



Chuck Farmer
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Planning, Conservation, and Resource Adequacy
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1600-120 Adelaide Street West
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October 21, 2022

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

Mr. Farmer,

Enbridge appreciates IESO's ongoing engagement related to the Expedited Long-Term 1 (ELT1) and Long-Term 1 (LT1) Request for Proposal (RFP) and contract drafting. We support many aspects of the RFP and contract, including the 22-year contract term for ELT1, the incentives for 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. We filed comments previously on several of these key issues. In some cases, IESO made changes that helped to mitigate some of the risk, but some were not addressed in IESO's update to the RFP and Contract, or in the webinar. IESO has also since made changes that further deepened the risk for technology types that are more aligned with IESO's objective for the ELT1 RFP – namely to procure reliable long-duration capacity that can meet Ontario ratepayer needs during times of peak demand.

We have herein restated 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. Each of the four sections 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 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 30th 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 those projects will be eligible for bidding. Even if 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 even eligible to be bid. In fact, it places an undue burden on the Indigenous groups to ask them to choose partners before they even 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 were clarified 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 actually 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 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 \$25,000/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 \$25,000/MW.

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 that 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? We appreciate that you shared some info on the webinar earlier this week, referencing a Q&A document, but it is still unclear.

Contract Design

Proposed Changes – Contract Design

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 first ten years of the Term, with a \$15,000/MW security required to cover the remaining period until 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:

- 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 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, and especially given the additional uncertainty around how those Market Renewal Policies will impact battery power storage

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.

Natural Gas considerations in the RFP and Contract

Unlike the weaker protections for all technologies – and especially power storage – in the face of unknown market rule changes, IESO has proposed that gas generators would have protection from any impact of Federal Clean Electricity Regulations. In addition to this, the IESO has also elected not to impose firm fuel obligations on natural gas providers. In the absence of firm commitments, these generators would be relying on interruptible services which may not be available when the generator tries to utilize them. This would be due to the likely circumstances that these generators would be called on for peak days for both the gas and electric systems. Requiring firm gas supply would ensure this firm capacity would be available when called upon.

Recommendation: Given that IESO’s central objective of this procurement is to deliver firm capacity when the province needs it most, the IESO should require gas generators to have firm commitments for gas supply as was established in the Natural Gas Electricity Interface Review (NGEIR).

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 2.8 – 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 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.



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 2.5(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?

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 at least 15% 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 frequently 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. 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.

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. IESO has also recently provided itself the right to disclose the location of the Proposed Sites and the Indigenous Communities that hold an economic interest.

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



in intends to acquire through the ELT1 and LT1 RFPs and there may well be strong bids that could compete in the LT1 RFP but were not selected simply because IESO ran out of MWs to allocate in ETL1. 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 received 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