documents as it relates to joint ventures, behind the meter facilities and aggregated facilities, as further explained below:</p> <ul style="list-style-type: none"> a) As a practice, the IESO enters into contracts with a single counterparty. This means joint ventures are excluded. However, an organizational structure with two or more parties joined together to form a single contracting party, such as a Limited Partnership (LP), is eligible. b) The SHP will compensate facilities for direct injections to the transmission or distribution system. Facilities need to have a directly metered connection to the distribution or transmission system in order to be eligible. If existing behind-the meter-facilities have proper meters installed and the appropriate connections established, then they may become eligible for the SHP. c) As per the direction in the August 2023 Ministry Directive, facilities whose existing contracts with IESO aggregate multiple other facilities shall not be eligible to participate in the Small Hydro Program.
<p>Stakeholders have recommended that facilities operating under lease agreements should simply be required to maintain their lease agreement/tenure during the contract term.</p>	<p>This feedback has been incorporated into the Rules (Section 3.2(a)(ii)).</p>
<p>Rather than photographs of the nameplate rating of facility equipment being provided to determine if a facility meets the 10MW or less eligibility criteria, a stakeholder suggests:</p> <ul style="list-style-type: none"> - Stream 1 (Merchant Facilities) should be required to submit an Independent Engineer’s report validating the maximum continuous output of a facility 	<p>The IESO appreciates this feedback and after consideration, has decided to maintain the eligibility criteria, as it relates to capacity, as drafted. The use of Nameplate Capacity in determining eligibility is consistent with the language in the August 2023 Directive, which refers to installed capacity.</p> <p>Nameplate Capacity represents a standardized and simple approach to assessing the capacity for the purposes of eligibility for both Streams as well as</p>

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<ul style="list-style-type: none"> - Stream 2 (existing IESO contract holders) be required to have an existing Contract Capacity of 10MW or less <p>A stakeholder suggested that the Nameplate Capacity should not form the basis of program eligibility as they may not be representative of actual maximum outputs.</p>	<p>evaluation of the 1MW or less eligibility criteria for the <1MW price adder.</p> <p>Nameplate Capacity has been defined as “the manufacturer’s total installed rated capacity of the Facility to generate Electricity”.</p>

Applications

Feedback	IESO Response
<p>A stakeholder requested clarity in the Rules that owners of Stream 2 Facilities may apply for an SHP-AR Contract at any time prior to the natural expiry of their Existing Contract.</p>	<p>The Rules have been updated to reflect this feedback and provide clarity (Section 4.1(c)(i)).</p>
<p>A stakeholder requested that the requirement for a revenue grade meter be in place for contract offer, rather than a requirement to apply to the SHP.</p>	<p>The IESO has maintained the requirement to have a revenue grade meter to apply to the SHP, as presented in the draft documents. This is because having the necessary equipment installed at the time of application will streamline the review process and support the expediency of Contract Offers. Once proper metering is in place, a facility may become eligible for the SHP.</p>
<p>Stakeholders asked the IESO to review the application requirement for Stream 1 (Merchant Facilities) to submit copies of documents such as licenses, permits, Water Management Plans, etc., suggesting that these documents can be available upon request, or an attestation provided.</p> <p>Similarly, stakeholders suggest that the application requirements for an existing facility be minimal.</p>	<p>The application has been designed such that the information provided will form a solid basis to manage issues or facility amendments in the future. The process has been designed to help ensure simplicity, while still maintaining the integrity of the contractual basis. The application requires fewer submissions for Stream 2 (existing IESO contract holders) than for Stream 1 (Merchant Facilities).</p>
<p>Stakeholders commented that Stream 2 facilities should not be required to submit an Independent Engineer’s Certificate.</p>	<p>Independent Engineer’s Certificates are not required.</p>

Feedback	IESO Response
Stakeholders asked that the review of the Application Package be time-bound to 60 days.	The IESO considered this feedback and will endeavor to process applications in a timely manner.
<p>Stakeholders suggested that the rejection of an Application should not be “for any reason”.</p> <p>A stakeholder expressed concern that if there was any mistake in the application, that it would be rejected.</p>	<p>The IESO has incorporated feedback and removed “for any reason”.</p> <p>To clarify and address the concerns of a stakeholder, the IESO is not obligated to reject an application if there is a mistake as stated in the Rules, Section 4.4(f).</p>

Program Management & Contract Offer

Feedback	IESO Response
<p>Stakeholders have requested that notice be provided in advance of any amendments to the Rules or Contract, and that an opportunity for feedback on any proposed amendments be provided.</p> <p>Similarly, stakeholders have suggested that the IESO should not be able to cease taking applications at any time. Stakeholders state that a Government Directive would be required to cancel the program and that prior notice of program cancellation should be provided.</p>	<p>The IESO remains committed to working with stakeholders to engage on issues and work collaboratively on any potentially impactful changes to the program.</p> <p>The IESO will endeavor to provide notice and incorporate feedback on any proposed changes to the Rules or Contract, where feasible. The provisions allowing the IESO to cancel or amend the program will remain as drafted.</p> <p>The terms providing the IESO discretion to amend program rules and cancel or suspend the program are included in other IESO program documents and are considered standard language.</p>
Stakeholders have requested that the Contract Date should be the date of the IESO’s receipt of a Complete Application Package.	The language in the draft documents, as it relates to the Contract Date, has been maintained to indicate the Contract Date is the date both parties sign the agreement. This is because the IESO does not intend to back date the agreement.
Stakeholders have requested that 60 Business Days be provided to an eligible participant to accept the contract offer.	The IESO has incorporated this feedback by now allowing 60 Business Days for acceptance of contract offer.

Upgrades

Feedback	IESO Response
<p>Stakeholders have strongly recommended that Stream 2 facilities should be permitted to Upgrade or Expand for both the Original Term and the Extended Term to enable a reasonable timeframe for investment.</p> <p>Additionally, stakeholders commented that Upgrades or Expansions should be enabled in the Original Term to allow for opportunities provided by the federal Investment Tax Credit for Clean Energy Projects.</p>	<p>In consideration of feedback, the IESO proposes that for Stream 2 Facilities whose original contract contemplated allowing upgrades (HCI contract holders), an Upgrade or Expansion will be permitted during the Original Term as well as the Extended Term. Any such Upgrade or Expansion will be subject to the provisions specified in Exhibit H of the Contract.</p> <p>Such Upgrade or Expansions are proposed to be subject to the following compensation scheme: (i) during the Original Term, electricity generated from that portion of the Facility that comprises the Upgrade or Expansion shall be paid the Exhibit B-2 Contract Rate. Electricity generated from that portion of the Facility that comprises the original Facility shall be compensated at the Exhibit B-1 Contract Rate. This will result in an overall blended Contract Rate for the Facility during the Original Term; and (ii) during the Extended Term, the entirety of the Facility will be subject to Exhibit B-2 Contract Rate. In addition to a blended Contract Rate during the Original Term, the Escalation Percentage is proposed to be blended during the Original Term in a similar manner.</p> <p>Please note that all Environmental Attributes associated with Contract Facility would extend to the Upgrade or Expansion and be governed by Section 2.11 of the Contract. The IESO intends to add language to the final SHP documents to address the Investment Tax Credit. The IESO will be prepared to discuss its approach at the webinar on September 19th, 2023.</p>
<p>A Stakeholder sought clarity that upgrades would be permitted under the SHP Contract for a facility that terminates their OEFC contract.</p>	<p>Yes, OEFC facilities that receive an SHP Contract will be enabled to apply to upgrade or expand their facility under the SHP Terms & Rate.</p>

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<p>Similarly, a stakeholder sought clarity as to how a modification upstream of the facility (which may enhance energy production) would be treated under SHP.</p>	<p>As per existing contracts, if site work leads to a change in the contracted facility (as described in Exhibit A of the SHP Contract) then that would constitute a facility amendment governed by Section 2.6 of the Contract, and a corresponding contractual amendment would be required, subject to obtaining the IESO's prior written consent.</p>
<p>Stakeholders do not support the proposed Minimum Threshold criteria for upgrades, which require an increase in the Nameplate Capacity by either: (a) 1 MW; or (b) 50% of the Nameplate Capacity (prior to the Upgrade or Expansion), whichever is lessor.</p> <p>Stakeholders also commented that the criteria is a new proposal that was not previously discussed through the engagement process.</p>	<p>The documents remain as drafted to include minimum criteria for upgrades. The minimum criteria is meant to ensure that upgrades and expansions via the program meaningfully contribute to resource adequacy in the province.</p> <p>The Draft 1 SHP documents incorporate a greater level of detail than was discussed during previous engagements and webinars. The IESO is now engaging on the details within the documents through the release of the Draft 1 documents and the release of a second draft of documents for comment.</p>
<p>Stakeholders recommend the re-insertion of language into Section 9.1 of the Contract, and Exhibit D: "Outage Hours shall not include any hours where the Facility is removed from Service for the purposes of upgrade, redevelopment or expansion or for the purposes of runner upgrades or other major refurbishment".</p> <p>A stakeholder recommended that outage hours associated with third-party forced outages should also be excluded from the calculation.</p>	<p>Since upgrades are now proposed to be allowed under the Original Term for HCI contract holders this language will be re-inserted into the applicable sections/Exhibits of the SHP-AR Contract.</p> <p>In alignment with other contracts, the IESO does not consider third-party forced outages in this type of calculation.</p>
<p>Stakeholder requested clarity that existing HCI contract rate, which includes an amended HCI price for upgrades, will be incorporated in the SHP-AR Contract.</p>	<p>Yes, rates from existing IESO contracts will be carried over into the Original Term of the SHP-AR contract, as indicated in Exhibit B-1.</p>

Indigenous Adder

Feedback	IESO Response
<p>Stakeholders support the inclusion of an Indigenous Adder and recommend a sliding scale dependent on % ownership (5%-50%) during the term of the Extended Period, which may change over time.</p>	<p>The SHP will not include an adder for Indigenous ownership, as it did not receive Ministerial direction to do so.</p>

Specific Contract Provisions

Feedback	IESO Response
<p>Stakeholders suggest that the language in Section 1.1 of the Contract, as it relates to “system Operator issuing instructions” be restricted to Market Participants.</p>	<p>While the system operator does not normally instruct distribution connected facilities that are not Market Participants, as this provision was included in the original HCI terms, it has been carried over to the SHP Contract.</p>
<p>Stakeholders have requested that the intent of Section 1.5, as it relates to the Market Renewal Program (MRP), be clarified.</p> <p>More specific language, such as “elements of Market Renewal that should reasonably have been known and/or in place at the time of contract execution” should be used to limit the practical application of the provision.</p>	<p>The language in Draft 2 of the SHP has been clarified to state “which are in effect or have received provisional approval as of the Contract Date” (Section 1.5(b) of the Contract).</p>
<p>Stakeholders have asked that provision 1.6 of the Contract, as it relates to the reimbursement of costs associated with direction from the Lakes and Rivers Improvement Act (LRIA) or the Endangered Species Act (ESA), be included in all forms of the SHP Contract, for both Original and Extended Terms.</p> <p>Stakeholders believe this provision recognizes the potential for government to introduce new regulatory requirements that could materially</p>	<p>The IESO has incorporated feedback by keeping this provision intact for the Original Term of HCI contracts (as these contracts already include this provision). Other forms of existing IESO contract (RESOP, RES, HESOP) will not have this provision added to their Original Term. This provision will not be included in the Extended Term / SHP Term (and so will not apply to Merchant Facilities or OEFC Applicants).</p>

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affect Supplier economics and which are out of the control of the Supplier.	
Stakeholders suggested that the reference to the \$131/MWh price cap in Section 1.6 of Contract should be removed.	The IESO will retain a pricing cap but has incorporated feedback by adjusting the price cap to reflect the impacts of inflation since it was established. The price cap is now \$140.40/MWh. This was calculated by escalating the original price cap (the 2009 FIT rate), using a 20% escalation factor (as per the FIT schedule).
Stakeholders are supportive of incorporating a GRC Adjustment mechanism as noted in Section 1.13.	In response to this feedback, the IESO has drafted a GRC Adjustment mechanism into section (Section 1.13 & Exhibit B-2, Section 1.3 & 1.5).
Stakeholders suggest that Section 2.6 of the Contract be amended to anticipate the potential for the addition of battery storage at facilities in the future.	The SHP does not prohibit battery storage, or other forms of energy storage. If a facility were to contemplate the addition of energy storage equipment, prior consent would be required from the IESO via the facility amendment process described in Section 2.6.
Stakeholders suggest that Section 2.11 of the Contract, as it relates to the Supplier's right to reimbursement for the cost of complying with a direction with respect to Environmental Attributes, should not be removed and that the provision should remain intact.	The IESO has considered and incorporated feedback to maintain the provision to cover approved costs relating to the transfer of Environmental Attributes.
Stakeholder does not agree that the IESO should keep the interest on the Performance Security, as stated in Section 5.1 of the Contract.	The IESO has incorporated this feedback by removing the concept of earning interest. This concept is not applicable since the IESO now only accepts letters of credit.
Stakeholders commented on Sections 15.6, 7 and 8 of the Contract, suggesting that SHP contract holders should be allowed to freely assign the contract or change control (without the requirements to provide notice to the IESO and obtain its consent). Similarly, stakeholder does not support that the IESO has the sole discretion to withhold its consent to an assignment of the Agreement or a change in	<p>Requiring IESO consent for assignment or change of control is standard for all IESO contracts and will remain the contract.</p> <p>Consent to an assignment will not be withheld for Steam 2 Facilities.</p>

Feedback	IESO Response
control for a period of three years from the Term Commencement Date for Stream 2 Facilities.	
Stakeholder requested that specific provisions from the base HCI contract (such as 2.8(c), 2.9(a), 5.1, etc.) be modified.	The intent of using the existing HCI terms as the basis of the SHP Contract was to maintain consistency for existing contract holders and minimize the need for legal review. Modification of these base terms is not in the scope for SHP document development.

Other

Feedback	IESO Response
Stakeholders requested clarity around the settlement approach for negative market payments and should ensure that reimbursement is provided for negative market payments.	The treatment of negative market prices under the SHP Contract has been updated to reflect the design intent previously communicated.
Stakeholder commented that it is unclear if the HOEP successors, OZP or LMP, are real-time or day-ahead prices.	Day-ahead prices will be used in the SHP payment terms, which are applicable during the Extended Term for Steam 2 Applicants and for the entire term of Steam 1 Applicants. For the Original Term for Steam 2 Applicants, the treatment of HOEP successors is described in Section 1.7 of Exhibit B-1 for Type 1 Facilities.

Definitions

Feedback	IESO Response
Stakeholders requested clarity on the definition of Nameplate Capacity, as there was a discrepancy between the terms in the Program Rules and Contract.	Nameplate Capacity has been defined in both the Program Rules and the Contract as “the manufacturer’s total installed rated capacity of the Facility to generate Electricity.”
Stakeholders suggested that the definition of “Existing Contract” be expanded to include a Non-Utility Generation (NUG) contract (also known as an OEFC contract).	For clarity, the definition of an “Existing Contract” has been updated to apply to IESO contracts only. The terms “OEFC” and “OEFC Contract” have been added to the definitions in the Rules.

Feedback	IESO Response
Stakeholders pointed out that there were terms in the definitions that did not appear in the Draft Program Rules or Contract (such as "Emissions Reduction Credits").	Terms in the definitions that have not been used in the body of the documents have been removed. Note that a number of terms that appear in the definitions are used only in other definitions, but not in the main body of the Program Rules or the Contract.
Stakeholder recommend that the definition of "Upgrade/Expansion" should adopt that already in place under the Electricity Act - O. Reg. 124/02: Taxes and Charges on Hydro-Electric Generation Stations	After considering this feedback, the IESO has maintained the definitions as drafted. The proposed definition provided by stakeholders, from the referenced regulation, contains a 2% threshold for upgrade or expansion. A 2% threshold is not consistent with ensuring that upgrades and expansion via the SHP program meaningfully contribute to Ontario's resource adequacy.
Stakeholders seek clarity regarding the treatment of transmission connected projects when HOEP is replaced by LMP.	The MRP draft Amendment, as previously shared with existing hydroelectric Suppliers by the IESO, is now included under the Original Term of the SHP to address the settlement of transmission connected Suppliers (Section 1.8 of Exhibit B-1 for Type 1 Facilities).
Stakeholders suggest that definitions of OZP and LMP are required.	These terms are defined in the provisionally approved Market Rules which will come into effect on the MRP in-service date and do not need to be defined within the SHP.
The definition of the less than 1MW adder needs to incorporate Stream 1 Facilities.	The less than 1MW adder definition has been updated to incorporate Stream 1 Facilities.