



ONTARIO POWER AUTHORITY

Standard Offer Program

Renewable Energy

Draft Program Rules



Ontario Power Authority

RENEWABLE ENERGY

STANDARD OFFER PROGRAM

DRAFT PROGRAM RULES

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SECTION 1 - INTRODUCTION

The format of this document includes a simplified description of each Section in a box at the beginning of each Section, similar to this box. These plain language introductions are included for the reader's ease of reference only, and will not affect the interpretation or the application of the Program Rules themselves.

1.1 Background to the Renewable Energy Standard Offer Program

The Ontario Power Authority (OPA) and the Ontario Energy Board (OEB) have proposed a Renewable Energy Standard Offer Program (the “**Program**”) for the Province, designed to encourage and promote greater use of renewable energy sources such as wind, water, biomass, solar and solar photovoltaic from smaller generating projects that would be connected to an electricity distribution system in Ontario.

Renewable energy facilities connected can contribute to cleaner air and a healthier environment. When implemented, the Program will make a significant aggregate contribution toward achieving the Government's target of having 2,700 megawatts of electrical power generated by new renewable energy sources in Ontario by the year 2010.

The fundamental objective of the Program is to remove barriers that have effectively prevented smaller renewable energy projects from proceeding. In particular, the Program will avoid the complexity, costs and administrative burden of developing project proposals and meeting the requirements of the competitive procurement processes and contracts that were designed for large projects. To remove these barriers, the Minister of Energy requested that the OPA and the OEB design a standard offer program for small renewable energy generation projects that would provide a standard pricing regime and simplified eligibility, contracting and other rules.

This document presents the Draft Program Rules for the Renewable Energy Standard Offer Program, as prepared by the OPA. The Program Rules are being published in draft form in order to prompt comments and feedback from those with an interest in the Program. This is part of the OPA's commitment to transparency and stakeholder consultation in all its activities. Stakeholders are requested to provide their comments no later than September 22, 2006. Please use the feedback mechanism provided on the OPA Website.

After consideration of stakeholder feedback, the OPA will publish an application package including final Program Rules, a Contract and detailed instructions on how to apply for a Contract. Any conflict or inconsistency between the Contract and the Draft Program Rules shall be resolved in favour of the Contract.

The Draft Program Rules in this document apply to renewable energy generation projects with a capacity of no greater than 10,000 kW that can be connected to an electricity distribution system in Ontario. An additional simplified program for very small renewable projects – those with a capacity of 10 kW or less – is being considered.

For ease of understanding, each section of the Draft Program Rules is prefaced by brief “plain language” explanatory notes. All upper case terms in these Draft Program Rules are defined in the Appendix at the end of this document.

1.2 Purpose and Intent of the Program Rules

The intent of the Program is to make it easier for the operators of small renewable energy generating facilities to contribute to Ontario's electricity supply by providing power to their local Electricity distributor and to be paid for the power they provide. The Program has been designed to promote renewable electricity generation projects that are of value to the Ontario ratepayer.

To qualify under the Program, projects must be both technically and economically feasible. Successful applicants (known as “**Generators**”) must be willing to make necessary investments in their facilities and in the costs of connection to the Distribution System and metering, bear certain ongoing costs of operation and maintenance, and enter into a contract with the OPA for 20 years.

Applicants are cautioned that certain areas of the Provincial transmission grid are limited in their ability to accept incremental power. This may limit the ability of the system to accept all of the generation that project developers might wish to offer under the Program. For this reason, the OPA may be required to restrict or decline project applications in certain designated areas or sub-zones.

SECTION 2 - ELIGIBILITY REQUIREMENTS

An eligible renewable energy project must be located in Ontario, must have an installed generating capacity of more no more than 10,000 kW, must be connected (directly or indirectly) to an OEB-licensed distribution system, must have a connection voltage of no more than 50 kilovolts and must be metered in accordance with Distribution System Code requirements at the Generator's expense.

2.1 To be eligible to participate in the Program, a Generator may be any Person, other than Ontario Power Generation Inc., its affiliates or any party in respect of which Ontario Power Generation Inc. has a material interest in the form of debt, equity or other contractual arrangements.

2.2 To be eligible to participate in the Program, a Project that is proposed to become a Contract Facility:

- (a) must constitute a Renewable Generation Facility;
- (b) must be located in the Province of Ontario;
- (c) shall have a Gross Nameplate Capacity of not more than 10,000 kW;
- (d) must achieve Commercial Operation on or after January 1, 2000;
- (e) must connect to the Distribution System of a licensed electricity distributor in Ontario, either directly or through a Load Customer (i.e. behind-the-meter), via a single connection at a voltage of 50 kV or less which is exclusive to the Project,
- (f) must have separate interval metering suitable for Program data collection and settlement purposes; and
- (g) shall not be or have been the subject of a previous or current contract arising from the Ontario Hydro Non-Utility Generation program or the subsequent Province of Ontario or OPA requests for

proposals for renewable energy supply, or have or have had a physical or financial power purchase contract relating to the generation of Electricity by the Project or other form of contract relating to Electricity or Related Products relating to the Project not acceptable to the OPA.

2.3 Other than as set forth above or otherwise restricted in these Program Rules, the Program does not:

- (a) restrict the nature or jurisdiction of entities that can own Contract Facilities;
- (b) impose environmental standards in addition to those existing under federal or provincial laws;
- (c) place a cap on the total number of Contract Facilities or the total kilowatts of capacity accepted under the Program; or
- (d) restrict the location of Contract Facilities, subject to the application of Restricted Sub-Zones.

2.4 Phased Projects and Incremental Projects will be eligible to participate in the Program provided they satisfy the additional requirements set out in Section 9 and Section 10, respectively, of these Program Rules.

SECTION 3 - APPLICATION ELIGIBILITY CRITERIA

The Draft Program Rules establish five requirements that must be met by Applicants at the time of filing their Application with the OPA. In each case, evidence that the requirement has been met must be provided and the OPA reserves the right to confirm compliance with the relevant party or authority. The five requirements are as follows:

- 1. The Applicant must provide a copy of a letter sent to the relevant local governments by which the Applicant has informed them of the details of the proposed project.***
- 2. The Applicant must include a completed Connection Impact Assessment provided by the relevant Local Distribution Company.***
- 3. The Applicant must state the category applicable to the Project under the Environmental Assessment requirements of the Ontario Ministry of the Environment, and provide evidence that any required Environmental Assessment is underway.***
- 4. The Applicant must provide evidence either of ownership of the property in question or of leasehold or other Access Rights necessary to complete the proposed Project, such as a copy of a deed or a lease agreement.***
- 5. Applications must include written confirmation from an accredited professional that the business plan for the Project is complete and reasonable, all relevant studies have been completed and cost estimates and a critical path for the Project are reasonably achievable.***

3.1 The following conditions precedent must be satisfied by an Applicant prior to submitting an Application under the Program, and the evidence described below must be submitted with the Application as evidence that each condition precedent has been satisfied:

- (a) **Community Notification:** The Applicant shall include with its Application a copy of a letter addressed and delivered to the relevant local government(s) dated not less than six months prior to the date of the Application (the “**Community Notification**”) and setting out:
- (i) the name of the Applicant;
 - (ii) the municipal address of the location of the Project;
 - (iii) the specific type of Renewable Generation Facility that makes up the Project;
 - (iv) the size in kW or MW of the Project; and
 - (v) the estimated Commercial Operation Date of the Project.

The Community Notification shall also identify the express support, if any, of other parties in the community for the Project.

- (b) **Connection Impact Assessment:** The Applicant shall include with its Application a true copy of a Connection Impact Assessment delivered to it by the Local Distribution Company in respect of the proposed Connection Point of the Project to the Distribution System. The Connection Impact Assessment must have been delivered within the previous 6 months or otherwise be certified by the relevant LDC as current within the previous 6 months. The Connection Impact Assessment must be for the exact Gross Nameplate Capacity of the proposed Project.
- (c) **Environmental Assessment:** The Applicant shall include with its Application a statement identifying the category to which the proposed Project belongs according to the Ontario Ministry of the Environment’s *Guide to Environmental Assessment Requirements for Electricity Projects* dated March 2001, as referred to in O. Reg. 116/01 under the *Environmental Assessment Act* (Ontario) entitled “Electricity Projects”, as amended from time to time. The Applicant’s statement shall certify on behalf of the Applicant that:
- (i) it is a “Category A project” and the *Environmental Assessment Act* (Ontario) does not apply to the Project;
 - (ii) it is a “Category B project” and the Application includes a copy of the published “Notice of Commencement of Screening” identifying the date and location of publication;
 - (iii) it is a “Category C project” and the Application includes a copy of the “Terms of Reference” as submitted to the Ministry of the Environment in respect of the individual environmental assessment of the Project, together with a statement of the date of submission of such Terms of Reference; or
 - (iv) the Project is a hydroelectric facility and the Application includes a copy of all notices required pursuant to section 4.2.6 (entitled “ER Planning Process”) of the *Class Environmental Assessment for Modifications to Hydroelectric Facilities* or pursuant to any

other provincially approved environmental assessment process, including but not limited to class environmental assessments;

all of which shall be subject to verification by the OPA with the Ministry of Natural Resources and/or the Ministry of the Environment, as applicable.

- (d) **Demonstrated Site Access:** The Applicant shall include with its Application evidence that it is the registered owner of the lands underlying the proposed Project or has the necessary Access Rights including, without limitation, specific permits with respect to Crown lands or permissions from Band Councils with respect to Reserve Land or Special Reserves as defined by the *Indian Act* (Canada), where applicable.
- (e) **Business Plan Review:** For Projects greater than 10 kW in size, the Applicant shall include with its Application written confirmation addressed to the OPA from a Person with a chartered accountant, professional engineer or similar accredited professional designation satisfactory to the OPA (the “**Business Plan Review Letter**”) that:
- (i) the Applicant's business plan respecting the Project is complete and reasonable;
 - (ii) the Applicant has completed relevant resource studies to support the efficacy of the proposed Project at the proposed site; and
 - (iii) the Applicant's cost estimates and critical path for the Project are reasonably achievable.

The Business Plan Review Letter shall be substantially in the form attached hereto as Exhibit “B”;

SECTION 4 - TRANSMISSION CONSTRAINTS

As certain areas of the Provincial transmission grid are or may become limited in their ability to accept incremental power, the OPA may be required to restrict or reject Applications in certain designated areas or sub-zones of Ontario. These restrictions will take into account both existing operations and improvements that might be made to the transmission system over time. Further details on the location of these sub-zones and the capacity allocation process will be made available and published on the OPA Website.

4.1 The OPA, in coordination with Hydro One, IESO, and other agencies and stakeholders, is identifying a series of Restricted Sub-Zones with associated Sub-Zone Limits to reflect transmission constraints in the Province of Ontario. The OPA will impose limits on the approval of Applications in Restricted Sub-Zones. Sub-Zone Limits will be determined for each Restricted Sub-Zone recognizing:

- (a) the operating characteristics and physical constraints of the system;
- (b) existing and proposed generators under the Ministry of Energy and OPA procurement processes; and
- (c) capacity improvements made to the transmission system from time to time.

4.2 The process of capacity allocation will be coordinated in advance of the implementation of the Program. For an indication of the location of previously published Restricted Sub-Zones, reference is made to Appendix L of the Renewables II RFP. The information in Appendix L is being updated and is referred to herein for reference only and Appendix L should not be relied upon. More details on the capacity allocation process will be available in due course. Restricted Sub-Zones will change from time to time to reflect changes in the constraints affecting the IESO-Controlled Grid.

SECTION 5 - CONTRACT PRICING

The Draft Program Rules establish a market-based pricing system that provides a Base Rate to be paid to Generators for each kilowatt-hour (kWh) of Electricity delivered, plus a performance incentive for Generators who can control their output to meet peak demand requirements reliably over time. It also provides for price escalation to the Base Rate paid to some Generators, linked to the Consumer Price Index (CPI) in Ontario.

The Draft Program Rules provide a higher price for solar photovoltaic (PV) production, recognizing that PV Projects cannot be successful under a pricing regime suitable for other renewable generation sources. Because PV technology is evolving, PV pricing may be revisited on an ongoing basis.

Program pricing will be reviewed periodically and may be modified, but modifications will not be retroactive and thus will not amend executed Contracts.

In summary, Program pricing is as follows:

- *For the first year of the Program, all Generators, except PV Generators, will be paid a Base Rate of 11.0 cents per kWh for Electricity actually delivered under the Contract.*
- *In subsequent years, 20 percent of the Base Rate will be indexed for inflation according to the year-over-year change in the Consumer Price Index. The indexing formula and an example of this escalation provision can be found in the Draft Program Rules.*
- *Projects that can reliably operate during On-Peak Hours will be eligible for an additional 3.52 cents per kWh for Electricity actually delivered during those On-Peak Hours. On-Peak Hours will be identified and posted on the OPA Website and will be updated from time to time. Intermittent generation Projects are not eligible for this additional payment.*
- *PV Projects will be paid 42.0 cents per kWh but will not be eligible for inflation indexation or the peak-hour premium.*
- *The OPA will pay all applicable sales taxes on amounts payable to a Generator under a Contract. The Generator will be responsible for all taxes other than sales taxes in respect of the Electricity delivered from the Contract Facility.*

5.1 Pursuant to the Contract, the OPA will pay a Generator in respect of a Contract Facility, other than a PV Contract Facility, an amount equal to the Base Rate for the Hourly Delivered Electricity in each hour that Electricity is generated from the Contract Facility. With respect to any PV Contract Facility, the OPA will pay the Generator an amount equal to 42.0 cents per kWh for the Hourly Delivered Electricity in each hour that Electricity is generated from the Contract Facility. The Base Rate per kWh or 42.0 cents per kWh, as applicable, payable to a Generator in accordance with the Contract is hereinafter referred to in these Program Rules as the “**Contract Price**”.

5.2 Pursuant to the Contract and except as noted below, the OPA will pay to a Generator, in addition to the Contract Price, a premium of 3.52 cents per kWh for the Hourly Delivered Electricity in each On-Peak Hour that Electricity is generated from the Contract Facility (the “**On-Peak Performance Incentive Payment**”), provided that:

- (a) in the Application, the Applicant shall include an attestation signed by an accredited professional engineer licensed by Professional Engineers Ontario confirming that the proposed Generator’s plans and specifications for the Project include adequate investments in such equipment and infrastructure and in obtaining such regulatory and other approvals as are necessary to ensure that the Project will be able to generate Electricity for a minimum of 80% of the On-Peak Hours during the course of a calendar year under normal weather conditions and operating circumstances;
- (b) in the Application, the Applicant shall include an annual forecast of the monthly Electricity production of the Project during On-Peak Hours, and an annual forecast of the monthly Electricity production of the Project during Off-Peak Hours; and
- (c) not earlier than 120 days prior to and not later than 60 days prior to the Commercial Operation Date of the Contract Facility and each phase (if applicable), the Applicant shall provide a complete and accurate update of the information set out above, which update shall be satisfactory to the OPA in its discretion, including making appropriate third party enquiries.

5.3 Intermittent generation Projects, including, without limitation, wind and PV Projects, are not eligible for the On-Peak Performance Incentive Payment. The premium paid in the form of the On-Peak Performance Incentive Payment does not constitute an adjustment to the Base Rate and is not subject to escalation. On-Peak Hours will be posted on the Website and will be updated from time to time by the OPA.

5.4 Contract Payments made in respect of Incremental Projects shall be determined by multiplying the Base Rate or 42 cents/kWh (as applicable) by the Hourly Delivered Electricity of the entire Facility, times the ratio of the Contract Capacity of the Incremental Project to the Gross Nameplate Capacity of the entire Facility.

5.5 The Contract, other than for PV Contract Facilities, includes an escalation on 20% of the Base Rate (but not the On-Peak Performance Incentive Payment) on the basis of increases in the Consumer Price Index commencing on and effective as of November 1, 2007 and thereafter on November 1 of each year of the Program (based upon the average CPI published in each of the 12 months leading up to and including June of such year), calculated as follows:

$$CP_y = (FP) + (IP_{y-1}) \times (1 + CPI_y)$$

Where:

- CP_y is the Contract Price expressed in ¢/kWh for the program year commencing on November 1 of year y and ending on November 1 of year y+1
- CP₂₀₀₆ is the Contract Price for the program year commencing on November 1, 2006, being 11 ¢/kWh
- FP is the Fixed (un-indexed) Portion for each year of the term, being 8.8 ¢/kWh
- IP_{y-1} is the Indexed Portion applicable in year y-1 during the term, expressed in ¢/kWh
- IP₂₀₀₆ is the Indexed Portion for the program year commencing November 1, 2006, being 2.2 ¢/kWh
- CPI_y is the average of the Ontario "All Items" CPI published by Statistics Canada for each of the 12 months prior to and ending on June 30 in year y, but shall not be less than 0%
- CPI₂₀₀₆ is deemed to be 0.0%

Such that:

$$CP_{2007} = (FP) + [(IP_{2006}) \times (1 + CPI_{2007})]$$

$$CP_{2008} = (FP) + [(IP_{2006}) \times (1 + CPI_{2007}) \times (1 + CPI_{2008})]$$

Etc.

For example,

<u>Year Y</u>	<u>Year described</u>	<u>CPI</u>	<u>CPI Example</u>	<u>Contract Price Example</u>
2006	Nov 1 06-Oct 31 07	N/A	0.0	(8.8)+(2.2) =11.0 ¢/kWh
2007	Nov 1 07-Oct 31 08	June 06-June 07	2.4	(8.8)+[(2.2) x (1+0.024)] =11.0528 ¢/kWh
2008	Nov 1 08-Oct 31 09	June 07-June 08	3.7	(8.8)+[(2.2) x (1+0.024) x (1+0.037)] =11.13615 ¢/kWh
2009	Nov 1 09-Oct 31 10	June 08-June 09	-1.9	(8.8)+[(2.2) x (1+0.024) x (1+0.037) x (1+0)] =11.13615 ¢/kWh

For greater certainty, the Base Rate will increase by the CPI commencing on November 1, 2007 and all Contracts will utilize the then current Base Rate at the time such Contract is executed.

5.6 The Contract provides that all Related Products otherwise applicable to the Contract Facility or available to a Generator in respect thereof, are absolutely and unconditionally assigned to the OPA. Upon the request of the OPA, a Generator will use all Commercially Reasonable Efforts to obtain any applicable Related Products. The direct out of pocket costs of acquiring Related Products ("**Out-of-Pocket Costs**") will be reimbursable to the Generator by the OPA.

5.7 The OPA will pay all applicable Sales Taxes exigible on all amounts payable to a Generator pursuant to a Contract. The Generator shall remain liable for all taxes other than Sales Taxes in respect of the Contract Facility.

5.8 Without limiting the generality of any other provision contained in these Program Rules, the OPA specifically reserves the right at any time to amend the Contract Price, the Base Rate, the On-Peak Performance Incentive Payment and the CPI escalation of the Base Rate (including the methodology or calculation thereof) offered pursuant to the Program at any given time, in each case in respect of one or more types of Renewable Generating Facilities. Any such amendment shall be prospective only and shall not affect Contracts previously entered into.

SECTION 6 - METERING REQUIREMENTS AND PAYMENT

The Generator is responsible for coordinating with the Local Distribution Company to determine the appropriate metering configuration and requirements. The Generator is also responsible for the cost of connection and metering as determined by the Local Distribution Company in compliance with the Distribution System Code.

Contract Payments will be based on the Electricity delivered from the Contract Facility to the Connection Point and successfully injected into the Distribution System or Load Customer's electrical system. Note that this may include adjustments to metered Electricity output to account for site-specific losses.

6.1 All Contract Facilities must have separate metering, other than those Contract Facilities that are Incremental Projects, which may not have separate metering. The Generator shall have sole responsibility for coordinating metering configuration and metering requirements with the applicable LDC. Without limiting the generality of the foregoing, the Generator may have its Contract Facility meter located either on the LDC side of a Load Customer load meter, or on the Load Customer side of the Load Customer load meter. Regardless of the configuration determined, the Generator shall be paid under the Contract based on the Hourly Delivered Electricity.

6.2 Regardless of the agreed upon metering configuration, a Load Customer will have its standard LDC load bill calculated in the normal manner without regard to the Electricity output of the Contract Facility. Even where a Contract Facility has its meter configured in a manner which reduces the metered amount of a Load Customer's energy consumption because of the Electricity output of the Contract Facility, the LDC will bill the Load Customer for the actual Electricity consumption prior to such reduction.

6.3 The choice of the metering configuration by the Generator where the Contract Facility is metered on the Load Customer side of the Load Customer load meter may result in additional metering requirements and costs to the Generator and the Load Customer, for which the Generator will be solely responsible.

6.4 The Generator shall provide the OPA and its designated agents all rights to receive, use, retain and deal with the meter data and read only access to the Contract Facility meter.

SECTION 7 - SETTLEMENT

Under the Contract, the OPA will pay any amounts owing to the Generator and will accomplish this through the existing settlement mechanisms managed by the Local Distribution Company. However, the OPA may make alternate settlement arrangements in its sole discretion. In all cases, settlement will be based on metered data, and payments based on the Contract Price will be made directly to the Generator.

Electricity consumed by the Generator and the LDC's fixed monthly customer charges will both be dealt with in the normal course by the LDC, in compliance with the requirements of the OEB.

In case of payment disputes, the Contract will provide for appropriate dispute resolution mechanisms.

7.1 Pursuant to the Contract, the parties shall utilize the provisions of the Retail Settlement Code and any other applicable regulatory requirements for settlements. The OPA will have the contractual obligation to pay the Generator any amounts owing under the Contract and will do so through settlement between the Generator and the LDC in accordance with this Section, on a periodic basis in accordance with the relevant LDC's Settlement Period.

7.2 Periodic settlements by the LDC will account for station service (Electricity consumed by the Contract Facility) and fixed monthly customer charges in the normal manner, in compliance with the requirements of the OEB.

7.3 The OPA reserves the right at its sole discretion to make alternate settlement arrangements in respect of the entire Program or in respect of one or more LDCs at any time and from time to time. In any event, any such arrangements will result in settlement based on Hourly Delivered Electricity and will entail payments in respect thereof to Generators from the OPA or other parties directed by the OPA to make such payments. Notwithstanding such other parties being involved in the settlement process, the OPA shall at all times remain liable to the Generator for the Contract Payments. The Contract contains appropriate dispute resolution mechanisms in the event of payment disputes.

SECTION 8 - CONTRACT

The standardized Contract will be published after stakeholder feedback on the Draft Program Rules has been considered. The Draft Program Rules relating to any Contract include the following provisions:

- *A Contract will be for 20 years. It will identify the location and type of the Generator's Contract Facility and the principals involved, and establish the Contract Capacity.*
- *Within three years of the execution date of the Contract, a Generator's Contract Facility (other than waterpower Projects) must achieve Commercial Operation. If the Generator's Contract Facility is a waterpower Project then, within the same three year period, the Generator must obtain written approval from the Minister of Natural Resources for the location of the dam and its plans and specifications under Section 14 of the Lakes and Rivers Improvement Act (Ontario) (for Contract Facilities on provincial watercourses), and a priority permit issued under Section 7 of the Dominion Waterpower Regulations (Canada)(for Contract Facilities on federal watercourses). These requirements are defined as the "Third Anniversary Requirements".*
- *Generators are not required to post security deposits.*
- *The OPA will be the owner of all Electricity and Related Products generated from the Contract Facility. The OPA will pay only for Electricity delivered to the Distribution System or Load Customer, and Out-of-Pocket Costs should they be properly incurred.*
- *The Generator is responsible for all applicable connection and metering costs and all other related costs.*
- *The Generator is obliged to comply with all applicable laws, regulations, licenses and permits.*
- *The Contract may be terminated if information in the Application is inaccurate in a material respect.*
- *The Contract will include arbitration and other dispute resolution mechanisms.*

8.1 The OPA and the Generator shall, within ten (10) Business Days of acceptance of the Application, enter into a Contract for the purpose of establishing their respective rights and obligations in respect of the Program and these Program Rules. If the Generator shall fail to enter into a Contract within such time period, the Application shall be deemed to have been withdrawn and the acceptance shall be deemed to have been revoked. Without limiting the generality of the foregoing, the Contract will, among other things:

- (a) identify the parties, the location of the Contract Facility and the type of Contract Facility, using information provided in the Application;
- (b) establish the Gross Nameplate Capacity and the Contract Capacity of the Contract Facility and each phase thereof;
- (c) provide for a term of 20 years, commencing on the Commercial Operation Date, subject to earlier termination in accordance with its terms;

- (d) provide that, other than with respect to waterpower Projects and subject to Force Majeure provisions, there is a maximum period of three years from the date of the Contract to achieve Commercial Operation, failing which the Contract shall terminate or, in the case of a phased Project, shall continue in full force and effect only in respect of those phases of the Project which have achieved Commercial Operation within such time;
- (e) provide that, with respect to waterpower Projects, there is a maximum period of three years from the date of the Contract for the Generator to obtain, for all phases of the Project, the following:
 - (i) for Projects on provincial watercourses, written approval from the Minister of Natural Resources for the location of the dam and its plans and specifications under Section 14 of the *Lakes and Rivers Improvement Act*, R.S.O. 1990, c. L.3; and
 - (ii) for Projects on federal watercourses, a priority permit issued under Section 7 of the Dominion Waterpower Regulations (Canada);

failing which the Contract shall terminate or, in the case of a phased Project, shall continue in full force and effect only in respect of those phases of the Project which have satisfied the requirements set out above within such time;

- (f) provide for a maximum period to achieve Commercial Operation ending on the eighth (8th) anniversary of the date of the Contract, failing which the Contract shall terminate notwithstanding Force Majeure;
- (g) not require that the Generator post security deposits securing performance under the Contract or include provisions penalizing the Generator for failing to generate Electricity, other than:
 - (i) the loss of Contract Payments, and
 - (ii) the right of the OPA to terminate the Contract in the event that a Generator or Contract Facility that was eligible becomes ineligible or in the event a Contract Facility does not generate any Electricity in a consecutive 24 month period or suffers a Material Adverse Effect (other than an event of Force Majeure);
- (h) not require the OPA to pay any amounts to the Generator other than Contract Payments;
- (i) require that all Electricity (up to the Contract Capacity) and Related Products generated from a Contract Facility during the term of the Contract be sold only to the OPA, unless otherwise agreed upon by the Parties;
- (j) permit assignment of the Contract by the OPA, without consent, to a third party having a credit rating by Dominion Bond Rating Service or another international rating service substantially the same as the OPA's credit rating;
- (k) permit assignment of the Contract by the Generator to a party who is eligible to participate in the Program and to whom title to the Contract Facility is transferred, or a change of Control of the Generator to a party who is eligible to participate in the Program, each without consent but with prior written notice to the OPA;

- (l) provide that the Generator is solely responsible for all Connection Costs and metering costs relating to the Contract Facility;
- (m) oblige the Generator to cause the Contract Facility to comply with all Laws and Regulations, to use Commercially Reasonable Efforts to satisfy the Third Anniversary Requirements and, where applicable, to at all times comply with Good Engineering and Operating Practices;
- (n) contemplate a Secured Lender and a Secured Lender's Security Agreement and the provision for a New Agreement for the benefit of the Secured Lender in the event of default by the Generator under the Secured Lender's Security Agreement;
- (o) contain termination rights including, without limitation, termination on the basis of mutual consent and termination by the OPA if it is determined at any time that information contained in the Application was inaccurate in any material respect or in the event of fraudulent acts or material breach of the Contract on the part of the Generator;
- (p) contain rights of indemnification in favour of the OPA and related parties;
- (q) provide for binding arbitration of Contract disputes following notice from one party to the other of a dispute and a 30 day response period followed by a 90 day resolution period, after which either party may refer the matter to binding arbitration if the dispute has not been resolved, and provide for binding multi-party arbitration of disputes or issues relating to the Contract which are applicable to all Generators or any class of Generators;
- (r) authorize the OPA to access meter data for the Contract Facility either directly from a Generator or through the LDC; and
- (s) include any other provisions deemed appropriate from time to time by the OPA, in its sole discretion.

SECTION 9 - PHASED PROJECTS

The Program allows for Renewable Generation Facilities to be completed in two or more phases. However, the Program Rules stipulate that only those phases of a Project that achieve Commercial Operation (or in the case of waterpower Projects, that satisfy the other Third Anniversary Requirements) within three years of the execution date of the Contract will be eligible for payments under the Contract. Any phase of a Contract Facility that does not meet these applicable requirements will not be covered by the Contract and the Generator, in order to qualify that phase, must reapply under the Program as a new Project with a separate connection or as an Incremental Project, if applicable.

9.1 It is a contractual requirement of the Program that all Contract Facilities satisfy the Third Anniversary Requirements at all times. Where a Contract Facility is expected to be completed in two or more phases, a Generator will be permitted to achieve Commercial Operation separately for each phase, provided that:

- (a) upon the connection of each phase to the Distribution System, (i) the aggregate of all phases connected at such time satisfies all of the eligibility requirements, and (ii) the Contract Facility as a whole, when fully operational, must satisfy all of the eligibility requirements;
- (b) the Contract Facility will be restricted to those phases that are completed and have satisfied the relevant Third Anniversary Requirements on or before the third anniversary of the date of the Contract;
- (c) if one or more phases of a Contract Facility does not satisfy the relevant Third Anniversary Requirements on or before the third anniversary of the date of the Contract, such phase or phases shall be deemed to be removed from the Contract Facility and the Generator may not thereafter receive Program payments for generation from such removed phases under the Contract (without prejudice to the ability of the Generator to submit a separate Application for such phase or phases for the purpose of having such phase or phases approved as a separate Project or an Incremental Project under the then current Program Rules and Contract); and
- (d) the Generator will be entitled to receive Contract Payments once the first phase of the Contract Facility achieves Commercial Operation and the term of the Contract shall commence upon the first phase of the of the Contract Facility attaining Commercial Operation.

SECTION 10 - INCREMENTAL PROJECTS

The Program allows for Incremental Projects that either increase Electricity output from existing facilities or bring facilities back into service. The Draft Program Rules stipulate that an Incremental Project can be eligible for the Program if the combined installed generating capacity of the pre-existing facility and the Incremental Project does not exceed 10,000 kW. In any case, only the Electricity generated from the incremental capacity will be eligible for payment under the Contract.

10.1 Incremental Projects include Projects which:

- (a) produce increased Electricity output through rehabilitation and/or with upgrades or additions to existing equipment or Facilities; and/or
- (b) involve facilities previously abandoned and brought back into service, provided they were out of service for the full 24-month period between August 19, 2003 and August 18, 2005 (as confirmed in writing by the applicable LDC in the form attached hereto as Exhibit "C").

10.2 An Incremental Project will be an eligible Project for the Program provided that its output in combination with the pre-existing Facility does not result in a combined Gross Nameplate Capacity of more than 10,000 kW and it is otherwise eligible to participate in the Program.

10.3 For a Project to constitute an Incremental Project, the change in the relevant Facility must cause an increase in its Gross Nameplate Capacity.

10.4 Contract Payments for Incremental Projects shall be made in accordance with Section 7 of these Program Rules.

10.5 To the extent that a Facility is ineligible to participate in the Program pursuant to the provisions of Section 2.2 of these Program Rules, and there is a subsequent Incremental Project at the Facility that would otherwise be eligible to participate in the Program, then such subsequent Incremental Project may be eligible to participate in the Program even though the original Facility is not eligible pursuant to Section 2.2.

10.6 An Incremental Project may make use of the existing connection to the Distribution System maintained by an ineligible Facility, despite the requirements of Section 2.2(e) of these Program Rules.

SECTION 11 - APPLICATION

Details of the Application process are under development and will be published on the OPA Website in advance of the launch of the Program. The Draft Program Rules stipulate that Applications must be complete and satisfy all of the eligibility requirements. The OPA reserves the right to reject any Application and will disclose the reasons for rejection to the Applicant.

11.1 Generators who wish to participate in the Program shall submit to the OPA an Application in such form(s) as may be designated and posted on the Website by the OPA from time to time, together with the documents required to establish that the Applicant has satisfied all of the Application eligibility criteria set out in Section 3 of these Program Rules.

11.2 Details of the Application process are under development and will be posted on the Website in advance of the launch of the Program.

11.3 The OPA reserves the right to reject any Application for any reason, including, without limitation, an incomplete Application, an Application in respect of which the included information is not satisfactory to the OPA or its advisers in any respect and an Application in respect of which the OPA deems the Generator or the Project, or any parts thereof, to be unsuitable for the Program for any reason. Applicants will be advised of the reasons for rejection.

SECTION 12 - APPLICATION REVIEW

The Draft Program Rules provide that acceptance or rejection of an Application will be solely at the discretion of the OPA. Applications will be reviewed for completeness and to validate that all eligibility requirements have been satisfied. The OPA will notify the Applicant of acceptance or rejection in writing. The OPA reserves the right to reject Applications that pertain to a transmission Restricted Sub-Zone.

An Applicant whose Application has been rejected will have 30 days in which to make a written submission to have the decision reversed, after which the OPA will have 60 days in which to give a final decision in writing. The final decision will not be subject to further appeal.

12.1 Acceptance of an Applicant's Application will be solely at the discretion of the OPA. Without limiting the generality of the foregoing and for purposes of information only:

- (a) an Applicant's Project summary will be reviewed in detail by the OPA to confirm the completeness of the overall Application and that all constituent elements thereof appear to confirm that the Project satisfies each of the eligibility requirements set out in Section 2 and has satisfied all of the Application eligibility criteria as set out in Section 3 of these Program Rules;
- (b) the OPA may be required to refuse Applications in respect of a Restricted Sub-Zone;
- (c) the OPA reserves the right to assess each Application on its merits and to accept or reject any Project described in an Application for any reason specific or general.

12.2 The OPA will provide written notice to each Applicant of the acceptance or rejection of the Applicant's Application to receive a Contract in respect of a Project. The OPA will endeavour to provide such decision within 30 Business Days of the submission of the Application, although the Applicant acknowledges that such timeline is a target only and the OPA shall have no liability for any delay beyond such target.

12.3 Where the Program Rules or the Contract have been revised after an Application has been submitted but before it has been accepted, the revised Program Rules and/or Contract shall apply.

12.4 Where the Program Rules or the Contract have been revised after an Application has been accepted but before the Contract has been executed, the Program Rules and the Contract in effect at the time of acceptance shall apply.

12.5 The OPA shall give reasons for rejecting an Application. Rejection of an Application shall be without prejudice to submitting a revised Application to the extent that an Applicant believes an Application can be improved and thereby accepted, provided that such revised Application shall be subject to the Program Rules and Contract then in effect.

12.6 An Applicant whose Application is rejected may within 30 days of notification of such rejection make written submissions to the OPA in an attempt to have the rejection reversed. On the basis of such written submissions the OPA will, within 60 days of receipt of such written submissions, give written notice of its decision in the matter, which decision shall be final and binding and not subject to appeal to any party.

12.7 An Applicant may withdraw a submitted Application at any time, by notice in writing to the OPA.

SECTION 13 - CONFIDENTIALITY

Prospective Applicants to the Program should be aware that information they provide to the OPA will be subject to the Freedom of Information and Protection of Privacy Act (Ontario) ("FIPPA") and may become generally available to the public. Information that the Applicant considers to be commercially sensitive or otherwise confidential should be clearly marked as such, but may nevertheless be subject to FIPPA.

13.1 Subject to Section 13.3, all information provided by or obtained from the OPA in any form in connection with the Program, either before or after the execution of a Contract, is the sole property of the OPA and must be treated as confidential, and

- (a) is not to be used for any purpose other than applying to participate in the Program and the performance by the Generator under the Contract;
- (b) must not be disclosed without the prior written authorization of the OPA, other than to the Applicant's or Generator's partners, advisers and Secured Lenders, provided the disclosing party obtains similar confidentiality commitments from such third parties; and
- (c) shall be returned by the Applicant, Generator or third party (as applicable) to the OPA immediately upon request of the OPA.

13.2 Information provided by an Applicant or a Generator is subject to, and may be released in accordance with, the provisions of the *Freedom of Information and Protection of Privacy Act* (Ontario). At the option of the Applicant, the Applicant will clearly indicate in a separate confidentiality statement, in a form included in the Application, those portions of the Application that contain proprietary or confidential information for which confidentiality is to be maintained by the OPA. In the event that no confidentiality statement is provided, the Applicant will be automatically deemed, by submission of the Application, to certify to the OPA that no portion of the Application contains proprietary or confidential information for which confidentiality is to be maintained by the OPA. Subject to Sections 13.3 and 13.4, the confidentiality of any such information identified by the Applicant or Generator (as applicable) in a confidentiality statement will be maintained by the OPA except that:

- (a) such information may be disclosed where an order by the Information and Privacy Commission, a court or a tribunal requires the OPA to do otherwise;
- (b) the OPA will provide the IESO with current information relating to the Program and its operation as the OPA shall determine from time to time;
- (c) the OPA may discuss any Project-related information with any third parties engaged by the OPA in connection with the Program, provided the OPA obtains similar confidentiality commitments from such third parties;
- (d) the OPA may discuss any Project-related information with the LDCs, the Ministry of Energy, the Ministry of the Environment, the Ministry of Finance, the Ministry of Natural Resources, the Ontario Energy Board, the Ontario Electricity Financial Corporation, the IESO, Hydro One Networks Inc. and other Governmental Authorities, provided the OPA obtains similar confidentiality commitments from such third parties;
- (e) the OPA may disclose and publish the names of all Applicants and Generators; and
- (f) the OPA may disclose and publish aggregate data relating to the Program.

13.3 Notwithstanding any other provisions of these Program Rules, the following information shall not be considered to be confidential:

- (a) information which the disclosing party is required or compelled by law to disclose;

- (b) information which is or becomes generally available to the public without fault or breach on the part of the disclosing party of any duty of confidentiality owed by such disclosing party to the other party or to any third party;
- (c) information which the disclosing party can demonstrate has been rightfully obtained from a third party who had the right to transfer or disclose it to the disclosing party free of any obligation of confidence;
- (d) information which the disclosing party can demonstrate was rightfully known by it or in its possession at the time of disclosure, free of any obligation of confidence when disclosed; or
- (e) information which has been independently developed by the disclosing party.

13.4 Applicants are advised that their Applications will, as necessary, be disclosed on a confidential basis to the OPA's counsel, consultants, and other advisers retained for the purpose of the Program.

SECTION 14 - ADDITIONAL RULES

The Draft Program Rules include a number of additional provisions that will be included in the Contract, such as the following:

- ***Obtaining a Contract will not entitle a Generator to any exclusive right to generate Electricity to the exclusion of others. The OPA may enter into Contracts with other parties on similar or different terms.***
- ***Program Applications will be prepared at the sole cost and expense of the Applicant and the OPA will not be liable for an Applicant's costs or expenses under any circumstances.***
- ***The OPA may seek clarification, documentation and statements relating to Applications, which must be supplied within 10 Business Days of the date of request unless otherwise stipulated by the OPA.***
- ***The OPA may change the Program Rules, but any changes will be prospective only and not apply to executed Contracts.***

14.1 In addition to the foregoing, the following rules apply to the Program and all Applications, Applicants and Generators:

- (a) A Contract executed by the OPA and a Generator is not an exclusive contract for the generation of Electricity. In submitting an Application, an Applicant will be deemed to have acknowledged that the OPA may enter into Contracts or agreements with others on the same or similar terms and by other means and on different terms.
- (b) The OPA will grant an option to acquire a Contract in respect of a Project (an "Option") to an Applicant who is a party to a power purchase agreement and/or an agreement for the sale of Related Products with an OEB-licensed Electricity retailer (the "LER Contract") provided the Applicant otherwise qualifies under the Program Rules to receive a Contract and, in particular,

has made an Application and satisfied the Application eligibility criteria set out in Section 3 of these Program Rules. The Option will be exercisable only upon the expiry of the LER Contract (including all renewals) or the termination of the LER Contract by the Option holder due to a breach of the LER Contract by the licensed Electricity retailer. The term of such Option and, if the Option is exercised, the resulting Contract, would terminate on the twentieth anniversary of the later of (i) the Commercial Operation Date of the Contract Facility, and (ii) the date the Option is granted. Upon exercise of the Option, the Contract to be entered into shall be the form of Contract that was in effect at the time that the Option was granted.

The Applicant's right at any time to exercise the Option will be conditional upon the Applicant continuing to satisfy the eligibility requirements set out in Section 2 of these Program Rules (provided that the existence of the prior LER Contract, if terminated on or before the exercise of the Option, shall not disqualify the Applicant pursuant to Section 2.2(g)). The Option will be assignable only to a party acquiring the ownership of the Project and taking an assignment of the LER Contract, on written notice to the OPA.

- (c) Each Application will be prepared at the sole cost and expense of the Applicant.
- (d) The OPA shall not be liable to pay any Applicant's costs or expenses under any circumstances. In particular, the OPA will not reimburse the Applicant in any manner whatsoever in the event of rejection of any or all Applications or in the event of the cancellation or suspension of the Program at any time. By submitting an Application, the Applicant irrevocably and unconditionally waives any claims against the OPA relating to the Applicant's costs and expenses including without limitation, costs in relation to satisfying the Application eligibility criteria described in Section 3 of these Program Rules.
- (e) The OPA reserves the right, but is not obligated, at any time, to seek clarification and to request additional information, documentation and statements in relation to any Application. Any such requested clarification, information, documentation or statements must be submitted to the OPA within ten (10) Business Days of the date of such request or such other time frame as may be requested by the OPA, failing which the Application may be rejected as being incomplete.
- (f) The OPA may prepare a written interpretation of any aspect of an Application and seek the respective Applicant's acknowledgement of that interpretation. Written interpretations which have been acknowledged by an Applicant shall be considered to form part of the Application(s) of the Applicant. The OPA is not obliged to seek clarification or interpretation of any aspect of an Application.
- (g) Notwithstanding anything contained in these Program Rules, the OPA reserves the right, in its sole discretion, to reject any Application in whole or part whether or not completed properly and whether or not it contains all necessary information and reserves the right to discuss different or additional proposals to those included in any Application.
- (h) The OPA reserves the right to cancel the Program for any reason or to suspend the Program for any reason, including, without limitation, in the event of a market shut down, for such period of time as the OPA shall determine in its sole discretion, in each case without any obligation or any reimbursement to the Applicants. Without limiting the generality of the foregoing, the Program shall be deemed to be automatically suspended at any time and for the entire duration of any

period during which the IESO has declared a suspension of market operations in accordance with the IESO Market Rules.

- (i) Each Applicant shall be solely responsible for its own costs and expenses relating to the preparation and submission of its Application and the development of the Contract Facility, whether or not an Application is rejected or the Program or Contract is suspended, revoked or revised.
- (j) The OPA may verify with any Applicant or with a third party any information set out in an Application.
- (k) The OPA may at any time make changes, including substantial changes, to these Program Rules. All such changes will be prospective only.
- (l) The OPA reserves the right to withhold payment of any Contract Payment under a Contract until it is satisfied that the relevant Electricity was delivered at the Connection Point.
- (m) The OPA is subject to the *Freedom of Information and Protection of Privacy Act* (Ontario) (“FIPPA”) and the OPA may be required to disclose information which is provided to the OPA by an Applicant and is otherwise not protected from disclosure through an exemption in FIPPA or any other applicable legislation, regulation or policy. Applicants should not assume that such an exemption is available.

14.2 The rights reserved to the OPA in these Program Rules are in addition to any other express rights or any other rights which may be implied in the circumstances, and the OPA shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Generator or any third party resulting from the OPA exercising any of its express or implied rights under the Program.

14.3 By submitting an Application, the Applicant authorizes the collection by the OPA of the information set out in the Application and otherwise collected in accordance with the terms hereof, and the use of such information for the purposes set out in or incidental to these Program Rules and the Contract, and for the purpose of offering, managing and directing the Program generally.

APPENDIX: DEFINITIONS

This Appendix contains a glossary of terms used throughout the Draft Program Rules.

For the purposes of the Program Rules, the following terms shall have the following meanings:

- (1) **“Access Rights”** means, in respect of a Project, either title to or rights of access to the real property site on which the Project is located, enforceable by contract for the term of the Contract. Such contractual rights may include a binding lease, option, letter of intent, memorandum of understanding or other binding grant conditional only on the Applicant entering into the Contract, which shall in any case be satisfactory to the OPA in its sole discretion;
- (2) **“Ancillary Service”** has the meaning ascribed to it in the IESO Market Rules;
- (3) **“Applicant”** means a party submitting an Application to participate in the Program;
- (4) **“Application”** means an application submitted by an Applicant in response to the Program in respect of the construction, development and operation of a Project and all clarifications and additional information, documents and statements in respect thereof provided by an Applicant in writing as requested by or on behalf of, and accepted by, the OPA. The form of Application is attached as Exhibit “A” hereto;
- (5) **“Arm’s Length”** means, with respect to two or more Persons, that such Persons are not related to each other within the meaning of subsections 251(2), (3), (3.1), (3.2), (4), (5) and (6) of the *Income Tax Act* (Canada) or that such Persons, as a matter of fact, deal with each other at a particular time at arm’s length;
- (6) **“Base Rate”** means the price, expressed in cents per kWh, for each kWh of Hourly Delivered Electricity generated by a Contract Facility, other than a PV Contract Facility, during a Settlement Period. At the commencement of the Program the Base Rate will be 11.0 cents per kWh. Commencing on November 1, 2007 and thereafter on November 1st in each year of the Program, 20% of the Base Rate will be adjusted in accordance with Section 5.5 of the Program Rules to reflect any average annual increase in CPI. For certainty, following November 1, 2007, “Base Rate” shall at any time refer to the Base Rate as adjusted in accordance with the foregoing;
- (7) **“Bio-fuel”** means a liquid fuel or product made solely from Renewable Biomass and includes, without limitation, ethanol or Biodiesel as well as the direct utilization of vegetable oils or animal fats;
- (8) **“Biodiesel”** means the mono-alkyl esters of fatty acids derived from vegetable oils or animal fats;
- (9) **“Bio-gas”** means a gaseous fuel or product made solely from Renewable Biomass, and for greater certainty, includes gaseous output from anaerobic digestion of Source Separated Organics, livestock manure, energy crops, livestock feed ingredients, food and feed processing by-products, off-specification food and feed materials and organic by-products from Bio-fuel production;
- (10) **“Business Day”** means a day other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario, are not open for the transaction of business;

- (11) “**Business Plan Review Letter**” has the meaning given to it in Section 3.1(e) of the Program Rules;
- (12) “**Capacity Products**” means any products related to the rated, continuous load-carrying capability of a Contract Facility to generate and deliver Electricity at a given time.
- (13) “**Cents**”, or “¢” means hundredths of a Canadian dollar;
- (14) “**Commercial Operation**” means the receipt by a Generator of all Governmental Approvals required in connection with the operation of a Contract Facility (or a phase, as applicable), and the determination by the Generator through testing in accordance with the relevant Connection Agreement, confirmed if applicable by the relevant LDC, that the Contract Facility (or a phase, as applicable) is capable of delivering Electricity through the Connection Point to the Distribution System or the Load Customer’s electrical system, as applicable.
- (15) “**Commercial Operation Date**” means the date on which Commercial Operation is first attained, as specified in a written notice from the Generator to the relevant LDC and the OPA, failing which the OPA may determine the Commercial Operation Date in its sole discretion, acting reasonably;
- (16) “**Commercially Reasonable Efforts**” means efforts which are designed to enable a Person, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, any undertaking contemplated by the Program Rules or the Contract and which do not require the performing Person to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the transaction therein contemplated;
- (17) “**Connection Agreement**” means the agreement or agreements required to be entered into by an LDC with a Generator with respect to the connection of its Contract Facility to a Distribution System, in accordance with the Distribution System Code, as applicable, and governing the terms and conditions of such connection, including the payment of Connection Costs;
- (18) “**Connection Costs**” mean those costs which are payable by a Generator related to the reliable connection of its Contract Facility to a Distribution System, including any costs specified pursuant to a Connection Impact Assessment, a Customer Impact Assessment and a System Impact Assessment, as applicable;
- (19) “**Connection Impact Assessment**” means an assessment conducted for an LDC to determine the impact on the Distribution System of connecting the Contract Facility to its Distribution System;
- (20) “**Connection Point**” means
- (a) in respect of a Contract Facility connected to a Distribution System, the electrical connection point between the Contract Facility and such Distribution System; and
 - (b) in respect of a Contract Facility connected to a Load Customer or connected to a Distribution System via a Load Customer, the electrical connection point between the Contract Facility and the Load Customer;
- (21) “**Consumer Price Index**” or “**CPI**” means the twelve month year-over-year consumer price index for “All Items” published or established monthly by Statistics Canada (or its successor) in relation to the Province of Ontario;

- (22) “**Contract**” means the standard form of contract which is offered by the OPA to Applicants under the Program from time to time, to be entered into between a Generator and the OPA, as amended, restated or replaced from time to time;
- (23) “**Contract Capacity**” means:
- (a) for Incremental Projects, the increase in Gross Nameplate Capacity of the Facility that is directly attributable to the Incremental Project; and
 - (b) for all other Projects, the Gross Nameplate Capacity of the Project;
- (24) “**Contract Facility**” means a Project in respect of which an Application has been accepted by the OPA and a Contract has been entered into between a Generator and the OPA;
- (25) “**Contract Payments**” means all payments to a Generator under a Contract including payments on account of the Contract Price multiplied by Hourly Delivered Electricity, the On-Peak Performance Incentive Payments, if applicable, and Out-of-Pocket Costs, if any.
- (26) “**Contract Price**” or “**CPy**” means the relevant price described in Section 5.1 of the Program Rules;
- (27) “**Control**” means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise;
- (28) “**Customer Impact Assessment**” means a study conducted by a transmitter to assess the impact of the connection of a Project on the transmission customers in the area, a Distribution System and an end-user, if applicable;
- (29) “**Distribution System**” means a system connected to the IESO-Controlled Grid of 50 kV or less for distributing Electricity, and includes any structures, equipment or other things used for that purpose. A distribution system is comprised of the main system capable of distributing Electricity to many customers and the connection assets used to connect a customer to the main distribution system, provided that the distribution system shall be deemed not to include any equipment controlled by the IESO in accordance with the Distribution System Code;
- (30) “**Distribution System Code**” means the code established and approved by the OEB, as amended from time to time, which, among other things, establishes the obligations of an LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards for Distribution Systems;
- (31) “**Distributor**” means a person who owns or operates a Distribution System;
- (32) “**Electricity**” means electric energy, measured in kWh;
- (33) “**Electricity Act, 1998**” means the *Electricity Act, 1998*, S.O. 1998, c. 15, schedule A, as amended or replaced from time to time;

(34) **“Emission Reduction Credits”** means the credits associated with the avoidance or reduction of emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as defined in O. Reg. 397/01 made under the *Environmental Protection Act* (Ontario), as amended from time to time, or such other regulations as may be promulgated under the *Environmental Protection Act* (Ontario) or any currently applicable or future Laws and Regulations;

(35) **“Environmental Attributes”** means environmental attributes associated with a Contract Facility having decreased environmental impacts now or in the future, and the right to quantify and register these with competent authorities, including, without limitation:

- (a) all right, title, interest and benefit in and to any renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance or other proprietary or contractual right, whether or not tradable, resulting from the actual or assumed displacement of emissions by the production of Electricity from the Contract Facility as a result of the utilization of renewable energy technology;
- (b) rights to any fungible or non-fungible attributes or entitlements relating to environmental impacts, whether arising from the Contract Facility itself, from the interaction of the Contract Facility with the IESO-Controlled Grid, the Distribution System or the Load Customer, or because of applicable Laws or Regulations or voluntary programs established by Governmental Authorities;
- (c) any and all rights, title and interest relating to the nature of an energy source (including a Renewable Fuel) as may be defined and awarded through applicable Laws and Regulations or voluntary programs, including all Emission Reduction Credits; and
- (d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing, including the Government of Canada’s Wind Power Production Incentive and Renewable Power Production Incentive, which may be available in connection with a Contract Facility;

but excluding

- (e) any tax or other benefit of the Province of Ontario relating to wind and water power projects; and
- (f) any tax or other benefit related to a Canadian renewable and conservation expense under section 66.1(6) of the *Income Tax Act* (Canada) or a similar successor policy or program.

In the event that any governmental or non-governmental agency, whether provincial, federal, national or international in scope or authority, creates or sanctions a registry, trading system, credit, offset or other program relating to Environmental Attributes or their equivalent, the term “Environmental Attributes” as used in the Program Rules shall include the rights or benefits created or sanctioned under any such program or programs to the extent available as a result of or arising from the production of Electricity from a Contract Facility.

(36) **“Facility”** means an Electricity generation facility which is greater than but includes a Contract Facility constructed, developed, and operated by a Generator;

(37) **“Force Majeure”** means any act, event, cause or condition (i) that prevents a Person from performing its obligations, (ii) that is beyond the affected Person’s reasonable control, and (iii) which the Person is not able to mitigate through the use of Commercially Reasonable Efforts, and includes:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of the Person invoking Force Majeure, unless such strikes or labour disputes are the result or part of a general industry strike or labour dispute);
- (e) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (f) delays or disruptions in fuel supply resulting from a Force Majeure event (whether such event is in respect of the Person invoking Force Majeure or a third party);
- (g) an order, judgment, legislation, ruling or direction by a Governmental Authority restraining a Person, provided that the affected Person has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;
- (h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority or LDC required to perform or comply with any obligation under a Contract, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Person invoking Force Majeure; and
- (i) material delays in the delivery of key equipment;

(38) “**Generator**” means an Applicant whose application has been approved and who has entered into a Contract in respect of its Contract Facility with the OPA;

(39) “**Good Engineering and Operating Practices**” means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent Generator in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry. Without limiting the generality of the foregoing and in respect of the operation of a Contract Facility, Good Engineering and Operating Practices include taking reasonable steps to ensure that:

- (a) adequate materials, resources and supplies, including fuel, are available to meet the Contract Facility’s needs under reasonable conditions and reasonably anticipated abnormal conditions; and

- (b) sufficient operating personnel are available and are adequately experienced and trained to operate the Contract Facility properly, efficiently and taking into account manufacturers' guidelines and specifications and are capable of responding to abnormal conditions;
- (c) preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation and taking into account manufacturers' recommendations and are performed by knowledgeable, trained and experienced personnel utilising proper equipment, tools and procedures; and
- (d) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and abnormal conditions;

(40) "**GST**" means the goods and services tax exigible pursuant to the *Excise Tax Act* (Canada), as amended from time to time;

(41) "**Governmental Authority**" means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO, the OEB, the Electrical Safety Authority and any Person acting under the authority of any Governmental Authority, but excluding the Ontario Power Authority;

(42) "**Gross Nameplate Capacity**" means the total rated installed capacity to generate Electricity that is separately metered by one meter and, in the case of Incremental Projects, includes the Contract Capacity. The Gross Nameplate Capacity is determined prior to consideration of station service load and site-specific losses;

(43) "**Hourly Delivered Electricity**" means:

- (a) in respect of Incremental Projects, the proportion of the Electricity generated by a Facility during any hour equal to the ratio of the Contract Capacity to the Facility's Gross Nameplate Capacity; and
- (b) for all other Contract Facilities, the Electricity generated by the Contract Facility during any hour;

in each case, provided such Electricity is delivered to the Connection Point and successfully injected into the Distribution System or the Load Customer's electrical system;

(44) "**Incremental Projects**" has the meaning given to it in Section 10.1 of the Program Rules;

(45) "**IESO**" means the Independent Electricity System Operator of Ontario established under Part II of the *Electricity Act, 1998*, or its successor;

(46) "**IESO-Controlled Grid**" has the meaning ascribed to it by the IESO Market Rules;

(47) "**IESO Market Rules**" means the rules made under section 32 of the *Electricity Act, 1998*, together with all market manuals, policies and guidelines issued by the IESO, all as amended or replaced from time to time;

(48) "**kW**" means kilowatt(s);

(49) "**kWh**" means kilowatt-hour(s);

- (50) **“Laws and Regulations”** means:
- (a) applicable federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
 - (b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction, including but not limited to the OEB;
 - (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;
 - (d) any requirements under or prescribed by applicable common law;
 - (e) the Retail Settlement Code and any other codes issued by the OEB; and
 - (f) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the IESO from time to time that are binding on the Generator;
- (51) **“Load Customer”** means a facility that uses Electricity for its own consumption, and has contracted for, or intends to contract for, connection to the Distribution System for the purpose of drawing such Electricity from the Distribution System;
- (52) **“Local Distribution Company”** or **“LDC”** means a Person licensed by the OEB as an “Electricity Distributor” in connection with a Distribution System;
- (53) **“Material Adverse Effect”** means any change (or changes taken together) in, or effect on, an affected Person that materially and adversely affects the ability of such Person to perform its obligations under a Contract;
- (54) **“MW”** means megawatt(s);
- (55) **“Municipal Solid Waste”** means (i) common refuse collected from the general public and generated by residential, commercial, institutional and industrial sources, consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber and other combustible materials and non-combustible materials such as metal, glass and rock, whether or not it is owned, controlled or managed by a municipality; and (ii) solid fuel, whether or not it is waste, that is derived in whole or in part from the refuse included in clause (i) of this definition, but which, for greater certainty, shall not include gaseous waste or wastes used in an incineration unit;
- (56) **“New Agreement”** means a new agreement substantially in the form of a Contract and for the then balance of the term thereof, which may be entered into between the OPA or its assignee and a Secured Lender who is at Arm’s Length with the Generator or a Person identified by such Secured Lender following an event of default under the Secured Lender’s Security Agreement;
- (57) **“OEB”** means the Ontario Energy Board or its successor;
- (58) **“Off-Peak Hour”** means any hour which is not an On-Peak Hour;
- (59) **“On-Peak Hour”** has the meaning given to it by the OPA from time to time, with reference to the OEB’s Regulated Price Plan as amended from time to time;

- (60) **“On-Peak Performance Incentive Payment”** has the meaning given to it in Section 5.2 of the Program Rules;
- (61) **“OPA”** means the Ontario Power Authority established under Part II.1 of the *Electricity Act, 1998*, and its successors and assigns;
- (62) **“Option”** has the meaning given to it in Section 14.1(b) of the Program Rules;
- (63) **“Out-of-Pocket Costs”** has the meaning given to it in Section 5.6 of the Program Rules;
- (64) **“Person”** means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind;
- (65) **“PV”** means a photovoltaic solar system;
- (66) **“Program”** means the Renewable Energy Standard Offer Program established by the OPA pursuant to the Program Rules;
- (67) **“Program Rules”** means the rules for the Program to which this Appendix is attached, as may be amended from time to time by the OPA;
- (68) **“Project”** means a proposed or existing Renewable Generation Facility described in an Application.
- (69) **“PST”** means the Ontario provincial sales tax exigible under the *Retail Sales Tax Act (Ontario)*, as amended from time to time;
- (70) **“Related Products”** means all Capacity Products, Ancillary Services, transmission rights, Environmental Attributes and any other products or services of value that may be provided by or attributable to a Contract Facility from time to time (excluding steam and hot water produced by the Contract Facility), that may be traded in the markets established from time to time by the IESO Market Rules or other markets, or otherwise sold or otherwise have value, and which shall be deemed to include products and services for which no market may exist;
- (71) **“Renewable Biomass”** means organic matter that is derived from a plant and available on a renewable basis, including, without limitation, organic matter derived from dedicated energy crops, dedicated trees, agricultural food and feed crops and waste organic material from harvesting or processing agricultural products, forestry products (including spent pulping liquor) and sewage including manure, provided that:
- (a) such organic matter is not Municipal Solid Waste;
 - (b) such organic matter is not peat or a peat derivative;
 - (c) waste organic material shall not contain any treated by-products of manufacturing processes, including, without limitation, chipwood, plywood, painted or varnished wood, pressure treated lumber, or wood contaminated with plastics or metals; and
 - (d) supplementary non-renewable fuels used for start up, combustion, stabilization and low combustion zone temperatures shall be no more than 10.00% of the total fuel heat input in any calendar year for Electricity generation units with a Gross Nameplate Capacity of 500 kW or less

and 5.00% of the total fuel heat input in any calendar year for Electricity generation units with a Gross Nameplate Capacity of greater than 500 kW;

- (72) **“Renewable Generation Facility”** means a facility that generates Electricity that is delivered through an LDC-owned meter or other meter as provided by the Distribution System Code to a Distribution System or Load Customer from any one of the following sources: wind, Thermal Electric Solar, PV, Renewable Biomass, Bio-gas, Bio-fuel, landfill gas, or water;
- (73) **“Renewables II RFP”** means the Ontario Ministry of Energy Request for Proposal No. SSB-071540 issued June 17, 2005.
- (74) **“Restricted Sub-Zone”** refers to parts of the IESO-Controlled Grid or Distribution System elements that are subject to a Sub-Zone Limit;
- (75) **“Retail Settlement Code”** means the code established and approved by the OEB, governing the determination of financial settlement costs for electricity retailers, consumers, generators and distributors, as amended from time to time;
- (76) **“Sales Taxes”** means GST and PST and excludes all other *ad valorem*, property, occupation, severance, production, transmission, utility, gross production, gross receipts, sales, use and excise taxes, taxes based on profits, net income or net worth and other taxes, governmental charges, licenses, permits and assessments;
- (77) **“Secured Lender”** means a chargee, mortgagee, assignee, sublessee, grantee or similar counterparty under a Secured Lender’s Security Agreement;
- (78) **“Secured Lender’s Security Agreement”** means an agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, containing a charge, mortgage, pledge, security interest, assignment, sublease or similar right with respect to all or any part of a Generator’s right, title and interest in or to its Contract Facility and the relevant Contract or any benefit or advantage of any of the foregoing, granted by the Generator as security for any indebtedness, liability or obligation of the Generator, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof;
- (79) **“Settlement Period”** means the monthly or other periodic billing cycle for a relevant LDC;
- (80) **“Source Separated Organics”** means the organic portion of the Municipal Solid Waste collection stream which has been separated from potential contaminants such as metal, plastic and glass prior to collection and which does not contain any treated byproducts of manufacturing processes or other materials that can adversely affect anaerobic processes or cause liquids and solids produced through anaerobic processes to become hazardous waste.
- (81) **“Sub-Zone Limit”** means the total cumulative incremental generation capacity that can be accommodated within a Restricted Sub Zone;
- (82) **“System Impact Assessment”** means a study conducted by the IESO pursuant to section 6.1.5 of Chapter 4 of the IESO Market Rules, to assess the impact of a new connection of a Contract Facility to the IESO-Controlled Grid, or of the modification of an existing connection of a Contract Facility to the IESO-Controlled Grid on the reliability of the integrated power system;

- (83) **“Thermal Electric Solar”** means a thermal electric solar system;
- (84) **“Third Anniversary Requirements”** means (i) for all Contract Facilities other than waterpower Contract Facilities, the requirement that a Contract Facility, including all phases thereof, achieves Commercial Operation no later than the third anniversary of the date of the Contract, subject to Force Majeure; and (ii) for waterpower Contract Facilities, the requirement that a Generator obtains, for all phases of its Contract Facility, the following items no later than the third anniversary of the date of the Contract:
- (a) for Contract Facilities on provincial watercourses, written approval from the Minister of Natural Resources for the location of the dam and its plans and specifications under Section 14 of the *Lakes and Rivers Improvement Act*, R.S.O. 1990, c. L.3; and
 - (b) for Contract Facilities on federal watercourses, a priority permit issued under Section 7 of the *Dominion Waterpower Regulations* (Canada);
- (85) **“Website”** means the OPA’s Renewable Energy Program Website accessible at “<http://www.powerauthority.on.ca>” or such other Website as the OPA shall select from time to time.

EXHIBIT "A" – APPLICATION

The form of Application will be provided by the OPA prior to the posting of the final Program Rules.

EXHIBIT “B” – BUSINESS PLAN REVIEW LETTER

The form of Business Plan Review Letter will be provided by the OPA prior to the posting of the final Program Rules.

EXHIBIT “C” – FORM OF LDC CONFIRMATION

The form of LDC confirmation will be provided by the OPA prior to the posting of the final Program Rules.