

June 22, 2012

**Filed on RESS
Sent By Email**

Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700
2300 Yonge Street
Toronto, ON M4P 1E4



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Your reference

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richard.king@nortonrose.com

Dear Ms. Walli:

**TransAlta Generation Partnership ("TAGP")
Clarification – Distribution Licence Requirement
Section 81 Notice of Proposal**

We are counsel to TAGP. Please find attached a Notice of Proposal filed pursuant to section 81 of the *Ontario Energy Board Act*, 1998 (the "OEB Act"). This section 81 Notice is being filed in connection with TAGP's plans to construct electricity distribution facilities from its Sarnia Regional Cogeneration Plant ("SRCP") to supply new and existing load at a site owned by LANXESS (formerly owned by Bayer) immediately north of, and contiguous with, the SRCP site. The circumstances related to the supply of power from the SRCP are set out below, and are somewhat unique. Consequently, TAGP is seeking clarification from the Board as to whether a distribution licence is required in order to supply power to the existing load at the LANXESS site, and a new load (located either on the LANXESS site or the SRCP site).

The SRCP was one of the "early mover" generation facilities built in Ontario in anticipation of the move to a fully competitive wholesale and retail electricity market. The SRCP came into service in 2003 on a site in Sarnia owned by Dow Chemical Canada Inc. ("Dow Chemical"). The SRCP consisted of integrating TAGP's newly constructed generation facilities with the existing generation purchased by TAGP that had been owned and operated by Dow Chemical for its industrial purposes. In addition to the existing generation at Dow, TAGP also purchased existing generation at the LANXESS site immediately to the north of the Dow Chemical site. Whereas the existing generation at the Dow Chemical site was integrated with the newly constructed generation facilities (i.e., they were electrically connected), there was no electrical connection to the generation on the LANXESS site. As part of the SRCP project, TAGP supplied bulk steam and power to Dow Chemical, LANXESS, Suncor and NOVA pursuant to long-term contracts, with the remainder of generation sold into the Ontario power market.

Dow Chemical permanently closed its Sarnia operations in 2009, and sold the site to TAGP. Schedule A to this letter shows a simplified drawing of the TAGP and LANXESS properties. TAGP continues to own the older, existing generation on both the former Dow Chemical site and the LANXESS site, and continues to have a contractual commitment to supply steam and electricity to LANXESS. Rather than refurbish the older generation on the LANXESS site, TAGP has determined that it is more efficient to supply electricity via a new distribution voltage connection from the SRCP (see Schedule B for a simplified drawing). In addition, TAGP has an opportunity to supply additional new load (i.e., a new corporate entity that is unrelated to LANXESS, TransAlta or Dow Chemical) which may locate on either the LANXESS site or the SRCP site. In the former case, please see Schedule C to this letter for a simplified electrical configuration. In the latter case, please see Schedule D to this letter for a simplified electrical configuration.

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The ability to supply LANXESS and a new load via a distribution connection necessitates the filing of this section 81 Notice (construction of distribution facilities by a generator), and also raises the question of whether a distribution licence is required under section 57 of the OEB Act. It is this latter issue that TAGP would like the Board to clarify.

Distribution Licence Requirement

Under section 57(a) of the OEB Act, a licence is required in order to “own or operate a distribution system”. The term “distribution system” is defined to mean a “system for distributing electricity, and includes any structures, equipment or other things used for that purpose”. Section 4.0.1 of Ontario Regulation 161/99 provides a number of exemptions from having to obtain an electricity distribution licence, including the following:

4.0.1 (1) Clause 57(a) ... of the Act do not apply to a distributor who distributes electricity for a price no greater than that required to recover all reasonable costs,

(a) with respect to a distribution system owned or operated by the distributor that is entirely located on land on which one or more of the following types of building or facilities is also located: ...

3. An industrial, commercial or office building.

...

(b) with respect to a distribution system owned or operated by the distributor that is entirely located on land owned or leased by the distributor; ...

TAGP will not charge LANXESS or the new load for the distribution of electricity. Consequently, the first part of subsection 4.0.1(1) of Ont. Reg. 161/99 is satisfied. The question then is whether the exemption in clause 4.0.1(1)(a)(3) or paragraph 4.0.1(1)(b) applies. TAGP's position is that the wording of subsection 4.0.1(1) is not sufficiently precise to allow TAGP to definitively determine whether a distribution license is required in order to supply electricity to LANXESS and a new load from the SRCP. Consequently, TAGP is seeking clarification from the OEB as to whether a distribution licence is required in order to:

- supply electricity to LANXESS via new electricity distribution facilities connected to the SRCP;
- supply electricity to a new load located on either the LANXESS site (as per Schedule C) or the SRCP site (as per Schedule D).

TAGP's submissions on this issue is as follows:

First, TAGP submits that the exemption provision in Ont. Reg. 161/99 is not sufficiently precise to cover many different scenarios that could arise as a result of proposals to construct new distribution facilities. Consequently, the OEB will have to make determinations as to whether a licence is required by considering the wording and intent of the exemption provision, as well as the OEB's statutory objectives. To that end, there is no compelling reason to require TAGP to hold a distribution licence in order to supply LANXESS or a new load. As noted, TAGP will not be seeking to charge either LANXESS or the new load for distribution. TAGP will not be looking to expand the distribution facilities beyond the TAGP and LANXESS properties. The impetus for the distribution facilities is to meet a contractual commitment to supply LANXESS in a way that is more economically and environmentally efficient than refurbishing old generation on the LANXESS site that TAGP owns. It would allow for increased expansion at the LANXESS site (through increased LANXESS load or the addition of a new business on vacant land at the LANXESS site without having to expand LANXESS' transformer connected to the Hydro One Networks Inc. system). It would also allow TAGP to “replace” the load that was lost when Dow Chemical closed its Sarnia operations in 2009. All of this, TAGP submits, furthers the first two statutory objectives (electricity) of the OEB, namely: (a) to protect the interests of consumers (i.e., LANXESS and new

load) with respect to the pricing, adequacy, reliability and quality of electricity service; and (b) to promote economic and cost efficiency in the generation, transmission and distribution of electricity. Supplying LANXESS and a new load via distribution facilities connected to the SRCP would provide for a reliable, cost-effective and economically efficient means of securing electricity for these consumers. It is certainly more efficient, cost-effective and environmentally sounder than increasing the output at older, TAGP-owned generation. There would not need to be any new public utility connection assets built with the costs borne by LANXESS, the new load or other ratepayers. Under any of the electrical configurations shown in Schedules B, C or D, the LANXESS load and new load would continue to be supplied in the event that the SRCP went off-line.

With respect to the first exemption specifically (i.e., clause 4.0.1(1)(a)(3)), TAGP is of the view that no distribution licence is required because the distribution facilities would be located on land on which only industrial buildings are located. There is no requirement in subsection 4.0.1 that the land be a single parcel or that the buildings be on land owned by a single (or related) entities.

With respect to the second exemption (i.e., paragraph 4.0.1(1)(b)), TAGP submits that the wording of paragraph 4.0.1(1)(b) merely highlights the fact that the Board must determine the requirement for a distribution licence based on the facts of each particular case. Technically, if the provision is read literally, TAGP could simply lease land on the LANXESS site underlying the new distribution facilities and avail itself of the exemption. By doing so, TAGP could claim that the new distribution facilities are located entirely on land owned or leased by TAGP and therefore no distribution licence is required. TAGP submits that it should not have to lease these lands in order to avail itself of the exemption from having to obtain a distribution licence.

For all of these reasons, TAGP submits that a distribution licence should not be required in order for TAGP to supply electricity to LANXESS or a new load, but seeks the OEB's clarification.

Section 81 OEB Act Notice

As noted, TAGP is filing this section 81 Notice because the construction of the new distribution facilities would be carried out by TAGP (a generator) or some other affiliate of TAGP. However, TAGP is of the view that the attached section 81 form demonstrates that the construction of the distribution facilities will not adversely affect the development or maintenance of a competitive electricity market in Ontario. There are no issues of market power arising from the proposed construction.

Should you have any questions, please contact me.

Yours very truly,

Original signed by

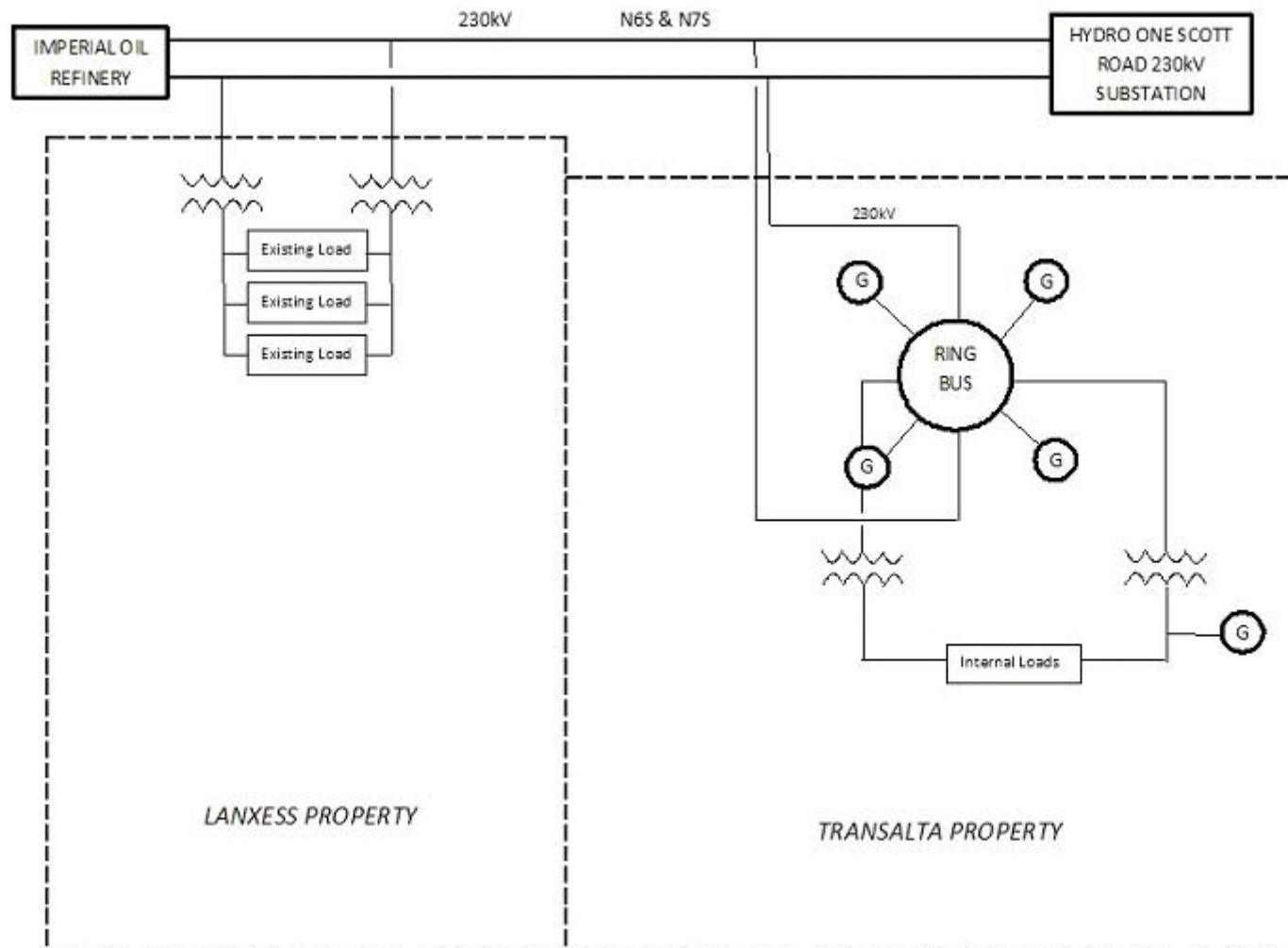
Richard King

RK/mnm

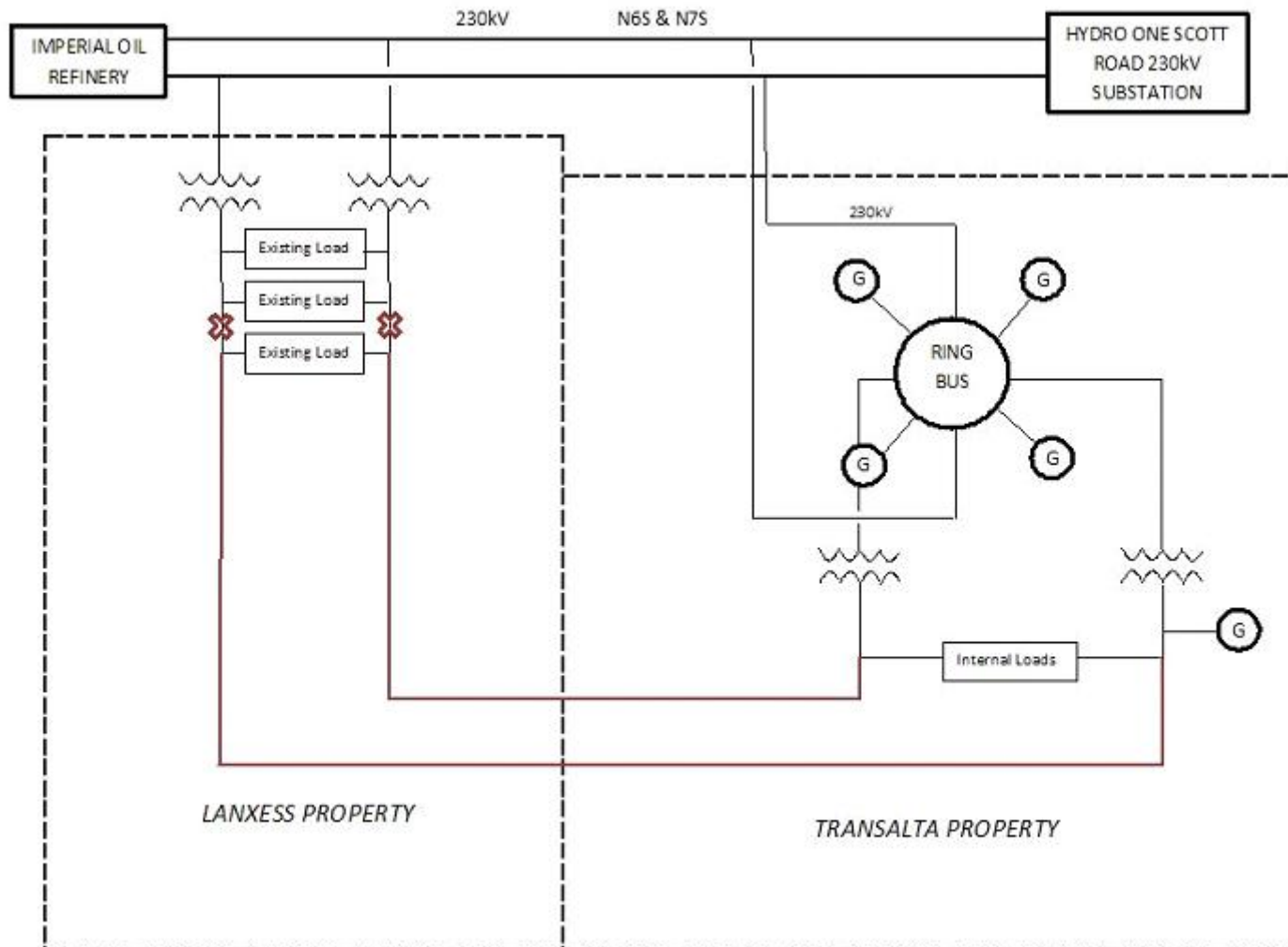
Enclosure(s)

Copy to: P. Smith (TransAlta)
A. Pye (OEB)

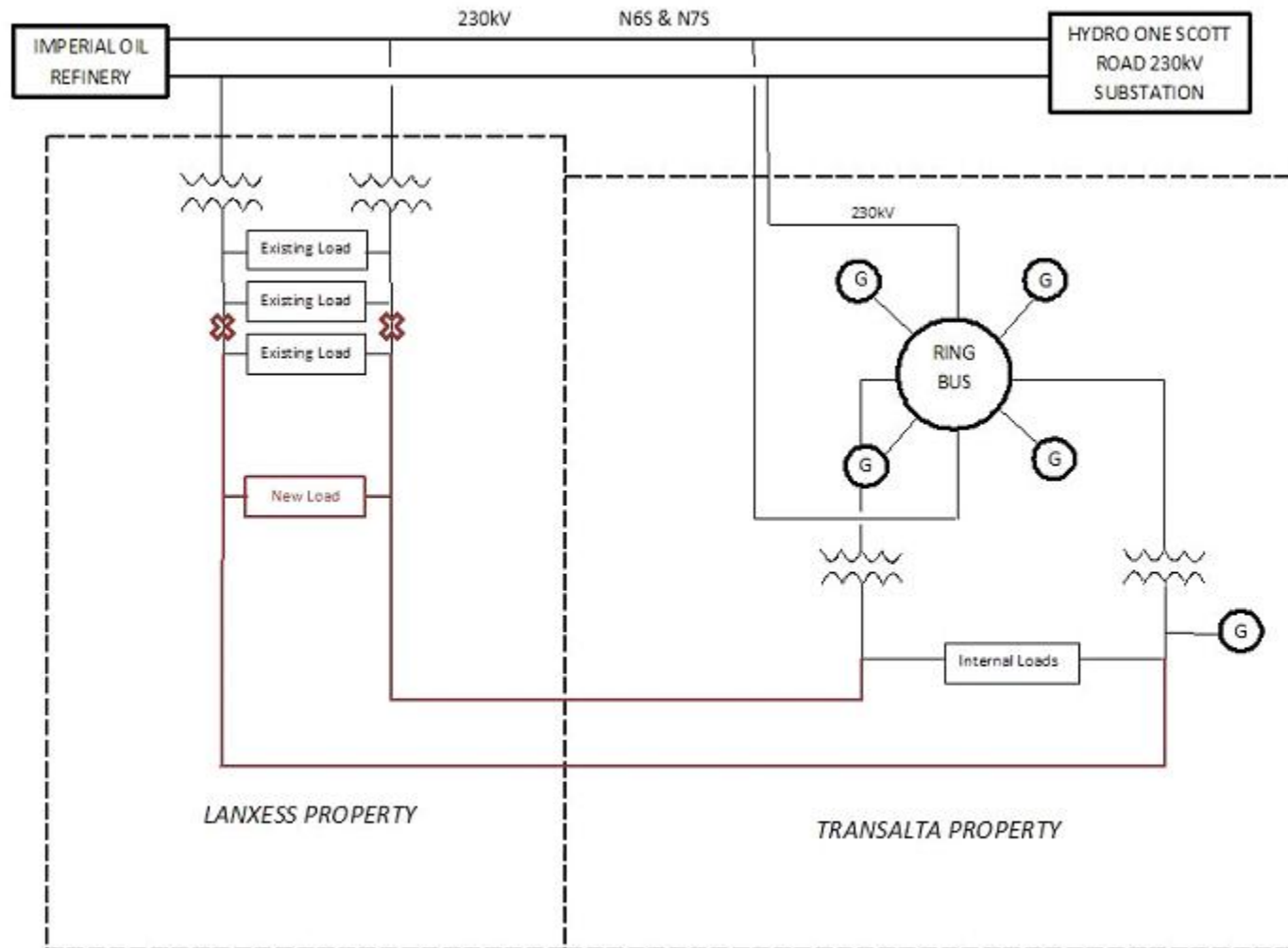
Schedule A



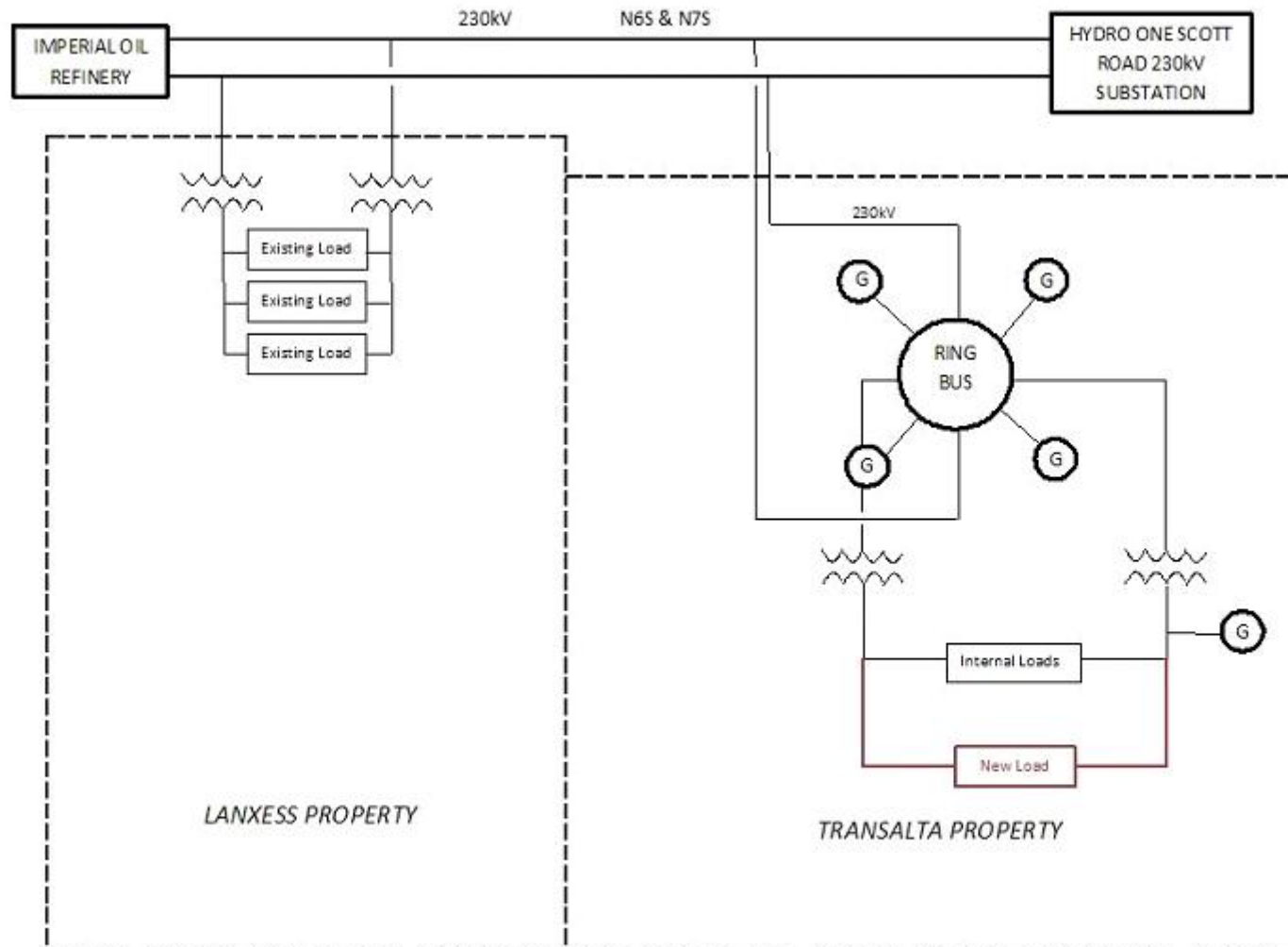
Schedule B



Schedule C



Schedule D



Ontario Energy Board

Preliminary Filing Requirements For a Notice of Proposal under Sections 80 and 81 of the Ontario Energy Board Act, 1998

Part I

1.1 Identification of the Parties

1.1.1 Applicant

Name of Applicant:	File No. (Board Use Only)	
TransAlta Generation Partnership ("TAGP")		
Address of Head Office: 110 – 12 Avenue SW Calgary, Alberta T2R 0G7	Telephone Number:	
	519-464-5975	
	Facsimile Number:	
	519-464-5832	
Name of Individual to Contact:	E-mail Address:	
	peter_smith@transalta.com	
	Telephone Number:	
Peter Smith Director, Commercial Management	Facsimile Number:	
	E-mail Address:	

1.1.2 Other Parties to the Transaction or Project

None. TAGP will construct, own and operate the proposed electricity distribution facilities from its Sarnia Regional Cogeneration Plant ("SRCP") to supply new and existing load at a site owned by LANXESS (formerly owned by Bayer) immediately north of, and contiguous with, the SRCP site, as well as potential new load on the SRCP site. No other parties are involved in the project.

If more than one attach list:

Name of Applicant:	(Board Use Only)	
Address of Head Office:	Telephone Number:	
	Facsimile Number:	
	E-mail Address:	
Name of Individual to Contact:	Telephone Number:	
	Facsimile Number:	
	E-mail Address:	

1.2 Relationship between Parties to the Transaction or Project

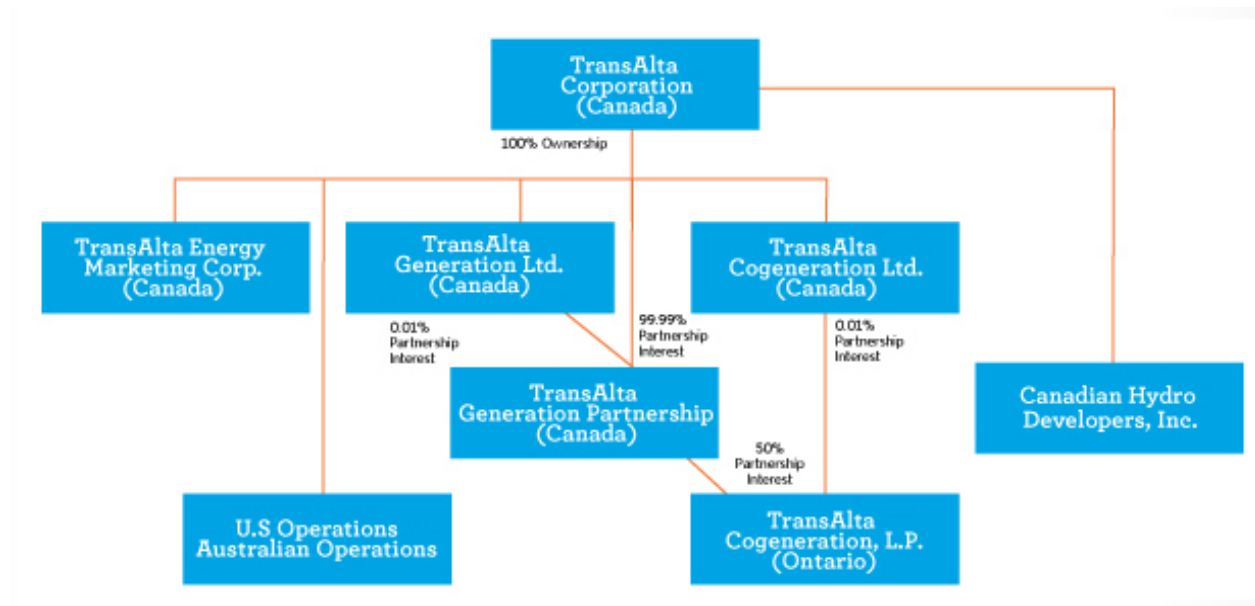
1.2.1 Attach a list of the officers, directors and shareholders of each of the parties to the proposed transaction or project.

Directors: Brett Gellner
 Maryse C. St.-Laurent

Officers: Brett Gellner – President
 David Koch – VP & Controller
 Maryse C. S.-Laurent – VP & Corporate Secretary
 Todd Stack – Treasurer

TAGP is wholly owned by TransAlta Corporation (“TAC”)

1.2.2 Attach a corporate chart describing the relationship between each of the parties to the proposed transaction or project and each of their respective affiliates.



1.3 Description of the Businesses of Each of the Parties

1.3.1 Attach a description of the business of each of the parties to the proposed transaction or project, including each of their affiliates licensed under the OEB Act to operate in Ontario for the generation, transmission, distribution, wholesaling or retailing of electricity or providing goods and services to companies licensed under the OEB Act in Ontario (“Electricity Sector Affiliates”).

TAGP is in the business of electricity generation in the Provinces of Alberta and Ontario. TAGP owns and operates a 506 MW capacity generation facility located in Sarnia which provides thermal energy to several industrial customers in the area. The plant sells power directly to the IESO and also trades power in the Ontario market and holds bilateral agreements with industrial customers.

TransAlta Cogeneration Limited Partnership (“TCLP”) is also in the business of electricity generation in the Province of Ontario. TCLP is 50% owner and operator of three cogeneration plants in Mississauga, Windsor and Ottawa. All three facilities supply electricity to the provincial grid via the IESO under long term contracts.

Canadian Hydro Developers Inc. (“CHD”) is a wholly owned subsidiary of TAC and **Canadian Renewable Energy Corp. (“CREC”)** is a wholly owned subsidiary of CHD. CHD and CREC own and operate a number of hydro and wind facilities in Ontario, Alberta and British Columbia (please see section 1.4.1 for locations).

TransAlta Energy Marketing Corp. (“TEMC”) is responsible for optimizing the value of TransAlta’s assets and for proprietary trading of energy products all over North America. Both TEMC and its US affiliate,

TransAlta Energy Marketing (U.S.) Inc. (“TEMUS”) are licensed electricity wholesalers in Ontario. Both TEMC and TEMUS conduct physical and financial trading of power in Alberta, PacNW, California, Desert SW, PJM, MISO, NEPOOL and Ontario. In addition, they also trade other products including Coal, Gas and Emissions.

For a list and description of all TransAlta generation facilities in Canada and elsewhere, please visit our website at www.transalta.com. The locations are also provided below under 1.4.1.

1.3.2 Attach a description of the geographic territory served by each of the parties to the proposed transaction or project, including each of their Electricity Sector Affiliates, if applicable, and the geographic location of all existing generation facilities.

Please refer to 1.3.1.

1.3.3 Attach a breakdown of the annual sales (in C\$, and in MWh) as of the most recent fiscal year end of the existing generation output among the IESO Administered Markets (“IAM”), bilateral contracts, and local distribution companies.

2011

IESO Market	1,110,037 MWh	C\$26.7million
Bilateral Contracts	746,995 MWh	C\$45.7million
LDC's	0 MWh	

1.3.4 Attach a list identifying all relevant Board licenses and approvals held by the parties to the proposed transaction or project and each of their Electricity Sector Affiliates, and any applications currently before the Board, or forthcoming. Please include all Board file numbers.

TransAlta Generation Partnership – Generator License EG-2009-0287
TransAlta Cogeneration LP – Generator License EG-2003-0184
Canadian Hydro Developers Inc. – Generator License EG-2003-0134
Canadian Renewable Energy Corp. – Generator License EG-2003-0013
TransAlta Energy Marketing Corp. – Wholesaler License EW-2011-0136
TransAlta Energy Marketing (U.S.) Inc. – Wholesaler License EW-2007-0601

1.4 Current Competitive Characteristics of the Market

1.4.1 Describe the generation capacity (in MW), within the Province of Ontario, of the parties to the proposed transaction or project, including each of their respective Electricity Sector Affiliates, prior to the completion of the proposed transaction or project.

<i>Facility</i>	<i>Capacity (MW)</i>
TAGP Sarnia Cogeneration Plant	506
TCLP Mississauga Cogeneration Facility	108
TCLP Ottawa Cogeneration Facility	68
TCLP Windsor Cogeneration Facility	68
CHD Hydro (run-run-of-river) plant operations in Appleton, Galetta, Misema, Moose Rapids and Ragged Chute	(combined cap) 14
CHD Melancthon Wind Facility	200
CREC Wolfe Island Wind Facility	198

1.4.2 Describe the generation market share based on actual MWh production as a percent of the Annual Primary Demand, within the Province of Ontario, of the parties to the proposed transaction or project, including each of their respective Electricity Sector Affiliates, prior to completion of the proposed transaction or project.

In 2011, TAGP and its Electricity Sector Affiliates generated 5055.3 GWh. This represents a 3.6% market share of the Annual Primary Demand (141.5 TWh).

1.5 Description of the Proposed Transaction or Project and Impact on Competition - General

1.5.1 Attach a detailed description of the proposed transaction or project, including geographic locations of proposed new transmission or distribution systems, or new generation facilities.

TAGP plans to construct electricity distribution facilities from its SRCP to supply new and existing load, both on the SRCP site and to a site owned by LANXESS immediately north of, and contiguous with, the SRCP site. A few configurations are possible and are set out in the Schedules to this Notice.

The SRCP came into service in 2003 on a site in Sarnia owned by Dow Chemical Canada Inc. ("Dow Chemical"). The SRCP consisted of integrating TAGP's newly constructed generation facilities with the existing generation purchased by TAGP that had been owned and operated by Dow Chemical for its industrial purposes. In addition to the existing generation at Dow, TAGP also purchased existing generation at the LANXESS site immediately to the north of the Dow Chemical site. Whereas the existing generation at the Dow Chemical site was integrated with the newly constructed generation facilities (i.e., they were electrically connected), there was no electrical connection to the generation on the LANXESS site. As part of the SRCP project, TAGP supplied bulk steam and power to Dow Chemical, LANXESS, Suncor and NOVA pursuant to long-term contracts, with the remainder of generation sold into the Ontario power market. Dow Chemical permanently closed its Sarnia operations in 2009, and sold the site to TAGP.

Schedule “A” to this Notice provides a simplified drawing of the existing facilities on the TAGP and LANXESS properties. TAGP continues to own the older, existing generation on both the former Dow Chemical site and the LANXESS site. Schedule “B” provides a simplified drawing of the proposed new distribution facilities to be constructed by TAGP.

In addition, TAGP has an opportunity to supply additional new load (i.e., a new corporate entity that is unrelated to LANXESS, TransAlta or Dow Chemical) which may locate on either the LANXESS site or the SRCP site. Schedule “C” describes the electrical configuration where new load locating on the LANXESS site. Schedule “D” describes the electrical configuration for new load locating on the SRCP site.

The distribution facilities will consist of an approximately 2km long 13.8kV overhead pole line.

1.5.2 Describe the generation capacity (in MW), within the Province of Ontario, of the parties to the proposed transaction or project, including each of their respective Electricity Sector Affiliates, after the completion of the proposed transaction or project.

Unchanged.

1.5.3 Describe the generation market share based on anticipated MWh production as a percentage of the Annual Primary Demand, within the Province of Ontario, of the parties to the proposed transaction or project, including each of their respective Electricity Sector Affiliates, after the completion of the proposed transaction or project.

Unchanged. See 1.4.2.

1.5.4 Attach a short description of the impact, if any, of the proposed transaction or project on competition. If there will be no impact on competition, please state the reasons. Cite specifically the impacts of the proposal on customer choice regarding generation, energy wholesalers, and energy retailers.

The proposed project will have no impact on competition, nor customer choice regarding generation, energy wholesalers or energy retailers. The impetus for the distribution facilities is to meet a contractual commitment to supply LANXESS in a way that is more economically and environmentally efficient than refurbishing old generation on the LANXESS site that TAGP owns. It would allow for increased expansion at the LANXESS site (through increased LANXESS load or the addition of a new business on vacant land at the LANXESS site without having to expand LANXESS’ transformer connected to the Hydro One Networks Inc. system). It would also allow TAGP to “replace” the load that was lost when Dow Chemical closed its Sarnia operations in 2009. All of this, TAGP submits, furthers the first two statutory objectives (electricity) of the OEB, namely: (a) to protect the interests of consumers (i.e., LANXESS and new load) with respect to the pricing, adequacy, reliability and quality of electricity service; and (b) to promote economic and cost efficiency in the generation, transmission and distribution of electricity. Supplying LANXESS and a new load via distribution facilities connected to the SRCP would provide for a reliable, cost-effective and economically efficient means of securing electricity for these consumers. There would not need to be any new public utility connection assets built with the costs borne by LANXESS, the new load or other ratepayers. Under any of the electrical configurations shown in Schedules “B”, “C” or “D”, the LANXESS load and new load would continue to be supplied in the event that the SRCP went off-line.

Carrying out the proposed project will not result in any consolidation in the utility sector or generation sector, nor will it provide a greater market share for any current market participant. Consequently, there is no impact on competition in the Ontario power market as a result of the project.

1.5.5 Provide confirmation that the proposed transaction or project will have no impact on open access to the transmission or distribution system of the parties or their affiliates. If open access will be affected explain how and why.

Proponent does not own any existing open access distribution. The project will not affect any generator or load customer access (it represents access they would not otherwise have).

1.6 Other Information

1.6.1 Attach confirmation that the parties to the proposed transaction or project are in compliance with all license and code requirements, and will continue to be in compliance after completion of the proposed transaction or project.

TAGP confirms that it is in compliance with all license and code requirements and will continue to be in compliance after completion of the proposed project. Note that TAGP is currently seeking clarification from the Board as to whether a distribution licence is required in order to supply power to the existing load at the LANXESS site and new load on the LANXESS site or SRCP site.

PART II – SECTION 80 OF THE ACT—TRANSMITTERS AND DISTRIBUTORS ACQUIRING AN INTEREST IN GENERATORS OR CONSTRUCTING A GENERATION FACILITY

All applicants filing a Notice of Proposal under section 80 of the Act must complete and file the information requested in Part II.

As TAGP is filing a Notice of Proposal under section 81 of the OEB Act, it has not provided information requested in Part II.

Part III – SECTION 81 OF THE ACT—GENERATORS ACQUIRING AN INTEREST IN OR CONSTRUCTING A TRANSMISSION OR DISTRIBUTION SYSTEM

3.1 Effect on Competition

All applicants filing a Notice of Proposal under section 81 of the Act must complete and file the information requested in Part III.

3.1.1 Provide a description of the transmission or distribution system being acquired or constructed.

See response to 1.5.1.

3.1.2 Provide details on whether the generation facilities owned by the acquiring company are or will be directly connected to the transmission or distribution system being acquired or constructed.

Yes, the existing generating facilities (SRCP) will be directly connected to the distribution system being constructed. See response to 1.5.1.

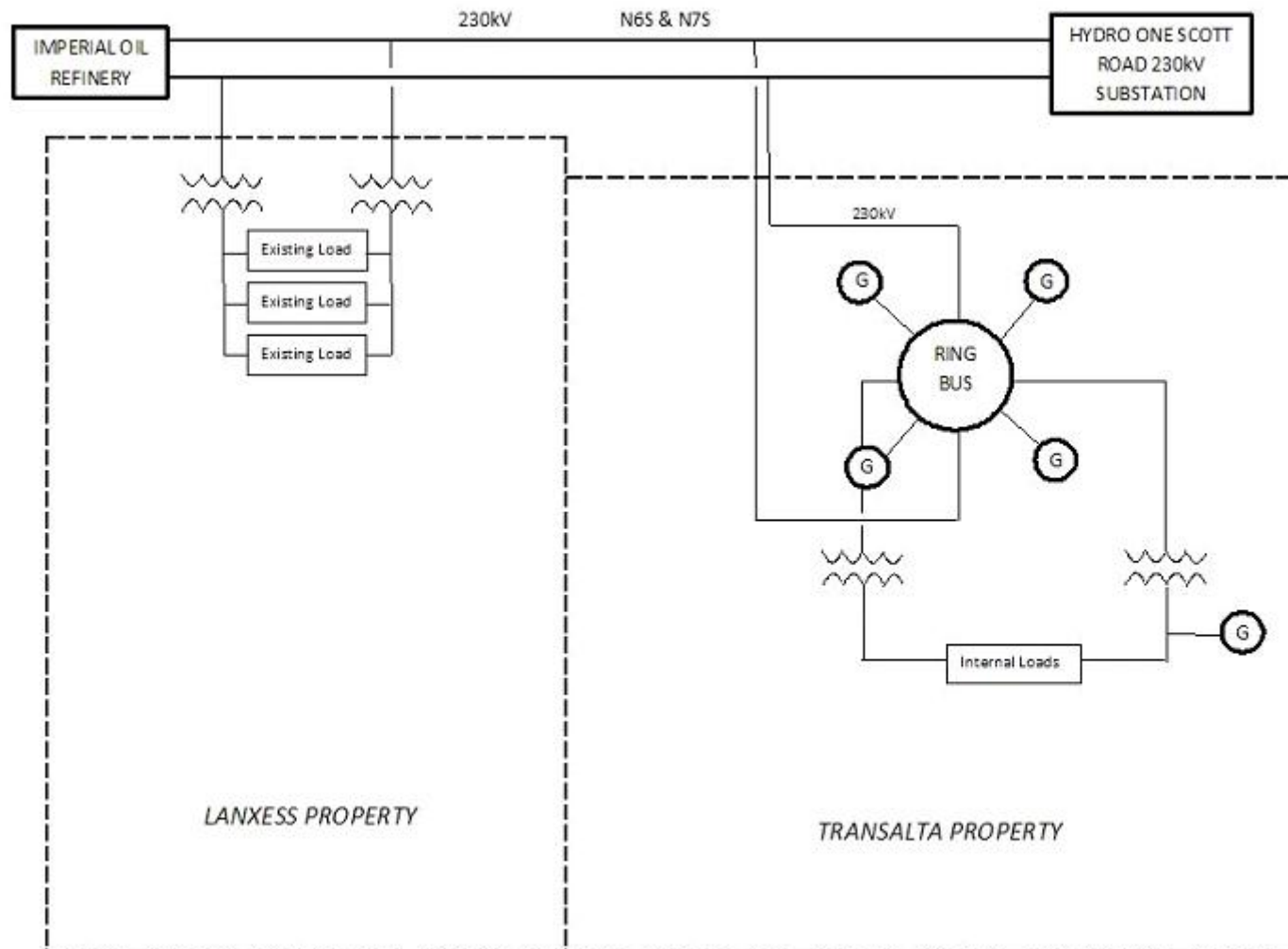
3.1.3 Provide details of whether the generation facility is expected to serve a “load pocket”, or is likely to be “constrained on” due to transmission constraints.

The existing SRCP generation facility has a 506 MW nameplate capacity. TAGP only expects to serve between 15MW-50MW of load with its proposed distribution facilities (with expansion, the load could reach a maximum of 80MW). This proposed load is actually smaller than that required from the SRCP by Dow Chemical when the SRCP first came into service and Dow Chemical was still in operation (Dow Chemical 's peak load was approximately 100MW).

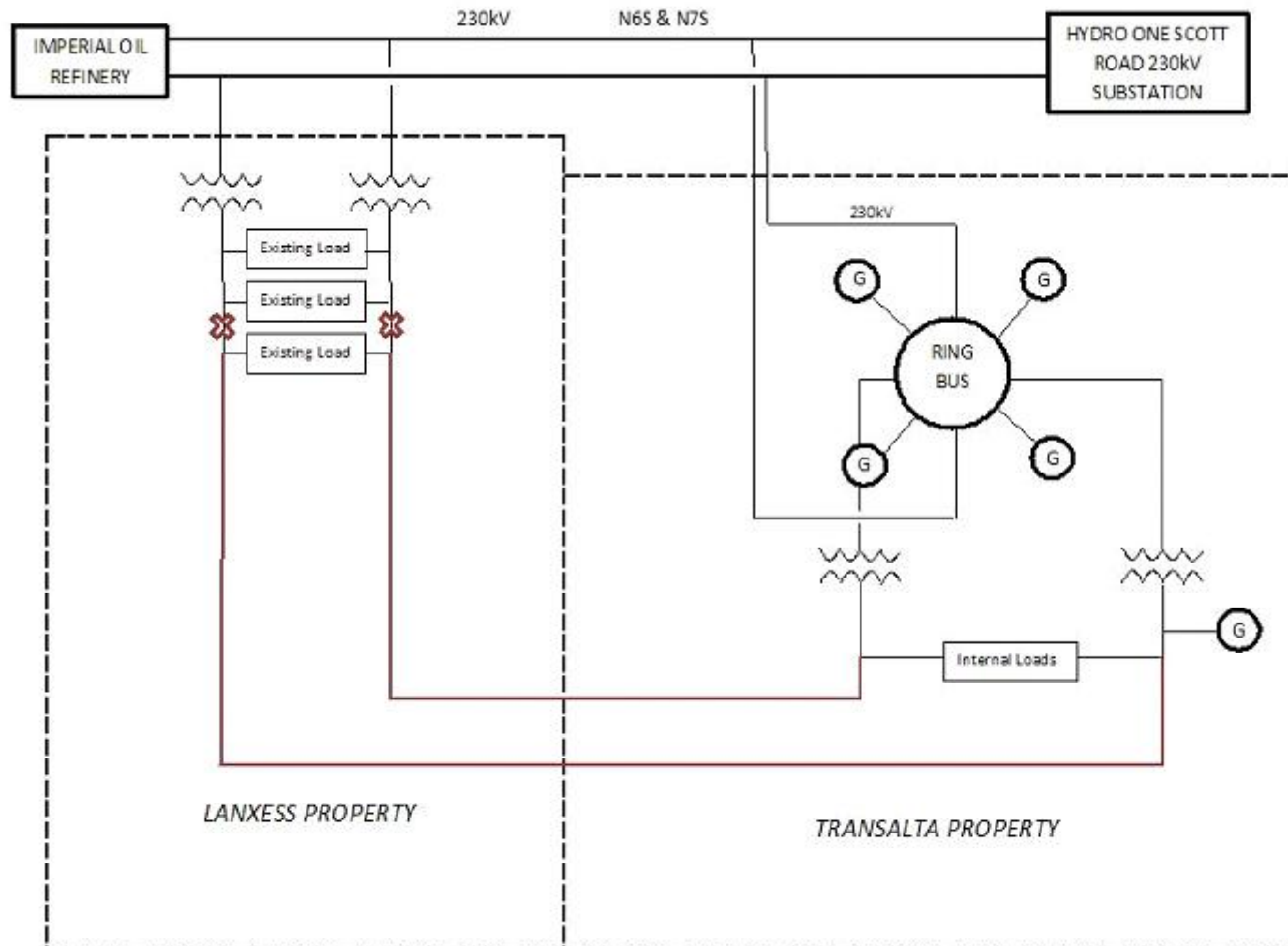
3.1.4 Provide details on whether the generation facilities are expected to sign a “must run” contract with the IESO.

TAGP does not expect to sign a must-run contract with the IESO.

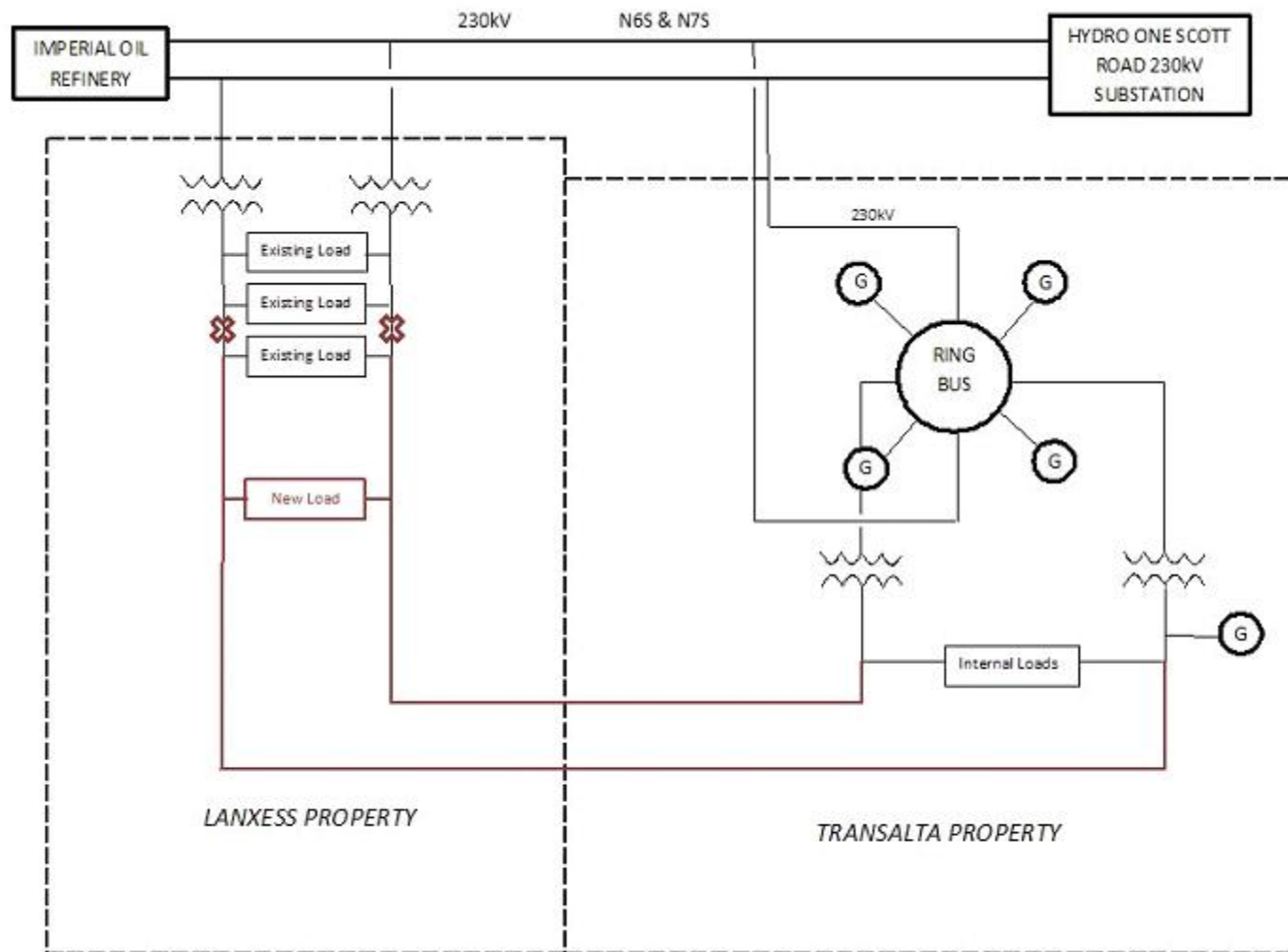
Schedule A



Schedule B



Schedule C



Schedule D

