

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Electricity Act*, 1998, S.O. 1998, c. 35
(the “**Electricity Act**” or “**Act**”);

AND IN THE MATTER OF an Application by Capital Power Corporation, Thorold CoGen L.P., Portlands Energy Centre L.P. dba Atura Power, St. Clair Power L.P., TransAlta (SC) L.P. (collectively, the “**NQS Generation Group**” or “**Applicants**”) for Review of Amendments to the Independent Electricity System Operator Market Rules

**IESO’S WRITTEN SUBMISSIONS IN ADVANCE OF
NOVEMBER 26, 2024 PRE-HEARING CONFERENCE**

November 22, 2024

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Glenn Zacher LSO# 43625P
gzacher@stikeman.com
Tel: 416-869-5688

Patrick Duffy LSO#501875
pduffy@stikeman.com
Tel: 416-869-5688

Lesley Mercer LSO#54491E
lmerc@stikeman.com
Tel: 416-869-5859
Fax: 416-947-0866

Lawyers for the IESO

OVERVIEW

1. The Applicants allege that it is unjustly discriminatory for the IESO to make market rule amendments implementing the IESO's Market Renewal Program ("**MRP**") "prior to resolving contractual amendments to the [Applicants' Clean Energy Supply ("**CES**") Agreements" with the former Ontario Power Authority (the "**OPA**").¹

2. The Applicants' allegations are contract claims, specifically, that the IESO's proposed Term Sheet amendments to their contracts are not sufficient to mitigate the impacts of the MRP rule amendments ("**MRP Amendments**"). These contract claims exceed the bounds of a market rule amendment review under section 33(9) of the *Electricity Act*,² which is limited to adjudicating the impact of market rule amendments on *market participants*, not the impact of market rule amendments on the commercial interests of *out-of-market contract counterparties*.

3. The Applicants' allegation that the IESO must defer making market design changes until the IESO first satisfies the Applicants' contract amendment demands is also at odds with what the Applicants *agreed* to in their contracts. The contracts anticipate the MRP Amendments and provide that in the event of such amendments, the parties will amend the contracts to mitigate the impacts of MRP on the Applicants' contractual revenues and other contractual rights and obligations. Failing agreement on contract amendments, the contracts provide that the parties have recourse to arbitration.

4. The Applicants' allegations invert their agreement to make contract amendments consequential on market rule amendments and, instead, make market rule amendments contingent on satisfying the Applicants' contract amendment demands. This makes the Market Renewal Program beholden to the Applicants' commercial interests.

5. The Application also proposes to convert the Board's review of market rule amendments into a forum for litigating contract claims. It sweeps into a *market rule amendment* review, a review by the Board of *out-of-market commercial negotiations* together with the Applicants' proposed assessment of IESO analysis and decision-making processes relating to these contract amendment negotiations and the MRP Amendments' impact on the Applicants' contractual rights

¹ Application dated November 7, 2014 (the "**Application**"), paragraph 31.

² *Electricity Act*, 1998, SO 1998, c 15, Sch A (the "**Electricity Act**").

and obligations. These matters are irrelevant and out of scope for a review under section 33(9) of the *Electricity Act*.

6. The IESO respectfully requests that the Board make a threshold determination clarifying what matters are relevant and within the scope of this section 33(9) review. This will assist in determining the issues, evidence scope, and hearing procedure, as well as making a ruling on the Applicants' request for further document discovery. Clarifying relevance and scope will also ensure that this proceeding is conducted efficiently and in accordance with the lawful parameters of the 120-day review prescribed by section 33(9) of the *Electricity Act*.

7. The balance of this submission briefly addresses the principles that govern a section 33(9) review, the pertinent facts relating to the Applicants' CES contracts, and the nature of the contract claims advanced by the Applicants in their Application. It also responds to the Applicants' request for further document production.

LAW

8. The Board's review of market rule amendments is governed by section 33(9) of the *Electricity Act*, which limits the grounds for review to a determination of whether the market rule amendments are: (i) inconsistent with the purposes of the *Electricity Act*, or (ii) unjustly discriminate against a market participant or class of market participants.

9. There are important parameters and principles that govern the Board's review under section 33(9). First, the two grounds for review prescribed by section 33(9) are the only grounds upon which market rule amendments may be reviewed. The Board has described section 33(9) as a "jurisdiction limiting" clause that precludes a broader review of the IESO's rulemaking processes. In the earlier *3x Ramp Rate* review, the Board specifically rejected the applicant's proposed review of the IESO's rule-making processes and ordered all such evidence that the applicant sought to rely upon be struck from the record.³

10. Second, section 33 provides for a review of an IESO decision to make market rule amendments; it does not provide for a first instance proceeding. Relatedly, section 33 provides

³ EB-2007-0040, Decision and Order dated April 10, 2007 and as corrected on April 12, 2007 ("**3x Ramp Rate Decision**"), p. 10 and Appendix A, pp. 87-88, 90-91, IESO Document and Authorities Brief for November 26, 2024 Pre-Hearing Conference (the "**IESO Document Brief**"), Tab 1; EB-2019-0242, Decision and Order dated January 23, 2020 ("**TCA Decision**"), IESO Document Brief, Tab 2.

for an expedited 120-day review. The Board has confirmed that this legislated timeline is consistent with the limited scope of the Board's review under section 33(9).⁴

11. Lastly, the onus is on the applicant to demonstrate that the impugned market rule amendments are inconsistent with the purposes of the *Electricity Act* or is unjustly discriminatory. The IESO has no legal or evidentiary burden.⁵

ARGUMENT

CES Contracts

12. The Applicants are parties to CES contracts with the former OPA.⁶ The contracts anticipate further market design changes, including the MRP Amendments, and the Applicants and the OPA agreed, including in sections 1.7 and 1.8 of the contracts, that in the event of such market rule amendments, they would make specific amendments to the contracts and, failing agreement on amendments, the parties have recourse to arbitration. A copy of the of CES contract for the Napanee Generating Station, which is owned by the Applicant Portlands Energy Centre L.P.⁷ is included at Tab 3 of the IESO Document Brief.

13. Sections 1.7 to 1.8 of the CES and CHP contracts articulate the governing principles that apply to the amendments that the Applicants and the OPA agreed to make to the contracts in the event of market design changes, including the MRP Amendments:

- (a) All references to Hourly Ontario Energy Price ("**HOEP**") will be replaced with an hourly electricity price established in the Day-Ahead Market ("**DAM**").
- (b) The imputed start-up and shut-down hours shall continue but shall be modified by using information or prices made available in the DAM to deem an operating pattern for generation facilities that maximizes deemed operation during times of positive imputed net revenue and minimizes deemed operation during times of negative imputed net revenue.

⁴ 3x Ramp Rate Decision, Appendix A, pp. 87-88, IESO Document Brief, Tab 1.

⁵ 3x Ramp Rate Decision, p. 18; TCA Decision, p. 8, IESO Document Brief Tab 1.

⁶ The applicant Northland is an exception. It is party to a Combined Heat and Power (**CHP**) agreement with the IESO; however, the contract has generally the same deemed dispatch or imputed revenue structure as the other parties' CES contracts, and the terms of the contracts are generally similar. All references herein to the CES contracts include Northland's CHP contract.

⁷ This CES contract is publicly available. The Applicants' other CES contracts and amendments are generally confidential.

- (c) Start-up costs shall continue to be imputed for only one start-up per day.
- (d) Suppliers' generating facilities shall continue to be deemed to commence and cease operation based on imputed start-up and shut-down hours.
- (e) Any amendments to accommodate the opening of DAM shall be made on the basis that the economic effect of such amendments reflects the "Supplier's economics" as contemplated under the contract.

14. At the outset of the IESO's MRP market rule amendment process, the IESO commenced a separate and parallel process for negotiating contract amendments with contract counterparties, including a specific process for negotiating amendments with CES counterparties. The IESO initiated this separate contract amendment process in 2019 by issuing the "*IESO's Approach to Amending Market Participant Contracts in Response to the Market Renewal Program*", wherein the IESO stated:

In an effort to be transparent to all stakeholders, IESO contract management is prepared and publish this document and certain other nonconfidential information relating to the contractual implications of the market renewal program (MRP). However any potential contractual implications or required contractual amendments will be determined through a process that is separate and distinct from MRP design. Any contractual implications or required contractual amendments will be addressed with the applicable contract counterparties, as required, by IESO contract management.⁸ (Emphasis added)

15. Over the past five years, IESO contract management has been negotiating with CES contract holders, including the Applicants. The IESO has proposed Term Sheet amendments and received feedback from the Applicants on its proposed amendments. The IESO and the Applicants have not concluded contract amendments, but contract amendment negotiations remain ongoing. Copies of proposed Term Sheet amendments the IESO issued in 2019 and 2024 are included at Tabs 5-7 of the IESO Document Brief.

⁸ *IESO's Approach to Amending Market Participant Contracts in Response to the Market Renewal Program*, IESO Document Brief, Tab 4.

Applicants Market Rule Amendment Review

16. The IESO Technical Panel voted unanimously on September 10, 2024 to approve the MRP Amendments⁹ and the IESO's Board of Directors voted unanimously to approve the MRP Amendments on October 18, 2024.

17. The Applicants issued their Application to revoke the MRP Amendments on November 7, 2024, despite their ongoing contract amendment negotiations with the IESO. The Applicants allege in the Application that they were “left with no option”.¹⁰ This is simply not the case. The Applicants are entitled to negotiate amendments to their contracts, failing which they have recourse to binding arbitration. Continuing contract amendment negotiations or arbitration are the lawful and exclusive forum for the Applicants to pursue contract amendments to mitigate and remedy any adverse impacts resulting from MRP. The allegation that the Applicants had no option but to commence a parallel OEB proceeding to litigate their contract claims is not correct.

18. The heart of the Applicants' allegations is that the IESO's proposed Term Sheet amendments do not satisfy the Applicants' contract demands and therefore “[t]he MRP Amendments, when considered *together with the IESO's proposed Term Sheet amendments*, are unjustly discriminatory and inconsistent with Subsections 1(d), (g) and (i) of the *Electricity Act*”. Indeed, the Applicants go so far as to allege that there are alternatives to the Applicants' form of CES and CHP agreements – i.e., deemed dispatch models – and that consideration of alternative contract models, in addition to the IESO's proposed Term Sheet amendments are within the scope of this proceeding.¹¹ It is a central contradiction of the Application that it demands that the Board review and assess the parties' contract amendment negotiations, including the IESO's proposed Term Sheet amendments, but the Applicants also say that the Board has no jurisdiction “to weigh in on matters better addressed through contractual negotiations”.¹²

19. The Applicants' allegations of unjust discrimination are directly premised on their position that the IESO should not be permitted to make market rule amendments unless it first negotiates acceptable contract amendments with the Applicants:

31. The effect of implementing the MRP Amendments without first addressing the unjust treatment of the NQS Generation Group is

⁹ Technical Panel Memo Re: Market Renewal – Final Alignment Batch: MR-00481-R00-R013 dated September 3, 2024, IESO Document Brief, Tab 8.

¹⁰ Application, paragraph 28.

¹¹ Application, paragraphs 24 and 25.

¹² See Applicants' counsel's letter dated November 14, 2024.

to unjustly discriminate against a market participant or class of market participants, particularly... **[i]mplementation of the MRP Amendments prior to resolving contractual amendments to the Deemed Dispatch Agreements** results in an unequal bargaining position in favour of the IESO.¹³ (Emphasis added)

20. The foregoing statement is patently inconsistent with what the Applicants agreed to in their CES and CHP contracts. The Applicants agreed that contract amendments would be made consequent upon and would follow market rule amendments, not that market rule amendments would be contingent upon first addressing the Applicants' contractual interests.

21. The Applicants' claims of inconsistency with the purposes of the *Electricity Act* are likewise based on their position that the MRP Amendments will offend certain purposes of the *Act*, unless the Applicants' contracts are amended to their satisfaction:

The **use of deemed dispatch, or imputed net revenue, model in contractual arrangements following implementation of the MRP Amendments** is inconsistent with Subsections 1 (d), (g) and (i) of the *Electricity Act, 1998* and fails to offset the discriminatory financial harm imposed by the MRP Amendments...¹⁴ (Emphasis added)

22. In short, the Application circumvents the agreement that the Applicants made in their CES contracts and it seeks to preemptively enjoin the MRP Amendments by requesting that the Board revoke the MRP Amendments unless the IESO first satisfies the Applicants' contract amendment demands.

Applicants' Request for Document Discovery

23. The Applicants seek production of documents going back five years or more relating to:

- the IESO's analysis and decision-making processes relating to negotiating contract amendments with the Applicants
- the IESO's analysis and decision-making processes relating to the impact of various MRP Amendments on the Applicants' contracts
- review of the design of the Applicants' current deemed dispatch contract model as compared to contract models used in other competitive wholesale markets

¹³ Application, paragraph 31.

¹⁴ Application, paragraph 33.

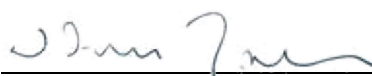
24. The Board determined in the *3x Ramp Rate* decision that the IESO's internal and external rule amendment processes are not relevant to a market rule amendment review under section 33(9) and that the Board is not a parallel Divisional Court that has the authority to assess matters of procedural fairness or other process issues. The Applicants' request for documents relating to the IESO's analysis and decision-making processes relating to contract amendments and/or MRP rule amendment processes should accordingly be denied.

25. A market rule review under section 33(9) also does not extend to reviewing out-of-market contract processes. The two prescribed criteria under section 33(9) address how a market rule amendment, not an out-of-market contract, interacts with the purposes of the *Electricity Act*. It likewise addresses how a market rule amendment may impact a market participant or class of market participants, not how it may impact the commercial interests of a contract counterparty. The Applicants' request for documents relating to the Applicants' out-of-market contracts and out-of-market contract amendment negotiations should also be denied.

26. The IESO has more specifically addressed each of the categories of documents that the Applicants requested in Schedule A to the Application in the table attached hereto as Appendix "A".

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of November, 2024.

November 22, 2024



Stikeman Elliott, LLP
Lawyers for the IESO.

Appendix A – Applicants Information Requests

Section of Application, Schedule A	Information Request	Applicants Position	IESO Position
<i>SECTION 1 - Information relating to the impact of MRP on the Applicants, including all materials, analysis, correspondence, and records related to:</i>			
1(a)	how the IESO’s stated intention of not extracting financial value from contracts with the Applicants was considered, planned, and executed under MRP; ¹	This will allow the OEB, the Applicants and all other parties to better understand whether the IESO’s stated intention throughout the MRP process of not extracting financial value from contracted assets was adhered to internally and in public correspondence through the entire stakeholdering process, as well as through support from internal analysis.	<p>The request seeks documents related to the IESO strategy in contractual amendment discussions between the IESO and the Applicants. These documents are outside the scope of a section 33 review.</p> <p>The Applicants’ allegation of unjust discrimination is premised, as stated at paragraph 31 of the Application, on “[t]he effect of implementing the MRP Amendments without <u>first</u> addressing the unjust treatment of the Applicants” and, in particular, the assertion that the “[i]mplementation of the MRP Amendments prior to resolving contractual amendments to the Deemed Dispatch Agreements results in an unequal bargaining position in favour of the IESO.”</p> <p>The Applicants’ position is premised upon an inaccurate representation of the terms of the Deemed Dispatch Agreements. For example, sections 1.7 and 1.8 of the <u>CES Contracts</u> (which are referenced at paragraph 17 of the Application) contain mechanisms for the amendment of the contract in response to changes in the applicable price signals in the IESO Market Rules. As noted at paragraph 17 of the Application, the IESO <u>published</u> a term sheet with proposed amendments to the CES Contracts in 2019 and</p>

¹ The complete passage from the extract referenced by the Applicants states: "It is not an objective of the IESO to extract financial value from contracts by way of the MRP. This has been expressed by the IESO to all stakeholders **throughout the discussions related to contract implication from the MRP**. The IESO intends to maintain the allocation of risk and reward that has been **established by the contracts** to the greatest extent possible, including, where applicable, the impacts of market rule changes. The IESO’s focus will be on making **principled amendments based on the provisions of the applicable contract** and not on achieving a particular commercial outcome" (Emphasis added): <https://www.ieso.ca/-/media/Files/IESO/Document-Library/market-renewal/IESO-Approach-to-implement-MRP.pdf>

Section of Application, Schedule A	Information Request	Applicants Position	IESO Position
			<p>updated the proposal twice in 2024. If the members of the Applicants do not want to accept the terms proposed by the IESO (as other generators have done), they have a right to have the necessary contractual amendments adjudicated by way of arbitration in accordance with the arbitration provisions of the CES Contract. A copy of the Napanee Generating Station CES Contract and the IESO’s proposed term sheets are included at Tabs 3 and 5-7 of the IESO Document Brief.</p> <p>The same general contractual structure is utilized throughout the Deemed Dispatch Agreements.</p> <p>The Deemed Dispatch Agreements provide for a clear order of operations – contract amendments are to follow, and not impede, the evolution of the IESO market – and include an arbitration mechanism to guard against any inequalities in the parties’ bargaining position. The members of the Applicants agreed to this structure when they entered into the Deemed Dispatch Agreements.</p> <p>If there is a “broken link” between the MRP Amendments and the Deemed Dispatch Agreements – as the Applicants alleges at paragraph 21 of the Application – which cannot be resolved by way of negotiations, then the appropriate forum to resolve that disagreement is in an arbitration under the applicable Deemed Dispatch Agreement.</p> <p>As the Applicants acknowledge in their letter of November 14, 2024, the Board has no jurisdiction “to weigh in on matters better addressed through contractual negotiations.” This begs the question as to why the Board should be ordering the disclosure of, and admitting evidence related to, contractual matters that cannot be</p>

Section of Application, Schedule A	Information Request	Applicants Position	IESO Position
			addressed by the Board in a section 33 review.
1(b)	how the IESO’s stated intention of maintaining the allocation of risk and reward that has been established by contracts with the Applicants to the greatest extent possible under MRP was considered, planned, and executed;	The OEB, the Applicants and all other parties need to understand whether the IESO undertook a detailed analysis on the financial impact that MRP may have on some or all Market Participants and if undertaken, any such financial impacts identified were properly considered, as were potential remedies such as revisions to the contemplated MRP Amendments and/or contract amendments or other considerations. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	The request seeks documents related to the contracts and contractual amendment discussions between the IESO and the Applicants. These documents are outside the scope of a section 33 review as stated in the response to 1(a).
1(c)	how the IESO compensates market participants under MRP for facility startup costs previously recovered in the RT-GCG program;	The OEB, the Applicants and all other parties need to understand if the IESO undertook a detailed analysis on the reduction in revenue to the Applicants as a direct result of the elimination of the RT-GCG program. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	<p>The Applicants asserts that the requested information is necessary to determine if the IESO undertook a “detailed analysis” of the reduction in revenue to the Applicants as a direct result of the elimination of the RT-GCG program. This pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.</p> <p>Further, the Applicants bear the burden to lead evidence in a section 33 review to prove that the MRP Amendments are unjustly discriminatory. The test is not whether “the IESO considered if its proposed MRP Amendments were unjustly discriminatory” in its</p>

Section of Application, Schedule A	Information Request	Applicants Position	IESO Position
			<p>rule-making process.</p> <p>In any event, the MRP Amendments, along with the underlying design documents, have been published and are available to the Applicants to undertake their own analysis as to how market participants are compensated for facility startup costs under the MRP Amendments.</p>
1(d)	how the IESO envisioned, planned, and executed the integration of the deemed dispatch model into MRP, including the economics, risk, and scheduling aspects of the deemed dispatch model with existing contracts;	The OEB, the Applicants and all other parties need to understand how the IESO considered, analyzed and modelled the potential financial risk for the Applicants and any internal analysis on remedies for the financial risk as a result of the deemed dispatch model. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	See response to 1(c). The requests pertain to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.
1(e), (f)	<p>how the IESO considered, planned, and executed on the lack of transparency in market pricing and scheduling signals under MRP, since a lower incremental energy offer will not necessarily guarantee dispatch;</p> <p>how the IESO intends to address the lack of transparency in (e);</p>	The OEB, the Applicants and all other parties need to transparently understand how the IESO modelled the commitment and dispatch of the Applicants under the current Market Rules compared with under the MRP Amendments and whether this was considered throughout the MRP process. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	See response to 1(c). The request pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.

Section of Application, Schedule A	Information Request	Applicants Position	IESO Position
1(g)	Annual savings from changes to in the design and settlement of commitment programs for NQS generators;	The OEB, the Applicants and all other parties need to understand if the IESO undertook detailed modelling on the revenue impact to the Applicants from changes to the commitment programs and whether these revenue impacts were intended to be addressed by the IESO through other market design changes or contract amendments. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	See response to 1(c). The request pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.
1(h)	The dispatch and commitment of NQS generators in the energy market under the current Market Rules compared to the MRP Amendments;	The OEB, the Applicants and all other parties need to review any analysis by the IESO to determine whether it considered how often/little various members of the Applicants would be committed under the current Market Rules compared to the MRP Amendments. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	See response to 1(c). The request pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.
1(i)	The impact of financial settlement using Make Whole Payments (MWPs) compared to Congestion Management Settlement Credits (CMSCs) for NQS generators	The OEB, the Applicants and all other parties need to understand if the IESO undertook detailed modelling on the financial impact to the Applicants from the elimination of CMSC and replacement with MWPs. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	See response to 1(c). The request pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.

Section of Application, Schedule A	Information Request	Applicants Position	IESO Position
1(j)	Review of the design of the current deemed dispatch contracts with NQS generators compared to contracts with similar NQS assets in other competitive wholesale markets;	As the MRP Amendments are modelled after market design elements in other competitive wholesale markets we need to understand whether the IESO considered the unique design of the deemed dispatch contracts in Ontario compared to how other NQS assets are contracted in other competitive wholesale markets. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	<p>See response to 1(a) and (c).</p> <p>The request seeks documents related to the contractual amendment discussions between the IESO and the Applicants as well as a comparison of the relevant contractual provisions “with similar NQS assets in other competitive wholesale markets.” These documents are outside the scope of a section 33 review. The test in a section 33 review is not whether the IESO term sheets are comparable to contracts in other jurisdictions.</p> <p>As described in the additional context, the request also pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.</p>
1(k)	The number of instances when assets – NQS and other non-NQS assets – will be dispatched out of economic merit based on incremental energy offers;	The OEB, the Applicants and all other parties need to understand whether the IESO considered and analyzed how NQS assets and other non-NQS assets will be dispatched out of economic merit under the MRP Amendments to better understand the potential for financial harm from NQS assets being displaced by seemingly less economic assets. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	See response to 1(c). The request pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.

Section of Application, Schedule A	Information Request	Applicants Position	IESO Position
1(l)	Pricing analysis in the various energy zones under the current Market Rules compared to the MRP Amendments;	There is limited-to-no pricing transparency as a result of the MRP Amendments and this introduces the potential for further financial harm to NQS Generators compared to the current market. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	See response to 1(c). The request pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.
1(m)	Impact on historical imputed production by moving to a single trigger startup (i.e. if generators were re-settled in the past using a single trigger, how would have imputed production changed);	No further comments. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	See response to 1(c). The request pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.
1(n)	The potential decrease to system cost by allowing multiple offer windows in the day ahead (MRP is currently one and done, with little transparency).	No further comments. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	See response to 1(c). The request pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.

Section of Application, Schedule A	Information Request	Applicants Position	IESO Position
<i>SECTION 2 - Information relating to the consistency of the MRP Amendments with the purposes of the Electricity Act, including all materials, analysis, correspondence, and records related to:</i>			
2(a)	how the MRP Amendments impact the scheduling and dispatch of market participants;	The OEB, the Applicants and all other parties need to understand how the IESO analyzed and modelled the commitment and dispatch of resources under MRP Amendments compared to the current Market Rules to determine whether the IESO properly considered the financial harm of the MRP Amendments. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	See response to 1(c). The request pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.
2(b)	Updates to the original benefits case for MRP and the current savings that are expected from the MRP Amendments;	The OEB, the Applicants and all other parties need to understand if the savings from the original benefits case are largely coming from reduced revenue to the Applicants compared to other Market Participants (or other means of efficiency) and whether the IESO properly analyzed or considered this outcome. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	See response to 1(c). The request pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review. Further, the IESO has published a business case for MRP which has been made publicly available.
2(c)	Updates to market design changes included in the MRP Amendments in response to commitment and dispatch concerns raised by Market Participants throughout the MRP stakeholder engagement	The OEB, the Applicants and all other parties need to understand if and how the IESO considered commitment and dispatch concerns from other Market Participants to determine whether there was a different approach that could have been taken in comparison to the approach taken with the Applicants. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that	See response to 1(c). The request seeks information on how the IESO responded to comments made in the rule amendment process, which is outside of the Board’s mandate in a section 33 review.

Section of Application, Schedule A	Information Request	Applicants Position	IESO Position
	process;	response is probative in its own right.	
2(d)	Design or changes to the contracts included in the Long-Term and Medium-Term procurements in response to the MRP Amendments; and	The OEB, the Applicants and all other parties need to understand why the IESO has moved to a different contract structure (for asset types that were previously contracted under deemed dispatch contracts) as part of its most recent procurements and whether this decision was done as a result of internal analysis. This evidence goes directly to whether or not the IESO considered if its proposed MRP Amendments were unjustly discriminatory. If the response is the IESO conducted no such analysis – then that response is probative in its own right.	See response to 1(a). The IESO’s decision-making on contracts for Long-Term and Medium-Term procurements is a separate contractual matter that is unrelated the impact of the MRP Amendments on the Applicants.
2(e)	The financial impact (negative or positive) on changes to NQS and non-NQS Market Participants as a result of the MRP Amendments.	Same comment as 2(b) above.	See response to 1(c). The request pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.