

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[REDACTED]
[REDACTED]
[REDACTED]

Section	Feedback
N.A.	<p>Energy storage proponents request consideration within the Renewable Electricity Program. The [REDACTED] [REDACTED] is a consortium of experts from across the energy industry that has come together to recommend strategies for Alberta to leverage energy storage technology within its electricity market. The [REDACTED] will continue to engage the AESO and Alberta Government regarding the beneficial roles and services that energy storage can provide to the Alberta Electric System while enabling the government to achieve its current and future Climate Leadership Plan objectives. As renewable energy becomes an increasingly sizable proportion of Alberta's electricity supply, energy storage plays an increasingly critical role in minimizing the GHG emissions from Alberta's energy supply. Energy storage that is allowed to optimally participate in Alberta's electric grid can provide the system benefits of being able to reduce costly and contentious transmission wires infrastructure without compromising the Alberta electric system's reliability or robustness, while instead improving resiliency.</p> <p>The [REDACTED] welcomes further opportunities to engage with the AESO and provide useful information on the role that energy storage technology can play in the Alberta Electricity System.</p>

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Section	Feedback
3	Commercial Operation - During the evaluation RFP process, is there a competitive benefit for a Generator that is able to meet Target COD before December 2019?
3	Earliest Support Payment - In a situation where a Generator achieves COD prior to the Earliest Support Payment date (before December 2018), will the Generator have the ability to sell electricity into the wholesale market prior to receiving support payments?
4	Requirements for Commencement of Construction - a copy of the financial model should not be required by the AESO.
6	Security - Lenders providing project financing for the Generator will require a first lien on the facilities. The AESO should accept a security interest secondary to project financing.
6	Pre-COD Security - Can the performance security take the form of a standby letter of credit?
9	Connection requirements - A portion of the connection requirements may be deemed 'system costs' by the AESO. Will these system costs required to connect the Generator remain outside of the Generator's cost responsibility?

Section	Feedback
8	Reduction of Contract Capacity - what are the implications to the Generator if the contract capacity is reduced beyond the 80% capacity set forth in the RESA?
12	Will reporting by the Generator pertaining to the RESA be public information?
13	Other Government Funding - Does this clause pertain to any funding not provided by the Government of Alberta (i.e. federal funding, municipal funding?)
20	Termination for Extended FM - Generators will have difficulty obtaining the most competitive project financing rates if the Termination for Extended FM clause remains.
20	Definition - does Force Majeure include the inability of a TFO to connect a Generator if the event is out of the control of the Generator?
23	Generator Events of Default - Failure to Hold Permits - for clarity, if a Generator fails to hold a permit because of the inability to obtain or renew any permit/licence or approval required for performance, would this constitute a Force Majeure event?
23	Standard Events of Default - Should the Generator become insolvent or default, the project financing lender will require the ability to step into the position of the Generator without a default event.

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Section 2: Term	[REDACTED] requests that the AESO extend the term of the Support Period to 25 years from 20 years. Turbine technology is rated for upwards of 25 years, which would align better with a 25 year support agreement. Further, project financing over a 25 year contract increases the amortization period of debt services and reduces the annual debt contribution for a project. This will result in lower bid prices for the AESO.
Section 3: Target and Longstop Dates	<p>Commercial Operation: [REDACTED] fully supports the proposed December 2019 Commercial operation date. [REDACTED] feels this date is achievable for projects in mid stage development and will provide the AESO with a very competitive and robust competition.</p> <p>Extension of Dates: [REDACTED] agrees with the extension of the CC Longstop, Target COD and COD Longstop to be extended based on a reasonable period. Given Force Majeure events are typically longer periods of time (road restrictions, weather) day-to-day typically doesn't work and the period should be established as an aggregate timeframe.</p>

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Section 4: Requirements for Commencement of Construction	<p>Sharing a copy of the Generator financial model: ██████ requests that the AESO remove this attribute from the Requirements for Commencement of Construction. Financial models are considered extremely confidential in industry. Should the AESO require information relating to a Proponents financing plan, ██████ suggest the AESO requests specific information relating to financing assumptions and inputs</p>
Section 6: Security	<p>Post COD Security: It is unclear why this is being defined as security rather than a settlement provision as detailed in Section 16 of the term sheet?</p> <p>Security over the Facility: It is unclear to ██████ what form of security this will take. ██████ is concerned that security provisions and interest by the AESO may result in a non-financeable project. ██████ requests further information as to the scope of security.</p>
Section 8: Design and Construction	<p>Reduction of Contract Capacity: ██████ agrees that there should be a fixed cap for Nameplate contract capacity, but wants to ensure there is no cap for Energy delivered. There may be efficiencies gained throughout the life of a project that would enhance the project's ability to deliver energy to the grid, and we want to ensure this is not limited.</p>
Section 15: Ancillary Services	<p>Ancillary Services: ██████ suggests that limiting the ability for renewables to participate in ancillary market may be detrimental to the evolution of the renewable market in Alberta. In particular with respect to storage technology coupled with wind. Wind could also participate in future ancillary services such as ramping as these markets may provide an opportunity for wind to extract value out of a curtailment situation. Instead of not being compensated for curtailing, a facility may opt to participate in ramping services and ramp down the facility.</p>
Section 16: Settlement Provisions	<p>Contract Price: The phrase: "greater of the pool price and zero" as the subtraction from the strike price does not permit a negative pool price environment which could result from legislative changes in the future to address significant non-dispatch able renewable generation levels. This should simply be "pool price" as this is a regulatory risk not something in the Generator's control.</p>
Section 18: Curtailment	<p>Curtailment: ██████ suggest the AESO share the risk of curtailment with the generator. Similar to the FIT contracts in Ontario with an annual cap of 100 MWhr/MW capacity and a life time of 2000 MWhrs/MW. Any curtailment beyond this amount is subject to RESA payments on estimated curtailments. Curtailment can be for economic, transmission congestion or system generation/load control purposes. As Alberta increases the intermittent, renewable generation portfolio, the exposure to curtailments increases. Sharing this risk would assure greater financial viability of projects.</p>
Section 19: Change in Law	<p>Changes to Regulatory Permits or Licenses: as currently proposed, unless the statutory regulatory provision changes a project would not be allowed to seek relief. There are changes to regulatory processes that wouldn't necessarily be reflected in statutory regulation – for example changes to AEP frameworks on bird and bat that is not written as law causing delays. ██████ recommends including provisions for change of regulatory provisions not reflected in the statutory regulation.</p>

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Section 20: Force Majeure	<p>Force Majeure: [REDACTED] suggests the AESO include <u>delays in construction start due to hearings</u> as an acceptable reason for Force Majeure. In Alberta, each project is assessed under its own merits – there is no precedent set for prior appeals and hearings. In addition the AUC is under no obligation to commit to a maximum time frame for approval of an appeal. As the generator has no control over these processes, [REDACTED] suggest these should be considered Force Majeure</p>
Section 23: Termination Events of Generator Default	<p>Standard Events of Default: [REDACTED] suggests the provisions of generator bankruptcy do not automatically result in a termination event, but rather the contract provide for lender step-in, contract assumption and cure period. That provided the AESO has not been harmed and/or the correction period exhausted no termination right should be activated. This type of provision is necessary to permit financing.</p>
Section 24: Termination – Events of AESO Default	<p>Remedies for AESO Events of Default: [REDACTED] disagrees with any provisions for termination for convenience (see Section 25 below) on AESO’s part, therefor, damages payable to the Generator in the event of an AESO default shall include all remedied the Generator has at law or equity, including pursuing a claim for damages.</p>
Section 25: Termination – AESO Convenience	<p>Termination for Convenience: [REDACTED] does not support any Termination for Convenience clause regardless of the AESO specifying it may only apply this provision prior to commercial operation. [REDACTED] is committed to developing, constructing and operating renewable energy facilities in Alberta and expects the AESO to honor their side of the RESA once awarded. Given the political uncertainty in Alberta, the ability of the AESO to terminate a RESA is unacceptable.</p>
Section 28: Assignment	<p>Assignment by the AESO: [REDACTED] suggests that if the AESO assigns the RESA, it must do so only to another entity with the same, or greater credit worthiness.</p>

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3	Under Commencement of Construction, suggest deleting “as soon as reasonably possible”- the Generator can manage its own schedule, and will still be bound by the CC Longstop Date. For Target COD, suggest aligning timing with the Earliest Support Payment date of one year prior to COD rather than “as soon as reasonably possible”
4	Again, question the need to commence construction “as soon as possible”. The Generator can manage its own schedule, and suffer the consequences if it fails to meet COD.
6	For Pre-COD Security, suggest allowing investment grade entities some level of unsecured credit (either directly or as guarantor to an affiliate), consistent with the AESO’s existing credit policies.
7	More detail needed to ensure fairness to the Generator, recognizing that the Generator has little to no control of these costs. Costs of the REP development, implementation, and administration costs may be more appropriately funded from the Government of Alberta via the carbon levy, or through the AESO trading charge.
12	Suggest imposing a standard of reasonableness on the AESO for reporting requirements.

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16	Contract Price- The formula appears to be: (metered electricity) x (strike price – max(pool price, 0)). This payment formula means that the Generator will not be kept whole in the event that future market rules allow for the pool price to be negative. This is an uncontrollable policy risk being imposed on the Generator, suggest simply considering the difference between the strike price and pool price.
19	Consequences of Designated Changes- suggest expanding this section to also include Change to ISO Rules and Change in Market Structure.
25	Payments from the AESO for Termination Prior to Construction Commencement should not be limited, rather they should reflect any verifiable cost incurred by the Generator prior to termination.
28	Generator Assignment Prior to Commercial Operation- AESO’s consent should not be unreasonably withheld if the assignee can satisfy the terms of the RESA, suggest emulating the language for assignment after Commercial Operation.
29	Similar to #28 above, consent from the AESO in the circumstances of Change of Control should not be unreasonably withheld if the new controlling entity can satisfy the terms of the RESA.
33	AESO should consider a dispute that applies universally to all Generators with a RESA (for instance, a Change of Law), taking the dispute to a forum that will result in consistent treatment to all parties rather than managing individual litigation processes that may result in different outcomes.

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Section 2: Term	<ul style="list-style-type: none"> • We ask that the AESO consider a 25 year term instead of 20. <ul style="list-style-type: none"> ○ 25 years is achievable for many renewable technologies including wind turbines ○ Solar PV panels can last over 30 years ○ Making this change will result in lower bid prices per MWh by lengthening the amortization period and taking full advantage of the built infrastructure
Section 3: Target and Longstop Dates	<ul style="list-style-type: none"> • We do not agree that a pre-specified commencement of construction date is required. A simple notice of construction should suffice to keep the AESO informed. <ul style="list-style-type: none"> ○ It is Generator's duty to deliver the project on time and Generators will set appropriate timelines to do so. ○ This extra administrative step is not needed to incent Generators to deliver on time and introduces a possible new element of risk for Generators. • Target COD: We support adding days to the Support Period if Generator is able to achieve COD before the Target COD. <ul style="list-style-type: none"> ○ This will incent Generators to work efficiently and allow Generators to in turn incent EPC's and contractors with early completion incentives. Having positive incentives down the development chain will bring efficiencies to the entire process. ○ The risk regime on the revenue entitlement of Generator under the RESA is imbalanced in a number of ways and will impair financing (including relating to curtailment as



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	<p>discussed below as identified in industry commentary). In this regard, as payment under the RESA is contingent on achieving commercial operations and on actual generation, the RESA needs to address deemed elements where matters are outside of the control of Generator but within the control of governmental agencies. For instance if a governmental agency takes any steps preventing Generator from achieving "commercial operations" other than due to a default by the Generator, the RESA should trigger a deemed achievement of "commercial operations" and Generator should be paid what it would have been paid had the event not occurred.</p> <ul style="list-style-type: none"> • Milestone dates may require more than a day by day extension in certain cases, contract terms should allow flexibility if the force majeure event results in a longer extension being required.
<p>Section 4: Requirements for Commencement of Construction</p>	<ul style="list-style-type: none"> • To the extent that actions of a governmental agency prevent Generator from achieving commencement of construction, that condition should be waived by the AESO. • The Generator's financial model should not be required to be disclosed. <ul style="list-style-type: none"> ○ Financial models are considered confidential and proprietary. They contain sensitive data on the inner workings of a Generators business and should not be subject to possible discovery. ○ There are many items that could put a Generator at a disadvantage if made available to its competitors and could also lead to disclosure issues for publically traded companies.
<p>Section 6: Security</p>	<ul style="list-style-type: none"> • Security over the facility: This clause should be removed as it will be problematic for project financing. Another option could be to modify the clause to function similarly to other jurisdiction's contracts such as Ontario. • For the letter of credit, we would support the development of a credit test mechanism that waives the letter of credit requirements for entities of sufficiently high rating or gives such proponents or their parent (as supported by a parent guarantee).
<p>Section 8: Design and Construction</p>	<ul style="list-style-type: none"> • Facility modification: to a certain extent during development of the project, certain modifications may need to be made due to supply issues, technological advancement, etc. Clarification on what the AESO would be reasonably expected to consent to would be helpful; consent should not be unreasonably withheld and be provided without delay on an expedited basis given the sensitivities to the timing of the project.
<p>Section 13: Renewable Attributes and Funding from other Governmental Authorities</p>	<ul style="list-style-type: none"> • Please further clarify the definition "funding of governmental authority". <ul style="list-style-type: none"> ○ This term may be overly broad and inadvertently include sources of payment that it was not intended to capture.
<p>Section 15: Ancillary Services</p>	<ul style="list-style-type: none"> • We would ask the AESO to reconsider the inclusion of the clause prohibiting proponents from ever providing ancillary services. If the proponents of a particular project happen to be able to provide additional benefits to the Alberta Electric System, then they should be permitted to

Section	Feedback
	<p>participate. Generators are paid based on generation and therefore they should be in a position to make economic choices about the manner in which they operate and contract their facilities.</p> <ul style="list-style-type: none"> • Similarly, should a project have capacity value they should be permitted to participate in capacity markets. Any proceeds from participating in these markets, in addition to energy, would be considered in determining the RESA support payment.
<p>Section 16: Settlement Provisions</p>	<ul style="list-style-type: none"> • “Pool Price” is a specific term used in the current Alberta market design and changes to the market will occur over the course of the contract term. We request that this term be replaced by a generic term that represents income earned from market sources that the project qualifies for and participates in (energy, capacity, ancillary services). • Any risks of future changes to the market which introduce negative pricing should also be considered when drafting this language to remove the risk of negative pricing and produce revenue certainly for Generators submitting projects into this competition. • More generally, we request additional information on how settlement would be conducted. How frequently will it occur and will it take place through normal AESO mechanisms?
<p>Section 18: Curtailment</p>	<ul style="list-style-type: none"> • To ensure the best project bid prices and eliminate uncertainty, the AESO should consider limiting liability for volumetric risk due to curtailment. That is there should be a deemed level of generation minimum in all cases. Other jurisdictions have put in place structures to do this and we suggest that the AESO consider introducing provisions to do the same. • Related to the above issue, a provision should also be added into the contract that specifies that the AESO will accept all energy produced by the project during its contracted life. Generators should be given certainty that future market or system changes will not preclude energy from the project being accepted into the system. If this assurance is not included there is a large risk borne by Generator that cannot be self-mitigated. • Where Generator is prevented from generating by a governmental agency other than due to a default by the Generator, the Generator should be paid what it would have been paid had the event not occurred
<p>Section 19: Change in Law</p>	<ul style="list-style-type: none"> • With future market changes announced but uncertain this section will be of critical importance to proponents who decides to participate in the RFP. The change in law provisions must be robust enough to capture any risks borne by proponents which would result from changes in law and related keep whole provisions which provide returns aligned with those expected and priced by Generators at the time of the bid for the entire life of the contract. • Changes imposed by governmental agencies to regulatory permits or licences should also be included as events which trigger change in law relief. • The designated changes are too narrow. To the extent there is any change in law which adversely affects the Generator and/or the project (whether they are "directed specifically" at the project or not) should trigger appropriate contract adjustments to compensate Generator for such impacts. Further, a materiality qualification is not beneficial to the process unless it is tied to a small impact dollar threshold.



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Section 20: Force Majeure	<ul style="list-style-type: none"> • Force Majeure prior to COD should be expanded to be more specific on which sorts of delays would be considered force majeure. <ul style="list-style-type: none"> ○ Delays in permits, authorizations, permissions, exemptions, or approvals that are beyond the reasonable control of the developer should be a permissible reason for declaring force majeure. ○ Breakdown of public traffic, embargo, impossibility of obtaining transport of major equipment should also be an allowable force majeure • Force Majeure post COD should include a provision to extend the RESA on a day by day basis • In our view, the termination for extended force majeure regime does not work and improperly allocates risk. The Generator must have the ability to exit the RESA and extract value on its assets in an extended FM scenario where it is not receiving payment. Where the FM event is caused by government or governmental agency, the Generator should be the only party with a right to terminate and the Generator should be paid on a basis similar to the compensation structure proposed by the AESO in a termination for convenience scenario in Section 25 (we object to the termination for convenience rights – see below)
Section 23: Termination – Event of Generator Default	<ul style="list-style-type: none"> • This section requires substantial work. The standard events of default must accommodate acceptable cure periods. These cure periods will depend on the nature of the default and the time frame reasonably required to cure such event having regard to Good Industry Practice. Further it needs to accommodate scenarios where events can and cannot be cured and curative action that involves taking reasonable steps to cure or ensure the event does not occur again.
Section 25: Termination – AESO Convenience	<ul style="list-style-type: none"> • Termination for Convenience Right: This is unacceptable to us. • The proposed structure creates an imbalanced risk arrangement. Post construction termination rights compensates only for returns to date of termination rather than returns over the life of the contract. • The termination for convenience clauses introduce significant risk for proponents and could result in fewer respondents to the RFP and/or higher priced bids to compensate for the risk. It is in the best interest of both Generators and consumers to eliminate this potential burden. • If Termination for Convenience is not modified or removed from the terms, a principled approach to compensation for any and all cases if of Termination for Convenience should include reimbursement for all demonstrable costs to Generator including lost opportunity over the life of the contract.
Section 26: Termination – Extended Force Majeure / Other Events	<ul style="list-style-type: none"> • See our comments above • Further, this requires much more consideration. For instance, AESO should have limited rights to terminate – see above. Termination should not be available unless AESO is not receiving substantially all that it was expected to. So cause and materiality of the impacts of the FM will be critical to delineating the termination rights which are reasonable. Further compensation needs to be addressed for FM regardless of cause as by its nature the FM is beyond the reasonable control of the affected party.



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Section 27: Financing and Consequences of Default	<ul style="list-style-type: none"> • Direct Lender Agreement: Agreeable terms for an agreement such as this will vary from lender to lender. The prescribed form should be open for consultation with lenders and Generators before being finalised.
Section 28: Assignment	<ul style="list-style-type: none"> • We support the inclusion of language that consent for assignment should not be unreasonably withheld and should be explicitly permitted between affiliates and subsidiaries. <ul style="list-style-type: none"> ◦ Final legal/financial structures may not be able to be in place at the time of bid or award and therefore structuring flexibility is necessary. • We request that the contract terms be drafted to require any assignment by the AESO to include notice to the Generator. Any assignments should also be subject to a credit test mechanism to ensure the new counterparty has the same creditworthiness as the AESO. Further we will require certainty that the assignee is not a legislative body which Generators have limited recourse to.
Section 29: Change of Control	<ul style="list-style-type: none"> • As mentioned for Section 28, consent should not be unreasonably withheld
Section 33: Dispute Resolution	<ul style="list-style-type: none"> • We would support an extension of the 10 days period currently contemplated for dispute resolution. This period should allow enough time for amicable discussions to take place and to find a mutually beneficial solution. • Adding an arbitration provision would also be desirable.



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Section 3	Our view is that the \$50,000/MW security bond is excessive. We understand the need to ensure commercial incentive to deliver capacity, but we feel that an amount closer to \$5,000/MW would be reasonable and comparable with security offered in other jurisdictions.
Section 6	It is understandable that the AESO would want the ability to maintain security of supply in the event of default, etc. but this right cannot prejudice the ability to raise project financing, especially debt. Any increased risk or potential loss of control/ownership for a senior lender will have a direct impact on interest rate and therefore increase the minimum price/MWhr that the project will need to secure under the REP. Care should be taken to clarify that AESO payments to the generator will continue to ensure that debt service is maintained if the AESO exercises its step-in rights.
Section 7	We support the requirement of the AESO to recover administration costs etc. However, depending on the level set this qualification fee could be a major disincentive for smaller projects/generators to participate in the process.
Section 17	Please be aware that this will require bidders to price in the 80% of future inflation which is not indexed in the REC into the bid price, i.e. reducing affordability to the AESO in the earlier years to compensate generators for the lack of indexation in later years.
Section 19	Would changes to legislation relating to calculation of corporate or property taxes be included? Unlike other

	businesses, the generator with a fixed income RESA, will be unable to pass through any input cost increases imposed by the municipality or at a provincial/federal-level to its customer (the AESO).
Section 20	Please can we clarify if a successful bidder is unable to obtain a municipal development permit and/or AUC facility approval that this would constitute a Force Majeure event, enabling (i) extension of time and (ii) refund of security bond if reasonable efforts to appeal a permit/approval refusal fail.

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2 - Term	<p>Consider extending the Support Period to more than 20 years. Aligning the Support Period to the expected life of the asset will result in lower strike pricing. The Support Period should be varied based on the technology (e.g., 30 years for wind and solar).</p> <p>Consider allowing the Support Period to be maintained if the Target COD is missed through the payment of liquidated damages. This would allow financing to be obtained for the maximum period and reducing strike pricing.</p> <p>Consider allowing the Support Period to be extended if Force Majeure or Change in Law causes the Target COD to be delayed. There should not be a penalty for events of Force Majeure or Change in Law</p>
4 – Requirements for Commencement of Construction	<p>Please confirm obtaining AUC and other permits and licenses in conjunction with a statutory declaration will not need any confirmation from the AESO to meet Commencement of Construction requirements. The AESO could fail to confirm the Commencement of Construction even after funds were expended. In addition, this would deny access to remedies in the Termination for Convenience.</p> <p>Please describe the need for the financial model. If the reason is whether the project is economic, the statutory declaration will confirm financing has been obtained. If it is to understand the project returns, it is highly likely the model inputs and possibly the model structure will change with time. In addition, there is a risk in sharing a highly proprietary model with the AESO which is subject to FOIP.</p>

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5 – Requirements for Commercial Operation	Please describe what happens if only 90 to 100% of contract capacity is available to deliver electricity at COD. Is there a cure period in which the 100% contract capacity can be achieved? One year seems like an appropriate cure period.
6 - Security	Please confirm the security over the facility would be subordinated to the project lender. If not, this will increase the strike price as lenders will be unwilling to take on the additional risk.
7 – AESO Administration Fee	Consider removing this fee as it will only increase the strike price. Also, it seems inappropriate as the RFP is the AESO's request. It is unclear as to whether all proponents are to pay the fee.
8 – Design and Construction	<p>Reduction of Contract Capacity Consider using Contract Capacity instead of nameplate capacity and allow for a performance test to confirm contract capacity. Having the ability to generate more than the contract capacity should not be penalized as long as instantaneous generation does not exceed the contract amount. (Please explain why having more capacity would be a reason to terminate.)</p> <p>Consider eliminating the minimum installed capacity at 80% of contract capacity level but maintaining the utility scale requirement. Land rights and financing issues may cause more than a 20% reduction in installed capacity. Please explain why 80% was chosen.</p>
13 – Renewable Attributes and Funding from other Government Authorities	<p>Other Government Funding Consider removing the sharing of funding requirement as this funding would be reflected in the strike price. It would be appropriate for the ratepayers to receive the benefit in lower pricing.</p>
16 – Settlement Provisions	<p>Contract Price Consider removing the zero pool price floor and replace it with actual pool price. Given the possible changes in the market, there could be a period in the future where the pool price could be negative.</p> <p>Consider making the settlement net of transmission and distribution charges. This would allow for locational pricing changes and allow the minimum strike price to be bid as there would be no risk of increased transmission charges.</p>
17- Indexation and Payment Adjustments	Please explain why 20% of the strike price is indexed and why CPI, instead of using a labor index .
18 – Curtailment	Consider changing this clause to limit the amount of curtailment which is uncompensated. The GoA is responsible for procuring renewable generation which in turn would be one reason for curtailment. It is not appropriate to be wholly uncompensated for something out of the Generator's control. In addition, this unlimited curtailment clause would increase the strike price as financing would be more costly.

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19 – Change in Law	<p>Consider adding a statement that the purpose is to keep the Generator’s economics materially unaffected.</p> <p>Changes to ISO rules Consider changing this concept to be a cumulative effect of ISO rules on Generator’s economics. This would prevent a series of small changes from having a material affect.</p> <p>Designated Changes – Required Amendments to the RESA by GoA (or any regulatory body in Alberta) Please describe why this clause is necessary. It is unusual for a government entity to direct amendments to a contract and it is contrary to the principles of contracts whereby once entered into a contact the terms may not be amended without written consent.</p>
20 – Force Majeure	<p>Please confirm the ‘will include’ FM includes the inability to obtain consent/approval by the AESO as the AESO could frustrate compliance by withholding consent/approval</p>
23 – Termination – Events of Generator Default	<p>Consider adding a reasonable cure period to the remedies. As an example, missing the CC Longstop date may not mean the COD will be missed.</p>
24-Termination – Event of AESO Default	<p>The termination payment from the AESO should not be limited in the case of AESO default. This is a quid pro quo as the generator has uncapped liability.</p>
25-Termination – AESO Convenience	<p>Termination for Convenience Right Consider removing the termination for convenience during construction. Keeping the provision adds to the project risk and, accordingly, the strike price. If kept, the termination for convenience should be limited to the first days of construction.</p> <p>Termination Prior to Construction Commencement If kept, all reasonable expenses should be covered without limitation.</p> <p>Termination Post Construction Commencement Consider adding other costs such as lender make-whole payments and severance costs in the calculation. In addition, this key provision should be reviewed by lending institutions for their comment.</p>
28 – Assignment	<p>Please confirm that assigning to an affiliate, regardless of whether it is before or after COD, will not require AESO consent.</p> <p>Prior to Commercial Operation Please confirm that assignment may occur if the AESO is satisfied the new entity can meet the requirements and obligations.</p>

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[Redacted submitter information]

Section	Feedback
2 - Term	<p>[Redacted] encourages the AESO to consider contract terms (Support Period) longer than the proposed 20 years for this solicitation as well as future cycles in order to encourage lower cost outcomes through the reduction of risk and creation of additional revenue security. Establishment of longer-term arrangements would align with the expected lifespan of various eligible technologies including hydroelectric and wind energy.</p> <p>At a minimum, the AESO should consider establishing contracting provisions in future solicitations which better align with hydroelectric projects, in recognition that adequate inclusion of hydroelectricity can drive highly competitive cost outcomes, support grid reliability and enhance renewable resource and geographic diversity.</p> <p>[Redacted] also encourages AESO to revisit the day-for-day shortening of the Support Period for a Generator failing to achieve its target commercial operation date. Project development can include a variety of delays that may place at risk the achievement of a project's target commercial operation date. Shortening the Support Period on a day-for-day basis therefore exposes projects to considerable risk that project revenues will fall below revenues assumed in the development of bid pricing and financing terms. Therefore, [Redacted] suggests the RESA be modified to either i) remove entirely the day-for-day provision, ii) enhance the</p>

Section	Feedback
	<p>day-for-day provision by including an exemption timeframe during which the day-for-day penalty is not applicable (i.e., 6 months from target COD) or iii) include a buy-back provision enabling a Generator that has missed its target commercial operation date to pay a pre-established amount to maintain the full term. Absent changes as proposed, additional risk premiums are likely to be included in bid pricing.</p>
<p>4 – Requirements for Commencement of Construction</p>	<p>AESO proposes commencement of construction to occur once AESO has confirmed such in writing. [REDACTED] instead recommends that AESO deem commencement of construction to occur once the Generator provides notification to AESO that required milestones have been met. Changing the RESA in this manner will help remove the potential that commencement of construction dates are delayed as a result of administrative circumstances and not actual milestones being met.</p> <p>[REDACTED] further recommends removal of the requirement that the Generator provide AESO with a copy of the project financial model. First, we question the necessity of this requirement in deeming commencement of construction to have occurred. Second, and most importantly, requiring a Generator to provide the project’s financial model will trigger confidentiality concerns as the model is proprietary and vital to each Generator’s ability to maintain competitiveness in Alberta and other markets.</p>
<p>6 – Security</p>	<p>The RESA indicates the Generator will be required to provide AESO with security interests in the facility. This creates a conflict for projects seeking third-party financing, as the lender will require the Generator to provide it with security interest. [REDACTED] recommends removing this provision entirely or, in the alternative, amending it to make clear the security interest required by a lender will take priority over that required by AESO.</p>
<p>7 – AESO Administrative Fee</p>	<p>The RESA vaguely suggests the Generator will be required to pay an administrative fee to cover the AESO’s REP development, implementation and administration costs. [REDACTED] does not dispute this requirement; however, we advise the AESO to make clear the fee amount in advance of any formal RFP in order to allow bidders to incorporate this incremental cost into bid pricing.</p>
<p>13 – Renewable Attributes and Funding from Other Governmental Authorities</p>	<p>[REDACTED] understands AESO’s description of “all Renewable Attributes” to include Renewable Electricity Credits (RECs) and carbon attributes; however, we seek AESO clarification or confirmation of this interpretation. Furthermore, we urge AESO to clarify how resource attributes will be tracked to avoid double counting concerns. One approach to consider is requiring the utilization of the Western Renewable Energy</p>

Section	Feedback
	<p>Generation Information System (WREGIS), or a similar platform, for the reporting and retiring of RECs transferred pursuant to the RESA. Similarly, AESO should strive to report any carbon attributes transferred under the RESA to avoid the potential separate sale of the renewable and carbon attributes associated with the same MWh.</p>
<p>15 – Ancillary Services</p>	<p>Current RESA language restricts a Generator from the sale of ancillary services. However, the rationale for this restriction is unclear. AESO should be seeking both to attract technological and resource configuration diversity and preserve grid reliability, and therefore should not restrict the types of products bidders can provide. While standalone wind or solar projects may be unlikely to offer ancillary service products, energy storage applications could be paired with a wind or solar project to provide such services. In addition, many hydroelectric projects are able to offer these important reliability services. Enabling all resources capable of providing ancillary services to do so will enhance competition in the ancillary services market and drive lower RFP bid pricing due to the availability of incremental revenue streams. At minimum, future solicitations should consider removal of this restriction.</p>
<p>16 – Settlement Provisions</p>	<p>Section 16 of the RESA states that AESO support payments for each hour will equal the metered quantity capped at the contract capacity multiplied by the difference between the strike price and the greater of the pool price or zero. ██████████ urges AESO to reconsider this rule. The addition of large amounts of renewables to a grid has often proven to produce negative prices – especially when wind generators are geographically concentrated in small geographical areas. Understandably, some generators may be able to curtail generation when negative prices occur; however, this could significantly impact revenues to the generator as well as diminish the amount of renewable energy produced over time. In turn, this could potentially increase project costs to the generator as additional risk premiums would have to be built in to the projects costs.</p>
<p>17 – Indexation and Payment Adjustments</p>	<p>We thank AESO for its consideration of price adjustments associated with changes to the CPI. However, we encourage AESO to include an adjustment to 100% of the strike price, rather than the 20% proposed. Absent the ability to adjust the entire strike price when changes occur to the CPI, this provision will place added upward pressure on bid pricing as projects may need to price in a yearly increase in their pricing when showing a normalized price bid for a RESA. This could also potentially impact financing competitiveness.</p>

Section	Feedback
18 – Curtailment	<p>AESO proposes to place the risk of curtailment entirely on the Generator through the provision restricting compensation for curtailed energy. [REDACTED] is concerned that this added risk will place upward pressure on bid pricing and potentially impact financing availability. To minimize this risk, it would be more appropriate for AESO to place an annual cap on unpaid curtailment. In addition we would recommend aligning the interconnection and procurement processes within the AESO to prevent accumulation of surplus generation in any region. This will more transparently outline the risk of potential cost exposure, which will benefit financing and bid terms.</p> <p>Relatedly, current AESO Rules (ISO Rule 304.3) places a real power output limit on non-exempt wind projects. [REDACTED] requests clarification of whether any wind projects awarded a RESA will be subject to or exempt from the output limit.</p>
19 – Change in Law	<p>Current language suggests there may be circumstances whereby the Government of Alberta may require amendments to the RESA. [REDACTED] requests clarity on what circumstances may necessitate this outcome, and we caution against inclusion of language calling into question the certainty of RESA contractual arrangements. Furthermore, we seek clarification on the financial relief contemplated under such specified circumstances. Without clarity on the circumstances and financial relief, bidders will need to establish additional bid premiums to cover the perceived risk, with premiums ranging depending on individual company risk appetite. This again will result in higher bid prices and ultimately ratepayer costs, but can be easily avoided through appropriate clarity and certainty upfront.</p>
25 – Termination - AESO Convenience	<p>Section 25 of the RESA conveys to the AESO the right to terminate the RESA for convenience prior to commercial operation of the facility, and includes a cap on reimbursement of Generator costs if termination occurs prior to commencement of construction. [REDACTED] urges AESO to remove this provision entirely as it only leads to increase in investment risk and complexity in financing arrangements, ultimately resulting in added cost for the ratepayers of Alberta. Instead we strongly recommend extra rigour in the bid evaluation process focusing on project maturity, local acceptance and sponsor capabilities prior to execution of contracts.</p>

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
2	<ul style="list-style-type: none">- The RESA should incorporate the ability for the Generator to buy back delay days at the time of COD at an agreed price to be established in the RESA.
3	<ul style="list-style-type: none">- Please define what is meant by “commence construction”? Is it commencing earthworks, hiring an EPC contractor, issuing FNTF, etc.- The earliest Support Payment date should be 18 months prior to Target COD.
4	<ul style="list-style-type: none">- Please advise exactly what the AESO is envisioning would be required to be delivered when they ask for a financial model.- Would the Generator’s IRR need to be disclosed to the AESO in order to act as the basis of the project’s IRR calculation in section 25?- Please describe exactly what is meant by requirement to secure financing prior to construction. Is it a credit agreement signed? Or all conditions precedent met? Would a commitment letter from a bank or a parental guarantee suffice?- Please describe which are the key AUC approvals/permits/licenses required.
5	<ul style="list-style-type: none">- What is a “non-zero offer” letter?- Please describe which are the key AUC approvals/permits/licenses to be provided.- Will the Independent Engineer be the AESO’s own IE or one contracted by the Generator specifically for this

Section	Feedback
	<ul style="list-style-type: none"> - task? - Contract Capacity should be clearly noted in AC terms.
6	<ul style="list-style-type: none"> - Any security interest granted to the AESO will have to be deeply subordinated to senior lenders to the project as reasonably required by senior lenders. - The performance security should be increased. It is a low figure compared to what we have seen in Ontario.
7	<ul style="list-style-type: none"> - The amount and frequency of this fee should be clearly stated, be based on the number of MW installed and be fixed for the term of the RESA.
8	<ul style="list-style-type: none"> - Facility Modification - AESO consent right for facility modification should be not to be unreasonably withheld. - Reduction of Contract Capacity – Should recognize that solar projects output may degrade at up to .7%/yr. Therefore, capacity may be as much as 15% lower by year 20 of the RESA. Also, capacity should not have to be restated each year for this degradation.
10	<ul style="list-style-type: none"> - The wording of this point is not clear. Will the site only have one meter with electricity consumed at site (when not generating) netted from the generation sold? Or will there be multiple meters and electricity usage be metered separately from generation?
12	<ul style="list-style-type: none"> - What reporting requirements will be required before COD? We would prefer to see the reporting requirements before COD minimized.
13	<ul style="list-style-type: none"> - It should be clear that the Generator is not permitted to receive any funding from any governmental authority in exchange for title to Renewable Attributes. It should be clear that if the Generator has already received any funding or incentives or commitments from the government of Alberta that it should not be eligible to participate in the REP or receive an RESA. - Can the AESO please clarify, if a municipal entity has an ownership interest in a project would the project be eligible to participate in the REP and receive an RESA? - Demand Transmission Service (DTS) Credits, should explicitly not be subject to the funds that the AESO is entitled to 50% of.
14	<ul style="list-style-type: none"> - The Generator should be able to contract the O&M work out. - Current wording states that the Generator needs to own or lease the facility during the term of the RESA. This should be modified to clarify that the Generator only needs to demonstrate legal rights over the facility (including options to lease which may be exercised after the start of the RESA).
16	<ul style="list-style-type: none"> - This point is likely addressed in section 19 but should the ISO rules change such that negative pool prices are permitted, then this would have to be reflected in the contract price/settlement provisions addressed in this section. - How will contracts be ranked and awarded? Will it be based on lowest Strike Price or forecasted lowest Support Payment? If based on lowest Support Payment, what will the basis for forecasted pool prices?
17	<ul style="list-style-type: none"> - The percentage of the strike price that should be indexed to inflation should be 25%.

Section	Feedback
18	<ul style="list-style-type: none"> - Please describe what is meant by curtailment. Will it be limited to grid outages or is the AESO envisioning something else? Prospects of curtailment presents a risk to Generators and lenders and should be very limited. - Is the AESO willing to provide any cap on curtailment?
19	<ul style="list-style-type: none"> - The Change in Law provisions in the RESA should explicitly provide for payment adjustments in the event that there is a change to the “ISO Tariff – Rate DTS” rules. For distribution system connected Generators, this is an important payment and which could be seen as either providing incremental revenue or reducing net costs to distribution connected generators. This benefit will allow distribution connected generators to reduce their strike price but only to the extent the Generator knows they will be protected from changes to these rules. This element of the ISO Tariff recognizes the benefits of distribution connection, which include the deferral/avoidance of future transmission system investments. The Generator has no ability to control any changes to these ISO rules. - Changes to conditions in regulatory permits or licenses outside the reasonable control of the Generator should be considered changes in law.
20	<ul style="list-style-type: none"> - Please clarify what is meant by “the inability to obtain consent/approval of the AESO pursuant to the terms of the agreement” in the second sub-bullet under Definition. - FM to not include appeals unless Supplier ordered to cease construction. This makes it seem like a project under construction can be appealed? Is this the case? This will become an issue for lenders. If there is a right to appeal after construction starts it will be difficult to finance. - Will obtaining key AUC approvals and permits be incorporated under Force Majeure if AUC is slow? - FM should include delays caused by real property disputes outside the reasonable control of the Generator.
21	<ul style="list-style-type: none"> - Please explain what is meant by (i)?
23	<ul style="list-style-type: none"> - Any security interest granted to the AESO will have to be deeply subordinated to senior lenders to the project as reasonably required by senior lenders.
25	<ul style="list-style-type: none"> - How will the equity internal rate of return “IRR” be determined? - Definition of “qualifying pre-construction” costs should be very broad and include any and all pre-construction costs including deposits, fees, etc - The AESO should not have any right to terminate for convenience post COD.
26	<ul style="list-style-type: none"> - The remedy if this occurs prior to construction should be the same as the remedy outlined for Termination Prior to Construction Commencement in section 25.
31	<ul style="list-style-type: none"> - REP Specific Representations and Warranties (iii). FM relief should not be limited to events that were reasonably unforeseeable. Many FM events could theoretically be foreseen (eg. strikes, government orders, permit renewals, etc) but still unexpected and beyond the Generator’s control.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted submitter information]

Section	Feedback
Multiple	<p>In several instances throughout the RESA the AESO has used the Request for Qualification (RFQ) as the point at which specific project parameters are “locked in” and then referred to in the RESA. In general, the RFQ is an inappropriate time to lock in these parameters for the purposes of either evaluation within the procurement, or to refer to within the RESA itself.</p> <p>For example, within Section 6 of the term sheet, the AESO specifies that the Pre-COD Security of \$50,000.00/MW will be calculated based on the nameplate capacity declared at RFQ. Firstly, the proposed Generator should not be required to specify specific project nameplate capacities within the RFQ. The RFQ should be used to qualify the company in question rather than the specific projects. Project details like nameplate capacity will change between the time the RFQ is evaluated and when the project is bid during the Request for Proposals (RFP). The RFP is the appropriate time to collect information like nameplate capacity for the purposes of populating the RESA and establishing requirements such as Pre-COD Security.</p> <p>Another example of the AESO referring to the nameplate capacity within the RFQ is within Section 8 of the term sheet wherein the AESO specifies the provisions around reducing contract capacity. This too should refer to the RFP rather than the RFQ.</p>
Section 2: Term	<p>[Redacted] recommends that the AESO consider a 25 year Support Period to align with warranty lengths for solar generation technologies (similar warranty/certification period increases have also been observed with wind turbine technologies). A longer Support Period will also contribute to lower bid prices within the procurement process due</p>

Section	Feedback
	<p>to longer financing amortization periods providing revenue certainty over the longer time period. These lower bid prices will help achieve lower electricity costs for Alberta rate and tax payers.</p> <p>Support Period Buy Back</p> <p>█ recommends that the AESO include a provision within the RESA whereby a project that achieves Commercial Operation after the Target COD, but before the COD Longstop Date, may “buy back” any lost days from the Support Period by providing both notice and a payment to the AESO. Allowing the Generator to exercise such a provision would reduce financial risk to both the Generator and its financiers, which will contribute to lower bid prices within the procurement process.</p>
<p>Section 3: Target and Longstop Dates</p>	<p>CCI Longstop Date</p> <p>The Commencement of Construction Longstop date should be set no earlier than the Target COD to allow full flexibility for Generators to manage the different construction timelines associated with their projects.</p> <p>Target COD</p> <p>The Target COD should be set no earlier than 2 years after the awarding/sign-back of the RESA and the commencement of the Term. As currently contemplated, utility scale solar projects could have to reach COD in less than 2 years depending on when the final RESA is established and the first REP procurement concludes. Experience in other jurisdictions has shown that a 2-3 year Development Period is reasonable for the construction of a new-build utility scale groundmount solar facility.</p>
<p>Section 4: Requirements For Commencement of Construction</p>	<p>█ recommends that the AESO revise the RESA to specify that Commencement of Construction has been achieved at the point when the Generator has delivered all required materials (in the form of a statutory declaration) to the AESO, and that no further confirmation from the AESO is required.</p> <p>In our view, such notice of construction should confirm that the Generator has:</p> <ol style="list-style-type: none"> 1. Obtained key Alberta Utilities Commission (“AUC”) and other environmental, assessments, permits, licenses and approvals <i>necessary to commence construction</i> 2. Secured financing or entered into arrangements sufficient to complete construction, commissioning and operation of the facility, 3. Procured or entered into arrangements for long-lead equipment and materials which are necessary for the construction of the facility; and, 4. Commenced construction activities at the site of the facility.

Section	Feedback
	<p>Sharing a copy of the Generator financial model: If AESO is interested in knowing total project costs which would be included in the financial model, [REDACTED] recommends that a Generator deliver a “financing plan” in a prescribed form, noting the sources of debt and equity (akin to the Ontario IESO’s process), rather than requiring the submission of a financial model.</p> <p>Financial models are core to a developer’s competitive edge. These documents are strictly confidential, and not suitable for release to a third party, especially a public sector third party (i.e., AESO or any branch of government) that is subject to FOIP requests. Additionally, the AESO is unable to provide certainty that the financial model will not be viewed by a non-permitted party, as records can be accidentally disclosed to the requester or to the incorrect Generator. Moreover, it is not uncommon for professionals in this sector to move from positions with AESO, to consultancy firms, and to developers, exposing generators to risk of sharing financial models.</p>
Section 5: Requirements for Commercial Operation	[REDACTED] requests clarification on the meaning of “non-zero offer” from the AESO.
Section 6: Security	<p>Security over the Facility</p> <p>[REDACTED] recommends removing this clause from the RESA. For generators requiring third party project financing, lenders will not consent to the AESO being given a security interest over the facility regardless if it is subordinated. In the event that the AESO wants post-COD security, it is recommended that they implement the requirements outlined in Section 5.2 of Ontario’s FIT contract.</p> <p>Security Amount</p> <p>[REDACTED] agrees that it is reasonable for the AESO to hold contract security for contracted facilities in the form of acceptable LCs, cash or credit ratings. [REDACTED] recommends, however, that security amounts be tied to the maturity of the facility rather than collected in its full amount at contract execution.</p>
Section 7: AESO Administration Fee	[REDACTED] does not take issue with the AESO collecting an administration fee as a requirement of the RFQ/RFP (i.e. during the procurement process and to cover the costs of running the procurement process). Clarity is required, however, on the amount of the AESO administration fee.
Section 8: Design and Construction	<p>Facility Modification</p> <p>[REDACTED] requests clarity from the AESO with regards to what specific layout/design information will be required in the RESA, and how that information (and under what circumstances) that information will be permitted to change over the Development Period. For example, it would be unreasonable to require the Generator to specify the specific location of all modules, inverters, and transformers in the RESA prior to achieving Commercial Operation. During the Development Period, and as a result of legitimate requests from permitting and connection authorities, the location of specific equipment is expected to change on site. As such, specific details such as these should not be required before achieving Commercial Operation. For information that is requested within, within the RFP process for example, [REDACTED] recommends that consent to changes should not be unreasonably withheld by the AESO.</p>

Section	Feedback
Section 12: Reporting	<p>Frequency of reporting should be specified, either on a semi-annual or annual basis. [REDACTED] recommends a reduced frequency for post-COD reporting as compared to pre-COD, should AESO request reporting during the Support Period. [REDACTED] also requests clarity on what is meant by “and including matters relating to its equity participants.”</p>
Section 15: Ancillary Services	<p>The AESO has specified that the Generator will not be permitted to sell ancillary services from a project under the RESA.</p> <p>[REDACTED] understands the AESO’s intent to keep the first round of the REP relatively uncomplicated, however, we believe the AESO should initiate consultations with industry as to how the sale of ancillary services could work within the RESA framework in the future. Both on its own, and in conjunction with certain energy storage technologies, solar could likely provide certain types of ancillary services and should not be precluded from doing so.</p> <p>Additionally, [REDACTED] requests that AESO confirm that distribution tariff amounts received by facilities connected to the distribution system under this provision are not classified as Ancillary Services under the RESA.</p>
Section 16: Settlement Provisions	<p>Contract Price</p> <p>Calculating “the difference between the strike price and the greater of the pool price and zero” to determine the size of any RESA support payments exposes generators to negative pricing risks. [REDACTED] recommends that the RESA include provisions eliminating any exposure to negative pricing. This will result in lower bid prices than are currently incentivized with this contract language, as it reduces risk exposure for generators. While we understand that there is currently a floor on pool prices at \$0/MWh, the framing of “the greater of the pool price or zero” has led to some concern about the likelihood of changes to the floor.</p>
Section 18: Curtailment	<p>The AESO has specified that Generators will not be compensated for electricity that they could have produced during any periods of curtailment. Throughout the AESO’s communication on the Renewable Energy Program, it has been emphasized that any risk would be borne by that party in the contract best placed to deal with it. The curtailment rules, as outlined in this draft, place all curtailment risk on the generator, where some risk should be shared with the AESO. The Transmission Regulations in Alberta obligates the AESO to maintain a congestion free power system under normal operating circumstances. Under the RESA provisions, if the AESO is unable to fulfil the congestion free obligations, it is the generator who will face the consequence.</p> <p>[REDACTED] understands that congestion will occur for short periods of time while the system adjusts to unexpected circumstances (i.e., significant demand changes) and therefore some amount of curtailment risk sharing is appropriate. However, curtailment due to congestion in the Alberta power system is best controlled by the AESO as the system operator, planner and connection authority. Curtailment risk sharing has been addressed in other jurisdictions by capping the annual curtailment structure.</p>

Section	Feedback
	<p>With an annual cap of 50 MWh/MW of capacity and a lifetime cap of 1000 MWh per MW, proponents are provided with the incentive to consider siting impacts on curtailment, while not requiring them to take all the risk and increase bid prices unnecessarily. This could also be addressed by providing the generator with compensation in the event that curtailment arises as a result of an act or omission by the AESO, the Government of Alberta or a change in law.</p> <p>██████ recommends the AESO cap curtailment risk on generators by establishing a certain number of hours of curtailment for which they will not be compensated for any electricity they could have produced. Full curtailment will also make the projects un-financeable. ██████ recommends curtailment thresholds similar to those in Ontario. In the event that a cap is implemented, ██████ members also request some clarity from the AESO regarding how likelihood of curtailment, as driven by geographical factors, will be taken into account by the procurement process.</p>
Section 19: Change in Law	<p>The AESO has specified a series of categories of Designated Changes to law which identify that the Generator will receive schedule and financial relief with respect to changes in law, regulation, orders, or required amendments to the RESA by the Government of Alberta (or any regulatory body in Alberta) which are directed specifically at:</p> <ul style="list-style-type: none"> • The Generator in relation to the Project; • The rules and regulations which govern generation facility owners; • The RESA, the subject matter of the RESA or arrangements of the nature of the RESA. <p>Changes would need to delay the development and construction of the facility or which increase costs the Generator would reasonably be expected to incur. Relief will not be provided where the Generator had prior knowledge of the change or where the change is in response to an action of the Generator that is contrary to law or contrary to where change is permitted by the RESA.</p> <p>The change in law provisions are limited in their applicability to certain types of changes that are directed specifically at the Generator, rules/regulations governing generation facility owners, or the subject matter of the RESA. This scope does not incorporate other law or regulation changes that could materially adversely affect the economics of the project (such as the recent announcement of the intent to develop a capacity market). ██████ recommends broadening the Designated Changes to incorporate any changes to law, regulation, orders or required amendments to the RESA by the Government of Alberta that materially adversely affect the economics of the Project.</p> <p>Prior Notice</p> <p>Furthermore, the RESA terms provide that relief will not be provided where the Generator had prior notice of the change or where the change is permitted by the RESA. However, this may be of little relief to generators, as there is always prior notice of a change in law. Notice for changes in law may range from significant times spent in consultation with industry to as little as 24 hours' notice (with respect to the notice provided to the legislature. In the spirit of transparency and providing relief where required, ██████ recommends that "prior notice" should only be applicable to notice given prior to the submission of a binding bid.</p>

Section	Feedback
Section 20: Force Majeure	<p>Schedule Relief</p> <p>The AESO should clarify that proponents would be eligible for Force Majeure relief due to permitting delays. Furthermore, Force Majeure relief should also be granted upon appeal regardless of any stop work order, as a company should not reasonably be expected to commence construction with an appeal pending. There are several opportunities for appeals or delays throughout the project development process, including through an AUC hearing, Alberta Environmental and Parks review or other processes after permit issuance through challenges to supporting permits, a review and variance of AUC decisions and/or an outright appeal to the AUC permit. There are no prescribed timescales for resolution of all such interventions and appeals. In Ontario, there are prescribed timescales for resolution of appeals. Accordingly, should regulatory appeals or interventions arise which cannot be anticipated, relief under Force Majeure should be allowed. This could be addressed by granting day-for-day Force Majeure relief for the appeal period. [REDACTED] recommends adopting such an approach in the RESA to give developers relief for processes over which they have no control.</p>
Section 23: Termination – Events of Generator Default	<p>Generator Events of Default should have reasonable cure periods. [REDACTED] recommends a timeline of 60 days, or other reasonable time frame if the parties agree to extend. If the default is of a nature that it cannot be cured within the reasonable cure period, then the Generator should be permitted to work towards a remedy with a plan developed during the cure period, if it is acceptable to the AESO.</p>
Section 25: Termination – AESO Convenience	<p>General</p> <p>The AESO has included preliminary provisions for an AESO right of termination for convenience. Due to the risks it represents to the success of the Renewable Energy Program, the option for “Termination for convenience” within 30 days of commercial operation of a facility must be removed from the draft terms of the RESA. Under no circumstance is such a clause appropriate in the context of renewable energy generation projects, given the structure in which such projects are procured, financed and built as compared to large scale power or infrastructure assets. The opportunity for “termination for convenience” by the AESO is a significant risk for Generators and third party financiers, resulting in risk premiums that may prevent projects from being financeable. These risks will be costed into Generators’ bid prices, which will drive up costs for ratepayers and taxpayers. Termination for Convenience also exposes project partners, such as First Nations and municipalities, to risks as the threat of project cancellation will also limit their access to financing.</p> <p>[REDACTED] has also included the comments below with regards to Termination for Convenience, however, reiterates that Termination for Convenience should be removed from the RESA.</p> <p>Industry will require significantly more information on the timelines, mechanics, and eligible costs to be included in the event that this right is exercised by the AESO. For example, the specific process for when and how costs will be calculated and settled, timelines for all activities within the process, and any true-ups for taxes and interest paid, is required to be consulted on.</p>

Section

Feedback

The calculation of repayment to lenders will also be important and must include full makewhole and swap reimbursement for fixed price interest. This concept was tested in Ontario and ultimately rejected due to the impact on financeability of projects.

Timelines

At any time prior to commercial operation the AESO can terminate the RESA by giving 30 days notice to the Generator. This timeline is far shorter than the timelines established under the Large Renewable Procurement (LRP I) in Ontario, which set a notice timeline of 180 days. [REDACTED] recommends that a similar timeframe be adopted for the RESA.

Termination Prior to Construction Commencement

If the Termination for Convenience Right is exercised before the commencement of construction the Generator's exclusive remedy is proposed to be held to qualifying pre-construction development costs.

In other renewable energy procurements wherein the contract counterparty's liabilities are limited to qualifying pre-construction development costs, the upper limit of those costs has been set far lower than is representative of actual costs incurred. In Ontario under the LRP, the pre-construction liability limit was set at \$250,000.00 + \$10.00/kW of contract capacity.

Depending on project size, pre-construction development costs can range from \$300,000.00/MW up to 500,000.00/MW just before the project is fully permitted and the Generator is ready to notify the AESO of Commencement of Construction. Depending on the time in the development cycle that the Termination for Convenience Right is exercised, the Generator could have spent up to the figures identified above. If the Termination for Convenience Right was exercised earlier in the development process, the incurred costs would be lower.

In order to fairly compensate Generators for qualifying pre-construction development costs for solar, the upper limit should be set no lower than \$500,000.00/MW with clear definitions of what qualifying pre-construction development costs are. The AESO would not be liable to pay for any qualifying pre-construction development costs that were not supported by evidence.

Examples of the types of activities that should fall under the definition of qualifying pre-construction development costs include:

- Interconnection assessments and deposits for connection agreements
- Approvals and permitting costs (including environmental approvals, municipal permits, and public engagement)
- Energy production estimates for financing purposes
- Legal and financial due diligence
- Agreements with equipment suppliers, EPCs and other contractors

Section	Feedback
	<ul style="list-style-type: none"> Preliminary engineering and design <p>Termination Post Construction Commencement</p> <p>Opportunities for AESO termination for convenience post-construction commencement should be removed from the RESA, as courts are the most appropriate vehicle to resolve the costs owed at this point in the process.</p> <p>Significantly more clarity is required with regards to the formula for calculating the termination payment in the event the Termination for Convenience Right is exercised post construction commencement. For example, the AESO has included “all decommissioning, breakage, and other costs related to the winding down of the project” within the calculation of the termination payment. It is unclear, however, whether items such as interest payments on outstanding debt or taxes owed on the termination payment itself are factored into the calculation. The existence of any true up payments later in the process are also not included in the calculation as currently worded.</p>
	<p>Security Agreement: ██████ recommends that language be added that such an agreement not be unreasonably withheld. Third party consents are often the final condition precedent to financial close, and Generators would like comfort that the AESO will be responsive to a Generator’s request, and act reasonably as the counterparty.</p> <p>Direct lender agreement: ██████ recommends that language be added that reasonable comments from a lender be incorporated in the prescribed form. Each lender is unique, and can require specific clauses or language be included. Additional, as per above, given timing considerations, we would request language that would address the intent to work to an expedient execution of such an agreement.</p>
Section 28: Assignment	<p>The AESO has specified that either party can assign its rights and benefits with prior consent of the other, not to be unreasonably withheld, unless the assignment would cause the Generator to breach the obligation to own or lease the facility for the Term.</p> <p>██████ seeks clarity as to whether this provision is intended to limit the parties to which the entity that is the Generator at COD can assign/sell the RESA to after COD. The entity that is the Generator, after Commercial Operation has been achieved, should not be precluded from assigning the RESA to another entity (provided that entity becomes the Generator).</p>
Section 29: Change of Control	<p>The AESO has specified that changes of control involving affiliates are permitted provided the original persons in control of the Generator maintain a minimum interest. ██████ requests clarity as to the threshold the AESO will use to determine a “minimum interest” and how this will be evaluated i.e. ownership shares vs de facto control.</p>
Section 33: Dispute Resolution	<p>Dispute Resolution</p> <p>██████ recommends that the period for dispute resolution specified in the RESA be increased from 10 days to 30 days. Depending on the nature of the dispute, 10 days could reasonably be assumed to be too short a period in order to effectively reach a resolution between the AESO and the Generator. Additionally, the RESA should specify</p>

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	that an arbitration process will exist for situations wherein the AESO and the Generator are unable to reach a mutually satisfactory resolution to the dispute.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted submitter information]

Section	Feedback
Section 25: Termination – AESO Convenience	<p>Termination for Convenience: Due to the risks it represents to the success of the Renewable Energy Program, the option for “Termination for convenience” within 30 days of commercial operation of a facility must be removed from the draft terms of the RESA. Under no circumstance is such a clause appropriate in the context of renewable energy generation projects, given the structure in which such projects are procured, financed and built as compared to large scale power or infrastructure assets. The opportunity for “termination for convenience” by the AESO is a significant risk for Generators and third party financiers, resulting in risk premiums that may prevent projects from being financeable. These risks will be costed into Generators’ bid prices, which will drive up costs for ratepayers and taxpayers. Termination for Convenience also exposes project partners, such as First Nations and municipalities, to risks as the threat of project cancellation will also limit their access to financing.</p> <p>Termination post Construction Commencement: Opportunities for AESO termination for convenience post-construction commencement should be removed from the RESA, as courts are the most appropriate vehicle to resolve the costs owed at this point in the process. Greater clarity will be required on how to determine what valuation principles will be used to determine the value of wind farm assets.</p>

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Section 20: Force Majeure	<p>Force Majeure: The AESO should clarify that proponents would be eligible for Force Majeure relief due to permitting delays. Furthermore, Force Majeure relief should also be granted upon appeal regardless of any stop work order, as a company should not reasonably be expected to commence construction with an appeal pending. There are several opportunities for appeals or delays throughout the wind project development process, including through an AUC hearing, Alberta Environmental and Parks review or other processes after permit issuance through challenges to supporting permits, a review and variance of AUC decisions and/or an outright appeal to the AUC permit. There are no prescribed timescales for resolution of all such interventions and appeals. In Ontario, there are prescribed timescales for resolution of appeals. Accordingly, should regulatory appeals or interventions arise which cannot be anticipated, relief under Force Majeure should be allowed. This could be addressed by granting day-for-day Force Majeure relief for the appeal period. We would recommend adopting such an approach in the RESA to give developers relief for processes over which they have no control.</p>
Section 18: Curtailment	<p>Curtailment: Throughout the AESO's communication on the Renewable Energy Program, it has been emphasized that any risk would be borne by that party in the contract best placed to deal with it. The curtailment rules, as outlined in this draft, place all curtailment risk on the generator, where some risk should be shared with the AESO. The Transmission Regulations in Alberta obligates the AESO to maintain a congestion free power system under normal operating circumstances. Under the RESA provisions, if the AESO is unable to fulfil the congestion free obligations, it is the generator who will face the consequence.</p> <p>██████████ understands that congestion will occur for short periods of time while the system adjusts to unexpected circumstances (i.e., significant demand changes) and therefore some amount of curtailment risk sharing is appropriate. However, curtailment due to congestion in the Alberta power system is best controlled by the AESO as the system operator, planner and connection authority. Curtailment risk sharing has been addressed in other jurisdictions by capping the annual curtailment structure.</p> <p>With an annual cap of 50 MWh/MW of capacity and a lifetime cap of 1000 MWh per MW, proponents are provided with the incentive to consider siting impacts on curtailment, while not requiring them to take all the risk and increase bid prices unnecessarily. ██████████ acknowledges that it would be reasonable to vary the curtailment cap according to the curtailment risk of the project, in order to maintain incentives for developers to manage curtailment risk.) This could also be addressed by providing the generator with compensation in the event that curtailment arises as a result of an act or omission by the AESO, the Government of Alberta or a change in law.</p> <p>In the event that a cap is implemented, ██████████ ██████████ also request some clarity from the AESO regarding how likelihood of curtailment, as driven by geographical factors, will be taken into account by the procurement process.</p>

Section	Feedback
Section 2: Term	<p>██████████ recommends that the AESO consider a 25-year term (Support Period) to align with improvements in wind turbine technology. This timeframe would reflect the fact that turbines are now commonly type certified for a minimum of 25 years, up from 20 years, which was common several years ago. Moreover, irrespective of renewable technology type, a longer Support Period will result in lower bid prices, due to the longer financing amortization periods associated with revenue certainty over a 25-year period, extended by up to five years from current accepted debt tenors for 20-year arrangements. These lower bid prices will produce the lowest costs for Alberta rate- and tax-payers.</p> <p>Term Buy Back: To reduce Generator risk, which leads to lower pricing, the RESA should allow the Generator who achieves COD after target COD, but prior to the COD longstop date to pay a set amount to maintain the full term of the RESA. This provision will also have the benefit of simplifying the negotiations around the financing of the Project.</p> <p>██████████ recommends that the following language be added to the RESA terms:</p> <p><i>Where the Commercial Operation Date occurs after the Target COD, the Generator shall have the option to, no later than 60 days after the Commercial Operation Date, provide notice to the AESO along with a payment in the amount of 0.05 Dollars per kW multiplied by the Contract Capacity and multiplied by the number of calendar days that the Commercial Operation Date followed the Target COD. Where the Supplier exercises such option, the Term shall be extended such that the Term will expire on the day before the 25th (twenty-fifth) anniversary of the Commercial Operation Date.</i></p>
Section 3: Target and Longstop Dates	<p>Commencement of Construction: Acknowledging that the interests of the contract counter parties are already aligned (the AESO is interested in ensuring contracted projects reach in-service in the targeted timelines, and the Generator is interested in commencing commercial operation as soon as possible such that it can realize revenue on its investment through RESA revenues), ██████████ ██████████ suggest that any Commencement of Construction milestone date should include a reasonable cure period if generators fall behind on meeting that date. Given that any generator participating in the procurement process has already passed through a rigorous qualification exercise, it can be expected that they are very likely to have the capacity to complete any project by the expected COD. Beyond these qualifications, the cure period should also require generators to demonstrate measures taken to meet the COD.</p> <p>Commercial Operation: ██████████ recommends that If the Generator fails to achieve commercial operation by Target COD, the Support Period shall be shortened for each day of delay on a day-for-day basis, subject to the Generator’s exercise of the optional term buy-back.</p>

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	<p>Extension of Dates: ██████ recommends that milestone dates should be reasonably extended for the consequential delay associated in the event of force majeure. In many cases this is a day-for-day situation, however, certain delays can result in delays that are more than day-for-day.</p>
<p>Section 4: Requirements for Commencement of Construction</p>	<p>Requirements for Commencement of Construction: ██████ ██████ recognize the value in a notice of construction process such that AESO has a written record of facilities that are under construction. However, in the interest of clarity, ██████ recommends that such notice of construction should confirm that the Generator has:</p> <ol style="list-style-type: none"> 1. obtained key Alberta Utilities Commission (“AUC”) and other environmental assessments, permits, licenses and approvals <i>necessary to commence construction</i> 2. secured financing or entered into arrangements sufficient to complete construction, commissioning and operation of the facility, 3. procured or entered into arrangements for long-lead equipment and materials which are necessary for the construction of the facility; and, 4. commenced construction activities at the site of the facility. <p>With regards to 1., ██████ requests that the AESO provide clarity on which environmental assessments, permits, licenses and approvals would be considered necessary to commence construction. With regards to 4., ██████ ██████ recommend that construction activity could be considered to have commenced with site clearing work.</p> <p>Sharing a copy of the Generator financial model: If AESO is interested in knowing total project costs which would be included in the financial model, ██████ recommends that a Generator deliver a “financing plan” in a prescribed form, noting the sources of debt and equity rather than requiring the submission of a financial model.</p> <p>Financial models are core to a developer’s competitive edge. These documents are strictly confidential, and not suitable for release to a third party, especially a public sector third party (i.e., AESO or any branch of government) that is subject to FOIP requests. We also note that while the previous AESO Competitive procurement for transmission required this financial model, this competitive procurement is for unregulated assets and therefore the financial model should not be required by the AESO.</p>
<p>Section 6: Security</p>	<p>Security over the Facility: ██████ recommends removing this clause from the RESA. For generators requiring third party project financing, lenders may not consent to the AESO being given the priority interest over the facility (i.e., above their security interests). While the AESO required this security over the facility in its transmission procurement, ██████ ██████ would like to emphasize that transmission is a regulated asset that would be required by AESO, leading to the assumption that any defaulted assets would be purchased by another TFO. As a</p>

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	<p>generator is not a regulated asset, this backstop is not guaranteed, which may lead to difficulty in acquiring financing.</p>
<p>Section 7: AESO Administration Fee</p>	<p>AESO Administrative Fee: The RESA must outline the cost and timing of the proposed administrative fee. The size of the fee will be required as it will impact the bid price. [REDACTED] recommends that instead of an administration fee in the RESA, the AESO should consider a capped application fee as part of the REP RFP process, where the bulk of the REP resource needs will be spent. The ongoing contract management costs of RESA should be captured as part of AESO general tariff rates similar to funds required for market operations, planning, forecast, etc.</p>
<p>Section 8: Design and Construction</p>	<p>Design and Modification: [REDACTED] [REDACTED] recommend that Section 8 refer more specifically to “new and expanded projects in Alberta.”</p> <p>Facility Modification: In several instances throughout the RESA terms, the AESO has used the Request for Qualification (RFQ) as the point at which specific project parameters are “locked in” and then referred to in the RESA. In general, the RFQ is an inappropriate time to lock in these parameters for the purposes of either evaluation within the procurement, or to refer to within the RESA itself. According to the draft terms, project capacity is to be declared within the RFQ stage, however it may be better practice to declare project capacity within the RFP stage to allow greater accuracy. Declaring capacity at the RFP stage would allow a generator to perform final modifications to project design prior to RFP bid submission, including adjustments to project capacity.</p> <p>Reduction of Contract Capacity: The RESA has a requirement for an independent engineer to confirm the capacity of the project should the capacity of the project be reduced. A confirming process for the confirmation from the independent engineer should be included in the RESA term sheet.</p>
<p>Section 12: Reporting</p>	<p>Reporting: Frequency of reporting should be specified, either on a semi-annual or annual basis. [REDACTED] recommends a reduced frequency for post-COD reporting as compared to pre-COD, should AESO request reporting during the Support Period. [REDACTED] [REDACTED] also request clarity on what is meant by “and including matters relating to its equity participants.”</p>
<p>Section 13: Renewable Attributes and Funding from other Governmental Authorities</p>	<p>Other Government Funding: Clarity is required on the definition of “funding of governmental authority”, particularly as it may be impacted by favourable property tax treatment from municipalities. There should also be some clarity provided on the difference between incentive programs developed by federal and municipal authorities. [REDACTED] [REDACTED] recommend that this Section include language specifically allowing equity partners, such as indigenous communities to access funding for participation in renewable projects, without any requirement that funds are shared with the AESO. Such funding is sometimes available to provide partners with funding needed to access office space, buy equipment and hire employees. [REDACTED] also recommends that this clause explicitly rule out claw backs from CCEMC.</p>

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Section 15: Ancillary Services	<p>Ancillary Services: ██████ notes that the ancillary services needed by the electricity system and the ancillary services that could potentially be provided by wind energy are likely to evolve over time. We would be interested in better understanding the intent of this prohibition of ancillary services and its implications over time.</p>
Section 19: Change in Law	<p>Change in Law: Given recent announcements and developments regarding the introduction of a capacity market structure and the devolution of the coal Power Purchase Arrangements in Alberta, it will be necessary to provide Generators with schedule and financial relief for any Change to ISO Rules or Change in Market Structure. This will be required in order for any companies requiring third party financing to receive it.</p> <p>Consequences of Designated Changes: More clarity and discussion is required with respect to the use of terms “directed specifically”, “generator,” “facility,” and “project,” as they relate to Designated Changes.</p> <p>Designated Changes: As proposed, the Designated Changes provision applies in circumstances where the change in law is “directed specifically” at the Generator (or the rules and regulations governing generation owners, or the RES). However, the AESO should not discount that it is possible to have changes in law that despite not being directed specifically at the Generator may nevertheless have the <i>effect</i> of materially impacting the Generator’s economics. Greater consideration should be given to these broader circumstances and this section should be revised to afford the Generator protection for laws of general application based on the effect on the Generator and not solely on the intent of the laws. That is, Generators should also be protected from change in law that is not directed specifically at the Generator. In addition, we assume that the limitation with respect to changes in law to “by the GoA (or any regulatory body in Alberta)” are limited to required amendments to the RESA.</p> <p>Prior Notice: Furthermore, the RESA terms provide that relief will not be provided where the Generator had prior notice of the change or where the change is permitted by the RESA. However, this may be of little relief to generators, as there is always prior notice of a change in law. ██████ ██████ have observed that notice for change in law may range from significant times spent in consultation with industry to as little as 24 hours’ notice (with respect to the notice provided to the legislature. In the spirit of transparency and providing relief where required, ██████ recommends that “prior notice” should only be applicable to notice given prior to the submission of a binding bid.</p> <p>Change to ISO rules: The Change in Law section should be clarified to include circumstances where new ISO rules or laws are enacted or passed and not just changes to existing ISO rules or laws.</p>
Section 23: Termination – Event of Generator Default	<p>Events of Generator Default: Generator Events of Default should have reasonable cure periods. We recommend a timeline of 60 days, with an additional 60 days for lenders, or other reasonable time frame if the parties agree to extend. If the default is of a nature that it cannot be cured within the reasonable cure period, then the Generator</p>

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	<p>should be permitted to work towards a remedy with a plan developed during the cure period, if it is acceptable to the AESO.</p>
<p>Section 27: Financing and Consequences of Default</p>	<p>Security Agreement: ██████ requests that language be added that such an agreement not be unreasonably withheld. Third party consents are often the final condition precedent to financial close, and Generators would like comfort that the AESO will be responsive to a Generator’s request, and act reasonably as the counterparty.</p> <p>Direct lender agreement: ██████ requests that language be added that reasonable comments from a lender be incorporated in the prescribed form. Each lender is unique, and can require specific clauses or language be included. Additionally, as per above, given timing considerations, we would request language that would address the intent to work to an expedient execution of such an agreement.</p>
<p>Section 28: Assignment</p>	<p>Generator Assignment Prior to Commercial Operation: Assignments to subsidiaries, affiliates, SPVs or LPs should not be limited prior to COD. While it is reasonable for the AESO to require consent, consent should “<i>not be unreasonably withheld.</i>”</p> <p>Assignment by AESO: Assignment by the AESO should at least require notice to the Generator. While consent may be appropriate, it should not be unreasonably withheld.</p>
<p>Section 29: Change of Control</p>	<p>Generator Change of Control Prior to Commercial Operation: The AESO should not unduly limit transactions where the contracted facility is not a major part of the transaction. For instance, if a company is undergoing a sale of global assets, it would be unreasonable to hold up the sale if the generating asset is only one part of a greater deal.</p>
<p>Section 33: Dispute Resolution</p>	<p>Dispute Resolution: The ten-day period for dispute resolution as specified by the draft terms of the RESA is too short a timeframe. Parties should be granted 30 days to resolve a dispute. The RESA should also provide opportunities for Arbitration, along with an appropriate Arbitration process, similar to that outlined in Section 15.1 of the Ontario FIT contract. This can provide a private and confidential resolution that may be more expedient than litigation.</p>

Section

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COD Longstop Date

A “COD Longstop Date” of 18 months after Target COD is excessive and may result in the unintended consequence of bidders submitting projects with overly aggressive or unrealistic Target CODs. We submit that this is inconsistent with the broader goals of the REP. The goal of the “COD Longstop Date” should be to promote the timely construction and commissioning of facilities to meet the GoA’s 2019 target for COD. The current 18-month “COD Longstop Date” does not achieve this. In our view Generators should be able to provide reasonable certainty within a few months as to when they will achieve their Target COD, barring any unforeseen delays outside of the Generator’s control. Such events are already covered in this section and an Extension of Dates is permitted for the Target COD, and Longstop Dates in the event a force majeure or a change in law delays the Generator in the development or construction of the facility. Given this, and the comments made in regard to Section 2 as to what should constitute grounds for an Extension of Dates and Extension of Term, we propose that a more commercially reasonable COD Longstop Date would be maximum 6 months. This will hold Generators to a reasonable standard and also protect against projects with unrealistic Target CODs. There should be reasonable clarity provided to the market, the AESO, and the GoA with respect to supply and when successful REP projects will be added to the system.

Earliest Support Payment

The Earliest Support Payment provision raises two concerns: 1) it is ambiguous and could be interpreted to mean that support payments may be issued prior to COD; and 2) the specified one-year prior timeframe is excessive. To address the first issue around ambiguity, we suggest the AESO specify that support payments will only be provided once COD is reached. The second issue pertains to the AESO’s proposal to provide support payments for REP projects as early as one year prior to Target COD. This appears to be problematic for a number of reasons. As stated above, the market and the AESO should have reasonable certainty as to when REP projects will COD; this not only provides transparency to the market regarding supply and potential price impacts but also helps to align renewable additions more closely with coal retirements. Projects awarded in the first competition are to be operational in 2019, and as such will already precede coal retirements (December 31, 2019). The GoA should have reasonable certainty regarding the potential costs of the REP within a given budget year. A Target COD that could range anywhere from 12 months prior to 18 months later (as proposed above) is not reasonable and would not be helpful in any of these respects. Such lengthy date ranges could also create issues for planning and procurement under the forthcoming capacity market, leading to increased forecast risk, among other issues. We propose that the AESO shorten the Earliest Support Payment provision to 6 months prior to COD.

Extension of Dates

In addition to force majeure and change in law events, an Extension of Dates should be permitted and considered in the event of all other circumstances outside of a Generator’s control- these

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	<p>should include, among other circumstances, delays in regulatory and environmental approvals and delays in interconnection to the system that are not a result of the actions of the Generator. We ask that the AESO consider revising this section as such. The term “reasonable period” as it refers to Extension of Dates is vague and we propose it be stated that in the event of applicable delays an Extension of Dates will be credited on a one-for-one or day-for-day basis.</p>
<p>4- Requirements for Commencement of Construction</p>	<p>Delivery of Financial Model to AESO We respectfully disagree with the delivery of a Generator’s financial model to the AESO as a requirement for commencement of construction or for any other purpose in the RESA or associated REP competitive process. In our view, this action is unnecessary and should be removed for the following reasons:</p> <ol style="list-style-type: none"> 1- Financial models contain proprietary and commercially sensitive information. The sharing of such models not only presents confidentially and FOIP concerns regarding the potential sharing and release of commercially sensitive information, but it also presents serious concerns of prejudice to Generators in future RESA disputes. 2- The RFQ stage in the competitive process, among other things, will allow the AESO to evaluate financial eligibility requirements of participants and their proposed projects. Any concerns related to project financing or a Generator’s ability to finance should be vetted through the RFQ. 3- Affirmation of financing commitments, operational convents, and representations and warranties of the Generator are already covered under the RESA and the Generator is subject to the associated penalties in the event of non-delivery. 4- There is also a concern that the potential sharing of a Generator’s financial model with the AESO, GoA, and/or competitors could interfere with and impair the competitive process. <p>It is our understanding that similar requests in other jurisdictions relate to disclosing sources of debt and equity for a project, not sharing of a full financial model. We ask the AESO to clarify what they believe constitutes a financial model and provide more context as to its rationale for requesting the financial model.</p> <p>Other Issues Confirm that possession of key AUC and other environmental, assessments, permits, licenses and approvals will not be a qualifying factor for participation in the first competition. Limiting competition to projects with permits in hand will significantly reduce the number of bidders in the first RFP and lead to less competitive outcomes. Eligible projects, and accordingly winning bids, in the first competition should have a reasonable chance of achieving commercial operation in 2019.</p> <p>It is assumed that key AUC approvals include power plant facility applications submitted by the Generator as well as NID applications submitted by the AESO and substation/ interconnection</p>

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	<p>applications submitted by the TFO. This should be specified. It is unclear if “Commence of Construction” will be contingent on an approved NID and AUC interconnection approval. Please specify any and all connection-related approvals, contracts, and agreements that will be required to achieve “Commencement of Construction”.</p> <p>Requirements for “Commencement of Construction” related to permitting and approvals are of particular concern as portions of these timelines are not solely controlled by the Generator. As outlined in Section 3, it is commercially reasonable for there to be provisions in the RESA protecting the Generator in the event delays to these requirements occur that are not the result of the actions of the Generator. In these circumstances, we submit that longstop and target dates be extended without penalty to the Generator.</p> <p>“Long-lead equipment” should be defined and specified by technology so that there is no ambiguity. Typically, long-lead equipment is equipment that must be procured a year or more in advance of delivery at site. For wind facilities, long-lead equipment would be limited to wind turbine generators and project substation power transformers. All other components associated with construction of a wind facility can usually be procured within 10 months of COD. For solar, long-lead equipment could include solar inverters, solar photovoltaic (PV) modules, and power transformers.</p>
5- Requirements for Commercial Operation	Provide a definition of “non-zero offer” letter and any associated requirements of the Generator.
6- Security	<p>We request the AESO consider deleting “Security over the Facility” in Section 6. This provision may limit a Generator’s ability to balance sheet finance as security interests on assets may be prohibited by lending agreements. With balance sheet financing using bank credit facilities, private bonds, public bonds and public equity there are typically limitations contained within those credit agreements on a party’s ability to allow for security interests in its assets. We submit that what the AESO has proposed as Pre-COD and Post-COD security is sufficient to protect it in the event of a bankruptcy. Additionally, a Generator rated investment grade could provide security in the form of a parental guarantee or a letter of credit as opposed to security over specific assets. We ask that such options be expressly permitted.</p> <p>We propose that Generators be permitted to revise the project proposal (including the project’s nameplate capacity) between the RFQ and RFP stages. This would be reflected in Section 6 and Section 8, as well as specified in the REOI, RFQ, RFP. Flexibility to make changes to the project proposal pre-RFP is important and essential to ensuring that the most efficient and economic equipment, technology, and project arrangements are chosen by Generators. This will result in the most competitive projects and bids being submitted.</p>

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7- AESO Administration Fee	<p>Bidders in the REP should be able to reasonably understand and assess the costs they will face connecting to the Alberta Interconnected Electric System and participating in the Alberta market, prior to submitting proposals in response to the RFP. In this respect, we request details regarding the administration fee (magnitude and frequency), and all other payments, trading charges, rate riders, tariffs, and fees that will be applied to RESA projects.</p> <p>Will the AESO's Energy Market Trading charge be applied in addition to a REP administration fee?</p>
8- Design and Construction	<p>Changes to Nameplate Capacity Prohibiting the installed nameplate capacity of a facility from exceeding the capacity set forth in the RESA will preclude RESA projects from expanding their facilities to bid in to future competitions, and thus limit potentially low cost capacity bidding in to future RFPs. We ask the AESO to consider revising this section to allow increases to nameplate capacity in the event a Generator chooses to expand a facility for the purposes of bidding in to a future REP competition or selling in to the market. We are also concerned that this prohibition may impair a Generator's ability to adapt facilities to new technologies, monitoring systems, and other equipment over time and thus could limit potential efficiency improvements that could result from such changes. This section should allow for such facilities modifications, with consent of the AESO, not to be unreasonably withheld, even if they may result in associated increase in nameplate capacity, but provided they do not reduce nameplate capacity or negatively impact the performance of the facility and obligation of the generator to meet its obligation under the RESA.</p> <p>Other Issues As proposed, when is the Generator required to specify turbine vendor model? We submit this should not be required until the RFP stage. Facility modifications being permitted without penalty up until the RFP is submitted would will allow for the most efficient technologies and the most competitive bids.</p> <p>Will facility modifications be permitted during commercial operation? We propose that facility modifications be permitted, with consent of the AESO and AUC, provided that they do not impact a facility's output. Such modifications may be beneficial to the overall efficiency and performance/production of a facility.</p>
9- Connection Requirements	<p>As highlighted in Section 4, greater clarity is required regarding the interconnection approvals and agreements that a RESA project must have and their impact on longstop dates. Additionally, we ask the AESO to specify the costs and connection requirements required under this section, or at minimum reference the governing rules/ legislation (i.e. the <i>Transmission Regulation</i>). For example, will RESA projects be required to submit a System Access Service Request? Will RESA</p>

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	<p>projects be required to execute a Rate Supply Transmission Service (“STS”) contract, or will a new rate of service be developed?</p> <p>If a RESA project is required to hold an STS contract, how will loss charges be applied, and if so will the application of these charges differ from other market participants? As stated in Section 7, bidders in the REP should be able to reasonably understand and assess the costs they will face connecting to the Alberta Interconnected Electric System and participating in the market. Charges such as losses, have the ability to impact project economics and need to be clearly understood by bidders prior to responding to the RFP. At this time, the cost or credit associated with transmission line losses in Alberta remains largely unclear, even for existing market participants. Further uncertainty is created by the DOE’s recent announcement that it will be reviewing the transmission policy framework in light of the capacity market transition. As a RESA Generator will not have the ability to “flow through” costs by bidding in to market, it must have a reasonable degree of certainty on future loss charges or the associated risk premium will be reflected in its bid. To this end, we request the AESO specify details on how loss charges/credits will be applied to RESA projects and on what settlement basis (pool price, strike price, or other).</p> <p>Please confirm whether or not REP projects will be required to pay a Generating Unit Owner’s Contribution (“GUOC”) or system contribution payment in addition to the project security specified in Section 6. If yes, please provide the AESO’s assessment of the reasonableness and ability of current ISO Rule Section 505.2 - Performance Criteria for Refund of Generating Unit Owner’s Contribution (“GUOC”)- and the specified generating unit performance standards to apply to RESA projects. Section 8 allows for up to a 20% reduction in nameplate capacity Post-COD without penalty or adjustment to strike price provide the project remains utility scale. If a GUOC payment is required by the Generator will the GUOC payment or refund criteria be adjusted in light of a reduction of contract capacity? Will there be any penalties applied outside the RESA for a reduction in contract capacity?</p>
10- Metering	No comment.
11- Approvals	No comment.
12- Reporting	Generators should have reasonable clarity as to the proposed RESA reporting process, including content and proposed frequency. A reasonable frequency for reporting pre-COD would be semi-annually. Reporting post-Cod should be conducted annually. We submit that Generators should not be required to provide any commercially sensitive information through the reporting process.
13- Renewable Attributes and Funding from	Renewable Attributes

Section	Feedback
Other Governmental Authorities	<p>The definition of “Renewable Attributes” included in the defined terms, Appendix 1, is vague. We suggest expanding the term to “Renewable and Environmental Attributes” and using the Western Renewable Energy Generation Information System (“WREGIS”) definition below:</p> <p><i>Renewable and Environmental Attributes: Any and all credits, benefits, emissions reductions, offsets, and allowances—howsoever titled—attributable to the generation from the Generating Unit, and its avoided emission of pollutants. Renewable and Environmental Attributes do not include (i) any energy, capacity, reliability, or other power attributes from the Generating Unit; (ii) production tax credits associated with the construction or operation of the Generating Unit and other financial incentives in the form of credits, reductions, or allowances associated with the Generating Unit that are applicable to a state, provincial, or federal income taxation obligation; (iii) fuel-related subsidies or “tipping fees” that may be paid to the seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or (iv) emission reduction credits encumbered or used by the Generating Unit for compliance with local, state, provincial, or federal operating and/or air quality permits.</i></p> <p>The WREGIS is an independent, renewable energy tracking system for the region covered by the Western Electricity Coordinating Council (“WECC”). WREGIS tracks renewable energy generation from units that register in the system by using verifiable data and creating renewable energy certificates (REC) for this generation. WREGIS is an independent veritable 3rd party and offers a pre-established tracking mechanism for the AESO. In the event the AESO disagrees, it should confirm a definition and a tracking system for Renewable and Environmental Attributes.</p> <p>In regard to biomass, we submit that the definition of Renewable Attributes clarify that the Generator would hold title to any secondary environmental attributes created as a result of the project, namely, offsets related to the feedstock and activities other than electrical generation. The WREGIS definition proposed above is also useful for these purposes.</p> <p>In our view, it is important that the AESO retire any Renewable and Environmental Attributes it inherits from the REP. Not retiring these attributes may limit investment in voluntary REC’s and offsets. Additionally, it creates a risk of oversupply in existing REC and offset markets that could potentially undermine the fidelity of the price signal in these markets.</p> <p>The AESO has stated that it will use the NRCan definition of “renewables” to assess project eligibility under the first REP competition. However, there are multiple NRCan definitions of “renewables” as well as a definition of renewables proposed in Bill 27. We request clarity as to the definition of “renewables” that the AESO will use to assess project eligibility under the first REP competition.</p>

Section	Feedback
	<p>Other Government Funding We request more details as to what constitutes “funding”. For instance, would tax incentives or distribution tariff credits qualify as funding? Suggest adding “funding” to the list of defined terms.</p> <p>Does the prohibition on “other funding or incentives that are provided or offered by the Government of Alberta” in this section related only to “Renewable and Environmental Attributes” or does it relate to all elements of project funding, including funding related to technology advancement and demonstration, climate change adaptation, feedstocks, and other areas not directly related to the production of electricity?</p> <p>Respectfully, the AESO should not be entitled to any portion of project funding received by a project, provided that it falls outside of the prohibited funding stipulated in this section. Secondary sources of funding will allow projects to be more competitive and potentially lower cost. Where these sources of funding are not expressly prohibited, they should be allowed and their proceeds retained in full by the Generator.</p>
14- Operational Covenants	<p>Please confirm that it is the AESO’s intention that force majeure provisions of the RESA will apply to operational covenants related to fuel supply arrangements and resource rights in the event that due to circumstance outside of the Generator’s control (such as fire, or drought) it is unable to procure feedstock.</p>
15- Ancillary Services	<p>No comment.</p>
16- Settlements Provisions	<p>Calculating the RESA support payment as “equal the metered electricity generated by the facility (capped at the contract capacity) multiplied by the difference between the strike price and <u>the greater of the pool price and zero</u>” presents concerns about potential exposure of RESA projects to negative pricing. To remove this risk and avoid any associated risk bid premiums we propose the AESO remove the underlined portion quoted above and replace it simply with “pool price”. The AESO would define “Pool Price” in the RESA as it is defined in its Consolidated Authoritative Document Glossary (“CADG”).</p> <p>Please confirm that compensation is to be provided on the basis of asset level treatment as opposed to comparison to an average, or other approaches. If yes, this should be specified in the Settlement Provisions. If no, please explain.</p> <p>A full understanding of all the fees, payments, riders, trading charges, tariff provisions, and other charges that will be applied to RESA projects and how they will be applied will allow bidders to develop an accurate and competitive bid. Clarity on these charges are requested throughout these</p>

Section	Feedback
	<p>comments. It would be helpful if this section, in addition to the terms of payment, to outline the settlement process for any fees, payments, tariffs or charges. Will the settlement of these charges occur inside or outside of the CFD settlement?</p>
<p>17- Indexation and Payment Adjustments</p>	<p>No comment.</p>
<p>18- Curtailment</p>	<p>Discussion of Curtailment and Alternative Approaches</p> <p>Lack of clarity at this time regarding the forthcoming capacity market framework, changes to the transmission policy, and changes to market rules, make curtailment an unmanageable risk for developers/ Generators under the REP. REP projects will not have the ability to recover any change in cost/risk through the market. As stated by the AESO, in its REP Recommendations, risk should be allocated to those best able to manage it. In the current circumstances the party best able to manage curtailment risk is the AESO or GOA. Generators can manage commodity and development risks, but they cannot be reasonably expected to manage regulatory and policy risks without a significant risk premium – something the AESO has said it wishes to avoid in the first competition and supported its decision to choose an Indexed REC approach to funding.</p> <p>For the reasons, above, the AESO or the GOA needs to bear some or all of the risk associated with REP energy that is curtailed for reasons outside of a Generator’s control. Two approaches to treating RESA curtailments are described below:</p> <ol style="list-style-type: none"> 1- The AESO/ GOA bears the risk of all REP energy that is curtailed for reasons outside of a Generator’s control. The Generator would be fully compensated at strike price for any energy that was available but for reasons outside of the Generator’s control could not be supplied to the grid. 2- The AESO could implement a risk-sharing approach to curtailment. This approach has been used in other jurisdictions. The AESO would specify in the RESA a reasonable limit for the number of hours in a calendar year that a Generator could be curtailed and not compensated (i.e. 25 hours per facility per year). Curtailments beyond this threshold would be compensated at full strike price. In addition, to the yearly limit, a lifetime curtailment cap (x hours per facility per the 20-year term), could be implemented. Any curtailed MWhs above the lifetime cap would be compensated at full strike price. The AESO will need to work with developers/ Generators pre-RFP to determine the appropriate limits/thresholds for REAS projects. This approach would also eliminate to a large extent risk premiums associated with curtailed energy as the maximum volume of curtailment would be known in advance and would be set reasonably as to not create an undue level of risk. <p>The approaches above advocate that the AESO bear some portion of curtailment risk. This is because the AESO - as the transmission system planner and the generation planner in respect to</p>


Section	Feedback
	<p>the REP and the 5000 MW of renewable generation - is now the party best able to manage the risk of curtailment. The approaches also provide the AESO and the GOA with a cost trade-off that can be assessed, regardless of market framework, related to resolving issues causing curtailment or paying for curtailed energy. In any event, the Generator must be kept economically whole for curtailment of energy outside of its control.</p> <p>Regardless of the chosen approach, we ask the AESO to provide a definition of curtailment in the RESA that includes all instances of energy curtailed for reasons outside of the actions of the Generator- including, but not limited to transmission constraints, transmission congestion, reliability events, supply surplus events, and for the purposes of grid management and maintaining reliability (i.e. application of the AESO's Wind Power Management Rule). Also, in developing any approach that will include compensation for curtailed energy the AESO will need to determine and specify the terms for assessing the volume of curtailed energy, specifically as it related to intermittent energy. Some jurisdictions employ wind forecasting services to estimate the volume of curtailed wind generation and pay compensation based on that amount. In our view, Generators will require these terms to be clear in the RFP and the RESA</p> <p>Other Issues Confirm that force majeure events are not classified as curtailment under this section.</p> <p>The AESO has stated that to be eligible for the first competition projects must utilize the existing transmission/distribution system. Confirm that as part of the REP process the AESO will not be awarding contracts to projects that exhaust the transmission capacity in an area such that a neighboring REP project would be curtailed due to lack of transmission capacity/infrastructure.</p> <p>It is our understanding that the AESO's current practice of curtailing excess generation in the event of supply surplus events during 0\$ system marginal price ("SMP") is to curtail flexible offer blocks prior to inflexible offers blocks, and to curtail flexible offer blocks on a pro-rata basis. Please confirm that this is the AESO's practice, and the practice currently applied to wind aggregated facilities.</p>
19- Change in Law	<p>The Government has announced plans to transition to a capacity market in Alberta by 2021 and has directed the AESO to develop rules and implement the new market structure. While the coming change in market structure is known, the details of the market and the potential impact to RESA projects remains unclear. There will be numerous changes made to policy, legislation, and AESO Rules over the next 3-5 years and Generators should be insulated from the impact these changes may have on their economics for the Term of the RESA. The risk of legal, regulatory, and policy changes under the RESA should be borne by the party best able to manage it, in this case, the</p>

Section	Feedback
	<p>AESO/ GOA. The risk premium of such changes, if borne by Generators would be high. As such, we submit this section include specific provisions to keep Generators whole in the event any such change impacts their economics. The AESO should state that the aim or intention of this section is to keep the Generator in the same position economically as if the change had not occurred. This general premise for “payment adjustments” is reflected in the processes described under “Consequences of Designated Changes,” but it could be stated more clearly and must apply broadly to all changes in law. It is unclear why Change to ISO Rules and Change in Market Structure are not included as part of Designated Changes. Please explain. The same consequences that apply to Designated Changes should also apply to Changes to ISO Rules and Change in Market Structure. If this is not the AESO’s intent, please outline the proposed consequences of these changes.</p> <p>“Consequences of Designated Changes,” should not be limited to those that result “in a net increase or decrease in Generator’s costs,” we propose they also include those that materially impact a Generators economics- which would include consideration of anticipated rate of return, among other elements. This section must also outline the basis for determining claims of additional time. Delays as a result of a change in law should extend the contract “Term” and any other impacted target or longstop dates on a one for one basis. Further details on the schedule and financial relief that will be provided to Generators in the event of a change in law is also required.</p> <p>In reference to a Change in Market Structure, the section discusses “adopting, if necessary, a replacement reference price for purposes of determining the support payments” in such events. Please confirm that the reference price under the RESA will be the Alberta Hourly Pool Price and that a replacement would be adopted in the event that this price no longer existed or functioned in the same respect as it does today. The section must specify that adoption of any reference price will not alter the terms of settlement.</p> <p>The section also states that “Relief will not be provided where the Generator had prior notice of the change.” It must be clear in the RESA that this does not apply to broad announcements made by the Government, such as the recently announced change in market structure and would only apply to those changes where sufficient notice and details were provided to Generators.</p> <p>Designated Changes, as described above, are also to include required amendments to the RESA by the GOA (or any regulatory body in Alberta). This is an important inclusion, especially “in light of the powers of Ministerial discretion envisioned and included in Bill 27. Section 14(1) of Bill 27 allows that the Minister may provide directions to the AESO for the purposes of enhancing accountability or the control of costs in respect of renewable electricity programs or renewable electricity support agreements. Section 14(2) prescribes that the AESO shall comply with any such</p>

Section	Feedback
	<p>direction, subject to the obligations imposed on it by renewable electricity support agreements. In this sense, Designated Changes must specifically include ministerial directions to the AESO under 14(1) - and must not be limited to those “which materially delay the development and construction of the facility or which increase costs Generator would reasonably be expected to incur,” but expanded to include changes that affect or reduce the support payment or pricing or affect the operation of the facility. Generators require contractual certainty that once entered into the RESA may not be altered or amended without written consent and must be protected from any such changes and kept whole in such events. Does the AESO anticipate amendments to the RESA by the GOA beyond those contemplated by the REA? If so, please describe.</p> <p>With respect to the last point, please provide a definition of “Generator Conduct” and explain what this wording means or is intended to cover. It may be more reasonable to preclude changes in law as a result of Generator misconduct, as opposed to changes in law as a result of Generator conduct.</p>
20- Force Majeure	<p>In addition to “the inability to obtain or renew any permit/license/approval required for performance,” in our view FM should also include delays in receiving permits/licenses/approvals caused by actions not of the Generator, and remedies should be made available to the Generator in such instances. FM should be granted and relief provided on a day-for-day basis in the event that a Generator’s permits or approvals are appealed.</p> <p>The occurrence of an event of FM post COD should result in a reasonable extension of the Term, as a FM by definition cannot be reasonably anticipated and is beyond the reasonable control of the Generator. Shortening the Term of the RESA may materially impact the economics of the project. Generators should have certainty and reasonable assurance that their Term will be extended or other financial remedies provided to keep them whole in the event of delays outside of their control.</p> <p>What is included under “certain transmission or distribution facilities”? All transmission and distribution facilities that would prevent a Generator from delivering its electricity to grid should constitute a FM if delayed or disrupted. This needs to be specified in this section and the word “certain,” removed. Any delay or disruption to the construction of transmission and distribution facilities that prevents a party from performing its obligations, to the extent it could not have been reasonably anticipated by, and is beyond the reasonable control of the Generator should constitute an allowable FM.</p> <p>As requested above: please confirm that FM provisions of the RESA will apply to operational covenants related to fuel supply arrangements and resource rights in the event that due to circumstance outside of the Generator’s control (such as fire or drought) it is unable to procure</p>

Section	Feedback
	feedstock. It should be specified here and in Section 14 that covenants related to fuel supply and resource rights are subject to the force majeure provisions.
21- Liability and Indemnification	No comment.
22- Insurance	No comment.
23- Termination – Events of Generator Default	Feedback is provided above in Sections 3 and 4 with respect to target and longstop dates. No further comments at this time.
24- Termination – Events of AESO Default	If the AESO defaults, we submit that they should face full liability and not be entitled to limit or cap their damages. Reciprocal protection has not been offered to the Generator in the event of default.
25- Termination – Events of AESO Convenience	<p>Please clarify what will be included as “qualifying pre-construction development costs”.</p> <p>In the event the AESO defaults on the RESA or chooses to terminate for convenience at any stage, we propose it should not be entitled to limit or cap their damages and should face full uncapped liability. The requirements for construction commencement are significant and damages should be awarded to fully compensate a Generator for its actual out-of-pocket costs plus to get a project to the start of construction.</p>
26- Termination – Extended Force Majeure / Other Events	No comment.
27- Financing and Consequences of Default	No comment.
28- Assignment	Winning bidders should be obliged to construct. AESO assignment should be limited to another Government entity with equivalent authority. A Generator should have the right to assign the contract to an affiliate without an obligation to obtain AESO consent. This is not currently reflected in the description.
29- Change of Control	No comment.
30- Confidentially and FOIP	Permitting the AESO to disclose certain information and data relating to the Project does not necessarily mean that this is a typical or customary confidentiality provision. The AESO should be subject to the same or similar provisions that the Generator is subject to and disclosure of information and data should only be permitted to representatives who need to know the information for the purpose of fulfilling their obligations under the Agreement. Please confirm the treatment of commercially sensitive information under FOIP and specifically that any and all requests shall be

Section	Feedback
	first sent to the Generator for an opportunity to provide consent or raise any objections as permitted under FOIP. Reiterate the concerns expressed above in Section 4 regarding sharing financial models with the AESO.
31- Generator's Representations, Warranties and Other Obligations	No comment.
32- AESO's Representations, Warranties and Other Obligations	No comment.
33- Dispute Resolution	No comment.




December 9, 2016

Alberta Electric System Operator
Via email
rep@aeso.ca

Re: Comments Respecting Renewable Electricity Support Agreement

The AESO's stakeholder engagement website requests comments on the Renewable Electricity Support Agreement (RESA) by Dec 9th. The following comments are submitted on behalf of the



1. RESA item 2 respecting Term indicates the support period commences on commercial operation and ends 20 years after the earlier of commercial operation and the target date for commercial operation. Given the Federal Govt.'s plan to increase carbon tax to \$50 per Tonne by 2022 it is not clear why extending the support period past 2022 is prudent since the carbon tax would have the effect of placing renewable generation on an equal footing with fossil fired generation?

2. RESA, item 5 states an Engineer's certificate is required stating that the facility has been constructed, connected, commissioned and synchronized to the Alberta Interconnected Electric System or an electric distribution system, as applicable, such that 90% of the contract capacity is available to deliver electricity. Given that renewable energy supply is typically non dispatchable the term contract capacity used in the context of the RESA needs to be defined.

3. There is concern that the acquisition of renewable capacity with support payments from the AESO during the 2017 to 2019 period may have a dampening effect on the already depressed pool prices, given that renewables such as wind are non dispatchable resources. Given that the market restructuring is not expected to be completed before 2019, it is possible that other generators may call for compensation from the Government for increased losses sustained due to change in law or other forms of interference in the existing energy market if pool prices are further depressed as a

result of the additions under RESA during the transition period. Further, depressed pool prices may also increase support payments under the RESA during the transition period.

4. One option for addressing the above concern is to delay the acquisition of any renewable additions under the RESA until restructuring is completed and not trigger any form of capacity payments until such time as the existing excess reserve capacity (currently installed capacity for generation= 16,000 MW; current peak use = 11,000 MW) is used up by load growth and/ or retirements. This approach would ensure supply costs do not increase prematurely. Power prices are correlated with economic growth in the Province and it is important to maintain the low current prices for electricity supply as long as necessary in order to facilitate economic recovery, the drivers and timing of which remain very uncertain. The need and timing of new capacity requirements need to be fully tested and evaluated given that the AESO's forecasts have not been proven to be accurate in the past; one consequence of this is the current over supply of generation.

5. If the above option is not acceptable a second option would be to require any renewable supply acquired prior to completion of restructuring to be made dispatchable. There are several storage technologies that could play a role in making this possible. Here are some of the implications of using storage:

- Storage could become a virtual behind the fence dispatchable resource for intermittent renewables such as wind generation (the term behind the fence is intended to convey the meaning storage injection is to be contracted for by the renewable generator who would also control dispatch from storage and incur STS charges upon storage withdrawal; the term virtual is used to convey the meaning storage need not necessarily be co-located with the generation or located behind the generator's metering point).
- The wind generators could contract with storage providers for storage rights including the rights to inject and to dispatch out of storage, based on economic dispatch; storage providers should not be subject to DTS for injections; storage injection rates should be determined by the AUC

- The AESO could procure other ancillary services including load following, frequency regulation, reserve capacity (spinning, supplemental, operating reserves), on a merit order dispatch basis from storage providers among others; The cost of the storage facility itself would not be included as part of the wires costs and this would be consistent with existing legislation
- The use of storage could help maximize the value of renewable/wind generation-hence no need to subsidize the 400 MW of wind contemplated for 2017 through contracts for differences; incorporation of storage as an ancillary service could reduce the overall cost of such services and potentially reduce carbon emissions since most system support generation will no longer have to run at sub optimal efficiencies; system modeling is required to make these assessments
- Through use of storage, renewable generation may be subject to economic dispatch without unduly impacting pool prices.

6. With respect to RESAs there should be an upper limit on the bid price for renewable supply contracts. Safeguards need to be put in place to ensure the wind/renewable supply offers for the RESA are truly competitive and are not the result of potential collusion among renewable/wind producers.

Yours truly,

[Redacted signature block]

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
6	The Pre-COD Security is set at \$50,000 per MW. This is substantially higher than other similar processes, including the former Large Renewable Procurement (LRP) in Ontario. Setting the security at such a high level may limit the pool of respondents.
6	It is noted the security is required in the form of a letter of credit. Would AESO consider an alternative surety such as a performance bond?
7	The AESO Administration Fee is not defined and therefore it remains to be seen the impact that this will have on project economics.
8	Reduction of Contract Capacity. The AESO will be entitled to terminate the RESA if the Generator overbuilds against the nameplate capacity submitted in the RFQ. Is this termination right necessary as the RESA payments are capped at the contract capacity? A limited overbuild (<5%) would typically be allowed, for example, competitive selection of turbines, e.g. 3.2 MW machines from one manufacturer vs. 3.3 MW machines from another.
14	Fuel Sources. Fossil fuel powered back-up generators may be required to provide control and reserve power to the Generator facility in the event of grid power failure.
15	Ancillary Services. Would the exclusion of ancillary services prevent hybrid systems that incorporate an element of

Section	Feedback
	storage technology?
18	Curtailment. It is understood that curtailment will not be compensated for. Will renewable generation have priority over non-renewables for despatch? How will curtailment be apportioned between similar renewable generation?
18	Curtailment. A risk-sharing approach to economic curtailment has been implemented in other similar agreements.
20	Termination for Extended FM. If FM is invoked due to “delays or disruptions in the construction of certain transmission or distribution facilities” for an extended period, would this mean AESO has the right to unilaterally terminate? If so, how will the Generator be compensated for losses/damages?
23	Termination. Time and facility for cure of default needs to be defined.
25	Termination – AESO Convenience. The remedy and payments, particularly in the Post Construction Commencement Period, available to the Generator are not a fair reflection of the risk and investment undertaken by the Generator at that point, particularly given the termination would be for convenience.
26	Extended Force Majeure. FM includes “delays or disruptions in the construction of certain transmission or distribution facilities”. The implication is that if these delays or disruptions last more than 18 months, or with other events of force majeure collectively last longer than 24 months, AESO can terminate without any compensation to the Generator.
28	Assignment. The definition of Affiliate is not given. It is anticipated that this would include companies with common shareholders.
28	Assignment. No consideration is given for novation of the Agreement, only Assignment.
29	Assignment by AESO. Is it intended that the wording “not to make any material amendments to same or to terminate same without prior consent of Generator” would override the termination rights the RESA?

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
3	We object to the CC Longstop Date milestone (and associated LDs and termination right), or any other interim milestones. LDs should only be applicable for failure to meet COD Longstop Date.
4	Requirements for Commencement of Construction should not be applicable as these are related to the CC Longstop Date milestone, which we propose to reject (see above).
5	What is a “non-zero offer” letter? Also, in lieu of a certificate from an independent engineer, provide an option to provide such certificate from an officer of Generator. We don’t provide IE certificates for declaration of COD. Replace 90% of contract capacity with 80%.
6	Security over the Facility: No security interest in the facility or revenue stream; instead, we can provide a guaranty by a creditworthy parent company.
14	Own/Lease the Facility: We require the right to change control without the AESO’s consent subject to appropriate

Section	Feedback
	credit support requirements and appropriate operational controls.
18	Does this refer to curtailment by Buyer? Under what circumstance does curtailment occur? Assumption is that this is not economic curtailment. There need to be distinctions between economic and reliability curtailments.
23	CC Longstop Date Event of Default – No. Breaches with respect to the Facility, Event of Default – No.
25	No Termination for convenience – such termination should be a default with a forward liquidation of the contract.
28	Need to clarify to provide permitted exceptions for lender assignment, and assignments in the event of mergers, consolidations, etc.
29	We need the ability to have a change in control without requiring the AESO’s consent as long as collateral arrangements and obligations under the RESA are assumed by the transferee.
30	REP Specific Representations and Warranties: Object to including representation (i) and it is unclear whether representation (iii) can be made as of execution date.
33	Prefer to have a binding arbitration provision. American Arbitration Association or equivalent organization.
Appendix 1	Note that the definition of Renewable Attributes appears to be energy only

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted submitter information]

Section	Feedback
General Comments	<p>[Redacted] has submitted comments from the perspective of an experienced developer, who has participated in every competitive procurement process in Canada since 2007 and through its affiliates has participated in hundreds of competitive auction in various jurisdiction and power markets across North America.</p> <p>We feel strongly that a good contract is one that is able to reasonably balance risk between Generator and Buyer. Our comments below are meant to outline an appropriate balance of that shared risk profile in order to design a contract that will be able to secure the lowest cost renewable energy projects with the highest chance of meeting the goal of achieving commercial operation on schedule.</p> <p>It is our opinion that the Voluntary Termination and Curtailment rules outlined below poses the greatest unwarranted risk to The Generator, greatly increasing the potential for higher than necessary bid strike prices.</p> <p>RFQ and RFP design: The RFQ is an inappropriate time to 'lock in' project parameters for the purposes of either evaluation within the procurement, or to refer to within the RESA itself. For example, the Generator should not be required to specify specific project nameplate capacities within the RFQ. The RFQ should be used to qualify the company in question rather than the specific</p>

Section	Feedback
	<p>projects. Project details, like nameplate capacity, may change between the time the RFQ is evaluated and when the project is bid during the Request for Proposals (RFP). The RFP is the appropriate time to collect information like nameplate capacity for the purposes of populating the RESA and establishing requirements such as Pre-COD Security.</p> <p>Multiple Off-takers: Nothing in the RESA should preclude the Generator from building a project larger than the contract capacity set forth in the RESA and selling the excess energy and attributes to a third party off-take or to the market. This would mean that the additional MWs would share the substation and certain of the other components that comprise the “Facility” and pre-supposes separate metering. Clarifications would be required as to whether the additional MWs would need to be separately permitted and registered with AESO, etc.</p>
1. Parties	<p>Funding of AESO Payment Obligations: the Government of Alberta has stated it will fund AESO payments under the RESA from the planned carbon levy. It is unclear whether this mechanism will provide sufficient funds and what recourse generators will have in the event of funding issues.</p> <p>The creditworthiness of AESO needs to be demonstrated and greater clarity around the sufficiency and enforceability by AESO of the funding mechanisms supporting AESO’s RESA payments.</p>
3. Target and Longstop Dates	<p>Commencement of Construction: much greater clarity is required by AESO as to what constitutes “Commencement of Construction”.</p>
4. Requirements of Commencement for Construction	<p>Statutory Declaration: A guarantee of Parent company funding of the required financial commitment should be sufficient to allow the Generator to make the required statutory declaration concerning “secured financing sufficient to complete development.”</p>
5. Requirements for Commercial Operation	<p>Achievement of Commercial Operation: Requires the “government approvals required to construct, operate, and maintain the facility”.</p> <p>This sweeps in every potential permit, whether material, local or typically granted later in the process. Given the variety and number of governmental authorities that could have an approval role in the permitting of an Alberta renewable project, this is an uncertain and potentially high bar.</p>

Section	Feedback
	Further, if it is to evidence COD, construction approvals are not necessary.
6. Security	<p>Security Interest in the Facility in favour of AESO: AESO has already indicated it will employ a right of set-off and applicable bankruptcy and insolvency legislation that will override any such contractual language in such event. Further, we do not recall seeing a provision like this in a similar North American agreement. Subject to further detail, we question the utility of the provision and have serious concerns that it would result in an un-financeable document, given third party project lender will require subordination. Further, would proponents that use their balance sheet to finance where all equity required to fund the project is provided from a parent or affiliate company be afforded the same subordination?</p>
8. Design and Construction	<p>Facility Modifications: ‘Modification’ should be clarified and a definition of ‘Facility’ would also be helpful. In principal, the Generator owner should have the ability to modify the Facility, provided that the Generator does not increase or change the facility nameplate or price, subject to the terms of the RESA. However, the AESO also needs to recognize that changes/additions in land footprint are inevitable in the development and construction process and that requiring Generators to select turbines at contract execution will lead to higher strike prices, given the continuing evolution of turbine technology and the layout refinements that occur over the course of development.</p> <p>Reduction of Contract Capacity: Concerning the right of the Generator to reduce the nameplate capacity to 80%, when may this right be exercised? We suggest a one-time option to exercise prior to COD.</p> <p>AESO should consider setting the RESA contract capacity at a MW capacity, but not nameplate capacity, or at least allow nameplate capacity that is some percentage in excess of contract capacity. This will enable Generators to over-build and more often provide energy closer to the contract capacity. Generators would be required self-curtail to not exceed the contract capacity or some percentage above the contract capacity. It is anticipated this will result in lower strike prices.</p>
12. Reporting	<p>Report Frequency: In lieu of requiring reports at the AESO’s request, please specify a frequency for reports. For example, progress reports submitted quarterly until a year before COD, at which point, the progress reports become monthly, is a reasonable report frequency.</p>
13. Renewable Attributes and Funding	<p>Renewable Attributes: It is unclear if the definition of ‘Renewable Attributes’ applies to existing or existing <u>and</u> future Renewable Attributes. Parties will be bidding a strike price based on the then-known Renewable Attributes, not those that may exist in the future, including as a result of a change in law. Generator should not be required to incur additional costs or risks to obtain, certify and</p>

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	<p>transfer future Renewable Attributes. The AESO should have the option to elect to such additional benefits, and if it wishes to do so it should compensate Seller for any additional costs.</p> <p>Other Government Funding: The AESO's ability to keep 50% of any government funding or incentive means that AESO should also pay 50% of any related costs incurred by Generator to obtain such funding or incentives.</p> <p>AESO should be clearer as to the extent of this right or what constitutes 'government funding or incentives'. For example, to the extent a wind project obtains favorable tax treatment, such as credits, does AESO expect to be entitled to some of that benefit?</p>
15. Ancillary Services	<p>Ancillary Services: The intent of this prohibition to sell ancillary services is unclear. Is the intent that the Generator may not sell to third parties and AESO keeps any ancillary attributes, or is the intent that ancillary benefits are not addressed by the RESA? To the extent AESO is not worse off (i.e., no less renewable attributes produced), Generator should be allowed to sell ancillary services.</p>
16. Settlement Provisions	<p>Contract Price: Generator should not be exposed to the negative price risk, should prices be allowed to be negative in the future, as AESO is the floating price (pool price) recipient, and should bear such risk. This is a critical point and is underscored by the principles of the REP in that parties risk should be allocated to parties that are best able to manage it.</p> <p>The Contract price should be calculated based on the smallest settlement interval calculated by the AESO.</p>
18. Curtailment	<p>Curtailment: This statement is <u>very</u> concerning: "Generator will not be compensated for electricity it could have produced during any curtailment." It is specifically concerning, under future grid scenarios where the Generator can be curtailed for economic reasons, including automated generation control, or security constrained economic dispatch instructions, Generator should not be exposed to such risk as this will limit the ability to finance projects under the RESA .</p> <p>Risks should be borne by those most suited to absorb them. As it relates to economic curtailment, the Contract Price implies that the AESO will bear the risk of the pool price. Should this price become negative in the future, the AESO can have the right to require the project to curtail but must keep the project whole based on the amount of energy that would have been generated during such period, multiplied by the Strike Price. If the curtailment is reliability-related, for instance, due to a system emergency, than the Generator will bear the risk of such curtailment without compensation.</p>
19. Change in Law	<p>General Comment: Given recent announcements and developments regarding the introduction of a</p>

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	<p>capacity market structure and the devolution of the coal Power Purchase Arrangements in Alberta, and given the potential impacts and extensions based on Change of Law, it is imperative that a clear definition of this provision is included in the RESA which is reviewed by potential financial institutions that may offer financing for projects bidding into the REP.</p> <p>Designated Changes: Clarify what constitutes “prior notice of the change”.</p> <p>Consequences of Designated Changes: Generator protection in this section should be expanded to include any Change in ISO rules or Change in Market Structure that result in an increase in Generator’s costs to comply with the RESA.</p>
20. Force Majeure	<p>Schedule Relief: As drafted, “Schedule Relief” creates a double penalty. A Generator experiencing Force Majeure cannot wholly or partially perform, and the term of the RESA runs without relief because delays to milestones do not extend the Support Period. This must be corrected.</p> <p>Force Majeure Clarification: The RESA should explicitly state that all TFO related delays are included in Force Majeure as these may be out of the control of the proponent.</p> <p>An appeal of a permit or licence is not Force Majeure unless the Generator is ordered to cease construction. The uncertainty of an appeal may cause a prudent Generator to cease or suspend construction, but were it to do so, it would be unable to claim Force Majeure unless a court order or regulatory stay order was issued. This is unreasonable because the Generator cannot control third parties that may wish to appeal permits. If drafted in this manner, the RESA can be expected to create a situation where informed renewable energy opponents, locally or otherwise, file appeals in order to delay projects and cause investment uncertainty. Quickly in the life of this procurement program, regulatory uncertainty may greatly diminish the field of competitors, resulting in higher strike prices.</p>
23. Termination Events of Generator Default	<p>Cure Periods: Generator Events of Default should have reasonable cure periods. If the default is of a nature that it cannot be cured within the reasonable cure period, then the Generator should be permitted to work towards a remedy with a plan developed during the cure period, if it is acceptable to the AESO.</p>
25. Termination – AESO Convenience	<p>Termination for Convenience Clause: We understand that Alberta is modifying its energy marketplace, but wishes to retain some of the essential characteristics of the unique Alberta energy market where generators take on significant risk. An arbitrary and discretionary termination for convenience provision is inconsistent with the strengths of the Alberta marketplace, in the view of</p>

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	<p>Generators, and opens the RESAs to additional risk, which Generators cannot control. The energy to be supplied by renewable suppliers will be needed to replace the departing coal capacity and is being procured in small and consistent increments. In that construct, adjustments to the program going forward are preferable to retroactive cancellations of contracts, let alone for the reputational damage and investment uncertainty the latter would create. Very significant amounts of capital are required to develop these projects, and capital will be more costly, leading to higher bid strike prices, or choose not to participate due to these kinds of arbitrary mechanisms.</p> <p>The lesson in Ontario's recent power purchase agreements is that, notwithstanding arguments that these provisions are derived from the 'Public-Private-Partnership (3P)' context, they fail to make a Generator whole. Pre-COD, as currently proposed the unknown capped amount may not be sufficient. Post-COD, equity investment is impacted to the extent capital is not redeployed for a comparable return for the balance of the term of the contract. This is particularly punitive to the generators that the AESO should be most keen to attract – entities that can leverage their balance sheet or other low cost capital and strategic experience to deliver projects on budget and on schedule without expose to fluctuation in the capital markets. This includes several experienced Alberta energy companies.</p>
28. Assignment	<p>Assignment: Restrictions to the Generator on assignment to non-affiliates are necessary to ensure that the most experienced and creditworthy generators bid, secure and obtain contracts. To do otherwise will invite less well-capitalized, less experienced participants to make unsustainable strike price bids, creating financing and performance issues.</p>
29. Change of Control	<p>Change of Control: Any Change of Control pre-COD should not be limited to affiliates provided the Generator or an affiliate has at least 50% of the membership interests or continues to have the power to control the management of Generator.</p>

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
Section 2	Some consideration should be given to a 25 year Support Period due to the fact that wind generation technology (and other renewable technology) has improved its operating lifetime. Now owners and operators see the operational life and financial life of a wind farm as at least 25 years (and in some cases 30 years). Increasing the Support Period will allow developers to recover the capital costs over a longer period and will therefore be able to offer lower prices in the bid process. This will reduce costs to consumers, as it is currently impossible to accurately model merchant prices on the tail end of the project given recent changes in the market and the long period of forecast. With a longer period of price certainty, developers will be able to price even more aggressively.
Section 3	It appears that there is no grace period between the targeted Commencement of Construction date and longstop date. A clear grace period should be implemented between these two dates prior to liquidated damages being collected and/or a reduction in the 20 year term of the contract. This grace period would be especially important in the case that generators have a hearing in the AUC permitting process that lasts longer than expected which is now more likely given the volume of projects that are going through the process. The recommended grace period would be six months.
Section 4	The requirement to submit a financial model seems to be duplicative with the requirement of the statutory declaration that the Generator has secured sufficient financing. Given that financial models change even during the course of construction and after COD, we find risk in the inclusion of this requirement in addition to the

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	declaration. Can AESO clarify the purpose of the inclusion of a requirement of the financial model in addition to the statutory declaration?
Section 6	In the “Post-COD” bullet, it indicates that AESO can set off amounts owing to it from the revenue of the project. Given that there is no cap on this reduction in revenue, we see additional risk to the Generator. We would suggest a threshold on the amount of offset that can be taken from project revenues, above which there would be alternative settlement through negotiation, arbitration or other legal avenues.
Section 6	We understand the logic behind the need for AESO to have security over the facility but we would note that this could cause a problem with financing entities, who usually have first “step-in rights” in the case of Generator default or insolvency. We would suggest that any security granted to AESO would be subordinate to that of financiers.
Section 6	It is unclear whether the \$50,000/MW performance securities mentioned in Section 6 will be used to pay any LDs outlined in Section 3. Please confirm whether this is the intention.
Section 7	Clarity on the quantum of the administrative fee is required. We would suggest that it should be negligible to project economics in order to keep costs to consumers low. Another alternative would be for the fees to be included in the REP application costs. This would allow AESO to capture the costs up-front at a time where most of the work will be done.
Section 8	In the “Facility Modification”, the material modifications require AESO consent. The AESO should clarify that the consent would not be unreasonably withheld as some modification will be required through permitting, approvals, engineering studies, etc.
Section 10	Can AESO please confirm where the projects will be metered? Will the revenue meters be at the wind farm switchyard?
Section 13	It is unclear whether there should be a prohibition on some forms of Government funding for projects that wish to receive a RESA contract. For example, a question of fairness would emerge if a project were awarded a CCEMC grant and then applied 50% of that funding to the competitiveness of their bid. We would suggest that such funding cannot be applied to projects wishing to participate in the REP program.
Section 16	Clarity is required on the impact of negative pricing events-the document indicates in Section 16 that the contract price is calculated using “the greater of the pool price and zero”. Our understanding is that the current market does not allow negative pricing so this verbiage would not be required. More clarity on this clause is required as it appears to be incongruent with current market rules/practices. There is a risk to Generators that the specific identification of “zero” would remove the ability for a Generator to enact Change in ISO Rules (section 19) provisions since the RESA states “zero” instead of the floor for pool prices stated in the ISO rules.
Section 18	In other jurisdictions, there is a cap on curtailment events for contracted generators. In Ontario, the IESO caps curtailment at 100 hours per MW. It is important to place this risk where it can best be managed, and we believe that although generators can assume some limited risk in this area (which will cause developers to choose sites in areas where there is limited congestion), a developer that wins an early REP bid has no control over the

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	subsequent projects that might come into the area and cause congestion. As the overseer of the REP, the AESO has the ability to control the siting of new projects in subsequent REP rounds. Therefore, we believe that the top-end risk associated with curtailment should lie with AESO and a cap on such curtailment would achieve this risk allocation. Without a curtailment cap, a Generator would be forced to bid under the worst case curtailment risk.
Section 20	Section 20 indicates that Force Majeure (FM) applies to an appeal of a Permit or License, only if the Supplier is ordered to cease construction. However we would note that there is no limit to the timing upon which a hearing during the AUC permitting process can run. If AUC or other agencies get overwhelmed with the amount of projects being permitted, this could cause a material delay. We would suggest that FM can be claimed if a hearing lasts for more than 6 months, such claim would be on a day-for-day basis after the 6 month milestone has elapsed.
Section 21	We suggest that the indemnity provisions laid out in this section should be reciprocal in order to give generators coverage in the case of claims, losses or damages associated with breaches of the AESO's representations, warranties or covenants. We would also suggest that consequential damages are carved out from this section.
Section 23	Section 23 does not indicate that there will be any cure periods for events of generator default. We believe that the inclusion of such cure periods (durations TBD depending on the default) are essential for any standard contract in order to reduce the likelihood of constant litigation in this respect. Reasonable cure periods should be standard for such events as "Failure to Hold Permits", modification of the facility, insolvency/bankruptcy, etc.
Section 24	For AESO events of default Pre-COD, we strongly believe that the generator should be made whole (i.e. reimbursed for sunk costs). If the generator has made the commitment to long-lead items but has not commenced construction, >\$10-\$50M would be at risk and default from AESO would leave the generator with stranded assets and investments without the ability to recover such costs.
Section 25	We strongly urge AESO to reconsider the inclusion of the Voluntary Termination (Termination for Convenience) clause. We have seen this in other jurisdictions and it serves to allow renewables to become the subject of political fighting, while at the same time, reducing the confidence that investors have to proceed with capital intensive projects. Investors and financiers will not proceed with investment at the project level while the risk of termination for convenience persists. In the spirit of risk being allocated to those who can best manage it, we would advocate for a structure in which at all stages, the developer is made whole in the case of termination prior to certain milestones being achieved. The pre-construction development costs reimbursement must be high enough to cover the extent of the financial commitment that a Generator would be expected to meet the development timelines in the RESA. The short development cycle (i.e., Target COD of December 2019) means that Generators that are working to meet the timeline must make earlier commitments compared to projects with longer development timelines. We would also advocate for the Termination for Convenience right to be removed once developers have met certain milestones (e.g. Gate 4 of the interconnection process, a complete AUC application submitted, a financing plan submitted to AESO). In no case should Termination for Convenience risk persist at the time that developers need to make commitments to long-lead items or go to the market to attract financing. Also, we note that the make whole provisions contemplated in Section 25 cover debt financing, but do not protect the equity invested. Most of the early risk will be taken on by the equity sponsors and some developers (especially Alberta incumbents) may even opt to build "on balance sheet". By not protecting equity investments, developers are

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	discouraged from putting their own capital at risk which seems to contradict the goal of having stable, long-term players invest in the Alberta renewables market.
Section 25	The 30-day notice for Termination for Convenience Right (should it be included) is very short. This does not give any time for generators to plan for such termination and modify their investments. Inclusion of such a short time period dramatically increases the probability of stranded assets and equipment, all at the risk of the developer/generator.
Section 28	Assignment to affiliates should be allowed with the permission of the AESO, <u>not to be unreasonably withheld</u> .
Section 33	In Section 33, dispute resolution moves quickly to the litigation phase. We request an interim phase, perhaps involving meetings between the senior management of the generator and the AESO to attempt to manage the dispute prior to litigation.
Section 27	We note that a secured lender security agreement is contemplated by this clause, and agree with its inclusion. However, we would suggest that lenders will not want their step-in rights to be subject to AESO consent, and therefore suggest that this clause is revised in order to remove the consent right from AESO for lender step-in.
Other	With respect to the upcoming procurement, it is of paramount importance that developers are given information on the final qualification criteria for participation in the REP bid as soon as possible. Given that the RFQ is just a few months away, guidance prior to the end of December 2016 is critical. This will reduce the amount of guesswork on the part of developers and, in turn, reduce the amount of speculative work that agencies such as AUC, AEP and ACT need to do for projects pre-bid. Ample time should be given for developers to ensure that they are afforded adequate time to ensure they will meet the criteria.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
1	If the AESO is to be the contractual counterparty of the Generator for the RESA we expect the Province will provide a backstop or guarantee of the AESO's obligations under the RESA as the AESO is not currently an agent of the Crown or an entity with its own balance sheet to fall back on.
2	The period of the contract should be for the 20 year term commencing on Commercial Operation Date. Generators are naturally incented to meet the targeted Commercial Operation Date as they will not collect revenue until this occurs but they will have spent considerable capital in constructing the project. The potential to shorten the term of the contract adds uncertainty to the Generator's financial model and will make financing the projects more expensive. Shortening the Support Period is also raised in the AESO's provision #3 and our position is same in that case as well. We strongly encourage the AESO to provide the 20 year support term for all projects that are not terminated for other reasons.
3	It is not clear what is intended in the statement "...must commence construction of the facility as soon as reasonably possible..." A Generator may have an opportunity to start construction earlier than the project schedule forecasts,

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	but this may not translate into an earlier Commercial Operation Date. In addition, starting construction earlier than necessary can drive up overall project costs which would impact the ultimate cost to the customer. What benefit is being sought by directing Generators to ‘commence as early as possible’?
4	It is reasonable to submit a forecast of energy production to the AESO but we believe the requirement to submit the entire financial model to the AESO is unnecessary. Each Generator’s financial model will contain commercially sensitive information and the AESO is subject to Freedom of Information Act requests, which we expect will be problematic for most participants.
7	In order to comment properly it is necessary to understand how the fee will be structured and how significant it will be relative to the project. Will all parties pay this fee or just parties who are successfully awarded a RESA? Typically in a negotiation each party pays its own costs. Any fee charged to proponents will only cause a cost increase in the bids. Perhaps a more efficient way to cover the costs of the process would be to have them funded from the collection of carbon taxes.
8	Flexibility and reasonability with respect to this clause will be critical. Flexibility will be required in regard to things like turbine selection which may alter the specifications or features of the facility but may improve construction timing, energy output, or over all costs. We anticipate the AESO’s consent will not be withheld unreasonably.
12	In order to add certainty, the applicable periods for “regular reporting” should be specified in the RESA, as well as the required contents of those reports. In this event the statement “...as determined by the AESO from time to time in its discretion” should not be included since the parties will have already agreed.
13 & 15	The restrictions in each of these sections should be limited to the specific Project that is the subject of the RESA.
18	If a curtailment occurs as a result of system congestion or economic reasons on the part of the AESO, Generators should not bear that cost. Determining how the risk of curtailment is shared between the AESO and Generators will be an important consideration for potential bidders.
19	Regarding whether the Generator had “prior notice of the change”, we believe the applicable standard should be whether the Generator had notice of the change prior to entering into the RESA, not prior to the change itself.

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23	We would expect for there to be reasonable cure periods for any Generator Event of Default that is capable of being cured. Similarly, there should be a notice period prior to the termination of the RESA by the AESO upon the occurrence of a Generator Event of Default that is continuing – we would suggest 30 days.
25	We disagree with the inclusion of a termination for convenience clause in the RESA. Termination should occur as a result of an event of default by the Generator which has not been cured. Once parties have entered into a contract, substantial effort has been made to deliver on that contract and it is unreasonable to allow one party to unilaterally terminate the agreement for convenience. This clause places too much risk on the Generator and then caps their ability to recover the costs associated with the work to date.
26	It is not unreasonable that over a 20 year period an unfortunate series of events could befall a Generator's project. The inclusion of this clause could result in the termination of the RESA for a project that could otherwise recover from the event (or series of events) of Force Majeure and continue to provide good value to customers over the remaining term of the contract. Following the conclusion of a Force Majeure event the affected party should have the opportunity to provide a schedule to the other party indicating whether and how quickly normal operations can be restored. As long as normal operations can be restored within a reasonable time frame and under commercially reasonable terms, the contract should not be capable of being terminated.
28 & 29	Assignment by the Generator or a change of control of the Generator prior to Commercial Operation should be subject to consent from AESO but such consent should not be unreasonably withheld or delayed. We anticipate that any change of control provision will make an exception for a public company that is generally not able to prevent a change of control from occurring. Assignment by AESO should be subject to consent of the Generator, also not to be unreasonably withheld or delayed, assuming that the assignee is an agent of the Crown or Crown guaranteed.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted submitter information]

Section	Feedback
General	<p>The Renewable Energy Program (“REP”) RFPs should be designed to ensure the lowest cost to the AESO (and, by extension, Alberta ratepayers) over the life of the RESA. The selection of projects based solely on the strike price tendered by generators in an RFP will not necessarily achieve that. The following example illustrates why.</p> <p>Consider two wind farms, A and B. Wind farm A is located in an area where the development costs are relatively low, but the wind tends to blow during off-peak hours (when the Alberta pool price would be expected to be lower). Wind farm B is located in area with higher development costs, but the wind tends to blow during on-peak hours in the area (when the pool price would be higher). The developer of wind farm A bids a strike price of \$60/MWh and the developer of wind farm B bids a strike price of \$70/MWh (each bid reflecting anticipated development costs). The costs of the respective support payments for wind farms A and B will depend on the farms’ respective strike price-pool price spreads over time. Assuming wind farm A and B are dispatched similar amounts, the support payments for wind farm A would tend to be more costly for the AESO than the support payments for wind farm B (since wind farm A would tend to generate during times with lower pool prices and would therefore have larger strike price-pool price spreads).</p> <p>Accordingly, [Redacted] recommends that the AESO evaluate and select projects under the REP RFPs based on the lowest expected costs of support payments. As an alternative, the AESO could consider the relative expected cost of support payments in addition to tendered strike prices (particularly where two projects have similar strike prices but potentially material differences in expected support payment requirements).</p>

<p>Section 3 – Target and Longstop Dates</p>	<p>If the AESO and the Government of Alberta consider it important to have the initial 400 MW of REP generation in service for the December 2019 target COD, the penalty for failing to achieve the target ISD should be more significant than simply shortening the Support Period. In that regard, ██████ would suggest liquidated damages between \$100 to \$500 per MW per day (unless the delay results from Force Majeure or the AESO’s actions) for every day past the Target COD.</p>
<p>Section 4 – Requirements for Construction Commencement</p>	<p>██████ notes that financial models typically include commercially sensitive materials that, if publicly disclosed, would harm a company’s competitive position, so it is important for the AESO to take all reasonable steps to protect such materials from disclosure.</p>
<p>Section 6 – Security</p>	<p>██████ believes that the AESO’s proposal to take a security interest in the generation facilities alone will be more expensive and result in the AESO (and, by extension, Alberta ratepayers) bearing more risk than other forms of security. If a Generator — particularly a less creditworthy party — fails to perform under the RESA and the AESO does not have other types of performance security, the AESO’s only practical recourse would be its security interest in the facilities. This is problematic for several reasons, including that (1) the value of the AESO’s security interest will, in turn, depend on the quality of the equipment used in constructing the facility, the quality of the facility’s construction and facility maintenance, and (2) the AESO’s security interest would likely be subordinated to project financing. Post-COD performance security, along with post-COD availability covenants, would better limit the risk to the AESO associated with Generator non-performance and would better incent Generators to design and construct quality facilities and maintain those facilities. Letters of credit and parental guarantees from sufficiently creditworthy parties are more efficient to issue and can be issued at a lower cost for many potential Generators (including ██████). Those forms of security would also provide better post-COD performance security for the AESO than a security interest in the generation facilities (particularly if that security interest is subordinated to other lenders’ interests). For those reasons, ██████ recommends that the AESO consider other forms of post-COD security instead of taking a post-COD security interest in facilities subject to a RESA.</p>
<p>Section 7 – AESO Administration Fee</p>	<p>██████ requests that the AESO (1) explain how the Administration Fee will be calculated and, (2) provide an estimate of the Administration Fee that is anticipated to be charged by the AESO in connection with each RFP under the REP (as part of the RFP package).</p>
<p>Section 8 – Design and Construction</p>	<p>This section would give the AESO the right to terminate a RESA in the event that the installed nameplate capacity of a facility subject to a RESA exceeds the capacity set forth in the RESA. This right may prevent Generators from pursuing expansions and possible site improvements (due to technological advances, retrofitting of equipment or software upgrades) that do not require financial support under the REP. It is in the public interest that Generators be allowed to pursue these expansions and improvements, provided that the expansion or improvement does not (1) increase the AESO’s exposure to financial support payments under the REP, (2) impair the AESO’s security interest in the original facility built under a RESA, or (3) jeopardize the efficiency or reliability of the original facility. This section should be clarified accordingly.</p>
<p>Section 12 – Reporting</p>	<p>The AESO’s ability to impose or change reporting requirements should be limited to what is reasonably required to manage RESAs.</p>

<p>Section 13 – Renewable Attributes and Funding from other Governmental Authorities</p>	<p>█ requests that the AESO provide clarity in the RESA on the meaning of (1) “funding or incentives” and (2) “any governmental authority” (each as they are used in this section).</p>
<p>Section 14 – Operational Covenants</p>	<p>█ requests that the AESO clarify in the RESA that the Generator will be permitted to contract out operation and maintenance work on the facility (while remaining solely responsible for the operation and maintenance of the facility under the RESA).</p> <p>Additionally, the AESO should consider including minimum availability covenants that oblige Generators to ensure that their facilities can, and are available to, produce power and inject that power into the AIES are reasonable amount of time over the life of the RESA. As alluded to above, minimum facility availability covenants would ensure that Generators have an appropriate incentive to design and construct quality facilities and maintain those facilities over the full term of the RESA. If Generators do not have those incentives, the AESO (and ratepayers) will end up bearing the risk associated with design, construction or maintenance deficiencies (in particular for less creditworthy Generators). That risk is appropriately borne by Generators.</p>
<p>Section 15 – Ancillary Services</p>	<p>█ requests that the AESO clarify in the RESA how broadly the restriction on ancillary services is intended to apply. Specifically, is the restriction intended to apply (1) only to the facility subject to the RESA, (2) to the proponent of the facility, or (3) more broadly than that?</p> <p>Additionally, the restriction on the sale of ancillary services might limit Generators’ incentives to place storage assets at wind and solar generation sites. The AESO should allow Generators to sell ancillary services provided that doing so will not (1) increase the AESO’s exposure to financial support payments under the REP, (2) impair the AESO’s security interest in the facility built under a RESA, or (3) jeopardize the efficiency or reliability of the facility.</p>
<p>Section 16 – Settlement Provisions</p>	<p>█ requests confirmation that if the AESO lowers the \$0/MWh price floor for wholesale power pool bids during the term of a RESA but after the RESA is signed, that would be a designated change in law under section 19 of the RESA and the AESO would keep Generators whole for any economic impacts from such change.</p>
<p>Section 18 – Curtailment</p>	<p>Generators should bear the risk of curtailment that is due to factors within the Generator’s control, including curtailment that is required:</p> <ul style="list-style-type: none"> • to comply with noise requirements; • for environmental/wildlife protection reasons; • because of facility specific reactive power (VAR) or remedial action scheme issues; or • because of “local” transmission congestion (i.e. because of the Generator’s siting decision for the facility). <p>The AESO, however, is increasingly assuming a central planning role in respect of generation in Alberta. Consequently, the AESO should bear the risk of economic curtailment, including curtailment due to generation overbuild, because the AESO will be best positioned to manage that risk (while Generators will have little or no ability to do so).</p>

<p>Section 19 – Change in Law</p>	<p>█████ requests that the AESO clarify (1) what the “applicable statutory regulatory provisions” are (in relation to changes to regulatory permits or licences), and (2) when a change in law “only applies (or applies earlier) due to the Generator’s conduct”. This language in respect of item (2) appears to be too broad (as it is arguable that in many cases, laws are only applicable to a party due to the party’s conduct).</p>
<p>Section 20 – Force Majeure</p>	<p>█████ requests that the term of a RESA be extended for a Force Majeure event that occurs after commercial operation of the facility, provided that the Generator (1) has made reasonable efforts to mitigate or limit damages to AESO, (2) has taken all appropriate corrective action and (3) resumes prompt performance under the RESA when possible. The allocation of this type of force majeure risk to Generators would otherwise increase the cost to the AESO and the ratepayers (since potential Generators would presumably include a risk premium in their bids based on this risk).</p>
<p>Section 22 – Insurance</p>	<p>█████ believes that the AESO’s insurance requirements are unnecessarily prescriptive. The insurance industry and insurance products change over time. Because the RESAs are long-term agreements, it is important that the language used in the agreements is appropriately broad and flexible enough to allow Generators and the AESO sufficient flexibility to satisfy key obligations as available products and industries change over time. In that regard, █████ would suggest that the AESO simply require Generators to maintain comprehensive insurance with coverage types and limits that are appropriate and consistent with customary industry practices in the generation of electrical power.</p> <p>Alternatively, █████ has the following comments on the language specifically used by the AESO in section 22:</p> <ul style="list-style-type: none"> • From Commencement of Construction to COD. All insurance required under applicable laws as well as such insurance <u>or self-insurance</u> that a prudent person would <u>be required to obtain</u> <u>maintain</u> including “all-risk” property insurance covering not less than the <u>probable maximum loss value</u> of the facility, “all-risk” equipment breakdown insurance, “wrap-up” liability insurance and “commercial general liability” insurance with a rider t to include <u>environmental pollution</u> incidents. • From and after COD. All insurance required under applicable laws as well as such insurance <u>or self-insurance</u> that a prudent person would <u>be required to obtain</u> <u>maintain</u>, including “all-risk” property insurance covering not less than the <u>full replacement value</u> <u>probable maximum loss value</u> of the facility, “boiler and machinery” <u>or “all risk” equipment breakdown</u> insurance and “commercial general liability” insurance with a rider to cover <u>environmental pollution</u> incidents. <p>The reasons for those suggested changes, in short, are as follows. Allowing sufficiently creditworthy Generators to satisfy insurance requirements through self-insurance can reduce costs. Requiring Generators to obtain insurance implies that Generators must procure insurance when many may already have appropriate insurance in place. The remaining changes reflect typical insurance policy nomenclature and corporate insurance procurement practices.</p>
<p>Section 25 – Termination – AESO Convenience</p>	<p>█████ requests that the AESO clarify two issues raised by this section. First, in what circumstances would the AESO anticipate terminating a RESA “for convenience” pursuant to section 25? Second, how will the AESO calculate the IRR applicable under a particular RESA? Uncertainty regarding these issues may lead potential generators to bid higher strike prices in order to “price in” the risk, which would be contractor to the AESO’s objective of obtaining the lowest priced power.</p>

<p>Section 28 – Assignment</p>	<p>██████ requests that the AESO clarify (1) whether a Generator can assign and novate a RESA to an affiliate (assuming the affiliate becomes bound by the terms of the RESA and the affiliate provides the required security) without the consent of the AESO, and (2) that the AESO’s consent will not be required for an assignment among affiliates (making the same assumptions).</p>
<p>Section 29 – Change of Control</p>	<p>██████ requests that the AESO (1) confirm that “changes involving affiliates where the original persons in control of the Generator maintain a minimum interest” will not be subject to AESO consent (but could instead be treated in similar fashion to changes of control after commercial operation), and (2) clarify what “changes involving affiliates where the original persons in control of the Generator maintain a minimum interest” means (including what “affiliate” means and what a “minimum interest” means).</p>
<p>Section 30 – Confidentiality and FOIP</p>	<p>██████ requests that the AESO clarify in the RESA what “information and data relating to the Project” the AESO will be permitted to disclose under section 30.</p> <p>██████ also requests that the AESO confirm in the RESA that if the AESO receives a request for access under the <i>Freedom of Information and Protection of Privacy Act</i> (Alberta) seeking access to or disclosure of a financial model disclosed by a Generator to the AESO in accordance with the RESA, the AESO will refuse that request pursuant to subsection 16(1) of the <i>Freedom of Information and Protection of Privacy Act</i> (Alberta).</p>
<p>Section 31 – Generators Representations, Warranties and Other Obligations</p>	<p>██████ requests that the AESO clarify in the RESA what constitutes “incentives under any other environmental program in respect of the facility.” ██████ suggests that the language used for this particular representation should conform to (or mirror) the language used in section 13.</p> <p>██████ also requests that the AESO clarify in the RESA what constitutes the taking (by a Generator) of “any action that would constitute a conflict of interest”. The purpose of this restriction is unclear, and ██████ questions whether the restriction may have undesirable anti-competitive effects.</p>

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
3	There is a discontinuity in the dates established by the Target COD and CC Longstop Date. The Commencement of Construction and COD dates cannot be the same as currently contemplated in the document.
3	It is understandable that the AESO wants termination rights and imposition of liquidated damages if the COD Longstop Date is not achieved. However, there should not be termination rights and imposition of liquidated damages for failure to commence construction.
3	The Earliest Support Payments are not permitted to begin any earlier than one year prior to the Target COD. Please provide clarity that if the project does start earlier than one year, it is still entitled to the full 20 years of payments.
4	There should not be a requirement of providing a copy of the project's financial model. This information is generally considered proprietary and confidential. Providing a copy in the public environment serves no commercial reason for the AESO.
6	With regards to Post-COD Security requirements, this right should be subordinated to Lender's rights otherwise project financing will be troublesome. Lender's typically have concern with a counterparty having priority of payment over them.
7	The amount and structure of the AESO Administration Fee should be outlined in detail under the RFP process.

Section	Feedback
	Consideration should be given to ensure it is commensurate and appropriate with project size.
8	Under “Facility Modification”, materiality should be well defined. Project Specifications routinely change over the course of design and construction. This should be limited to changes to the interconnection, nameplate capacity, and similar areas only.
12	Under reporting requirements, the AESO’s discretion should have a reasonableness standard applied to it.
17	“strike price” should be a defined term in the agreement.
19	All of the provisions of “Consequences of Designated Changes” should also apply to “Change to ISO Rules” and “Change in Market Structure”. The Generator and Lender will require certainty in being made economically whole for changes beyond their control.
19	Under the provisions of “Changes to Regulatory Permits or Licenses”, Consequences of Designated Changes” should also apply to the extent these changes are through no fault of the Generator.
20	FM should also include “Acts of God”.
21	The AESO should indemnify Generator under (ii) as well.
23	Provisions for notice and cure rights for all events of Generator Default should be added.
24	Termination events caused by the AESO should provide the Generator the same right to pursue a claim for damages as the AESO reserves the right to do under Section 23.
25	For Termination prior to COD, Generator’s remedy should also include payments for the advancement of long lead items such as main power transformer, interconnection facilities by the host utility, and payments for WTG’s.
26	Need to add a termination right for Generator in the event that on average the pool price remains above the strike price for some extended period of time (suggest 6 months). The RESA is not intended to disadvantage Generator economically from material changes in pool price over an extended period of time.
28	Generator will need to have assignment rights prior to COD for lenders and other equity partners. As such, AESO’s consent should not be unreasonably withheld.
28	Generator consent should be required for AESO’s assignment as it would require similar creditworthiness of the Assignee under the agreement.
29	Under change of control prior to COD there should be a standard of majority change of control as lenders and other equity participants generally get involved with projects at this stage.
30	Due to the provisions of Freedom of Information noted in this section, this is why Generator’s financial model should not be required under Section 4.

Feedback Form

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Submitter Information:

[Redacted submitter information]

Section	Feedback
N/A	[Redacted] would like to provide the following information/comments to the AESO. [Redacted] also welcomes further opportunities to engage with the AESO and provide useful information on the role that wind energy converters can play in the Alberta Electricity System.
Section 2: Term	[Redacted] recommends a minimum Support Period of 25 years with an option to bid for a 30 years Support Period. The proposed Term structure will allow AESO to access the full suite of technology available today. A longer Support Period will not only lead to lower bid prices but also allow AESO to secure up to 10 years of additional Renewable Attributes from projects compared to a 20 years Support Period.
Section 8: Design and Construction	Current state of technology for wind turbines allow for overbuilding of a windfarm while limiting the power output at point of connection to a set capacity. This approach enables a wind farm to minimize system losses and maximize energy output. Enabling such approaches will increase project output and potentially lead to lower bid prices. As such, [Redacted] recommends decoupling installed nameplate capacity of individual wind turbines from the nameplate capacity either declared at RFQ or at RFP for a given project.

Section	Feedback
Section 9: Connection Requirements	Based on Alberta's plans to significantly increase installed wind capacity over the next couple of years, [REDACTED] recommends that the RESA sets a baseline standard for technology to be selected by Generators. This includes grid connection requirements that go beyond the existing ISO Rules 502.1 and that address specific needs of the Alberta transmission system in anticipation of a high share of inverter based generation. One example for such a requirement could be inertial response provided by wind turbines.
Section 15: Ancillary Services	This seems to impose an unnecessary limitation on future assets especially considering the planned further increase of wind power capacity in Alberta. International experience shows that wind turbine technology can already provide ancillary services today and this capability will even further increase in the future. So, prohibiting provision of ancillary services is believed to impose unnecessary restrictions which can have a negative commercial impact on the Generator and the Alberta market.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



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Submitter Information:

Comments on REP Program Design

Topic	Feedback
RFQ:	Project Eligibility: Traditionally, RFQs have focused on narrowing participation in the RFP by selecting only those with sufficient development experience and economic resources to successfully develop a project of this scope. It is uncommon at the RFQ stage to qualify specific projects, or to solicit specific information about the proposed project in order to proceed. The reason for this is two-fold. First, proponents are still securing their portfolio of projects from developers or finalizing development themselves. The AESO should allow this to continue until the RFP stage in order for those projects to transact in time for the procurement. Second, the AESO should allow developers as much time as possible to assess their projects and get them as advanced as possible before committing them to the process. Given the timing of the RFQ, it is too early to expect proponents to have finalized the project list they intend to bring forward into this first procurement. We therefore strongly recommend removing project detail information from the RFQ process and put it instead into the RFP stage.
RFP	Project Teams: For the RFP stage, proponents should be able to confirm that <i>no material changes</i> have occurred to the project team that would impact its eligibility. To request a confirmation that the teams themselves have not changed prohibits team members from any job promotion, career change, or company change, or prohibits companies from otherwise conducting normal course of business during the procurement process. Our proposal would allow such changes as long as that individual is replaced with a person with similar experience.
Connection Queue and approvals timelines	The AESO and government should consider certain amendments to the connections and approvals process. The current design was constructed in order to facilitate merchant projects to bring their proposals forward and limit connection barriers. However, given the current desire for a procurement structure to facilitate the development of

Topic	Feedback
	renewables, the AESO should consider amending the process to better coordinate it with the procurement design. We feel a consultation on potential amendments to the regulatory process should be held to ensure a consistent and reasonable framework.

Comments on Draft Term Sheet

Section	Feedback
General	In General, we agree with the structure, concepts and objectives as outlined in the current draft term sheet. One general comment, however, is that the AESO appears to have relied heavily in many sections on precedents in the recent Large Renewable Procurement in Ontario. We would caution that while this procurement does represent the most recent similar procurement in Canada, it also contained provisions (curtailment risk, termination for convenience, etc.) that do not drive the lowest cost renewable energy bids and in fact run counter to the government's renewable energy objectives. In order to improve the bid quality and reduce support payments over the term, we would suggest that the recent LRP should not set industry precedent or best practices when procuring renewable energy in Alberta.
2	Term: We recommend that the AESO consider a 25-year term (Support Period) to align with improvements in wind and solar technology. This timeframe would reflect that projects are now commonly certified for a minimum of 25 years. Moreover, irrespective of renewable technology type, a longer Support Period will result in lower bids prices, due to longer financing amortization periods. These lower bid prices result in achieving the lowest costs for Alberta rate- and tax-payers.
3	<p>Timelines: The CC Longstop Date, Target COD and COD Longstop Date all have extremely short timelines. A more natural project development timeline, and one that would maximize participation, would allow at least three (3) years between contract award and COD. While we recognize the desire for expediency, the current structure runs counter to the stated objectives of encouraging a broad and competitive procurement by favouring those few projects that are further advanced.</p> <p>By making this structural advantage in the procurement for more advanced projects, the AESO risks raising the bid prices, as advanced projects could request a premium for their advanced status. By allowing other projects the time to develop, the AESO would increase competition, allow a broader range of participants and ultimately secure lower bid results.</p> <p>Another inadvertent consequence of this structure is that it places increased pressure on other entities, such as the connection assessment team, the Alberta Utilities Commission (AUC), the Albert Environment and Parks and others. As we saw in other jurisdictions, those other entities acted as a bottleneck to projects, resulting in significant project delays and Force Majeure requests, as projects will have significant investment riding on the timing of their</p>

Section	Feedback
	<p>decisions.</p> <p>Finally, by designing the procurement to favour those projects furthest along in the approvals process, the AESO encourages a large number of proponents and approvals entities to invest significant time and money in projects that may not eventually be selected. This represents not only a waste of time and money for those entities, but also means that the projects may have to go through the process several times (for example, re-conducting environmental surveys) before they are eventually selected. This will result in more expensive projects than required and will recover this expenditure in the bid price.</p>
4	<p>Timing: The AESO should identify a clear timeframe for issuing the confirmation once all required documentation has been received.</p>
4	<p>Financial Model: Financial models are extremely confidential documents, which underpin a company's economics, purchasing position, return requirements, among other things. Such information, if not kept strictly confidential, risks permanently disadvantaging a company from future procurements both within and outside of Alberta. Companies will not be comfortable exposing these documents to the discretion of potential Freedom of Information requests.</p> <p>While we recognize that the AESO's request for those financial models could relate to other provisions in the contract (termination for convenience, for example), we strongly recommend identifying other means to achieve those objectives. Removing the post-construction termination for convenience is one example of how this may be accomplished.</p>
4	<p>Permits: The proponent should only be required to provide those permits required to commence construction. Ideally, the AESO should specify which of those approvals they wish to see.</p>
4	<p>Commence Construction: The AESO should remove the requirement to confirm that the proponent has commenced construction on site, or at a minimum, define this potentially as 'site clearing'. In cases of third party financing, the lender would likely not permit the proponent to commence construction prior to the AESO confirmation. Furthermore, to require otherwise puts the proponent at risk of launching expensive construction activities prior to having received confirmation from the AESO as to the status. Should the AESO chose to terminate the contract prior to their consent to being issued, the proponent would not be covered for these additional expenses (see also our comments on termination for convenience).</p>
6	<p>Pre-COD: We believe there is a typo in this section, as the capacity should be based on the project capacity as outlined in the contract, rather than that which is declared in the RFQ (See also our general comments on what should be requested in the RFQ vs RFP).</p>
6	<p>Security over the facility: Third party lenders would not consent to allowing the AESO higher priority security interests in the facility. The AESO's security interest should therefore be subordinate to that of Secured Lenders.</p>
8	<p>Facility modification: The AESO should also consider what types of upgrades will be allowed over the course of the contract. As technology improves, operators are sometimes able to retrofit these upgrades into their facilities post construction. This is sometimes as simple as software upgrades or the installation of other minor equipment to</p>

Section	Feedback
	<p>the facility. Projects should be able to continuously improve their facilities over the term of the contract, even if this results in minor increases to rated capacity (say, up to 5%). Doing so will have two notable benefits: 1) some generators may take the risk on these technology improvements in the future, thereby reducing their bid price; and 2) it will allow the facilities to stay more current and potentially lead to some residual value at the end of the contract (which could also lower bid prices and/or result in continued, lower cost, zero emission generation in the future). It may also leave open the possibility to incorporate measures that better support grid operations.</p>
12	<p>Government Funding: Incentives granted to the facility on a per MWh basis should be shared, but other types of funding (tax incentives, certain grants such as First Nations funding, etc) should not be clawed back.</p>
16	<p>Contract Price: While we recognize that current market rules set a floor bid price at \$0, we are concerned by the contract price definition that specifically defines the support payment as the difference between the strike price and the greater of the pool price and zero. Instead, the contract should identify the support payment as being the difference between the strike price and pool price. This removes the risk of any future changes to the minimum bid price and potentially lengthy change in law challenges.</p>
18	<p>Curtailment: As with the negative price exposure, asking proponents to take all curtailment exposure undermines the structure of the indexed REC and results in higher bid prices. We would suggest a risk-sharing principle based on the items within the control of each contracted party. Those risks within the proponent's control might be borne by the proponent, and those within the AESO or government's control be borne by the AESO. As a proponent cannot control how many projects will connect subsequently in its zone, nor can it control the number of MW or rules of future procurements (for example, with respect to grid upgrades or the transmission legislation), it is unreasonable to ask the proponent to take on that curtailment risk. The curtailment risk should therefore be attributed to the AESO.</p> <p>This change will provide certainty for proponents that will then build this into their financial model and reduce their bid prices. If proponents are left to bear the risk, they are likely to assume a certain amount of curtailment in their bid (even if it does not come to fruition) and therefore the AESO would end up overpaying the support payments.</p>
19	<p>Change in Law: The Alberta market is in the midst of a dramatic shift away from an energy only structure, moving instead to contracts for renewables and capacity auctions for gas, among other changes. As these modifications are implemented, it is to be expected that further refinements, of varying significance and formats, may be required in order to support this transition.</p> <p>Given the long term nature of investments in energy projects, in order to bid into a competitive process, proponents must take a view on the market and economics in order to fix their bid price for the life of the investment. Any later change in those assumptions risks completely undermining the investment.</p> <p>With that in mind, we feel that the change in law provisions contemplated for coverage under the RESA are too narrow and need to be broadened. The AESO should ensure that the change in law provisions protect investors from adverse impacts, not only from the Government of Alberta or regulators, but in fact to any body that is in a position to create laws, regulations, policies or orders impacting the facility.</p>

Section	Feedback
	<p>Furthermore, relief should be granted for changes by any entity whether or not the changes were specifically directed at: “the Generator in relation to the Project; the rules and regulations which govern generation facility owners; or the RESA, the subject matter of the RESA or arrangements in the nature of the RESA”. Adverse consequences, regardless of the primary target or intent, should be covered regardless of the entity or primary goal of the changes.</p> <p>Any resulting and demonstrable adverse economic consequences, directly or indirectly, that results from governmental conduct (at any level including agencies and regulatory bodies, and implemented in any manner affecting generators of similar facilities) should be considered as resulting from a " change in law".</p>
20	<p>Force Majeure: Given the limited development timeframe, the IESO should clarify that proponents would be eligible for FM relief due to permitting delays. Furthermore, FM relief should also be granted upon appeal regardless of any stop work order, as a company should not reasonably be expected to commence construction with an appeal pending. Furthermore, it should be clear that any delay due to the AESO or other public entity, a FM should be granted.</p>
21	<p>Liability and Indemnification: We suggest including the following: “...provided that the foregoing indemnities will not apply to the extent the damage/injury is attributable to <i>acts or omissions</i>, negligence or wilful misconduct of the indemnified parties.”</p>
23	<p>Events of Generator Default: We would propose that, prior to the termination of the contract due to bankruptcy, that the Lender step-in rights be implemented. The agreement should not terminate and then be re-issued in the event of bankruptcy.</p>
23	<p>Event of Generator Default: It is customary to implement a reasonable cure period to remedy any Event of Default. We recommend a timeline of 60 days or other reasonable timeframe if the parties agree to extend.</p>
25	<p>Termination for convenience: For any termination for convenience prior to the commencement of construction, eligible costs should include all external consulting fees, technical reports, environmental support, legal and other reasonable third party costs required to develop the facility according to the required timelines. It should also include any non-refundable equipment deposits including transformers or other generating equipment, connection costs, lender fees or other costs related to financing. It should also include any reasonable overhead costs associated with the foregoing.</p> <p>The concept of the payments should be to keep a party whole to cover any and all reasonable expenses incurred in response to the government’s procurement initiative and timelines. We recommend that the pre-construction payment in the event of termination be capped at \$6,000,000 + \$500,000/MW for wind and \$6,000,000 + \$300,000/MW for solar. For greater certainty, the AESO would only be liable for actual expenses incurred and only those deemed reasonable for the timely construction of the facility.</p>
25	<p>Termination post Construction Commencement: We strongly recommend that the AESO remove the termination for convenience post construction commencement. Including this section in the contract pre-supposes, and in some ways enables, future decisions that would have material adverse impacts on proponents, taxpayers, and the investment climate in Alberta. It creates a mechanism by which irresponsible policy decisions can be made that</p>

Section	Feedback
	would unreasonably cost taxpayers with no tangible benefit as a result. It is one thing to change policy for future market design and procurements, but it is another to terminate projects that have responsibly invested, achieved all required approvals, made commitments to the local communities and put shovels in the ground. The AESO should not be enabling this kind of political interference to the detriment of taxpayers.
27	See comments in section 23. This agreement should allow Lender step in rights to proceed prior to the termination of the contract.
29	Change of Control: While we understand the desire to restrict project sales through changes of control prior to COD, the AESO should not unduly limit transactions where the contracted facility is not a major part of the transaction. For instance, if a company is undergoing a sale of global assets, it would be unreasonable to hold up the sale for this one asset as a part of a greater deal

Feedback Form

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Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
3 – Target and Longstop Dates	<p>AESO's option to terminate seems severe. Will there be a discretionary/reasonableness element attached to this? Would the AESO consider a phased penalty mechanism instead of, or prior to, an option to terminate?</p> <p>How does the AESO arrive at \$50,000 per MW for liquidated damages? And why are they considered damages? What if the AESO can mitigate its damages (e.g., a different facility is able to come online in a short period of time)?</p> <p>If an FM event or change-in-law delays development or construction, will <u>all</u> of the dates be extended (e.g., FM delays the CC Longstop Date—will that also extend Target COD and COD Longstop, or does the Generator have to abide by the original Target COD and Longstop dates?)</p>
4 – Requirements for Commencement of Construction	<p>The Commencement of Construction is indicated to occur “at the point when, <u>as subsequently confirmed by the AESO in writing</u>, Generator has...” Does this mean Commencement of Construction does not occur until formal confirmation from the AESO is received? Will the AESO be under a time limit in which to deliver formal confirmation?</p> <p>What if certain assessments, permits, licenses, approvals, are obtained, but <i>conditional</i>—will this still count as</p>

Section	Feedback
	<p>being “obtained”?</p> <p>The AESO indicates that a Generator must secure financing sufficient to complete development, construction, and commissioning of the facility. What if the financing comes in tranches, and is conditional upon achieving certain milestones?</p> <p>Do <u>all</u> procurement arrangements need to be settled prior to commencement of construction?</p> <p>What constitutes “commenced construction activities” at the site?</p> <p>██████ objects to the requirement to provide details of a Generator’s financial model. The competitive bid process implies that a successful project is evaluated on costs, not on profitability or other determinants. This creates an unfair negotiating advantage for the AESO and the GOA and undermines a competitive process in which the Generator is taking on certain risks and has the right to price those risks as it sees fit.</p>
6 – Security	<p>How does the AESO arrive at \$50,000 per MW for liquidated damages? And why are they considered damages? What if the AESO can mitigate its damages (e.g., a different facility is able to come online in a short period of time)?</p>
7 – AESO Administration Fee	<p>What quantum of costs will this fee represent? Will it be allocated between projects or will it be project specific? Will the AESO consider a cap on costs?</p>
8 – Design and Construction	<p>With respect to facility modification, will there be a reasonableness requirement for consent, and would the AESO consider setting out certain “permitted” modifications? Given the length of term, surely there will be multiple opportunities to upgrade, modify, enhance the facility, and Generators should have some certainty that they will be able to take advantages of opportunities when they arise.</p>
12 – Reporting	<p>If the AESO is maintaining discretion over reporting requirements, will it provide in the RESA specific guidelines so that Generators know how onerous and detailed the reporting requirements are? What if certain reporting requirements conflict with other confidentiality obligations of the Generator (e.g., to lenders)?</p> <p>Can the AESO change reporting requirements during the term of the RESA? If so, and the changes add administrative burden, will this be taken into account in regards to effects on the financial performance of the project?</p>
13 – Renewable Attributes and Funding from other Governmental Authorities	<p>What is behind AESO’s rationale for obtaining 50% of capacity or generation-based funding?</p>

Section	Feedback
14 – Operational Covenants	The AESO's requirements regarding ownership, leasing, operation, and maintenance are strict. What about joint venture arrangements, corporate/tax planning decisions? Would the AESO entertain alternative ownership, leasing, operation, and maintenance arrangements if they are vetted and approved by the AESO in advance?
18 – Curtailment	Generators not being compensated during curtailment is a significant concern. What is the AESO's justification for this? This can create significant risk on Generators that is beyond the scope of their control.
19 – Change in Law	<p>Will there be explicit criteria setting out what “materially affects” amounts to?</p> <p>How will the parties determine the replacement reference price? Will this be based on some sort of calculation or mark-to-market assessment?</p> <p>Should designated changes include changes to Federal laws, rules, and regulations that impact the project?</p> <p>What does the AESO mean when it says relief will not be provided if a Generator had <u>prior</u> notice of a change?</p> <p>If changes to conditions in permits or licenses will not be considered changes in law unless statutory regulatory provisions change, under certain conditions will they count as events of force majeure?</p> <p>Will the AESO consider broadening the scope of this clause to protect developers against other changes in law which may materially impact project economics over the term?</p>
20 – Force Majeure	The 18-month period, beyond which a party may terminate, is somewhat short. Will the AESO consider 24 months both for single- and multiple-event force majeure?
21 – Liability and Indemnification	[REDACTED] has concerns regarding the Generator indemnifying the GoA, and in all instances except negligence or willful misconduct? “Any occurrence or event relating to the facility” is excessively broad, and could encompass any number of situations, whether they occur at the facility or not, and whether occasioned by the Generator or not. Does the AESO intend to circumscribe these obligations in the RESA?
23 – Termination – Events of Generator Default	<p>Will there be a notice and grace period to allow a party in default to cure?</p> <p>Is it correct to assume a FM delay with respect to permitting would preclude the AESO from declaring an Event of Generator Default?</p> <p>Regarding breaches with respect to ownership and modifying the facility, we ask the AESO to consider our above comments re pre-approval of alternative ownership arrangements, and pre-defined criteria for acceptable facility modifications.</p>

Section	Feedback
25 – Termination – AESO Convenience	<p>██████ assumes the AESO will provide the pre-construction termination payment cap <i>prior</i> to execution of the RESA and better define the scope of “qualifying” costs.</p>
26 – Termination – Extended Force Majeure / Other Events	<p>The 18-month period, beyond which a party may terminate, is somewhat short. Will the AESO consider 24 months both for single- and multiple-event force majeure?</p>
27 – Financing and Consequences of Default	<p>To a certain extent the rights and obligations of secured lenders will be driven by the secured lenders themselves. How prepared is the AESO to entertain additional rights when requested by lenders?</p>
28 – Assignment	<p>Why does the AESO have sole discretion regarding pre-COD assignment? Why does the reasonableness requirement for consent fall away if the Generator does not own or lease the facility? Would the AESO entertain assignment to a non-affiliate if it is approved in advance?</p>
29 – Change of Control	<p>Why does the AESO retain sole discretion over change of control? What is the rationale?</p>
31 – Generator’s Representations, Warranties, and Other Obligations	<p>What is the AESO contemplating with respect to the “no other business being carried on” representation?</p> <p>Is it correct to assume “Generator has not received incentives under any other environmental program” is a representation and not a warranty? (<i>e.g.</i>, the Generator may obtain other funding in certain circumstances pursuant to section 13?)</p> <p>What is meant by “Generator has made all due inquiry into requirements to obtain applicable permits and licenses, and it acknowledges it will only be entitled to Force Majeure relief in respect of failure to fulfill any such requirements that were reasonable unforeseeable”? What constitutes “due inquiry”?</p>

Section	Feedback
6 – Security	The final bullet relating to the Generator granting the AESO a security interest may be problematic for Generators in obtaining security for the facilities, as this could potentially give the AESO a security interest over and above creditors lending to the Generator. The possible lending implications of this provision should be fully considered.
6 – Security	When specifically must the completion and performance security be posted? RFQ stage, RFP stage, upon RESA award?
7 – AESO Administration Fee	<p>If the Government pays the AESO to administer this program, will this cost to Generators be removed? Do other jurisdictions with similar programs charge an administrative fee to Generators?</p> <p>Will this fee be a fixed amount per project or will it vary depending on capacity and actual output of the Generator’s facility?</p> <p>Will this fee be borne exclusively by successful proponents under the REP or will this fee be charged to all pool participants?</p>
8 – Design and Construction	The statement on Facility Modification should be clarified to define what constitutes a material modification of the facility. I.e. would changing the location of a wind turbine generator within a project area constitute a material change if no change is made to the capacity of the facility?
12 – Reporting	<p>The regular reporting requirements should be appropriately flushed out in the contract and for any changes to these requirements, the AESO should provide Generators with a notice period to accommodate the changes.</p> <p>Will costs associated with new reporting requirements be recoverable?</p> <p>Who is responsible for the cost of registering the Renewable Attributes of the Project including associated audits and reports? Who pays for ongoing audits required to maintain registration?</p>
13 – Renewable Attributes and Funding from other Governmental Authorities	The second bullet relates to other government funding and states that the Generator shall provide written notice to the AESO of any application it makes relating to any funding for the facility from government sources. Then the final sentence of this bullet states that “The Generator may not seek other funding or incentives that are provided or offered by the Government of Alberta with respect to renewable generation projects.” This should be clear in that it ties to the Generator’s actions for the Facility only (and not the Generator itself) and it is confusing when read in conjunction with the first sentence of the bullet. Adding exemption or carve out language should be considered – for example, “The Generator may not seek other funding or incentives without the prior consent of the AESO that are provided or offered by the Government

Section	Feedback
	<p>of Alberta with respect to renewable generation projects.”</p> <p>Does this clause prevent the Generator from selling electricity (not Renewable Attributes) to a governmental authority under a contract such as a PPA or CFD?</p>
14 – Operational Covenants	<p>Fuel Sources – Consider allowing non-renewables as a backup fuel with no Indexed REC Payment for generation with the non-renewable fuel. Some facilities, such as biofuels, will benefit from utilizing a mix of bio-fuel and natural gas to maintain stability. This would also allow these facilities to provide firm capacity to the grid in the event of a biofuel shortfall.</p>
15 – Ancillary Services	<p>Consider allowing Generators to sell ancillary services. This may drive down strike price of projects that are able to provide ancillary services.</p>
16 – Settlement Provisions	<p>Will this section be re-written for future RESA’s that utilize a different funding mechanism than the Indexed REC? Consider more generic language if this RESA is meant to cover future auctions.</p>
18 – Curtailment	<p>Does the RESA grant AESO any additional rights with respect to curtailing output from a Generator’s facility?</p>
19 – Change in Law	<p>Consequences of Designated Changes – Adjustment to the strike price should only be used for a change in law that impacts variable operating costs. A different mechanism should be used to compensate for changes to fixed operating costs.</p> <p>Changes to Regulatory Permits or Licenses – Consider changing this to include changes to permits or licenses imposed by the regulator as a Change in Law. Otherwise this leaves a backdoor for increasing the Generator’s compliance costs with no means for recovery.</p> <p>Generator Conduct – If the Generator’s Conduct meets the requirements of all Operational Covenants, market rules, etc. then the Generator should be eligible for reimbursement for the Change in Law to the extent the Generator is impacted.</p>
20 – Force Majeure	<p>The concept should include events that are not reasonably within the control of a party and also the consequences of which could not reasonably be prevented by a Party (e.g. natural disasters, extreme weather events, military action, etc.)</p> <p>FM should include inability to procure fuel to the extent that the inability is caused by one of the times qualifying for FM (e.g. labour strike, government order, natural disaster, etc.)</p>
21 – Liability and Indemnification	<p>Consequential damages should be specifically <i>excluded</i> from any Party’s liability. In the carve-out language at the end, the following hi-lighted language should be added:</p> <ul style="list-style-type: none"> • “Generator will indemnify the AESO and the GoA from all claims, losses and damages in relation

Section	Feedback
	<p>to: (i) any occurrence or event relating to the facility; (ii) any breach of Generator's representations, warranties and covenants; and (iii) the discharge of contaminants at or related to the facility and any fines in connection therewith, <u>provided</u> that the foregoing indemnities will not apply to the extent the damage/injury is attributable to the negligence or wilful misconduct of the indemnified parties or the failure of the Indemnitees to comply with applicable laws and regulations or with respect to the AESO, a breach of any of the AESO's obligations under this Agreement.</p>
23 – Termination – Events of Generator Default	<p>Under 'Exercise Security' it discusses the AESO holding security as protection against Generator Events of Default. Please see the commentary under '6 Security'.</p>
28 – Assignment	<p>The second bullet allowing assignment after COD by either party <u>with</u> the prior consent of the other conflicts with the final bullet 'Assignment by AESO' which allows AESO to assign <u>without</u> the Generator's consent. It is unclear if the last bullet is specific to the AESO's assignability without consent pre-COD. As well, whether the AESO has the ability to assign the contract prior to COD is not clear (unless this is what the last bullet is meant to address). The conflict between the second and fourth bullet should be clarified and the AESO's ability to assign pre-COD should be addressed.</p>
29 – Change of Control	<p>This term should be defined and the minimum interest language here should clearly carve-out internal reorganizations as constituting a change of control.</p>
31 – Generator's Representations, Warranties and Other Obligations	<ul style="list-style-type: none"> • The Generator is entitled to Force Majeure relief in respect of failure to fulfill any requirements that were reasonably unforeseeable. I think this concept under Force Majeure should be clear in that any non-customary delay by an authority in approvals or permits is not reasonably foreseeable. • This section says that the Generator will need to represent that "There is no reason to believe that commercial operation of the facility may not be achieved by Target COD" – this is a problematic representation for a number of reasons. If Target COD is not reached, it may ultimately become an exercise in whether or not the Generator should or should not have known about an issue and this representation should be removed. <ul style="list-style-type: none"> ○ This also raises the question if issues come up that could delay Target COD, whether the Generator has an obligation to inform the AESO. ○ As is customary in many agreements with respect to representations and warranties (and as listed as a standard event of default in 23 Termination – Events of Generator Default) if the agreement specifies that it is an event of default when a representation is not true and correct in all material respects, then whenever something <i>could</i> delay the commercial operation date, the Generator would technically be in breach of that representation. • This provision also includes a statement that the Generator has not received incentives under any other environmental program in respect of the facility. As the green energy landscape is still

Section	Feedback
	<p>emerging and we do not know exactly what it looks like, this representation should be removed or have prior consent language added – see additional commentary on this under ‘13 Renewable Attributes and Funding from other Governmental Authorities’ above.</p> <ul style="list-style-type: none"> • It should also be made clear if “incentive under any other environmental program” includes tax incentives from any level of government
33 – Dispute Resolution	<p>The provision provides that if the parties’ representatives cannot resolve the dispute within 10 days of request by a party, either party may commence litigation. More fulsome procedures should be considered here and consideration should be given as to whether this is best dealt with in binding arbitration (rather than litigation) to ensure timeliness of resolution. To keep the process simple, the following arbitration language could be inserted:</p> <ul style="list-style-type: none"> ○ All disputes arising out of or in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement, will be finally resolved by arbitration under the Arbitration Rules (the “Rules”) of the ADR Institute of Canada, Inc. (the “Institute”), with the following exceptions: <ul style="list-style-type: none"> ▪ the arbitrator, and not the Institute, will administer the arbitration on an <i>ad hoc</i> basis; ▪ the Seat of Arbitration (as such term is defined in the Rules) will be Edmonton, Alberta; ▪ the location of the arbitration will be in Edmonton, Alberta; and ▪ the language of the arbitration will be conducted in English.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
6 "Security"	<ul style="list-style-type: none">➤ Pre-COD: Require a monthly review of an asset/debt ratio of the Generator to confirm the legitimacy of the letter of credit, considering the volatility in the market and potential default of the Generator.➤ Security over the Facility: Should the Generator "default" the landowner must be protected from any bankruptcy or insolvency. The landowner should be compensated as per any agreements for land use or lease. The landowner should never have to accept any responsibility for abandonment and reclamation of the site. Can it be confirmed that security interests in the facility and the proceeds from the sale of electricity will provide economic security for landowners and necessary decommissioning and reclamation in the case of default? If the security interests and proceeds will not offer that guarantee than perhaps a levy from all licensed Generators should be collected for the unforeseen events required to reclaim sites faced with bankruptcy and generation – similar to the Part 11: Orphan Fund of the Oil and Gas Conservation Act that funds the energy industry Orphan Well Association. This might also include a monthly review of the validity of economics for the Generator once the commercial operation of the facility commences.
21 "Liability and Indemnification"	<ul style="list-style-type: none">➤ The Generator should be required to indemnify the landowner of any leased land the same considerations as AESO and the GoA. There is a need to protect the landowner from unforeseen circumstances that would put an impact on the land, therefore impacting the landowner. This would include but not be limited to lease payments, abandonment/decommissioning costs and reclamation of the site.

Section	Feedback
22 "Insurance"	<ul style="list-style-type: none"> ➤ Requirement for "insurance" rider in the "commercial general liability" to protect the interest of landowners. A landowner will be cleared from any responsibility or costs if a Generator becomes bankrupt or insolvent.
27 "Financing and Consequences of Default"	<ul style="list-style-type: none"> ➤ Provisions to protect landowners of leased land during the event of Generator bankruptcy or insolvency. The landowner would not be responsible for costs associated with operation costs, abandonment/decommission and reclamation.
31 "Generator's Representations, Warranties and Other Obligations"	<ul style="list-style-type: none"> ➤ Standard Representations and Warranties: The Generator should be required to use a Licensed Land Agent under the Land Agents Licensing Act to confirm integrity to the process and have parties conduct business within the code of conduct and ethics as required by the Act when negotiating with a land owner for a lease.
33 "Dispute Resolution"	<ul style="list-style-type: none"> ➤ Arbitration at the cost of the Generator should be offered to landowners that require a process for dispute resolution, rather than a 10 day period (mediation?) leading to litigation. Arbitration is offered as a tool for dispute resolution in most contracts in Alberta and is supported by Alberta Justice.

Feedback Form

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Submitter Information:

[REDACTED]
[REDACTED]
[REDACTED]

Section	Feedback
4	More details on 'financial model' please
5	Definition of 'punchlist'
7	Notional size of administration fee?
12	Notional what and how often of 'regular reporting'?
14	Confirm that operation and maintenance can be 'farmed out'.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



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[Redacted]
[Redacted]
[Redacted]

Section	Feedback
17	Please point to a specific public index to used as CPI reference point
28	Require better reciprocity in assignment for either counterparty
33	For your protection ensure the dispute resolution explicitly applies under our jurisdiction (laws of Alberta) vs. for example the laws of the place of the counterparties head office

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



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Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
2	<ul style="list-style-type: none">- If the commercial operation date is far later than the target date due to interconnection issues beyond the generator's control, can concessions be made regarding the support period?- Please define the term "commercial operation".
3	<ul style="list-style-type: none">- Is the security amount negotiable, or is it set at \$50,000/MW? What does the AESO base this amount on?- If there are delays beyond the generator's control (e.g. interconnection delays), will the penalty be waived?
6	<ul style="list-style-type: none">- Is it possible to place the amount posted in the Letter of Credit in an escrow or fixed deposit account?- Interest over security will be a problem. Banks and lenders will require first call on all security. The AESO would have to be seconding to project financing.
15	<ul style="list-style-type: none">- Why would ancillary services (AS) be excluded? If the system needs AS, generators should be able to provide it.
16	<ul style="list-style-type: none">- [Redacted] would like to remove the zero as the contract price floor in case the market price is allowed to go negative in the future.
17	<ul style="list-style-type: none">- Percentage seems low as there will be rebuilds and major capex additions due to maintenance efforts over a 20 year contract.

Section	Feedback
18	<ul style="list-style-type: none"> - How often could generators be asked to curtail considering one of the requirements from the AESO is to use existing infrastructure? - Will generators be compensated if there are planned system outages that are outside of the generator's control?
19	<ul style="list-style-type: none"> - The contract states "Relief will not be provided where the Generator had prior notice of the change". Please define what "prior notice" means. What input will generators have once notice is given? - Please define "financial relief".
24	<ul style="list-style-type: none"> - Will generators be able to negotiate termination payment amounts, as well as termination payment schedules? Termination payments should include costs incurred by generators.
25	<ul style="list-style-type: none"> - Please define "Qualifying Costs". - Can these costs be negotiated? - Please confirm where in the agreement the generator's IRR amount is set.
29	<ul style="list-style-type: none"> - Extending the notice period to 15 business days would be helpful. - Generators need the ability to have a change of control of the company without losing the agreement.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



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Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
Section 3: Target and Longstop Dates	<p>There seems to be an error in the term sheet in that December 2019 is suggested as the CC Longstop Date for commencement of construction and for Target COD. [Redacted] would expect at least a year between commencement of construction and COD.</p> <p>[Redacted] suggests a CC Longstop Date of within 12 months after the RESA has been awarded. [Redacted] expects that the CC Longstop Date won't be any later than December 2018. [Redacted] suggests a Target COD of December 31, 2019 and a COD Longstop Date of within 12 months after Target COD.</p> <p>Liquidated damages should be \$80,000 per MW as per comments in Section 6.</p>
Section 4: Requirements for Commercial Construction	<p>[Redacted] resists the requirement to provide a copy of its financial model to the AESO. This is an extremely confidential document and could be compelled into the public realm pursuant to a FOIP application.</p>
Section 5: Requirements for Commercial Operation	<p>[Redacted] is not clear on what a "non-zero offer" letter is.</p>

Section	Feedback
Section 6: Security	<p>██████ believes that upon submission of the bid in the RFP, the Generator should be required to obtain and maintain security (in the form of a letter of credit) in the amount of \$40,000 per MW (calculated based on nameplate capacity declared at RFP). Following the PPA Award, the Generator should be required to obtain and maintain security (in the form of a letter of credit) for an additional amount of \$40,000 per MW (calculated based on nameplate capacity declared at RFP). This would have the effect of changing the Pre-COD Security from \$50,000 per MW to \$80,000 per MW.</p> <p>██████ requests further information regarding what formal credit support the Government of Alberta is giving to the AESO so the AESO can get the benefit of the Government of Alberta's credit rating.</p> <p>██████ resists the requirement to give the AESO security interests in the facility/project and the proceeds therefrom. This unnecessarily complicates the financing, was not required as part of the renewables procurement processes in Ontario and creates a considerable administrative burden for the AESO. Project lenders will need to have the first lien and intercreditor agreements will therefore need to be negotiated. ██████ believes the benefit to the AESO of having such a security interest is not worth the costs involved in providing for it. There are other measures where by the AESO could receive adequate protection such as having consent rights on a sale of the project (for example in the Direct Lender Agreement).</p>
Section 13: Renewable Attributes and Funding from other Governmental Authorities	<p>It should be made clear that Renewable Attributes exclude tax incentives and tax benefits.</p> <p>In ██████ view, the requirement to pay 50% of any funding or incentive payments should be struck or modified. Capacity payments should be included in the strike price and Generator should not be required to give half of such amounts to the AESO. Capacity payments should be addressed in the Change of Law clause once the capacity market comes into effect.</p>
Section 14: Operational Covenants	<p>The covenant that the Generator shall be <u>solely</u> responsible for the operation and maintenance of the facility should provide for certain exceptions: it is standard for a sub-contractor to do certain O&M work and for an equipment supplier to do maintenance under a long-term services contract.</p>
Section 16: Settlement Provisions	<p>The description of the Contract Price should clarify whether the RESA support payment will equal the metered electricity generated by the facility, gross or net of transmission losses. Further, ██████ recommends that the RESA include provisions eliminating any exposure to negative pricing. This will result in lower bid prices than are currently</p>

Section	Feedback
	<p>incentivized with this contract language, as it reduces risk exposure for generators. While we understand that there is currently a floor on pool prices at \$0/MWh, the framing of “the greater of the pool price or zero” has led to some concern about the likelihood of changes to the floor. It’s not clear whether the strike price is flat, escalating or sculpted.</p>
Section 18: Curtailment	<p>██████████ projects need to be protected from curtailment as a result of projects brought online after COD and from curtailment resulting from a Change in Law. These exceptions/carve-outs should be added.</p>
Section 19: Change in Law	<p>The Change in Law clause needs to address the announcement of the capacity market and how capacity payments will be built into the strike price. ██████████ will want to be entitled to participate in a capacity market.</p> <p>Additionally, the use of the words “directed specifically” in the Designated Changes section is unclear, and in ██████████ view, this clause is too narrowly drafted. It refers to no relief where the Generator had “prior notice” of the change. What constitutes prior notice? Is this notice prior to the contract being entered into? Additionally, what is meant by “a change in law...due to the Generator’s conduct”? This provision also needs to be clarified.</p>
Section 20: Force Majeure	<p>It strikes ██████████ as incongruent that a party would be able to claim FM for an inability to obtain or renew a permit, but not for an appeal of such permit (which is, in itself, an inability to obtain or renew a permit). Arguably, there is not much difference and this could create considerable confusion.</p> <p>██████████ believes FM should include appeals to a Generator or TFO application that were submitted prior to the RFQ. We believe that in order to qualify for the RFQ, projects should be in Stage 3 or higher and have submitted their AUC Power Plant Application.</p> <p>██████████ does not understand the rationale for having no extension of the term as a result of FM that occurs after the commercial operation date.</p>
Section 23: Termination – Events of Generator Default	<p>Although ██████████ strongly resists any grant to AESO of a security interest in the facility, if this concept is retained, this clause should clarify that the AESO may only exercise such security in accordance with the intercreditor agreement between project lenders and the AESO.</p> <p>Further to ██████████ comments in Section 3, ██████████ suggests a CC Longstop Date of within 12 months after the RESA has been awarded - ██████████ expects that the CC Longstop Date won’t be any later than December 2018. ██████████ suggests a Target COD of December 31, 2019 and a COD Longstop Date of within 12 months after Target</p>

Section	Feedback
	<p>COD. Liquidated damages should be \$80,000 per MW as per comments in Section 6.</p>
<p>Section 25: Termination – AESO Convenience</p>	<p>As a general principle, this clause would allow a new government to come in and cancel all such projects. Such a clause calls into question whether this is a long term commitment with the government. Such an “escape” clause is of great concern for [REDACTED] and in [REDACTED] view it should be removed.</p> <p>Regarding Termination Prior to Construction Commencement, the payment should not be capped and should include costs incurred under EPC/EPCM contracts and turbine supply agreements as well as other agreements for long lead items.</p> <p>Regarding Termination Post-Construction Commencement, an IRR to the date of termination for convenience is not sufficient. It should be to the date of termination of the 20-year contract. Also, greater clarity will be required regarding the determination of FMV – based on what valuation principles? Will this be determined by an expert valuator? Chosen by who?</p>
<p>Section 27: Financing and Consequences of Default</p>	<p>In respect of the Security Agreement, a mortgage charge should be included.</p> <p>In respect of the Direct Lender Agreement, this could presumably include certain rights that provide adequate protection to the AESO without it requiring a security interest in the facility/project.</p>
<p>Section 28: Assignment</p>	<p>The AESO’s right to withhold consent to assignment should not be unreasonably withheld.</p> <p>[REDACTED] recommends that the Generator be permitted to assign to an affiliate at any time (at any stage of the project).</p> <p>Assignment by AESO – AESO should only be able to assign to an entity with the same or better credit rating at the time of PPA award.</p>
<p>Section 29: Change of Control</p>	<p>The Change of Control provision should be specific to original parties holding a minimum interest of 50%.</p>
<p>Section 31: Generator’s Representations, Warranties and Other Obligations</p>	<p>The REP Specific Representation and Warranty that “(v) Generator has not taken any action that would constitute a conflict of interest is unclear”. A conflict of interest with who?</p>

Section	Feedback
General	<p>We would like to understand the AESO's thoughts on the qualification process as soon as possible. We believe that in order to qualify for the RFQ, projects should be in Stage 3 or higher and have submitted their AUC Power Plant Application.</p> <p>Our understanding is that there were exclusivity requirements with the AESO's prior interconnection procurement process. Will this be the case with the RESA?</p>

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



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Submitter Information:

[REDACTED]
[REDACTED]
[REDACTED]

Section	Feedback
2	[REDACTED] supports the AESO's proposal that the "Support Period" commences on commercial operation and ends 20 years after the earlier of commercial operation and the target date for commercial operation. This will incent generators to meet their target dates for commercial operation.
5	Can the AESO provide additional information on the "non-zero offer" letter?
7	[REDACTED] supports the REP development costs being recovered by an administration fee to generators. Does the AESO have an approximate estimate of what this fee will be?
13	Re: title transfer of all Renewable Attributes – is the AESO planning on utilizing an existing or new third-party registry to track these attributes?
16	The CFD structure does not encourage any geographic diversification of renewable (particularly wind) resources. Has the AESO contemplated any mechanisms to encourage geographic diversification in this, or a subsequent procurement process? Will the AESO be publishing offer information once the procurement is complete? Making pricing and volume data as transparent as possible should increase the competition for the next auction.

Section	Feedback
	<p>Elsewhere, the AESO has made reference to an “affordability threshold.” Has the AESO considered what this might entail and how will it be implemented?</p> <p>Are the transmission costs associated with potential renewable projects included in the bid evaluation process to get the cheapest overall project and a fair comparison? If not in this auction, will they be considered in subsequent procurements?</p>
17	Can the AESO provide more information on how the index mechanism was determined? What was the 20% of the strike price based upon? Is there a study outlining typical O&M costs for various renewable resources?
18	Does the curtailment provision apply to both congestion and \$0/MWh price situations?

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Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
3	Recognizing that both the generator and the AESO have an interest in ensuring that projects proceed to commercial operation expeditiously, the timing of construction is a risk best managed by the generator. As such, [Redacted] recommends that the CC Longstop date be removed from the RESA.
4	This is confidential, commercially sensitive information that should not be required from the generator. Any information that is submitted to the AESO could potentially be made public through freedom of information requirements, and should therefore not be required to be submitted. The financial model should only be required if the termination for convenience clause is invoked.
6	The rights and ranking of the AESO under such security agreements should be consistent with and subject to the terms of the Direct Lender Agreement.
8	The generator is responsible for the design and operation of the facility and should therefore have flexibility in making changes to the facility provided that they do not alter the contract capacity as stated in the RESA. Generators should be permitted to make efficiency improvements to their facility.
13	Generators have a variety of funding sources available to them, from both governmental and non-governmental sources, and should be allowed to retain any funding related to the project provided that it is not related to the Renewable Attributes of the project, which are transferred to the AESO. Generators should have an incentive to drive down bid prices by seeking out funding opportunities, which may

Section	Feedback
	be available because the project has unique characteristics or partnerships. Allowing generators to retain this funding will help to drive bid prices down and encourage high value renewable energy projects for Alberta.
15	As renewable energy technologies evolve, the provision of ancillary services may become more prevalent and valuable for the grid and therefore the RESA should not limit the sale of these services. The AESO should allow and encourage market participants to creatively come up with new solutions to providing ancillary services while providing reasonable regulatory oversight.
16	Clarity is required on the impact of negative pricing events, and how that will impact payment from the AESO. Clarity is requested, especially, on whether there is going to be a floor on payments for such situations.
18	Providing no compensation for curtailed electricity generation introduces a high level of uncertainty for generators in the RESA. With increasing levels of wind generation on the grid, curtailment is likely to increase. Potential curtailment over the term of the contract is impossible to accurately forecast and this uncertainty will result in higher bid prices. To balance this risk, a cap on curtailment should be introduced in the RESA. Uncapped curtailment undermines the concept of a contract for difference, which is intended to create price certainty for Generators.
19	<p>The change in law rules should be extended to cover any changes that increase costs for the generator, whether or not the changes are specific to the generator, the rules or renewable energy in general. Furthermore, these provision should include change in law both within Alberta and outside Alberta, since both have the potential to impact project economics. In some case changes to general laws and regulations that are not specific to renewable energy, for example property tax, can dramatically alter the economics of a facility. Because the electricity is sold under a fixed price, the generator has no ability to pass on these unforeseen costs and should therefore be reflected through adjustments to payments under the RESA. For example, the Change in Law definition should include a change in GST or any provincial sales tax, levy, duty charge, etc applied to any good or service consumed used or supplied by the Generator or its Subcontractors in the course of carrying the project.</p> <p>Change in Law: Given recent announcements regarding the introduction of a capacity market structure in Alberta, it will be necessary to provide Generators with schedule and financial relief for any Change to ISO Rules or Change in Market Structure. This will be required in order for any companies requiring third party financing to receive it.</p> <p>Change to ISO rules: The Change in Law section should be clarified to include circumstances where new ISO rules or laws are enacted or passed and not just changes to existing ISO rules or laws.</p> <p>Consequences of Designated Changes: More clarity and discussion is required with respect to the use of terms “generator,” “facility,” and “project,” as they relate to Designated Changes.</p>
20	<p>The definition should be broaden to include elements usually required by the Senior Lenders, like terrorism acts, contamination by ionizing radiation, epidemic, or quarantine restriction that prevents, delays or interrupts the performance of any obligation under the Agreement, war, etc. These events are not insurable and should be included in the Force Majeure definition.</p> <p>The AESO should clarify that proponents would be eligible for Force Majeure relief due to permitting delays as long as they are unforeseeable and not as a result of a Supplier’s own actions. Furthermore, Force Majeure relief should also be granted upon appeal regardless of any stop work order, as a company should not reasonably be expected to commence construction with an appeal pending. If we are to consider that there are three opportunities for appeals or delays throughout the wind project development process, including</p>

Section	Feedback
	<p>prior to permit issuance through a hearing, after permit issuance through a review and variance of AUC decisions and/or an outright appeal to the AUC permit. In some cases, there are no prescribed timescales for resolution of such interventions and appeals. In Ontario, there are prescribed timescales for resolution of appeals, whereas within the AUC process approvals are automatically stayed. Accordingly, should AUC appeals or interventions arise which cannot be anticipated, relief under Force Majeure should be allowed. This was addressed in Ontario during the FIT regime by granting day-for-day Force Majeure relief for the appeal period on Renewable Energy Approvals. We would recommend adopting such an approach in the RESA to give developers relief for processes for which they have no control.</p>
20	<p>The usual delay for invoking termination for extended FM is 360 days. Going to 18 months will increase the cost of the project, as the Senior Lenders will request larger Debt Service Reserve Amounts or other reserves, which will add to the financing cost. Furthermore, there should be an extension of the term, day for day, following a FM event during operations. We would recommend adopting such an approach in the RESA to give developers relief for processes for which they have no control. Without this kind of provision, Lenders will ask for a hefty reserve to cover for this scenario, as the Generator will have to service the debt without revenues and without having the benefit to recover its return on equity at the end of the contract and this will add to the cost of the project</p>
25	<p>The right of the AESO to terminate for convenience introduces a significant level of risk for generators, which is likely to increase bid prices, and deter investment from the province of Alberta. Given the current high level of turbulence and uncertainty in the Alberta market, the market needs clear and strong signals that unilateral policy changes (such as contract terminations) will not put investment and project development at risk.</p>
28	<p><u>This section should include the right to assign to the Senior Lenders:</u> “Generator Assignment Prior to Commercial Operation. Prior to commercial operation of the facility, the Generator shall not be entitled to assign any of its rights or benefits without the consent of the AESO, which may be withheld in the AESO’s sole discretion, except that Project Co may assign to the Senior Lenders, subject to the Direct Lender Agreement.</p> <p>The right of a generator to assign to an affiliate this right should exist notwithstanding the restrictions on assignment listed in the other two clauses (i.e. “Generator Assignment Prior to Commercial Operation” and Assignment After Commercial Operation by Either Party”).</p>
29	<p><u>This clause should include an exception for the Senior Lenders.</u></p> <p>“Generator Change of Control Prior to Commercial Operation. Prior to commercial operation of the facility, no change of control (other than changes involving affiliates where the original persons in control of the Generator maintain a minimum interest) of Generator will be permitted without prior consent of AESO, which consent may be withheld in the AESO’s sole discretion, <u>except in connection with the exercise of rights by the Senior Lenders under the Senior Debt Financing Agreements in accordance with the Direct Lender Agreement”</u></p>

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



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Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
RFQ	<p>This process seems too lengthy and could be streamlined. Suggested time 2-3 months.</p> <p>Pay to play has many negative connotations especially in politics. Suggest keeping barriers to entry to a minimum as to expand the playing field. It is better that the Renewable Energy ("RE") space is not dominated by a few large players as this will limit the economic benefit in terms of diversity in employment growth. Just as big banks now almost completely dominate the financial world in their ruthless focus on profits only the RE space should be nit dominated by a few large players.</p>
RFP	<p>The bidding process should examine the source of the RE as not all RE energy produces at the same time. Solar, for example, produces in daylight hours which over the last 15 years attracted a 40% premium over the 24 hour period in terms of pool price received. Therefore, as AESO examines the bids all they should take this into account. Two equal bids, one solar and one not should favour solar. Will there be a carve out for solar?</p>
	<p>If there is an increase in Alberta carbon tax, will that be shared with the Generator?</p>

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[Redacted]

Section	Feedback
Section 2: Term	A 25 year Support Period would better reflect the expected life of current turbines, and would result in lower bid prices.
Section 3: Target and Longstop Dates	<p>The Government of Alberta has launched the REP to create jobs, reduce emissions from the power sector and to add the lowest cost renewable energy for the benefit of consumers. None of these policy objectives are accomplished with a failed process that awards RESA's to early stage projects that do not get built!</p> <p>To achieve the goal of initial clean energy production in 2019, the AESO should tighten the timelines and definitions, especially related to Commercial Operation, and also related to bid security and force majeure for permitting. The proposed COD Longstop Date should be 6 months after Target COD versus 18 months, to help ensure that the REP process delivers on its goals. In addition, Commencement of Construction must occur by February of 2019 to ensure a 2019 COD.</p>
Section 20 and 31: Force Majeure	Section 31 seems more restrictive than Section 20 related to force majeure and the ability to obtain permits. In Section 20, failure to obtain permits, and interventions in regulatory proceedings, are normal course events and should <u>not</u> be events of force majeure.
Section 25: Termination - AESO convenience	Section 25 seems inequitable and should be deleted. Alternatively, termination for AESO convenience could be applicable only if the Commencement of Construction or the Target COD dates are not met.


Section	Feedback
Section 31: Rep's and Warrants	<p>To reduce speculative submissions, Representation (i) in Section 31 (related to achieving the Target COD) should be strengthened with very specific and objective criteria that are outlined in the RFQ for milestones that must be accomplished and warranted prior to RFP bid submission. (eg. completion of environmental studies, interconnection studies, consultation, AUC filings and completion, at a minimum, of Gate 3 in the interconnection process). Completed favorable connection studies and zero system upgrade costs should be mandatory given the GOA policy requirements concerning system upgrade costs. Specific, stringent and objective RFQ criteria must be defined to avoid the failed procurement processes that have been observed in other jurisdictions.</p>



Response to Alberta's Energy Transition


The  supports Alberta's electricity policy framework of: Competitive, Reliable and Sustainable¹. We are glad to see that your administration is continuing to focus on these core principles. Our organization urges you to consider the following points as you proceed with your Energy Transition efforts:

1) Capacity Market Considerations

In general,  favors price certainty and predictability in Capacity Markets. The PJM Capacity Market has successfully tested this type of model, which allows the flow-through of costs to consumers, certainty of volume calculations, and a long-term outlook (3-5 years). This long-term outlook and transparency will create a predictable environment that will enable investment when necessary, while limiting price shocks.

We hope that the government understands the inherent bias in capacity markets towards over procurement and does its best to prevent over forecasting demand².

2) Renewable Procurement Policy

 prides itself on the contracting of renewable energy for its consumers and supports incentive programs for renewable generation. However, we believe that the government should only establish agreements with renewable generators for Renewable Energy Credit compensation (RECs). Energy should continue to settle in the energy-only market. By settling energy prices outside of the market mechanism, we believe that the current proposal has the potential to greatly distort the energy market in Alberta.

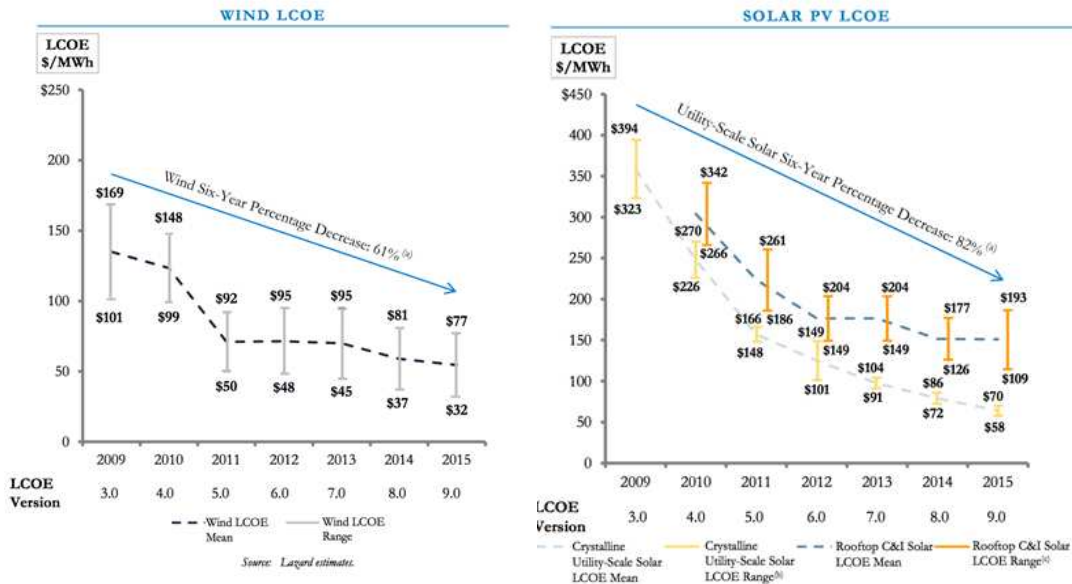
We also argue that this method prevents the province from being able to take advantage of innovation in the renewable energy sector over the lifetime of the program. The decline in the Levelized Cost of Energy (LCOE) of Wind and Solar over the past 6 years demonstrate the perils of central procurement of generating resources at a fixed point in time. Wind and solar prices have fallen by nearly 50% since 2009, and governments like Ontario, that have used central procurement, have locked the province into contracts that are now way above the current levelized cost of renewable energy. In 2015, the Ontario Auditor General estimated that the province could have saved \$4.7 billion had a more competitive framework been established³. Alberta must learn from the mistakes of Ontario and several European jurisdictions that have used global adjustment, or contract-for-differences structures to distort the energy market. We strongly advocate against using a global adjustment or contract-for-differences to pay any type of generator the difference between their PPA strike price and the pool price.

¹ "Alberta's Electricity Policy Framework," Alberta Department of Energy, 2005, <http://www.energy.alberta.ca/Electricity/pdfs/AlbertaElecFrameworkPaperJune.pdf>.

² Newberry, David. "Missing Money and Missing Markets". University of Cambridge, 2015, http://www.eprg.group.cam.ac.uk/wp-content/uploads/2015/03/1508_updated-July-20151.pdf

³ Auditor General 2015 Annual Report, Section 3.05, P. 228. <http://www.auditor.on.ca/en/content/annualreports/arbyyear/ar2015.html>.

Alternatively, we urge the province to consider a competitive renewable energy credit trading system that will enable renewable generators to be fairly compensated, while not locking in prices at today's rates. See California⁴ for an example of this type of program.



3) Electricity Price Protection

The retail electricity sector has long understood the desire of some consumers for price stability. It is with this knowledge in mind that we offer fixed, 5-year energy contracts. At this moment, competitive retailers are offering fixed price contracts at around the government guaranteed rate⁵. As a result, [REDACTED] is concerned that the Alberta Government has decided to begin competing with an existing industry offering. We feel that this not only undermines the energy market in the province, but also contradicts one of the primary purposes of the Alberta Electric Utilities Act, which is:

5.(c) to provide for rules so that an efficient market for electricity based on fair and open competition can develop in which neither the market nor the structure of the Alberta electric industry is distorted by unfair advantages of government owned participants or any other participant⁶.

Incumbent utilities, the [REDACTED] [REDACTED], and other competitive retailers are more than capable of providing the price certainty that the government is seeking, while still allowing customers who wish to float their energy contracts in low cost environments to seek out cost savings.

⁴ California Renewable Portfolio Standard Program Overview, Moreover, the Regulated Rate Option has also provided <http://programs.dsireusa.org/system/program/detail/840>.

⁵ 6.79¢/KWh for 5 years, <https://www.enmax.com/home/electricity-and-natural-gas/easymax>.

⁶ Alberta Electric Utilities Act, 2003.



4) Ban on Door-to Door

██████████ is supportive of consumer protection goals, but has significant concerns regarding the necessity and fairness of a ban on door-to-door sales.

██████████ experience has been that direct sales provides the most effective way of educating consumers about their options in the Province and in assisting consumers to choose products of value with respect to each consumer’s needs and preferences. ██████████ believes it is in the best interest of consumers, government and industry to work collaboratively in an effort to ensure that Alberta consumers are protected, while not unduly harming business, innovation and growth in the Province.

██████████ submits that the prohibition on door to door sales will significantly impact the ability to effectively provide consumers in Alberta with innovative solutions to their energy consumption.

Finally, ██████████ has a track record of exceeding energy regulation with respect to consumer protections we provide our customers.

Should you wish to discuss we would be happy to arrange a discussion.

All of which is respectfully submitted.



Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



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Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
2 (Term)	Prior to commercial operations, the Support Period should be adjusted on a day-for-day basis for all <i>Force Majeure</i> relief that has been granted to the Supplier.
18 (Curtailment)	There should be a more balanced “risk-sharing” approach regarding economic curtailment. Lack of compensation or locational signals for curtailment will dictate that “worst-case” curtailment assumptions are used in economic analysis and bids. A reasonable annual and aggregate cap on curtailment should be considered.
20 (Force Majeure)	<p><i>Force Majeure</i> rights should be applicable for “an appeal of the Permit and License in respect of the Project” regardless of whether the Supplier is ordered to cease construction. Past experience has shown opponents abusing the appeal process to intentionally delay and/or hinder Suppliers from completing construction or to cause economic loss. These delays and resulting losses occur regardless of whether a stay of construction has been issued. The lack of a stay of construction does not lessen or eliminate these unforeseen and unavoidable delays and this is not a reasonable requirement for the granting of <i>force majeure</i> related to appeal of the Permit and License.</p> <p>Prior to commercial operations, the Support Period should be adjusted on a day-for-day basis for all <i>Force Majeure</i> relief that has been granted to the Supplier.</p>

Section	Feedback
25 (Termination – AESO Convenience)	<p>Termination for Convenience Right should be deleted</p> <p>Termination for Convenience Prior To Construction - Qualifying pre-construction development costs should be more thoroughly defined and include all pre-construction costs including costs associated with complying with Section 4 and, in particular, all costs associated with procuring long-lead equipment and materials including wind turbines.</p>
6 (Security)	<p>Please provide the detailed terms and conditions under which the AESO is given security interest in the facility (...to protect against bankruptcy or insolvency by the Generator) and a draft of the associated consent and acknowledgment agreement</p>
33 (Dispute Resolution)	<p>The proposed resolution period is too short and arbitration should be utilized to address disputes between the Parties</p>

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Section	Feedback
4 – Requirements for Commencement Of Construction	'Procured or entered into contacts for long-lead equipment and materials' should not be a distinct requirement for achieving 'commencement of construction'; when and how an individual project developer performs those activities varies (and may occur after actual commencement of project construction); rather, the declaration requirement should be limited to securing financing and delivering a notice to proceed to the construction contractor.
5 –Requirements for Commercial Operations (and 20-Force Majeure)	If not due to the non-action of Generator, the Generator should not be held responsible for actions, non-actions, and/or delayed actions by AESO, including: <ul style="list-style-type: none">- Receipt of "non-zero offer" letter from AESO- Inability to obtain consent/approval from AESO (in the context of FM)
6 - Security	'Security over the Facility' – The details of these expectations/requirements must be provided as this directly affects the feasibility of securing 3 rd party project financing
7 – AESO Admin Fee	If Generator is to be responsible for Fee, the Fee needs to be defined prior to Project submission. Otherwise, AESO Fee should be structured as a pass-through or 'adder' to the contract price.
8 – Design and Construction	'Facility Modification' – Clarify that Generator has the right to modify the facility as necessary to maintain original project size/capability (e.g. replace turbines, transformers, etc.); in other words, AESO should not

Section	Feedback
	have ability to refuse modification that would lead to AESO having a termination right
18 – Curtailment	Unlimited non-compensated curtailment is not financeable. Non-compensated curtailment should be limited to only non-economic curtailment (e.g. for system operations/emergencies). Any economic curtailment should be limited and defined, such as a cap (e.g. 50 hours) or other mechanism, above which Generator shall be paid at full contract price for MWhs that could have been produced.
19 – Change in Law	Clarify what 'conditions' in 'changes to regulatory permits and licenses' are not covered as CIL
23 – Termination – EOD	'After COD' Remedies – uncapped/undefined liabilities is not financeable; clarify any such damages are limited to specific security mechanisms (i.e., off set of payments and the security interest in project)
25 – Termination – AESO Convenience	Prior to Construction – the meaning of 'qualified pre-construction development costs' must be clarified Post Construction Commencement – any termination payment associated with termination for convenience post construction commencement must include the return on equity for the entire project period/expectations (not only to the date of termination). Otherwise, it will negatively affect the ability to attract investors.
28 – Assignment / Change of Control	Prior to COD – standard must be 'not to be unreasonably withheld' (rather than AESO sole discretion) and/or otherwise allow transfers/assignment to entities with equal credit and qualifications.

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[Redacted]
[Redacted]
[Redacted]

Section	Feedback
6	Post-COD: While we understand the reasoning behind the AESO requesting a security downpayment, we are wondering if the fees of that security will be held in trust and earning interest during the project lifetime?
6	Security over the Facility: Will AESO specify in its RFP what the amount will be and the values that each winning suppliers will have to pay less in decommissioning the solar farm? Many other jurisdictions have done away with a security over the facility, opting instead to charge a substation building charge, or no charge, given that the security payment can be applied towards such fees. Perhaps more industry input on this should be sought out.
7	Admin Fee: What percentage will be levied and will it be pooled amongst the winning Generators?
25	Termination for Convenience by AESO: I believe that AESO should obtain industry and Generator input for the advance notice required should the regulator terminate a contract. Completing a solar power plant requires time, effort and cost and receiving a 30 days' notice would be very unfair for the Generator. Furthermore, it would not provide sufficient time to find and sign-up other off-takers for the power that will be generated by the solar plant.
27	Financing: This section of the RESA could be solidified to take into account Joint Venture arrangements between Generators, as well as other syndicated types of financing arrangements that may impact the overall agreement.

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[REDACTED]
[REDACTED]
[REDACTED]

Section	Feedback
General	For confidence in the market it is important that the RESA be made public to meet the AESO's statutory obligation of transparency. The absence of defined terms and the actual structure of the agreement make the intent of some sections less than clear. A lack of clarity in the terms may result in a real barrier to participation in the REP.
Section 2	Please explain why the 20 year term is more appropriate than the 12 year term in the Ontario Feed-in Tariff Contract, Version 5.0. The [REDACTED] questions whether the 20 year contract term is a barrier to certain types of generation technology.
Section 3	Without seeing the wording and context of sections 5 and 23 it is unclear how section 3 works. Also, why does this section not mandate that the AESO trigger the termination for failure to commence construction by the CC Longstop Date? There is ambiguity in reference to "commence construction", section 3 requires "as soon as reasonably possible" and section 4 "commercially reasonable efforts". Any ambiguity in the phrase "commence construction", together with the "option" to terminate rather than a requirement may result in future uncertainty and litigation. If this option and discretion is left with the AESO then the contract should explain how, or by what standard, the AESO will determine whether or not to exercise such option on behalf of Albertans (fiduciary obligation or a standard of commercial reasonability).
Section 7	Please explain in detail the calculation of the fee to "...cover the AESO's REP development implementation and

Section	Feedback
	<p>administrative costs.”</p> <p>The [redacted] sees some disadvantages with the chosen cost recovery mechanism:</p> <ul style="list-style-type: none"> - With this mechanism, there is no apparent incentive for the AESO to minimize its costs. - Generators will estimate this cost in their bids. Due to the uncertainties involved (e.g., AESO budget, number of successful bidders, and quantity of capacity) bidders may build a risk premium into their bids to ensure they recover this cost through the Support Payment. This may cost society more than if the cost was recovered from all customers through the AESO tariff. <p>The [redacted] recommends AESO’s REP development, implementation and administration costs be recovered by the AESO through its general rate application.</p>
Section 10	Does the stated metering requirement eliminate incremental capacity from existing facilities to be offered into the program
Section 13	Please explain the basis for the 50% funding sharing mechanism. Assuming that Generators offer a Support Price that allows sufficient recovery of costs to justify the investment, why should a Generator receive additional revenues from outside the province after they have been fully paid by the REP program? The RFP could instead require Generator to apply for additional available funding and pass any additional funds to the AESO less the administration costs of obtaining the funding. This would result in lower costs for Albertans.
Section 15	<p>Please explain the rationale for excluding REP facilities from providing ancillary services. If the facility is capable of providing a service why should it be excluded? The [redacted] is concerned that such provisions effectively result in a barrier to competition in another segment of the market.</p> <p>In light of the recent announcements on the introduction of a capacity market the AESO should also be clear how renewable resources are able to participate in capacity auctions.</p>
Section 16	Generators under RESAs appear to be financially exposed to negative prices. The [redacted] sees two possibilities, 1) the AESO is contemplating negative pricing, if so this should be clearly articulated so as not to trigger the “Change in Law” clause, or 2) the existence of one or more RESAs with this provision will pose a barrier to the adoption of negative pricing in the future. The [redacted] is of the view that both a lack of clarity or erection of barriers to market evolution is inconsistent with the promotion of competition.
Section 19	<p>Please provide the proposed wording for the change in law provision including the notice requirements and timing for making a change in law claim (i.e. two weeks from the event or months?).</p> <p>Given the Alberta Government’s recent statements about the potential future implementation of a capacity market, the [redacted] recommends a more detailed set of principles be established and documented in the RESA of how to generally deal with the required modifications.</p>

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Section	Feedback
Section 1 – Parties	<p><u>Commentary:</u></p> <p>While the AESO has stated that the Government of Alberta (“Government”) will enter into renewable energy finance agreements (REFAs) with the AESO, whereby the Government intends to fund the AESO using funds received from the province-wide carbon levy imposed under the <i>Climate Leadership Act</i> (not yet in force) in order to support RESA payments by the AESO, there is currently no visibility as to whether such amounts will be sufficient or as to what assurances Generators will have that they or the AESO will be able to enforce the REFAs.</p> <p>Generators and financiers will require clarification and strong assurances regarding the creditworthiness of the AESO. In many instances, this assurance needs to take the form of an investment grade rating from a recognized rating agency. The AESO should be taking steps with at least two credit rating agencies to obtain credit ratings, such that its credit rating is comparable to that of the Government. At this point, it is speculative as to whether the REFA mechanism will practically ensure that it is possible to finance the construction of projects based on the RESAs.</p>
Section 2 – Term	<p><u>Suggested Revisions:</u></p> <p>The term of the RESA (the “Term”) will commence upon execution. The Term consists of a development and construction period, which commences on execution of the RESA and ends upon commercial operation of the facility (the “Development Period”), followed by a support period which commences on commercial operation and ends 20 years after the earlier of commercial operation and the target date for commercial operation Target COD (the “Support Period”). This means that if the Generator fails to achieve commercial operation by the Target COD</p>

Section	Feedback
	<p>target date for commercial operation, the RESA will nonetheless terminate on the 20 year anniversary of such target date for commercial operation, shortening the Support Period on a day-for-day basis.</p> <p><u>Commentary:</u></p> <p>In the context of this initial, relatively small procurement, it is not clear why a day for day reduction in the Support Period has been chosen as the method to incent the Generator to meet the Target COD instead of providing for daily liquidated damages (LDs). The rationale for such LDs would be to compensate the AESO for losses it suffers due to the delay in bringing generation on-line. It is less clear why the AESO is concerned that it could have a RESA with a Term that ends up expiring slightly after the expiration date of the Term that it had originally expected to end no later than December 31, 2039. Permitting the Generator to pay for the right to preserve the Support Period if it is late in achieving the Target COD will reduce financing risk (and, therefore, debt cost) as lenders will know that the Support Period is fixed and will not encroach on any “tail” that has been modelled in the financing. In such case, the worst case scenario is that the Term expires on June 30, 2041, which we would not expect to be materially adverse to the AESO.</p> <p>If the design life of the renewable technology used is longer than 20 years (e.g. hydro), a longer operating term should be an option, particularly as a longer operating term would allow a better strike price to be bid.</p>
<p>Section 3 – Target and Longstop Dates</p>	<p><u>Suggested Revisions:</u></p> <ul style="list-style-type: none"> • Commencement of Construction. Generator must <u>shall use commercially reasonable efforts to</u> commence construction of the facility as soon as reasonably possible and in any event by the specified longstop date (the "CC Longstop Date"). The CC Longstop Date for the first procurement will be [December ●, 2019]. If the Generator fails to commence construction by the CC Longstop Date, the AESO will have the option to terminate the RESA (in which case Generator will pay, as liquidated damages, a sum equal to the completion and performance security (i.e. \$50,000 per MW, calculated based on the contract capacity of the project) and AESO’s remedies will be limited to such amount). • Commercial Operation. <ul style="list-style-type: none"> • Target COD. Generator shall endeavor <u>use commercially reasonable efforts</u> to achieve commercial operation of the facility as soon as reasonably possible, and in any event by the specified target date for commercial operation ("Target COD"). Target COD for the first procurement shall be [December ●, 2019]. If the Generator fails to achieve commercial operation by Target COD, the Support Period shall be shortened for each day of delay on a day-for-day basis. • COD Longstop Date. The Project must achieve commercial operation within 18 months after Target COD (the "COD Longstop Date") failing which AESO will have the option to terminate the RESA (in which case Generator will pay, as liquidated damages, a sum equal to the completion and performance security (i.e. \$50,000 per MW, calculated based on the contract capacity of the project) and AESO’s remedies will be limited to such amount).

Section	Feedback
	<ul style="list-style-type: none"> • Extension of Dates. Each of the CC Longstop Date, Target COD, and COD Longstop Date will be extended for a reasonable commensurate period if an event of force majeure, <u>a delay attributable to the AESO,</u> or a change in law delays Generator in the development or construction of the facility. • Earliest Support Payment. The Support Period (and the payment of support payments) will not be permitted to commence any earlier than one year prior to Target COD, <u>without consent of the AESO, not to be unreasonably withheld.</u> <p><u>Commentary:</u></p> <p>Suggested revision to the “Commencement of Construction” and “Commercial Operation” is to ensure Generator is subject to the same standard in both Section 3 and Section 4. Also, both milestones have longstop dates to ensure that such milestone dates are met so the Generator should determine what commercially reasonable efforts it will undertake to meet such longstop dates.</p> <p>The target date in the Term Sheet for commercial operation is indicated as December 2019 and the longstop date would be 18 months later. We assume the December 2019 target date will be adjusted to the third anniversary of contract award. See our comment in Section 3 related to the concern that Generators not be afforded an opportunity to pay liquidated damages to preclude a shortening of the operating term in order to preserve the economics of the project.</p> <p>The Term Sheet has a longstop date for commencement of construction, failing which the RESA is terminable on payment of liquidated damages by the AESO at a rate of \$50,000 per MW of capacity. Such a provision is unusual in our experience. Having target and longstop dates for <u>commercial operation</u> is a sufficiently powerful mitigant against late performance by the Generator. A Generator should not face contract forfeiture where it is running late on commencement of construction but is nonetheless able to catch up and deliver a project before the target (or longstop) date for commercial operation by redeploying resources or otherwise. It is less apparent why the AESO requires this remedy as it is with Target COD. If the concern is system reliability, the actual date of construction may have no direct bearing on the date that the project comes on-line. As with delay in achieving the Target COD, although we do not believe that the AESO should have a significant concern that the Generator will not execute the project as quickly as reasonable, we would suggest that LDs tied to pre-COD milestones are a more appropriate motivator than a termination right. However, if LDs are paid pre-Target COD, those LDs should be fully recoverable if the Target COD is achieved or partially refunded if the pre-Construction milestone delay days exceed the post-Target COD delay days.</p>
Section 4 – Requirements for Commencement of Construction	<p><u>Suggested Revisions:</u></p> <p>Generator will be required to use commercially reasonable efforts to commence construction of the facility as soon as reasonably possible. Commencement of construction of the facility will be deemed to have been achieved at the point when, as subsequently confirmed by the AESO in writing, Generator has:</p> <ul style="list-style-type: none"> • Obtained key Alberta Utilities Commission (“AUC”) and other environmental, assessments, permits, licenses and approvals;

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	<ul style="list-style-type: none"> • Delivered a statutory declaration to the AESO confirming the Generator has: <ul style="list-style-type: none"> • secured financing <u>commitments</u> sufficient to complete development, construction and commissioning of the facility; • procured or entered into arrangements for long-lead equipment and materials which are necessary for the construction of the facility; and • commenced construction activities at the site of the facility;and • Delivered a copy of its financial model to the AESO. <p><u>Commentary:</u></p> <p>We have suggested the deletion of “as subsequently confirmed by the AESO in writing” for two reasons. First, commencement of construction should be an objective condition that is deemed to have occurred when the objective conditions precedent to commencement of construction had occurred. A more typical determinant of this milestone is the issuance of a full “notice to proceed” under an EPC contract. Secondly, at the point that construction has started the Generator should not be at risk of continuing to incur substantial costs while waiting for the AESO to determine whether it agrees that construction has started and, if not, whether it will terminate the RESA if the Generator was late in achieving the CC Longstop Date (assuming such a termination right remains (see our comments in Section 3)).</p> <p>It is not clear what “secured financing” means. Even if financial close has not occurred, a Generator may be comfortable enough to risk its capital commencing construction prior to such date. Our concern is that a conservative reading would be that the achievement of financial close is what it means to have “secured financing”.</p> <p>Why does the AESO require the Generator’s financial model when all it should care about is the strike price it is paying under the RESA? This seems like an area that is ripe for potential misunderstanding or even embarrassment if a FIPPA request were to produce a financial model that a requesting party labels as resulting in windfall returns to the Generator despite the fact that the lowest competitive strike prices are expected to obtain a RESA. Second, this concept is also open to ambiguity that could be detrimental to the Generator. Can the Financial Model required to be delivered be a preliminary one, or does it need to be a final version produced or approved by the project lenders that incorporates the specific terms of the financing? If the former, does it need to be updated? Does it need to be approved by the AESO?</p>

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Section 5 – Requirements For Commercial Operation	Please see our first comment under Section 4 which is equally applicable here.
Section 6 - Security	<p><u>Suggested Revisions:</u></p> <ul style="list-style-type: none"> • Pre-COD. Prior to commercial operation of the facility, the Generator will be required to obtain and maintain completion and performance security (in the form of a letter of credit) in the amount of \$50,000 per MW (calculated based on nameplate capacity declared at RFQ). • Post-COD. Security post-COD will be required and will take the form of the AESO’s contractual right in the RESA to set off any amount owing to it from the power pool financial settlement funds due and owing to the Generator. Accordingly, the Generator will not be required to obtain and maintain any liquid security following commercial operation of the facility. • Security over the Facility. The Generator will be required to provide the AESO (if appropriate enabling legislative or regulatory changes are made) with security interests in the facility and the proceeds from the sale of electricity to protect against any bankruptcy or insolvency of the Generator, any non-permitted transfer of the facility by the Generator, or other events of Generator default. <p><u>Commentary:</u></p> <p>The Term Sheet provides that the AESO is to have a security interest in the project, and in the proceeds from the sale of electricity, to protect against default risk by the Generator including insolvency or a non-permitted transfer of the project. Creating a security interest will significantly complicate any financing of the project. At a minimum, senior secured project lenders will require a deep subordination agreement with the AESO. Additionally, the AESO should consider whether from a contract administration perspective it is prepared to deal with subordinated security and the administrative matters that arise when security is registered against a debtor. (See our comments regarding RESA administration in Section 30.)</p> <p>Given the powerful contractual sanctions the AESO will hold under the RESA, it is not clear why the AESO requires security to enforce the Generator’s obligations. The RESA is expected to be the most material asset of the project since the project will not be viable without it. The threat of termination in the case of an event of default will be sufficient to ensure compliance. The concern that a Generator would obtain a RESA and then abscond with its generation project to another jurisdiction is not likely to materialize. Furthermore, the events of default that the AESO is concerned about could be secured by performance security, if necessary. For example, although we would not anticipate that the RESAs will be “in the money” for the AESO for some time, if they were then liquid security for monthly difference payments payable to the AESO can be easily secured by such security. This is a common form of security and will provide priority and greater ease of collection to the AESO than realization on hard project collateral following the expiration of standstill periods under any intercreditor arrangements.</p>

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Section 7 – AESO Administration Fee	<p><u>Commentary:</u></p> <p>We request clarification regarding: (i) the amount of this fee and how it is calculated; (ii) the frequency in which it must be paid; and (iii) its purpose.</p>
Section 8 – Design and Construction	<p><u>Suggested Revisions:</u></p> <p>The Generator will have the following rights and obligations in respect of the development and construction of the facility:</p> <ul style="list-style-type: none"> • Standard of Care. Generator will be required to design and build the facility in accordance with good engineering and operating practices, in compliance with all applicable laws, rules, codes, permits, licenses and the RESA <u>in all material respects.</u> • Facility Modification. Generator will not be permitted to materially modify, vary or amend the specifications or features of the facility (as set out in the specifications attached to the RESA) without the consent of the AESO, <u>which consent shall not be unreasonably withheld.</u> • Reduction of Contract Capacity. The installed nameplate capacity of the facility may not exceed the capacity set forth in the RESA (i.e. the nameplate capacity declared at RFQ – <u>MWac in the case of solar PV facilities.</u> if it does, the AESO will be entitled to terminate the RESA. <p>Provided the project remains utility scale (i.e. $\geq 5\text{MW}$) the installed nameplate capacity may be reduced to not less than 80% of the capacity set forth in the RESA in recognition of the fact that the availability of resources such as land rights and financing may change. Should the Generator reduce the facility’s capacity from what was declared at RFQ, the contract capacity will be correspondingly reduced to reflect the actual nameplate capacity of the facility (as confirmed by an independent engineer). Any such reduction will not result in a strike price adjustment</p> <p><u>Commentary:</u></p> <p>The modifications that result in a material change in a project being subject to the AESO’s discretionary consent do not reflect that changes to projects often arise in the ordinary course of construction or due to circumstances beyond the Generator’s reasonable control. We agree that it is reasonable to expect that any proposed material adverse change in (i) Contract Capacity or (ii) the Generator’s ability to perform material obligations under the RESA should be subject to an AESO consent which may be unreasonably withheld. However, all other material modifications should be subject to a consent requirement which may only be “reasonably withheld” by the AESO.</p> <p>Why would an inadvertent overbuild not be a curable default? Alternatively, why wouldn’t the payments to the Generator just be based on (and therefore not exceed) Contract Capacity? In the latter case the AESO is not harmed because it is not paying more than it bargained while procuring more renewable energy than it had anticipated but not paying for it other than through the power pool.</p>

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Section 12 – Reporting	<p><u>Suggested Revisions:</u></p> <p>Generator will be subject to regular reporting requirements with respect to the Project (both pre-COD and during the Support Period, and including matters relating to its equity participants), as determined by the AESO <u>acting reasonably from time to time in its discretion</u>. Generator shall also, as requested by the AESO, <u>acting reasonably</u>, provide any and all information necessary to confirm or register the Renewable Attributes associated with Generator’s renewable electricity produced at the facility.</p> <p><u>Commentary:</u></p> <p>Please see our comments regarding tracking of equity participants in Section 29. To the extent that the AESO requires reporting, it should act reasonably in its requests or give some indication as to what reporting it will require, particularly after COD.</p>
Section 13 – Renewable Attributes and Funding from other Governmental Authorities	<p><u>Suggested Revisions:</u></p> <ul style="list-style-type: none"> • Renewable Attributes. Generator shall, in exchange for the support payment, transfer title to all Renewable Attributes to the AESO, <u>except as needed to operate the Project under Applicable Laws.</u> <p><u>Commentary:</u></p> <p>To the extent the AESO requests that the Generator take steps to register or qualify Renewable Attributes, or provide any and all information necessary to confirm or register the Renewable Attributes per Section 12, this should be for the AESO’s account and not the Generator’s.</p>
Section 14 – Operational Covenants	<p><u>Suggested Revisions:</u></p> <p>Generator will be required to comply with the following operational covenants:</p> <ul style="list-style-type: none"> • Own/Lease the Facility. Generator shall own or lease the facility during the term of the RESA. • Operating Standard. Generator shall operate the facility in accordance with good engineering and operating practices and all applicable ISO rules, permits, licenses, approvals, laws, codes and standards. • Operation and Maintenance. Generator shall be solely responsible for <u>undertaking or arranging for</u> the operation and maintenance of the facility, including obtaining and maintaining in good standing all required governmental approvals. • Fuel Sources. The facility shall not use any sources or fuels other than the designated renewable fuel (except for non-renewable fuel which may be permitted in respect of any biomass facilities). • Fuel Supply Agreements. Generator shall use commercially reasonable efforts to maintain or enter into any necessary fuel supply agreements (only applicable to biomass facilities). • Resource Rights. Generator shall <u>use commercially reasonable efforts to</u> ensure that any necessary

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	<p>resource rights remain in effect during the term (for example, waterpower rights for hydro).</p> <p><u>Commentary:</u> Generator cannot compel a governmental authority to issue resource rights. This covenant should be the same as with respect to fuel supply.</p>
Section 16 – Settlement Provisions	<p><u>Suggested Revisions:</u></p> <ul style="list-style-type: none"> • Contract Price. For each hour, the RESA support payment will equal the metered electricity generated by the facility (capped at the contract capacity) multiplied by the difference between the strike price and the greater of the pool price and zero. <p><u>Commentary:</u> The pool price cannot be negative, therefore the lowest it can be is zero and in such circumstance there is no “greater” that can be applicable.</p>
Section 18 – Curtailment	<p><u>Suggested Revisions:</u> Generator will <u>not</u> be compensated for electricity it could have produced during any curtailment.</p> <p><u>Commentary:</u> Unbounded risk of curtailment of projects is of significant concern to Generators and lenders. The risk can be open ended and impossible to model. We wish to request that the AESO provide clarification regarding the definition of “curtailment” and its objectives for this clause.</p> <p><i>Physical Curtailment</i> There may be circumstances where the inadequacy of grid infrastructure in a region or as a whole is more appropriately a risk socialized among all electricity ratepayers. Endemic system risks without compensation for lost generation (in addition to force majeure protection) could result in risk premiums being included in strike prices bid into the RFP. We would ask that the AESO clarify whether all circumstances of transmission system inadequacy are intended to be financial risks of Generators.</p> <p><i>Economic Curtailment</i> In our view it is not the case that private Generators should be required to take the risk of the provincial economy as a whole or changes in system planning arising from government policy that lead to increased frequency or intensity of surplus offer situations. There should be reasonable limits on curtailment of newly procured Generators that are ready and willing to operate but are unable to do so because of changes to reasonably anticipated generation profiles formulated at the time that bids for a RESA are submitted.</p>

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Section 19 – Change in Law	<p data-bbox="541 256 802 285"><u>Suggested Revisions:</u></p> <p data-bbox="541 302 1835 358">The RESA will include change in law provisions which allow the Generator to claim additional time or payment adjustments in a variety of circumstances including:</p> <ul data-bbox="590 375 1906 1141" style="list-style-type: none"> <li data-bbox="590 375 1906 743"> <p data-bbox="638 375 1906 464">Designated Changes. Generator will receive schedule and financial relief with respect to changes in law, regulations, <u>or orders, or required amendments to the RESA</u> by the GoA (or any regulatory body in Alberta) which are directed specifically at:</p> <ul data-bbox="621 480 1906 743" style="list-style-type: none"> <li data-bbox="621 480 1115 509">the Generator in relation to the Project; <li data-bbox="621 526 1457 555">the rules and regulations which govern generation facility owners; or <li data-bbox="621 571 1906 743">the RESA, the subject matter of the RESA or arrangements of the nature of the RESA, and which <u>materially delay the development and construction of the facility or which increase costs adversely affect the Generator's economics that it would reasonably be expected to incur-receive from the Project and the RESA</u>. Relief will not be provided where the Generator had prior notice of the change <u>prior to bidding for its RESA</u>, or where the change is in response to any action by Generator which is contrary to law <u>[or where the change is permitted by the RESA]</u>. [Question for AESO: What would these changes be?] <li data-bbox="590 760 1906 963"> <p data-bbox="638 760 1906 963">Consequences of Designated Changes. If a designated change results in a net increase or decrease in Generator's <u>economics that it reasonably expected to receive from the Project and the RESA costs</u>, payments under the RESA will be adjusted as necessary to keep the Generator in the same financial position in respect of the RESA, after giving effect to such designated change, as it would have been in had such designated change not occurred. Changes to Generator's net capital costs will be addressed through lump sum payments and changes to net operating costs will be addressed through an adjustment to the strike price.</p> <li data-bbox="590 979 1906 1068"> <p data-bbox="638 979 1906 1068">Changes to Regulatory Permits or Licenses. Changes to conditions in regulatory permits or licenses will not be considered changes in law unless and to the extent the applicable statutory regulatory provisions change <u>or such changes are directed by the Government of Alberta</u>.</p> <li data-bbox="590 1084 1906 1141"> <p data-bbox="638 1084 1906 1141">Generator Conduct. A change in law will <u>not</u> qualify to the extent that it only applies (or applies earlier) due to the Generator's <u>breach of law conduct</u>.</p> <p data-bbox="541 1157 705 1187"><u>Commentary:</u></p> <p data-bbox="541 1203 1871 1260">The risk of changes in laws that adversely affect the economics of a project should not be borne by the party that has the least ability to mitigate or prevent such risks (i.e. the Generator).</p> <p data-bbox="541 1276 1906 1391">Electricity industry participants expect that their operations will be subject to regulation, and that the statutes, regulations, codes and rules that create such regulatory framework will be refined over time. Accordingly, normal course "evolutionary" changes in regulation are generally accepted as an operational risk. Also, it is generally accepted in Canada that there is political and functional separation between regulatory bodies and government with</p>

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	<p>the intention that regulators may perform their duties without political interference.</p> <p>However, concerns that political imperatives could influence regulatory oversight or enforcement are not imprudent. Also, it is possible to have changes in statutes that are directed at, or have the effect of, materially changing the economics of investments previously procured by government. For such sweeping changes it is reasonable to conclude that because they are within the control of government the risk of such “revolutionary” changes are more efficiently borne by the public.</p> <p>To the extent that the AESO has rule-making powers, we respectfully submit that they should not take priority over the commercial terms of the RESA. Doing so gives the AESO the ability, in its capacity as a commercial counterparty, to unilaterally amend the terms of the RESA through rule amendments. To the extent that the AESO must be able to make changes to the ISO Market Rules for changes in the market or system reliability reasons and such changes may have any adverse effect on the Generator’s economics (not just “materially” affecting Generator’s economics). Additionally, we submit that the definition of Designated Changes in Section 19 should be expanded to include any Ministerial regulations or directives and changes in the ISO Market Rules that have a discriminatory effect on a Generator. Lastly, although ultimately symbolic, the AESO should covenant to obtain waivers from the Government to exercise any statutory or law-making rights it has to nullify or void any provision of the RESA, including the change law provisions, or to pass legislation preventing the Generator from enforcing its rights under the RESA.</p>
Section 20 – Force Majeure	<p><u>Suggested Revisions:</u></p> <ul style="list-style-type: none"> • Definition. “Force Majeure” or “FM” will be defined as any event, cause or condition that prevents <u>or delays</u> a party from performing its obligations (other than payment) – but only to the extent it could not have been reasonably anticipated by, and is beyond the reasonable control of, the party claiming FM. For greater certainty: • FM <u>will</u> include: general industry strikes, delays or disruptions in the construction of certain transmission or distribution facilities, restraint by government orders/judgements, and the inability to obtain or renew any permit/licence/approval required for performance (unless the revocation or modification was caused by the inaction of the party seeking to invoke FM). • FM <u>will not</u> include: inability to procure feed stock/fuel, <u>unless due to an event of FM, an appeal of the Permit and Licence in respect of the Project—unless Supplier is ordered to cease construction</u>, and the inability to obtain consent/approval of the AESO pursuant to the terms of the agreement. • Performance Excused. A party affected by an event of FM is excused from performance (other than payment) during the existence of such event. • Schedule Relief. If FM delays the commencement of construction or the occurrence of commercial operation, then the CC Longstop Date, Target COD, and COD Longstop Date will be extended for <u>a commensurate such reasonable</u> period of delay directly resulting from such FM event. The occurrence of an event of FM which occurs after commercial operation of the <u>facility Project</u> will not extend the <u>Term, by</u>

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	<p style="text-align: center;"><u>as many days as the duration of the FM.</u></p> <p><u>Commentary:</u></p> <p>Providing that events that “could have been reasonably anticipated” by the Generator is likely to have the effect of neutering the provision. For example, it is reasonable to anticipate that there could be delays in obtaining a permit in numerous circumstances that do not involve the neglect of the Generator. By providing that FM events do not include those resulting from the negligence of the Generator, that should be sufficient protection for the AESO that it is not granting relief in circumstances where the purported FM event was actually within the reasonable control of the Generator to prevent or avoid.</p> <p>One issue we note is that an appeal of a permit or licence is not an event of force majeure unless the Generator is ordered to cease construction. The uncertainty of an appeal of a necessary permit could cause lenders to delay financial close or to stop funding if financial close has occurred. Under such circumstance, a Generator will wish to reduce its spend rate by slowing or suspending construction. This will, in turn, increase the risk of delay in achieving COD. However, it would be unable to claim Force Majeure for such delay unless a court order or regulatory stay order was issued, which will not necessarily be the case even though the practical result is that the Generator must slow or suspend work. This is an unfair result and perversely results in the Generator being better off if a stop work order is delivered by the appellate body. Further, we recommend that an appeal of a Permit and Licence be expressly included as an event of Force Majeure for the post-COD period.</p> <p>Lastly, the language as currently drafted regarding “Schedule Relief” creates a situation where the Generator is double penalized. First it is penalized because it cannot perform due to a FM (e.g. cannot generate and earn revenue) and second because the Term of the RESA continues to run thereby adversely affecting the project’s economics or creating financing risk as noted in the comments in Section 2 above.</p>
<p>Section 24 – Termination – Events of AESO Default</p>	<p><u>Suggested Revisions:</u></p> <ul style="list-style-type: none"> • Remedies for AESO Events of Default. Generator may terminate the agreement for an AESO Event of Default. Any such termination which occurs pre-COD shall result in termination payments from the AESO which are the same as in the case of termination for AESO convenience. For any such termination post-COD, Generator shall retain any other <u>all</u> remedies available to it at law and equity. <p><u>Commentary:</u></p> <p>As noted below in the comments in Section 25, the termination for convenience provisions do not adequately or fairly compensate Generators. In the case of a termination due to the default of the AESO (which should be a low-risk scenario since the AESO’s primary obligation will be to make difference payments <u>after</u> COD), it is less clear why the Generator would not be entitled to the damages it suffers as the result of the AESO’s fault.</p>
<p>Section 25 – Termination – AESO Convenience</p>	<p><u>Commentary:</u></p> <p>The Term Sheet contemplates the AESO having a right of termination for convenience both prior to, and after, commencement of construction up to commercial operation. Prior to commencement of construction, compensation</p>

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	<p>will be for pre-construction development costs up to a cap to be determined. Based on our experience, it is unlikely that this amount will adequately compensate a Generator for its development costs. After commencement of construction, compensation for equity invested will include a return on equity but only up to the date of termination. If capital cannot be redeployed for a comparable return, the Generator will suffer a loss. Compensation for such lost return on equity should be at the end of the Term and not just the date of early Termination by the AESO, otherwise the Generators are not fully compensated for their loss of bargain.</p> <p>AESO should consider the appropriateness of these provisions and what they signal to investors. Expecting investors to spend significant capital to meet Longstop dates, only to be subject to a discretionary or arbitrary termination right by the AESO, creates uncertainty and unnecessary investor risk. Such a provision makes political uncertainty a Generator risk instead of a Government or AESO risk even though they are in a better position to manage such risk. In the context of an announced closedown of approximately 6,000 MW of thermal generation and the procurement of an announced 5,000 MW of renewable generation, at best such a provision highlights the vulnerability of projects to political risk where the very small portion of 400 MW out of the 5,000 could be abruptly terminated. At worst, it suggests that system planning is arbitrary or incompetent. As we currently see in Ontario, these termination for convenience provisions create tremendous uncertainty, particularly as provincial elections draw near. Worse, it forces proponents to expend capital to race to reach milestones with the result that, given the inadequate compensation, the more the proponent spends the worse off it is if early termination occurs. If investors believe that the climate in Alberta is such that there is the possibility that such provisions could be triggered, it could significantly reduce the participants in the RFP or lead to significant risk premiums being priced into bids given the high risk and consequences of early termination.</p>
<p>Section 26 – Termination – Extended Force Majeure / Other Events</p>	<p><u>Suggested Revisions:</u></p> <p>Extended Force Majeure. If any single event of <u>Generator invoked</u> force majeure lasts 18 months (or if multiple events of force majeure collectively last longer than 24 months), <u>either party</u> may terminate the RESA without cost or payment of any kind to either party, and all performance security will be returned or refunded.</p> <p><u>Commentary:</u></p> <p>The 24-month period should be longer in the case of hydro facilities.</p>
<p>Section 27 – Financing and Consequences of Default</p>	<p><u>Suggested Revisions:</u></p> <ul style="list-style-type: none"> • Rights and Obligations of Secured Lenders: <ul style="list-style-type: none"> • Secured lenders have the right to be notified and to cure events of Generator default (other than those relating to bankruptcy, winding up or failure to achieve COD or commencement of construction by the specified longstop dates). • Secured lenders will have standard rights to step-in, appoint a receiver, or sell Generator’s interest in the facility (provided the transferee agrees to perform the Generator’s contractual obligations and subject to AESO consent rights).

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	<ul style="list-style-type: none"> New Agreement. Following termination of the RESA prior to the end of the Term due to Generator default, AESO must offer to enter a new agreement (substantially in the form of the existing RESA) with each secured lender or its designee. Each secured lender will have the option to enter such new agreement for the remainder of the Term, provided that such secured lender has paid any sums due as a result of the termination, cured existing defaults that can be cured, and paid AESO's reasonable costs and expenses incurred in connection with such new agreement. <p><u>Commentary:</u></p> <p><i>Rights and Obligations of Secured Lender</i></p> <p>If secured lenders may only exercise their enforcement rights with the consent of the AESO the RESA will be unfinanceable. The rationale behind providing lenders' rights is to set out the rights of the lenders to, among other things, cure defaults or enforce their security without risking the termination of the RESA (which is the principal underpinning of their credit facilities), interference by the AESO, or the renegotiation of the RESA in a circumstance that the AESO has undue leverage as the result of a Generator's default.</p> <p>The secured lenders' rights to be notified and to cure defaults need to be clarified to provide timing and a procedure.</p>
Section 28 – Assignment	<p><u>Suggested Revisions:</u></p> <ul style="list-style-type: none"> Generator Assignment Prior to Commercial Operation. Prior to commercial operation of the facility, the Generator shall not be entitled to assign any of its rights or benefits without the consent of the AESO, which may be withheld in the AESO's sole discretion, which consent shall not be unreasonably withheld, provided that AESO can withhold consent if the assignment would: (i) cause the Generator to breach the obligation to own or lease the facility; or (ii) have a material adverse effect on Generator's ability to perform its obligations. Assignment After Commercial Operation by Either Party. Either party can assign its rights and benefits with prior consent of the other, not to be unreasonably withheld, provided that AESO can withhold consent in certain specified circumstances, including if the assignment would: (i) cause the Generator to breach the obligation to own or lease the facility; or (ii) have a material adverse effect on Generator's ability to perform its obligations. Generator Assignment to Affiliate. Generator may assign its rights and benefits to an affiliate acquiring the facility, provided such affiliate becomes bound by the terms of the RESA and provides the required security. Assignment by AESO. AESO may assign its rights and benefits without consent of Generator, <u>provided</u> the assignee agrees to be bound by the agreement and not to make any material amendments to same or to terminate same without prior consent of Generator and <u>provided further</u> the AESO remains liable for any payment defaults and obligations of the assignee arising from the replacement party's event of default.

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	<p><u>Commentary:</u></p> <p>Our observation is that assignments or changes of control that require discretionary consent do not reflect the reality of how projects are developed by proponents. Projects change hands or proponents mitigate their risk by inviting other investors to participate. In a scenario where RESA holders will have just gone through an RFQ and competitive RFP process, RESA holders will be sound and creditworthy developers who are unlikely to “flip” projects and therefore risk bringing the RFP process into disrepute. Additionally, any assignee or acquiror would be required to assume the assignor’s/target’s bid price which was determined in a competitive auction; this should mitigate any concern that an assignee/seller is reaping a windfall profit in a sale or syndication.</p> <p>We suggest that the AESO consent requirement prior to Commercial Operation should be subject to a reasonableness or some other objective standard, which provides the AESO with sufficient protections in the event the assignment would cause a breach or otherwise have a material adverse effect. This should be equally applicable prior to and after Commercial Operation. If there is a concern about the ability of an assignee pre-COD to successfully complete the project, given that the proponent will have just gone through the RFQ process an additional, objective criteria for pre-COD assignment could be that the assignee would have met at least the qualification metrics that the assignor did.</p>
<p>Section 29 – Change of Control</p>	<p><u>Suggested Revisions:</u></p> <ul style="list-style-type: none"> • Generator Change of Control Prior to Commercial Operation. Prior to commercial operation of the facility, no change of control (other than changes involving affiliates where the original persons in control of the Generator maintain a minimum interest) of Generator will be permitted without prior consent of AESO, which consent may be withheld in the AESO’s sole discretion shall not be unreasonably withheld. • Generator Change of Control After Commercial Operation. Following commercial operation of the facility, a change of control of the Generator will be permitted provided Generator, within 10 business days following such change, provides AESO with notice and such additional information as AESO reasonably requires regarding name of persons/entities which control or have a direct or indirect ownership interest in Generator. <p><u>Commentary:</u></p> <p>See our comments above in Section 28.</p> <p>We have deleted “involving affiliates” as we assume that the “minimum interest” is expected to be below 50% (the threshold for de jure control and most affiliate tests).</p> <p>With respect to the Post-COD requirement to provide the names and numbers of entities having a direct or indirect ownership in the Generator, we would suggest that the information is not particularly helpful to the AESO or its objectives. These type of reporting and contract administration provisions risk creating an unnecessary administrative burden on the AESO and, worse, a potential new bureaucracy that has the function of administering contracts and contract information that may be of questionable utility. To the extent the AESO intends to keep administrative fees low for the protection of tax payers, avoiding unnecessary administrative requirements would</p>

Section	Feedback
	<p>help meet this objective. In addition, providing indirect ownership interests would be difficult for any open ended fund or other public issuer and, again, would be of questionable utility to the AESO.</p>
<p>Section 31 – Generator’s Representations, Warranties and Other Obligations</p>	<p><u>Suggested Revisions:</u></p> <ul style="list-style-type: none"> • Standard Representations and Warranties. Generator will make a number of standard representations and warranties, including: authority to enter into the agreement, valid formation and due organization, due authorization, no other business being carried on, reliance on own investigations, statements of fact in proposal are true and not misleading, plain and true disclosure of all material facts and circumstances, and no improper payments or benefits offered to the AESO or any of its agents; and Generator shall act in accordance with its anticorruption policy. • REP Specific Representations and Warranties. Generator will make a number of representations and warranties related to the facility and the Project, including that: (i) there is no reason to believe that commercial operation of the facility may not be achieved by Target COD; (ii) Generator and the facility will comply with the eligibility requirements of the Renewable Energy Program; (iii) Generator has made all due inquiry into requirements to obtain applicable permits and licenses, and it acknowledges it will only be entitled to Force Majeure relief in respect of failure to fulfill any such requirements that were reasonably unforeseeable; (iv) Generator has not received incentives under any other environmental program in respect of the facility; and (v) Generator has not taken any action that would constitute a conflict of interest. <p><u>Commentary:</u></p> <p>It is not clear why these representations and warranties require the Generator to be a single purpose entity under the RESA. Clarification is required to determine why only single purpose entities can be a party to the RESA. In addition, further clarification is required regarding the requirement for “plain and true disclosure of all material facts and circumstances” and what a “10b-5” full-disclosure representation from the US corporate finance context is intended to achieve in the context of a renewable project development.</p>
<p>Section 32 – AESO’s Representations, Warranties and Other Obligations</p>	<p><u>Suggested Revisions:</u></p> <p>The AESO will make a number of standard representations and warranties including, for example: authority to enter into the agreement, validly existing, and due authorization; <u>no improper payments or benefits received by the AESO or any of its agents; there is no reason to believe that commercial operation of the facility may not be achieved by Target COD.</u></p> <p><u>Commentary:</u></p> <p>We would suggest that greater reciprocity in the representations of the parties is appropriate, particularly where the AESO may have better knowledge about certain matters that it is requesting the Generator represent and warrant.</p>

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

Section	Feedback
Section 2:	<p>██████ supports ██████ recommendation that the AESO consider a 25 yr term (Support Period) to align with the certified and warranted lifespan of current wind turbine technology. ██████ believes aligning with the 25 yr lifespan of the wind turbine will also result in improved financing terms for Generators that matches the amortization period of the projects, which in turn will result in lower RESA bid prices and thus lower electricity rates for Albertans.</p> <p>██████ does not support the suggested approach that the RESA Support Period term be extended due to Generators inability to achieve the Target COD date. In order for the AESO to ensure the REP process is a success the AESO should structure a process that ensures only Generators with de-risked mature projects participate - creating strict timelines and real financial penalties for non-performance of contract terms. That will create the right competitive environment for success.</p>
Section 3:	With the aim to create a highly successful REP competitive process that will yield the lowest cost projects that pose little to no risk of default or failure to achieve COD, ██████ recommends the AESO re-examine the Target

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and Longstop Dates to tighten the dates and penalties applied for Generators. Specifically, we recommend the following be examined.

1. **Commencement of Construction Longstop Date:** While many developers will assert that a commencement of construction requirement is not a necessary component of the REP program in order to provide them with maximum flexibility to manage permitting, transmission connection and other project related risks, [REDACTED] recommends the AESO maintain the commencement of construction longstop date in order to reduce or eliminate projects that do pose material permitting, transmission interconnection or other development risks from being awarded a RESA and failing to deliver on a commencement of construction deadline. It is likely that if this first deadline is missed, the additional deadlines of Target COD and COD Longstop Date will also be missed.
2. **Target COD and COD Longstop Date:** [REDACTED] recommends that Generators declare their Target COD in their RFP submission and be held to that Target COD with the application of liquidated damages equal to the sum of the completion and performance security as laid out by the AESO. If the LDs only apply to the COD Longstop Date this will open up an opportunity for bidders to game the system to buy more time to develop their projects. If this is allowed, the AESO will face a significant risk that immature projects default due to their lack of maturity. If this occurs, the AESO and the Government of Alberta face the risk that the REP program is viewed as delivering failed renewable projects, as it has recently occurred in neighbouring jurisdictions. A COD Longstop date in combination with LDs applied to the Target COD is an appropriate mechanism to be used to shorten the RESA contract period.
3. **Extension of Dates:** While it is appropriate that force majeure events or a change in law delays should apply to the CC Longstop, Target COD and COD Longstop Dates, [REDACTED] recommends the force majeure definition not include the inability to obtain a permit, licence of approval as this will allow immature underdeveloped and high risk projects to obtain a RESA contract and then either default or fail to achieve the target deadlines. There are over 1300 MW of wind projects in Stage 4 or 5 of the AESO Connection process and an equal number of MWs with AUC permits. It is this group of projects that will deliver quality projects on time and on budget with little risk of default. While many developers will lobby for looser RESA terms this is only in an effort to ensure that immature underdeveloped projects can participate in the REP to obtain a RESA contract, but in allowing this to occur, the AESO will incur significant risk of project default. It is better that projects participate in the competitive process once they are sufficiently developed and de-risked so as to be able to guarantee commencement of construction and target COD dates, and less mature projects participate in future competitive processes. Many jurisdictions across Canada have witnessed significant project default because of loopholes in the competitive bidding processes that allowed them to win contracts but not be able to deliver the projects. For example, in Saskatchewan, the 175 MW wind project awarded to Algonquin in 2012 was recently denied environmental approval after 4 years of post-contract award development work. Clearly this project was not de-risked at the time of bid submission and as a result Saskpower will not be delivered

Section	Feedback
	<p>energy as contracted for on time and on budget. Similarly in the BC Hydro 2008 Clean Call, over 35% of the projects awarded contracts were not built.</p> <p>4. Earliest Support Payment: [REDACTED] recommends that the AESO consider both an early support period of 1 yr as suggested and an early on line bonus concept or an extension to the RESA Support Period to encourage mature projects to achieve a Target COD by late 2018 or early 2019. If this COD can be achieved, the Government of Alberta will be able to demonstrate success with the REP program, defined as lowest cost renewables brought online on budget and on time, prior to the next election.</p>
Section 4:	<p>[REDACTED] supports [REDACTED] position on Section 4 issues and would like to emphasize that the AESO should request a “financing plan” from the Generator as opposed to a copy of the financial model, and [REDACTED] requests that the AESO state specifically what financial aspects they are requesting. A full financial model likely has detail in it that the AESO does not require, but the disclosure of the model puts the Generator at material risk of future disclosure of highly confidential information via a FOIP request.</p>
Section 5:	<p>[REDACTED] supports [REDACTED] feedback on this section and requests clarification on the meaning of a ‘non-zero offer’ letter. [REDACTED] also suggests that the AESO utilize the Independent Engineer report and certificate that will be prepared for the project financing of the project produced by a reputable and bankable consultant. This Independent Engineer report will provide and certify the information the AESO requires while minimizing the duplication of costs. [REDACTED] requests that the AESO clearly specify what the requirements of the form of certificate will be.</p>
Section 6:	<p>[REDACTED] recommends that the AESO remove the security over the facility clause because this is a non-viable approach for lenders and could result in projects that are seeking project financing from being excluded from the REP process. Lender will not accept a priority security interest or a subordinated interest on the facility.</p> <p>[REDACTED] also requests that the AESO clarify the timing of when the pre-COD letter of credit performance security will be required.</p>
Section 7:	<p>[REDACTED] requests clarification on the amount and timing of the AESO’s REP administration fee so that this cost can be factored into the overall project budget.</p>
Section 8:	<p>[REDACTED] recommends that the Design & Construction Section – Facility Modification & Reduction of Capacity modifications of up to 20% should not be allowed for reasons associated to land rights or financing as suggested in the document. Developers should not be allowed to bid projects that do not have 100% of the land rights required to bid. This is an unacceptable risk that the AESO should not allow. With respect to financing, changes in</p>

Section	Feedback
	financing post RESA award should not impact the facility size and thus should also not be allowed. It is reasonable to allow for smaller changes to the facility size – between 5% to 10% which is a reasonable and normal.
Section 12:	█ requests that the AESO specify in advance what the REC registration process/requirements and the AESO reporting process and requirements so that these costs and requirements can be properly accounted for in advance by the Generator. █ requests clarification on what is meant by reporting on matters related to its equity participants.
Section 13:	<p>█ agrees that in order to create an equal playing field between Generators that the Generator may not seek funding from other Government of Alberta renewable programs unless it can be clearly demonstrated that the incentive program is not related to the funding of the project directly. If for example it is related to a battery storage facility that will be co-located where the wind project is sited, █ believes the Generator should be eligible to apply and keep the funding.</p> <p>█ does not support the approach that any share any other funding or incentive program be shared with the AESO 50%. For example, if a Generator partners with a municipality and receives a more favourable property tax approach in order to incent development in their rural municipality, it is not clear why that benefit should be shared with the AESO.</p>
Section 15:	█ does not believe this optionality should be unilaterally thrown out. As the owner and operator of two of the most unique ‘wind only’ WECC and NERC certified Balancing Authorities in North America, the company has an experienced perspective on the role and value of renewable assets in the reliability markets. Given the depth and robustness of the company’s operating platform, we see real potential value of allowing these assets to participate in the reliability side of the equation. Whether through the operational flexibility of new advanced turbine technology or the inclusion of a storage asset on site, the projects participating in the process can provide much needed reliability to the overall system. At a minimum there should be a discussion about these potential benefits and the value they can bring as the AESO seeks long term solutions to the success of the procurement program.
Section 16:	It is highly important to include clarity concerning negative pricing. Financing solutions, and their subsequent cost, could be dramatically altered without real clarity on this issue.
Section 18:	Curtailment exposure is a critical component when assessing the viability of the project’s that are submitted into the solicitation process. To protect the integrity and strength of the financing solutions available to project’s there should be clarity on the amount and frequency of potential curtailment. Projects that are submitted that may face higher levels of curtailment based on transmission conditions concerning there interconnection point

Section	Feedback
	will provide less overall value to process. Curtailment levels should be assessed and those projects exhibiting prohibitive levels of curtailment should be weighted appropriately.
Section 19:	██████████ supports ██████████ comments on this section. Any limitation or exposure to a weak or ill-defined set of change in law clauses will alter and impact the integrity of third party financing solutions. Any new laws or ISO rules should be included in this language, not just changes to current rules or laws.
Section 20:	██████████ would seek clarity and tight definition of any Force Majeure clause and finds it highly unusual that permitting risk would be considered a force majeure event. The integrity of the solicitation process rests on submission from participants of mature and highly developed projects. The protection for unforeseen delays should be limited. Projects that are submitted should have been de-risked to the full extent possible prior to their submission into the RFP. This can be managed through a demanding qualification process to allow the AESO to determine risk profiles of the projects that are submitted and to distinguish amongst projects the risk adjusted value of the submission.
Section 23:	██████████ recommends that reasonable cure periods be introduced to allow for Generators to remedy the situation causing the concern. ██████████ suggestion of 60 days for both Generator and lender is reasonable. Further clarity need to be given regarding the linkage between the triggering event, cure periods, and security provisions to ensure an optimal solution that adequately protects both counterparties.
Section 25:	██████████ strongly recommends the AESO remove this broad termination for convenience right. If the integrity of the first REP is to be maintained both the Generator and the AESO needs to be fully committed upon contract award. Any termination for convenience, should it occur, should, only be allowed prior to commencement of construction and with the condition that Generator pre-construction costs are fully compensated.
Section 27:	Language should be added in these sections to enable project’s ability to access third party financing. As described by ██████████ third party consents are a critical component of final closing protocols and timely receipt is material. The company also recommends that the AESO maintain some flexibility regarding final language as each lender can and will likely have some unique or specific requests that can prove material in final closing parameters.
Section 31:	██████████ is generally comfortable with the provisions that have been mentioned, however clarity on final language will be needed to adequately assess the risk associated with these claims.
Section 33:	██████████ recommends that a longer time period be considered for dispute resolution, a minimum of 30 days. Depending on the nature and tenor of the dispute these can be complex situations with very significant dollars at stake for both sides of the transaction. Time should be granted to work towards a reasonable and holistic solution.

Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by **5pm MST on December 9, 2016**. Terms used but not defined herein shall have the meanings ascribed to them in the Key Provisions of the Renewable Electricity Support Agreement dated November 10, 2016.

Submitter Information:

Section	Feedback
Section 2	If the Target COD is not achieved due to reasons not otherwise covered by Force Majeure, [REDACTED] recommends giving the Generator the option of paying a reasonable amount of liquidated damages in order to maintain the operating Term so as to preserve Project economics. We suggest that the Generator be able to pay \$50 per MW per day to maintain the 20-year Term of the contract.
Section 3	<p>[REDACTED] recommends not including a longstop date for the commencement of construction. The Target COD and COD Longstop Date provide ample motivation for the Generator to deliver the Project on schedule. A Generator should not face RESA termination for commencing construction late where it has the ability to accelerate its schedule and mitigate any construction delay.</p> <p>In the alternative, [REDACTED] recommends tying the CC Longstop Date to the COD Longstop Date rather than fixing a specific target date for the CC Longstop Date. The COD Longstop Date minus a period of six months represents the approximate time to construct a typical wind project. Tying the CC Longstop Date to the COD Longstop Date provides more flexibility to developers but achieves the same purpose as utilizing a specific date.</p>

Section	Feedback
Section 5	We would like clarification/specificity on the timeline and process for obtaining a “non-zero offer” letter from the AESO. If obtaining the letter requires subjective interpretation/judgement on the part of the AESO the opportunity for manipulation of the requirement is troubling.
Section 6	Given the AESO’s right of set-off against any amount owing to it from the power pool financial settlement funds due and owing to the generator, [REDACTED] does not believe that granting the AESO a security interest in the Project is necessary or appropriate. Indeed, if the AESO is given a first rank and priority interest over the facility or collateral, we do not believe that the RESA will be financeable. The intention of the AESO’s security interest should be clarified and not under any circumstances rank above a construction or term lender.
Section 7	The amount and timing (and indexing, if any) of the AESO administration fee should be specified.
Section 8	The AESO should not have the right to terminate the RESA if the facility’s nameplate capacity exceeds contract capacity in order to address such issues as underperformance relative to contract capacity. If excess power is generated above and beyond contract capacity, such excess generation can simply receive the market price.
Section 12	The frequency of reporting should be specified. [REDACTED] recommends semi-annual reporting obligations.
Section 13	[REDACTED] requests clarification on what constitutes “funding by any governmental authority”. While we understand that the GOA will want to share the proceeds from grants or other types of financial incentives from the Federal Government such as the ECO energy program or future REC programs, other forms of project-specific rebates or adjustments (e.g. property tax adjustments, LDC credits for distribution connected projects, etc.) should be carved out from this provision.
Section 15	The prohibition on the sale of ancillary services should be re-considered as it pertains to placing energy storage assets at wind and solar sites. This provision combined with the proposed tariff treatment of energy storage may result in few (if any) energy storage projects being built in Alberta. We believe this approach is short-sighted and not in the best interests of Alberta as energy storage facilities could help smooth out the variable nature of wind and solar generation, which will be invaluable once all 5,000 MWs of renewable energy is online.
Section 16	<p>The reference to the support payment equaling “the metered electricity generated by the facility multiplied by the difference between the strike price and the greater of the pool price and zero” raises the potential for exposure to negative prices should the AESO remove the current floor price of \$0/MWh. We recommend that the RESA include a provision that generators will be made whole for any exposure to future negative pricing.</p> <p>In addition, as the AESO is neither a Crown Corporation nor an agent of the Crown, third party lenders may have difficulty assessing counterparty credit risk. In this regard we recommend that the AESO explore obtaining a guaranty from the GOA and/or a credit rating.</p>
Section 18	The curtailment rules in the draft RESA place all curtailment risk on the generator. If curtailment arises as a result of an act or omission by the AESO, the GOA, a change in law, etc., the Generator should be compensated. [REDACTED] is

Section	Feedback
	<p>concerned about the ability to finance the RESA if curtailment is not addressed; therefore, we recommend adding a cap on the amount of curtailment that Generators must absorb.</p> <p>This has been addressed in other jurisdictions, such as Ontario, by capping the annual curtailment structure. [REDACTED] recommends an annual cap of 20 MWh per MW of contract capacity and a lifetime cap of 200 MWh per MW of contract capacity. This mechanism provides proponents with the incentive to consider siting impacts on curtailment, while not requiring them to take all the risk that could increase bid prices unnecessarily.</p>
Section 19	<p>The change in law provisions related to potential changes to Alberta’s wholesale market design should be broadened to include other protections given the likelihood of significant changes in this market. Generators should be made whole for any changes made to AESO rules, market structure or government policy decisions that alone or in the aggregate negatively impact Project economics. Further, change in law should extend to federal laws, regulations and orders that impact the Generator or facility.</p> <p>In addition, given the latitude given to applicable Provincial ministries, material and unforeseen changes to conditions in (and timelines for issuance of) regulatory permits and licenses should be considered changes in law.</p> <p>Finally, we recommend that notice of a change should only exclude the Generator from being granted relief with respect to changes that occur prior to the submission of an RFP proposal. The concept of notice of a change will deny the Generator of relief must not apply to changes which occur post RFP submission.</p>
Section 20	<p>[REDACTED] recommends revising the Force Majeure provision to include delays by a government agency in the issuance of any permit, license or approval that is required and delays with respect to interconnection that are caused by a TFO (as long as such delay was not caused by the inaction of the party seeking to invoke the Force Majeure event).</p> <p>In addition, we recommend that if an event of Force Majeure occurs post-COD, the term of the RESA is extended for period equal to the length of the Force Majeure event. Further, the Generator should not owe liquidated damages to the AESO if the RESA is terminated by the AESO as a result of an event of Force Majeure.</p>
Section 22	<p>We assume that having a separate environmental/pollution policy as opposed to having such coverage fall under commercial general liability will be acceptable, but please confirm.</p> <p>Please also confirm that a separate wrap-up insurance policy is not required if a company has its own commercial general liability coverage, umbrella liability coverage and workers compensation insurance for the construction and operation periods and also requires all contractors and subcontractors to have their own insurance (all in accordance with applicable laws).</p>
Section 23	<p>Please see comment in Section 3 above. This provision should include a reasonable cure period (e.g., 60 days) for</p>

Section	Feedback
	the Events of Generator Default. In addition a materiality threshold should be applied to breaches of representations and warranties.
Section 24	An asymmetric pre-COD remedy for events of default event is not appropriate. A Generator's damages for a pre-COD AESO Event of Default should not be limited to an amount that is equal to the termination payment for AESO convenience. The Generator should be free to pursue all available rights and remedies against the AESO
Section 25	<p>██████ recommends removing the concept of termination for convenience as such a provision will add undo risk that will ultimately be priced into the bid submissions resulting in higher costs to ratepayers. In addition, we are concerned that a termination for convenience provision will impose issues with respect to the ability to finance the RESA and request that input from construction and term lenders be provided (unless input from lenders has already been solicited by the AESO regarding this provision).</p> <p>If a termination for convenience provision is required prior to construction, we recommend not limiting the remedy payment to a specific dollar amount as this will be difficult to quantify and suggest the provision be drafted in a similar manner as termination post-construction. For instance, in order to meet the Target COD, the Generator will likely have to make significant financial commitments for long lead equipment items such as turbines or transformers well in advance to the date of Construction Commencement. To the extent the AESO maintains this provision; we recommend that the cap for termination prior to construction be limited to \$1.5 million per megawatt rather than an arbitrary fixed dollar amount.</p> <p>Finally, please provide additional clarity regarding the definition of IRR.</p>
Section 27	Stakeholders should be given an opportunity to review the prescribed form of consent and acknowledgment agreement that will accompany the RESA.
Section 28	<p>██████ recommends that the provision for third party assignment after COD be clarified. The Key Provisions suggest that the RESA can be assigned by either party without consent yet the AESO appears to retain the ability to make a subjective evaluation of the Generator's "ability to perform its obligations". This is not necessary given that the generator's assets will include an operational Project and, at least as currently drafted, the AESO will have a security interest in the Project.</p> <p>Please also clarify that an assignment by Generator to an affiliate can occur both pre and post COD.</p>

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[REDACTED]
[REDACTED]
[REDACTED]

Section	Feedback
3	\$25000.00 per MW completion and performance security
6	\$25000.00 per MW based on nameplate capacity at RFQ
7	AESO administration fee—how calculated ? (ID#2011-003R)
16	Contract \$215.00 to \$290.00 per MWh Recommendation doc. Sec. 4.6.1
23	Default prior to operation \$25000.00 MW

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

Section	Feedback
N.A.	<p>As an energy storage proponent, [redacted] requests consideration within the Renewable Electricity Program. [redacted] is a member of the [redacted] a consortium of experts from across the energy industry that has come together to recommend strategies for Alberta to leverage energy storage technology within its electricity market. [redacted] alongside the [redacted] will continue to engage the AESO and Alberta Government regarding the beneficial roles and services that energy storage can provide to the Alberta Electric System while enabling the government to achieve its current and future Climate Leadership Plan objectives. As renewable energy becomes an increasingly sizable proportion of Alberta's electricity supply, energy storage plays an increasingly critical role in minimizing the GHG emissions from Alberta's energy supply. Energy storage that is allowed to optimally participate in Alberta's electric grid can provide the system benefits of being able to reduce costly and contentious transmission wires infrastructure without compromising the Alberta electric system's reliability or robustness, while instead improving resiliency.</p> <p>[redacted] welcomes further opportunities to engage with the AESO and provide useful information on the role that energy storage technology can play in the Alberta Electricity System.</p>

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
3	<ul style="list-style-type: none">A clear and time-limited process for extension of dates in events of force majeure or change in law should be specified to clarify what is meant by “a reasonable period”.
6	<ul style="list-style-type: none">The security provided by the Generator should be used to protect landowners from any liability for utility payments and reclamation activities when the generating unit is located on leased land and a Generator becomes insolvent or bankrupt. This should be specified in Section 6.
19	<ul style="list-style-type: none">The change in law clause should be as clear and comprehensive as possible so there is limited room for interpretation. The requirements, consequences, and timelines should be specified for each situation of change in law to clarify the process for negotiation and dispute resolution. For example, if a change to ISO rules occur which “materially affects Generator’s economics” the consequence may be that the parties will be required to negotiate amendments. There should be clarity about the scope and time of these negotiations.To avoid uncertainty, there should be a clear definition of the “materiality” criteria in respect of generator’s economics, delays in development and construction, and cost increases.In respect of consequences of designated changes, there should be certainty about what constitutes the generator’s “same financial position” in respect of the RESA, what “net capital costs” are and what “net operational costs” are.The type of regulations and orders which are considered changes in law should be specified.The events that are not considered change in law should be specified, including a clear definition of generator

Section	Feedback
	conduct, and of those circumstances attributable to both the AESO and the generator.
20	<ul style="list-style-type: none"> The requirements, consequences, and timelines should be specified for each situation of force majeure to clarify the process for negotiation and dispute resolution. The types of government orders which are considered an event of force majeure should be specified.
21	<ul style="list-style-type: none"> A provision of liability for payment should be included to protect landowners from any liability for utility payments and reclamation activities when a generating unit is located on leased land and a Generator becomes insolvent or bankrupt. Indemnification provided by the Generator should include any claims, losses, or damages from landowners when a generating unit is located on leased land.
22	<ul style="list-style-type: none"> The “commercial general liability” insurance should include a rider to protect landowners from utility payments and reclamation activities when a Generator becomes insolvent or bankrupt.
26	<ul style="list-style-type: none"> The terms in Section 26 should specify a) computation of extended force majeure in the Development Period and b) computation of extended force majeure in the Support Period. The events occurring during the Development Period where the Generator may be granted schedule relief should not be aggregated with events occurring during the Support Period.
27	<ul style="list-style-type: none"> In case of a new agreement, the new RESA should include “the same terms of the existing RESA” instead of “substantially in the form of the existing RESA”. This section should specify a provision of liability to protect landowners from any liability for utility payments and reclamation activities when a generating unit is located on leased land and a Generator becomes insolvent or bankrupt.
33	<ul style="list-style-type: none"> This section should specify a clear and time-limited process for dispute resolution which includes situations of events of force majeure or change in law.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]

[Redacted]

[Redacted]

Introduction

[Redacted] is a Canadian law firm that works exclusively for indigenous people, persons, organizations and businesses, including many in Alberta. [Redacted] believes that until indigenous people have more control over their own fates and futures, including economic and political decision making control, reconciliation between aboriginal communities and the broader Canadian public will remain elusive.

[Redacted] welcomes steps to develop a large renewable energy economy in Alberta. However, with the 2017 bid process imminent, strong and specific criteria encouraging participation of indigenous communities in this new economy have yet to be announced. Proceeding forward in their absence would be an enormous missed opportunity, overlooking the chance to put the incumbent Alberta government's ("GoA") election commitments to implement the United Nations Declaration on the Rights of Indigenous People ("UNDRIP") in action, leaving Alberta's First Nations once again on the sidelines of a new economy being developed in their treaty territories.

Indigenous participation in renewable energy projects is an opportunity to demonstrate development based on the principles of Free, Prior and Informed Consent (“**FPIC**”), a foundational concept of UNDRIP. [REDACTED] is urging the Province to support its shift towards renewable resource developments with a strong signal to prospective developers that aboriginal participation is a valued attribute of a successful bid.

We are specifically encouraging AESO to loosen the requirements around changes of control to allow for inclusion of indigenous partnerships prior to a Project reaching commercial operation, and to explore the idea of adding rated criteria to the competitive process to encourage indigenous participation and partnership. Where the AESO adopts such a formula, a specific section in the RESA could address aboriginal partnerships. Such partnerships have been adopted in other Canadian jurisdictions and have proven to be favorable to both communities and private developers, by providing certainty of stakeholder support and allowing indigenous groups participation in the energy sector in a manner typically aligned with traditional values.

[REDACTED] has gained extensive expertise in the last five years working on renewable energy deals for First Nations in Ontario. While the Ontario legislative context was favorable to aboriginal partnerships in the development of Ontario’s renewable portfolio, [REDACTED] witnessed the positive outcomes from these agreements. Strong partnerships with private developers have permitted First Nation communities to become important stakeholders on their land.

By taking an ownership position in these renewable energy projects, First Nations are creating wealth for their communities through employment opportunities and reinvestment in community programs. Multiple First Nations built their expertise in the field of renewable energy with smaller projects developed under the Ontario Feed In Tariff (“**FIT**”) Programs. Priority points were awarded to project applicants seeking to develop a project with an indigenous partner, thereby increasing the likelihood of a successful application. Over and above this, an increased electricity purchase price called an ‘Aboriginal Price Adder,’ indexed to proportionate indigenous project ownership, was permitted to be charged by successful applicants, thereby increasing the amount of revenue generated by the project. According to the Independent Electricity System Operator (“**IESO**”), 561 FIT contracts involving an Aboriginal Partnership have been issued.

In 2014, similar incentives were reproduced in a competitive bidding framework under Ontario's Large Renewable Procurement I ("LRP I"), demonstrating that these incentives could co exist in a procurement regime that placed downward pressure on bid prices. LRP I concluded in April 2016 with the awarding of 16 power purchase agreements. Thirteen of these qualified as Aboriginal Participation Projects which required an aboriginal economic interest in the project of at least 10%. The IESO identified that 5 of these projects had over 50% ownership held by an aboriginal community.

The "Report to Minister" on Alberta's Climate Leadership (the "**Leach Report**"), published in November 2015, made clear recommendations to the GoA in terms of partnership with indigenous communities¹. "Full inclusion" was a key concept in the drafting of the recommendations of the Leach Report and an important focus was made on the necessity of creating concrete partnerships with First Nations and Métis communities in the growing sector of renewable energy².

As per the conclusions of the experts in the Leach Report, aboriginal participation and engagement was a core element of their mandate. The experts strongly encourage the GoA to ensure the implementation of a structure in the renewable energy procurement which fosters the participation of aboriginal communities:

"Our panel believes that Aboriginal communities, organizations and their members should be expressly taken into account in investments devoted both the climate change mitigation and to future work on climate change adaptation. We've explicitly included consideration for impacts on Aboriginal peoples and communities of carbon pricing in our revenue recycling proposals, to ensure that vulnerable communities are not disadvantaged. We've recommended that specific supports be provided in energy efficiency programming, in the oil and gas methane reduction program and in **the renewable energy procurement process to ensure that Aboriginal peoples can participate with full agency both in mitigation of existing emissions and in the deployment of new energy technologies in Alberta**³. [Emphasis added]

¹ Leach and a ., *Climate Leadership, Report to Minister*, November 2015, <http://www.alberta.ca/documents/climate/climate-leadership-report-to-minister.pdf> at 4 and 30.

² *Ibid.* at 10.

³ *Ibid.* at 90.

The expert panel focused on the need for a strong governmental commitment towards aboriginal communities in the context where the development of renewable energy projects will occur on aboriginal traditional land⁴. The expert panel addressed in their report the unique aboriginal context in which the GoA is navigating. Alberta needs to fully protect aboriginal rights and treaties but should also seize the opportunity offered when drafting future laws on energy initiatives in the province:

“Our panel believes it is critical that new climate policies, and the changes they bring to Alberta, remain the subject of genuine engagement with Aboriginal communities and organizations, and that this engagement be continuous throughout the process, including implementation and monitoring”⁵.

Engaging early with host indigenous communities should be strongly encouraged. This is a key factor for any project impacting the traditional territories of indigenous groups. Strong relationships will ensure success for all stakeholders and, maximize the long term social acceptability and the socio economic development of communities impacted by the projects.

The government of Alberta was elected on, *inter alia*, the promise to implement the UNDRIP and to build it into its provincial law. While the GoA has acknowledged it may later decide to include indigenous participation in future renewable energy procurements, this acknowledgement only emphasizes its absence in the present. ■ recognizes that Bill 27 is clear on the responsibility of the GoA⁶ to manage the engagement with aboriginal communities, however we note that the AESO’s efforts are planned to be concentrated on the investor and **developer communities**:

“The focus of the AESO’s engagement efforts would therefore be with the investor and developer communities as well as other interested parties. This delineation has and will continue to allow the AESO to concentrate on the types of feedback necessary to further develop key elements of the Program, such as the procurement documents and long-term agreements. It also enables the GoA to coordinate its engagement for the Program with its broader CLP engagement activities.

⁴ *Ibid.* at 57.

⁵ *Ibid.* at 28.

⁶ Sect on 3, B 27, RENEWABLE ELECTRICITY ACT, 2016 B 27. Second Sess on, 29th Leg s ature, 65 E zabeth II.

The AESO recognizes that the legal duty to consult Indigenous Peoples rests with the GoA. The AESO will continue to support the GoA moving forward with respect to issues or concerns as the Program develops”⁷.

main objective through its recommendations on the provisions of the RESA is to focus on the importance of engaging with the First Nations of Alberta in this first competitive process as “**developer communities**”. Business opportunities should be created as soon as possible in Alberta, and the government should not delay this opportunity. First Nations have tremendous capability to finance the purchase of equity investments into these projects, if given the opportunity. Aboriginal communities cannot merely be seen through a narrow duty to consult lens. They are developer communities – a sound fiscally responsible electricity regime that encourages their participation allows for the incubation of a domestic investment community that independently improves outcomes of the members living in these communities. The GoA and the AESO should take a strong position towards aboriginal partnerships. They have proven overwhelmingly positive for all involved stakeholders in other Canadian jurisdictions.

What is also clear from other jurisdictions in Canada where aboriginal partnerships were encouraged is the active, participatory, nature of consent. Whereas discussions regarding consultation characteristically revert to competing assessments of its adequacy, discussions that prolong rather than avoid conflict, consent is objectively far easier to assess. In turn, in an assessment regarding the mitigation of development risk, a demonstration that consent has been achieved is accordingly of much greater value than a determination that consultation has been adequate.

[REDACTED] FEEDBACK ON THE RESA

Section	Feedback
4 and 8	Requirements for Commencement of Construction (4) Generator will be required to use commercially reasonable efforts to commence construction of the facility as soon as possible. Commencement of construction of the facility will be deemed to have been

⁷ Renewable Electricity Program Recommendations, AESO, May 2016, p. 37.

Section	Feedback
	<p>achieved at the point when, as subsequently confirmed by the AESO in writing, Generator has:</p> <ul style="list-style-type: none"> • Obtained key Alberta Utilities Commission (“AUC”) and other environmental, assessments, permits, licenses and approvals; [...] <p>Design and Construction (8)</p> <p>The Generator will have the following rights and obligations in respect of the development and construction of the facility:</p> <ul style="list-style-type: none"> • Standard of Care. Generator will be required to design and build the facility in accordance with good engineering and operating practices, in compliance with all applicable laws, rules, codes, permits, licenses and the RESA. [...] <p>COMMENTS:</p> <ul style="list-style-type: none"> • Additional requirement for commencement of construction should include confirmation the Generator has received a valid support resolution of the Indigenous Community on whose traditional territory the Project is located. • Absent a support resolution, the commencement of construction should additionally require the submission of an aboriginal participation plan to the AESO demonstrating the steps Generator intends to take in accordance with an agreed frame of reference to encourage aboriginal participation in the Project and mitigate construction period impacts on aboriginal and treaty rights.
5	<p>Requirements for Commercial Operation</p> <p>Commercial operation of the facility will be deemed to have been achieved at the point when, as subsequently confirmed by the AESO in writing, Generator has satisfied each of the following requirements: [...]</p> <ul style="list-style-type: none"> • the AESO has received copies of all government approvals required to construct, operate and maintain the facility;

Section	Feedback						
	<p data-bbox="537 253 579 285">[...]</p> <p data-bbox="537 324 772 357">COMMENTS:</p> <ul data-bbox="537 363 1915 824" style="list-style-type: none"> <li data-bbox="537 363 1915 552">• An additional requirement of Commercial Operation must include either an indigenous support resolution or, where no indigenous support resolution has been achieved, certificate from the Generator confirming that all of the steps outlined in the approved Aboriginal Participation Plan submitted prior to the commencement of construction have been met in accordance with the frame of reference established by the AESO. <li data-bbox="537 597 1915 824">• The requirements for meeting commercial operation under the standard Power Purchase Agreement (“PPA”) signed between Hydro Quebec and wind developers in the Province of Quebec include a specific provision mandating the Generator pay a scheduled amount to landowners and First Nations whose lands are affected by the project. The PPA provision refers to an appendix (on which both parties add their initials⁸). This provision appears in the section on the requirement for commercial operation. <p data-bbox="537 870 949 902">The provision of the PPA states:</p> <table data-bbox="537 961 1915 1237"> <tr> <td data-bbox="546 967 1016 993"><i>PARTIE VII DÉBUT DES LIVRAISONS</i></td> <td data-bbox="1234 967 1696 993">Part VII BEGINNING OF DELIVERIES</td> </tr> <tr> <td data-bbox="546 1026 1016 1052"><i>23 DATE DE DÉBUT DES LIVRAISONS</i></td> <td data-bbox="1234 1026 1831 1052"><i>23 DATE OF COMMENCEMENT OF DELIVERIES</i></td> </tr> <tr> <td data-bbox="546 1091 1209 1237"><i>h) livraison au Distributeur d'une attestation à l'effet que le Fournisseur a respecté ses engagements à l'égard de l'application du cadre de référence et à l'égard des paiements annuels</i></td> <td data-bbox="1234 1091 1898 1237"><i>(h) delivery to the Distributor of a certificate to the effect that the Supplier has complied with its obligations with respect to the application of the</i></td> </tr> </table>	<i>PARTIE VII DÉBUT DES LIVRAISONS</i>	Part VII BEGINNING OF DELIVERIES	<i>23 DATE DE DÉBUT DES LIVRAISONS</i>	<i>23 DATE OF COMMENCEMENT OF DELIVERIES</i>	<i>h) livraison au Distributeur d'une attestation à l'effet que le Fournisseur a respecté ses engagements à l'égard de l'application du cadre de référence et à l'égard des paiements annuels</i>	<i>(h) delivery to the Distributor of a certificate to the effect that the Supplier has complied with its obligations with respect to the application of the</i>
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⁸ As per example, see the PPAs signed by Hydro-Quebec with wind developers, available online at: http://www.hydroquebec.com/distributeur/fr/marchequebecos/parc_eoens.htm

Section	Feedback
	<p><i>liés à la présence d'éoliennes versés aux municipalités locales, municipalités régionales de comté, communautés autochtones et propriétaires privés, conformément à ce qui est présenté à l'Annexe IX;</i></p> <p><i>frame of reference and with respect to the annual payments related to the presence of wind turbines made to local municipalities, regional county aboriginal communities and private owners as set out in Schedule IX;</i></p>
<p>11</p>	<p>Approvals AESO and Generator will each be required to obtain and maintain any governmental approval, permits, or licenses required to perform or comply with its respective obligations under the RESA.</p> <p>COMMENTS:</p> <ul style="list-style-type: none"> As per the previous comments, an indigenous support resolution or alternatively an acceptable Aboriginal Participation Plan in accordance with states frames of reference should be a requirement pertaining to the Generator's obligation to obtain and maintain approvals in order to comply with its obligations under the RESA.
<p>13</p>	<p>Renewable Attributes and Funding from other Governmental Authorities [...] Other Government Funding. Generator shall provide written notice to the AESO of any application it makes relating to any funding or incentives that may be provided by any governmental authority in relation Key Provisions of RESA Page 5 of 13 November 10, 2016 to the facility and thereafter shall provide AESO with copies of all correspondence respecting such application. Where such funding or incentive is paid or provided based on capacity of or generation at the facility (i.e. based on kW, kWh, MW or MWh) and is not provided in exchange for title to Renewable Attributes, the Generator shall within 30 days of receipt of any such funding or incentive payment, pay to the AESO 50% of any such payment. The Generator may not seek other funding or incentives that are provided or offered by the Government of Alberta with respect to renewable generation projects.</p> <p>COMMENTS:</p> <ul style="list-style-type: none"> AESO must contemplate the ownership of renewable generation projects by entities partly or wholly

Section	Feedback
	<p>owned by indigenous communities, and permit space for the negotiation of the same. Where an indigenous community is successful in negotiating a governmental guarantee, or Alberta otherwise institutes an Aboriginal Loan Guarantee Program, in each case to assist credit challenged communities to raise the necessary capital to purchase an equity interest in a Generator, a restriction that the Generator may not seek other funding or incentives that are provided or offered by the Government of Alberta with respect to renewable generation projects would preclude the utilization of this very practical financing tool. Suggest an exemption for Generators that are partly or wholly owned by indigenous communities.</p>
<p>14</p>	<p>Operational Covenants</p> <p>Generator will be required to comply with the following operational covenants: [...]</p> <ul style="list-style-type: none"> • Resource Rights. Generator shall ensure that any necessary resource rights remain in effect during the term (for example, waterpower rights for hydro). <p>COMMENTS:</p> <ul style="list-style-type: none"> • In the case the project is developed on an indigenous reserve land, the RESA should add a specific provision mentioning that the rental fees paid for indigenous waterpower rights.⁹
<p>16</p>	<p>Settlement Provisions</p> <p>Contract Price. For each hour, the RESA support payment will equal the metered electricity generated by the facility (capped at the contract capacity) multiplied by the difference between the strike price and the greater of the pool price and zero.</p>

⁹ See, for example, the amendments to the *Natural Resources Transfer Agreement* dated 1938 and 1945 dealing with indigenous waterpower rights of the Stoney Nakoda Nations.

Section	Feedback
	<ul style="list-style-type: none"> • Payment. For each hour, if the difference calculated is positive, the AESO shall pay such amount to the Generator. If, however, the difference calculated is negative (i.e. when pool price exceeds the strike price), the Generator shall pay the absolute value of such amount to the AESO. <p>COMMENTS:</p> <ul style="list-style-type: none"> • The presence of a support payment for the development of renewable energy projects is a policy decision allowing for the introduction of these technologies into the Alberta electricity market consistent with the environmental goals of the GoA. The decision to structure a support payment for renewable developers, while overlooking the alignment of renewable energy projects with indigenous traditional values and the opportunity to encourage indigenous investment in such projects, is a missed opportunity to develop a strong domestic investor community within the province’s indigenous groups, and postpones taking the concrete steps towards economic reconciliation outlined in the Truth and Reconciliation Commission’s 2015 Calls to Action, and the aforementioned UNDRIP. • As indicated, [redacted] urges the AESO to refer to the model adopted by the IESO in Ontario regarding aboriginal participation, aboriginal projects and an aboriginal price adder. Moreover, in a competitive bidding scenario, aboriginal communities have consistently demonstrated resourcefulness and ingenuity in structuring relationships that allow a Project to bid competitively. Without a push to developers encouraging aboriginal participation, however, there is little opportunity for these communities to demonstrate these qualities.
19	<p>Change in Law</p> <p>The RESA will include change in law provisions which allow the Generator to claim additional time or payment adjustments in a variety of circumstances including:</p> <p>[...]</p> <ul style="list-style-type: none"> • Change to ISO rules. Parties will be required to negotiate amendments to the agreement if there is a change in the ISO rules which materially affects Generator’s economics.

Section	Feedback
	<ul style="list-style-type: none"> • Change in Market Structure. If the market structure changes in the future, the contract will include a mechanism for adopting, if necessary, a replacement reference price for purposes of determining the support payments. [...] <p>COMMENTS: A change in law concerning future aboriginal participation in renewable energy projects submitted to the AESO should be mentioned in provision 19. However, strongly encourages the GoA to instead include criteria for meaningful aboriginal participation in the first procurement process starting in 2017. It is not too late at this point to include incentives to encourage indigenous participation.</p>
29	<p>Change of Control</p> <ul style="list-style-type: none"> • Generator Change of Control Prior to Commercial Operation. Prior to commercial operation of the facility, no change of control (other than changes involving affiliates where the original persons in control of the Generator maintain a minimum interest) of Generator will be permitted without prior consent of AESO, which consent may be withheld in the AESO’s sole discretion. • Generator Change of Control After Commercial Operation. Following commercial operation of the facility, a change of control of the Generator will be permitted provided Generator, within 10 business days following such change, provides AESO with notice and such additional information as AESO reasonably requires regarding name of persons/entities which control or have a direct or indirect ownership interest in Generator. <p>COMMENTS:</p> <ul style="list-style-type: none"> • strongly recommends that an exemption for aboriginal groups is provided in this section to allow developers negotiating with these communities to allow for their direct participation in the ownership of the Project. The RESA section on Change of Control should accordingly be modified to allow for a change of control only in the instance of an aboriginal group participating or declining participation in a project.

Section	Feedback
	<ul style="list-style-type: none"> • See sections 16 and 17 of the LRP I Contract on Assignment, Change of Control and Aboriginal Participation Projects: http://www.ieso.ca/Documents/generation_procurement/lrp/LRP I Contract 20150731.pdf. • See also sections 16 and 17 of the FIT Contract: http://fit.powerauthority.on.ca/sites/default/files/version5/FIT 5.0 Contract 20160826.pdf.
31	<p>Generator’s Representations, Warranties and Other Obligations</p> <p>[...]</p> <ul style="list-style-type: none"> • REP Specific Representations and Warranties. Generator will make a number of representations and warranties related to the facility and the Project, including that: (i) there is no reason to believe that commercial operation of the facility may not be achieved by Target COD; (ii) Generator and the facility will comply with the eligibility requirements of the Renewable Energy Program; (iii) Generator has made all due inquiry into requirements to obtain applicable permits and licenses, and it acknowledges it will only be entitled to Force Majeure relief in respect of failure to fulfill any such requirements that were reasonably unforeseeable; (iv) Generator has not received incentives under any other environmental program in respect of the facility; and (v) Generator has not taken any action that would constitute a conflict of interest. <p>COMMENTS:</p> <ul style="list-style-type: none"> • In addition to the specific representations and warranties mentioned in provision 31, [redacted] encourages the AESO to add a representation specific to the acquisition of the consent of aboriginal communities that would be affected by the development of a renewable energy project. The Renewable Energy Program should require, in the first procurement process, the consent of the aboriginal community through a support resolution, or in its absence a clear plan for aboriginal participation submitted by the Generator. • In addition, specific representations and warranties should be added if AESO decides to implement the recommendations on aboriginal partnership and incentives contained in this submission.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
3	<p><i>"The Support Period (and the payment of support payments) will not be permitted to commence any earlier than one year prior to Target COD."</i></p> <p>Our understanding, based on the preliminary published material is that major financial milestones include:</p> <ul style="list-style-type: none">- A 'qualification fee' due as part of the RFQ in Q2 2017,- A final bid price is committed to through the RFP in Q4 2017,- 'bid security' is due either pre-COD or at the RFP in Q4 2017 (see point 6),- Yet the Support Period cannot begin until Dec 2018. <p>These timescales appear to be designed around development of a typical transmission connected wind development, such as that described in the AESO's Renewable Electricity Program Recommendations report appendix C.</p> <p>Other renewable technologies with a lower environmental and construction impact 'may' have shorter development and construction timelines, and could be ready for operation earlier than the proposed earliest Support Period that we would view would be to the advantage of both the AESO and</p>

Section	Feedback
	<p>the Generator.</p> <ul style="list-style-type: none"> ➔ Given the above, would the AESO consider increasing the period before Target COD that the Support Period can begin to bring forward revenue?
4	<p><i>“Requirements for Commencement of Construction... ..when, as subsequently confirmed by the AESO in writing, Generator has:</i></p> <ul style="list-style-type: none"> • <i>Obtained key Alberta Utilities Commission (“AUC”) and other environmental, assessments, permits, licenses and approvals;...”</i> <ul style="list-style-type: none"> ➔ Would the AESO expect to see progress on the AUC approvals process at any earlier stage (e.g. part of the Project Eligibility General Requirement)?
6	<p>From REP-RESA-Term-Sheet-for-Stakeholder-Comments-10-11-2016.pdf: <i>“Prior to commercial operation of the facility, the Generator will be required to obtain and maintain completion and performance security...”</i></p> <p>From AESO 1st competition webpage: https://www.aeso.ca/market/renewable-electricity-program/first-competition/ <i>“RFP General requirements</i></p> <ul style="list-style-type: none"> • <i>Bid security must be provided with submissions.”</i> <p>Presumably these are references to the same security. The extract from the Term Sheet implies that the security needs to be in place before commercial operation, whereas the AESO website which describes the first round, this appears to be required at the submission of the RFP.</p> <ul style="list-style-type: none"> ➔ Please can AESO confirm the ‘trigger’ for the required \$50,000/MW security?
7	<p><i>“The Generator will be required to pay an administration fee to the AESO to cover the AESO’s REP development, implementation and administration costs.”</i></p>

Section	Feedback
	<p>We are concerned that a greater administrative effort may be required for certain technologies (Wind technical Due Diligence for example).</p> <ul style="list-style-type: none"> → Will this fee be distributed amongst bidders on a per participant, per project or on a per MW basis? → At what stage will this fee be levied? → Is there a cap or limit or an anticipated cost?
8	<p><i>“Facility Modification. Generator will not be permitted to materially modify, vary or amend the specifications or features of the facility (as set out in the specifications attached to the RESA) without the consent of the AESO.”</i></p> <p>Over the 20 year term length we anticipate many advances in generation technologies and possible deployment of energy storage technologies (including as envisioned by AESO in its ‘energy storage initiative’).</p> <ul style="list-style-type: none"> → Could the AESO provide a clear and detailed description of what constitutes a material modification, and at which stage (RFP, RFQ, COD) particular specifications and features of a project become unmodifiable? → Would this clause serve to prevent a future retrofitting of an energy storage technology, perhaps one that was participating in an AESO energy storage incentive?
16	<p><i>“Payment. For each hour, if the difference calculated is positive, the AESO shall pay such amount to the Generator. If, however, the difference calculated is negative (i.e. when pool price exceeds the strike price), the Generator shall pay the absolute value of such amount to the AESO.”</i></p> <ul style="list-style-type: none"> → How often will support payments be settled (will the support payment be part of the Pool Statements)? → Will the settlement period be the same for positive differences (AESO to Generator payment) and negative differences (Generator to AESO payment)?
17	<p><i>“20% of the strike price (i.e. the percentage allocated to operation and maintenance costs) will be adjusted by any change in the Consumer Price Index (Alberta, all items) (“CPI”).”</i></p> <ul style="list-style-type: none"> → Different technologies have very different O&M costs. Would the AESO be able to explain the rationale behind the arbitrary figure of 20% as the indexed proportion of the strike price?

Section	Feedback
25	<p><i>“Termination for Convenience Right. Prior to commercial operation of the facility, the AESO may terminate the RESA for convenience... ..Generator’s exclusive remedy is payment of qualifying pre-construction development costs incurred prior to the termination date....”</i></p> <p>→ Please can the AESO define “qualifying pre-construction development costs”?</p>
29	<p><i>“Generator Change of Control Prior to Commercial Operation. Prior to commercial operation of the facility, no change of control (other than changes involving affiliates where the original persons in control of the Generator maintain a minimum interest) of Generator will be permitted without prior consent of AESO, which consent may be withheld in the AESO’s sole discretion.”</i></p> <p>For a project’s successful delivery and implementation, it may be advantageous for control of the generator to pass from a company focused on development to one focused on construction or be required through the finance mechanism chosen.</p> <p>→ Could the AESO elaborate on the circumstances where it might choose to withhold consent for a change of control?</p> <p>→ Please define minimum interest?</p>
General question without direct Term Sheet reference	<p>From AESO 1st competition webpage: https://www.aeso.ca/market/renewable-electricity-program/first-competition/</p> <p><i>“RFQ General requirements</i></p> <ul style="list-style-type: none"> • <i>Bidders must pay a non-refundable qualification fee to participate”</i> <p>The AESO website describing the first round discusses a ‘qualification fee’ due at the RFQ stage. We cannot find reference to this on the Term Sheet, but depending on its magnitude, it may have significant impact on a project’s cashflow requirements.</p> <p>→ Can AESO comment on the anticipated amount of this qualification fee and if it will be quantified on a per participant, per project or per MW basis?</p>
General	<p>From AESO 1st competition webpage: https://www.aeso.ca/market/renewable-electricity-program/first-competition/</p>

Section	Feedback
question without direct Term Sheet reference	<p>“RFQ General requirements...</p> <ul style="list-style-type: none"> ● ...Bidders must demonstrate their qualifications in three categories: <ul style="list-style-type: none"> ○ Project eligibility” <p>Presumably, proof of land control will be required as part of the RFQ ‘Project eligibility’ requirement.</p> <p>➔ Can the AESO comment on what it would expect to see at this stage of the process, i.e. an exclusivity agreement with a landowner or an option agreement to lease or purchase the land?</p>
General question without direct Term Sheet reference	<p>From AESO 1st competition webpage: https://www.aeso.ca/market/renewable-electricity-program/first-competition/</p> <p>“RFQ General requirements...</p> <ul style="list-style-type: none"> ● ...Bidders must demonstrate their qualifications in three categories: <ul style="list-style-type: none"> ○ ...Financial strength and capacity ○ Technical capability” <p>➔ How will the AESO assess the RFQ requirements? Will it be a pass/fail test or a scoring matrix to only invite the highest scoring bidders through to RFP?</p> <p>➔ What other tests will the AESO carry out to determine the eligibility/viability of the actual site?</p>
General question without direct Term Sheet reference	<p>From AESO REP main webpage: https://www.aeso.ca/market/renewable-electricity-program/</p> <p>“REOI... ..Other highlights No obligation on interested parties to participate in the next stage, the RFQ”</p> <p>The AESO Recommendations Report discusses at length an ROEI stage in Q1 prior to the RFP stage. However, we note that such a stage is not</p>

Section	Feedback
	<p>mentioned in either the Term Sheet or the AESO 1st competition webpage (but does feature on the REP main webpage).</p> <ul style="list-style-type: none"> → Has this stage now been removed from the process? <p>If this stage is still part of the process, the information on the website has stated that participants of this stage are not obligated to participate in the RFQ.</p> <ul style="list-style-type: none"> → Is participation in the REOI required to participate in the RFQ?
<p>General question without direct Term Sheet reference</p>	<p>From AESO's Renewable Electricity Program Recommendations report (p24): https://www.aeso.ca/assets/Uploads/AESO-RenewableElectricityProgramRecommendations-Report.pdf</p> <p>"5.2 Overview... .. <i>connection access to the</i></p> <ul style="list-style-type: none"> → Could the AESO provide more information on the practicalities of implementing a prioritization of winning bidders? → Would a similar prioritization be given to winning bidder's projects connecting on the distribution network, but which require AESO regulatory approval?

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
3.	We commend the clear time period for the support (20 years). It is crucial that there that successful projects are indeed in operation by 2019, while ensuring enough competition to procure the most cost-effective projects possible, while completing all due diligence on environmental assessments. This can be accomplished by implementing penalties for inability to meet the target COD, stringent enough to ensure that only companies who can feasibly achieve the target COD win the bid.
5.	If there is a facility with a combination of wind and battery behind the fence, will the same provisions apply for electricity provided from the battery? We submit that they should, as the batteries would be providing renewably generated electricity.
15.	Can you share the reason for not permitting the sale of ancillary services? We submit that they should be permitted, as renewable resources such as wind power are increasingly able to provide ancillary services in other markets, which can lower overall costs to the grid. In addition, we do not want the restrictions under the RESA to be such that it disincentivizes the deployment of storage capacity.
19.	It is important to clarify that the capacity market will not necessitate a review of these RESAs, to avoid uncertainty in the bidding process and lack of clarity on the plan for review in the future. Given that an indexed REC mechanism will be used it is reasonable to clarify that there will be no further reviews of the

Section	Feedback
	RESAs after the implementation of the planned capacity market.
General	<p>We would also like to submit some general comments on the first competition:</p> <ul style="list-style-type: none"> - We recommend that there be a requirement for demonstrating community support (such as a letter of support from the municipality, or a community relations plan and status). - We fully support the requirement to use existing transmission and distribution systems - We understand the reasons for having a limited set of criteria for the first procurement round. However, we recommend that subsequent processes incorporate other quantitative and qualitative criteria in different components of the process.

Feedback Form

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Section	Feedback
3	<p>a) It is not entirely clear when the payment security has to be posted. Is it at the time the RESA is signed or is it at the bid stage already</p> <p>b) The amount listed of \$50,000 per MW seems excessive and will have the effect of unnecessarily increasing the bid prices.</p> <p>c) The target COD date of December 2019 for the first procurement is aggressive assuming up to 11 months for the procurement process until bid award. Assuming bid award at the end of 2017 and allowing for ~12 months for construction, only ~ 12 months are available to get through the AUC permitting and AESO interconnection study process. Allowing an additional 6 months prior to a reduction of the RESA term (end of June 2020) would be a reasonable approach.</p>
4	<p>considering that the financial model of a proponent is a highly confidential document to the proponent, we believe that as such, it should at the most be available for review by AESO but not become part of the records that would be available through a freedom of information inquiry and potentially give competitors insight into the cost of capital and other assumptions of a given bidder/proponent.</p>

Section	Feedback
6	same question as in 3, when is the payment security required to be posted? It states that the payment security must be posted prior to COD but does not specify exactly when, since AESO can already draw on the security if construction has not commenced by the CC Long Stop Date.

Section	Feedback
9	<p><u>AESO Connection Queue Process and Related Costs</u></p> <p>A) The current AESO connection queue process are a material part of the interconnection costs and hence have a negative impact on the required bid price when averaged between projects that drop back out of the queue because a bid was not successful and later have to reapply and do all the work from the beginning.</p> <p>B) In AESO's renewable electricity program where 5,000 MW of renewable electricity capacity will be procured the current gated interconnection queue process makes little sense. It unnecessarily wastes both AESO's and the developer's financial resources. If other Canadian renewable energy procurements are a guideline, each RFP will likely be oversubscribed by a factor of ~10:1 This means that for the first 400 MW almost 4,000 MW in interconnection queue applications will be received that each have to be treated as if they were to obtain a contract. Unless a proponent is willing to build a facility as a "merchant plant" inevitably the significant amounts spent pursuing each queue position by the unsuccessful bidder will be lost and the proponent has to start over again hoping to be successful next time. Assuming a 1:10 ratio of successful verses unsuccessful bids this could easily amount to in excess of \$9 million of wasted resources for each bid process (\$1 million per queue position wasted).</p> <p>C) A suggested remedy to this process would be that AESO publishes transmission capacities for each of their designated Zones in Alberta based on the current base case. This would be updated with each successive RFP taking into account non-renewable energy generating facilities that have connected outside of the REP process.</p> <p>D) Connections would then be awarded only to the successful proponents in the bid process similar to the way it has been handled in Ontario.</p> <p>E) It would allow for more aggressive bid prices by proponents, broaden the field of possible bidders and avoid a rush for queue positions and stretching the resources of both the AESO and the TFO.</p> <p>F) It would also allow local Canadian developers to stay engaged longer in the development process before they are forced to sell their development assets and thereby retaining more of the value generated by the REP in Canada.</p> <p>G) Should AESO decide to maintain the current process throughout the 5,000 MW procurement process the other option it may want to consider, is to front end load the procurement and dividing the procurement into 1,000 MW or larger tranches, starting with the second scheduled procurement. Unsuccessful bidders should be allowed a second chance to bid their development assets before they loose their respective queue position, thereby providing better justification for the significant amounts spent pursuing the interconnection queue position, while at the same time not allowing "perpetual queue hugging" and a fair allocation of interconnection assets to REP and other market participants. Another benefit of front end loading procurement of renewable resources is the fact that we have generationally low interest rates that may not continue at the same low rates for years to come.</p>

Section	Feedback
16	<p>Settlement Provisions:</p> <p>A) Since the draft RESA is set up as a 20 year contract for differences (CFD) where the difference between the pool market price and the bid price (strike price) is compensated it doesn't make any sense that in the first procurement no allowance is made for the time a renewable energy resource is generating its power. Solar and Wind energy would have sizeable differences in system value since solar energy is only produced during the daytime and predominantly over the summer months when typically the pool price is higher and hence for an equal strike price from a wind and a solar project the amount that has to be supplemented is less for a solar project.</p> <p>B) A suggested solution is to not just to compare the bid prices, but also the anticipated support for each technology category (solar and wind energy) based on AESO's forward price curve for peak and off-peak generation.</p> <p>C) Another consideration should be the anticipated forecasting errors and the corresponding cost of back up generation to mitigate forecasting errors based on the accuracy of forecasting for day ahead wind and solar output.</p> <p>D) A less complicated approach could be to simply establish technology based set asides based on what would be considered an optimized system approach that maximizes available transmission resources, anticipated cost of generation (can be adjusted annually based on bid prices received) and the projected diurnal and seasonal generation profiles of the renewable energy resources available plus the proximity of the available renewable resources to load centres.</p>
18	<p>Curtailement: It might be a good idea for AESO to think about incentivizing generators to install energy storage devices that might alleviate any need for curtailment or to create a separate procurement category for both short and longer term energy storage technologies to maximize the system value of renewable energy resources and avoid the wasting of clean energy.</p>

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



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[Redacted submitter information]

Section	Feedback
3	As written, only force majeure and changes in laws can cause an extension. To cater to the best interests of the AESO and the generator, we recommend that longstop dates should be extendable based on reasonable decisions and actions by both parties.
6, Security over the Facility	We propose that the security interests in the facility provided to the AESO are subordinate to the security interests held by the senior debt lender(s) to the project. Without first security, senior debt lenders will not lend to such facilities.
13, Renewable Attributes	We recommend that AESO offers an incentive to generators developing baseload renewable power such as biomass to account for the additional renewable attributes created by such projects. By our assessment, biomass projects create significantly more renewable attributes per MWh of power generated compared to top tier wind projects, primarily due to the benefit of methane avoidance that such projects present (in certain instances, up to 1.7x the offsets per MWh). In order for biomass to be able to competitively bid into the AESO Renewable Electricity Program, we suggest that a credit of \$7/MWh be provided to biomass developers and believe that this is justifiable given the additional renewable attributes the projects will provide to AESO. Additional benefits of biomass include that it contributes to grid stability, with an assumed capacity factor of $\geq 90\%$, and that it enhances the geographical diversification of the grid, with top biomass development projects being far-removed from where additional wind generation is currently proposed.

Section	Feedback
13, Other Government Funding	We suggest this clause only apply to funding programs/agreements arising after the November 3, 2016 announcement of the Renewable Electricity Program. Payments from programs/agreements prior to this program should continue without the Generator paying half to AESO.
14, Fuel Sources	In the case of biomass, we recommend that any residuals from sustainably harvested biomass be considered acceptable fuel. This allows the generator to backstop its fuel supply with additional sources should there be a curtailment at a major fuel source.
17	Indexing 20% of the contract strike price to CPI disadvantages technologies with higher operation, maintenance and fuel costs. In order for such technologies to be able to competitively bid in the REP auction, we would recommend that the percentage of the strike price indexed to CPI is project-specific and is part of the bid. In other words, a project could bid in a strike price, a percentage index to CPI for the life of the contract, and winners could be determined by looking at the projects on a net present value per MW basis.
31, REP Specific Representations and Warranties	<p>With regard to “(iv) Generator has not received incentives under any other environmental program in respect of the facility”:</p> <p>Similar to our recommendation on 13, Other Government Funding above, we suggest this clause only apply to funding programs/agreements arising after the November 3, 2016 announcement of the Renewable Electricity Program. Funding received under certain Government of Alberta programs have been used to advance the development of some renewables project. Having taken advantage of funding previously made available by the Government of Alberta should not render a project ineligible.</p>

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Section	Feedback
General	<p>[Redacted] would like to thank the AESO for allowing stakeholders with an opportunity to provide feedback on the term sheet. [Redacted] has provided its comments on multiple sections below and is also available to discuss or provide clarity at the AESO's convenience.</p> <p>In our comments below, we have assumed that for this initial REP to be considered successful by the people of Alberta, it must deliver competitively-priced power that is in operation by the end of the second quarter of 2019 (to this end, and as discussed in our comments on section 3, [Redacted] suggests that the Target COD be no later than Q2, 2019). If the projects selected in the initial REP are immature and run into permitting or transmission problems, then this will create uncertainty for all following RFPs, which will negatively impact the Alberta governments ability to achieve their renewable energy goals.</p> <p>[Redacted] and other developers have invested significant time and money into developing advanced projects in anticipation of this RFP and under that assumption that quick delivery of competitively-priced projects will be a priority. The importance of this investment in Alberta over the past few years and the ability to deliver operating projects in a timely manner should not be discounted. Our comments below are all offered in the context of these goals for the initial REP.</p>

Section

Feedback

We would also like to point out that the use of the terms “RFQ” and “RFP” may be misleading to some degree in this procurement. Typically, an RFQ would qualify proponents in general terms and the RFP would delve into the details of individual projects, including pricing. In such a scenario, project details would necessarily be broad and subject to change between the RFQ and the RFP. In [REDACTED] view, the proposal by the AESO is more akin to a two-stage RFP. The project’s technical bona fides are established in the first stage (called the “RFQ”), and then the pricing is provided in the second stage (the “RFP”). In other recent RFPs, an applicant’s submission must first pass a review for completeness and general technical requirements prior to the opening of their submission on price (typically in a separate, sealed, envelope). If as we suggest, the REP is viewed as a 2-stage RFP rather than an RFQ with a subsequent RFP, calls for allowing changes between the RFQ and the RFP, or requiring less specificity during the RFQ make much less sense. We would recommend that the AESO maintain their current approach of requiring a high level of detail in the RFQ that cannot be changed prior to the RFP.

[REDACTED] is very concerned that some proponents are trying to influence the AESO to dilute the requirement that projects be in an advanced stage for this first REP, creating the risk that this first REP will not be successful in meeting the goals of the government. In order to ensure a successful (as discussed above) outcome for the first REP, [REDACTED] strongly recommends that the AESO either restricts participation in the first REP to advanced stage projects that can commence construction in early 2018, or otherwise prioritize the selection of these projects. If advanced stage projects are not selected, the AESO runs the risk of selecting projects that cannot be completed in the timeframe it desires (2019 or earlier) or, at all if issues that are currently unknown are brought to light in the permitting process.

As an example of what could go wrong, we’d suggest that the AESO consider the Chaplin Wind Project in Saskatchewan. This project was awarded a PPA by SaskPower in early 2012 despite being sited near an Important Bird Area. This proximity ultimately resulted in the project being unable to secure the approvals and permits required, and after almost 5 years, this project has still not started construction. By prioritizing projects that are more advanced in their permitting, the AESO can avoid selecting projects like Chaplin that have not yet uncovered potential roadblocks to receiving the required permits. Note that this applies to interconnection approval as well as to environmental permits, especially in a system like Alberta’s that has a high potential for transmission congestion.

In order to avoid the risks of projects either not being built or being delayed long past the Target COD, [REDACTED] recommends only advanced stage projects be allowed to pass the RFQ stage, specifically projects that are in Stage 3 or higher of the AESO interconnection process and have submitted a Power Plant Application, NID and Transmission Line Application (if needed) to the AUC prior to the RFQ submission date. This will ensure that successful projects can meet or beat the Target COD while minimizing delays and allowing the Government to meet their renewable energy targets on schedule. Some may suggest that such an approach would limit competition, however as of the date of this submission the AESO Project List indicates there are 20 wind projects

Section	Feedback
	<p>totalling 3000MW, that are in Stage 3 or higher. Out of this subset 10 are in stage 4 and some have submitted AUC applications or have already received permits. ■■■ believes that these advanced projects are more than sufficient to ensure that this procurement is very competitive while still delivering renewable energy to the grid in the timeframe the AESO and the Government desire. Projects that are not at this advanced level of development prior to the RFQ submission are highly unlikely to be able to be in operation in 2019. ■■■ believes that the AESO shares our view that the initial REP must be successful to clearly demonstrate the benefits that renewable energy can bring to Alberta's energy system. The other important point to note is that, unless the current interconnection process is changed, if projects receive a RESA in the REP but have not yet reached stage 3 in the AESO's process, they may find themselves without a clear path to transmission capacity as other, more advanced projects (or projects that subsequently advance to stage 3 before them) take up that transmission capacity, further hampering the chances of the selected project being operational by the Target COD. Projects that are not sufficiently advanced for the initial REP will be able to compete in subsequent rounds once they are further advanced.</p> <p>Finally, ■■■ also suggests this procurement not make consultants, EPCs and members of organizations exclusive to one project. ■■■ recognizes that such exclusivity was a requirement in the Competitive Transmission Procurement, however ■■■ strongly recommends the AESO not impose similar requirements for the indexed REC. In the renewable energy industry there are many consultants, EPCs and members of each renewable energy company that work on multiple projects. ■■■ believes any exclusivity will limit competition and unnecessarily eliminate projects from participating. It will also create strong divides in the industry and would not be conducive to building a competitive Renewable Energy sector in Alberta.</p>
Section 2	<p>■■■ recommends the AESO provide no room for Generators to extend their contract term, buy back term forfeited due to delays in construction, or otherwise mitigate issues related to non-performance. The AESO should establish hard deadlines with substantive penalties to ensure that projects get built within the desired timeframe.</p> <p>■■■ also recommends the AESO consider a 25-year term for the RESA to more accurately reflect the operational lifetime of current wind turbine technology (turbines are now certified for a minimum of 25 years, up from 20 years). This longer term will result in lower bid prices due to the longer financing amortization period associated with revenue certainty.</p>
Section 3	<p>As discussed above, there are many advanced stage projects that have a high likelihood of achieving a Target COD of Q2 2019 or earlier. ■■■ encourages the AESO to establish an early Target COD and shorten the COD Longstop Date to December 2019. Tightening the COD window will ensure that early-stage projects do not participate that would jeopardize the successful outcome of the first REP. In this vein, ■■■ recommends that rules need to be strictly enforced in the RFQ process with stiff penalties should they be broken. Such penalties, along with high bid/completion security, are needed to ensure that immature projects do not participate without due care, and that unscrupulous developers do not submit reckless bids to secure RESAs that they believe they will be able to sell or otherwise "figure out" after the fact. As an example, Hydro Quebec's recent procurement required security of \$40,000/MW on bid with a further \$40,000/MW upon execution of the contract. We recommend that</p>

Section	Feedback
	<p>AESO be consistent with Hydro Quebec's recent security requirements in order to avoid problems of immature projects being awarded contracts.</p> <p>█ suggests the AESO fix a "start of construction date" for all projects awarded at 9 months after REC award or Q3 2018 in order to have projects operational by 2019. The Target COD should be Q2 2019 with the COD Longstop Date of December 2019.</p>
Section 4	<p>█ strongly opposes the requirement to provide a financial model to the AESO. Our financial models contain proprietary and competitive information that is highly sensitive. The AESO is a public body subject to the Freedom of Information and Protection of Privacy Act and as such there is the real possibility that our proprietary models could be made public. We understand that the AESO required a financial model for the competitive transmission procurement, however that procurement was for regulated assets. This procurement is for unregulated assets and as such no model should be needed. █ suggests Generators provide a financing plan to the AESO as part of the RFQ to address any concern about availability of capital.</p>
Section 5	<p>Can the AESO provide more information on the non-zero offer letter and clarity on the list of approvals required?</p>
Section 6	<p>█ recommends removing the "Security over the Facility" clause from the RESA. This is not a standard requirement in the industry, and we are not clear why AESO would require such security, and know that such security will be an issue for lenders and third party project financing (as it would likely have priority over their security interests). █ suggest others methods be explored for post-COD security.</p>
Section 7	<p>Can the AESO clarify the administration fee amount? Is this an annual fee or a one-time payment upon RFP submission?</p>
Section 8	<p>█ agrees with this section. █ suggests Generators declare their project size and capacity during the RFQ stage or earlier. As discussed above, this will ensure immature projects do not participate and the AESO increases the chances of projects meeting their Target COD or earlier.</p>
Section 13	<p>█ suggests that the language in this section states explicitly that the definition of government funding does not include tax incentives.</p>
Section 14	<p>Can the AESO provide more clarity on "Own/lease the facility" section?</p>
Section 15	<p>While we understand that the RESA is intended to be for a bundled product of all the output from the facility, we are concerned that – without more certainty around curtailment (as discussed below), potential exposure to negative pricing, etc. – the exclusion on selling ancillary services may be too restrictive. Without more clarity on this topic █ cannot accept forfeiting this right or provide more productive feedback on this issue.</p>

Section	Feedback
Section 18	<p>Can the AESO provide clarity on the rights Generators have to not be curtailed? ■ recommends projects be protected from curtailment as a result of projects becoming operational in subsequent RFP's and from curtailment resulting from a Change of Law.</p> <p>In order to limit curtailment issues and select projects with a clear path to interconnecting, ■ recommends the AESO only select projects that are in stage 3 or higher with their AUC applications submitted by RFQ date. Projects in this stage have curtailment issues resolved or are aware of particular issues and have a path for interconnection.</p>
Section 19	<p>The Change in Law section needs to address the capacity market and potential capacity payments. The Change in Law section should also be clarified to include circumstances where new ISO rules or laws are enacted and not just to existing laws. The use of 'directed specifically' in the Designated Changes section is unclear and not defined well. It refers to no relief where the Generator had "prior notice" of the change. Can the AESO also clarify what constitutes prior notice? Is this a notice prior to the contract being entered or after? Furthermore, what is meant by "a change in law "due to the Generator's conduct"?"</p>
Section 20	<p>■ suggests that Force Majeure be limited to general industry strikes, delays or disruptions in the construction of certain transmission or distribution facilities, restraint by government order/judgements and for appeals to a Generators or TFO's AUC Application. Force Majeure for an appeal should only be allowed if the Generator, AESO and TFO (if needed) have submitted the Power Plant Application, NID and Transmission Line (Facility) Applications, respectively, for the project to the AUC prior to the RFQ submission date. If a project does not have these applications submitted to the AUC prior to the RFQ submission date, the project should not be allowed to participate in this procurement as it creates a serious risk to become operational in 2019.</p>
Section 25	<p>■ believes the AESO should only be allowed to terminate for convenience with deposit forfeitures if construction does not commence by the later of June 30, 2018 or 9 months after REC award (this date should be 18 months before the agreed long stop date). The AESO should not be allowed this termination for convenience if construction commences on or before the date specified to meet the long stop date. Without this protection, financing and equity commitments will be much harder and more expensive to obtain or not available at all, given the uncertainty that this clause creates. This difficulty will make the resulting projects much more expensive for Alberta rate payers.</p>
Section 27	<p>In respect of the Security Agreement, a mortgage charge should be included. ■ also requests that language be added to this section such that an agreement not be unreasonably withheld. Third party consents can be the final condition precedent to financial close, and ■ would like comfort that the AESO will be responsive to such a request, and act reasonably as the counterparty.</p> <p>In respect of the Direct Lender Agreement, this could presumably include certain rights that provide adequate protection to the AESO without it requiring a security interest in the facility/project. ■ also requests that language</p>

Section	Feedback
	<p>be added to this section that reasonable comments from a lender be incorporated in the prescribed form. Additionally, [REDACTED] also requests that language be added to this section such that a request not be unreasonably withheld.</p>
Section 28	<p>[REDACTED] believes generators should be allowed to assign to an affiliate (controlled by, or under the same control as the generator) at all times without consent.</p> <p>Assignment by the AESO should also require consent by the Generator, not to be unreasonably withheld.</p>
Section 31	<p>[REDACTED] recommends the AESO identify milestone accomplishments for a project to pass the RFQ stage. The AESO should not let the Generator make undocumented and unqualifiable representation and warranties related to the facility and project. By providing key requirements in the RFQ stage, the AESO can ensure projects COD by the desired time frame.</p>

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Section	Feedback
2 Term	We would suggest that the Generator be given the option to pay liquidated damages for a delay in COD versus shortening the Support Period. This should provide sufficient incentive for generators without being unduly punitive.
3 Target and Longstop Dates	<p>The concepts of Target COD, and COD Longstop Date, and timing seem reasonable, however we believe that the CC Longstop Date adds an additional unnecessary complication. We agree with the principal that the generator should bare the risks of project construction that are within its control. As currently contemplated, there are several conditions that need to be satisfied (including financing) before commencement of construction is deemed to have occurred. Significant project progress and expense could have been achieved (which would still enable the project to reach completion by the COD Longstop Date) without necessarily meeting all of these conditions. Bidders who pass qualification in the RFQ round of the process should be capable of managing construction risks and not need to be held accountable to an additional interim milestone.</p> <p>Force majeure should include unanticipated delays in achieving AESO and AUC approvals (given that an individual participant has no control over AESO or AUC workload).</p> <p>Under Section 20, the AESO is proposing a termination for Extended FM. If the contract is terminated for an extended FM event, then the Generator should not owe liquidated damages to the AESO for such termination.</p>

Section	Feedback
	<p>We need to understand the full picture regarding project milestone “bright line tests” the AESO has in mind to assess project readiness at the RFQ stage to fully comment on this section. Generally, we would suggest the AESO minimize the requirements for these type of tests, and leave the risk in the generator’s hands to manage construction and COD timing.</p>
<p>4 Requirement for Commencement of Construction</p>	<p>Since the Support Period cannot begin more than one year prior to Target COD, it should be noted that it is commercially reasonable to delay construction so as not to achieve COD before this date.</p> <p>The generator having “commenced construction activities at the site” is one of the conditions that has been identified as being necessary before the AESO deems that the facility has officially commenced construction. This is problematic as most lenders would not approve the funds to start construction with a) the limited compensation that appears to be contemplated for AESO termination for convenience prior to construction commencement, and b) the potential for the CC Longstop date to lead to contract termination unless the AESO deems that commencement of construction has taken place.</p> <p>If the AESO feels it is necessary to put itself in a place to confirm project readiness, then it should confirm the “ability to commence construction activities” rather than their actual commencement.</p> <p>Other than in the context of the AESO’s proposed termination for convenience post construction commencement (which we consider to be problematic, as discussed below), there does not appear to be a reason for the Generator to deliver a copy of its financial model to the AESO.</p>
<p>5 Requirement for Commercial Operation</p>	<p>The requirement that the facility must be able to achieve 90% of “contract capacity” to achieve COD seems at odds with the ability under section 8 to reduce the “installed nameplate capacity” to not less than 80% of the “capacity set forth in the RESA” (which we assume to be the same as the “contract capacity”).</p>
<p>6 Security</p>	<p>We need to understand the actual language proposed for the AESO’s security interest in the facility, and how this interacts with the rights of secured lenders to comment on this section, but at a minimum the AESO’s rights must be subordinate to lender’s step-in rights.</p>
<p>7 AESO Administration Fee</p>	<p>We recognized that per Bill 27 the AESO is likely to be required to levy reasonable fees to cover the cost of the procurement and administering the RESA contracts. A principle should be adopted that participants in one procurement round should not be responsible for the costs of funding subsequent procurement rounds.</p> <p>We request that the procurement and administration costs be estimated before the RFP submission is required and incorporated into the RESA as a fixed fee per MW of contract capacity. This will allow these costs to be reasonably taken into account during the bid process.</p>
<p>8 Design and Construction</p>	<p>It seems reasonable for the AESO to restrict the maximum support payment to covering only the MWs of contract capacity. However, it seems unreasonable and unnecessary for the AESO to terminate the entire RESA if the facility’s nameplate capacity exceeds the contract capacity.</p> <p>Facility modification restrictions should only be implemented to the extent that they negatively impact the AESO or the generator’s ability to perform under the RESA contract.</p>

Section	Feedback
	<p>Say for example that a new blade coating technology (or another development) emerges that can increase the performance of a facility's turbines. This type of modification should be allowed. If the facility has been underperforming relative to its contract capacity, then the facility will get closer to original AESO expectations. If the facility ends up over performing, then the support payments can be capped at the contract capacity, and the generator will simply receive market price for the excess generation. Under either set of circumstances the performance of the assets is improved, providing additional clean energy to the grid, supporting the government and AESO's goal of greening the grid. This type of modification should be encouraged, not discouraged.</p>
12 Reporting	<p>Reporting requirements should be limited in scope to what is required to ensure compliance with the agreement. Generators must also be able to comply with the requirements at a reasonable cost.</p>
13 Renewable Attributes and Funding from other Governmental Authorities	<p>It is difficult to gauge the scope of the section on other government funding. More specific definitions are required as to what constitutes a governmental authority, and what constitutes funding or an incentive. If a project is proposed by an entity that is owned (in whole or in part) by a municipality, does that constitute government funding? If a project locates in an area with low property taxes, does that constitute an incentive? Does this include credits passed on to distribution connected projects?</p> <p>We do not believe that government funding for areas such as facilitating the participation of aboriginal communities should be prevented or shared with the AESO.</p> <p>It is likely that government support would be sought in advance of the project receiving a RESA contract (and therefore concepts like notice etc. don't seem to apply). Are these restrictions and sharing formulas intended only to apply following the signing of the RESA?</p> <p>Restrictions on the Generator with respect to seeking funding or incentives from the Government of Alberta (GoA) with respect to renewable generation projects should be limited to not seeking these things for the facility (not all projects undertaken by the Generator).</p>
15 Ancillary Services	<p>Presumably this section is only meant to limit the sale by the Generator of ancillary services from the facility. A full prohibition on the sale of ancillary services seems excessive and will more problematic for non-wind technologies. To encourage the development of storage potential in the province, we would recommend that the AESO specifically allow the future addition of storage to the facility sites and the sale of ancillary services from such additions.</p>
16 Settlement Provisions	<p>The RESA support payment should equal the metered electricity generated by the facility (capped at the contract capacity) multiplied by the difference between the strike price and the pool price. Currently pool prices in Alberta can not go below zero. Eliminating this floor would require an AESO market rule change, and should be covered under the Change in Law section. Having generators bare the risk of pool prices falling below zero would violate the concept of the index REC covering pool price risk.</p>
17 Indexation and Payment Adjustments	<p>The Consumer Price Index has done a poor job historically of covering the increasing costs of labour and maintaining power facilities in Alberta. We suggest adding an Alberta labour component to the indexation factor.</p>

Section	Feedback
18 Curtailment	<p>We consider the allocation of this risk to be a material factor in determining whether to proceed with projects in the Alberta market.</p> <p>Curtailments are likely to be caused by either system-wide conditions of over supply (of either renewables or of all types of generation), or regional conditions caused by the presence of other facilities on the system who (under Alberta’s current transmission framework) may not have been in existence when the facility with the RESA contract was sited in that location.</p> <p>This may not be a material factor to consider in the operation of the system today, however this could change over time with government direction to materially increase the level of renewables on the system or other system changes, and therefore could change during the term of the executed RESA.</p> <p>Generators are not able to manage this risk for their facilities, and it is more consistent with the AESO’s stated “principle of allocating risk to those best able to manage it” to not have generators bare this risk.</p>
19 Change in Law	<p>Given the number of potential changes in the electrical sector anticipated in the next few years, as well as the many that could happen over the next twenty, the change in law provisions contemplated for coverage under the RESA are overly narrow and need to be broadened.</p> <p>In describing the AESO’s approach to change in law protection at the recent Alberta Power Summit, Ms. Moore stated “the principal that we used when we thought about change in law was if you submit your bid today based on your project costs and your project economics, and the law changes in five years and your costs doubled that’s not fair ... you don’t even know that that risk exists today and you can’t value it as part of your bid price, and so we’re prepared to take ... those changes of law and the risks associated with those off the table”.</p> <p>This seems like a fair and broad based approach to change in law protection, however the protections in the draft term sheet appear to have been crafted on a much narrower basis.</p> <p>Designated changes as currently contemplated deal only with changes promulgated by the GoA or any regulatory body in Alberta. This protection should be extended to include any body that is in a position to create laws, regulations, or orders impacting the facility, like for example the federal government.</p> <p>It is unclear why it is reasonable to only cover designated changes that are “directed specifically at: the Generator in relation to the Project; the rules and regulations which govern generation facility owners; or the RESA, the subject matter of the RESA or arrangements in the nature of the RESA”. These distinctions seem ripe for controversy over time.</p> <p>It is unclear what the distinction is between the use of the terms “Generator” “facility” and “Project”. Why would there be a restriction such that change in law protection could only be invoked if the change was directed at the Generator and not the facility? Rarely would a change in law be expected to be directed at a specific Generator in relation to a specific Project. Why would changes that impacted the facility and similar facilities not be included.</p> <p>Change in law should protect Generators from changes that materially affect Generator economics related to the facility that is under the RESA. Material cost increases can easily result from changes that impact the facility but are not directed specifically at the facility, the generator, or even the generation industry (for example changes to safety regulations, or federal environmental standards).</p>

Section	Feedback
	<p>All changes in law should result in preservation of the Generator’s financial position. This is specified as the intent following a designated change, however it is not clear that this is the intent after a Change in ISO rules or Change Market Structure.</p> <p>Relief will not be provided for a designated change “where the Generator had prior notice of the change”. Can you please clarify prior to what point this notice must be received? We believe a that it is reasonable to exclude changes that were finalized prior to the RFP submission, however notice after that point provides no relief for generators.</p> <p>The provision that “a change in law will not qualify to the extend that it only applies...due to the Generator’s conduct” seems very broad, and must be judged against some reasonable standard of conduct. In combination with the provisions of Section 14 of Bill 27, for example, a scenario could be envisioned where GoA could enact legislation or direct the ISO to change a market rule for the “control of costs in respect of renewable electricity programs or renewable electricity support agreements” that would not be covered under change in law, because the law was imposed as a result of the government not liking the “conduct” of generators because they made profits under the RESA.</p> <p>Currently change in law only appears to cover single material events, and does not sufficiently address a situation where multiple changes add up to materially impact the generator’s economics. We suggest this notion be added to the section.</p> <p>It is unclear whether changes in cost allocations that could have material impacts on generator economics (such as line loss allocations) are considered to be changes to ISO rules.</p>
20 Force Majeure	<p>Force Majeure coverage only extends to events that “could not have been reasonably anticipated”, which seems like a difficult standard to measure. I may recognize that a risk exists although it is outside of my control. Does this mean that I have then reasonably anticipated it?</p> <p>There appears to be unequal treatment of FM situations that occur prior to COD and after COD. Prior to COD the full Supply Period is delayed and preserved. After COD the supply period is shortened as a result of FM. This is equivalent to the penalty imposed on the generator for not meeting Target COD as a result of its own fault which seems punitive. We believe that it would be more reasonable for an event of FM to cause a day for day extension of the Supply Period. The generator will not be unduly enriched as the extension will not occur until the end of the term, and will also not be unduly penalized as a result of losing a portion of the Supply Period through no fault of their own.</p>
22 Insurance	Insurance requirements should allow for self insurance to be used by companies with the capacity to manage such exposures.
23 Termination – Event of Generator Default	Reasonable cure periods should be included for generator events of default.
25 Termination – AESO Convenience	We believe that termination for convenience is a provision that is unlikely to be needed in the first round of procurement, and that it will have negative consequences for achieving the procurement’s low cost objective, because it creates an additional risk that generators will need to price into their bids increasing prices.

Section	Feedback
	<p>If a termination for convenience clause must be included, then it should cover all costs incurred by the generator. The imposition of a price cap further increases risk and therefore bid prices. If a cap must be included, then it should be set at a level that would at least be expected to cover the full costs of construction and should be imposed on a per MW basis.</p> <p>The clause as currently proposed creates a distinction between before and after the commencement of construction. The AESO has listed several significant steps it requires to all be completed before commencement of construction has been deemed to occur, including securing financing and procuring long-lead equipment. Completing any one of these steps could lead to significant costs being incurred by the generator. For this reason, we do not believe that before and after commencement of construction (as defined) provides a good dividing line for a change in the compensation formula.</p> <p>We do not believe that a termination for convenience clause if appropriate post COD (if this period was intended to be covered by the post construction commencement language). This has not been common practice in other renewable procurement processes.</p> <p>It is not appropriate to calculate compensation for termination at any stage based on a theoretical financial model. Using a model has the potential to leave generators with stranded costs if actual costs are greater than those modeled and the AESO terminates.</p> <p>It is also unclear how the proposed Internal Rate of Return (IRR) compensation formula is intended to work. IRR is a concept that only has meaning to truly represent a generator's economics over the entire life of a project. Generators do not invest in a project with the objective of reaching a certain IRR by a date within a project's life span. From a purely mathematical view point, IRR starts out as negative at the beginning of a project and increases (non-linearly) over time. A generator would not be fairly compensated for its investment (and lost opportunity cost) by receiving an amount calculated to achieve a certain IRR within a project model for a subset of the life of the project.</p>
28 Assignment	A Generator should be able to assign its rights to an affiliate prior to COD.

Section	Feedback
7 - AESO Administration Fee	The amount of this fee is not provided. Please advise what this is expected to be.
8 - Design and Construction	<p>Reduction of Contract Capacity – <i>“the installed nameplate capacity may be reduced to not less than 80% of the capacity set forth in the RESA in recognition of the fact that the availability of resources such as land rights and financing may change”.</i></p> <p>Land rights and financing should not be subject to change and should be flagged as part of the RFQ process. If a company/project cannot satisfy these requirements then they should not be invited to bid on the initial REP RFP.</p>
13 – Renewable Attributes And Funding from other Governmental Authorities	<p>Renewable Attributes – What happens to the renewable attributes (REC) once the transfer of title goes to the AESO? What will they be retired against? Or will they be sold into the Alberta emission offset market to recoup some of the cost associated with the Indexed REC?</p>
17 - Indexation and Payment Adjustments	Why is the indexation only being considered on the O&M?
19 - Change in Law	<p>Change in Market Structure – With the recent announcement to implement a Capacity Market, how does this factor into the REP RFP?</p>
23 - Termination – Events of Generator Default	<p>CC Longstop Date – <i>“Failure to commence construction of the facility by [December ●, 2019]”</i></p> <p>COD Longstop Date- <i>“Failure to achieve commercial operation of the facility within 18 months after Target COD.”</i></p> <p>Failure to Hold Permits – <i>“Failure to hold a valid licence, permit or approval”</i></p> <p>All the items noted above should never occur under the initial REP RFP as they should be flagged as part of the RFQ process. If a company/project cannot satisfy these requirements then they should not be invited to bid on the initial REP RFP.</p>
25 - Termination – AESO Convenience	<p>Termination for Convenience Right – <i>“Prior to commercial operation of the facility, the AESO may terminate the RESA for convenience by providing up to 30 days’ notice (and the AESO may issue a stop work notice to stop further work in notice period)”.</i></p> <p>AESO needs to properly define under what circumstances the RESA would terminate at its convenience. A 30 Day notice to terminate prior to commercial operation would be punitive given that the Generator would have already built the project.</p> <p>Termination Prior to Construction Commencement – <i>“For any such termination which occurs prior to commencement of construction of the facility, the Generator’s exclusive remedy is payment of qualifying pre-construction development costs incurred prior to the termination date, which amount shall not exceed \$● million.”</i></p> <p>Has the amount been determined? If so, on what basis?</p>
30	<p>Freedom of Information – <i>“The parties will acknowledge that AESO is subject to the Freedom of Information and Protection of Privacy Act (Alberta) and that such Act applies to confidential information in the custody and</i></p>

Section	Feedback
	<p data-bbox="577 240 793 267"><i>control of AESO.”</i></p> <p data-bbox="577 276 1858 303">As outlined under Section 4, this is a concern if the Generator has to provide its financial model to the AESO.</p>

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
five	<p>How does the AESO prevent false claims of capacity? I would suggest the amount of capacity needs to be proven prior to commercial operation. Name plate is X is it really? Your design was X and Y showed up. Show me</p> <p>Suggest wording change "confirms the amount of capacity that has been installed has been proven by demonstrated performance; and states that the facility has been constructed, connected, commissioned and synchronized to the Alberta Interconnected Electric System or an electric distribution system, as applicable, such that 90% of the contract capacity is available to deliver electricity; and</p>
Eight	<p>How is deterioration of capacity to be evaluated? Some technologies may suffer some natural deterioration of capacity over the contract term.</p> <p>Suggest the "Reduction of Contract Capacity" section be strengthened to provide for some mechanism for confirming capacity during the term of the agreement or the ability of of AESO to request a performance test such that capacity can be confirmed ...ie at any time AESO has the right to.....</p>

Section	Feedback
Section #6	We do not agree that the Generator should be required to provide the AESO with “Security interests in the facility”. This could significantly impact the Generators ability to secure financing for a project.
Section #7	What is the “Administration Fee” to AESO going to be?
Section #9	Connection Requirement Costs should be negotiated between the Generator and transmission line operator. AESO should not mandate that this cost be paid only by the Generator. This mandate will only result in higher connection costs for the Generator.
Section #13	Please explain why the Generator must transfer title to all Renewable Attributes to the AESO?
Section #14	The fourth bullet (fuel sources) – it may not always be practical to only use “renewable fuel” at all facility sites? Is this necessary?
Section #15	Why is a Generator not permitted to sell ancillary services?
Section #18	The term here that bothers us is “during any curtailment”. This language implies there are no exceptions.
Section #19	This section (Change in Law) creates a great deal of uncertainty and risk for the Generator in reopening contracts with the AESO and Alberta Government for “Change to ISO rules”, “Change to Market Structure”, “Change to Regulatory Permits”, etc. Clarity and some sense of contractual certainty will be needed to encourage our investment.
Section #20	The third bullet (Scheduled Relief). We believe an extended or prolonged Force Majeure event should allow for a Term Extension.
Section #24	Termination payments in the event of default by the AESO will need to be defined in detail.
Section #25	Termination by Convenience Right by the AESO provides another level of uncertainty for a project and is not acceptable to us. No investor wants the project terminated either before or after construction for the “convenience of the AESO”. This materially impacts investment decisions.

Section	Feedback
Section #28	It is our view that assignment of an interest in a project by the Generator should be allowed both prior to and after commercial operation and the language concerning such assignment should be the same whether the AESO is assigning its rights or the Generator is the assignor (see the last bullet in this section).
Section #29	Change of control prior to commercial operation language puts all the discretion with the AESO. We do not support this approach.
Section #33	Dispute resolution time frame of 10 days is too short. Should be extended to 20 or 30 days.

Section	Feedback
	commercial operation of the facility as soon as reasonably possible,..."
6	Security over the Facility: <ul style="list-style-type: none"> Any security over the facility must be deeply subordinated and behind any project level debt
8	Reduction of Contract Capacity: "The installed nameplate capacity of the facility may not exceed the capacity set forth in the RESA (i.e. the nameplate capacity declared at RFQ). If it does, the AESO will be entitled to terminate the RESA." <ul style="list-style-type: none"> It is common to have minimum capacity requirements within EPC contracts. Contractors sometimes target to over build slightly in order to reduce the probability of not meeting the minimum capacity threshold For AESO to have the option to terminate the RESO under such scenario seems highly punitive Suggest capping support payment to the amount of nameplate capacity declared at RFQ instead
14	Resource Rights: "Generator shall ensure that any necessary resource rights remain in effect during the term..." <ul style="list-style-type: none"> Suggest adding qualifier such that "Generator shall use commercially reasonable efforts to maintain necessary resource rights"...
18	Curtailement: "Generator will not be compensated for electricity it could have produced during any curtailment" <ul style="list-style-type: none"> Clarify type of curtailment – technical, economic, or both? Lack of compensation due to economic curtailment can be highly problematic from a project financing (and potentially equity perspective) Suggest capping amount of any potential economic curtailment
19	Change in Law: <ul style="list-style-type: none"> Lenders and investors will be highly focused on this subject and would highly value mitigation of any negative cash flow impact driven by change in law
20	Schedule Relief: "...The occurrence of an event of FM which occurs after commercial operation of the facility will not extend the term." <ul style="list-style-type: none"> Under what circumstances (if any) are payments expected to continue to be made during an AESO FM or Generator FM event? If AESO does not make payments and term of contract is not extended as a result of FM, debt service capacity becomes squeezed It is not uncommon for project off-takers to share the risk of FM with project sponsors by way of either (i) maintaining some percentage (or all) of the payment stream during an event of FM, or (ii) extending the term of the contract day-for-day for duration of an extended FM event or allowing some other form of catch up mechanism
27	Rights and Obligations of Secured Lenders: "Secured lenders have the right to be notified and to cure events of

Section	Feedback
	<p>Generator default (other than those relating to bankruptcy, winding up or failure to achieve COD or commencement of construction by the specified longstop dates).</p> <ul style="list-style-type: none"> Why can't secured lenders cure defaults with respect to reaching COD? Lenders rely on operating cash flows to be repaid and would want the ability to cure any defaults in order to reach commercial operation <p>New Agreement: "If more than one secured lender opts to enter a new agreement, AESO will enter the new agreement with the secured lender with the highest priority."</p> <ul style="list-style-type: none"> Is this referring to different classes of debt (i.e. senior vs. subordinated)? Within same class, all lenders should have the same right.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
General	Will the results of the successful bids be posted?
5	Is this the nameplate capacity?
7	How much is this fee and when is it due?
8	How are technology changes taken in to account? Control systems may allow capacity increases that could be sold to the pool outside the RESA and not exceed the bid capacity.
9	Transmission upgrades and distribution upgrades and any extensions are not allowed in this bid. Is this correct?

11	Should new costs be added by changes to approvals will the Generator be compensated?
12	What will be required in the reports?
13	When the pool price equals the bid price and Renewable attributes increase will the Generator be compensated for the windfall? If the pool price equals the bid and carbon value added means the bid price is exceeded new government incentives outside Alberta should not be shared
15	What about revenue from sharing surplus capacity value in the infrastructure without impacting RESA commitments?
16	Will this accounting be handled by AESO providing a net payment to the Generator
18	How are long term curtailments handled, for example the transmission system failing?
20	What if the FM cannot be resolved?
23	"Failing to hold permits" excepting regulation change impacting permits <u>After Commercial Operation</u> What about takeover by the lender that continues operation?
General	<ul style="list-style-type: none"> When will the draft PPA be available for view? When will the draft contracts be available? When will successful bidders be notified?

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Key Provisions of the Renewable Electricity Support Agreement



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Submitter Information:

Section	Feedback
Section 1	Please confirm that the RESA can be executed by an affiliate of the successful proponent.
Section 2	<p>Please confirm that the Support Period will be extended in the event of Force Majeure.</p> <p>We suggest that the Term be 20 year from the actual COD even if COD occurs after Target COD and the RESA provide for daily liquidated damages (LDs) for late COD. Therefore AESO will be compensated for losses it suffers due to the delay in CIOD while reducing financing risk for the Generator.</p>
Section 3	<p>1) Please explain why the CC Longstop Date and Target COD is the same date, i.e. [December • 2019]?</p> <p>2) We suggest to replace “must” by “shall use commercially reasonable efforts” and provide for LDs in case of late COD</p> <p>3) We suggest removing the CC Longstop Date since a delay in the commencement of construction will not necessarily result in a delay in commercial operation and therefore AESO will not suffer any loss. The requirements for Target COD should sufficiently address AESO’s concerns with respect to the commencement of construction.</p>

Section	Feedback
	<p>4) At a minimum, failure to meet the CC Longstop Date should not be an event of default that could result in termination of the RESA. LDs should be a sufficient remedy. In addition if LDs are paid pre-COD they should be repaid if COD is achieved on or before Target COD.</p>
Section 4	<p>1) We suggest the deletion of “as subsequently confirmed by the AESO in writing”. The Commencement of construction shall be determined by objective conditions, such as a full notice to proceed under the construction contract.</p> <p>2) Please confirm the following:</p> <ul style="list-style-type: none"> - References to permits are strictly to those permits required to commence construction - Balance sheet financing together with parent company letters of support (if applicable) is acceptable to satisfy financing requirements - Please define or clarify what constitutes construction activities <p>3) Please explain why the Generator’s financial model shall be delivered to AESO?</p>
Section 5	<p>Please confirm what (i) the definition of a non-zero offer letter by the AESO; and (ii) what will trigger the issuance of a non-zero offer letter by the AESO</p> <p>We suggest the deletion of “as subsequently confirmed by the AESO in writing”. The COD shall be determined by objective conditions.</p>
Section 6	<p>Provision of Security over the Facility could hinder financing of the project. Any security in the facility and/or proceeds from the sale of electricity will need to be deeply subordinated in favour of lenders in order for Generator to secure financing for the construction of the facility.</p> <p>It is expected that the RESA will contain provisions for the protection of lenders in case of bankruptcy or default of the Generator.</p> <p>Security over the facility is unnecessary given AESO termination rights for Generator default and pre-COD and post-COD security requirements.</p>
Section 7	<p>Please confirm if the proposed administrative fee is fixed/capped (and to what amount) and clarify that it will apply to all program participants as opposed to only Generators that sign the first RESA contract.</p> <p>As a point of process, in other jurisdictions, the registration/bidding fees for the RFQ/RFP process are such that they cover the costs of program development for the ISO.</p> <p>In the Alberta context, it is reasonable to assume the REP framework will be reusable in future tenders, and that the overall cost of the REP should be borne by proponents, over multiple tenders so we disagree that the first tender be</p>

Section	Feedback
	100% born by proponents. In any case, all bidders should share the costs, not only potential winners.
Section 8	Changes to projects often arise in the ordinary course of construction or due to circumstances beyond the Generator's reasonable control. We suggest that proposed material adverse change should be subject to a consent requirement which may only be "reasonably withheld" by the AESO except for material change to Contract Capacity or to the Generator's ability to perform material obligations under the RESA , in which cases the AESO consent could be unreasonably withheld.
Section 18	Generators, investors and lenders need a certain level of protection against curtailment events which could materially negatively affect economics of the project. Please provide clarification on AESO's position regarding compensation for curtailment, including any curtailment resulting from changes in the market structure whereby central planning of the system by the AESO changes its mandate to monitor, control, and decide on system curtailment. This could occur sometime midway through the contract term, not just at the outset with the current market structure. Some form of limit is necessary within the contract to cap the risk. This will enable further project de-risking and lower bids.
Section 19	<p>Generators should be protected from arbitrary or discriminatory changes in law, including changes in regulatory permits and licenses.</p> <p>Since the Government of Alberta has already announced a market structure change, guidance how the RESA will be harmonized into the new structure is desired.</p> <p>Generally, the 'change of market structure' triggering a replacement/adjusted reference price to the RESA should be 'no less favourable' to the proponent, that is to say, target returns under the RESA should not be negatively affected by market restructuring.</p>
Section 20	<p>1) The definition of Force Majeure should specify that the event could not have been reasonably anticipated <u>at the time of execution of the RESA.</u></p> <p>2) Please confirm that the following are included in the definition of Force Majeure:</p> <ul style="list-style-type: none"> - General industry strikes of third party contractor's employees - Appeal of permits to the extent this delays the start of construction and COD
Section 23	<p>1) RESA should provide for a reasonable cure period for Events of Default before AESO may terminate the agreement, and should provide for step-in rights for lenders in all circumstances, including Generator bankruptcy.</p> <p>2) CC Longstop Date should not be considered as an Event of Generator Default for the reasons explained above under section 3.</p> <p>3) Exercise Security is not an appropriate remedy for an Event of Generator Default for the reasons explained above</p>

Section	Feedback
	under section 6
Section 24	<p>1) Remedies for AESO Events of Default should mirror remedies for Generator Events of Default, e.g. “including pursuing a claim for damages” to be added</p> <p>2) AESO Events of Default should be resulting in right of termination by Generator</p>
Section 25	<p>1) Termination for convenience is experienced in other jurisdictions and it appears that such termination right negatively impacts the financing of the projects and results in higher selling price to account for the risk of termination.</p> <p>2) Termination payments prior to commencement of construction should be sufficient to compensate Generators for all direct losses (such as past payments/investments) and indirect losses (commitments made to fund large procurements and lost return on equity) incurred. As a principle, the limit should not be capped, but be built through verifiable spend and risk taken on by the proponent before construction.</p>
Section 27	<p>1) Lenders should not be prevented from curing any Generator Default, including any failure to achieve COD or commencement of construction.</p> <p>2) Lenders right to transfer Generator’s interest should not be subject to AESO consent if specific criteria described in the RESA are met (for example credit rating, experience, ownership of other facilities in Alberta, etc) or, alternatively, such consent should not unreasonably withheld.</p>
Section 28	Please confirm that assignment by Generator to an affiliate is permitted at all times without AESO consent.
Section 29	Please confirm that a change of control of Generator involving affiliates is permitted at all times without AESO consent and that any other change of control involving a person meeting certain minimum criteria will either not require consent or such consent will not be unreasonably withheld by AESO.
Section 31	Acknowledgement regarding force majeure event is overly broad and redundant given the requirements in Section 20. To obviate any issues with interpretation of the contractual requirements with respect to Force Majeure, such an acknowledgment by the Generator is not appropriate in Section 31 and should be struck.
Section 33	Please clarify AESO’s position on alternative dispute resolution, including specifically arbitration. Depending on the nature of the dispute, resolution may require more than 10 days. The period for resolving the dispute should be increased, e.g. 30 days.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



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Submitter Information:

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Section	Feedback
Section 2 : Term	Request extension of Support Period to 25 years. Current 20 year buy Support Period is not capex effective taking into consideration of proven renewable energy technology track records. Wind, as industry common, practices 25 project life period, and for solar, also industry norm of 25 years with many independent engineers back proofing at least up to 30 years. Lengthen to 25 years deem more effective of the capex input, and hence better bid proposals
Section 3 : Target and Longstop Dates	Request removing Commencement of Construction Longstop date. Developers should be able to practices its own development and EPC strategy and requirement to placing a hard date on the construction may intrude this right. Having a hard date on the COD deem sufficient.
Section 4 : Requirement for Commencement of Construction	Request removing disclosure of Financial model. Financial model contains sensitive information for the developer and financiers which should not be disclosed to 3 rd parties.
Section 5 : Requirements for Commercial Operations	Request clarity on 'Non-zero offer'.
Section 6 : Security	Request removing Security over Facility requirement. Project financing schemes would require 1 st lien over the

Section	Feedback
	Facility and such requirement would impede lender's requirements
Section 8 : Design and Construction	Request further clarity on 'material modification'.
Section 13 : Renewable Attributes and Funding from other Governmental Authorities	Request further clarity on 'Other Governmental Funding'
Section 14 : Ancillary Services	Request to remove this section. Generators able to provide additional values to AESO should not be withheld from participating REP program.
Section 18 : Curtailment	Request cap on curtailment. Generator would be taking on too much risk and this would increase significant financing cost hence raising bid prices
Section 19 : Change in Law	Schedules should be provided at reasonably actable time to cope with Change in Law.
Section 20 : Force Majeure	Appeal to be included as Force Majeure. Appeal process do not have defined to course of time process and delays from Appeals needs to be treated as Force Majeure
Section 23 : Termination -	Request Cure period for Generators to be implemented.
Section 25 : Termination - AESO Convenience	Request Termination for Convenience to be removed. Unilateral convenience termination right is not appropriate and such right imposes significant risk upon Generators without any mitigation method.
Section 28 : Assignment	Request inclusion that AESO should not unreasonably withhold consent of assignment of prior to Commercial Operation.
Section 29 : Change of Control	Request inclusion that AESO should not unreasonably withhold consent of Change of Control
Section 33 ; Dispute Resolution	Request cure period of 10 days be lengthened to at least 30 days.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



Feedback on the key provisions of the Renewable Electricity Support Agreement (RESA) must be sent to rep@aeso.ca by 5pm MST on December 9, 2016.

Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
2 Term	<p>RE: <i>This means that if the Generator fails to achieve commercial operation by the target date for commercial operation, the RESA will nonetheless terminate ... shortening the Support Period on a day-for-day basis.</i></p> <p>The Generator should not be penalized for any delays that are not within its control, e.g. transmission or distribution interconnection delays which occur through no fault of the Generator.</p>
6 Security	<p>The Security requirements seem very stringent. What is the value of the Security post-COD and how does it compare to existing similar AESO or government agency required Security for Generators?</p>
7 AESO Administration Fee	<p>Given that the REP is a government-driven program, adding another administrative fee burden to the Generator seems excessive and may impact project economics if significant.</p>
8 Design and Construction	<p>RE: <i>Generator will not be permitted to materially modify, vary or amend the specifications or features of the facility (as set out in the specifications attached to the RESA) without the consent of the AESO.</i></p> <p>The Generator should be able to operate and maintain the facility as it deems appropriate providing that this does not contradict the terms of the AUC permit. In any event there should be an obligation for AESO to act reasonably.</p>

Section	Feedback
	<p>RE: <i>The installed nameplate capacity of the facility may not exceed the capacity set forth in the RESA (i.e. the nameplate capacity declared at RFQ). If it does, the AESO will be entitled to terminate the RESA.</i></p> <p>In such cases, the AESO should only pay up to the nameplate capacity in the RESA, rather than terminate the RESA.</p>
13 Renewable Attributes and Funding From other Governmental Authorities	<p>Re: <i>Renewable Attributes</i></p> <p>We suggest the government / AESO give Generators the ability to sell some or all of the Renewable Attributes to alternate buyers. This would lessen the cost impact to rate payers and Alberta tax payers.</p>
14 Operational Covenants	<p>RE: <i>The facility shall not use any sources or fuels other than the designated renewable fuel (except for non-renewable fuel which may be permitted in respect of any biomass facilities).</i></p> <p>Complying with this as written is not be feasible. For example, the facility may use power from the Alberta electrical grid for its buildings, which would not be solely from the designated renewable fuel. As another example, the vehicles on site would not be fueled by the designated fuel source.</p>
19 Change in Law	<p>RE: <i>If the market structure changes in the future, the contract will include a mechanism for adopting, if necessary, a replacement reference price for purposes of determining the support payments.</i></p> <p>The intent of this should be to keep the Generator whole so that the change doesn't harm the Generator.</p> <p>RE: <i>Relief will not be provided where the Generator had prior notice of the change.</i></p> <p>At what point in time would it be reasonable to determine that the Generator had prior notice? For example, the Alberta government has recently announced a change in market structure that may impact the value of the REP. However, it will be some time before a Generator bidding into the current REP understands the potential impacts.</p>
22 Insurance	<p>RE: <i>From Commencement of Construction to COD.</i></p> <p>Some companies self-insure. Would this be allowed if it is standard practice and the Generator has the financial capacity to do so?</p>
25 Termination – AESO Convenience	<p><i>Termination Prior to Construction Commencement</i></p> <p>The AESO should pay Generator for all costs incurred to date with no limit. In order to meet the timelines specified in the agreement, the Generator may be required to order equipment and make financial arrangements in advance of Construction Commencement and should not be penalised for this.</p> <p><i>Termination Post Construction Commencement</i></p> <p>The Generator should be given the option to continue to generate without a RESA.</p>
28 Assignment	<p>RE: <i>Generator Assignment Prior to Commercial Operation.</i></p>

Section	Feedback
	<p>It is not clear why there is a distinction between assignment prior to and after commercial operation. The Generator should be able to assign both prior to and after commercial operation. As a minimum, the AESO should be required to act reasonably in this decision. Otherwise, the AESO may limit the Generator's ability to bring in qualified partners.</p> <p>RE: <i>Assignment by AESO</i></p> <p>The assignee should be required to take over the contract as is without the right to any amendments.</p>
29 Change of Control	As with Assignment above, the AESO should have the obligation to act reasonably.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



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Submitter Information:

[Redacted]
[Redacted]
[Redacted]

Section	Feedback
Section 2: Term	<p>[Redacted] recommends that the AESO consider a 25-year term (Support Period) to align with improvements in wind turbine technology.</p> <p>[Redacted] also recommends that the AESO consider offering the option for generators to exit the RESA contract at a time of their choosing without penalty if the electricity market in Alberta develops in such a way that the generator chooses to participate as a generator outside of the REP program.</p>
Section 3: Target and Longstop Dates	<p>Commencement of Construction:</p> <p>Based on experience with past projects that included such timelines, [Redacted] recommends not having a contractual target for Commencement of Construction. Such targets require significant amount of definition as to what this terms means. Is ordering equipment considered commenced? How much of the equipment? Do you have to start field construction? Is there a force majeure clause for permitting relating to field construction? These issues make this type of timeline very complex. Specifically, where we are working with a municipality to resolve permit related questions that delay initial construction efforts without putting the</p>

Section	Feedback
	<p>ultimate COD timeframe in jeopardy, we want to make sure we have the time to resolve those concerns amicably instead of being under contractual pressure to force issues to close.</p> <p>Further, if we miss the Commencement of Construction timeframe and forgo the performance security, but still are able to meet the Target COD and COD Longstop, do we get our Commencement of Construction security back? Is the contract cancelled or is it still in force if we miss the Commencement of Construction deadline? In short, we recommend considering the COD dates as the ultimate triggers to avoid the many questions and ambiguous management of the target for commencement of construction.</p> <p>Finally, [REDACTED] notes that this penalty somewhat duplicates the AESO's Generating Unit Owner's Contribution requirements.</p> <p>Commercial Operation: [REDACTED] recommends that If the Generator fails to achieve commercial operation by Target COD, the Generator should have the option to maintain the full term of the Support Period via some type of term buy back or other contractual mechanism.</p> <p>Extension of Dates: [REDACTED] recommends that all milestone dates should be reasonably extended for the consequential delay associated with the event of force majeure.</p>
<p>Section 4: Requirements for Commencement of Construction</p>	<p>Requirements for Commencement of Construction: [REDACTED] recommends that AESO amend the term sheet to require that Commencement of Construction of a facility will be deemed to have been achieved at the point when the Generator has <i>delivered</i> a notice of construction, whether in the form of statutory declaration, or other AESO prescribed form. No further confirmation from AESO should be required.</p> <p>See comments above regarding concerns with the difficulty of defining permits and material arrangements to demonstrate commencement.</p>

Section	Feedback
	<p>Sharing a copy of the Generator financial model: [REDACTED] questions whether this section refers to a financial plan, or demonstration of how the project will be funded in full, which we are happy to provide.</p> <p>If this section truly refers to the financial model, which could outline return expectations, debt covenant terms, etc, [REDACTED] considers the financial model to be highly proprietary and strongly requests that the AESO not request this information. [REDACTED] recommends that the requirements of this section be met via demonstration of the ability to finance the project in the form of a financing plan, including confirmation letters from all sources of funding for the project.</p>
Section 5: Requirements for Commercial Operations	<p>Non-Zero Offer: [REDACTED] requests clarification on the meaning of “non-zero offer” from the AESO.</p>
Section 7: AESO Administration Fee	<p>AESO Administration Fee: [REDACTED] requests further clarity on the amount and mechanism for the proposed administration fee.</p>
Section 8: Design and Construction	<p>Standard of Care: Although we certainly agree with the requirement to “design and build the facility in accordance with good engineering and operating practices, in compliance with all applicable laws, rules, codes, permits, licenses and the RESA. “, the non specific portions of this clause, and the lack of a materiality clause, raise questions regarding the application. If two professional engineers disagree on good engineering practices, is our contract in jeopardy? If a construction worker exceeds the speed limit, is the contract in jeopardy?</p> <p>Facility Modification: Throughout the development process, wind farms will cycle through various layouts due to feedback from stakeholders, government requirements and regulation, and from public consultation and ongoing design changes. This section should be updated to allow for normal, natural evolution of project design, while requiring AESO approval only for major modifications, such as changes to the point of interconnection</p>

Section	Feedback
	or capacity changes.
Section 13: Renewable Attributes and Funding from other Governmental Authorities	Renewable Attributes. ██████ would request that the AESO consider an option for Generators to retain the renewable attributes from the project, and submit RESA contract price bids accordingly.
Section 14: Operational Covenants	Fuel Sources: The facility should be allowed to use other fuel sources for on site heating (ie natural gas furnaces or similar). The facility may need backup generation services for “black start” scenarios that would use other fuel sources.
Section 15: Ancillary Services	Ancillary Services: The benefit of this prohibition of ancillary services is unclear. Technology development and market evolution may provide significant advantages to the AESO to allow existing facilities to participate in ancillary services. For example, energy storage could be co-located.
Section 18: Curtailment	Curtailment: For technical reasons, ██████ agrees that renewable projects are the logical first point of curtailment. ██████ is concerned that the changes to the existing market structure could lead to market oversupply conditions. It does not seem efficient for RESA contract holders to reflect this risk in their bid price. In the event of curtailment, there needs to be some type of mechanism to compensate investors for the investment that has been made in the facility, similar to the foundation being proposed for capacity market participants.
Section 23: Termination – Event of Generator Default	Events of Generator Default: Generator Events of Default should have reasonable cure periods.

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Submitter Information:

Section	Feedback
4	As a developer I would be uncomfortable sharing our financial model with the AESO, as it is sensitive commercial information. Would a letter from a funder confirming that funds have been released to allow a project to proceed to this stage not be better to evidence commencement of construction, rather than the model?
5	Requiring an independent engineer to provide a certificate to AESO will be an extra cost burden on the developer. A certificate from the equipment manufacturer (solar panels/wind turbine) confirming commissioning, as well as a certificate from the AESO or DFO confirming that they are satisfied that generation can commence on to their networks, should be enough evidence that the project is ready for commercial operation. Neither manufacturer or network owner is going to let a project begin commercial operation before the appropriate time, so this third party opinion should not be necessary. While we appreciate that appropriate levels of due diligence should be conducted at all stages of the project, the AESO needs to consider the escalation in costs to the developer in what already looks to be an expensive development process, and avoiding requirements that are not essential to ensure the maximum project participation in the REP.
6	The provision of a Letter of Credit for such a large amount could exclude a lot of potential funders due to the high cost for them to secure this, particularly for smaller projects. Do AESO really require such a large security to ensure that projects that enter a RESA reach commercial operation? The incentive for the developer to succeed to realise the value of the project and recover all costs incurred to be successful in the RFP should be enough security for AESO. I am concerned again that another unnecessary cost burden is being put on to the developer, likely resulting

Section	Feedback
	in reduced competition with only a few bigger developers who have the bank balance taking part.
7	Can the AESO define what the admin fee will be? Will it be a flat rate, or determined from the size of the project being submitted?
12	Can the AESO define the reporting requirement in the RESA, rather than leave it as open ended as 'at its discretion'? This would allow the Generator to anticipate when information will be needed and the time/resources needed to prepare it.
13	Denying access to other GoA incentives could potentially disadvantage some community schemes, who might seek funding initially to scope out projects, and then help with fees to progress them.
17	Can the AESO expand on the reasoning as to why only 20% of the strike price is going to be adjusted by any change in the CPI? This seems to be quite a large downside to opting for the REP compared to proceeding without it on the normal energy market, which will largely reflect CPI increase 100%.

Feedback Form

Key Provisions of the Renewable Electricity Support Agreement



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Submitter Information:

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Clause	Term	Final Comments
3	Target and Longstop Dates	<p>While there should be penalties and potential loss of the economic benefit if a developer is not able to get through the required regulatory approvals in a timely manner, the AESO should be explicit about extending both target/longstop dates and revising contract duration for regulatory delays. These delays are outside of the proponents control and could delay construction and COD dates. One specific remedy to mitigate these potential delays would be prioritization of awarded RESA projects in the regulatory approvals process.</p>
4	Requirements for Commencement of Construction	<p>See section 3 above.</p> <p>It is unnecessary for proponents to provide their commercially sensitive financial model. It is not a common practice to share this level of information with a Buyer especially when there is a competitive auction process. Providing this information to the AESO could put proponents at a commercial disadvantage in subsequent RFPs.</p> <p>A proponent's advancement or stage in the AESO's interconnection process should not be given any weight in the criteria for selecting successful projects. The AESO's interconnection process allows any proponent to advance at their own pace. A successful proponent of a new project can quickly advance in the interconnection process to meet the timelines of the RESA. Therefore, projects that are already in an advanced stage interconnection process should be not be given any preference over new projects that are not or are in earlier stages of the interconnection process. Furthermore, the AESO should support successful proponent's project by prioritizing project with a RESA and ensuring that the interconnection process is as efficient as possible to meet the commercial operation date.</p>

5	Requirements for Commercial Operation	<p>Will the government allow companies that have demonstrated significant experience in building and operating similar facilities be allowed to self-certify facility completion? If so, what requirements would need to be met?</p> <p>All performance requirements should be clarified in the RESA to ensure proponents are aware of their risks. The only performance guarantee in relation to the RESA appears to be a pre-COD capacity certification. Is this correct? If not, what performance guarantees be needed? If prior to operations a facility was deemed to be able to deliver 90% of its expected energy but fell short of this metric during operation what would the remedy be if any?</p> <p>What will happen to a project if it generates over the capacity noted in the RESA? Will the energy covered by the RESA get the strike price and any additional information received the market price?</p>
6	Security	<p>The performance security requirement should be increased from \$50,000 to \$100,000/MW to better reflect the significant financial investment required to complete a successful project.</p> <p>The AESO should remove its equity security requirement. The only debt that a project could potentially owe to the AESO would be if the project proponent did not refund monies back to the ISO if the market price was above the RESA strike price. To avoid this issue, the AESO should setup a payment process where RESA proponents' payments are capped at the strike price. This will remove any need for this type of equity security guarantee and greatly simplify payments.</p> <p>The equity security guarantee the AESO is suggesting could be problematic for financing as it is raises uncertainty about the priority of financiers in the event of insolvency, bankruptcy etc.</p>
7	AESO Administration Fee	<p>The AESO should clearly outline what the AESO Administration fee will be and how it will be assessed on projects. It is preferable for the Carbon Fund to pay any AESO administration fee as successful proponents will have already posted security and would be paying the related cost of capital. Forcing this cost on proponents would simply add to the bid price that will ultimately be recovered by the Carbon Fund.</p>

8	Design and Construction	<p>To have a better understanding of the requirements of a RESA, terms such as "good engineering and operating practices" should be replaced with terms such as "good electricity industry practice" that are defined in other authoritative AESO documents.</p> <p>"Materiality" - this term can have a very broad meaning so further defining it or providing guidance would help identify risks, reduce uncertainty and thus costs. Alternatively, this term could be removed without much loss in meaning.</p> <p>Under Facility Modification bullet, adding language stating "consent cannot be unreasonable withheld and needs to be provided in a commercially timely manner" would allow valuable flexibility ensuring the AESO gets the best resource to meet the contracted RESA requirements. By restricting this flexibility, the AESO risks paying more for inferior resources.</p>
9	Connection requirements	<p>The REP auction selection criteria should also consider the impacts to existing renewable generation. Preference should be given to projects that minimize negative impacts to existing generation (e.g. reduce the production of electricity due to wake effects). This will maximize the environmental and supply benefits of all renewable generation on the system.</p> <p>To have a better understanding of the requirements of a RESA, further definition of the following term would be helpful:</p> <p>"all facility connection requirements" – It would be helpful if the RESA made specific reference to the AESO interconnection requirements instead of using an undefined term (e.g. section 3 of the AESO tariff, references to specific NERC requirements, etc.)</p> <p>Similarly, further guidance on the relevance of the interconnection queue would also provide greater clarity regarding the interconnection priority. See section 4 above for further detailed comments.</p>
12	Reporting	<p>What level and type of reporting will be required? How will RECs need to be registered?</p>
13	Renewable Attributes and Funding from other government Authorities	<p>How will RECs need to be retired and tracked?</p> <p>The requirement to share other government incentives adds unnecessary complexity for proponents and is not a standard feature of other competitive auction requirements in other jurisdictions. This requirement forces proponents to make complicated adjustments to construct their bids as they need to account for the amount that is shared (i.e. the value of some incentives may not be fixed). The benefit of other government</p>

		incentives will ultimately be passed onto the AESO through the lower bid price without the need to pay 50% of any such government incentives.
14	Operational Covenants	<p><u>Own/Lease the Facility</u> This covenant and the restriction in assignment in section 28 (which allows the AESO to deny consent to assignment if the Generator does not own or lease the facility) implies that the signatory Generator party to the RESA will, at all times of the RESA term, own or lease the Facility. This is an unreasonable requirement in that projects may change ownership post-COD.</p> <p><u>Operations and Maintenance</u> Please confirm that the obligation to be “solely” responsible for the operation and maintenance of the facility does not preclude an agreement with a qualified third party operator or the original equipment manufacturer to operate and maintain the facility.</p> <p>See comments to section 28.</p>
15	Ancillary Services	Some renewable resources that may participate in the REP, such as hydro generation, could provide ancillary services. As such, the RESA is too restrictive in its prohibition from selling ancillary services. The AESO needs to allow project proponents to represent the ancillary services value as part of their bid to ensure bid selection results in the greatest value at least cost.
16	Settlement Provisions	<p>Does the AESO need to pay the RESA proponent the market price and then recoup over-payments (i.e. payments above the strike price)? A simpler approach is to cap RESA payments to the strike prices. See comments to section 6 for security implications and benefits.</p> <p>How is overproduced power treated? Is a proponent allowed to overproduce – could the extra power be sold as merchant generation? Are there penalties that would be applied?</p>
17	Indexation and Payment Adjustments	The RESA should set its index such that it aligns cost increases as closely as possible to observed inflation. For instance, the CPI indexation could be split such that indices for labour and material reflect the observed project cost increases due to inflation.

18	Curtailment	<p>There are two forms of curtailment to consider in section 18: curtailment related to transmission congestion and non-transmission curtailment (i.e. ISO Rule 202.5: Supply Surplus).</p> <p>With respect to curtailment related to transmission congestion, these risks can be avoided by siting projects in uncongested areas of the transmission system. These risks should be borne by project proponents to ensure that they have incentive to propose projects that do not require additional transmission investment and/or reinforcement. This approach is consistent with the curtailment risks that existing generators bear when new generation results in transmission congestion.</p> <p>Non-transmission curtailment cannot be avoided by project siting and is directly related to the amount of renewable generation brought online in response to REP procurement. These curtailment risks are an abnormal risk that result from out-of-market action. A REP project proponent cannot avoid this risk and forcing the project proponent to bear these risks will only serve to increase revenue uncertainty, increase project financing costs and raise the cost of REP bids. Moreover, keeping REP project proponents whole from these risks by compensating them for it does not provide any perverse incentive to increase these risks or disadvantage existing generators. Existing generators will be impacted by these curtailments and will be no worse off if REP project proponents are compensated for these risks. These risks will increase as more renewable generation is brought online in response to REP auctions (i.e. the probability and frequency of zero-dollar hours will increase).</p> <p>A broader discussion of the fairly compensating and treating existing renewable generation given out-of-market renewable procurement is necessary and should take place in the consultation on overall market design.</p>
19	Change in Law	<p>It is proposed that the change in law section of the term sheet be replaced with the following:</p> <p>The RESA will include change in law provisions which allow the Generator to claim additional time or payment adjustments in a variety of circumstances including:</p> <ul style="list-style-type: none"> • Change to ISO rules. Parties will be required to negotiate amendments to the agreement if there is a change in the ISO rules which affects Generator’s economics. Any such amendments will reflect the economics of the Generator as contemplated under the RESA prior to the introduction of such change in the ISO rules.

		<ul style="list-style-type: none"> • Change in Market Structure. If the market structure changes in the future, the contract will include a mechanism for adopting, if necessary, a replacement reference price for purposes of determining the support payments. Any such amendments will reflect the economics of the Generator as contemplated under the RESA prior to the introduction of such change in the market structure. • Designated Changes. Generator will receive schedule and financial relief with respect to changes in law, regulations, orders, or required amendments to the RESA by the Government (or any regulatory body in Alberta) and any modification or amendment of the foregoing, which in each case occurs after the date of the submission of the Generator’s binding bid and which is applicable or relate to the Generator, the facility or the ownership, operation, maintenance or decommissioning of the facility, the electricity sector, including re-regulation or deregulation affecting generation, supply, sale or transmission of electricity, transmission system or the environment, and which delays the development or construction of the facility or which increases costs or reduces revenues the Generator would reasonably be expected to incur or receive. Relief will not be provided where the change occurs after the date of the Generator’s bid, or where the change is in response to any action by Generator which is contrary to law or where the change is otherwise permitted by the RESA. <ul style="list-style-type: none"> • Consequences of Designated Changes. If a designated change results in a net increase or decrease in Generator's costs, payments under the RESA will be adjusted as necessary to keep the Generator in the same financial position in respect of the RESA, after giving effect to such designated change, as it would have been in had such designated change not occurred. Changes to Generator’s net capital costs will be addressed through lump sum payments and changes to net operating costs will be addressed through an adjustment to the strike price. • Changes to Regulatory Permits or Licenses. Changes in law will include any interpretation, reinterpretation or administrative position relating to any of the laws as made or taken by any governmental authority; and any material requirements or conditions connected to the issuance, renewal, extension, replacement or modification of any governmental approval required connected to the RESA. • Generator Conduct. A change in law will not qualify to the extent that it only applies (or applies earlier) due to the Generator's conduct.
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20	Force Majeure	<p>The carve out related to inability to obtain approval of the AESO pursuant to the terms of the agreement should be clarified. We believe it has been written to relates to their contractual rights and consent and not any regulatory approvals. Is this a correct interpretation?</p> <p>The RESA should not be able to be terminated if “multiple events ... last 24 months in aggregate”. Rather, there should be an ability for either party to cure the issue and/or an arbitration process. Cancellation after numerous events would create a difficulty in counting the number of days that would cumulatively add up to 24 months over a 20-year period. While the intent of this section is well understood, it seems the risks termination would create more risk and financing costs than benefits associated with unilateral ability to cancel a RESA.</p> <p>The language “could not have been reasonably anticipated” should be removed or replaced with more specific language to provide clarity and certainty.</p>
21	Liability and Indemnification	<p>Our concern is that the breadth of clause (i) is too broad and uncapped. The AESO should ask for indemnity only to the extent of supplier negligence. Therefore, this clause should be limited to negligence not "any occurrence of event relating to the facility" and as it relates to a third party claim the indemnity should be limited to only or injury, death or property damage claims.</p> <p>There should be an exclusion of consequential damages provided that in no event will either party be liable under the RESA or under any cause of action relating to the subject matter of this RESA for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits, loss of use of any property or claims of customers or contractors of the parties for any such damages.</p>
22	Insurance	<p>Can a project proponent self-insure? If so, what would be the requirements and form that this insurance would have to take to meet AESO requirements.</p> <p>The insurance in the first bullet referred to as "all-risk property insurance" should be changes to the industry term "Course of Construction Coverage" for clarity purposes.</p>

23	Termination – Events of Generator Default	<p>The AESO should define the term “continuing” to provide greater clarity.</p> <p>If the AESO can cancel the agreement as soon as default takes place, then financing will be very costly or may not be available at all (e.g. financiers would look protect themselves from the risk of a stranded asset).</p> <p>Exercise Security: AESO holding security will make financing difficult and likely increase bid costs. See comments to section 6.</p>
25	Termination - AESO convenience	<p>Under the Termination Prior to Construction Commencement, will the generator be compensated for supplier damages it incurs under its contracts?</p> <p>This should not be capped at some administratively set level. Rather, the AESO reimbursement should be guided by the principle of reasonable commercial costs with a third-party arbitrator to review.</p>
26	Termination - Extended Force Majeure/Other Events	<p>See comments related to the cumulative 24-month termination requirement in section 20.</p>
27	Financing and Consequences of Default	<p>The security described in this clause contradicts clause 6.</p> <p>Proponents will need to review the "prescribed form" for the DLA prior to agreeing to it.</p>

28	Assignment	<p><u>Assignment after Commercial Operation by Either Party</u></p> <ul style="list-style-type: none"> • Assignment by AESO is dealt with further on in this section and requiring consent runs counter to the AESO’s ability to assign in section 28. • In the case of an assignment by the Generator, the current conditions around when consent may be withheld should be eliminated and replaced with the concept that AESO would not be able to withhold consent where the Generator has satisfied the AESO, acting reasonably, that (a) the proposed assignee is of good reputation and has suitable technical, commercial and financial resources; and (b) the proposed assignee is not involved in a business or activity incompatible with the Project or the business relationship between the AESO and the Generator.
29	Change of Control	<p><u>Change of Control Prior to Commercial Operation</u></p> <p>This concept should exclude changes in control due to: (a) changes in ownership of any shares or units of ownership that are listed on a recognized stock exchange, and (b) as a result of a realization by the lender on its security.</p>
33	Dispute Resolution	<p>The AESO should consider binding arbitration as an alternative mechanism to settle disputes as opposed to litigation.</p>
n.a.	Definition	<p>As commented in several sections above the terms are not defined and need greater clarification. The AESO should provide definitions or use authoritative definitions to ensure all proponents have a clear understanding of the requirements. An example of how this is done in other jurisdictions is BC Hydro which used clear language to describe the requirements for dealing with environmental attributes in their Standing Offer EPA found at: “Standard Form EPA – March 9, 2016” (https://www.bchydro.com/energy-in-bc/acquiring_power/current_offerings/standing_offer_program/program-documents.html).</p>

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	<p>There should not be a penalty if the COD Longstop date can still be met, or in addition to having the contract terminated.</p> <p>Also please:</p> <ul style="list-style-type: none"> confirm that the Generator is responsible for selecting the CC Longstop Date. describe the damages the AESO anticipates it would incur should the Generator fail to meet the CC Longstop date.
<p>4 Requirements for Commencement of Construction</p>	<p>The reference to key Alberta Utilities Commission (“AUC”) and other environmental, assessments, permits, licenses and approvals is vague. The requirement suggests that the Generator would need to have all “assessments, permits, licenses and approvals” in place prior to commencing construction, some of which may not be required to commence construction or may not be obtainable at that point in time. Rather, the requirement should be limited to obtaining only those material “assessments, permits, licenses and approvals” that are legally required to commence construction activities.</p> <p>The term “commenced construction” activities should also be defined to avoid ambiguity, in particular if the RESA provides the AESO with the right to terminate if the Generator fails to commence construction by the CC Longstop Date. As currently worded the AESO will deem the “<u>commencement of construction</u>” as having begun when the AESO confirms the Generator has provided the AESO with a Statutory Declaration indicating that it has secured financing, procured long-lead equipment and “<u>commenced construction activities</u>.” The term “commenced construction activities” (in the third bullet) should be defined as “site clearing and associated activities” in order to avoid any ambiguity regarding the milestones the AESO expects the Generator to achieve in order to avoid having its contract terminated, and what will be accepted by the AESO in the Statutory Declaration.</p> <p>Finally, please indicate what information the AESO expects will be included in the financial model and for what purpose the AESO will rely on the information provided in the financial model? There are significant concerns with providing commercially sensitive information to the AESO, in particular given the AESO is subject to the FOIP Act increasing the risk that this information could be made public.</p>
<p>6 Security over the Facility</p>	<p>Security over the Facility:</p> <p>The requirement to provide the AESO with security interests in the facility raises significant concerns for developers. As an alternative to providing a security interest in</p>

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	<p>the facility we recommend the AESO consider other forms of acceptable replacement security including:</p> <ul style="list-style-type: none"> • Guarantees • Letters of Credit • Cash <p>In addition, it appears that the reference to “if appropriate enabling legislative or regulatory changes are made” refers to the provisions contained in the Renewable Energy Act (“RE Act”) that has yet to receive Royal Assent.¹ It is important to note that the reference in the RE Act does not require the Generator to provide security to the AESO, rather it permits the AESO to require security <i>if</i> it deems it necessary, and only under very limited circumstances in relation to generator default or insolvency.</p> <p>Therefore, it is not appropriate to place this requirement on all Generators regardless of their financial strength and capacity. Given the developer is qualified during the RFQ and is specifically required to demonstrate it is of sufficient financial strength and capacity to proceed, it should not be required to provide the AESO with a security interest in the facility. If the Generator is unable to continue to demonstrate financial strength or capacity after the RESA is executed, only then should it be subject to this requirement. The term should therefore be amended to provide the AESO with the ability to take security in a facility if the Generator’s financial strength or capacity drops below the level at which it was qualified.</p>
7 AESO Administration Fee	<p>Please describe the nature and quantum of the AESO Administration Fee (i.e. will it be a one-time flat fee or a per MW or MWh charge). This fee should be transparent and applied in an equitable manner to all projects participating in the REP. The details of the Administration Fee must be provided prior to the RFQ phase, before developers are required to pay a non-refundable “pay to play” fee, so the impact on the developers strike price can be determined.</p>
8 Design and Construction	<p>As a general comment the RESA is inconsistent when describing the regulatory and environmental approvals, permits, licenses etc... pertaining to the Generator. For accuracy, the RESA, when describing the regulatory approvals as they apply to the Generator should refer to the Generator’s AUC Power Plant Approval, and Permit and</p>

¹ RESA s. 8(1) ” Despite section 9(6) of the *Electric Utilities Act*, the ISO may, in accordance with any commercial terms that are part of a renewable electricity program, hold a security or other interest in a generating unit, as defined in that Act, as security in relation to generator default or insolvency.

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	<p>License for the Generator's transmission facilities. Additionally, in some cases, the RESA may also need to refer to the AUC Permit & License associated with the transmission facilities required for the connection of the Generator and the AUC Connection Order.</p> <p>Facility Modification:</p> <p>Is it the AESO's intent to simply refer to the Functional Specification that a project receives as per the AESO's Connection process or does the AESO intend to create an additional document that outlines the specifications or features of the facility? In addition, does the Generator would receive consent from the AESO upon submitting a System Access Service Request application and completing the requirements outlined in the AESO's Behind the Fence or Connection Process or does the AESO envision that the Generator would follow some other process for obtaining consent to modify its facility?</p> <p>Reduction of Contract Capacity:</p> <p>Is the term "nameplate capacity" meant to have the same meaning as the term Maximum Authorized Real Power (MARP) or Maximum Capability (MC) as set out in the Consolidated Authoritative Document Glossary or is it some other measure of the facility's capacity? If it is intended to convey some other measure of the facility's capacity how does the nameplate capacity relate to the MARP and the MC? Rather than introduce a new term to describe capacity the RESA should refer to a measure of capacity that is already defined in the AESO Rules for consistency and to avoid confusion.</p> <p>In addition, the reduction in contract capacity clause should only capture reductions in contract capacity from the time the RESA is executed to the COD. Otherwise the RESA would need to take into consideration any degradation in the "nameplate capacity" of the facility that occurs over the projects lifespan.</p> <p>Further, the RESA should not restrict or prohibit the ability of the Generator to undertake future expansions at the facility provided the project subject to the RESA can be metered separately. Likewise, the RESA should not restrict the ability of the Generator to retrofit their projects to take advantage of technology improvements that increase the performance of the facility over the projects lifespan and allow the Generator to recover any lost production due to degradation.</p>

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15 Ancillary Services	<p>This requirement should be removed. Although not directly applicable to wind facilities, there may be other renewable resources that wish to participate in this or a future REP. Prohibiting Generators which have been awarded a RESA from participating in the various Ancillary Services (AS) markets foregoes the opportunity to have a more competitive AS market. Further, allowing Generators to participate in the AS market may result in lower strike prices in the REP, placing downward pressure on costs.</p>
18 Curtailment	<p>This clause should state that the curtailment practices for the Generator should be consistent with the current ISO Rules governing transmission constraint management to ensure equitable treatment amongst all generators as it relates to curtailment practices. For all generators, existing or new, the curtailment risk related to transmission congestion should lie with the AESO.</p>
19 Change in Law	<p>Change to ISO Rules and Market Structure:</p> <p>Please clarify that:</p> <ul style="list-style-type: none"> ○ a change in law under this section also includes circumstances where new laws or ISO rules are enacted or passed, and not just changes to existing laws or ISO rules; and ○ the remedy for Designated Changes will also be afforded to the Generator where any change in law or ISO rules can decrease the revenues reasonably expected by the Generator. ○ the Change in Law clause also includes any changes in Federal Laws. <p>Designated Changes:</p> <p>The use of the phrase “directed specifically” within the Designated Changes provision is unclear. It is important for this provision to address the adverse effect of any change in law on the Generator’s economics, whether or not such change was directed specifically at the Generator (or the rules governing the generators or RESA).</p> <p>In addition, the terms provide that relief will not be provided where the Generator had prior notice of the change or where the change is permitted by the RESA. There is always prior notice of a change in law. At the very least, and in extreme cases, it is 24 hours (with respect to the notice provided to the legislature), however, typically there is much more time spent in consultation with industry. Therefore, this should only be applicable to notice given prior to the submission of a binding bid.</p>

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	<p>Finally, when Changes in Law apply, the parties should have, as a remedy, an arbitration process to finalize any amendments to the RESA required to address the impact of the Change in Law.</p>
<p>20 Force Majeure</p>	<p>As a general comment, the FM provisions as currently worded, place considerable risk on the Generator for events that the Generator is in no better position to manage than the AESO. Failing to consider catastrophic events, changes in conditions, or appeals, of the Power Plant Approval or transmission Facility Permit and Licenses, places considerable risks on the Generator and will require developers to include a risk premium in their strike price in order to offset the costs they may incur in the future.</p> <p>In some cases the risks may be so significant that the developer may choose not to participate in the REP. In either case, placing these types of risks on developers places upward pressure on price and will result in the AESO paying more than necessary. The AESO should expand the FM provisions and carry the risk as it would then be distributed across all projects. In the unlikely event a Generator declared FM the AESO would only be exposed to the Schedule Relief costs for that Generator which should be lower than the cost of paying a premium that would be built into the strike price of all projects.</p> <p>Definition:</p> <p>Specifically, FM provisions should include an appeal of the Power Plant Approval and Transmission Facility Permit and License (and any other approvals, orders, permit and license that if appealed could result in an order to cease construction) regardless of whether or not an order to cease construction is issued. In cases where the Generator is not required to cease construction an extension may still be required and Schedule Relief should apply. Finally, if the appeal ultimately results in a repeal of an Approval, Order, or Permit and License during construction, then the Generator should be able to terminate the agreement without paying liquidated damages. (We also note that the word Supplier should be replaced with Generator for consistency.)</p> <p>Schedule Relief:</p> <p>Schedule Relief provisions should extend beyond the COD of the facility. If the facility were to suffer from a catastrophic event that is completely outside the control of the Generator they should also be eligible for schedule relief. Finally, in many cases a day-for-day extension may not suffice, for example, if the delay causes the Generator to miss a construction window. Therefore extensions should consider, and take into</p>

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	<p>account, the impact of the delay on the schedule.</p> <p>Termination for Extended FM:</p> <p>Section 13 of ISO Rule 103.12 states:</p> <p>“A market participant is not required, notwithstanding any other provision in the ISO rules, to comply with a provision of the ISO rules to the extent the market participants action or inaction is caused by any one (1) or more of the following:</p> <ul style="list-style-type: none"> a) An event of force majeure but only if the market participant gives written notice to the ISO of the force majeure in reasonable detail no later than two (2) business days after it knows of the event or condition and makes all reasonable efforts to cure, mitigate or remedy the force majeure.” <p>The termination clauses in the RESA should not serve to remove any of the rights afforded to a market participant under the AESO Rules. As currently worded the FM clause could dissuaded a Generator from exercising its rights under the ISO Rules in order to avoid exposing itself to a potential termination of its RESA. As such, the Termination for Extended FM clause is too punitive.</p> <p>Specifically, 18 months is not sufficient should the facility suffer from a catastrophic event. Over a twenty year time frame it is not unreasonable to have multiple FM events that last 24 months in aggregate. We suggest 36 months (in both cases) would be more reasonable and would mitigate the need for the developer to include a risk premium related to termination for extended FM in its strike price and would be less likely to interfere with the rights of a market participant pursuant to ISO Rule 103.12.</p>
21 Liability and Indemnification	<p>The indemnity should exclude coverage for any injury or damage attributable to the negligence or wilful misconduct of the indemnitees or the failure of the indemnitees to comply with laws and regulations. There should also be a general exclusion for any liability for consequential damages. Finally, there should be reciprocal indemnities from the AESO for the benefit of the Generator.</p>
23 Termination – Events of Generator Default	<p>Generator Events of Default should have a reasonable cure period, such as 60 days. If the default cannot be cured within the cure period of 60 days, then the Generator should be permitted to develop a plan for submission to the AESO during the cure period to avoid termination of the RESA.</p>

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24 Termination - Events of AESO Default	<p>Similar to the Events of Generator Default, it should also be a default if the AESO: (i) fails to hold a valid permit, license, permit, approval, order, authorization, consent or approval by a governmental authority, or (ii) breaches any representation or warranty.</p>
25 Termination - AESO Convenience	<p>Termination for AESO Convenience is untenable once construction has commenced. We are also concerned that if termination occurs prior to construction commencement the Generator's exclusive remedy is payment of qualifying pre-construction development costs incurred prior to the termination date. This does not appear to allow for consideration of any punitive elements such as liquidated damages, or third party claims that the Generator would be exposed to as a result of the contracts it has entered into with the various EPC firms. The clause also fails to consider any damages the Generator may face from renegeing on its contracts to pay royalties to land owners.</p> <p>Therefore this clause should be removed. It places considerable risk on the project developer for which a risk premium will be built into the strike price and is likely to significantly discourage participation in the REP. As discussed above this reduces the competitiveness of the REP. Given the RESA already contemplates numerous off-ramps for the AESO, the inclusion of this type of clause disproportionately increases the risk to developers relative to any flexibility the AESO may deem necessary. Although the intent appears to keep the Generator whole there are too many different circumstances that could occur making it simply impossible to include all of the different costs the Generator would face should the AESO exercise its rights under this clause.</p> <p>Finally could the AESO please define the meaning of the term "set off" and list the types of amounts that would qualify to be "set off" by the AESO.</p>
26 Termination for Extended Force Majeure / Other Events	<p>This clause is redundant as it is captured in clause 20. Please see comments above.</p>
29 Change of Control	<p>Presumably the AESO's concern is that should it allow any and all changes of ownership the risk of Generator default will increase. Although this could be one potential outcome the opposite could also be true. If the Generator finds itself at risk of default, having the ability to find a partner that allows it to complete the project on time reduces the chance of Generator default, which is clearly a more efficient outcome. As such, the clause should explicitly state that consent will not be unreasonably withheld.</p> <p>Although not applicable to the key commercial terms contained herein, any restriction on Change in Control throughout the REP likewise unduly limits the ability of the</p>

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	<p>developer to enter into ownership arrangements that allows them to minimize costs. Restricting the opportunity for partnerships or acquisitions prohibits parties from entering into ownership arrangements that are the most cost effective and contribute to lower overall costs which are reflected in lower overall bids. For example, a developer may wish to partner with a party that has access to balance sheet financing. Prohibiting the developer from negotiating an ownership structure that gives the developer access to lower cost balance sheet financing could increase the overall costs of the developers bid ultimately reducing the competitiveness of the REP. Furthermore, it may reduce the number of parties that are ultimately able to compete at the RFP stage which could also reduce downward pressure on bid prices.</p>
<p>32 AESO's Representations, Warranties and Other Obligations</p>	<p>The RESA should be amended to include a representation of the AESO that it has been provided with sufficient guarantees or backstops to ensure financial stability for the duration of the contract.</p>
<p>33 Dispute Resolution</p>	<p>The ten day period for dispute resolution is far too short of a time-frame. We recommend a more robust, yet timely, dispute resolution process that provides for opportunities for arbitration, rather than solely litigation, that includes the following steps:</p> <ul style="list-style-type: none"> • In the event of a dispute, and the parties are unable to resolve the dispute within 5 business days, the matter shall be referred to a member of each parties senior management for resolution. • If senior management from the respective parties are unable to resolve the dispute within 5 business days the parties shall resolve the dispute in accordance with the following arbitration provisions: <ul style="list-style-type: none"> ○ Each party shall appoint its own arbitrator with the appropriate qualifications with respect to the mater in dispute within 10 business days after the expiry of the second 5 business day period referred to above. ○ If either party fails to appoint an arbitrator within the 10 day period, the party who has appointed an arbitrator can make an application to the Justice of the Court to have the second arbitrator appointed. ○ The two arbitrators thus appointed shall appoint a third arbitrator

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	<p>within 10 days of the appointment of the second arbitrator.</p> <ul style="list-style-type: none"> ○ The board of arbitrators shall proceed promptly to determine the matters in issue and shall render its decision within 30 days from the appointment of the third arbitrator (unless otherwise agreed to by the parties).