

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 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
What feedback do you have related to OEFC eligibility and the requirement to terminate the OEFC Contract prior to the Contract Date?	The OWA supports the ability for a proponent to apply for an SHP contract prior to the expiration or termination of an OEFC Contract, and for the migration to the SHP contract concurrent with OEFC contract expiration/termination. The OWA also notes the Minister’s Directive includes: “The IESO shall, working with the Ministry of Energy and the Ontario Financing Authority (OFA), report back by March 31, 2024, on the feasibility of transferring the NUG contracts to IESO by terminating all of OEFC's remaining NUG contracts for hydroelectric facilities, and allowing 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. The IESO's report back should also include an analysis of the treatment of outstanding debt owed by the NUG generators to OEFC.” The OWA and OEFC contract holders would appreciate the opportunity to work directly with the IESO in the development of the report back.
What feedback do you have related to the GRC (Gross Revenue Charge) Adjustment mechanism?	The OWA supports the concept of the Gross Revenue Charge Adjustment mechanism as government decisions to revise the GRC (rate, application, formula) are out of the control of generators. We note that not all facilities are subject to GRC (e.g. expansions have a 10 year holiday, facilities on federal lands). The OWA recommends that the IESO also include a mechanism whereby a future government decision to replace the GRC with another charge or tax be addressed within the contract (i.e. generator is kept whole).

What feedback do you have related to Upgrades & Expansions being enabled for those in the SHP that previously held HCI Contracts?

The OWA agrees that upgrades and expansions should be enabled within the original term of HCI contract and throughout the term of an SHP Stream 1 contract. The OWA does not agree with the proposed threshold for eligibility (lesser of 50% or 1MW increase). The IESO has adhered to the principle of maintaining wherever possible the Original contract structure and terms in the Stream 2 contracts, which the OWA has supported. In the existing HCI contracts, eligible expansions are defined as: "Expansion means a project for the Upgrade to a Facility in accordance with this Agreement whereby the actual generating capacity of the Facility is increased by more than 5%." To be consistent and to enable investment in expansions and upgrades the existing threshold should be applied. The OWA has also raised the question of the IESO's proposed treatment of efficiency increases (i.e. improved generation at existing units) and recommends that any incremental generation be included in contract payments. Finally, while the OWA appreciates that the IESO is proposing to specify that federal Investment Tax Credits will vest with the Supplier, we are very concerned with the IESO's proposed limitation on those ITC's that are associated with Expansions and Upgrades only. It is important to recognize that there are two (2) separate Investment Tax Credit proposals for hydroelectric facilities. The first (Clean Technology Investment Tax Credit) offers a 30% fully refundable tax credit to taxable private businesses in Canada for eligible technologies, including small-scale hydro (<50MW). For existing facilities, The CT ITC is to include the capital cost of additions or alterations to an existing small-scale hydro-electric installation provided the additions or alterations increase the generating capacity of the installation and the resulting rated capacity of the electrical generator or generators at the installation site does not exceed 50 MW. The second (Clean Electricity ITC), announced in Budget 2023, offers a 15% fully refundable tax credit to taxable private entities and non-taxable entities for eligible technologies including both small-scale hydro and large-scale hydro and is expected in 2024. Importantly, this ITC is proposed to include refurbishments of existing facilities. A refurbishment is significantly different than regular maintenance (which the SHP is intended to support). The OWA strongly recommends that all federal investment tax credits for which a waterpower generator is eligible be vested in the Supplier. Further, the OWA recommends that the SHP Contract anticipate potential future federal or provincial measures to support the industry and

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	provide for a fair and objective means to determine ownership should such provisions arise.
What feedback do you have related to Exhibit B1 of the draft SHP-AR Contract?	As the OWA understands it, Exhibit B1 replicates the existing metering and settlement provisions of the various forms of contracts (HCI, RES, RESOP, HESOP) as separate schedules to be applied in the Original Term and adds the SHP Contract metering and settlement provisions to be applied for the Extended Term or for the entire term for Stream 1 facilities. The OWA has not undertaken a line-by-line analysis of the various contracts against Exhibit B1 but would appreciate IESO's confirmation of our understanding of the approach taken.

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<p>What feedback do you have on the draft SHP Contract?</p>	<p>The OWA notes that Section 6.1 (l) of the draft contract (Representations of Supplier) indicates that “As of the date hereof and for throughout the Term, the Supplier will own or have the right to lease the Facility for a term that expires on or after the Termination Date.” This differs from Section 3.2 (a) (ii) of the Program Rules (Eligible Participants) “have the right to lease the Project Site for the Term (and for which clarity, the lease expiry date is not required to be on or after the Program Termination Date at the time of application, however if the lease expires prior to the Program Termination Date, the Supplier shall be responsible for ensuring that the lease term is extended prior to such expiry to ensure that at all times during the Term, the lease remains in good standing, failing which it shall be an event of default under the Contract)”. This differs as well from Section 6.4 of the Program Rules (Ownership of Facility) “The Supplier will be required to provide a representation and warranty, which shall be valid for the entirety of the Term, that the Supplier owns or has the right to lease the Contracted Facility for a term that expires on or after the Program Termination Date. Breach of such representation and warranty, subject to any applicable cure periods, shall be an automatic event of default following which the Sponsor may choose to terminate the Contract.” The OWA notes that leasehold tenure for waterpower on provincial Crown land is issued through a “Waterpower Lease Agreement” which is a “rolling lease” for which the term is to be repeatedly extended by ten years in advance of lease expiration. However, the administration of this requirement is controlled by the Ministry of Natural Resources and Forestry, the timing of which is not in the control of the Lessee. We recommend that all references in this regard (i.e. 3.2 (a) ii, 6.2 of the Program Rules, 6.1 (l) of the Contract be consistent with “The Supplier has the right to lease the Project Site for the Term (and for which clarity, the lease expiry date is not required to be on or after the Program Termination Date at the time of application, however if the lease expires prior to the Program Termination Date, the Supplier shall be responsible for complying with the appropriate application requirements to extend the lease prior to such expiry to ensure that at all times during the Term, the lease remains in good standing).”</p>

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<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>This appears to be consistent with what the IESO has communicated in terms of the metering and settlement provisions of the SHP, the treatment of negative pricing and the proposed approach to the GRC adjustment.</p>
<p>What feedback do you have on the draft Application Form?</p>	<p>SHP Info - There are some minor errors (Steam vs Stream). Capacity should indicate MW. Applicant Information – No comment. Facility and Connection Information – Remove “Proposed” facility throughout. Note that under “Municipality / Township / County”, there may be some facilities in unorganized territory. What is the IESO looking for in a “Legal Description” beyond that which is already included? Why does the IESO need a “List all local water level control authorities, governing bodies or other oversight parties or documents.....” What contractual purpose does this serve? Facility Overview – Remove “Proposed”. Why does the IESO require “a list or description of environmental features (including a description of features that mitigate environmental concerns, such as air quality, noise, water, sewage discharge, etc. and a list of environmental approvals and permits and their status)”. What contractual purpose does this serve? Acknowledges, Representations and Warranties – with respect to OEFC contracts, we recommend that evidence of termination in the form of a letter from the OEFC confirming the termination date shall be provided to the Sponsor within sixty (60) Business Days of the Contract Date. The proposed twenty (20) days does not provide enough time in the event that OEFC is unable to process the request expeditiously. Checklist –See earlier comment on “Evidence of the Proposed Facility’s Nameplate Capacity”.</p>
<p>What feedback do you have on the draft Prescribed Forms?</p>	<p>No comments – will the IESO be preparing Standard Forms for responses to Applicants?</p>
<p>What feedback do you have related to Rules related to Secured Lender Agreements?</p>	<p>No specific comments at present. The OWA would appreciate some additional time for generators to engage their lenders to seek feedback.</p>

General Comments/Feedback

- The OWA would appreciate an opportunity to discuss with the IESO the definition and use of the term "Installed Capacity" (as referenced in the Minister's Letter and Directive) within the Program Rules and Contract Structure. In the former, it is suggested that an Applicant provide "evidence of the Proposed Facility's Nameplate Capacity consisting of a photograph of the actual manufacturer's actual rated nameplate capacity on each hydroelectric turbine at the Proposed Facility", Yet in the Definitions "Nameplate Capacity" means the manufacturer's total installed rated capacity of the Facility generate Electricity. (There is no definition of "Installed Capacity"). In the Contract, Nameplate Capacity and Contract Capacity are both used, with Contract Capacity meaning the capacity of the Facility as set out on the SHP--AR Contract Cover Page. The intent of defining "Installed Capacity" for the purposes of the Contract should be to determine what a particular facility is capable of generating in all but exceptional circumstances. The reference to nameplate capacity on each "hydroelectric turbine" will not achieve this. Typically you will find the nameplate on the generator, not the turbine which is submerged. Furthermore, generator nameplate rating is often higher than the installed turbine capacity and also needs to take into consideration power factor. The OWA recommends an approach that is based on historical (5 years) generation to the 98th percentile of output. This information is readily available through existing metering data.