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**File No. 043650.00001**

December 18, 2024

**BY RESS**  
**registrar@oeb.ca**

Ms. Nancy Marconi, Registrar  
Ontario Energy Board  
PO Box 2319  
26th Floor, 2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Capital Power Corporation, Thorold CoGen L.P., Portlands Energy Centre L.P. dba Atura Power, St. Clair Power L.P., TransAlta (SC) L.P. (the “NQS Generation Group”)**  
**Application for Review of Amendments to the Independent Electricity System Operator (“IESO”) Market Rules – EB-2024-0331 (“Application”)**

In accordance with Procedural Order No. 2 issued on December 2, 2024, please find enclosed the evidence of the NQS Generation Group in support of the Application (“**Expert Report**”). The NQS Generation Group files its evidence pursuant to Rule 13A of the Ontario Energy Board’s (“**OEB**”) *Rules of Practice and Procedure* (“**Rules**”). The authors of the Expert Report have been made aware of, and have agreed to accept, the responsibilities that are or may be imposed as set out in Rule 13A or Form A of the Rules.

The NQS Generation Group retained three experts from Power Advisory LLC who will opine on the following areas of expertise: **energy markets, wholesale market design, energy contract design and operations, and energy policy.**

The OEB ruled in Procedural Order No. 2 that the NQS Generation Group has not established any basis on which contractual matters could be within the scope of this section 33 review. To be clear, the NQS Generation Group is not asking the OEB to consider whether a particular contractual term, or proposed amendment of a contractual term, is inconsistent with the purposes of the *Electricity Act, 1998* or will result in unjust discrimination. Nor is the NQS Generation Group asking the OEB to weigh in on contractual matters.

Rather, the OEB must as a matter of law and procedural fairness consider the financial consequences of the Market Rule Amendments under the existing contracts between the IESO and NQS Generation

Group to assess the full factual extent of the unjust economic discrimination caused by the Market Rule Amendments.

In our view Procedural Order No. 2 does not exclude consideration of the consequential economic impacts of the Market Renewal Amendments on the NQS Generation Group arising from their contracts. On this point OEB Staff agreed that the OEB needs to consider some contractual evidence so that its assessment of unjust economic discrimination or inconsistency with the purposes of the *Electricity Act, 1998* is not done in a vacuum.<sup>1</sup>

The OEB has a legal obligation under section 33 to consider the totality of the economically discriminatory harms caused by the Market Rule Amendments. This includes harms that arise from the Market Rule Amendments directly within the IESO-administered markets as well as the harms that arise from the Market Rule Amendments through the relevant contracts. The OEB will not be able to weigh whether or not those harms are “just” or “unjust” without considering the totality of the relevant factual information that informs the economically discriminatory impacts of the Market Rule Amendments.

Finally, procedural fairness requires the OEB provide the NQS Generation Group an adequate opportunity to be heard. Since the NQS Generation Group holds the burden of proof in this Application, it must be afforded with an opportunity to be able to fully present its evidence and argument to the decision-making panel. The right to be heard is fundamental to a fair proceeding.

Please contact the undersigned with any questions.

Yours truly,

**BORDEN LADNER GERVAIS LLP**



Colm Boyle

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<sup>1</sup> Transcript, Pre-Hearing Conference, November 26, 2024, P128, L15-28.