

## **ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Electricity Act*, 1998, c. 15 (Schedule A)  
and *Ontario Energy Board Act*, 1998, c. 15 (Schedule B);

**IN THE MATTER OF** an Application by 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.  
("NQS Generation Group") to the Ontario Energy Board for an Order  
or Orders under section 33 of the *Electricity Act*, 1998.

### **INTERVENOR SUBMISSIONS OF FIRSTLIGHT**

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## Introduction

1. The relevant test prescribed under subsection 33(9) of the Ontario *Electricity Act* is whether the MRP Amendments unjustly discriminate against a market participant or class of market participants.
2. “Discrimination” means economic harm. “Unjust” discrimination means treatment that is not justified by a difference in circumstances.<sup>1</sup>
3. FirstLight submits the MRP Amendments are unjustly discriminatory in that they cause economic harm to IESO-registered market participants H2O Power Limited Partnership and H2O Power Holding Limited Partnership (together, “**H2O Power**”).

## FirstLight has appropriate standing in this proceeding

4. FirstLight is the indirect owner of five non-dispatchable hydroelectric generation facilities located in Kapuskasing and on the French River near Sudbury, Ontario, with a total installed capacity of approximately 30 MWs (the “**Facilities**”).<sup>2</sup>

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<sup>1</sup> APMCO Motion Decision and Order dated January 23, 2020.

<sup>2</sup> Oral Hearing Transcript, Day 3, page 78, lines 10 to 16.

5. Hydromega Services Inc. (“**Hydromega**”) is the direct owner and registered operator of the Facilities.<sup>3</sup> H2O Power are IESO-registered market participants for certain dispatchable transmission connected facilities.
6. FirstLight owns and manages the H2O Power transmission connected facilities and the Hydromega Facilities together. Direct economic harms suffered by the Hydromega Facilities therefore flow upwards and impact FirstLight and H2O Power, including the operational expenditure, capital expenditure and real time operation and management of H2O Power.<sup>4</sup>
7. Nowhere does subsection 33(9) of the Electricity Act, nor any OEB decision made thereunder to date, explicitly limit economic harm to *direct* economic harm. Discrimination can include *indirect* economic harm suffered by a market participant or class of market participants.
8. This interpretation is supported by the intervention of SEC and CCC on behalf of end use consumers who, like the Facilities, are also settled under the OEB’s Retail Settlement Code.

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<sup>3</sup> (EB-2018-0139) OEB [Electricity Generation Licence EG-2010-0387](#) issued April 11, 2011

<sup>4</sup> Oral Hearing Transcript, [Volume 3](#), page 77, lines 5 to 8; 23 to 26; to page 78, lines 1 to 9.

9. Otherwise, and taken to its logical conclusion, all distribution connected participants would never have any recourse for addressing economic harm caused to them by IESO market rule amendments.
10. For these reasons, FirstLight respectfully submits that, *vis-a-vis* H2O Power, it is entitled to seek relief in this proceeding.

### **MRP Amendments cause economic harm**

11. The undisputed evidence filed by FirstLight in this case demonstrates the MRP Amendments will cause approximately \$4.6 million in economic harm to the Facilities.<sup>5</sup> This amount is significant for FirstLight and H2O Power.
12. This economic harm arises from the MRP Amendments that change the settlement of the Facilities under the OEB Retail Settlement Code from the current Hourly Ontario Energy Price (HOEP) to a future Ontario Zonal Price plus Load Forecast Deviation Adjustment.<sup>6</sup>
13. The IESO has taken the position that “[n]o amendments to the LDC-Settled Contracts will ... be required” as a result of the MRP Amendments.<sup>7</sup> As such, and unlike for the NQS Generation Group applicants, there is no opportunity for

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<sup>5</sup> (Subject to confirmation from the IESO as to the applicability of a settlement floor price.) [Affidavit of Marc Mantha, sworn December 28, 2024](#), filed December 28, 2024 (“**Mantha Affidavit**”).

<sup>6</sup> [IESO MRP Objective Evidence](#), filed December 11, 2024, subsections 2.4.2.2 and 2.4.3.

<sup>7</sup> [Mantha Affidavit](#), Exhibit B.

FirstLight to (re-)negotiate contract amendments for the Facilities to address the economic harm that will be caused by the MRP Amendments.

14. Hence the only recourse FirstLight has to address the pending economic harm to the Facilities is the relief being sought in this proceeding, i.e. an order revoking the MRP Amendments and referring them back to the IESO for further consideration on the basis that they unjustly discriminate against a market participant or class of market participants.

### **The discrimination is unjust**

15. The economic harm caused by the MRP Amendments is unjust in that they discriminate against IESO registered market participants that are owned directly or indirectly by the same legal entity that own distribution connected facilities settled under the OEB Retail Settlement Code.

16. This difference in circumstance, as compared to market participants that do not have a direct or indirect legal relationship with distribution connected facilities settled under the OEB Retail Settlement Code, is neither a relevant nor contemplated justification warranting different treatment.

### **Conclusion**

17. For these reasons, FirstLight submits the applicable test under subsection 33(9) of the *Electricity Act* is met for demonstrating the MRP Amendments pertaining to

the creation of the (pending) Retail Settlement Code Price are unjustly discriminatory, and should therefore be revoked and referred back to the IESO for further consideration.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 3<sup>rd</sup> day of February, 2025.



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