

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**.

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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>CanSIA 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>

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	<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>CanSIA 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>CanSIA 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.

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	<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, CanSIA 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	CanSIA requests clarification on the meaning of “non-zero offer” from the AESO.
Section 6: Security	<p>Security over the Facility</p> <p>CanSIA 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>CanSIA 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. CanSIA 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	CanSIA 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>CanSIA 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, CanSIA recommends that consent to changes should not be unreasonably withheld by the AESO.</p>

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Section 12: Reporting	<p>Frequency of reporting should be specified, either on a semi-annual or annual basis. CanSIA recommends a reduced frequency for post-COD reporting as compared to pre-COD, should AESO request reporting during the Support Period. CanSIA 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>CanSIA 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, CanSIA 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. CanSIA 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>CanSIA 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>

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	<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>CanSIA 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. CanSIA recommends curtailment thresholds similar to those in Ontario. In the event that a cap is implemented, CanSIA 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). CanSIA 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, CanSIA recommends that "prior notice" should only be applicable to notice given prior to the submission of a binding bid.</p>

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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. CanSIA 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. CanSIA 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>CanSIA 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>

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	<p>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.</p> <p>Timelines</p> <p>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. CanSIA recommends that a similar timeframe be adopted for the RESA.</p> <p>Termination Prior to Construction Commencement</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Examples of the types of activities that should fall under the definition of qualifying pre-construction development costs include:</p> <ul style="list-style-type: none"> • 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

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	<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: CanSIA 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: CanSIA 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>CanSIA 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. CanSIA 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>CanSIA 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.