

# Feedback Form

## Overview and Q&A Session on the Small Hydro Program (SHP) Draft Documents: September 19, 2023

### Feedback Provided by:

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Following the September 19, 2023 engagement webinar, the Independent Electricity System Operator (IESO) is seeking feedback from stakeholders on the items discussed during the webinar. The webinar presentation and recording can be accessed from the [engagement web page](#).

**Please submit feedback to [engagement@ieso.ca](mailto:engagement@ieso.ca) by end of day Tuesday, September 26, 2023.** If you wish to provide confidential feedback, please submit as a separate document, marked "Confidential". Otherwise, to promote transparency, feedback that is not marked "Confidential" will be posted on the engagement webpage.

## SHP Draft Documents

Topic	Feedback
<p>What feedback do you have related to OEFC eligibility and the requirement to terminate the OEFC Contract prior to the Contract Date?</p>	<p>During the September 19 Webinar, the IESO indicated that OEFC contract holders are eligible to apply to the SHP. However, OEFC contracts would first need to be terminated prior to their Contract Date before SHP Contract terms can apply. In contrast, Stream 2 IESO contract holders would be allowed to maintain their existing payment terms in their Original Term, to then bridge into the SHP-AR Contract terms in a dual-schedule contract setup. When asked why OEFC contracts would be treated differently and not be eligible to also maintain their existing terms under a dual-schedule setup, the IESO responded that they do not have visibility on OEFC contract terms, and therefore cannot accept and maintain them.</p> <p>We urge the IESO to simplify this process, and allow OEFC contract terms to be maintained in a dual-schedule setup. O.C. 1257/2023 required the IESO to report back on “the feasibility of transferring the NUG contracts to IESO by terminating all of OEFC’s remaining NUG contracts for hydroelectric facilities, and allowing <u>IESO to enter into contracts with these facilities on financial terms that are materially consistent with their existing NUG contracts, provided that the contract entered into by IESO expires at the same time that the NUG contract would have expired.</u>” (underline added) We note that this Directive considers that the contract transfer from the OEFC to the IESO would maintain the OEFC contracts’ <u>financial terms and contract duration</u>. A lack of visibility on the OEFC contract terms does not prevent the IESO from completing the transfer as considered by the Directive: this can be achieved via the dual-schedule contract setup that the IESO itself envisioned for Stream 2 holders.</p>
<p>What feedback do you have related to the GRC (Gross Revenue Charge) Adjustment mechanism?</p>	<p>We appreciate the revisions related to the GRC. However, more clarification on Footnote 3, regarding adjustment mechanisms to account for future changes to GRC and similar taxes and charges would be welcome.</p>

Topic	Feedback
<p>What feedback do you have related to Upgrades &amp; Expansions being enabled for those in the SHP that previously held HCI Contracts?</p>	<p>We welcome the proposal to enable upgrades and expansions committed in the original HCI contracts in the SHP contracts, and we support the OWA’s comments seeking clarification regarding how tax credits would be treated. However, consistent with our earlier comment requesting OEFC contracts to be treated in the same manner as HCI contracts in a dual-schedule setup, we urge the IESO to adopt the same enabling mechanism for upgrades and expansions for OEFC-contracted facilities. Ultimately, both HCI contracts and OEFC contracts would likely fall under the IESO’s purview, and standardizing how all such hydro facilities would be treated, operated, optimized, and improved would be to the benefit of both facility owners and the IESO. As Ontario faces capacity and energy shortfall in the next decades, granting all hydro facilities the same option to upgrade and expand would support both government policy and resource adequacy.</p>
<p>What feedback do you have related to Exhibit B1 of the draft SHP-AR Contract?</p>	<p>Click or tap here to enter text.</p>

What feedback do you have on the draft SHP Contract?

As we previously commented, the Program should only be cancelled, modified, or suspended as a result of a Ministerial Directive, and not at the discretion of the Sponsor. In addition, advance Notice to suppliers in situations where any changes are considered should be included as parts of the SHP rules.

On Section 1.6:

Consider adding a termination right if capital improvements would result in exceeding the max price limit.

On Section 2.8(b) – requirement that Facility not “... utilize any sources... other than waterpower to produce Electricity...”: Please consider modifying this restriction to account for the possibility of battery or other forms of energy storage that could be added and enable dispatchability.

On Section 2.8(c) – requirement to use CRE to provide resource data:

Consider clarifying that CRE would not require a Supplier to commission studies that did not already exist or were not commercially available.

On Section 2.9(a) – requirement that Indemnitees be listed on Supplier’s insurance policies as additional insureds and waive subrogation:

Consider modifying to account for financings as lenders typically require priority on subrogation waivers and loss payees.

On Section 2.11(a) – transfer of all Environmental Attributes to Sponsor:

Consider carving out Environmental Attributes in respect of any energy storage that may be subsequently added.

On Section 2.11(c):

Suppliers should get the benefit of this provision (analogous to ss. 1.5, 1.6 and Article 12)

On Section 3.3(g):

Consider changing “not to be a Future Contract Related Product” to “to be a Related Product” for clarity.

On Section 3.4:

Consider referring to the "Supplier's side of the" Connection Point for clarity.

On Section 5.1 – Performance Security:

Consider a concept of ramping down Performance Security requirement given that it is only on Sponsor election and in the event of average of HEOP over a contiguous six month period is greater than 75%. Consider also release of Performance Security if HOEP event is temporary.

On Section 5.4 – Interest on Performance Security:

Can be deleted as Performance Security is now restricted to LCs (i.e. no cash on which interest would accrue).

On Section 6.1(f) – representation about availability to generate Electricity and comply with Agreement:

Since this is also a continuous covenant, consider carving out specific instances where this will not be true (Outages, Upgrades and Expansions, etc.)

On Section 8.1(a) – Effectiveness of Contract:

Section 8.1 should reflect that this Agreement incorporates the terms of the Prior Contract and that the new terms only apply on expiry of the Prior Contract even though the effective date of the Amended and Restated Agreement is the Contract Date.

On Section 8.1(d):

"Contract Date" is defined as the date of execution of the amended and restated. This provision should reference the Prior Contract date.

On Section 9.1(j) & 15.7 – Change of Control:

COC prohibition currently catches direct ownership in the Facility which precludes any internal re-organizations that do not affect ultimate beneficial and legal control up the chain. Consider allowing internal re-organizations as long as top level control is maintained.

On Section 9.1(k)

Appears to be blank.

On Section 11.1(d) – requirement to provide registrations:

Topic	Feedback
	<p>Consider restricting these to registrations in Canadian personal property registries (as US and real property registrations are not available prior to financial close)</p> <p>On Section 11.1(g) – Multiple Secured Lender’s Security Agreements: Consider allowing for termination of Secured Lender’s Security Agreements if requested by Supplier and consented to by beneficiary lender so that lenders do not have to rely on s. 11.2(h) and/or enter into subordination agreements.</p> <p>On Section 12.1(a)(iii) – Discriminatory Action “...such action increases the costs that Supplier would reasonably be expected to incur...”: Consider changing “costs” to Supplier Economics in line with ss. 1.5, 1.6 and previous forms of IESO contracts. A discriminatory action could just as easily result in diminished revenues.</p> <p>Section 13.4 – Defence of Claims: Consider adding “as a group” to the Indemnitees’ right to separate counsel (i.e. Supplier should not have to pay for separate counsel for each and every distinct Indemnitee)</p> <p>On ““Generating Equipment” Definition: Consider explicitly carving out any energy storage equipment which may be currently captured by “used ... in the generation of Electricity...”</p> <p>On “Governmental Authority” Definition: Consider explicitly carving out the Sponsor, which may be capture by the current formulation.</p>
<p>What feedback do you have related to Exhibit B2 of the draft SHP-AR Contract or Exhibit B of the draft SHP Contract?</p>	<p>Click or tap here to enter text.</p>
<p>What feedback do you have on the draft Application Form?</p>	<p>Click or tap here to enter text.</p>

Topic	Feedback
What feedback do you have on the draft Prescribed Forms?	Click or tap here to enter text.
What feedback do you have related to Rules related to Secured Lender Agreements?	<p data-bbox="662 285 1409 352">On SECURED LENDER CONSENT &amp; ACKNOWLEDGEMENT (STREAM 2):</p> <ul data-bbox="711 365 1500 1625" style="list-style-type: none"> <li data-bbox="711 365 1500 512">- Section 11.2(b) of the SHP-AR Contract provides Secured Lender may cure a Supplier default during the Supplier's cure period. We anticipate Secured Lender will seek an additional cure period.</li> <li data-bbox="711 525 1500 634">- Consider modifying Section 11.2(a)(i) of the SHP-AR Contract to clarify that notices to Secured Lender will be delivered concurrently with notices to Supplier.</li> <li data-bbox="711 646 1500 1033">- Section 2(b): Suggest that execution of this Agreement by the Security Agent should be added to Section 2(a) as a CP to the Effective Time -- if IESO's execution of this Agreement and the Contract is sufficient to trigger the "Effective Time" and consequently a termination of the Original SLCA, there is a risk that Supplier will inadvertently default under its financing by virtue of losing existing security/consents (the Original SLCA). Supplier needs to retain some control around when the "Effective Time" is triggered.</li> <li data-bbox="711 1045 1500 1113">- Section 4: Paragraphs (a), (g), (i), (k) and (o) do not contain any representation or warranty.</li> <li data-bbox="711 1125 1500 1192">- Section 4(d): Consider limiting this to security which is relevant to the IESO.</li> <li data-bbox="711 1205 1500 1625">- Section 4(g): Requirement to provide 10 Business Days notice prior to exercising rights under security will be an issue for lenders. In our experience, it is typical that either: (i) there is no requirement to provide advance notice, or (ii) there is a requirement to exercise commercially reasonable efforts to provide advance notice, but an express acknowledgement that failure to provide such notice does not result in liability accruing to Security Agent and does not limit their right to enforce. Also note that Section 11.1(e) of template SHP-AR Contract only requires 5 Business Days.</li> </ul>

## General Comments/Feedback

Allowing OEFC contract holders the same dual-schedule setup as currently proposed for HCI contracts would not only help garner their support for the SHP, it would also encourage Program uptake by OEFC contract holders. Moreover, as the dual-schedule setup would be welcomed by OEFC contract holders, the IESO would be able to count on their support preparing the report, as directed by the Ministry, on moving OEFC contracts to the IESO. We urge the IESO to reconsider its proposal and standardize how HCI and OEFC contracts would be incorporated in the SHP.

Finally, we generally support the OWA's comments. Thank you for the opportunity to provide our feedback.