

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998,
S.O. 1998, c. 15 (Sched. B), as amended (the “OEB Act”).

AND IN THE MATTER OF a Hearing on Application to
Review Amendments to the Market Rules made by the
Independent Electricity System Operator.

Technical Conference Undertaking Responses

Filed: January 13, 2025

UNDERTAKING JT2.1

Reference:

Technical Conference Hearing Transcript (Day 2) page 8 line 6 to 7.

Undertaking:

NQS to produce the retainer letter of Mr. Chee-Aloy.

Response:

The agreed-to fee cap is commercially sensitive and is not relevant to the matters at issue in this proceeding. NQS is filing the retainer letter of Mr. Chee-Aloy in accordance with the request to redact non-relevant information set out in the cover letter.

John Vellone
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File No. TBD

October 30, 2024

PRIVILEGED AND CONFIDENTIAL

Jason Chee-Aloy
Managing Director
Power Advisory LLC
Suite 700, P.O. Box 32
Toronto, ON M5J 2H7

Dear Mr. Chee-Aloy:

Re: Retainer Letter Agreement
Assessment of the Market Renewal Program for Ontario Generators

By way of this letter, Borden Ladner Gervais LLP (“**BLG**” or “**we**”) hereby confirms Power Advisory LLC’s (the “**Company**” or “**you**”) retainer in connection with BLG’s legal advice to Northland Power Thorold CoGen L.P., St. Clair Power, L.P., Greenfield Energy Centre, L.P., Capital Power Corporation, Atura Power, and TransAlta Corporation (“**Generation Consortium**”) in respect of the Independent Electricity System Operator’s (“**IESO**”) recent amendments to the Market Rules to implement the Market Renewal Program (“**MRP**”). By signing back a copy of this letter, you agree that this letter contains the agreed-upon terms and conditions of the retainer between BLG and the Company, subject to amendment by written agreement between the parties (the “**Retainer Agreement**”).

1. NO CONFLICT

You do not have any conflict of interest or other constraints on your ability to provide the services contemplated in this Retainer Agreement.

2. SCOPE OF SERVICES AND DELIVERABLES

You have been retained to provide Services to BLG in connection with MRP, in respect of which BLG has been retained to provide legal advice.

The “**Services**” include, but are not limited to, supporting BLG in its assessment of the following areas:

- Review and assessment of the MRP design and amendments to the Market Rules regarding implications for gas-fired generators; and

- Review and assessment of the MRP amendments to the Market Rules relating to associated amendments to contracts, to which gas-fired generators are counterparty with the IESO, and the implications to gas-fired generators.

The project team will consist of the following individuals:

- Jason Chee-Aloy
- Michael Killeavy
- Darryl Yahoda
- Brady Yauch
- Greg Peniuk

In connection with the Services, you have agreed to deliver the following deliverables (the “**Deliverables**”):

- Provide expert report(s) detailing observations, findings, opinions, and recommendations in respect of the MRP design and amendments to the market rules.

Company’s work product is to be used only with regard to the Services and not for any other purpose without Company’s written approval.

Prior to the submission of any statement describing Company’s experience, credentials, or the nature of Company’s work and opinions related to this Retainer Agreement, or the publishing of any report authored by Company, Company will be provided a reasonable opportunity to review such statement for accuracy and provide appropriate disclaimers and legends to any such information and materials.

Upon full payment of all amounts due Company in connection with this Retainer Agreement, all rights, title and interest in the Deliverables will become Generation Consortium’s sole and exclusive property for Generation Consortium’s use in connection with the professional services set forth in this Retainer Agreement, subject to the exceptions set forth below. Company shall retain sole and exclusive ownership of all rights, title and interest in its work papers, proprietary information, processes, methodologies, know-how and software, including such information as existed prior to the delivery of the Services and, to the extent such information is of general application, anything that it may discover, create or develop during provision of the Services (“**Company Property**”). To the extent the Deliverables contain Company Property; Generation Consortium is granted a non-exclusive, non-assignable, royalty-free license to use it in connection with the subject of this Retainer Agreement.

3. FEES

By entering into this Retainer Agreement, BLG and the Company acknowledge that the Services will be provided on a time and material basis [REDACTED] [REDACTED]

BLG or the Company may, at any time and from time to time, request in writing additions, deletions, amendments or any other changes to the Services, including to the scope and nature of the Services or the Deliverables (each, a “**Change**”). No Change shall come into effect unless and until it has been

approved by BLG and the Company in writing, and once so approved, the applicable Services or Deliverables will be deemed to have been amended in accordance with such Change. For clarity, work subsequent to the delivery of the Deliverables, including future risk assessment support work, will be charged out on a time and material basis, as agreed to by the parties in writing prior to the execution of any such work.

In the event Generation Consortium and/or BLG decide that expert witness services are required, a separate engagement is required.

4. SCHEDULE

The Company, BLG and the Generation Consortium will consult with each other on setting a schedule. The Company shall coordinate with BLG and Generation Consortium to update the schedule as required throughout the term of this Retainer Agreement. Unless otherwise agreed to by BLG and the Company in writing, including but not limited through the execution of an approved Change in accordance with the provisions of Section 3, the Retainer Agreement will terminate as soon as the Services and Deliverables are provided and completed by the Company.

5. ACCOUNTS

All fees and billings must be approved by both BLG and Generation Consortium. The Company shall invoice BLG monthly for Services rendered. BLG will attach the Company's invoices to BLG's invoices to Generation Consortium for legal services provided by BLG to Generation Consortium in connection with the matters contemplated by this Retainer Agreement. Accordingly, no payment will be made to the Company by BLG until such time as BLG receives payment from Generation Consortium for the same.

Once BLG receives payment from Generation Consortium for Services rendered by the Company during the applicable billing period, BLG will promptly remit same to the Company. In addition, BLG may withhold any payment if there remain outstanding any unresolved issues.

The Company should submit a summary sheet (as described below) only of all accounts to BLG monthly if the amount payable on an assignment exceeds \$1,000. Otherwise the Company should submit a summary sheet only of all accounts quarterly or on completion of the assignment within the quarterly period, whichever is earlier. The Company should submit each summary sheet of an account to BLG within 30 days of the earlier of the end of the billing period or completion of the assignment.

The Company will submit all original summary sheets of all accounts by email to John Vellone: jvellone@blg.com. The Company will email all invoices to John Vellone, with a copy to Salvatore.Provvidenza@Northlandpower.com, bnunley@invenergy.com, Brett.Kruse@calpine.com, csutherland@capitalpower.com, Noralyn.Vasquez@aturapower.com, Brian.Heaman@transalta.com.

Due to the confidential nature of the matters contemplated in this Retainer Agreement, BLG requests that the Company submit a detailed account which will include at least the following information for each assignment which is being billed:

- a. identification of the assignment by appropriate subject heading for the assignment. Unless specifically agreed otherwise, the Company should provide separate accounts for each assignment;
- b. identification of the billing period to which the account relates;
- c. an itemised summary of the work that has been undertaken, including a brief description of each service (for example, conference with the instructing BLG, preparation of purchase agreement, etc.), the date on which each service was rendered, the time spent on each service, the individual who performed the service and the billing rate of such individual;
- d. a clear line item on the last page of each invoice summarizing all research conducted in the billing period and to indicate whether written results of the research (e.g., reports, memos, opinions) have already been sent to BLG or are attached; and
- e. an itemisation and brief description of all expenses incurred during the billing period, with copies of supporting invoices for any expenses in excess of \$100, unless BLG indicates that such invoices are not required.

The timely closing of Generation Consortium books at year-end requires the prompt submission of year-end accounts. For accrual purposes, if requested, the Company must calculate anticipated fees and expenses for December and must provide BLG with an estimate of these charges by December 15, unless the December charges will total less than \$1,000. Following the completion of the calendar year, the Company is required to specify on all invoices any fees or costs that are for work that was delivered in a previous calendar year.

BLG will also reimburse the Company for all reasonable out-of-pocket expenses incurred on behalf of BLG, subject to Section 6 of this Retainer Agreement.

BLG does not pay premiums or bonuses based on results, unless otherwise agreed in writing.

6. OTHER RULES ON FEES AND EXPENSES

- a. The Company may bill BLG for travel expenses only in accordance with Generation Consortium's Standard Form Business Expense Schedule provided by Generation Consortium to BLG and the Company as the same may be amended, supplemented or replaced from time to time. The Company may not bill BLG for any time away from the office which is not spent performing Services for BLG and Generation Consortium.
- b. The Company may bill BLG for photocopying at a rate of no more than \$0.10 per page. If it is anticipated that the photocopying expenses for a particular matter will exceed \$500, please advise BLG accordingly so that we may consider whether the copying services should be performed by a third party service provider.
- c. The Company may bill BLG for long distance phone calls at no more than the Company's internal costs for those calls. If requested, the Company will include with any applicable account provided to BLG, the per minute charge applied to each long distance call and the date and length of each call.

- d. The Company may not bill BLG for the transmission or receipt of faxes. Whenever possible, e-mail is preferred.
- e. The Company may not bill BLG for routine secretarial work or office administration, including charges for “opening a file”, software licenses, system application charges, word processing, printer charges, research search fees, local telephone expenses or office supplies.
- f. The Company may not bill BLG for overtime of administrative staff, unless BLG has consented to such billings in advance.
- g. The Company may not bill BLG for time spent preparing or reviewing proposals, accounts or budgets.
- h. The Company may not bill BLG for food or refreshments provided to BLG representative at meetings in the office of the Company.
- i. The Company may not bill BLG for meals provided to the Company’s employees, contractors or agents.

7. CONFIDENTIALITY & PRIVILEGE

Unless we advise you otherwise, the information, documents and other materials that you will receive from BLG and Generation Consortium are proprietary and confidential (the “**Confidential Information**”). You hereby acknowledge the privileged and confidential nature of the Confidential Information and the damage that could result if the Confidential Information is disclosed to any third party. The Confidential Information is only being provided for the purpose of delivering the Services and Deliverables, and it would not otherwise be disclosed to you. In connection with your retainer, you undertake, subject to applicable law or court order, to preserve the confidentiality of any Confidential Information, received from BLG, or Generation Consortium or its agents in the course of the retainer.

From the outset of this retainer, our communications will be privileged (in that they will remain confidential). Notwithstanding the foregoing, Generation Consortium reserves the right, in its sole and absolute discretion, and without notice to the Company, to unilaterally waive privilege over any communications or Deliverables produced in connection with the matters contemplated by this Retainer Agreement.

8. TERMINATION

Either party may terminate this Retainer Agreement at any time on thirty (30) days’ prior written notice to the other party. BLG agrees to pay for work performed up to the effective date of termination, subject to the terms of Section 5. Upon BLG’s written request, you shall return to BLG and delete any and all electronic copies you may have of all documents and materials in your possession relating to this Retainer Agreement, including all Confidential Information and the Deliverables, whether completed or not; provided, that, Company may retain a copy of its reports and work papers.

9. LIMITATION OF LIABILITY

To the extent that BLG asks the Company to reach conclusions or form opinions, the Company is obligated to give BLG its best independent judgement without regard to the impact that such conclusions or opinions might have. [REDACTED]

The preparation of work product by the Company is an evolving process during which the Company's analysis is focused and refined as its research and document review proceeds and as information emerges under this Retainer Agreement. Preliminary conclusions, superseded drafts, worklists and irrelevant data are not a part of and will not be recorded in Company's final work product. Such documents may be provided on a routine basis as work tasks are completed. Circumstances may arise that require the retention of such drafts or other interim documents. The Company understands that BLG will provide the Company with instructions regarding document retention and production procedures that BLG expects it to follow.

10. ROLE AND DUTY OF AN EXPERT

Rule 13A of the OEB *Rules of Practice and Procedure* (the “**Rules**”) provides that an expert shall assist the Board impartially by giving evidence that is fair and objective.¹ Additionally, an expert may give evidence in a proceeding only on issues that are relevant to the expert’s area of expertise.

By entering into this Retainer Agreement, you acknowledge and agree that you have received a copy of Rule 13A of the Rules concerning expert evidence, and agree to accept the responsibilities that are or may be imposed on you by that rule with respect to testimony before the OEB.

You must attest to your understanding of and compliance with the foregoing in Form A (Acknowledgement of Expert’s Duty) that is appended to the Rules.² It is important that you understand your duties as an expert. Please contact us if you have any questions or require further information. Otherwise, please return this Form A to us when you deliver your report.

11. ENTIRE AGREEMENT

This Retainer Agreement constitutes the complete agreement between BLG and the Company with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. This Retainer Agreement may be amended only in a writing that refers to this Retainer Agreement and is signed by both parties. Where a conflict exists between the SOW and this Retainer Agreement, this Retainer Agreement shall prevail.

[signature page follows]

¹ https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2024-03/OEB_Rules-Practice-and-Procedure_20240306.pdf

² A copy of this form is found here: https://www.oeb.ca/oeb/_Documents/Regulatory/Rules_Form-A_Experts_Duty.pdf

Yours truly,

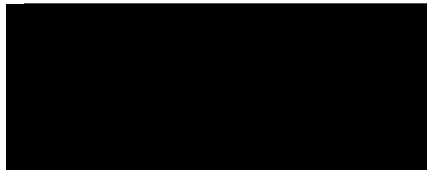
BORDEN LADNER GERVAIS LLP



John Vellone

JV/

Power Advisory LLC



Per:

Name: Jason Chee-Aloy

Title: Managing Director

Date: October 30, 2024

UNDERTAKING JT2.2

Reference:

Technical Conference Hearing Transcript (Day 2) page 20 line 5 to 11.

Undertaking:

(A) NQS Group to confirm whether the team met with the IESO and make presentations to the IESO that are also covered in your independent expert report in this case (Refused).

(B) NQS Group to confirm whether witnesses continue to be engaged by some or all of the Applicants in respect of contract amendment negotiations with the IESO (Refused).

Response:

Refused

UNDERTAKING JT2.3**Reference:**

Technical Conference Hearing Transcript (Day 2) page 90 line 20 to 22.

Undertaking:

NQS to file references to pre-dispatch and real-time tables from market surveillance panel reports.

Response:

The following data was pulled from the most recent Market Surveillance Panel (MSP) reports that contained the relevant data. The most recent MSP reports – State of the Market for 2022 and 2023 – no longer contain price-setting tables.

<https://www.oeb.ca/sites/default/files/msp-monitoring-report-202303.pdf>

Table A-1: Share of Hours of Resource Type Setting the Pre-Dispatch and Real-Time MCP, 3 Periods

Resource	Summer 2020		Winter 2020/21		Summer 2021	
	PD-1	RT	PD-1	RT	PD-1	RT
Hydro	23%	39%	19%	49%	17%	43%
Wind	11%	21%	9%	20%	5%	11%
Gas	36%	53%	32%	42%	41%	62%
Nuclear	0%	1%	0%	0%	0%	0%
Solar	1%	0%	1%	0%	0%	0%
Biofuel	1%	2%	1%	2%	0%	0%
Imports	13%	-	30%	-	27%	-
Exports	31%	-	23%	-	23%	-
Loads	1%	-	2%	-	1%	-

<https://www.oeb.ca/sites/default/files/msp-monitoring-report-202203.pdf>

Table A-3: Share of Resource Type Setting the Real-Time MCP, 3 Periods⁵⁶

Resource Share (%)	Winter 2019/20	Summer 2020	Winter 2020/21
Hydro	41.8%	38.5%	48.7%
Wind	24.1%	21.1%	19.3%
Gas	32.5%	38.2%	30.8%
Nuclear	0.02%	0.8%	0%
Solar	0.01%	0.09%	0%
Biofuel	1.7%	1.2%	1.3%

Table A-4: Share of Resource Type Setting the Pre-Dispatch MCP, 3 Periods⁵⁸

Resource Share (%)	Winter 2019/20	Summer 2020	Winter 2020/21
Hydro	19.7%	22.2%	18.8%
Wind	11.7%	10.5%	8.2%
Gas	21.4%	28.8%	26.8%
Nuclear	0%	0.3%	0%
Solar	0.02%	0.2%	0.04%
Biofuel	0.9%	0.8%	0.8%
Imports	20.9%	12%	27.5%
Exports	25.2%	25.2%	17.8%
Loads	0.08%	0.08%	0.2%

<https://www.oeb.ca/sites/default/files/msp-monitoring-report-202108.pdf>

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Table A-4: Share of Resource Type Setting the Pre-Dispatch MCP, 3 Periods

Resource Share (%)	Summer 2019	Winter 2019/20	Summer 2020
Hydro	18%	20%	22%
Wind	18%	12%	10%
Gas	23%	21%	29%
Nuclear	5%	0%	0.3%
Solar	1%	0.02%	0.2%
Biofuel	0.5%	1%	1%
Imports	15%	21%	12%
Exports	19%	25%	25%

Table A-4 presents the share of intervals in which each resource type, imports and exports set the Pre-Dispatch MCP in the Summer 2019 Period, the Winter 2019/20 Period and the Summer 2020 Period.

Table A-3: Share of Resource Type Setting the Real-Time MCP, 3 Periods

Resource Share (%)	Summer 2019	Winter 2019/20	Summer 2020
Hydro	34%	42%	39%
Wind	29%	24%	21%
Gas	28%	32%	38%
Nuclear	7.3%	0.02%	0.8%
Solar	0.8%	0.01%	0.09%
Biofuel	0.7%	1.6%	1.2%

Table A-3 presents the share of intervals in which each resource type set the real-time MCP in the Summer 2019 Period, the Winter 2019/20 Period and the Summer 2020 Period.¹¹⁷

UNDERTAKING JT2.4

Reference:

Technical Conference Hearing Transcript (Day 2) page 143 line 24 to 26.

Undertaking:

NQS to confirm whether the York Energy Centre and East Windsor Cogeneration facility earn RT-GCG revenues.

Response:

No. Both the York Energy Centre and the East Windsor Cogeneration facilities do not currently participate in the RT-GCG program.

UNDERTAKING JT2.5

Reference:

Technical Conference Hearing Transcript (Day 2) page 147 line 1 to 3.

Undertaking:

NQS to file a live excel version showing the calculations of the data in figures 19, 20, and 22 in the power advisory report (Refused).

Response:

Refused

UNDERTAKING JT2.6

Reference:

Technical Conference Hearing Transcript (Day 2) page 155 line 28 to page 156 line 1.

Undertaking:

NQS to ask Power Advisory to confirm the list of facilities in its report.

Response:

The list of facilities used in the report and the financial impact analysis are listed in Appendix A.