

April 13th, 2020

IESO Stakeholder Engagement

Hydro One Feedback on Proposed Participant Agreement and Draft Documents

We reviewed the draft participant agreement and draft documents for the IESO's Energy Efficiency Auction Pilot. We raise a few substantive observations and recommendations for the IESO's consideration with a view to improving interest in the pilot by making key contractual terms more commercially reasonable.

Appendix A - Participant Agreement

- Section 5.3 – As currently worded, this section suggests that the grounds for payment are discretionary and subjective which could lead to loss of payment for program participants, introducing an unnecessary risk. Payment terms should be objective.
- Sections 7.2 and 7.3 – The indemnity is significantly imbalanced and unlimited. It effectively requires the participant to insure multiple persons (including multiple third parties) for any losses relating to the program without limitation, putting an entire organization at risk. Hydro One does not believe this is a commercially reasonable clause and strongly recommends that this section is revisited so it is more in line with what is commercially reasonable practice (i.e. an indemnity that is limited to the contracting parties and capped financially) and that the indemnity be reciprocal. Section 7.2 should be reciprocal.
- Section 9.3 – This section is far too broad and would depend on the specifics of the initiative. In addition, license in section 9.3 should be contingent on payment (i.e. if there is no payment of the incentive, the IESO should not have any license to the deliverables otherwise it would be unjustly enriched).
- Section 5.8 (termination for convenience) – The formulas in this section can generally lead to under-recovery costs despite no wrongdoing by the participant. Given that measures for this pilot cannot be easily removed or returned once installed, the participant will incur financial and reputational loss if the IESO terminates the arrangement after they have been installed. This is problematic.
 - In the event of termination prior to an obligation period where a participant has already implemented all measures, the total payment equates to only 40% or 60% of the committed incentive (depending on timing of termination) despite all costs having been incurred.
 - In the event of termination during an obligation period, the incentive amount will always be lower than the contracted amount when the contracted capacity obligation is met since only 70% of the agreed incentive is paid for the remaining time in the obligation period.

Appendix C – Measure Reference Manual

- The posted list appears to capture only commercial measures. The IESO's Measures and Assumptions List has also included residential measures in the past. Since residential measures are eligible for this program, not including them in this list implies that deemed savings cannot be used which would place an undue evaluation burden on resource aggregators.

We trust these comments are helpful. Thank you for your continued engagement with stakeholders on this initiative.

Sincerely,



S. Lisa Lee

Director, Customer Solutions

Hydro One Networks Inc.