

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Electricity Act, 1998*, SO 1998, c 15, Sch A; and in particular section 33 thereof;

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.

THE NQS GENERATION GROUP ARGUMENT IN CHIEF

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I. SUMMARY OF ARGUMENT

1. On October 18, 2024, the Independent Electricity System Operator’s (“**IESO**”) Board of Directors approved a package of amendments (“**MRP Amendments**”), known as “market rule amendments MR-00481-R00-R13”, to the full suite of Ontario Electricity Market Rules (“**Market Rules**”) which were required to operationalize the Market Renewal Program (“**MRP**”).
2. 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) (the “**Application**”).
3. The NQS Generation Group represents a unique class of supply resources that participate in the IESO-administered markets known as non-quick start gas-fired generators (“**NQS Generators**”). NQS Generators share unique operational characteristics, including start-up costs, speed no-load costs, a minimum loading point and a minimum generation block run-time, that distinguish them as a class from other participants in the IESO administered markets.
4. In the words of the IESO, *generators supply energy and receive energy payments for doing so* and, accordingly, there are no relevant differences in the circumstances of the NQS generation resources in the IESO-administered market when compared to all supply resources.
5. On December 18, 2024, the NQS Generation Group filed a report prepared by Power Advisory LLC titled “Expert Evidence in Appeal” (the “**Power Advisory Expert Report**”).
6. NQS generators play a particularly important role in meeting Ontario’s forecasted capacity and supply needs, including providing key operational benefits through being capable of providing supply in nearly every hour of the year and ramping supply up and down in response to variable supply and demand fluctuations on the grid. NQS Generators represent an important, flexible, component of an “all of the above” approach to meeting Ontario’s electricity needs.¹
7. In this context, the NQS Generation Group submits that is clear and compelling evidence that the MRP Amendments result in economic discrimination against NQS Generators as a class, or in the alternative a specific NQS generator represented by the proxy generator, that is unjust and inconsistent with the purposes of the *Electricity Act, 1998*.
8. First, there is clear and compelling evidence that the MRP Amendments will cause economic harm to the NQS Generators as a class, or to an individual NQS generator (as represented by the proxy generator).

¹ Power Advisory Expert Report, paras. 97-102.

9. The Power Advisory Expert Report speaks for itself in this regard:

“Based on a historical impact analysis, the average negative financial impact to a typical NQS Generator is more than \$3.5 million annually or \$21 million in total over the 2018 to 2023 timeframe. This financial impact is based on a comparison between commitment, dispatch, and settlement within the IAM, using the current Market Rules compared to the MRP Amendments and includes a number of assumptions to isolate the financial impact. Additionally, the MRP Amendments result in a \$38 million negative financial impact resulting from a reduction in commitment of the proxy NQS Generator in the IAM over the six-year time frame. This impact is not accounted for in the “deemed” dispatch settlement structure contained in the contracts the NQS Generators hold with the IESO.

The values above are based on one, 600 MW proxy NQS Generator. As such, the market impact of the MRP Amendments across the entire NQS Generation Group would be more than \$140 million over the 6-year time frame, or more than \$23 million annually. From a contract perspective, the impact would \$250 million over the 2018 – 2023 time frame if applied to all of the MWs owned by the NQS Generation Group subject to the deemed dispatch contract and NQS participation in the IAM.”²

10. Second, there is evidence that this economic harm is both unjust and inconsistent with the purposes of the *Electricity Act, 1998*.
11. The IESO appears to rely heavily on the claimed “efficiency benefits” associated with the MRP Amendments. However, the IESO’s own evidence conducted in support of the MRP Business Case is that historically 5 out of 6 commitments of NQS Generators were already efficient.³ Put another way, any “efficiency benefits” claimed by the IESO will only arise for 1 out of 6 commitments (16.7% of commitments). By contrast, the Power Advisory Expert Report demonstrates that NQS Generators will be financially harmed in 6 out of 6 commitments (100% of commitments) following the MPR Amendments.⁴
12. NQS Generators compete against a range of other resource types in providing energy and operating reserve services in the IESO-administered markets including, without limitation, opportunity cost hydro, storage, imports, and demand response. The Power Advisory Report explains that no other supply resource will face the same negative financial impact as NQS Generators as a result of the MRP Amendments.⁵
13. Indeed, following the MRP Amendments, qualified hydroelectric generators will have a variety of parameters included in the calculation engines that will provide greater control over their commitments.⁶ However, those same hydroelectric resources will not face the similar risk of mitigation under the proposed market power mitigation framework following

² Power Advisory Expert Report, paras 17-18 and Appendix C.

³ Technical Conference Transcript, Day 1, at page 11, line 28 to page 12, line 23.

⁴ Oral Hearing Day 2 P137L5-12.

⁵ Power Advisory Expert Report, at para. 63.

⁶ Ibid. at para. 64.

the MRP Amendments.⁷ In addition, and unlike NQS Generators, these hydroelectric generators as well as storage resources will have opportunity costs considered when establishing reference levels under the expanded market power mitigation framework following the MRP Amendments.⁸

14. Similarly, while wind and solar generators face similar forecast risks due to divergences between the DAM and RTM as NQS Generators, the IESO has elected to fully protect those resources from these incremental risks through proposed contractual amendments.⁹ Indeed, the IESO acknowledges that only emitting resources (which overwhelmingly consists of natural gas generation) will see a reduction in supply following MRP.¹⁰ In the submission of the NQS Generation Group that it is not appropriate for the IESO to be implementing environmental policy under the pretext of market efficiency.
15. Taken together, the evidence in this proceeding demonstrates that the MRP Amendments will cause financial harm by depriving the NQS Generators as a class, or an NQS generator as represented by the proxy generator, from earning revenue associated with participation, commitment, dispatch, and settlement in the IESO-administered market.¹¹ The impact and effect of these changes will have unjust discriminatory financial impacts on the NQS generation class and are inconsistent with the purposes of the *Electricity Act, 1998*.
16. When looking at the qualitative and quantitative impacts of MRP in aggregate, the MRP Amendments unjustly discriminate against NQS generation resource class or against NQS generation resource market participants individually. No other supply resource in the IESO-administered market will face the same degree of negative financial risk or curtailment from MRP.¹²
17. The impact and effect of MRP is a significant net margin shortfall for the NQS generation class of resources. Less cashflow has the potential to jeopardize the financial viability of the NQS generation class of resources and imperil the reliability of Ontario's electric system.¹³ Such an outcome is inconsistent with the purposes of the *Electricity Act, 1998* and especially problematic at a time when the Independent Electricity System Operator ("IESO") forecasts electricity demand in Ontario will increase by 75% by 2050 and the IESO is carrying out the largest energy procurements in Canadian history.¹⁴
18. When comparing the costs and benefits of MRP in 2025 dollars, ratepayers would have been over \$90 million better off had MRP never been implemented. Even without any adjustments for the time value of money spent by the IESO over the past decade, the IESO is projecting \$266 million in net present value of benefits and \$268 million in

⁷ Ibid at para. 65 and Figure 13.

⁸ Transcript at pg. 142 line 28 to pg. 143, line 18.

⁹ Power Advisory Expert Report, at para. 66.

¹⁰ Exhibit K1.1 at 4.0-ED-3(a) and 4.0-ED-10(b)

¹¹ Power Advisory Expert Report, para 16.

¹² Power Advisory Expert Report, para 62.

¹³ Oral Hearing T2P142L14-19.

¹⁴ Ontario's Affordable Energy Future: The Pressing Case for More Power, Minister's message, online: <<https://www.ontario.ca/page/ontarios-affordable-energy-future-pressing-case-more-power>>

implementation and operation costs. Clearly, the IESO is very concerned about the optics of the financial implications of MRP.

19. All this is happening in the broader context of a further \$250 million in financial harm to the NQS Generation Group arising under their procurement contracts.

II. INTRODUCTION

20. On October 18, 2024, the Independent Electricity System Operator's ("**IESO**") Board of Directors approved a package of amendments ("**MRP Amendments**"), known as "market rule amendments MR-00481-R00-R13", to the full suite of Ontario Electricity Market Rules ("**Market Rules**") which were required to operationalize the Market Renewal Program ("**MRP**").
21. 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).
22. The OEB issued and published a Notice of Hearing dated November 13, 2024. Procedural Order No. 1 ("**PO1**") was issued on November 19, 2024, requiring the IESO and the NQS Generation Group to attend a virtual transcribed Pre-Hearing Conference, which was held on November 26 and 27, 2024, to hear "oral submissions on intervention and cost eligibility requests, cost responsibility, the issues list, evidentiary matters and the proceeding schedule."
23. On December 2, 2024, the OEB issued Decision and Procedural Order No. 2 ("**Decision and PO2**") to establish the scope of the proceeding related to the issues, setting the procedural schedule for the proceeding and other evidentiary matters.
24. On December 11, 2024, the IESO filed its descriptive evidence pursuant to PO2. On December 18, 2024, and pursuant to the Decision and PO2, the NQS Generation Group filed expert evidence prepared by Power Advisory LLC (the "**Power Advisory Expert Report**"). On December 23, 2024, the IESO filed a motion to strike portions of the Power Advisory Expert Report (the "**Motion to Strike**"), and on the same day, the NQS Generation Group filed a motion to review and vary the Decision and PO2 (the "**Motion to Review**"). The OEB issued Decision and Procedural Order No. 3 on December 23, 2024 ("**PO3**"), requiring parties who wish to file submissions responding to the IESO's Motion to Strike to do so by December 30, 2024. The NQS Generation Group filed a reply to the IESO's Motion to Strike on December 30, 2024, and the OEB issued the Decision on Motions by IESO and NQS Generation Group on January 3, 2024 (the "**Decision on Motions**"), which included decisions on both the IESO's Motion to Strike and the NQS Generation Group's Motion to Review. In the Decision on Motions, the OEB refused to strike out portions of the Power Advisory Expert Report, allowing portions related to certain contractual matters to "remain on the record for context only".

25. The IESO filed its responding evidence on January 6, 2025, and a Technical Conference was convened on January 9 and 10, both pursuant to Decision and PO2. On January 13, 2025, the NQS Generation Group filed submissions on objection to IESO reliance on certain documents (the “**Disputed Documents**”) and on January 14, 2025, the NQS Generation Group filed a Notice of Motion for preliminary matters related to the categorization of the IESO’s witnesses as fact or expert witnesses, and disclosure matters (the “**Preliminary Matters**”).
26. The OEB issued Decision and Procedural Order No. 4 on January 14, 2025 (“**Decision and PO4**”), finding that the “Power Advisory witnesses have been qualified as experts” and that the “Disputed Documents are not necessary and shall not be filed on the record of this proceeding or presented at the oral hearing.”
27. An Oral Hearing was convened on January 15 to 17, 2025. The OEB delivered the remainder of its decision on the Preliminary Matters on the first day during the Oral Hearing, January 15, 2025.

III. IESO EXPERTS

28. The IESO is not seeking to have its witnesses qualified as expert witnesses but rather as “fact witnesses who have expertise.”¹⁵ The NQS Generation Group is very concerned about three aspects of the IESO witnesses’ testimony in this proceeding: (i) unqualified fact witnesses providing opinion evidence; (ii) lack of independence; and (iii) inconsistent and evasive testimony.

A. Unqualified Fact Witnesses Providing Opinion Evidence

29. The NQS Generation Group submits that the opinion evidence of Mr. Matsugu and Mr. Nusbaum be given limited or no weight.
30. Expert witnesses are qualified by the OEB to give their opinion about issues that lie beyond the experience and expertise of an ordinary person. They must have specialized knowledge, training, and expertise in order to be qualified as an expert. Opinion evidence may only be tendered through the evidence of an independent and properly qualified expert.¹⁶
31. Both Mr. Matsugu and Mr. Nusbaum were called by the IESO as fact witnesses, meaning they were not qualified to give opinion evidence to the OEB or respond to the opinions of Power Advisory.¹⁷ For example, the Ontario Court of Appeal found that a nurse was not permitted to comment on conduct of other nurses unless tendered as expert.¹⁸ In any event,

¹⁵ Decision and Procedural Order No. 4, January 14, 2025, pg. 7.

¹⁶ *Lockridge v. Ontario (Director, Ministry of the Environment)*, 2012 ONSC 2316, para 94.

¹⁷ *Fairfield v. Director, Ministry of the Environment, Ontario Environmental Review Tribunal*, 93 C.E.L.R. (3d) 135; Cited as a defined term for “fact witness” in Canadian Abridgment Words & Phrases, Ontario Environmental Protection Act Annotated (P. Lombardi), Ontario Water Law (J. Abouchar), Annotated Guide to the Canadian Environmental Protection Act (J. Castrilli), Business Guide to Environmental Law (D. Estrin).

¹⁸ *Marchand (Litigation Guardian of) v. Public General Hospital Society of Chatham (2000)*, 51 O.R. (3d) 97 (Ont. C.A.); leave to appeal refused (2001), 2001 CarswellOnt 3412 (S.C.C.)

Mr. Matsugu and Mr. Nusbaum do not have the requisite experience, qualifications, professional recognition or education to be accepted by the OEB as having expertise in the subjects of energy markets and wholesale market design. Indeed, neither the OEB or court has previously recognized Mr. Matsugu and Mr. Nusbaum as experts.¹⁹ In addition, Mr. Nusbaum's markets experience, as evidenced from his CV, is fairly limited.

32. If the IESO intended to rely on Mr. Matsugu and Mr. Nusbaum's knowledge and experience to give the IESO's opinion evidence probative value, it stands to reason that these witnesses should be qualified and tested under the rules governing expert opinion evidence. Opinions provided by Mr. Matsugu and Mr. Nusbaum go to the central issues that the OEB must decide. It would be unfair for the OEB to place equal weight to the independent Power Advisory expert evidence and the IESO fact witness evidence.
33. While the OEB has some latitude on the admission of evidence,²⁰ the use of experts is an exceptional situation with numerous procedural safeguards that must be satisfied in order to prevent prejudicial evidence from coming before the OEB. These safeguards would be undermined if parties could too easily smuggle expert or opinion evidence in with fact witnesses.

B. Lack of Independence

34. The NQS Generation Group submits that the opinion evidence of Mr. Matsugu and Mr. Nusbaum is not independent.
35. Neither Mr. Matsugu nor Mr. Nusbaum have signed an Acknowledgement of the Expert's Duty form appended to the OEB's *Rules of Practice and Procedure*, nor do they claim to be neutral, unbiased or non-partisan in their filed evidence. The Ontario Superior Court of Justice has previously ruled such a circumstance results in an expert witness taking on the role of an advocate.²¹ If the IESO relies on Mr. Matsugu or Mr. Nusbaum for their purported expertise, they are similarly non-independent advocates for the IESO.
36. Moreover, both Mr. Matsugu and Mr. Nusbaum acknowledge that their job performance at the IESO is specifically evaluated in relation to MRP.²² MRP has taken approximately a decade to implement and at a cost of \$233 million of public funds,²³ clearly Mr. Matsugu and Mr. Nusbaum have many career and financial reasons to align their testimony with the goals of the IESO and their superiors.

¹⁹ Technical Conference Day 1 P83L11-16.

²⁰ *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 15.

²¹ *Lockridge v. Ontario (Director, Ministry of the Environment)*, 2012 ONSC 2316, para 96.

²² Technical Conference T1P91L18 to T1P92L26.

²³ EB-2022-0318, Exhibit B-1-2 - 2023-2025 Business Plan, Page 20 of 32.

37. Indeed, the IESO described in EB-2022-0318 that the performance measurement target for Mr. Matsugu and Mr. Nusbaum is for the full implementation of MRP by 2025 “to help ensure accountability and course correction, as needed”:²⁴

Appendix 1 – IESO Performance Management – Measures and Targets

The IESO’s performance management program provides an important level of oversight for the organization and its stakeholders, and helps to ensure accountability and course correction, as needed.

Measures and targets have been revised to align with the IESO’s refreshed strategy and the 2023-2025 Business Plan. Since the strategy update this spring, Directors and ELT members have been engaged in an iterative process to contribute refreshed measures and identify annual targets. This set of measures is intended to help improve engagement and provide clear identification with how work efforts contribute to the IESO’s overall strategy success.

Measure	Target			Measure Weight
	2023	2024	2025	
1. Market Renewal Program delivery: Total actual schedule complete percentage is within planned completion	80%	90%	100%	20%

C. Inconsistent and Evasive Testimony

38. Under cross examination by Mr. Vellone at both the Technical Conference and Oral Hearing, Mr. Matsugu was evasive in answering many of the questions put to him.
39. For example, Mr. Vellone put an IESO interrogatory response from a prior proceeding to Mr. Matsugu that stated all else being equal, MRP is expected to increase non-emitting resources as a proportion of Ontario’s electricity supply. Mr. Vellone’s question was simple – does Mr. Matsugu agree with this statement?²⁵
40. Mr. Matsugu evaded this simple question for the next 6 pages of transcript.²⁶ This is one example of many. The transcripts are replete with evasive testimony from Mr. Matsugu. The NQS Generation Group requests that the OEB panel weigh the testimony of Mr. Matsugu accordingly.

IV. LAW

A. Unjust discrimination

41. On the question of whether the MRP Amendments are unjustly discriminatory, the OEB held that three elements are required: (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

²⁴ EB-2022-0318, Exhibit B-1-2 - 2023-2025 Business Plan, Page 21 of 32; EB-2024-0004, Exhibit D-1-2, Attachment 2 - Organizational Chart Page 8 of 10.

²⁵ Oral Hearing T1P122L4-15.

²⁶ Oral Hearing T1P122L4 to T1P127L11.

– it cannot be purely qualitative.²⁷ Interpreting section 33 of the *Electricity Act, 1998* involves a consideration of the “impact or effect” of the MRP Amendments.²⁸

42. The priority is to ensure that there is no unjust discrimination for or against any class of 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.²⁹

1. *Element 1: Evidence of Economic Discrimination*

43. Discrimination may 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.³⁰
44. In EB-2019-0242, the OEB found there was no question that different resources are treated differently when there are differences in eligibility for payments (e.g., activation payments and start-up costs as part of the GCG program).³¹

2. *Element 2: Circumstances*

45. It must be shown that the difference in treatment is not justified by a difference in circumstances. The prospect of “unjust” treatment arises when there is different treatment in the absence of material and relevant differences in the situation or characteristics among the affected market participants.³²
46. In EB-2019-0242, the OEB found there are no relevant differences between Generation and DR Resources as they are functionally equivalent in balancing supply and demand in the energy market.³³

3. *Element 3: Discrimination is Quantitative*

47. The OEB requires adequate information on the nature and extent of the economic impacts in order to make a finding of unjust discrimination. The claim of discrimination cannot be purely qualitative; it must have some quantitative aspect to it.³⁴

²⁷ EB-2019-0242, AMPCO Decision and Order, January 23, 2020, pg. 25, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/665860/File/document>>

²⁸ EB-2007-0040, AMPCO Decision and Order, April 10, 2007, pg. 9, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/381172/File/document>>

²⁹ *Ibid* at pg. 27.

³⁰ EB-2019-0242, AMPCO Decision and Order, January 23, 2020, pg. 10, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/665860/File/document>>

³¹ *Ibid* at pg. 25.

³² EB-2019-0242, AMPCO Decision and Order, January 23, 2020, pg. 10, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/665860/File/document>>

³³ *Ibid*, at pg. 25.

³⁴ EB-2019-0242, AMPCO Decision and Order, January 23, 2020, pg. 10, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/665860/File/document>>

B. Inconsistency with Purposes of *Electricity Act, 1998*

48. The purposes of the *Electricity Act, 1998* can, at times, be in tension with one another. To the extent competing purposes of the *Electricity Act, 1998* diverge, the NQS Generation Group submits this engages a weighing exercise by the OEB panel.

V. **FINANCIAL HARMS CAUSED BY MRP**

49. The financial harms suffered by the NQS Generation Group fall into the following categories of harm, which are discussed in further detail below:
- a) Introduction of the Day Ahead Market (“**DAM**”) to replace the Day Ahead Commitment Process (“**DACP**”) and introduction of Enhanced Real-Time Unit Commitment (“**ERUC**”) to replace the pre-dispatch commitment process;
 - b) Replacing the Real-Time Generator Cost Guarantee (“**RT-GCG**”) program with the Generator Offer Guarantee (“**GOG**”) program;
 - c) Imposition of a significantly expanded Market Power Mitigation (“**MPM**”) framework; and
 - d) Elimination of Congestion Management Settlement Credit (“**CMSC**”) payments.

A. **Introduction of the DAM to replace the DACP and introduction of ERUC to replace the pre-dispatch commitment process**

50. The MRP Amendments create economic barriers to the NQS Generation Group being committed and dispatched across the DAM, pre-dispatch and the real-time market (“**RTM**”) compared to the current DACP, pre-dispatch and real-time market.³⁵ Fewer commitments and reduced dispatch means less market revenue resulting from less run-time, estimated by the Power Advisory Group’s (“**PAG**”) analysis to be approximately 12 percent lower.³⁶
51. The IESO concedes that the way NQS generators participate and offer into the market will be fundamentally different. The IESO also concedes that the effect of the MRP Amendments is to fundamentally change the commitment in compensation of NQS generators in the day-ahead timeframe.³⁷ The main reasons for the reduced rate of commitment and dispatch that cause financial harm are the following, most of which have been conceded by the IESO:

	Pre-MRP	Post-MRP	Consequence to NQS Class
Loss of Multiple Commitment Opportunities	The pre-dispatch timeframe has historically accounted for the majority of commitments of NQS generators pre-MRP. ³⁸	The IESO expects that post-MRP most commitments will be made through the day-ahead market. ⁴³ The IESO expects exports, which have not historically participated in the DACP, ⁴⁴	As a result of MRP, there will be less of an opportunity for NQS generators to be committed or dispatched under ERUC during pre-dispatch or real-time. ⁴⁸ The majority of eventual real-time

³⁵ Power Advisory Expert Report, paras 16, 40, 50.c., 55.

³⁶ Power Advisory Expert Report, para 54, 55.e. Oral Hearing Day 2, page 136, line 23 – page 137, line 5.

³⁷ Oral Hearing T2P52L2-28.

³⁸ Power Advisory Expert Report para 55(c).

⁴³⁴³ Oral Hearing T1P111L18-22.

⁴⁴ Oral Hearing T1P114L13-18.

⁴⁸ Oral Hearing T1P118L11-21.

	Pre-MRP	Post-MRP	Consequence to NQS Class
	Exports do not typically participate in the current DACP and largely arise during the pre-dispatch timeframe. ³⁹ To the extent that exports arrive in the pre-dispatch process, that incremental demand would need to be served by additional supply that was not committed or scheduled through the day-ahead commitment process. ⁴⁰ This additional supply could be served by NQS generators committed through the current RT-GCG program. ⁴¹ Prior to MRP, the NQS generators had a greater opportunity to get committed in pre-dispatch. ⁴²	post-MRP will now participate in the day-ahead market. ⁴⁵ Opportunities to receive commitments in real time post-MRP will largely be limited to changes in demand forecast, changes in generation forecast, such as intermittent generation or generator outages. ⁴⁶ However, forecast error could also see further reduction in real-time demand and result in no new real-time commitment opportunities in certain hours. ⁴⁷	demand will be represented in the day-ahead market. ⁴⁹ It was easier for NQS generators to self-invoke a commitment in pre-dispatch pre-MRP. ⁵⁰ Under MRP, more exports are expected to be scheduled in the DAM compared to in the current market in which exports are more often scheduled in the real-time market, resulting in fewer commitment opportunities in pre-dispatch or in the RTM. ⁵¹ Given exports do not participate in the DACP today, there is currently more unserved demand following DACP; whereas, post MRP, those exports will likely be scheduled in the DAM, resulting in, all else being equal, less unserved demand after DAM. ⁵² Under the MRP Amendments, there will be a far more limited opportunity to receive a commitment following DAM, significantly reducing the second opportunity for NQS Generators to receive a commitment. ⁵³ Relevant as additional context, this loss of flexibility also creates a significant barrier to a NQS Generator trying to operate in accordance

³⁹ Oral Hearing T1P114L13 to T1P115L2.

⁴⁰ Oral Hearing T1P115L3-9.

⁴¹ Oral Hearing T1P115L10-13.

⁴² Oral Hearing T1P111L23 to T1P112L3; T1P118L22 to T1P119L7.

⁴⁵ Oral Hearing T1P112L27 to T1P113L10.

⁴⁶ Oral Hearing T1P113L17-26.

⁴⁷ Oral Hearing T1P114L3-12.

⁴⁹ Oral Hearing T1P111L18-22.

⁵⁰ Power Advisory Expert Report, Figure 4. Technical Conference Day 2, page 76, lines 17-24. Oral Hearing Day 2, page 121, line 27 – page 122, line 6.

⁵¹ Oral Hearing Day 1, page 118, lines 1-16.

⁵² Oral Hearing T1P118L1-10.

⁵³ Power Advisory Expert Report para 55(c).

	Pre-MRP	Post-MRP	Consequence to NQS Class
			with the terms of their deemed dispatch procurement contract.
Hedge Between DACP and Pre-Dispatch Commitment Processes Eliminated	See “Loss of Multiple Commitment Opportunities” above.	See “Loss of Multiple Commitment Opportunities” above.	Under the MRP Amendments, NQS generators suffer harm due to the loss of a hedge that exists in the current IAM between the DACP and pre-dispatch commitment processes due to the existence of two different markets. If an NQS generator does not get a commitment through DACP, they have a second opportunity through RT-GCG. ⁵⁴ This allows them to account for the RT-GCG net margin in their three-part DACP offers. ⁵⁵ Under the MRP Amendments, the second pre-dispatch commitment opportunity is eliminated. ⁵⁶
Less Commitments in DAM and ERUC	In the current pre-dispatch process, NQS generators compete only on incremental energy offers. ⁵⁷ The incremental energy offer is the only financial parameter used in the current pre-dispatch and real-time calculation engines. Whereas it is only the current DACP that includes three-part offers for NQS generators.	The MRP Amendments require NQS generators to compete for commitment in the DAM and pre-dispatch on a broader cost envelope compared to the current Market Rules by requiring three-part offers for incremental energy, start-up and speed no load costs ⁵⁹ if the NQS generator intends to be eligible for cost guarantees. ⁶⁰	NQS generators will be less competitive as a result of the change. ⁶⁶ MRP will limit the number of hours where NQS generators receive a DAM, pre-dispatch, or real-time schedule for energy production and/or OR supply. Post-MRP the IESO’s calculation engines will incorporate a broader suite of costs and

⁵⁴ Power Advisory Expert Report, paras 55.c., 56.f. Oral Hearing Day 2, page 40, line 22 – page 42, line 26; page 44, lines 14-17.
⁵⁵ Power Advisory Expert Report, para 56.f.-h. Technical Conference Day 2, page 84, line 19 – page 85, line 22. Oral Hearing Day 2, page 40, line 22 – page 42, line 26; page 123, line 24 – page 124, line 12. IESO Brief of Exhibits, page 80; 2014 MSP Report page 167.
⁵⁶ Oral Hearing Day 2, page 124, lines 19-25.
⁵⁷ Power Advisory Expert Report, paras 48.b., 55.b.,d. (see example). Technical Conference Day 2, page 46, lines 25 – page 47, line 2. Oral Hearing Day 1, page 40, lines 16-24; page 46, lines 22-28. Oral Hearing Day 2, page 38, lines 11-18.

⁵⁹ Power Advisory Expert Report, paras 40, 48.c., 49.c., 55.b., Figure 2. Technical Conference Day 2, page 46, line 25 – page 47, line 10; page 76, line 22 – page 77, line 7; page 99, lines 7-11. Oral Hearing Day 2, page 121, line 26 – page 122, line 6. Oral Hearing Day 1, page 109, line 27 – page 110, line 11.
⁶⁰ Oral Hearing Day 1, page 110, lines 8-11.
⁶⁶ Technical Conference Day 2, page 46, line 25 – page 47, line 10; page 99, lines 7-11. Oral Hearing Day 2, page 120, lines 23-27; page 121, lines 3-4; page 140, line 26 – page 141, line 9. Oral Hearing Day 1, page 134, line 28 – page 135, line 8; page 139, lines 20-28 & page 141, line 24 – page 142, line 21.

	Pre-MRP	Post-MRP	Consequence to NQS Class
	However, the IESO states the pre-dispatch timeframe has accounted for substantially all of the commitments of NQS generators. ⁵⁸	To the extent an NQS generator receives a commitment in MRP, that will be either through the DAM or the ERUC processes. ⁶¹ When participating in either the DAM or the ERUC, NQS generators have an option to submit three-part offers, which include start-up costs, speed no-load costs; and incremental energy costs. ⁶² Dispatch is done in consideration of all costs communicated as part of a three-part offer. ⁶³ Optimization of dispatch in the DAM and the ERUC processes consider whether the totality of the costs associated with committing an NQS generator is cheaper than the next best alternative. ⁶⁴ If there is a resource cheaper than an NQS generator, that resource will receive the dispatch. ⁶⁵	operational constraints than is included in the existing calculation engines. ⁶⁷ The broader consideration of costs included within the MRP Amendments throughout the DAM to RTM calculation engines will limit commitment opportunities for NQS Generators, particularly when compared to other supply resources that will continue to largely participate on an incremental energy basis only. ⁶⁸
Operating Constraints	The market schedule and associated MCP assumes there are no physical constraints on the grid (e.g., transmission losses, transmission congestion, etc.) or operational constraints (e.g., MGBRT and MLP for NQS Generators). ⁶⁹	MRP extend the consideration of all the operational constraints and parameters of NQS generators, including MLP, MGBRT and minimum run time as part of commitment, scheduling, optimization in the pre-dispatch timeframe. ⁷⁰	The addition of operational constraints to the DAM and pre-dispatch calculation engines will further restrict NQS generators' competitiveness and likelihood of obtaining a commitment and being dispatched. ⁷¹
27 Hour Look Ahead Period	Currently, the pre-dispatch calculation engine provides no binding schedules for Market	The MRP Amendments introduce a longer than industry standard 27-hour look-ahead period.	The IESO acknowledges that the NQS generators will suffer harm. Specifically, the IESO states

⁵⁸ Power Advisory Expert Report para 55(b); Undertaking Response JT1.4

⁶¹ Oral Hearing T1P127L18-23.

⁶² Oral Hearing T1P127L24 to T1P128L1.

⁶³ Oral Hearing T1P128L8-17.

⁶⁴ Oral Hearing T1P129L3-26.

⁶⁵ Oral Hearing T1P129L27 to T1P130L3.

⁶⁷ Power Advisory Expert Report para 55(a).

⁶⁸ Power Advisory Expert Report para 55(b).

⁶⁹ Power Advisory Expert Report para 43(b).

⁷⁰ Oral Hearing T1P48L9-16.

⁷¹ Power Advisory Expert Report, paras 40., 48.c., 55.a., 56.g, 57.a., Figure 2.

	Pre-MRP	Post-MRP	Consequence to NQS Class
	Participants in the pre-dispatch process. Additionally, commitments and schedules are done on an hour-by-hour basis that does no optimize schedules on an inter-hour basis.	Pre-dispatch will now include a multi-hour process that will optimize energy offers and total costs over a 27-hour look-ahead period.	ERUC will optimize the system with a look-ahead period of up to 27 hours, rather than the current 1-hour optimization, reducing the number of commitments to the benefit of the IESO, Market Participants and Ontario consumers. “Commitment” is defined by the IESO as the process of deciding when and which non-quick start resources should come online in order to maintain reliability and meet demand at lowest overall cost. ⁷² This creates significant financial uncertainty for NQS generators, specifically due to the combination of their longer start-up times, the high proportion of intermittent generation in Ontario, the common occurrence of failed imports, and outages (among other contributing factors). ⁷³
New DAM to real-time binding financial risk	The current DACP is not financially binding for market participants. If a generator receives a DACP schedule but cannot meet that schedule in real-time, the generator is not obligated to buy back the undelivered portion of this schedule. ⁷⁴	Under MRP, if a generator receives a schedule in the DAM, they are compensated at the relevant DAM price for that scheduled quantity. ⁷⁵ If the NQS generator cannot meet the DAM schedule in real time, the NQS generator must buy back the undelivered portion of its DAM market schedule at the real-time market price. As a result of not having the NQS generation resource available,	The MRP Amendments present a financial risk to the NQS Generation Group that does not exist in the current IAM due to the imposition of financially-binding schedules in the DAM. ⁷⁷ First, the schedules must be bought out if the schedule is not met, which can increase from the DAM based on the RTM price in the RTM. ⁷⁸ In contrast, the DACP does not result in schedules

⁷² IESO Book of Exhibits, January 6, 2025, PDF page 707.

⁷³ Power Advisory Expert Report, paras 40, 48.b.,d., 50.c., Figure 2. Technical Conference Day 2, page 91, line 18 –page 94, line 17; page 98, lines 1-5.

⁷⁴ Oral Hearing T2P22L26 to T2P23L7.

⁷⁵ Oral Hearing T2P19L22-27.

⁷⁷ Oral Hearing T2P23L8-19.

⁷⁸ Power Advisory Expert Report, para 39. Oral Hearing Day 2, page 19, line 28 – page 20, line 7; page 21, line 1 – page 23, line 25.

	Pre-MRP	Post-MRP	Consequence to NQS Class
		the likely outcome is that the back price will be higher than DAM. This consequence is not unique to NQS generators and is applicable to all resources participating in the market. ⁷⁶	that are financially-binding nor is a buy-back required if a generator cannot meet their schedule. ⁷⁹ The result is creation of financial risk that does not currently exist. ⁸⁰
Changes to settlement timeframes	<p>Presently, there are no financially binding day-ahead prices and all financial outcomes are determined by real-time prices.⁸¹</p> <p>In today's market when an NQS generator receives a DACP commitment, and if it carries it through on the exact same commitment in real-time, that generation commitment is settled on the basis of the real-time price. To the extent that there is a day-ahead production cost guarantee payment (DA-PCG), the revenues included in that calculation are also derived from the real-time price.⁸²</p>	<p>Following the implementation of MRP, when a resource receives the day-ahead market schedule, it will be settled on the basis of the relevant day-ahead market price.</p> <p>Under MRP, when an NQS generator carries through on the DAM schedule in real time, the price received will be based on DAM prices (not real-time price).⁸³</p>	<p>The IESO agrees this change is a material difference between DACP and DAM.⁸⁴ The current DACP imposes no price risk from failing to meet day-ahead schedules that are beyond those included in the DA-PCG, as prices are settled in real-time. In the future, NQS Generators will have “buy out” any divergence from their DAM schedule – imposing a new financial risk. Other participants – notably wind and solar – have received term sheet amendments that alleviate the risk of the two-settlement system.</p>

⁷⁶ Oral Hearing T2P19L28 to T2P21L15.

⁷⁹ Power Advisory Expert Report, para 47. Oral Hearing Day 2, page 22, line 26 – page 23, line 1; page 23, lines 2-7; page 140, lines 16-22; page 170, lines 17-25.

⁸⁰ Oral Hearing Day 2, page 23, lines 2-13.

⁸¹ Oral Hearing T2P24L7-15.

⁸² Oral Hearing T2P23L20 to T2P24L6.

⁸³ Oral Hearing T2P24L16 to T2P25L7.

⁸⁴ Oral Hearing T2P25L8-13.

B. Replacing the RT-GCG program with the GOG programs

52. Under the current Market Rules, the cost guarantee program (i.e. RT-GCG) compensates generators for their start-up and incremental energy costs up to their minimum loading point (“**MLP**”) for the duration of their MGBRT to the extent they are not able to recover those costs through market revenue earned for the same portion of the schedule.⁸⁵ Only incremental energy revenues earned up to MLP for the duration of MGBRT are offset against costs in determining the magnitude of the cost guarantee payment; operating reserve (“**OR**”) revenue is not included.⁸⁶
53. The cost guarantee programs under the MRP – the day-ahead generator offer guarantee (“**DA-GOG**”) and real-time generator offer guarantee (“**RT-GOG**”) programs - function similarly, but also account for all costs and revenues earned for OR and energy injections above MLP or beyond MGBRT in determining the amount of the offer guarantee payment.⁸⁷ Changes to the guarantee programs result in reduced overall net margins for the NQS generators.⁸⁸

	Pre-MRP	Post-MRP	Consequence to NQS Class
RT-GCG program currently allows generators to profit whereas the RT-GOG and DA-GOG programs are intended to be revenue neutral	Through a long series of cross examination questions, the IESO conceded that the RT-GCG program operates profitably for NQS generators. ⁸⁹ The MSP also acknowledges that the “RT-GCG program also allows resources to operate profitably, on an all in basis, and still receive a guarantee payment.” ⁹⁰	Under MRP, the cost guarantee programs (RT-GOG and DA-GOG) are intended to be revenue neutral. ⁹¹	During the technical conference, the IESO acknowledged that under the MRP Amendments, “[NQS generators] would receive less revenue, sorry, less net revenue as a result of that cost guarantee payment”. ⁹² The financial harms suffered by the NQS Generation Group resulting from differences in the cost guarantee programs under the MRP Amendments compared to the current Market Rules are:

⁸⁵ Oral Hearing T1P89L23 and T1P90L14.

⁸⁶ Power Advisory Expert Report, paras 44.d., 56, Figure 8. Technical Conference Day 2, page 52, lines 2-6. Oral Hearing Day 2, page 122, line 24 – page 123, line 1.

⁸⁷ Technical Conference Day 2, page 56, lines 19-23; page 62, lines 14-17. Oral Hearing Day 2, page 200, lines 24-28. Oral Hearing Day 1, page 106, line 2 – page 107, line 18.

⁸⁸ Power Advisory Expert Report, paras 47.c., 56.d., Figure 9. Technical Conference Day 2, page 60, lines 6-14. Oral Hearing Day 2, page 121, lines 3-7. Oral Hearing Day 2, page 123, lines 2-8.

⁸⁹ Oral Hearing T1P101L6-10; Oral Hearing T1P89L17 to T1P102L26.

⁹⁰ Ontario Energy Board, Market Surveillance Panel, Monitoring Report on the IESO-Administered Electricity Markets for the Period from May 2015 – October 2015 (“[November 2016 MSP Report](#)”).

⁹¹ Oral Hearing T1P105L13-24 and T1P108L7-19.

⁹² Technical Conference T1P140L1-9, T1P140L22 and T1P141L4.

	Pre-MRP	Post-MRP	Consequence to NQS Class
			<ol style="list-style-type: none">1. Lost opportunity to earn profit through provision of operating reserve earned once committed and dispatched;⁹³2. Lost opportunity to earn profit from operating above MLP once committed and dispatched;⁹⁴ and3. Lost opportunity to earn profit from operating beyond MGBRT once committed and dispatched.⁹⁵ <p>The IESO confirmed at the Technical Conference that NQS generators will receive less net revenue due to the replacement of the RT-GCG with the DA-GOG and RT-GOG programs.⁹⁶</p> <p>The changes to the cost guarantee program are not accurately characterized as an efficiency improvement; it is a wealth transfer from the NQS generators to customers.⁹⁷</p>
Loss of Opportunity under RT-GCG to observe prices and adjust offer strategy – change	Pre-dispatch shadow prices are published no later than nine hours in advance of the dispatch hour and upwards of 32 hours in advance. ⁹⁸	Under MRP, the IESO is not intending to publish any price signals, such as forecast or projections of locational marginal price, in advance of the DACP. ¹⁰²	In today's market, an NQS generation resource can observe both pre-dispatch shadow prices and change their offers in advance of and during the RT-GCG commitment window. Given the

⁹³ Technical Conference Day 2, page 56, lines 5-14; page 60, lines 25-28; page 61, lines 2-4; page 63, lines 1-11. Oral Hearing Day 2, page 166, line 16 – page 167, line 7. Oral Hearing Day 1, page 49, lines 21-28; page 50, lines 19-23; page 95, line 12 – page 97, line 11; page 111, lines 7-11.

⁹⁴ Technical Conference Day 2, page 62, lines 14-17. Oral Hearing Day 2, page 166, line 16 – page 167, line 7. Technical Conference Day 2, page 61, line 28 – page 62, line 13; page 63, lines 1-14. Oral Hearing Day 1, page 39, lines 6-9; page 49, lines 21-28; page 50, lines 19-23; page 63, line 12-27; page 93, line 4 – page 94, line 5; page 96, line 27 – page 97, line 11; page 111, lines 2-6.

⁹⁵ Technical Conference Day 2, page 62, lines 14-17. Oral Hearing Day 2, page 166, line 16 – page 167, line 7. Power Advisory Expert Report, paras 17-18. Technical Conference Day 2, page 63, lines

1-18. Oral Hearing Day 1, page 39, lines 6-9; page 94, line 15 – page 95, line 5; page 96, line 27 – page 97, line 11; page 111, lines 2-6.

⁹⁶ Technical Conference T1P141L1-4

⁹⁷ Oral Hearing Day 2, page 137, line 15 – page 138, line 23. Oral Hearing Day 3, page 72, line 25 – page 73, line 11.

⁹⁸ Oral Hearing T2P12L24-28.

¹⁰² Oral Hearing T2P12L14-23.

	Pre-MRP	Post-MRP	Consequence to NQS Class
in information availability and flexibility	<p>Under the current RT-GCG program, NQS generators can self-invoke a commitment if they are economic for half of their minimum generation block run time (“MGBRT”).⁹⁹ Self-invocation could occur in pre-dispatch minus 3, pre-dispatch minus 2, or pre-dispatch minus 1.</p> <p>Thus, an NQS generator could observe pre-dispatch shadow prices in advance of PD-3 to get a sense of what the incremental energy offers will be economic during the RT-GCG commitment window.¹⁰⁰</p> <p>Following the completion of the DACP, assuming the resource does not get a commitment in DACP, incremental energy offers can be changed at any point in advance of the PD-2 time frame.¹⁰¹</p>	<p>Under the MRP Amendments, there is no option to self-invoke to be committed.¹⁰³</p>	<p>information and flexibility, an NQS generator could adjust its offer strategy to increase its odds of meeting the RT-GCG eligibility criteria in invoking a commitment.¹⁰⁴</p> <p>Following MRP, since there are no forecasted prices published in advance of the DAM, NQS generators will not have the same information available to inform their offer strategy or flexibility to obtain commitments post DAM.¹⁰⁵.</p>
NQS generators may offer into the DACP at a profit due to foregone RT-GCG opportunity	<p>The DACP runs first, then the pre-dispatch process begins, and then NQS generators can invoke a commitment in the pre-dispatch minus 3 to pre-dispatch minus 1 window. If a RT-GCG commitment occurred, it would always occur after the DACP had completed and the results are known. If an NQS generator receives a DACP commitment, it is unable to subsequently receive</p>	<p>Under MRP, NQS commitments are expected to occur in the DAM as opposed to the RTM, in part, but not entirely because exports will move into the DAM, leaving less unmet demand in the RTM. Further, the GOG program is less</p>	<p>In the current market, the existence of the RT-GCG as a second opportunity for commitment allows NQS generators to offer and potentially obtain favourable, profitable rates in the DACP.¹⁰⁹ Under MRP, the loss of these favourable rates could have a material financial impact to NQS generators.¹¹⁰</p> <p>With lower rates of commitment in the RTM under MRP, resulting from less unmet demand in the</p>

⁹⁹ Power Advisory Expert Report, paras 48.c., Figure 4, para 55.e. Technical Conference Day 2, page 76, lines 3-21. Oral Hearing Day 1, page 130, lines 14-17; page 131, line 18 – page 132, line 11; page 133, lines 1-7. Oral Hearing Day 2, page 121, lines 21-25.

¹⁰⁰ Oral Hearing T2P13L1-21.

¹⁰¹ Oral Hearing T2P14L12-16.

¹⁰³ Power Advisory Expert Report, Figure 4. Technical Conference Day 2, page 76, lines 17-24. Oral Hearing Day 2, page 121, line 27 – page 122, line 6.

¹⁰⁴ Oral Hearing T2P14L17 to T2P16L8.

¹⁰⁵ Oral Hearing T2P16L9 to T2P19L16.

¹⁰⁹ Oral Hearing Day 2, P44L14-P47L18.

¹¹⁰ Oral Hearing Day 2, page 48, line 4-21.

	Pre-MRP	Post-MRP	Consequence to NQS Class
	a commitment under the RT-GCG program for the same hours. ¹⁰⁶ The opportunity cost of receiving a DACP commitment is therefore tied to the potential profitability of an RT-GCG commitment and can be factored into an NQS generator’s offer strategy, resulting in favourable rates for NQS generators. ¹⁰⁷	financially lucrative than the RT-GCG, reducing. ¹⁰⁸	RTM, combined with the reduced financial benefit provided by the less lucrative GOG program, the NQS generators essentially lose the opportunity to earn favourable rates through commitment in the day-ahead time period (i.e. the DAM).

¹⁰⁶ Oral Hearing T2P31L14 to T2P35L11.

¹⁰⁷ Oral Hearing T2P47L6-P48L3.

¹⁰⁸ Technical Conference T1P140L1-9, T1P140L22 and T1P141L4.

C. Imposition of a significantly expanded MPM framework

54. The MRP Amendments introduce a fundamentally different ex-ante Market Power Mitigation (“**MPM**”) regime that currently does not exist in Ontario.¹¹¹ MPM under MRP will apply to a significantly greater number of operational and financial parameters for NQS Generators than other supply resources. Nearly every element of operation of an NQS Generator – including the number of hours it takes to start, MGBRT, MLP and various financial costs – will be screened by the IESO for market power.¹¹² “Mitigation” by the IESO means that an NQS generator’s bid will be unilaterally altered by the IESO to a reference level, resulting in lower revenues, and heavy handedly interfering with a competitive electricity market.

	Pre-MRP	Post-MRP	Consequence to NQS Class
Fundamentally Different MPM Framework	Exercise of market power has limited impact on uniform market clearing price and dispatch schedules. Intended to influence payments to the resource. ¹¹³ The current MPM framework is done on an ex-post (after the fact) basis. ¹¹⁴ MPM under the current IAM is carried out manually and infrequently. ¹¹⁵	Exercise of market power can materially impact locational marginal prices and dispatch schedules. Intended to influence market prices. ¹¹⁶ The future MPM framework under MRP will apply extensive screens of energy and operational parameters on an ex-ante (before the fact) basis in all the DAM, pre-dispatch, and real-time calculation engines. Ex-ante mitigation is carried out automatically. ¹¹⁷ Under the new MPM regime, financial and operational parameters are screened by the DAM and pre-dispatch calculation engines and are subject to mitigation.	Since NQS generators are often price-setters, the risk of their offers being mitigated increases. ¹¹⁸ The NQS generators have many more financial and operational parameters subject to mitigation compared to other resource types (e.g., nuclear, hydroelectric, wind and solar generation, energy storage, imports, and dispatchable loads), increasing the risk of earning less wholesale revenue due to mitigation of both incremental energy and OR offers. ¹¹⁹
MPM of start up costs (and other components) under	The start-up cost component of an NQS generator's DACP three-part	The start-up cost component of an NQS generator's day-ahead market three-part offer will be subject to ex-ante market power mitigation. An NQS generator’s startup costs could ultimately be replaced by an	While start-up cost is one component of ex-ante mitigation, Power Advisory expects that ex-ante review of all financial and operational parameters (e.g., MGBRT, MLP, ramp rates and SNL) and ex-

¹¹¹ Power Advisory Expert Report, paras 48.f., 58. Oral Hearing Day 2, page 135, lines 17-27.

¹¹² Power Advisory Expert Report para 68.

¹¹³ IESO, Market Power Mitigation Education, slide 8, online: <<https://www.ieso.ca/-/media/Files/IESO/Document-Library/tp/2024/iesotp-20240716-market-power-mitigation-presentation.pdf>>

¹¹⁴ Power Advisory Expert Report para 58(b).

¹¹⁵ Power Advisory Expert Report paras 51(a) and 58(c).

¹¹⁶ IESO, Market Power Mitigation Education, slide 8, online: <<https://www.ieso.ca/-/media/Files/IESO/Document-Library/tp/2024/iesotp-20240716-market-power-mitigation-presentation.pdf>>

¹¹⁷ Power Advisory Expert Report para 58(c).

¹¹⁸ Power Advisory Expert Report, para 58.f., Figure 12.

¹¹⁹ Power Advisory Expert Report, paras 51, 58, 60, 65, 68, Figure 4, Figure 12, Figure 13. Oral Hearing Day 3, page 43, lines 1-15.

	Pre-MRP	Post-MRP	Consequence to NQS Class
DAM (but not DACP)	offer is not currently the subject of any form of market power mitigation. ¹²⁰	administratively determined reference level, which will be less than the non-mitigated start-up costs initially submitted as part of the three-part offer. ¹²¹ All components subject to mitigation are outlined in Figure 13 of the Power Advisory Report.	post review of physical MWs offered will have a significant financial impact on NQS generators. ¹²² Given the number of parameters NQS generators are subject to MPM under MRP, there are many more ways for NQS generators to be captured (and therefore mitigated) in the MPM framework than competing resources. ¹²³
Price cap on OR offers	OR prices in the current IESO-administered market face no price cap. Currently, OR prices often exceed the proposed threshold of \$15/MW – with more than 12% of all hours in 2023 exceeding this cap. ¹²⁴	The IESO will screen and potentially replace OR offers when they are greater than \$15/MW when it considers there to be “global” market power across the entire IESO-administered market. This creates a de facto \$15/MW price cap on OR during certain circumstances. ¹²⁵	This poses an additional risk for NQS generators as large providers of OR, whereas nuclear, wind and solar generators are not impacted as they do not provide OR. ¹²⁶

¹²⁰ Oral Hearing T2P30L27 to T2P31L13.

¹²¹ Oral Hearing T2P30L8-26.

¹²² Power Advisory Expert Report Figure 4.

¹²³ Power Advisory Expert Report para 58(f).

¹²⁴ Power Advisory Expert Report para 60.

¹²⁵ Power Advisory Expert Report para 60.

¹²⁶ Power Advisory Expert Report para 60.

D. Elimination of CMSC payments

55. A market participant’s supply resource energy offers may be uneconomic in the market schedule, but it may be committed in the dispatch schedule due to various constraints on the electricity grid. To ensure the market participant follows dispatch, the IESO will provide payment of CMSCs to make this resource financially whole and ensure they do not suffer an operating loss by following their dispatch schedule.¹²⁷
56. CMSCs can also be paid to NQS Generators when they are dispatched out of economic merit – that is, when their dispatch schedule differs from their market schedule. The payments of CMSCs compensate for differences between implied operating profits from MPs following their dispatch schedules instead of their market schedules. The payments of CMSCs act as a financial bridge between the two distinct schedules and are currently a key component of the IAM.¹²⁸

	Pre-MRP	Post-MRP	Consequence to NQS Class
Replacement of CMSC with “make-whole payments”	CMSC payments were created “[i]n principle, ... to ensure that the generators and dispatchable loads are made whole to their operating profit.” ¹²⁹ CMSCs are a profitable form of compensation to generators, including NQS generators. ¹³⁰ The IESO’s MRP Business Case confirms the loss in revenue to the NQS generators, stating that “[t]he need for make-whole payments under the new design is expected to be infrequent and immaterial.” ¹³¹ The elimination of CMSC payments and the corresponding drastic drop in make-whole payments results in financial harm to NQS generators. ¹³²	The introduction of the single schedule market and associated locational marginal prices as part of the MRP Amendments eliminates the payment of CMSCs that account for differences between the market schedule and physical dispatch schedule. ¹³³	The MRP Amendments eliminate CMSC payments and will be replaced in part by make-whole payments, which will be much lower. ¹³⁴ While NQS Generators can today forecast wholesale prices based on a high-level understanding of the economic merit order across the entire IAM, the MRP Amendments will introduce the risk of various transmission and other constraints into LMPs that will be used for settlement purposes – making the forecasting of prices significantly more challenging. ¹³⁵

¹²⁷ Power Advisory Expert Report para 31.

¹²⁸ Power Advisory Expert Report para 44(c).

¹²⁹ Technical Conference Day 2, page 106, line 27 – page 107, line 2. See also Oral Hearing Day 1, page 150, line 23 – page 152, line 8.

¹³⁰ Technical Conference Day 2, page 106, line 27 – page 107, line 28. Oral Hearing Day 1, page 153, line 26 – page 155, line 14.

¹³¹ IESO Brief of Exhibits, page 738, footnote 46, as confirmed in the IESO’s Market Renewal Program Business Case Validation Memorandum, dated September 22, 2022.

¹³² Oral Hearing Day 1, page 155, lines 15-23.

¹³³ Power Advisory Expert Report para 32.

¹³⁴ Power Advisory Expert Report, paras 32, Figure 4. Technical Conference Day 2, page 106, line 27 – page 107, line 28. Oral Hearing Day 1, page 153, lines 2-25; page 157, line 5 – page 158, line 17.

¹³⁵ Power Advisory Expert Report para 49(c).

VI. UNJUST ECONOMIC DISCRIMINATION AGAINST THE NQS GENERATORS

57. The IESO acknowledges MRP will discriminate against the NQS generation class as the class will experience an overall reduction in generation output post-MRP in an interrogatory response in EB-2020-0230.¹³⁶

Q (ED): Other things equal, will MRP increase or decrease the non-emitting resources as a proportion of Ontario's electricity supply? Please estimate the proportion change (%) on a best-efforts basis.

A (IESO): Other things equal, **it is expected that MRP will help to increase non-emitting resources as a proportion of Ontario's electricity supply.** The proportion change (%) is difficult to estimate due to market conditions and market participant behaviour. As it is very difficult to predict future market conditions and market participant behaviour, the IESO does not conduct this kind of modelling. [Emphasis added]

58. The NQS Generation Group submits that the IESO has a targeted, intentional campaign to push emitting resources out of the IESO-administered market under the guise of "efficiency".
59. Simply put, the IESO has no data, quantitative analysis, or reliable expert evidence to rebut the economic analysis put forth by Power Advisory on the Amendments themselves.¹³⁷ The IESO confirmed in its business case that it did not estimate potential cost or saving impacts to market participants resulting from MRP.¹³⁸ Even consumer groups, such as the Vulnerable Energy Consumers Coalition, were concerned with the lack of rigor in the IESO's analysis on the purported benefits of MRP and non-responsiveness of the IESO to such concerns.¹³⁹

Q (VECC): Why should the cost-benefit analysis of the MRP not be considered seriously deficient if it does not incorporate an estimate of the cost of the proposed market rule changes to market stakeholders?

A (IESO): The analysis uses conservative assumptions and many potential benefits have not been quantified. Overall, the IESO is confident that the realized value of the Market Renewal Program (MRP) will exceed the benefits that are presented in the MRP Business Case. Further, market participant readiness is a key component for the Market Renewal Program (MRP) go-live. Planning is underway for the market participant readiness component of the MRP's implementation phase. The IESO will work with stakeholders through the Technical Advisory Group, and outline training and support plans to work on market participant readiness. These planning

¹³⁶ Exhibit K1.1, 4.0-ED-10(b); See also 4.0-ED-3(a).

¹³⁷ EB-2024-0331, Decision on Motion, January 3, 2025, at page 8.

¹³⁸ IESO, Brief of Exhibits for the Technical Conference, January 6, 2025, page 744, s. 4.4.

¹³⁹ EB-2020-0230, IESO Interrogatory Responses, 4.5 VECC 7(c)

activities will inform timing and any potential impacts to schedule and budget.

60. The IESO acknowledges in this proceeding it never conducted any analysis whatsoever to satisfy itself that Market Rules (including the MRP Amendments) would not unjustly advantage or disadvantage any market participant or class of market participants.¹⁴⁰ Notably this is in flagrant violation of an enforceable provision of the *Ontario Energy Board Act, 1998*.¹⁴¹
61. Given the IESO's utter failure to assess the impact of the MRP Amendments on any market participants at all, it should not be a surprise to the IESO, or this OEB panel, that the MRP Amendments unjustly discriminate against the NQS generation class through different treatment that is not justified by a difference in circumstances.¹⁴²

A. Element 1: Evidence of Economic Discrimination

62. From the tables in Section V above, there is no question that NQS generation resources are being economically discriminated against in the form of different treatment.

B. Element 2: Circumstances of Supply Resources

63. The second element of the test for unjust discrimination states 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. The question becomes what are those "circumstances"?
64. The NQS Generation Group submits that, for the purposes of the legal test, the relevant consideration for assessing "*an absence of material and relevant differences in their circumstances*" is how the IESO intends for key groups of market participants to interact with the IESO-administered market. Drawing too fine of distinctions between market participants could render section 33 of the *Electricity Act, 1998* meaningless.
65. The IESO was asked in Procedural Order No. 2 to describe the key changes to the current market rules and the expected impacts on market participants. In response, the IESO categorized market participants into the following circumstances:
- a) Market Participant Suppliers;
 - b) Market Participant Loads; and
 - c) Distribution Connected Load Customers.

¹⁴⁰ Technical Conference T1P87L17 to T1P88L24

¹⁴¹ *Ontario Energy Board Act, 1998*, SO 1998, c 15, Sch B, "enforceable provision" subsection (d).

¹⁴² Decision and Order EB-2019-0242, page 8.

66. This aligns with the IESO's categorization of supply and load resources in the last section 33 *Electricity Act, 1998* application in EB-2019-0242: "*Generators supply energy and receive energy payments for doing so. Loads do not supply energy and therefore do not receive energy payments.*"¹⁴³
67. The stated intention of MRP is to create circumstances where supply resources are to "*bring their best foot forward*" to drive competition by primarily committing supply resources in the day-ahead market. The IESO expects that competition would drive supply resources to offer reflective of what their underlying costs of producing are.¹⁴⁴ The IESO states the "*...intent of competition, sufficient competition, that should encourage participants to offer in a way that reflects their marginal cost*". The IESO asserts this competition is ultimately reflected in market prices.¹⁴⁵
68. However, a key assumption in making these assertions is that the MRP Amendments place all supply resources on equal footing when participating in the IESO-administered market. Specific programs, out of market payments, market rules, regulations, and so on for specific supply resources are intended to place those supply resources on equal footing to compete in the IESO-administered market. This is the crux of the NQS Generation Group's application: ***the MRP Amendments result in NQS generation resources no longer being on equal footing with other supply resources in the IESO-administered market.***
69. Indeed, the IESO recognizes the physical limitations of hydroelectric resources. For example, the IESO unique situations where hydroelectric resources may have interdependencies with other resources on the same river system.¹⁴⁶ In recognition of certain differences hydroelectric resources have successfully negotiated with the IESO to incorporate the following preferential treatment into MRP and are costs that will ultimately be borne by ratepayers:
- a) Unlike other supply resources, hydroelectric generators will be able to specify a number of operational parameters (e.g., maximum starts and must-run daily energy amounts) limiting the ability of MRP's calculation engine to dispatch the most efficient supply resource;¹⁴⁷
 - b) The IESO introduced 5 new dispatch data parameters that can be controlled by hydroelectric resources to control participation in the IESO-administered market;¹⁴⁸ and
 - c) Unlike other supply resources, of the 12 dispatch data parameters for hydroelectric resources only 2 parameters will be subject to market power mitigation (ramp rates and maximum starts per day). This offers hydroelectric generators far more flexibility to

¹⁴³ EB-2019-0242, Summary Closing Submissions of the IESO, December 9, 2019, at para 13.

¹⁴⁴ Oral Hearing T2P25L19-24; Oral Hearing T2P26L10-13

¹⁴⁵ Oral Hearing T2P105L26 to T2P107L4

¹⁴⁶ EB-2024-0331, IESO Descriptive Evidence, December 11, 2024, at s.3.4.3.

¹⁴⁷ Power Advisory Expert Report at para 64.

¹⁴⁸ Oral Hearing T3P4L1-11.

manage operational and financial risk. Comparatively, of the 15 dispatch data parameters for NQS generation resources 12 parameters will be subject to market power mitigation.¹⁴⁹

70. Similar to hydroelectric supply resources the IESO has implemented changes to the MRP Amendments and related contracts to eliminate certain risks faced by wind and solar supply resources.¹⁵⁰
71. The concerns raised by the NQS Generation Group for the past five years have been curiously ignored by the IESO culminating in this section 33 *Electricity Act*, 1998 application.
72. In the words of the IESO, *generators supply energy and receive energy payments for doing so* and, accordingly, there are no relevant differences in the circumstances of the NQS generation resources when compared to all supply resources.

C. Element 3: Discrimination is Quantitative

73. The third element of unjust discrimination is the economic impact of the different treatment must be quantified – it cannot be purely qualitative. The qualitative impacts of MRP are described in detail in Section V above. But-for the MRP Amendments, the harmful consequences would not flow to the NQS Generation Group. In other words, the cause of the harm set out in the Application is resulting from the MRP Amendments,
74. Power Advisory compared the annual net margin of a proxy generator operating under the current Market Rules with the same proxy generator operating under the MRP Amendments for the period of 2018-2023. This analysis revealed \$23 million in annual financial harm (\$140 million over the 6-year time frame) for the NQS Generation Group based on an extrapolation of the harms suffered by a proxy NQS generator.¹⁵¹ Notably, this quantitative analysis did not consider the potential for MPM to further inflict financial harm on the NQS generators. A quantitative historical analysis is the exact same approach the IESO used to calculate the benefits of MRP.¹⁵²
75. Power Advisory's analysis concludes that the NQS generators will be committed and dispatched less within the IESO-administered market under the MRP Amendments. This will result in less wholesale market revenues and profit compared to the current Market Rules. The financial impact from this outcome is significant.¹⁵³ Power Advisory states its analysis aligns with prior statements by the IESO and Market Surveillance Panel.¹⁵⁴

¹⁴⁹ Power Advisory Expert Report at para 65.

¹⁵⁰ Power Advisory Expert Report at para 66-67.

¹⁵¹ Power Advisory Expert Report, Appendix C.

¹⁵² Oral Hearing Day 1 P12L20-26.

¹⁵³ Power Advisory Expert Report at Appendix C.

¹⁵⁴ Oral Hearing T3P73L26-28.

76. The IESO elected not to provide any of its own quantitative analysis on the impacts of MRP on the NQS Generation Group and outright refused to do so during the Technical Conference.¹⁵⁵ The only quantitative analysis for the OEB panel's consideration is that of Power Advisory. The IESO does concede that replacement of the RT-GCG with the DA-GOG and RT-GOG will result in less net revenue for NQS generators.¹⁵⁶
77. The IESO cites \$190 million benefit (i.e. \$19 million annually) in efficiencies can be gained from eliminating 1 in 6 “inefficient” NQS generation commitments.¹⁵⁷ Assuming the IESO is correct, which it is not, the IESO is implementing changes to MRP that is not directed solely at the 1 in 6 purportedly inefficient commitments, but rather the changes discriminate against all commitments of NQS generation resources.¹⁵⁸ This outcome is not just.
78. Indeed, the IESO only assessed NQS generation resources when it considered “more efficient unit commitment” of the existing market in its 2019 Business Case. The IESO confirmed that no other resource underwent an efficiency assessment as all the 1,300 historical commitments inspected for the MRP Business Case were commitments of the NQS generation class.¹⁵⁹ This discriminatory analysis is not just - the IESO did not assess the efficiency of any other supply resources.

VII. INCONSISTENCY WITH THE PURPOSES OF THE ELECTRICITY ACT

79. The MRP Amendments are also inconsistent with the purposes of the *Electricity Act, 1998*, including:
- (a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;
 - (d) to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;
 - (f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;
 - (g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity; and
 - (i) to facilitate the maintenance of a financially viable electricity industry.

¹⁵⁵ Technical Conference T1P20L8-13.

¹⁵⁶ Technical Conference T1P14L1-4.

¹⁵⁷ EB-2024-0331, IESO Brief of Exhibits, January 6, 2024, PDF page 733.

¹⁵⁸ Oral Hearing T2P123L7-13; Oral Hearing Day 2, page 122, lines 8-13; page 123, lines 9-15; page 136, lines 12-19. IESO Brief of Exhibits, page 733, as confirmed in the IESO's Market Renewal Program Business Case Validation Memorandum, dated September 22, 2022.

¹⁵⁹ IESO Undertaking Response JT1.2.

A. Lack of Ratepayer Benefit of MRP

80. While the IESO is quick to tout the headline that MRP will deliver over \$700 million¹⁶⁰ to Ontario consumers over the first 10 years of operation, the IESO is not so quick to compare the net present value of MRP benefits to the costs of MRP implementation and operation in 2025 dollars. This comparison paints a bleak picture for ratepayers and highlights the IESO's gross mismanagement of MRP costs and overstatement of benefits.
81. As of September 22, 2022, the IESO states that the updated net present value of the MRP benefit is \$266 million beginning once MRP goes live in 2025.¹⁶¹ Comparing the net present value of the benefits with the current forecasted MRP implementation and operation cost of \$268 million is shocking.¹⁶² Assuming the IESO's forecasts are correct, what this reveals on an unadjusted basis of implementation costs is that ratepayers would have been better off had MRP never been implemented.
82. When correcting for the time value of money by combining:
- a) the value of MRP implementation costs in 2025 dollars that have been incurred by the IESO over the past decade (using the IESO's discount rate of 6%)¹⁶³ by equally distributing the total cost of \$233 million on an annual basis (\$23.3 million over 10 years); and
 - b) the expected future operational costs of \$35 million;¹⁶⁴
- the actual cost of MRP in 2025 dollars is approximately \$360 million.
83. Comparing for the net present value of MRP benefits in 2025 dollars of \$266 million to the adjusted value of MRP implementation costs in 2025 dollars of approximately \$360 million reveals that ratepayers would have been significantly better off (approximately \$94 million) had MRP never been implemented.
84. The NQS generation resources are bearing the brunt of the IESO's mismanagement of the MRP program. Correcting the unjust discrimination against the NQS generation resources likely means the net present value of MRP benefits will be further reduced.

B. Economic Sustainability of the NQS Generation Group

85. Three sections of the *Electricity Act, 1998* speak to the economic sustainability of generation in the province of Ontario, specifically sections 1(a), 1(g) and 1(i). The financial harms that have been described in Section V above, as modelled within Power Advisory's

¹⁶⁰ IESO Undertaking Response JT1.12, Appendix C, page 1.

¹⁶¹ IESO Undertaking Response JT1.12, Appendix C, page 1.

¹⁶² IESO Undertaking Response JT1.12, Appendix C, page 4.

¹⁶³ IESO Brief of Exhibits, January 6, 2025, PDF page 758.

¹⁶⁴ IESO Undertaking Response JT1.12, Appendix C, pages 3-4.

expert report, are extremely important to understand because that represents less wholesale market revenue for NQS generation resources.¹⁶⁵

86. Mr. Chee-Aloy succinctly described at the oral hearing what is at stake for NQS generation resources in the context of MRP:¹⁶⁶

[...] And I understand, I'm not going to get into all the ins and outs of the contract. But realistically speaking, that's how every single generator, that's how every single lender looks at these investments.

And if the totality of the changes represents less cash flow to these generators, by way of their financing, covering their debt-to-service coverage ratio can be challenged, which then puts them offside with potentially their credit facility agreement, which then jeopardizes how those facilities may be maintained, crucial facilities needed to maintain the reliability of the system, let alone meet policy objectives set by the government. That's what's at stake here in the broader perspective.

C. Cleaner Energy Sources and Technologies

87. Natural gas is a critical component of the province's electricity generation mix to maintain reliability and meet peak electricity demand. Increased electricity generation through natural gas can help reduce province-wide emissions by supporting cost-effective electrification in other sectors like transportation and heavy industry. A premature phase-out of natural gas-fired electricity generation could hurt electricity consumers and the economy.¹⁶⁷
88. Despite this clear policy statement by the Province of Ontario, the IESO states the net result of MRP is a reduction in natural gas fired generation.¹⁶⁸ The outcome of MRP is clearly inconsistent with section 1(d) of the *Electricity Act, 1998*.

VIII. OTHER COMMENTS

A. Scope of Appeal

89. In Procedural Order No. 2 the OEB appeared to be critical of the NQS Generation Group's decision to appeal the MRP Amendments as a whole.¹⁶⁹ The NQS Generation Group wishes

¹⁶⁵ Oral Hearing T2P142L5-9.

¹⁶⁶ Oral Hearing T2P142L8-20.

¹⁶⁷ Province of Ontario, Consultation to support the important role for natural gas in Ontario's energy system and economy.

¹⁶⁸ Exhibit K1.1, 4.0-ED-10(b); See also 4.0-ED-3(a).

¹⁶⁹ EB-2024-0331, Decision and Procedural Order No. 2, December 2, 2024, page 11.

to provide a brief explanation. Appendix D of the Power Advisory evidence highlights the problematic rules of MRP.¹⁷⁰

90. Whether the NQS Generation Group appealed only the rules listed in Appendix D or the entirety of MRP makes no practical difference in the result. The IESO acknowledges that the scope of this appeal involves key components of MRP design.¹⁷¹ MRP is unlikely to proceed if the NQS Generation Group is successful in its section 33 review of Appendix D or the entirety of MRP – they key components subject of this appeal are fundamental to MRP.

B. Relevance of the Market Surveillance Panel Reports

91. Several parties during the oral hearing referred to historical reports from the MSP on the state of the IESO-administered market at a given point in time. It is not clear what relevance these MSP reports have to this proceeding given the OEB’s ruling in Decision and Procedural Order No. 2 that a section 33 *Electricity Act, 1998* review “...needs to be focused on understanding the Amendments and what impact they have on the operation of the IESO-administered market.” The OEB states that the nature and details of the process used by the IESO to consult with stakeholders, including the MSP, are not relevant to the question of whether the MRP Amendments themselves result in unjust discrimination.
92. Should a party in this proceeding seek to rely on any MSP report that does not address the MRP Amendments themselves, the NQS Generation Group submits that the burden of establishing the relevance of those reports should be placed on that party given the OEB’s clear direction in Decision and Procedural order No. 2. The question before the OEB is focused on the MRP Amendments themselves,¹⁷² not the process and stakeholding that led to the MRP Amendments.

IX. CONCLUSION AND REQUESTED RELIEF

93. Considering the foregoing, the NQS Generation Group reiterates its request for relief at paragraphs 2(b) and 2(e) of the Application filed on November 7, 2024.

¹⁷⁰ Please note footnote 38 that states: “The list above has been constructed on a reasonable efforts basis and to the extent a rule or appendix is excluded, but is also relevant to this evidence, we would invite the IESO to notify the OEB of this basis.”

¹⁷¹ Oral Hearing T1P32L21 to T1P33L25

¹⁷² EB-2024-0331, Decision on Motion, January 3, 2025, at page 8.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27TH DAY OF JANUARY, 2025

BORDEN LADNER GERVAIS LLP

Per:

A handwritten signature in black ink, appearing to read "Colm Boyle".

Colm Boyle
Counsel to NQS Generation Group