

## ONTARIO ENERGY BOARD

**IN THE MATTER OF** the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Sched. B, as amended;

**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**”) for a review of the Market Renewal Program Market Rule Amendments passed by the Board of Directors of the Independent Electricity System Operator (“**IESO**”) on October 18, 2024.

### NOTICE OF MOTION

The NQS Generation Group will make a Motion to the OEB on a date and at a time to be determined by the OEB.

### PROPOSED METHOD OF HEARING

The NQS Generation Group propose that the Motion be heard orally in advance of the oral hearing in this matter. The NQS Generation Group is filing this motion now in so that there is sufficient time to receive the information requested in the “Disclosure” section below in advance of the oral hearing.

### THE MOTION IS FOR:

#### Preliminary Matters

1. The IESO has refused to specify the areas of expertise of Mr. Darren Matsugu and Mr. Stephen Nusbaum.<sup>1</sup> It is not the responsibility of the NQS Generation Group to guess what areas of expertise the IESO witnesses are claiming to have expertise in. If the IESO is claiming expertise of Mr. Darren Matsugu and Mr. Stephen Nusbaum, under section 13A.03 of the OEB *Rules of Practice and Procedure* the IESO had an obligation to provide this information as part of its evidence filings in this proceeding.

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<sup>1</sup> T1P84L15 to T1P85L6

2. An order of the OEB requiring the IESO and its witnesses to give full and complete answers to the following matters:
  - i. **IESO Witnesses [T1P83L2-7]:** State whether Mr. Darren Matsugu and Mr. Stephen Nusbaum are being proffered by the IESO as expert, fact witnesses, or a combination of both;
  - ii. **IESO Witnesses [T1P83L2-7]:** If either Mr. Darren Matsugu or Mr. Stephen Nusbaum are being proffered by the IESO as expert witnesses, or a combination of a fact and expert witness, state the general areas of expertise of Mr. Darren Matsugu and Mr. Stephen Nusbaum in accordance with section 13A.03 of the OEB *Rules of Practice and Procedure*;
  - iii. **IESO Evidence:** If either Mr. Darren Matsugu or Mr. Stephen Nusbaum are being proffered by the IESO as only fact witnesses, a determination at the beginning at the oral hearing that any opinion evidence of a fact witness be will be given limited or no weight.

### Disclosure

3. An order of the OEB requiring the IESO and its witnesses to give full and complete answers to the following questions asked at the Technical Conference:
  - i. **More Efficient Unit Commitment [T1P11L27 to T1P14L23]:** Direct the IESO to produce the data, analysis, and assumptions used to calculate the more efficient unit commitment benefit of \$190 million at Tab 2 of Exhibit KT1.2.
  - ii. **Participation in GCG Program [T1P51L10-14]:** Direct the IESO to provide any information or data on the number of non-quick start 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.
  - iii. **Ex-Ante and Ex-Post Settlement Adjustments [T1P72L26 to T1P79L5]:** Direct the IESO to provide the dollar amount of ex-ante mitigation and 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 GROUNDS FOR THE MOTION ARE:**

**IESO Witnesses and Evidence (Paragraphs 2.i, 2.ii, and 2.iii above)**

4. The IESO has been evasive, inconsistent, or refused to answer the question of whether Mr. Darren Matsugu and Mr. Stephen Nusbaum are being proffered by the IESO as expert witnesses. Mr. Zacher agrees with Mr. Vellone on page 42 of Transcript 1 that opinion evidence is being provided:

16 → MR. VELLONE: “Mr. Zacher, your client is trying to  
17 produce opinion evidence here, and I am trying to get at  
18 the analysis used to support the opinion. That is all I am  
19 trying to do.”

20 → MR. ZACHER: “Right. And you can ask the witnesses  
21 about the basis for the conclusions that they have  
22 expressed in the evidence.”

5. Yet, on several occasions Mr. Zacher refers to Mr. Darren Matsugu and Mr. Stephen Nusbaum as “fact witnesses” (pages 39 and 157 of Transcript 1):

11 → MR. ZACHER: “Mr. Vellone, these are fact witnesses and  
12 you can just as easily look at the market rules as we can.”

25 → MR. ZACHER: “So, Mr. Rubenstein, just because these  
26 are fact witnesses and you're asking a question that is in  
27 some ways a legal question, we'll take that under  
28 advisement and we'll -- let me back up. We'll provide you

6. When the IESO was asked the question directly whether Mr. Darren Matsugu and Mr. Stephen Nusbaum are being proffered as expert witnesses, the IESO provided a different response altogether (page 83 of Transcript 1):

2 → MR. BOYLE: ···So the Power Advisory folks have given you ·  
3 the areas of their expertise in energy markets, wholesale ·  
4 market design, energy contract design, and operations and ·  
5 energy policy. ··Are you advocating that you're an expert in ·  
6 any of those areas or advancing the position that you're an ·  
7 expert in those areas, or are you a fact witness?¶

8 → MR. ZACHER: ··They're fact witnesses, Mr. Boyle, who ·  
9 have expertise.¶

7. Finally, Mr. Nusbaum agrees that the IESO's evidence is replete with opinion evidence (pages 86-87 of Transcript 1):

26 → So, you are disagreeing with the Power Advisory's ·  
27 opinions; correct?¶

28 → MR. NUSBAUM: ··In a number of areas, yes, that's ·

1  
1 correct.¶

2 → MR. BOYLE: ··And you're providing your own opinion in ·  
3 response to Power Advisory; correct?¶

4 → MR. NUSBAUM: ··This is IESO evidence informed by my and ·  
5 other members of IESO's staff's view of that evidence, yes.¶

**More Efficient Unit Commitment (Paragraph 2.iv)**

8. At PDF pages 732-733 of the IESO's Brief of Exhibits filed on January 6, 2025, the IESO appended its Energy Stream Business Case from 2019 speaking to "Quantifiable Market Efficiencies". This document states, *inter alia*, the following:

[...] A re-dispatch of resources to meet demand was undertaken with each individual resource commitment removed and replaced by resources that were available and not previously scheduled. The total costs to meet demand from the re-dispatched case were compared against the total costs with the original commitment and its start-up costs. If the re-dispatched costs were lower, the inefficiency cost of the commitment was the difference between the two values, otherwise, the commitment was efficient. A rate of commitment inefficiency was calculated by summation of the costs of inefficient commitments and dividing this total cost by the total volume of energy produced by NQS in the year. The analysis indicated that about 1 in 6 commitments have been inefficient and resulted in additional \$0.80/MWh costs. Based on IESO's 2019 System Planning Outlook projections of energy produced by NQS, **ERUC is expected to deliver savings of approximately \$190 million in its first 10 years of operation**. [Emphasis added]

9. The IESO is alleging that there are \$190 million in efficiencies but is unreasonably refusing to produce the underlying analysis to support the conclusions cited in the paragraph above. The OEB *Rules of Practice and Procedure* explicitly state that the purpose of a technical conference is to review and clarify an intervention, reply, or evidence of a party. The NQS Generation Group is entitled to understand what analysis the IESO has to support these conclusions. To the extent the NQS Generation Group's request includes confidential information, the OEB has a process for the IESO to file confidential material under section 10 of the *Rules of Practice and Procedure*.

### **Participation in GCG Program**

10. The IESO states that it rejects the claim that RT-GOG compensation is financially restrictive when compared with RT-GCG.<sup>2</sup> The IESO also disagrees with Power Advisory's evaluation that NQS generators will be negatively financially impacted when the RT-GCG cost guarantee is replaced with RT-GCG.<sup>3</sup> Finally, the IESO states that three-part offers and compensation in the day-ahead timeframe will not introduce new risks or features that are not present in the current market.<sup>4</sup>
11. Despite these claims, when asked about evidence in the current market to demonstrate these alleged behaviours by generators, the IESO refused. The NQS Generation Group needs to understand what 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.

### **Ex-Ante and Ex-Post Settlement Adjustments**

12. The NQS Generation Group requested 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 as it does not have access to this data. The only party who has this data is the IESO. This evidence is directly probative to the question of unjust economic discrimination caused by the MRP amendments.

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<sup>2</sup> IESO Reply Evidence, P13L3-5

<sup>3</sup> IESO Reply Evidence, P22L9-14

<sup>4</sup> IESO Reply Evidence, P3L20-22

January 14, 2025

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**AND TO: ALL INTERVENORS IN EB-2024-0331**