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September 30, 2022

Re: Feedback on the Draft Expedited Long-Term 1 RFP and Contract

Mr. Farmer,

Enbridge appreciates IESO's ongoing engagement related to the Request for Proposal (RFP) and contract drafting for the Expedited Long-Term 1 (ELT1) and Long-Term 1 (LT1) RFPs. We support many aspects of the RFP and contract, including the 22-year contract term for ELT1, the incentives for long-duration power delivery and Indigenous involvement, and the prioritization of power storage resources. IESO's engagement and updates to key provisions have gone a long way toward addressing key financial and technical barriers to participation.

However, there are some proposed items that are either unclear or unnecessarily restrictive and which, without amendment, represent insurmountable risk to developers looking to participate in this ELT1 process. For example, the broad drawdown rights IESO has reserved with respect to the large Performance & Completion Security, and IESO's right to cancel contracts with Suppliers in the event they do not provide a Municipal Resolution by a date that would be otherwise unnoteworthy in a project development process, represent enormous developer risks that could be mitigated while protecting IESO's and Ontario ratepayers' priorities.

Enbridge believes that modifications to the most challenging provisions could mitigate these developer risks while still allowing IESO to achieve its reliability goals under ELT1. We have herein provided our comments and questions for clarification under four sections:

- Procurement Design
- Contract Design
- Performance Requirements



- Communications

In each section, we reference the contact and/or RFP section related to our comments, but the references are not intended to be comprehensive (there may be other updates required elsewhere in the documents). Each of the four sections listed above also include two subsections: Proposed Changes to IESO language, and Questions for Clarification.

We have appreciated the opportunity to provide comments throughout this procurement design process and look forward to continued participation in IESO's procurement engagements.

### **Feedback on specific proposed provisions**

#### **Procurement Design**

##### **Proposed Changes – Procurement Design**

##### ***RFP Section 1.2(d) and 4.4(d)(v) – Power storage target***

IESO has proposed in Section 1.2(d) of the ELT1 RFP to set a power storage target under the 1 GW it plans to procure under the RFP. We support IESO setting a minimum target for power storage as it is a clean, affordable way to maximize the benefit of the Province's renewable energy resources, and we look forward to learning more about the target on October 7<sup>th</sup>. However, IESO should not restrict its options by treating the target as a maximum threshold as well.

Specifically, in Section 4.4(d)(v) of the ELT1 RFP, IESO says it will only evaluate power storage proposals up to the power storage target threshold and will then turn to other resources. We recommend that IESO instead continue evaluating power storage bids to determine how they compare to the other non-power storage projects and allow itself the flexibility to procure the entire 1 GW of target capacity from power storage. These resources are non-emitting, do not take up a lot of space, and can help alleviate, rather than add to, grid congestion. IESO should have the flexibility to exceed the minimum power storage threshold in its review of proposals.

Recommendation: We recommend that IESO establish a minimum power storage target, as intended, but that it provide itself flexibility to procure all 1 GW under the ELT1 from power storage resources insofar as they are the best options under the proposal review stage.

***RFP Section 2.2(l) and 3.6(c)(i) – Indigenous economic participation***

IESO has proposed to provide rated criteria points for Indigenous economic participation. Enbridge fully supports encouraging Indigenous participation in Ontario's electricity sector and we have several such partnerships with Indigenous communities across Canada. As a result, we have experience building such partnerships and we have concerns with how IESO has proposed to document these arrangements.

IESO has asked that proponents be able to provide written evidence of the Economic Interest in the Supplier and, in Section 3.6(c), expressly requires that we submit – at the time of bid in December – organizational charges and securities registers documenting the Economic Interest, which IESO has clarified would be an equity stake in the Supplier. This is impractical and the documentation IESO has proposed to require could in itself prevent meaningful Indigenous participation, particularly in any large-scale projects.

For example, proponents will not know until November 30<sup>th</sup> which, if any, of the projects qualified under the RFQ and submitted for Deliverability assessments will be eligible to be bid into the ELT1 RFP and/or will now know at which size or configuration of those projects will be eligible for bidding. Even where a proponent and an interested Indigenous group are committed to partnering, it may be difficult for the would-be partners to establish an ownership structure prior to knowing what projects are eligible to be bid, and 20 days (November 30 – December 20) is not enough time to have meaningful and lasting financial discussions about eligible projects. In fact, it places an undue burden on the Indigenous groups to ask them to choose partners before they know which proponents will have projects to bid; to do so requires them to simultaneously negotiate with dozens of potential partners, which could strain available resources.

Ideally, instead of rated criteria, Indigenous economic interest could act as a price adder after contract selection. Where the potential adders, based on level of economic participation, were established by IESO in advance, proponents could adapt their bid prices accordingly based on how committed they were to Indigenous partnerships. However, in the event IESO prefers the rated criteria approach, it is necessary that the documentation required not outpace good business practices because to do so would introduce unnecessary risk and would discourage Indigenous partnerships.

Recommendation: We recommend that IESO modify the Indigenous economic interest from providing rated criteria points during the selection process to providing a price adder after the contract award. This will enable Indigenous partners to focus only on projects that have contracts and will enable fulsome financial and structural decisions to ensure lasting partnerships that work for all parties can be established. In this case, IESO should publish what the adders would be based on level of economic interest in the RFP.



In the event IESO would prefer to maintain the rated criteria approach, we recommend that IESO require proponents to submit a signed Letter of Intent with one or more Indigenous groups for any project where they are claiming the rated criteria points (i.e., instead of a securities registry and organizational structure). The LOI should set out the intended equity stake, name the parties participating, and detail the plan for next steps in the negotiation post-selection. We have done this under other RFPs and can provide more detailed suggestions if it would be helpful.

***RFP Section 2.2(m), and Contract 2.5(a)(i)(F) & 2.14***

IESO proposes that, in the event a proponent does not provide evidence of municipal support as part of its RFP bid, that the proponent would be required to provide a Municipal Support Resolution or letter from a Land Use Planner that all permits and approvals have been received or issued no later than 60 days after the first anniversary of the Contract Date. IESO has subsequently clarified that it selected this date because it wants time to pursue alternative options before May 2025.

Enbridge notes that it is already a requirement to reaching Commercial Operation (Section 2.5(a)(i)(F)) that proponents provide evidence that they have obtained all necessary permits, which (paired with IESO's comments) suggests that the purpose of this intermediate step is to allow IESO the ability to terminate a project – subject to loss of the entire Completion and Performance Security - based on a seemingly arbitrary deadline that is not necessarily tied to standard permitting and project development processes. For example, it is possible that site preparation work could begin before all permits are required and that not having “all permits” by May 2024 would not necessarily pose any real threat to the target commercial operation date (COD) of May 2025. In any case, IESO has provided until May 2026 to reach COD, making this interim municipal support resolution additionally unnecessary and inappropriate.

The Province of Ontario has the ability to ease permitting and to overcome unnecessary red tape, including at IESO's advice. In the event the Province and IESO choose not to exercise that power, they should both bear some of the risk of not meeting those targets. IESO has instead proposed, via this provision, that proponents bear all of the risk at prohibitively large potential cost. This provision could be a barrier to participation if not addressed.

Recommendation: We recommend that the requirements in Section 2.2(m) of the RFP and 2.14 of the Contract be removed. IESO requires quarterly reports on progress toward completion under this RFP and will have the opportunity to discuss any concerns with Suppliers based on those reports.



In the event IESO wants the additional comfort this provision provides, we recommend that the date upon which such evidence that all necessary permits have been received is amended to be the date of the start of equipment installation, rather than 60 days after the Contract Date. The start of equipment installation is a date by which all permits would need to have been received and would still provide substantial advance notice for IESO to take other action. In the event IESO requires a specific date, we would recommend December 31, 2024.

***RFP Section 3.6(d)(ii) – Proposal Security***

IESO has requested a Proposal Security of \$60,000/MW of the proposed Maximum Contract Capacity for large-scale LT1 projects but just \$45,000/MW for small-scale projects. The Security will scale with the number of MWs anyway, so there is no clear reason why the amount should be more than doubled and it seems unnecessarily punitive to larger projects.

Recommendation: We recommend that the Proposal Security for all projects be the same at \$45,000/MW.

***RFP Section 3.7(a)(iv) – Failure to sign the contract***

IESO proposes in this section that it be entitled to draw down on the Proposal Security in the event a Supplier has not signed the contract or provide the Completion and Performance Security in the specified timeframe. IESO has also proposed it have the right to disqualify the Selected Proposal and any other controlled by the proponent. This would seem to be sufficient penalty for the Supplier failing to meet the deadlines. As noted elsewhere in these comments, the timeline to complete the required tasks is unnecessarily tight and the proposed Security is punitively large, so blanket right to draw down the Security to an unlimited amount for missing a signature date represents an extremely large bidding risk.

Recommendation: We recommend that IESO put a limit on how much of the Proposal Security it can draw down and provide some mechanism for cure, e.g., the Supplier could get a reasonable extension if it provides sufficient evidence that the Completion and Performance Security and/or Contract signature is imminent. This would still allow IESO to move quickly but would help mitigate administrative bid risk.

Questions for Clarification – Procurement Design

***RFP Section 2.2(b) – Bidding entity***



This section requires proponents whose proposals are selected under the RFP process to enter into the ELT1 contract as suppliers under their own names. It is our understanding from the Request for Qualifications process that IESO does not intend to limit proponents' ability to create new investment vehicles in order to participate in the ELT1 RFP process. Furthermore, some provisions, e.g., that any Indigenous partners hold an equity stake in the Supplier, would require that new investment vehicles be established prior to bid submission. However, it is not clear when or how this is permitted.

Question: Can we interpret Section 2.1(b) of the ELT1 RFP to mean that Qualified Applicants are able to set up any investment vehicle (e.g., LP, LLC), and that such investment vehicle could bid in the procurement as a "Supplier" insofar as the investment vehicle is "Controlled by a Qualified Applicant"? And, that such Supplier could then sign the contract with IESO post-selection?

***RFP Section 3.6(c)(i) – Proposal Fee***

This section requires proponents to submit a Proposal Fee with their bid.

Question: Is this one Proposal Fee per project submitted (e.g., per investment vehicle, LLC, etc.) or one Proposal Fee per proponent (e.g., the Qualified Applicant)?

***RFP Section 3.6(c)(i) – Community engagement***

This section requires that proponents provide evidence of community engagement, which has since been clarified to include a community engagement plan, at least one community meeting, maintenance of a webpage, and certain notification requirements related to the public meeting. We fully support meaningful community engagement but timing is getting extremely tight and proponents require clarification immediately on key questions in order to ensure the specifics of the engagement completed by December 20<sup>th</sup> satisfies IESO's requirements.

Question: Where more than one project that will ultimately be bid by the same Qualified Applicant but different proponents controlled by the Qualified Applicant are located nearby each other, is it possible to combine those projects into a single meeting insofar as all applicable stakeholders are properly notified and engaged? (We recommend that this be allowed and we believe based on IESO's preliminary comments in the September webinar that it agrees. Any proponents who acted on IESO's preliminary feedback in the absence of an update (no later than October 4<sup>th</sup>) should have their public meetings deemed to be acceptable under the RFP requirements as there would not be time to hold multiple meetings.)



***RFP Section 3.7(a)(iii) – Contract signing and Security***

This section requires that Suppliers provide the Completion and Performance Security and sign the Contract within 20 business days of the ELT1 Contract Receipt Date.

Question: Is there a reason this isn't the more standard 30 business days or 45 calendar days? We understand IESO is attempting to confirm selected suppliers as soon as possible in case it is necessary to abandon one and select another right away, but 20 business days is quite a tight turnaround.

***RFP Section 4.4(b) – Power storage contract***

This section requires that proponents select either the "Storage Category" or the "Non-Storage Category" when bidding.

Question: Are hybrid resources able to select either category as best fits their business model? Or does IESO envision hybrid (power storage + solar) resources having to select one in-particular?

***RFP Section 4.4(d)(i) and Definitions – LSAF and HSAF***

This section and the related definitions establish the Low-Spread Adjustment Factor (LSAF) and the High-Spread Adjustment Factor (HSAF) and related formulas. IESO has subsequently proposed that the LSAF and HSAF be the same, which clarified one of our questions on this topic. However, we request one further clarification.

Question: Please confirm that proponents can bid "0%" for the LSAF and HSAF to have no adjustment to capacity payments based on the spread.

***RFP Section 5.4 – Return of Proposal Security***

This section sets out clearly that proponents not passing stage 4 will receive their Proposal Security back within 10 business days of the later of not being selected and/or rescinding any CIA applications. Moving to Stage 5 – the Deliverability Test Results Assessment – could still result in a proponent not being selected under the review process. However, IESO did not clarify when such proponents would receive their Proposal Security back if not selected.



Question: Would the timeframe for return of the Proposal Security be the same for proponents moving to Stage 5 of the review process but ultimately not being selected as a Supplier as it is for those not moving beyond Stage 4?

## **Contract Design**

### **Proposed Changes – Contract Design**

#### ***RFP Section 2.2(d)&(f) & 3.7(a)(ii), and Exhibit B of the Contract – Materials Indexing***

IESO proposed two materials indices be used to index 50% of the Fixed Capacity Payment as a one-time adjustment to accommodate the current volatility in certain materials pricing. IESO has proposed the one-time indexing take place on the first anniversary of the Contract Date and be based on a comparison of the calendar month prior to bid submission and the average of the three months prior to the one-year anniversary of the Contract Date. IESO has also subsequently clarified that there would be no floor on the indexing, e.g., the Fixed Capacity Payment value could be indexed down at this single adjustment date. While Enbridge appreciates IESO's efforts to help mitigate some of the materials risk in the market today that is out of the control of both IESO and proponents, there are a few key details that should be considered in order to ensure this proposal does not end up creating risks of its own, and therefore, driving up prices.

Recommendation: We recommend the following changes,

- IESO should establish a floor on the index value to discourage inflating bid prices to mitigate risk of downward indexing on a capital investment in an unpredictable market for new technologies. This is especially true as IESO has selected the percentage of fixed costs to be indexed, which may not align with the true percentage of fixed costs that require indexing, and as the materials indices proposed do not cover all materials – particularly the most volatile – which could result in the indices IESO has selected decreasing while materials costs actually increase for selected Suppliers.
- In any case, and especially in the case that IESO does not establish a floor to prevent downward indexing, proponents should be able to opt-out of this indexing at the time of bid submission by indicating as much in their bid package. We support the Consortium's multi-component approach and we recommend that proponents be able to opt out of one or more (including all) of the indexing components at the time of bid submission.
- We generally support the approach proposed by the Consortium including the inclusion of Lithium Carbonate. However, lithium will not be the core element in all batteries so proponents should be able to swap in other indices if their core element is not lithium. For example, we recommend that



proponents should be able to select the Zinc LME Index instead of the lithium-ion indices the Consortium highlights if the proponent's battery is not lithium-based. This would be consistent with the intent of the Consortium's proposal and would also be consistent with IESO's preference for longer-duration power production.

- We further agree with the Consortium that non-lithium (or other core element) materials should be indexed, and IESO's proposed indices in the Draft ELT1 RFP were good proposals to cover indexing of those materials. We recommend that IESO maintain its proposed index for non-lithium/core element materials in support of the Consortium's model.
- We support the Consortium's reference time periods (e.g., the reference time period would be the price at the time of the Proposal Submission Date, and the final price would be the average price of the 12 months following the Contract Date). This is generally consistent with IESO's proposal but allows for a longer period over which the future price is averaged to ensure that an anomaly in volatile prices don't introduce unnecessary risk for IESO, Ontario ratepayers, or developers.

***RFP Section 2.2(j)(i) – Power storage regulatory charge exemption***

IESO has proposed that power storage would receive a regulatory charge credit, including a reimbursement for the Global Adjustment where its roundtrip efficiency is above 80%, below which it would receive “less than 100% reimbursement of such charges.” Enbridge supports the intent behind IESO's proposal to exempt power storage from such regulatory charges and we fully support the idea. However, the way the exemption is drafted it would be unnecessarily punitive to longer-duration power storage technologies. It is our understanding that four-hours was the bare minimum IESO needs to obtain under the ELT1 RFP and that longer duration capacity provision is preferred. As a result, we recommend the following changes to ensure that longer-duration storage is not punished by having to pay larger regulatory charges, which would further impair the economics of bidding longer-term storage into the RFP.

Recommendation: We recommend that the roundtrip efficiency be reduced to 65% or absolutely no more than 70%.

We further recommend that IESO introduce a sliding scale for the “less than 100% reimbursement” for those not meeting the 70% round trip efficiency threshold so that it steps down gradually depending on how far below 70% the Supplier is in a given payment period.

We also recommend that Section 2.2(j)(iii) be updated to clarify that the reimbursement will be as defined in this section until the Supplier is eligible for and successfully enrolled in the ICI program, to avoid any gaps between the two programs.

**Contract Section 6.1(a)(b) & 10.2(b) – Completion and Performance Security**

IESO proposes in this section that Suppliers would be required to provide a \$60,000/MW Completion and Performance Security (C&P Security) for large-scale projects to cover the period from the Contract Date to the COD, and a C&P Security of \$25,000/MW to cover the period from the COD to the end of the Term in April 2047. IESO has provided itself elsewhere in the Contract broad draw down rights on these C&P Securities under a range of circumstances and to an unlimited amount. While we understand that IESO is hoping to establish steep penalties to discourage speculative bidding and to ensure ratepayers have the capacity needed in 2025, both of which goals we support, the language as proposed goes a major step further, introducing significant risk that seriously challenges the economics of participating in the ELT1 RFP or LT1 RFP.

Recommendation: We recommend the following changes and clarifications be made to mitigate the risks for committed developers while, we believe, maintaining the protections IESO intends,

- The C&P Security for Contract Date to COD should be the same for large and small-scale projects, e.g., ideally \$25,000/MW but definitely no more than \$45,000/MW.
- The C&P Security for COD to April 2047 should be significantly reduced (well below \$25,000/MW) as most of the risk will have been mitigated once the project reaches COD. We understand that there may be some cases where the committed capacity is not met and IESO will be owed amounts but most likely those amounts will be deducted from the larger compensation owned the Supplier. Perhaps, to protect against truly problematic performers, IESO could reserve the right to demand a higher C&P Security in the event of chronic failure to meet capacity commitments and a corresponding failure to pay IESO amounts owed.
- IESO should provide much more definition around its draw down rights from the Contract Date through the end of the Term, e.g., under what circumstances will it draw down, up to what threshold, with what cure options provided the Supplier, etc. Proponents require some certainty as to when and how the draw downs might happen in order to manage risk and financial planning. IESO should only be able to draw down to cover specific penalties outlined in the contract and not for other reasons.
- IESO should clarify that drawdown on the C&P Security would be IESO's sole and exclusive remedy in the event of a Supplier Event of Default.



***Contract 1.6 and 13.2 – IESO Market Rules, and Discriminatory Action***

IESO has adhered fairly closely to the LRP Discriminatory Action language and protections for Suppliers, but has only covered increased costs under the Market Rules section, which is a critical lessening of protections as compared to LRP. We agree with the Consortium’s comments on the risks related to this lower level of protection, especially considering the expected implementation of Market Renewal for which the rules are not yet finalized and related impacts untested.

Recommendation: We recommend the IESO return to the LRP language for Section 1.6(b) of the contract to cover new Supplier economics as well as material costs.

***Contract 2.1(a) – Design and construction of the facility***

Recommendation: For greater clarity and certainty in the design and construction of the facility, we recommend IESO amend this provision to require, “The Supplier agrees to design and build the Facility using Good Engineering...in each case, as applicable, and all other Law and Regulations, applicable as of the Contract Date.”

***Contract Section 2.3(c) – Penalties for missing the Milestone Date***

IESO states in this section that Suppliers will owe the amounts set out in Section 2.3(b) within 10 business days of receipt of an invoice from IESO. There is no explicit accommodation for Force Majeure circumstances in limiting liability for Delay Liquidated Damages.

Recommendation: We recommend that IESO incorporate delays occasioned by Force Majeure as limiting Suppliers’ liability and to provide relief from Delay Liquidated Damages. We further recommend that IESO choose a more logistically practical payment period for any penalties and damages of one calendar month.

***Contract Section 2.4(a) – Information during design and construction***

IESO requires what appear to be duplicative reports to be provided to the Buyer (IESO) and to the System Operator (also IESO) regarding progress in design and construction of the site. It further reserves the rights to use any progress reports and photographs to be posted or printed on its site or in its publications. This provision seems administratively burdensome and possibly represents IESO reserving rights to make confidential and commercially sensitive information public.



Recommendation: Enbridge recommends that Suppliers only be required to provide a report – ideally on a semi-annual basis instead of quarterly – to IESO once, instead of reporting to multiple IESO departments. We further recommend that IESO not have the reserved right to share any of the information included in those reports with any entity and definitely not with the public, without the Suppliers' consent so that they have an opportunity to identify confidential and/or commercially sensitive information and protect it from disclosure. This is especially important as development work will be starting on ELT1 projects even while proponents are preparing bids for LT1 RFP.

***Contract Section 2.4(c) – Administrative charge***

We understand that IESO wants to ensure timely delivery of the above-described quarterly reports but IESO has proposed a \$5,000 penalty to be paid within 10 business days upon failing to supply a report on time. This is an unnecessarily large sum and is further administratively burdensome.

Recommendation: We recommend that the fee be applied only if the report is late, IESO has asked for the report, and the Supplier has failed to deliver it within 15 calendar days of receipt of IESO's notice. We further recommend that the payment be due within 30 calendar days, a more logistically feasible payment period.

***Contract Section 2.8 – Insurance Covenants***

This section sets out the insurance requirements the Supplier is required to have in place for construction and operation of the facility. We understand that IESO needs to have reliable insurance in place for major reliability projects and we support this objective. However, not all Suppliers are the same size or are structured the same way, and the insurance covenants as drafted are unnecessarily restrictive, which could cause some proponents significant challenges to participating in the ELT1 RFP. We believe these restrictions could be amended to accommodate more insurance approaches while still maintaining the high standard for protection that IESO needs to protect its grid and Ontario ratepayers.

Recommendation: We recommend the blackline changes below to Section 2.8(a)-(c), in order to accommodate additional insurance approaches without reducing the protections IESO requires of Suppliers (deletions shown as strikethroughs, additions in red).

- (a) The Supplier shall ~~put in effect and~~ maintain, or cause its contractors, where appropriate, to maintain, from the commencement of the construction of the Facility to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance that a **similarly situated prudent** Person in the business of developing, constructing, financing and operating the Facility

would maintain including policies for “all-risk” property insurance covering not less than the full replacement value of the Facility, “all-risk” equipment breakdown insurance, “wrap-up” liability insurance and “commercial general liability” insurance with a rider to extend coverage to include Environmental Incidents.

- (b) Any policies described in this Section 2.8 must (i) for any property insurance, contain a waiver of subrogation in favour of the Indemnitees; and (ii) for any liability insurance, **as applicable**, include the Indemnitees as additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement, in which case the policy shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. ~~The limit for liability policies described in this Section 2.8 shall be for an amount appropriate for the size and scope of the Facility.~~
- (c) **Supplier may, at its discretion, either (1) maintain; or (2) choose to self-insure in lieu of insurance (either in whole or part), the insurance coverages required in this Agreement. When the requirements of this Agreement are self-insured by Supplier in lieu of insurance, Supplier shall, as applicable and to the extent of its obligations herein, provide defense and indemnity support to Buyer in the same manner and to the same extent, using industry standard claims adjustment practices, as if it were fully insured by a financially sound third-party insurer on insurance forms customarily available for similar operations undertaken by similar organizations at the time such obligations are realized.**
- (d) **The Supplier shall provide the Buyer with, as applicable, a certification of insurance or letter of self-insurance confirming its compliance with the requirements** ~~a certified true copy of the insurance policies required~~ in this Section 2.8 which confirms the relevant coverage, including endorsements on or before the commencement of the construction of the Facility, and renewals or replacements **within 15 business days after** ~~on or before~~ the expiry of any such insurance.

### **Contract Section 11.2 – Force Majeure**

Recommendation 11.2(e): We disagree that IESO on this provision. We believe IESO changing its schedule of Planned Outages for the Facility as set out in the Annual Operating Plan could constitute Force Majeure, depending on the notice given and the circumstances. We recommend that IESO clarify the specifics around this provision.

We also recommend that supply chain bottlenecks and connection delays should be eligible events of force majeure.

At the end of the Force Majeure section IESO states that any actions of the Buyer (IESO) that are not also the action of the System Operator (also IESO) does not constitute Force Majeure. This is opaque and overly broad. We recommend that IESO clarify this so that proponents can better determine what risks this introduces to the operation and economics of the Facility.

### **Contract Section 14.3 – Indemnification**

Recommendation: This section should be mutual.



***Contract Section 16.5(d)&(e) – Buyer Assignment***

Recommendation: IESO should require Supplier consent to assign in these cases as the Supplier may have considerations that would not allow such assignments.

Questions for Clarification – Contract Design

***Contract Section 2.10 – Environmental Attributes***

IESO states in this section that it will have no interest in any Environmental Attributes or, except in respect of the Supplier's performance requirements under the Agreement, other products or services associated with the generation of Electricity by the Facility.

Question: Please clarify what "except in respect of the Supplier's performance requirements under this Agreement" means with respect to excess generation and/or Environmental Attributes.

***Contract Section 2.5(a)(i)(D) – Reaching COD***

IESO proposes in this Section that a Facility cannot reach COD until 100% of the Contract Capacity and, if applicable, Storage Capacity are available.

Question: Would this mean the Contract Capacity for the month in which the Facility is entering operation, or the Maximum Contract Capacity, i.e., the highest Contract Capacity for the year?

***Contract Section 2.11 – Future Capacity Related Products***

This section limits Suppliers' ability to develop or monetize any capacity related products tied to the Contract Capacity without IESO's consent and advance notice.

Question: Does this mean that the Supplier is free to develop, register and monetize any capacity available at the facility but not bid into the ELT1 RFP and, therefore, not comprising any part of the Contract Capacity? We believe this should be permitted insofar as the Contract Capacity remains available to IESO and bid into the DAM as set out in the contract, e.g., Suppliers should be able to develop or monetize any capacity not included in Exhibit B of the contract without IESO consent or notice.



***Contract Section 11.2(g) – Force Majeure related to COVID and Russia’s invasion of Ukraine***

In this section, IESO proposes that Suppliers cannot claim Force Majeure in respect of any impacts of COVID-19 and/or Russia’s invasion of Ukraine that were known or ought reasonably to have been known as of the Contract Date.

Question: Specifically, how does IESO propose to determine that a force majeure event is an “impact of” COVID-19 or Russia’s invasion of Ukraine? And, given the changing nature of both ongoing matters, how does IESO intend to determine what could reasonably have been known as of March 2023?

**Performance Requirements**

Proposed Changes – Performance Requirements

***Contract Definitions and Exhibits E1 and E2 – Planned Outage Capacity Reduction Factor***

IESO has proposed that Facilities will only be eligible to schedule Planned Outages of 5% or less of Qualifying Hours in a month. This is far too small a percentage, especially for power storage, which needs to charge outside qualifying hours in many cases and will not be able to simply defer Planned Outages in all cases.

Recommendation: We recommend that the allowable Planned Outages limit be changed to 10% of Qualifying Hours in a month in the definition of Planned Outage Capacity Reduction Factor in Exhibits E1 and E2 of the Contract (i.e., the Planned Outage Capacity Reduction Factor cap should be lowered from 0.95 to 0.80 in those exhibits).

Questions for Clarification – Performance requirements

***RFP Section 2.2(c) – Qualifying Hours***

In this section, IESO requires Facilities to offer their capacity into the IAM at a specified minimum quantity on Business Days from 7am to 11pm ET or other such continuous 16 hour period over a maximum five days and reserves the right to modify the continuous period on 90-days’ notice. IESO has offered to provide details on how this requirement leaves sufficient charging time, particularly for the longer-duration Facilities that the RFP design is intended to prefer, but has not done so as of the filing of these comments.



Question: We ask IESO provide – with several examples – how it envisions the requirements in 2.2(c) will provide sufficient charging time without penalty. Please include examples of shorter-duration power storage (i.e., four hours) and longer duration (e.g., six and eight hours) power storage Facilities. This will go a long way to helping power storage providers understand how IESO expects this section to be applied and enforced.

***RFP Section 2.2(h)(iii) and Contract Definitions – Adjusted Monthly Contract Capacity***

In this section, IESO states that the Adjustment Monthly Contract Capacity will “also account for the total number of hours in which the Facility is State-of-Charge Limited (SOCL) in the Settlement Month.” The Contract Definitions clarify that SOCL means that the Facility has discharged 98% of the Storage Capacity in the applicable Qualifying Hours and the 10-hour period immediately preceding the Qualifying Hours, providing that the energy amount of any operating reserve that is activated as a reduction in load demand and the amount of energy to be reserved during the Qualifying Hours to meet the DAM commitments shall be considered expended.

Question: Please confirm this means that, when IESO is calculating the Adjusted Monthly Contract Capacity, such SOCL capacity will be included in the total. We request that IESO provide an example of this calculation for proponents’ reference.

Also, please clarify how IESO will determine SOCL, e.g., will IESO accept self-declaration or will it interrogate the battery? This has material impacts for proponents.

**Communications**

**Proposed Changes – Communications**

***RFP Section 3.10 – Disclosure of Proponents***

In this section, IESO reserves the right to disclose any of the following Proposals information after its notification of all successful and unsuccessful proponents of their results, including Proponent name, applicable Long-Term Reliability Project and its Monthly Contract Capacity, and average or individual Proposal Prices or other aggregate pricing information, all of which it states it may disclose in aggregate or on an individual basis.





Enbridge strongly opposes such disclosure, particularly on an individual basis, as doing so would catastrophically disadvantage any proponents in ELT1 who planned to rebid their projects into the Long-Term 1 RFP in summer 2023. IESO is planning to purchase only a small portion of the 2.5 GW in capacity it intends to acquire through the upcoming RFPs under the ELT1, and there may be strong bids that could compete in the LT1 RFP but were not selected under ELT1 simply because IESO ran out of MWs to allocate. IESO's act of sharing monthly contract capacity and bid price – even if aggregated but definitely if shared on an individual basis – would be the same as if IESO forced only some proponents to disclose their planned bid packages to their competitors prior to LT1. This would create a massive information asymmetry, as those bidding only in LT1 would not have to similarly disclose their bid packages, which would provide an unfair and insurmountable advantage to those proponents who decided not to participate in ETL1.

Recommendation: Enbridge recommends that IESO not provide any details – aggregated or otherwise – about monthly contract capacity or pricing until after all bids are submitted under LT1. IESO could share winning proponents' names and the location and nameplate capacity of winning Facilities, but all monthly contract capacity and pricing details should remain confidential until no changes can be made to LT1 bids. This will ensure there is no information asymmetry in the nearly identical LT1 RFP process between those proponents who participated in ELT1 and those who did not.

We do not believe the same risk will apply post-LT1 bid receipt as, based on what IESO has said about LT2 but we still recommend that IESO not disclose individual monthly contract capacity or proposal prices.

Thank you again for the opportunity to provide this feedback on IESO's proposed RFP and Contract. Please contact the undersigned to discuss the contents of this submission.

Sincerely,  
Denise Heckbert  
Strategy & Markets Policy, Enbridge