

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 DOCUMENT AND AUTHORITIES BRIEF
FOR NOVEMBER 26, 2024 PRE-HEARING CONFERENCE**

November 22, 2024

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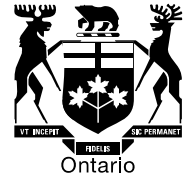
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TAB 1



EB-2007-0040

IN THE MATTER OF the *Electricity Act*, 1998, S.O.1998, c.15 (Schedule B);

AND IN THE MATTER OF an Application by the Association of Major Power Consumers in Ontario under section 33 of the *Electricity Act*, 1998 for an Order revoking an amendment to the market rules and referring the amendment back to the Independent Electricity System Operator for further consideration, and for an Order staying the operation of the amendment to the market rules pending completion of the Board's review.

DECISION AND ORDER

(Issued April 10, 2007 and as corrected on April 12, 2007)

BEFORE:

Gordon Kaiser
Presiding Member and Vice Chair

Pamela Nowina
Member and Vice Chair

Bill Rupert
Member

The Application

On February 9, 2007, the Association of Major Power Consumers in Ontario ("AMPCO") filed with the Ontario Energy Board (the "Board") an Application under section 33(4) of the *Electricity Act*, 1998 (the "Act") seeking the review of an amendment to the market rules approved by the Independent Electricity System Operator (the "IESO") on January 17, 2007. The Board has assigned file number EB-2007-0040 to the Application.

The amendment that is the subject matter of the Application is identified as MR-00331-R00: “Specify the Facility Ramping Capability in the Market Schedule” and relates to the ramp rate assumption used in the market pricing algorithm within the IESO-administered markets (the “Amendment”).

The specific relief sought in the Application is the following:

- an order under section 33(7) of the Act staying the operation of the Amendment pending completion of the Board’s review of the Amendment;
- an order under section 33(9) of the Act revoking the Amendment and referring the amendment back to the IESO for further consideration; and
- an award of costs, such costs to be payable by the IESO.

On February 9, 2007, the Board issued its Notice of Application and Oral Hearing in relation to the Application.

Under section 33(6) of the Act, the Board is required to issue an order that embodies its final decision in this proceeding within 60 days after receiving AMPCO’s application.

This is the first application of its kind to proceed to a hearing before, and a decision by, the Board. An earlier application by a different applicant and in relation to a different amendment to the market rules was subsequently withdrawn.

Although the Board has considered the entirety of the record in this proceeding, the Board has summarized the record only to the extent necessary to provide context for those findings.

The Amendment

The Amendment relates to the calculation of the energy price (the market clearing price or “MCP” that is calculated in five-minute intervals) in the real-time energy market administered by the IESO and, more specifically, to a change (from 12x to 3x) in the assumption that is made about the ramping capabilities of generation facilities when determining market prices.

The algorithm that is used to compute MCP – known as the “market schedule” and sometimes referred to as the unconstrained schedule – contains a parameter (the “TradingPeriodLength”) that specifies the ramp rate multiplier to be used in determining energy market prices. Ramp rate, which is usually expressed in MW per minute, indicates how quickly the output of a generation facility can be increased or decreased.

Prior to the Amendment, the market rules authorized the IESO (then known as the Independent Electricity Market Operator or IMO)¹ to establish the “TradingPeriodLength” parameter for the pricing algorithm but did not define its value. Prior to market opening, the value of the parameter was set at 60 minutes, which is the equivalent of a 12x ramp rate. Most generation facilities, and in particular those that typically set market prices, can change their output from minimum levels to full output in roughly one hour. The result of the 12x ramp rate multiplier is that the market schedule has since market opening assumed that generation facilities are able to ramp output up or down 12 times faster than is, in fact, the case. It is widely acknowledged that use of the 12x ramp rate multiplier was implemented as a temporary solution to address extreme price excursions that were experienced during testing prior to opening of the wholesale market.

Further examination of the ramp rate multiplier issue was initiated by the IESO in December, 2005. Stakeholder consultations ensued, principally through the Market Pricing Working Group as well as through the IESO’s Stakeholder Advisory Committee.

At the end of this examination, the IESO proposed to amend the market rules by setting the value of the “TradingPeriodLength” parameter at 15 minutes, which is the equivalent of a 3x ramp rate. To that end, on December 27, 2006, the IESO published the Amendment for comment. Five submissions were received in response; one from AMPCO opposing the Amendment and four from generators supporting the Amendment as a move in the right direction albeit not as the preferred solution. The Board of Directors of the IESO approved the Amendment on January 17, 2007, and it was published on January 19, 2007. The Amendment was scheduled to go into effect on February 10, 2007, the earliest date permitted by section 33(1) of the Act.

¹ For convenience, this Decision and Order will refer throughout to the IESO even though, at the time relevant to the point under discussion, it may have been called the IMO.

Once implemented, the Amendment would result in the market schedule assuming that generation facilities are able to ramp output up or down 3 times faster than is, in fact, the case.

It is to be noted that the 3x ramp rate multiplier relates solely to the calculation of energy prices. The physical dispatch algorithm (known as the “real-time schedule” and sometimes referred to as the constrained schedule), which is used by the IESO to dispatch facilities to meet market demand in any given interval, reflects the actual ramping capabilities of generation facilities (in other words, the value of the “TradingPeriodLength” parameter is set at 5 minutes, equivalent to a 1x ramp rate).

The role played by, and the impact of, the ramp rate multiplier in the determination of real-time energy prices is discussed further below under the heading “Pricing and Dispatch in the Real-time Energy Market”.

The Proceeding

A brief description of the issues and the orders issued by the Board is summarized below.

1. *Stay of Operation of the Amendment*

The Amendment had an effective date of February 10, 2007. AMPCO’s arguments in support of its application for an order under section 33(7) of the Act staying the operation of the Amendment pending completion of the Board’s review of the Amendment were that: (i) it is in the public interest to order the stay; (ii) there are legitimate concerns with respect to the Amendment that should be considered by the Board; and (iii) the balance of convenience favours a stay.

On February 9, 2007, the IESO filed a letter with the Board indicating that it consented to the stay of the operation of the Amendment, such consent being without prejudice to any arguments that the IESO might make in relation to the Board’s review of the Amendment. The IESO noted that it had given due consideration to the balance of convenience and the short duration of the stay given the Board’s statutory deadline for completion of its review of the Amendment.

By Order dated February 9, 2007, the Board stayed the operation of the Amendment pending completion of the Board’s review of the Amendment and issuance by the Board

of its order embodying its final decision on AMPCO's application for review of the Amendment. The Board noted in particular that the balance of convenience favoured a stay of the operation of the Amendment, particularly given the long history of the ramp rate issue in the IESO-administered markets.

2. *Intervenors*

The following parties requested and were granted intervenor status in this proceeding: the Association of Power Producers of Ontario ("APPRO"); Coral Energy Canada Inc. ("Coral Energy"); the Electricity Market Investment Group ("EMIG"); Hydro One Networks Inc. ("Hydro One"); the IESO; Ontario Power Generation Inc. ("OPG"); TransAlta Energy Corp. and TransAlta Cogeneration L.P. (collectively "TransAlta"); TransCanada Energy Ltd. ("TransCanada"); and the Vulnerable Energy Consumers Coalition ("VECC").

In addition, the Board received on March 30, 2007 a letter of comment filed by Constellation Energy.

3. *Procedural Order No. 1*

On February 16, 2007, the Board issued its Procedural Order No. 1. In addition to establishing the process and timelines for this proceeding, Procedural Order No. 1 also:

- indicated that cost awards would be made available in this proceeding to eligible intervenors, and solicited written submissions on the issue of the party from whom cost awards should be recovered;
- directed the IESO to file materials associated with the development and adoption of the Amendment; and
- identified the following as the issues to be considered in this proceeding:
 - (i) is the Amendment inconsistent with the purposes of the Act?
 - (ii) does the Amendment unjustly discriminate against or in favour of a market participant or a class of market participants?

4. *Cost Awards*

Requests for eligibility for an award of costs were made by AMPCO, VECC and APPrO. TransAlta reserved its right to apply for an award of costs should special circumstances arise in the proceeding. In its letter of intervention, the IESO also indicated that it would seek an award of costs.

In response to Procedural Order No. 1, four parties made submissions in relation to the issue of the party from whom cost awards should be recovered. The submissions are summarized in the Board's Procedural Order No. 2 issued on March 9, 2007.

The Board determined that cost awards in this proceeding should be recovered from the IESO, for the reasons stated in Procedural Order No. 2. The Board also determined that VECC, APPrO and AMPCO are eligible for an award of costs in this proceeding, subject to any objections that the IESO might wish to make for consideration by the Board. By letter dated March 16, 2007, the IESO indicated that while it accepts and respects the Board's decision regarding cost eligibility, it reserved the right to ask the Board to limit the amount of costs recoverable by parties objecting to the Amendment in the event that it appears, at the end of the proceeding, that some or all of the grounds for the objection ought not to have been advanced.

5. *Production of Materials by the IESO*

As noted above, among other things Procedural Order No. 1 directed the IESO to file materials associated with the development and adoption of the Amendment. By letter dated March 2, 2007, AMPCO alleged that the IESO's filing in response to Procedural Order No. 1 was deficient in a number of respects. By letter also dated March 2, 2007, the IESO replied to the allegations contained in AMPCO's letter, stating that there is no merit to AMPCO's allegations and that the IESO had produced all of the materials required by Procedural Order No. 1.

In its Procedural Order No. 2, the Board among other things ordered the IESO to produce certain materials, including material prepared by the IESO in the context of the Day Ahead Commitment Process and/or the Day Ahead Market initiative that directly relates to ramp rate (the "DAM/DACP Materials"). In ordering the IESO to produce the DAM/DACP Materials, the Board expressly recognized that the relevance of those Materials to the criteria set out in section 33(9) of the Act, which form the basis of the issues list set out in Procedural Order No. 1, is not clear. Procedural Order No. 2 thus also invited parties to make submissions on the issue of the relevance to this

proceeding of the DAM/DACP Materials, and more specifically to the criteria set out in section 33(9) of the Act and the issues list set out in Procedural Order No. 1.

On March 12, 2007, the IESO filed a letter with the Board in response to Procedural Order No. 2. In that letter, the IESO stated that the nature and extent of the task involved in satisfying the document production requirements of Procedural Order No. 2 makes completion of the task within anything remotely close to the specified timeframe completely impractical. Without waiving any of its rights or accepting the relevance to this proceeding of the materials identified in Procedural Order No. 2, the IESO put forward a proposed plan to meet the Board's information requirements within the requisite timeframes. On March 14, 2007, AMPCO filed a letter with the Board expressing its concerns regarding the IESO's proposed plan. The concerns related principally to the scope of the IESO's production in respect of the subject matter and time period to be covered.

On March 14, 2007, the Board issued its Procedural Order No. 3. The effect of Procedural Order No. 3 was to revise the nature of the production required of the IESO under Procedural Order No. 2, generally in line with the proposed plan submitted by the IESO in its letter of March 12, 2007 but with the exception that the production should cover a longer period than that proposed by the IESO.

6. *Technical Conference*

Procedural Order No. 1 made provision for a technical conference to be held in this proceeding. On March 20, 2007, and in response to inquiries received by certain parties, Board staff communicated with the parties to confirm whether they wished to proceed with the technical conference. Based on the responses received to that communication, the Board decided to cancel the technical conference and the parties were so advised by Board staff on March 21, 2007.

7. *Submissions on the "Relevance Issue"*

On March 21, 2007, AMPCO filed with the Board a letter setting out a proposal for submissions on the issue of the relevance of certain materials to this proceeding. As noted above, in its Procedural Order No. 2 the Board invited parties to make submissions on the relevance of the DAM/DACP Materials. AMPCO's proposal, made with the consent of the IESO, was to the effect that AMPCO would provide the Board and all parties with a "comprehensive submission on the relevance of materials

produced by the IESO in relation to a central theme contained in AMPCO's application: "that the Amendment violates fundamental principles of procedural fairness". The proposal also suggested that, rather than filing submissions in accordance with Procedural Order No. 2, parties should await production of AMPCO's comprehensive submission and respond to that document.

On March 22, 2007, the Board issued its Procedural Order No. 4 setting out the timeframe for the filing of AMPCO's submissions on relevance. The Board encouraged intervenors to make written submissions in response to those of AMPCO but, given the imminence of the commencement of the oral hearing, indicated that it would allow all intervenors to make oral submissions on the relevance issue at the beginning of the oral hearing.

Written submissions on relevance were filed by AMPCO, the IESO, APPrO and Coral Energy. The positions of the parties are summarized below under the heading "The Board's Mandate".

8. *The Oral Hearing and Final Written Argument*

The Board held an oral hearing in this proceeding, commencing on March 29, 2007 and concluding on March 30, 2007. The first day of the hearing was devoted almost exclusively to submissions by the parties on the "relevance issue", as described in greater detail below under the heading "The Board's Mandate". On the second day of the hearing, witnesses gave evidence on behalf of AMPCO, the IESO, APPrO and TransCanada, principally in relation to the nature and impact or effect of the Amendment. The position of the parties in this regard is discussed in greater detail below under the heading "The Impact of the Amendment".

During the hearing, proposals were also made by certain of the parties in relation to the filing of final written argument, and these were accepted by the Board. AMPCO filed its final written argument on April 2, 2007. VECC filed its final written argument on April 3, 2007. The following parties filed their final written argument on April 4, 2007: the IESO; APPrO; and TransCanada. OPG filed a letter with the Board indicating its support for the final argument filed by APPrO. Coral Energy did not file final written argument, but did indicate during the oral hearing that it would address the substantive issues associated with the Amendment through APPrO. AMPCO filed its written reply argument on April 5, 2007.

The Board's Mandate

The “relevance issue”, as it has been referred to in this proceeding, arose initially in relation to the DAM/DACP Materials. As stated in Procedural Order No. 4, the issue is relevance of materials – and hence of the position or argument that the materials support – relative to the criteria set out in section 33(9) of the Act. This issue, of necessity, requires consideration of the scope of the Board’s mandate on applications to review amendments to the market rules under section 33 of the Act.

As the proceeding progressed, it became clearer that AMPCO’s views as to the scope of the Board’s mandate differs markedly from the views of other parties. A number of the concerns raised by AMPCO regarding the Amendment relate not to the impact or effect of the Amendment, but rather to the process by which the Amendment was made by the IESO. Many of the materials filed by the IESO in response to the Board’s Procedural Orders are relevant to those concerns, but have little or no relevance to the issue of the impact or effect of the Amendment.

The position of the parties in relation to the scope of the Board’s mandate, as expressed in the written submissions filed in response to Procedural Order No. 4 and/or in oral submissions made at the commencement of the oral hearing, may be summarized as follows.

AMPCO’s position is that the Board’s mandate is not limited to the grounds set out in section 33(9) of the Act. Rather, the Board has a “plenary review jurisdiction” that would allow the Board to address what AMPCO alleges as significant failures of procedural fairness by the IESO. In support of its position, AMPCO referred to and relied on sections 33(4), 33(5) and 33(6) of the Act, on section 19(4) of the *Ontario Energy Board Act, 1998*, on the Board’s authority to determine all questions of law and fact in all matters within the Board’s jurisdiction, and on the Board’s public interest role. On that basis, in AMPCO’s view the criteria expressed in section 33(9) of the Act are better understood as the two instances in which the legislature has directed the Board on how it must exercise its review discretion, leaving the Board otherwise able to exercise its review discretion as the Board sees fit.

By contrast, the position of the IESO, APPrO, Coral, OPG and TransCanada is that the Board’s mandate is limited by section 33(9) of the Act to a determination of whether (a) the amendment is inconsistent with the purposes of the Act; or (b) the amendment unjustly discriminates against or in favour of a market participant or a class of market

participants. On that basis, whether the IESO has, and breached, a common law duty of procedural fairness or acted in a manner giving rise to a reasonable apprehension of bias (both of which allegations were denied by the IESO), are not matters for consideration by the Board on a market rule amendment review application under section 33 of the Act. Materials produced by the IESO that are relevant only to the IESO's processes in making the Amendment should therefore be disregarded. The IESO also specifically requested that the Board strike AMPCO's March 26, 2007 submission from the record.

On March 29, 2007, the Board rendered an oral decision on this issue. Specifically, the Board determined that its mandate under section 33 of the Act is limited to an examination of the market rule amendment against the criteria set out in section 33(9) of the Act. The Board also ordered that any evidence relating to the IESO's stakeholdering process, including AMPCO's March 26, 2007 submission, be struck from the record. An excerpt from the transcript of the oral hearing that contains the Board's decision and order in this regard is set out in Appendix A to this Decision and Order.

The parties agreed to, and filed with the Board, a list of the materials affected by the Board's decision (i.e., those to be struck from the record and those to remain on the record).

The Impact of the Amendment

It remains for the Board to determine whether the Amendment is inconsistent with the purposes of the Act or unjustly discriminates against or in favour of a market participant or a class of market participants.

A brief summary of the position of the parties is set out below, followed by the Board's findings.

In order to better understand the position of the parties, however, it is necessary to provide some further context around the setting of prices in the IESO-administered energy market and the role that the ramp rate multiplier plays, if only at a high and simplified level.

1. *Pricing and Dispatch in the Real-time Energy Market*

The MCP, which is calculated in five-minute intervals, is determined using a market schedule (pricing algorithm) that calculates the price based on the most economical offers submitted by generators that would satisfy the demand for energy in a particular five-minute interval. Dispatchable generators receive the MCP for their output, and dispatchable loads pay MCP for the energy they consume. All other generators and loads receive or pay, respectively, the Hourly Ontario Energy Price (“HOEP”). HOEP is a simple average of the 12 MCPs determined for the hour. Ontario currently has a uniform pricing system and MCP (and thus HOEP) are the same everywhere in the province. The introduction of locational marginal pricing for the province, which has long been the subject of discussion, is not expected to occur at least in the short term. However, the IESO does calculate what the prices would be in different locations were locational marginal pricing to be in place. These are referred to as “shadow prices”.

Three aspects of the market schedule are of particular relevance to this proceeding:

- the market schedule is “myopic”, in that it ignores expected demand in future intervals and sets the MCP based solely on demand conditions in each five-minute interval;
- the market schedule ignores transmission constraints, and assumes for pricing purposes that the cheapest available generation facility anywhere in Ontario is available to satisfy demand in any interval when, in fact, it may be unavailable due to transmission constraints; and
- the market schedule assumes for pricing purposes that generation facilities are able to ramp output up or down faster than they might actually be able to do so (by a factor of 12 currently or by a factor of 3 under the Amendment).

By contrast, the algorithm used by the IESO to dispatch facilities has the following characteristics:

- the dispatch algorithm has, since 2004, incorporated multi-interval optimization (“MIO”), which “looks ahead” to expected demand in future five-minute intervals;
- the dispatch algorithm takes account of all physical constraints on the system; and

- the dispatch algorithm respects the actual ramping capabilities of generation facilities.

The result is that MCP does not necessarily reflect what the prices would have been had the prices been determined on the basis of the offers submitted by generation facilities that are actually dispatched to provide energy to meet demand in a given five-minute interval. The ramp rate multiplier allows the market schedule to set prices on the basis of generation facilities that are cheaper but unavailable due to actual ramping restrictions, and as a result reduces both price volatility and the average level of prices. The same can be said for the market schedule assumption that the system is unconstrained.

A consequence of the lack of complete alignment between the pricing algorithm and the dispatch algorithm is that generation facilities that were assumed by the market schedule to be supplying energy in a five-minute interval might not in fact be dispatched due to the presence of transmission or ramping constraints. A generation facility may have to be dispatched even though it had offered to supply electricity at a price that is higher than HOEP. These generation facilities will be “constrained on”, and under the market rules are entitled to an additional payment referred to as a Congestion Management Settlement Credit (“CMSC”) payment. Similarly, when a cheaper generation facility is not dispatched due to the presence of transmission constraints or because it can ramp down more quickly than a more expensive generation facility, the cheaper facility will be “constrained off” and also entitled to a CMSC payment. In both cases, the CMSC payment reflects the difference between HOEP and the offer made by the generation facility that has been constrained on or constrained off, as the case may be. CMSC payments are not reflected in the energy price, but are recovered through uplift charges from wholesale market participants on a pro-rata basis based on their energy consumption at the time at which the CMSC payments were incurred.

2. Position of the Parties on the Impact of the Amendment

The following summary is based principally on the final arguments filed by the parties. For the most part, these largely reflect the tenor of each party’s participation in this proceeding.

The position of the parties to this proceeding fall into two distinct camps: AMPCO and VECC oppose the Amendment while the IESO, APPrO, Coral Energy (through APPrO),

OPG and TransCanada support it. The letter of comment received from Constellation Energy also supports the Amendment. TransAlta was not an active participant in this proceeding, but is one of the generators that indicated its support for the Amendment as an interim solution in response to the IESO's request for submissions referred to above. EMIG (of which Coral Energy and Constellation Energy Group Inc. are members) was also not an active participant in this proceeding, but noted in its letter of intervention its belief that "in order to support new private investment in generation, Ontario must transition towards a competitive market where prices reflect the true cost of power". Hydro One did not take a position in this proceeding.

A number of the arguments made by AMPCO and VECC challenge the validity or reliability of the IESO's assessment of the costs and benefits associated with the Amendment, and are therefore better understood if the position of the parties supporting the Amendment is presented first.

Parties Supporting the Amendment

Active participants in this proceeding that support the Amendment assert that the Amendment is consistent with the purposes of the Act and does not unjustly discriminate against or in favour of a market participant or a class of market participants. Certain parties have added that the evidence in this proceeding is overwhelmingly to that effect.

The IESO's position is that the Amendment is consistent with, and will promote, a number of the purposes of the Act. Specifically, the IESO submits that the Amendment will: enhance overall reliability, better protecting the interests of consumers in that regard (sections 1(a) and 1(f) of the Act); encourage conservation and demand management (sections 1(b) and 1(c) of the Act); promote economic efficiency (section 1(g) of the Act); and cultivate a financially viable electricity industry (section 1(i) of the Act). According to the IESO, the Amendment will contribute to the achievement of these objectives by: more closely aligning the dispatch and pricing algorithms; resulting in more accurate price signals for consumers and producers; reducing uneconomic exports out of Ontario with resulting efficiency gains realized through the mechanism of export arbitrage; providing immediate efficiency gains for the Province; reducing fossil fuel generation; and achieving a significant improvement in efficiency for the Ontario market.

The IESO further submits that the Amendment, a superior solution to the available alternatives (including incorporation of MIO in the pricing algorithm), will be simple and inexpensive to implement and will achieve the noted benefits with minimal, if any, impact on average prices for consumers. The IESO has estimated that the impact of the Amendment on HOEP will be an average 2.6 percent increase. However, the IESO has also estimated that the impact on consumer bills will be mitigated by: the export arbitrage response that is expected to follow implementation of the Amendment; the global adjustment; the rebate that is currently paid out on revenues earned by OPG on its non-prescribed assets (the "OPG Rebate"); savings in CMSC payments; and savings in Intertie Offer Guarantee payments (these being payments made to importers to reduce price risks for imports that result from the fact that they are scheduled based on pre-dispatch prices but settled on the basis of real-time prices). After accounting for such mitigation, and based on 2006 market prices, the impact of the Amendment would, according to the IESO, vary from a net cost of \$6.68 million or 0.004 cents/kWh (assuming an export arbitrage response of 50%, which the IESO considers conservative) to a net saving of approximately \$13 million or 0.008 cents/kWh (assuming an export arbitrage response of 100%). As a supplementary mitigation measure, the IESO intends to disburse surplus funds from the transmission rights clearing account (the "TR Clearing Account") over 12 consecutive months to begin in conjunction with implementation of the Amendment.

With respect to the issue of unjust discrimination, the IESO argues that discrimination, in the context of a market for electricity, refers to economic discrimination. As such, more must be involved than an economic advantage accruing to one party rather than the other. The IESO further states that, by lessening subsidies and better aligning prices and dispatch costs, the Amendment plainly lessens inappropriate economic treatment of market participants.

Similar to the IESO, APPrO submits that improvements resulting from implementation of the Amendment are consistent with the purposes set out in sections 1(b), 1(c), 1(f), 1(g) and 1(i) of the Act. According to APPrO, the Amendment addresses many of the challenges and inefficiencies resulting from the use of the 12x ramp rate multiplier by creating just price signals for generators and loads, and does so with minimal, if any, customer cost impacts. APPrO also argues that the effects resulting from the 12x ramp rate multiplier are prejudicial to, and discriminate against, consumers and suppliers. APPrO states that, by more closely aligning the pricing algorithm with the dispatch algorithm, the Amendment would mitigate those prejudicial and discriminatory effects

(such effects including that consumers are not paying the true cost of the electricity they consume and are paying for inefficiencies through uplift charges).

TransCanada's position is that the Amendment will improve the operation of Ontario's competitive electricity market and, since many of the purposes of the Act have as their object the promotion of a competitive market, improvements to the market support the purposes of the Act. According to TransCanada, by moving the market closer to real prices, the Amendment will also specifically encourage conservation (section 1(b) of the Act) and promote the use of cleaner energy sources (section 1(d) of the Act).

TransCanada also submits that market efficiency will be promoted by: more closely aligning the pricing and dispatch algorithms; increasing the internal consistency of the market rules; improving price signals and inducing more efficient investment; and improving price transparency and reducing less transparent uplift payments (by reducing CMSC payments). While not a perfect solution, in TransCanada's view the Amendment represents an important step in the right direction.

On the issue of unjust discrimination, TransCanada agrees with the view expressed by Coral Energy in submissions made before and during the oral hearing to the effect that "unjust" discrimination equates with "inefficient" discrimination.

Parties Opposing the Amendment

AMPCO and VECC take the position that the Amendment fails when considered in light of the criteria set out in section 33(9) of the Act, and should therefore be revoked and referred back to the IESO for further consideration.

AMPCO's position is that the Amendment is inconsistent with certain of the purposes of the Act. The purposes of the Act that underlie this position are: (i) ensuring the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand (section 1(a) of the Act); and (ii) protecting the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service (section 1(f) of the Act). AMPCO also submits that the Amendment unjustly discriminates against consumers (by increasing prices) and in favour of generators (by providing "windfall profits" to generators – such as nuclear generators – that are unable to respond quickly to changing demand conditions).

In support of its position, AMPCO submits that the IESO is not at liberty to pick and choose the purposes of the Act that it will further while ignoring others in favour of perceived improvements in efficiency. The Act does not assign differing weights or priorities to the various purposes of the Act and, if anything, the protection of the interests of consumers has been given priority.

AMPCO also submits that the IESO's estimates of the costs and benefits of moving to a 3x ramp rate multiplier in terms of determining the wealth transfer implied by the Amendment are unreliable. According to AMPCO, the efficiency gains flowing from the Amendment, as articulated by the IESO and other parties, are: (i) not supported by economic theory having regard to the "Theory of the Second Best"; (ii) based on the mistaken view that uneconomic exports are principally the result of the 12x ramp rate multiplier rather than being largely attributable to Ontario's uniform pricing structure; and (iii) overstated. AMPCO states that, by contrast, the impact of the Amendment on consumers – a price impact variously estimated by the IESO at approximately \$225 million, \$197 million, \$112 million and \$100 million depending on whether the effect of arbitrage is taken into account – has been understated. AMPCO notes that a number of the price mitigation mechanisms identified by the IESO are of short (the OPG Rebate and the disbursement of funds from the TR Clearing Account) or uncertain (the global adjustment) duration or are speculative (export arbitrage), and a longer term price mitigation strategy is required. AMPCO also notes that the 3x ramp rate multiplier solution is inferior to incorporation of MIO in the pricing algorithm, which is a superior solution that could be implemented at a modest cost, and is not the preferred option identified by any market participant.

In its reply argument, AMPCO submits that the evidence in this proceeding does not, contrary to the position expressed by APPrO, answer the question of whether the Amendment will result in a HOEP that more closely approximates the price that would result were the pricing and dispatch algorithms perfectly aligned. AMPCO also submits that the evidence does not address what the "true cost" of electricity might be, nor how such notion compares based on the current HOEP versus HOEP calculated on the basis of the Amendment. Moreover, given the hybrid nature of the market, prices are not in AMPCO's view expected to have more than a marginal impact on investment decisions. AMPCO also notes that, contrary to the view articulated by TransCanada, the Act does not have as one of its objectives the promotion of a competitive market.

VECC's position is that the Amendment unjustly discriminates against consumers because it results in a pricing algorithm that moves away from, rather than towards, the

prices generated by the IESO's dispatch algorithm, resulting in overall inefficiency in the setting of HOEP by unjustifiably increasing the prices consumers pay on a province-wide basis. While agreeing that the Board's role is not to "remake" the IESO's decision in relation to the Amendment, VECC submits that the Board must determine whether the decision-making process was sound and led to a reasonable result in that: the issue was clearly defined; the criteria used by the IESO were comprehensive and consistent with the purposes of the Act; and the criteria were applied on a consistent and balanced basis throughout the decision-making process. VECC argues that the IESO's characterization of the issue changed over time from a focus on the differences between the pricing algorithm and the dispatch algorithm to a focus on inefficient exports. According to VECC, there is no confidence that the Amendment is the best way to address the newly framed issue without unjustly discriminating against consumers. In VECC's view, the IESO should therefore be directed to reconsider alternative solutions to the inefficient export issue that do not unjustly discriminate against consumers by inexplicably raising domestic prices.

VECC also expressed concern regarding use of the IESO's cost/benefit analysis as the measure of economic efficiency for changes in rules dealing with the market schedule and the determination of energy prices, noting that: uneconomic exports are largely the result of the fact that Ontario has uniform pricing; the IESO has narrowly redefined the issue of economic efficiency as reducing exports to New York; certain of the benefits that the IESO has identified in relation to the Amendment are unsubstantiated; and any amendment to the market rules that increased market prices would be judged as economically efficient when based on the IESO's analytical framework.

3. Position of the Parties on the Burden of Proof

An issue that arose most squarely in the exchange of final written argument is the question of which party bears the burden of proof in an application under section 33 of the Act.

Certain references in the IESO's final written argument make it clear that, in the IESO's view, in an application under section 33 of the Act the burden of proof is on the applicant to demonstrate that the market rule amendment is inconsistent with the purposes of the Act or is unjustly discriminatory.

AMPCO takes a different view, and submits that the burden of proof is ultimately on the IESO to show that the market rule amendment at issue in fact satisfies the test to be

applied by the Board as set out in section 33(9) of the Act. In support of that view, AMPCO notes that a market rule amendment review is fundamentally different from a more typical proceeding before the Board in that, among other things, applicants have no ability to pursue the relief of their choice by seeking an alternative or different amendment to the one adopted by the Board of Directors of the IESO. AMPCO also notes that the 60-day timeline within which the Board must issue its order on an application under section 33 of the Act supports AMPCO's position on the burden of proof issue. It would be patently unreasonable to expect that any applicant could develop a traditional applicant's filing complete with a full array of econometric and other analyses in the time allowed.

4. *Board Findings*

a. The Burden of Proof

In applications before the Board, the burden of proof is typically on the applicant to satisfy the Board that the requested relief should be granted. The Board certainly expects that the IESO will participate fully in proceedings relating to applications under section 33 of the Act in support of the amendment that is under review. However, the Board has heard no compelling reason that would cause it to take a different approach and place the burden of proof on the IESO in the circumstances of this case.

b. The Merit of Addressing the 12x Ramp Rate Multiplier Issue

Before turning to an examination of the impact or effect of the Amendment, the Board considers it useful to provide further context regarding the history and impact of the 12x ramp rate multiplier in the marketplace. Several parties noted that, as the wholesale market was designed for implementation at market opening, inputs to both the pricing algorithm and the dispatch algorithm were aligned in relation to the value to be used to reflect the ramping capabilities of generation facilities (in both algorithms, the value of the "TradingPeriodLength" was set at 5 minutes). To this day, that remains the case for the dispatch algorithm. As noted above, however, prior to market opening the market rules were amended to allow the IESO to set a different value for the "TradingPeriodLength" parameter in the pricing algorithm as a temporary measure to address extreme real-time price excursions that occurred during market testing. This is reflected in the "Explanation for Amendment" contained in market rule amendment proposal MR-00189-R00, dated April 16, 2002, which proposed the amendment to the

market rules that would allow the IMO the discretion to set the value of the TradingPeriodLength parameter in the pricing algorithm:

The proposed amendment would permit the IMO to establish a longer Trading Period Length in the market schedule (unconstrained) to overcome the [price excursion] problems identified above. With a longer Trading Period Length within the market schedule (unconstrained), generation facilities will have large ramping capability and there will be less need to select additional higher cost resources to meet the increasing demand. As a result, less extreme price excursions will occur.

The real-time schedule (constrained) will continue to use the 5 minute Trading Period Length. Therefore, discrepancies will increase between the real-time schedule and the market schedule (unconstrained). As a consequence, congestion management settlement credit (CMSC) payments will increase. However, the decreases in energy prices, resulting from the change in the ramp time in the market schedule, are expected to offset increases in CMSC payments.

It should be noted that using a longer Trading Period Length in the determination of the market schedule is judged to be a transitional provision. It is expected that a longer term solution will need to be considered which could include a day-ahead market with unit commitment, increased generator self-scheduling, contracted ramp capability, or multi-period optimization.

The Board has not heard any evidence in this proceeding that would point to the introduction of the 12x ramp rate multiplier as having a basis rooted in market economics. To the contrary, the evidence in this proceeding is that the 12x ramp rate multiplier distorts wholesale market prices downwards and engenders adverse consequences for the marketplace in the form of generation and demand side inefficiencies. For example, dampened wholesale prices diminish incentives for conservation, load management and demand side management. The evidence in this proceeding is also that the 12x ramp rate multiplier contributes to inefficient exports. Inefficient exports, in turn, can increase the need for coal-fired generation to meet Ontario demand and thereby contribute to increased emissions. These adverse consequences were identified and discussed at some length in the evidence filed by, and the testimony given on behalf of, the IESO and APPRO, and are also discussed in the evidence filed by TransCanada. That adverse consequences flow from the 12x ramp rate multiplier was not seriously contested by evidence to the contrary filed by

AMPCO, although AMPCO did challenge the strength of any causal connection between the 12x ramp rate multiplier and inefficient exports.

The Board also notes that the 12x ramp rate multiplier issue has been the subject of comment by the Market Surveillance Panel. Specifically, the potential adverse market impact of the 12x ramp rate multiplier has been referred to or discussed in the following Market Surveillance Panel semi-annual monitoring reports, which were referred to by a number of parties to this proceeding: December 13, 2003 (covering May 2002 to October 2003); December 13, 2004 (covering the period May to October 2004); June 9, 2005 (covering the period November 2004 to April 2005); June 14, 2006 (covering the period November 2005 to April 2006); and December 13, 2006 (covering the period May to October 2006).

For example, after concluding that a significant portion of the difference between the constrained and unconstrained real-time prices, and of the remaining difference between HOEP and the unconstrained pre-dispatch price, is due to the 12x ramp rate assumption, the Market Surveillance Panel stated as follows in its December 13, 2004 report (at page 66):

The Panel is of the view that the continued understatement of the HOEP leads to inefficient decisions by both loads and generators in both the short-term and the long-term. This takes the form of an inefficient load profile and of under-investment in both conservation and generation.

With respect to the argument that the assumption that ramp rates are 12-times their true value results in a more stable HOEP, the Panel recognizes that price stability can be beneficial to market participants. The Panel observes, however, that it is open to market participants to insulate themselves contractually from price variation. Moreover, price volatility presents a profit opportunity for more price responsive generation and loads. To the extent that it is efficient to do so, volatility can be reduced by the actions of market participants. This is much better, in the Panel's view, than suppressing price variation by artificial means, especially when this has the side effect of understating the average price. The Panel strongly recommends that actual ramp rates be used to determine the HOEP.

Eighteen months later, the Market Surveillance Panel further commented on the issue in its June 14, 2006 report (at page 79) as follows:

For these and possibly other reasons, arbitrage between Ontario and New York is focused on the HOEP. The result is inefficient exports and the effective extension of the cross-subsidy inherent in Ontario's uniform price regime to New York loads. This problem has been exacerbated by market rules that, other things being equal, would have reduced the HOEP relative to prices in the constrained schedule. For example, the 12 times ramp rate assumption, which has the appearance of systematically lowering the HOEP (i.e., because it removes ramp effects in price), may simply lead to more exports than would otherwise occur.

In its most recent report, dated December 13, 2006, the Market Surveillance Panel stated as follows on page 106:

There are two major causes of socially inefficient exports from Ontario to New York. First, like privately inefficient exports, the lack of accurate price signals or information can lead to "guessing wrong" and hence socially inefficient exports ex post. Improvements in price signals should result in a higher frequency of socially efficient exports. Socially inefficient exports can also occur, however, if there are defects in the market design. Ontario's uniform pricing regime is poorly designed in the sense that it admits to the possibility that the prices that exporters pay do not reflect the incremental cost of supply. Other aspects of the unconstrained pricing algorithm such as the 12 times ramp rate assumption can further misalign the HOEP and the relevant nodal prices thereby contributing to the potential for ex post socially inefficient exports... (footnote omitted)

And again at pages 147 and 148:

Moreover, with the Global Adjustment dampening the redistributive effects of changes in HOEP and mitigating any harm that might be said to be visited upon consumers from potentially higher HOEP, the Panel contends that there may be no better time than now to address the remaining sources of inefficiency in the design of the Ontario spot market. Artificially reducing the HOEP, as is the outcome under the current market design, simply means that consumers pay more (or receive a smaller rebate) through the Global Adjustment, all the while inducing market inefficiencies from which all Ontarians lose.

The real-time price signals generated by an efficient wholesale market are central to the economic success of the new hybrid market for several reasons:

- First, the real time production and consumption decisions of many wholesale market participants will continue to be guided by real-time prices. If these price signals continue to ignore certain system realities such as transmission constraints or the actual ramping capabilities of generation facilities, they will at times induce these participants to make decisions that reduce the short-term dispatch efficiency. As we have indicated in Chapter 3, factors such as the uniform pricing system and the 12 times ramp rate assumption create a wedge between the HOEP and local shadow prices. This can result in inefficient production and consumption decisions such as the inefficient exports from Ontario to New York that we began documenting in our last report....(footnote omitted)
- Second, even though long-term investment will be guided through central planning in the near term, price signals from an efficient wholesale market can and should play an important role in guiding this planning process...Furthermore, as we have argued above, attempts to subsidize consumers by suppressing real-time prices leads to over-consumption and could ultimately lead to over-investment by the planners at [the Ontario Power Authority].

These comments reinforce the evidence in this proceeding as to the inefficiencies to which the 12x ramp rate multiplier contributes.

The observations of the Market Surveillance Panel in its most recent (December 13, 2006) report also support the assertion made by the IESO and others that addressing efficiency of the market remains a relevant objective even in the context of the hybrid framework under which Ontario's electricity sector operates at this time. Even AMPCO's expert witness, Dr. Murphy, who questioned the relevance or merits of the Amendment in light of the evolution of the market to a hybrid structure, conceded on cross-examination that improvements in wholesale market efficiency and accurate price signals are important even in a hybrid market.

The Board accepts that the 12x ramp rate multiplier, introduced as a temporary measure, has price distorting effects that can and do engender inefficiencies. The Board therefore also accepts that, in principle, there is merit in addressing the 12x ramp

rate multiplier issue if and to the extent that efficiency improvements can be expected to result, and that this is so even in the context of the hybrid market.

c. Evaluation of the Amendment as a Solution

The IESO has put forward credible evidence that the Amendment will result in greater efficiency in the IESO's real-time market as compared to the status quo. The benefits from this improved efficiency include, but are not limited to, reduced uneconomic exports to New York. The impact of this latter benefit is quantifiable, and has been quantified by the IESO. The other benefits are less easily quantified, but bear consideration nonetheless.

The Board does not agree with AMPCO's argument that the Amendment is inconsistent with the purposes of the Act and that the IESO has selectively chosen the purposes of the Act it will further while ignoring others. AMPCO asserts that the Amendment is contrary to section 1(a) of the Act ("responsible planning and management of electricity resources, supply and demand"). The Board concurs with the IESO's view that greater economic efficiency will further that objective. AMPCO also argues that the Amendment is inconsistent with section 1(f) of the Act ("protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service"). As discussed more fully below, the Board finds that the IESO has carefully considered the impact of the Amendment on consumers' average bills and determined that the impact is likely to be relatively modest. It may even be positive. The IESO has also noted that, while there may be a modest impact on consumers' bills, the Amendment is consistent with the purpose of protecting the interests of consumers with respect to the adequacy and reliability of supply.

There is no evidence before the Board in this proceeding that would lead the Board to take issue with the assertion made by the IESO and others that improvements in the economic efficiency of the electricity system in Ontario will promote adequacy and reliability of supply by providing more accurate price signals and triggering more appropriate price responsive behaviour. The same can be said for the assertions that the Amendment will encourage conservation, load management and demand side management and will, by reducing inefficient exports, also reduce the need for coal-fired generation to meet Ontario demand and thereby contribute to a lessening of emissions.

AMPCO and VECC both assert that the "3x myopic" Amendment is, by the IESO's own submission, inferior to a "1x MIO" solution. They support this view by reference to

documents that were prepared by the IESO at various times in the Amendment development process. They submit that this is a valid basis on which the Board should revoke the Amendment.

The Board does not accept that view. Although it is obvious that the IESO reviewed several alternatives in the course of developing the Amendment, it has consistently taken the position in this proceeding that a “3x myopic” rule is superior to a “1x MIO” option. This conclusion appears in the document issued by the Board of Directors of the IESO when the Amendment was approved, and it is supported by the IESO’s and APPRO’s experts. Other than referring to earlier assessments that the IESO does not currently support, AMPCO and VECC provided no evidence that “1x MIO” is a superior solution.

d. The Anticipated Impact on Consumer Bills

The Board has also considered the possible impact of the Amendment on consumers’ electricity bills.

As noted above, the IESO has calculated that the net annual cost to consumers of adopting the 3x ramp rate assumption in the pricing algorithm is \$6.68 million, or 0.004 cents/kWh. That calculation is based on the following assumptions and estimates:

- an average annual HOEP of \$49 per MWh (the average price in 2006);
- an increase of 2.6% in the average HOEP as a result of the Amendment, before consideration of mitigating factors;
- mitigation of 50% of the estimate increase in HOEP due to “export arbitrage”;
- mitigation of 80% of the net price increase (that is, after the export arbitrage effect) due to the global adjustment and the OPG Rebate; and
- reductions in CMSC payments and Intertie Offer Guarantees that are paid through uplift charges.

In its calculation of the net consumer impact, the IESO also takes into account a planned distribution to consumers of approximately \$54 million from the IESO’s TR Clearing Account. The Board does not believe that this particular distribution is

appropriately considered as a mitigation measure in relation to the Amendment. Elimination of this particular mitigation measure does not affect the Board's overall assessment of the Amendment.

Dr. Rivard of the IESO testified that, on the basis of additional analysis on the elasticity of export response, the export arbitrage effect on HOEP would likely be higher than 50%, which would reduce further the net cost of the Amendment to consumers. He noted that were the export arbitrage effect to reach approximately 65%, and keeping the other assumptions the same, the impact of the Amendment would be a net reduction in consumers' bills.

AMPCO disputes most of the assumptions and estimates that underlie the IESO's calculations. It claims that the IESO's estimates are unreliable, although it provided little evidence about the estimates it believes should be used.

Predicting the net effect of the Amendment on consumer's bills is a complex exercise and is not something the Board believes can be done with precision. The Board does, however, view the IESO's calculation as an indicator of the order of magnitude of the net effect of the Amendment. The Board agrees with AMPCO that the base price of \$49 per MWh, which is the starting point of the IESO's calculation, is low by historical standards. The Board notes, however, that the IESO provided additional information on a range of net consumer costs using higher average HOEPs. The Board also acknowledges AMPCO's comment that the OPG Rebate is scheduled to expire in two years. Even if the OPG Rebate is discontinued at that time, the IESO has estimated that the global adjustment would still provide significant price mitigation, approximately 60% compared to the current 80% from the combined global adjustment and OPG Rebate.

The Board finds that the expected impact on consumers' bills is relatively modest. The IESO's published calculation shows a very minor impact – just 0.004 cents/kWh – based on estimates that the IESO considers to be conservative. Even if a higher base price were used (an average annual HOEP of \$70 per MWh based on 2005 prices), and assuming no replacement for or extension of the OPG Rebate in two years, the estimated net impact would be larger but still relatively small. The difference resulting from the use of a higher base price relative to use of the lower one would be much less than 1/10th of a cent/kWh.

e. Conclusions

The Board concludes that the efficiency benefits that are anticipated to arise as a result of the Amendment are consistent with the purpose of the Act that speaks to promoting economic efficiency in the generation, transmission, distribution and sale of electricity. The Amendment also supports the purposes that relate to encouraging electricity conservation, demand management and demand response; ensuring the adequacy, safety, sustainability and reliability of electricity supply in Ontario; and protecting the interests of consumers in relation to the adequacy and reliability of electricity service. While the Board acknowledges that the Amendment may result in an increase in average consumer bills, that increase is anticipated to be modest.

The Board is also of the view that, in the context of its mandate under section 33 of the Act, unjust discrimination means unjust economic discrimination.

Based on the record of this proceeding, the Board finds that the Amendment is consistent with the purposes of the Act. The Board also finds that the Amendment does not unjustly discriminate for or against a market participant or a class of market participants.

Other Matters

1. *Stay of the Amendment Pending Appeal*

By the terms of the Board's February 9, 2007 Order, the stay of the operation of the Amendment applies pending completion of the Board's review of the Amendment. Issuance of this Decision and Order completes the Board's review, and has by the terms of the Order the effect of lifting the stay. For greater certainty, however, the Board will include an order to that effect in this Decision and Order.

In its final written argument, AMPCO requested that, in the event that the Board does not revoke the Amendment, the Board order a stay of the Amendment pursuant to section 33(6) of the *Ontario Energy Board Act, 1998* pending appeal to the Divisional Court.

In the letter accompanying its final written argument, the IESO noted that this request for relief was not included in the Application and is out of time. While the IESO therefore did not address this request in its final written argument, the IESO did in its

letter express the view that the Board does not have jurisdiction to grant such relief, and that if AMPCO wants a stay it must apply to the Divisional Court. APPRO's position is to the same effect.

In the circumstances of this case, the Board has decided not to extend its February 9, 2007 order staying the operation of the Amendment.

The Board understands that the IESO may wish to proceed with implementation of the Amendment on a timely basis, and that parties that are supportive of the Amendment would be equally supportive of prompt implementation. However, the Board does not believe that it is in the best interests of the wholesale electricity marketplace to face the prospect of the Amendment being implemented one day and suspended shortly thereafter further to the invocation of a judicial process. The Amendment is not urgently required for reasons such as reliability and the ramp rate issue is one that has been outstanding for several years. In the circumstances, the Board expects that the IESO will act responsibly by allowing AMPCO a reasonable opportunity to request judicial recourse prior to taking whatever steps may be required to implement the Amendment. The Board similarly expects that AMPCO will act responsibly by ensuring that any request for a stay of the operation of the Amendment that it may wish to make to the Divisional Court is made without undue delay.

2. New Obligations for IESO under its Licence

In its final written argument, AMPCO requested that the Board require the following, either under an existing condition of the IESO's licence or by way of a new licence condition:

- that the IESO prepare and submit to the Board, for every proposed market rule and market rule amendment, a report supported by appropriate analysis and available to the public, that explains how the proposed rule or amendment is consistent with the objects of the IESO and promotes the purposes of the Act; and
- that, in relation to the Amendment and such other market rules or market rule amendments as the Board considers appropriate, the IESO report publicly on an annual basis with respect to whether and the extent to which the amendments have met the IESO's objectives and provided the benefits anticipated by the IESO at the time each of the amendments were made.

In the letter accompanying its final written argument, the IESO noted that this request for relief was not included in the Application, is out of time, was not dealt with in any way in this proceeding and is entirely inappropriate.

Whatever the Board may think of AMPCO's request on the merits, the Board does not consider it appropriate to address the request at this stage in the proceeding. The issue of new reporting requirements for the IESO in relation to amendments to the market rules was not raised by AMPCO on a timely basis, and the other parties to this proceeding will not have had a fair opportunity to consider and respond to the request. AMPCO may, if it so wishes, pursue this matter further outside the context of this proceeding.

3. *Cost Awards*

Parties eligible for an award of costs, as identified in Procedural Order No. 2, shall submit their cost claims by April 24, 2007. A copy of the cost claim must be filed with the Board and one copy is to be served on the IESO. The cost claims must comply with section 10 of the Board's *Practice Direction on Cost Awards*.

The IESO will have until May 8, 2007 to object to any aspect of the costs claimed. A copy of the objection must be filed with the Board and one copy must be served on the party against whose claim the objection is being made.

A party whose cost claim was objected to will have until May 15, 2007 to make a reply submission as to why its cost claim should be allowed. Again, a copy of the submission must be filed with the Board and one copy is to be served on the IESO.

The Board will issue its decision on cost awards at a later date once the above process has been completed.

THE BOARD ORDERS THAT:

1. The Application by the Association of Major Power Consumers in Ontario for an order under section 33(9) of the *Electricity Act, 1998* revoking the market rule amendment identified as MR-00331-R00: "Specify the Facility Ramping Capability in the Market Schedule" and referring the amendment back to the IESO for further consideration is denied.

2. The stay of the operation of the market rule amendment identified as MR-00331-R00: "Specify the Facility Ramping Capability in the Market Schedule", as ordered by the Order of the Board dated February 9, 2007, is lifted.

DATED at Toronto, April 10, 2007.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A

to

**Decision and Order
April 10, 2007**

**Association of Major Power Consumers in Ontario
Review of Market Rule Amendment
EB-2007-0040**

Excerpt from Transcript of Oral Hearing Held March 29, 2007

(see attached document)

1 our binder. I apologize, it might just be me, but the
2 record, the decision does not bear out the quote that that
3 included.

4 MR. RUPERT: Mr. Rodger, I was going to mention, I
5 think the page 5 reference, at least as I read it here,
6 didn't refer to the page that was doing what you thought it
7 did. Maybe there is a cross-reference issue in your
8 submissions.

9 MR. RODGER: I'll certainly check that. Sorry, Mr.
10 Rupert.

11 MR. KAISER: Why don't you have a look now, and see if
12 you can help us.

13 MR. RODGER: Mr. Chair, we'll endeavour to get copies
14 during the lunch break.

15 MR. KAISER: All right. We'll take the lunch break
16 now. We'll come back at 2 o'clock.

17 --- Recess taken at 12:34 p.m.

18 --- On resuming at 2:11 p.m.

19 **DECISION:**

20 MR. KAISER: Please be seated.

21 The Board has decided to issue a decision now on the
22 matter of the relevance of the evidence with respect to the
23 process, rather than deferring it, as Mr. Rodger suggested,
24 in order that we can proceed with the case in a more
25 orderly manner.

26 We are dealing with an application by AMPCO under
27 section 33(4) of the *Electricity Act* for review of the
28 three times ramp rate market rule amendment. In that

1 context there has been a discussion and a concern about the
2 scope of the case, and particularly whether evidence
3 regarding the process by which the IESO reached this rule
4 is relevant.

5 AMPCO submits that the three times ramp rate market
6 rule amendment should be revoked by this Board and referred
7 back to the IESO for stakeholder consultation, based on the
8 following grounds: First, that the process followed by the
9 IESO in the three times ramp rate stakeholder consultation
10 process violated IESO's common-law duty of procedural
11 fairness, by breaching AMPCO's legitimate expectation that
12 the IESO would follow its published stakeholder engagement
13 process and apply its stakeholder engagement principles,
14 and raising a reasonable apprehension of bias that the IESO
15 favoured the interests of generators; secondly, that the
16 integrity of the statutorily-mandated consultation process
17 has been undermined. They say this is inconsistent with
18 the purposes of the *Electricity Act* and unjustly
19 discriminates against Ontario consumers in favour of
20 Ontario generators.

21 They also allege certain substantive failures, as
22 well, which are not at issue in the proceeding this
23 morning.

24 Accordingly, AMPCO argues that the materials produced
25 by IESO relating to procedural matters are relevant both to
26 the issue of procedural fairness and also the substantive
27 issues.

28 The starting point in this discussion is section 33(9)

1 of the *Electricity Act*. It has been referred to by
2 virtually everyone this morning. It provides that:

3 "If, on completion of its review, the Board finds
4 that the amendment is inconsistent with the
5 purposes of this *Act*, or unjustly discriminates
6 against or in favour of a market participant or a
7 class of market participants, then the Board
8 shall make an order revoking the amendment on the
9 date specified by the Board and referring the
10 amendment back to the IESO for further
11 consideration."

12 AMPCO argues that all of the IESO materials are
13 relevant because they demonstrate that the IESO failed to
14 follow procedural fairness in developing the amendment.
15 According to AMPCO, the lack of procedural fairness
16 demonstrates that the amendment unjustly discriminates
17 against its members in favour of generators.

18 In other words, AMPCO argues that it has rights of
19 natural justice in IESO rule-making and that those rights
20 should be enforced by the Board in the market review
21 amendment process.

22 All of the other parties appearing before us this
23 morning state that this is an incorrect interpretation of
24 section 33(9), because it equates the term "unjustly
25 discriminates" with a violation of the rules of natural
26 justice and it equates the Board's review process with a
27 judicial review application.

28 They argue that the purpose of the Board's review in a

1 market review amendment should be aimed at economic
2 efficiency and not natural justice.

3 They say that the OEB should be reviewing an amendment
4 to the IESO rules and not the IESO stakeholdering process;
5 that the scope of the Board's review should be aimed at the
6 rule itself, and the impact of that rule, not the process
7 by which the amendment was made.

8 In other words, it's argued before us that the issue
9 is whether the rule is unjustly discriminatory. The Board
10 agrees with that position.

11 Sections 19(1) and 20 of the *OEB Act*, read together,
12 provide that the Board has general authority to determine
13 any question of law or fact arising in any matter before it
14 except where that authority is limited by statutory
15 provision to the contrary.

16 In the case of a market rule amendment, another
17 statutory provision does limit the Board's jurisdiction.
18 Section 33(9) of the *Electricity Act* specifically sets out
19 certain grounds on which the Board may make an order.

20 Accordingly, we find that section 33(9) of the
21 *Electricity Act* is a jurisdiction-limiting provision, not
22 another jurisdiction-granting provision. That is, with
23 respect to a market rule amendment, the Board's
24 jurisdiction is not as broad as suggested by section 20 of
25 the *OEB Act*, but limited by section 33(9) of the
26 *Electricity Act*.

27 In this regard, the Board has also considered the
28 submissions of various parties, and agrees, that the 60-day

1 time limit for disposing of this review is consistent with
2 the conclusion that the Board's scope of review is limited
3 to the criteria set out in section 33(9).

4 The legislature can be taken as having known that an
5 exhaustive review of the process would render it impossible
6 to meet these timelines.

7 We then come to what can be seen as a second and
8 distinct issue. That is whether there is a common-law
9 principle of administrative law that the IESO has violated
10 in the course of this market rule amendment process which
11 yields a separate and distinct remedy.

12 The IESO says the common-law principles of
13 administrative law do not assist AMPCO in extending the
14 jurisdiction of the Board to review the details of the
15 stakeholdering process. They say that the IESO is a
16 statutory corporation whose affairs are managed and
17 supervised by an independent board of directors, and the
18 functions carried out by the IESO under the review at issue
19 in this proceeding is a rule-making function and is
20 essentially a legislative function.

21 They rely upon the Supreme Court of Canada's 1980
22 decision in the Inuit Tapirisat as support for the
23 proposition that in legislative functions these rules do
24 not apply.

25 AMPCO takes a different view and it relies upon the
26 Supreme Court of Canada 1990 decision in Baker, as well as
27 the Divisional Court decision in Bezaire.

28 The aspects of the decision that AMPCO relies upon can

1 be found at pages 15 and 14, where the Court stated that
2 one of the criteria that must be looked at in determining
3 whether the rules of natural justice apply to a process is
4 whether the parties had a legitimate expectation that those
5 rules would be followed. The Court states, in part:

6 "Fourth, the legitimate expectations of the
7 person challenging the decision may also
8 determine what procedures the duty of fairness
9 requires in given circumstance."

10 They go on to say:

11 "This doctrine as applied in Canada is based on
12 the principle that the circumstances affecting
13 procedural fairness take into account the
14 promises or regular practices of administrative
15 decision-makers and it would generally be unfair
16 for them to act in contravention of
17 representations as to procedure or to backtrack
18 on substantive promises without according
19 significant procedural rights."

20 The Court also noted that another factor to be
21 considered in determining the nature and extent of the duty
22 of fairness that's owed to the parties is the importance of
23 the decision to individuals involved.

24 As has been pointed out, there's no question that
25 there's a significant amount of money involved in this
26 decision; it's an important decision. With respect to the
27 expectations of the parties, there is a provision in
28 section 13.2 of the *Electricity Act* requiring the IESO to

1 establish processes by which consumers, distributors and
2 generators may provide advice. AMPCO makes the point that a
3 framework was established to govern the process by which
4 these rules would be amended and implemented. They say
5 that this procedure, despite the expectation they were
6 entitled to, has not been followed.

7 That may or may not be the case, but this Panel is of
8 the view that that is not a matter for our consideration.
9 Mr. Vegh in his submissions questioned whether the Board
10 should be a parallel Divisional Court. We don't think it
11 should be.

12 IESO may or may not have followed the rules of natural
13 justice. And they may or may not have been required to do
14 so based upon the different authorities that have been
15 cited by the different parties. But that, we believe, is a
16 matter to be determined by the Divisional Court, not the
17 Ontario Energy Board.

18 Mr. Rodger did refer us to a decision of this Board on
19 September 20th, 2005. That appears at tab 11 of Ms.
20 DeMarco's brief. I'm reading in part:

21 "The Board concludes that stakeholder concerns
22 have been substantially met. The true test will,
23 however, be the experience of stakeholders in the
24 new process. Stakeholders and the Board will
25 have opportunities to review how well the process
26 works over time as they are implemented. The
27 Board therefore approves the IESO proposals on
28 its stakeholdering process. It should be noted,

1 however, that this approval relates to the
2 processes that the IESO has proposed. It does not
3 change the Board's obligation to review IESO
4 programs that have implications for IESO fees,
5 expenses and revenue requirements, even when
6 these programs have been subjected to the IESO
7 stakeholdering process."

8 Mr. Rodger's submission was that having approved the
9 stakeholdering process it was incumbent upon the Board to
10 follow through and police, if you will, the rule-making
11 process.

12 We differ on that. The two are distinct functions.
13 The review at question is a judicial review and best
14 reserved for the courts.

15 That leads us to the Order requested. Pursuant to
16 this decision, the Board will order that any evidence
17 relating to the stakeholdering process be struck. That
18 would include Mr. Rodger's submission of March 26th. If
19 the parties are unable to agree on what evidence is to be
20 excluded or not excluded, the Board may be spoken to.

21 That completes the Board's ruling in this matter.

22 **PROCEDURAL MATTERS:**

23 Mr. Rodger and Mr. Mark, we were going to suggest,
24 subject to your convenience, that you may want to adjourn
25 for the rest of the day and regroup in light of that.

26 MR. MARK: It probably makes sense.

27 MR. KAISER: Unless there be some debate and
28 discussion as to what evidence is to be struck and what

TAB 2

DECISION AND ORDER

EB-2019-0242

ASSOCIATION OF MAJOR POWER CONSUMERS IN ONTARIO

**Application to review amendments to the market rules
made by the Independent Electricity System Operator**

**BEFORE: Cathy Spoel
Presiding Member**

**Emad Elsayed
Member**

**Susan Frank
Member**

January 23, 2020

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1 INTRODUCTION AND SUMMARY

This is the Decision and Order of the Ontario Energy Board (OEB) on an application filed by the Association of Major Power Consumers in Ontario (AMPCO) for an order revoking a set of amendments to the wholesale electricity market rules made by the Independent Electricity System Operator (IESO) (Amendments), and referring them back to the IESO for further consideration (Application). The Application was filed under section 33 of the *Electricity Act, 1998* (Act). AMPCO also filed a Notice of Motion requesting an order of the OEB under section 33(7) of the Act staying the operation of the Amendments pending the completion of the OEB's review.

The Amendments at issue (MR-00439-R00 to -R05) enable the evolution of the IESO's Demand Response Auction into a Transitional Capacity Auction, including notably to allow participation by generators that are neither under contract nor rate-regulated. The Amendments were published by the IESO on September 5, 2019 and had an effective date of October 15, 2019.

By Decision and Order dated November 25, 2019, the OEB stayed the operation of the Amendments pending completion of the OEB's review and issuance by the OEB of its order embodying its final decision in this proceeding. The OEB is required by section 33(6) of the Act to issue that order within 120 days of receipt of the Application.

The OEB has considered the Amendments against the statutory tests set out in section 33(9) of the Act, and has concluded that the Amendments: (i) are not inconsistent with the purposes of the Act; and (ii) do not unjustly discriminate against or in favour of a market participant or class of market participants. Accordingly, the Application is dismissed and the stay of the operation of the Amendments is lifted.

2 PROCESS

2.1 The Application

The Application was filed on September 26, 2019 by AMPCO, an organization that represents major power consumers in Ontario, some of whom participate in the IESO-administered markets as Demand Response Resources (DR Resources).

The Application concerns the IESO's new capacity market. The IESO developed a capacity auction (the Transitional Capacity Auction or TCA) to secure capacity commitments to participate in that market. Both DR Resources and dispatchable generating facilities that are neither under contract nor rate regulated are eligible for participation in the TCA. The TCA builds on the IESO's former Demand Response Auction (DRA), which has been in place since December 2015, in which only capacity offered from DR Resources was procured. The Amendments at issue in this proceeding enable that evolution.

The Application requests that the OEB revoke the Amendments and refer them back to the IESO for further consideration on the grounds that the Amendments are: (i) inconsistent with the purposes of the Act; and / or (ii) unjustly discriminatory to DR Resources. According to the Application, the inequity in treatment regarding payment terms for DR Resources and generation resources is unjustly discriminatory to the DR Resources, and will result in outcomes that are inconsistent with the Act. AMPCO's claim is that their capacity offers in the auction will not be able to compete with those of generation resources, since the latter receive an energy payment if dispatched in addition to an availability payment.

As part of its Application, AMPCO also filed a Notice of Motion requesting an order of the OEB staying the operation of the Amendments pending the completion of the OEB's review (Motion to Stay).

2.2 Notice of Hearing, Interventions, Cost Responsibility and Cost Award Eligibility

A Notice of Hearing was issued on October 1, 2019. The OEB attended to service of the Notice of Hearing on all electricity licensees as well as on all entities identified by the IESO as participants in the 2015, 2016, 2017 and 2018 DRAs.

In Procedural Order No. 1, issued on October 4, 2019, the OEB ordered AMPCO to file all affidavit material on which it intended to rely, whether in support of its Application or the Motion to Stay, by October 11, 2019. AMPCO filed affidavit material on that day.

In response to the Notice of Hearing, several interested parties requested intervenor status, the Ontario Energy Association requested observer status, and the Canadian Manufacturers & Exporters indicated that it would be monitoring the proceeding as it unfolded.

On October 18, 2019, the OEB issued Procedural Order No. 2, which established procedures and timelines for dealing with the Application and the Motion to Stay in parallel¹, and granted intervenor status to all those that requested it; namely:

- Advanced Energy Management Alliance (AEMA)
- Association of Power Producers of Ontario (APPRO)
- Capital Power Corporation (Capital Power)
- Kingston CoGen Limited Partnership (KCLP)
- Rodan Energy Solutions Inc. (Rodan)
- School Energy Coalition (SEC)
- TransAlta Corporation (TransAlta)
- IESO

AEMA, Capital Power, Rodan and TransAlta did not actively participate in this proceeding.

In Procedural Order No. 2, the OEB also stated that it intended for the IESO to bear the costs of this proceeding, but invited the IESO to make a submission if it wished to object to bearing the costs of this proceeding or to object to any of the requests for cost award eligibility made by AMPCO, APPRO, SEC and KCLP. After consideration of submissions filed by various parties, the OEB issued its Decision on Cost Responsibility & Cost Eligibility on November 12, 2019. In that Decision, the OEB determined that: (i) the IESO shall bear the costs of this proceeding; (ii) AMPCO, SEC and APPRO are eligible for an award of costs; and (iii) KCLP is not eligible for an award of costs.

2.3 Motion to Stay

In support of their positions on the Motion to Stay, evidence was filed by AMPCO, the IESO and KCLP. Submissions on the Motion to Stay were filed by AMPCO, the IESO, KCLP, APPRO and OEB staff. A Decision and Order staying the operation of the Amendments was issued on November 25, 2019.

¹ Subsequent procedural orders amended, revised or supplemented the procedures and timelines established in Procedural Order No.2.

2.4 Hearing of the Application

Evidence in respect of the Application was filed by AMPCO, the IESO, KCLP and OEB staff. The hearing on the Application commenced on November 25, 2019 and continued on November 28 and 29. Written summaries of planned oral arguments were filed by AMPCO, the IESO, KCLP, APPrO and OEB staff on December 9, 2019. Oral argument by these parties, as well as by SEC, was heard on December 12 and 13, 2019.

3 BACKGROUND

The IESO-Administered Markets

The IESO-administered markets consist of several wholesale markets including energy and operating reserve, procurement markets for ancillary services and, most recently, a market to procure capacity.

The wholesale energy market is the cornerstone of the IESO's market architecture, and has operated since the market opened in 2002. Both generation and load facilities participate in the IESO's markets. Some generation and load facilities are dispatchable – that is, they have the capability to adjust their level of energy production or consumption in response to dispatch instructions received from the IESO. In the IESO's real-time energy market, dispatchable generators and loads make offers to supply and bids to consume energy, respectively. The IESO determines a market clearing price every five minutes, and also sends dispatch instructions to all dispatchable market participants every five minutes. Dispatchable generators are paid the market clearing price for the energy they produce and inject into the grid. Dispatchable loads pay the market clearing price for the energy they withdraw from the grid.

The Developing Capacity Market

The IESO's energy market has been modified over time to incorporate contracted generating resources, to integrate significant amounts of renewable generation, and to support other changes. More recently, similar to other organized wholesale markets in North America, the IESO began to develop a market mechanism to procure capacity.

In 2015, the IESO launched the DRA to procure capacity from DR Resources, which commit to being available to reduce consumption based on market prices during a pre-defined commitment period. The DRA has been run each year in early December, and the associated commitment periods run from May 1 to October 31 for the summer period, and November 1 to April 30 for the winter period.

There are two types of DR Resources that can participate: dispatchable loads and Hourly Demand Response resources. The latter may be dispatched on an hourly basis for up to four hours. There are two types of Hourly Demand Response resources: physical resources, which are directly connected to the IESO-controlled grid; and virtual resources, which typically provide demand response capability through a portfolio of contributors connected at the distribution level.

DRA participants make capacity offers that consist of megawatts of capacity and prices at which they are willing to agree to a capacity commitment. The IESO decides how much DR capacity it wants to procure and at what price. The auction clears where supply

equals demand; this intersection determines the price paid for capacity for the upcoming commitment periods. All proponents whose capacity offer prices are equal to or lower than the auction clearing price are selected for capacity commitments. Regardless of their offer, each DR Resource receives the same auction clearing price for each megawatt of capacity they make available for curtailment upon dispatch from the IESO during the commitment period.

DR Resources make their capacity available by submitting bids to buy energy in each of the “availability window” hours within a business day. The energy bids identify the maximum prices DR Resources are willing to pay for energy. Market prices higher than a DR Resource’s bid price results in that DR Resource being dispatched to curtail consumption. There is no payment provided to DRA participants when they are dispatched to curtail consumption, but at the same time they also do not pay for the electricity they are no longer consuming.

The TCA is designed to work in much the same way as the DRA, except that dispatchable generators that are neither under contract nor rate-regulated compete for capacity commitments alongside dispatchable loads and Hourly Demand Response resources. As with the DRA, the TCA design is such that all resources that clear the TCA receive the same availability payment for each megawatt of capacity made available during the commitment period. As with the DRA, DR Resources make their capacity available by submitting bids to buy energy, and are dispatched to curtail consumption to the extent that market prices are higher than their bid prices. Generators who are successful in the TCA have to offer supply into the energy market during the TCA commitment period. Like other generators, they are paid for energy injections at the prevailing market clearing price when dispatched to produce electricity, consistent with initial market design and market rules that pre-date the Amendments made by the IESO in respect of the TCA.

Out-of-Market Payments

A significant feature of the IESO-administered markets is the range of supplemental payments made available outside of the IESO’s energy market. These out-of-market payments (so called because the payments are not reflected in the market price for energy) are largely motivated by reliability imperatives that can at times require market participants to operate when it is otherwise uneconomic for them to do so. Different classes of market participants are eligible for different forms of out-of-market payments.

One particular form of out-of-market payment that received significant attention in this proceeding are payments made to generators under the real-time generation cost guarantee (GCG) program. The IESO created this program to manage the reliability risk of generators with large start-up costs opting not to run on days when they may not be

able to recover their costs through prevailing energy prices. In its current form, the GCG program guarantees non-quick start gas-fired generators recovery of their costs to start up and be available (e.g., fuel, incremental operating & maintenance) should market revenues fall short. Absent the GCG program, the only way for a non-quick start generator to attempt to recover these costs is to include an estimate of them in their energy offer prices.²

² KCLP oral argument, transcripts, v.4, p.120

4 THE STATUTORY TESTS

As set out in section 33(9) of the Act, the tests that apply when reviewing market rule amendments are whether they: (i) are inconsistent with the purposes of the Act; or (ii) unjustly discriminate against or in favour of a market participant or class of market participants.

There has been only one prior case under section 33 of the Act in respect of which the OEB issued a final decision.³ In that case, the OEB determined that unjust discrimination in the context of section 33 of the Act means unjust *economic* discrimination.⁴ That case also established that the burden of proof in demonstrating whether market rule amendments pass or fail the statutory tests is on the applicant.⁵ All of the parties agreed that these principles are applicable in the current proceeding.

AMPCO's application initially contended that the Amendments failed both of the statutory tests, but later stated that inconsistency with the purposes of the Act flows from unjust discrimination, and that absent unjust discrimination there is no issue with consistency with the purposes of the Act.⁶ Accordingly, the central issue in this case is whether the Amendments, by allowing generators and loads to compete in an expanded capacity auction, have the effect of being unjustly discriminatory to DR Resources. Parties made various submissions on whether or not the Amendments were unjustly discriminatory to DR Resources, but generally concurred with the definition of "unjust discrimination" suggested by OEB staff in its written summary of argument; namely, different treatment that is not justified by a difference in circumstances.⁷

While generally agreeing with OEB staff's definition, SEC submitted that the impact of the Amendments on ratepayers must be considered in assessing whether any economic discrimination is unjust.⁸ The IESO argued that determining whether discrimination is 'unjust' requires consideration of the interests of others such as the IESO, consumers and generators.⁹

OEB staff submitted that the key underlying question is the degree to which generation and DR Resources are in substantially similar circumstances with respect to their characteristics and to the services they provide to the IESO-administered markets. In the event that their circumstances are found to be dissimilar, different treatment may be

³ EB-2007-0040

⁴ EB-2007-0040, Decision and Order, p.26

⁵ EB-2007-0040, Decision and Order, p.18

⁶ AMPCO oral argument, transcripts, v.4, p.1-2

⁷ OEB staff written argument, p.4

⁸ SEC oral argument, transcripts, v.4, p.96

⁹ IESO written argument, para 10

discriminatory but would not be unjustly so. However, if their circumstances are substantially the same, different treatment in the broader economic context – that is, through the IESO’s market design and its supporting rules – would result in the Amendments being unjustly discriminatory.¹⁰

There was disagreement among the parties as to whether the test for unjust discrimination is qualitative or quantitative. AMPCO argued that “unjust” discrimination in this statutory context means discrimination that is not economically justified and that it is a *qualitative – not a quantitative* – test.¹¹ SEC argued that the test for unjust discrimination is not entirely qualitative, and that there has to be some material negative impact, otherwise the question of what constitutes discrimination becomes an entirely theoretical discussion.¹² The IESO agreed with SEC’s argument and also submitted that, if the risk of a DR Resource being activated (and incurring the related activation costs) is “infinitesimally small”, then there is no unjustness.¹³

All parties, including the IESO, agreed that it was appropriate to consider the Amendments in the broader market context and not in a ‘vacuum’.¹⁴ However, the IESO’s position was that AMPCO’s requested remedy of revoking the Amendments because other market rules and the original market design may make the Amendments unjustly discriminatory to DR Resources amounts to an impermissible challenge to those other rules.¹⁵

AMPCO clarified its position that it was not asking the OEB to find whether or not the IESO should implement energy or activation payments for DR Resources and that there are other options and approaches that have been successfully and relatively easily implemented in the past.¹⁶ In any event, AMPCO concluded that, while there are “fixes” available that do not involve disrupting existing market rules, it is not a problem for the OEB to solve but rather the IESO.

Findings

The OEB finds that the question of consistency with the purposes of the Act is only relevant to the extent there is unjust discrimination. In no other manner are the Amendments inconsistent with the purposes of the Act.

¹⁰ OEB staff written argument, p.4

¹¹ AMPCO written argument, paras 13-17 and oral argument, transcripts, v.4, p.36-37

¹² SEC oral argument, transcripts, v.4, p.95

¹³ IESO oral argument, transcripts, v.4, p.170

¹⁴ IESO oral argument, transcripts, v.4, p.153

¹⁵ IESO oral argument, transcripts, v.4, p.152-153

¹⁶ AMPCO oral reply argument, transcripts, v.5, p.19-20

On the matter of discrimination, the OEB finds that, as in the Ramp Rate case¹⁷, discrimination means economic discrimination.

On the question of whether the Amendments are unjustly discriminatory, the OEB finds that three elements are required.

First, there must be economic discrimination. Discrimination can arise from differences in treatment and, in the context of the electricity markets, this can mean differences in treatment for different classes of market participants when considered in the context of the IESO-administered market as a whole.

Second, it must be shown that the difference in treatment is not justified by a difference in circumstances. This is not to say that differently situated parties cannot be treated differently; treatment can be unequal yet not inequitable or “unjust”. It is only different treatment in the absence of material and relevant differences in the situation or characteristics among the affected market participants that raises the prospect of unjust discrimination.

Third, the claim of discrimination cannot be purely qualitative; it must have some quantitative aspect to it. The OEB appreciates that as the Amendments are prospective, quantification will be based on estimates and assumptions about the operation of the market, but within that context, the OEB requires adequate information on the nature and extent of the economic impacts in order to make a finding of unjust discrimination.

With respect to the IESO’s argument that the OEB does not have jurisdiction to review the Amendments, as the OEB noted in its decision on the Motion to Stay, the fact that the lack of energy payments for DR Resources may be a circumstance that results in the Amendments being discriminatory does not mean that, in reviewing the Amendments, the OEB is conducting a review of the market rules relating to energy payments. The OEB maintains that view in this Decision.

¹⁷ EB-2007-0040

5 POSITIONS OF THE PARTIES

5.1 Overview of the Parties' Evidence

Colin Anderson, in his capacity as president of AMPCO, was the witness for the applicant. Mr. Anderson's testimony described the reasons behind AMPCO's view that the absence of energy market payments to DR Resources for energy delivered via curtailment would put DR Resources at a competitive disadvantage in the TCA and would likely cause them to be replaced by generators. He provided examples involving a steel manufacturer as a DR Resource that incurs costs analogous to those of generators in order to deliver energy.

The IESO's witnesses were David Short, Director of Capacity Market Design, and Candice Trickey, Director of Demand Side Strategy. They described the operation of the IESO's markets, the Amendments that establish the TCA, the design of prior DR programs, and other features of the IESO's market programs such as the GCG program.

John Windsor, Vice President of Energy Services & Asset Management of Northland Power Inc. appeared as a witness on behalf of KCLP, a partnership that owns a gas-fired generator that would be eligible to participate in the TCA. Northland Power Inc. is an owner of KCLP. He provided background on the generation facility and described the significance of potential revenues through the TCA in any decision to continue to operate the facility in the Ontario market.

Brian Rivard appeared as an expert witness on behalf of KCLP. Dr. Rivard's testimony introduced the concept of horizontal equity and included detailed scenario analyses of the offer strategies of differently configured market resources in the presence or absence of energy payments for DR Resources.

OEB staff retained London Economics International (LEI), specifically A.J. Goulding and Adam Hariri, as expert witnesses, to prepare an independent report and provide testimony with a focus on how DR Resources are compensated in U.S. markets that are subject to the jurisdiction of the Federal Energy Regulatory Commission, including consideration of energy, capacity and other payments. LEI identified key contextual differences between the markets in Ontario and the U.S.; among others, those differences include the disconnect between wholesale electricity prices and fixed retail rates that presented a barrier to demand response in the U.S.

While APPrO and SEC participated actively in the cross examination of witnesses and argument, neither provided evidence or witnesses of their own.

5.2 Areas of Agreement

In addition to the areas of agreement amongst the parties noted in section 4 above, there also appeared to be general agreement among the parties that:

- The Amendments are not inconsistent with the purposes of the Act, except for the issue of unjust discrimination on which the parties were divided
- There is a need to retain additional capacity resources in order to maintain reliability
- The use of competition is an appropriate means to retain additional resource commitments
- DR Resources and generators are functionally equivalent regarding their ability to balance supply and demand upon dispatch in the energy market

An area about which there was partial agreement pertains to the costs of providing DR, and the differences in the kinds of costs that DR Resources may incur when doing so. Given the significance of the question of costs to the proceeding, the OEB sees benefit in describing these in further detail.

The first point of agreement pertains to the concept of the value of lost load, or VOLL – that for any given energy consumer, there is a maximum price for energy above which the consumer would rather forgo the opportunity to consume the energy than pay to continue consuming. It was not contested that this value can vary by consumer. A VOLL would be equal to the added value that a load derives from the energy as an input in the production of a product or service. This concept arose frequently in the hearing.

There also appeared to be no general disagreement among the parties that DR Resource costs could be categorized as follows:

- *Cost related to availability:* These are the costs that a DR Resource would incur in order to be a participant in the DRA, and be available in the event a DR activation arises.
- *Costs related to an activation event:* Such costs would parallel the start-up costs faced by a non-quick start generator.
- *Costs related to the amount of energy made available via an activation to curtail demand:* These costs parallel a generator's marginal costs of generating electricity.

There was also general agreement that the first type of costs (related to availability) are appropriately recovered via DR Resource offer prices in the TCA.

Parties further generally agreed that there are activation costs for both generation and DR Resources. However, there was no consensus as to the nature of those costs and

whether they should be included in offers made by DR Resources in the capacity market or in the bids they make in the energy market. Parties disagreed whether these costs could be managed by DR Resources via their TCA bids, should be compensated through the provision of energy payments like those made to generators or should be compensated by creating for DR Resources an out-of-market mechanism similar to the GCG program. The specific positions of the parties in relation to this matter are discussed below.

It was also noted that the latter two cost categories, which relate to DR activation costs, can arise out-of-market when DR Resources are either tested or activated to assist the IESO in responding to emergency conditions on the grid. Parties agreed that, since these are out-of-market activations, DR Resources cannot manage any resulting costs via their bid prices in the energy market. The IESO has recently adopted market rule amendments that will provide compensation to Hourly Demand Response resources for test and emergency activations.¹⁸

5.3 Disputed Matters

AMPCO's fundamental position in this proceeding is that the Amendments are unjustly discriminatory to DR Resources since they will be unable to compete on a level playing field with generation resources in their bidding in the TCA.

By contrast, the position of the intervenors that participated in the proceeding (IESO, KCLP, APPrO and SEC) was that the Amendments are not unjustly discriminatory for various reasons.

The positions of the parties and OEB staff on areas where there was no agreement are discussed further below.

Do the Amendments have an unjustly discriminatory effect given the payments available to generators in the energy market? Do the Amendments have an unjustly discriminatory effect given payments available to generators outside of the energy market? Has there been an assessment of these issues?

In this proceeding, an inquiry into the presence of economic discrimination requires an assessment of the kinds of payments resources are eligible for in the IESO-administered markets. As discussed in section 3 above, the two main categories of payment are energy payments (paid to generators upon dispatch) and out-of-market payments.

¹⁸ The market rule amendments did not contain provisions to compensate DLs for test and emergency activations as they already benefit from the make whole payment program related to local prices that Ms. Trickey briefly described. Transcripts, v.3, p.30-31

A. *Absence of energy payments for DR Resources*

AMPCO

AMPCO argued that, while DR and generation resources clearing the TCA are each obligated to also participate in the energy market with daily bids and offers, respectively,¹⁹ and both incur costs when activated in the energy market, only generators receive payments for activation. All generators receive energy payments, and some also receive payments under the GCG program.^{20 21} Generators therefore do not need to factor the risk of incurring costs of activation into their capacity offers.²²

In contrast, DR Resources must include forecast activation costs in their TCA bids, or risk activation and incurring associated costs without compensation. AMPCO contends that the effect of the Amendments is therefore to create a TCA in which DR Resources must compete with generators at a disadvantage.²³

AMPCO argued that, given the functional equivalence of the services provided by DR Resources and generation resources, there is no economic justification for DR Resources having to recover anticipated activation costs through their TCA bids, or risk losses, when generators can recover costs associated with their dispatch in the energy market through payment streams not available to DR Resources.^{24 25} The absence of economic justification for discriminating against DR Resources makes the discrimination “unjust” and AMPCO summed it up as follows:

Functional equivalence, different compensation, lack of economic justification; that is the ‘unjust’ component of the ‘unjust discrimination’ test under s.33 of the Act.²⁶

IESO

The IESO’s position is that the Amendments are not unjustly discriminatory because they treat DR and generation resources equally in the TCA. That is, all DR and generation resources that successfully bid into the TCA receive the same availability payments

¹⁹ AMPCO oral reply argument, transcripts, v.5, p.24

²⁰ AMPCO oral argument, transcripts, v.4, p.11

²¹ Transcripts, v.2, p.29

²² AMPCO oral argument, transcripts, v.4, p.34

²³ AMPCO oral reply argument, transcripts, v.5, p.12

²⁴ AMPCO written argument, paras 13–17 and oral argument, transcripts, v.4, p.36-37

²⁵ AMPCO oral argument, transcripts, v.4, p.11

²⁶ AMPCO oral argument, transcripts, v.4, p.11-12

irrespective of whether they are subsequently economically activated in the energy market.²⁷

The IESO argued that there is no evidence that the current market design that treats generators and load participants differently in the energy market is defective or inequitable, and what evidence there is, is that there is no basis for making energy payments to DR Resources.²⁸

The IESO further indicated whether DR resources should receive energy payments is an energy market design issue that is “irrelevant to the main point [at] issue [in this proceeding], which is, is there any competitive disadvantage in the capacity auction”.²⁹ The IESO also noted that it is currently undertaking a stakeholder engagement process to assess whether DR Resources should receive energy payments. The IESO stated it will make a final decision on that matter in June 2020. The IESO agreed that the scope of that stakeholder engagement would be broadened to assess activation payments, as well as energy payments, given the amount of discussion related to out-of-market GCG payments to generators.³⁰

KCLP

KCLP supported the IESO’s position that, under the TCA, DR and generation resources are treated exactly the same: they compete in an auction to provide a unit of capacity, and every participant that clears the auction receives exactly the same auction clearing price. Both DR Resources and generators are given a fairly high degree of discretion to establish their energy market bids or offers at a price which allows them to recover their VOLL or their variable costs of providing energy when activated.³¹ KCLP referred to the evidence of Dr. Rivard, who noted that “not getting an energy payment right now, based on history seeing how often they would actually be activated is, in my words, *de minimus* in expectation, in which case they could offer in that capacity auction exactly the same that they would have had generators not been there”.³²

KCLP also argued that, if DR Resources received an energy payment for an economic activation, it would be a double benefit because the DR Resource avoids the cost of consuming and would also receive an energy payment from the IESO to avoid this cost.³³

²⁷ IESO written argument, p.1

²⁸ IESO oral argument, transcripts, v.4, p.152-153

²⁹ Transcripts, v.5, p.28

³⁰ Transcripts, v.3, p.91-93

³¹ KCLP written argument, paras 18-24

³² Transcripts, v.2, p.191

³³ KCLP written argument, para 38

APPrO

APPrO stated that it relied largely on the independent expert evidence filed by KCLP to establish that the Amendments afford fair and equitable treatment to auction participants and do not unjustly discriminate against DR resources.³⁴ APPrO also referred to the evidence of Dr. Rivard in support of its position that paying an energy payment to DR Resources for economic activations would afford a competitive advantage to DR Resources over generators in the TCA.³⁵

OEB Staff

OEB staff submitted that there are key differences in circumstances between generation and DR Resources. When generation is dispatched, it sells energy it owns into the market. When making energy available to other loads via a curtailment, a DR Resource is simply choosing not to buy energy.

Given the evident differences in the circumstances of generation and load resources, the difference in eligibility for energy payments to generation and DR Resources upon dispatch is not unjustly discriminatory. Further, an energy payment to DR Resources would constitute a double payment for the reduction in demand in addition to avoided costs.³⁶

SEC

SEC argued that, in order to show that the Amendments are unjustly discriminatory, AMPCO would need to demonstrate that there is a material negative impact and not just theoretically. If there is no discrimination, in fact, then there is no unjust discrimination.³⁷

As a more general matter, SEC raised a concern that the IESO should have done the economic assessment on the issue of energy payments or activation payments to DR Resources before the Amendments were approved by the IESO Board of Directors. SEC noted that it is important to remember that only the IESO has the information to properly undertake such an empirical analysis.³⁸

³⁴ APPrO written argument, para 3

³⁵ APPrO written argument, para 25

³⁶ OEB staff written argument, p.7

³⁷ SEC oral argument, transcripts, v.4, p.95

³⁸ SEC oral argument, transcripts, v.4, p.105-106

B. Absence of out-of-market payments to DR Resources

As discussed in section 3, in addition to the payments that generators receive for the energy they supply, there are also some out-of-market ‘make whole’ payments that are currently available to some generators but not to DR Resources in the event of activation.³⁹

AMPCO

During the oral hearing, AMPCO questioned witnesses about the GCG program, and about past IESO and Ontario Power Authority programs that provided compensation for activation for DR Resources. It argued that DR Resources are at a competitive disadvantage in the TCA relative to generation resources because they do not have access to such out-of-market compensation.⁴⁰

AMPCO noted, if the OEB finds the Amendments create a TCA that is discriminatory against DR Resources, “it is not up to the Board to fix that problem. It is up to the IESO”. AMPCO added that the IESO has already done this in respect of out-of-market test and emergency activations, where the IESO determined compensation for DR Resources was appropriate. There is therefore no bar to the IESO implementing activation payments in relation to DR Resources, as an alternative to energy payments, if appropriate.⁴¹

IESO

The IESO submitted that the evidence before the OEB is that it is entirely within DR Resources' control to manage the probability or risk of activation by including economic activation costs in their energy market bids; and if they do this, the risk and associated cost of being activated is remote and immaterial.⁴²

The IESO further argued that, where there are costs caused by uneconomic activations of DR Resources due to testing, the IESO has a program that is similar to those available to generators in that it also provides for out-of-market compensation. The IESO noted those are the only costs that DR Resources are exposed to that they cannot avoid through their energy market bids and the only place to put them was in their capacity auction bid.⁴³

³⁹ KCLP oral argument, transcripts, v.4, p.119-120. KCLP discusses two generator cost guarantee programs introduced by the IESO: the real-time generation cost guarantee program in 2003 and the day-ahead cost guarantee program in 2006.

⁴⁰ AMPCO written argument, paras 5-7

⁴¹ AMPCO oral reply argument, transcripts, v.5, p.20

⁴² IESO written argument, paras 20-21, and the evidence of IESO's witnesses, transcripts v.3, p.23-24

⁴³ IESO oral argument, transcripts, v.4, p.165

KCLP

KCLP noted that the GCG programs were created to address a deficiency in the energy markets to provide assurance to certain generators that had long start-up times. In order to minimize potential losses, they avoided starting up unless they could cover all of their costs. The result of the introduction of the GCG program was that generators no longer had to build these costs into their energy market offers and, as a result, could avoid those potential losses.⁴⁴

KCLP's witness, Mr. Windsor, stated that the GCG program guarantees recovery of about 10% to 15% of the overall variable costs associated with running the generation unit for a typical period of time.⁴⁵

OEB Staff

OEB staff noted that both experts in this proceeding indicated that DR Resources can incur start-up costs that are akin to those recovered by eligible generators under the GCG program.⁴⁶

OEB staff submitted that determining whether there is unjust discrimination absent a mechanism through which DR Resources can recover activation costs depends on the OEB's assessment of the similarity of circumstances between GCG-eligible generators and DR Resources.

OEB staff agreed that both DR and generation resources can provide capacity to the market on a functionally equivalent basis, and did not dispute that each resource type may incur certain costs, including start-up and variable costs. OEB staff noted that, while it is conceivable that some start-up costs could be incurred by some DR Resources, there was no evidence on the record that any DR Resource faces physical or operational constraints of a similar magnitude to those faced by GCG-eligible generators.⁴⁷

OEB staff questioned IESO's suggestion that they have other "similar programs" to the GCG for DR Resources where the example provided was payments for out-of-market activations involving Hourly Demand Response resources. OEB staff noted that such payments are not similar in nature because they are "make-whole" payments for "testing" required by the IESO, rather than payments related to participating in the market.⁴⁸

⁴⁴ KCLP oral argument, transcripts, v.4, p.119-120

⁴⁵ Transcripts, v.2, p.29

⁴⁶ OEB staff written argument, p.8

⁴⁷ OEB staff written argument, p.10

⁴⁸ OEB staff written argument, p.9

Does FERC Order 745 provide any guidance for Ontario?

AMPCO's application referenced, among other things, the U.S. Federal Energy Regulatory Commission (FERC) Order 745, issued in 2011.⁴⁹ This Order established that DR Resources participating in organized wholesale energy markets would be compensated through the payment of the locational marginal price for curtailing their load if dispatched. In the Order, FERC concluded that it would be "unjust" and "unreasonable" to not pay DR Resources the same energy price as generators due to their functional equivalence in relation to balancing supply and demand. FERC Order 745 stated the following:

*...when a demand response resource has the capability to balance supply and demand as an alternative to a generation resource ... payment by an RTO or ISO of compensation other than the [locational marginal price] is unjust and unreasonable. ... As stated in the NOPR, we believe that paying demand response resources the LMP will compensate those resources in a manner that reflects the marginal value of the resource to each RTO and ISO.*⁵⁰

While AMPCO stated that the FERC Order neither should nor could be directly applied to the Ontario context, it submitted that the Order, given the hearing process that preceded it, could nevertheless provide a starting point for determining appropriate treatment for DR Resources.⁵¹

There was also general agreement, including among both experts (Mr. Goulding and Dr. Rivard), that FERC's actual approach in Order 745 involving paying the full locational marginal price to DR Resources that passed a net benefit test was not applicable to Ontario. Beyond the basic matter of FERC not having jurisdiction in Ontario, an additional practical reason for that is the Global Adjustment (GA), which is unique to Ontario.

Also, as discussed in LEI's report on DR programs in selected US markets (LEI Report)⁵², a primary goal of FERC Order 745 was to address barriers to DR that FERC identified, such as the lack of a direct connection between wholesale market prices and fixed retail prices, and a lack of dynamic retail prices (i.e., retail prices that change as the marginal wholesale costs change). Due to this disconnect, "customers do not have the ability to respond to the often volatile price changes in the wholesale market and demonstrate the need for including demand response as part of wholesale market

⁴⁹ AMPCO Application, paras 36-43

⁵⁰ AMPCO written argument, para 37

⁵¹ Transcripts, v.1, p.33-35

⁵² LEI Report, 'Demand response programs in selected US markets', filed November 8, 2019

design.”⁵³ Ontario does not have the same disconnect between wholesale market prices and retail prices.

Findings

While useful as an example of an approach taken in another jurisdiction, the OEB finds that FERC Order 745 is not relevant to the determination of the issues in this proceeding given the differences in the markets.

Frequency of Dispatch/Activation

- a) What is the risk of activation?***
- b) To what extent is the historical experience regarding activation indicative of future expectations?***
- c) Can DR Resources adequately address this activation risk?***

AMPCO

a) AMPCO noted that the costs associated with activation (i.e., curtailment) are specific to each individual DR Resource in the auction based on a number of business and operational factors; no two DR Resources are likely to have the same characteristics, inputs or outcomes. As a result, the risk of activation differs across DR Resources.⁵⁴

b) AMPCO argued that, as DR-related technologies change, so might the frequency of investment by DR Resources. Consequently, the past under one set of rules and conditions cannot be assumed to necessarily predict the future under another, more equitable set of rules.⁵⁵

c) AMPCO responded to IESO’s position that there is no activation risk for DR Resources that cannot be managed through their energy bids. AMPCO noted that the costs at risk are the costs of activation, and the only way for DR Resources to cover that risk is through their capacity offers because they are not getting any other payments upon activation. Generators recover their activation costs through their energy payments, so they do not have to manage that risk through their capacity offers. AMPCO added that despite what the IESO says, there is no bidding strategy that can protect DR Resources from this risk beyond including that risk in their capacity offers. In the TCA, there is only a

⁵³ LEI Report, p.14

⁵⁴ AMPCO Response to OEB staff IR #1

⁵⁵ AMPCO written argument, paras 13-17

protective bidding strategy for DR Resources and that is if they receive energy payments, so that the cost of activation would not need to be reflected in their capacity offers.⁵⁶ DR Resources were able to manage that risk, without energy payments, in the DRA by reflecting the activation costs in their capacity offers because they were all exposed to the same risk (i.e., no unfair competitive disadvantage).⁵⁷

IESO

a) The IESO noted that DR Resources have been economically activated in the energy market in very limited circumstances since the DRA was launched in 2015 – once in 2019 for Hourly Demand Response resources, while dispatchable loads have been dispatched less than 1% of the time.⁵⁸ This is likely due to the relatively high prices at which DR Resources bid into the energy market.⁵⁹ The IESO also noted that it has not conducted any analysis to assess the reasons for the historical decline – from 244 to 64 – in annual DR activations since the DRA was created.⁶⁰

b) The IESO stated that “based only on historical bids of dispatchable loads, the IESO would expect little change to the frequency of economic activations for DR resources in 2021, 2022, or 2023.”⁶¹

c) According to the IESO, all of the activation costs that AMPCO alleges DR Resources are exposed to, when they are activated in the energy market, can be included in their energy market bids; in other words, they do not need to be included in their capacity offers in the TCA.⁶² In the IESO’s view, DR Resources are capable of entirely managing that risk by bidding high enough into the energy market, so that they do not get called upon and avoid incurring activation costs. It does not matter what the costs are called – value of lost load, activation costs, start-up costs, shutdown costs – that a DR Resource is potentially exposed to when activated in the energy market, they can manage those costs through their energy market bids.⁶³ IESO argued that AMPCO’s claim is an abstract, theoretical claim of discrimination.⁶⁴

⁵⁶ AMPCO oral reply argument, transcripts, v.5, p.16

⁵⁷ AMPCO oral reply argument, transcripts, v.5, p.5-12

⁵⁸ IESO Evidence, paras 36-39

⁵⁹ During this period, the HOEP has averaged about \$25/MWh, while dispatchable load bid prices have averaged about \$1,500/MWh and HDR bid prices have averaged about \$1,700/MWh.

⁶⁰ IESO Response to OEB staff Supplemental IR #14

⁶¹ IESO Response to OEB staff Supplemental IR #14

⁶² Transcripts, v.5, p.13

⁶³ Transcripts, v.5, p.28-29

⁶⁴ Transcripts, v.5, p.31

KCLP

KCLP argued that the IESO-administered markets provide market participants a fair degree of flexibility, in terms of deciding how they bid into those markets and deciding how they choose to compete in those markets. The fact that one market participant may choose to adopt what it called “an irrational or uncompetitive economic bidding strategy” and consequently lose out in a competitive market is not sufficient grounds to justify a finding of unjust economic discrimination, particularly if it can be shown that that market participant could have avoided the problem by adopting a different bidding strategy.⁶⁵

SEC

SEC referenced IESO's evidence that DR Resource activations are expected to remain infrequent in the future and submitted that, if that is the case, then there would be an extremely low need for a DR Resource to build anything into its capacity offer to recover the costs of activation. The test is not whether there is no risk that there will be activation, but that there has to be some meaningful risk which would have a meaningful impact on costs and a meaningful impact on the bids that DR Resources would make into the TCA. SEC therefore noted that, on the basis of the IESO's evidence, there cannot be said to be any discrimination between DR Resources and generators in the TCA.⁶⁶

Findings

The OEB finds that the two classes of market participants, generators and DR Resources, will be treated differently if they successfully bid in the TCA. There was little disagreement in the proceeding that differences in treatment result from the different payments that different resources are eligible to receive if activated. These include energy payments and out-of-market payments such as the GCG. In this way, there at least appears to be discrimination.

In theory, these differences in treatment could result in unjust economic discrimination as the DR Resources, being ineligible for those payments, may have to substantially lower their offers to uneconomic levels if they wish to successfully compete in the TCA. For DR Resources, the costs associated with activation will not be recoverable in the current market.

⁶⁵ KCLP oral argument, transcripts, v.4, p.117

⁶⁶ SEC oral argument, transcripts, v.4, p.97

***Is there sufficient evidence to determine if there will be economic discrimination?
Is there sufficient evidence to determine that any economic discrimination will be
“unjust”?***

AMPCO

AMPCO acknowledged that it must demonstrate the basis for the OEB to find that the Amendments result in unjust discrimination or are contrary to the objectives of the legislation⁶⁷ but it took the position that extensive economic analysis is not necessary for AMPCO to discharge its burden.⁶⁸

AMPCO argued that the test for unjust discrimination is a qualitative, rather than quantitative test and that “functional equivalence, different compensation, lack of economic justification; that is, the ‘unjust’ component of the ‘unjust discrimination’ test under section 33 of the Act”.⁶⁹

It was AMPCO’s evidence that DR Resources incur real costs to curtail their load, and that these costs are beyond the cost of lost production.⁷⁰ AMPCO stated that the cost elements associated with curtailment are specific to each individual participant based on a number of business and operational factors and no two participants are likely to have the same characteristics, inputs or outcomes.⁷¹ In testimony, AMPCO cited an example from the steel industry, but without quantifying any costs.⁷²

IESO

IESO argued that the evidence before the OEB does not support energy payments for DR Resources. AMPCO has not provided any expert evidence to the contrary. Other than referencing FERC’s Order 745 and its “net benefits” test, AMPCO has not provided any evidence to show that the absence of energy payments for DR Resources in Ontario is unjust.⁷³

KCLP

KCLP argued that AMPCO has provided insufficient evidence to substantiate its allegation of discrimination and to fulfil this prong of the legal test. There is no direct

⁶⁷ AMPCO oral argument, transcripts, v.4, p.15

⁶⁸ AMPCO oral argument, transcripts, v.4, p.24

⁶⁹ AMPCO oral argument, transcripts, v.4, p.11-12

⁷⁰ AMPCO oral argument, transcripts, v.4, p.27

⁷¹ AMPCO Response to OEB staff IR#1(a)

⁷² Transcripts, v.1, p.16

⁷³ IESO written argument, paras 16-17

evidence from any AMPCO member or other DR Resource that they would be unjustly discriminated against.⁷⁴

APPrO

APPrO argued that AMPCO's evidence in this proceeding is deficient and falls short of discharging the burden of demonstrating that the Amendments unjustly discriminate against DR Resources. AMPCO has not advanced an analysis, study, or report that sets out the potential economic impacts of the Amendments on its members. The OEB should afford AMPCO's evidence the commensurate evidentiary value for what it is; that is, a theoretical concern from a non-market participant that is unsupported by experience, facts or data.⁷⁵

SEC

SEC said that it had no reason to doubt the steel manufacturer example that AMPCO provided with respect to incremental activation costs. However, there are a number of uncertainties. There is a broad array of DR Resources and it is not clear how relevant that type of incremental activation cost is in relation to other types of DR Resources and/or what the overall magnitude is. There was also evidence on Hourly Demand Response resources in this proceeding, but it is uncertain if they have any incremental costs.⁷⁶ Unfortunately, neither AMPCO, nor probably more importantly, the IESO provided any impartial analysis regarding the actual impact on customers of providing energy payments to DR Resources.⁷⁷

OEB Staff

OEB staff noted that, beyond anecdotal examples, there is no evidence on the record regarding the quantum and types of costs DR Resources may incur upon activation. Furthermore, there was little evidence on how widespread these costs are across the diverse group of DR Resources.⁷⁸

Findings

The OEB finds that there is insufficient evidence to make a finding that the Amendments will result in unjust discrimination.

⁷⁴ KCLP written argument, para 40

⁷⁵ APPrO written argument, paras 10, 12, 14

⁷⁶ SEC oral argument, transcripts, v.4, p.91-92

⁷⁷ SEC oral argument, transcripts, v.4, p.100

⁷⁸ OEB staff written argument, p.6

At Section 4 of this Decision, in describing the test to be applied to assess whether there is unjust discrimination, the OEB identified three elements: (i) there must be evidence of discrimination, in the form of different treatment; (ii) it must be shown that the different treatment is being applied to market participants despite an absence of material and relevant differences in their circumstances; and (iii) the economic impact of the different treatment must be quantified – it cannot be purely qualitative.

In the preceding sections, the OEB found that there is no question that different resources are treated differently, in the form of differences in eligibility for payments. For example, certain generators are eligible for activation payments and start-up costs as part of the GCG program. These payments are specific to the circumstances of each generator. DR Resources do not have access to these payments.

On the question of differences in circumstances between generation and DR Resources, the evidence before the OEB is that both generators and DR Resources incur activation costs, and that these costs vary among members of each of these two classes of market participants. Generation and DR Resources are functionally equivalent in balancing supply and demand in the energy market. Theoretically, there are no relevant differences in their circumstances.

On the third element of demonstration of unjust discrimination being the quantification of the economic impact, there was no evidence presented by any party on the range of costs incurred by any of these market participants. The only example of costs that might be incurred by any of AMPCO's members was that of an unidentified steel manufacturer. Even then, there was no evidence of what the costs might actually be. The absence of quantitative evidence on costs that different parties incur does not permit the OEB to conclude with certainty whether the circumstances between generators and DR Resources are in fact similar or different, and whether, as a consequence, different treatment could constitute unjust discrimination. In addition, the experience to date under the DRA indicated that there has been very limited activation of DR Resources, which suggests that there could have been very limited economic impact on the DR Resources. However, there was no data on the financial or economic cost to DR Resources or a forecast as to the frequency of activation over the next decade. Absent this information, the extent of the economic impact to DR Resources cannot be estimated.

Given the insufficiency of evidence, as described above, the OEB has no basis on which to make a positive finding of unjust discrimination and return the Amendments to the IESO for reconsideration.

The OEB is cognizant of AMPCO's members' reticence to share their economic data with each other, and other competitors. That said, there are methods by which this information

could be shared with the OEB without compromising the confidentiality of any individual market participant's information.⁷⁹

Could adjustments be made to the energy market rules or the capacity market rules to address the activation issue?

While the OEB has no authority in this proceeding to require the IESO to make any changes to any of its market rules, and will make no findings on the appropriateness of any particular approach, there was considerable discussion about alternatives to the current payment structure in the context of bid activation.

The major threads of discussion on this issue related either to the eligibility for payments to DR Resources upon dispatch, the expansion of out-of-market provisions, or alternative approaches to the design of bids in the energy market.

AMPCO

While AMPCO has advocated for an energy payment (a payment to DR Resources upon activation equal to the prevailing energy price), its final argument in this proceeding noted that an energy payment is not the only way to rectify the alleged discrimination.

AMPCO noted that “there are several examples of historical programs in which DR Resources were provided with administratively set (rather than market determined) activation payments”.⁸⁰ AMPCO also noted that, unlike energy payments to compensate DR Resources, such alternative mechanisms would involve changes to the market rules that would not result in disrupting the initial market design.⁸¹ AMPCO urged the OEB, in referring the Amendments back to the IESO, to provide guidance to the effect that the IESO should provide a mechanism through which DR Resources will have a reasonable opportunity to recover their incremental costs of activation.⁸²

OEB Staff and KCLP

As noted above, OEB staff and KCLP submitted that an energy payment made to DR Resources in order to compensate for variable costs of activation would constitute a

⁷⁹ The OEB's *Rules of Practice and Procedure* and its [Practice Direction on Confidential Filings](#) make provision for the confidential treatment of information in appropriate cases. In assessing requests for confidential treatment, the OEB considers (among other things) whether the information is commercially sensitive and the potential harm that could result from disclosure in terms of a person's competitive position.

⁸⁰ AMPCO written argument, para 27

⁸¹ AMPCO oral reply argument, transcripts, v.5, p.20

⁸² AMPCO written argument, para 43

double payment for the reduction in demand since it would provide revenue in addition to avoided costs.⁸³

Dr. Rivard noted during cross examination that, if DR Resources have to raise their energy bid price above VOLL in order to reflect one-time costs of activation, it is not ideal from a market design standpoint.⁸⁴ He also noted that there is a potential that the DR Resource is at disadvantage in the sense that it is not offered exactly the same kind of guarantee for what is a same cost.⁸⁵

In response to a question from the OEB during the oral hearing regarding whether all types of resources would need to get the same payment for energy (as well as capacity) for it to be a fair competitive market, Mr. Goulding explained that one might conclude that it is fair if all resources get the same energy payment (market clearing price) for the same service. However, the avoided cost associated with a DR Resource introduces a challenge, since that, itself, may or may not be considered a form of energy payment. Mr. Goulding expressed the view that it would be fair if the DR Resource is compensated at its short run marginal cost when activated. While doing so would require a host of new market rules, it gets away from the double payment issue.⁸⁶

Observations

The OEB acknowledges that the IESO has a study underway to determine what, if any, payments should be made to DR Resources. It is beyond the scope of this proceeding for the OEB to comment on this study or any potential changes that may arise from it.

However, the OEB believes some general observations might be helpful. When considering market changes, the IESO should examine the total costs and compensation available to capacity market participants, whether that compensation is in the capacity market or the energy market, and whether that compensation is an out-of-market payment or some form of energy payment. The priority is to ensure that there is no unjust discrimination for or against any class of market participants. This is particularly relevant as the capacity market continues to expand by adding other types of resources.

⁸³ OEB staff written argument, p.7

⁸⁴ Transcripts, v.2, p.141

⁸⁵ Transcripts, v.2, p.114-115

⁸⁶ Transcripts, v.1, p.164-165

6 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The Application by the Association of Major Power Consumers in Ontario for an order under section 33 of the *Electricity Act, 1998* revoking the market rule amendments identified as MR-00439-R00 to –R05: “Transitional Capacity Auction” and referring the amendments back to the IESO for further consideration is denied.
2. The stay of the operation of the market rule amendments identified as MR-00439 -R00 to –R05: “Transitional Capacity Auction”, as ordered by the Decision and Order of the OEB dated November 25, 2019, is lifted.
3. Parties eligible for an award of costs shall submit their cost claims by February 6, 2020. A copy of the cost claim must be filed with the OEB and one copy is to be served on the IESO. The cost claims must comply with section 10 of the OEB’s *Practice Direction on Cost Awards*.
4. The IESO will have until February 13, 2020 to object to any aspect of the costs claimed. A copy of the objection must be filed with the OEB and one copy must be served on the party against whose claim the objection is being made.
5. A party whose cost claim was objected to will have until February 20, 2020 to make a reply submission as to why its cost claim should be allowed. A copy of the submission must be filed with the OEB and one copy is to be served on the IESO.

All materials filed with the OEB must quote the file number, EB-2019-0242, be made in a searchable/unrestricted PDF format and sent electronically through the OEB’s web portal at <https://pes.ontarioenergyboard.ca/eservice>. Two paper copies must also be filed at the OEB’s address provided below. Filings must clearly state the sender’s name, postal address and telephone number, fax number and email address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <https://www.oeb.ca/industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have computer access are required to file seven paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Michael Bell at Michael.Bell@oeb.ca and OEB Counsel, Ljuba Djurdjevic at Ljuba.Djurdjevic@oeb.ca.

ADDRESS

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DATED at Toronto January 23, 2020

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar and Board Secretary

TAB 3

|

CLEAN ENERGY SUPPLY (CES) CONTRACT

Between

TRANSCANADA ENERGY LTD.

– and –

ONTARIO POWER AUTHORITY

DATED as of the 14th day of December, 2012

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CLEAN ENERGY SUPPLY (CES) CONTRACT

This Clean Energy Supply (CES) Contract is dated as of the 14th day of December, 2012, between TransCanada Energy Ltd., a corporation existing under the laws of Canada (the “**Supplier**”) and the Ontario Power Authority (the “**Buyer**”). The Supplier and the Buyer are each referred to herein as a “**Party**” and collectively as the “**Parties**”.

WHEREAS on October 9, 2009 the Parties executed the Southwest GTA Clean Energy Supply (CES) Contract (the “**Original Contract**”) for a combined cycle, gas-fired power generation facility to be built and operated by the Supplier in Oakville, Ontario (the “**OGS Facility**”);

AND WHEREAS by letter dated October 7, 2010 the Buyer advised the Supplier that it would not proceed with the Original Contract, directed the Supplier to cease all further work and activities in connection with the OGS Facility and acknowledged that the Supplier was entitled to its reasonable damages, including the anticipated financial value of the Original Contract;

AND WHEREAS on December 13, 2012, the Minister of Energy issued a directive to the Buyer (the “**Ministerial Directive**”) to enter into this Agreement as a replacement for the Original Contract;

AND WHEREAS the Supplier and the Buyer wish to execute this Agreement in order to formalize the long-term contractual arrangements for the Supplier to develop and operate the Facility and to supply Electricity and Related Products from the Facility, directly or indirectly, to the IESO-Administered Markets during the Term on the terms and conditions set out herein;

NOW THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

In addition to the terms defined elsewhere herein, the following capitalized terms shall have the meanings stated below when used in this Agreement:

“**Actual Operation**” means that the Facility generated and delivered Electricity to the Delivery Point after start-up, synchronization to the IESO-Controlled Grid, and technically required hold points, with such operation being between the minimum load and the maximum continuous output rating of the Facility with supplementary firing.

“**Additional Term**” has the meaning ascribed to it in Exhibit C.

“Adjusted Contract Capacity” or **“ACC”** has the meaning ascribed to it in Exhibit J.

“Affiliate” means any Person that: (i) Controls a Party; (ii) is Controlled by a Party; or (iii) is Controlled by the same Person that Controls a Party.

“Agreement” means this Clean Energy Supply (CES) Contract as it may be amended, restated or replaced from time to time.

“Ancillary Services” has the meaning ascribed to it in the IESO Market Rules.

“Annual Average Contract Capacity” means the simple average of the Season 1 Contract Capacity, Season 2 Contract Capacity, Season 3 Contract Capacity and Season 4 Contract Capacity.

“Annual Average Nameplate Capacity” means the simple average of the Season 1 Nameplate Capacity, Season 2 Nameplate Capacity, Season 3 Nameplate Capacity, and Season 4 Nameplate Capacity.

“Annual Operating Plan” has the meaning ascribed to it in Section 15.3(b)(ii).

“Arbitration Panel” has the meaning ascribed to it in Exhibit K.

“Arm’s Length” means, with respect to two or more Persons, that such Persons are not related to each other within the meaning of subsections 251(2), (3), (3.1), (3.2), (4), (5) and (6) of the *Income Tax Act* (Canada) or that such Persons, as a matter of fact, deal with each other at a particular time at arm’s length.

“Assignee” has the meaning ascribed to it in Section 16.5(c).

“Assignment Period” has the meaning ascribed to it in Section 16.5(e).

“Associated Relationship” means the relationship between a meter at a Delivery Point and a Market Participant (where such Market Participant is not the Metered Market Participant), as established by certain processes in the MV-Web.

“Assumed Deemed Dispatch Payment” means an amount equivalent to the Monthly Payment that would have been payable by the Buyer to the Supplier or payable by the Supplier to the Buyer in a given Settlement Month, as the case may be, if the Contract Capacity of the Facility had been subject to the Deemed Dispatch Option for all hours in the entire Settlement Month.

“Availability” or **“AV”** has the meaning ascribed to it in Exhibit E.

“Average Test Capacity” has the meaning ascribed to it in Section 15.6(d).

“Bank Act” means the *Bank Act* (Canada), as amended from time to time.

“BTU” means British thermal unit (HHV).

“Business Day” means a day, other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.

“Buyer” means the Ontario Power Authority and its successors and permitted assigns.

“Buyer Event of Default” has the meaning ascribed to it in Section 10.3.

“Buyer Security” has the meaning ascribed to it in Exhibit G.

“Buyer Statement” has the meaning ascribed to it in Section 12.2(g).

“Buyer’s Website” means the website of the Buyer located at uniform resource locator (URL) www.powerauthority.on.ca/gp or such other URL, or other electronic or non-electronic format, as the Buyer may provide to the Supplier from time to time.

“Cancellation Notice” has the meaning ascribed to it in Exhibit G.

“Cancelled Directed Dispatch Order”, with respect to the Directed Dispatch Option, has the meaning ascribed to it in Exhibit G.

“Capacity Check Test” has the meaning ascribed to it in Section 15.6(a).

“Capacity Confirmation” has the meaning ascribed to it in Section 15.6(c).

“Capacity Products” means any products related to the rated, continuous load-carrying capability of a generating facility to generate and deliver Electricity at a given time.

“Capacity Reduction Factor” or **“CRF”** shall be an amount equivalent to 1.0 until, and to the extent, determined otherwise pursuant to Sections 15.6(e) and 15.6(f).

“Capital Costs” has the meaning ascribed to it in Exhibit Y.

“CO” means carbon monoxide.

“CES Contract” means a clean energy supply contract entered into by the Ontario Power Authority in accordance with the directive issued by the Ontario Minister of Energy to the Ontario Power Authority dated March 24, 2005.

“Claim” means a claim or cause of action in contract, in tort, under any Laws and Regulations or otherwise.

“Commercial Operation” has the meaning ascribed to it in Section 2.6.

“Commercial Operation Date” or **“COD”** means the date on which Commercial Operation is first attained.

“Commercially Reasonable Efforts” means efforts which are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement and which do not require the performing Party to expend any funds or assume liabilities, other than expenditures and liabilities which are reasonable in nature and amount in the context of the transactions contemplated by this Agreement.

“Company Representative” has the meaning ascribed to it in Section 15.1.

“Completion and Performance Security” has the meaning ascribed to it in Section 6.1(b).

“Confidential Information” means all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with this Agreement, whether before or after its execution, including all new information derived at any time from any such confidential information, but excluding: (i) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; and (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (iv) information that is independently developed by the Receiving Party.

“Connection Agreement” means the agreement or agreements required to be entered into by a Transmitter with the Supplier with respect to the connection of the Facility to a Transmission System in accordance with the Transmission System Code and governing the terms and conditions of such connection.

“Connection Circuit Failure” has the meaning ascribed to it in Section 2.8(d).

“Connection Cost Recovery Agreement” means the agreement entered into by a Transmitter with the Supplier with respect to the recovery of costs with respect to the connection of the Facility to a Transmission System in accordance with the Transmission System Code.

“Connection Costs” mean an amount equal to (a) those costs which are payable by the Supplier related to new or modified connection facilities, as defined by the Transmission System Code, for the reliable connection of the Facility to a Transmission System as more particularly specified pursuant to the System Impact Assessment, Customer Impact Assessment, and Transmission System Code for generator connections, multiplied by (b) the Contracted Proportion of Capacity. For greater certainty, Connection Costs consist of Transmitter Connection Costs and Supplier Connection Costs, but shall not include Network Upgrade Costs.

“Connection Point” means the electrical point or point(s) of connection, as defined in the IESO Market Rules, between the Facility and the IESO-Controlled Grid as specified in Exhibit A. For certainty, the Connection Point is defined by reference to electrical connection points.

“Connection Scope and Budget” has the meaning ascribed to it in Exhibit Y.

“Contingent Support Payment” or **“CSP”** means the amount, if any, for a Settlement Month, expressed in Dollars, as calculated in accordance with Exhibit J.

“Contract Capacity”, means that figure, expressed in MW, that shall be determined from time to time as follows: the Season 1 Contract Capacity, Season 2 Contract Capacity, Season 3 Contract Capacity or Season 4 Contract Capacity, as applicable, subject to adjustment as expressly provided pursuant to this Agreement.

“Contract Heat Rate” or **“CHR”** means, as applicable, the Season 1 Contract Heat Rate, Season 2 Contract Heat Rate, Season 3 Contract Heat Rate or the Season 4 Contract Heat Rate, expressed in MMBTU/MWh using higher heating value.

“Contract Year” means a twelve (12) month period during the Term which begins on the Term Commencement Date or an anniversary date thereof.

“Contracted Facility Operation” means:

- (a) in the case of the deemed operation of the Facility pursuant to the Deemed Dispatch Option, the deemed operation of the Facility to produce Electricity, Related Products, and Environmental Attributes that relate to the Contract Capacity, as contemplated under the Deemed Dispatch Option; and
- (b) in the case of the directed operation of the Facility pursuant to the Directed Dispatch Option, the directed operation of the Facility to produce Electricity, Related Products, and Environmental Attributes that relate to the Contract Capacity, as contemplated under the Directed Dispatch Option.

“Contracted Proportion of Capacity” means an amount equal to a fraction, the numerator of which is the Annual Average Contract Capacity and the denominator of which is the Annual Average Nameplate Capacity.

“Control” means, with respect to any Person at any time:

- (i) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or
- (ii) the exercise of *de facto* control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise.

Without limiting the generality of the foregoing, and by way of example, if Person “A” Controls Person “B”, Person “B” Controls Person “C”, and Person “C” Controls Person “D”, then each of Persons “A”, “B”, and “C” are deemed to Control Person “D”.

“Counterparty” has the meaning ascribed to it in Exhibit L.

“CPI” or **“Consumer Price Index”** means the consumer price index for “All Items” published or established by Statistics Canada (or its successors) for any relevant calendar month in relation to the Province of Ontario.

“Credit Rating” means, (i) with respect to the Supplier (or the Guarantor, if a Guarantee is in place) (A) its long-term senior unsecured debt rating (not supported by third party credit enhancement) or (B) the lower of its issuer or corporate credit rating, as applicable, in either case being the lower provided by S&P, Moody’s or DBRS or any other established and reputable debt rating agency, agreed to by the Parties from time to time, each acting reasonably, and (ii) with respect to any other Person, its long-term senior unsecured debt rating or its deposit rating as provided by Moody’s, S&P, DBRS, or, if such Person is a financial institution, Fitch IBCA, or any other established and reputable rating agency, as agreed to by the Parties, acting reasonably, from time to time.

“Creditworthiness Value” has the meaning ascribed to it in Section 6.4(b).

“CTG” means a combustion turbine-generator.

“Customer Impact Assessment” means a study conducted by a Transmitter to assess the impact of the connection of the Facility on the transmission customers in the area and a Local Distribution System, if applicable.

“Day-Ahead Energy Forward Market” means a forward market, established under the IESO Market Rules or otherwise, for Electricity or for Electricity and Related Products for each hour of a given day, that clears the day before based upon submitted bids to buy and offers to sell, and shall include, for purposes of this Agreement, such other mechanisms or amendments to the IESO Market Rules to enhance pre-dispatch scheduling and unit commitment of generators on a day-ahead basis.

“DBRS” means Dominion Bond Rating Service Limited or its successors.

“Deemed Dispatch Hour” has the meaning ascribed to it in Exhibit J.

“Deemed Dispatch Interval” or **“DDI”** has the meaning ascribed to it in Exhibit J.

“Deemed Dispatch Option” has the meaning ascribed to it in Exhibit G.

“Deemed Shut-Down Hour” has the meaning ascribed to it in Exhibit J.

“Deemed Start-Up” or **“DeemSU”** has the meaning ascribed to it in Exhibit J.

“Deemed Start-Up Hour” has the meaning ascribed to it in Exhibit J.

“Delivery Point” means the reference point determined in accordance with the IESO Market Rules and used for settlement purposes in the real-time markets.

“Directed Dispatch Hour” has the meaning ascribed to it in Exhibit J.

“Directed Dispatch Interval” has the meaning ascribed to it in Exhibit J.

“Directed Dispatch Option” has the meaning ascribed to it in Exhibit G.

“Directed Dispatch Order” means a Directed Dispatch Order (DA) or Directed Dispatch Order (LT), as applicable.

“Directed Dispatch Order (DA)” means a daily directed dispatch order issued by the Buyer in the form attached as Exhibit H.

“Directed Dispatch Order (LT)” means a long term directed dispatch order issued by the Buyer in the form attached as Exhibit H.

“Directed Shut-Down Hour” is the last hour of a Directed Dispatch Interval as set out in a Directed Dispatch Order.

“Directed Start-Up” or **“DirSU”** has the meaning ascribed to it in Exhibit J.

“Directed Start-Up Hour” is the first hour of a Directed Dispatch Interval as set out in a Directed Dispatch Order.

“Disclosing Party”, with respect to Confidential Information, is the Party and/or its Representatives providing or disclosing such Confidential Information and may be the Buyer or the Supplier, as applicable; provided, however, that where such Confidential Information is Mutually Confidential Information, both the Buyer and the Supplier shall be deemed to be the Disclosing Party.

“Discriminatory Action” has the meaning ascribed to it in Section 13.1.

“Discriminatory Action Compensation” has the meaning ascribed to it in Section 13.2.

“Discriminatory Action Compensation Amount” has the meaning ascribed to it in Section 13.3(e).

“Discriminatory Action Compensation Notice” has the meaning ascribed to it in Section 13.3(e).

“Dispatch Rights” has the meaning ascribed to it in Section 3.1.

“Dispatcher” has the meaning ascribed to it in Section 3.3.

“Dispute Notice” has the meaning ascribed to it in the Reimbursement Agreement.

“Dollars”, or “\$” means Canadian dollars and cents.

“Electricity” means electric energy.

“Electricity Act” means the *Electricity Act, 1998* (Ontario), as amended or replaced from time to time.

“Emission Reduction Credits” means the credits associated with the amount of emissions to the air avoided by reducing the emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as defined in O. Reg. 397/01 made under the *Environmental Protection Act* (Ontario), as amended from time to time, or such other regulation as may be promulgated under the *Environmental Protection Act* (Ontario).

“Emissions Limits” means those limits set out in Exhibit A relating to emissions from the Facility of NO_x and CO, respectively, as measured by the Emissions Measurement Methodology.

“Emissions Measurement Methodology” means the methodology set out in Exhibit W for purposes of measuring and calculating the actual emissions of NO_x and CO, respectively, from the Facility.

“End-User” means a Person who owns or operates an End-User Load.

“End-User Load” means a load facility which utilizes electricity supplied through a direct connection to the Transmission System, the Local Distribution System or the Facility.

“Environmental and Site Plan Milestone Events” means (i) the filing of the statement of completion with respect to the environmental assessment for the Facility as well as the receipt of site plan approval for the Facility, and (ii) the receipt of all other approvals and permits necessary for construction of the Facility to commence.

“Environmental Attributes” means the interests or rights arising out of attributes or characteristics relating to the environmental impacts associated with a generating facility or the output of a generating facility, and includes:

- (a) rights to any fungible or non-fungible attributes, whether arising from the generating facility itself, from the interaction of the generating facility with the IESO-Controlled Grid, the Local Distribution System or an End-User or because of applicable legislation or voluntary programs established by Governmental Authorities;
- (b) any and all rights relating to the nature of the energy source as may be defined and awarded through applicable legislation or voluntary programs. Specific environmental attributes include ownership rights to Emission Reduction Credits or entitlements resulting from interaction of the generating facility with the IESO-Controlled Grid, the

Local Distribution System or an End-User or as specified by applicable legislation or voluntary programs, and the right to qualify and register these with competent authorities; and

- (c) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing.

“Environmental Review Report” means an environmental review report that is completed in accordance with the Ontario Ministry of the Environment’s *"Guide to Environmental Assessment Requirements for Electricity Projects"*, dated March 2001, as referred to in O. Reg. 116/01 to the *Environmental Assessment Act* (Ontario) entitled “Electricity Projects”.

“EPC Contract” means the engineering, procurement and construction contract for the Facility entered into by the Supplier and the EPC Contractor.

“EPC Contractor” means, if applicable, the contractor engaged by the Supplier to perform the engineering, procurement and construction of the Facility.

“EPT” means Eastern Prevailing Time.

“EST” means the Eastern Standard Time applicable in the IESO-Administered Markets, as set forth in the IESO Market Rules.

“Event of Default” means a Supplier Event of Default or a Buyer Event of Default.

“Exposure Threshold Amount” has the meaning ascribed to it in Exhibit G.

“Facility” means the generation facility to be developed, constructed, owned, and operated by the Supplier, as described in Exhibit A hereto, with any modifications thereto approved by the Buyer.

“Facility Amendment” has the meaning ascribed to it in Section 2.1(c).

“Failed Start-Up” means, for the purposes of Exhibit M:

- (a) an attempted start where all initially available units are not at sixty (60%) percent of the Contract Capacity, net of Station Service Loads, within 270 minutes of initiating the first CTG start other than for reasons of a CTG failed start; and
- (b) excludes Start-Ups where circumstances in which IESO approvals, Pre-Dispatch Schedules or Dispatch Instructions (as defined in the IESO Market Rules) by the IESO render it inappropriate to achieve Electricity output from the Facility, net of Station Service Loads, equal to or greater than sixty (60%) percent of the Contract Capacity.

“Final Capacity Check Test” has the meaning ascribed to it in Section 15.6(f).

“Financial Closing” means the first date on which drawdown is permissible under the credit facility for the financing of the Facility or, in the event that financing of the Facility does not include a credit facility, the first date on which funding is otherwise available and dedicated for the financing of the Facility.

“Financial Closing Milestone Date” means the Milestone Date in respect of Financial Closing.

“Financial Indicators” means the Tangible Net Worth and the Credit Rating.

“FIPPA” means the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended or supplemented from time to time.

“FIPPA Records” has the meaning ascribed to it in Section 8.5.

“Fitch IBCA” means Fitch IBCA, Duff & Phelps, a division of Fitch Inc., or its successors.

“Force Majeure” has the meaning ascribed to it in Section 11.3.

“Force Majeure Capacity Reduction Factor” or **“FMCRF”** has the meaning ascribed to it in Exhibit J.

“Force Majeure Outage Capacity” or **“FMOC”** has the meaning ascribed to it in Exhibit J.

“Force Majeure Outage Hour” or **“FMOH”** has the meaning ascribed to it in Exhibit J.

“Forced Outage Factor” has the meaning ascribed to it in Exhibit M.

“Further Capacity Check Test” has the meaning ascribed to it in Section 15.6(d).

“Future Contract Related Products” means all Related Products that relate to the Contract Capacity and that were not capable of being traded by the Supplier in the IESO-Administered Markets or other markets on or before the date of this Agreement, but shall not include steam or hot water provided by the Facility.

“GAAP” means Canadian or U.S. generally accepted accounting principles approved or recommended from time to time by the Canadian Institute of Chartered Accountants or the Financial Accounting Standards Board, as applicable, or any successor institutes, applied on a consistent basis.

“Gas” means natural gas as supplied by pipeline.

“Gas Cancellation Amount” or **“GCA_m”** has the meaning ascribed to it in Exhibit J.

“Gas Cancellation Price” or **“GCP_d”** has the meaning ascribed to it in Exhibit J.

“Gas Cancellation Volume” or **“GCV_d”** has the meaning ascribed to it in Exhibit J.

“Gas Delivery and Management Services” has the meaning ascribed to it in Section 1(a) of Exhibit X.

“Gas Management Plan” has the meaning ascribed to it in Section 3(a)(ii) of Exhibit X.

“Gas Price” or **“GP_d”** means either Gas Price (DA) or Gas Price (LT), as applicable.

“Gas Price (DA)” or **“GP(DA)_d”** means the “day-ahead” price of Gas applicable for day “d”, determined in accordance with the Gas Price Index (DA), and converted from US dollars per MMBTU into Dollars per MMBTU as follows: the Gas Price (DA) applicable during each day “d”, which is posted on the Gas Price Index (DA) on day “d-1” (which for purposes of the Gas Price Index (DA) shall be the last Business Day prior to day “d”) will be converted from US dollars to Dollars utilizing the Bank of Canada noon spot exchange rate between US dollars and Dollars on day “d-1”.

“Gas Price (LT)” or **“GP(LT)_d”** means the “long-term” price of Gas applicable for day “d”, in Dollars per MMBTU, determined in accordance with Exhibit G.

“Gas Price Index (DA)” means the NGX Union-Dawn Day Ahead Index, or its successor indices.

“Gas Price Redetermination Date” has the meaning ascribed to it in Section 1.10(c).

“Gas Provider” has the meaning ascribed to it in Exhibit G.

“Gas Review Committee” has the meaning ascribed to it in Section 2 of Exhibit X.

“Gas Sale Transaction Costs” or **“GSTC”** has the meaning ascribed to it in Exhibit J.

“Generator Set” means the gas turbine generator and the steam turbine generator.

“Generator Set Failure” has the meaning ascribed to it in Section 2.8(d).

“GHG Amendment Principles” has the meaning given to it in Section 2.12(e).

“GHG Emissions Credits” has the meaning given to it in Section 2.12(e).

“GHG Laws and Regulations” has the meaning given to it in Section 2.12(e).

“Good Engineering and Operating Practices” means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generation facilities of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent generator in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices,

reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry. Without limiting the generality of the foregoing and in respect of the operation of the Facility, Good Engineering and Operating Practices include taking Commercial Reasonable Efforts to ensure that:

- (a) adequate materials, resources and supplies, including fuel, are available to meet the Facility's needs under reasonable conditions and reasonably anticipated abnormal conditions;
- (b) sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and taking into account manufacturers' guidelines and specifications and are capable of responding to abnormal conditions;
- (c) preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation and taking into account manufacturers' recommendations and are performed by knowledgeable, trained and experienced personnel utilising proper equipment, tools and procedures; and
- (d) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and abnormal conditions.

"Government of Canada" means Her Majesty the Queen in right of Canada.

"Government of Ontario" means Her Majesty the Queen in right of Ontario.

"Governmental Authority" means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO, the OEB, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority, but excluding the Ontario Power Authority.

"Greenhouse Gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"GST" means the goods and services tax exigible pursuant to the *Excise Tax Act* (Canada), as amended from time to time including, for greater certainty, the Harmonized Sales Tax.

"Guarantee" has the meaning ascribed to it in Section 6.4.

"Guarantor" has the meaning ascribed to it in Section 6.4.

“HHV” means higher heating value.

“HOEP” or **“Hourly Ontario Energy Price”** has the meaning provided to it in the IESO Market Rules, and expressed in Dollars per MWh.

“IDE Notice” has the meaning ascribed to it in the Reimbursement Agreement.

“IE Certificate” means a certificate in the form set out in Exhibit V addressed to the Buyer from an Independent Engineer, procured at the expense of the Supplier.

“IESO” means the Independent Electricity System Operator established under Part II of the Electricity Act, or its successor.

“IESO-Administered Markets” has the meaning ascribed to it by the IESO Market Rules.

“IESO-Controlled Grid” has the meaning ascribed to it by the IESO Market Rules.

“IESO Market Rules” means the rules governing the IESO-Controlled Grid and establishing and governing the IESO-Administered Markets, together with all market manuals, policies, and guidelines issued by the IESO, all as amended or replaced from time to time.

“IFRS” means the International Financial Reporting Standards, being the accounting standards and interpretations adopted or recommended from time to time by the International Accounting Standards Board (IASB) or any successor organization, applied on a consistent basis.

“Imputed Gross Energy Market Revenue” or **“IGEMR”** is the total gross revenue deemed to be earned by the Supplier for a Settlement Month, as calculated in accordance with Exhibit J.

“Imputed Net Revenue” or **“INR”** means, for a Settlement Month, the Imputed Gross Energy Market Revenue less the Imputed Variable Energy Cost, as calculated in accordance with Exhibit J.

“Imputed Production” or **“IP”** means, for a specified period within the Term, the aggregate amount of Electricity, expressed in MWh, imputed to be produced by the Facility in accordance with Exhibit J.

“Imputed Production Hour” or **“IPH”** is a Directed Dispatch Hour or Deemed Dispatch Hour, as applicable.

“Imputed Production Interval” or **“IPI”** is a Directed Dispatch Interval or Deemed Dispatch Interval, as applicable.

“Imputed Shut-Down Hour” is a Directed Shut-Down Hour or a Deemed Shut-Down Hour, as applicable.

“Imputed Start-Up” or **“ISU”** has the meaning ascribed to it in Exhibit J.

“Imputed Start-Up Hour” is a Directed Start-Up Hour or a Deemed Start-Up Hour, as applicable.

“Imputed Variable Energy Cost” or **“IVEC”** means the total Variable Energy Cost in relation to the Imputed Production as calculated in accordance with Exhibit J.

“including” means “including, without limitation”.

“Indemnifiable Loss” has the meaning ascribed to it in Section 14.3.

“Indemnitees” has the meaning ascribed to it in Section 14.3.

“Independent Engineer”, for the purposes of Section 2.6, means an engineer that is:

- (a) a Professional Engineer duly qualified and licensed to practice engineering in the Province of Ontario; and
- (b) employed by an independent engineering firm which holds a certificate of authorization issued by Professional Engineers Ontario that is not affiliated with or directly or indirectly controlled by the Supplier and that does not have a vested interest in the design, engineering, procurement, construction and/or testing of the Facility.

“Index Factor” or **“IF”** has the meaning ascribed to it in Section 1.1 of Exhibit J.

“Infeasibility Determination Event” has the meaning ascribed to it in the Reimbursement Agreement.

“Insolvency Legislation” means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada) and analogous legislation in effect in the provinces and territories of Canada and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law), as they may be amended from time to time.

“Insurance Costs” has the meaning ascribed to it in Section 2.10.

“Interest Rate” means the annual rate of interest established by the Royal Bank of Canada or its successor, from time to time, as the interest rate it will charge for demand loans in Dollars to its commercial customers in Canada and which it designates as its **“prime rate”** based on a year of 365 or 366 days, as applicable. Any change in such prime rate shall be effective automatically on the date such change is announced by the Royal Bank of Canada.

“IPH” has the meaning ascribed to it in Exhibit J.

“ITA” means the *Income Tax Act* (Canada), as amended from time to time and all regulations promulgated thereunder from time to time.

“Key Equipment Suppliers” means the third party equipment suppliers supplying key engineered equipment to the EPC Contractor, or to the Supplier, as specified pursuant to Exhibit P.

“kV” means kilovolts.

“kW” means kilowatt.

“kWh” means kilowatt hour.

“Laws and Regulations” means:

- (a) applicable Canadian federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
- (b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
- (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;
- (d) any requirements under or prescribed by applicable common law; and
- (e) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the IESO from time to time that are binding on the Supplier.

“Letter of Credit” means one or more irrevocable and unconditional standby letters of credit issued by a financial institution listed in either Schedule I or II of the *Bank Act* (Canada) or such other financial institution having a minimum Credit Rating of (i) A- with S&P, (ii) A3 with Moody’s, (iii) A (low) with DBRS, or (iv) A- with Fitch IBCA, in substantially the form attached as Exhibit C or in a form acceptable to the Buyer, acting reasonably, and otherwise conforming to the provisions of Section 6.2.

“Local Distribution Company” or “LDC” means a Person licensed by the OEB as a “Distributor” in connection with a Local Distribution System.

“Local Distribution System” means a system for conveying Electricity at voltages of 50 kilovolts or less and includes any structures, equipment or other things used for that purpose.

“Locational Marginal Pricing” or “LMP” means the form of pricing of Electricity, as determined and modified by the IESO from time to time, to be considered and implemented by the IESO, if at all, based upon a non-uniform, real-time, price of Electricity at each point, node, zone or other price reference location on the IESO-Controlled Grid and having the effect that such real-time prices reflect the costs of transmission congestion.

“Long Term Operating Plan” has the meaning ascribed to it in Section 15.3(b)(i).

“Market Participant” has the meaning ascribed to it by the IESO Market Rules.

“Market Price” means the spot price per MWh for Electricity in the IESO-Administered Markets applicable to the class of generator to which the Supplier belongs in accordance with the IESO Market Rules.

“Market Settlement Charges” means all market settlement amounts and charges described in Chapter 9 of the IESO Market Rules.

“Material Adverse Effect” means any change (or changes taken together) in, or effect on, the affected Party that materially and adversely affects the ability of such Party to perform its obligations hereunder.

“Max Increment_y” has the meaning ascribed to it in Exhibit J.

“Maximum Market Clearing Price” has the meaning ascribed to it in the IESO Market Rules.

“Metered Market Participant” has the meaning ascribed to that term by the IESO Market Rules.

“Metering Plan” means a report that is provided by the Supplier to the Buyer and that (a) verifies that the revenue-quality interval meters conform with Measurement Canada Regulations, and (b) provides all required information, and equipment specifications needed to permit the Buyer to remotely access, verify, estimate and edit for calculation purposes, and/or total revenue meter readings in order to accurately determine the generator output at the Delivery Point net of any Station Service Loads, and which is updated promptly, and, in any event, within ten (10) Business Days after any change to the metering installation occurs.

“Milestone Dates” means those dates set forth in the second column of the table contained in Exhibit F, with respect to the attainment of the corresponding Milestone Events set out in the first column of the table contained in Exhibit F.

“Milestone Events” means those events set forth in the first column of the table contained in Exhibit F which are considered critical by the Parties for the timely design, construction, financing, completion and operation of the Facility, and which are to be completed by the corresponding Milestone Dates.

“Ministerial Directive” has the meaning ascribed to it in the recitals to this Agreement.

“MMBTU” means one million BTUs.

“MOE Guideline A-5” means, collectively (i) Guideline A-5 issued by the Ontario Ministry of the Environment entitled “Atmospheric Emissions from Stationary Combustion Turbines”, bearing a last revision date of March 1994, as well as the additional requirements contained in

(ii) “Protocols and Performance Specifications for Continuous Monitoring of Gaseous Emissions from Thermal Power Generation” Report EPS 1/PG/7 (revised) December 2005 issued by the Emissions Research and Measurement Division, Environmental Technology Centre, Environmental Protection Service of Environment Canada.

“**Monthly Payment**” has the meaning ascribed to it in Section 4.2.

“**Moody’s**” means Moody’s Investors Service, Inc. or its successor.

“**MV-Web**” or “**MVPortlet**” means the internet-based communications interface application for Market Participants supplied by the IESO that allows Market Participants to access physical and financial data for the IESO-Administered Markets, and includes any systems or applications that may replace, supplement or succeed the MV-Web or MVPortlet.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**Nameplate Capacity**” means the rated, continuous load-carrying capability net of parasitic or station service loads, expressed in MW in Exhibit B for each Season, of the Facility to generate and deliver Electricity at a given time, and which includes the Contract Capacity.

“**Negative Interval Net Revenue Recapture**” or “**NINRR**” has the meaning ascribed to it in Exhibit J.

“**Negative Outlook**” means, with respect to any credit rating agency providing a Credit Rating for purposes of this Agreement, a potential or threatened downgrade to the Credit Rating of any Person.

“**Net Revenue Requirement**” or “**NR_y**” means the amount, expressed in Dollars per MW-month for any given Settlement Month, as set out in Exhibit B as being applicable for such month, and subject to indexation as set out in Exhibit J.

“**Net Revenue Requirement Indexing Factor**” or “**NRIF**” has the meaning ascribed to it in Exhibit J.

“**Network Upgrade Costs**” means an amount equal to (a) those costs, which may include design, engineering, procurement, construction, installation and commissioning costs, related to the Network Upgrades, multiplied by (b) the Contracted Proportion of Capacity. For greater certainty, Network Upgrade Costs shall not include Connection Costs.

“**Network Upgrades**” means all additions, improvements, and upgrades to the network facilities, as defined by the Transmission System Code, for the connection of the Facility to the Transmission System, as more particularly specified pursuant to the System Impact Assessment, Customer Impact Assessment and Transmission System Code for generator connections.

“New Agreement” means a new agreement substantially in the form of this Agreement, which is to be entered into with a Secured Lender who is at Arm’s Length with the Supplier or a Person identified by such Secured Lender following termination of this Agreement, as set out in Section 12.2(g).

“NGx” means the Natural Gas Exchange of the Toronto Stock Exchange, or its successor.

“Notice of Discriminatory Action” has the meaning ascribed to it in Section 13.3(a).

“Notice of Dispute” has the meaning ascribed to it in Section 13.3(b).

“NOx” means oxides of nitrogen, including nitric oxide (NO) and nitrogen dioxide (NO₂).

“O&M Cost” or **“O&M”** means the costs required to operate and maintain the Facility, as set out in Exhibit B, as adjusted from time to time in accordance with Exhibit J.

“Obligations” has the meaning ascribed to it in Exhibit L.

“OEB” means the Ontario Energy Board, or its successor.

“OETP” or **“Ontario Emissions Trading Program”** means the Ontario Emissions Trading Program operating under Regulation 397/01 of the *Environmental Protection Act* (Ontario).

“OETP Attributes” has the meaning given to it in Section 2.12(b).

“OPG” means Ontario Power Generation Inc. and its successors in interest to the Lennox Generating Station (or any substantial part of such generating station or lands upon which such generating station is located).

“OPG Site” has the meaning ascribed to it in Exhibit Y.

“OPG Site Costs” has the meaning ascribed to it in Exhibit Y.

“Original Contract” has the meaning ascribed to it in the recitals to this Agreement.

“Other Contractor(s)” means a person or persons, as the case may be, in a situation where there is no EPC Contractor, that has entered into a contract directly with the Supplier pursuant to which it provides goods or services that would form a substantial component of an EPC Contract (including a substantial component of the engineering, procurement or construction services). Where the Supplier itself is providing the goods or services that would form a substantial component of an EPC Contract (including a substantial component of the engineering, procurement or construction services), it shall also be considered an Other Contractor for purposes of Exhibit P.

“Other Suppliers” means all of the other suppliers that have with the Buyer a CES Contract or other bilateral arrangements with the Buyer similar in nature to this Agreement.

“Outage” means the removal of equipment from service, unavailability for connection of equipment or temporary de-rating, restriction of use or reduction in performance of equipment for any reason, including to permit the performance of inspections, tests, repairs or maintenance on equipment, which results in a partial or total interruption in the ability of the Facility to make the Contract Capacity available and deliver the Electricity from the Facility. For greater certainty, in the event that the capacity of the Facility is de-rated, the amount by which such capacity is reduced shall be deemed to first reduce the Supplier’s Capacity, with any excess of the reduction of the capacity over the Supplier’s Capacity then being deemed to reduce the Contract Capacity.

“Outage HOEP” or **“OHOEP”** has the meaning ascribed to it in Exhibit J.

“Outage Hours” means the duration, expressed in hours, of any Outages.

“Party” means each of the Supplier and the Buyer, and the Supplier and the Buyer are collectively referred to as the **“Parties”**.

“Payment Date” has the meaning ascribed to it in Section 5.3.

“Person” means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.

“Pipeline Costs” has the meaning ascribed to it in Exhibit Y.

“Pipeline Work” has the meaning ascribed to it in Exhibit Y.

“Planned Outage” means an Outage which is planned and intentional, and has been disclosed to the Buyer pursuant to Section 15.3(b)(ii)(B) or Section 15.3(b)(iv).

“Pre-Dispatch Price” means the pre-dispatch price for Electricity, being the hourly price determined from the Pre-Dispatch Schedule for a specified number of hours in advance of clearing of the Real-Time Market, as determined by the IESO-Administered Markets.

“Pre-Dispatch Schedule” has the meaning ascribed to it in the IESO Market Rules.

“Prevailing Party” has the meaning ascribed to it in Section 13.3(e)(ii).

“Price Evolution Event” has the meaning ascribed to it in Section 1.8.

“Price Unavailability Event” has the meaning ascribed to it in Section 1.9.

“Proposed Scope and Budget” has the meaning ascribed to it in Exhibit Y.

“Ramp Rate” means, for purposes of Section 2.6(a)(i)(G), the rate of increase in energy output that the Facility is capable of achieving after start-up, synchronization to the IESO-Controlled

Grid, and technically required hold points, with such interval being between the minimum load and the maximum continuous unfired output rating, being the maximum continuous output rating of the Facility without supplementary firing.

“Real-Time Market” has the meaning ascribed to it in the IESO Market Rules.

“Receiving Party”, with respect to Confidential Information, is the Party receiving Confidential Information and may be Buyer or the Supplier, as applicable.

“Records” means any recorded information in any form: (a) provided by the Buyer to the Supplier, or provided by the Supplier to the Buyer, for purposes of this Agreement, or (b) created by the Supplier in the performance of this Agreement.

“Reference Conditions” represent a reference state of 15 degrees Celsius ambient temperature, 60 percent relative humidity and 101.3 kiloPascals barometric pressure.

“Regulatory Environmental Attributes” has the meaning given to it in Section 2.12(a).

“Reimbursable Capital Costs” has the meaning ascribed to it in Exhibit Y.

“Reimbursable GD&M Services” has the meaning ascribed to it in Section 3(a) of Exhibit X.

“Reimbursement Agreement” means the Reimbursement Agreement made as of December 14, 2012 between the Supplier, the Buyer and the Government of Ontario, as amended from time to time.

“Related Products” means all Capacity Products, Ancillary Services, transmission rights and any other products or services that may be associated with the Facility from time to time (but excluding Environmental Attributes produced by the Facility) that may be traded in the IESO-Administered Markets or other markets, or otherwise sold, and which shall be deemed to include products and services for which no market may exist, such as capacity reserves.

“Replacement Guarantee” has the meaning ascribed to it in Section 6.4(c).

“Replacement Price” has the meaning ascribed to it in Sections 1.7(b)(i) and 1.8(b)(i), as applicable.

“Replacement Provision(s)” has the meaning ascribed to it in Sections 1.7(b)(ii), 1.9(b), 1.10(d), and 2.12(e), as applicable.

“Reportable Events” means any one or more of the following:

- (a) obtaining environmental and project and site approvals and permitting for the Facility;
- (b) completion of connection assessments, including receipt of approvals from the IESO or the Transmitter, as applicable;

- (c) execution of engineering, equipment procurement and construction contract(s) in respect of the Facility;
- (d) Financial Closing in respect of the Facility;
- (e) ordering of major equipment for the Facility;
- (f) delivery of major equipment for the Facility;
- (g) status of construction of the Facility;
- (h) completion of construction of the Facility;
- (i) status of construction of connection of the Facility to the Transmission System;
- (j) connection of the Facility to the Transmission System; and
- (k) Commercial Operation of the Facility.

“Representatives” means a Party’s directors, officers, shareholders, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents and those of its Affiliates and, in the case of the Buyer, shall include without limitation any Person from time to time appointed as the Dispatcher, and the agents and advisors of such Persons. While the Buyer is the Ontario Power Authority, this definition shall also include the Government of Ontario, the IESO, and their respective directors, officers, shareholders, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents.

“Revenue Sharing Payment” or **“RSP”** means the amount, if any, for a Settlement Month, expressed in Dollars, as calculated in accordance with Exhibit J.

“RFCRP” has the meaning ascribed to it in Exhibit J.

“RFREC” has the meaning ascribed to it in Exhibit J.

“ROC” or **“Reported Outage Capacity”** has the meaning ascribed to it in Exhibit J.

“ROH” or **“Reported Outage Hour”** has the meaning ascribed to it in Exhibit J.

“S&P” means the Standard and Poors Rating Group (a division of McGraw-Hill Inc.) or its successors.

“Season” means, as applicable, Season 1, Season 2, Season 3 or Season 4.

“Season 1” means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on December 1 and ending at 24:00 (EST) on February 28 or February 29, as the case may be, of each Contract Year.

“Season 1 Contract Capacity” means that portion of the Season 1 Nameplate Capacity set out in Exhibit B and expressed in MW, as being applicable for Season 1, subject to adjustment as expressly provided for pursuant to this Agreement.

“Season 1 Contract Heat Rate” means the heat rate set out in Exhibit B, and expressed in MMBTU/MW using higher heating value, as being applicable for Season 1.

“Season 1 Nameplate Capacity” means the Nameplate Capacity for Season 1 set out in Exhibit B and expressed in MW, subject to adjustment as expressly provided for pursuant to this Agreement.

“Season 2” means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on March 1 and ending at 24:00 (EST) on May 31 of each Contract Year.

“Season 2 Contract Capacity” means that portion of the Season 2 Nameplate Capacity set out in Exhibit B and expressed in MW, as being applicable for Season 2, subject to adjustment as expressly provided for pursuant to this Agreement.

“Season 2 Contract Heat Rate” means the heat rate set out in Exhibit B, and expressed in MMBTU/MW using higher heating value, as being applicable for Season 2.

“Season 2 Nameplate Capacity” means the Nameplate Capacity for Season 2 set out in Exhibit B and expressed in MW, subject to adjustment as expressly provided for pursuant to this Agreement.

“Season 3” means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on June 1 and ending at 24:00 (EST) on August 31 of each Contract Year.

“Season 3 Contract Capacity” means that portion of the Season 3 Nameplate Capacity set out in Exhibit B and expressed in MW, as being applicable for Season 3, subject to adjustment as expressly provided for pursuant to this Agreement.

“Season 3 Contract Heat Rate” means the heat rate set out in Exhibit B, and expressed in MMBTU/MW using higher heating value, as being applicable for Season 3.

“Season 3 Nameplate Capacity” means the Nameplate Capacity for Season 3 set out in Exhibit B and expressed in MW, subject to adjustment as expressly provided for pursuant to this Agreement.

“Season 4” means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on September 1 and ending at 24:00 (EST) on November 30 of each Contract Year.

“Season 4 Contract Capacity” means that portion of the Season 4 Nameplate Capacity set out in Exhibit B and expressed in MW, as being applicable for Season 4, subject to adjustment as expressly provided for pursuant to this Agreement.

“Season 4 Contract Heat Rate” means the heat rate set out in Exhibit B, and expressed in MMBTU/MW using higher heating value, as being applicable for Season 4.

“Season 4 Nameplate Capacity” means the Nameplate Capacity for Season 4 set out in Exhibit B and expressed in MW, subject to adjustment as expressly provided for pursuant to this Agreement.

“Secured Lender” means a lender under a Secured Lender’s Security Agreement.

“Secured Lender’s Security Agreement” means an agreement or instrument (other than the security agreement entered into between the Buyer and the Supplier pursuant to the Reimbursement Agreement), including a deed of trust or similar instrument securing loans, notes, bonds or debentures or other indebtedness, liabilities or obligations, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Supplier’s Interest granted by the Supplier that is security for any indebtedness, liability or obligation of the Supplier, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

“Senior Conference” has the meaning ascribed to it in Section 16.1.

“Shared Site Agreement” means the Shared Site Agreement between OPG and the Supplier dated December 14, 2012 which is related to the Facility, as such agreement may be amended from time to time.

“Settlement Month” has the meaning ascribed to it in Section 5.2, provided that if the first or last Settlement Month in the Term is less than a full calendar month, for the purposes of Exhibit J such month shall be equal to the number of days of the Term in such month.

“Start-Up” means, for the purposes of Exhibit M, to commence operation of the Facility for the purpose of providing Electricity to the IESO-Controlled Grid from a shutdown state.

“Start-Up Costs” or **“SUC”** means the start-up costs, as determined in accordance with Exhibit J.

“Start-Up Gas” or **“SUG”** means the number of MMBTU per start-up, as set out in Exhibit B.

“Start-Up Maintenance Cost” or **“SUMC”** means the start-up maintenance cost, expressed in \$/start-up, set out in Exhibit B, as adjusted from time to time in accordance with Exhibit J.

“Statement” has the meaning ascribed to it in Section 5.2.

“Station Service Loads” means energy consumed to power the on-site maintenance and operation of generation facilities but excludes energy consumed in association with activities which could be ceased or moved to other locations without impeding the normal and safe operation of the Facility.

“STG Failure” has the meaning ascribed to it in Section 2.8(d).

“Sum” has the meaning ascribed to it in Section 10.2(e)(i).

“Supplier” means TransCanada Energy Ltd., and includes any successor to TransCanada Energy Ltd. resulting from any merger, arrangement or other reorganization of or including TransCanada Energy Ltd. or any continuance under the laws of another jurisdiction or permitted assignee.

“Supplier Connection Costs” means an amount equal to (a) those Connection Costs and the Supplier’s reasonable and prudent internal costs (charged at its then current time and materials rates) associated with providing the required connection facilities to connect the Facility to a Transmission System (including costs associated with the Supplier Connection Work and with facilities provided or work performed by the Transmitter on a third-party basis to the Supplier) that are not Transmitter Connection Costs, multiplied by (b) the Contracted Proportion of Capacity.

“Supplier Connection Work” means the design, supply and construction of all power system components and associated facilities required to connect the Facility from the high voltage side of the Facility’s generator step-up transformers to the Connection Point, including all connection lines, all transformation, switching, synchronizing, protection and control, teleprotection, metering, and auxiliary equipment (such as grounding, monitoring and testing equipment), pursuant to requirements of the IESO and the Transmitter and as may be required to permit the delivery of Electricity and, to the extent required by the IESO or the Transmitter, Related Products from the Facility to the Connection Point as contemplated using Good Engineering and Operating Practices.

“Supplier Event of Default” has the meaning ascribed to it in Section 10.1.

“Supplier Non-acceptance Notice” has the meaning ascribed to it in Section 13.3(e).

“Supplier’s Capacity” means that amount of capacity, expressed in MW, that is equivalent to the Nameplate Capacity less the Contract Capacity for any given Season.

“Supplier’s Certificate”, with respect to attaining Commercial Operation, means a certificate from the Supplier in the form set out in Exhibit W, procured at the expense of the Supplier.

“Supplier’s Interest” means the right, title and interest of the Supplier in or to the Facility and this Agreement, or any benefit or advantage of any of the foregoing.

“System Impact Assessment” means a study conducted by the IESO pursuant to section 6.1.5 of Chapter 4 of the IESO Market Rules, to assess the impact of a new connection of the Facility to the IESO-Controlled Grid, or of the modification of an existing connection of the Facility to the IESO-Controlled Grid on the reliability of the integrated power system.

“Tangible Net Worth” means in respect of the Supplier or a Guarantor, at any time and without duplication, an amount determined in accordance with GAAP (or IFRS, if the Supplier or

Guarantor has adopted such standard), and calculated as (a) the aggregate book value of all assets, minus (b) the aggregate book value of all liabilities, minus (c) the sum of any amounts shown on account of patents, patent applications, service marks, industrial designs, copyrights, trademarks and trade names, and licenses, prepaid assets, goodwill and all other intangibles.

“Taxes” means all *ad valorem*, property, occupation, severance, production, transmission, utility, gross production, gross receipts, sales, use, excise and other taxes, governmental charges, licenses, permits and assessments, other than (i) GST and (ii) taxes based on profits, net income or net worth.

“Term” has the meaning ascribed to it in Section 9.1(b).

“Term Commencement Date” has the meaning ascribed to it in Section 9.1(b).

“Termination Date” means the date on which this Agreement terminates as a result of an early termination of this Agreement in accordance with this Agreement.

“Test Protocol” has the meaning ascribed to it in section 15.6(a).

“Total Monthly Fixed Capacity Payment” or **“TMFCP_m”** means the total monthly fixed capacity payment applicable for a Settlement Month, expressed in \$, and calculated in accordance with Exhibit J.

“Transmission System” means a system for conveying Electricity at voltages of more than 50 kV and includes any structures, equipment or other things used for that purpose.

“Transmission System Code” means the “Transmission System Code” approved by the OEB and in effect from time to time, which, among other things, sets the standards for a Transmitter’s existing Transmission System and for expanding the Transmitter’s transmission facilities in order to connect new customers to it or accommodate increase in capacity or load of existing customers.

“Transmitter” means a Person licensed as a “transmitter” by the OEB in connection with a Transmission System.

“Transmitter Connection Costs” means an amount equal to (a) those Connection Costs associated with those modifications to Transmitter-owned facilities required to connect the Facility to a Transmission System that only the Transmitter can perform, and that are payable by the Supplier to the Transmitter as required by the Transmission System Code, multiplied by (b) the Contracted Proportion of Capacity.

“Unit” means each generation unit and ancillary equipment forming part of the Facility.

“Variable Energy Cost” has the meaning ascribed to it in Exhibit J.

1.2 Exhibits

The following Exhibits are attached to and form part of this Agreement:

Exhibit A	Project Description
Exhibit B	Contract Capacity, Net Revenue Requirement, and Other Stated Variables
Exhibit C	Form of Irrevocable Standby Letter of Credit
Exhibit D	Form of Guarantee
Exhibit E	Determination of Availability
Exhibit F	Milestone Events and Milestone Dates for the Facility
Exhibit G	Dispatch Options
Exhibit H	Form of Directed Dispatch Order
Exhibit I	Form of Force Majeure Notice
Exhibit J	Calculation of CSP and RSP
Exhibit K	Arbitration Procedures Applicable to Section 1.6 to 1.10 inclusive and Section 2.12
Exhibit L	Form of Buyer Guarantee to Support Directed Dispatch (LT)
Exhibit M	Section 16.7 Test Conditions
Exhibit N	Form of Acknowledgement of Secured Lender's Rights
Exhibit O	Form of Quarterly Report
Exhibit P	Key Equipment Suppliers
Exhibit Q	Long Term Operating Plan
Exhibit R	Annual Operating Plan
Exhibit S	Form of Company Representative Notice
Exhibit T	Form of Confidentiality Undertaking
Exhibit U	Form of Supplier Certificate re: Commercial Operation
Exhibit V	Form of Independent Engineer's Certificate re: Commercial Operation
Exhibit W	Emissions Measurement Methodology
Exhibit X	Gas Delivery and Management Services
Exhibit Y	Reimbursable Capital Costs

Exhibits I, O, Q, R, S, T, U, and V, in the forms attached to this Agreement, reflect the corresponding forms appearing on the Buyer's Website as at the date of this Agreement. However, the Supplier acknowledges and agrees that the Buyer may, at any time and from time

to time after the date of this Agreement, acting reasonably, without notice to the Supplier, amend or replace each such form of certificates, notice or report, and post such amended or replacement form on the Buyer's Website, and thereafter such amended or replaced form as it appears on the Buyer's Website shall replace and shall be used by the Supplier or the Buyer, as the case may be, in the stead of the then current form. Accordingly, it is the responsibility of the Supplier to ensure that the latest draft of the relevant form, as posted on the Buyer's Website, is used.

1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated, and shall be paid, in Dollars.

1.6 IESO Market Rules and Statutes

- (a) Unless otherwise expressly stipulated, any reference in this Agreement to the IESO Market Rules or to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the IESO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. In the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency.
- (b) To the extent that there is an amendment to the IESO Market Rules following the date which is thirty (30) days prior to September 24, 2012, unless such amendment is stayed by the OEB, such that the Supplier's economics as contemplated hereunder after the introduction of such change do not substantially reflect the Supplier's economics as contemplated hereunder prior to the introduction of such change, then:
 - (i) either Party shall notify the other Party promptly and, in any event, within ten (10) Business Days upon becoming aware of the consequences of such change;
 - (ii) the Parties and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to amend this Agreement and the respective agreements of

those Other Suppliers on the basis that such amendments together with the change in the IESO Market Rules will substantially reflect the economics as contemplated hereunder of the Supplier and, at the Buyer's discretion, those Other Suppliers, prior to the introduction of such change in the IESO Market Rules; and

- (iii) if the Parties fail to reach agreement on the amendments described in Section 1.6(b)(ii) within sixty (60) days after the change in the IESO Market Rules became effective, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.6(c)(iii).

(c) The terms of this Agreement shall be amended either:

- (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.6(b)(iii);
- (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii); or
- (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date that the change in the IESO Market Rules became effective.

(d) This Section 1.6 shall not apply to the circumstances addressed in Sections 1.7, 1.8, 1.9, and 1.10, or 2.12.

1.7 Introduction of the Day-Ahead Energy Forward Market

- (a) If (i) the IESO has made an announcement that the Day-Ahead Energy Forward Market is likely to be opened within the succeeding twelve (12) calendar months, and (ii) the amendments to the IESO Market Rules for the Day-Ahead Energy Forward Market have been substantially developed by the IESO, the Buyer shall propose a Replacement Price and Replacement Provision(s), based on Sections 1.7(b) and 1.7(c), to the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other

Suppliers, as the case may be, within sixty (60) days after the date the Day-Ahead Energy Forward Market is opened for operation in Ontario, then the Replacement Price and the Replacement Provision(s), as applicable, shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.7(d)(iii).

- (b) For purposes of Section 1.7(a), the Replacement Price and the Replacement Provision(s) will be based on the following principles, with such modifications to take effect from and after the date set out in Section 1.7(d):
 - (i) in Exhibit J, all references to HOEP will be replaced with an hourly Electricity price established under the Day-Ahead Energy Forward Market (the “**Replacement Price**”); and
 - (ii) in Exhibit J, all references to Imputed Start-Up Hour and Imputed Shut-Down Hour shall continue, but shall be modified (the “**Replacement Provision(s)**”) by using information or prices made available under the Day-Ahead Energy Forward Market to deem an operating pattern for a facility with the attributes as set out in this Agreement that emulates a facility’s commitment to maximize deemed operation during hours of positive Imputed Net Revenue and minimize deemed operation during hours of negative Imputed Net Revenue, with due consideration for compensatory market-based payments that may be made available to such generators to offset incurred but non-recovered costs, and consideration for any other attributes which may be recognized within the Day-Ahead Energy Forward Market.
- (c) For purposes of Section 1.7(a), the following additional principles shall apply in Exhibit J if the Day-Ahead Energy Forward Market is opened for operation:
 - (i) Start-Up Costs shall continue to be imputed for only one (1) Start-Up per day in accordance with Exhibit J;
 - (ii) the Facility shall continue to be deemed to commence and cease operation based on an Imputed Start-Up Hour and Imputed Shut-Down Hour as determined in accordance with the provisions of Section 1.7(b)(ii) above; and

- (iii) any amendments to this Agreement to accommodate the opening of the Day-Ahead Energy Forward Market as contemplated by this Section 1.7 shall be made on the basis that the economic effect of such amendments substantially reflect the Supplier's economics as contemplated hereunder prior to the introduction of the Day-Ahead Energy Forward Market.
- (d) The terms of this Agreement shall be amended either:
 - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.7(a);
 - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.7(a); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.7(a), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date the Day-Ahead Energy Forward Market was opened for operation in Ontario.
- (e) Until such time as this Agreement is amended in accordance with Section 1.7(d), Exhibit J will continue to apply to calculate CSP and RSP, as applicable, and all references to HOEP shall continue, and payments of CSP and RSP shall continue to be made until such time, provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.7(d), and any Party owing monies to the other pursuant to such recalculation shall pay, within ten (10) Business Days after receipt of an invoice from the other Party, such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof. If Pre-Dispatch Prices are not applicable in the context of the Day-Ahead Energy Forward Market, then all references in Stage III of Exhibit J to Pre-Dispatch Prices and their use in determining Imputed Start-Up Hours and Imputed Shut-Down Hours shall be deleted.

1.8 Evolution of the IESO-Administered Markets

- (a) If (i) the IESO or the Government of Ontario have made an announcement with the effect that a Price Evolution Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Price Evolution Event have been approved by the applicable authority, the Buyer shall propose a Replacement Price, based on Section 1.8(b), to the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the

case may be, within sixty (60) days after the date the Price Evolution Event occurs, then the Replacement Price shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).

- (b) For purposes of Section 1.8(a), a “**Price Evolution Event**” means that the IESO Market Rules have changed (including the implementation of LMP by the IESO) such that HOEP or the replacement value for HOEP under a Day-Ahead Energy Forward Market, as determined through the application of Section 1.7 is no longer provided for, and is replaced by another market-based price signal(s). In such a case, this Agreement will be modified based on the following principles, with such modifications to take effect from and after the date set out in Section 1.8(d):
 - (i) in Exhibit J, HOEP, or its replacement value under a Day-Ahead Energy Forward Market, if applicable, will be replaced with the Ontario Electricity market price that most closely emulates the price actually paid to Supplier by the Ontario Electricity market for Electricity output from the Facility (the “**Replacement Price**”); and
 - (ii) it is expected that all other features of Exhibit J will be applicable.
- (c) If the IESO Market Rules are amended to provide for an installed capacity market, then either Party may propose, by notice in writing to the other Party, amendments to this Agreement and the Buyer and the Supplier and, at the Buyer’s discretion, those Other Suppliers who are required by the Buyer to participate, shall then engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers so as to facilitate the Supplier’s participation in such installed capacity market, on the basis that the economic effect of such amendments substantially reflect the Supplier’s economics as contemplated hereunder prior to the introduction of the installed capacity market. If the Parties fail to reach agreement on the amendments described in this Section 1.8(c), the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).

- (d) The terms of this Agreement shall be amended either:
- (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Sections 1.8(a) or 1.8(c), as the case may be;
 - (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Sections 1.8(a) or 1.8(c), as the case may be; or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Sections 1.8(a) or 1.8(c), as the case may be, where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as applicable, having effect from and after the date that the Price Evolution Event occurred or the installed capacity market was introduced, respectively.

- (e) Until such time as this Agreement is amended in accordance with Section 1.8(d), Exhibit J will continue to apply to calculate CSP and RSP, as applicable, using the Buyer's proposal submitted under Sections 1.8(a) or 1.8(c), as the case may be, provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.8(d), and any Party owing monies to the other pursuant to such recalculation shall, within ten (10) Business Days after receipt of an invoice from the other Party, pay such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.
- (f) This Section 1.8 shall not apply in the circumstances addressed in Section 1.7 or 2.12.

1.9 Price Unavailability Events

- (a) If (i) the IESO or the Government of Ontario has made an announcement with the effect that a Price Unavailability Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Replacement Provision(s) have been approved by the applicable authority, the Buyer shall propose Replacement Provision(s), based on Section 1.9(b), to the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the date the Price Unavailability Event occurs, then the Replacement Provision(s) shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges

that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.9(c)(iii).

- (b) For purposes of Section 1.9(a), a “**Price Unavailability Event**” means that HOEP or the replacement value for HOEP under a Day-Ahead Energy Forward Market as determined through the application of Section 1.7, the replacement market-based price signals referred to in Section 1.8 is no longer available. In such a case, this Agreement will be modified based on the following principles, with such modifications to take effect from and after the date set out in Section 1.9(c):
 - (i) this Agreement will be amended as necessary to ensure the Supplier will participate in any revised processes determined by the IESO to facilitate commitment, dispatch, and/or outage scheduling;
 - (ii) Exhibit J will be modified to define the Imputed Net Revenue to be based on Imputed Variable Energy Costs for the actual Electricity produced in a month and any actual Electricity payments made to the Supplier for Electricity produced by the Contract Capacity. In calculating the Imputed Variable Energy Cost, the stated variables contained in Exhibit B of this Agreement will be used, and
 - (iii) in Exhibit J, HOEP, or the replacement value for HOEP under a Day-Ahead Energy Forward Market as determined through the application of Section 1.7, or the replacement market-based price signals referred to in Section 1.8, will be replaced with the actual price received by the Supplier for Electricity produced by the Facility,

and the modifications and amendments described in Sections 1.9(b)(i), 1.9(b)(ii) and 1.9(b)(iii) are collectively referred to as the “**Replacement Provision(s)**”.

- (c) The terms of this Agreement shall be amended either:
 - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.9(a);
 - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.9(a); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.9(a), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date the Price Unavailability Event occurred.

- (d) Until such time as this Agreement is amended in accordance with Section 1.9(c), Exhibit J will continue to apply to calculate CSP and RSP, as applicable, using the Buyer's proposal submitted under Section 1.9(a), provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.9(c), and any Party owing monies to the other pursuant to such recalculation shall pay, within ten (10) Business Days after receipt of an invoice from the other Party, such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.
- (e) This Section 1.9 shall not apply to the circumstances addressed in Sections 1.7 and 1.8 or 2.12.

1.10 Invalidity, Unenforceability, or Inapplicability of Indices and Other Provisions

In the event that either the Buyer or the Supplier, acting reasonably, considers that any provision of this Agreement is invalid, inapplicable, or unenforceable, or in the event that any index or price quotation referred to in this Agreement, including the Gas Price Index (DA), ceases to be published, or if the basis therefor is changed materially, then:

- (a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to the other Party, a replacement provision and the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to replace such provision with a valid, enforceable, and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable, or inapplicable provision which it replaces;
- (b) if any index or price quotation referred to in this Agreement, other than the Gas Price Index (DA), ceases to be published, or if the basis therefor is changed materially, then the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to substitute an available replacement index or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index or price quotation that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index or price quotation;
- (c) if the Gas Price Index (DA) ceases to be published or announced, or if the basis therefor is changed materially (the date that the first of such events occurs being herein called the "**Gas Price Redetermination Date**"), then the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to substitute an available replacement index or price source that most nearly, of those then

publicly available, approximates the intent and purpose of the Gas Price Index (DA). During the negotiations (and any subsequent arbitration conducted in accordance with Section 1.10(d)) for determining an alternate Gas Price Index (DA), the last Gas Price (DA) in effect before the Gas Price Redetermination Date shall continue to be used for purposes of this Agreement as the Gas Price (DA), but if a replacement index or price source is determined and this Agreement is amended pursuant to Section 1.10(e), an adjustment will be made and such replacement index or price source shall be used as the new Gas Price Index (DA) for purposes of this Agreement, retroactive from the Gas Price Redetermination Date to the date that this Agreement is amended pursuant to Section 1.10(e), on which basis the Monthly Payment in respect of such retroactive period shall be recalculated and readjusted by the Parties;

- (d) if a Party does not believe that a provision is invalid, inapplicable or unenforceable, or that the basis for any index or price quotation is changed materially, or if the negotiations set out in Sections 1.10(a) or 1.10(b) or 1.10(c) are not successful, then if the Parties are unable to agree on all such issues and any amendments required to this Agreement (the “**Replacement Provision(s)**”) within thirty (30) days after either the giving of the notice under Section 1.10(a) or the occurrence of the event in Section 1.10(b) or 1.10(c), then the Replacement Provision(s) shall be determined by mandatory and binding arbitration from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.10(e)(iii); and
- (e) the terms of this Agreement shall be amended either:
 - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.10(d);
 - (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Section 1.10(d); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.10(d), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as applicable, having effect as of the date of the invalidity, inapplicability or unenforceability or from and after the date that the relevant index or quotation ceased to be published or the basis therefor is changed materially, as the case may be.

This Section 1.10 shall not apply to the circumstances addressed in Sections 1.7, 1.8, 1.9 or 2.12.

1.11 Entire Agreement

This Agreement and the Reimbursement Agreement constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, conditions, or representations (including any that may be implied by statute) and there are no agreements in connection with the subject matter of this Agreement except as specifically set forth or referred to in this Agreement or the Reimbursement Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made by a Party to this Agreement, or its directors, officers, employees or agents, to the other Party to this Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement or the Reimbursement Agreement.

1.12 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply unless otherwise expressly provided.

1.13 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.14 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the Buyer's legal and other professional advisors, the Parties acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision of this Agreement shall not be construed or interpreted against the Buyer or in favour of the Supplier when interpreting such term or provision, by virtue of such fact.

ARTICLE 2 DEVELOPMENT AND OPERATION OF THE FACILITY

2.1 Design and Construction of the Facility

- (a) The Supplier agrees to design and build the Facility using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Transmission System Code, the Connection Agreement, in each case, as applicable, and all other Laws and Regulations. The Supplier shall ensure that the

Facility is designed, engineered and constructed to operate in accordance with the requirements of this Agreement during the Term.

- (b) The Supplier agrees to provide a single line electrical drawing which identifies the as-built Connection Point(s), clearly showing area transmission and distribution facilities, including the transmission station(s) that is electrically closest to the Facility.
- (c) The Supplier shall at no time after the date of this Agreement modify, vary, or amend in any material respect any of the features or specifications of the Facility outlined in Exhibit A (the “**Facility Amendment**”) without first notifying the Buyer in writing and obtaining the Buyer’s consent in writing, which consent shall not be unreasonably withheld, provided that it shall not be unreasonable for the Buyer to withhold its consent to any modification, variation or amendment which would, or would be likely to, materially adversely affect the ability of the Supplier to comply with its obligations under this Agreement. Any Facility Amendment that has not been consented to by the Buyer (other than in instances where such consent has been unreasonably withheld) shall, if not removed within ten (10) Business Days after such Facility Amendment occurred, constitute a Supplier Event of Default. Without limiting the generality of the foregoing, and for purposes of this paragraph, the failure of the Facility to have a Connection Point as described in Exhibit A shall be deemed to be a Facility Amendment.
- (d) If the Buyer’s consent in writing has been given in relation to a reduction in the Contract Capacity pursuant to Section 2.1(c), the Contract Capacity shall be deemed to be reduced to the lower amount, effective at the time stated in such notice. If the Buyer’s consent has been given in relation to an increase in the Contract Capacity pursuant to Section 2.1(c) the Contract Capacity shall be increased to the higher amount, effective as of the time stated in such notice, provided that:
 - (i) such increase shall not be effective until the Supplier performs a Capacity Check Test confirming the increased amount of the Contract Capacity; and
 - (ii) the Supplier has delivered to the Buyer an amount of Completion and Performance Security corresponding to the increased amount of the Annual Average Contract Capacity as calculated in accordance with section 6.1.
- (e) For purposes of Section 2.1(c), in the event that the Nameplate Capacity of the Facility will be reduced as a result of a term, condition, or restriction imposed by, or contained in a permit, certificate, licence or other approval issued by, a Governmental Authority in respect of the Facility, then the amount by which such Nameplate Capacity is reduced shall be deemed to first reduce the Supplier’s

Capacity, with any excess of the reduction of the Nameplate Capacity over the Supplier's Capacity then being deemed to reduce the Contract Capacity.

- (f) The Supplier shall incorporate emissions limits for NOx and CO that do not exceed the respective Emissions Limits into the Environmental Review Report or the completed environmental assessment for the Facility, and into the Supplier's application to the Ontario Ministry of the Environment for a Certificate of Approval (Air) Operating Permit for the Facility with a specific request in such application that such emissions limits be imposed as conditions of such Certificate of Approval. Notwithstanding the foregoing, where the Supplier completed the Environmental Review Report or the environmental assessment for the Facility and has received a Certificate of Approval (Air) Operating Permit in respect of the Facility prior to the date of this Agreement, the Supplier shall instead apply to the Ontario Ministry of the Environment to replace the numerical values of NOx and CO set out in the Certificate of Approval (Air) Operating Permit to such values that comply with the specific Emissions Limits.
- (g) The Supplier shall diligently pursue the applications or requests to the Ontario Ministry of the Environment under Section 2.1(f), and shall advise the Buyer from time to time, upon request, as to the Supplier's progress in that regard. The Supplier shall provide to the Buyer a copy of the application for the Environmental Compliance Approval (Air) Operating Permit (or the application or request to the Ontario Ministry of the Environment to amend such permit, as the case may be), as well as the Environmental Compliance Approval (Air) Operating Permit (or the amended Environmental Compliance Approval (Air) Operating Permit, as the case may be) when received.

2.2 Additional Development and Construction Covenants

- (a) The Supplier agrees that the Facility shall be located in the Province of Ontario. The Supplier agrees that the Facility shall have a Connection Point as set out in Exhibit A and shall affect supply or demand in the IESO-Administered Markets.
- (b) The Supplier agrees to arrange for all Facility connection requirements in accordance with the Connection Agreement to permit the delivery of Electricity to the IESO-Controlled Grid. The Supplier agrees to provide to the Buyer a copy of the Customer Impact Assessment final report and the executed Connection Cost Recovery Agreement within ten (10) Business Days of the Supplier's receipt of each of such documents.
- (c) The Supplier agrees to provide all power system components and associated facilities on the Supplier's side of the Connection Point, including all connection lines from the Facility to the Connection Point and all transformation, switching, synchronizing, protection and control, teleprotection, metering, and auxiliary equipment (such as grounding, monitoring and testing equipment), pursuant to

requirements deemed necessary by the IESO and the Transmitter (and as specified in the System Impact Assessment and the Customer Impact Assessment, as applicable) to protect the safety and security of the IESO-Controlled Grid and its customers. The equipment to be so provided by the Supplier shall include such electrical equipment as the IESO or the Transmitter deem necessary, from time to time, for the safe and secure operation of the IESO-Controlled Grid as required by the IESO Market Rules and the Transmission System Code.

- (d) The Supplier agrees to provide, at its expense, a Continuous Emissions Monitoring (CEM) system to measure actual emissions of NO_x, CO, and O₂ in compliance with all requirements of section 7.1 of MOE Guideline A-5, all requirements and specifications of the Certificate of Approval (Air) for the Facility, as amended from time to time, and all requirements of the Emissions Measurement Methodology. Notwithstanding anything in Section 7.1 of MOE Guideline A-5 and the Certificate of Approval (Air) for the Facility, such CEM system must be installed and operational prior to the performance and generation tests for purposes of Section 2.6(a)(i).
- (e) The Supplier shall deliver the proposed Gas Management Plan to the Buyer by no later than the date contemplated by Section 3(a)(i) of Exhibit X and the Parties shall comply with the provisions of Exhibit X with respect to finalizing the Gas Management Plan.
- (f) The reimbursement of certain costs incurred by the Supplier pursuant to Sections 2.2(b) and 2.2(c) shall be effected pursuant to Exhibit Y. The Buyer shall make the payments contemplated in Exhibit Y as provided in Exhibit Y.
- (g) The Buyer shall support the development and construction of the Facility, which support shall include (i) assistance to the Supplier in connection with obtaining necessary permits, consents and approvals for the Facility in a timely manner, and (ii) assistance where reasonably able with the prioritization of the Facility in respect of its receipt of necessary permits, consents and approvals.

2.3 Allocation and Treatment of Transmitter Connection Costs and Network Upgrade Costs

- (a) The Buyer shall reimburse the Supplier for all Transmitter Connection Costs incurred by the Supplier on the following basis:
 - (i) The Supplier shall pay all Transmitter Connection Costs to the Transmitter as and when due.
 - (ii) The Supplier shall submit to the Buyer an invoice itemizing and describing the Transmitter Connection Costs, together with copies of each of the paid receipts issued by the Transmitter to the Supplier. If the

Transmitter Connection Costs are adjusted subsequent to COD, the Supplier shall forthwith provide written evidence thereof to the Buyer.

- (iii) The Buyer shall, within a reasonable time, review the Supplier's invoices and copies of each of the paid receipts to verify that all of the amounts described in each such invoice constitute Transmitter Connection Costs paid by the Supplier to the Transmitter. The Supplier consents to the Transmitter disclosing to the Buyer, on request, all information relating to Transmitter Connection Costs, including any information provided by the Supplier to the applicable Transmitter that relates to, or affects, Transmitter Connection Costs.
 - (iv) Subject to the Buyer's review and approval of the Supplier's invoices and paid receipts for Transmitter Connection Costs, the Buyer will reimburse such Transmitter Connection Costs (for greater certainty, without any interest accruing from the date such amounts were paid by the Supplier) to the Supplier on or before the later of (i) the date which is sixty (60) days after submittal of each invoice and (ii) the date that is one year prior to the Milestone Date for Commercial Operation of the Facility.
 - (v) If the OEB issues an order or directive resulting in an increase or decrease in the Transmitter Connection Costs to be paid by the Supplier, then the amount of Transmitter Connection Costs shall be deemed, from the date of such order or directive, to be adjusted by the amount of such increase or decrease, and the adjusted unpaid amount or excess reimbursement shall be paid by the Buyer to the Supplier, or by the Supplier to the Buyer, as applicable, within sixty (60) days after the date that the OEB issues such order or directive.
 - (vi) If this Agreement has been terminated by the Buyer as a result of a Supplier Event of Default, then in addition to any other remedies available to the Buyer under this Agreement, the Supplier shall forfeit all rights to receive any payments not reimbursed to the Supplier pursuant to Section 2.3(a)(iv) as of the Termination Date on account of Transmitter Connection Costs, as liquidated damages and not as a penalty.
- (b) The Supplier agrees to cause the Transmitter to construct all Network Upgrades that may be required to permit the delivery of Electricity and Related Products from the Facility to the IESO-Controlled Grid. The Supplier acknowledges that the responsibility for Network Upgrade Costs shall be allocated as between the Transmitter and the Supplier as set forth in the Transmission System Code provided, however, that if pursuant to an order or directive of the OEB or pursuant to the Transmission System Code, the Supplier is required to pay, without reimbursement, any Network Upgrade Costs, then the provisions of

Section 2.3(a) shall apply to such unreimbursed Network Upgrade Costs paid by the Supplier, *mutatis mutandis*.

2.4 Allocation and Treatment of Supplier Connection Costs

If the OEB issues an order or directive resulting in a Transmitter, instead of the Supplier as a generator, being responsible for the payment of any Supplier Connection Costs, then the Supplier shall provide written notice to the Buyer of the issuance of such order or directive within ten (10) Business Days of its issuance, and the Supplier shall cooperate in good faith with the Buyer and the Transmitter as required by the Buyer to assess the amount of Supplier Connection Costs for which the Supplier is no longer responsible. To the extent that the Supplier is entitled to be compensated for such costs pursuant to the provisions of Exhibit Y, then such costs shall no longer be reimbursable and, if already paid by the Buyer to the Supplier, then the Supplier shall repay such amounts to the Buyer. Notwithstanding anything in this Agreement to the contrary, the Net Revenue Requirement applicable from and after the effective date of such order or directive shall be reduced, by mutual agreement, by an amount commensurate with such reduction in Supplier Connection Costs for which the Supplier was not entitled to be reimbursed pursuant to Exhibit Y as a result of such OEB order or directive, amortized on a straight-line basis over the balance of the Term.

2.5 Milestone Dates

(a) The Supplier acknowledges that time is of the essence to the Buyer with respect to attaining Financial Closing and Commercial Operation of the Facility by their corresponding Milestone Dates set out by the Supplier in Exhibit F, and the Parties agree:

(i) that each of the Milestone Events corresponding to:

(A) Financial Closing; and

(B) attaining Commercial Operation of the Facility,

shall be achieved in a timely manner and by its corresponding Milestone Date, failing which the Supplier shall pay to the Buyer within five (5) Business Days after receipt of an invoice from the Buyer, as liquidated damages and not as a penalty, a sum of money equal to:

(C) \$50 per MW multiplied by the Annual Average Contract Capacity (as would be determined from and after the COD) for each calendar day after the Milestone Date in respect of Financial Closing;

(D) the amount of (1) \$150 per MW multiplied by (2) the Annual Average Contract Capacity (as would be determined from and after the COD) for calendar day after the Milestone Date, in respect of

Commercial Operation of the Facility until the Commercial Operation has been achieved.

However, if Commercial Operation of the Facility is achieved on or before its corresponding Milestone Date, then all liquidated damages for delay in achieving Financial Closing paid by the Supplier under this Section 2.5(a) shall be refunded to the Supplier, without interest, two weeks following COD;

- (b) The maximum time period that liquidated damages shall be calculated and payable under Section 2.5(a) by the Supplier:
 - (ii) for failure to meet the Milestone Date in respect of Financial Closing, shall be ninety (90) days; and
 - (iii) for failure to meet the Milestone Date in respect of Commercial Operation of the Facility, shall be five hundred and forty-five (545) days.
- (c) If prior to Financial Closing or the date of receipt by the Buyer of the Completion and Performance Security, there occurs or arises any incident, event or circumstance which results, or is likely to result, in a delay in the aggregate of thirty (30) days or more in the achievement of Commercial Operation following the Milestone Date therefor, including delays arising from events of Force Majeure, the Party first becoming aware of such delay or likely delay shall promptly (and, in any event, within ten (10) Business Days) notify the other Party and the Parties shall meet to discuss strategies for eliminating or reducing, to the extent possible and practicable to do so, the impact of such delay on the development, construction and/or commissioning of the Facility in order to achieve Commercial Operation by the Milestone Date therefor.
- (d) If there occurs or arises any incident, event or circumstance which results, or is likely to result, in a delay in the aggregate of thirty (30) days or more in achieving the Environmental and Site Plan Milestone Events as described in Exhibit F following the respective Milestone Date therefor (for greater certainty including delays arising from events of Force Majeure), the Party first becoming aware of such delay or likely delay shall promptly (and, in any event, within ten (10) Business Days) notify the other Party and the Parties shall meet to discuss strategies for eliminating or reducing, to the extent possible and practicable to do so, the impact of such delay on the development, construction and/or commissioning of the Facility in order to achieve Commercial Operation by the Milestone Date therefor.
- (e) If, prior to the Commercial Operation Date, the Supplier delivers an IDE Notice pursuant to the Reimbursement Agreement and, in accordance with Section 3.8 of the Reimbursement Agreement, the arbitration referred to therein recommences, then the Supplier's obligations under this Agreement will be suspended until this

Agreement is terminated pursuant to Section 3.16 of the Reimbursement Agreement.

- (f) If, prior to the Commercial Operation Date, the Supplier delivers an IDE Notice pursuant to the Reimbursement Agreement and the Buyer or the Government of Ontario delivers a Dispute Notice in respect of such IDE Notice or if the OPA otherwise disputes whether an event of Force Majeure described in either Section 3.1(b) or Section 3.1(c) of the Reimbursement Agreement has occurred, then the Supplier's obligations under this Agreement will be suspended and the Milestone Dates will be adjusted, as contemplated in and in accordance with, Section 3.7 of the Reimbursement Agreement.

2.6 Requirements for Commercial Operation

- (a) The Facility will be deemed to have achieved "**Commercial Operation**" at the point in time when the Buyer has received:
 - (i) an IE Certificate, in the form set out in Exhibit V, stating that:
 - (A) the Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Facility to operate in accordance with this Agreement;
 - (B) the Connection Point of the Facility is at the location specified in Exhibit A;
 - (C) the Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid, such that at least 100% of the Contract Capacity for the Facility is available to generate Electricity in accordance with the requirements of all applicable Laws and Regulations;
 - (D) the Facility has generated Electricity in compliance with all Laws and Regulations for four (4) continuous hours at an uninterrupted rate not less than 100% of the Contract Capacity for the Facility. This requirement shall be evaluated based on calculation of the generator output at the Delivery Point net of any Station Service Loads, in accordance with the Metering Plan, and shall be satisfied if the energy output in each of the four (4) hours (in MWh), divided by one hour, is equal to or greater than the Contract Capacity for the Facility. The Supplier acknowledges and agrees that the Contract Capacity for the Facility and the Station Service Loads, as may be measured by the foregoing test, shall not be adjusted for ambient weather or other conditions whatsoever;

- (E) during each of the four (4) continuous hours referenced in Section 2.6(a)(i)(D) for purposes of Electricity generation, the actual emissions of NO_x and CO, as determined using the Emissions Measurement Methodology (except that the actual readings will be averaged over such 4 continuous hours instead of 24 cumulative hours), did not exceed the respective Emissions Limits. The Supplier acknowledges and agrees that the satisfaction of this requirement does not relieve the Supplier of its obligations to comply with all requirements under this Agreement relating to emissions of NO_x and CO including those obligations set out in Section 2.8(e);
 - (F) it has been demonstrated, through performance testing in accordance with PTC 46-1996 Performance Test Code on Overall Plant Performance for a combined cycle generation facility or other equivalent international performance test procedures agreed to by the Buyer acting reasonably, an electrical output, measured at the Delivery Point net of any Station Service Loads, demonstrating the maximum capacity of the Facility and the Facility has achieved the Contract Capacity for the Facility. A copy of the performance test report is to be attached to the Independent Engineer's certificate. For greater certainty, any obligations of the Supplier under this Agreement relating to or premised upon the amount of Nameplate Capacity shall remain in effect, unamended, notwithstanding that the maximum capacity of the Facility as demonstrated during the performance test may be less than the Nameplate Capacity;
 - (G) it has been demonstrated that the Facility has a minimum Ramp Rate over a single five minute interval of at least "x" MW/minute, where "x" is a value equal to 4% of the Nameplate Capacity for the applicable Season; and
- (ii) a Supplier's Certificate, in the form set out in Exhibit U, together with such documentation required to be provided under such form to the Buyer.

The Buyer or its Representative shall be entitled, at the Buyer's option, to attend the performance and generation tests for purposes of Sections 2.6(a)(i)(D) and (F), and the Supplier shall provide to the Buyer confirmation in writing of the timing of such tests at least ten (10) Business Days in advance.

- (b) The Buyer shall notify the Supplier in writing within ten (10) Business Days following receipt of the IE Certificate and the Supplier's Certificate re: Commercial Operation as to whether the IE Certificate, Supplier's Certificate, and the documentation provided by the Supplier under the Supplier's Certificate are

acceptable to the Buyer, acting reasonably. If the Buyer determines that the IE Certificate, Supplier's Certificate, or such documentation provided by the Supplier under the Supplier's Certificate are not acceptable to the Buyer, the Buyer shall at the time of such notification provide to the Supplier reasonable particulars in respect of the deficiencies in the IE Certificate, Supplier's Certificate, or such documentation.

2.7 Buyer Information During Design and Construction

Prior to COD, the Supplier shall provide the Buyer with progress reports as follows:

- (a) By the fifteenth (15th) day of each calendar quarter following the date of this Agreement and continuing until COD, the Supplier shall provide the Buyer with quarterly progress reports substantially in the form of Exhibit O, describing the status of efforts made by the Supplier to meet each Milestone Date and the progress of the design and construction work and the status of permitting and approvals relating to the Facility. Such quarterly progress reports shall report on the progress of all applicable Reportable Events. At the Buyer's request, the Supplier shall provide an opportunity for the Buyer to meet with appropriate personnel of the Supplier to discuss and assess the contents of any such Quarterly Progress Report. The Supplier acknowledges that the Quarterly Progress Reports and photographs of the Facility may be posted or printed by the Buyer on its website or in publications.
- (b) In addition to the quarterly progress reports it is required to provide pursuant to Section 2.7(a), the Supplier shall also provide the Buyer with notice of any material incident, event or concern which may occur or arise during the course of the development, construction or commissioning of the Facility, promptly and, in any event, within ten (10) Business Days following the later of: (i) the Supplier becoming aware of any such incident, event or concern occurring or arising; and (ii) the Supplier becoming aware of the materiality of same, with such timing in each case based upon the Supplier having acted in accordance with Good Engineering and Operating Practices.
- (c) At the Buyer's request, the Supplier shall provide an opportunity for the Buyer to participate as an observer in the Supplier's regular project meetings with its EPC Contractor or Other Contractor(s), if any. A copy of the minutes of the project meeting shall be provided to the Buyer if the Buyer participates as an observer at any such meeting.

2.8 Operation Covenants

- (a) The Supplier agrees to own the Facility during the Term and to operate and maintain the Facility during the Term using Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules, the

Transmission System Code, the Connection Agreement and all other Laws and Regulations. For certainty, the Parties acknowledge that the Buyer is not purchasing from the Supplier, nor is the Supplier selling to the Buyer, any Electricity or Related Products.

- (b) The Supplier agrees to assume all risk, liability and obligation and to indemnify, defend and hold harmless the Indemnitees in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario), the *Dangerous Goods Transportation Act* (Ontario) or other similar legislation, whether federal or provincial and all as amended from time to time, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees.
- (c) The Supplier agrees to use Commercially Reasonable Efforts to maintain or enter into any fuel supply contracts that are necessary for the proper operation of the Facility during the Term. In addition, any Gas distribution services forming part of the Reimbursable GD&M Services must be obtained from either Enbridge Gas Distribution Inc. or Union Gas Limited, and the Supplier must not construct, own, or operate the gas pipeline that serves the Facility. Without limiting the generality of the foregoing, a Supplier who is also a load facility under the IESO Market Rules shall be solely responsible for all charges (net of any applicable credits) in relation to Electricity consumed by it in order to operate the Facility in accordance with this Agreement.
- (d) The Supplier shall design and construct the Facility so that:
 - (i) if the Facility is configured in an "n x 1" combined-cycle configuration (i.e. where more than one gas turbine generator supplies a single steam turbine generator), then under conditions where the steam turbine generator is not able to deliver any Electricity due to the failure of the steam turbine generator itself ("STG Failure"), one or more gas turbine generators are able to supply 45% or more of the Contract Capacity to the Connection Point within 30 minutes of the STG Failure;
 - (ii) if the Facility is configured in an "n x m" combined-cycle configuration (i.e. where "n" is the number of gas turbine generators and "m" is more than one steam turbine generators), then under conditions where one or more steam turbine generators and/or one or more of the gas turbine generators is not able to deliver any Electricity to the Connection Point due to the failure of the steam turbine generator itself and/or the gas turbine generator itself (in either or both cases, "Generator Set Failure"),

one or more of the remaining gas turbine generators and/or steam generators are able to supply 45% or more of the Contract Capacity to the Connection Point within 30 minutes of the Generator Set Failure; and

- (iii) irrespective of the configuration of the Facility in Sections 2.8(d)(i) and (ii) above, if one of the connection circuits between any gas turbine generator or steam turbine generator and the Connection Point is unable to deliver Electricity (“Connection Circuit Failure”), then sufficient switching exists so that 45% or more of the Contract Capacity can be delivered to the Connection Point on the remaining connection circuit(s) within 30 minutes of the Connection Circuit Failure.
- (e) The OPA may provide written notice to the Supplier within 120 days of this Agreement that the provisions of Section 2.8(d)(iii) should not apply to the Facility. The Parties shall, upon a request from the Buyer, enter into good faith negotiations to negotiate the necessary amendments to Exhibit J, in a form acceptable to both Parties, should the OPA provide such notice, to hold the Supplier harmless from any Imputed Net Revenue that would have been calculated during any Imputed Production Interval, or part thereof, in which a Connection Circuit Failure occurs and the Facility does not have sufficient switching so that 45% or more of the Contract Capacity can be delivered to the Connection Point on the remaining connection circuit(s) within 30 minutes of the Connection Circuit Failure. If such notice is provided and the Parties reach agreement on such necessary amendments to Exhibit J within 120 days after the date of this Agreement, the provisions of Section 2.8(d)(iii) shall not apply to this Facility and any work that would have been required solely to meet the requirements of Section 2.8(d)(iii) shall not be included in the Supplier Connection Work or the Supplier Connection Costs unless otherwise required by the Transmitter or the IESO. If the Parties are unable to reach agreement on such necessary amendments to Exhibit J within such 120 day period, then the provisions of Section 2.8(d)(iii) shall continue to apply thereafter.
- (f) In addition to meeting all requirements set out in the *Environmental Protection Act* (Ontario) and regulations thereunder (including Ontario Regulation 419/05 Air Pollution – Local Air Quality), as well as the MOE Guideline A-5, and any other regulatory requirements to which the Facility is subject, the proposed Facility must meet the specific limitations regarding air emissions set out in Exhibit A. The emissions of NO_x and CO, as measured using the Emissions Measurement Methodology, shall not exceed the respective Emissions Limits, including at the time of attaining Commercial Operation with reference to Section 2.6(a)(i)(E) and during any Capacity Check Test pursuant to Section 15.6(g). The Supplier shall forthwith provide written evidence of such compliance from time to time upon request by the Buyer. The Supplier shall forthwith provide to the Buyer written notice, and a full copy, of any Provincial Officer’s Order issued by the Ministry of the Environment or any information commencing a proceeding

under Part III of the *Provincial Offences Act* (Ontario) relating to emissions of NOx or CO from the Facility that exceed or are alleged to exceed the respective Emissions Limits, and shall provide forthwith from time to time copies of all further documents and correspondence relating to such Order or proceeding.

2.9 Metering and Dispatch Capabilities

- (a) The Supplier covenants and agrees to provide, at its expense, separate meters and ancillary metering and monitoring equipment for the Facility as required by the IESO Market Rules. The Supplier agrees to allow the Buyer to have viewing access rights only to the revenue-quality interval meter data of the Facility to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive for any loss adjustment factors by establishing an Associated Relationship between the Buyer and the Delivery Point of the Facility within the MVPortlet application tool (or the equivalent thereof), at no cost to the Buyer.
- (b) The Buyer retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan, and the meter data of Facility to confirm the accuracy of such data. The Supplier shall have the Metering Plan approved by the Buyer and shall deliver a copy to the Buyer for its approval no later than sixty (60) days prior to the Milestone Date for the first Commercial Operation test pursuant to Section 2.6. The Buyer agrees to review the Metering Plan submitted by the Supplier and to either approve the plan or provide the Supplier with its comments within fifteen (15) Business Days after receipt. The Supplier will provide the Buyer with a commissioning report for all revenue meters referenced in the Metering Plan prior to any use of metered data for the purposes expressed in Section 15.6.
- (c) The Supplier shall maintain (or be responsible for arranging on its behalf) a system satisfactory to the Buyer commencing the day prior to the Term Commencement Date and continuing every day throughout the Term, to receive Directed Dispatch Orders from either the Buyer or the Dispatcher, as the case may be, prior to the applicable daily deadlines set out in Exhibit G.

2.10 Insurance Covenants

- (a) The Supplier hereby agrees to 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 prudent Person in the business of developing and operating the Facility would maintain including the policies set out in this Section 2.10. All insurance policies to be effected and maintained as required hereunder shall:

- (i) be placed with insurers licensed to underwrite insurance in the Province of Ontario and having an overall A.M. Best's Rating of at least A- (except in the case of automobile liability insurance where the minimum rating of the insurer shall be B+); and
 - (ii) be capable of being reviewed and altered during the term of the policy to account for any changes in Laws and Regulations which affect coverage of the risk insured.
- (b) The Supplier shall put in effect and maintain, or cause its contractors, where appropriate, to maintain, at a minimum, the following insurance policies:
 - (i) "all-risk" property insurance covering property of every description insuring not less than the full replacement value of the Facility; and
 - (A) for the period prior to the COD:
 - (1) shall be in the joint names of at least the Supplier and its principal contractors, with no co-insurance restriction; the policy shall include as additional insureds all subcontractors and the coverage shall not be less than the insurance required by IBC Forms 4042 and 4047, extended to include testing and commissioning, or their equivalent replacement; and
 - (2) shall provide delayed start-up coverage on a fixed expense basis with an indemnity period of not less than twelve (12) months and a deductible waiting period of not more than ninety (90) days; and
 - (B) for the period from and after the COD:
 - (1) shall be in the name of the Supplier; and
 - (2) shall provide for business interruption coverage on an actual loss sustained basis with a waiting period of not more than ninety (90) days.

These policies shall contain a waiver of subrogation in favour of the Indemnitees. Deductibles for these policies shall not exceed \$500,000 for all losses (other than damage to Equipment (as defined below) which will be subject to the deductibles set forth in Section 2.10(b)(ii)), except for 3% of full replacement value of damage to property (with a minimum deductible of \$500,000) for damage to property arising from or relating to each of flood and earthquake.

- (ii) equipment breakdown insurance, in the joint names of the Supplier and, for the period prior to the COD, its principal contractors, insuring not less than the full replacement value of the boilers, machinery, pressure vessels, electrical and mechanical machines, air conditioning and refrigeration systems, computers, communications and electronic systems, service supply objects, heat recovery steam generator units, steam turbine generator units, generator step-up transformer units and combustion gas turbine generator units and all other equipment forming part of the Facility (the “Equipment”). The coverage shall not be less than the insurance provided by the forms known and referred to in the insurance industry as “Comprehensive Boiler and Machinery Form” or “Equipment Breakdown Insurance”. This policy shall contain a waiver of subrogation in favour of the Indemnitees. Deductibles in respect of this policy or the portion of the “all risk” property insurance relating to the Equipment (as described in Section 2.10(b)(i)) shall not exceed:

- (A) \$3,000,000 for property damage arising from and relating to testing and commissioning of Equipment prior to the COD; and
- (B) \$3,000,000 for property damage arising from and after the COD;

Equipment breakdown insurance coverage may be obtained as part of the “all risk” property insurance.

- (iii) commercial general liability insurance on an occurrence basis for death, bodily injury and property damage and other types of damage that may be caused to third parties as a result of the Supplier’s activities in connection with the Facility or performance of its obligations under this Agreement, to an inclusive limit of not less than \$10,000,000 per occurrence and in aggregate and with a deductible not exceeding \$100,000. This policy shall include the Indemnitees as additional insureds and shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The coverage provided shall not be less than the insurance required by IBC Form 2100-2, 4-1998 (or its equivalent replacement) and IBC Form 2320 (version in effect as at the date hereof or its equivalent replacement). The policy shall include the following coverage:

- (A) broad form products, premises and completed operations liability for a period of not less than twenty-four (24) months after the COD;
- (B) cross-liability and severability of interests clause;
- (C) contingent employer’s liability;
- (D) tenant’s legal liability (if applicable and with applicable sublimits);

- (E) blanket contractual liability of the Supplier under this Agreement;
 - (F) damage arising from shoring, blasting, excavating, underpinning, demolition pile driving and caisson work, work below ground surface, tunnelling, and grading (if applicable);
 - (G) non-owned automobile liability with blanket contractual coverage for hired automobiles;
 - (H) liability on the part of the Supplier resulting from activities or work performed by its contractors and subcontractors; and
 - (I) coverage shall be on an occurrence basis (and not a claims made basis).
- (iv) automobile liability insurance, providing coverage for owned, non-owned or hired automobiles with a combined single liability limit of not less than \$2,000,000 per occurrence;
 - (v) environmental impairment liability insurance, providing coverage for first party property damage and site clean-up and any third party claims for bodily injury, property damage and clean-up for any environmental incidents arising out of the construction, operation or maintenance of the Facility, with a limit of not less than \$5,000,000 per occurrence and in aggregate and with a deductible not exceeding \$200,000. This policy shall include the Indemnitees as additional insureds and shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The policy shall contain a cross-liability and severability of interests clause; and
 - (vi) any additional insurance required to be provided under all Laws and Regulations.
- (c) For purposes of the insurance coverage under Sections 2.10(b)(i) and (ii), the Supplier may procure and maintain separate insurance policies to cover the period prior to the COD and the period from and after the COD.
 - (d) The Supplier shall provide the Buyer with proof of the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage on or before the commencement of the construction of the Facility, and renewals or replacements on or before the expiry of any such insurance. The policies for the insurance coverage under Sections 2.10(b)(i), (ii), (iii), and (v) shall be endorsed to provide the Buyer with:
 - (i) not less than sixty (60) days notice in writing in advance of any termination, cancellation or non-renewal thereof, and the Supplier shall

ensure that the Buyer receives such notice prior to the commencement of such sixty (60) day period; and

- (ii) notice in writing at the time of any material change or amendment thereto (including any reduction in limits, increase in deductibles, exhaustion of aggregate limits, and change in named insured), and the Supplier shall ensure that the Buyer receives such notice at such time.

Upon the request of the Buyer, the Supplier will provide the Buyer with a copy of each insurance policy to be furnished within ten (10) Business Days of the request being made by the Buyer. The provision to the Buyer of any certificate of insurance, insurance policy or other evidence of compliance with this Section 2.10 shall not imply acceptance by the Buyer that the extent of insurance coverage is sufficient and otherwise complies with this Section 2.10.

- (e) If the Supplier is subject to the *Workplace Safety and Insurance Act* (Ontario), it shall submit a valid clearance certificate of Workplace Safety and Insurance Act coverage to the Buyer prior to the commencement of construction of the Facility. In addition, the Supplier shall, from time to time at the request of the Buyer, provide additional Workplace Safety and Insurance Act clearance certificates. The Supplier agrees to pay when due, and to ensure that each of its contractors and subcontractors pays when due, all amounts required to be paid by it and its contractors and subcontractors, from time to time from the commencement of construction of the Facility, under the *Workplace Safety and Insurance Act* (Ontario), failing which the Buyer shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the *Workplace Safety and Insurance Act* (Ontario) and unpaid by the Supplier or its contractors and subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to this Agreement together with all costs incurred by the Buyer in connection therewith.
- (f) In addition to all other rights and remedies available to the Buyer in this Agreement, if the Supplier fails to comply with this Section 2.10, the Buyer shall have the right (but not the obligation) to:
 - (i) obtain any and all insurance policies that the Supplier has failed to obtain and maintain or in respect of which the Supplier has failed to notify the Buyer in the manner contemplated herein. The Buyer shall have the right to deliver an invoice to the Supplier containing a statement of the reasonable costs of obtaining such insurance policies, together with any associated administrative and legal and other reasonable costs (collectively, the “**Insurance Costs**”) and the Supplier shall within ten (10) days of the date of receiving such invoice pay to the Buyer an amount

equal to the Insurance Costs, irrespective of whether or not the Buyer proceeds to obtain or has in fact obtained any such insurance policy or policies. The Parties agree that the Insurance Costs are a reasonable pre-estimate of damages and not a penalty. If the Supplier fails to pay to the Buyer the amount of the Insurance Costs, the Buyer shall be entitled to draw and retain from the Completion and Performance Security the amount of the Insurance Costs; or

- (ii) withhold any Contingent Support Payment until such time as the Supplier provides the certificates of insurance or copies of insurance policies as required under this Section 2.10.
- (g) Where the Supplier is made up of more than one legal entity (whether in the form of partnership, joint venture or otherwise), the Supplier shall provide to the Buyer an irrevocable direction designating one such legal entity as responsible for all insurance matters under this Section 2.10, and for the provision of information in relation thereto to the Buyer as contemplated in this Agreement, and such entity shall be so responsible. The Supplier agrees that such designate shall be authorized to bind the Supplier and all legal entities constituting the Supplier in respect of all matters relating to this Section 2.10.

2.11 Compliance with Laws and Regulations and Registration with the IESO

- (a) The Buyer and the Supplier shall each comply, in all material respects, with all Laws and Regulations required to perform or comply with their respective obligations under this Agreement.
- (b) The Buyer and the Supplier shall each furnish, in a timely manner, information to Governmental Authorities and shall each obtain and maintain in good standing any licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licensing as is required by the OEB. Without limiting the generality of the foregoing, the Supplier agrees to meet all applicable Facility registration requirements as specified in the IESO Market Rules.
- (c) The Supplier shall register with the IESO as a “Metered Market Participant” and as a “Generator” pursuant to the IESO Market Rules. The settlement of Market Settlement Charges shall take place directly between the Supplier as the “Metered Market Participant” and the IESO, and any costs incurred by the Supplier acting as the “Metered Market Participant” pursuant to the IESO Market Rules in respect of this Agreement shall be charged to and be the sole responsibility of the Supplier, unless otherwise expressly determined pursuant to Section 1.6, 1.7, 1.8 or 1.9 hereof.

2.12 Environmental Attributes

- (a) The Supplier shall from time to time during the Term of this Agreement obtain, qualify, and register with the relevant authorities or agencies all Environmental Attributes that are created by, or allocated or credited to, the Facility pursuant to Laws and Regulations (including the Ontario Emissions Trading Program, if applicable to the Facility) (collectively, the “**Regulatory Environmental Attributes**”).
- (b) The Supplier shall be entitled to any and all right, title and interest in any Regulatory Environmental Attributes attributable to the Facility that were available under the Ontario Emissions Trading Program as of March 13, 2009 (“**OETP Attributes**”). However, the amount of the Supplier’s entitlement to any such OETP Attributes shall be determined with reference to the levels in effect under the Ontario Emissions Trading Program as of the date of the Supplier’s claim from time to time to any such entitlement. For certainty, revenue arising from such OETP Attributes will not be included in Imputed Net Revenue for purposes of Exhibit J.
- (c) With respect to Regulatory Environmental Attributes, other than OETP Attributes:
 - (i) The Buyer shall be entitled to any and all right, title and interest in any Regulatory Environmental Attributes created, credited or allocated to the Facility in an amount related to Contracted Facility Operation; and
 - (ii) The Supplier shall be entitled to any and all right, title and interest in any remaining Regulatory Environmental Attributes net of the Buyer’s entitlement in Section 2.12(c)(i).

Further to Section 16.13, each of the Supplier and the Buyer shall do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to give effect to the provisions of this Section 2.12(c), including assigning, transferring or, if necessary, holding in trust for the other Party, such Regulatory Environmental Attributes.

- (d) The Supplier shall not participate in any voluntary programs with respect to any Environmental Attributes associated with the Facility without the prior written consent of the Buyer, which consent may be unreasonably withheld.
- (e) The Parties acknowledge that the Government of Canada and the Government of Ontario may, from time to time during the Term of this Agreement, implement Laws and Regulations covering Greenhouse Gas emissions that may be applicable to the Facility and that may contain provisions requiring the Facility to have, obtain and/or retire permits, credits, allowances, offsets, or similar instruments or

other compliance mechanisms (“**GHG Emissions Credits**”) in connection with the emission of Greenhouse Gases due to the operation of the Facility or prescribe other compliance mechanisms (the “**GHG Laws and Regulations**”). If the GHG Laws and Regulations are promulgated, and once the applicable details of the GHG Laws and Regulations and the details of their application to the Facility are known, then notwithstanding Section 2.12(c), the Buyer agrees to propose such amendments to this Agreement (the “**Replacement Provision(s)**”) to the Supplier and, at the Buyer’s discretion, to all of the Other Suppliers who are required by the Buyer to participate, based on the principles set out in Section 2.12(f) (the “**GHG Amendment Principles**”). If the Parties are unable to agree on the Buyer’s proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the applicable details of the GHG Laws and Regulations have been published in final form, then the Replacement Provision(s) shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel pursuant to Section 2.12(g).

- (f) For the purposes of Section 2.12(e), the GHG Amendment Principles upon which the Replacement Provision(s) will be based are as follows:
 - (i) The objective of the amendments, together with the GHG Laws and Regulations, will be to substantially reflect the economics of the Supplier under this Agreement with respect to Contracted Facility Operation prior to the implementation of the GHG Laws and Regulations.
 - (ii) If GHG Emissions Credits are created by, or allocated or credited to, the Facility, such GHG Emissions Credits will be allocated to the operation of the Facility based on:
 - (A) the requirements of Contracted Facility Operation; and
 - (B) the requirements of operation of the Facility that is not Contracted Facility Operation, if and to the extent that the requirements of Contracted Facility Operation have been satisfied.
 - (iii) If GHG Emissions Credits are required by GHG Laws and Regulations for Contracted Facility Operation and the amount of GHG Emission Credits, if any, allocated to Contracted Facility Operation is less than the amount required by GHG Laws and Regulations for Contracted Facility Operation, the amendments may include, at the option of the Buyer:

- (A) amendments to Exhibit J; or
 - (B) the addition of provisions which allow or require the Buyer to pay to the Supplier the reasonable cost of any required GHG Emissions Credits beyond the amount that are available to the Supplier (acting prudently and excluding transaction costs); or
 - (C) the addition of provisions which allow or require the Buyer to obtain the GHG Emissions Credits and transfer them to the Supplier at no cost to the Supplier; or
 - (D) the addition of provisions which allow or require the Buyer to pay any compliance penalties associated with any deficit in required GHG Emissions Credits; or
 - (E) the addition of provisions which enable the Buyer to require the Supplier to stop delivering Electricity beyond a specified amount below the maximum amount of Contracted Facility Operation otherwise permitted under this Agreement together with the necessary amendments to Exhibit J.
- (iv) If GHG Emissions Credits are required by GHG Laws and Regulations for Contracted Facility Operation and the amount of GHG Emission Credits, if any, allocated to Contracted Facility Operation is greater than the amount required by GHG Laws and Regulations for Contracted Facility Operation, the Buyer shall be entitled to any and all right, title and interest in any such excess GHG Emissions Credits.
 - (v) If GHG Emissions Credits are required by GHG Laws and Regulations for the operation of the Facility that is not Contracted Facility Operation, the Supplier is solely responsible for ensuring that it has a sufficient amount of GHG Emissions Credits for such operation.
- (g) The terms of this Agreement shall be amended either:
 - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 2.12(f);
 - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 2.12(f); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 2.12(f), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date that the applicable details of such GHG Laws and Regulations, and their effect on Contracted Facility Operation, were known.

ARTICLE 3 DISPATCH OPTIONS

3.1 Rights to Dispatch the Facility

The Buyer shall have the right, from time to time throughout the Term, to select the dispatch mechanism governing the Facility (the “**Dispatch Rights**”) in every given hour of the Term in accordance with, and subject to, the provisions of this Article 3.

3.2 Available Dispatch Options

The Buyer’s Dispatch Rights shall be restricted to the Deemed Dispatch Option and the Directed Dispatch Option in each case as described in Exhibit G.

3.3 Appointment of the Dispatcher Under the Directed Dispatch Option

- (a) The Buyer shall be entitled, without the consent of the Supplier, to appoint any Person from time to time throughout the Term and for any stated length of time up to the balance of the Term (the “**Dispatcher**”) to exercise the Dispatch Rights under the Directed Dispatch Option in the place of the Buyer.
- (b) The appointment of the Dispatcher will be made on the following basis:
 - (i) the Buyer will provide written notice to the Supplier at least five (5) Business Days prior to the exercise of Dispatch Rights by the Dispatcher;
 - (ii) the Dispatcher shall be entitled, during the term of its appointment, to exercise the Dispatch Rights under the Directed Dispatch Option in the place of the Buyer and communicate all Directed Dispatch Orders directly with the Supplier. However, the Dispatcher shall not have the authority to act for, or in the place of, the Buyer in any other respect under this Agreement and shall not be directly liable to the Supplier;
 - (iii) the appointment of the Dispatcher will not relieve the Buyer of its obligations to the Supplier under this Agreement, and all Monthly Payments shall continue to be made and settled directly between the Buyer and the Supplier; and
 - (iv) the appointment of the Dispatcher may be revoked by the Buyer at any time prior to the expiry of the term of the Dispatcher’s appointment by providing written notice to the Supplier at least one (1) Business Day prior to the revocation of the appointment of the Dispatcher. For greater

certainty, the revocation of the appointment of the Dispatcher shall not affect the validity of any outstanding Directed Dispatch Order, which shall continue to be governed by the terms of Exhibit G.

3.4 Future Tolling Dispatch

The Parties acknowledge that the market for Electricity and Related Products continues to evolve within the Province of Ontario, and that it is important to the Buyer to encourage market evolution in certain directions. Subject to Section 12.1(h), the Supplier agrees that if requested to do so by the Buyer, it will enter into good faith negotiations with the Buyer to allow the Contract Capacity to be dispatched by the Buyer, a Dispatcher or an assignee of the Buyer during all or any portion of the then remaining Term on a tolling basis, provided that it shall be a principle of such negotiations that the Supplier shall not be required to accept any tolling dispatch mechanism which adversely impacts the Supplier's economics as contemplated hereunder prior to the introduction of such tolling dispatch mechanism. Any disputes arising under this Section 3.4 are not subject to resolution pursuant to Section 16.2.

ARTICLE 4 OPERATION OF FACILITY AND PAYMENT OBLIGATIONS

4.1 Operation of Facility During the Term

- (a) From and after the beginning of the hour ending 01:00 (EST) of the Term Commencement Date, the Supplier agrees to operate the Facility in accordance with the terms of this Agreement, and the Monthly Payments shall begin to accrue and be payable in accordance with Section 4.2 and Article 5. For certainty, the Parties acknowledge that the Buyer is not purchasing from the Supplier, nor is the Supplier selling to the Buyer, any Electricity or Related Products.
- (b) The Supplier will provide the Buyer with prior written notice of the development by the Supplier of any Future Contract Related Products from time to time.

4.2 Payment Amounts

- (a) The “**Monthly Payment**” shall be an amount equal to one of the following:
 - (i) the Contingent Support Payment, if any, which shall be owed by the Buyer to the Supplier; or
 - (ii) the Revenue Sharing Payment, if any, which shall be owed by the Supplier to the Buyer.

4.3 Supplier Option to Reduce Contract Capacity

At any time within the six (6) month period immediately prior to the Milestone Date for Commercial Operation of the Facility, the Supplier shall, once during such period, have the right

to reduce the Season 1 Contract Capacity, the Season 2 Contract Capacity, the Season 3 Contract Capacity and/or the Season 4 Contract Capacity to a lower amount by providing written notice thereof to the Buyer during such period, provided that any such reduction:

- (a) shall not be greater than 5% of the Annual Average Contract Capacity; or
- (b) shall not result in a Season 3 Contract Capacity of less than 750 MW; or
- (c) shall not result in the inability of the Facility to provide 45% or more of the Contract Capacity in any Season under N-1 Generating Facility Conditions.

The reduction in the Contract Capacity set out in this Section 4.3 shall take effect on COD, provided that there is no Supplier Event of Default as of COD. The Supplier acknowledges that any such reductions in the Contract Capacity shall not reduce any obligations of the Supplier in existence prior to the effective date of such reduction and that such reductions shall be permanent and the Contract Capacity, as reduced, cannot be increased at any point during the balance of the Term.

4.4 Supplier's Responsibility for Taxes

The Supplier is liable for and shall pay, or cause to be paid, or reimburse the Buyer if the Buyer has paid, all Taxes applicable to any Revenue Sharing Payment due to the Buyer. If any GST is payable in connection with the Revenue Sharing Payment, such GST shall be paid by the Supplier. In the event that the Buyer is required to remit such Taxes, the amount thereof shall be deducted from any sums becoming due to the Supplier hereunder, or shall be added to any sums becoming due to the Buyer hereunder.

4.5 Buyer's Responsibility for Taxes

The Buyer is liable for and shall pay, or cause to be paid, or reimburse the Supplier if the Supplier has paid, all Taxes applicable to any Contingent Support Payment due to the Supplier. If any GST is payable in connection with the Contingent Support Payment, such GST shall be paid by the Buyer. In the event that the Supplier is required to remit such Taxes, the amount thereof shall be deducted from any sums becoming due to the Buyer hereunder, or shall be added to any sums becoming due to the Supplier hereunder.

4.6 Non-Residency

If the Supplier is or becomes a non-resident of Canada, as that term is defined in the ITA, the Supplier shall notify the Buyer forthwith of such status and shall provide the Buyer with information sufficient to permit the Buyer to comply with any withholding Tax, or other Tax obligations, to which the Buyer may be subject as a result thereof. If the Buyer incurs any withholding or other similar Taxes as a result of such non-residency, then payments under this Agreement by the Buyer shall be reduced by the amount of such withholding Taxes and the Buyer shall remit such withholding Taxes to the applicable taxing authorities. The Buyer shall within sixty (60) days after remitting such Taxes, notify the Supplier in writing, providing

reasonable detail of such payment so that the Supplier may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If, after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Supplier.

ARTICLE 5

STATEMENTS AND PAYMENTS

5.1 Meter and Other Data

- (a) The Supplier agrees to provide to the Buyer access to the meters in the Metering Plan to accommodate remote interrogation of the metered data on a daily basis. The Supplier agrees to provide to the Buyer, at all times, access to any other information relating to the Facility that the Supplier has provided to, or received from, the IESO from time to time. The Buyer agrees to provide to the Supplier, upon the Supplier's request, any Market Price information and any other information that the Buyer will be utilizing in preparing any Statement that is not available directly to the Supplier from the IESO. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 5.1, such Party shall notify the other Party, and if applicable, the IESO in accordance with the IESO Market Rules, on a timely basis.
- (b) Notwithstanding the foregoing, the Parties acknowledge and agree that all Statements shall be prepared based on market price information and settlement data from the IESO and in the event of a discrepancy between market price information and settlement data from the IESO and information received directly from the Supplier pursuant to Section 5.1(a), then the market price information and settlement data from the IESO shall, subject to Section 5.7, be considered to be correct.

5.2 Statements

The Buyer shall prepare and deliver a settlement statement (the “**Statement**”) to the Supplier, within ten (10) Business Days after the end of each calendar month in the Term that is the subject of the Statement (the “**Settlement Month**”), setting out the basis for the Monthly Payment with respect to the Settlement Month, as well as the basis for any other payments owing under this Agreement by either Party to the other in the Settlement Month. A Statement may be delivered by the Buyer to the Supplier by facsimile or electronic means and shall include the reference number assigned to this Agreement by the Buyer and a description of the components of the Monthly Payment and other payments, as described in this Agreement, including Sections 2.3(a)(iv) and 4.2, as applicable, owing to the Supplier for the Settlement Month.

5.3 Payment

The Party owing the Monthly Payment shall remit to the other Party full payment in respect of the Statement no later than twenty (20) Business Days after the end of the Settlement Month to

which the Statement relates (the “**Payment Date**”). Any and all payments required to be made by either Party under any provision of this Agreement shall be made by wire transfer to the applicable account designated in Section 5.5, or as otherwise agreed by the Parties.

5.4 Interest

The Party owing the Monthly Payment shall pay interest on any late payment to the other Party, from the Payment Date to the date of payment, unless such late payment was through the fault of the other Party. The interest rate applicable to such late payment shall be the Interest Rate in effect on the date that the payment went into arrears, calculated daily, but shall not, under any circumstances, exceed the maximum interest rate permitted by Laws and Regulations.

5.5 Payment Account Information

Account for payments to Supplier:

Royal Bank of Canada
335 – 8th Avenue S.W.
Calgary, AB T2P 1C9

Account Name: TransCanada Energy
Account Number: 108-328-6
Transit Number: 0009

Supplier’s GST Registration Number: 887168482RT0001

The Buyer acknowledges that the account information and GST registration number of the Supplier above constitutes Supplier’s Confidential Information and is subject to the obligations of the Buyer as set out in Article 8.

Account for payments to Buyer:

Royal Bank of Canada
Main Branch
200 Bay Street, Main Floor
Toronto, ON M5J 2J5

Account Number: 104-439-5
Transit Number: 00002

Buyer’s GST Registration Number: 854195039RT0001

The Supplier acknowledges that the account information and GST registration number of the Buyer above constitutes Buyer’s Confidential Information and is subject to the obligations of the Supplier as set out in Article 8.

Either Party may change its account information from time to time by written notice to the other in accordance with Section 15.7.

5.6 Adjustment to Statement

- (a) Each Statement shall be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a Party during the period of one (1) year following the end of the calendar year in which such Statement was issued. If there are no complaints raised, or if any complaints raised in the time period have been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such period.
- (b) Notwithstanding the foregoing, the determination by the IESO of any information shall be final and binding on the Parties in accordance with the IESO Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the IESO which the IESO has requested be corrected, then the one (1) year limit set forth in Section 5.6(a) shall not apply to the correction of such error or the Buyer's ability to readjust the Statement.
- (c) Subject to Section 5.7, any adjustment to a Statement made pursuant to this Section 5.6 shall be made in the next subsequent Statement.

5.7 Disputed Statement

If the Supplier disputes a Statement or any portion thereof, the Party owing any amount set forth in the Statement shall, notwithstanding such dispute, pay the entire amount set forth in the Statement to the other Party. The Supplier shall provide written notice to the Buyer setting out the portions of the Statement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the Buyer will promptly prepare a revised Statement. Any overpayment or underpayment of any amount due under a Statement shall bear interest at the Interest Rate, calculated daily, from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on the tenth (10th) Business Day following the date on which the revised Statement is delivered to the Supplier. If a Statement dispute has not been resolved between the Parties within five (5) Business Days after receipt of written notice of such dispute by the Buyer, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 16.1.

5.8 Statements and Payment Records

The Parties shall keep all books and records necessary to support the information contained in and with respect to each Statement and Monthly Payment made thereunder, in accordance with Section 15.2.

ARTICLE 6
CREDIT AND SECURITY REQUIREMENTS

6.1 Completion and Performance Security

- (a) **[Intentionally Deleted]**
- (b) The Supplier must post and maintain security for the performance of the Supplier's obligations under this Agreement (the "**Completion and Performance Security**") in the amount and for the period specified below:
 - (i) from the date of this Agreement to the first date specified in Section 6.1(b)(ii), security of \$25,000,000;
 - (ii) from the date that is the fifth anniversary of the COD to the first date specified in Section 6.1(b)(iii), the Completion and Performance Security shall be reduced to \$15,000,000;
 - (iii) from the date that is the tenth anniversary of the COD to the first date specified in Section 6.1(b)(iv), the Completion and Performance Security shall be reduced to \$10,000,000;
 - (iv) from the date that is the fifteenth anniversary of the COD to the end of the Term, the Completion and Performance Security shall be reduced to \$7,500,000.
- (c) Notwithstanding any other provision of this Agreement, no delay, including a delay resulting from an event of Force Majeure, shall extend the date by which any component of the Completion and Performance Security is required to be provided by the Supplier.
- (d) In the event that Buyer, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Completion and Performance Security, the Supplier shall forthwith provide replacement security to cover an amount equal to that recovered or paid out of the Completion and Performance Security. In exchange for the Completion and Performance Security in the amended amount, the Buyer will return to the Supplier the original Completion and Performance Security.

6.2 Composition of Security

- (a) Prior to the COD, the obligation of the Supplier to post and maintain Completion and Performance Security as required by Sections 6.1(b)(i) must be satisfied by the Supplier providing to the Buyer a Letter of Credit, certified cheque, bank draft, or other equivalent form of security acceptable to the Buyer for the full amount, but, for certainty, shall not include guarantees.

- (b) From and after the date of receipt by the Supplier of the confirmation of the Buyer described in Section 2.6(b) in respect of COD, the Completion and Performance Security shall be provided as set out in Section 6.2(b)(i) or (ii) below:
- (i) a Letter of Credit, certified cheque, bank draft, or other equivalent form of security acceptable to the Buyer, for the full amount of the Completion and Performance Security; or
 - (ii) subject to Section 6.2(d), a Guarantee, up to a maximum amount determined pursuant to Section 6.4, but not to exceed ninety percent (90%) of the amount of the Completion and Performance Security, together with a Letter of Credit, certified cheque, bank draft, or other equivalent form of security acceptable to the Buyer, for the balance of the amount of the Completion and Performance Security.

To the extent that the amount of the Guarantee requirement increases or decreases from time to time in accordance with this Article 6, the amount of the Letter of Credit shall correspondingly be required to be decreased or increased, respectively, so that the total amount of the Completion and Performance Security held by the Buyer at all times from and after the COD remains in an aggregate amount as required pursuant to Section 6.1.

- (c) If the aggregate of the Supplier's Creditworthiness Value determined pursuant to Section 6.4(b) and the principal amount of the Letter of Credit, certified cheque, bank draft, or other equivalent form of security acceptable to the Buyer described in Section 6.2(b)(ii) is equal to or greater than the amount of the Completion and Performance Security, then no Guarantee is required.
- (d) If a Guarantee forms part of the Completion and Performance Security and:
- (i) the Creditworthiness Value of the Supplier determined pursuant to Section 6.4(b) is equal to or greater than the Creditworthiness Value of the Guarantor determined pursuant to Section 6.4(b), provided the Guarantor has a Credit Rating required of a Guarantor as set out in Section 6.4, or
 - (ii) the aggregate of the Supplier's Creditworthiness Value and the principal amount of the Letter of Credit, certified cheque, bank draft, or other equivalent form of security acceptable to the Buyer described in Section 6.2(b)(ii) is equal to or greater than the amount of the Completion and Performance Security,

then, provided the Supplier is not then in default under this Agreement, the Buyer shall, upon request by the Supplier, return the Guarantee to the Supplier.

6.3 Letter of Credit Provisions

Any Letter of Credit delivered hereunder shall be subject to the following provisions:

- (a) The Supplier shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or other equivalent form of security satisfactory to the Buyer at least ten (10) Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a financial institution issuing a Letter of Credit fails to honour the Buyer's properly documented request to draw on an outstanding Letter of Credit (other than a failure to honour as a result of a request to draw that does not conform to the requirements of such Letter of Credit), provide for the benefit of the Buyer (A) a substitute Letter of Credit that is issued by another financial institution, or (B) other security satisfactory to the Buyer in an amount equal to such outstanding Letter of Credit, in either case within five (5) Business Days after the Supplier receives notice of such refusal.
- (b) A Letter of Credit shall provide that the Buyer may draw upon the Letter of Credit in an amount (up to the face amount or part thereof remaining available to be drawn thereunder for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Supplier but that have not been paid to the Buyer within the time allowed for such payments under this Agreement (including any related notice or grace period or both). A Letter of Credit shall provide that a drawing may be made on the Letter of Credit upon submission to the financial institution issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Buyer in accordance with the specific requirements of the Letter of Credit. The location where the drawing may be made must be Toronto, Ontario.
- (c) If the Supplier shall fail to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), or establish one or more additional Letters of Credit or other equivalent form of security satisfactory to the Buyer when required hereunder, then without limiting any other remedies the Buyer may have under this Agreement, the Buyer (i) may draw on the undrawn portion of any outstanding Letter of Credit and retain for its own account, as liquidated damages and not as a penalty, the amount equal to one (1%) percent of the face value of such outstanding Letter of Credit and/or (ii) prior to the expiry of such Letter of Credit, may draw on the entire, undrawn portion of any outstanding Letter of Credit, upon submission to the financial institution issuing such Letter of Credit of a certificate specifying the entire amount of the Letter of Credit is owing to the Buyer in accordance with the specific requirements of the Letter of Credit. Any amount then due and owing to the Buyer shall be received by the Buyer as liquidated damages and not as a penalty. If the amounts then due and owing are

less than the amount drawn under such Letter of Credit, then such excess amount shall be held as Completion and Performance Security. The Supplier shall remain liable for any amounts due and owing to the Buyer and remaining unpaid after the application of the amounts so drawn by the Buyer. If the Supplier subsequently delivers a Letter of Credit or other security or other collateral permitted pursuant hereto, in each case satisfactory to the Buyer in its sole and absolute discretion as to form, substance and amount, then upon acceptance by the Buyer thereof, the Buyer shall remit to the Supplier all amounts held by the Buyer as Completion and Performance Security pursuant to this Section 6.3(c).

- (d) The costs and expenses of establishing, renewing, substituting, cancelling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Supplier.
- (e) The Buyer shall return a Letter of Credit held by the Buyer to the Supplier, if the Supplier is substituting a Letter of Credit of a greater or lesser amount pursuant to Section 6.3(a), within five (5) Business Days from the Buyer's receipt of such substituted Letter of Credit.

6.4 Guarantee Provisions

- (a) The Buyer shall accept a guarantee in the form attached hereto as Exhibit D (the "**Guarantee**") from a guarantor of the Supplier (with the applicable party providing the Guarantee being referred to as the "**Guarantor**"), provided however that the Guarantor shall have a Credit Rating as listed in any of the four rows contained in the table below. Notwithstanding the foregoing, in the event the Guarantor has a Negative Outlook, then its Credit Rating, for purposes of calculating the Creditworthiness Value of the Guarantor in Section 6.4(b), will be automatically demoted by one (1) row in the table in Section 6.4(b). For greater certainty, a Guarantor with a Credit Rating in the fourth (4th) level set forth below without a Negative Outlook will no longer be able to provide a Guarantee if it subsequently receives a Negative Outlook. Subject to Section 6.2, the amount of the Guarantee shall be equal to or less than the Creditworthiness Value of the Guarantor, failing which the Supplier shall be required to provide alternative security as provided in Section 6.2(b) so as to remain in compliance with the Completion and Performance Security requirements set out in Section 6.1.
- (b) (i) A Person's Creditworthiness Value (the "**Creditworthiness Value**") shall be determined by the following formula:

$$S \times T$$

where S represents the Tangible Net Worth of the Person, expressed in Dollars, and T is a figure, used for weighting purposes, taken from the column entitled "Value of T" in the table below of the appropriate row corresponding to the

Person's Credit Rating as adjusted by any Negative Outlook in accordance with Section 6.4(a) or 6.4(b)(ii), as applicable, provided that where the Person has Credit Ratings from more than one rating agency set out in the table below, then the lowest of such Credit Ratings, as adjusted by any Negative Outlook in accordance with Section 6.4(a) or 6.4(b)(ii), as applicable, shall be used:

Credit Rating of Person				
	S & P	DBRS	Moody's	Value of T
1.	At least A-	At least A low	At least A3	0.10
2.	At least BBB+	At least BBB high	At least Baa1	0.08
3.	At least BBB	At least BBB	At least Baa2	0.06
4.	At least BBB-	At least BBB low	At least Baa3	0.05

- (ii) In the event that any Person has a Negative Outlook, then its Credit Rating will automatically be demoted by one (1) row in the table in Section 6.4(b).
- (c) Upon the consent of the Buyer, which consent shall not be unreasonably withheld, the Guarantor may substitute its Guarantee with a guarantee from an Affiliate or from any other Person who would qualify as a guarantor for an amount equivalent to the amount of the Guarantee (the "**Replacement Guarantee**"). The Replacement Guarantee shall be in the form of the Guarantee. Upon delivery of the Replacement Guarantee, (i) such Replacement Guarantee shall be deemed to be the "**Guarantee**" and such Affiliate or other Person providing such guarantee, as the case may be, shall be deemed to be the "**Guarantor**" for all purposes of this Agreement and (ii) the Buyer shall return the original Guarantee to the original Guarantor within five (5) Business Days of such delivery.
- (d) For greater clarity, all provisions of this Agreement that refer to (i) the Guarantor or similar references, or (ii) the Creditworthiness Value of the Guarantor or similar references, shall:
 - (1) only apply in respect of the Guarantor if that Guarantor has, at the applicable time, issued a Guarantee in favour of the Buyer and that Guarantee remains in effect at that time (otherwise, the reference to Guarantor shall be excluded when interpreting the provision until such time as a Guarantee is provided); and

- (2) only refer to the Creditworthiness Value of the Supplier (and not the Creditworthiness Value of its Guarantor) when and for so long as its Guarantor has not provided a Guarantee that remains in effect at the applicable time.

6.5 Financial Statements

If there is a Guarantor, the Supplier shall, on a quarterly basis, provide to the Buyer (i) as soon as available and in no event later than sixty (60) days after the end of each fiscal quarter of the Guarantor, unaudited consolidated financial statements of the Guarantor, for such fiscal quarter prepared in accordance with GAAP (or IFRS, if the Guarantor has adopted such standard), and (ii) as soon as possible and in no event later than one hundred and twenty (120) days after the end of each fiscal year, audited consolidated financial statements of the Guarantor for such fiscal year prepared in accordance with GAAP or IFRS, as applicable. Notwithstanding the foregoing, if any such financial statements are not available in a timely manner due to a delay in preparation or auditing, such delay shall not be considered a breach of this Section 6.5 so long as the Guarantor is diligently pursuing the preparation, audit and delivery of such financial statements. Quarterly financial statements may be delivered electronically to the Buyer in PDF form. Upon each delivery of the Guarantor's financial statements to the Buyer, the Guarantor providing such financial statements shall be deemed to represent to the Buyer that its financial statements were prepared in accordance with GAAP or IFRS, as applicable, and present fairly the financial position of the Guarantor for the relevant period then ended. In the event that the Guarantor does not publish financial statements on a quarterly basis, then unaudited consolidated financial statements shall be provided by the Guarantor, at a minimum, on a semi-annual basis. To the extent that the Supplier's Creditworthiness Value is such that the Guarantee is not required or it is returned to the Guarantor and cancelled pursuant to Section 6.2(d), then the obligations to provide financial statements under this Section 6.5 shall apply in full to the Supplier instead of the Guarantor.

6.6 Notice of Deterioration in Financial Indicators

The Supplier shall provide notice to the Buyer of any material deterioration of any of the Financial Indicators of the Supplier or the Guarantor immediately upon the Supplier becoming aware of such deterioration.

6.7 Interest on Completion and Performance Security

Any interest earned by the Buyer on any Completion and Performance Security provided to the Buyer shall be for the account of the Buyer and the Supplier shall not have any right to such interest.

ARTICLE 7 REPRESENTATIONS

7.1 Representations of the Supplier

The Supplier represents to the Buyer as follows, and acknowledges that the Buyer is relying on such representations in entering into this Agreement:

- (a) The Supplier is a corporation, existing under the laws of Canada, is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:
 - (i) any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the articles, by-laws or other constating documents, or resolutions of the directors or shareholders of the Supplier;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Supplier; or
 - (v) any Laws and Regulations,that could have a Material Adverse Effect on the Supplier.
- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being

contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.

- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier that could have a Material Adverse Effect on the Supplier.
- (f) All requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) The Supplier is not a non-resident of Canada for the purposes of the ITA, unless it has notified the Ontario Power Authority of such non-resident status as per Section 4.6.
- (h) The Supplier is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Supplier or on its obligations under this Agreement.
- (i) The Supplier has no reason to believe, acting reasonably, that any one or more of the Milestone Events may not be achieved by the corresponding Milestone Dates.

In addition, the Supplier shall, upon delivery of each of the quarterly progress reports required to be provided to the Buyer pursuant to Section 2.7, represent in writing that each of the foregoing statements set out in Sections 7.1(a) to 7.1(h) inclusive continues to be true or, if any of such statements are no longer true, then the Supplier shall provide to the Buyer a qualified representation with respect to such statement. Such qualified representation provided by the Supplier to the Buyer shall be subject, however, to the rights of the Buyer in Section 10.1(d) to require the Supplier to cure or remove any such qualification with respect to such statement.

7.2 Representations of the Buyer

The Buyer represents to the Supplier as follows, and acknowledges that the Supplier is relying on such representations in entering into this Agreement:

- (a) The Buyer that was the original counterparty to this Agreement is a corporation without share capital created under the laws of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Buyer and is a valid and binding obligation of the Buyer enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable

remedies may be granted solely in the discretion of a court of competent jurisdiction.

- (c) The execution and delivery of this Agreement by the Buyer and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Buyer under:
 - (i) any contract or obligation to which the Buyer is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholder of the Buyer;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Buyer; or
 - (v) any Laws and Regulations,that could have a Material Adverse Effect on the Buyer.
- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Buyer or, to the knowledge of the Buyer, threatened against the Buyer.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Buyer, threatened against the Buyer, that could have a Material Adverse Effect on the Buyer.
- (f) All requirements for the Buyer to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) The Buyer is in compliance with all Laws and Regulations other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Buyer or on its obligations under this Agreement.

ARTICLE 8 CONFIDENTIALITY AND FIPPA

8.1 Confidential Information

From the date of this Agreement to and following the expiry of the Term, the Receiving Party shall keep confidential and secure and not disclose Confidential Information, except as follows:

- (a) The Receiving Party may disclose Confidential Information to: (i) its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement; and (ii) where the Buyer is the Receiving Party, to the Government of Ontario for the purpose of releasing the Agreement (but not other Confidential Information) or making a public statement or announcement regarding the existence or contents of this Agreement (but not other Confidential Information). On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 8 by any of its Representatives.
- (b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 8.2.
- (c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Facility, provided that any such Secured Lender or prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender or prospective lender or investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") in the form referenced as Exhibit T, covenanting in favour of the Buyer to hold such Confidential Information confidential on terms substantially similar to this Article 8.
- (d) Notwithstanding the foregoing, the Supplier consents to the disclosure of its name and contact particulars (including its address for service and the name of its Company Representative) by the Buyer to all Other Suppliers for the purposes of Sections 1.6 to 1.10 inclusive, and Section 2.12.

8.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the Party compelling disclosure as is required by law only to such Person or Persons to which the Receiving Party is legally compelled to disclose and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

8.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives, or (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make at its own expense and retain one copy of any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Laws and Regulations, and shall keep such retained copy subject to the terms of this Article 8.

8.4 Injunctive and Other Relief

The Receiving Party acknowledges that breach of any provisions of this Article may cause irreparable harm to the Disclosing Party or to any third-party to whom the Disclosing Party owes a duty of confidence, and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article.

8.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the Ontario Power Authority is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the Ontario Power Authority (“**FIPPA Records**”) and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier agrees to provide a copy of any FIPPA Records that it previously provided to the Ontario Power Authority if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the Ontario Power Authority’s request. If the Supplier does possess such FIPPA Records in a deliverable form, it shall provide the same within a reasonable time after being directed to do so by the Ontario Power Authority. The provisions of this Section shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

ARTICLE 9 TERM

9.1 Term

- (a) This Agreement shall become effective upon the date of this Agreement.
- (b) The “**Term**” means that period of time commencing at the beginning of the hour ending 01:00 (EST) on the COD (the “**Term Commencement Date**”); and ending at 24:00 hours (EST) on the day twenty years after the COD, subject to earlier termination in accordance with the provisions hereof. Neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.

ARTICLE 10 TERMINATION AND DEFAULT

10.1 Events of Default by the Supplier

Each of the following will constitute an Event of Default by the Supplier (each, a “**Supplier Event of Default**”):

- (a) The Supplier or the Guarantor fails to make any payment when due, or deliver and/or maintain the Completion and Performance Security as required under this Agreement, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Buyer.
- (b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be

extended by a further fifteen (15) Business Days if the Supplier is diligently remediating such failure and such failure is capable of being cured during such extended cure period.

- (c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier and is not remedied within thirty (30) Business Days after receipt by the Supplier of written notice of such failure or cessation from the Buyer, provided that such cure period shall be extended by a further thirty (30) Business Days if the Supplier is diligently remediating such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Supplier of written notice of such fact from the Buyer, provided that such cure period (i) shall be extended for a further period of thirty (30) Business Days and (ii) may be extended by such further period of time as the Buyer in its sole and absolute discretion determines is reasonable, if, in each case, the Supplier is diligently correcting such breach and such breach is capable of being corrected during such extended cure period. For certainty, notwithstanding the receipt by the Buyer of a qualified representation by the Supplier with respect to any statement referred to in Sections 7.1(a) to 7.1(h) inclusive, the Buyer may, in its sole and absolute discretion, require the Supplier, within the time limits set out in this Section 10.1(d), to cure or remove any such qualification to such statement.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless, in the case of the Supplier, there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.
- (f) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person other than the Buyer or its nominee unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.

- (g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Supplier or of any of the Supplier's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of a Governmental Authority, the Supplier is adjudicated bankrupt or insolvent or any substantial part of the Supplier's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Supplier seeking to have the Supplier declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (h) The Supplier makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation.
- (i) The Supplier has defaulted under one or more obligations for indebtedness to other Persons, resulting in obligations for indebtedness in an aggregate amount of more than the greater of: (1) five percent (5%) of its Tangible Net Worth and (2) \$50,000/MW multiplied by the Annual Average Contract Capacity becoming immediately due and payable, unless: (A) such default is remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such default and such default is capable of being cured during such extended cure period; or (B) the Supplier has satisfied the Buyer that such default does not have a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement.
- (j) The Supplier has made a Facility Amendment that has not first been consented to by the Buyer and that has not been removed within ten (10) Business Days after such Facility Amendment occurred.
- (k) The COD has not occurred on or before the date which is one (1) year after the Milestone Date for Commercial Operation of the Facility, unless the Supplier has, on or prior to such one year date, paid all liquidated damages accruing to such one year date pursuant to Section 2.5 and the full amount of the required Completion and Performance Security is being held by the Buyer in accordance with Section 6.1.

- (l) The COD has not occurred on or before the date which is eighteen (18) months after the Milestone Date for Commercial Operation of the Facility.
- (m) Either of the defaults described in Sections 15.6(d) and 15.6(f)(i) has occurred.
- (n) The Availability is less than: (i) seventy percent (70%) in the second year after COD, (ii) seventy-five percent (75%) during the third year after COD, or (iii) eighty percent (80%) during the fourth and each succeeding year thereafter.
- (o) The Supplier undergoes a change in Control without first obtaining the written approval of the Buyer if required pursuant to Sections 16.6 or 16.7.
- (p) The Supplier assigns this Agreement without first obtaining the consent of the Buyer, if required pursuant to this Agreement.

10.2 Remedies of the Buyer

- (a) If any Supplier Event of Default (other than a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g), and 10.1(h)) occurs and is continuing, upon written notice to the Supplier, the Buyer may, subject to Article 12, terminate this Agreement.
- (b) If a Supplier Event of Default referred to in Sections 10.1(b), 10.1(m), or 10.1(n) occurs and is continuing, in addition to the remedies set out in Section 10.2(a), at the discretion of the Buyer, either:
 - (i) the Supplier will forfeit an amount equivalent to the Assumed Deemed Dispatch Payment that would be payable to the Supplier, if any, for the Settlement Month in which such Supplier Event of Default occurs, as liquidated damages and not as a penalty; or
 - (ii) the Buyer may levy a performance assessment set-off, as liquidated damages and not as a penalty, equal to three (3) times the average Assumed Deemed Dispatch Payment that would be payable to the Supplier, if any, for the most recent twelve (12) Settlement Months (or the number of Settlement Months that have elapsed from the Term Commencement Date if less than twelve (12) Settlement Months have elapsed), in the event that three (3) or more Supplier Events of Default referred to in Sections 10.1(b), 10.1(m), or 10.1(n) have occurred within a Contract Year, regardless of whether such Supplier Events of Default have been subsequently cured,

and which may be satisfied by the Buyer setting off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 6, and by drawing on the Completion

and Performance Security, or any part thereof, and if the remedy in Section 10.2(a) has not been exercised, requiring the Supplier to replace such drawn security with new security.

- (c) If a Supplier Event of Default occurs and is continuing, the Buyer may, in addition to the remedies set out in Section 10.2(a):
 - (i) set off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 6; and
 - (ii) draw on the Completion and Performance Security, or any part thereof and, if the remedy in Section 10.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (d) Notwithstanding Sections 10.2(a), 10.2(b), and 10.2(c), upon the occurrence of a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g) or 10.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 12.2(g).
- (e) If the Buyer terminates this Agreement pursuant to Section 10.2(a) or this Agreement is terminated pursuant to Section 10.2(d), the Buyer shall have the following option, exercisable in the sole and absolute discretion of the Buyer:
 - (i) if the Termination Date precedes the COD, the Supplier shall pay, as liquidated damages and not as a penalty, an amount equivalent to (1) the amount of all Completion and Performance Security provided by or on behalf of the Supplier, plus (2) the amount of any portion of the Completion and Performance Security that the Supplier was required under Section 6.1 to provide to the Buyer as of the Termination Date (with the total amount of such liquidated damages being referred to as the "**Sum**"). The Buyer shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and apply it towards the Supplier's obligation to pay the Sum. With respect to any unpaid portion of the Sum, the Buyer may exercise all remedies available to the Buyer including pursuing a claim for damages, as contemplated in Section 10.5; or
 - (ii) if the Termination Date is on or after the COD, the Buyer shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and exercise all other remedies available to the

Buyer including pursuing a claim for damages, as contemplated in Section 10.5.

- (f) Termination shall not relieve the Supplier or the Buyer of their respective responsibilities relating to the availability of the Contract Capacity and delivery of the Electricity, Related Products, and Environmental Attributes from the Facility that relate to the Contract Capacity, or amounts payable under this Agreement, up to and including the Termination Date. The Buyer shall be responsible only for the payment of amounts accruing under this Agreement up to and including the Termination Date. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the Buyer may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

10.3 Events of Default by the Buyer

Each of the following will constitute an Event of Default by the Buyer (each, a “**Buyer Event of Default**”):

- (a) The Buyer fails to make any payment under this Agreement when due, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Supplier.
- (b) The Buyer fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Buyer Event of Default), if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Buyer is diligently remedying such failure and such failure is capable of being cured during such extended cure period.
- (c) The Buyer fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Buyer and is not remedied within thirty (30) Business Days after receipt by the Buyer of written notice of such failure or cessation from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Buyer in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within thirty (30) Business Days after receipt by the Buyer of written notice of such fact from the Supplier, provided that such cure period shall be

extended by a further thirty (30) Business Days if the Buyer is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.

- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering the dissolution, termination of existence, liquidation or winding up of the Buyer unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Buyer under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Buyer's obligations under this Agreement.
- (f) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Buyer or of any of the Buyer's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of Governmental Authority, the Buyer is adjudicated bankrupt or insolvent or any substantial part of the Buyer's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Buyer seeking to have it declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (g) The Buyer makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator, of it or of all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.
- (h) The Buyer assigns this Agreement (other than an assignment made pursuant to Sections 16.5(d) or 16.5(e)) without first obtaining the consent of the Supplier, if required pursuant to this Agreement.

10.4 Termination by the Supplier

- (a) If any Buyer Event of Default occurs and is continuing, then upon written notice to the Buyer, the Supplier may: (i) in accordance with Sections 16.5(d)(iii) and 16.5(e)(iii), terminate this Agreement, and (ii) set off any payments due to the Buyer against any amounts payable by the Buyer to the Supplier.

- (b) Notwithstanding the foregoing, if applicable, the Buyer shall be responsible for payment of amounts accruing under this Agreement only up to and including the Termination Date. The Supplier may hold back payment or set off against any payments owed by it if the Buyer fails to comply with its obligations on termination.

10.5 Remedies for Termination Non-Exclusive

The termination of this Agreement by either Party and the payment of all amounts then due and owing to the other Party as expressly provided in this Agreement shall not limit, waive or extinguish in any way the recourse of either Party to any remedies available to it in relation to such termination at law, in equity or otherwise, nor shall such termination affect any rights that the Indemnitees may have pursuant to any indemnity given under this Agreement. Notwithstanding the foregoing, if the Buyer has exercised the option set out in Section 10.2(e)(i), then the Buyer's remedies against the Supplier in respect of the termination of this Agreement shall be limited to any unpaid portion of the Sum set out in Section 10.2(e)(i).

10.6 Termination Pursuant to Reimbursement Agreement

This Agreement may be terminated:

- (a) by written notice of the Supplier to the Buyer pursuant to Section 2.4 of the Reimbursement Agreement; or
- (b) as contemplated by and pursuant to Section 3.16 of the Reimbursement Agreement.

ARTICLE 11 FORCE MAJEURE

11.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure:
 - (i) the Supplier is unable to make available all or any part of the Contract Capacity or is unable to deliver Electricity from the Facility; or
 - (ii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, including the Supplier being unable to achieve a Milestone Event by the relevant Milestone Date;

then the Party so affected by Force Majeure shall be excused and relieved from performing or complying with such obligations (other than payment obligations) and shall not be liable for any liabilities, damages, losses, payments, costs, expenses (or Indemnifiable Losses, in the case of the Supplier affected by Force

Majeure) to, or incurred by, the other Party in respect of or relating to such Force Majeure and such Party's failure to so perform or comply during the continuance and to the extent of the inability so caused from and after the invocation of Force Majeure. Notwithstanding the foregoing, during such time as the Supplier is so unable to perform or comply with its obligations as a result of a Force Majeure, to the extent that the Supplier is able to deliver a portion of the Contract Capacity and Electricity from the Facility despite an event of Force Majeure, then the calculation of payment will be made with respect to such portion of the Contract Capacity and Electricity delivered in accordance with Exhibit J.

- (b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt notice, written or oral (but if oral, promptly confirmed in writing) of the effect of the Force Majeure and reasonably full particulars of the cause thereof, in substantially the form as set forth in Exhibit I, provided that such notice shall be given as follows: (i) within ten (10) Business Days of the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a Material Adverse Effect on the critical path of the project schedule for the development and construction of the Facility where the event or circumstances constituting Force Majeure occur prior to COD; or (ii) within ten (10) Business Days of the commencement of the event or circumstances constituting Force Majeure where the event or circumstances constituting Force Majeure occur on or after COD. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such ten (10) Business Day period, the Party invoking Force Majeure shall be allowed a further ten (10) Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars, in substantially the form set forth as Exhibit I, to the other Party. For greater certainty, the reporting or discussion of a Force Majeure event provided in a periodic report from the Supplier to the Buyer pursuant to Section 2.7 shall not constitute sufficient notice of the occurrence of a Force Majeure event.
- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within ten (10) Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 11.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the

Force Majeure or that otherwise may become due and payable during any period of Force Majeure.

- (f) If an event of Force Majeure causes the Supplier to not achieve a Milestone Event by the relevant Milestone Date, then such Milestone Date shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. After the Term Commencement Date, an event of Force Majeure shall not extend the Term.
- (g) If an event of Force Majeure described in Section 11.3(h) has delayed the COD by more than 365 days after the original Milestone Date for attaining Commercial Operation of the Facility (prior to any extension pursuant to Section 11.1(f)), then notwithstanding anything in this Agreement to the contrary, while the delay that is a result of the event of Force Majeure is continuing, the Supplier at its sole option may terminate this Agreement upon notice to the Buyer and without any costs or payments of any kind to either Party pursuant to this Agreement, and all security shall be returned forthwith.
- (h) If, by reason of Force Majeure, the COD is delayed by more than twenty-four (24) months after the original Milestone Date for attaining Commercial Operation of the Facility (prior to any extension pursuant to Section 11.1(f)), then notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon notice to the other Party and without any costs or payments of any kind to either Party, and all security shall be returned forthwith.
- (i) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of thirty-six (36) months in any sixty (60) month period during the Term, then either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and all security shall be returned forthwith.

11.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article 11, nor shall it be relieved of its obligations hereunder in any of the following circumstances:

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence;
- (b) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances (other than those involving the employees of any Key Equipment

Supplier or, prior to COD, OPG, in which case Section 11.2(c) shall apply), the settlement of which shall be wholly within the discretion of the Party involved);

- (c) if and to the extent the Supplier is seeking to invoke Force Majeure under Section 11.3(d): (i) in respect of strikes or labour disputes by employees of any Key Equipment Supplier and if (A) the due diligence procedures outlined in Section 2 of Exhibit P in selecting the Key Equipment Supplier have not been complied with; and/or (B) the mitigation measures outlined in Section 3 of Exhibit P have not been complied with; or (ii) prior to COD, in respect of strikes or labour disputes by employees of OPG and if the Supplier has failed to use Commercially Reasonable Efforts to mitigate the impact of such strike or labour dispute, including using Commercially Reasonable Efforts to recover any time lost as a result of such delay;
- (d) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach by such Party of Laws and Regulations;
- (e) if the Force Majeure was caused by a lack of funds or other financial cause;
- (f) if the IESO amends the schedule of Planned Outages for the Facility as set out in the Annual Operating Plan; or
- (g) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 11.1(b) or 11.1(d).

11.3 Definition of Force Majeure

For the purposes of this Agreement, the term “**Force Majeure**” means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, and that is beyond the affected Party’s reasonable control, and shall include:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of such Party or a third party (other than any Key Equipment Supplier or OPG) invoking Force Majeure, unless such strikes or labour disputes are the result or part of a general industry strike or labour dispute); for greater certainty, Force Majeure shall include strikes or other labour disputes by employees of any Key Equipment Supplier or OPG;

- (e) delays or disruptions in fuel supply resulting from a Force Majeure event (whether such event is in respect of a Party or a third party), and provided that it shall be considered an event of Force Majeure if delays or disruptions in fuel supply arise as a result of the Supplier being unable to secure transportation capacity for fuel supply to the Facility after having made Commercially Reasonable Efforts to do so, but it shall not be considered an event of Force Majeure if such transportation capacity was available and the Supplier failed to secure it or failed to maintain it after having secured it;
- (f) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (g) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;
- (h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority or Transmitter required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure;
- (i) any breach or failure by OPG of its obligations to sell to the Supplier the site required for the Facility or to perform its material obligations under the Shared Site Agreement provided that the Supplier has given written notice to the Buyer of such breach or failure (which notice shall provide details relating to the nature of OPG's alleged breach or failure) contemporaneously with written notice to OPG as required under the terms of the Shared Site Agreement;
- (j) any delay in achieving Commercial Operation of the Facility on or before the corresponding Milestone Date set forth in Exhibit F, as a result of an amendment by the IESO to the outage schedule: (1) relating to the connection of the Facility to the IESO-Controlled Grid, and/or (2) relating to the completion of any Network Upgrades; and
- (k) any unanticipated maintenance or outage affecting the Facility:
 - (i) which is not identified in the Supplier's then current schedule of Planned Outages submitted to the IESO or the Buyer, as the case may be, in advance of the occurrence of an event of Force Majeure referred to in this Section 11.3, and
 - (ii) which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure referred to in this Section 11.3,

or which results from a failure of equipment that prevents the Facility from producing Electricity, provided that:

- (A) notice of the unanticipated maintenance or outage is provided to the Buyer by the Supplier concurrently, or as soon as reasonably possible thereafter, with the notice in respect thereof provided to the IESO but, in any event, within ten (10) Business Days thereof;
- (B) the Supplier provides notice to the Buyer immediately, or as soon as reasonably possible thereafter, upon receipt from the IESO of advance acceptance or other proposed scheduling or approval of such maintenance or outage, if such approval is required to be obtained from the IESO;
- (C) the Supplier provides timely updates to the Buyer of the commencement date of the maintenance or outage and, where possible, provides seven (7) days advance notice of such date;
- (D) the unanticipated maintenance or outage is commenced within one hundred twenty (120) days of the commencement of the occurrence of the relevant event of Force Majeure; and
- (E) the Supplier schedules the unanticipated maintenance or outage in accordance with Good Engineering and Operating Practices.

For greater certainty, nothing in Section 11.3(k) shall be construed as limiting the duration of an event of Force Majeure. Each Party shall resume its obligations as soon as the event of Force Majeure has been overcome.

ARTICLE 12 LENDER'S RIGHTS

12.1 Lender Security

Notwithstanding Section 16.5, the Supplier, from time to time on or after the date of this Agreement shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For the avoidance of doubt, in the case of a deed of trust or similar instrument securing bonds or debentures where the trustee holds security on behalf of, or for the benefit of, other lenders, only the trustee shall be entitled to exercise the rights and remedies under the Secured Lender's Security Agreement as the Secured Lender on behalf of the lenders. A Secured Lender's Security Agreement shall be based upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.

- (b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligation of the Supplier that is not related to the Facility or cover any real or personal property of the Supplier not related to the Facility. For greater certainty, a Secured Lender's Security Agreement may cover shares or partnership interests in the capital of the Supplier.
- (c) No Secured Lender's Security Agreement shall affect or encumber in any manner the Buyer's title to any government-owned premises. The Buyer shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the Buyer for any or all of the same.
- (d) No Secured Lender's Security Agreement shall be binding upon the Buyer in the enforcement of the Buyer's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the Buyer by the Supplier or the Secured Lender; and in the event of an assignment of such Secured Lender's Security Agreement, such assignment shall not be binding upon the Buyer unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Buyer by the Supplier or the Secured Lender.
- (e) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give notice of such default to the Buyer at least five (5) Business Days prior to exercising any such rights.
- (f) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 12.
- (g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 12.
- (h) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the Buyer and the Supplier shall not amend or supplement this Agreement (including agreeing to a tolling arrangement

contemplated in Section 3.4 of this Agreement) or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned, or delayed. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.

- (i) Despite any enforcement of any Secured Lender's Security Agreement, the Supplier shall remain liable to the Buyer for the payment of all sums owing to the Buyer under this Agreement and for the performance of all of the Supplier's obligations under this Agreement.

12.2 Rights and Obligations of Secured Lenders

While any Secured Lender's Security Agreement remains outstanding, and if the Buyer has received the notice referred to in Section 12.1(d) or the contents thereof are embodied in the agreement entered into by the Buyer in accordance with Section 12.3, the following provisions shall apply:

- (a) No Supplier Event of Default (other than those set out in Section 10.2(d)) shall be grounds for the termination by the Buyer of this Agreement until:
 - (i) any notice required to be given under Section 10.1 and 10.2(a) has been given to the Supplier and to the Secured Lender; and
 - (ii) the cure period set out in Section 12.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the Buyer has given any notice required to be given under Section 10.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Buyer shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.
- (c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.
- (d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in Section 12.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the

application of the Secured Lender, may take possession of and manage the Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest with the consent of the Buyer as required under Section 12.2(f).

- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at Arm's Length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.
- (f) Despite anything else contained in this Agreement, any Person to whom the Supplier's Interest is transferred shall take the Supplier's Interest subject to the Supplier's obligations. No transfer shall be effective unless the Buyer:
 - (i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender; or
 - (ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender,

has approved of the transferee and the transferee has entered into an agreement with the Buyer in form and substance satisfactory to the Buyer, acting reasonably, wherein the transferee agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest, whether arising before or after the transfer, and including the posting of the Completion and Performance Security required under Article 6.

- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the Buyer shall, within ten (10) days after the date

of such termination, deliver to each Secured Lender which is at Arm's Length with the Supplier a statement of all sums then known to the Buyer that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Buyer is willing to enter into a New Agreement (the "**Buyer Statement**"). Subject to the provisions of this Article 12, each such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof shall thereupon have the option to obtain from the Buyer a New Agreement in accordance with the following terms:

- (i) Upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Buyer Statement, the Buyer shall enter into a New Agreement.
- (ii) Such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The Buyer's obligation to enter into a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured, and (C) paying all reasonable costs and expenses, including legal fees, so as to provide a full indemnity (and not only substantial indemnity), incurred by the Buyer in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof, as the case may be, shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

When the Secured Lender has appointed an agent, a receiver or a receiver and manager or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Secured Lender's security, that Person may exercise any of the Secured Lender's rights under this Section 12.2(g).

- (h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 12 shall enure only to the benefit of the holders of a Secured Lender's Security Agreement. If the holders of more than one such Secured Lender's Security Agreement who are at Arm's Length with the Supplier make written requests to the Buyer in accordance with this Section 12.2 to obtain a New Agreement, the Buyer shall accept the request of the holder whose Secured Lender's Security Agreement had priority immediately prior to the termination of this Agreement over the Secured Lender's Security Agreements of the other

Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security Agreement, the Buyer may rely upon the opinion as to such priorities of any law firm qualified to practise law in the Province of Ontario retained by the Buyer in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

12.3 Cooperation

The Buyer and the Supplier shall enter into an agreement with any Secured Lender for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement. The Buyer, acting reasonably, shall consider any request jointly made by the Supplier and a Secured Lender or proposed Secured Lender to facilitate a provision of a Secured Lender's Security Agreement or proposed Secured Lender's Security Agreement that may require an amendment to this Agreement, provided that the rights of the Buyer are not adversely affected thereby, the obligations of the Supplier to the Buyer are not altered thereby and the consent of any other Secured Lender to such amendment has been obtained by the Supplier or the Secured Lender making the request for the amendment.

ARTICLE 13 DISCRIMINATORY ACTION

13.1 Discriminatory Action

A "Discriminatory Action" shall occur if:

- (a) (i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a government bill in the Legislative Assembly of Ontario or causes to come into force or makes any order-in-council or regulation first having legal effect on or after September 24, 2012; or
- (ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier;
- (b) the effect of the action referred to in Section 13.1(a):
 - (i) is borne principally by the Supplier; or
 - (ii) is borne principally by the Supplier and one or more Other Suppliers who have a CES Contract or another bilateral arrangement with the Buyer similar in nature to this Agreement; and
- (c) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in respect of Contracted Facility Operation, or

adversely affects the revenues of the Supplier from Electricity and Related Products in respect of Contracted Facility Operation, except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement. Despite the preceding sentence, none of the following shall be a Discriminatory Action:

- (i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;
- (ii) any such statute that prior to five (5) Business Days prior to September 24, 2012:
 - (A) has been introduced as a bill in the Legislative Assembly of Ontario in a similar form as such statute takes when it has legal effect, provided that any amendments made to such bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or
 - (B) has been made public in a discussion or consultation paper, press release or announcement issued by the Ontario Power Authority, the Government of Ontario, and/or the Ministry of Energy and Infrastructure that appeared on the website of the Ontario Power Authority, the Government of Ontario and/or the Ministry of Energy and Infrastructure, provided that any amendments made to such public form, in becoming such statute, do not have a Material Adverse Effect on the Supplier; and
- (iii) any of such regulations that prior to five (5) Business Days prior to September 24, 2012:
 - (A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five (5) Business Days prior to the date of execution of this Agreement, or
 - (B) have been referred to in a press release issued by the Ontario Power Authority, the Government of Ontario and/or the Ministry of Energy and Infrastructure that appeared on the website of the Government of Ontario or the Ministry of Energy and Infrastructure, provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier.

13.2 Consequences of Discriminatory Action

If a Discriminatory Action occurs, the Supplier shall have the right to obtain, without duplication, compensation (the “**Discriminatory Action Compensation**”) from the Buyer for:

- (a) the amount of the increase in the costs that the Supplier would reasonably be expected to incur in respect of Contracted Facility Operation as a result of the occurrence of such Discriminatory Action, commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, but excluding the portion of any costs charged by a Person who does not deal at Arm’s Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm’s Length with the Supplier; and
- (b) the amount by which (i) the net present value of the net revenues from the Electricity and Related Products in respect of Contracted Facility Operation that are forecast to be earned by the Supplier during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, exceeds (ii) the net present value of the net revenues from the Electricity and Related Products in respect of Contracted Facility Operation that are forecast to be earned by the Supplier during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending on the expiry of the Term, taking into account the occurrence of the Discriminatory Action and any actions that the Supplier should reasonably be expected to take to mitigate the effect of the Discriminatory Action, such as by mitigating operating expenses and normal capital expenditures of the business of the generation and delivery of the Electricity and Related Products in respect of Contracted Facility Operation.

13.3 Notice of Discriminatory Action

- (a) In order to exercise its rights in the event of the occurrence of a Discriminatory Action, the Supplier must give a notice (the “**Preliminary Notice**”) to the Buyer within sixty (60) days after the date on which the Supplier first became aware (or should have been aware, using reasonable due diligence) of the Discriminatory Action stating that a Discriminatory Action has occurred. Within sixty (60) days after the date of receipt of the Preliminary Notice, the Supplier must give another notice (the “**Notice of Discriminatory Action**”). A Notice of Discriminatory Action must include:
 - (i) a statement of the Discriminatory Action that has occurred;
 - (ii) details of the effect of the said occurrence that is borne by the Supplier;

- (iii) details of the manner in which the Discriminatory Action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in respect of Contracted Facility Operation, or adversely affects the revenues of the Supplier from Electricity and Related Products in respect of Contracted Facility Operation; and
- (iv) the amount claimed as Discriminatory Action Compensation and details of the computation thereof.

The Buyer shall, after receipt of a Notice of Discriminatory Action, be entitled, by notice given within thirty (30) days after the date of receipt of the Notice of Discriminatory Action, to require the Supplier to provide such further supporting particulars as the Buyer considers necessary, acting reasonably.

- (b) If the Buyer wishes to dispute the occurrence of a Discriminatory Action, the Buyer shall give a notice of dispute (the “**Notice of Dispute**”) to the Supplier, stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable.
- (c) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days after the date of receipt of the Notice of Dispute by the Supplier, the dispute of the occurrence of a Discriminatory Action shall be submitted to mandatory and binding arbitration in accordance with Section 16.2 without first having to comply with Section 16.1.
- (d) If the Buyer does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation claimed in the Notice of Discriminatory Action, the Buyer shall pay to the Supplier the amount of Discriminatory Action Compensation claimed within sixty (60) days after the date of receipt of the Notice of Discriminatory Action. If a Notice of Dispute has been given, the Buyer shall pay to the Supplier the Discriminatory Action Compensation Amount determined in accordance with Section 13.3(e) not later than sixty (60) days after the later of the date on which the dispute with respect to the occurrence of a Discriminatory Action is resolved and the date on which the Discriminatory Action Compensation Amount is determined.
- (e) (i) If the Buyer wishes to dispute the amount of the Discriminatory Action Compensation, the Buyer shall give to the Supplier a notice (the “**Discriminatory Action Compensation Notice**”) setting out an amount that the Buyer proposes as the Discriminatory Action Compensation (the “**Discriminatory Action Compensation Amount**”), if any, together with details of the computation. If the Supplier does not give notice (the “**Supplier Non-acceptance Notice**”) to the Buyer stating that it does not accept the Discriminatory Action Compensation Amount proposed within thirty (30) days after the date of receipt of the

Discriminatory Action Compensation Notice, the Supplier shall be deemed to have accepted the Discriminatory Action Compensation Amount so proposed. If the Supplier Non-acceptance Notice is given, the Buyer and the Supplier shall attempt to determine the Discriminatory Action Compensation Amount through negotiation, and any amount so agreed in writing shall be the Discriminatory Action Compensation Amount. If the Buyer and the Supplier do not agree in writing upon the Discriminatory Action Compensation Amount within sixty (60) days after the date of receipt of the Supplier Non-acceptance Notice, the Discriminatory Action Compensation Amount shall be determined in accordance with the procedure set forth in Section 13.3(e)(ii) and Sections 16.1 and 16.2 shall not apply to such determination.

- (ii) If the negotiation described in Section 13.3(e) does not result in an agreement in writing on the Discriminatory Action Compensation Amount, either the Buyer or the Supplier may, after the later of (A) the date on which a dispute with respect to the occurrence of a Discriminatory Action is resolved and (B) the date of the expiry of a period of thirty (30) days after the date of receipt of the Supplier Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The Buyer and the Supplier shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Discriminatory Action Compensation Amount. The valuator so appointed shall be a duly qualified business valuator where the individual responsible for the valuation has not less than ten (10) years' experience in the field of business valuation. If the Buyer and the Supplier are unable to agree upon a valuator within such period, the Buyer and the Supplier shall jointly make application (provided that if a party does not participate in such application, the other party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Discriminatory Action Compensation Amount within sixty (60) Business Days after the date of his or her appointment. Pending a decision by the valuator, the Buyer and the Supplier shall share equally, and be responsible for their respective shares of, all fees and expenses of the valuator. The fees and expenses of the valuator shall be paid by the non-prevailing party. "Prevailing party" means the Party whose determination of the Discriminatory Action Compensation Amount is most nearly equal to that of the valuator's determination. The Supplier's and the Buyer's respective determinations of the Discriminatory Action Compensation Amount shall be based upon the Notice of Discriminatory Action and the Discriminatory Action Compensation Notice, as applicable.

- (iii) In order to facilitate the determination of the Discriminatory Action Compensation Amount by the valuator, each of the Buyer and the Supplier shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and the Supplier shall permit the valuator and the valuator's representatives to have reasonable access during normal business hours to such information and to take extracts therefrom and to make copies thereof.
- (iv) The Discriminatory Action Compensation Amount as determined by the valuator shall be final and conclusive and not subject to any appeal.
- (f) Any amount to be paid under Section 13.3(d) shall bear interest at a variable nominal rate per annum equal on each day to the Interest Rate then in effect from the date of receipt of the Notice of Discriminatory Action to the date of payment.
- (g) Payment of the Discriminatory Action Compensation and interest thereon by the Buyer to the Supplier shall constitute full and final satisfaction of all amounts that may be claimed by the Supplier for and in respect of the occurrence of the Discriminatory Action and, upon such payment, the Buyer shall be released and forever discharged by the Supplier from any and all liability in respect of such Discriminatory Action.

13.4 Right of the Buyer to Remedy or Cause to be Remedied a Discriminatory Action

If the Buyer wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the Buyer must give notice to the Supplier within thirty (30) days after the later of the date of receipt of the Notice of Discriminatory Action and the date of the receipt by the Buyer of the further supporting particulars referred to in Section 13.3(b). If the Buyer gives such notice, the Buyer must remedy or cause to be remedied the Discriminatory Action within one hundred and eighty (180) days after the date of receipt of the Notice of Discriminatory Action or, if a Notice of Dispute has been given, within one hundred and eighty (180) days after the date of the final award pursuant to Section 16.2 to the effect that a Discriminatory Action occurred. If the Buyer remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, the amount that the Supplier would have the right to claim in respect of that Discriminatory Action pursuant to Section 13.2, adjusted to apply only to the period commencing on the first day of the first calendar month following the date of the Discriminatory Action and expiring on the day preceding the day on which the Discriminatory Action was remedied.

ARTICLE 14 LIABILITY AND INDEMNIFICATION

14.1 Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any

special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in Section 13.2), loss of use of any property or claims of customers or contractors of the Parties for any such damages.

14.2 Liquidated Damages

Nothing in this Article shall reduce a Party's claim for liquidated damages pursuant to Sections 2.3(a)(vi), 2.5, 6.3(c), 10.2(b) and 10.2(e). The Supplier acknowledges and agrees with the Buyer that the actual damages incurred by the Buyer and Electricity consumers as a result of a failure by the Supplier to meet its obligations under this Agreement are impossible to definitively quantify and the Supplier further agrees that the payment of the liquidated damages set forth in this Agreement constitutes a fair and reasonable means of compensating the Buyer for damages likely to be incurred as a result of such delays and does not constitute a penalty.

14.3 Buyer Indemnification

In addition to the indemnity provided by the Supplier in Section 2.8(b), the Supplier shall indemnify, defend and hold the Buyer, the Ontario Power Authority (to the extent that it is no longer the Buyer), the Government of Ontario, the members of the Government of Ontario's Executive Council, and their respective Affiliates, other than OPG and any Person Controlled by it, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of (i) any occurrence or event relating to the Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws and Regulations and (ii) any breach by the Supplier of any representations, warranties, and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees. For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

14.4 Defence of Claims

- (a) Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 14.3 may apply, the Buyer shall notify the Supplier in writing of such fact. The Supplier shall assume the defence thereof with counsel designated by the Supplier and satisfactory to the affected

Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Supplier and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Supplier, the Indemnitees shall have the right to select separate counsel satisfactory to the Supplier acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Supplier shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five (5) days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.

- (b) Should any of the Indemnitees be entitled to indemnification under Section 14.3 as a result of a Claim by a third party, and the Supplier fails to assume the defence of such Claim (which failure shall be assumed if the Supplier fails to provide the notice prescribed by Section 14.4(a)), the Indemnitees shall, at the expense of the Supplier, contest (or, with the prior written consent of the Supplier, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Supplier (with the Supplier remaining obligated to indemnify the Indemnitees under Section 14.3), if, in the written opinion of an independent third party counsel chosen by the Company Representatives, such Claim is meritorious. If the Supplier is obligated to indemnify any Indemnitees under Section 14.3, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

14.5 Joint and Several Liability

If the Supplier is not a single legal entity (for example, an unincorporated joint venture or a general partnership), then each of the legal entities forming the Supplier shall execute this Agreement and shall be jointly and severally liable to the Buyer for all representations, warranties, obligations, covenants and liabilities of the Supplier hereunder.

ARTICLE 15 CONTRACT OPERATION AND ADMINISTRATION

15.1 Company Representative

The Supplier and the Buyer shall by notice in the form of Exhibit S, each appoint, from time to time, a representative (a “**Company Representative**”), who shall be duly authorized to act on behalf of the Party that has made the appointment, and with whom the other Party may consult at all reasonable times, and whose instructions, requests, and decisions, provided the same are in writing signed by the respective Company Representative, shall be binding on the appointing Party as to all matters pertaining to this Agreement. The Company Representatives shall not have the power or authority to amend this Agreement.

15.2 Record Retention; Audit Rights

The Supplier and the Buyer shall both keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained as required by Laws and Regulations but for no less than for seven (7) years after the creation of the record or data. The Supplier and the Buyer, on a confidential basis as provided for in Article 8 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by it relating to this Agreement reasonably required for the other Party to comply with its obligations to Governmental Authorities or to verify or audit billings or to verify or audit information provided in accordance with this Agreement. A Party may use its own employees for purposes of any such review of records provided that those employees are bound by the confidentiality requirements provided for in Article 8. Alternatively, a Party may at its own expense appoint an auditor to conduct its audit. The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

15.3 Reports to the Buyer

- (a) The Supplier shall deliver to the Buyer a copy of all reports, plans and notices that the Supplier is required to provide to the IESO with respect to Outages, at the same time or within one (1) Business Day after such reports, plans and notices are delivered by the Supplier to the IESO.
- (b) In addition to the documentation provided in Section 15.3(a), the Supplier shall deliver at the times specified below the following documents, reports, plans and notices to the Buyer:
 - (i) no later than sixty (60) days before the Milestone Date for Commercial Operation of the Facility, the Supplier shall provide to the Buyer an operating plan for the Facility for the Term, including a long term major maintenance schedule, in the form set out in Exhibit Q (the “**Long Term Operating Plan**”). The Supplier shall provide the Buyer with copies of any amendments or modifications to the Long Term Operating Plan within

ten (10) Business Days of such amendments or modifications being made. The Long Term Operating Plan shall be consistent with Good Engineering and Operating Practices and is not a guarantee of the timing of Planned Outages;

- (ii) no later than:
 - (A) the date that the Long Term Operating Plan is to be provided to the Buyer in accordance with Section 15.3(b)(i), and
 - (B) in respect of the second Contract Year and each Contract Year thereafter, sixty (60) days prior to each Contract Year,

the Supplier shall provide to the Buyer an operating plan for the Facility for the succeeding Contract Year, in the form set out in Exhibit R (the “**Annual Operating Plan**”). The Annual Operating Plan shall include a schedule of Planned Outages for that twelve (12) month period (together with the Supplier’s estimate of the expected duration of each Planned Outage) which shall be consistent with Good Engineering and Operating Practices, consistent with the Long Term Operating Plan and, to the extent the Supplier is required to do so by the IESO Market Rules, coordinated with and approved by the IESO. The Supplier may, on not less than ten (10) Business Days’ prior notice to the Buyer, amend the Annual Operating Plan;

- (iii) prompt notice to the Buyer of any Outage other than a Planned Outage, or any anticipated Outage other than a Planned Outage. Any notice under this subsection shall include a statement of the cause of such Outage, the proposed corrective action and the Supplier’s estimate of the expected duration of such Outage. The Supplier shall use Commercially Reasonable Efforts to promptly end or reduce the length of such Outage;
 - (iv) thirty (30) days prior written notice (or such lesser number of days as is possible in the circumstances) to the Buyer of any Planned Outage of the Facility.
- (c) All Outages shall take place in accordance with the notices of Outages provided by the Supplier to the Buyer under this Section 15.3.

15.4 Inspection of Facility

- (a) The Buyer’s Representatives shall, at all times upon two (2) Business Days’ prior notice, at any time after the execution of this Agreement, have access to the Facility and every part thereof during regular business hours and the Supplier shall, and shall cause all personnel operating and managing the Facility, to furnish the Buyer with all reasonable assistance in inspecting the Facility for the purpose

of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of the Supplier and all personnel operating and managing the Facility, as applicable, and shall not interfere with the operation of the Facility.

- (b) The inspection of the Facility by or on behalf of the Buyer shall not relieve the Supplier of any of its obligations to comply with the terms of this Agreement. No Supplier Event of Default by the Supplier will be waived or deemed to have been waived by any inspection by or on behalf of the Buyer. In no event will any inspection by the Buyer hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

15.5 Inspection Not Waiver

- (a) Failure by the Buyer to inspect the Facility or any part thereof under Section 15.4, or to exercise its audit rights under Section 15.2, shall not constitute a waiver of any of the rights of the Buyer hereunder. An inspection or audit not followed by a notice of a Supplier Event of Default shall not constitute or be deemed to constitute a waiver of any Supplier Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Supplier with this Agreement.
- (b) Failure by the Supplier to exercise its audit rights under Section 15.2 shall not constitute or be deemed to constitute a waiver of any of the rights of the Supplier hereunder. An audit not followed by a notice of a Buyer Event of Default shall not constitute or be deemed to constitute a waiver of any Buyer Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Buyer with this Agreement.

15.6 Capacity Check Tests

- (a) **Right to Request Capacity Check Test and Test Protocol.** The Buyer shall have the option, exercisable on no more than two (2) occasions per Contract Year, to require the Supplier, within ten (10) Business Days after written notice has been delivered to the Supplier, provided it is not during an Outage, to conduct a test (the “**Capacity Check Test**”), at the Supplier’s sole cost and expense, that may be witnessed by the Buyer or its Representative, to confirm the ability of the Facility to produce the Contract Capacity, as described below. For purposes of Section 16.7, the Supplier shall be entitled, without the consent of the Buyer, to schedule and conduct, at its sole cost and expense, Capacity Check Tests to demonstrate compliance with the test conditions set out in Exhibit M. If the Buyer has consented to a Facility Amendment pursuant to Section 2.1(c), the Supplier may request, within ten (10) Business Days after written notice has been delivered to the Buyer, a Capacity Check Test. The Capacity Check Test will be

carried out in accordance with a test protocol (the “**Test Protocol**”) which will include the format of the report to be prepared in respect of the Capacity Check Test and which Test Protocol is to be prepared by the Supplier and submitted in writing to the Buyer for approval within three (3) months after the Facility has attained Commercial Operation. The measurements of the Capacity Check Test shall be made using high accuracy calibrated instruments and recording systems or Facility instrumentation, including tariff meters for Electricity acceptable to the Buyer, acting reasonably. Each Capacity Check Test consists of the Facility generating Electricity for four (4) continuous hours during a period designated by the Supplier on prior written notice to the Buyer in advance as a test period, subject to coordination and approval of the IESO, and shall be evaluated based on calculation of the generator output at the Delivery Point net of any Station Service Loads in accordance with the Metering Plan. The Supplier acknowledges and agrees that the Contract Capacity, the Electricity output of the Facility and the Station Service Loads, as may be measured by the Capacity Check Test, shall not be adjusted for ambient weather conditions. For greater certainty, the Capacity Check Test shall be based on the Season 1 Contract Capacity, Season 2 Contract Capacity, Season 3 Contract Capacity or the Season 4 Contract Capacity, as applicable, depending on the calendar month during which the Capacity Check Test is conducted.

(b) **Optional Re-Performance of Capacity Check Test as a result of Weather or Force Majeure.** If the Capacity Check Test is interrupted by an event of Force Majeure, or if at any point during the Capacity Check Test the ambient air temperature, as reported at the Environment Canada weather station that is physically nearest to the Facility, exceeded

- (i) in respect of a Capacity Check Test conducted during Season 1, 7.0 degrees Celsius,
- (ii) in respect of a Capacity Check Test conducted during Season 2, 21.0 degrees Celsius,
- (iii) in respect of a Capacity Check Test conducted during Season 3, 30.0 degrees Celsius or
- (iv) in respect of a Capacity Check Test conducted during Season 4, 24.0 degrees Celsius,

then the Supplier may, at the Supplier’s sole cost and expense, re-perform the Capacity Check Test within ten (10) Business Days after the receipt by the Supplier of the Capacity Confirmation relating to such Capacity Check Test from the Buyer.

- (c) **Capacity Check Test Report.** The Supplier shall at the Supplier's sole cost and expense and within ten (10) Business Days, or as provided in the Test Protocol, after completion of the Capacity Check Test prepare and submit to the Buyer a written Capacity Check Test report that includes the data collected during the test period, computation of test data and the test results. The Buyer shall provide to the Supplier within ten (10) Business Days after receipt of the Capacity Check Test report from the Supplier, written confirmation of the Electricity output for each hour during the Capacity Check Test (the "**Capacity Confirmation**").
- (d) **Requirements to Pass a Capacity Check Test.** To pass the Capacity Check Test, the Electricity output (in MWh) for each hour of the Capacity Check Test, divided by one hour, must be equal to or greater than the Contract Capacity, in which case the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Capacity Confirmation in relation to the Capacity Check Test. If the Supplier has not passed the Capacity Check Test for each one of the four (4) continuous hours, then the Supplier shall, at the Supplier's cost and expense, perform a further Capacity Check Test (the "**Further Capacity Check Test**") within thirty (30) Business Days after the receipt by the Supplier of the Capacity Confirmation from the Buyer, on the same terms and conditions as the Capacity Check Test described in Section 15.6(a). If the total Electricity output of the Facility for the four (4) continuous hours of each of the Capacity Check Test and the Further Capacity Check Test, as stated in their respective Capacity Confirmations, divided by the number of hours in each of the respective check tests (each an "**Average Test Capacity**"), are both less than eighty percent (80%) of the Contract Capacity, then this shall be considered a Supplier Event of Default. For purposes of calculating the Average Test Capacity in this Section 15.6, the Electricity output from each hour shall not exceed a maximum amount equal to the Contract Capacity multiplied by one hour.
- (e) **Result of Further Capacity Check Test.** If the Further Capacity Check Test shows that the Average Test Capacity was less than 100% of the Contract Capacity, then the Capacity Reduction Factor for purposes of Exhibit J shall be reduced as set out below, effective on the date of the Capacity Confirmation in relation to the Further Capacity Check Test. The Capacity Reduction Factor shall be an amount equal to a fraction, the numerator of which is (i) the greater of the Average Test Capacities resulting from the Capacity Check Test and the Further Capacity Check Test, and the denominator of which is (ii) the Contract Capacity which relates to such greater Average Test Capacity.
- (f) **Final Capacity Check Test.** If Section 15.6(e) is applicable, then the Supplier shall perform a further Capacity Check Test (the "**Final Capacity Check Test**") at the Supplier's cost and expense within ten (10) Business Days after written notice has been delivered by the Supplier to the Buyer, no earlier than one month and no later than one year after the date of the Capacity Confirmation with respect to the Further Capacity Check Test, failing which this shall be considered to be a

Supplier Event of Default. The Final Capacity Check Test shall take place on the same terms and conditions as the Capacity Check Test described in Section 15.6(a) and including the delivery of the Capacity Confirmation in relation to the Final Capacity Check Test. If the total Electricity output of the Facility for the four (4) continuous hours of the Final Capacity Check Test, as stated in the Capacity Confirmation with respect to the Final Capacity Check Test, divided by the number of hours in such check test (which result shall also be an “**Average Test Capacity**” as calculated pursuant to Section 15.6(d)):

- (i) is less than ninety-five percent (95%) of the Contract Capacity, then this shall be considered a Supplier Event of Default;
 - (ii) is equal or greater to ninety-five percent (95%) and less than one hundred percent (100%) of the Contract Capacity, then the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to a fraction, the numerator of which is (i) the Average Test Capacity in relation to the Final Capacity Check Test, and the denominator of which is (ii) the Contract Capacity; and
 - (iii) is equal to one hundred percent (100%) of the Contract Capacity, then the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Capacity Confirmation in relation to the Final Capacity Check Test.
- (g) During the hours of any Capacity Check Test described in Sections 15.6(a) to (f) inclusive, the Buyer may, at its option, require the Supplier to simultaneously report the actual emissions of NOx and CO from the Facility using the Emissions Measurement Methodology (except that the actual readings will be averaged over such 4 continuous hours instead of 24 cumulative hours) to confirm that such emissions did not exceed the respective Emissions Limits. However, the Supplier acknowledges and agrees that the satisfaction of this requirement does not relieve the Supplier of its obligations to comply with all requirements under this Agreement relating to emissions of NOx and CO including those obligations set out in Section 2.8(e).

15.7 Notices

- (a) All notices pertaining to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall be addressed to the other Party as follows:

If to the Supplier: TransCanada Energy Ltd.
Royal Bank Plaza, South Tower

Suite 2400, 200 Bay Street
Toronto, Ontario
M5J 2J1

Attention: Terry Bennett
Facsimile: (416) 869-2056
E-mail: terry_bennett@transcanada.com

and to: TransCanada Energy Ltd.
450 – 1st Street S.W.
Calgary, Alberta
T2P 5H1

Attention: William R. Small
Facsimile: (403) 920-2326
E-mail: william_small@transcanada.com

If to the Buyer: Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

Attention: **Director, Contract Management**
Facsimile: (416) 969-6071
E-mail: contract.management@powerauthority.on.ca

Either Party may, by written notice to the other, change its respective Company Representative or the address to which notices are to be sent.

- (b) Notices shall be delivered or transmitted as set out below, and shall be considered to have been received by the other Party:
- (i) on the date of delivery if delivered by hand or by courier prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, it being agreed that the onus of establishing delivery shall fall on the Party delivering the notice;
 - (ii) in those circumstances where electronic transmission (other than transmission by facsimile) is expressly permitted under this Agreement, on the date of delivery if delivered prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter;

- (iii) on the third (3rd) Business Day following the date of transmission by facsimile, if transmitted prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the fourth (4th) following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter; and
 - (iv) on the fifth (5th) Business Day following the date of mailing by registered post.
- (c) Notwithstanding Section 15.7(b):
 - (i) any notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery; and
 - (ii) if regular post service, facsimile, or other form of electronic communication is interrupted by strike, slowdown, a Force Majeure event or other cause, a notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the Party sending the notice shall utilize any other such service which has not been so interrupted to deliver such notice.

ARTICLE 16

MISCELLANEOUS

16.1 Informal Dispute Resolution

If either Party considers that a dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the other Party, a senior executive (Senior Vice-President or higher) from each Party shall meet, either in person or by telephone (the “**Senior Conference**”), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 16.2, if agreed to by both Parties.

16.2 Arbitration

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement may be decided by arbitration provided, however, that the Parties have first completed a Senior Conference pursuant to Section 16.1. Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within fifteen (15) days following the agreement to refer the dispute to arbitration, upon the application of either of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the

Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

16.3 Business Relationship

Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment by such Party of Persons who perform this Agreement, including all federal, provincial, and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers' compensation coverage. None of the Persons employed by either Party shall be considered employees of the other Party for any purpose. Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

16.4 Binding Agreement

Except as otherwise set out in this Agreement, this Agreement shall not confer upon any other Person, except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Agreement. This Agreement and all of the provisions of this Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

16.5 Assignment

- (a) Except as set out below and as provided in Article 12, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

- (b) The Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Buyer to an Affiliate acquiring the Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the Buyer in writing to assume all of the Supplier's obligations and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 6 have been met in accordance with the terms of Article 6. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 16.5, the Buyer acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the Buyer, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.
- (c) If the Supplier assigns this Agreement to a non-resident of Canada (the "**Assignee**"), as that term is defined in the ITA, and the Buyer incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Buyer shall be reduced by the amount of such additional or withholding Taxes and the Buyer shall remit such additional or withholding Taxes to the applicable taxing authorities. The Buyer shall within sixty (60) days after remitting such Taxes, notify the Assignee in writing, providing reasonable detail of such payment so that the Assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Assignee.
- (d) The Ontario Power Authority shall have the right to assign this Agreement and all benefits and obligations hereunder for the balance of the Term without the consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b), which such assignee shall assume the obligations and liability of the Ontario Power Authority under this Agreement and be novated into this Agreement in the place and stead of the Ontario Power Authority (except for the Ontario Power Authority's obligation in Section 16.5(d)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender's rights in relation to this Agreement in the form set out in Exhibit N, whereupon:
- (i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;

- (ii) all of the representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and
 - (iii) the Ontario Power Authority shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Ontario Power Authority shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) before any such payment default becomes a Buyer Event of Default, and shall remain liable for any obligations and liabilities of the assignee arising from any Buyer Event of Default. Any notice required to be given under Sections 10.3 and 10.4(a) shall be given to the assignee and to the Ontario Power Authority. The time periods in Section 10.3 shall not begin to run until both the assignee and the Ontario Power Authority have been so notified.
- (e) The Ontario Power Authority shall have the right to assign this Agreement and all benefits and obligations hereunder from time to time throughout the Term for a period less than the balance of the Term (the “**Assignment Period**”) without the consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b), which such assignee shall assume the obligations of the Ontario Power Authority under this Agreement and be novated into this Agreement in the place and stead of the Ontario Power Authority (except for the Ontario Power Authority’s obligation in Section 16.5(e)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender’s rights in relation to this Agreement in the form set out in Exhibit N, whereupon:
- (i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
 - (ii) all of the representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption;
 - (iii) the Ontario Power Authority shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Ontario Power Authority shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) before any such payment default becomes a Buyer Event of Default, and shall remain liable to the Supplier for any obligations and liabilities of the assignee arising from any Buyer Event of Default. Any notice required to be given under Sections 10.3 and 10.4(a) shall be given to the assignee and to the

Ontario Power Authority. The time periods in Section 10.3 shall not begin to run until both the assignee and the Ontario Power Authority have been so notified; and

- (iv) upon the expiry of the Assignment Period:
 - (A) this Agreement, without requiring the execution of any assignment, consent or other documentation of any nature, shall automatically revert and be assigned back to the Ontario Power Authority;
 - (B) the assignee shall remain responsible to the Supplier for all obligations and liabilities incurred or accrued by the assignee during the Assignment Period; and
 - (C) the Ontario Power Authority, as Buyer pursuant to the automatic assignment back to it, shall be deemed to be in good standing under this Agreement, provided that such good standing shall not relieve the Ontario Power Authority from any obligation to the Supplier pursuant to Section 16.5(e)(iii) that arose prior to the expiry of the Assignment Period.

16.6 No Change of Control

- (a) The Supplier shall not permit or allow a change of Control of the Supplier, except with the prior written consent of the Buyer, which consent may not be unreasonably withheld. It shall not be unreasonable to withhold such consent if the change of Control will have or is likely to have, as determined by the Buyer acting reasonably, a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement, in which case such consent may be withheld by the Buyer.
- (b) For the purposes of Sections 16.6(a) and 16.7(a)(ii), a change of Control shall exclude a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange, provided that such shares or units of ownership are not those of an entity that directly owns the Facility whose special or sole purpose is the ownership of the Facility or the Facility and other generation facilities under a CES Contract or other bilateral arrangements with the Buyer similar in nature to this Agreement. For greater certainty, and the purposes of Sections 16.6(a) and 16.7(a)(ii), a change of Control shall include a change from no Person having Control of the Supplier to any Person having Control of the Supplier, as well as a change from any Person having Control of the Supplier to no Person having Control of the Supplier.

16.7 No Assignment or Change of Control for Specified Period

- (a) Notwithstanding the provisions of Sections 16.5(a), 16.5(b), 16.5(c), and 16.6(a) to the contrary, and except as provided in Article 12, under no circumstances shall:
 - (i) any assignment of this Agreement by the Supplier;
 - (ii) any change of Control in respect of the Supplier; or
 - (iii) fifty (50%) or more of securities or ownership interests carrying votes or ownership interests in respect of the Supplier be directly or indirectly held, whether as owner or other beneficiary and other than solely as the beneficiary of an unrealized security interest, individually or collectively by any Person or Persons who, as of the date of this Agreement, did not directly or indirectly hold any of such securities or ownership interests in respect of the Supplier, whether as owner or other beneficiary and other than solely as the beneficiary of an unrealized security interest,be permitted until the earlier of: (A) the third (3rd) anniversary of the COD; and (B) the date that the Facility has achieved the test conditions set out in Exhibit M.
- (b) Notwithstanding Section 16.7(a), for a period commencing on the date of this Agreement and ending the earlier of (i) six (6) months following the date of this Agreement and (ii) Financial Closing, the Supplier may, without the Buyer's further consent, assign all (but not less than all) of the Supplier's interest in this Agreement to a partnership in which the Supplier holds not less than a fifty percent (50%) interest, provided that: (1) the Supplier shall provide the Buyer with written notice of any such assignment; and (2) all partners of such partnership agree with the Buyer in writing to be jointly and severally liable to the Buyer for all the obligations and liabilities of the Supplier hereunder.

16.8 Survival

The provisions of Sections 2.4, 2.5(a), 2.8(b), 2.12, 4.4, 4.5, 4.6, Article 5, Article 6.3(c), Article 8, Sections 10.2, 10.4, 10.5, and 12.2(g), Article 14, Sections 15.2, 16.1, 16.2, and 16.5(c) to 16.5(e) shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

16.9 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the

contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by facsimile or electronic mail but such Party shall, within ten (10) Business Days of such delivery by facsimile or electronic mail, promptly deliver to the other Party an originally executed copy of this Agreement.

16.10 Additional Rights of Set-Off

- (a) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Buyer may set off any amounts owing by the Supplier to the Buyer in connection with Sections 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.3, 2.5, 2.8(b), 2.10, 4.2, 4.4, 4.6, 5.3, 5.4, 5.7, 6.1, 6.3(c), 10.2, 10.5, 14.3 and 16.5(c) against any monies owed by the Buyer to the Supplier in connection with Sections 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.3, 4.2, 4.5, 4.6, 5.3, 5.4, 5.7, 10.4, 10.5, 13.3(d) and 16.5(c).
- (b) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Supplier may set-off any amounts owing by the Buyer to the Supplier in connection with Sections 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.3, 4.2, 4.5, 4.6, 5.3, 5.4, 5.7, 10.4, 10.5, 13.3(d) and 16.5(c) against any monies owed by the Supplier to the Buyer in connection with Sections 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.3, 2.5, 2.8(b), 2.10, 4.2, 4.4, 4.6, 5.3, 5.4, 5.7, 6.1, 6.3(c), 10.2, 10.5, 14.3 and 16.5(c).

16.11 Rights and Remedies Not Limited to Contract

Unless expressly provided in this Agreement, the express rights and remedies of the Buyer or the Supplier set out in this Agreement are in addition to and shall not limit any other rights and remedies available to the Buyer or the Supplier, respectively, at law or in equity.

16.12 Time of Essence

Time is of the essence in the performance of the Parties' respective obligations under this Agreement.

16.13 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

TRANSCANADA ENERGY LTD.

ONTARIO POWER AUTHORITY

By: _____
Name: William C. Taylor
Title: Senior Vice President,
Eastern Power

By: _____
Name: Colin Andersen
Title: Chief Executive Officer

By: _____
Name: Terry Bennett
Title: Vice President,
Power Development

I have authority to bind the corporation.

We have authority to bind the corporation.

EXHIBIT A
PROJECT DESCRIPTION

Name of Facility:	<i>Napanee Generating Station.</i>	
Municipal Location and Address:	<i>Town of Greater Napanee, Ontario</i>	
Connection Point and Circuit Designation:	<i>Any two of the four existing 500kV transmission lines X520B, X521B, X526B or X527B owned by Hydro One Networks Inc. (“Hydro One”) and within the Hydro One switchyard or adjacent circuits as determined by Hydro One and the IESO.</i>	
Description of Generation Technology:	<i>A natural gas-fired combined-cycle facility using G-class fast-start combustion turbine generators, heat recovery steam generators, and a steam turbine generator in a 2 x 2 x 1 configuration, as more particularly described below.</i>	
Brief Description of Facility:	<i>The Facility will be a new dispatchable, natural gas-fuelled combined cycle generation station with a nominal capacity of 900 MW. The Facility will have the ability to dispatch between the minimum turndown of a single unit, up to the maximum output of the Facility with full HRSG duct firing. The Facility will be capable of cyclic dispatch along with fast start-up and long term reliability.</i>	

Detailed Description of Facility:

1.0 Overview

The Facility is a new 2 x 2 x 1 combined-cycle, natural gas-fuelled generation station with a nominal capacity of 900 MW. The Facility will be located on approximately 95 acres of land in the Town of Greater Napanee, approximately 500 metres from an existing Hydro One transmission corridor. The Facility will feature two Mitsubishi M501GAC fast-start Combustion Turbines, two heat recovery steam generators, and one Steam Turbine and a mechanical draft cooling tower.

Natural gas will be supplied by Union Gas Limited, the franchise holder in the area, requiring a new connection of less than 1 km to the Union Gas distribution system. The combustion turbines and duct burners will be equipped with dry low nitrogen oxide (“dry low NOx”) combustion technology and will utilize selective catalytic reduction (SCRs) to ensure the Facility meets or exceeds the Emissions Limits under this Agreement.

1.1 Site Description

The Facility will be located on a site acquired from OPG adjacent to OPG's Lennox Generating Station in the Town of Greater Napanee, County of Lennox Addington, approximately 25 km from the City of Kingston, Ontario.

The site of the Facility is approximately 95 acres of land in area and will be purchased by the Supplier pursuant to a Purchase Agreement between the Supplier and OPG.

1.2 Project Design and Major Equipment (including preliminary design diagram of the Facility showing all major components):

The Facility will include the following generation technology and major equipment:

- *Two Mitsubishi 501GAC fast-start Combustion Turbine Generators*
- *Two Heat Recovery Steam Generators (HRSGs) designed with duct burners and exhaust silencing*
- *One Steam Turbine Generator*
- *One Mechanical Draft Cooling Tower.*

The cooling tower water make-up as well as process water make-up will be drawn from and returned to Lake Ontario via OPG's existing connections or new connections to be developed by the Supplier.

1.3 Impact to Existing Infrastructure (including a description of all physical changes to existing transmission or distribution infrastructure needed to connect the Facility):

With respect to the electrical connection, the Facility 500kV transformers high voltage taps will interface with the existing 500 kV Hydro One transmission system via a double circuit connection consisting of underground cables and/or overhead transmission lines that will terminate within the Hydro One Lennox switchyard.

With respect to gas transmission and distribution, the Facility will require a new direct connection to the existing Union Gas Limited gas distribution system located on the OPG Lennox site.

With respect to water supply, water will be drawn from Lake Ontario using an existing and/or new pumping facilities and a new dedicated pipeline running to the Facility site from the existing OPG Lennox GS water intake or a new intake. A small volume of potable water is required and will be produced using an on-site potable water treatment plant using water sourced from Lake Ontario.

With respect to waste water, the cooling tower discharge and other process waste water generated by the Facility will be treated in a new on-site waste water treatment plant and discharged into Lake Ontario via an existing OPG outfall facility channel or a new channel. Sanitary sewage will be transferred to the existing OPG Lennox GS sanitary sewage system.

All interconnections for the Facility are located either on the OPG Lennox site or the Facility's site and no major off-site construction activity is expected.

1.4 Environmental Features (including a description of features and technologies that mitigate environmental concerns in relation to air quality, noise, water, sewage discharge, etc, and, as applicable, achieve the respective Emissions Limits):

The Facility will feature high efficiency G-class combustion turbine generators with dry low NOx combustors. Low NOx duct burners will also be used in each of the two heat recovery steam generators. In addition, Selective Catalytic Reduction (SCR) systems will be installed in the HRSGs to reduce NOx emissions from the exhaust streams of each gas turbine.

Continuous emissions monitors will be installed in each of the HRSG stacks and will include the measurement of NOx, CO and O₂. Noise mitigation measures as appropriate will be incorporated into the Facility as required to meet the applicable regulatory standards.

1.5 List of Environmental Approvals and Permits, and Status (including a description of the Facility's treatment under the Ontario Ministry of the Environment's "Guide to Environmental Assessment Requirements for Electricity Projects"):

The Facility is subject to the Environmental Screening Process defined under the Ministry of the Environment's Guide to Environmental Assessment Requirements for Electricity Projects under Ontario Regulation 1116/01. The Supplier has elected to undertake and file a more comprehensive Environmental Review Report (ERR). The Supplier has commenced study work to support the ERR and will formally initiate the process with the Notice of Commencement in early 2013.

The Facility is expected to require an Environmental Compliance Approval (ECA) incorporating conditions and limits with respect to all of the Facility's emissions, discharges and wastes. Application for the ECA will be concurrent with the ERR and approval is expected shortly after the completion of the ERR.

Depending on the requirements of the Ministry of the Environment, amendments to OPG's existing permits may be required to permit the discharge of water via their facilities. In addition the Facility may be required to comply with the MISA standards applicable to the OPG Lennox GS.

An amendment will be required to OPG's Permit to Take Water (PTTW) to list the Facility as an additional user and to increase the volume of water take to accommodate the Facility requirements. A new PTTW may be required as an alternative to an amendment to OPG's PTTW.

1.6 Fuel Supply (including Gas provider and description of the infrastructure and work required to obtain fuel supply and description of any required Gas compressors):

Natural gas will be supplied by Union Gas Limited, the franchise holder in the area, requiring a connection to the existing Union Gas lateral on the OPG Lennox GS site.

1.7 Water and Wastewater Supply and Return (including a description of the Facility's cooling needs and equipment washing requirements):

Steam cycle cooling for the Facility will be through a mechanical draft cooling tower. The cooling and process water make-up will be withdrawn from Lake Ontario using pumps and a pipeline running to the Facility site. The existing OPG PTTW will require amendments or a new permit may be required for the additional volumes required by the Facility and will be received from the Ministry of the Environment in advance of the time required to meet the project timeline.

Cooling tower effluent and other process waste water generated by the Facility, which will meet all Ontario Provincial Water Quality Objectives, will be treated and discharged into Lake Ontario using the existing OPG discharge channel facility or a new facility. Sanitary sewage will be transferred to the existing OPG Lennox GS sanitary sewage system.

A small volume of potable water is required and will be produced from an on-site potable water treatment plant using water sourced from Lake Ontario.

1.8 Electrical Interconnection (including description of work required to connect Facility):

The Facility will connect via two 500 kV transmission circuits from the high side of the Facility transformers to the Hydro One 500kV transmission system within the Hydro One Lennox switchyard at the Connection Point.

1.9 Network Upgrades (as specified in connection assessment studies):

The Facility's electrical connection will be engineered in accordance with specifications outlined by Hydro One and the IESO. The Supplier will enter into agreements for an “IESO System Impact Assessment” and “Hydro One Customer Impact Assessment” in accordance with the protocols established by the Independent Electricity System Operator and Hydro One, respectively.

1.10 Emissions Limits for NO_x and CO

Substance	Emissions Limits (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry-volume basis)
NO _x	15 ppmv
CO	15 ppmv

EXHIBIT B
CONTRACT CAPACITY, NET REVENUE REQUIREMENT,
AND OTHER STATED VARIABLES

CONFIDENTIAL

Net Revenue Requirement	\$15,200 /MW-month
Net Revenue Requirement Indexing Factor <i>(expressed as a decimal between 0.00 and 0.20)</i>	0.20
Annual Average Nameplate Capacity	900 MW
Annual Average Contract Capacity	900 MW
Start-Up Gas	2,450 MMBTU/start-up
Start-Up Maintenance Cost	\$0 /start-up
O&M Costs	\$0 /MWh

continued on next page

	Season 1	Season 2	Season 3	Season 4
Nameplate Capacity	900 MW	900 MW	900 MW	900 MW
Contract Capacity	900 MW	900 MW	900 MW	900 MW
Contract Heat Rate	7.355 MMBTU/MWh (HHV)	7.384 MMBTU/MWh (HHV)	7.443 MMBTU/MWh (HHV)	7.397 MMBTU/MWh (HHV)

EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE:	[●]
APPLICANT:	[●]
BENEFICIARY:	Ontario Power Authority and its permitted assigns
AMOUNT:	[●]
EXPIRY DATE:	[●]
EXPIRY PLACE:	Counters of the issuing financial institution in Toronto, Ontario
CREDIT RATING:	[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the <i>Bank Act</i>]
TYPE:	Irrevocable and Unconditional Standby Letter of Credit Number: [●] (the “Credit”)

The Credit is issued in connection with the Clean Energy Supply (CES) Contract (the “Contract”) dated **[Insert Date of Contract]** between the Beneficiary and the Applicant.

We hereby authorize the Beneficiary to draw on **[Issuing Bank Name/Address]**, in respect of the Credit, for the account of the Applicant, up to an aggregate amount of \$● (● Canadian Dollars) available by the Beneficiary’s draft at sight accompanied by the Beneficiary’s signed certificate stating that:

“The Applicant is in breach of, or default under, the Contract, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto.”

Drafts drawn hereunder must bear the clause “Drawn under irrevocable and unconditional Standby Letter of Credit No. [●] issued by **[Issuing Bank Name]** dated **[Issue Date]**.”

Partial drawings are permitted.

This Letter of Credit will automatically extend for additional, successive terms of one year each (each an “**Additional Term**”), unless the undersigned provides the Beneficiary with written notice, at least 60 days prior to the expiration date of the then current term, that it does not wish to extend this Letter of Credit for an Additional Term.

We engage with you that all drafts drawn under and in compliance with the terms of the Credit will be duly honoured, if presented at the counters of **[Issuing Bank Name/Address]** at or before **[Expiry Time]** (EST) on **[Expiry Date]**, as extended.

The Credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce Publication No. 590, and as to matters not addressed by ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby

irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

It is a term of the Credit that the above name of the Beneficiary will be amended to another entity by way of an amendment hereto, without the consent of the Applicant, and upon receipt by **[Issuing Bank Name]** of the Beneficiary's dated and signed letter addressed to **[Issuing Bank Name]** and completed as follows:

“We, the undersigned Beneficiary to **[Issuing Bank Name]** Letter of Credit No. [●], hereby waive all our rights under the said Letter of Credit and request that the current name and address of the Beneficiary thereunder be amended to read **[insert name and address of new Beneficiary]**. Please forward the original amendment to the **[new Beneficiary]**, care of the Applicant to whom we have delivered the original of the Letter of Credit along with its amendment(s) (if any).”

The Beneficiary may transfer the Credit without the consent of the Applicant or the issuing financial institution, provided that the transferee name is not identified on the following: the list of names subject to the Regulations Establishing a List of Entities Made Under Section 83.05(1) of the Criminal Code, and/or the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (RIUNRST) and/or United Nations Al-Qaida and Taliban Regulations (UNAQTR).

[Issuing Bank Name]

By: _____

By: _____

EXHIBIT D FORM OF GUARANTEE

THIS GUARANTEE dated as of [●] is made and entered into between [●], a corporation incorporated under the laws of [●] (the “**Guarantor**”), and [●] (the “**Buyer**”).

RECITALS:

- A. The Buyer and **[insert name of Supplier]**, a [●], [●] under the laws of [●] (“**Supplier**”), have entered into the Clean Energy Supply (CES) Contract dated as of the [●] day of [●], 2012 (as extended, amended, replaced and supplemented, collectively, the “**Agreement**”);
- B. The Guarantor will directly or indirectly benefit from the Agreement;
- C. Pursuant to the terms of the Agreement, the Buyer has required that the Guarantor shall deliver a guarantee of all payment obligations of the Supplier under the Agreement to the Buyer; and
- D. Capitalized terms used in this Guarantee but not otherwise defined herein have the meanings ascribed to them in the Agreement.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the Guarantor hereby agrees as follows:

1. **Guarantee**

Subject to the terms and conditions hereof, the Guarantor absolutely, irrevocably and unconditionally guarantees to the Buyer the full and timely payment when due, whether at stated maturity, by acceleration or otherwise, of the payment or indemnity obligations of the Supplier: (i) under the Agreement or (ii) under any award or order of any binding arbitration or court of competent jurisdiction in respect of the Agreement, and interest thereon accrued as provided in the Agreement, irrespective of when such obligations were incurred (the “**Guaranteed Obligations**”); provided, however, that the applicable rate of interest shall never exceed the maximum rate permitted by law. The aggregate amount of the Guarantor’s liability under this Guarantee shall not exceed [●] CANADIAN DOLLARS (Cdn. \$[●]) (the “**Maximum Guarantee Amount**”), plus reasonable legal fees and expenses payable by the Guarantor as provided herein. To the extent that Supplier fails to pay any Guaranteed Obligation, the Guarantor shall pay to the Buyer the amount due within ten (10) Business Days after demand for payment has been received by the Guarantor from the Buyer in writing in accordance with Section 11 hereof. The Guarantor shall also be liable for all reasonable out-of-pocket expenses (including the legal fees and expenses of the Buyer) incurred to collect or enforce any of the Guaranteed Obligations; provided however, that such legal fees and expenses shall be payable by the Guarantor only to the extent that the Buyer is successful in enforcing the Guaranteed Obligations. This Guarantee shall be a continuing guarantee effective during the term of the Agreement and until fulfillment of, including payment in full of, the Guaranteed Obligations.

2. Demand

The Guarantor's obligation to make payment under this Guarantee shall arise forthwith after demand for payment has been received by the Guarantor from the Buyer in writing in accordance with Section 11 hereof and the Guarantor's liability for the Guaranteed Obligations shall bear interest in accordance with the terms and conditions set forth in the Agreement. The only condition (and no other document, proof or action other than as specifically provided in this Guarantee is necessary as a condition) of the Guarantor honouring its obligations under this Guarantee shall be such demand for payment. No notice of the Guaranteed Obligations need be given in any form to the Guarantor at any time and the Guarantor waives any such notice and the right to consent to the Guaranteed Obligations. In the event that any payment to the Buyer in respect of any Guaranteed Obligations is rescinded or must otherwise be returned for any reason whatsoever, including the insolvency or bankruptcy of the Supplier or otherwise, the Guarantor shall remain liable hereunder in respect of such Guaranteed Obligations as if such payment had not been made.

3. Waivers

- (a) The Guarantor waives any right to require as a condition to its obligations hereunder that:
 - (i) collateral be applied to the Guaranteed Obligations;
 - (ii) an action be brought against the Supplier or any Person other than the Guarantor should the Buyer seek to enforce the obligations of the Guarantor;
 - (iii) a judgment be rendered against the Supplier or any Person other than the Guarantor;
 - (iv) the Supplier or any other Person be joined in any action against the Guarantor;
 - (v) an action separate from one against the Guarantor be brought against the Supplier or any other Person or under any other security or guarantee held by the Buyer; and
 - (vi) any Supplier Event of Default under the Agreement has occurred.
- (b) The Guarantor further waives:
 - (i) all defences, set-offs, counterclaims, estoppels or privileges which might but for this provision exonerate or discharge it from its obligations hereunder; and

- (ii) notice of acceptance of this Guarantee, notice of any liability to which it may apply, presentment, demand, protest and notice of dishonour, non-payment or non-performance and marshalling of assets.
- (c) The obligations of the Guarantor hereunder shall in no way be affected or impaired by reason, and the Guarantor waives its right to prior notice, of the happening from time to time of any of the following:
 - (i) any invalidity or unenforceability of all or any part of the Guaranteed Obligations or any agreement or instrument relating to or securing the Guaranteed Obligations;
 - (ii) any insolvency, bankruptcy, reorganization, or dissolution, or any proceeding of the Supplier or any other guarantor, including without limitation, rejection of the Guaranteed Obligations in such bankruptcy;
 - (iii) extensions (whether or not material) of the time for payment or performance of all or any portion of the Guaranteed Obligations;
 - (iv) the modification or amendment in any manner (whether or not material) of the Agreement or the Guaranteed Obligations;
 - (v) subject to applicable statutes of limitations, any failure, delay or lack of diligence on the part of the Buyer or any other Person to enforce, assert or exercise any right, privilege, power or remedy conferred on the Buyer or any Person in the Agreement or at law, or any action on the part of the Buyer or such other Person granting an indulgence or extension of any kind;
 - (vi) the settlement or compromise of any Guaranteed Obligations;
 - (vii) the change of status, composition, structure or name of the Supplier, including by reason of merger, amalgamation, continuance, dissolution, reorganization or consolidation with or into another legal entity;
 - (viii) the release or waiver, by operation of law or otherwise, of the performance or observance by the Supplier of any express or implied covenant, term or condition in the Agreement or the enforceability of any covenant, term or condition thereof;
 - (ix) the release or waiver, by operation of law or otherwise, of the performance or observance by any co-guarantor, surety, endorser or other obligor of any express or implied covenant, term or condition to be performed or observed by it under the Agreement or any related document;

- (x) the failure to acquire, perfect or maintain perfection of any lien on, or security interest in, any collateral provided by the Supplier to the Buyer or the release of any such collateral or the release, modification or waiver of, or failure to enforce, any pledge, security, guarantee, surety or other indemnity agreement in respect of such collateral;
- (xi) the assignment of the Agreement and/or any rights thereunder from or by the Supplier to any other Person; and
- (xii) any other circumstance similar, or having a similar effect, as those set out in subsections 3(c)(i) through (xi) inclusive, which might constitute in whole or in part a defence available to the release and discharge of this Guarantee.

4. Limitation of Liability

The Guarantor shall not be liable hereunder for any special, consequential, incidental, punitive, exemplary or indirect damages, including loss of use of any property or claims of customers of the Supplier or the Buyer, except to the extent specifically provided in the Agreement to be due from the Supplier.

5. Indemnity

The Guarantor hereby indemnifies and saves the Buyer harmless from and against any and all damages, losses, costs and expenses of any nature whatsoever resulting from or in consequence of any default or non-payment by Supplier of its payment or indemnity obligations: (i) under the Agreement or (ii) under any award or order of any binding arbitration or court of competent jurisdiction in respect of the Agreement, irrespective of when such obligations were incurred, including its obligations to pay interest as provided in the Agreement and all reasonable out-of-pocket expenses (including legal fees and expenses incurred to collect or enforce the Agreement); provided, however, that the maximum amount recoverable under the foregoing indemnity and otherwise under this Guarantee shall be an amount equal to the Maximum Guarantee Amount. In addition, the Guarantor shall also be liable to the Buyer for all reasonable out-of-pocket expenses (including legal fees and expenses of the Buyer) incurred to collect or enforce this indemnity; provided, however, that such legal fees and expenses shall be payable by the Guarantor only to the extent that the Buyer is successful in enforcing the indemnity provided herein. Any payment made pursuant to this Section 5 shall be reduced by any amount that is fully and indefeasibly paid by the Guarantor to the Buyer pursuant to its obligations under Section 1 hereof.

6. Release of Guarantee

If Section 6.2(d) of the Agreement is applicable, then upon request by the Supplier, the Buyer shall promptly return this Guarantee to the Guarantor and the Guarantor shall be released and discharged of its obligations hereunder with respect to any Guaranteed Obligations existing or arising after the date that Section 6.2(d) of the Agreement is applicable.

7. Defences

The Guarantor reserves the right to assert all rights, setoffs, counterclaims and other defences of the Supplier relating to the Guaranteed Obligations, other than defences arising out of the bankruptcy, insolvency, dissolution or liquidation of the Supplier.

8. Subrogation

The Guarantor shall not be or claim to be subrogated, in whole or in part, to the rights of the Buyer against the Supplier under the Agreement or otherwise, until (a) the Buyer shall have received full and indefeasible payment of all Guaranteed Obligations; and (b) either the Agreement has been terminated or this Guarantee has been terminated pursuant to the terms hereof and the terms and conditions of the Agreement as applicable. Except as set out in this Section 8, nothing contained in this Guarantee shall limit the rights at law and in equity of the Guarantor to subrogation.

9. Representations

The Guarantor represents that:

- (a) it is a **[corporation duly incorporated]** and existing under the laws of the Province of **[Ontario]** ***[Note to Finalization: Reflect form and jurisdiction of Guarantor]*** and has the corporate power and capacity to enter into this Guarantee and to perform its obligations hereunder;
- (b) this Guarantee has been duly authorized, executed and delivered by the Guarantor and is a valid and binding obligation of the Guarantor enforceable in accordance with its terms;
- (c) no declaration, filing or registration with, or notice to, or licence, permit, certificate, registration, authorization, consent or approval of or from, any Governmental Authority is necessary or required for the consummation by the Guarantor of the transaction contemplated by this Guarantee; and
- (d) the execution and delivery of this Guarantee and performance of its obligations hereunder do not conflict with or result in a breach of its constating documents or by-laws, any applicable law, rule or regulation, any judgment, order, contractual restriction or agreement binding on it or affecting its properties.

10. No Waiver by the Buyer

No failure on the part of the Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Buyer of any right, remedy or power hereby granted to the Buyer or allowed it by law or other agreement be a waiver of any other right, remedy or power, and each such right, remedy or power shall be cumulative and not exclusive of any other, and may be exercised by the Buyer

from time to time. No term, condition or provision hereof or any right hereunder or in respect hereof shall be, or shall be deemed to have been, waived by the Buyer except by express written waiver signed by the Buyer, all such waivers to extend only to the particular circumstances therein specified.

11. Notices

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be sufficiently given if transmitted by facsimile or delivered by hand or courier delivery:

(a) if to the Buyer, to:

[●]

Attention: [●]

Facsimile: [●]

(b) if to the Guarantor, to:

[●]

Attention: [●]

Facsimile: [●]

Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if a notice is delivered or transmitted after 5:00 p.m. local time or such day is not a Business Day, then such notice shall be deemed to have been given and received on the next Business Day. Either party may, by written notice to the other, change its address to which notices are to be sent.

12. Governing Law

This Guarantee shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Guarantor agrees that any suit, action or proceeding against the Guarantor arising out of or relating to this Guarantee against it may be brought in any court in the Province of Ontario and the Guarantor irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of such courts. The Guarantor irrevocably waives and agrees not to raise any objection it might now or hereafter have to the bringing of any such suit, action or proceeding in any such court, including any objection that the place where such court is located is an inconvenient forum or that there is any other suit, action or proceeding in any other place relating in whole or in part to the same subject matter. The Guarantor agrees that any judgment or order in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon it and consents to any such judgment or order being recognized and enforced in the courts of its jurisdiction of incorporation or any other courts, by registration of such judgment or

order, by a suit, action or proceeding upon such judgment or order, or any other means available for enforcement of judgments or orders, at the option of the Buyer, provided that service of any required process is effected upon it as permitted by applicable law. Nothing in this paragraph shall restrict the bringing of any such suit, action or proceeding in the courts of any other jurisdiction.

13. Severability

Each of the provisions contained in this Guarantee is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Guarantee.

14. Entire Agreement

This Guarantee constitutes the entire agreement between the parties pertaining to the subject matter of this Guarantee. There are no warranties, conditions, representations or agreements in connection with such subject matter except as specifically set forth or referred to in this Guarantee.

15. Binding and Assignment

- (a) This Guarantee and all of the provisions hereof shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. This Guarantee is not intended to confer upon any other Person, except the parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Guarantee.
- (b) Neither this Guarantee nor any of the rights, interests or obligations under this Guarantee shall be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, if the Buyer assigns the Agreement to an assignee pursuant to Sections 16.5(d) or 16.5(e) thereof, then the Buyer may assign this Guarantee to such assignee without the consent of the Guarantor or the Supplier.

16. Limitation Period

The limitation period applicable to any claim hereunder shall not begin to run until actual demand is made by the Buyer pursuant to Section 2 of this Guarantee. The Buyer and the Guarantor of this Guarantee agree to extend such limitation period to six (6) years from the date of such actual demand.

17. Facsimile and Counterparts

The parties may deliver an executed copy of this Guarantee by facsimile and this Guarantee may be executed and delivered by the parties in counterparts. All such facsimiles and counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Guarantee as of the day and year first above written.

[GUARANTOR]

By: _____
Name: [●]
Title: [●]

By: _____
Name: [●]
Title: [●]

I/We have the authority to bind the Guarantor.

[BUYER]

By: _____
Name: [●]
Title: [●]

I have the authority to bind the Corporation.

EXHIBIT E

DETERMINATION OF AVAILABILITY

1. The availability of the Facility in respect of a given Settlement Month (the “Availability”) shall be calculated as set out below.

- (a) First Year after COD

For each Settlement Month in the period prior to the end of the first anniversary after COD, the Availability of the Facility will not be tested for the purposes of Section 10.1(n) of the Agreement.

- (b) Second and Third Years after COD

For the purposes of the formula to calculate Availability set out below, the Availability of the Facility for each Settlement Month in the second and third years after COD shall be calculated as follows:

AV = (THM – OH – FMH) / (THM – FMH) x 100	
where:	
AV	is the Availability of the Facility (expressed as a percentage figure).
OH	is the total number of Outage Hours in the period between the COD and the last day of the applicable Settlement Month, subject to the following: (a) in determining Outage Hours, an hour may be a partial Outage Hour as a result of an Outage, including an inability of the Facility to produce at the full Contract Capacity or as a result of an Outage lasting for a part but not all of an hour. An hour in which a partial Outage occurs will be counted as a fractional Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum production in that hour that could have been achieved given the partial Outage (in MWh) by (ii) the Contract Capacity multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the Outage Hours in the given Settlement Month; and (b) Outage Hours shall not include the hours of any Outage where and to the extent that the Outage is caused by an event of Force Majeure.
THM	is the total number of hours in the period between the COD and the

	last day of the applicable Settlement Month.
FMH	is the total number of hours in the period between the COD and the last day of the applicable Settlement Month during which the Supplier was subject to an event of Force Majeure.

(c) Fourth and Subsequent Years after COD

The Availability of the Facility for each Settlement Month in the fourth and subsequent year after COD shall be calculated as follows:

$AV = (THM - OH - FMH) / (THM - FMH) \times 100$	
where:	
AV	is the Availability of the Facility (expressed as a percentage figure).
OH	is the total number of Outage Hours in the most recent 36 month period which ends on the last day of the Settlement Month, subject to the following: (a) in determining Outage Hours, an hour may be a partial Outage Hour as a result of an Outage, including an inability of the Facility to produce at the full Contract Capacity or as a result of an Outage lasting for a part but not all of an hour. An hour in which a partial Outage occurs will be counted as a fractional Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum production in that hour that could have been achieved given the partial Outage (in MWh) by (ii) the Contract Capacity multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the Outage Hours in the given Settlement Month; and (b) Outage Hours shall not include the hours of any Outage where and to the extent that the Outage is caused by an event of Force Majeure.
THM	is the total number of hours in the most recent 36 month period which ends on the last day of the Settlement Month.
FMH	is the total number of hours in the most recent thirty-six (36) month period which ends on the last day of the Settlement Month during which the Supplier was subject to an event of Force Majeure.

EXHIBIT F
MILESTONE EVENTS AND MILESTONE DATES FOR THE FACILITY

	MILESTONE EVENT	MILESTONE DATE (Month/Day/Year)
1.	Financial Closing	March 31, 2013
2.	Environmental and Site Plan Milestone Events	October 30, 2014 (for purposes of filing the statement of completion with respect to environmental assessment and receiving site plan approval)
		December 31, 2014 (for purposes of obtaining all other pre-construction approvals and permits)
3.	COD	December 31, 2018

EXHIBIT G DISPATCH OPTIONS

1. General

The following shall apply to the Deemed Dispatch Option and the Directed Dispatch Option:

- (a) the Supplier shall be free to operate the Facility (including the nomination and purchase of Gas) and generate Electricity and Related Products at its own discretion and for its own account, with the knowledge that payment settlements in each Settlement Month shall be based on the imputed revenue model set out in Exhibit J; and
- (b) the Monthly Payment, payable by the Supplier to the Buyer or the Buyer to the Supplier, as the case may be, in a Settlement Month will be based on the imputed revenue model set out in Exhibit J.

2. Deemed Dispatch Option

The Deemed Dispatch Option shall be the default dispatch payment model governing the Facility for all hours in the Term that are not associated with a Directed Dispatch Order, and shall be governed by the following rules:

- (a) all hours in a Settlement Month that are not the subject of a Directed Dispatch Order and all hours that are the subject of a Cancelled Directed Dispatch Order shall be subject to the Deemed Dispatch Option; and
- (b) for purposes of calculating the Monthly Payment, Deemed Dispatch Hours shall include all Outage Hours and all Force Majeure Outage Hours occurring during Deemed Dispatch Intervals.

3. Directed Dispatch Option

The Directed Dispatch Option shall be governed by the following rules:

- (a) the Buyer (or the Dispatcher, if one has been appointed) may, in accordance with the terms of the Agreement, issue a Directed Dispatch Order (DA) or a Directed Dispatch Order (LT), as applicable;
- (b) for greater certainty, for purposes of this Exhibit G, day “d” shall mean the twenty-four (24) hour period between the beginning of the hour ending 01:00 (EST) and the end of hour ending 24:00 (EST);
- (c) the Buyer shall not issue a provisional Directed Dispatch Order in respect of any hour in which a Planned Outage was scheduled with the IESO and that notice of

which was given to the Buyer, prior to the issuance of such provisional Directed Dispatch Order, in accordance with Sections 15.3(b)(ii)(B) and 15.3(b)(iv).

- (d) long term directed dispatch arrangements set out in a Directed Dispatch Order (LT) are to cover a period of one (1) or more calendar months, but may be subject to daily cancellation by the Buyer by issuing an order cancelling the Directed Dispatch Order (a “**Cancelled Directed Dispatch Order**”);
- (e) the Buyer, if requested by the Supplier, shall establish a standing credit support guarantee in favour of the supplier of Gas to the Supplier (the “**Gas Provider**”) (in a form substantially similar to Exhibit L) and other security provided to the Gas Provider in accordance with subparagraph (iv)(A) below (collectively, the “**Buyer Security**”) as follows:
 - (i) the Supplier shall, on a daily basis, determine the amount owed or that will be owed (whether or not then due) by the Supplier to the Gas Provider with respect to any and all Gas purchase transactions and any and all derivative transactions which relate to any Gas to be purchased for Contracted Facility Operation under a Directed Dispatch Order (LT) for any day that is the subject of a Directed Dispatch Order (LT) and which have been or will be entered into in accordance with this Exhibit G (the “**Exposure Amount**”);
 - (ii) the maximum Exposure Amount which the Buyer shall be entitled to maintain in relation to any Directed Dispatch Order (LT) shall be based on the Credit Rating of the Buyer and shall be the amount (the “**Exposure Threshold Amount**”) set out in the following table:

EXPOSURE THRESHOLD AMOUNT	CREDIT RATING		
	DBRS	S&P	Moody's
CAD \$75,000,000	A to A (high)	A to A+	A2 to A1
CAD \$50,000,000	A (low)	A-	A3
CAD \$20,000,000	BBB (high)	BBB+	Baa1
CAD \$15,000,000	BBB	BBB	Baa2
CAD \$5,000,000	BBB (low)	BBB-	Baa3
\$0	below BBB (low)	below BBB-	below Baa3

Notwithstanding the foregoing, (A) in the event the Buyer has a Negative Outlook, then its Credit Rating, for purposes of calculating the Exposure Threshold Amount and the amount of the guarantee, will be automatically

demoted by one row in the above table and (B) in the event the Buyer has a Credit Rating from more than one of the above credit rating agencies, then its Credit Rating for the above purposes will be based on the lowest credit rating granted by any such credit rating agency.

- (iii) the amount of the guarantee to be provided by the Buyer from time to time shall be equal to the Exposure Threshold Amount listed in that row of the table in subparagraph (ii) above which contains the Buyer's then current Credit Rating, as adjusted by any Negative Outlook in accordance with subparagraph (ii) above;
- (iv) in the event that the Exposure Amount on any day exceeds the Exposure Threshold Amount on such day then the Buyer shall, within two (2) Business Days of receiving notice of such fact:
 - (A) provide to the Gas Provider an irrevocable standby letter of credit, cash collateral or other form of collateral security, in each case, in form and substance acceptable to the Gas Provider (acting reasonably) for the full amount of the difference between the Exposure Amount and the Exposure Threshold Amount; or
 - (B) issue a full or partial Cancelled Directed Dispatch Order such that the Exposure Amount does not exceed the Exposure Threshold Amount;
- (v) in the event that the Buyer should fail to provide or maintain any of the applicable Buyer Security required hereunder, at the Supplier's option to be exercised by notice (the "**Cancellation Notice**") in writing to the Buyer, the Buyer shall be deemed to have issued a Cancelled Directed Dispatch Order in respect of the balance of the Directed Dispatch Order (LT) then outstanding and such Cancelled Directed Dispatch Order shall be deemed to be effective as of the day specified in the Cancellation Notice, provided that, if applicable, such date shall not be earlier than the date of receipt by the Buyer of the notice set out in subparagraph (iv) above; and
- (vi) the Supplier shall not vary the "**Obligations**" (as defined in Exhibit L) in respect of the standing credit support arrangement established by the Buyer in accordance with this Section 3(e), except: (i) as a direct result of the issuance of a new Directed Dispatch Order (LT) or the full or partial cancellation of an existing Directed Dispatch Order (LT); or (ii) if the Buyer has first consented in writing to a variation of such Obligations on any other basis. Notwithstanding Section 24 of Exhibit L, if the Supplier agrees with the "**Counterparty**" (as defined in Exhibit L) to vary such

Obligations on any other basis, any increased cost to the Buyer of discharging such Obligations, to the extent relating to or caused by such variance, shall be for the Supplier's sole account and may be set off by the Buyer against any payment owing by the Buyer under this Agreement;

- (f) a Directed Dispatch Order (LT) shall not relate to any calendar month ending more than one (1) year from the date of the order;
- (g) long term directed dispatch arrangements may also be amended on a daily basis by issuing a Cancelled Directed Dispatch Order for applicable day followed by a Directed Dispatch Order (DA) for such day;
- (h) a Directed Dispatch Order will be issued in the form provided in Exhibit H;
- (i) a Directed Dispatch Order (DA) may be issued by the Buyer (or the Dispatcher, if one has been appointed) in respect of any day "d" of the Term provided that it shall not be issued later than 09:00 EPT on the prior Business Day; however, if the Directed Dispatch Order (DA) is being issued in respect of a day that was the subject of a Cancelled Directed Dispatch Order and the Buyer is seeking to add additional Directed Dispatch Hours in respect of day "d" prior to 10:00 EPT, such Directed Dispatch Order (DA) shall not be issued later than 09:00 EPT on the day which is two (2) Business Days prior to day "d";
- (j) the Directed Dispatch Order (DA) shall specify the Directed Dispatch Hours for up to two (2) Directed Dispatch Interval(s) for the day by specifying the Directed Start-Up Hour and the Directed Shut-Down Hour for each Directed Dispatch Interval; each Directed Dispatch Interval shall constitute a consecutive run time that may continue into the next calendar day; for greater certainty, all hours in the day that are not Directed Dispatch Hours as specified in the Directed Dispatch Order (DA) shall be subject to the Deemed Dispatch Option;
- (k) a provisional Directed Dispatch Order (LT) may be issued by the Buyer (or the Dispatcher, if one has been appointed) in respect of one or more calendar months of the Term provided that it shall not be issued later than 09:00 EPT on the day which is five (5) Business Days before the first day of the first calendar month covered by such order;
- (l) a provisional Directed Dispatch Order (LT) shall specify the Directed Dispatch Hours for up to two (2) Directed Dispatch Interval(s) in each day of each applicable month by specifying the Directed Start-Up Hour and the Directed Shut-Down Hour for each Directed Dispatch Interval on a specific basis (e.g., 12:00 to 22:00 EST on Monday, the nth day of the month) or on a generic basis (e.g. 07:00 to 20:00 EST on each Business Day of the month); each Directed Dispatch Interval shall constitute a consecutive run time that may continue into the next calendar day; for greater certainty, all hours in a day that are not Directed

Dispatch Hours as specified in the Directed Dispatch Order (LT) shall be subject to the Deemed Dispatch Option;

- (m) each Directed Dispatch Interval specified by a Directed Dispatch Order (DA) or Directed Dispatch Order (LT) shall constitute a consecutive run time of at least four (4) Directed Dispatch Hours;
- (n) if specifically requested by the Buyer in the provisional Directed Dispatch Order (LT), the Supplier shall secure a long-term non-binding price quote (in Dollars per MMBTU) for the supply of Gas required to cover the specified Directed Dispatch Hours and Directed Start-Ups, based on the Contract Heat Rate and Start-Up Costs set out in Exhibit B, for each month covered by the provisional Directed Dispatch Order (LT) and advise the Buyer of such price quote within two (2) Business Days of the receipt of the provisional Directed Dispatch Order (LT) from the Buyer; if the Buyer does not specifically request a long-term non-binding price quote in the provisional Directed Dispatch Order (LT), the Supplier shall purchase Gas at its discretion in order to comply with the Directed Dispatch Order (LT) and the Buyer shall compensate the Supplier for such Gas purchased based on the Gas Price (DA) and in such event, paragraphs (o) and (p) shall not apply;
- (o) upon receipt of the price quote set forth in paragraph (n), the Buyer shall within one (1) Business Day of receipt of the price quote from the Supplier either:
 - (i) confirm its acceptance of the price quote and thereby approve the Directed Dispatch Order (LT) on the condition that the Gas Price (LT) applicable for such Directed Dispatch Order (LT) shall not exceed such price quote by more than an amount to be agreed upon by the Parties at such time; or
 - (ii) withdraw the provisional Directed Dispatch Order (LT), in which case the Buyer may issue a new or revised provisional Directed Dispatch Order (LT) in accordance with paragraph (k);
- (p) as soon as reasonably practicable, but no later than two (2) Business Days of the confirmation from the Buyer under paragraph (o)(i), the Supplier shall confirm to the Buyer that:
 - (i) it has secured the required physical or financial Gas supply arrangement based on the Gas price limit established under paragraph (o)(i), in which case the Gas Price (LT) applicable for such Directed Dispatch Order (LT) shall be equal to the long-term price so determined; for purposes of this paragraph, the Supplier may, but is not obligated to, secure the required physical or financial Gas supply arrangements by electing to supply Gas from its Gas portfolio, and the Gas Price (LT) applicable for such Directed

Dispatch Order (LT) shall in such case be equal to the price quote set forth in paragraph (n); or

- (ii) the required physical or financial Gas supply arrangement is not available based on the Gas price limit established under paragraph (o)(i), in which case the Buyer may issue a new or revised provisional Directed Dispatch Order (LT) in accordance with paragraph (k);
- (q) the Buyer (or the Dispatcher, if one has been appointed) may issue a Cancelled Directed Dispatch Order in respect of any Directed Dispatch Interval which is the subject of a Directed Dispatch Order (LT) cancelling the Directed Dispatch Order for such day, provided that the Cancelled Directed Dispatch Order shall not be issued later than 09:00 EPT on the prior day “*d-1*”;
- (r) any hour that is the subject of a Cancelled Directed Dispatch Order shall be subject to the Deemed Dispatch Option, unless the Buyer issues a Directed Dispatch Order (DA) in respect of such hour in accordance with paragraph (i);
- (s) a Cancelled Directed Dispatch Order shall cover periods equal to increments of one or more Directed Dispatch Intervals;
- (t) a Cancelled Directed Dispatch Order shall also require the Supplier to sell, using Commercially Reasonable Efforts, the applicable Gas Cancellation Volume of Gas that the Buyer had requested be purchased on a forward basis under the Directed Dispatch Order (LT), provided that the Supplier may, but is not required, to sell such Gas if: (i) the Supplier would have provided such Gas from its Gas portfolio, or (ii) the Supplier will transfer such Gas into the Supplier’s portfolio, as long as the Supplier, in either case, is willing to have a “deemed sale” at a target price mutually agreed by the Parties;
- (u) the amount of capacity imputed to be delivered in respect of any Directed Dispatch Hour under any Directed Dispatch Order shall always be equal to the Adjusted Contract Capacity;
- (v) the Buyer (or the Dispatcher, if one has been appointed) makes no guarantee or assurance to the Supplier as to whether, how often, or how long the Buyer (or the Dispatcher, if one has been appointed) will issue Directed Dispatch Orders to the Supplier during the Term; and
- (w) for purposes of calculating the Monthly Payment, Directed Dispatch Hours shall include all Outage Hours and all Force Majeure Outage Hours occurring during Directed Dispatch Intervals.

EXHIBIT H
FORM OF DIRECTED DISPATCH ORDER

The Parties agree that the form of order shall be agreed upon no later than six (6) months prior to the COD in accordance with the protocol set out in Exhibit G.

EXHIBIT I
FORM OF FORCE MAJEURE NOTICE

TO: [insert name of Buyer or Supplier, as applicable]

DATE: _____

RE:

Supplier:	Name of Facility:
COD per Contract:	Buyer Approved Revised COD:
1. Description of events leading to Force Majeure (Provide reasonably full particulars of the cause and timing of events relating to the invoked Force Majeure)	
2. Effect of Force Majeure (Provide reasonably full particulars of the effect of the Force Majeure on the [<i>Buyer or Supplier</i>]'s ability to fulfill its obligations under the Agreement)	
3. Cost of Alternatives available to remedy or remove the Force Majeure (Provide reasonably full particulars of alternatives available to the [<i>Buyer or Supplier</i>] to remedy or remove the Force Majeure, together with an estimation of related costs with respect to each alternative)	
4. Commercially Reasonable Efforts – Reasonably full particulars of efforts, if any, undertaken or contemplated by the [<i>Buyer or Supplier</i>] to remedy or remove the Force Majeure.	

EXHIBIT J CALCULATION OF CSP AND RSP

This Exhibit J sets out the calculation of the Contingent Support Payment and the Revenue Sharing Payment, as applicable, for a given Settlement Month “*m*” in Contract Year “*y*”, which is a four stage calculation which involves:

Stage I	Determination of the Total Monthly Fixed Capacity Payment;
Stage II	Determination of the Variable Energy Cost;
Stage III	Determination of the Imputed Net Revenue; and
Stage IV	Determination of the Contingent Support Payment and the Revenue Sharing Payment.

Except as expressly set forth below, all references to Sections are to Sections of the Agreement.

1.0 STAGE I: DETERMINATION OF TOTAL MONTHLY FIXED CAPACITY PAYMENT

1.1 The Total Monthly Fixed Capacity Payment is calculated as follows:

TMFCP_m = (CRF_m x FMCRF_m x NRR_y x AACC)	
where:	
TMFCP _m	TMFCP _m is the Total Monthly Fixed Capacity Payment (in \$ for the Settlement Month), provided that if the Settlement Month is the first or last Settlement Month of the Term, the NRR _y for the Settlement Month will be prorated for the number of days of the Term in the Settlement Month and the Total Monthly Fixed Capacity Payment shall be calculated as follows: TMFCP_m = (CRF_m x FMCRF_m x NRR_y x AACC) x (SMD_m/CMD_m)
SMD _m	is the number of days in the Settlement Month “ <i>m</i> ” (i.e. the number of days of the Term in such month).
CMD _m	is the total number of days in the calendar month in which the Settlement Month “ <i>m</i> ” falls.

CRF _m	is the Capacity Reduction Factor for Settlement Month “m” as defined in Section 15.6, and expressed as a fraction. The Capacity Reduction Factor shall be 1.0 unless and to the extent the circumstances set out in Sections 15.6(e) and (f) apply. If the Capacity Reduction Factor changes during the Settlement Month, then CRF will be calculated as a weighted average based on the number of days of the Settlement Month during which the different values of CRF apply.
NRR _y	is the Net Revenue Requirement (in \$/MW-month). For the first Contract Year, the Net Revenue Requirement shall be equal to the amount set out in Exhibit B. For the second and each succeeding Contract Year, a portion of the Net Revenue Requirement shall be adjusted on the first day of such Contract Year to the percentage increase or decrease (if any) between the CPI effective as of the first day of such Contract Year compared with the CPI effective as of the COD. The NRR _y shall be calculated as follows: NRR_y = (NRR_B x NRRIF x IF_y) + (NRR_B x (1-NRRIF))
NRRIF	is the Net Revenue Requirement Indexing Factor set out in Exhibit B, and expressed as a decimal figure between 0.00 and 0.20.
AACC	is the Annual Average Contract Capacity (in MW).
IF _y	is the Index Factor for year “y” and shall be calculated as follows: IF_y = CPI_y / CPI_B
CPI _y	is the CPI applicable to the calendar month during which the first day of Contract Year “y” occurs.
CPI _B	is the CPI applicable to the calendar month during which the COD occurs.
FMCRF _m	is the Force Majeure Capacity Reduction Factor for Settlement Month “m” which shall be equal to 1.0 if there are no Outages affecting an Imputed Production Hour in the Settlement Month resulting from an event of Force Majeure, otherwise it shall be calculated as follows: $FMCRF_m = 1 - \frac{\sum_{FMCRF=1}^{FMCRF=FMCRF_m} FMOC_{FMCRF}}{ACC_m \times IPH_m}$

ACC_m	is the Adjusted Contract Capacity (in MW) for the Settlement Month “ m ”, and is calculated as follows: $ACC_m = CC_m \times CRF_m$
CC_m	is the Contract Capacity (in MW) in Settlement Month “ m ”.
IPH	is an Imputed Production Hour, which is an hour in Settlement Month “ m ” that is contained within an Imputed Production Interval which occurred, in whole or in part, in Settlement Month “ m ”.
IPH_m	is the total number of Imputed Production Hours in Settlement Month “ m ”.
$FMO C_{FMOH}$	is the Force Majeure Outage Capacity in any Force Majeure Outage Hour, which is calculated as follows: $FMO C_{FMOH} = ACC_m - FMAC_{FMOH}$
$FMAC_{FMOH}$	is the Force Majeure Available Capacity (in MW), which is the portion of the Adjusted Contract Capacity available for dispatch as reported by the Supplier to the IESO in respect of a Force Majeure Outage Hour.
FMOH	is a Force Majeure Outage Hour, which is an hour within any Imputed Production Interval in Settlement Month “ m ” for which the Supplier has notified the IESO and the Buyer, as applicable, of an Outage caused by an event of Force Majeure. For greater certainty, any FMOH is by definition also an IPH; however, Outages must continue to be reported to the IESO and the Buyer for all Outage Hours.
$FMOH_m$	is the total number of Force Majeure Outage Hours in Settlement Month “ m ”.

2.0 STAGE II: DETERMINATION OF VARIABLE ENERGY COST

2.1 Calculation of Variable Energy Cost

The calculation of the Variable Energy Cost for each hour “*h*” during Settlement Month “*m*” is as follows:

$VEC_h = (GP_h \times CHR) + O\&M_y$	
where:	
VEC_h	is the Variable Energy Cost for hour “ <i>h</i> ” (in \$/MWh).
GP_h	is the Gas Price for hour “ <i>h</i> ” (in \$/MMBTU) and shall be determined as follows: (i) for Directed Dispatch Hours that are subject to a Directed Dispatch Order (LT) and are not subject to a Cancelled Directed Dispatch Order, the Gas Price (in \$/MMBTU) is the Gas Price (LT) applicable for the day as agreed upon by the Parties pursuant to paragraphs 3(o)(i) and (p)(i) of Exhibit G, otherwise the Gas Price is the Gas Price (DA) for the day, as applicable; and (ii) for all other hours, the Gas Price is the Gas Price (DA) for the day. The Gas Price (DA) shall be converted from US dollars to Dollars using the applicable conversion rate set out in Section 1.1.
CHR	is the Contract Heat Rate (in MMBTU/MWh), which shall be the Season 1 Contract Heat Rate, Season 2 Contract Heat Rate, Season 3 Contract Heat Rate or the Season 4 Contract Heat Rate, as applicable.
$O\&M_y$	is the O&M Cost set out in Exhibit B, as adjusted for indexation to the CPI as described in Section 2.2 of this Exhibit J (in \$/MWh).

2.2 Indexation of O&M Cost

For the first Contract Year, the O&M Cost shall be equal to the amount set out in Exhibit B. For the second and each succeeding Contract Year, the O&M Cost shall be adjusted on the first day of such Contract Year to the percentage increase or decrease (if any) between the CPI effective as of the first day of such Contract Year compared with the CPI effective as of the COD, and shall be calculated as follows:

$O\&M_y = O\&M_B \times IF_y$	
where:	
$O\&M_y$	is the O&M Cost (in \$/MWh) for Contract Year “ <i>y</i> ”. For the first Contract Year, the O&M Cost shall be equal to the amount set out in

	Exhibit B.
O&M _B	is the O&M Cost (in \$/MWh) as set out in Exhibit B.
IF _y	is the Index Factor for year “y” which is calculated as described in Section 1.1 of this Exhibit J.

2.3 Calculation of Start-Up Costs

The calculation of the Start-Up Costs for each day “d” during Settlement Month “m” is calculated as follows:

SUC_d = CRF_m x [SUG x GP_d + SUMC_y]	
where:	
SUC _d	is the Start-Up Costs (in \$/start-up) for day “d”.
CRF _m	is the Capacity Reduction Factor for Settlement Month “m” determined according to Section 1.1 of this Exhibit J.
SUG	is the Start-Up Gas (in MMBTU/start-up) as defined in Section 1.1 of this Agreement.
GP _d	is the Gas Price applicable for day “d” (in \$/MMBTU) and shall be determined as follows: (i) for days that are subject to a Directed Dispatch Order (LT) and are not subject to a Cancelled Directed Dispatch Order, the Gas Price (in \$/MMBTU) is the Gas Price (LT) applicable for the day as agreed upon by the Parties pursuant to paragraphs 3(o)(i) and (p)(i) of Exhibit G, otherwise the Gas Price is the Gas Price (DA) for the day, as applicable; and (ii) for all other days, the Gas Price is the Gas Price (DA) for the day. The Gas Price (DA) shall be converted from US dollars to Dollars using the applicable conversion rate set out in Section 1.1.

SUMC _y	is the Start-Up Maintenance Cost (in \$/start-up) for Contract Year “y”. For the first Contract Year, the Start-Up Maintenance Cost shall be equal to the amount set out in Exhibit B. For the second and each succeeding Contract Year, the Start-Up Maintenance Cost shall be adjusted on the first day of such Contract Year to the percentage increase or decrease (if any) between the CPI effective as of the first day of such Contract Year compared with the CPI effective as of the COD, and shall be calculated as follows: $\text{SUMC}_y = \text{SUMC}_B \times \text{IF}_y$
IF _y	is the Index Factor for year “y” which is calculated as described in Section 1.1 of this Exhibit J.
SUMC _B	is the Start-Up Maintenance Cost (in \$/start-up) as defined in Section 1.1 of this Agreement.

3.0 STAGE III: DETERMINATION OF IMPUTED PRODUCTION INTERVALS, IMPUTED GROSS ENERGY MARKET REVENUE AND IMPUTED NET REVENUE

Subject to the provisions below, the Facility shall be deemed to operate, and hence, be imputed to produce Electricity at the Adjusted Contract Capacity (“ACC”), for all hours within all Imputed Production Intervals contained in whole or in part in any month.

3.1 Imputed Production Intervals

An “**Imputed Production Interval**” (“IPI”) is either a Deemed Dispatch Interval or a Directed Dispatch Interval. For purposes of this Exhibit J, a set of two or more contiguous Deemed Dispatch Intervals shall be treated as a single Imputed Production Interval and day “d” shall mean the twenty-four (24) hour period between the beginning of the hour ending 01:00 (EST) and the end of hour ending 24:00 (EST). In respect of any hours in an Imputed Production Interval, the following shall apply:

- (i) Any hour that is either a Deemed Dispatch Hour or a Directed Dispatch Hour will be an Imputed Production Hour.
- (ii) Any Imputed Production Hour that is not immediately preceded by an Imputed Production Hour (including Imputed Production Hours in the previous day) will be considered an Imputed Start-Up Hour, and ISU_d will equal the total of the Imputed Start-Up Hours in day “d”, subject to ISU_d not being greater than the sum of DeemSU_d plus DirSU_d. If zero (0), one (1), two (2), or three (3) Imputed Start-Up Hours occur in a day, then ISU_d = 0, 1, 2, or 3, respectively, subject to ISU_d not being greater than the sum of DeemSU_d and Dir SU_d.

3.1.1 Deemed Dispatch Interval

In respect of any hour which is not the subject of a Directed Dispatch Order or is the subject of a Cancelled Directed Dispatch Order, the following shall apply:

- (i) A “**Deemed Dispatch Interval**” is a contiguous set of n Deemed Dispatch Hours for which the Facility is deemed to have operated, which is all hours between and including a Deemed Start-Up Hour and a Deemed Shut-Down Hour. A Deemed Dispatch Interval may consist of only one hour. For greater certainty, it is possible for a Deemed Start-Up Hour and a Deemed Shut-Down Hour to be the same hour.
- (ii) A “**Deemed Start-Up Hour**” is the first hour of a Deemed Dispatch Interval, and is the first hour, other than a Directed Dispatch Hour, following a Deemed Shut-Down Hour in which the Pre-Dispatch Price for that hour h , as published three hours prior to that hour, exceeds the applicable Variable Energy Cost, and the HOEP was greater than or equal to the applicable Variable Energy Cost for that hour h or for the previous hour $h-1$. Notwithstanding the foregoing, the requirement that the Deemed Start-Up Hour follow a Deemed Shut-Down Hour shall not apply to the first Deemed Start-Up Hour in the Term.
- (iii) A “**Deemed Start-Up**” (“**DeemSU**”) is deemed to have occurred at the time of the first Deemed Start-Up Hour in day “ d ”. If one or more Deemed Start-Ups takes place in a day, then $\text{DeemSU}_d = 1$; otherwise $\text{DeemSU}_d = 0$.
- (iv) A “**Deemed Shut-Down Hour**” is the last hour in a Deemed Dispatch Interval, and is the first hour within a Deemed Dispatch Interval in which,
 - (a) HOEP was less than or equal to the applicable Variable Energy Cost for that hour h and for the previous hour $h-1$; or
 - (b) the Pre-Dispatch Prices, as published in that hour h , for hours $h+1$, $h+2$ and $h+3$ are all less than the applicable Variable Energy Cost; or
 - (c) the following hour is a Directed Start-Up Hour.

3.1.2 Directed Dispatch Interval

In respect of any hours which are the subject of a Directed Dispatch Order, in addition to the terms set forth in Exhibit G, the following shall apply:

- (i) A “**Directed Dispatch Interval**” is a contiguous set of n Directed Dispatch Hours for which the Facility is directed to operate, which is all hours between and including a Directed Start-Up Hour and a Directed Shut-Down Hour as set out in a Directed Dispatch Order. For greater certainty, it is possible for a Directed Dispatch Interval and a Deemed Dispatch Interval to be contiguous.

- (ii) A “**Directed Start-Up**” (“**DirSU**”) is deemed to have occurred at the time of the first Directed Start-Up Hour that starts in day “*d*”, resulting from a Directed Dispatch Order. If the Directed Dispatch Order specifies a second Directed Production Interval in day “*d*”, a second Directed Start-Up is deemed to have occurred at the time of the second Directed Start-Up Hour in day “*d*”. If one Directed Start-Up takes place in a day, then $DirSU_d = 1$ and if two Directed Start-Ups take place in a day, then $DirSU_d = 2$.

3.2 Calculation of Imputed Gross Energy Market Revenue

The Imputed Gross Energy Market Revenue is calculated as follows:

$IGEMR_m = \sum_{IPH=1}^{IPH=IPH_m} IP_{IPH} \times HOEP_{IPH} - \sum_{ROH=1}^{ROH=ROH_m} ROC_{ROH} \times OHOEP_m - \sum_{FMOH=1}^{FMOH=FMOH_m} FMO C_{FMOH} \times HOEP_{FMOH}$	
where:	
$IGEMR_m$	is the Imputed Gross Energy Market Revenue (in \$) for Settlement Month “ <i>m</i> ”.
IP_{IPH}	is the Imputed Production corresponding to a given Imputed Production Hour, which is calculated as the Adjusted Contract Capacity for the Settlement Month, “ <i>m</i> ”, (ACC_m), calculated in accordance with Section 1.1 of this Exhibit J, multiplied by one hour.
IPH	is an Imputed Production Hour, which is an hour in Settlement Month “ <i>m</i> ” that is contained within an Imputed Production Interval which occurred, in whole or in part, in Settlement Month “ <i>m</i> ”. For greater certainty, IPH shall include all ROH and $FMOH$.
IPH_m	is the total number of Imputed Production Hours in Settlement Month “ <i>m</i> ”.
$HOEP_{IPH}$	is the Hourly Ontario Energy Price corresponding to a given Imputed Production Hour (expressed in \$/MWh).
$OHOEP_m$	is the Outage HOEP adjustment for Settlement Month “ <i>m</i> ”, determined as follows: (a) if the difference between the weighted average HOEP for all Reported Outage Hours in month <i>m</i> and the weighted average relevant Variable Energy Cost for all Reported Outage Hours in month <i>m</i> is equal to or less than Max Increment _y , then $OHOEP_m = \text{zero}$; and (b) if the difference between the weighted average HOEP for all

	Reported Outage Hours in month m and the weighted average relevant Variable Energy Cost for all Reported Outage Hours in month m is greater than Max Increment_y, then OHOEP_m equals that calculated difference minus Max Increment_y. For the purposes of determining Outage HOEP, where a weighted average is referred to, the weight for each hour shall be expressed by multiplying ROC for such hour multiplied by one hour.
ROC	is the Reported Outage Capacity in any hour, which is calculated as follows: $\text{ROC} = \text{ACC}_m - \text{ROAC}_{\text{ROH}}$ where ACC_m the Adjusted Contract Capacity (in MW) in Settlement Month “m”, calculated in accordance with the formula provided in Section 1.1 of this Exhibit J.
ROC_{ROH}	is the ROC corresponding to a given Reported Outage Hour.
ROAC_{ROH}	is the Reported Outage Availability Capacity (in MW), which is the portion of the Adjusted Contract Capacity available for dispatch as reported by the Supplier to the IESO in respect of a Reported Outage Hour.
ROH	is a Reported Outage Hour, which is an hour within any Imputed Production Interval in Settlement Month “ m ” for which the Supplier has notified the IESO and the Buyer, as appropriate, of an Outage that is not the result of an event of Force Majeure. For greater certainty, any ROH is by definition also an IPH; however, Outages must continue to be reported to the IESO and the Buyer for all Outage Hours.
ROH_m	is the total number of Reported Outage Hours in Settlement Month “ m ”.
Max Increment_y	is equal to \$75.00/MWh as of December 31, 2007. From and after January 1, 2008, and for each succeeding calendar year, Max Increment_y shall be adjusted on the first day of such calendar year to the percentage increase or decrease (if any) between the CPI effective as of the first day of such calendar year and the CPI effective as of the first day of the immediately prior calendar year.
FMO_{FMOH}	is the Force Majeure Outage Capacity in any Force Majeure Outage Hour, which is calculated as described in Section 1.1 of this Exhibit J.
FMOH	is a Force Majeure Outage Hour as defined in Section 1.1 of this Exhibit J.

$FMOH_m$	is the total number of Force Majeure Outage Hours in Settlement Month “ m ”.
$HOEP_{FMOH}$	is the HOEP corresponding to a given Force Majeure Outage Hour.

3.3 Calculation of Imputed Net Revenue

3.3.1 Calculation of Imputed Net Energy Revenue

The Imputed Net Energy Revenue for Settlement Month “ m ” is calculated as follows:

$INER_m = IGEMR_m - IVEC_m$	
where:	
$INER_m$	is the Imputed Net Energy Revenue (in \$) in Settlement Month “ m ”.
$IGEMR_m$	is the Imputed Gross Energy Market Revenue (in \$) in Settlement Month “ m ”.
$IVEC_m$	is the Imputed Variable Energy Cost (in \$) in Settlement Month “$m$”, which is equal to the aggregate Variable Energy Cost for the total Imputed Production during the Settlement Month “m”, calculated as follows: $IVEC_m = \sum_{d=1}^{d=day_m} \left[(SUC_d \times ISU_d) + \left(\sum_{IPH=1}^{IPH=IPH_d} VEC_h \times IP_{IPH} \right) - \left(\sum_{FMOH=1}^{FMOH=FMOH_d} FMO C_{FMOH} \right) \times \frac{FMOH=1}{ACC_m \times IPH_d} - \left(\sum_{FMOH=1}^{FMOH=FMOH_d} VEC_h \times FMO C_{FMOH} \right) \right]$
day_m	is the number of days in the Settlement Month “ m ”.
ISU_d	is the number of Imputed Start-Ups for day “ d ” calculated according to Section 3.1 of this Exhibit J.
SUC_d	is the Start-Up Costs (in \$/start-up) for day “ d ” calculated according to Section 2.3 of this Exhibit J.
VEC_h	is the Variable Energy Cost for hour “ h ” (in \$/MWh) calculated according to Section 2.1 of this Exhibit J.
IPH	is an Imputed Production Hour, which is an hour in day “ d ” that is contained within an Imputed Production Interval which occurred, in

	whole or in part, in day “d”.
IPH_d	is the total number of Imputed Production Hours in day “d”.
IP_{IPH}	is the Imputed Production corresponding to a given Imputed Production Hour (in MWh), which is calculated as the Adjusted Contract Capacity for the Settlement Month, “m” (ACC_m), calculated in accordance with Section 1.1 of this Exhibit J, multiplied by one hour.
FMOH	is a Force Majeure Outage Hour as defined in Section 1.1 of this Exhibit J.
$FMOH_d$	is the number of Force Majeure Outage Hours in day “d”.
$FMO C_{FMOH}$	is the Force Majeure Outage Capacity in any Force Majeure Outage Hour, which is calculated as described in Section 1.1 of this Exhibit J.

3.3.2 Calculation of Future Contract Related Products Revenue

The Future Contract Related Products Revenue for Settlement Month “m” is calculated as follows:

$FCRPR_m = RFCRP_m + RFREC_m$	
where:	
$FCRPR_m$	is the Future Contract Related Products Revenue (in \$) for Settlement Month “m”.
$RFCRP_m$	is: (a) 100% of the net revenue (in \$) arising from any Future Contract Related Products that are Capacity Products; and (b) 50% of the net revenue (in \$) arising from all Future Contract Related Products other than Capacity Products; corresponding to Settlement Month “m”, where net revenue is calculated as the revenue received from the applicable Future Contract Related Products less any reasonable costs incurred by the Supplier to receive such revenue. For greater certainty, such costs shall be determined on an actual cost basis without mark-up, as confirmed by the Buyer and Supplier, and which shall be subject to verification by the Buyer, from time to time.
$RFREC_m$	is any revenue to the Supplier in the Settlement Month “m” arising from the sale, disposition, or encumbrance of the Supplier’s interest in the GHG Emissions Credits provided or paid for by the Buyer pursuant

	to Section 2.12(f)(iii) of the Agreement.
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3.3.3 Calculation of Gas Cancellation Amount

The Gas Cancellation Amount (in \$) in Settlement Month “*m*” is calculated as follows:

$GCA_m = \sum_{d=1}^{d=day_c} GCP_d \times GCV_d$	
where:	
GCA_m	is the Gas Cancellation Amount (in \$) for Settlement Month “ <i>m</i> ”.
GCP_d	is the Gas Cancellation Price (in \$/MMBTU) for any day “<i>d</i>” that was the subject of a Directed Dispatch Order (LT) and (i) which order was cancelled by a full or partial Cancelled Directed Dispatch Order, or (ii) during which day any Directed Dispatch Hour is affected by an Outage caused by an event of Force Majeure, and is calculated as follows: (a) In the event of a sale of the Gas Cancellation Volume of Gas that is not a deemed sale pursuant to Section 3(r) of Exhibit G, then the Gas Cancellation Price is equal to the Gas Price (LT)_{<i>d</i>} minus the price (net of Gas Sale Transaction Costs) at which the Gas Cancellation Volume (GCV_{<i>d</i>}), as calculated below, is sold by the Supplier using Commercially Reasonable Efforts. (b) In the event of a sale of the Gas Cancellation Volume of Gas that is a deemed sale pursuant to Section 3(t) of Exhibit G, then the Gas Cancellation Price is equal to Gas Price (LT)_{<i>d</i>} minus the target price mutually agreed by the Parties pursuant to Section 3(t) of Exhibit G. For greater certainty, GCP_{<i>d</i>} may be a negative number.
GCV_d	is the Gas Cancellation Volume (in MMBTU) associated with the total Directed Dispatch Hours for any day “<i>d</i>” that were the subject of a Directed Dispatch Order (LT) and: (i) where such order was cancelled by a full or partial Cancelled Directed Dispatch Order, the Gas Cancellation Volume shall be an amount equivalent to (A) the applicable Contract Heat Rate multiplied by the applicable Adjusted Contract Capacity in the Settlement Month, “<i>m</i>”, and multiplied by such total number of cancelled Directed Dispatch Hours, plus (B) the Start-Up Costs (in MMBTU per start-up) set out in Exhibit B multiplied by the applicable number of DirSU_{<i>d</i>} cancelled as a result of the Cancelled Directed Dispatch Order; or

	(ii) where during such day any Directed Dispatch Hour is affected by an Outage caused by an event of Force Majeure, the Gas Cancellation Volume shall be an amount equivalent to (A) the applicable Contract Heat Rate multiplied by the weighted average $FMOH_{FMOH}$ over all FMOH in day “ <i>d</i> ” and multiplied by $FMOH_d$, plus (B) the Start-Up Costs (in MMBTU per start-up) set out in Exhibit B multiplied by the applicable number of $DirSU_d$ cancelled as a result of the Outage caused by the event of Force Majeure.
GSTC	is the Gas Sale Transaction Costs (in \$/MMBTU) which represents those transaction costs incurred by the Supplier in a sale of the Gas Cancellation Volume that is not a deemed sale pursuant to Section 3(t) of Exhibit G. The Supplier shall, upon the Buyer’s request, provide reasonable evidence of the GSTC for audit and verification by the Buyer from time to time.
day _c	is the total number of days in Settlement Month “ <i>m</i> ” which were the subject of a Directed Dispatch Order (LT) and (i) which order was cancelled for such days by a full or partial Cancelled Directed Dispatch Order, or (ii) were affected by an Outage caused by an event of Force Majeure.

3.3.4 Calculation of Negative Interval Net Revenue Recapture

NINRR _m	is the Negative Interval Net Revenue Recapture that is applicable to all those Imputed Production Intervals that are Deemed Dispatch Intervals only (provided that for purposes of calculating NINRR, (i) a set of two or more contiguous Deemed Dispatch Intervals shall be treated as a single Imputed Production Interval, and (ii) any Deemed Dispatch Interval having a Deemed Shut-Down Hour that meets the conditions set out in Section 3.1.1(iv)(c) of this Exhibit J shall be excluded from the calculation of NINRR) in Settlement Month “m” where IVEC_{IPI} was greater than IGEMR_{IPI}, and is calculated as the sum, over all such Imputed Production Intervals, of IVEC_{IPI} less IGEMR_{IPI}, where: $\text{IVEC}_{\text{IPI}} = \left[\sum_{\text{IPH}=1}^{\text{IPH}=\text{IPIH}} (\text{VEC}_{\text{IPH}} \times \text{IP}_{\text{IPH}} - \text{VEC}_{\text{FMOH/N}} \times \text{FMO}_{\text{FMOH/N}}) \right] + \text{SUC}_{\text{IPI}} - \text{SUC}_{\text{IPI}} \times \left[\frac{\sum_{\text{IPH}=1}^{\text{IPH}=\text{IPIH}} \text{FMO}_{\text{FMOH/N}}}{\text{ACC}_m \times \text{IPIH}} \right]$ and $\text{IGEMR}_{\text{IPI}} = \sum_{\text{IPH}=1}^{\text{IPH}=\text{IPIH}} (\text{IP}_{\text{IPH}} \times \text{HOEP}_{\text{IPH}} - \text{FMO}_{\text{FMOH/N}} \times \text{HOEP}_{\text{FMOH/N}})$ and $\text{NINRR}_m = \sum_{\text{IPI}=1}^{\text{IPI}=\text{IPI}_m} (\text{IVEC}_{\text{IPI}} - \text{IGEMR}_{\text{IPI}})$
VEC _{IPH}	is the applicable Variable Energy Cost for those Imputed Production Hours during an Imputed Production Interval where IVEC _{IPI} was greater than IGEMR _{IPI} .
SUC _{IPI}	are the Start-Up Costs, if the Imputed Production Interval for which IVEC _{IPI} was greater than IGEMR _{IPI} has an Imputed Start-Up Hour that is the first Imputed Start-Up Hour of the day in which such Imputed Production Interval falls.
IPI _m	is the total number of Imputed Production Intervals in Settlement Month “m” where IVEC _{IPI} was greater than IGEMR _{IPI} .
IPIH	is the total number of Imputed Production Hours in the Imputed Production Interval for which IVEC _{IPI} was greater than IGEMR _{IPI} .
FMO _{FMOH/N}	is the Force Majeure Outage Capacity in any Force Majeure Outage Hour (which is calculated as described in Section 1.1 of this Exhibit J) during an Imputed Production Interval where IVEC _{IPI} was greater than

	IGEMR _{IPI} .
FMOH/N	is a Force Majeure Outage Hour (as defined in Section 1.1 of this Exhibit J) during an Imputed Production Interval where IVEC _{IPI} was greater than IGEMR _{IPI} .

3.3.5 Calculation of the Imputed Net Revenue

The Imputed Net Revenue shall be calculated by adding (i) the Imputed Net Energy Revenue determined in accordance with Section 3.3.1 of this Exhibit J; (ii) the Future Contract Related Products Revenue determined in accordance with Section 3.3.2 of this Exhibit J, and (iii) the Negative Interval Net Revenue Recapture determined in accordance with Section 3.3.4 of this Exhibit J, and subtracting (iv) the Gas Cancellation Amount determined in accordance with Section 3.3.3 of this Exhibit J, expressed as:

$\text{INR}_m = \text{INER}_m + \text{FCRPR}_m + \text{NINRR}_m - \text{GCA}_m$

4.0 **STAGE IV: DETERMINATION OF CONTINGENT SUPPORT PAYMENT AND REVENUE SHARING PAYMENT**

4.1 The Contingent Support Payment and Revenue Sharing Payment for a Settlement Month are calculated as follows:

If $\text{TMFCP}_m > \text{INR}_m$, then: $\text{CSP}_m = \text{TMFCP}_m - \text{INR}_m$ and $\text{RSP}_m = 0$. If $\text{TMFCP}_m < \text{INR}_m$, then: $\text{RSP}_m = \text{INR}_m - \text{TMFCP}_m$ and $\text{CSP}_m = 0$. If $\text{TMFCP}_m = \text{INR}_m$, then: $\text{RSP}_m = 0$ and $\text{CSP}_m = 0$.	
where:	
TMFCP_m	is the Total Monthly Fixed Capacity Payment (in \$) for Settlement Month “m”.
INR_m	is the Imputed Net Revenue (in \$) in Settlement Month “m”.
CSP_m	is the Contingent Support Payment (in \$), if any, for Settlement Month “m”.
RSP_m	is the Revenue Sharing Payment (in \$), if any, for Settlement Month “m”.

EXHIBIT K
ARBITRATION PROCEDURES APPLICABLE TO SECTIONS 1.6 TO 1.10
INCLUSIVE AND SECTION 2.12

The following rules and procedures (the “**Rules**”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.6 to 1.10 inclusive and Section 2.12 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and, at the Buyer’s option, all Other Suppliers required by the Buyer to participate, have been unable to reach agreement as contemplated in Sections 1.6 to 1.10 inclusive and Section 2.12 of this Agreement, as applicable, then the Buyer shall commence arbitration by delivering a written notice (the “**Request**”) to the Supplier and such Other Suppliers required by the Buyer to participate (collectively the “**Suppliers**”). If the Buyer has not already done so, the Buyer shall then deliver to the Suppliers the names of such Other Suppliers. Within twenty (20) days of the delivery of the Request, the Buyer shall deliver to the Suppliers a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within twenty (20) days of the receipt of the Buyer’s notice nominating its arbitrator, the Suppliers shall by written notice to the Buyer nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two (2) arbitrators nominated shall then select a chair person of the arbitration panel (the “**Arbitration Panel**”) who shall be a former judge of a Superior Court or appellate court in Canada.
2. **Application to Court** - If the Suppliers are unable to agree on the nomination of an arbitrator within twenty (20) days of the receipt of the Buyer’s notice nominating its arbitrator, any of the Suppliers or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two (2) arbitrators are unable to agree on a chair person within thirty (30) days of the nomination or appointment of the Supplier’s arbitrator, any of the Suppliers or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.
3. **General** - The Arbitration Panel, once appointed, shall proceed immediately to determine the Replacement Price and/or the Replacement Provision, as the case may be, in accordance with the Ontario *Arbitration Act, 1991* and, where applicable, the Ontario International Commercial Arbitration Act, it being the intention of the Buyer and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement Price and/or the Replacement Provision. Unless otherwise agreed by the Parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Suppliers shall have a right to participate in the arbitration proceeding.

4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the Replacement Price and/or the Replacement Provision needs to be determined through more than one (1) arbitration proceeding, then the Parties agree that the Arbitration Panel shall determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.
5. **Award** - The award of the Arbitration Panel, which shall include the Replacement Price and/or Replacement Provision, shall be made within six months after the appointment of the Arbitration Panel, subject to any extended date to be agreed by the Parties or any reasonable delay due to unforeseen circumstances.
6. **Costs** – The Parties shall pay their own costs of participating in the arbitration proceedings.
7. **Fees** - Each of the arbitrators on the Arbitration Panel shall be paid their normal professional fees for their time and attendances, which fees together with any hearing room fees, shall be paid by the Buyer.
8. **Computation of Time** - In the computation of time under these Rules or an order or direction given by the Arbitration Panel, except where a contrary intention appears, or the parties otherwise agree:
 - (a) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words “at least” are used;
 - (b) statutory holidays shall not be counted;
 - (c) where the time for doing any act or any order or direction given by the Arbitration Panel expires on a day which is not a Business Day, the act may be done on the next day that is a Business Day; and
 - (d) service of a document or notice or any order or direction given by the Arbitration Panel made after 4:00 p.m. (Toronto time), or at any time on a day which is not a business day, shall be deemed to have been made on the next business day.
9. **Place of Arbitration** - The arbitration, including the rendering of the award, shall take place in Toronto, Ontario, which shall be the seat of the proceedings. The language to be used in the arbitration shall be English.

EXHIBIT L
FORM OF BUYER GUARANTEE TO SUPPORT DIRECTED DISPATCH (LT)

THIS GUARANTEE dated and effective as of the Term Commencement Date by the Ontario Power Authority (the “**Guarantor**”) to and in favour of [●] **[insert legal form of the Gas supplier and jurisdiction of organization]** (the “**Counterparty**”). Capitalized words and phrases used in this Guarantee shall have the meanings given to them in the Clean Energy Supply (CES) Contract dated as of the [●] day of [●], 2012 between [●] **[insert legal form of the Supplier and jurisdiction of organization]**, and the Guarantor (the “**Agreement**”) on the date hereof unless otherwise defined herein or unless otherwise indicated by the context of their use.

IN CONSIDERATION of: (i) agreements between the Counterparty and [●] or its permitted assigns under the Agreement (the “**Debtor**”) and (ii) the Counterparty agreeing that it may grant credit to the Debtor (being transactions which the Guarantor will benefit from, directly or indirectly), the Guarantor agrees as follows:

18. Obligations

The Guarantor irrevocably and unconditionally guarantees to the Counterparty, its successors and permitted assigns the due and punctual payment of all present and future amounts payable (including damages, if any, arising from a failure to perform) by the Debtor to the Counterparty under or pursuant to one or more Gas purchase transactions (including physical and financial transactions) entered into by the Debtor with the Counterparty which relate to the Gas required by the Debtor to comply with a Directed Dispatch Order (LT) (a “**DDO**”) issued by the Guarantor in accordance with Exhibit G of the Agreement (collectively, the “**Obligations**”). For certainty, and without limiting the generality of the foregoing, upon receipt by the Counterparty of a copy of a DDO delivered by the Guarantor pursuant to Section 8 hereof, all Gas purchase obligations of the Debtor which relate to such DDO shall be deemed to be Obligations guaranteed hereunder. In addition, the Guarantor agrees to pay the Counterparty, upon demand, all out-of-pocket costs and expenses (including, without limitation, reasonable legal fees on a solicitor/client basis) that the Counterparty incurs in connection with enforcing any of its rights under and collecting upon this Guarantee, to the extent that the Guarantor has received written notice of the claim for any satisfaction of the Obligations before any such out-of-pocket costs and expenses for which the Guarantor is to be responsible are incurred by the Counterparty.

19. Nature of Guarantee

The liability of the Guarantor in respect of the Obligations shall be absolute and unconditional irrespective of any change in the name, ownership, objects, capital, constating documents or by-laws of the Debtor or any amalgamation, sale, merger or re-organization of the Debtor or, if a partnership, in the firm (in which case this Guarantee shall apply to the corporation or partnership, as the case may be, resulting or continuing therefrom). This Guarantee is a guarantee of payment and not of collection.

20. Liability as Primary Debtor

This Guarantee shall apply in respect of all Obligations despite (i) any incapacity, disability, or lack or limitation of status, authorization or power of the Debtor or any of its directors, officers or agents; (ii) the Debtor not being a legal entity; (iii) the bankruptcy, insolvency, dissolution or liquidation of the Debtor; and (iv) any lack of a written contract or of execution of documents by the Debtor if the Debtor has agreed in writing with the Counterparty to be bound by transactions without such writing or execution. Any such Obligations which may not be recoverable from the Guarantor as guarantor shall be recoverable from the Guarantor as principal debtor upon demand and with interest, calculated and payable as provided in this Guarantee.

21. Continuing Guarantee

This is a continuing guarantee and shall apply to and secure payment of all Obligations and any ultimate unpaid balance thereof. Notwithstanding anything in this Guarantee to the contrary, this Guarantee shall continue to be effective or shall be reinstated (as the case may be) in respect of a particular Obligation if at any time (before or after termination of this Guarantee) any payment in connection with that Obligation is rescinded or must otherwise be restored or returned by the Counterparty upon the insolvency, bankruptcy or reorganization of the Debtor or for any other reason whatsoever, all as though such payment had not been made.

22. Term

This Guarantee will remain in full force and effect until the end of the “Term” (as defined in the Agreement) (“**Expiry**”) or until it is terminated with regard to future transactions by the Guarantor giving Notice of termination to the Counterparty (a “**Termination Notice**”). If the Guarantor delivers a Termination Notice to the Counterparty, this Guarantee shall be terminated, subject to any prior expiry as set out above, effective as at the later of (i) the effective date of such termination as specified in the Termination Notice; and (ii) the sixtieth (60th) day following actual receipt of the Termination Notice by the Counterparty. Neither Expiry nor delivery of a Termination Notice shall affect the Guarantor’s liability relating to Obligations arising from transactions entered into on or prior to the effective date of the Expiry or Termination Notice, and this Guarantee shall remain in effect with respect to such Obligations.

23. Right to Payment

The Guarantor’s liability under this Guarantee will not be affected by the existence, validity, enforceability, perfection or extent of any collateral or security for the Obligations. The Counterparty shall not be obligated to file any claim relating to the Obligations if the Debtor becomes subject to a bankruptcy, reorganization or similar proceeding and the failure of Counterparty to do so shall not affect the Guarantor’s obligations under this Guarantee. The Counterparty shall not be bound to file suit or seek or exhaust its recourse against the Debtor or any other person or to realize on any security it may hold in respect of the Obligations before being entitled to payment under this Guarantee. The Guarantor renounces all benefits of discussion and division.

24. Dealings by Counterparty

The Counterparty may, without giving Notice to or obtaining the consent of the Guarantor, enter into agreements and transactions with the Debtor, amend or modify agreements with the Debtor, settle or compromise any of the Obligations, grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, whether full, partial, conditional or otherwise, perfect or fail to perfect any securities, release any undertaking, property or assets charged by any securities to third parties and otherwise deal or fail to deal with the Debtor and others (including, without limitation, any other guarantors) and securities, hold moneys received from the Debtor and others or from any securities unappropriated, apply such moneys against part of the Obligations and change any such application in whole or in part from time to time, all as the Counterparty may see fit, without prejudice to or in any way discharging or diminishing the liability of the Guarantor. No loss of any securities received by the Counterparty from the Debtor or any other persons shall in any way discharge or diminish the liability of the Guarantor, unless occasioned through the fault of the Counterparty.

25. Delivery of Copies of Directed Dispatch Orders

The Guarantor shall deliver, or cause to be delivered, to the Counterparty, a copy of each DDO issued by the Buyer to the Debtor in accordance with Exhibit G of the Agreement.

26. Payment

If the Debtor fails to pay any Obligation when due, the Guarantor will pay that Obligations directly to the Counterparty promptly upon the Counterparty's demand in accordance with this Guarantee. The liability of the Guarantor shall be payable within five (5) Business Days following written demand delivered to the Guarantor's address set forth in this Guarantee or at such other address as the Guarantor may from time to time designate by Notice to the Counterparty. The liability of the Guarantor shall bear interest from the date five (5) Business Days following Guarantor's receipt of such demand to the date of payment (and both before and after any judgement) at the lesser of (i) the rate equal to the Interest Rate plus two percent (2%) per annum; and (ii) the maximum legal rate per annum.

27. Waivers

The Guarantor waives notice of acceptance of this Guarantee and waives diligence, presentment, protest, notice of protest, acceleration or dishonour and all demands whatsoever other than the demand described in the preceding section of this Guarantee. Any failure of the Counterparty to exercise, and any delay by the Counterparty (other than a delay that gives rise to a defence under an applicable statute of limitation) in exercising, any right, remedy or power under this Guarantee shall not operate as a waiver of such right, remedy or power. Any single or partial exercise by the Counterparty of any right, remedy or power under this Guarantee shall not preclude any other or future exercise of any right, remedy or power.

28. Maximum Liability

Notwithstanding any other provision of this Guarantee, the Guarantor's aggregate liability under this Guarantee is limited to [●] Million Canadian Dollars (\$[●]) **[insert as per paragraph 3(e) of Exhibit G]**; provided that this Guarantee shall cover and the Guarantor shall pay, in addition, (i) interest (at the rate set forth in Section 9 above) after demand by the Counterparty under this Guarantee until payment by the Guarantor and (ii) the enforcement costs and expenses (including, without limitation, legal fees on a solicitor/client basis) to which the Counterparty is entitled under this Guarantee.

Except to the extent that the agreements between the Debtor and the Counterparty expressly provide that the Debtor shall have liability for damages other than direct, actual damages, THE LIABILITY OF THE GUARANTOR SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES SUFFERED OR INCURRED BY THE COUNTERPARTY IN RELATION ONLY TO THE OBLIGATIONS AND THE GUARANTOR SHALL NOT BE LIABLE FOR CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES IN TORT, CONTRACT OR OTHERWISE, INCLUDING DAMAGES FOR LOST PROFITS.

29. Subrogation Rights

Until the Obligations have been fully paid and discharged, the Guarantor shall not have any right to be subrogated to any rights of the Counterparty against the Debtor. Upon the Guarantor having fully and unconditionally paid and discharged its obligations under this Guarantee, the Guarantor shall be subrogated to the rights of the Counterparty against the Debtor.

30. Taxes and Set-Off

All amounts payable by the Guarantor shall be paid without any deduction or withholding whatsoever for amounts payable to third parties (other than the Debtor), whether for duties, levies or taxes imposed, levied or assessed by any authority or any other matter whatsoever, unless and to the extent that the Guarantor shall be prohibited by law from doing so, in which event the Guarantor shall (i) forthwith pay to the Counterparty an additional amount so that the amount received by the Counterparty will equal the full amount of the Obligations; and (ii) pay to the relevant authorities the full amount of the deduction or withholding (including any deduction or withholding on any additional amounts payable pursuant to this sentence). The Guarantor has the right to set-off any amounts due by the Counterparty to the Debtor under any of the agreements relating to the Obligations against any payment due under this Guarantee.

31. Reservation of Defences

The Guarantor hereby waives all suretyship defences of every kind and all payments required hereunder shall be made in accordance with the terms hereof, provided that the Guarantor shall have the benefit of and the right to assert any defences against the claims of the Counterparty which are available to the Debtor and which would have been available to the Guarantor if it were in the contractual position of the Debtor under the agreements relating to the Obligations, other than defences (i) arising from the bankruptcy of the Debtor; (ii) expressly waived in this

Guarantee; (iii) arising from the lack of due authorization, execution or delivery by the Debtor of any agreement(s) creating or giving rise to the Obligations; and (iv) previously asserted by the Debtor, to the extent that the claim of the Counterparty against which any defence was asserted by the Debtor has been successfully and finally resolved in favour of the Counterparty by a court of competent jurisdiction and last resort.

32. Representations and Warranties

The Guarantor hereby represents and warrants that (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) the execution, delivery and performance of this Guarantee are within the Guarantor's powers, have been duly authorized by all necessary action and do not violate the Guarantor's charter or by-laws or any law, order or contractual restriction binding on the Guarantor; (iii) any governmental and other consents required with respect to the execution, delivery and performance of this Guarantee by the Guarantor have been obtained and are in full force and effect and all conditions of any such consents have been complied with; (iv) this Guarantee constitutes the legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with its terms (except as enforceability may be limited by bankruptcy, insolvency, moratorium and other laws affecting enforcement of creditors' rights in general and general principles of equity); and (v) it expects to derive advantage from each and every extension of credit to the Debtor.

33. Additional Security

This Guarantee is in addition and without prejudice to any security of any kind (including, without limitation, any other guarantees, whether or not in the same form) held by the Counterparty.

34. Notices

Every communication, request, demand and notice of any kind (in each case, a "**Notice**") delivered or required to be delivered under this Guarantee shall be in writing and delivered either personally, via prepaid overnight courier service, via certified or registered mail or via facsimile transmission. A Notice shall be deemed received if sent to the address or fax number specified below (i) on the day received if sent by overnight courier delivery and received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours; (ii) on the next business day if sent by facsimile transmission when sender has machine confirmation that the Notice was transmitted; and (iii) ten (10) Business Days after mailing if sent by certified or registered mail.

To the Guarantor:

[●] [address]

[●] [city/state/province]

To the Counterparty:

[●] [address]

[●] [city/state/province]

[●] [zip/postal code]

[●] [zip/postal code]

Attn: [●]

Attn: [●]

Fax: [●]

Fax: [●]

The Guarantor or the Counterparty may change its address for Notices by providing Notice to the other.

35. Further Assurances

The Guarantor shall from time to time upon the request of the Counterparty, execute and deliver, under seal or otherwise, all such further agreements, instruments and documents and do all such further acts and things as the Counterparty may require to give effect to the transactions contemplated by this Guarantee.

36. Successors and Assigns

This Guarantee shall enure to the benefit of and be binding upon the successors and permitted assigns of the Guarantor and the Counterparty. This Guarantee shall not be assigned or otherwise transferred, in whole or in part, by the Guarantor or the Counterparty without the prior written consent of the other, which consent shall not be withheld unreasonably.

37. Governing Law and Attornment

This Guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario, without regard to its conflicts of laws principles. Each of the Guarantor and the Counterparty irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Ontario in any action or proceeding arising out of or relating to this Guarantee and waives any objection to such jurisdiction on the grounds that it is an inconvenient forum or any similar grounds. The Guarantor consents to the service of process in any action or proceeding relating to this Guarantee by Notice to the Guarantor in accordance with the provisions of Section 17 hereof. Nothing in this Section 20 shall prevent the Counterparty from enforcing any judgment arising from this Guarantee against the Guarantor in any other jurisdiction.

38. Limitation Period

The limitation period applicable to any claim hereunder shall not begin to run until actual demand is made by the Counterparty pursuant to this Guarantee. The Guarantor and the Counterparty of this Guarantee agree to extend such limitation period to six (6) years from the date of such actual demand.

39. Entire Agreement

There are no representations, conditions, agreements or understandings with respect to this Guarantee or affecting the liability of the Guarantor or the Counterparty other than as set forth or

referred to in this Guarantee. No provision of this Guarantee may be amended or waived except by a written instrument executed by the Guarantor and the Counterparty.

The Guarantor has executed this Guarantee as of the date first above written.

ONTARIO POWER AUTHORITY

By: _____

Name:

Title:

EXHIBIT M
SECTION 16.7 TEST CONDITIONS

1. The Facility has completed at least 2,000 hours of operation after the COD, of which not less than 160 hours has been at no less than the Contract Capacity and the balance has been at an output level equal to or greater than sixty percent (60%) of Annual Average Contract Capacity.
2. For a period of at least six (6) consecutive calendar months within the last twelve (12) calendar months prior to application to the Buyer under Section 16.7 of the Agreement, the Facility has satisfied the following criteria when evaluated on a cumulative basis over this six (6) month period:

- (a) The average Availability (as determined below) exceeds ninety three percent (93%).

The Availability shall be calculated in accordance with the formula set out in Exhibit E with the exception that the time period for calculating the “OH”, “FMH” and “THM” shall be the six-month period specified above.

The operating reliability is demonstrated by a Forced Outage Factor not exceeding two and one-half percent (2.5%), calculated as the fraction of (i) the sum of the amount of Contract Capacity (expressed in MW) not available for dispatch by the IESO in each hour (or pro rata for a portion of an hour) during this six (6) month period as a result of an Outage (other than any Planned Outages or any Outages caused by an event of Force Majeure) over (ii) the product of the Contract Capacity and the total number of hours in this six (6) month period (“**Forced Outage Factor**”).

- (b) The start reliability is demonstrated by the number Failed Start-Ups not exceeding the greater of:
 - (i) four (4); or
 - (ii) four percent (4%) of Start-Ups
3. The Facility has completed and passed a Capacity Check Test within the last six (6) months prior to application to the Buyer under Section 16.7 of the Agreement.

EXHIBIT N
FORM OF ACKNOWLEDGEMENT OF SECURED LENDER'S RIGHTS

TO: **[Insert name of agent for Secured Lenders]** (the "Agent")

RECITALS:

- A. The Ontario Power Authority has exercised its right to assign the Clean Energy Supply (CES) Contract (the "**CES Contract**") dated as of the [●] day of [●] between [●] (the "**Supplier**") and the Ontario Power Authority pursuant to Section 16.5(d) or (e) thereof to **[insert name of assignee]** (the "**Assignee**").
- B. The Supplier has delivered to the Ontario Power Authority a copy of the **[Credit Agreement and the Security, the registration details of the Credit Agreement and the Security]**, together with written notice of the address of the Agent to which notices may be sent pursuant to Section 12.1(d) of the CES Contract.

The Assignee acknowledges and confirms that:

- (i) the provisions of Section 16.5(d) or (e) of the CES Contract have been complied with by the Ontario Power Authority and the Assignee;
- (ii) all of the representations, as amended below, set forth in Section 7.2 of the CES Contract are deemed to be made by the Assignee to the Supplier, and subject to Article 12 of the CES Contract, by the Assignee to the Agent, as of the date of the assignment;
- (iii) the representation set forth in Section 7.2(a) of the CES Contract is amended as follows:
 - “(a) The Assignee is a **[corporation/partnership/unlimited liability company]** created under the laws of **[Province/Canada]**, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.”
- (iv) the **[Credit Agreement and the Security]**, collectively, constitutes a Secured Lender's Security Agreement under the CES Contract and that the Agent constitutes a Secured Lender thereunder; and
- (v) subject to the provisions of Article 12 of the CES Contract and compliance therewith by the Agent and the Supplier, as applicable, the Agent shall be entitled to the benefit of the provisions of Article 12 of the CES Contract

in favour of a Secured Lender and the Agent shall be entitled to enforce the same as if the Agent were a party to the CES Contract.

Dated this [●] day of [●]

[Insert name of Assignee]

By: _____

Name:

Title:

EXHIBIT O
FORM OF QUARTERLY REPORT

FORM OF QUARTERLY REPORT
OPACM – Form 001 (2008-10)
SUBMIT FORM BY E-MAIL TO
contract.management@powerauthority.on.ca

Pursuant to Section 2.6 of the Agreement, the Supplier is hereby submitting this Quarterly Progress Report to the Buyer

Date	
Legal Name of Supplier	
Facility	
Contract Title	
Contract Date	
Reporting Period	
Contractual COD	
OPA Approved Revised COD	
1. Executive Summary (of Quarterly Activities in 4-6 Bullet Points)	
▪ ▪ ▪ ▪	
2. Assignment and Change of Control (Sections [No.] and [No.] of the Agreement)	
▪	
3. Force Majeure (Section [No.] of the Agreement)	
▪	
4. Secured Lender's Security Agreement (Section [No.] of the Agreement) If a Secured Lender's Security Agreement has been entered into by the Supplier, the Supplier needs to provide details.	
▪	

5. Company Representative (If there has been a change, pursuant to Section [No.] of the Agreement, the Supplier is required to submit a new Form of Company Representative Notice [OPACM-Form-005])

Name of Company Representative	[Name]
Title	[Title]
Mailing Address	[Mailing Address incl Postal Code]
Telephone	() [No.]
Fax	() [No.]
E-Mail Address	[Email Address]

6. Project Contact for Public Information (Provide contact information for the individual who is designated to provide information to the media or the public about the project or facility. This information will be listed on the OPA website.)

Name of Project Contact for Public Information	[Name]
Title	[Title]
Company	[Title]
Telephone	() [No.]
Toll-Free Telephone (if applicable)	[No.]
E-Mail Address	[Email Address]

7. Representations of the Supplier (Section [No.] of the Agreement)

[illegible]

8. Development, Design and Construction Progress						
Item	Reportable Events	Status of Efforts / Progress Description	% Complete	Date		
				Contractual	Forecast	Actual
1	Required regulatory approvals including municipal site plan approvals and environmental permitting to allow construction to commence	Progress: Issues:				
2	Completion of IESO connection assessment and approval processes including issuance of impact assessment reports by the IESO, the Transmitter, and LDC, as applicable	Progress: Issues:				
3	Execution of EPC Contract or main construction contract	Progress: Issues:				
4	Financial closing	Progress: Issues:				
5	Major equipment or long lead time equipment ordered	Progress: Issues:				

6	Major equipment or long lead time equipment delivered	Progress: Issues: 				
7	Commencement of construction	Progress: Issues: 				
8	Connection of the Facility to the IESO controlled grid with availability of back feed power	Progress: Issues: 				
9	Testing and commissioning	Progress: Issues: 				
10	Commercial Operation Date	Progress: Issues: 				

9. Supplier Submittals Prior to Term Commencement Date (Required to confirm the section numbers and the completeness of submissions)

Item	Section	Description of Submittals	Submission Date		
			Contractual	Forecast	Actual
1		Single Line Diagram			
2		Independent professional engineer certificate			
3		Metering Plan			
4		Valid certificates of insurance for “all risk”			
5		Valid certificates of insurance for commercial general liability			
6		Valid certificates of insurance for environmental/ pollution liability			

7		Clearance certificate of <i>Workplace Safety and Insurance Act (Ontario)</i>			
8		Evidence on Supplier registered with the IESO as a “Metered Market Participant” and as a “Generator”			
9		Completion and Performance Security before Term Commencement Date			
10		Completion and Performance Security upon Term Commencement Date			
11		Long Term Operating Plan			

10. Progress Photos

Provide five to ten photos that best represent the progress of construction work during the quarter.

- Photos should not be inserted into this section of the quarterly report
- However, they should be sent as JPEG attachments in a separate email (the email must not exceed 10MB)
- Use descriptive filenames to reflect or explain the content of each photo (“Turbine installation in progress.jpg” and not “Photo 1.jpg”)

Quarterly progress reports shall be submitted, electronically only and without covering letter, to the Director of Contract Management of the Buyer by the fifteenth (15th) day of each calendar quarter following the date of the Agreement (i.e., January 15, April 15, July 15, October 15, as the case may be) and continuing until the Term Commencement Date. The reports shall be prepared in bullet form, and shall contain the following:

1. **Executive Summary** – A brief overview of major work accomplished, any significant safety or environmental events that have occurred in the reporting period, and any issues that could have potential schedule impacts or invoking Force Majeure.
2. **Assignment and Change of Control** – Report the status of Assignment and/or Change of Control, if any (this section is to report status only, the Supplier is required to give the Buyer prompt notice before this occurs as per Section [No.]).
3. **Force Majeure** – Report the status of Force Majeure events, if any (this section is to report status only, the Supplier is required to give the Buyer prompt notice when Force Majeure is invoked as per Section [No.]).
4. **Secured Lender’s Security Agreement** – Report the status of the Secured Lender’s Security Agreement (this section is to report status only. The Supplier is required to give the Buyer promptly the details of the Secured Lender’s Security Agreement as per Section [No.]).

5. **Company Representative** – Report the details of the current Supplier Company Representative. (The Supplier is required to give the Buyer promptly the details of the Supplier Company Representative as per Section [No.]).
6. **Project Contact for Public Information** – Provide contact information for the individual who is designated to provide information to the media or the public about the project or facility. This information will be listed on the OPA website.
7. **Representations of the Supplier** – Report that the representations of the Supplier stipulated in Section [No.] of the Agreement are still valid or provide a statement of the exceptions.
8. **Development, Design and Construction Progress** – Report the status of each reportable event as shown on the quarterly progress report form; if the reportable event is also a Milestone Event, then enter the contractual Milestone Date as per Exhibit [No.].
9. **Supplier Submittals Prior to Term Commencement Date** – Report the status of the submittals as shown on the quarterly progress report form.
10. **Progress Photos** – Provide photos that best represent the progress of construction work during the quarter. The photos should not be inserted into the quarterly report, but sent in a separate email as JPEG attachments with descriptive filenames.

EXHIBIT P
KEY EQUIPMENT SUPPLIERS

1. List of Key Equipment Suppliers

The Key Equipment Suppliers shall include the following:

- (a) Key Equipment Suppliers under contract as of the date of the Agreement:
 - MPS Canada, Inc.
- (b) Key Equipment Suppliers (to be selected by the EPC Contractor following execution of the EPC Contract) shall include the third party equipment suppliers which are at Arm's Length to the Supplier and the EPC Contractor and under contract with the EPC Contractor to supply the following key engineered equipment or equivalents, if applicable:
 - Heat Recovery Steam Generator ("HRSG")
 - Steam Turbine Generator
 - HRSG Bypass Stack
 - HRSG Bypass Stack Heater
 - Generator Step Up Transformer
 - Distributed Control System
 - Continuous Emissions Monitoring System
 - Plant Cooling System
 - High Pressure Boiler Feed Water Pump
 - Demineralized Water Treatment System
 - Condensate Pump
 - Condensate Polisher System
 - Medium Voltage Switchgear and Motor Control Center
 - Gas Compressor
 - Water Treatment Plant Module

- SCR (Selective Catalytic Reduction) Stack Assembly

2. Due Diligence Process Relating to Selection of Key Equipment Suppliers

As part of the procurement process undertaken to select Key Equipment Suppliers (except for the supplier of the combustion turbine/generator sets as noted in Section 1 above), the Supplier shall enforce the provisions of the EPC Contract which shall require the EPC Contractor to undertake the following minimum due diligence procedures to mitigate the risk associated with strikes or labour disputes relating to the employees of Key Equipment Suppliers:

- (a) The EPC Contractor shall require each bidder to submit the following information as part of its bid submission:
 - Is Bidder's shop and/or Subcontractor's shop affiliated with any labour union?
_____ (yes) _____ (no)
 - If yes, provide the following information:
 - (i) Name of Bidder's and/or Subcontractor's Labour Union(s) by Trade and Local Union Number(s).
 - (ii) Dates of expiration and/or renegotiation dates of each labour contract or collective agreement.
 - (iii) Is Bidder's shop(s) and/or Subcontractor's shop(s) presently experiencing any work stoppages as a result of a strike or labour dispute?
_____ (yes) _____ (no)
 - (iv) Furnish date and length of last work stoppage resulting from a strike or labour dispute.
- (b) The EPC Contractor shall review and analyze the answers to these questions to determine whether there is an impending risk of a strike or labour dispute affecting a bidder and its subcontractors. To the extent that a labour contract or collective agreement is set to expire during the execution of the work, the EPC Contractor shall consider the bidder's prior history relating to strikes and labour disputes and any pending or potential issues between the bidder and its labour union(s).
- (c) If, after completing the foregoing due diligence procedures, the EPC Contractor concludes that there is a reasonable risk that a bidder or its subcontractors may be subject to a strike or labour dispute which will unduly delay the execution of the work under the EPC Contract, the EPC Contractor shall disqualify such bidder from the procurement process.

3. Measures to Mitigate Impact of Key Equipment Supplier Strikes or Labour Disputes

In the event of a strike or labour dispute by employees of any Key Equipment Supplier, the Supplier shall use, and shall enforce the provisions of the EPC Contract which shall require the EPC Contractor to use, Commercially Reasonable Efforts to mitigate the duration and impact of such a strike or labour dispute, including using Commercially Reasonable Efforts to recover any time lost as a result of such delay.

4. Where No EPC Contractor or EPC Contract

In the case of there being one or more Other Contractor(s), the Supplier's obligations under this Exhibit P shall be met if the Other Contractor(s) shall themselves carry out and be subject to such obligations or requirements, and have any liabilities, that the EPC Contractor would have been required to carry out or would have been subject to had the EPC Contractor been engaged, and the EPC Contract contained such provisions, as otherwise contemplated in this Exhibit P. For clarity, the provisions of Sections 2 and 3 of this Exhibit P shall apply to every Other Contractor.

5. Multiple Contractors

Subject to Section 4 of this Exhibit P, the obligations that would otherwise be applicable to an EPC Contractor or under an EPC Contract under this Exhibit P may be borne by more than one Other Contractor or be contained in more than one contract (such that some such obligations are contained in one contract and others in another contract) provided that, in respect of each and every such Other Contractor and contract, the applicable provisions of Sections 2 and 3 of this Exhibit P shall apply.

**EXHIBIT Q
LONG TERM OPERATING PLAN**

SUBMIT BY E-MAIL TO
contract.management@powerauthority.on.ca

Pursuant to Section [No.] of the Contract, the Supplier is hereby submitting this Long Term Operating Plan to the Buyer.
Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the "Contract")
Contract Date	

1. Contract Capacity

Contract Capacity (MW – electrical)					
As Applicable		As Applicable		As Applicable	
Season 1		Summer		Year	
Season 2					
Season 3		Winter			
Season 4					
Annual Average Contract Capacity					

2. Unit Outages

2.1 Planned Outages

Assumptions:

Contract Year	Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Planned Outages (Days)					
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							

2.2 Unplanned Outages

Assumptions:

Contract Year	Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Unplanned Outages (%)					
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							

3. Overall Availability

Assumptions:

Contract Year	Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Availability (%)					
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							

**EXHIBIT R
ANNUAL OPERATING PLAN**

SUBMIT BY E-MAIL TO
contract.management@powerauthority.on.ca

Pursuant to Section [No.] of the Contract, the Supplier is hereby submitting this Annual Operating Plan to the Buyer.
Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the "Contract")
Contract Date	
Contract Year No.	
From Month / Year to Month / Year	

1. Contract Capacity

Contract Capacity (MW-electrical)					
NEW AND CLEAN CONDITION					
As Applicable		As Applicable		As Applicable	
Season 1		Summer		Year	
Season 2					
Season 3					
Season 4		Winter			
Annual Average Contract Capacity					
Contract Capacity (MW)					
CONTRACT CAPACITY FOR THE CONTRACT YEAR					
As Applicable		As Applicable		As Applicable	
Season 1		Summer		Year	
Season 2					
Season 3					
Season 4		Winter			
Annual Average Contract Capacity					

2. Unit Outages

2.1 Planned Outages

Assumptions:

Contract Month	Month / Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Planned Outages (From / To and Number of Days)					
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

2.2 Unplanned Outages

Assumptions:

Contract Month	Month / Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Unplanned Outages (%)					
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

3. Overall Availability

Assumptions:

Contract Month	Month / Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Availability Outages (%)					
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

EXHIBIT S
FORM OF COMPANY REPRESENTATIVE NOTICE

OPACM – Form 005 (2008-10)
SUBMIT BY E-MAIL TO
contract.management@powerauthority.on.ca

Pursuant to Section [No.] of the Agreement, the Supplier is hereby submitting this Form of Company Representative Notice to the Buyer.

Date	
Legal Name of Supplier	
Facility	
Contract Title	
Contract Date	

Name of Company Representative	
Title	
Mailing Address	
Telephone	()
Fax	()
E-Mail Address	

Authorized Signatory:	
By: _____ Date: _____	
[Name]	
[Title]	
[Supplier Legal Name]	

EXHIBIT T
FORM OF CONFIDENTIALITY UNDERTAKING

FORM OF CONFIDENTIALITY UNDERTAKING

OPACM – Form 006 (2008-10)

SUBMIT FORM BY E-MAIL TO

contract.management@powerauthority.on.ca

Pursuant to Section [No.] of the Agreement, the Supplier is hereby submitting this Form of Confidentiality Undertaking to the Buyer.

Date	
Legal Name of Supplier	
Facility	
Contract Title	
Contract Date	

WHEREAS the Supplier is a party to the Agreement;

AND WHEREAS the undersigned is a Secured Lender or prospective Secured Lender;

AND WHEREAS the Supplier wishes to disclose Confidential Information contained in the Agreement to the undersigned with respect to the financing of the Facility such disclosure is prohibited without the provision to the Buyer of this Confidentiality Undertaking;

NOW THEREFORE the undersigned covenants and agrees in favour of the Buyer to hold any and all Confidential Information confidential on the terms set out in Article 8 of the Agreement as applicable to the Supplier, mutatis mutandis.

All capitalized terms used in this Confidentiality Undertaking and not defined herein shall have the respective meanings ascribed thereto in the Agreement.

Signed this	[Day]	day of	[Month, Year]	.
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[Supplier Legal Name]

By:

Name: [Name]

Title: [Title]

[Name of Secured Lender]

By:

Name: [Name]

Title: [Title]

EXHIBIT U
FORM OF SUPPLIER’S CERTIFICATE RE COMMERCIAL OPERATION

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO
contract.management@powerauthority.on.ca

Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the “Contract”)
Contract Date	
Commercial Operation Date or Term Commencement Date	
Beginning of the Hour Ending	01:00 hours (EST)

WHEREAS subsection [No.] of the Clean Energy Supply (CES) Contract (the “Contract”) between [Supplier Short Name] and the Buyer dated as of [Contract Date] provides that the Facility will be deemed to have achieved Commercial Operation at the point in time when, *inter alia*, the Buyer has received a certificate (this “Certificate”) addressed to it from the Supplier containing certain statements with respect to the Facility;

NOW THEREFORE, [SUPPLIER LEGAL NAME] CERTIFIES to the Buyer that:

- a) [Independent Engineering Company Legal Name] is:
- (i) duly qualified and licensed to practice engineering in the province of Ontario and which holds a certificate of authorization issued by Professional Engineers Ontario;
 - (ii) does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the facility; and
 - (iii) not an affiliate of [Supplier Short Name] nor directly or indirectly Controlled by [Supplier Short Name].
- b) [Supplier Short Name] has provided to the Buyer the following documentation required to be so provided at or prior to Commercial Operation:

- i) Certificate of an independent professional engineer using OPA’s “Form of Independent Engineer Certificate” (OPACM-Form-016) in accordance with Section [No.] of Contract;
- ii) As-built single line diagram in accordance with Section [No.] of the Contract;
- iii) Insurance certificates required pursuant to Section [No.] of the Contract, including without limitation, certificates in respect of:
 - 1) All-risk property insurance;
 - 2) Equipment breakdown insurance (if applicable);
 - 3) Commercial general liability insurance; and
 - 4) Environmental/pollution liability insurance;
- iv) *Workplace Safety and Insurance Act* (Ontario) clearance certificate pursuant to Section [No.];
- v) Metering Plan that has been approved by the Buyer; pursuant to Section [No.];
- vi) Long Term Operating Plan pursuant to Section [No.];
- vii) Annual Operating Plan pursuant to Section [No.]; and
- viii) Ontario Energy Board Generator License pursuant to Section 2.11(b).

Signed this	[Day]	day of	[Month, Year]	.
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			[Legal Name of Supplier]		
			Per:		
				Name: [Name]	
				Title: [Title]	

EXHIBIT V
FORM OF INDEPENDENT ENGINEER’S CERTIFICATE
RE COMMERCIAL OPERATION

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO
contract.management@powerauthority.on.ca

Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the “Contract”)
Contract Date	
Legal Name of Independent Engineer	

WHEREAS subsection [No.] of the CES Contract (the “Contract”) between the Supplier and the Buyer dated as of [Contract Date] provides that the Facility will be deemed to have achieved Commercial Operation at the point in time when, *inter alia*, the Buyer has received a certificate (this “Certificate”) addressed to it from an Independent Engineer containing certain statements with respect to the Facility;

AND WHEREAS [Legal Name of Independent Engineer] (the “Undersigned”) acts as the Independent Engineer for the purposes of delivery of this Certificate;

NOW THEREFORE, THE UNDERSIGNED CERTIFIES to the Buyer, and acknowledges that the Buyer is relying on this Certificate, that:

- (i) the Undersigned is duly qualified and licensed to practice engineering in the province of Ontario;
- (ii) the Undersigned is neither an employee nor a consultant of the Supplier such that the majority of either the time or billings of the Undersigned during the 18 month period prior to the date hereof were devoted to the Facility;
- (iii) the Undersigned is not an affiliate of the Supplier nor directly or indirectly Controlled by the Supplier; and

- (iv) that each of the required statements set out in subparagraphs (A) to (F), inclusive, of Section 2.6(a)(i) of the Contract are true, correct, and have been satisfied with respect of the Facility.

Signed this	[Day]	day of	[Month, Year]	.
----------------	-------	-----------	---------------	---

			[Legal Name of Independent Engineer]		
			Per:		
				Name: [Name, P.Eng.]	
				Title: [Title]	

			Professional Engineer Stamp of Signing Engineer	

APPENDIX A

To Independent Engineer Certificate

PERFORMANCE TEST REPORT

EXHIBIT W

EMISSIONS MEASUREMENT METHODOLOGY

The Emissions Measurement Methodology is set out below:

1. Assumptions Regarding Emissions Limits

The respective Emissions Limits for NO_x and CO set out in Exhibit A are based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry-volume basis.

2. Continuous Emissions Monitoring (CEM) Requirements

A Continuous Emissions Monitoring (CEM) system to measure actual emissions of NO_x, CO, and O₂, shall be maintained in compliance with the requirements of Section 7.1 of MOE Guideline A-5, and in compliance with all requirements and specifications of the Certificate of Approval (Air) for the Facility, as amended from time to time.

The CEM system shall continuously monitor and record the concentrations of the actual emissions of NO_x, CO, and O₂ in the undiluted exhaust gases.

The Supplier shall retain all records and information related to or resulting from the maintenance of the CEM system and monitoring activities for NO_x and CO in accordance with Section 15.2 of this Agreement.

3. Correction of Readings

Readings of actual emissions of each of NO_x and CO, respectively, will be corrected to the following conditions:

- a. Reference Conditions; and
- b. 15% O₂ content in the exhaust gases on a dry-volume basis;

in accordance with MOE Guideline A-5.

4. Measurement Period

The readings of actual emissions of each of NO_x and CO, respectively, as corrected pursuant to section 3 of this Exhibit W, will be arithmetically averaged over a rolling period of the last 24 cumulative hours of Actual Operation of the Facility. For greater certainty, where such 24 cumulative hour period is not comprised of a single uninterrupted 24 hour period, the 24 cumulative hour period shall be comprised of the sum of all whole and partial hours of Actual Operation that equal 24 cumulative hours of Actual Operation.

Without limiting the generality of the foregoing and by way of an example, assuming that the Facility was only in Actual Operation from 07:30 to 11:30 EST from Monday, June 1, 2009 to Friday, June 5, 2009, inclusive, with the next period of Actual Operation occurring from 07:30 to 11:30 EST on Monday, June 8, 2009, then the rolling 24 cumulative hour period, as measured immediately after 11:30 EST on Monday, June 8, 2009, would be comprised of each of the six separate four-hour periods of Actual Operation between Monday, June 1, 2009 to Monday, June 8, 2009, inclusive.

5. Compliance with Emissions Limits

The average readings of actual emissions of each of NO_x and CO, respectively, over the 24 cumulative hour period as determined pursuant to paragraph 4 of this Exhibit W (or over the 4 hour period for purposes of Sections 2.6(a)(i)(E) and 15.6(g)), will be compared with the respective Emissions Limits for purposes of this Agreement.

EXHIBIT X
GAS DELIVERY AND MANAGEMENT SERVICES

1. Confirmation Regarding Existing Net Revenue Requirement

- (a) The Buyer and Supplier acknowledge and agree that the Net Revenue Requirement set out in Exhibit B does not contain or incorporate any costs, contingencies, compensation or risk premiums whatsoever associated with Gas transportation, distribution, storage, or balancing services to the Facility's burner-tip (collectively, the “**Gas Delivery and Management Services**” or “**GD&M Services**”).
- (b) The purpose of this Exhibit is to provide for the full reimbursement (on a flow-through basis) to the Supplier from the Buyer of GD&M Services costs required for the operation of the Facility during the Term in accordance with the terms of this Agreement as more particularly set out in Section 3 of this Exhibit, and which compensation shall be paid by the Buyer to the Supplier in accordance with Section 4 of this Exhibit, regardless as to which Party is paying the Monthly Payment.

2. Gas Review Committee

Within sixty (60) days after the date of this Agreement, the Supplier and the Buyer shall form a Gas review committee (the “**Gas Review Committee**”) which will be comprised of two nominees from each of the Supplier and the Buyer. Each Party will provide written notice to the other of its nominees within such sixty (60) day period. All decisions of the Gas Review Committee shall be unanimous. Each Party may at any time and from time to time change one or both of its nominees to the Gas Review Committee on written notice to the other Party. A quorum for a meeting of the Gas Review Committee shall be two persons, provided that at least one nominee of each Party is present.

3. Gas Management Plan

- (a) The Supplier shall be restricted to procuring those GD&M Services from time to time that are required to operate the Facility during the Term in accordance with this Agreement (collectively, the “**Reimbursable GD&M Services**”) on the following basis:
 - (i) the Supplier shall provide to the Buyer, within one hundred and twenty (120) days after the date of this Agreement, a copy of the Supplier's proposed Gas Management Plan (as defined herein). Either Party may, at any time and from time to time, provide to the other Party a copy of any proposed amendments to the Gas Management Plan;

- (ii) the plan prepared by the Supplier pursuant to Section 3(a)(i) of this Exhibit (as amended from time to time, the “**Gas Management Plan**”) shall contain the Supplier's proposed Gas management strategy associated with the procurement of the Reimbursable GD&M Services. The Gas Management Plan shall be based upon the following principles:
 - A. the Gas Management Plan shall only contain commercially reasonable assumptions;
 - B. any Gas distribution services forming part of the Reimbursable GD&M Services must be obtained from either Enbridge Gas Distribution Inc. or Union Gas Limited, or their respective successors, and the Supplier must not construct, own, or operate the gas pipeline that serves the Facility;
 - C. the Reimbursable GD&M Services shall not relate to any Supplier's Capacity;
 - D. the Reimbursable GD&M Services shall not include any capital cost contributions for any pipeline capacity upgrades or connection costs (which amounts will be dealt with in accordance with the provisions of Exhibit Y);
 - E. adherence to Good Engineering and Operating Practices;
 - F. the ability of the Supplier to operate the Facility in a manner that is in accordance with this Agreement using the Reimbursable GD&M Services; and
 - G. after giving effect to the principles set out in Section 3(a)(ii) of this Exhibit associated with the Reimbursable GD&M Services, the minimization of costs and risks to both the Supplier and the Buyer;
 - (iii) the Gas Management Plan shall also contain the methodology of monitoring the Supplier's compliance with the Gas Management Plan from time to time, and the consequences, if any, to the Supplier if the Supplier does not comply with the Gas Management Plan; and
 - (iv) the Gas Management Plan may also contain proposed amendments to this Agreement that are required to implement the Gas Management Plan provided, however, that any amendments to the Agreement shall only be implemented by written agreement of the Parties.
- (b) The Gas Management Plan (and any amendments proposed by the Supplier from time to time) shall be subject to the prior written approval of the Buyer. If the Parties are unable to agree on the Supplier's initial proposed Gas Management

Plan provided pursuant to Section 3(a)(i) of this Exhibit within six months of delivery of the proposal to the Buyer and after the completion of a Senior Conference pursuant to Section 16.1, then either Party may require by written notice to the other that a Gas Management Plan, meeting the requirements of this Exhibit, be determined by binding and mandatory arbitration in accordance with Section 5 of this Exhibit X.

- (c) Following the Term Commencement Date, the Gas Review Committee shall review the Gas Management Plan on an annual basis (or more often if the Parties so agree) to determine whether any modifications are required to the Gas Management Plan based on the prior twelve months of operational history of the Facility. Any modifications to the Gas Management Plan shall be subject to the prior written approval of the Buyer, and to the extent that any amendments are required to this Agreement to implement such modifications, then any such amendments shall only be implemented by written agreement of the Parties.

4. Payment for Reimbursable GD&M Services

The Supplier shall be entitled to compensation by the Buyer on the following basis:

- (a) no later than ten (10) Business Days after the end of each calendar month following the Term Commencement Date, the Supplier shall prepare and deliver to the Buyer a detailed monthly invoice setting out the total amount for those Reimbursable GD&M Services:
 - (i) that were paid for by the Supplier in the previous calendar month as a result of the operation of the Facility in accordance with this Agreement; and
 - (ii) that were consistent with the strategy and principles set out in the Gas Management Plan,

together with reasonable supporting documentation to confirm the amounts and the breakdown of such Reimbursable GD&M Services, including statements and invoices issued by the providers of such Reimbursable GD&M Services to the Supplier setting out the amounts paid to them by the Supplier;

- (b) the Buyer shall review the monthly invoice and the supporting documentation described in Section 4(a) of this Exhibit. If the Buyer, acting reasonably, disputes the amount of the Supplier's invoice or considers that the procurement of such Reimbursable GD&M Services were not consistent with the strategy and principles set out in the Gas Management Plan, then the Buyer shall provide notice thereof to the Supplier within ten (10) Business Days of receipt of the invoice and supporting documentation, along with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the invoice is appropriate, the Supplier shall promptly prepare a revised invoice. Any

overpayment or underpayment of an invoice shall bear interest at the Interest Rate, calculated daily from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised invoice shall be due at the same time as the next Monthly Payment is due for a Settlement Month. If an invoice dispute has not been resolved between the Parties within five (5) Business Days after receipt of written notice of such dispute by the Supplier, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 16.1 of the Agreement; and

- (c) subject to the Buyer's right to dispute any monthly invoice pursuant to Section 4(b) of this Exhibit, the Buyer agrees to pay to the Supplier the amount due to the Supplier under such invoice. Such payment will be due at the same time as the Monthly Payment is due for the Settlement Month to which the monthly invoice relates, provided that if the Supplier's monthly invoice and supporting documentation is not received by the Buyer within the time set out in Section 4(a) of this Exhibit, then following receipt thereof such payment will be due at the same time as the next Monthly Payment is due for a Settlement Month. The Buyer shall pay interest on any late payment of amounts payable pursuant to this Section 4(c) of this Exhibit at the Interest Rate, calculated daily from and including the date such payment was due to the date of payment thereof.

5. Dispute Resolution

- (a) If a Party (the "**Notifying Party**") has provided to the other Party a notice pursuant to Section 3(b) of this Exhibit, then the binding and mandatory arbitration will be conducted, and the dispute regarding the initial proposed Gas Management Plan will be determined, in accordance with the following procedure:
 - (i) the Notifying Party shall notify the other Party (the "**Recipient**") in reasonable detail of the issues to be arbitrated in relation to the differences between the Notifying Party's proposed Gas Management Plan and the Recipient's proposed Gas Management Plan (the "**Commencement Notice**"), and within twenty (20) Business Days from the receipt of the Commencement Notice, the Recipient may set forth in reasonable detail any additional related issues to be arbitrated in respect of the differences between the Notifying Party's proposed Gas Management Plan and the Recipient's proposed Gas Management Plan (the "**Commencement Notice Response**"). Within twenty (20) Business Days after the last day for giving the Commencement Notice Response, each Party shall furnish to the other Party a notice (a "**Preliminary Decision Notice**") setting forth (on a word-for-word basis) the initial Gas Management Plan meeting the requirements of Sections 1 and 3 of this Exhibit that such Party wishes the arbitrator to choose in light of all of the issues to be arbitrated. For greater certainty, the Commencement Notice and the Commencement Notice

Response will not constitute the Notifying Party's or Recipient's Preliminary Decision Notice, as applicable, and either Party may vary in its Preliminary Decision Notice any position set out in the Commencement Notice or Commencement Notice Response, as applicable, and the Preliminary Decision Notice from either Party may be prepared and furnished without reference to the content, issues or details contained in the Commencement Notice or the Commencement Notice Response;

- (ii) within twenty (20) Business Days after the giving of the latter of the Preliminary Decision Notices, the Parties shall attend a meeting at a mutually acceptable time and place to discuss the content of such Preliminary Decision Notices and, based thereon, to determine whether either Party wishes to modify its Preliminary Decision Notice in any way. Any such modifications shall be discussed by the Parties so that when each Party finalizes its Preliminary Decision Notice (the "**Final Decision Notice**") it shall do so with full knowledge of the content of the other Party's Final Decision Notice. The delivery of Final Decision Notices by each Party to the other Party shall occur no later than twenty (20) Business Days after the meeting to discuss the Preliminary Decision Notices, and prior to such date the Parties shall exchange drafts of their respective Final Decision Notice as required such that both Parties have full knowledge of the content of the other Party's Final Decision Notice while preparing its own Final Decision Notice;
- (iii) it is the intent of the Parties that, to the extent practicable, such binding arbitration shall be conducted by a person knowledgeable and experienced in the type of matter that is the subject of the dispute. In the event that the Parties are unable to agree upon such person within ten (10) Business Days after the last meeting held pursuant to Section 5(a)(ii) of this Exhibit, then, upon the application of either Party, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario);
- (iv) upon final selection of the arbitrator, the arbitrator shall, as expeditiously as possible (and if possible, within thirty (30) days after his or her selection) render a decision on the matter submitted for arbitration and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be required to select one or the other of the Final Decision Notices and shall have no power whatsoever to reach any other result. Aside from selecting one or the other of the Final Decision Notices, the arbitrator shall have no power to modify or change the Agreement.

The arbitrator shall not be provided with the Commencement Notice, the Commencement Notice Response, or the Preliminary Decision Notice of either Party. The arbitrator shall select the Final Decision Notice that in its judgment most closely meets the principles set out in Sections 1 and 3 of this Exhibit. Each Party shall bear (and be solely responsible for) its own incurred during the arbitration process, and each Party shall bear (and be solely responsible for) an equal share of the costs of the arbitrator; and

- (v) the arbitration, including the rendering of the decision, shall take place in Toronto, Ontario, which shall be the location of the proceedings. The language to be used in the arbitration shall be English. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario).
- (b) The provisions of Section 16.2 of the Agreement shall not apply to a dispute being conducted pursuant to Section 5(a) of this Exhibit.

EXHIBIT Y
REIMBURSABLE CAPITAL COSTS

1. Definitions:

- (a) **“Capital Costs”** has the meaning ascribed to it in the Shared Site Agreement;
 - (b) **“OPG Site”** has the meaning ascribed to it in the Shared Site Agreement;
 - (c) **“OPG Site Costs”** means an amount equal to (i) the portion of Capital Costs attributable to, or incurred in respect of, capital upgrades, improvements, interconnections, installations or Works (as defined in the Shared Site Agreement) located on the OPG Site and that have been verified by an independent engineer selected by the Buyer, multiplied by (ii) the Contracted Proportion of Capacity;
 - (d) **“Pipeline Costs”** means an amount equal to (i) those costs which are payable by the Supplier to Union Gas Limited or TransCanada PipeLines Limited for the performance of the Pipeline Work, multiplied by (ii) the Contracted Proportion of Capacity;
 - (e) **“Pipeline Work”** means the design, supply and construction of all facilities (including all pipelines and pipeline upgrades) and all work necessary to deliver Gas to the Facility in order to permit the Supplier to meet its obligations under this Agreement; and
 - (f) **“Reimbursable Capital Costs”** means the total of the following:
 - i. that portion of the total OPG Site Costs that is greater than Eighteen Million Two Hundred and Fifty Thousand Dollars (\$18,250,000.00) and less than Twenty Three Million Two Hundred and Fifty Thousand (\$23,250,000.00);
 - ii. the Pipeline Costs; and
 - iii. Supplier Connection Costs.
2. The Supplier shall consult with the Buyer during the development of the scope of work and budget for the Pipeline Work and the Supplier Connection Work. At the Buyer's request, the Supplier shall provide an opportunity for the Buyer to attend at the Supplier's meetings with Union Gas Limited, TransCanada PipeLines Limited and the Transmitter related to the development of the scope, cost estimates, budgets and workplans for the Pipeline Work and the Supplier Connection Work. The Supplier shall submit to the Buyer a detailed scope of work and budget for the Supplier Connection Work and such budget and scope of work as the Supplier receives from Union Gas Limited and TransCanada PipeLines Limited, if any, in respect of the Pipeline Work (the **“Proposed Scope and Budget”**) prior to committing to any material Pipeline Costs or Supplier

Connection Costs. The Buyer shall review and provide comments, if any, on the Proposed Scope and Budget within thirty (30) days of the receipt thereof. The Supplier shall further consult with the Buyer to discuss such comments and following such consultations, the Supplier shall submit to the Buyer a final detailed scope of work and budget for the Supplier Connection Work and such final budget and scope of work as the Supplier receives from Union Gas Limited and TransCanada PipeLines Limited, if any, in respect of the Pipeline Work, having consideration, acting reasonably, to the Buyer's comments where reasonably practicable (such revised detailed scope of work and budget shall be referred to as the "**Connection Scope and Budget**").

3. The Supplier shall not commit to any material Pipeline Costs or Supplier Connection Costs prior to completing and submitting to the Buyer the Connection Scope and Budget. The Supplier shall, as soon as practicable, notify the Buyer if the Pipeline Costs or the Supplier Connection Costs materially differ from the budget therefor set out in the Connection Scope and Budget. If there is a material change required to the Connection Scope and Budget, the Supplier shall, as soon as practicable, notify the Buyer and the Supplier shall consult with the Buyer to discuss such material change.
4. The Supplier shall contract with Union Gas Limited or TransCanada Pipelines Limited, as the case may be, to perform the Pipeline Work.
5. The Supplier shall use Commercially Reasonable Efforts to minimize the Reimbursable Capital Costs. The Supplier shall provide information to the Buyer in a timely manner as reasonably required for the Buyer to monitor the Supplier's incurrence of, and efforts to minimize, such costs, including updated cost estimates, budgets and workplans, and will consult with the Buyer as reasonably requested by the Buyer. In addition, if the Buyer requests any information relating to the Reimbursable Capital Costs, the Supplier shall provide such information as is in its possession or use Commercially Reasonable Efforts to obtain that information from the appropriate third party.
6. The Buyer shall reimburse the Supplier for Reimbursable Capital Costs incurred by the Supplier on the following basis:
 - (a) The Supplier shall pay all Reimbursable Capital Costs as and when due, subject to the Supplier's right to contest whether any such amount is properly due and payable.
 - (b) The Buyer shall not be required to reimburse the Supplier for more than Five Million Dollars (\$5,000,000) on account of OPG Site Costs.
 - (c) The Supplier shall submit to the Buyer, no more frequently than monthly, invoices itemizing and describing all Reimbursable Capital Costs, together with supporting documents including copies of paid receipts issued by invoicing third parties. If the Reimbursable Capital Costs are subsequently adjusted, the Supplier

shall forthwith provide written evidence thereof to the Buyer and the Reimbursable Capital Costs will be readjusted accordingly.

- (d) The Supplier agrees to take all steps to cooperate with the Buyer in conducting the Buyer's review pursuant to Section 6(e) and consents to the applicable party to whom the Reimbursable Capital Costs were paid disclosing to the Buyer, upon request and with the consent of the disclosing party, all information relating to any Reimbursable Capital Costs and any information provided by the Supplier to the applicable party that relates to, or affects, such costs.
- (e) The Buyer or, in the case of OPG Site Costs, the independent engineer shall, within a reasonable period of time, review the Supplier's invoices, copies of each of the paid receipts, and any information received from an applicable party in Section 6(d), to verify that the Reimbursable Capital Costs described in each such invoice were incurred prior to the date which is 180 days after COD and in accordance with this Exhibit Y and paid by the Supplier after the date of this Agreement.
- (f) Subject to the Buyer's or the independent engineer's review and verification pursuant to Section 6(e), as the case may be, the Buyer shall reimburse the Supplier for Reimbursable Capital Costs on or before the later of (i) the date which is sixty (60) days after the submittal of each invoice to the Buyer and (ii) the date that is one year prior to the Milestone Date for Commercial Operation of the Facility, together with interest accruing at the Interest Rate from and after the date of submittal of an invoice to the Buyer until the date of payment thereof.
- (g) If the Buyer believes that there is an error or any amount improperly charged to the Supplier in any invoice submitted by a third party to the Supplier, the Buyer may request the Supplier to exercise any applicable dispute rights the Supplier has with respect to the applicable third party. In such circumstances, any reasonable out-of-pocket costs incurred by the Supplier in exercising such dispute rights shall be deemed to be "**Reimbursable Capital Costs**" for the purposes of this Exhibit Y. The Supplier shall consult with the Buyer on an ongoing basis as requested by the Buyer, and shall provide such information to the Buyer in a timely manner so as to allow the Buyer to provide substantial input and direction as to the resolution of such dispute. The Supplier shall advise the Buyer as to any resolution of such dispute, and if such resolution results in an adjustment to Reimbursable Capital Costs, the Supplier will provide notice thereof to the Buyer pursuant to Section 6(b).
- (h) Any Reimbursable Capital Costs that are incurred by the Supplier after the date which is 180 days after COD shall not be reimbursed by the Buyer to the Supplier.

- (i) If this Agreement has been terminated by the Buyer as a result of a Supplier Event of Default, then the Supplier shall forfeit all rights to receive any Reimbursable Capital Costs not paid to the Supplier and outstanding as of the Termination Date, as liquidated damages and not as a penalty.

TAB 4

IESO's Approach to Amending Market Participant Contracts in Response to the Market Renewal Program

EXTERNAL PUBLICATION

Disclaimer

In an effort to be transparent to all stakeholders, IESO contract management has prepared and published this document and certain other non-confidential 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. References to the IESO in this document are references to IESO contract management, unless the context otherwise requires.

The information in this document is based on the proposed parameters and design decisions that have been published by the IESO in connection with the MRP as of the date of this document. As the MRP progresses, and as available information and decisions evolve, the IESO's proposed approach and strategy for addressing contractual implications of the MRP may also evolve.

This document is provided for information purposes only. It does not constitute, nor should it be construed to constitute, legal advice or a guarantee, offer, representation or warranty on behalf of the IESO. In the event of any conflict or inconsistency between the information contained in this document and the Market Rules, the Market Manuals, any IESO contract or any applicable legislation or regulation, the provisions of the Market Rules, Market Manuals, contract, legislation or regulation, as applicable, shall govern. This document is being provided without prejudice to any party's rights or remedies under any contract and does not constitute an amendment or waiver of any terms or conditions of any contract.

Executive Summary

Following the release of the four high-level design (HLD) documents, the Independent Electricity System Operator (IESO) believes it is now timely to outline its intended approach for addressing the implications from the Market Renewal Program (MRP) on its existing electricity supply contracts.

The IESO is party to 110 electricity supply contracts for facilities that are registered to participate in the IESO-Administered Markets (Market Participant (MP) contracts) and are expected to be impacted directly by the MRP. In addition, the IESO is party to approximately 33,600 contracts for facilities that are connected to the distribution system and are not market participants. Of these, the vast majority (approximately 30,200) are microFIT contracts that are not expected to be impacted by the MRP, while the remainder (approximately 3,400) may be impacted by changes to the Ontario Energy Board's (OEB) Retail Settlement Code resulting from the MRP. The remaining discussion in this document is focused on the implications to MP contracts.

The IESO's objective is to ensure that the contractual implications arising from the MRP are addressed within a timeline that is appropriately aligned with the MRP and in a manner that is consistent with the existing terms in the affected contracts. This includes making any necessary contract amendments as a result of changes to energy pricing, as well as commitment and dispatch mechanisms that are part of the energy stream of the MRP, and also providing contractual certainty for contract counterparties interested in participating in the Incremental Capacity Auction (ICA). The changes will allow for contracts to continue functioning in a manner that is aligned with the incentives of the renewed markets.

The IESO's contract management team has been actively engaged in the MRP from the outset with various stakeholders, including many of the contract counterparties, to discuss potential implications that the MRP may have on contracts. Through webinars, group meetings, and individual discussions, the lines of communication have been open. The IESO appreciates the constructive engagement by affected contract counterparties. With the release of the HLD documents, and as the MRP transitions to the detailed design phase, contract implications can be more fully understood, and potential amendments will be explored in more detail with affected parties. As part of the process, the IESO expects to adopt a more structured approach to discussions with contract counterparties and, as appropriate, with other affected stakeholders.

Although the engagement approach with respect to contract implications as a result of MRP will be separate and distinct from the stakeholder engagement regarding the design of the energy and capacity streams of the MRP, it will continue to be aligned and coordinated with developments within the MRP. While the MRP stakeholder engagement process is primarily for market design matters, the IESO will leverage opportunities to address issues that may have joint contracts and markets implications. Engagement in respect of MRP implications on IESO contracts will be targeted for contract counterparties, but will also utilize a dedicated

webpace for contract implications to be located on the IESO website, and thus be accessible to all stakeholders. This will provide transparency for all stakeholders with respect to non-confidential aspects of discussions with groups of contract counterparties.

The MRP HLDs provide a significant level of detail regarding market changes that may have implications on existing IESO contracts. This document strives to identify the various implications and suggests approaches for addressing them going forward.

The IESO is seeking comments and feedback on the information presented in this document. Written feedback can be provided directly to the IESO's contract management group, via email at mr.ContractManagement@ieso.ca.

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1. Purpose of Document

The purpose of this document is to describe the approach that the IESO plans to adopt in order to address implications from the MRP on existing electricity supply contracts for facilities registered to participate in the IESO-Administered Markets (MP contracts). This document outlines the IESO's objective and the supporting high-level principles that will guide discussions with contract counterparties and ultimately lead to any necessary contract amendments. High-level implications, and suggested strategies to address them, are identified and discussed throughout this document.

2. Contracts Overview

At the present time, nearly all of Ontario's electricity generation is either contracted or rate-regulated. The IESO is the contract counterparty to 23.4 GW (approximately 63%)¹ of total grid-connected generation and 3.4 GW of distribution-connected generation. The IESO's predecessor, Ontario Power Authority, began contracting for generation in 2005 through competitive, standard offer, and bilateral procurements. The majority of the IESO's contracts are for 20-year operating terms, while some are shorter and certain hydro and nuclear contracts are longer. Contracts will begin to expire in the 2020s and a majority of the contracts for generating facilities will expire by the end of the 2030s.

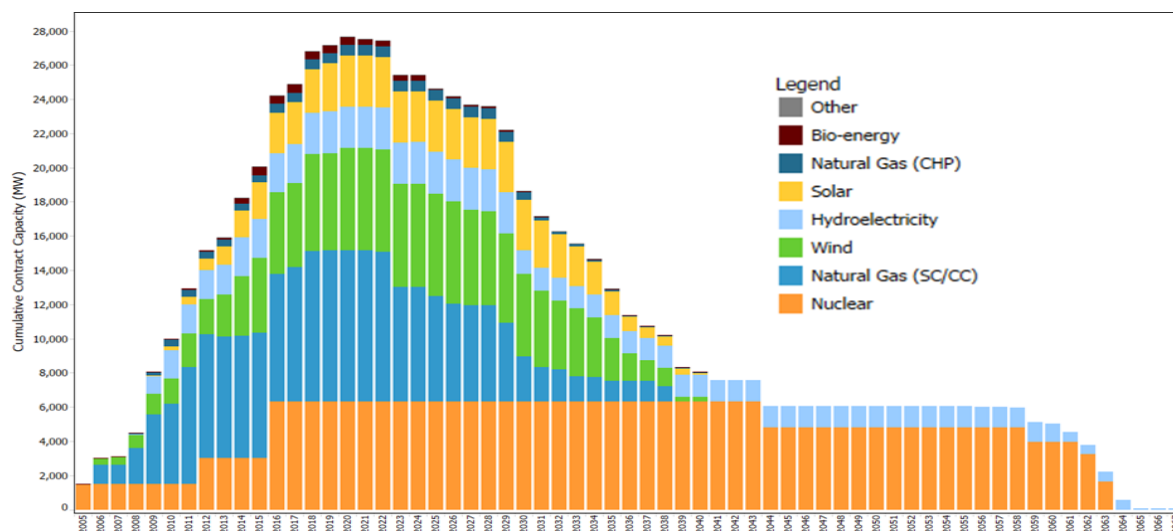


Figure 2-1-1 | Projected lifecycle for contracted capacity, by resource type (*Progress Report on Contracted Electricity Supply, IESO, 2018*)

The vast majority of IESO contracts are for smaller, distribution-connected facilities, which are mainly solar-powered. For example, over 30,000 microFIT contracts make up a small amount of capacity and are not expected to be impacted by the MRP. The remainder, approximately 3,400, of distribution connected contracted facilities that do not participate in the IESO-Administered Markets, may be affected by changes in the OEB's Retail Settlement Code triggered by the MRP. Implications for those contracts are not yet known and can only be addressed once the MRP-related changes to the OEB's Retail Settlement Code are known.

Contracts that are likely to be directly impacted by the MRP are the 110 contracts for facilities that are registered to participate in the IESO-Administered Markets (MP contracts). These contracts, which represent almost 90% of contracted capacity, are expected to be the primary focus of discussions as the MRP progresses. The remaining discussion in this document is focused on the implications to these MP contracts.

¹ As of February 15, 2019.

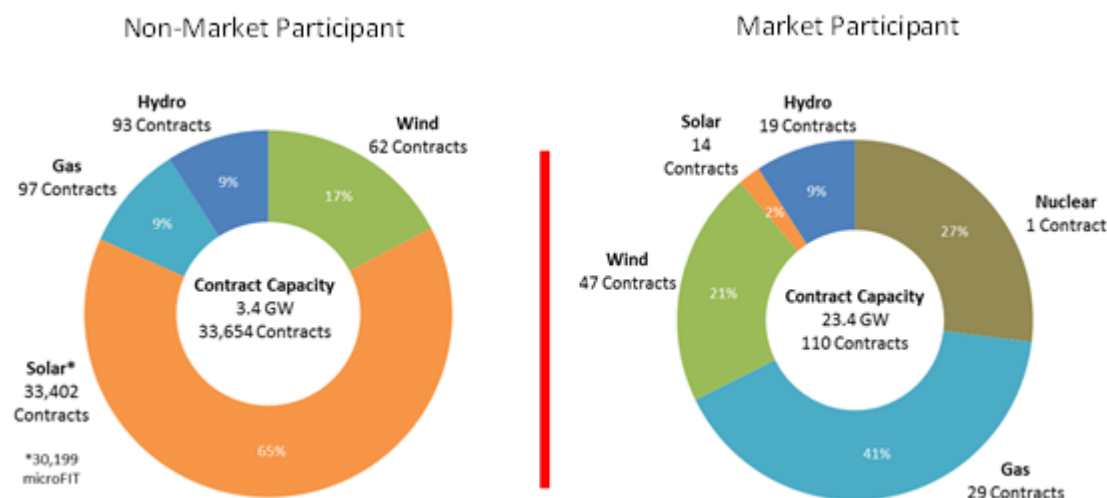


Figure 2-2-2 | Non-Market Participant contracts compared to Market Participant contracts based on the number of contracts and overall capacity, broken down by resource type

Although the MP contracts span across different electricity generation technologies, procurements, and forms of contracts, there are several commonalities that are important in relation to the MRP.

Fundamental commonalities of MP contracts include:

- Financial Hedge – In their simplest form, most of the MP contracts provide a hedge against a market price for electricity through a top-up to a strike price or to a fixed monthly amount. Therefore, at a conceptual level, it should be possible to maintain the hedge in principle, even though the mechanics of the market price may change through the MRP.
- Operationally Impartial – With the exception of a few specific physical obligations, the MP contracts generally do not dictate how a facility is to be operated. This is left up to the facility owners and operators. Therefore, at a conceptual level, the opportunities and risks of operating a facility that were being managed by the facility's owner or operator before the MRP should continue to be managed by the facility's owner or operator after the MRP has been implemented.
- Contemplate Market Evolution – The introduction of Locational Marginal Pricing (LMP) (as introduced in the MRP Single Schedule Market (SSM) initiative) has been contemplated in most of the MP contracts. Similarly, the introduction a Day-Ahead Market (DAM) is also contemplated in many of the MP contracts. The MP contracts that contemplate these elements of the MRP contain provisions setting out the basis upon which any applicable contract changes will be made, and in some cases provide guidance as to the parameters upon which the changes contemplated in the MRP energy stream are to be reflected in the contracts.

These fundamental commonalities help provide a common starting point for all parties in future discussions when assessing implications on contracts from the MRP.

3. Objective, Principles and Considerations

The IESO's primary objective is to ensure that any contractual implications are addressed in a manner consistent with the terms of the applicable contracts, through any necessary and appropriate contract amendments, to ensure that all MP contracts function seamlessly and efficiently in accordance with their terms in the renewed markets.

The primary principle to be employed by the IESO is to proceed on the basis of the existing provisions in the relevant contracts. As noted previously, most of the MP contracts expressly contemplate market evolution. Some contracts have specific provisions directly applicable to the changes that are being contemplated by the MRP, while some may address changes to the markets more broadly. The IESO intends to proceed on the basis of those specific provisions where applicable and otherwise in accordance with the more general applicable terms and principles of the contract if specific elements are not contemplated by the contract.

There are several key considerations that apply to the principle described above, as follows:

- ***Consideration #1: Treat similar contracts in a similar manner***
 - As contract procurements evolved and changes were made over time, it became apparent that differences have arisen between the same types of contracts. Despite those differences, in most cases, the fundamentals of contracts belonging to the same type are substantially the same. For this reason, and to maximize consistency, administrative simplicity, and transparency, the IESO intends to make the same contractual amendments to contracts belonging to the same type, subject to any contract-specific considerations that may apply.
- ***Consideration #2: Contract incentives should be aligned with market incentives***
 - One of the core considerations for MP contracts is ensuring that they do not impede efficient market operations. With the MRP intended to advance the efficiency of electricity markets, it is important to ensure that the contracts do not distort or undermine market incentives, and that contracted generators have substantially the same incentives to respond to market signals as they would in the absence of their contracts. Opportunities for the most efficient alignment of incentives will be explored with a view to advancing the market dynamics under the MRP to the benefit of all parties.

- ***Consideration #3: Timely resolution of amendments***

- o The MRP will bring significant changes to the electricity markets in Ontario. While the language of many contracts contemplates the resolution of amendments after the implementation of market rule changes, the IESO believes that all parties would benefit from clarity of contract-market interaction by the date of implementation of the MRP. The timeframe for the MRP design and implementation should allow for this. Accordingly, discussions will be planned with this in mind, starting with the use of the HLD documents as a basis for developing the framework of proposed contract amendments.

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.

4. Market Renewal Program Implications on Contracts

Consistent with how the MRP has been divided into two streams, MP contract implications will be treated in the same two streams – ***energy and capacity***. The energy stream will be relevant to all MP contracts. The capacity stream will have general applicability with respect to end-of-term transition, but is otherwise likely to have limited applicability only to MP contracts that are interested in participating in the Incremental Capacity Auction (ICA) in respect of merchant capacity.

The implications from the energy stream arise mainly from the introduction of a DAM and a SSM with locational marginal pricing, as they impact the mechanisms used for MP contract settlement. The implications from the capacity stream, specifically the ICA, will be driven by end-of-term transition issues and by the need for contractual clarity in respect of the participation of incremental capacity from existing contracted generating assets in the ICA.

The following describes the high-level implications that have been identified by the IESO based on the current MRP design and proposed high-level solutions to address them.

4.1 Energy Stream

4.1.1 Single Schedule Market (SSM)

With respect to SSM and moving to a locational marginal price, all MP contracts will need to address that Hourly Ontario Energy Price (HOEP)², which is currently a fundamental parameter in the settlement of all MP contracts, will no longer exist. As noted in the SSM HLD, the current two-schedule market that was introduced in 2002 was always contemplated to be a transitional step to facilitate moving to a single schedule market with locational marginal pricing (LMP). Many MP contracts contemplate and address this potential change with language that is reasonably clear in the context of the present MRP. Implementation of such changes is a part of the risk and reward structure embodied in those contracts.

4.1.2 Day-Ahead Market (DAM)

With respect to the contractual implications of DAM, there are two major groups of contracts:

- First group - the Clean Energy Supply (CES) and similar “imputed dispatch” contracts, which generally include a provision that settlement should transition to a DAM basis, and which set out the principles to be used in implementing the switch.

² For the purpose of this document, HOEP also refers to the uniform Energy Market Price (EMP) or Market Clearing Price (MCP).

- Second group - contracts in respect of variable generation and other contracts where IESO payment is based on the output of the facility (i.e. power purchase agreements or PPAs), which generally do not have provisions addressing the implementation of a DAM. The IESO is of the view that the introduction of DAM-based contract settlement would be advantageous to the proper alignment of incentives between these contracts and the market. The IESO believes that it is possible to achieve this without any downside to contract counterparties, while providing contract counterparties the opportunity to benefit from the flexibility to respond to market incentives.

4.1.3 Enhanced Real-Time Unit Commitment (ERUC)

ERUC is the third initiative in the energy stream of the MRP. While market participants may be able to participate in the ERUC program, the contract settlement provisions of the MP contracts are not generally expected to be impacted by ERUC. Accordingly, the IESO has not identified any contract implications arising from ERUC.

4.1.4 Single Schedule Market (SSM) and Day-Ahead Market (DAM) related implications

Table 4-1 provides an overview of high-level contract implications arising from the SSM and the DAM:

Table 4-1 | Impacts of SSM and DAM by contract type

MP Contract Type	SSM Impact	DAM Impact
CES and similar contracts (ACES, CES, CHP, PGC)	HOEP will no longer exist and contracts will be settled on locational marginal prices.	Contracts provide for a change to contract settlement deeming provisions in Exhibit J to the DAM.
Renewable wind and solar PPAs (FIT, RES, LRP)		Forecast and balancing risk between DAM and Real-Time (RT) needs to be addressed to provide a basis for efficient market behavior without introducing a new contract risk.
NUG capacity contracts		Contracts provide for certain elements to switch to the DAM.
Other (including nuclear and hydro)		This will be contract dependent but generally will need to address contract settlement changes to the DAM to support efficient market behaviours.

As a starting point, to address the implications from the MRP that are identified in Table 4-1 in a manner consistent with the principle and considerations noted above, the IESO has developed a framework for contract amendments that may be appropriate for the energy stream. This framework for both CES and similar contracts and PPAs is outlined in Table 4-2 below.

Table 4-2 | Contract changes based on contract type for the energy stream

Element	CES and Similar Contracts	Power Purchase Agreements
Single Schedule Market	Change the use of HOEP in contract settlement to the applicable locational marginal price, as specified in the contracts.	Change the use of HOEP in contract settlement to the applicable locational marginal price as a successor to HOEP, as specified in the contracts.
Day-Ahead Market	Amend Exhibit J to settle contracts and calculate imputed net revenues based on the DAM.	Amend contract settlement to offset economic impact of differences between day ahead forecasted quantity and real-time delivered quantities. Payment for energy continues to be based on real-time production and includes the same real-time foregone energy provisions as in the existing contracts, as applicable.

4.2 Capacity Stream

The HLD for the ICA contemplates allowing contracted resources to offer capacity that is incremental to their contract capacity (i.e. merchant capacity) into the auction, in accordance with applicable rules and requirements of the ICA. Therefore, in order to facilitate incremental capacity participation in the ICA, contractual implications will need to be resolved to provide certainty to contract counterparties that are interested in participating. Unlike the energy stream, where implications need to be addressed for all MP contracts, capacity stream implications may only need to be addressed for those contracted resources that intend to participate in the ICA, and to deal with end-of-term issues (discussed below). It is not yet clear how many contracted resources plan to offer incremental merchant capacity or pursue uprates to increase the amount of merchant capacity. Despite this, it is important to identify and address contractual interactions that may need to be addressed through contract amendments, in order to provide clarity to all parties considering

such a plan, and to facilitate participation in the ICA. This will also provide contract counterparties with the foundation needed to begin assessing their economic feasibility and opportunities associated with participating in the ICA well in advance of scheduled auctions and commitment periods.

One of the most important elements of any amendment will be to ensure that incremental capacity can be clearly differentiated from contract capacity across all contracts and technologies. It is imperative to the IESO that total capacity is accounted for correctly as part of the process for meeting Ontario's resource adequacy needs and ensuring that there is no duplication of payments for existing contract capacity through the contract and the ICA. The IESO will establish a procedure for calculation of the incremental installed capacity (ICAP)³ available at a contracted facility. The qualification (i.e. determination of the Unforced Capacity⁴) of this incremental ICAP will be established as part of the ICA pre-auction requirements. The interaction between ICA committed capacity and contract capacity and/or energy generated by contract capacity will need to be addressed in the contracts.

There is also an opportunity to ensure that the transition of capacity from being under a contract to operating in the ICA at the end of a contract term does not result in any inefficiencies should the contract term not end immediately before the start of an ICA obligation period. There is no anticipation of any restriction on contract counterparties offering capacity into an ICA in respect of obligation periods commencing after the contract term expires, however an appropriate strategy must be developed for addressing a contract term that ends during an obligation period and would therefore result in that capacity not being eligible to offer into the ICA until the start of the next obligation period.

Table 4-3 provides an overview of high-level implications related to the ICA that may affect contracts:

Table 4-3 | ICA impacts by contract type

Contract Type	Calculation of Incremental Capacity	Other Interactions with Contracts
CES and similar Contracts (ACES, CES, CHP, PGC)	Separate the contract capacity stated in each contract from incremental capacity available for offer in the ICA.	Capacity check tests, outages, derates, force majeure, and offer obligations, as applicable, will have to be aligned between contract obligation and ICA.

³ From the ICA HLD document, Installed Capacity (ICAP) reflects the maximum output capacity of a resource as assessed by the IESO, or as demonstrated in a physical test during periods prescribed by the IESO to reflect conditions expected (e.g., temperature and humidity) at times of peak system need during each obligation period.

⁴ From the ICA HLD document, Unforced Capacity (UCAP) is a unit of measure that reflects the resource assessment quantity of a resource, which may be further reduced due to the results of the deliverability assessment.

Renewable Wind and Solar PPAs (FIT, RES, LRP)	Separate the contract capacity stated in each contract from incremental capacity and any energy associated with that incremental capacity available for offer in the ICA.	Energy metering, outages, derates, force majeure, and offer obligations will have to be aligned between contract obligations and ICA.
NUG Capacity Contracts	Separate the contract capacity stated in each contract from incremental capacity available for offer in the ICA.	Capacity check tests, outages, derates, force majeure, and offer obligations will have to be aligned between contract obligations and ICA.
Other (including nuclear and hydro)	Will be contract dependent, but if applicable, separate the contract capacity stated in each contract from incremental capacity and any energy associated with that incremental capacity available for offer in the ICA.	Similar to those noted above if applicable and on a case-by-case basis.

As a starting point, to address the implications from the MRP that were identified in Table 4-3 and consistent with the principle and considerations also noted above, the IESO has considered the contractual amendments that may be necessary for the ICA stream. The framework for those potential changes for both CES and similar contracts and PPAs is outlined in Table 4-4 below.

Table 4-4 | Contract changes based on contract type for the capacity stream

Element	CES and Similar Contracts	Power Purchase Agreements
Contract Capacity/Merchant Capacity Differentiation	Define calculation of incremental installed capacity that is above contract capacity, while “Qualified Capacity” ⁵ under the ICA to be determined in accordance with ICA rules.	Define calculation of incremental installed capacity that is above contract capacity, while Qualified Capacity to be determined in accordance with ICA rules.

⁵ From the ICA HLD, Qualified Capacity means the amount of capacity a capacity auction participant is determined by the IESO to be able to offer into a specific auction for a capacity auction resource. A resource’s qualified capacity amount is determined through the capacity qualification process.

Energy Compensation	Not applicable as contract settlement is based on deemed parameters utilizing contract capacity.	Separate metering of energy from existing capacity and from the ICA capacity may be required. The IESO is exploring the possibility of proportionate allocation of commonly metered energy based on actual and verified capacity additions made for ICA participation.
Energy Must-Offer Obligations	Where energy must-offer obligations exist in the contract, modify the obligations, if required, to not conflict with any ICA offer obligations where ICA offer obligations apply to all capacity.	No contractual offer obligations currently exist and are not expected in the future.
Capacity Check Test	Capacity check test protocols to be changed to account for capacity (ICAP) committed to the ICA and the outcome during a contractual capacity check test would be adjusted to account for this.	Generally not applicable to these contracts as PPAs typically do not have contractual capacity check test obligation.
Metering Plans	Metering plans to be changed to align with any changes to capacity check test protocols.	Metering plans to be changed to align with any changes to calculation of energy output.
Force Majeure	Consistent with contract provisions, the impact of any force majeure event would be attributed to merchant capacity (including ICA capacity) before providing any relief to contract capacity.	Generally not required given the interaction of force majeure with PPA requirements during the operating term.

Outages	Consistent with contract provisions, the impact of any outage event would be attributed to merchant capacity (including ICA capacity) before providing any relief to contract capacity.	Generally not applicable, as PPAs for the most part do not have provisions related to outages.
End of Term Obligations	Allow a contract counterparty option for limited reduction of contract term so that the final date of the term aligns with the start of an obligation period under the ICA.	Allow a contract counterparty option for limited reduction of contract term so that the final date of the term aligns with the start of an obligation period under the ICA.
Contract Facility Amendments	IESO will grant approvals of contract facility amendments for the purposes of creating additional capacity for the ICA if agreement can be reached on other contractual amendments related to the ICA.	IESO will grant approvals of contract facility amendments for the purposes of creating additional capacity for the ICA (subject to satisfactory metering or proportioning of energy) if agreement can be reached on other contractual amendments related to the ICA.

As illustrated in Figure 2-1, a number of contracts will start expiring around the time or shortly after the time the ICA is expected to be in place. These contracts may not require changes to facilitate participation while under contract, but may require amendment to allow timing adjustments to align with the ICA obligation periods.

5. Engagement

Since the early stages of the MRP, the IESO has taken a proactive approach to initiate discussions with contract counterparties to ensure that lines of communication have been established. Now that the HLD documents have been published and the MRP is entering the detailed design phase, the IESO believes that more comprehensive discussions with respect to contracts should take place.

The IESO has received some feedback on how best to engage with contract counterparties. The feedback has ranged from suggestions that the IESO create a separate MRP stakeholder initiative to address contract implications, to continuing to address contract implications grouped by the various types of contracts, to taking a more focused approach to specific contracts. The IESO has considered these suggestions, recognizing that the contract amendment process is to be separate from and responsive to the MRP and is not intended to drive MRP outcomes. A broad stakeholdering approach by its nature does not align well with a desired outcome to amend a specified set of contracts that are ultimately bilateral in nature in accordance with their terms. Similarly, individual discussions for each contract would be very resource intensive and would not align with the considerations noted in this document. For these reasons, the IESO will continue to address contract implications from the MRP as a separate initiative, distinct from the stakeholder engagement dealing with the design of the energy and capacity streams, but will continue employ an approach that is closely aligned and coordinated with developments in the MRP.

The consultation elements identified below are intended to provide a balanced and structured approach to meet the needs of the IESO, contract counterparties and broader stakeholders. This balanced approach recognizes that addressing contract implications from the MRP is inherently different from the broader stakeholder approach that is being taken to design the detailed elements of the various MRP initiatives, yet provides appropriate engagement and transparency. In order to achieve the overall objective set out in this document, the IESO will continue to follow the existing mechanisms that it has implemented along with the addition of other mechanisms to advance contractual discussions, including the following:

- A dedicated webspace has been created on the IESO website to provide information pertaining to contract implications with respect to the MRP. The IESO intends to publish presentation materials, webinar recordings, certain feedback and responses, as well as any other non-confidential information that may be relevant to all contract counterparties or broader stakeholders;
- Contract counterparties and other stakeholders will have the opportunity for input/feedback on contractual implications from proposed design decisions, through group and individual discussions, as well as a central IESO – Contract Management MRP mailbox (*mr.ContractManagement@ieso.ca*) for written questions and comments;

- Webinars targeted to all contract counterparties or types of contract counterparties will be conducted and open to all stakeholders. These will be held periodically, approximately one to three times per year, and will address general contractual issues and feedback that may be pertinent to all (or a subset of) contract counterparties;
- Meetings with groups of contract counterparties will continue to be held as necessary to address specific issues applicable to specific groups of contracts that have been identified in the implications section above;
- Smaller group or individual meetings will be held on an as-needed basis to address any specific issues for individual (or a few) contracts and any matters that may be confidential in nature to a contract counterparty; and
- Updates to the Markets Development Advisory Group, Stakeholder Advisory Committee, and other IESO stakeholder forums will be provided on an as-needed basis where progress will be highlighted and general contracts feedback can be addressed.

6. Timing and Next Steps

The IESO is aiming to align the timing of its contract amendments with the go-live date of the MRP as illustrated in the Figure 6-1 below. The IESO intends to engage and enter into more detailed discussions with counterparties with contracts of similar types during the development of the detailed designs, and once the HLDs have been finalized.

The IESO foresees its process being broken down into several phases which include development of principles, development and finalization of term sheets, and drafting of amending agreements.

The IESO will use its dedicated web space on the IESO website to post non-confidential information and keep contract counterparties abreast of the development of discussions and issue identification. Contract counterparties are also strongly encouraged to proactively engage with IESO contract management throughout this initiative to address any contract-specific matters.

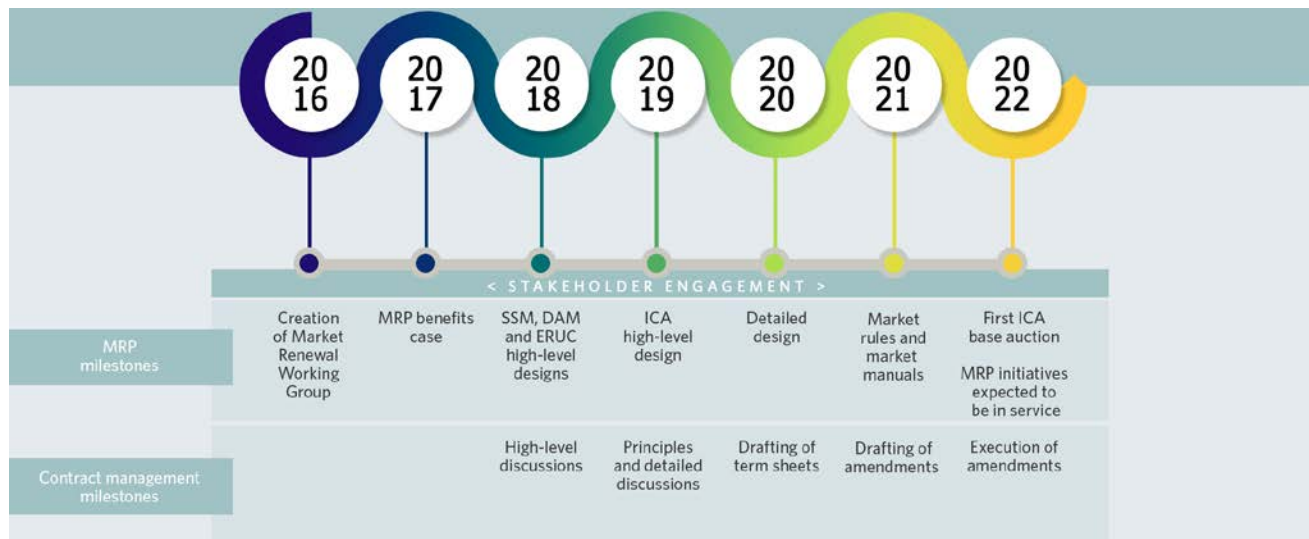


Figure 6-1 | Estimated timeline of aspects of the energy and capacity streams, as well as contract management

7. Request for Feedback

Moving forward, the IESO is seeking comments and feedback on the information presented in this document. If there is significant interest, IESO may present a webinar to provide further clarification. Written feedback can be provided directly to the IESO's contract management group, via email at mr.ContractManagement@ieso.ca. Feedback may be submitted on both confidential and non-confidential basis and should be identified accordingly. Any feedback or questions that are marked as confidential will be treated as such in accordance with applicable contract terms, while all other feedback may be summarized and posted publically.

8. List of Acronyms

ACES	Accelerated Clean Energy Supply
CC	Combined Cycle
CES	Clean Energy Supply
CHP	Combined Heat and Power
DAM	Day-Ahead Market
EMP	Energy Market Price
ERUC	Enhanced Real-Time Unit Commitment
FIT	Feed-In Tariff
GW	Gigawatt
HLD	High-Level Design
HOEP	Hourly Ontario Energy Price
ICA	Incremental Capacity Auction
ICAP	Incremental Capacity
IESO	Independent Electricity System Operator
LMP	Locational Marginal Price
LRP	Large Renewable Procurement
MCP	Market Clearing Price
MP	Market Participant
MRP	Market Renewal Program
NUG	Non-Utility Generator
OEB	Ontario Energy Board
PGC	Peaking Generation Contract
PPA	Power Purchase Agreement
RES	Renewable Energy Supply
RT	Real-Time
SSM	Single Schedule Market
UCAP	Unforced Capacity



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TAB 5

CES CONTRACT**MRP CONTRACT AMENDMENT TERM SHEET**

Heading	Provisions
1. Applicability	(a) This Term Sheet has been drafted with reference to a generic Clean Energy Supply Contract (CES Contract) (the “Contract”). This Term Sheet does <u>not</u> apply to contracts for facilities that use fuels other than natural gas, contracts that do not have Imputed Production as part of their settlement calculations, or contracts in respect of any facility that does not participate in the IESO-Administered Markets. (b) Capitalized terms used but not defined in this Term Sheet have the meanings given to such terms in the applicable Contract.¹
2. Context	(a) In connection with the IESO’s Market Renewal Program (“MRP”), the IESO has published high-level designs (“HLDs”) for the Day-Ahead Market (“DAM”), Single Schedule Market (“SSM”) and Enhanced Real-time Unit Commitment (“ERUC”) projects. (b) Based on the designs contemplated for the DAM and SSM as set out in the respective HLDs, the IESO anticipates that a requirement for a Replacement Price and Replacement Provisions will be triggered under (i) Section 1.7 of the Contract, addressing the opening of a Day Ahead Energy Forward Market and (ii) Section 1.8 of the Contract, addressing the occurrence of a Price Evolution Event (namely the implementation of Locational Marginal Pricing²). (c) This Term Sheet defines the Replacement Price and Replacement Provisions anticipated to be required by Sections 1.7 and 1.8 of the Contract (the “Proposed Amendments”), and is based on the assumption that (i) the Day Ahead Energy Forward Market is opened at the same time as the implementation of Locational Marginal Pricing, and (ii) the DAM and SSM are ultimately designed and implemented on the same basis as provided for in the applicable HLDs. If either of these assumptions turns out to be incorrect, then the Proposed Amendments set forth in this Term Sheet may require further revision.
3. Timing & Process	(a) Negotiations of this Term Sheet are being done on a without prejudice basis. The Term Sheet is non-binding on either Party. (b) The Term Sheet will remain as a working draft while MRP continues to be developed. As more details are published about MRP (e.g. through the publication of detailed designs and ultimately draft IESO Market Rule amendments) and as discussions with Suppliers progress, the Term Sheet

¹ This Term Sheet is based on generic CES contract language. There are minor variations in the defined terms between contracts and accordingly, once facility-specific amending agreements are drafted, they will be drafted with reference to the applicable defined terms.

² The implementation of Locational Marginal Pricing is one of the effects of moving to a single schedule market.

	will be updated on an ongoing basis, as required to reflect the updated design of MRP and ongoing discussions. (c) On or about the same time as final or near-final IESO Market Rules for MRP are published, amending agreements based on the Term Sheet can be finalized. If a Secured Lender Consent and Acknowledgement Agreement has been entered into in respect of a Contract, the amending agreement will require consent of the Secured Lender. (d) The Replacement Price and Replacement Provisions will be made effective from and after the date the DAM is opened and LMP is implemented. (e) The generic Term Sheet and any comments on it are generally <u>not</u> considered to be confidential. As the Parties move to contract-specific discussions, it may be necessary to switch to confidential discussions to protect the confidentiality of the agreements.
4. Proposed Amendments & Rationale	(a) Schedule “A” to this Term Sheet sets out the Proposed Amendments. (b) Schedule “B” to this Term Sheet sets out the rationale for the Proposed Amendments.
5. Further Evolution	(a) In entering into the amending agreements, the Parties will agree that the Replacement Price and Replacement Provisions satisfy any and all obligations either Party has to the other under the applicable Contract in connection with the IESO Market Rule amendments implementing the energy stream of MRP. Any further new or amended IESO Market Rules will be addressed in accordance with relevant provisions of the Contract.

Schedule “A” – Proposed Amendments

1. Create the following new defined term:

“Applicable Day-Ahead Hourly Locational Marginal Price” or “ADAHLMP” means, with respect to any hour, the locational marginal price applicable to the Facility’s Connection Point in the day-ahead IESO-Administered Market for Electricity for that hour. **[NTD: This defined term is to be finalized to align with the terminology used in final market rules.]**

2. Amend the definitions of Deemed Start-Up Hour and Deemed Shut-Down Hour in Section 3.1 of Exhibit J as follows:

- (a) A “Deemed Start-Up Hour” is the first hour of a Deemed Dispatch Interval, and is the first hour, other than a Directed Dispatch Hour, following a Deemed Shut-Down Hour in which the ~~Pre-Dispatch Price for that hour h, as published three hours prior to that hour, exceeds the applicable Variable Energy Cost, and the HOEP~~ **ADAHLMP** was greater than or equal to the applicable Variable Energy Cost for that hour h ~~or for the previous hour h-1~~. Notwithstanding the foregoing, the requirement that the Deemed Start-Up Hour follow a Deemed Shut-Down Hour shall not apply to the first Deemed Start-Up Hour in the Term.
- (b) A “Deemed Shut-Down Hour” is the last hour in a Deemed Dispatch Interval, and is the first hour within a Deemed Dispatch Interval in which,
 - (a) ~~HOEP~~ **ADAHLMP** was less than or equal to the applicable Variable Energy Cost for that hour h and for the previous hour h-1; or
 - (b) ~~the Pre-Dispatch Prices, as published in that hour h,~~ **ADAHLMP** for hours h+1, h+2 and h+3 are all less than the applicable Variable Energy Cost; or
 - (c) the following hour is a Directed Start-Up Hour.

3. Amend Section 3.2 of Exhibit J (Calculation of Imputed Gross Energy Market Revenue and Section 3.3.4 of Exhibit J (Calculation of Negative Interval Net Revenue Recapture) as follows:

- (a) Change all references from HOEP to ADAHLMP.

Schedule “B” – Rationale for Proposed Amendments

1. Day Ahead Energy Forward Market

- (a) In the case where a Day Ahead Energy Forward Market is opened, Section 1.7(b) sets out two principles that apply to the Replacement Price and Replacement Provisions and Section 1.7(c) sets out three additional principles (each, an “Amending Principle”, and referred to in this Term Sheet as “Principle A” through “Principle E”, respectively³).
- (b) All Amending Principles are expressly tied to Exhibit J. As such, the Proposed Amendments are confined to Exhibit J.
- (c) The approach to developing the Proposed Amendments was to satisfy the requirements of the more specific Amending Principles in a manner that would also respect the requirements of the more general Amending Principles. Principles A, C, and D are very specific as to their application, and have been directly applied in the development of the Proposed Amendments.
- (d) Principle B has been followed by continuing to deem start-ups and shut-downs on the basis of rational price signals that maximize deemed operation during hours of positive INR and minimize deemed operation during hours of negative INR, with due consideration for compensatory market-based payments to offset incurred but non-recovered costs (i.e. taking into account make-whole payments in the DAM). The Proposed Amendments do this by revising the definitions of Deemed Start-Up Hour and Deemed Shut Down Hour to use pricing information from the Day Ahead Energy Forward Market, and maintaining the structure of accounting for Start-up Costs in IVEC after-the-fact (including through the preservation of the NINRR term). Principle B also references “consideration for any other attributes which may be recognized within the Day Ahead Energy Forward Market”; however, the DAM continues to recognize the same attributes as the existing IESO-Market Rules (albeit in a different structure), and accordingly no new attributes are proposed to be introduced into Exhibit J.
- (e) Principle E has been followed by preserving the overarching structure of Exhibit J and ensuring that the quality of the hedge provided by the Imputed Production model set out in Exhibit J is not impaired for a Facility with the attributes set out in Exhibit B. The only effect of the Proposed Amendments on the Imputed Production model is to increase the notice of impending Deemed Start-Up Hours and Deemed Shut-Down Hours. According to the DAM HLD, the ADAHLMP should generally be posted by 13:30 EPT on the day before delivery, which provides considerably more notice than the existing use of the one, two and three hour-ahead Pre-Dispatch Prices. In effect, the ADAHLMP is treated as being similar in nature to a Pre-Dispatch Price for the purpose of being an imputed start/stop signal, but provided in the day-ahead timeframe rather than just one, two or three hours ahead of the delivery hour.

2. Locational Marginal Price

- (a) Section 1.8(b) provides that in the event of a Price Evolution Event, including the implementation of Locational Marginal Pricing, in Exhibit J, HOEP, or its replacement value under a Day Ahead Energy Forward Market is to be replaced with “the Ontario

³ The wording of the Amending Principles varies somewhat between certain CES contracts. The IESO does not currently consider the variance to be material.

Electricity market price that most closely emulates the price actually paid to Supplier by the Ontario Electricity market for Electricity output from the Facility” and that all other features of Exhibit J will be applicable. As such, the Applicable Day-Ahead Hourly Locational Marginal Price has been identified as the appropriate replacement value for HOEP in the context of the concurrent implementation of LMP and DAM.

TAB 6

CES CONTRACT**MRP CONTRACT AMENDMENT TERM SHEET**

Heading	Provisions
1. Applicability	(a) This Term Sheet has been drafted with reference to a generic Clean Energy Supply Contract (CES Contract) (the “Contract”). This Term Sheet does <u>not</u> apply to contracts for facilities that use fuels other than natural gas, contracts that do not have Imputed Production as part of their settlement calculations, or contracts in respect of any facility that does not participate in the IESO-Administered Markets. (b) The amendments set forth in this Term Sheet have previously been discussed with stakeholders and reflect the implementation of the approach previously presented by the IESO to stakeholders. (c) Capitalized terms used but not defined in this Term Sheet have the meanings given to such terms in the applicable Contract.¹
2. Context	(a) In connection with the IESO’s Market Renewal Program (“MRP”), in 2019 the IESO published high-level designs (“HLDs”) for the Day-Ahead Market (“DAM”), Single Schedule Market (“SSM”) and Enhanced Real-time Unit Commitment (“ERUC”) projects. The IESO subsequently published detailed design documents for the energy-stream of market renewal (the “Detailed Design Documents”) and has now prepared IESO Market Rule amendments which have been provisionally approved by the IESO board. (b) Based on the Detailed Design Documents and the provisional IESO Market Rule amendments, the IESO anticipates that a requirement for a Replacement Price and Replacement Provisions will be triggered under (i) Section 1.7 of the Contract, addressing the opening of a Day Ahead Energy Forward Market and (ii) Section 1.8 of the Contract, addressing the occurrence of a Price Evolution Event (namely the implementation of Locational Marginal Pricing²). (c) This Term Sheet defines the Replacement Price and Replacement Provisions anticipated to be required by Sections 1.7 and 1.8 of the Contract (the “Proposed Amendments”), and is based on the assumption that (i) the Day Ahead Energy Forward Market is opened at the same time as the implementation of Locational Marginal Pricing, and (ii) the DAM and SSM are ultimately designed and implemented on the same basis as provided for in the Detailed Design Documents and the provisional IESO Market Rule amendments. If either of these assumptions turns out to be incorrect, then

¹ This Term Sheet is based on generic CES contract language. There are minor variations in the defined terms between contracts and accordingly, once facility-specific amending agreements are drafted, they will be drafted with reference to the applicable defined terms.

² The implementation of Locational Marginal Pricing is one of the effects of moving to a single schedule market.

	the Proposed Amendments set forth in this Term Sheet may require further revision.
3. Timing & Process	(a) Negotiations of this Term Sheet are being done on a without prejudice basis. The Term Sheet is non-binding on either Party. (b) The Term Sheet will remain as a working draft while MRP continues to be developed. As more details are published about MRP (e.g. through the finalization of draft IESO Market Rule amendments) and as discussions with Suppliers progress, the Term Sheet will be updated on an ongoing basis, as required to reflect the updated design of MRP and ongoing discussions. (c) On or about the same time as final or near-final IESO Market Rules for MRP are published, amending agreements based on the Term Sheet can be finalized. If a Secured Lender Consent and Acknowledgement Agreement has been entered into in respect of a Contract, the amending agreement will require consent of the Secured Lender. (d) The Replacement Price and Replacement Provisions will be made effective from and after the date the DAM is opened and the SSM is implemented. (e) The generic Term Sheet and any comments on it are generally <u>not</u> considered to be confidential. As the Parties move to contract-specific discussions, it may be necessary to switch to confidential discussions to protect the confidentiality of the agreements.
4. Proposed Amendments & Rationale	(a) Schedule "A" to this Term Sheet sets out the Proposed Amendments. (b) Schedule "B" to this Term Sheet sets out the rationale for the Proposed Amendments.
5. Further Evolution	(a) In entering into the amending agreements, the Parties will agree that the Replacement Price and Replacement Provisions satisfy any and all obligations each Party has to the other under the applicable Contract in connection with the IESO Market Rule amendments implementing the energy stream of MRP. Any further new or amended IESO Market Rules will be addressed in accordance with relevant provisions of the Contract.

Schedule “A” – Proposed Amendments

1. Add the following new defined term:

“**Applicable Day-Ahead Locational Marginal Price**” or “**ADALMP**” means, with respect to any hour, the locational marginal price for energy (in \$/MWh) at the delivery point that corresponds to the Facility’s Connection Point in the day-ahead IESO-Administered Market for Electricity for that hour.

[NTD: For any Facility with multiple delivery points, the definition of ADALMP will be supplemented to reflect the capacity-weighted average of delivery point location marginal prices, as follows:

“Applicable Day-Ahead Locational Marginal Price” or “ADALMP” means, with respect to any hour, the weighted average of the locational marginal prices in the day-ahead IESO-Administered Market for energy (in \$/MWh) for that hour at the delivery points that correspond to the Facility’s Connection Points, weighted according to the registered capacities with the System Operator for each such Connection Point. As of the Effective Date, the weighting that would be applied for the purpose of averaging is ● percent (●%) for the ● Connection Point and ● percent (●%) for the ● Connection Point. Any future changes to the weighting require the consent of the Buyer, not to be unreasonably withheld).]

2. Amend the definitions of Deemed Start-Up Hour and Deemed Shut-Down Hour in Section 3.1 of Exhibit J as follows:

(a) A “Deemed Start-Up Hour” is the first hour of a Deemed Dispatch Interval, and is the first hour, other than a Directed Dispatch Hour, following a Deemed Shut-Down Hour in which the ~~Pre-Dispatch Price for that hour h, as published three hours prior to that hour, exceeds the applicable Variable Energy Cost, and the HOEP~~ **ADALMP** was greater than or equal to the applicable Variable Energy Cost for that hour h ~~or for the previous hour h-1~~. Notwithstanding the foregoing, the requirement that the Deemed Start-Up Hour follow a Deemed Shut-Down Hour shall not apply to the first Deemed Start-Up Hour in the Term.

(b) A “Deemed Shut-Down Hour” is the last hour in a Deemed Dispatch Interval, and is the first hour within a Deemed Dispatch Interval in which,

(a) ~~HOEP~~ **ADALMP** was less than or equal to the applicable Variable Energy Cost for that hour h and for the previous hour h-1; or

(b) ~~the Pre-Dispatch Prices, as published in that hour h,~~ **ADALMP** for hours h+1, h+2 and h+3 are all less than the applicable Variable Energy Cost; or

(c) the following hour is a Directed Start-Up Hour.

3. Amend Section 3.2 of Exhibit J (Calculation of Imputed Gross Energy Market Revenue) and Section 3.3.4 of Exhibit J (Calculation of Negative Interval Net Revenue Recapture) as follows:

(a) Change all references from HOEP to ADALMP.

Schedule “B” – Rationale for Proposed Amendments

1. Day Ahead Energy Forward Market

- (a) In the case where a Day Ahead Energy Forward Market is opened, Section 1.7(b) sets out two principles that apply to the Replacement Price and Replacement Provisions and Section 1.7(c) sets out three additional principles (each, an “**Amending Principle**”, and referred to in this Term Sheet as “Principle A” through “Principle E”, respectively³).
- (b) All Amending Principles are expressly tied to Exhibit J. As such, the Proposed Amendments are confined to Exhibit J.
- (c) The approach to developing the Proposed Amendments was to satisfy the requirements of the more specific Amending Principles in a manner that would also respect the requirements of the more general Amending Principles. Principles A, C, and D are very specific as to their application, and have been directly applied in the development of the Proposed Amendments.
- (d) Principle B has been followed by continuing to deem start-ups and shut-downs on the basis of rational price signals that maximize deemed operation during hours of positive INR and minimize deemed operation during hours of negative INR, with due consideration for compensatory market-based payments to offset incurred but non-recovered costs (i.e. taking into account the DAM Generator Offer Cost Guarantee). The Proposed Amendments do this by revising the definitions of Deemed Start-Up Hour and Deemed Shut Down Hour to use pricing information from the Day Ahead Energy Forward Market, and maintaining the structure of accounting for Start-up Costs in IVEC after-the-fact (including through the preservation of the NINRR term). Principle B also references “consideration for any other attributes which may be recognized within the Day Ahead Energy Forward Market”; however, the DAM continues to recognize the same attributes as the existing IESO Market Rules (albeit in a different structure), and accordingly no new attributes are proposed to be introduced into Exhibit J.
- (e) Principle E has been followed by preserving the overarching structure of Exhibit J and ensuring that the quality of the hedge provided by the Imputed Production model set out in Exhibit J is not impaired for a Facility with the attributes set out in Exhibit B. The only effect of the Proposed Amendments on the Imputed Production model is to increase the notice of impending Deemed Start-Up Hours and Deemed Shut-Down Hours. According to the provisionally approved market rules, the ADALMP should be posted as soon as practical after completion of the day ahead scheduling process, which provides considerably more notice than the existing use of the one, two and three hour-ahead Pre-Dispatch Prices. In effect, the ADALMP is treated as being similar in nature to a Pre-Dispatch Price for the purpose of being an imputed start/stop signal, but provided in the day-ahead timeframe rather than just one, two or three hours ahead of the delivery hour.

2. Locational Marginal Price

- (a) Section 1.8(b) provides that in the event of a Price Evolution Event, including the implementation of Locational Marginal Pricing, in Exhibit J, HOEP, or its replacement value under a Day Ahead Energy Forward Market is to be replaced with “the Ontario

³ The wording of the Amending Principles varies somewhat between certain CES contracts. The IESO does not currently consider the variance to be material.

Electricity market price that most closely emulates the price actually paid to Supplier by the Ontario Electricity market for Electricity output from the Facility” and that all other features of Exhibit J will be applicable. As such, the Applicable Day-Ahead Locational Marginal Price has been identified as the appropriate replacement value for HOEP in the context of the concurrent implementation of LMP and DAM.

TAB 7

CES CONTRACT

MRP CONTRACT AMENDMENT TERM SHEET

Heading	Provisions
1. Applicability	(a) This Term Sheet has been drafted with reference to a generic Clean Energy Supply Contract (CES Contract) (the “Contract”). This Term Sheet does <u>not</u> apply to contracts for facilities that use fuels other than natural gas, contracts that do not have Imputed Production as part of their settlement calculations, or contracts in respect of any facility that does not participate in the IESO-Administered Markets. (b) The amendments set forth in this Term Sheet have previously been discussed with stakeholders and reflect the implementation of the approach previously presented by the IESO to stakeholders. (c) Capitalized terms used but not defined in this Term Sheet have the meanings given to such terms in the applicable Contract.¹
2. Context	(a) In connection with the IESO’s Market Renewal Program (“MRP”), in 2019 the IESO published high-level designs (“HLDs”) for the Day-Ahead Market (“DAM”), Single Schedule Market (“SSM”) and Enhanced Real-time Unit Commitment (“ERUC”) projects. The IESO subsequently published detailed design documents for the energy-stream of market renewal (the “Detailed Design Documents”) and has now prepared IESO Market Rule amendments which have been provisionally approved by the IESO board. (b) Based on the Detailed Design Documents and the provisional IESO Market Rule amendments, the IESO anticipates that a requirement for a Replacement Price and Replacement Provisions will be triggered under (i) Section 1.7 of the Contract, addressing the opening of a Day Ahead Energy Forward Market and (ii) Section 1.8 of the Contract, addressing the occurrence of a Price Evolution Event (namely the implementation of Locational Marginal Pricing²). (c) This Term Sheet defines the Replacement Price and Replacement Provisions anticipated to be required by Sections 1.7 and 1.8 of the Contract (the “Proposed Amendments”), and is based on the assumption that the DAM and SSM are ultimately designed and implemented on the same basis as provided for in the Detailed Design Documents and the provisional IESO Market Rule amendments (including as part of a single transition). If this assumption turns out to be incorrect, then the Proposed Amendments set forth in this Term Sheet may require further revision.

¹ This Term Sheet is based on generic CES contract language. There are minor variations in the defined terms between contracts and accordingly, once facility-specific amending agreements are drafted, they will be drafted with reference to the applicable defined terms.

² The implementation of Locational Marginal Pricing is one of the effects of moving to a single schedule market.

3. Process	(a) Negotiations of this Term Sheet are being done to fulfill Buyer's obligations, pursuant to Section 1.7(b) and 1.8(b) of the Contract, to propose a Replacement Price and Replacement Provisions to Supplier. The Term Sheet is non-binding on either Party. (b) The Term Sheet will remain as a working draft while MRP continues to be developed. As more details are published about MRP (e.g. through the finalization of draft IESO Market Rule amendments) and as discussions with Suppliers progress, the Term Sheet will be updated on an ongoing basis, as required to reflect the updated design of MRP and ongoing discussions. (c) On or about the same time as final or near-final IESO Market Rules for MRP are published, amending agreements (each, an "MRP Amending Agreement") based on the Term Sheet can be finalized. If a Secured Lender Consent and Acknowledgement Agreement has been entered into in respect of a Contract, the MRP Amending Agreement will require consent of the Secured Lender. (d) The generic Term Sheet and any comments on it are generally <u>not</u> considered to be confidential. As the Parties move to contract-specific discussions, it may be necessary to switch to confidential discussions to protect the confidentiality of the agreements.
4. Proposed Amendments & Rationale	Schedule "A" to this Term Sheet sets out the Proposed Amendments.
5. Further Evolution	(a) In entering into the MRP Amending Agreements, the Parties will agree that the Replacement Price and Replacement Provisions satisfy any and all obligations each Party has to the other under the applicable Contract in connection with the IESO Market Rule amendments implementing the energy stream of MRP as of the date of the MRP Amending Agreement. Any further new or amended IESO Market Rules after the date of the MRP Amending Agreement will be addressed in accordance with relevant provisions of the Contract.
6. Effectiveness & Market Transition	(a) The IESO (as System Operator) has published its proposed plan for the transition to the SSM and DAM in presentations entitled Go-Live Plan and MRP Transitional Amendments, both dated April 25, 2024 (the "Go-Live Plan"). The Go-Live Plan includes a description of the cutover plan to transition from the current (legacy two-schedule) market, to the SSM and DAM and, if necessary, the rollback plan to restore the legacy (two-schedule) market, all of which will be addressed by amendments to the IESO Market Rules. The following provisions relating to the transition to the SSM and DAM and the effectiveness of the Proposed Amendments are based on the Go-Live Plan. (b) In accordance with the Go-Live Plan: (i) "Go-Live Date" means the first trade date of the SSM, which is currently targeted to be May 1, 2025;

	(ii) “Go-Live Decision” means the decision, made by the System Operator after confirming that all necessary conditions for Go-Live have been achieved, to commence final preparations for cutover, which is currently targeted for announcement in early April 2025; (iii) “MRP Cutover Start Decision” means the decision, made by the System Operator, to begin executing the cutover plan, which is currently targeted for announcement the morning of April 30, 2025; (iv) “Market Transition Completed” means the time the System Operator decides to end the market suspension for transition, which is currently targeted for announcement on May 2, 2025. The announcement of the end of the market suspension for transition is also expected to announce the opening of the first DAM offer window. (v) “MRP Cutover Completed” means the time the System Operator determines that the Go-Live Plan has been completed, which is currently targeted for announcement on May 8, 2024. (c) Upon the System Operator confirming Market Transition Completed, the Proposed Amendments shall take effect retroactive to the Go-Live Date. For greater certainty, during any period of DAM suspension after the activation of the SSM, the Proposed Amendments applicable to a DAM Suspension Day will apply.
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Schedule “A” – Proposed Amendments

1. Add the following new defined term:

“Applicable Day-Ahead Locational Marginal Price” or “ADALMP” means, with respect to any hour, the locational marginal price for energy (in \$/MWh) at the delivery point that corresponds to the Facility’s Connection Point in the day-ahead IESO-Administered Market for Electricity for that hour.

[NTD: For any Facility with multiple delivery points, the definition of ADALMP will be supplemented to reflect the capacity-weighted average of delivery point location marginal prices, as follows:

“Applicable Day-Ahead Locational Marginal Price” or “ADALMP” means, with respect to any hour, the weighted average of the locational marginal prices in the day-ahead IESO-Administered Market for energy (in \$/MWh) for that hour at the delivery points that correspond to the Facility’s Connection Points, weighted according to the registered capacities with the System Operator for each such Connection Point. As of the Effective Date, the weighting that would be applied for the purpose of averaging is ● percent (●%) for the ● Connection Point and ● percent (●%) for the ● Connection Point. Any future changes to the weighting require the consent of the Buyer, not to be unreasonably withheld).]

“Applicable Real-Time Locational Marginal Price” or “ARTLMP” means, with respect to any hour, the average of the real-time locational marginal price (in \$/MWh) applicable to the delivery point that corresponds to the Facility’s Connection Point during such hour.

“DAM” means the IESO-Administered Market known as the “Day-Ahead Market”.

“DAM Suspension Day” means any day for which the DAM is suspended (in whole or in part) by the IESO. For greater certainty, the foregoing applies to both the DAM suspension as part of the market renewal transition and any subsequent DAM failures.

2. Amend the definitions of Deemed Start-Up Hour and Deemed Shut-Down Hour in Section 3.1 of Exhibit J as follows:

- (a) A “Deemed Start-Up Hour” is the first hour of a Deemed Dispatch Interval, and is the first hour, other than a Directed Dispatch Hour, following a Deemed Shut-Down Hour in which the ~~Pre-Dispatch Price for that hour h, as published three hours prior to that hour, exceeds the applicable Variable Energy Cost, and the HOEP ADALMP~~ was greater than or equal to the applicable Variable Energy Cost for that hour h ~~or for the previous hour h-1~~. Notwithstanding the foregoing, the requirement that the Deemed Start-Up Hour follow a Deemed Shut-Down Hour shall not apply to the first Deemed Start-Up Hour in the Term.
- (b) A “Deemed Shut-Down Hour” is the last hour in a Deemed Dispatch Interval, and is the first hour within a Deemed Dispatch Interval in which,
 - (a) ~~HOEP ADALMP~~ was less than or equal to the applicable Variable Energy Cost for that hour h and for the previous hour h-1; or
 - (b) ~~the Pre-Dispatch Prices, as published in that hour h,~~ ADALMP for hours h+1, h+2 and h+3 are all less than the applicable Variable Energy Cost; or

- (c) the following hour is a Directed Start-Up Hour.
- 3. Amend Section 3.2 of Exhibit J (Calculation of Imputed Gross Energy Market Revenue) and Section 3.3.4 of Exhibit J (Calculation of Negative Interval Net Revenue Recapture) as follows:
 - (a) Change all references from HOEP to ADALMP.
- 4. At the end of Section 3 of Exhibit J (Calculation of Imputed Gross Energy Market Revenue), insert the following:

“Notwithstanding anything else in Section 3 of Exhibit J, in respect of any day that is a DAM Suspension Day:

 - (i) for the purposes of the definition of Deemed Start-Up Hour, replace “ADALMP was greater than or equal to the applicable Variable Energy Cost for that hour h” with “Pre-Dispatch Price for that hour h, as published three hours prior to that hour, exceeds the Variable Energy Cost, and the ARTLMP was greater than or equal to the applicable Variable Energy Cost for that hour h or for the previous hour h-1”;
 - (ii) for the purposes of the definition of Deemed Shut-Down Hour:
 - (A) in (a) replace “ADALMP” with “ARTLMP”; and
 - (B) in (b) replace “ADALMP” with “the Pre-Dispatch Prices, as published in that hour h,”; and
 - (iii) in Section 3.2 of Exhibit J, each reference to ADALMP shall be deemed to be a reference to ARTLMP.”

TAB 8

Memorandum



Independent Electricity System Operator
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To: The Markets Committee

Presenter: Michael Lyle, Vice President, Legal Resources and Corporate Governance and
Chair, IESO Technical Panel

Date: October 17, 2024

Re: MRP Market Rule Amendments – Approval of Final Alignment Batch (MR-00481-R00-R13)

Purpose of Item: Recommendation for Approval to the Board

Executive Summary:

The IESO is seeking approval from the IESO Board on proposed market rule amendments to implement the Market Renewal Program (MRP).

At the September 10, 2024 Technical Panel meeting, the Technical Panel voted unanimously in favour of recommending the amendment proposals to the IESO Board. The Technical Panel's vote to recommend concludes four years of extensive discussions with the Technical Panel over more than 30 meetings.

Significant Issues, Risks and Opportunities:

The most significant feedback received on the Final Alignment Batch, and primary subject of discussion with the Technical Panel, related to market power mitigation (MPM) and the concern of some supplier representatives that the MPM framework could potentially impact supply resources in ways that are unintended, and which have not, or cannot be anticipated prior to it being

operationalized. Concerns were also expressed with respect to the sufficiency of avenues for supplier recourse in the event MPM does create such unintended impacts.

In response to these concerns, the IESO held five additional sessions on MPM with the Panel. The IESO reiterated the importance of implementing an enhanced MPM framework in the renewed market given the shift to Locational Marginal Pricing and the risk that shift creates of exposing consumers to unreasonably high prices where local supply is restricted. The IESO also recapped the various mitigation processes associated with the MPM framework, existing and new recourse mechanisms, and then sought additional input from the Panel to better understand Panel member concerns relating to potential unintended outcomes and the sufficiency of recourse mechanisms. The IESO and Panel members had concerted discussions with respect to actions that could be taken to help identify and address potential unintended outcomes of the implementation of the MPM framework. In addition to market participants' ability to leverage the existing recourse options, the IESO committed to take the following actions to the satisfaction of stakeholder and Panel member concerns:

1- Further delay designation of constrained areas as follows:

- Collect five months of data from the renewed market prior to conducting the analysis to establish potential and narrow constrained areas (PCA's and NCA's respectively);
- Delay application of the first dynamic constrained areas (DCAs) until 30 days after the PCA analysis is completed;
- IESO to provide a preliminary view of potential PCAs and NCA designations based on the first 90 days of data after go live;
- IESO will, on an ongoing basis, publish to the IESO website the PCAs that will be used during the designation period.

2- Enhance testing of the MPM framework during the End-to-End test phase;

3- Apply discretion to not issue ex-post mitigation assessments if warranted; and

4- Establish an MPM working group, the objective of which will be to assist in identifying unintended outcomes of the MPM framework and recommending means to address such unintended outcomes, and codifying this obligation in the market rules.

Lastly, Technical Panel members and stakeholders continue to assert the importance of arriving at an acceptable resolution on gas generator contracts.

Background:

The Final Alignment batch is a restatement of the market rule amendment proposals from the six previous provisionally approved batches, and it comprises the entire set of MRP market rule amendments required to implement MRP. The IESO created a provisional recommendation and approval process to enable stakeholders, Technical Panel, and IESO Board members to review the market rules for MRP, first with a focus on discrete batches and then in their entirety, before making a final Technical Panel recommendation for Board approval. As such, this Final Alignment batch consists primarily of previously reviewed and provisionally approved material.

The contents of the Final Alignment batch have been further supplemented to include:

1. Updates to earlier batches resulting from the ongoing implementation and engagement processes;
2. Transitional market rules required to facilitate the mechanics of transitioning from the current market to the renewed market; and
3. Administrative “conforming changes” made to improve alignment between the various impacted chapters (e.g. updates to internal references and defined terms).

Proposal and Analysis

Nine sets of written submissions were received following the Technical Panel vote to post on the market rule amendments for the Final Alignment batch. A total of 219 comments resulted from the written submissions from the Association of Power Producers of Ontario (APPrO), Atura Power, Evolugen, Lukas Deeg (generator representative), Michale Pohlod (demand response representative), Ontario Power Generation (OPG), Power Advisory, Workbench Energy, and Vlad Urukov (generator representative).

The majority of comments were requests for clarification (153), followed by editorial (43), modification of a market rule (10), and modification of a market manual (13). No significant concerns on the Final Alignment market rules language were received.

Concerns raised on MPM related to unintended outcomes and results on suppliers, and sufficiency of recourse mechanisms were the main substantive comments as noted and addressed above.

Next Steps / Implementation:

I recommend that the Board accept the unanimous vote and recommendation of the Technical Panel to approve market rule amendments MR-00481-R00-R13: Market Renewal Program – Final Alignment.

Requested Committee Resolution:

The Committee is asked to pass the following resolution:

BE IT RESOLVED THAT the Markets Committee recommends that the Board of Directors approve the following resolution:

[Recommended Board Resolution Begins.]

CONCERNING MR-00481-R00-R13: Market Renewal Program: Final Alignment, which are market rule amendments to implement the Market Renewal Program:

- a) **WHEREAS** these proposals, as part of the broader Market Renewal Program, are intended to increase the efficiency of Ontario's electricity markets and reduce system costs paid by consumers;
- b) **WHEREAS** the IESO engaged with the Technical Panel and the broader stakeholder community, and has revised these proposals based on feedback received; and
- c) **WHEREAS** the Technical Panel voted unanimously to recommend MR-00481-R00-R13 for approval by the IESO Board;

BE IT RESOLVED THAT on the recommendation of the Markets Committee, the IESO Board of Directors accepts the recommendation from the Technical Panel and approves MR-00481-R00-R13: Market Renewal Program: Final Alignment to come into effect on November 11, 2024.

Michael Lyle

Cc: IESO Records

Encls.

- a. Presentation
- b. Appendix A – Market Renewal Program: Summary of Market Rule Amendment Batches
- c. Market Rule Amendment Proposal forms
 - MR-00481-R00: Final Alignment – Definitions
 - MR-00481-R01: Final Alignment – Introduction and Interpretation
 - MR-00481-R02: Final Alignment – Participation
 - MR-00481-R03: Final Alignment – Administration, Supervision, Enforcement
 - MR-00481-R04: Final Alignment – Grid Connection Requirements
 - MR-00481-R05: Final Alignment – Power System Reliability
 - MR-00481-R06: Final Alignment – Wholesale Metering
 - MR-00481-R07: Final Alignment – System Operations and Physical Markets
 - MR-00481-R08: Final Alignment – Chapter 0.7 Appendices
 - MR-00481-R09: Final Alignment – Physical Bilateral Contracts and Financial Markets
 - MR-00481-R10: Final Alignment – Settlements and Billing
 - MR-00481-R11: Final Alignment – Chapter 0.9 Appendices
 - MR-00481-R12: Final Alignment – Transmission Service and Planning
 - MR-00481-R13: Final Alignment – Chapter 9 Notice of Disagreement Timelines
- d. Technical Panel Materials
 - i. Link to [Memo to Technical Panel from IESO staff, dated September 3, 2024](#)
 - ii. TP member Rationale, dated September 16, 2024
- e. Summary of Stakeholder and Technical Panel Comments
- f. Consumer Impact Assessment
- g. Draft Board Resolution