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Ontario Energy Board
2300 Yonge Street
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February 3, 2025
Our File: EB20240331

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2024-0331 – NQS Generation Group MRP Market Rule Review – SEC Submissions

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No.2, enclosed, please find SEC's submissions.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

cc: Brian McKay, SEC (by email)
Applicant and Intervenors (by email)

EB-2024-0331

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Electricity Act, 1998,* S.O. 1998, c. 35, (Schedule. B);

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 Review of Amendments to the Independent Electricity System Operator Market Rules.

SUBMISSIONS OF THE
SCHOOL ENERGY COALITION

A. <u>Overview</u>

1. On November 7, 2024, a group of non-quick start ("NQS") gas-fired generators (referred to as the "NQS Generation Group")[1] filed an application pursuant to section 33 of the *Electricity Act,* requesting that the Ontario Energy Board ("OEB") review and revoke amendments to the Market Rules made by the Independent Electricity System Operator ("IESO"), that would implement the Market Renewal Program ("MRP" and "MRP Amendments").[2]

2. MRP is intended to improve Ontario's electricity system, by making several significant design changes to enhance the efficiency and cost-effectiveness of the wholesale market (the IESO-Administered Market or "IAM"). The changes are expected to deliver material financial benefits to Ontario electricity consumers, including schools.

3. The School Energy Coalition ("SEC") submits there is no merit in the NQS Generation Group's claim that the MRP Amendments are unjustly discriminatory and inconsistent with the purposes of the *Electricity Act*. The MRP Amendments are neither unjust nor discriminatory and further the purposes of the *Electricity Act.*

[1] Capital Power Corporation, Thorold CoGen L.P., Portlands Energy Centre L.P., dba Atura Power, St. Clair Power L.P., TransAlta (SC) L.P

[2] MR-00481-R00 to R13

4. The NQS Generation Group has not filed any evidence demonstrating that the MRP Amendments will lead to economic discrimination against any of its generators, let alone that it would be unjust, nor that they are inconsistent with the purposes of the *Electricity Act.* Instead, the NQS Generation Group has provided evidence that a hypothetical proxy NQS generator may be financially harmed. However, this has little relevance to the test they must meet.

5. The MRP Amendments address several key flaws in the current Market Rules, which have been identified as far back as market opening by the Market Surveillance Panel ("MSP"). Both the MSP and the Auditor General of Ontario ("Auditor General") have made numerous findings over the years regarding how the existing market design harms consumers and, in certain circumstances, unfairly benefits NQS generators.

6. The application was filed even though the NQS generator representatives on the IESO's Technical Panel voted in favor of these very Market Rule amendments, and the NQS Generation Group companies themselves never raised, throughout the extensive stakeholder consultations that took place over multiple years, any concerns that MRP or the MRP Amendments raised an issue under section 33(9) of the *Electricity Act*.[3]

7. The MSP aptly summarized the dynamics of market design changes in its 2016 Report, when it said that "[t]he 'losers' from a revised market design are, on the other hand, highly sophisticated and know how such a redesign will impact them" and that they "naturally resist changes that will harm their interests, and are well positioned to slow down such changes."[4] The NQS Generation Group, perceiving themselves as the "losers," are resisting these changes, which are intended to deliver benefits to Ontario consumers, by bringing this application. The OEB should see this application for what it is and deny it.

B. <u>Market Renewal Program Amendments</u>

MRP Amendments

8. The MRP Amendments are designed to implement the IESO's MRP program, which is aimed at "improv[ing] efficiency and integrat[ing] an increasingly diverse and decentralized mix

[3] Oral Hearing ["OH"] Tr.2, p.90-91; IESO Technical Panel , Member Vote and Rationale-Market Renewal Program: Final Alignment Batch, September 10, 2024 (K2.3, p.124-128)

[4] Market Surveillance Panel, Congestion Payments in Ontario's Wholesale Electricity Market: An Argument for Market Reform (December 2016), p.14

of resources into the Ontario market and electricity system."[5] The IESO estimates that MRP will deliver $975M in benefits to Ontario electricity consumers over the first 10 years.[6]

9. The key components of the MRP (and the MRP Amendments) are the introduction of: i) a Single Schedule Market ("SSM") to replace the existing two-schedule market, which would introduce Locational Marginal Pricing ("LMP") and eliminate the need for Congestion Management Settlement Credits ("CMSC"), ii) a financially binding Day-Ahead Market ("DAM"), and iii) an Enhanced Real-Time Unit Commitment Process ("ERUC") to improve efficiency and cost of dispatching resources to meet demand between the day-ahead and real-time markets. To ensure dispatchable resources do not unfairly take advantage of these new mechanisms by exercising market power, the MRP Amendments also create an enhanced Market Power Mitigation ("MPM") framework.[7]

10. For customers, the benefit of the MRP is the goal of creating a more cost-effective IAM. This will save customers costs by more efficiently and cost-effectively dispatching resources, addressing concerns raised over the years with the existing Market Rules by both the MSP and the Auditor General. Both the MSP and Auditor General have identified numerous inefficiencies in the current IAM market design that have unfairly benefited certain market participants, specifically NQS generators, like those represented by the NQS Generation Group, to the detriment of consumers. MRP is the IESO's attempt to address many of these issues.

11. MRP is an expensive undertaking that is being paid for by consumers through the OEB-approved IESO fee.[8] Through the end of Q3 2024, the IESO had spent $204.4M on MRP, with a total budget of $233M.[9] The IESO has said that the project remains appropriate as a result of the benefits that will be derived. Based on the specifics of the application and the relief sought, if the NQS Generation Group is successful in this application, they will not just delay consumers from

[5] IESO Description Evidence, IESO Market Rule Description Evidence in Response to Procedural Order No. 2, p.2 ["IESO Description Evidence"]
[6] Undertaking JT 1.12, Appendix C, 'MRP Business Case Validation Memo', p.3 (K2.3, p.108)
[7] IESO Description Evidence, p.22-27
[8] OH Tr, 2, p.86
[9] OH Tr, 2, p.86; See IESO, Market Renewal Program Quarterly Project Status Report (as of September 30, 2024) , p.2

receiving the benefits but almost certainly will ultimately eliminate most, if not all, of those benefits, as they take issue with all of the major components of MRP.[10]

MRP Will Address Market Surveillance Panel and Auditor General Criticism of Existing Market Rules

12. The MSP is an expert panel of the OEB responsible for identifying and addressing inefficiencies, flaws, and competition issues in the IAM, and recommending remedial actions to ensure their efficient and fair operation.[11] Over the years, the MSP has consistently highlighted design flaws and inefficiencies in the Market Rules, many of which the IESO now aims to address through the MRP Amendments.

13. Incredibly, the NQS Generation Group now dispute the relevance of the MSP reports and recommendations[12], which go directly to understanding both the rationale and benefits of MRP and the MRP Amendments, as well as how existing Market Rules were problematic, often benefiting NQS generators at the expense of Ontario consumers. The IESO has emphasized over the years that most of the major problems with the existing Market Rules, were to be resolved through MRP.[13] The OEB has recognized the importance of the MSP in the context of an application to review and revoke a Market Rule amendment, as it has previously cited and extensively quoted from their reports as part of its findings.[14]

14. ***Day-Ahead and Dispatch.*** The proposed DAM and ERUC program are designed to improve the scheduling and commitment of dispatchable generation.[15] DAM is intended to provide "more certainty around next-day operations, improving reliability and reducing the need for costlier out-of-market actions." [16] The ERUC program is intended to improve the scheduling of resources.[17]

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[10] OH Tr.2, p.87-89
[11] Ontario Energy Board, By-Law #2 - Market Surveillance Panel, section 4.1.1
[12] NQS Argument-in-Chief, para. 91-92
[13] For example, see the most recent 'IESO Annual Update to the Ontario Energy Board on Actions Taken to Address Market Surveillance Panel Recommendations (Period from January 2020-December 2024)', p.2,12-13,17-18 (Attachment to Undertaking JT1.10; K2.3, p.86); IESO Reply Evidence, p.20-24; IESO Description Evidence, p.2,8, 20
[14] *Decision and Order* (EB-2007-0040), Revised April 12, 2007, p.20-22
[15] Market Surveillance Panel, State of the Market Report 2023 (September 2024), p.86 (K2.3, p.44)
[16] Market Surveillance Panel, State of the Market Report 2023 (September 2024), p.86 (K2.3, p.44)
[17] Market Surveillance Panel, State of the Market Report 2023 (September 2024), p.86 (K2.3, p.44)

15. One major aspect of the existing pre-real time commitment and real-time dispatch process that has garnered significant criticism is the Real-Time Generation Cost Guarantee ("RT-GCG") program. This "out-of-market" and "non-competitive process" was originally designed to mitigate the risk that NQS generators would not start their generation units, as they were uncertain if they would be dispatched sufficiently to recover their costs.[18] The RT-GCG program, which is only available to NQS generators[19], guarantees their costs (start-up, speed-no load, and incremental energy) if they are dispatched regardless of how much they earn in the market.[20]

16. However, the MSP has found that the RT-GCG program has led to "productive inefficiencies in the short-run when demand is not served using the lowest cost resources."[21] Additionally, it suppressed market prices by removing incentives for generators to include fixed start-up costs in their offers, which also reduced rewards for other participants to remain available during critical periods.[22]

17. Similarly, the Auditor General found that this program has led to higher than appropriate costs for consumers as result of the "IESO's inefficiently selecting which gas generators will produce electricity (that is, the IESO buys electricity from a gas generator that produces it for a higher overall cost), resulting in a depressed market price and an inflated global adjustment."[23] For more than a decade, the MSP has also recommended that all market revenues earned by a generator during a run should be incorporated into the calculation for guaranteed payments, as opposed to only a portion under the existing Market Rules.[24] Doing so would be "fair to Ontario consumers who assume any downside risk that generators run at a loss".[25]

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[18] Market Surveillance Panel, State of the Market Report 2023 (September 2024), p.85 (K2.3, p.43)
[19] OH Tr.2, p.58
[20] IESO Description Evidence, p.20
[21] Market Surveillance Panel, State of the Market Report 2023 (September 2024), p.85 (K2.3, p.43)
[22] Market Surveillance Panel, State of the Market Report 2023 (September 2024), p.85 (K2.3, p.43)
[23] Auditor General of Ontario, 2017 Annual Report, Chapter 3, Independent Electricity System Operator - Market Oversight and Cybersecurity, p.349 (K2.3, p.53)
[24] Market Surveillance Panel, Monitoring Report on the IESO-Administered Electricity Markets for the period from November 2012 – April 2013 (January 2014) , p.157, 174 (K2.3, p.65, 82); Market Surveillance Panel, Monitoring Report on the IESO-Administered Electricity Markets for the period from May 2015 – October 2015 (November 2016), p.126; Market Surveillance Panel, Monitoring Report 32 (July 16, 2020), p.20
[25] Market Surveillance Panel, Monitoring Report on the IESO-Administered Electricity Markets for the period from May 2015 – October 2015 (November 2016), p.124

18. The MSP has also criticized the current dispatch engine, whose isolated hour-by-hour approach, fails to account for important generator characteristics such as minimum loading points ("MLP") and minimum generation block run times ("MGBRT").[26] This also allows, for among other problems, "two-shifting", where an NQS generator inefficiently claims start-up costs through the RT-GCG program twice in a day, since the dispatch engine does not optimize over multiple hours.[27]

19. As the MSP itself has noted, the MRP Amendments should address these issues.[28] The ERUC is expected to enhance efficiency by optimizing resource scheduling over multiple hours (up to 27 hours), including through consideration of NQS generators MLP and MGBRT, and through consideration of all costs.[29] The new Real-Time Generator Offer Guarantee ("RT-GOG") program, also only available to NQS generators, will still guarantee their costs, but will include consideration of all market revenues earned by a generator during a commitment which will be incorporated into the calculation for eligibility for a guarantee payment.[30] The MSP anticipates that these changes "should improve competition and productive efficiency issues associated with RT-GCG."[31]

20. ***Single Schedule Market.*** The proposed Single Schedule Market ("SSM") is aimed at addressing the current misalignment between prices and dispatch in the IAM, and eliminating CMSC payments through introduction of LMP.[32]

21. The problems associated with the two-schedule system have been subject to much discussion over the years and "[s]ince market opening, no element of Ontario's wholesale electricity markets has attracted the attention and concern of the [MSP] more than Congestion

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[26] Market Surveillance Panel, State of the Market Report 2023 (September 2024), p.86
[27] Market Surveillance Panel Report 33 (December 2020), p.18, 27
[28] Market Surveillance Panel, State of the Market Report 2023 (September 2024), p.85-86 (K2.3, p.43-44)
[29] IESO Description Evidence, p.21; Market Surveillance Panel, Monitoring Report 32 (July 16, 2020), p.20-22
[30] IESO Description Evidence, p.20
[31] Market Surveillance Panel, State of the Market Report 2022, (December 2023), p.42
[32] IESO Description Evidence, p.3

Management Settlement Credit (CMSC) payments."[33] This included the MSP issuing a report dedicated to the topic.[34]

22. The MSP has found that the current two-schedule system, which balances the market through separate constrained and unconstrained processes, along with CMSCs, "distort the incentives for some participants to respond efficiently in the market", at times "creat[ing] a disconnect between the price that reflects actual system needs and the payment opportunities available to a market participant."[35] This structure has resulted in "misaligned incentives which cause inefficiencies," including those stemming from uniform pricing that distort consumption, export, and investment decisions, as well as inefficiencies in dispatch caused by the strategic offer behavior.[36] The MSP has long called for a new market design that involves replacement of the uniform price, and a two-schedule system, with one that includes locational pricing, and less out-of-market payments like CMSCs.[37]

23. The introduction of the SSM with LMP, which will apply to all market participants[38], aims to address many of these issues, including by "alleviating inefficiencies associated with the uniform price and the [two-schedule market]."[39] Furthermore, the MSP anticipates that the implementation of LMPs will "stimulate competition and efficiency by rewarding and incentivizing lower-cost generation" while eliminating the "limited incentive to improve the management of congestion when generators are compensated for lost imputed operating profits as implied by the market schedule" that exists under the current Market Rules, which include the

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[33] Market Surveillance Panel, Congestion Payments in Ontario's Wholesale Electricity Market: An Argument for Market Reform (December 2016), p.1 (K2.3, p.85)
[34] Market Surveillance Panel, Congestion Payments in Ontario's Wholesale Electricity Market: An Argument for Market Reform (December 2016) (K2.3, p.84)
[35] Market Surveillance Panel, State of the Market Report 2022, (December 2023), p.39-40
[36] Market Surveillance Panel, State of the Market Report 2023 (September 2024), p.84 (K2.3, p.42); Market Surveillance Panel Report 36 (March 2022), p.23 ; Market Surveillance Panel, Congestion Payments in Ontario's Wholesale Electricity Market: An Argument for Market Reform (December 2016); Market Surveillance Panel, Monitoring Report on the IESO-Administered Electricity Markets for the period from November 2005 – April 2006 (June 14, 2026), p.121-122
[37] Market Surveillance Panel, Congestion Payments in Ontario's Wholesale Electricity Market: An Argument for Market Reform (December 2016), p.1 (K2.3, p.85); See also Auditor General of Ontario, 2017 Annual Report, Chapter 3, Independent Electricity System Operator - Market Oversight and Cybersecurity, p.352 (K2.3, p.352); OH Tr.2, p.88
[38] OH Tr.2, p.85; OH Tr.3, p.42.
[39] Market Surveillance Panel, State of the Market Report 2023 (September 2024), p.83 (K2.3, p.41)

payment of CMSCs.[40] Any lower revenue the NQS generators may earn as a result of the implementation of the SSM and LMP through the MRP Amendments, is a result of more efficient prices that better align with the dispatch being used on the system and the elimination of "unwarranted" CMSC payments.[41]

24. ***MPM Framework.*** The MRP Amendments also incorporate a new, more enhanced MPM framework that will be applicable to every dispatchable resource.[42] MPM is required to ensure that market participants are not able to unfairly increase prices for consumers by either economically or physically withholding energy.[43] While the existing Market Rules include a more limited MPM approach, focused on an ex-post review process, the new MPM framework will also include an ex-ante process targeting economic withholding.[44] Both the revised ex-post and ex-ante processes will involve an assessment of offers through various tests (conduct and impact) based on the specific grid conditions where the resource is located.[45]

25. For the ex-ante review, if, after assessment of the tests, market power is determined to exist, the IAM calculation engine will replace the offer values with resource-specific reference levels.[46] These reference levels, initially determined by the IESO in consultation with each market participant, allow for third-party independent review in cases of disagreement.[47] The benefit of an ex-ante review, as opposed to a purely ex-post review, is that it enables the IESO to prevent the exercise of market power before it affects other market participants through the dispatch process.[48]

26. While the number of parameters that may be reviewed as part of the MPM framework is higher for NQS generators, this is due to their having more financial and operational parameters that could allow them to exercise market power.[49] For example, NQS generators may provide three-part offers (start-up, speed-no-load, and incremental energy), whereas all other resources can

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[40] Market Surveillance Panel, State of the Market Report 2023 (September 2024), p.85 (K2.3, p.43)
[41] OH Tr.2, p.79; Undertaking JT 1.12, Appendix C, 'MRP Business Case Validation Memo', p.3 (K2.3, p.108)
[42] OH Tr.2, p.76
[43] OH Tr.2, p.74; IESO Description Evidence, p.22
[44] IESO Description Evidence, p.23-25; OH Tr.2, p.74
[45] IESO Description Evidence, p.24-25
[46] IESO Description Evidence, p.25-26
[47] IESO Reply Evidence, p.36
[48] OH Tr.2, p.75-76
[49] OH Tr.2, p.76

only provide incremental energy offers.[50] Additionally, the dispatch engine must consider unique parameters for NQS generators, such as MLP and MGBRT.[51]

27. The IESO has acknowledged that, as the MPM framework is new, it may have unintended consequences for all market participants. To address this, the IESO has established a MPM Working Group, which presumably will include members representing the interests of NQS generators, given their demonstrated interest in this issue through this application.[52]

28. The NQS Generation Group argue that NQS generators will bear a disproportionate risk under the MPM framework.[53] Even if true, this is a result of NQS generators being amongst the generation type most likely to exercise market power, as gas generators frequently serve as the price-setting resource.[54] To the extent that NQS generators' offers are disproportionately replaced by the reference level, thereby reducing their overall revenues compared to the current Market Rules, this outcome reflects their increasing ability to exercise market power.[55]

C. <u>Power Advisory Evidence</u>

29. The only evidence submitted by the NQS Generators in support of the application is an expert report prepared by Power Advisory LLC ("Power Advisory" and the "Power Advisory Report"), which is limited in scope.[56] Power Advisory was retained to analyze the financial harm, specifically the reduction in net margin, to NQS generators that are part of the NQS Generation Group as a result of the proposed MRP amendments.[57] In its analysis, Power Advisory compared the net margin of NQS Generators under the current Market Rules within the IAM to the net margin anticipated under the MRP Amendments.[58] With respect to certain aspects of the MRP Amendments, Power Advisory outlined how the impacts on NQS Generators might differ from those on other resources, although it did not attempt to quantify these differences.[59]

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[50] OH Tr.1, p.39
[51] OHTr.1, p.39; IESO Reply Evidence, p.29
[52] OH Tr.2, p.77-78; 'IESO Market Power Mitigation Working Group - Overview' (K2.2, p.104)
[53] NQS Generation Group Argument-in-Chief, para. 54, p.23; Power Advisory Report, para. 68f, Figure 12
[54] Power Advisory Report., para. 68f, Figure 12; Technical Conference Undertaking JT2.3; NQS Generation Group Argument-in-Chief, p.23
[55] OH Tr.2, p.76
[56] Power Advisory Report
[57] Power Advisory Report, para. 1; OH Tr.3, p.33
[58] OH Tr.3, p.33-34
[59] OH Tr.3, p.34

30. Notably, Power Advisory was not asked to, and did not, provide an opinion on the justness, reasonableness, or appropriateness of the MRP Amendments. Additionally, it did not address whether the MRP Amendments are inconsistent with the purposes of the *Electricity Act*.[60] Power Advisory's conclusion is that if the MRP Amendments had been in place between 2018-2023, the NQS Generation Group's net revenues would have decreased by $140M.[61]

31. There are several glaring problems with Power Advisory's calculations of financial harms, which should result in their evidence being given little weight.

Proxy Generator Approach Is Inappropriate

32. Power Advisory's financial impact is based on the impact of a proxy generator which it then scales up to reflect the total capacity of the NQS generators that are part of the NQS Generation Group. Reliance on a proxy generator, rather than information derived from one of the many generators owned and operated by NQS Generators, is both inappropriate and inconsistent with the OEB's previous guidance regarding the necessity of demonstrating actual quantification of economic impact.[62] In the Transitional Capacity Auction Decision[63], the OEB determined that AMPCO failed to meet these requirements, stating that "there was no evidence presented by any party on the range of costs incurred by any of these market participants." The OEB concluded that, the example of costs potentially incurred by an unidentified AMPCO steel manufacturer member was insufficient.[64] Here, Power Advisory's use of a proxy generator as the foundation to quantify the economic impact of the proposed amendments is not materially different from that unidentified steel manufacturer, rejected by the OEB. Such an approach fails to reflect the actual costs incurred by the specific market participants who are claiming unjust discrimination.[65]

33. Furthermore, Power Advisory failed to provide any supporting information to demonstrate that the parameters used for the proxy generator accurately approximate the average generator in the NQS Generation Group.[66] As Mr. Yauch candidly admitted, "I can't point you to a particular datapoint that supports it, other than the fact that we have worked with most of them for many

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[60] OH Tr.3, p.34-35
[61] Power Advisory Report, para. 18
[62] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.25
[63] *Decision and Order*, (EB-2019-0242), January 23, 2020
[64] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.25
[65] OH Tr.3, p.56, 58
[66] OH Tr.3, p.56-57

years."[67] This "trust us" approach is wholly inadequate, and should be unequivocally rejected by the OEB.

34. Power Advisory has cited the commercial sensitivity of individual NQS generators' information as the justification for its failure to seek actual data from these generators, and its inability to provide any evidence to support its claim that the proxy generator represents an approximation of the average NQS generator.[68] The OEB addressed this very issue in the Transitional Capacity Auction Decision, where it acknowledged "AMPCO members' reticence to share their economic data with each other, and other competitors."[69] However, the OEB, referencing its Practice Direction on Confidential Filings, correctly recognized that "there are methods by which this information could be shared with the OEB without compromising the confidentiality of any individual market participant's information."[70]

35. Ensuring that the proxy generator parameters reflect the actual characteristics of the NQS generators is fundamental to assessing the reasonableness of Power Advisory's analysis. Power Advisory acknowledges that each NQS generator has distinct attributes, costs, and operational characteristics.[71] Moreover, Mr. Yauch appropriately conceded that, if the parameters of the proxy generator do not approximate those of the NQS generators, the resulting analysis will yield different financial impacts.[72]

Calculations Cannot Be Verified or Properly Understood Due to Refusal To Produce the Model

36. SEC submits that the OEB should give little weight to the financial analysis included in the Power Advisory Report, as Power Advisory and the NQS Generators collectively refused to provide a copy of the underlying model and/or live spreadsheets necessary to understand and verify the analysis and calculations.[73] Mr. Yauch acknowledged that neither the parties nor the OEB can independently verify the accuracy of the numbers and calculations, requiring all parties to rely solely on Power Advisory's assurance that no errors were made.[74] The refusal was based on the

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[67] OH Tr.3, p.57
[68] OH Tr.2, p.192; OH Tr.3, p.47, 57
[69] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.25
[70] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.25-26
[71] OH Tr.3, p.54, 59
[72] OH Tr.3, p.56
[73] OH Tr.2, p.198; OH Tr.3, p.63; Technical Conference ("TC") Tr.2, p.147; Refusal JT 2.5
[74] OH Tr.3, p.62-63

claim that the model is proprietary[75] and commercially sensitive[76]. While this may justify providing the information confidentially pursuant to the Practice Direction on Confidential Filings[77], it is not a valid reason for non-disclosure.

37. The OEB has also previously rejected that as a basis for not providing similar information. In EB-2022-0200, the OEB ordered Enbridge to produce the "model and model output dataset" that underpinned an expert report forming part of its evidence.[78] The OEB found that, "in light of the relationship of this evidence to the approvals sought by Enbridge Gas, the assertion that the requested information is proprietary in nature is an insufficient basis on which to refuse disclosure."[79] Here, the relationship is even stronger, as the Power Advisory Report constitutes the entirety of the NQS Generators' evidence. The NQS Generators have a legal obligation, as a matter of fairness, to produce this "foundational information," which includes the raw data and records of an expert.[80]

Flawed Methodology

38. There are also several critical flaws in Power Advisory's methodology in calculating the financial harms.

39. First, a central component of Power Advisory's analysis is the financial impact resulting from what it expects will be reduced commitments and dispatch of NQS generators after the implementation of the MRP amendments.[81] Yet, as the IESO rightly points out, "[t]o the extent there is a reduced commitment and dispatch of a particular NQS resource, it will primarily be a result of competition amongst NQS generators – i.e., between more competitive/efficient NQS generators and less competitive/efficient NQS generators – and is not expected to uniformly impact NQS generators as a class as Power Advisory has assumed."[82]

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[75] TC Tr.2, p.145, 147
[76] OH Tr.3, p.62
[77] See Practice Direction on Confidential Filings, Appendix B, section 7
[78] *Procedural Order No.3*, (EB-2022-0200), March 17, 2023, p.1; SEC notes that ultimately, the Parties reached an agreement regarding production of more expansive information in lieu of the production of the model.
[79] *Procedural Order No.3*, (EB-2022-0200), March 17, 2023, p.1
[80] *BIE Health Products v. Attorney General (Canada),* 2018 ONSC 2142, para. 19
[81] Power Advisory Report, Appendix B and C
[82] IESO Reply Evidence, p.4, 13

40. The result is that, if one NQS generator is no longer dispatched because of the MRP amendments, another more cost-efficient NQS generator may be dispatched in its place, as the supply is still needed. This possibility, which the IESO says is the most likely outcome at this time[83], is not even considered by Power Advisory as part of its analysis.[84] Since Power Advisory just looked at a single proxy generator, which it then scaled up on a per-MW basis to derive a rough estimate of the total impact on the generators in the NQS Generation Group[85], it could not consider the impact between NQS generators. If it had, the total financial harm would be lower.[86]

41. Second, to calculate the commitment and dispatch impact of the MRP Amendments, Power Advisory used the three hours before dispatch (PD-3) prices as a proxy for the relevant DAM price after the implementation of the MRP amendments.[87]SEC submits that the use of PD-3 prices is highly problematic and does not reflect the prices necessary to assess the dispatch decisions of the proxy generator. The PD-3 prices used by Power Advisory are unconstrained[88], whereas the MRP involves moving to a Single Schedule Market, where there will be a single price accounting for system constraints.[89]

42. Lastly, PD-3 prices are Ontario-wide, whereas the MRP amendments will implement LMP, which will set different prices at each node.[90] Power Advisory could have accounted for this by incorporating historical shadow prices published by the IESO for various nodes, but it did not.[91] Furthermore, as Mr. Yauch agreed, moving to a Single Schedule Market that includes LMP will lead to market participants changing their offer strategies[92], making historical PD-3 prices a poor reflection of future market prices under an amended Market Rules.

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[83] TC Tr.1, p.33-35
[84] OH Tr.3, p.11
[85] OH Tr.3, p.3-5
[86] IESO Reply Evidence, p.13
[87] Power Advisory Report, Appendix B, p.58; OH Tr.3, p.59
[88] Mr. Yauch mentions that there are also constrained PD-3 prices, but he used unconstrained ones. (OH Tr.3, p.59-60)
[89] OH Tr.3, p.60
[90] OH Tr.3, p.60
[91] OH Tr.3, p.61; SEC notes that FirstLight's evidence support spreadsheet includes the of shadow prices at specific nodes (see K3.2).
[92] OH Tr.3, p.61

43. Power Advisory's evidence indicates that they conduct extensive IAM price forecasting in Ontario, utilizing their proprietary production cost dispatch model.[93] They also claim to have a comprehensive understanding of the operational parameters and characteristics of various resource types.[94] With this expertise, they could have conducted more sophisticated modeling exercises to forecast the impacts on all market participants under MRP, accounting for the interactions among the various elements to properly assess the financial impact on NQS Generators. They did not do so.

D. <u>Unjust Discrimination</u>

44. To be successful in demonstrating that a Market Rule amendment is unjustly discriminatory under section 33(9) of the *Electricity Act,* an applicant must demonstrate that the amendments are not just discriminatory, but also unjust.[95] NQS Generators have demonstrated neither.

Discrimination

45. Discrimination in the context of section 33(9), requires that a market participant or class of market participants demonstrate that they are economically treated differently compared to other market participants, or the IAM.[96] As the OEB has said, "discrimination means economic discrimination".[97] The assessment of a claim of discrimination cannot be solely a qualitative assessment, but "must have some quantitative aspect to it."[98] While this will be "based on estimates and assumptions about the operation of the market", the "OEB requires adequate information on the nature and extent of the economic impacts in order to make a finding of unjust discrimination."[99] Said differently, the "economic impact of the different treatment must be quantified."[100]

46. SEC submits the NQS Generation Group has not demonstrated that the MRP Amendments economically discriminate against NQS generators, let alone in an unjust manner. Nearly all of

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[93] OH Tr.2, p.156-157
[94] OH Tr.2, p.156-157
[95] *Electricity Act, 1998*, section 33(9)
[96] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.10; *Decision and Order* (EB-2007-0040), Revised April 12, 2007, p.26
[97] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.10
[98] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.10
[99] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.10
[100] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.25

their evidence, including the entirety of the summary tables included in their Argument-in-Chief[101], focuses on claims that NQS generators will be financially harmed by the MRP Amendments. However, financial harm is not the standard for determining economic discrimination.

47. The fact that NQS generators may experience financial harm as a result of the MRP Amendments does not constitute economic discrimination. The purpose of the IAM, and electricity markets more broadly, is to match supply and demand in the most efficient and cost-effective manner.[102] As a result, any Market Rule amendment designed to enhance the efficiency and cost-effectiveness of the IAM will inevitably lead to some competitive realignment. More efficient and cost-effective resources will benefit, while less efficient and cost-effective resources may be disadvantaged. If financial harm, measured in reduced net margins or commitments, were the test for discrimination, nearly all Market Rule amendments would be impermissible, as they invariably result in some market participants benefiting while others are adversely affected.[103]

48. Economic discrimination requires evidence of differential treatment, not differential impact.[104] Market Rules will inevitably affect different market participants differently, but this does not constitute discrimination. For example, lower-cost resources should naturally be dispatched more frequently than higher-cost resources, earning higher IAM revenue as a result. Similarly, quick-start generators should be dispatched more often and earn more IAM revenue compared to NQS generators. None of this amounts to economic discrimination.

49. What the NQS Generation Group must demonstrate is that the MRP Amendments themselves treat or are applied differently to NQS generators as compared to other market participants. The implementation of the DAM, SSM with the elimination of the CMSC, and the

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[101] NQS Generation Group Argument-in-Chief, p.13-25
[102] OH Tr.3, p.25
[103] OH Tr.3, p.35-36
[104] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.10, 22; At paragraph 41 of its Argument-in-Chief, the NQS Generation Group cites the Ramp Rate Decision (EB-2007-0040) to support the position that the interpretation of section 33 of the *Electricity Act* involves consideration of the "impact or effect" of the MRP Amendments. However, this is not what the Ramp Rate Decision states. While the OEB does use the term "impact or effect" in its decision, it does so in the context of discussing arguments or evidence. At no point does the decision suggest that this is the standard by which the OEB should assess unjust discrimination.

new MPM framework apply to all dispatchable resources.[105] They do not single NQS generators out in any way nor treat them differently.

50. Even if as a result of the MRP Amendments NQS generators may be financially worse off compared to other resource types, this is due to design changes that now more fairly accounts for their total costs of commitment when determining if they will be dispatched and total revenue received to be eligible for cost guarantee payment.[106]

51. Regardless, the financial harm to the NQS generators has not been appropriately quantified as required. As detailed earlier, Power Advisory's reliance on a proxy generator, whose parameters they refuse to substantiate in any way, rather than actual data from any of the nine NQS generators owned by the NQS Generation Group, to model the impact of the MRP Amendments[107], is inconsistent with the OEB's prior guidance on what constitutes proper quantification of economic impacts.

52. The RT-GOG program, implemented as part of the ERUC, is one aspect of the MRP Amendments that may be considered economically discriminatory. However, rather than being discriminatory against NQS generators, it is actually discriminatory *in their favor*. NQS generators are the only class of market participants for whom the MRP Amendments, like the existing RT-GCG program under the current Market Rules, provide a special program tailored to their unique needs.[108] This program guarantees NQS Generators cost recovery, ensuring they cannot incur financial losses when dispatched.[109]

53. In the Transitional Capacity Auction Decision, the OEB concluded that there "at least appears to be discrimination" against Demand Response resources, in part due to their ineligibility to recover start-up costs through the RT-GCG program.[110] If excluding Demand Response resources from the program was considered discriminatory against them, it necessarily implies discrimination in favor of NQS generators who do have access.

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[105] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.10
[106] OH Tr.2, p.85; OH Tr.3, p.42; OHTr.1, p.76
[107] Power Advisory Report, Appendix B
[108] OH Tr.1, p.37-38
[109] OH Tr.2, p.56
[110] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.22

54. While the RT-GOG program may be "less lucrative" than the existing RT-GCG program[111], this only reflects the changes to address the unfairness and discrimination in favor of NQS generators, as identified by the MSP and Auditor General.

55. Based solely on an interrogatory response in a separate proceeding regarding the potential impact of MRP on the relative supply mix, the NQS Generation Group boldly claims that the "IESO has a targeted, intentional campaign to push emitting resources out of the IESO-administered market under the guise of 'efficiency'."[112] However, the reality appears quite different. The IESO has recently, a) procured approximately 410 MW of new natural gas generation as part of its Long-Term 1 RFP[113], b) secured 251.4 MW of additional capacity through technological updates to existing natural gas generation facilities (including six represented by the NQS Generation Group)[114], and c) actively advocated for changes to the Federal Government's Clean Electricity Regulations due to their impact on natural gas generation.[115]

Unjustness

56. Even if the amendments can be shown to be discriminatory, that does not mean they are unjust. An applicant must show that "difference in treatment is not justified by a difference in circumstances".[116] Even then, differently situated parties can be treated differently. It is "only different treatment in the absence of material and relevant differences in the situation or characteristics among the affected market participants that raises the prospect of unjust discrimination."[117]

57. SEC submits that the NQS Generation Group has not even attempted to demonstrate that any economic discrimination is unjust. Even though the OEB has confirmed that the applicant bears the legal onus in an application under section 33 of the *Electricity Act*[118], the NQS Generation

[111] NQS Generation Group Argument-in-Chief, p.22
[112] NQS Generation Group Argument-in-Chief, para.58
[113] IESO, Long-Term RFP (LT1 RFP) – Final Results (June 6, 2024), p.5
[114] IESO, Same Technology Upgrades Solicitation – Executed Agreements (September 18, 2023)
[115] IESO Submission on the Proposed Clean Electricity Regulations (November 2, 2023)
[116] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.10
[117] *Decision and Order*, (EB-2019-0242), January 23, 2020, p.10
[118] *Decision and Order* (EB-2007-0040), Revised April 12, 2007, p.18

Group filed no evidence on the question of the "justness" of any of the MRP Amendments as they relate to NQS generators or otherwise.[119]

58. The NQS Generation Group asserts for the first time in their Argument-in-Chief, without providing any supporting evidence, that the existing Market Rules place them on an "equal footing to compete" in the IAM, and that they no longer will be as a result of the MRP Amendments.[120] In fact, the opposite is true. The current Market Rules provide an unfair advantage to NQS generators that have led to inefficient and uneconomic dispatch decisions. The MRP Amendments are intended to treat NQS generators more similarly (and more fairly) relative to other resources.

59. For example, during the pre-dispatch process through the ERUC, NQS generators must now compete based on their total marginal costs, either by bidding entirely as incremental energy or by using a three-part bid that allows access to the guarantee costs program (RT-GOG).[121] This contrasts with the current system, where NQS generators only need to compete on incremental energy offers, as they can recover their other marginal costs, startup and speed-no-load costs through the RT-GCG program.[122] These changes eliminate the existing issue where NQS generators unfairly benefit from being able to submit offers that are "not truly being reflective of generation cost."[123] Furthermore, under the MRP Amendments, NQS generators, like all other resources, must be economic for the entirety of their commitment, rather than just for half of their MGBRT as under the current system.[124] As noted by the MSP, these changes will enhance competition. It will also prevent situations highlighted by the Auditor General, where the "IESO [bought] electricity from a gas generator that produces it for a higher overall cost."[125]

60. The only aspect of the MRP Amendments that NQS Generation Group's evidence provides any support for differential treatment is with respect to the MPM framework, and how the number

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[119] OH Tr.3, p.34-35
[120] NQS Generation Group Argument-in-Chief, para. 68
[121] OH Tr.2, p.165-166
[122] OH Tr.2, p.121-122; TC Tr.2, p.77
[123] Market Surveillance Panel, State of the Market Report 2023 (September 2024), p.85
[124] OH Tr.2, p.121-122; TC Tr.2, p.77
[125] Auditor General of Ontario, 2017 Annual Report, Chapter 3, Independent Electricity System Operator - Market Oversight and Cybersecurity, p.349

of parameters for which NQS generators are subject to potential mitigation is much higher than hydroelectric resources.[126]

61. The hydroelectric parameters that are not subject to potential mitigation are those that generally cannot be used to artificially inflate market payments for the benefit of these generators.[127] Therefore, applying the MPM to these parameters is unnecessary. The distinction in the applicability of the MPM between NQS and hydroelectric generators is justified by the differences in their operational characteristics (including the requirements for hydroelectric generators to follow certain safety and environmental protocols that are not applicable to NQS generators).[128]

62. Should the IESO later determine that certain parameters are being exploited by hydroelectric generators to exert market power after the MRP is implemented, presumably it will address the issue by expanding the MPM framework to include those additional operating parameters.

63. At its most basic level, the MRP Amendments are "just". as they will enhance the efficiency and cost-effectiveness of the IAM, a fact that the NQS Generation Groups' expert, Power Advisory, does not dispute.[129] As Mr. Yauch stated: "Our evidence does not dispute those efficiency benefits. There is a strong case for MRP, and we never take a run at them and say they're not there. The efficiency benefits exist."[130]

E. <u>Inconsistency with the Purposes of the *Electricity Act*</u>

64. SEC submits that the MRP Amendments are not inconsistent with the purposes of the *Electricity Act*.

65. For an applicant to demonstrate that a market rule amendment is inconsistent with the purposes of the *Electricity Act*, they must show that the amendment is inconsistent with the purposes as a whole. The language of section 33(9) requires a finding of inconsistency with the purpos<u>es</u> collectively, rather than with any specific purpose.[131] Any consideration of inconsistency

[126] NQS Generation Group Argument-in-Chief, para 60; Power Advisory Report, para. 64-67
[127] OH Tr.1, p.77-78
[128] OH Tr.1, p.77-78
[129] See OH Tr.3, p.71; TC Tr.2, p.78, 97
[130] OH Tr.2, p.138
[131] *Electricity Act, 1998*, section 33(9)

must encompass all the purposes, which include the mandate "to protect the interests of consumers with respect to prices and the adequacy, reliability, and quality of electricity service."[132] This approach is no different from the OEB's exercise of its authority under the *OEB Act*, where it is required to "balance a number of sometimes competing goals".[133]

66. The NQS Generation Group chose not to file any evidence demonstrating how the MRP Amendments are inconsistent with the purposes of the *Electricity Act*.[134]

Protection of the Interest of Consumers

67. In their argument, the NQS Generation Group appears to claim that the MRP is not in the interest of consumers, alleging that ratepayers would have been $94 million better off if the MRP had never been implemented.[135] However, the NQS Generation Group has fundamentally misunderstood the IESO's 2022 Business Case Benefits Validation Memo. The $266 million in benefits they cite is actually a calculation of the net benefits, which includes not only the net present value of $975 million in quantifiable benefits over the first 10 years of operation, but also $268 million in implementation and forecast operational costs over the same period.[136]

68. Even assuming that the MRP would result in a net loss to customers, the NQS Generation Group's proposed relief, revoking the MRP Amendments, would only exacerbate the situation. Most of the implementation costs for the MRP have already been incurred. Revocation of the amendments, as proposed by the NQS Generation Group, would eliminate all the projected benefits. As the NQS Generation Group itself concedes, this "likely means the net present value of MRP benefits will be further reduced."[137] It is consumers (loads) and not generators who are paying for MRP through the OEB approved fees.[138]

69. While it is possible, even likely, that the IESO has overstated the benefits and understated the costs, the evidence clearly demonstrates that the MRP Amendments will advance the purpose

[132] *Electricity Act, 1998*, section 1(f)
[133] *Natural Resource Gas Ltd. v. Ontario Energy Board,* 2006 CanLII 24440, para. 18
[134] OH Tr.3, p.34-35
[135] NQS Generation Group Argument-in-Chief, para. 83
[136] Undertaking JT 1.12, Appendix C, 'MRP Business Case Validation Memo', p.3-4 (K2.3, p.108-109)
[137] NQS Generation Group Argument-in-Chief, para. 84
[138] OH Tr.2, p.86-87

of protecting consumers with respect to price by implementing numerous recommendations from the MSP and the Auditor General.[139]

Economic Sustainability of Generation

70. The NQS Generators also argue that reduced wholesale market revenues for NQS generators harm the economic sustainability of generation in Ontario, which they claim would conflict with several purposes of the *Electricity Act,* notably 1(a), (g), and (i).[140] However, the only evidence they point to in support of this claim is a brief comment by Mr. Chee-Aloy at the oral hearing.[141] Notably, Power Advisory was not asked, nor did they provide, any formal evidence on this issue.[142] Additionally, the NQS Generation Group did not file any evidence showing the MRP Amendments' impact on specific companies or generators, nor did they provide Power Advisory with any specific information. As a result, at best, Mr. Chee-Aloy's comment represents an uninformed speculation.

71. His comments were in stark contrast to when SEC suggested that Power Advisory's own modeling showed a proxy generator would retain a strong operating profit margin of 17.6% (down from 19.6% under current Market Rules) [143], Mr. Yauch acknowledged his lack of information on what constitutes an appropriate margin. He stated that he does not "own and operate a facility… don't know what their IRR is, their debt-service ratios, what their ROE assumptions are" or "what is built in to their financial models and the investment decisions they made when they decided to invest in the province."[144]

72. Improved efficiency benefits of the IAM resulting from the MRP Amendments further the statutory purposes of the *Electricity Act*. As the OEB noted in the Ramp Rate Decision[145], the "efficiency benefits that are anticipated to arise as a result of the amendment are consistent with the purpose of the [Electricity Act] that speaks to promoting economic efficiency in the generation, transmission, distribution, and sale of electricity."[146]

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[139] *Electricity Act, 1998*, section 1(f)
[140] NQS Generation Group Argument-in-Chief, para. 85; *Electricity Act, 1998*, section 1(a),(g)(i)
[141] NQS Generation Group Argument-in-Chief, para. 86
[142] OH Tr.3, p.34-35
[143] OH Tr.3, p.63-64
[144] OH Tr.3, p.64
[145] *Decision and Order* (EB-2007-0040), Revised April 12, 2007
[146] *Decision and Order* (EB-2007-0040), Revised April 12, 2007, p.26

Promotion of Use of Cleaner Energy Sources

73. The NQS Generators reference statements from a Government of Ontario consultation, recognizing natural gas as an important component of the electricity supply mix required to achieve province-wide emissions reductions through electrification.[147] They argue that these statements demonstrate that MRP, which the IESO has previously indicated in another proceeding, may reduce natural gas-fired generation, are inconsistent with purpose 1(d) of the *Electricity Act*[148]

74. The MRP Amendments are not inconsistent with the purpose of promoting "cleaner energy sources and technologies, including alternative energy sources and renewable sources, in a manner consistent with the policies of the Government of Ontario."[149] While natural gas plays a role in Ontario's energy mix, the Government of Ontario has also been procuring other cleaner energy resources, such as energy storage, which align with the objectives of the MRP.

75. Furthermore, MRP has been a central element of recent IESO Business Plans[150], which require approval by the Minister of Energy and Electrification.[151] If the MRP were inconsistent with the policies of the Government of Ontario, as claimed by the NQS Generators, those approvals would not have been granted.

F. Relief

SEC submits the OEB should dismiss the application on the basis that the MRP Amendments are neither unjustly discriminatory, nor inconsistent with the purposes of the *Electricity Act*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

February 3, 2025

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[147] NQS Generation Group Argument-in-Chief, para.87-88
[148] NQS Generation Group Argument-in-Chief, para.87-88
[149] *Electricity Act, 1998*, section 1(d)
[150] See for example, EB-2022-0318, Exhibit B-1-2, p.17, 20
[151] EB-2022-0318, Exhibit B-1-3, p.1