



**Capital Power Corporation, Thorold CoGen L.P.,  
Portlands Energy Centre L.P. doing business as Atura  
Power, St. Clair Power L.P., TransAlta (SC) L.P.**

**Application to Review Amendments to the Market Rules  
made by the Independent Electricity System Operator**

**DECISION AND PROCEDURAL ORDER NO. 4**

**January 14, 2025**

On November 7, 2024, Capital Power Corporation, Thorold CoGen L.P., Portlands Energy Centre L.P. doing business as Atura Power, St. Clair Power L.P., and TransAlta (SC) L.P., a group of non-quick start gas-fired generators (NQS Generation Group), jointly filed an application under section 33 of the *Electricity Act, 1998*, S.O. 1998, c. 15, (Schedule B) (*Electricity Act*). The application requests that the Ontario Energy Board (OEB) review a set of amendments to the market rules made by the Independent Electricity System Operator (IESO) (MR-00481-R00 to -R013) (Amendments), revoke the Amendments and refer them back to the IESO for further consideration. The Amendments deal with a comprehensive set of changes to the IESO-administered markets required to operationalize the IESO Market Renewal Program (MRP) to evolve Ontario's electricity market. (MRP) to evolve Ontario's electricity market.

On December 2, 2024, the OEB issued [Decision and Procedural Order No. 2](#) (PO2) which among other things, made provision for a Technical Conference on January 9-10, 2025 and a hybrid oral hearing on January 15-17, 2025.

This Decision and Procedural Order No. 4 addresses certain matters arising from the Technical Conference with respect to the proposed expert witnesses on behalf of NQS Generation Group, the witnesses' qualifications, and disputed documents which are supposedly related to the qualifications and independence of NQS Generation Group's proposed expert witnesses. This decision also provides direction to the parties in respect of a motion filed by NQS Generation Group on January 14, 2025 (NQS Motion) as well as clarification on some other procedural matters.<sup>1</sup>

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<sup>1</sup> [NQS Motion](#), January 14, 2025.

## Background

On December 18, 2024, NQS Generation Group filed expert evidence in the form of a report by Power Advisory LLC (Expert Report). In its covering letter to the Expert Report, NQS Generation Group proposed to qualify three individuals from Power Advisory as experts in the areas of energy markets, wholesale energy design, energy contract design, and operations and energy policy.<sup>2</sup>

On the first day of the Technical Conference on January 9, 2025, the IESO's witnesses were questioned by counsel for NQS Generation Group, OEB staff, and the intervenors.<sup>3</sup>

Also on January 9, 2025, counsel for the IESO sent an email to the other parties with attached documents, which it proposed to put to the Power Advisory witnesses during their examination on January 10, 2025. The documents consist of emails from Power Advisory to the IESO and an attached PowerPoint presentation titled "Analysis of Impacts of MRP Design and Draft Term Sheet" (collectively, the **Disputed Documents**).

In a reply email on January 9, 2025, NQS Generation Group objected to the Disputed Documents being admitted at the Technical Conference and stated that: (a) one of the attached documents does not pertain to the market rule Amendments, but rather the draft contract amendment term sheets, and (b) the other document was marked as "Confidential and Without Prejudice" and should not have been produced.

The email exchange of January 9, 2025 and the Disputed Documents are not on the public record of this proceeding.

OEB staff conveyed the OEB panel's directions to the parties with respect to the Disputed Documents at the start of the second day of the technical conference on January 10, 2025. Parties were informed that the Disputed Documents (and questions related to the Disputed Documents) would not be allowed at the Technical Conference. The OEB panel's instruction was that, if the IESO wished to introduce the Disputed Documents, it should file a written submission by 12:00pm on January 13, 2025 and NQS Generation Group could file a reply submission by 4:30pm on January 13, 2025. The Power Advisory witnesses gave evidence at the Technical Conference on January 10, 2025. Under questioning by the IESO, counsel for NQS Generation Group clarified that it seeks to qualify Brady Yauch and Jason Chee-Aloy as experts in energy markets, wholesale market design, and energy policy and Michael Killeavy and Jason Chee-Aloy

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<sup>2</sup> [Cover letter to Power Advisory Report](#), December 18, 2024.

<sup>3</sup> [Technical Conference Transcript, January 9](#), 2025.

as experts in energy contract design.<sup>4</sup> On January 13, 2025, each IESO and NQS Generation Group filed their submissions on the Disputed Documents.

Also on January 13, 2025, the IESO and NQS Generation Group filed responses to undertakings given at the Technical Conference.<sup>5</sup>

On January 14, 2025, NQS Generation Group filed a motion for the IESO to produce certain information requested at the Technical Conference which the IESO refused to provide.

## **Submissions on Disputed Documents and Expert Witness Qualifications**

### **IESO Submissions**

In its submission, the IESO contends that the Disputed Documents go to the “independence, or lack thereof, of [the Power Advisory] witnesses”.<sup>6</sup>

The IESO stated that Power Advisory has acted and may still be acting for NQS Generation Group in an advocacy role and does not satisfy the threshold requirement to be independent expert witnesses if it has advocated or is advocating for NQS Generation Group on matters related to Power Advisory’s Expert Report.<sup>7</sup>

The IESO noted that it does not seek to rely on the Disputed Documents to address out-of-scope contractual matters, but that it instead seeks to use the documents to address the independence of the Power Advisory witnesses.

The IESO also submitted that claims pertaining to the alleged settlement privileged status or confidentiality of the Disputed Documents do not apply in the circumstances.<sup>8</sup>

### **NQS Generation Group Submissions**

In its submission, NQS Generation Group reiterated its objection to disclosure of the Disputed Documents and requested that they be excluded from the record and from use in cross-examination by the IESO.<sup>9</sup>

The NQS Generation Group provided several reasons to exclude the Disputed Documents from the record. NQS submitted, among other things, that the Disputed

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<sup>4</sup> [Technical Conference Transcript, January 10](#), 2025, p. 11, lines 16-20.

<sup>5</sup> [NQS Undertaking Responses](#); [IESO Undertaking Responses](#)

<sup>6</sup> [IESO Submission on Documents](#), January 13, 2025, para. 2.

<sup>7</sup> *Ibid.*, para. 31.

<sup>8</sup> *Ibid.*, para. 34.

<sup>9</sup> [NQS Reply Submissions on Documents](#), January 13, 2025.

Documents are unnecessary insofar as the documents concern contract amendments, and contractual matters are out of scope in this proceeding.<sup>10</sup> NQS further submitted that the Disputed Documents were (1) communicated to the IESO on a without prejudice basis, (2) are subject to settlement privilege, and (3) are considered confidential under the contract to which they pertain.<sup>11</sup>

In addition, the NQS Generation Group argued that insofar as the IESO objects to the independence of the Power Advisory witnesses, their objection is untimely under OEB Rule 14.03 which requires that allegations relating to good character, propriety of conduct or competence of a party be brought at least 15 days prior to a hearing.<sup>12</sup>

## Findings

### Expert Witness Qualification

At the Technical Conference, each of IESO and NQS Generation Group put questions to the other party's witnesses with respect to their qualifications.

The IESO does not seek qualification of its witnesses as experts.

NQS Generation Group seeks qualification of its Power Advisory witnesses as experts, pursuant to section 13A of the OEB [Rules of Practice and Procedure](#).

Counsel for NQS Generation Group examined the IESO's witnesses<sup>13</sup> on various aspects of their CVs and experience during the first day of the Technical Conference.<sup>14</sup> On the second day of the Technical Conference, counsel for the IESO engaged in similar lines of questioning with the Power Advisory witnesses put forward by NQS Generation Group.<sup>15</sup>

Questions with respect to the qualifications of the parties' witnesses also produced a number of undertakings for additional information pertaining to the witnesses' independence, expertise, experience and past working history in the sector.<sup>16</sup>

The OEB panel hearing this application has listened to the Technical Conference and reviewed the transcripts and is satisfied as to the expert qualifications of the Power Advisory witnesses. The OEB accepts the Power Advisory witnesses – Jason Chee-

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<sup>10</sup> Ibid., para. 9-10.

<sup>11</sup> Ibid., paras. 13-14, 17, 21-22.

<sup>12</sup> Ibid., para 6-7.

<sup>13</sup> Mr. Matsugu and Mr. Nusbaum for the IESO.

<sup>14</sup> Technical Conference Transcript, January 9, 2025, p. 82-92.

<sup>15</sup> Technical Conference Transcript, January 10, 2025, p. 5-24.

<sup>16</sup> Cf. JT1.8, JT2.1 and JT2.2.

Aloy and Brady Yauch – as experts on the subjects of energy markets and wholesale market design. The Power Advisory witnesses may also be experts in the area of energy contract design, however, as the OEB has determined, the contracts between the IESO and the NQS Generation Group are outside the scope of this application. Therefore, the OEB does not need to determine whether they are experts on this subject.

The OEB does not accept the IESO's arguments seeking to disqualify the Power Advisory witnesses as experts on the basis of alleged lack of independence.

Rule 13A of the OEB's Rules of Practice and Procedure require that that an expert "assist the OEB impartially by giving evidence that is fair and objective".<sup>17</sup> Similarly, [Form A \(Acknowledgement of Expert's Duty\)](#) requires an expert to acknowledge its duty to provide evidence in the proceeding as follows:

- a) to provide opinion evidence that is fair, objective and non-partisan;
- b) to provide opinion evidence that is related only to matters that are within (the expert's) area of expertise; and
- c) to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.

Having heard the evidence at the Technical Conference, the OEB finds that the Power Advisory witnesses provided evidence that draws on their experience with the Ontario electricity market, consistent with what has been set out in their CVs. Their evidence presents an analysis they have done regarding what they view to be the impact of the Amendments on non-quick start gas-fired generators. The fact that they may draw on this same experience to assist generators in contract negotiations is irrelevant to their competence to carry out the analysis they are presenting in this proceeding.

Whether that evidence is sufficient to establish whether the Amendments are inconsistent with the purposes of this Act or unjustly discriminate against or in favour of a market participant or class of market participant is the ultimate question to be answered by the OEB in this proceeding, based on the entirety of the record, and the weight the OEB will give to the evidence of the parties.

It will not be necessary to repeat the questioning of the Power Advisory witnesses as to their expert qualifications at the oral hearing. The OEB is satisfied that the witnesses have been qualified as experts as described in this Decision and Procedural Order and will be allowed to give evidence as expert witnesses at the oral hearing.

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<sup>17</sup> [OEB Rules of Practice and Procedure, Revised March 6 2024](#), Rule 13A.02.

Having determined that the Power Advisory witnesses are qualified experts, the OEB finds that the Disputed Documents are not necessary and shall not be filed on the record of this proceeding or presented at the oral hearing.

### NQS Motion

The NQS Motion seeks an order of the OEB requiring the IESO to provide answers on the following matters:

- whether Mr. Matsugu and Mr. Nusbaum (the IESO witnesses) are being proffered as expert or fact witnesses, or a combination of both;
- if the IESO witnesses are being proffered as expert witnesses or a combination of expert and fact witnesses, the general areas of expertise of the IESO witnesses; and
- if the IESO witnesses are proffered only as fact witnesses, a determination that opinion evidence of fact witnesses will be given limited or no weight.

The NQS Motion also seeks answers to certain questions posed at the Technical Conference for which the IESO refused to give an undertaking, and in particular, the production of:

- data, analysis and assumptions used to calculate the more efficient unit commitment benefit in document at Tab 2 of the IESO Technical Conference Brief of Exhibits;<sup>18</sup>
- information or data on the number of non-quick start generators that currently participate in the Day-Ahead Commitment Process (DACP) on an incremental-energy-offer-only basis, without reliance on the Generator Cost Guarantee program;<sup>19</sup> and
- dollar amounts of ex-ante mitigation and ex-post settlement adjustments under the DACP under the current Market Power Mitigation regime for the 2018 to 2023 time frame.<sup>20</sup>

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<sup>18</sup> [IESO](#) Brief of Exhibits, pages 732-733; Undertaking Refusal JT1.1 and Appendix C of IESO Undertaking Responses

<sup>19</sup> Undertaking Refusal JT1.4

<sup>20</sup> Undertaking Refusal JT1.7 and

## Findings on NQS Motion

The OEB has reviewed the [IESO Undertaking Responses](#) including the questions that the IESO refused to answer or undertake to answer.

### IESO Witnesses

The OEB notes that the IESO is not seeking to have its witnesses – Mr. Matsugu and Mr. Nusbaum – qualified as expert witnesses but rather as “fact witnesses who have expertise”.<sup>21</sup> While the OEB recognizes that the IESO has not requested that these witnesses be qualified as expert witnesses, the OEB also recognizes that the evidence they gave at the Technical Conference draws on their experience as set out in their CVs. The OEB will not make any determination on whether they are qualified to give expert evidence at this time and parties will have an opportunity to make submissions that include what weight is to be given to any of the evidence heard by the OEB, as part of the written argument process.

### Refusal JT1.1

The requested information is data and analysis underlying the IESO’s MRP Business Case and the Business Case Validation Memo which indicates that the more efficient unit commitment process will produce \$190 million of savings.<sup>22</sup>

The Business Case Validation Memo states, among other things:

“The benefits of more efficient unit commitment were determined based on assessing the inefficiency of the existing process to commit resources that require lead time to come on-line and minimum operating runtimes once connected to the grid. This calculation is still valid as there will continue to be non-quick-start resources with start-up costs and minimum operational requirements that would be inefficiently scheduled in the absence of MRP. With the potential for a decarbonized and decentralized resource mix, the renewed market will be necessary for driving efficient outcomes and managing resources’ operational requirements”.<sup>23</sup>

The OEB will seek clarification of this information request at the beginning of the oral hearing.

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<sup>21</sup> Technical Conference Transcript, January 9, p. 83, line 8-9.

<sup>22</sup> IESO Undertaking Responses Appendix C

<sup>23</sup> MRP Business Case Validation Memo, page 2

### Refusal JT1.4

The requested information is regarding the evidence and data the IESO has on the number of NQS generators that currently participate in the day-ahead commitment process on an incremental-energy-offer-only basis, without reliance on the Generator Cost Guarantee program.

In its refusal to provide the information, the IESO confirmed its understanding that most NQS resources choose to submit three-part offers because they prefer to receive a cost guarantee.

The OEB approves the NQS Generation Group's request and finds that it would be helpful to have a more specific understanding of the number and percentage of generators that participate using three-part offers. The IESO shall provide the data with respect to the generators listed at Appendix B of IESO's responses to undertakings from the Technical Conference.

### Refusal JT1.7

The requested information is the dollar amount of ex-ante mitigation or ex-post settlement adjustments under the day-ahead commitment process, under the current market power mitigation regime for the 2018 to 2023 time frame.

The OEB understands that there is no ex-ante mitigation in the current market and asks the IESO to confirm this. The OEB requires the IESO to provide the quantum of ex-post mitigation in that time frame, on an annual basis.

## **Procedural Clarifications**

On the first day of the Technical Conference a question was raised about PO2 and whether oral arguments would be made at the hearing. The OEB will not require oral argument at the hearing and made provision in PO2 for written arguments after the oral hearing and set out a schedule for the filing of written arguments.

With respect to the order of examinations at the oral hearing, the OEB will be assisted by the IESO presenting its witnesses first and conducting an examination in chief, followed by cross-examination by NQS Generation Group, intervenors and OEB staff. After the IESO's witnesses, NQS Generation Group will present its witnesses and conduct its examination in chief, followed by questions from the other parties.

Further procedural orders may be issued by the OEB in due course.



**THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. The IESO's request to introduce the documents described in this Decision as the "Disputed Documents" is refused.
2. The OEB accepts the Power Advisory witnesses as expert witnesses as described in this Decision and does not require those witnesses to be requalified at the oral hearing.
3. Final arguments will be submitted in writing only after the oral hearing in accordance with the schedule set out in Procedural Order No.2.
4. Part 3.ii and 3.iii of the NQS Motion for disclosure from the IESO is granted as described in this Decision. Part 3.i of the NQS Motion will be addressed at the oral hearing.
5. The NQS Motion with respect to the IESO witnesses is dismissed.

**DATED** at Toronto, **January 14, 2024**

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar