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BRIEFING NOTE

To: IESO LRP Group

From: Offices of the OEA

Date: Tuesday, June 30, 2015

cc: Shawn Cronkwright
JoAnne Butler

Subject: OEA COMMENTS ON PROPOSED VOLUNTARY TERMINATION RIDER

INTRODUCTION

The OEA is submitting this briefing note in response to the IESO's call for feedback on its proposed changes to the voluntary termination provisions of the LRP I contract. In our April 22, 2015 note the OEA encouraged the IESO to undertake a dedicated session on voluntary termination and are pleased that the IESO has agreed to hold this consultation. The OEA continues to believe that voluntary termination – especially after notice to proceed has been given – is a troubling concept that sends the wrong signal to investors. Nonetheless, the OEA would like to express its appreciation for the proposed revisions to the voluntary termination provisions (which address a number of key concerns) and for the opportunity to provide additional feedback to the IESO on this subject.

GENERAL PRINCIPLE

Voluntary termination, in its current form, is still a new feature of IESO procurements and contracts. It is expected that there will be learnings on the parts of both the IESO and industry as the RFP and LRP projects move forward. The OEA respectfully encourages the IESO to therefore be flexible in working with industry to make voluntary termination work as best as possible. As part of this approach, the OEA believes it is important that the IESO be proactive in responding to stakeholder feedback received from this consultation.

VOLUNTARY TERMINATION PROVISIONS

The OEA has reviewed the proposed changes to the voluntary termination provisions of the LRP I contract and suggests the following amendments:

Pre-Construction Development Costs – Section 9.6(f)
Liability Limits –The OEA notes that the pre-construction requirements for developing LRP projects (e.g. permitting, community engagement etc.) are greater than they are for FIT projects. Meeting these enhanced requirements will be costlier than would be the case for FIT

projects, and consequently we feel that the Pre-Construction Liability Limits should be increased beyond those set for FIT projects to more accurately reflect LRP costs.

In addition, the Pre-Construction Liability Limits in Exhibit B of the Agreement are not sufficient to cover reasonable non-refundable deposits for Generating Equipment. We believe it is imperative that the Buyer at the very least cover any non-refundable deposits that are triggered by the Buyer's termination of the Agreement, and the OEA therefore requests that in addition to a general increase in Pre-Construction Liability Limits, the provision be modified to exclude the amount of non-refundable deposits from the Pre-Construction Liability Limit.

Termination Costs – The Supplier should also be entitled to reasonable out of pocket costs directly resulting from the Buyer's termination of the Agreement, and such termination costs should be excluded from the Pre-Construction Liability Limit.

Tax Gross-Up – It does not appear that the tax gross-up provision (Exhibit B to the Voluntary Termination Rider) covers the Pre-Construction Development Costs. We request that those provisions be extended to Pre-Construction Development Costs.

Borrowing Entity – Section 9.6(b)
The definitions of Senior Debt and Junior Debt imply that debt must be borrowed by Supplier, which could limit structuring options (such as having an affiliate of the Supplier as the borrower with the Supplier providing security against the project assets). The OEA requests that the language be modified to remove the requirement that secured debt must be borrowed only by the Supplier.

Hedging Agreements
The definition of Hedging Agreements only refers to hedging agreements entered into in relation to Senior Debt. However, the Hedging Agreement definition is used in the context of the Junior Debt as well. We believe this is a drafting error.