

Feedback Form

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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?

Twin Falls 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 commencement/effective date of the SHP contract to be concurrent with OEFC contract expiration/termination. Twin Falls 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."

Twin Falls notes that the phrase "allowing IESO to enter into contracts with these [OEFC] 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" is somewhat unclear. There is little incentive for OEFC contracts to enter into an SHP Contract earlier than the existing OEFC contract termination date unless the rates in the SHP Contract are available immediately upon early termination of the OEFC contracts. In addition, the above wording catches those OEFC Contracts, like Twin Falls contract with the OEFC, that are available for termination in the short term, but roll over on a year to year basis until terminated by notice, and which financial terms are inadequate and significantly less favorable than financial terms set out in the revised draft SHP Contracts. Please clarify the IESO's understanding of this phrasing in the Minister's Directive, and confirm new SHP Contracts with the IESO will not be on financial terms similar to existing OEFC contracts, like the current Twin Falls OEFC contract.

Twin Falls supports the OWA in working directly with the IESO in the development of the report back.

Section 6.10 of the Rules states that "All Environmental Attributes generated by the Contracted Facility (including those generated by Upgrades and Expansions) will be transferred and assigned to the Sponsor in accordance with Section 2.11 of the

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	<p>Contract". In addition, the definition of "Environmental Attributes in the IESO SHP Contract states in part that such Attributes means "the interest or rights arising out of attributes or characteristics relating to the environmental impacts associated with the Facility or the output of the Facility, now or in the future, and the right to quantify and register these with competent authorities including...". Both of the above noted sections suggest that the Environmental Attributes reference will include those Attributes created after the expiration of the SHP Contract. As a result, section 6.10 of the Rules and the definition of Environmental Attributes in the SHP Contract should limit those Attributes to those created during the Term of the SHP Contract.</p>
<p>What feedback do you have related to the GRC (Gross Revenue Charge) Adjustment mechanism?</p>	<p>Twin Falls 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). Twin Falls 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).</p>

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<p>What feedback do you have related to Upgrades & Expansions being enabled for those in the SHP that previously held HCI Contracts?</p>	<p>Twin Falls agrees that upgrades and expansions should be enabled throughout the term of an SHP Stream 1 contract. Twin Falls does not agree with the proposed threshold for eligibility (lesser of 50% or 1MW increase).</p> <p>Twin Falls notes that 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. For greater clarity, Twin Falls is currently investigating upstream flow regulation that would materially increase annual generation at the Twin Falls facility downstream and is seeking clarity that this increased generation would be eligible under an SHP Contract.</p> <p>Twin Falls 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 CE 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 provide for a fair and objective means to determine ownership should such provisions arise.</p>

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What feedback do you have related to Exhibit B1 of the draft SHP-AR Contract?	No comments.
What feedback do you have on the draft SHP Contract?	<p>Twin Falls 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." Twin Falls 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. The Twin Falls facility is located on Crown Land and Kagiano holds Land Use Permits with the MNRF and does not own the Project Site. Twin Falls does, however, own the Twin Falls Facility. The term "Lease" is not defined in the draft SHP Contract and we are seeking clarity as to whether land use permits are intended to be included in the term "Lease". Alternatively, the eligibility requirement could be returned to ownership of the generating station, as in the prior version of the draft SHP Contract.</p>

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	<p>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)”, and that the term “lease” be defined to include Land Use Permits.</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>Twin Fall is providing comments here on Schedule B of the SHP Contract.</p> <p>There are references to the “SHP-AR Contract” that need to be corrected.</p> <p>Schedule B outlines only the payments under the SHP Contract and makes no mention of IESO market payments. Since Twin Falls and many other generators are not currently market participants or otherwise do not receive market payments, can the IESO provide some clarity on these payments or otherwise direct future participants in the SHP to the appropriate documentation respecting IESO market payments?</p> <p>How will generators with an SHP Contract confirm that the deduction of the MPi (i.e., the HOEP) in the SHP Contract Payment is consistent with the hourly price used to determine market payments?</p> <p>Will the IESO be providing regular statements confirming that: SHP Contract Payment + market payments = total amounts owed to generators?</p>

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What feedback do you have on the draft Application Form?	<p>Twin Falls is generally supportive of the changes requested and questions raised by the OWA.</p> <p>Acknowledgements, Representations and Warranties – with respect to OEFC contracts, Twin Falls 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>
What feedback do you have on the draft Prescribed Forms?	No comments at this time – will the IESO be preparing Standard Forms for responses to Applicants?
What feedback do you have related to Rules related to Secured Lender Agreements?	No comments at this time.

General Comments/Feedback

- Twin Falls is generally supportive of the request from the OWA to discuss the meanings and use of “installed capacity” and “nameplate capacity” in the SHP Contract documentation and draft Application Form.
- Twin Falls is concerned by the removal of references to an Indigenous Address in the draft SHP Contract and related documents. We understand the IESO has removed these references since the matter of an Indigenous Adder was not addressed in the Minister’s Directive. Twin Falls has directed our concerns to the Minister in a letter copied to the IESO office.
- Please keep in mind that the Twin Falls Facility owned by Biigtigong Nishnaabeg and is located on their unceded territory and the contract should be looked at from this lens.