

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 REPLY ARGUMENT

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I. SUMMARY OF SUBMISSIONS

1. Consistent with Decision Procedural Order No. 2, the NQS Generation Group filed its Argument in Chief on January 27, 2025 (“**AIC**”) in respect its application filed with the Ontario Energy Board (“**OEB**”) by a group of non-quick start gas-fired generators under Section 33 of the *Electricity Act, 1998* assigned OEB File No. EB-2024-0331 (the “**Application**”). This is the reply of the NQS Generation Group to the submissions of the School Energy Coalition (“**SEC**”), the Vulnerable Energy Consumers Coalition (“**VECC**”), and HQ Energy Marketing Inc. (“**HQEM**”) received February 3, 2025 and the submissions of the Independent Electricity System Operator (“**IESO**”) received February 10, 2025. Capitalized terms used in this reply but not defined herein have the meaning ascribed to those terms in the AIC.
2. Unsurprisingly, the IESO, consumer representatives (SEC and VECC), and a direct competitor to the NQS Generation Group (HQEM) each oppose the relief sought in the Application. In a highly unusual circumstance for an application of this importance, on February 3, 2025, OEB Staff advised the OEB by letter that it will not be making submissions in this proceeding. No explanation of this decision was provided in the letter.
3. On December 2, 2024, the OEB issued its Decision and Procedural Order No. 2 establishing the parameters governing the scope of this proceeding as:
 - a. *“the contracts themselves and the provisions for the generators to seek amendments to those contracts are separate from the issue of whether the Amendments are inconsistent with the purposes of the Electricity Act or will result in unjust discrimination”*; and
 - b. *“[t]he OEB will not be assisted [...] by expanding the scope of the review to consider the details of how the IESO carried out its rule development process”*.
4. While the NQS Generation Group disagreed with the first aspect of this scoping decision,¹ the NQS Generation Group have been very careful to work within the parameters of the OEB’s scoping determination following the OEB’s determination on the Motion to Review.
5. The same cannot be said of the other parties that made submissions in this proceeding, each of which took great pains to color the Application as “improper” in that it raises concerns that were *“never advanced by the Applicants in the more than five years that the MRP Amendments were being developed, stakeholder, evaluated and approved.”*² Not only are these assertions not true,³ worse they are out of scope and are simply not helpful to the OEB panel in making its decision on the Application.

¹ This basis of this disagreement is set out in the Motion to Review filed December 23, 2024.

² IESO Submissions at page 2, paragraph 1.

³ The IESO’s continued insistence that the NQS group never raised these concerns previously is perplexing given the IESO itself attempted to file historical confidential and without prejudiced correspondence including “emails

6. There is no legal obligation for a market participant to disclose to the IESO its intention to bring an application under Section 33 of the *Electricity Act, 1998*. Rather, the IESO has a standing legal obligation under Section 5(5) of the *Electricity Act, 1998* which it must, and in this instance has failed to, meet in respect of the MRP Amendments.
7. Each of the parties, including the IESO, further argue that the Application amounts to nothing more than concerns with out-of-scope contracts. Again, nothing could be further from the truth. While it is no secret the NQS Generation Group has raised legitimate concerns about the impact of the MRP Amendments under the terms of their respective contracts, following the scoping decisions the evidence advanced by the NQS Generation Group has been squarely focused on the unjustly discriminatory impacts of the MRP Amendments themselves.
8. It is important that the OEB panel take the Application, and its role in assessing the unjustly discriminatory impacts of the MRP Amendments, seriously. The OEB should not dismiss the Application as merely a contractual issue despite various parties efforts to suggest otherwise. It is clear from both the evidence and AIC that the substance of the claim is clearly within scope of a Section 33 review.
9. It is also incorrect for the IESO to assert that its responding evidence went “virtually unchallenged during the technical conference and oral hearing.”⁴ As summarized in Appendix A of this reply, the IESO has avoided, objected to or not responded to the vast majority of questioning by the NQS Generation Group. As a consequence, the IESO has produced limited reasoning and absolutely no analysis, data, or modelling to support any of the critiques it has levied on the Power Advisory Expert Report.
10. The NQS Generation Group has struggled with unhelpful and aggressively litigious manner in which the IESO has engaged in this proceeding. The IESO plays a unique role in the administration of the IAM and is not on an equal footing with market participants in terms of information availability. As a consequence, the IESO plays a critical role in facilitating the advancement of information that would support a decision that is in the public interest under Section 33 of the Act. This was articulated by the OEB in EB-2007-0040 as an obligation to participate fully in proceedings in support of the amendment that is under review. In addition, under Section 5(5) of the *Electricity Act, 1998*, the IESO has a positive legal obligation to not conduct the operations of the IESO-administered markets in any manner that unjustly advantages or disadvantages a market participant or class of market participants or is inconsistent with the Act. As detailed further below, the IESO has failed to discharge these obligations.

from Power Advisory and an attached PowerPoint Presentation titled “Analysis of Impacts of MRP Design and Draft Term Sheet” (referred to as the “Disputed Documents” in Decision and Procedural Order No. 4) which clearly indicated that the NQS Generation Group’s concerns have been raised with the IESO previously (many times).

⁴ IESO Submission, at para 55.

11. While it is true the NQS Generation Group bears the burden of proof in respect of the Application, the realities of the statutory timelines imposed under Section 33 of the *Electricity Act, 1998* creates practical limitations on what can be realistically expected to be accomplished. The MRP Amendments were approved by the IESO Board October 18, 2024, Power Advisory was retained October 30, 2024,⁵ the Application was filed November 7, 2024, and the Power Advisory Expert Report was filed December 18, 2024 – exactly two (2) months after the MRP Amendments were approved by the IESO and only 49 days after being retained.
12. It is the submissions of the NQS Generation Group that to the extent it may have been hypothetically possible to produce different evidence:
 - a. the Power Advisory Expert Report demonstrates clearly and quantitatively illustrates that the MRP Amendments will result in material economic harm to a typical NQS generator;
 - b. it was simply impossible for to create a predictive model of future MRP market outcomes (rather than using a back cast) and redispatch all available Ontario resources against the NQS resources in the time allowed; and
 - c. it was incumbent upon the IESO to produce evidence to assist the OEB panel in making its determination to the extent that information was available, and it failed to do so.
13. For example, the IESO has repeatedly asserted, and does so again in its submissions, that “*NQS resources largely compete with each other, meaning that any reduced commitments for one NQS resources is likely to be made up by other more efficient NQS resources.*”⁶
14. Given that opportunity cost hydro, storage, and imports all compete directly with NQS resources, the NQS Generation Group has repeatedly sought to elicit additional information from the IESO to test this assertion with data and evidence.⁷ This was the essence of the request in Undertaking JT1.1, which only after the NQS Generation Group exhausted all available remedies, including bringing a successful motion to compel, did the IESO release a previously public presentation (with a broken video link) that added very little of value to the evidentiary record.⁸
15. The IESO is in a unique position where only it can actually furnish the OEB with data about the percentage of times NQS resources compete with each other, versus with other resource types. As a consequence, the OEB is left in a situation where the IESO is making an unsubstantiated and disputed assertion while at the same time is sitting on a treasure trove of data that would enable them to produce that exact analysis. The IESO has continuously

⁵ JT1.1 contains the Power Advisory retainer agreement.

⁶ IESO Submissions at para 5.

⁷ Technical Conference T1P11L28-P16L2; T1P33L14-P36L7; T1P61L7-P63L24; Oral Hearing T1P82L12-P88L25.

⁸ Undertaking Response JT1.1, January 15, 2025.

refused to produce this data or give it to Power Advisory to assess or opine on it, and instead in its submissions argue that it is “a glaring flaw” that Power Advisory’s report *“did not account for even one instance of intra-group competition over a six-year period in its quantitative impact analysis.”*

16. In the NQS Generation Group’s submissions, neither it nor Power Advisory can be faulted for not incorporating data into its evidence that is exclusively held by the IESO when the IESO has repeatedly frustrated any attempts to gain access to exactly the data in question. Absent credible quantitative evidence otherwise from the IESO, it is reasonable to do what Power Advisory has done in their quantification of harms. In addition, being committed more or less often (the impact of within group competition) does not eliminate the financial harm to the proxy NQS generator evidenced in the Power Advisory Expert Report.
17. As another example, and as more fully addressed in Section IV(A) below, several parties including the IESO fault Power Advisory expert report for its use of a “proxy generator” as representative of a typical NQS generator (rather than putting a specific NQS Generation Group member’s specific facility on trial). The IESO has access to this information from all NQS generators in Ontario and could easily have produced its own evidence of alternative “proxy generator” parameters had it believed the Power Advisory proxy was not accurate. The IESO has not done so – because the proxy generator is representative of the NQS Generation Group’s members’ facilities – and provide a clear, quantitative and directional impact of the MRP Amendments on a typical NQS facility.
18. Throughout this proceeding, the IESO has never attempted to estimate potential cost or saving impacts to market participants resulting from MRP and asserted that such an information request by the NQS Generation Group is not relevant.⁹ How can the IESO be so confident that NQS generators are not being unjustly discriminated against when it never performed the requisite analysis?
19. As was outlined in AIC, which will not be restated again here, the NQS Generation Group submits that there is clear and compelling evidence that the MRP Amendments will result in economic discrimination against NQS generators as a class, or in the alternative, to a specific NQS generator as represented by the proxy generator. In addition, there is evidence that this harm is both unjust and inconsistent with the purposes of the *Electricity Act, 1998*.
20. Parties in this proceeding appear to be concerned that revoking the MRP Amendments would “eliminate all the projected benefits” for ratepayers and “leave them solely responsible to bear the substantial costs.”¹⁰ To be clear, the NQS Generation Group is not looking to

⁹ Application, Schedule A, ss. 1(d),(g),(h),(i),(k),(l),(m),(n), 2(1),(b),(c),(e). The Applicant reiterated its request in its letter to the OEB, dated November 14, 2024 and in the NQS Generation Group Pre-hearing Conference Submission, pg. 11. The Applicant also filed the NQS Generation Group Notice of Motion, dated January 14, 2025, at pg. 2. The IESO refused requests for information in IESO Letter, dated November 11, 2024, at pg. 3; IESO’s Written Submissions in Advance of November 26, 2024 Pre-Hearing Conference, Appendix A, pg. 2, 5.

¹⁰ SEC Submission at paras 11 & 68. CCC Submission at page 2.

undermine the purported benefits of MRP. Rather, the NQS Generation Group wants their concerns around unjust discrimination addressed.

21. To maintain MRP implementation on May 1, 2025, the NQS Generation Group notes the OEB has the discretion under Section 33(9) of the *Electricity Act, 1998* to set the date on which the MRP Amendments are to be revoked.¹¹

(9) If, on completion of its review, the Board finds that the amendment is inconsistent with the purposes of this Act or unjustly discriminates against or in favour of a market participant or class of market participants, the Board shall make an order,

(a) revoking the amendment on **a date specified by the Board;**
[...] [Emphasis added].

22. If the OEB finds in favor of the NQS Generation Group that the MRP Amendments are unjustly discriminatory and inconsistent with the purposes of the *Electricity Act, 1998*, the OEB could set a date that is 24 months in the future to effect the revocation of the MRP Amendments. This would provide sufficient time for the IESO to address the OEB's findings on unjust discrimination while also allowing the balance of MRP to proceed in the interim as planned.

II. THE IESO'S ROLE IN THIS PROCEEDING

23. The IESO is avoiding any responsibility in this proceeding for defending, justifying, or quantifying the impacts of MRP on market participants. The IESO hides behind the burden of proof to reason that the onus is solely and squarely on the NQS Generation Group to prove their case under Section 33 of the *Electricity Act, 1998*.¹²
24. This position ignores the unique monopoly role the IESO plays in the public-interest administration of the IESO markets. It also ignores the positive legal obligation imposed on the IESO under Section 5 of the *Electricity Act, 1998*. It also ignores the OEB's prior rulings on exactly this issue (emphasis added): "The Board certainly expects that the IESO will participate fully in proceedings relating to applications under section 33 of the Act in support of the amendment that is under review."¹³
25. First, a market participant challenging a rule amendment under section 33 is not on equal footing with the IESO in terms of information availability. As the OEB ruled in Decision and Procedural Order No. 2, the information filed by the IESO in accordance with its license was not helpful.¹⁴ As the market operator, the IESO administers markets for the wholesale buying and selling of electricity and electricity-related services and therefore holds all

¹¹ *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A, s.33(9)(a).

¹² IESO Submission paras 69-71.

¹³ EB-2007-0040 Decision and Order issued April 10, 2007 and corrected April 12, 2007 at page 18.

¹⁴ Decision and Procedural Order No. 2 at page 10.

relevant information and analysis a market participant may need to formulate its case for a section 33 review. This information asymmetry, especially in relation to data needed for quantification and comparing other generation resource types, is a significant impediment for market participants prosecuting a section 33 review.

26. The table included at Appendix A sets out in detail a list of instances where the IESO was not cooperative, and borderline obstructive, in providing evidence. For example, the NQS Generation Group requested a list disclosure from the IESO in its Application, including an updated benefits case of MRP, how different market participants may be impacted by MRP, and the IESO's forecasted dispatch and commitment of NQS generators.¹⁵ The IESO strenuously argued that these information requests were "not relevant to a market rule amendment review under section 33(9)".¹⁶ Now the IESO is surprisingly backtracking on this position of non-relevance to use its own withholding of information against the NQS Generation Group in its argument.¹⁷
27. The NQS Generation Group submits there is a positive obligation on the IESO as a public interest body to produce all the material facts and data in a section 33 proceeding to allow market participants to prosecute their market rule review applications, and so that the OEB can carry out its public interest mandate.
28. Second, the NQS Generation Group is perplexed by the IESO's adversarial conduct in this proceeding (and every prior market rule review proceeding) as a public interest regulator. The NQS Generation Group submits the IESO's role in a section 33 *Electricity Act, 1998* review should be one of truth seeking, particularly: (i) presenting, fully and diligently, all the material facts that have evidentiary value, as well as all the proper inferences that may reasonably be drawn from those facts; (ii) advocating accurately, fairly and dispassionately; (iii) acknowledging that a section 33 *Electricity Act, 1998* review is not a contest between a market participant and the IESO; and (iv) promoting the cause of justice in its truth seeking function to determine whether unjust discrimination or inconsistency with the purposes of the *Electricity Act, 1998* exists.
29. Instead, the IESO has fiercely defended the MRP Amendments from an entrenched position and opposed every position advanced by the NQS Generation Group. The IESO is a not-for-profit corporation without share capital, is independent of all other Ontario electricity Market Participants, and should have no financial interest in the outcome of this proceeding.¹⁸
30. It is apparent that the IESO is concerned about public perception of its forecasts and management of MRP. The IESO should have significant concern that the "do-nothing" option has a higher net present value than the MRP implementation option (\$268M NPV in avoided MRP costs in the "do-nothing" option versus \$266M NPV of MRP implementation option). Remedying the unjust discrimination outlined by the NQS Generation Group in this

¹⁵ NQS Application, Schedule A, s.1(h), 2(a), 2(e).

¹⁶ IESO Pre-hearing Conference Submissions, para 24.

¹⁷ IESO Submission at paras 7, 48, 53.

¹⁸ *Electricity Act, 1998*, s.5(2).

Application will not allow the IESO to make the claim that MRP roughly breaks even for ratepayers. The unjust wealth transfer from the NQS generators to ratepayers is being used to justify errors made by the IESO managing its costs and exaggerating benefits of MRP implementation.

31. Third, the IESO is required to conduct the operations of the IESO-administered markets in a manner that does not unjustly advantage or disadvantage any market participant or class of market participants or is inconsistent with the *Electricity Act, 1998*.¹⁹ It is deeply troubling to the NQS Generation Group that the IESO admits it is not complying with this enforceable provision and has never done so in the past.²⁰ Nor has the IESO even attempted to estimate potential cost or saving impacts to market participants resulting from MRP, and asserted that such an information request by the NQS Generation Group is not relevant.²¹ How can the IESO be so confident that NQS generators are not being unjustly discriminated against when it never performed the requisite analysis?
32. Finally, since there is no legislated right for the NQS Generation Group to a hearing in front of the IESO, no presumption or deference is owed to the IESO by the OEB.²² The standard of proof is on a balance of probabilities. Under a nearly identical regulatory framework involving a generation facility, the Alberta Court of Appeal in *Milner Power Inc. v. Alberta (Energy and Utilities Board)* held that the AESO rule complaint process is a right to question a rule or fee of the AESO and the AESO is afforded no deference for its creation of market rules:³

[28] The AESO has been given extensive powers which can impact dramatically on complainants such as Milner. Its powers must be exercised within any relevant statutory and regulatory limits and are subject to complaint to the Board pursuant to sections 25 and 26. Section 25 allows any person to make a written complaint to the Board about an ISO rule, an ISO fee, or an ISO order. The remedial power provided under section 25 is also instructive on the breadth of the right to complain. Pursuant to section 25(6), following a hearing, the Board can determine whether an ISO order is "unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory or inconsistent with or in contravention of this Act or the regulations". In addition, section 26 allows for complaints about an ISO's conduct. **Although the AESO may consult prior to making rules, there is no legislated right for an affected party to a hearing in front of the AESO. As a result, the complaint process before the Board is more than**

¹⁹ *Electricity Act, 1998*, s.5(5).

²⁰ NQS AIC para 60.

²¹ Application, Schedule A, ss. 1(d),(g),(h),(i),(k),(l),(m),(n), 2(1),(b),(c),(e). The Applicant reiterated its request in its letter to the OEB, dated November 14, 2024 and in the NQS Generation Group Pre-hearing Conference Submission, pg. 11. The Applicant also filed the NQS Generation Group Notice of Motion, dated January 14, 2025, at pg. 2. The IESO refused requests for information in IESO Letter, dated November 11, 2024, at pg. 3; IESO's Written Submissions in Advance of November 26, 2024 Pre-Hearing Conference, Appendix A, pg. 2, 5.

²² IESO Submission at paras 69-71.

one of an appeal or judicial review. It is the right to question a rule or fee of the AESO. [...]

[52] [...] The fact that the AESO has delegated power to manage, does not mean that power is not subject to the complaint process. To use the fact the AESO had been delegated power as somehow requiring deference to its decisions at this early stage of evaluating a complaint for merit is to engage the concept of deference at the wrong time and place. The AESO's authority is limited by the complaint process. If that process can be bypassed before investigation by deferring to its authority, then the legislative safeguard is completely undermined. [...]

[54] Thus, the Board appears to have placed the fact that the AESO had engaged in a consultative process and that the matters are highly technical as its reasons for finding that the investigation or hearing were not warranted. **The fact that the AESO had engaged in a consultative process in respect of matters that are highly technical is not relevant** to whether the complaint raises a doubt as to whether the Line Loss Rule breaches the *Regulation*. [...] [Emphasis added]

33. Once unjust discrimination or inconsistency with the purposes of *Electricity Act, 1998* is established, the burden shifts to the IESO to rebut. However, the IESO made a strategic choice to not: (i) analyze, quantify or disclose any benefits of MRP aside from the figures in the business case that demonstrate ratepayers are worse off with MRP; (ii) estimate potential cost or saving impacts to market participants resulting from MRP; or (iii) disclose the information requested at Appendix A of the Application.
34. The IESO failed to meet its evidentiary burden to rebut the unjust discrimination and inconsistency with the purposes of the *Electricity Act, 1998* evidenced by the NQS Generation Group. Indeed, the IESO acknowledges that it did not provide any evidence “to disprove harm or discrimination”.²³ Bald statements without any justification, quantification, analysis or reasoning, such as the IESO’s rebuttal that MRP delivers “substantial operational, reliability and efficiency benefits that will reduce all Ontario electricity consumers”, is not evidence.²⁴ The burden of proof has no relevance to the unsubstantiated evidence the IESO marshalled to rebut and critique the evidence of the NQS Generation Group.

III. IESO CONDUCT

35. The IESO continues, without an air of reality, to attack the genuineness of the motives of the NQS Generation Group in filing this application,²⁵ attack the credibility of individual employees of the NQS Generation Group,²⁶ question the independence and credibility of the

²³ IESO Submission at para 70.

²⁴ IESO Submission at para 3.

²⁵ IESO Submission at para 2 and 121.

²⁶ IESO Submission at paras 40-41.

Power Advisory expert witnesses,²⁷ and now remarkably attacks the credibility of counsel to the NQS Generation Group.²⁸ The overzealous advocacy by the IESO apparently has no bounds. Commissioner Moran already ruled that none of these types of allegations are helpful:²⁹

I have heard the IESO allege that the NQS is participating in this section 33 process in order to gain leverage in contractual discussions. I have heard NQS allege that the IESO is attempting to contract out of a section 33 review. And I want to say I really don't find any of those allegations on people's motive helpful, at all.

36. It is entirely unclear what relevance submissions by the NQS Generation Group's counsel in a different proceeding for a different client on a different witness panel and subject matter have to the issues in this proceeding. It is not necessary to respond in kind to these inflammatory submissions other than to express our disappointment, displeasure, and ask the IESO to exercise greater restraint in the future.
37. Perhaps the most puzzling aspect of the IESO submission is the complete disregard for the scoping decisions by the OEB that it vehemently argued for. The OEB ruled during the oral hearing that "...it does not need to get into the process" of how the entire MRP was stakeholdered and under consideration for the past "five-plus years". The OEB states it will not "...need that for this particular proceeding."³⁰ Despite this, the IESO continues to advance the following unreasonable positions:
 - a) Contrary to Commissioner Moran's direction above, the IESO continues to mischaracterize the NQS Generation Group's Argument in Chief and evidence on the discriminatory nature of the MRP Amendments themselves as an out-of-scope contractual claim.³¹ Contrast this with the IESO's position at the Pre-Hearing Conference where counsel expressly agreed that the market rules focused claim by the NQS Generation Group is "within the scope of section 33(9)" of the *Electricity Act, 1998*.³²
 - b) Referring to the details of how the IESO carried out its rule development process on how the MRP Amendments were developed, stakeholdered, evaluated and approved.³³ The OEB ruled in Decision and Procedural Order No. 2 and at the Oral Hearing that details of how the IESO carried out its rule development process are out of scope, and particularly questions about participation on the Technical Panel itself.³⁴ Counsel for

²⁷ IESO Submission at paras 40 and 114.

²⁸ IESO Submission at paras 9, 79 and 80.

²⁹ Pre-Hearing Conference Transcript P116L22-28.

³⁰ Oral Hearing Transcript T3P32L9-11

³¹ IESO Submission para 2.

³² Pre-Hearing Conference Transcript P82L16-21

³³ IESO Submission at paras 1, 35-36, 38-43, 94, 96, and 120-121.

³⁴ Decision and Procedural Order No. 2 at page 6; Oral Hearing Transcript T3P32L15-17

- the IESO even agreed that the process and stakeholder consultations and the entire process that led up to the approval of the market rule amendments (including the participation on the Technical Panel) are not relevant.³⁵ How a Technical Panel member voted on the MRP Amendments or when the NQS Generation Group exercised its statutory right under section 33 of the *Electricity Act, 1998* is not relevant. The fact is that the IESO has been aware of the NQS Generation Group's concerns for several years but decided to proceed with the MRP Amendments in the face of those concerns.
- c) Focusing the bulk of its submissions on historical critiques of the IESO-administered market by the MSP and development of the MRP Amendments³⁶ instead of the central issue of whether the rules that result from the rule development process are unjustly discriminatory.³⁷ The MSP and Auditor General reports are of limited assistance for determining the issues in this proceeding and should remain on the record for context only.³⁸ The question before the OEB is focused on the Amendments themselves, and while the MSP is an expert and impartial panel, their analysis and recommendations ultimately relate to modifications to the existing market, not a fulsome and standalone analysis of MRP.³⁹ The submissions below expand upon the MSP and Auditor General reports.
 - d) Boldly referring to privileged and confidential discussions the OEB previously directed as “not necessary and shall not be filed on the record of this proceeding or presented at the oral hearing”⁴⁰ to relitigate the independence of Power Advisory⁴¹ despite an OEB ruling on this issue: “The OEB does not accept the IESO’s arguments seeking to disqualify the Power Advisory witnesses as experts on the basis of alleged lack of independence [...] The fact that they may draw on this same experience to assist generators in contract negotiations is irrelevant to their competence to carry out the analysis they are presenting in this proceeding.”⁴²
 - e) Feigning surprise at never conducting any analysis to confirm compliance with an enforceable provision of the *Electricity Act, 1998*. Specifically, section 5(5) requires the IESO to operate the IESO-administered market in a manner that does not unjustly advantage or disadvantage any market participant or class of market participants or is not inconsistent with the *Electricity Act, 1998*. The IESO argues there is no evidence of such, however Mr. Matsugu’s testimony is to the contrary.⁴³

³⁵ Oral Hearing Transcript T3P31L15-19.

³⁶ IESO Description Evidence, dated December 11, 2024, pp. 2-3, 4, 8, and 20; IESO Responding Evidence, dated January 6, 2025, pg. 4, lines 7-15; pg. 10, lines 11-14; pg. 20, line 20 – pg. 22, line 2; pg. 23, line 15 – pg. 24, line 9.

³⁷ Decision and Procedural Order No. 2 at page 6.

³⁸ Decision on Motion, January 3, 2025, at page 10.

³⁹ Decision on Motion, January 3, 2025, page 8.

⁴⁰ Decision and Procedural Order No. 4 at page 6.

⁴¹ IESO Submission at para 114.

⁴² Decision and Procedural Order No. 4 at page 5.

⁴³ Technical Conference T1P87L24 to T1P88L24.

MR. BOYLE: Right. But under the Electricity Act, the IESO needs to satisfy itself that it does not unjustly advantage or disadvantage any market participant or class of market participants. Have you conducted any analysis on that historically?

MR. ZACHER: Do you mean outside of the evidence that the IESO has given in this proceeding?

MR. BOYLE: Correct, yes.

MR. MATSUGU: In addition to the evidence that we provided, no.

38. The bulk of the IESO submission does not focus on the Amendments themselves and what impact they have on the operation of the IESO-administered market. The OEB ruled that it will not be assisted in making this determination by expanding the scope of the review to consider the details of how the IESO carried out its rule development process.⁴⁴

IV. THE POWER ADVISORY EVIDENCE

39. The unreasonableness of the critiques of the Power Advisory evidence must be put into context. The schedule issued in Decision and Procedural Order No. 2 only gave Power Advisory one week with the full record of written evidence to prepare an economic model and finalize its expert report based on thousands of pages filed by the IESO. The depth and breadth of insight Power Advisory has presented to the OEB Panel in such a short period of time is laudable.
40. Taken as a whole, and as discussed further below, the critiques leveled by the IESO and other parties are unfounded and/or immaterial.

A. Use of a Proxy Generator is Appropriate

41. The IESO and SEC question Power Advisory's use of a proxy generator to calculate \$140 million in adverse economic impacts to the NQS Generation Group,⁴⁵ even though the evidence from Power Advisory is that the intention was to provide the OEB with a clear representative generator without getting into the commercially sensitive details of a particular operating facility.
42. The IESO and SEC argue by analogy that the proxy generator is equivalent to AMPCO's passing reference in oral evidence to an unidentified and hypothetical steel manufacturer in the transitional capacity auction decision (EB-2019-0242).⁴⁶ Nothing could be further from the truth for the following reasons.

⁴⁴ Decision and Procedural Order No. 2 at page 6. Decision on Motion, January 3, 2025, page 8.

⁴⁵ IESO Submission at para 57(a); SEC Submission at paras 32-35.

⁴⁶ IESO Submission at para 113.

43. First, the AMPCO decision expressly permits quantification “...based on estimates and assumptions about the operation of the market...”⁴⁷
44. Second, counsel for AMPCO principally argued that the test under section 33 of the *Electricity Act, 1998* was “...a qualitative, not a quantitative, test.”⁴⁸ As a result, the entirety of AMPCO’s evidence on quantification was an anecdotal unidentified steel manufacturer described by the President of AMPCO in a single page of transcript and is reproduced in full:⁴⁹

These operations incur real costs to do this, beyond the cost of lost production, as highlighted by Dr. Rivard. And I will give you some examples of this. I will take the steel industry as an example, because it is probably easier to understand than some of the others.

In a situation where demand response is activated, typically steel manufacturing entities would take out of service called an electric arc furnace. If that electric arc furnace happens to still have molten steel inside it, you're no longer putting electricity to it to keep it that way. It will eventually harden up. That is a very bad thing. So they do fire on gas.

In addition to that, there's a downstream process where billets are loaded into a furnace for further processing. Those furnaces are full of refractory, which is basically industrial grade insulation, for lack of a better term.

That refractory, if it is subjected to temperature fluctuations, will crack, break, and fall off. It is very expensive. So they also have to fire that furnace with natural gas, which they otherwise would not have to do. These are costs that are avoidable in a situation where they have been told to activate.

Another example -- and again it is a gas-firing example -- steel melts at somewhere around 2,500 degrees Fahrenheit. Generally speaking, the facilities that make steel don't have building heating. They don't need it. But in a situation in the middle of winter where you have shut down and stopped your process, it starts to get cold, and things inside that facility can freeze up, and they do have to bring in gas-fired heaters to keep that facility warm. Again, another situation where, but for the activation, you wouldn't be burning that gas and you wouldn't be incurring that cost.

45. In no way is Power Advisory’s detailed independent expert report, questioning at the technical conference, questioning at the oral hearing, and comprehensive undertaking responses comparable to the “cursory example” tendered by AMPCO.

⁴⁷ Decision and Order EB-2019-0242, January 23, 2020, at page 10.

⁴⁸ EB-2019-0242, AMPCO Summary of Final Argument, December 9, 2019, at para 14.

⁴⁹ EB-2019-0242, Oral Hearing T1P16L12 to T1P17L17.

46. Third, it is also surprising both the IESO and SEC take issue with the use of a proxy and back-cast by Power Advisory⁵⁰ when the IESO itself used a back-cast in its Business Case to calculate and justify the benefits of MRP,⁵¹ and the IESO has relied on the use of proxies in numerous other OEB proceedings.⁵²
47. Unlike the brief hypothetical example referenced in the capacity auction decision (EB-2019-0242), in this case the assumptions made by Power Advisory were intended to create a proxy generator that represents the class as a whole given there is a spectrum to NQS generation resources.⁵³ As stated by Mr. Yauch, the proxy generator is a “representative unit of the NQS Generation fleet”⁵⁴ and “[t]he proxy generator is there to provide an average impact to the group as a whole”⁵⁵ and “in general, the entire [NQS resource] class will be impacted and that's what the proxy generators is intended to capture.”⁵⁶ The parameters used for the representative NQS proxy are based on Power Advisory’s experience and from working with many generators in the province of Ontario.⁵⁷
48. There was considerable discovery on this topic during both the technical conference and the oral hearing, and no party (including the IESO, which has access to the data for a wide range of NQS resources in Ontario) has put forth any compelling evidence to suggest that the proxy generator is not representative of the NQS class as a whole. Power Advisory stated that even if the approximate representative characteristics of an NQS proxy are not exact, the impact would be directionally the same.⁵⁸
49. The approach of using proxy generator was explicitly intended to highlight the impact on the NQS Generation class as a whole. It is the basis of an informative financial impact, recognizing that the unique characteristics of each NQS generator will result in varying levels of financial impacts. The basis of the operational and financial characteristics of the proxy generator are based on Power Advisory’s extensive knowledge of working with various NQS Generators (a fact that the IESO has tried to use against their evidence on the basis of bias). Throughout the proceeding, the IESO never put forth alternative parameters that would materially change either the analysis or its conclusions. On that basis, it is clear that the IESO did not actually dispute the parameters of the proxy generator, but instead tried to merely cast doubt on the approach. In any case, the proxy generator is intended to highlight that NQS Generators as a class – as represented by a unit that shares many similar financial and operational parameters of different NQS Generators – will be impacted, but that financial

⁵⁰ Oral Hearing T2P119L22-28

⁵¹ IESO Brief of Exhibits, January 6, 2025, at PDF page 733; Oral Hearing T3P49L26-28.

⁵² EB-2015-0275, B-1-1_IESO_Att 3_Elenchus-IESO 2016 Fees Evidence_20160513, page 33, footnote 13; EB-2019-0002, IESO_IRR_Issues 6-2_6-3_20190430, AMPCO INTERROGATORY 31(b), PDF page 95; EB-2022-0002, IESO_IRRs_Issue 3.0_20220603, OEB STAFF INTERROGATORY 16(c), PDF page 7.

⁵³ Oral Hearing T3P13L17-19, T3P16L26-28 & T3P55L11-18.

⁵⁴ Oral Hearing T3P7L15-16.

⁵⁵ Oral Hearing T3P6L22-23.

⁵⁶ Oral Hearing T3P11L9-11.

⁵⁷ Oral Hearing T2P156L11 to T2P157L7.

⁵⁸ Oral Hearing T3P56L13-19.

impact will not be uniform. The use of a proxy generator is intended to “smooth” out those variances between different units.

50. It appears that both the SEC and IESO argue that the only meaningful or acceptable evidence of economic discrimination would be if a particular market participant put commercially sensitive information about their specific facility on trial. With respect, this proposition is absurd. It would create such a meaningful barrier to bringing a Section 33 application that no rationale market participant would bring an application under Section 33 of the *Electricity Act, 1998*.
51. It should be recognized that each of the Power Advisory witnesses (unlike the IESO’s own fact witnesses) signed an acknowledgement of expert’s duty recognizing their duty to provide evidence that is fair, objective and non-partisan, and to provide opinion evidence that is related only to matters that are within the scope of their expertise. The Power Advisory witnesses are in exactly a position where it is reasonable to “trust them” on the representativeness of the proxy generator.
52. Finally, each of the IESO, CCC and SEC argue that Power Advisory should have been obligated to produce the modelling underlying their expert report – however none of these parties bothered to bring a motion to compel further and better responses, which is the remedy available to all parties if there is a disagreement around the production obligations of the parties. As a consequence, the OEB should take the critiques of Power Advisory’s legitimate commercial concerns to refuse disclosure of their proprietary model seriously, and should reject the arguments of the IESO, CCC and SEC as nothing more than an opportunistic attack on the credibility of Power Advisory’s expert report.
53. Power Advisory has a deep understanding of the various NQS generators that participate in the IESO-administered market. This is not about “trusting” Power Advisory, but it is recognizing Power Advisory’s independent expertise in this area – as was done by the OEB in its ruling on Power Advisory’s expertise in this proceeding.⁵⁹

B. Pre-Dispatch Price

54. The IESO and SEC assert Power Advisory uses an incorrect pre-dispatch price in its modelling.⁶⁰
55. Unfortunately, the IESO misrepresents what was stated by Power Advisory at the technical conference and oral hearing. The responses provided by Mr. Yauch below at the oral hearing should be dispositive that PD-3 prices are broadly representative and shadow prices would not change the directional outcome of Power Advisory’s analysis.⁶¹

⁵⁹ Decision and Procedural Order No. 4.

⁶⁰ IESO Submission at para 57(b); SEC Submission at paras 41-42.

⁶¹ Oral Hearing T3P60L12 to T3P61L1; Oral Hearing T3P61L18 to T3P62L11. See an identical conclusion at the Technical Conference T2P32L12 to T3P33L4.

MR. RUBENSTEIN: And so how is an unconstrained price representative of the -- how is an unconstrained price representative of what prices in a single constrained schedule are going to look like?

MR. YAUCH: The point of the example -- the prices that are there really are representative. They are there to highlight if prices were a certain way, here's how you could be scheduled and committed today, and here's how you could be scheduled and committed and settled in the future.

So you can replace these with shadow prices and do the exact same exercise and go through, "Here is the financial impact." We think directionally it would be the same, because shadow prices, while they can diverge from HOEP, they are broadly aligned.

But the prices here are just representative, to show the difference in commitment, dispatch and settlement. So you can highlight what happens today and what would happen in the future.

[...]

MR. RUBENSTEIN: So that to me is another reason, wouldn't you agree, that historic PD-3 prices may not be reflective of prices that generators will have, post-MRP. Fair?

MR. YAUCH: If you take the assumption that the market is perfectly competitive and everyone will offer their marginal cost, it would be generally the same; **it would be representative of it.**

And, in fact, the IESO has said in engagements when people have asked, what are future LMPs going to look like, they said go back and look at shadow prices, and that will give you an idea. So I think the idea being yes, there will be some bid and offer strategy changes, but the marginal cost of units participating in the market does not actually change, going forward.

And these units in particular are mostly located in Southern Ontario, where there is much less transmission congestion and constraints. Shadow prices tend to be more correlated with one another, and tend to be more correlated with HOEP. **Therefore, they are broadly representative of what prices might look like.** But the future, there is a whole bunch of things changing the future. [Emphasis added]

56. The IESO produced data that suggests that historical PD-3 shadow prices are on average \$15/MWh higher than the DACP shadow price. The IESO relied on this data to suggest that, by using the PD-3 price to represent DAM prices under MRP, PA's analysis is flawed, and that DACP shadow prices should have been used instead. In fact, using DACP shadow prices would have worsened the accuracy of PA's analysis, specifically because exports do not

participate in the DACP today (a fact confirmed by the IESO at the oral hearing), meaning DACP prices are not representative of actual supply and demand conditions (a fact proven by the IESO's own analysis finding the price is \$15/MWh too low on average). Exports do participate in PD-3 and will participate in the DAM under MRP; Thus PD-3 prices are more reflective of actual supply demand conditions and the prices PA would expect to find under MRP.⁶²

57. Power Advisory recognized that its quantification of MRP Amendment impacts is based on estimates and assumptions about the operation of the market, such as the assumption of using PD-3 prices in the analysis. Any analysis of the electricity grid is approximated because the grid itself is complicated, and many variables are at play. The Power Advisory analysis is not intended to provide an exact dollar figure but to provide an approximation for the OEB to get a sense of impact and quantum.⁶³

C. Total Revenue and Net Margin

58. The IESO asserts Power Advisory failed to distinguish between impacts on total revenue versus net margin.⁶⁴ This is factually untrue.
59. The quantification of financial impacts to NQS generators is explicitly a net margin value,⁶⁵ as was discussed at length in the hearing.⁶⁶ Some of the examples in the evidence are gross margin revenues, but Power Advisory walked through those examples in the hearing and showed how one can calculate the net margin. The examples – most notably in Appendix B – are there to simply show how changes in market design can impact revenues. The financial impact, as detailed at length in Appendix C, clearly shows the net margin impact on the proxy NQS Generator.

D. Modelling

60. The IESO and SEC assert that Power Advisory failed to “show its work” in accordance with Rule 13A.03.⁶⁷ The IESO and SEC strategically raised this disclosure issue at the last minute on the second and third days of the oral hearing, respectively, after having the Power Advisory report for a month and attending a technical conference. It is not clear what meaningful analysis could have been performed at the very last minute given the evidentiary portion of this proceeding closed at the end of the third day of the oral hearing.
61. Even so, Mr. Duffy was expressly given an offer by Mr. Yauch “...to give that information and explain in detail how it [the model] works.”⁶⁸ Instead of taking Mr. Yauch up on his

⁶² Technical Conference T2P33L11-28; IESO Responding Evidence at page 31, line 17.

⁶³ Oral Hearing T3P7L21 to T3P8L13.

⁶⁴ IESO Submission at para 57(c).

⁶⁵ Oral Hearing T3P2L12-28.

⁶⁶ Oral Hearing T2P181L9 to T2P200L26.

⁶⁷ IESO Submission at para 57(d); SEC Submission at para 36-37.

⁶⁸ Oral Hearing T2P200L5-11.

offer for a detailed explanation, Mr. Duffy abruptly stated he “...will leave that for argument.”⁶⁹ Power Advisory cannot be faulted for the IESO or SEC’s lack of understanding when they did not exercise self-help remedies, such as asking the necessary clarifying questions over 5 days of hearings, or asking the OEB to adjudicate outstanding production issues from questioning (as the NQS Generation Group did in its successful motion to compel the IESO to give full and complete answers).

62. Like AMPCO members in EB-2019-0242, the members of the NQS Generation Group have very serious and legitimate concerns around the commercial sensitivity of information about their particular facilities. Unfortunately, the OEB’s Practice Direction on Confidential Filings is also not a complete solution to the NQS Generation Group members’ concerns for three reasons.
63. First, the NQS Generation Group members do compete in the IAM and as a result they do not share their commercially sensitive information as between each other (such sharing would be anti-competitive) nor have they shared this information with BLG as legal counsel to the group (because pursuant to the Law Society of Ontario, we have a legal obligation to share that information with the entire group once one member shares that information with us).
64. Section 33 of the *Electricity Act, 1998* expressly contemplates a group of similarly situated market participants, like the NQS Generation Group, bringing an application. However, were the OEB to force those group members to share their commercially sensitive information with each other before even filing an application – it would result in an effective neutering of this statutory remedy and/or undercut competition in the IESO-administered market. It would also result in significant inefficiency and duplication of process if each individual member of the NQS Generation Group hired their own legal counsel and filed a separate and distinct application with the OEB, each with pages of confidentiality requests.
65. Second, under the Practice Direction on Confidential Filings there is an undisputable litigation risk that a confidentiality claim may be rejected by the OEB and commercially sensitive information may need to be disclosed on the public record. Some commercially sensitive information, including information directly relevant to a particular facility’s competitive offers into the IAM, is so important that no rationale business actor will put that information at risk lightly. This is particularly the case for the NQS Generation Group – which routinely compete with opportunity cost hydro, opportunity cost storage and imports (each of which can inform their offer strategies by trying to estimate the NQS Generation Group member’s costs and then beat it by just a margin to maximize their own profitability). It is noteworthy that several of these competitors are parties in this proceeding (FirstLight and HQEM).
66. Third, under the Practice Direction on Confidential Filings, parties and their representatives may sign a declaration to access the confidential information. In this proceeding, this would

⁶⁹ Oral Hearing T2P200L13-14.

be direct competitors including both FirstLight, a hydroelectric facility operator, and Hydro Quebec, an importer.

67. Both the IESO and SEC elected not to undertake their own analysis to rebut that of Power Advisory. The fact is Power Advisory's analysis on the impacts to NQS generators is "triangulating" around other publicly available analysis from the IESO and MSP, as stated by Mr. Yauch:

MR. VELLONE: Can we scroll down a little bit. My friend, Mr. Duffy, didn't put this kind of paragraph immediately following the recommendation to you as witnesses. And I guess my question is about the \$40 million per year of benefit that's quantified there. How does that relate to the analysis that you did in your report?

MR. YAUCH: Yes, I went back and re-read this last night, unfortunately. And in the analysis that the MSP does here, it says, okay, what if you actually calculated, used the broader envelope when you calculate the guarantee payments. So, we know today it is only counted on revenues earned up to MLP across your MGBRT, we talked about it at length but under MRP that's going to change. It's going to include your entire revenue envelope, including OR revenues, beyond MGBRT, above MLP. And the MSP went back and did analysis and said, oh, if you did that, you would actually save \$40 million per year in terms of the GCG payments. And so this is, I think to Mr. Moran's comment, this is really a transfer because how the revenues are calculated in the real-time GCGs less of an efficiency benefit and more of a transfer payment that goes from NQS generators. In this case it would go to customers.

In the \$40 million per year, that's on the entire NQS fleet, so let's call it 8,000 or 9,000. I don't know what it was in 2016, but it would have been around there. So, our number is \$21 million per year and that's 4100 megawatts. Our number ends up being very close to this number. And we've talked a lot about whether the proxy generator and the associated analysis is an accurate reflection, but we're now starting to get a lot of different data points on what the impact is of these changes. The IESO has \$190 million over 10 years -- or \$19 million. The Panel did analysis similar to ours and they are getting \$40 million per year. We have \$21 million, but it's only accounting for just half the generators, give or take, that participate in the market. So, I wanted to highlight the fact that there is a -- everything is triangulating around a certain number in impact that is reflected in our analysis as well.

E. Selection of NQS Facilities

68. The IESO questions the facilities selected by Power Advisory in Appendix A of the expert report.⁷⁰ It is unclear what relevance or material impact this critique has on the Power Advisory analysis that uses a representative proxy,⁷¹ nor does the IESO explain in any detail in its submission the significance of this critique.

F. Annual Financial Impacts

69. The IESO challenges Power Advisory's assumptions used in the extrapolation of the annual financial impact to NQS generators.⁷²
70. First, Sections IV(A) and IV(B) above on the "Use of a Proxy Generator is Appropriate" and "Modeling" provide a fulsome response to the IESO repetitious incorrect allegations about the proxy generator.
71. Second, the IESO's disputing of the Dawn reference price is inconsistent with its own approach, and that of the MSP,⁷³ to reference gas prices.⁷⁴ The IESO uses the Dawn price as the reference level for thermal plants in the province to determine reference levels as part of its MPM framework. The Dawn hub is one of the most liquid gas trading hubs in eastern North America and is directly connected with many of the members of the NQS Generation Group.
72. Third, while the NQS Generation Group maintains that there are ample generation resources in the market to compete with NQS generators for dispatch and competition is expected to increase (as set out in Section VII(A) below), whether another NQS generator took the place of the proxy generator is not the primary driver of the financial harm. The termination of the RT-GCG program and the loss of staged DACP and RT-GCG commitment opportunities impacts all NQS generators. For those commitments that remain under MRP, every single one will result in, at best, equal net margin, but more likely less net margin than today. It is not the 1 in 6 purportedly inefficient commitments that are impacted, it's all six commitments, as the net margin from nearly every commitment for NQS Generators will be reduced as a result of the MRP Amendments.⁷⁵

⁷⁰ IESO Submission at para 57(e).

⁷¹ Mr. Yauch discusses this point here: Oral Hearing T3P4L25 to T3P8L13.

⁷² IESO Submission at para 57(f).

⁷³ SEC Compendium for the Oral Hearing, January 15, 2025, at page 69. "To eliminate the impact of changes in the prices of natural gas and other inputs over the two-year period, the generators' **offers were normalized for changes in gas prices at the Dawn Hub**, and OM&A costs were adjusted for changes in the Canadian GDP Implicit Price Index (a broad measure of inflation)."

⁷⁴ Note this is also the reference point for the CES Contract filed by the IESO: IESO Document and Authorities Brief for the Pre-Hearing Conference, November 22, 2024, Tab 3, page 11.

⁷⁵ Oral Hearing T3P13L1-13.

V. IESO RESPONDING EVIDENCE

73. It is incorrect for the IESO to assert that its responding evidence went “virtually unchallenged during the technical conference and oral hearing.”⁷⁶ After a lengthy Technical Conference and Oral Hearing in which Mr. Matsugu and Mr. Nusbaum avoided, objected or did not respond to the majority of questioning by Mr. Vellone directly related to the Responding Evidence,⁷⁷ the IESO had no analysis, data, reasoning, or modelling to support any of the critiques it levied in its responding evidence.

A. Commitment and Dispatch of Resources

74. The IESO challenges Power Advisory’s conclusion that the MRP Amendments will result in reduced commitment and dispatch of NQS resources on five core grounds.⁷⁸ None of these grounds have merit:
- a. The IESO misconstrues how impactful new risks and features of the MRP Amendments will be to NQS generators by referring to 3-part offers existing in the DACP process.⁷⁹ A fulsome response to this assertion can be found in Section VII(A) below.
 - b. The IESO asserts that Power Advisory does not acknowledge the MRP Amendments rectify flaws in the current market design.⁸⁰ Regardless of the objectives the IESO is trying to attain, the MRP Amendments in their present form introduce unjust financial discrimination for NQS. Power Advisory was not retained to assess whether the MRP Amendments address flaws in the market design, nor is it the subject of this proceeding.⁸¹ This may be the subject of a pending MSP report expected in early 2025.⁸²
 - c. The IESO⁸³ and SEC⁸⁴ have no evidence to support the assertion that to the extent there is reduced commitment and dispatch, the competition will occur between NQS resources. This premise was rejected outright by Power Advisory. As Power Advisory stated, and as evidenced in undertaking JT2.3, there are multiple other resource types (e.g., hydro, imports, etc.) that compete with NQS generators for

⁷⁶ IESO Submission at para 55.

⁷⁷ Technical Conference T1P20L22-P23L10, P23L10-P24L9, P25L3-P27L16, P27L22-P28L12, P28L13-P29L26, P31L1-P33L13, P33L14-P36L7, P37L7-P40L13, P40L13-P40L28, P41L1-P44L11, P44L11-P46L1, P46L2-P47L21, P47L22-P51L19, P51L20-P54L11, P54L12-P56L19, P56L20-P65L19, P59L20-P61L6, P61L7-P63L23, P64L8-P67L18, P67L19-P69L15, P69L16-28, P70L1-P71L17, P71L19-P72L1, P72L2-25, P72L26-P79L5.

⁷⁸ IESO Submission at para 53.

⁷⁹ IESO Submission at para 53(a).

⁸⁰ IESO Submission at para 53(b).

⁸¹ Technical Conference Undertaking Response JT2.1.

⁸² Compendium of the School Energy Coalition, January 1, 2025, at PDF page 44.

⁸³ IESO Submission at para 53(c).

⁸⁴ SEC Submission at para 39-40.

commitment and dispatch.⁸⁵ The MRP design introduces a new financial hurdle for all NQS generators compared to other resource types. This will impact NQS Generators as a class. A fulsome response to this assertion can be found in section VII(A) below.

- d. The IESO takes issue with Power Advisory's statement that NQS generators will be required to submit 3-part offers.⁸⁶ This is discussed in detail at Section VII(A) below.⁸⁷
- e. The IESO asserts, without any of its own financial modelling, that Power Advisory's financial impact analysis significantly overestimates the financial impact of the MRP Amendments.⁸⁸

B. Market Power Mitigation

75. The IESO challenges Power Advisory's conclusions on the impact of MPM on four grounds.⁸⁹ None of these grounds have merit:

- a. The current MPM framework has no impact on price-setting, is not done on an ex-ante basis and incorporates no reference levels or after-the-fact physical withholding screens. Concluding that the current to future MPM frameworks are similar is highly misleading. The IESO itself has even agreed to essentially turn some components of the new MPM framework off when MRP launches as they couldn't confidently answer many questions on the impact the new framework will have.
- b. The IESO has no evidence to support the assertion that Power Advisory "misstates and exaggerates" the extent that NQS generators will be impacted by MPM. Again, the IESO agreed to pause the implementation of the new MPM framework, in part because of uncertainty around its impacts, a concession that itself discredits the IESO characterization of Power Advisory's conclusions.
- c. As discussed in further detail below at Section VII(C), the expert evidence from Power Advisory demonstrates that a significant number of operational parameters for hydro units – which can materially impact the supply stack – are not subject to mitigation. The IESO has no evidence to support that this is immaterial on the overall efficiency of the market or will have no impact on competing resources.

⁸⁵ Technical Conference Undertaking Response JT2.3; Oral Hearing T3P45L7-18; Oral Hearing T2P190L13-P190L28, P192L26-P193L12, T3P10L26-P15L12.

⁸⁶ IESO Submission at para 53(d).

⁸⁷ Oral Hearing T2P128L19-P129L2.

⁸⁸ IESO Submission at para 53(e).

⁸⁹ IESO Submission at para 53.

- d. The IESO is the final arbiter of reference levels unless overruled. In its own evidence the IESO states it issues a “preliminary view” on a market participant’s reference levels and reference quantities before registration. Should a market participant disagree with the IESO’s “preliminary view” determination, it would need to pursue, at significant expense and potential delay to registration, the dispute resolution process set out in Chapter 0.7 of the MRP Amendments to have the reference levels changed.⁹⁰

VI. MARKET SURVEILLANCE PANEL REPORTS

76. The IESO and SEC place significant reliance on historical MSP reports in support of their arguments. Similar to the IESO’s comments about Mr. Chee Aloy’s testimony,⁹¹ both the IESO and SEC rely on out-of-court statements by the MSP and tender them for the truth of their contents. The OEB should be cautious not to place undue weight upon such evidence where the best evidence is sworn testimony from duly qualified expert witnesses in this proceeding. None of the parties in this proceeding had an opportunity to cross-examine the MSP on these reports.
77. While the MSP is an expert and impartial panel, their analysis and recommendations ultimately relate to modifications to the existing market, not a fulsome and standalone analysis of the MRP Amendments. The NQS Generation Group submits the MSP reports must be weighed in the manner they are tendered to the OEB panel and considered within the scope the MSP reports are intended to cover.
78. The OEB should also be cautious about overreliance on the MSP reports since the *Electricity Act, 1998* only grants the MSP narrow jurisdiction to monitor activities taking place in the IESO-administered markets, investigate specific market participants, make recommendations, and issue reports to the Minister of Energy. In writing its reports, the MSP does not give consideration to the same broad objects required of the IESO under section 6 of the *Electricity Act, 1998*, such as maintaining reliability of the IESO-controlled grid, and is solely focused on monitoring the competitiveness and efficiency of the IESO-administered market.
79. This is evidenced by the fact the IESO does not always agree with MSP reports. For example, in December 2019, the MSP released a report on what is known as the “DR Flaw” that found wholesale payments were impacted by as much as \$450-560 million. The IESO issued a press release disputing this number published by the MSP and estimated the error to be approximately \$225 million.⁹²

⁹⁰ IESO Responding Evidence at page 40.

⁹¹ IESO Submission at para 103.

⁹² IESO, Response to the Market Surveillance Report, December 23, 2019, online: <<https://www.ieso.ca/Sector-Participants/IESO-News/2019/12/Response-to-the-Market-Surveillance-Report>>

80. In any event, it is the IESO, not the MSP, that elected to proceed with the MRP Amendments and is accountable for ensuring the MRP Amendments are not unjustly discriminatory or inconsistent with the purposes of the *Electricity Act, 1998*.

A. *The GOG Program Represents a Fundamental Change from the RT-GCG Program*

81. No party has argued that the change to replace the RT-GCG Program with the DA-GOG and the RT-GOG is a discrete change to the Market Rules that affects only NQS Generators (since no other class of generator is eligible for the program). Rather, the parties argue that the changes to the cost (or offer) guarantee program will result in a more “efficient” market.
82. For example, at paragraph 25 of its submissions the IESO claims that it “advised the MSP that it would address the issues identified with the RT-GCG in the design of a revised unit commitment process under MRP.” This is quite misleading.
83. The IESO’s position on the RT-GCG program in this proceeding represents a marked and material change from its historical views on the RT-GCG program, which have diverged with the MSP on this topic. Specifically, the IESO has historically **defended** RT-GCG and utilized it to maintain reliability. A brief timeline can set this out in detail.
- a. In 2014 and 2016 the MSP recommended that the IESO increase the revenue envelope used to offset costs to determine cost guarantee payments, including revenues above MLP, beyond MGBRT and those generated through OR.⁹³ However, the IESO repeatedly pushed back against these recommendations.
 - b. its 2016 Annual OEB Status Update Report, which claimed that including revenues above MLP, beyond MGBRT and from OR “*would significantly reduce the incentive structure under the program*” and “*could have negative impacts on the program’s overall reliability goals*”.⁹⁴
 - c. In the 2017 Annual OEB Status Report, the IESO claimed that implementation of RT-GCG pre-approved cost framework “*remov[ed] the potential for overpayments*” and continued to assert that “*a RT-GCG program is necessary for power system reliability*” and so would not make any more adjustments, including those recommended by the MSP.⁹⁵
84. As highlighted by the IESO’s 2017 Annual OEB Status Report - the MSP’s recommendations on the pre-2017 RT-GCG program **cannot simply be applied to the post-2017 RT-GCG program as the program has evolved over time.** While it remains open for the MSP to conduct an analysis on the RT-GCG Program as it exists today to identify if

⁹³ IESO Undertaking Resp_2016 OEB Annual Update Report_MSP Recommendations_20150113, pages 2, 6.

⁹⁴ IESO Undertaking Resp_2016 OEB Annual Update Report_MSP Recommendations_20150113, pages 2, 6.

⁹⁵ IESO Undertaking Resp_2017 OEB Annual Update Report_MSP Recommendations_20150113, Recommendations 3-1 and 3-2, pg. 4-5.

further refinements are truly needed – the OEB has no evidence to rely on to arrive at this conclusion.

85. Further, the IESO’s justification for its continued assertion that the RT-GCG (or GOG) program should be “revenue neutral”⁹⁶ is not at all clear. From its inception until the MRP Amendments, the IESO’s actions have reiterated on multiple occasions that the RT-GCG program (and its predecessor, the Spare Generation on Line program) is not - nor should it be - revenue neutral. In fact, the IESO concedes elsewhere in its argument that the RT-GCG is not revenue neutral.⁹⁷
86. The RT-GCG program was intentionally designed to allow NQS generators to make a positive net margin from the market and still receive an RT-GCG payment.
 - a. The IESO also disagreed with removing cost guarantees for O&M for the same reasons it gave for refusing to expand the revenue envelope - that it would reduce incentive to participate and could negatively impact grid reliability.⁹⁸
87. Both are examples where the IESO has acted contrary to its current assertions that revenue neutrality can meet the program goals and result in an efficient market, assuming, of course, that the intention is for the efficient market to be accompanied by a reliable grid.
88. As was explained by the Auditor General, the RT-GCG program was originally introduced when “experts were concerned that Ontario was not prepared to meet its upcoming demands for electricity,” and that Ontario needed “non-market mechanisms for generators to recover their costs and operate profitably.”⁹⁹
89. The IESO has adduced absolutely no evidence to suggest that with these changes, NQS resources will continue to have sufficient economic incentives to participate in the OR and energy markets. Nor has the IESO produced any evidence that as a result of these fundamental changes in incentives, there will be no material adverse impacts on system reliability.
90. However, the reaction of the NQS Generation Group to this fundamental change to the cost guarantee program should provide a clear signal. Asset owners that made investment decisions in Ontario under an assumption of profitability under the existing cost guarantee program – and in so doing delivered significant reliability benefits to the IESO and Ontario ratepayers – are now having the basis of those investment decisions undermined with MRP.

⁹⁶ IESO Submissions at para 53(c).

⁹⁷ IESO Submission at para 22.

⁹⁸ IESO_Undertaking Resp_2016 OEB Annual Update Report_MSP Recommendations_20250113, page 1.

⁹⁹ Office of the Auditor General of Ontario, 2017 Annual Report: Volume 1 of 2, 2017, section 3.06: Independent Electricity System Operator—Market Oversight and Cybersecurity, page 333; IESO Brief of Exhibits, page 365.

91. Where efficiency may be a relevant consideration, reliability would be an increasingly important consideration under current and forthcoming tight supply conditions.
92. The commentary and recommendations of the MSP and AGO, therefore, provide little justification regarding the go-forward value of the MRP Amendments and changes to the RT-GCG program.

B. Unsubstantiated Regulatory Capture

93. CCC asserts that the “very long” delays in implementing the changes to the market recommended by the MSP are the result of “regulatory capture” by sophisticated parties.¹⁰⁰ Of course, the cited statement by the MSP provides no substantiation, only an accusation. The example provided is that the IESO’s failure to update the CMSC regime at the speed preferred by the MSP is the fault of others, again without any specific examples or explanations provided to substantiate such a claim.
94. The simpler evidence-based explanation is that the IESO, as an independent, not for profit sophisticated party, controls the timelines for market design changes. For instance, as discussed above in VII(A) the IESO has also resisted implementing the MSP’s recommended changes to the RT-GCG program for over a decade, because, in the IESO’s own words such changes “would significantly reduce the incentive structure under the program” and “could have negative impacts on the program’s overall reliability goals.”¹⁰¹ The IESO is solely responsible for any delays that may have occurred in implementing the MSP’s recommendation; the IESO has both the authority and the mandate.

VII. ELEMENT #1: ECONOMIC DISCRIMINATION

95. Despite conducting none of its own analysis on the matter, the IESO contends, without any supporting evidence, that the MRP Amendments are not discriminatory. The table in the Argument in Chief setting out all the aspects of unjust economic discrimination against NQS generators resulting from MRP was largely unchallenged.
96. The IESO’s MRP Amendments represent a significant overhaul of the IESO-Administered Market design and Market Rules. This overhaul will, among other changes, introduce new calculation engines and settlement mechanisms that will determine commitment, dispatch, and settlement for NQS generators, among other resources.¹⁰² It belies belief that a complete overhaul of the market – including changing the basis for which resources are compensated – would not create winners and losers, and thus economic discrimination against a market participant or group of market participants.¹⁰³

¹⁰⁰ CCC Submission, at pg. 2.

¹⁰¹ As discussed in VII.A., see IESO Undertaking Resp_2016 OEB Annual Update Report_MSP Recommendations_20150113, pages 2, 6; 2017 Annual OEB Status Update Report, Recommendations 3-1 and 3-2, pg. 4-5; November 2016 MSP Report, page 124; IESO_Undertaking Resp_2016 OEB Annual Update Report_MSP Recommendations_20250113, page 1.

¹⁰² Power Advisory Expert Report, para 15.

¹⁰³ IESO Submission at paras 7 and 116.

97. The IESO argues that economic harm is not the test for unjust economic discrimination but then refers synonymously to those terms elsewhere in its own argument.¹⁰⁴ The NQS Generation Group tabulated in its Argument in Chief how the MRP Amendments will result in economic discrimination and quantified the economic harm from such discrimination to be approximately \$140 million.¹⁰⁵
98. Indeed, the IESO recognizes in its business case MRP could result in “net negative revenue impacts” for some resources.¹⁰⁶
99. Nevertheless, the IESO decided that “it is outside the scope of this study to estimate the net effects of these changes on individual classes of market participants” and thus provided no quantification for these potential impacts.¹⁰⁷ In the intervening eight years since that statement, the IESO produced no such analysis while outright refusing to produce such analysis for consideration by the OEB in this proceeding.¹⁰⁸
100. In the absence of this critical analysis, the NQS Generation Group retained Power Advisory to quantify the economic impact of the MRP Amendments on the NQS Generation Group (itself a subset of market participants within the broader group of NQS generators). Power Advisory’s analysis concluded that, “The MRP Amendments will significantly change the participation, commitment, dispatch, and settlement of NQS Generators. The overall result of these changes, from a financial perspective, will be negative for NQS Generators.”¹⁰⁹

A. NQS Generation Resources Will Receive Fewer Commitments and Dispatch

101. The IESO argues the evidence does not support the NQS Generation Group’s allegation that there will be less commitment and dispatch of NQS generation resources following MRP due to amended pre-dispatch calculation engines.¹¹⁰ However, the IESO’s own Business Case states ERUC alone will reduce the number of commitments of NQS generation resources to the benefit of the IESO following MRP.¹¹¹
102. Power Advisory’s evidence aligns with this statement from the IESO’s Business Case. Power Advisory states that a reduction in commitment and dispatch of NQS Generators results from the IESO’s calculation engines in the MRP Amendments, which incorporate a broader suite of costs and operational constraints than is included in the existing calculation engines under the current IAM design and Market Rules.¹¹²

¹⁰⁴ IESO Submission at para 112.

¹⁰⁵ NQS Generation Group AIC at paras 49-56.

¹⁰⁶ MRP Benefits Case 2017, page 105.

¹⁰⁷ MRP Benefits Case 2017, page 105.

¹⁰⁸ Technical Conference T1P20L8-13.

¹⁰⁹ Power Advisory Expert Report at para 16.

¹¹⁰ IESO Submission at paras 5 and 107.

¹¹¹ IESO Brief of Exhibits, January 6, 2025, at page 707.

¹¹² Power Advisory Expert Report at page 27.

103. The IESO then goes on to make the several incorrect assertions at paragraph 107 to support its erroneous conclusion on reduced commitments and dispatch above:

- a. The IESO proposes an energy-only offer strategy in lieu of three-part offers that Power Advisory expressly rejected since it “...*would make very little economic sense*” as the NQS generator would operate at a loss.¹¹³ The IESO is using the scoping decision and exclusion of contracts to mislead the OEB on the actual outcome of an energy-only offer strategy. Specifically, the contract deems NQS generators to operate on an incremental energy cost, and it is assumed that the contract assumes NQS generation resources recover their start-up costs from the RT-GCG program.¹¹⁴ The energy-only offer strategy is not a commercially viable alternative for NQS generators when the contracts are considered in the entire context. In fact, the IESO’s position conflicts with the MSP’s conclusion as early as 2007 that the CES contracts used by NQS generators encourage market efficiency stating:

Generators under the CES/Early Movers contracts are motivated to offer at their incremental cost. When the Market Clearing Price is higher than the calculated unit strike price, the unit is deemed to produce energy, otherwise they are penalized an amount based on the foregone output which is ultimately removed from their monthly revenue requirement. This promotes efficient dispatch.¹¹⁵

- b. The IESO relies on semantics when it highlights that, under MRP, NQS generators are not **required** to offer start-up costs via the aptly named Start-Up Cost portion of its three-part offers. While NQS generators are not required to structure their offers in such a manner, they nevertheless need to include their start-up costs in one of the three-part offer buckets to ensure that they don’t operate at a loss. The IESO goes so far as to suggest that NQS generators could offer their start-up costs in their incremental energy offers; The mere suggestion of which flies directly in the face of the efficiency gains the IESO purports the MRP Amendments will deliver. Incremental energy offers are used to set prices in real-time, if those offers include costs already incurred (i.e. sunk costs), such as start-up costs, the real-time energy price will not reflect the marginal cost of serving the next megawatt of demand, and the price will be inefficiently high. In fact, adopting the offer strategy suggested by the IESO would result in significantly higher electricity prices for all consumers, as all supply that clears the market will be paid the higher price associated with the marginal offer of the NQS generator who increases its incremental energy offer to include its start-up costs. Indeed, the IESO's suggestion is as inefficient and costly

¹¹³ Oral Hearing T3P20L9 to T3P21L6; Oral Hearing T3P25L12-22.

¹¹⁴ Oral Hearing T3P20L14-18. See also Market Surveillance Panel Report on the IESO-Administered Electricity Markets for the period from May 2010 – October 2010, dated February 2011, at page 95.

¹¹⁵ Market Surveillance Panel Monitoring Report on the IESO-Administered Electricity Markets for the period from May 2007 - October 2007, dated December 2007, s. 4.4.1 (pg. 169).

for consumers as it is commercially unviable for NQS generators. The IESO confirmed in its response to JT1.4 that, “for the period from 2019-2024, generators eligible to receive Day-Ahead Production Cost Guarantees participated substantially all of the time using three-part offers” despite not being **required** to do so.

- c. The IESO argues that, due to limited availability for incremental energy and reserves from other peaking resources, an NQS generator that loses a commitment will be replaced by a more efficient NQS resource. This assertion runs entirely contrary to the IESO’s assumption in its own business case that the reduction in NQS commitments will accrue “...to the benefit of the IESO”, not another NQS resource.¹¹⁶ Further, Undertaking JT2.3 and the supply mix posted on the IESO’s website disproves the IESO’s notion about a lack of competition between generation resources.¹¹⁷ In addition to the natural-gas fired supply operated by the NQS Generation Group, Ontario’s supply mix includes peaking generation from the following sources: oil (2 GW), hydro (8.8 GW), biofuel (287 MW), significant imports, and expected future storage. Competition is expected to increase over time as a result of recent IESO procurements.¹¹⁸ The IESO has procured over 3.3 GW of storage (i.e., 2,666 MW)¹¹⁹ and peaking natural gas-fired capacity through its Expedited RFP and Long-Term RFP1, with expected in-service dates before the end of the decade. Between 500 MW and 1,000 MW of additional capacity is expected to be procured via the IESO’s Long-Term 2 RFP this year. All these resources will compete directly with the NQS Generation Group for dispatch under MRP.
- d. The IESO argues that there is no evidence linking a reduction in commitments to a reduction in NQS generator’s financial outcome or net revenue since “fewer commitments would reduce a generator’s costs.”¹²⁰ This is an absurd proposition and problematic in its own right. The IESO is advocating that an NQS generator has the same net financial incentive to obtain 1 or 1,000 commitments. Not only was this demonstrated to be false in Power Advisory’s analysis,¹²¹ but the IESO expressly conceded in its submission and during the Technical Conference that the RT-GCG program is not revenue neutral, and that an NQS generator can operate profitably in consideration of all its costs and market revenues, and still receive an RT-GCG payment.¹²² Thus, the number of commitments matter. Furthermore, while the IESO repeatedly argued that the intent and purpose of the RT-GCG was to be revenue neutral, but the IESO itself has acknowledges that the program is not

¹¹⁶ IESO Brief of Exhibits, January 6, 2025, at page 707 (footnote 7).

¹¹⁷ <https://www.ieso.ca/Learn/Ontario-Electricity-Grid/Supply-Mix-and-Generation>

¹¹⁸ Oral Hearing, T1P87L7-26.

¹¹⁹ Per the IESO Undertaking Response J1.2, 2,666 MW of storage resources have been procured by the IESO through the expedited LT RFP (i.e., 882 MW) and the LT1 RFP (i.e., 1,784 MW).

¹²⁰ IESO Submission at para 107(c).

¹²¹ Power Advisory Expert Report at paras 55-57.

¹²² IESO Submission at para 22; Technical Conference T1P139 to T1P141.

in fact revenue neutral, and that this was an intended feature of the RT-GCG program needed to ensure reliability (see section VII(B) for additional information).

B. Elimination of the RT-GCG Program is Discriminatory

104. The IESO argues the NQS Generation Group has not established that replacement of the RT-GCG program with the GOG program, particularly in respect of the incorporation of all wholesale revenues into the RT-GOG payment calculation, results in discrimination.¹²³ The IESO concedes in its argument, however, that the RT-GCG program is not revenue neutral.¹²⁴
105. As outlined in the Argument in Chief, the IESO already concedes that the implementation of the GOG program under MRP will result in economic discrimination by NQS generators receiving less net revenues when compared with the existing RT-GCG program.¹²⁵ One of the causes of this discrimination is including more revenues in the GOG payment calculation relative to the RT-GCG program.
106. In its submission¹²⁶ the IESO relies on Recommendation 3-2 from the MSP's November 2016 *Monitoring Report on the IESO-Administered Markets*¹²⁷ that, for the purposes of calculating RT-GCG payments, the IESO should implement a "comprehensive offset methodology" that includes revenues earned above MLP and after MGBRT (including OR). The IESO confirmed that the MRP Amendments directly address this recommendation. In the analysis that supported that recommendation, the MSP calculated that, from 2010 to 2015, had the recommended changes been in effect, it would have resulted in a reduction in RT-GCG payments of \$81.6 million (or \$13.6 million/year).

¹²³ IESO Submission at paras 31 and 108.

¹²⁴ IESO Submission at para 22.

¹²⁵ NQS AIC at pages 19-20.

¹²⁶ IESO Submission at para 31.

¹²⁷ Referred to at Tab 4 of IESO Brief of Exhibits, January 6, 2025. See pages 126-127 here: https://www.oeb.ca/oeb/_Documents/MSP/MSP_Report_May2015-Oct2015_20161117.pdf

**Table 3-3: Annual RT-GCG Savings
2010-2015
(\$ millions)**

Year	Actual RT-GCG Payments	Savings from Including OR	Savings from Comprehensive Offset Methodology	Savings from Removing O&M from the Guarantee	Total Savings ¹⁴⁸
2010	72.8	0.5	18.8	55.5	60.2
2011	71.7	1.2	12.9	55.6	59.6
2012	78.4	0.8	18.3	61.1	66.1
2013	63.5	2.4	11.1	38.3	43.2
2014	61.5	1.9	4.5	27.9	30.6
2015	57.1	2.1	7.3	35.1	39.0
Total	405.0	8.8	72.8	273.5	298.6

107. Implementing this recommendation would alter the after-the-fact RT-GCG settlement calculation but would not change the underlying commitment or dispatch of NQS generators. As such, the actual costs incurred by the NQS generators for these RT-GCG commitments would remain unchanged, meaning the loss of \$81.6 million in RT-GCG revenue would be a direct reduction in net margin. This \$81.6 million reduction in net margin speaks directly to financial harm that will flow to the NQS Generation Group as a result of the MRP Amendments. In fact, the IESO does not contest that the MRP Amendments will result in negative financial harm to the NQS Generation Group.

C. The Market Power Mitigation Framework Discriminates Against NQS Generators

108. The IESO argues that the NQS Generation Group has not substantiated that they will receive lower wholesale energy and operating reserve revenues in periods where MPM is applied. This position is without merit. Power Advisory clearly draws a link at paragraph 58 of its expert report that NQS resources are at much higher risk of MPM under MRP when compared to other resource types. Mr. Nusbaum acknowledges the entire purpose of MPM is to lower revenues.¹²⁸

MR. VELLONE: Which, because of the way you have implemented your screen, by definition means that it would be less than the non-mitigated start-up costs initially submitted as part of the three-part offer; is that right?

¹²⁸ Oral Hearing T2P30L18-26.

MR. NUSBAUM: Yes. When the MPM framework has determined that a start-up cost was artificially high and was giving a market participant the ability to influence or exercise market power, it would be mitigated to their reference level, **which would be a lower value**. [Emphasis added]

109. The IESO attempts to reason that NQS resources have more parameters subject to MPM because NQS resources have more dispatch parameters through which market power can be exercised.¹²⁹ This does not explain why, for example, the NQS resources have more parameters subject to MPM on a proportional basis (2 of 12 for Hydro – 17%; 0 of 5 for Nuclear – 0%, 0 of 7 for Quick Start – 0%, 12 of 15 for NQS – 80%).¹³⁰ Nor does it explain why NQS generators are singled out as the only resource type subject to MPM for energy offers and maximum daily energy limit (as shown in the table below).¹³¹

Dispatch Data Type	Dispatch Data Parameter	Existing or New	Generation Facility Type					Non-Dispatchable (Self-scheduling, Transitional, Intermittent)
			Dispatchable					
			NQS (Nuclear)	NQS (Other)	Quick Start (Variable Generator)	Quick Start (Hydro-electric)	Quick Start (Other)	
Id	Registered market participant name	Existing	x	x	x	x	x	x
Id	Resource type	Existing	x	x	x	x	x	x
Id	Resource name	Existing	x	x	x	x	x	x
Hourly	Energy offer	Existing	x	x	x	x	x	x
Daily	Maximum daily energy limit	Existing		x	x	x	x	

110. The IESO has identified one form of exercising market power – economically withholding to raise energy prices – and decided it will mitigate that heavily, including by pre-verifying operational parameters. Given NQS generators are frequently price setting resources in the energy market, they are disproportionately impacted by this new MPM framework.
111. The IESO relies on semantics to confuse and obfuscate when it suggests that NQS generators need not avow themselves of certain “voluntary” economic and operational parameters that are subject to ex-ante validation in the new MPM framework.¹³² Yes, some of these parameters – such as the previously discussed start-up offer – are voluntary in name, but forgoing their use would be both commercially nonsensical and inefficient. Furthermore, forgoing use of important operational parameters, such as maximum daily energy limit, may lead to operational and safety concerns.

¹²⁹ IESO Submission at para 109.

¹³⁰ NQS AIC at para 69.

¹³¹ Power Advisory Expert Report at Figure 13 – see also Energy ramp rate.

¹³² IESO Submission at para 109.

112. There are other exercises of market power that the IESO has left completely unaddressed in its new MPM framework. For instance, hydroelectric resources may specify a Minimum Daily Energy Limit, effectively dictating the minimum amount of energy the IESO is required to accept in the market that day. Without doubt, there are legitimate operational and regulatory requirements specific to hydroelectric generators that necessitate flexibility and thus the existence of that operational parameter. However, that parameter could also be used to force power priced below competitive rates into the market, artificially depressing market prices in an attempt to undercut competitors and their long-term market viability. In this way, the Minimum Daily Energy Limit parameter is certainly a “dispatch parameter[s] through which they can exercise market power and materially impact market payments”.¹³³ This selective enforcement is unjustly discriminatory.

D. Elimination of CMSC Payments Discriminates Against NQS Generators

113. The MRP Amendments eliminate CMSC payments and will be replaced in part by make-whole payments that will be much lower, which Power Advisory states will pose a financial risk for NQS generators. The IESO also concedes that it is possible the elimination of CMSC payments, and the drastic drop in make-whole payments, could result in financial harm to NQS generators.¹³⁴ Further, the IESO confirmed that an NQS generator that is constrained off pre-MRP would receive a CMSC payment even though they are not generating, but post-MRP a generator that is not scheduled under MRP would receive no compensation at all.¹³⁵
114. 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.¹³⁶

VIII. ELEMENT #2: DISCRIMINATION HAS BEEN QUANTIFIED

115. All the prior section 33 *Electricity Act, 1998* cases dealt with discrete changes to the Market Rules. Whereas the MRP Amendments represent fundamental and significant changes to the participation, commitment, dispatch, and settlement of NQS generators in the IESO-administered market.¹³⁷ The Market Rules have been entirely rewritten.
116. Requiring the NQS Generation Group to model the impact of all aspects of an entirely new market within a the timelines of this proceeding may not be reasonable or practicable, especially considering the lack of public data, the IESO’s refusal to provide such data,¹³⁸ and

¹³³ IESO Submission at para 109.

¹³⁴ Oral Hearing T1P155L15-23.

¹³⁵ Oral Hearing T1P157L25 to T1P158L6.

¹³⁶ NQS AIC at page 25. Oral Hearing T3P41L24 to T3P42L2.

¹³⁷ Power Advisory Expert Report at para 16.

¹³⁸ Decision and Procedural Order No. 2, December 2, 2024, at pages 9-11.

the IESO acknowledging it has never performed this analysis over the past decade.¹³⁹ The OEB recognized in the AMPCO decision that quantification will be based on estimates and assumptions:¹⁴⁰

Third, the claim of discrimination cannot be purely qualitative; it must have some quantitative aspect to it. The OEB appreciates that as the Amendments are prospective, **quantification will be based on estimates and assumptions about the operation of the market**, but within that context, the OEB requires adequate information on the nature and extent of the economic impacts in order to make a finding of unjust discrimination. [Emphasis added]

117. The Power Advisory report complies with this directive of the OEB when generating the principal findings that the market impact to the entire NQS Generation Group would be more than \$140 million from the MRP Amendments and \$250 million from the contracts over the 6-year time frame of 2018-2023. Power Advisory quantified these amounts based on estimates and assumptions about the operation of the market pre- and post-MRP. The Power Advisory report concludes that nearly all of the changes implemented by MRP will primarily impact NQS Generators, while having limited to no financial impact on other supply resources.¹⁴¹ The Power Advisory report states that other market participants with different supply resources in the IESO-administered market will not face a similar level of financial risk as the NQS generators will, based on the MRP Amendments.¹⁴²
118. The IESO challenges Power Advisory's quantification of \$140 million in economic harm to the NQS Generation Group from the MRP Amendments on the following incorrect bases: (1) a proxy generator, fictional commitments (properly referred to as a "back-cast"), and "black box" analysis (properly referred to as a proprietary market model); (2) the decision by the OEB in AMPCO demand response proceeding; (3) unfair critiques of the Power Advisory evidence; and (4) not accounting for certain risks.¹⁴³

A. Power Advisory's Back-cast and Proprietary Market Model Are Appropriate

119. For responses to the critiques by the IESO on the Power Advisory back-cast and proprietary market model,¹⁴⁴ please refer to Section IV above.
120. Regarding the assertion that the Power Advisory prepared a "barebones expert's report" with the intent of expanding upon the reasons for the expert's opinion during his or her

¹³⁹ NQS AIC at paras 59-60.

¹⁴⁰ Decision and Order EB-2019-0242, January 23, 2020, at page 10.

¹⁴¹ Power Advisory Expert Report at paras 18 & 35.

¹⁴² Power Advisory Expert Report at para 19.

¹⁴³ IESO Submission at paras 48, 111-115.

¹⁴⁴ IESO Submission at paras 111-112 & 114.

testimony”.¹⁴⁵ There are no facts in this case to support this conclusion, nor does the IESO provide any. The IESO has surgically extracted from the case a portion of a larger discussion in which the court reviews the caselaw speaking to the relevant legal principles. The court explains that the task of the decision-maker is to balance the need to prevent a party from being “taken by surprise” with the “risk of excluding relevant opinion evidence” which threatens the ability of the decision-maker to come to a just verdict.¹⁴⁶ The expert “is not bound by the four corners of the written report”¹⁴⁷ and may “explain and amplify” on matters that are “latent in” or “touched on” by the report”¹⁴⁸ Where the other party is not taken by surprise by the expert’s testimony, the expert is permitted to testify beyond their expert report.¹⁴⁹

B. AMPCO Decision (EB-2019-0242)

121. For responses to the arguments used by the IESO from AMPCO demand response proceeding, please refer to Section IV above.
122. The OEB’s assessment of the Power Advisory evidence must also consider that it denied certain information requested in Schedule A of the Application twice that the IESO is now using against the NQS Generation Group. The NQS Generation Group expressly requested the following information from the IESO in Schedule A of the Application that may be within the scope of this proceeding:

1(g) Annual savings from changes to in the design and settlement of commitment programs for NQS generators;

1(h) The dispatch and commitment of NQS generators in the energy market under the current Market Rules compared to the MRP Amendments;

1(i) The impact of financial settlement using Make Whole Payments (MWPs) compared to Congestion Management Settlement Credits (CMSCs) for NQS generators;

1(k) The number of instances when assets – NQS and other non-NQS assets – will be dispatched out of economic merit based on incremental energy offers;

2(a) how the MRP Amendments impact the scheduling and dispatch of market participants;

¹⁴⁵ IESO Submission at footnote 164, citing *Sean Omar Henry v Dr. Marshall Zaitlen*, 2022 ONSC 214, at para 18-19.

¹⁴⁶ *Sean Omar Henry v Dr. Marshall Zaitlen*, 2022 ONSC 214, at paras 17, 20.

¹⁴⁷ *Sean Omar Henry v Dr. Marshall Zaitlen*, 2022 ONSC 214, at para 17.

¹⁴⁸ *Sean Omar Henry v Dr. Marshall Zaitlen*, 2022 ONSC 214, at paras 15-17.

¹⁴⁹ *Hacopian-Armen Estate v Mahmoud*, 2021 ONCA 545, at paras 79, 85.

2(b) Updates to the original benefits case for MRP and the current savings that are expected from the MRP Amendments;

2(e) The financial impact (negative or positive) on changes to NQS and non-NQS Market Participants as a result of the MRP Amendments.

C. IESO Identified Risks

123. The IESO criticizes Power Advisory for not analyzing three risks it identifies¹⁵⁰. The IESO does not provide any evidence or reasoning on why these risks are material. The MRP Amendments are implementing an extensive MPM framework that currently does not exist and will negatively impact NQS Generators. NQS Generators will be disproportionately impacted by the MPM framework given they are likely to experience mitigation back to reference levels that do not result in infra-marginal rents in the IESO-administered market.¹⁵¹

IX. ELEMENT #3: DISCRIMINATION AGAINST THE NQS GENERATION GROUP IS UNJUST

124. Contrary to the positions taken by the IESO and SEC,¹⁵² a determination of whether the MRP Amendments are “unjust” is a legal determination under section 33 of the *Electricity Act, 1998* and the OEB cannot fetter its discretion to make this determination. It is not appropriate for an independent expert like Power Advisory to weigh in on legal matters that should be left for the OEB Panel to determine.
125. The IESO further asserts that the NQS Generation Group has not provided any evidence showing the alleged discrimination is unjust.¹⁵³ The IESO argues that to the extent the MRP Amendments discriminate against the NQS Generation Group, such discrimination is justified because the MRP amendments will improve overall market efficiency.¹⁵⁴ The NQS Generation Group does not agree.
126. As set out in the Argument in Chief,¹⁵⁵ the NQS Generation Group will suffer economic discrimination in four areas: (1) replacing the DACP and pre-dispatch with DAM and ERUC; (2) replacing the RT-GCG program with the GOG program; (3) imposition of a significantly expanded MPM framework; and (4) elimination of CMSC payments. Power Advisory concluded that the MRP Amendments result in very different outcomes for how non-NQS generation resources are able to interact with the IESO-administered market when compared to NQS generators.¹⁵⁶

¹⁵⁰ IESO Submission at para 115.

¹⁵¹ Power Advisory Report at para 58(a).

¹⁵² SEC Submission at para 30; IESO Submission at paras 51 & 116.

¹⁵³ IESO Submission at para 116.

¹⁵⁴ IESO Submission at para 117.

¹⁵⁵ NQS AIC at pages 13-25.

¹⁵⁶ Oral Hearing T2P87L10 to T2P89L20.

127. The column in the table provided in the Argument in Chief titled “Consequence to NQS Class” and the discussion throughout this argument particularize the unjustly discriminatory harms to the NQS Generation Group resulting from MRP. The MRP Amendments result in unjust economic discrimination against the NQS Generation Group in a manner and degree that no other generation resources will suffer, and such discrimination has not been justified by a difference in circumstances.
128. The unjust aspect is that the NQS Generation Group will be disproportionately affected by the MRP Amendments when compared to other generation resources. This fact featured prominently throughout the Power Advisory expert report¹⁵⁷

The financial harm imposed on the NQS Generators is not imposed to similar extent – or at all – on other supply resources (e.g., hydroelectric, nuclear, wind and solar generators, etc.) and Market Participants (“MPs”). To Power Advisory’s knowledge, the IESO has not released an extensive analysis to suggest it has considered the financial impact of the MRP Amendments on different supply resources, including NQS Generators. [...]

Section 6 provides a detailed analysis on the financial harm that the MRP Amendments will impose on the NQS Generators. This section also includes **an overview of the potential financial harm – or lack thereof – facing other MPs from the MRP Amendments.** [...]

In multiple ways, the Ontario government has highlighted the importance of the NQS Generators in meeting its electricity and non-electricity (e.g., economic development) policy objectives. The MRP Amendments counteract this policy support **by introducing financial harm that is not being equally applied to other MPs within the IAM or to potential future MPs through current electricity supply procurement processes** being undertaken by the IESO to contract for needed supply resources (e.g., re-contracting operating generators, contracting new generation and storage projects) [...]

Other MPs with different supply resources in the IAM will not face a similar level of financial risk as the NQS Generators will, based on the MRP Amendments. These supply resources will either have the exclusive privilege of making use of additional operational constraints that they can impose on the MRP’s calculation engines (as applicable to specific hydroelectric generators) – without the threat of mitigation that applies to every operational and financial parameter for NQS Generators – or will have their contracts amended to account for the financial harms imposed by the MRP Amendments (as applicable to wind and solar generators). [...]

¹⁵⁷ Power Advisory Expert Report at paras 2, 7, 9, 19, 27, 52 & 61.

Nearly all of these changes will primarily impact NQS Generators, while having limited to no financial impact on other supply resources.
[...]

Taken in their entirety, the MRP Amendments result in significant financial implications for the NQS Generators in multiple areas. When viewed collectively, the financial impact will be negative. **Many of the financial implications described throughout this section are targeted specifically at NQS Generators and will not be applied to other MPs participating in the IAM.** [...]

NQS Generators are being treated differently under the MRP Amendments than other supply resources (e.g., nuclear, hydroelectric, wind and solar generation, energy storage, imports, and dispatchable loads). Due to the difference in treatment, **NQS Generators face a greater negative financial impact than other resource types as a result of the MRP Amendments.** [Emphasis added]

129. Power Advisory expanded upon on how the MRP Amendments are unjustly discriminatory against NQS generators who compete primarily with opportunity cost hydro-electric, imports, oil, wind, solar, peaking gas, biomass, and battery storage.¹⁵⁸ Other generation resources have better control of how they are scheduled and how they produce energy:
- a. With respect to hydro-electric, the MRP Amendments “...allow for hydro-electric generators to exercise those parameters puts them on a better footing to control how they compete against non-quick start generators for dispatch and setting price [...] So we believe the addition of these parameters advantages hydro-electric generation.”¹⁵⁹ Further, hydro-electric resources have better control over responding to demand forecast volatility: “...I can talk about outages, I can talk about failed imports closer to the real-time dispatch hour. And if I marry that to the point I made earlier, with optional parameters to which specific hydro-electric generators can use to better secure their minimum outputs, to better secure when they use their water, the resources that are going to be moved up and down, if they are not committed to the day-ahead, then they are committed through pre-dispatch are the gas-fired generators, they are the non-quick start generators.”¹⁶⁰
 - b. With respect to wind and solar, the MRP Amendments that result in these resources facing “...a potential risk that they are scheduled in the day-ahead process based on the IESO's forecast, if that's the forecast they decided to use. They can use their own. And then in real-time, if they failed to actually deliver the energy that they were forecasted for, they would have to buy back or get to claw back, however you want to phrase it -- we'll go with buy back because that seems less offensive. They

¹⁵⁸ Technical Conference T2P48L9-18.

¹⁵⁹ Technical Conference T2P87L10 to T2P89L20.

¹⁶⁰ Technical Conference T2P94L6-15.

have to buy back the energy, but, due to the term sheet amendments that are published on the IESO's website as a result of MRP, the contract essentially makes them whole to that financial risk. So, while there was a market risk and, actually, it would have been very significant for wind and solar, there was a commensurate off-setting mechanism to deal with that financial risk.”¹⁶¹

130. The MPM is also unjustly discriminatory against NQS generators. As noted in the Power Advisory Expert Report, NQS generators can currently recover their opportunity costs when participating in the current day-ahead commitment process.¹⁶² They will not be able to do so post MRP. In addition, while both hydro-electric and storage resources will have opportunity costs considered when establishing their MPM reference levels, the NQS generation resources will not have opportunity costs considered when establishing their MPM reference levels.¹⁶³ This means the new MPM framework will (1) allow NQS competitors to recover their opportunity costs in the market; while (2) explicitly limiting NQS generators' ability to recover their opportunity costs in the post MRP market.
131. The IESO misquotes the OEB decision in the *3x Ramp Rate* case to suggest that unjust discrimination is permissible where rule amendments deliver efficiency benefits. In this case, the OEB only weighed efficiency in the context of whether the market rule amendment was inconsistent with section 1(a) of the *Electricity Act, 1998* (“responsible planning and management of electricity resources, supply and demand”).¹⁶⁴ Regardless of the objectives the IESO is trying to attain, the MRP Amendments in their present form introduce unjust financial discrimination for NQS generators. This is not permitted under the *Electricity Act, 1998*.
132. SEC cherry picks a single change from the MRP Amendments, which is the replacement of the RT-GCG program with the GOG program, to conclude that the overall impact of the MRP Amendments is not unjustly discriminatory.¹⁶⁵ The analysis in SEC’s example of the RT-GCG program is flawed for the reasons more fulsomely provided in Section VII, but most importantly the IESO acknowledges in its submission that the RT-GCG program was not revenue neutral, and the elimination of this program will harm NQS generators.¹⁶⁶
133. SEC also argues that recent IESO procurements and submission on the Clean Electricity Regulations somehow rebuts the IESO’s statement that the MRP Amendments are “expected to increase non-emitting resources as a proportion of Ontario’s electricity supply.”¹⁶⁷ The fact is that all these procured emitting resources will also be subject to the same unjustly discriminatory MRP Amendments. The IESO’s submission on the Clean Electricity Regulations related to concerns about the “reliability of the provincial electricity system.”

¹⁶¹ Technical Conference T2P130L21 to T2P131L11

¹⁶² Transcript Vol. 2 20250116 at page 34, line 3 to page 35, line 8.

¹⁶³ Transcript Vol. 1 2025015 at page 142, line 20 to page 143, line 16.

¹⁶⁴ Decision and Order EB-2007-0040 at page 23.

¹⁶⁵ SEC Submission 58-59.

¹⁶⁶ IESO Submission at para 22.

¹⁶⁷ NQS AIC at para 57.

134. It is particularly unfair that NQS generators built their facilities under a particular compensation framework in the Market Rules and now that compensation framework is being changed in a way that unjustly discriminates against NQS generators. The NQS Generation Group is not suggesting that the IESO cannot make changes to the Market Rules, but the MRP Amendments are wholesale changes to the entire market that unjustly discriminates against an entire class of generation resources. In the submission of the NQS Generation Group, the MRP Amendments amount to confiscatory regulation from existing captive utility investors.

X. INCONSISTENCY WITH THE PURPOSES OF THE ELECTRICITY ACT

A. *Lack of Compelling Evidence of Ratepayer Benefits of MRP*

135. The IESO cites its MRP Business Case and the IESO Validation Memo to argue that the “IESO’s evidence shows that the MRP Amendments will deliver significant operational, efficiency and reliability benefits.”¹⁶⁸
136. A glaring issue with the IESO’s Business Case is that the underlying analysis has not been produced on the evidentiary record in this proceeding, has not been the subject of any meaningful scrutiny or evidentiary testing, despite the NQS Generation Group’s efforts to elicit this factual information from the IESO multiple times through this proceeding (see, for example, Appendix A, row 8).
137. This goes directly to the credibility of these estimates, which should be afforded little if no weight.
138. What we do know is that the original Brattle 2017 MRP benefits case¹⁶⁹ estimated a net present value of customer benefits arising from MRP ranging from a staggering \$2.2 billion to \$5.2 billion, including an implementation cost of \$200 million. Five years later, the IESO’s 2022 Business Case Benefits Validation Memo now estimates the net benefits of MRP to be \$266 million (a decrease of 84% from the low end of the Brattle estimate) while the implementation costs have increased to \$268 million (an increase of 34% from the Brattle estimate).
139. Further, the IESO has failed to produce any evidence estimating potential cost or saving impacts to market participants, including NQS generators, resulting from MRP for the past decade.¹⁷⁰
140. This was recognized by SEC, which acknowledges that “[w]hile it is possible, even likely, that the IESO has overstated the benefits and understated the costs” of MRP,¹⁷¹ SEC goes

¹⁶⁸ IESO Submissions at para. 93.

¹⁶⁹ Cited at footnote 12 of the Power Advisory Expert Report.

¹⁷⁰ NQS Generation Group AIC at paras 59-61.

¹⁷¹ SEC Submissions at para. 69.

on to raise concerns about the effect of revoking MRP in its entirety. The NQS Generation Group addresses this concern in the request for relief section below.

141. A second glaring issue with the IESO's Business Case is the omission of a key step – identifying alternative options and estimating the costs and benefits for each. There is a spectrum of approaches that could have, and in the NQS Generation Group's submissions, should have been explored in the interests of ratepayers including alternative amendments to the market rules. In the NQS Generation Group's submissions, there are numerous alternative approaches that could have avoided the unjust and discriminatory treatments of the NQS Generation Group.
142. Those alternatives have, to date, not been considered or explored by the IESO.

B. Economic Sustainability of NQS Generators

143. The IESO argues that the NQS Generation's Group's concerns around the economic viability of the NQS generation group is "newly raised" and "should be disregarded."¹⁷²
144. This is simply not true. The NQS Generation Group's concerns around financial viability and inconsistency with Subsections 1(a), (g) and (i) of the *Electricity Act, 1998* were raised since the original Application,¹⁷³ came up again during the prehearing conference,¹⁷⁴ and again through the NQS Generation Group's Motion to Review,¹⁷⁵ and again in AIC.¹⁷⁶ The NQS Generation Group was intentionally specific in the purposes it was citing in its Application to prevent the IESO from making the very claim that it now makes.
145. Unfortunately, the OEB's Decision and Procedural Order No. 2 and its subsequent denial of the NQS Generation Group's Motion to Review limited the ability of the NQS Generation Group to lead further evidence on the impact of the MRP Amendments on the financial viability of NQS Generators because this topic necessarily requires consideration of both market and contractual financial impacts on NQS generators. Since the OEB ruled that contractual impacts were out of scope, and refused to allow evidence of those impacts to be expanded upon, the OEB (perhaps unintentionally?) limited the NQS Generation Group's ability to lead further evidence on this issue.
146. As a consequence, the Power Advisory Expert Report (which shows a further \$250 million in contractual harms) together with Mr. Chee-Aloy's evidence at the oral hearing is the best evidence this panel has available on the impacts of the MRP Amendments on the financial viability of NQS generators. As explained by Mr. Chee-Aloy, and noted at paragraph 86 of the AIC, many of the NQS generators are project financed with significant debt sized to expected net revenues. To the extent those net revenues are reduced through MRP and

¹⁷² IESO Submissions at paras. 102-103.

¹⁷³ NQS Generation Group, Application for Review of Market Rules, at paras 32-33.

¹⁷⁴ Pre-Hearing Conference Transcript 20241126 at page 58, lines 23-28 and page 121, lines 2-13.

¹⁷⁵ Notice of Motion dated December 23, 2024.

¹⁷⁶ AIC at paras. 85-86.

through the contracts, the Debt-Service Coverage Ratios of those projects may very well drop below allowable limits, triggering harmful credit provisions.

147. Taken together with the fact that a majority of owners of NQS generators in Ontario felt that this issue was important enough to file and prosecute this Application with the OEB and incur both the cost and expense of this process, should clearly signal that the concerns around financial viability are legitimate and not overstated.

C. Cleaner Energy Sources and Technologies

148. The IESO argues that the net result of MRP is a reduction in natural gas fired generation is “unsubstantiated” and that the evidence does not support this claim.¹⁷⁷
149. This not only stands in stark contrast the IESO’s clear and unambiguous wording of the responses to 4.0-ED-10(b) and 4.0-ED-3(a) filed as Exhibit K1.1 (and put to the IESO’s witnesses during cross-examination), but it is also ignores the Power Advisory Expert Report and the evidence from the IESO’s own witnesses that NQS generators will receive fewer commitments following MRP.¹⁷⁸
150. In this context, SEC argues that since MRP has been a central element of the IESO Business Plans, and since those require approval of the Minister of Energy and Electrification, that MRP certainly cannot be inconsistent with the policies of the Government of Ontario.¹⁷⁹
151. The problem with this argument is that, as has been proven out in this Application, the IESO has not undertaken any analysis of its own of the financial or discriminatory impacts of the MRP Amendments on any classes of market participants. As a consequence, it is difficult to imagine a situation where the Minister of Energy and Electrification has previously been briefed by the IESO of the harms that will be suffered specifically by the NQS Generation Group.

XI. IESO WITNESSES

152. The IESO did not seek to have its witnesses qualified as experts but rather as “fact witnesses who have expertise.”¹⁸⁰ The IESO has provided absolutely no rationale why it could not, like the NQS Generation Group did do, retain an independent third-party expert to provide opinion evidence to the extent the IESO thought that opinion evidence was necessary. For example, in 2017 the IESO retained Brattle to author the original MRP benefits case.
153. The NQS Generation Group has previously asserted three concerning aspects of the IESO witnesses’ testimony. The first is that the IESO witnesses are not independent, which was

¹⁷⁷ IESO Submissions at paragraphs 104-105.

¹⁷⁸ AIC at paras 50-51.

¹⁷⁹ SEC Submissions at para 75.

¹⁸⁰ AIC, at para 34. See also Decision and Procedural Order No. 4, January 14, 2025, pg. 7.

adequately established in the NQS Generation Group's AIC.¹⁸¹ The second is that they are unqualified fact witnesses providing opinion evidence outside of known exceptions. The third issue is their inconsistent and evasive testimony.

154. Regarding the first issue, the IESO attempts to rebut the lack of independence by misapplying the rule in *Browne v Dunn*. This rule requires a cross-examiner to grant the witness a fair opportunity to comment on any evidence that the cross-examiner may call that tends to contradict the version of the facts the witness has provided. The statement cited by the IESO does not establish that a contradiction exists as Mr. Matsugu only refers to exceptional "bonuses" or "performance pay" in this excerpt.¹⁸²
155. A proper reading of the oral hearing transcript shows that Mr. Nusbaum confirmed that job performance is evaluated in relation to MRP targets and key performance indicators.¹⁸³ Mr. Matsugu also confirmed he has job "performance objectives around completing certain work" in relation to MRP.¹⁸⁴ The figure at paragraph 37 of the Argument in Chief shows the specific MRP key performance indicator referred to by Mr. Nusbaum and Mr. Matsugu that is tied to MRP. The IESO confirmed that this MRP key performance indicator "represents company-wide measures and targets" but does not explain why a "company-wide" measure and target would not apply to Mr. Matsugu and Mr. Nusbaum.¹⁸⁵ Indeed, the IESO expressly states in its 2023 Annual Report that performance measures have a direct impact on IESO executive compensation.¹⁸⁶

Performance Measures and Impact on Compensation

The IESO establishes corporate performance measures aligned with its business priorities during its annual business planning process. These are approved, monitored and assessed by the Board each year. Individual performance measures supporting one or more corporate performance measures are also developed for each executive. As outlined previously, the corporate results achieved each year impact each executive's variable pay.

For 2023, the Board assessed the corporate results and determined that, overall, the IESO achieved expectations for the measures and targets specified. In addition to the corporate measures, each executive had an individual set of measures and targets aligned with the corporate performance objectives and the IESO's business priorities, which were similarly assessed. The Board assessed the results of the CEO, and the CEO assessed the performance of the vice-presidents, which were also reviewed with the Board.

¹⁸¹ AIC at paras 36-37; para 36 cites Technical Conference T1P91L18 to T1P92L26. In the IESO Closing Argument, at para 89, the IESO seems to confound employment compensation with employment evaluation. Mr. Matsugu and Mr. Nusbaum both have performance objectives tied to MRP, confirmed during the Technical Conference, see T1P82L12-24.

¹⁸² Technical Conference T1P92L21-24.

¹⁸³ Technical Conference T1P91L28 to T1P92L5.

¹⁸⁴ Technical Conference T1P92L11-24.

¹⁸⁵ IESO Submission at para 90.

¹⁸⁶ EB-2024-0004, Exhibit B-1-6 2023 Annual Report and Audited Financial Statements Page 44 of 50.

156. The NQS Generation Group asks the OEB to weigh this lack of independence when considering the evidence from Mr. Nusbaum and Mr. Matsugu.
157. Regarding the second issue – it is a fundamental rule that the admission of opinion evidence from experts “is an exception to the general rule barring opinion evidence”.¹⁸⁷ Procedures for qualifying experts includes procedural safeguards meant to ensure that evidence from competent and unbiased experts is placed before the decision-makers.
158. In the IESO Submission at paragraphs 72-77, the IESO asserts two exceptions to this rule in putting forward Mr. Matsugu and Mr. Nusbaum as “fact witnesses who have expertise”.¹⁸⁸ The first is the “compendious statement of facts” exception which is intended to permit a lay person (i.e. a fact witness), to testify “in the form of an opinion if, by doing so, he is able more accurately to express the facts he perceived.”¹⁸⁹
159. The Supreme Court of Canada provided a clear boundary on a fact witness’ evidence, in the context of police officers providing evidence as to the accused’s state of impairment, stating:
- ”a[n] ordinary witness may give evidence of his opinion as to whether a person is drunk. This is not a matter where scientific, technical, or specialized testimony is necessary in order that the tribunal properly understands the relevant facts.”*¹⁹⁰
160. Certainly, opinions on the predicted efficiency of a newly designed electricity market – with key differences to the closest comparables by virtue of being a hybrid market – falls outside of these bounds. Fact witnesses are further limited to providing evidence of which they have firsthand knowledge.¹⁹¹ According to their curricula vitae, both Mr. Matsugu and Mr. Nusbaum have limited firsthand knowledge of the MRP. Mr. Matsugu worked on MRP from 2017 to 2021 and Mr. Nusbaum’s current role with MRP began in 2023.
161. The second exception asserted by the IESO is that of a participant expert - “a witness with special skill, knowledge, training, or experience who has not been engaged by or on behalf of a party to the litigation”¹⁹² and whose relevant opinions were formed as “part of the ordinary exercise of his or her skill, knowledge, training and experience while observing or participating in such events.”¹⁹³ Participant witnesses are differentiated from fact witnesses

¹⁸⁷ Alan W. Bryant, Sidney N. Lederman & Michelle K. Fuerst’s, *The Law of Evidence in Canada*, 6th ed. (Toronto: LexisNexis, 2022), ss. 12.2, 12.39. See also *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23, at paras 14, 15.

¹⁸⁸ Decision and Procedural Order No. 4, at pg. 7.

¹⁸⁹ *Graat v The Queen*, [1982] 2 SCR 819 [*Graat*], at pg. 837. See also the explanation in *Graat* at pg. 840 for the “compendious statement of facts” exception.

¹⁹⁰ *Graat*, at pg. 838.

¹⁹¹ Alan W. Bryant, Sidney N. Lederman & Michelle K. Fuerst’s, *The Law of Evidence in Canada*, 6th ed. (Toronto: LexisNexis, 2022), s. 12.40.

¹⁹² *Westerhoff v Gee Estate*, 2015 ONCA 206, para 60.

¹⁹³ *Starra v Starra*, 2024 ONSC 6613, at para 30.

by their specialized skill but are still limited to their involvement in the matter, and beyond those limits, a witness must be properly qualified.¹⁹⁴

162. The boundary between admissibility of opinion evidence by experts and non-experts is as follows:

*“There is no half-way house of opinion evidence. Either the matter is one in which we permit ordinary witnesses to opine on because we recognize that their opinion is essentially comprised of a compilation or collation of regular everyday observations that would otherwise be difficult to articulate, or the opinion is one that should be offered by a duly qualified expert because it requires specialized knowledge that ordinary people may not possess.”*¹⁹⁵

163. In practical terms, the courts have differentiated between admissible evidence from doctors with firsthand knowledge about the treatment of their patients – which is admissible¹⁹⁶ – and that of paramedics and police officers opining on the causation of an injury – which is inadmissible.¹⁹⁷
164. The application of this principle as it applies to an economist or engineer working in the field of electricity markets aligns more with the paramedics and police officers than that of physicians. Although the IESO fact witnesses may have the appropriate general expertise of electricity markets, this cannot be assumed in the same way that a licensed doctor’s training in a specific area of specialty or with a specific patient’s treatment can be. For instance, to become a cardiac surgeon, there is a clear training path and certain assumptions can be made based on that training path. The same is not true for an understanding of electricity markets or the extent of knowledge and experience needed to understand the impacts of the MRP Amendments, hence the need for, and existence of, an expert qualification procedure.
165. The key issue with weighing evidence from participant witnesses is the scope of their firsthand engagement with the matter,¹⁹⁸ which is limited for the IESO’s “fact witnesses who have expertise”, as discussed above. Evidence going beyond the scope of a participant expert’s expertise is not allowed and should be afforded little, if any, weight.¹⁹⁹
166. Further, as the “evidence approaches the central issues that the court must decide, one can still expect an insistence that the witnesses stick to the primary facts and refrain from giving their inferences. It is always a matter of degree.”²⁰⁰ As discussed in the NQS Generation

¹⁹⁴ *Westerhoff v Gee Estate*, 2015 ONCA 206, para 61-63.

¹⁹⁵ *R v Hayatibahar*, 2022 ONSC 3692, at para 97.

¹⁹⁶ *Westerhoff v Gee Estate*, 2015 ONCA 206 at para 70.

¹⁹⁷ *R v Hayatibahar*, 2022 ONSC 3692, at para 96-97.

¹⁹⁸ *Starra v Starra*, 2024 ONSC 6613, at para 24; *Slover v Rellinger*, 2019 ONSC 6497, at paras 323-330.

¹⁹⁹ *Starra v Starra*, 2024 ONSC 6613, at paras 21, 25, 30; *Talluto v Marcus*, 2016 ONSC 3340, at paras 21-22.

²⁰⁰ Alan W. Bryant, Sidney N. Lederman & Michelle K. Fuerst’s, *The Law of Evidence in Canada*, 6th ed. (Toronto: LexisNexis, 2022), s. 12.15 (“**Bryant et al**”). See also *R v Kruk*, 2024 SCC 7, at para 149, citing Bryant et al.

Group's Argument in Chief, the "[o]pinions provided by Mr. Matsugu and Mr. Nusbaum go to the central issues that the OEB must decide". However, they were not qualified as expert witnesses.²⁰¹ Due to the limited participation of the IESO witnesses in the long history of MRP, we request that their evidence be afforded little weight.

167. The IESO Submission also cites OEB proceedings in which opinion was given and accepted by fact witnesses. Other matters where other parties either mutually agreed or did not object to the admission of different evidence by different fact witnesses related to different issues are irrelevant to the current proceeding.²⁰² As discussed in the NQS Generation Group Argument in Chief, "neither the OEB or court has previously recognized Mr. Matsugu and Mr. Nusbaum as experts."²⁰³ With respect to the subject matter of the current proceeding, "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."²⁰⁴
168. Regarding the third issue - the IESO denies that Mr. Matsugu was evasive under cross examination by Mr. Vellone, however, the transcripts from both the Technical Conference and Oral Hearing are replete with examples where straightforward questions consumed multiple pages of transcript.²⁰⁵ The NQS Generation Group requests that evasive testimony be weighed accordingly.
169. In summary, the IESO witnesses were not qualified as experts and lack independence. The evidence that Mr. Matsugu and Mr. Nusbaum can provide is limited to their firsthand involvement with the matter at hand. The only independent, unbiased evidence provided by qualified expert witnesses presented during this proceeding is that provided by Power Advisory and in the Power Advisory Expert Report.

XII. REQUESTED RELIEF

170. Parties in this proceeding appear to be concerned that revoking the MRP Amendments would "eliminate all the projected benefits" for ratepayers and "leave them solely responsible to bear the substantial costs."²⁰⁶ To be clear, the NQS Generation Group is not looking to undermine implementation of MRP.

²⁰¹ AIC, at para 31.

²⁰² For example, see the IESO Submission, at para 78.

²⁰³ AIC, at para 31.

²⁰⁴ AIC, at para 31.

²⁰⁵ Oral Hearing, T1P115L14-T1P119L8, T1P122L4-P127L11, T1P134L28-P138L2, T1P139L20-P142L21, T2P16L9-P19L14, T2P21L16-P22L24, T2P25L14-P27L15, T2P27L16-P30L7, T2P37L26-P39L28, T2P40L20-P48L4, T2P48L4-P50L25; Technical Conference T1P11L19-P15L8, T1P15L9-T1P20L14, T1P41L1-P44L11, T1P46L2-P47L21, T1P47L21-P50L3, T1P51L20-P54L11, T1P56L20-P59L14, T1P59L20-P61L6, T1P61L7-P64L8, T1P67L19-P69L28, T1P72L26-P79L5.

²⁰⁶ SEC Submission at paras 11 & 68. CCC Submission at page 2.

171. To maintain MRP implementation on May 1, 2025, the NQS Generation Group notes the OEB has the discretion under Section 33(9) of the *Electricity Act, 1998* to set the date on which the MRP Amendments are to be revoked.²⁰⁷

(9) If, on completion of its review, the Board finds that the amendment is inconsistent with the purposes of this Act or unjustly discriminates against or in favour of a market participant or class of market participants, the Board shall make an order,

(a) revoking the amendment on **a date specified by the Board;**
[...] [Emphasis added].

172. If the OEB finds in favour of the NQS Generation Group that the MRP Amendments are unjustly discriminatory and inconsistent with the purposes of the *Electricity Act, 1998*, the NQS Generation Group recommends that the OEB set a date that is 24 months in the future to effect the revocation of the MRP Amendments. This would provide sufficient time for the IESO to address the OEB's findings on unjust discrimination while also allowing MRP to proceed in the interim as planned.

173. The NQS Generation Group reiterates its request for relief in the Argument in Chief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18TH DAY OF FEBRUARY, 2025

BORDEN LADNER GERVAIS LLP

Per:

John Vellone
Counsel to NQS Generation Group

²⁰⁷ *Electricity Act, 1998*, s.33(9)(a).

APPENDIX A

Table 1 – Summary of the IESO’s Lack of Cooperation in Providing Evidence

	IESO’s Criticism of NQS Generation Group’s Evidence of Harm	Request for IESO Data and Analysis	IESO’s Response
1	Applicants’ evidence does not include actual pre-dispatch commitments that the Applicants have received in the current market that they anticipate will be reduced by the introduction of three-part offers and multi-hour optimization in pre-dispatch; ²⁰⁸	The Applicant requested the IESO’s materials, analysis, correspondence, and records related to the dispatch, commitment and scheduling of NQS generators in the energy market under the current Market Rules compared to the MRP Amendments, the annual savings from changes to the design and settlement of commitment programs for NQS generators, and the number of instances when assets – NQS and other non-NQS assets – will be dispatched out of economic merit based on incremental energy offers. ²⁰⁹	The IESO refused to provide the requested information ²¹⁰ and further refused to produce any data or evidence that the Applicants’ will not suffer financial harm to reduced commitments and dispatch when asked during the Technical Conference so that the offered opinion evidence could be tested. ²¹¹
2	The Power Advisory Report fails to provide any quantitative analysis that Power Advisory says will cause adverse financial impacts to NQS generators ²¹² related to the 27 hour Look Ahead Period (LAP). ²¹³	The Applicants further asked the IESO for any data or analysis to justify their claim that the 27-hour look-ahead period offers greater financial and operational certainty to market participants, especially NQS generators, or that there would not	The IESO was evasive when asked during the Technical Conference and ultimately did not produce the requested information. ²¹⁵

²⁰⁸ IESO Submission, at para 48(a), citing Oral Hearing T2P192L10-P193L6; Oral Hearing T3P47L12-P48L3.

²⁰⁹ Application, Schedule A, 1.g-h,k, 2.a. The Applicant reiterated its request in its letter to the OEB, dated November 14, 2024 and in the NQS Generation Group Pre-hearing Conference Submission, pg. 11.

²¹⁰ IESO Letter, dated November 11, 2024, at pg. 3; IESO’s Written Submissions in Advance of November 26, 2024 Pre-Hearing Conference, Appendix A, pg. 2, 5. The IESO objected to the information request in the NQS Generation Groups’ Application because:

1. The onus is on the NQS Generation Group to lead evidence to satisfy the statutory tests under the subsection 33(9).4;
2. this is a review proceeding
3. there were extensive underlying market rule amendment and stakeholder processes that they were undertaken by the IESO as part of MRP;
4. because of the incredibly broad scope of the MRP Amendments that the Applicants seek to have reviewed;
5. The information is publicly available; and
6. The information request pertains to the IESO’s analysis and decision-making as part of the process of making the MRP Amendments, which is outside of the Board’s mandate in a section 33 review.

²¹¹ Technical Conference T1P31L1-P33L13, citing IESO Responding Evidence, P4L16-17.

²¹² IESO Submission at para 115, citing Power Advisory Expert Report at paras 48, 51, 52, 58-60.

²¹³ IESO Submission, at para 115.

²¹⁵ Technical Conference T1P41L1-P44L11; Technical Conference T1P59L20-P61L6, citing IESO Responding Evidence, P12L1-2.

		be negative financial consequences to NQS resources during the Technical Conference. ²¹⁴	
3	Applicants’ evidence does not include the amount of wholesale market revenues the Applicants receive in the current market that will be included in the calculation of the RT-GOG (i.e. revenues for providing operating reserve or operating a facility above its MLP or beyond its MGBRT). ²¹⁶	The Applicant requested the IESO’s materials, analysis, correspondence, and records related to the impact of MRP on how the IESO compensates market participants under MRP for facility startup costs currently recovered in the RT-GCG program. ²¹⁷	The IESO refused to provide the information requested ²¹⁸ and further produced no analysis to support its claim that NQS generators will be negatively financially impacted by the replacement of the RT-GCG program with the RT-GOG program. ²¹⁹
4	Applicants’ evidence does not include the wholesale energy and operating reserve revenues the Applicants receive in the current market which they claim will be impacted by the introduction of ex ante mitigation under the new MPM framework. ²²⁰	The Applicant requested the dollar amount of ex-ante mitigation or ex-post settlement adjustments under the DACP’s current MPM framework during the Technical Conference at which time undertaking JT1.7 was refused. ²²¹	The Applicant had to file a motion to compel ²²² to force the IESO to provide the requested information. ²²³

²¹⁴ Technical Conference T1P41L1-P44L11; Technical Conference T1P59L20-P61L6, citing IESO Responding Evidence, P12L1-2.

²¹⁶ IESO Submission, at para 48(d), citing Technical Conference T2P160L6-27; Oral Hearing T2P155L26-P156L14.

²¹⁷ Application, Schedule A, 1.c.; Applicants’ letter to the OEB dated November 14, 2024; NQS Generation Group Pre-hearing Conference Submission, pg. 11.

²¹⁸ IESO Letter, dated November 11, 2024, at pg. 3; IESO’s Written Submissions in Advance of November 26, 2024 Pre-Hearing Conference, Appendix A, pg. 2, 5. The IESO objected to the information request in the NQS Generation Groups’ Application because:

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4. because of the incredibly broad scope of the MRP Amendments that the Applicants seek to have reviewed; and
5. The information is publicly available.

²¹⁹ Technical Conference T1P67L19-P69L28, citing IESO Responding Evidence, at pg. 22, lines 11-14.

²²⁰ IESO Submission, at para 48(e), citing Technical Conference T2P54L7-18.

²²¹ Technical Conference T1P72L26-P79L5.

²²² NQS Generation Group Notice of Motion, dated January 14, 2025, at pg. 2.

²²³ Decision and Procedural Order No. 4, dated January 14, 2025, pg. 8; IESO Responses to Undertakings, dated January 21, 2025, JT1.7.

5	Applicants’ evidence does not include the CMSC revenues the Applicants receive in the current market that will not be part of the “make-whole” payments under the MRP Amendments. ²²⁴	The Applicants requested the IESO’s materials, analysis, correspondence, and records related to the impact of financial settlement using make whole payments compared to CMSCs for NQS generators. ²²⁵	The IESO refused to provide the information requested. ²²⁶
6	Applicants’ evidence does not include the Applicants’ internal rates of return, debt-service ratios, return on equity assumptions, credit ratings or other matters that would inform their future investment decisions. ²²⁷	<p>The Applicants attempted to elicit information from the IESO witnesses regarding the effect of changes to the Market Rules and programs like the RT-GCG program on investment risk, but the IESO was uncooperative.²²⁸</p> <p>The Applicants also introduced evidence related to the impact of the MRP Amendments on investment decisions.²²⁹</p>	The IESO was uncooperative in responding to the Applicants’ request. ²³⁰
7	Power Advisory’s evidence does not account for reduced commitments for one NQS generator being picked up by another NQS generator - that competition amongst NQS generators – i.e. between more competitive/efficient NQS generators and less competitive/efficient NQS generators –	The Applicant asked the IESO for any analysis or data they had to justify their claim that NQS generators will primarily compete with other NQS generators such that loss of a commitment will be gain to another, in order to test the opinion evidence provided. ²³²	<p>The IESO has not done any analysis to back up their claim that NQS generators only compete with other NQS generators.²³⁴</p> <p>When asked about specific supply resources as competitors, the IESO was evasive.²³⁵</p>

²²⁴ IESO Submission, at para 48(f), citing Oral Hearing T3P41L24-P42L10.

²²⁵ Application, Schedule A, 1.i; Applicants’ letter to the OEB dated November 14, 2024; NQS Generation Group Pre-hearing Conference Submission, pg. 11.

²²⁶ IESO Letter, dated November 11, 2024, at pg. 3; IESO’s Written Submissions in Advance of November 26, 2024 Pre-Hearing Conference, Appendix A, pg. 2, 5. The IESO objected to the information request in the NQS Generation Groups’ Application because:

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²²⁷ IESO Submission, at para 48(g), citing Oral Hearing T2P171L18-P172L10; Oral Hearing T3P63L20-P64L17.

²²⁸ Oral Hearing T1P146L2-P149L27.

²²⁹ Oral Hearing T2P141L17-P142L20.

²³⁰ Oral Hearing T1P146L2-P149L27.

²³² Technical Conference T1P33L14-P36L7, citing IESO Responding Evidence, at pg. 4, lines 16-17; Technical Conference T1P61L7-P64L8, citing IESO Responding Evidence , at pg. 13, lines 17-25.

²³⁴ Technical Conference T1P33L14-P36L7, citing IESO Responding Evidence, at pg. 4, lines 16-17; Technical Conference T1P61L7-P64L8, citing IESO Responding Evidence , at pg. 13, lines 17-25.

²³⁵ Oral Hearing T1P82L12-P88L25.

	so the NQS generators as a class will not be uniformly impacted. ²³¹	The Applicant also attempted to elicit information from the IESO witnesses related to hydro-electric generators, storage and imports as sources of competition outside of the NQS class of generators. ²³³	
8	<p>Power Advisory did not, as required by Rule 13A.03, disclose in its Report the specific information upon which its opinion is based, including a description of the factual assumptions made and research conducted, and a full list of the documents relied upon in preparing the evidence.²³⁶</p> <p>Similar claim - Power Advisory failed to “show its work” in calculating the annual financial impact on the proxy generator.²³⁷</p>	<p>The Applicant requested, by undertaking JT1.1, that the IESO “produce the data and analysis used to support its market participant data calculations, together with any explanations” for the \$190M benefit claimed in the IESO’s 2019 Business Case and 2022 Validation Memo due to more efficient commitments under MRP.²³⁸</p> <p>The Applicant further requested, by undertaking JT1.2, specific details of the analysis of the 1,300 commitments reviewed by the IESO in estimating the benefit from enhanced commitment under MRP.²³⁹</p> <p>The Applicant also asked if the IESO had or would be willing to conduct an analysis of financial harms to NQS generators using the data from the \$190 million estimated benefit from the improved commitment efficiency of MRP and the Power Advisory methodology.²⁴⁰</p>	<p>The IESO refused undertaking JT1.1 and only provided a portion of the requested information following oral submissions and decision by the Panel.²⁴¹</p> <p>Undertaking JT1.2 and the subsequent request for analysis was likewise refused.²⁴²</p> <p>The additional request for the IESO to conduct an analysis of financial harms using the IESO’s data and Power Advisory’s method was refused.²⁴³</p>

²³¹ IESO Submission, at para 53(c),(e); IESO Responding Evidence, pg. 4, lines 19-23.

²³³ Oral Hearing T1P82L12-P88L25.

²³⁶ IESO Submission, at para 57.

²³⁷ Technical Conference T2P144L23-P148L5; Hearing Transcript T2P197L15-P198L14.

²³⁸ Technical Conference T1P12L24-P15L4.

²³⁹ Technical Conference T1P15L9-P16L2.

²⁴⁰ Technical Conference T1P16L3-P20L14.

²⁴¹ Technical Conference T1P12L24-P15L4.

²⁴² Technical Conference T1P15L9-P16L2.

²⁴³ Technical Conference T1P16L3-P20L14.

9	Power Advisory based its analysis entirely on a “proxy generator” and “fictional commitment[s]” and did not seek to ground that analysis using the operational parameters of the Applicants’ facilities or actual commitments because Power Advisory considered such data to be “commercially sensitive”. ²⁴⁴	The Applicant requested the IESO’s information related to the financial impact (negative or positive) on changes to NQS and non-NQS market participants as a result of the MRP Amendments. ²⁴⁵	The IESO refused to provide the requested information. ²⁴⁶
10	Power Advisory’s estimated \$23 million annual financial impact on the Applicants is based on a historical analysis of the Amendments had they been in force for the 2018 to 2023 period, which inherently presents an inaccurate and speculative forecast given that future market conditions, dynamics, and outcomes under MRP will differ from these historical circumstances. ²⁴⁷	To estimate the benefits from the enhanced unit commitment process (i.e. \$190 million), the IESO used a similar historical analysis. ²⁴⁸	The IESO claimed that “there is a limitation about using historical data to inform future outcomes” ²⁴⁹ but has not done any additional analysis to support either the MRP Business Case or the expected financial harm to NQS generators resulting from the MRP Amendments. ²⁵⁰
11	Power Advisory presented a definitive impact calculation for the Applicants as a whole ²⁵¹ based upon a single scenario rather than providing a range of possible impacts or multiple potential scenarios ²⁵² in recognition of the	The NQS Group requested specific details of the aggregated analysis of the 1,300 commitments reviewed by the IESO in	Ultimately, the NQS Generation Group had to apply to the OEB to compel the IESO to answer this question. ²⁵⁵

²⁴⁴ Oral Hearing T2P192L10-P193L6; Oral Hearing T3P47L12-P48L3.

²⁴⁵ Application, Schedule A, 2.e. The Applicant reiterated its request in its letter to the OEB, dated November 14, 2024 and in the NQS Generation Group Pre-hearing Conference Submission, pg. 11.

²⁴⁶ IESO Letter, dated November 11, 2024, at pg. 3; IESO’s Written Submissions in Advance of November 26, 2024 Pre-Hearing Conference, Appendix A, pg. 2, 5. The IESO objected to the information request in the NQS Generation Groups’ Application because:

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²⁴⁷ IESO Responding Evidence, at pg. 5, lines 19-23.

²⁴⁸ Technical Conference, T1P40L13-25.

²⁴⁹ Technical Conference, T1P40L13-25.

²⁵⁰ Technical Conference, T1P16L3-P20L14.

²⁵¹ Oral Hearing T2P173L2-P174L2.

²⁵² Oral Hearing T2P173L2-P174L22.

²⁵⁵ IESO Responses to Technical Conference Undertakings, at JT1.2.

	inherent uncertainties and implicit assumptions in its analysis. ²⁵³	estimating the benefit from enhanced commitment under MRP, but the requested undertaking JT1.2 was refused. ²⁵⁴	
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²⁵³ IESO Submission, at para 57(g).

²⁵⁴ Technical Conference T1P15L9-P16L2.