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September 30, 2022

**RE: Feedback on Draft E-LT1 RFP and Contract**

Mr. Farmer:

These comments are in response to the Independent Electricity System Operator's (IESO's) request for feedback on the draft Request for Proposal (RFP) and draft contract pursuant to the expedited process of the first Long-Term RFP (aka "E-LT1 RFP"), which was posted on the IESO's website on August 25, 2022.

Convergent Energy and Power ("Convergent") appreciates the opportunity to provide actionable feedback intended to help the IESO make the E-LT1 RFP a *success for ratepayers*. As an invested and leading Ontario storage developer interested in a reliably and efficiently functioning Ontario electric system and market, we offer the following comments and proposed changes for the IESO's consideration.

**Executive Summary**

The IESO clearly signaled its firm need for capacity to the market which prompted a wide range of storage developers to prioritize the Ontario markets and invest time and resources preparing projects for submission. Given the large number of applicants and projects in front of the IESO, it must now make several decisions that will dictate likelihood the E-LT1 RFP successfully procures the most cost efficient and reliable projects from committed developers. The changes proposed herein target specific RFP and contract terms directly driving developer cost and risk assessments. These are intended to give the IESO mechanisms necessary to properly weight value and likelihood of timely project construction. As discussed further below, we believe this discreet list of proposals are the most important to provide protections necessary for both the IESO and developers, prioritizing our input on three areas of importance:

- 1) **Storage Target Procurement Capacity** – Set at 70%
- 2) **Rated Criteria**
  - a) Duration – Remove criteria for storage-focused procurement
  - b) Weighting – Set at 20%
  - c) Interconnection – Award Rated Criteria points for submitted Interconnection Applications
- 3) **Contract & RFP Terms** – Redlined Document w/ Proposed Changes Provided as Attachment
  - a) Force Majeure – Expand to protect developers for interconnection delays
  - b) Early COD Multiplier – Insufficient to incentivize or compensate early project completion
  - c) Change in Law – Expand protections to protect against harm from future law or regulatory changes, particularly planned market reforms



## **1) RFP Target Procurement Capacities**

IESO has established that there will be a target capacity for energy storage and a target capacity for non-energy storage. Convergent recommends that at least 70% of the target capacity for the E-LT1 RFP should be allocated to energy storage projects. Further, the IESO should describe how the target capacities will be set for the E-LT1 RFP, including any interplay between targets or results of the Same Technology Uprate process.

## **2) Rated Criteria**

### **a) Duration**

The IESO's confirmation that there will be a storage specific procurement target negates the appropriateness of the Duration Rated Criteria in the E-LT1 RFP and should be removed. This IESO has reinforced many times the goal for this procurement on an expedited timeline is the capacity need driven by pending supply shortfalls, accordingly the compensation mechanism in the contract is for the delivery of capacity, not energy. Prioritizing longer duration storage by granting additional points does not further the IESO's need to procure capacity, it addresses energy. That is not within the scope of data driven needs underlying the E-LT1 RFP, nor would the additional energy output be compensated for under this contract. Said another way, there is no alignment between the incentive created by the Duration Rated Criteria and the contract product or compensation structure.

Awarding rating points for energy under a capacity contract creates a misaligned incentive to developers which will improperly skew the results of the IESO's price ranking. Long duration storage is largely a non-commercially viable technology at this time, especially not on expedited time frame, and would be unrealistic for the IESO to expect delivery of projects under the timelines it has prioritized. If the IESO prioritizes those projects by granting Rated Criteria for longer duration, that reduces the likelihood more cost-efficient capacity storage resources can be procured and built.

The IESO should remove the Duration Rated Criteria from the E-LT1 RFP. If energy needs indicate higher value in longer duration storage, then Convergent encourages the IESO to include this Rated Criteria in that LTRFP and to define compensation under the contract accordingly.

### **b) Weighting**

The IESO originally proposed a 20% Evaluated Price modification for Rated Criteria points, but recently increased that figure 30% without detailed explanation. We believe the level should be returned to 20% in line with established expectations. The Rated Criteria currently included in the RFP identify important qualities that will certainly help the IESO identify more "attractive" projects based on policy objectives. Other than the locational criteria which is tied to reliability in constrained areas of the system, the other Rated Criteria do not necessarily translate to reliable, cost-efficient construction of resources. Given this misalignment the 30% weighting for those points should be reduced to 20% to better reflect the priorities of the RFP.

### **c) Interconnection Application Filed**

The timeline and structure of the E-LT1 RFP sets a course for a large volume of projects being submitted to the interconnection process all at once. This creates a problem for the IESO given the potential for backlog to be



created by a large volume of applications all at once. This also harms the developers because it delays discovery of very important cost information until well after contracts have been awarded. It is unreasonable and unwise for the IESO to establish a requirement for interconnection applications at the time of bid submission because that would simply shift the large volume of interconnection applications in one batch to an earlier point in time which is still not helpful for the IESO. However, if there is a Rated Criteria awarding points for interconnection applications submitted before or at the time of bid submission then multiple goals are achieved. Not all projects will be able, or willing to submit interconnection applications at this juncture for a multitude of justifiable reasons. But for those who can and want to file interconnection applications earlier, it puts those projects on a faster timeline to identify costs and advances construction timeline. This increases developers' ability to plan for and deal with contingencies while also increasing the likelihood they will be able to achieve an early COD in line with the IESO's expectations. This can also split the burden on the IESO and utilities by spreading out timing of applications.

Accordingly, we propose the IESO include a **new rated criteria** awarding points for *projects with interconnection applications submitted at or prior to bid submission*.

### **3) Contract & RFP Terms**

#### *a) Force Majeure*

In Article 11 of the proposed contract, the IESO sets forth a thoughtful and detailed explanation of rights and expectations for Force Majeure under the contract. To ensure rights under Force Majeure are fairly balanced across parties protecting against events beyond their control, this section should be expanded to include delays due to interconnection that are beyond the control of the developer. It is well known that one of the main contributing factors to delays in the construction of supply resources in North America is the interconnection process. Neither the IESO, utilities or the developers want delays with interconnection, but given the frequency of interconnection delays that are beyond the control of the developer, it is important to include within the definition of Force Majeure the fact that issues related to interconnection approvals by the IESO or completion of interconnection works by LDCs could be Force Majeure events that allow for relief to Milestone Dates if conditions satisfied.

We offer redlines to §11.3 (h) in our contract redline included as an Attachment to this letter and intended to address this void for the IESO's consideration.

#### *b) Early COD Multiplier*

Convergent supports the IESO's concept of preserving a level playing field among bidders by setting a standard delivery date of May 1, 2026, and then offering adders for any projects that can be brought online prior to that date. This ensures the IESO will be comparing "apples to apples" across proposals, but still provides a framework to provide economic incentive and coverage of costs for early delivery. However, the values proposed by the IESO for early delivery multipliers do not fully address the increase in costs necessary to hit those early delivery dates. A key component to achieving early delivery is the increased cost of equipment in the near term, and the IESO's proposed multipliers are insufficient to cover that increased cost of materials based on current market conditions. Said another way the modest increases to monthly payment proposed



during the first year of operation are simply too low to cover actual costs needed to get a vendor to deliver in that time frame.

The value of the multipliers should reflect not just the IESO's willingness to pay for early delivery, but also the suppliers increased costs. The current multiplier values appear to only reflect the IESO's willingness to pay for early delivery. If that is the IESO's maximum, then the multipliers do not need to be adjusted, but the IESO must understand there is no incentive to deliver early, there is only a *bonus* for early delivery. If the IESO however truly does want to *incentivize* early delivery, then the multipliers must be meaningfully increased to align with current market conditions and the cost necessary to accelerate delivery and construction with vendors. At a very high level a rough estimate of meaningful adjustment would be in the magnitude of an additional payment of 125% of the contract value each month before August 31, 2025, an additional payment of 110% of the value of the contract in each month from September 1, 2025 through December 31, 2025, and then from January 1, 2026 through April 30, 2026 an additional payment of 95% of the contract value for each of those months where a project has been delivered early.

c) Change of Law

Protection from changes in law is a common contract provision, however the risk of exposure to changes in law and regulation under this contract far exceed what is common, in fact it is likely to occur during the duration of these contracts. The IESO's market renewal process is an ambitious and necessary undertaking in Ontario, but it will take time and it will change the market dynamics suppliers are forced to assume at the time these contracts are being awarded. This known risk will be factored by developers into pricing in ways that will unnecessarily increase prices for the IESO. However, the IESO has the opportunity now to reduce that risk by providing certainty to developers that they can have a reasonable expectation of preserving the economics of their project during the long duration of these contracts.

The high bar set by the language in Section 1.6 (for changes in market rules) and Article 12 (changes in law), including from the potential unforeseen consequences of the market renewal process, provide insufficient protection to the Supplier for changes that may affect the economics of this E-LT1 Agreements over the long-duration terms. Suppliers need appropriate mechanisms to ensure they are able to preserve the economics throughout the term and the ability for the agreement to be amended if changes from the market renewal process are required to comply with the Must Offer Obligation under the E-LT1 Agreement and to satisfy the technical requirements, including those of system metering, performance testing, etc., that may be caused by changes in the market structure.

The implications of the Global Adjustment on Suppliers has been addressed from an economic perspective, however while the definition of "Global Adjustment" includes "or its successors", to the extent the Global Adjustment is replaced or ceases to be published (or ICI is terminated or replaced), a mechanism is needed to properly manage expectations and reduce risks. Specifically, the provisions of Section 1.7 (Inapplicability of Indices) can be looked to as a way of determining how any successor to the Global Adjustment is treated in this Contract and to ensure that the Supplier is placed in the same financial position it would have been absent such changes. Exhibit S notably also doesn't address scenarios in which the Global Adjustment is replaced or significantly changed, just scenarios where the basis upon which GA is allocated to the Facility changes.



d) Contract Clean Up

Discriminatory Action is defined to include an action that has the effect of increasing costs incurred in respect of the development, construction, operation, and maintenance of the Facility, including costs to satisfy Must-Offer Obligations; however, Section 13.2 (Consequences of Discriminatory Action) is limited only to recovery of costs associated with Must-Offer Obligations. Section 13.2 should include compensation for the increase in the costs that the Supplier would reasonably be expected to incur because of the Discriminatory Action (including costs incurred in respect of the development, construction, operation and maintenance of the Facility and the increase in the costs that the Supplier would reasonably be expected to incur to satisfy the Must-Offer Obligation).

We include as an Attachment to this letter a redline to the IESO's draft E-LT1 Agreement, which reflects both points raised in this letter and additional comments that include certain clarifying changes and what we view as material comments to the E-LT1 Agreement. We welcome this dialogue with the IESO and look forward to the IESOs feedback and reviewing the changes ultimately made to the E-LT1 Agreement as a result.

**Conclusion**

Convergent thanks the IESO for the opportunity to meaningfully engage and contribute to the success of this procurement, and for all the hard work and time the IESO Staff has dedicated to this procurement. We look forward to continued work with the IESO.

Sincerely,

Katie Guerry

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