

April 27, 2021

Rachel Thompson, Senior Policy Advisor  
Ministry of Energy, Northern Development and Mines  
Strategic Network and Agency Policy Division  
77 Grenville Street, 6<sup>th</sup> Floor  
Toronto, ON M7A 2C1

**Submitted online via: Environmental Registry of Ontario**

Dear Ms. Thompson,

**Re: ERO #019-3007 - Reforming the Long-Term Energy Planning Framework in Ontario**

Capital Power is pleased to provide this submission in response to the referenced Notice posted by the Ministry of Energy, Northern Development and Mines (the "Ministry") on January 27, 2021 in which the Ministry requested feedback on how to refocus Ontario's long-term energy planning process to promote transparency, accountability, and effectiveness of planning decision-making, increase investment certainty, and protect the interests of ratepayers. The Ministry's posting notes that a desired outcome of the new framework is to empower expert technical planners, such as the Independent Electricity System Operator ("IESO"), to plan the most reliable and cost-effective system, and to ensure that the sector agencies have the appropriate mandates and authorities to undertake expanded roles related to planning and resource acquisition.

Capital Power is a growth-oriented North American wholesale power producer, publicly traded (TSX: CPX), and headquartered in Edmonton, Alberta. We develop, acquire, own, and operate power generation facilities using a variety of energy sources. Currently, we own over 6,400 megawatts (MW) of power generation capacity at 26 facilities across North America. Five of our power generating facilities are located in Ontario, and are comprised of the following three natural gas-fired and two wind facilities that represent roughly 1,300 MW of capacity:

- 875 MW Goreway Power Station
- 200 MW York Energy Centre
- 84 MW East Windsor Cogeneration Centre
- 105 MW Port Dover & Nanticoke Wind
- 40 MW Kingsbridge 1 Wind

Capital Power supports the Ministry's goals in this initiative and is pleased to provide the attached detailed submission providing six recommendations for improving energy planning and procurement in Ontario in a manner that builds upon the core framework that exists today and seeks to balance the goals of reliability, affordability, and sustainability in the electricity sector.

At a high-level, these recommendations outline improvements focused on: 1) developing a made-in-Ontario approach to competitive procurement; 2) evolving the role of IESO to be the agency responsible for planning and competitive procurement; 3) enhancing the role of the Ontario Energy Board (“OEB”) to include oversight of IESO-led planning and procurement; 4) enhancing OEB oversight of market rules, monitoring, compliance and enforcement; 5) ensuring clear, long-term policy direction by the government; and 6) ensuring the conditions necessary for effective competition. These recommendations are informed by our investments and experience in Ontario and other jurisdictions across North America, and, if adopted, will help to ensure that Ontario is able to meet current system needs and embrace future challenges.

Capital Power appreciates the opportunity to provide comments on this important initiative and we look forward to continuing to work with the Ministry and electricity sector stakeholders on improvements to Ontario’s long-term planning and procurement framework. We welcome the opportunity to meet with the Ministry to share our views and answer any questions you may have regarding this submission. Please feel free to contact me directly at (780) 691-0064 or [gberry@capitalpower.com](mailto:gberry@capitalpower.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Grant Berry', with a long horizontal line extending to the right.

Grant Berry  
Director, Government Relations  
Capital Power

cc. D. Jurijew, Vice-President, Government Relations, Regulatory and Environmental Policy  
E. Coyle, Director, Regulatory and Environmental Policy

Attachment 1 – Written Submission of Capital Power re: ERO #019-3007

**Attachment #1 – Written Submission of Capital Power re: ERO #019-3007**

This submission is structured into five sections, as follows:

- Section I provides introductory comments and context for Capital Power’s recommendations to improve long-term energy planning and procurement in Ontario.
- Section II provides a summary of Capital Power’s recommendations.
- Section III outlines Capital Power’s recommendations in detail.
- Section IV provides concluding remarks.

**I. Introduction and Context**

Capital Power is pleased to provide this submission to the Ministry of Energy, Northern Development and Mines (the “Ministry”) for improving long-term energy planning and procurement in Ontario in a manner that builds upon the core framework that exists today and seeks to balance the goals of reliability, affordability, and sustainability in the electricity sector. The recommendations outlined by Capital Power in this submission are guided by these principles and by the Ministry’s objectives<sup>1</sup>, and are informed by our investments and experience in a range of jurisdictions involving different approaches to market design, agency structure, and governance.

Our recommendations are also informed by the unique features of the Ontario market, both in terms of how the market has evolved as well as the dynamics of supply and demand. Capital Power believes that by recognizing and respecting these realities, Ontario can create a more transparent, more accountable, and more effective framework for planning and competitive procurement. This approach will also help government to implement reforms well in advance of the coming need for capacity, which the Independent Electricity System Operator (“IESO”) now expects for the mid-2020s, and avoid having to rely on sub-optimal solutions to address these needs which would only exacerbate existing market issues.

Market frameworks where the objectives for the electricity system – including with respect to the role of competition – are clearly articulated in legislation and supported by an effective governance framework provide greater certainty and confidence for all stakeholders. To enable this requires well-defined roles, mandates, and accountabilities for the various agencies involved in the administration, regulation, and oversight of the different components of the electricity value chain. Effective and investable market frameworks leverage the expertise of independent agencies and stakeholders to ensure resilient and transparent planning in support of sound long-term investment decisions. Ontario should rely on its independent agencies to

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<sup>1</sup> The Ministry has requested feedback on how to refocus Ontario’s long-term energy planning process to promote transparency, accountability, and effectiveness of planning, increase investment certainty, and protect the interests of ratepayers. The Ministry notes that a desired outcome of the new framework is to empower expert technical planners to plan the most reliable and cost-effective system, and to ensure that sector agencies have the appropriate mandates and authorities to undertake expanded roles related to planning and resource acquisition. See ERO #019-3007.

administer and oversee planning and procurement through meaningful stakeholder engagement within a legislative framework that enshrines the central purposes and principles of the market determined by the government. Evolving Ontario's long-term planning and procurement framework in this manner can help the Ministry achieve its goals of incenting required investment and creating value for ratepayers.

Legislation needs to clearly define and support the role for competition in Ontario's market, particularly regarding investment in generation capacity. Ontario can best position itself for ensuring value for ratepayers and meeting the supply needs and challenges of the future by leveraging competition to drive supply diversity and cost-efficient outcomes. Future supply procurement should occur through an IESO-led competitive RFP process with long-term contracting as the chief revenue mechanism for investors. Effective governance structures will ensure competitive forces are effectively deployed to deliver diverse investment in support of long-term reliability, affordability, and sustainability.

## II. Summary of Recommendations

The recommendations summarized below and detailed in the next section identify a core set of proposed changes to Ontario's long-term planning and procurement framework that Capital Power submits will provide greater certainty for required investment and create value for ratepayers. Recommendation #1 addresses the need to evolve Ontario's energy planning and procurement mechanisms in a manner necessary to support competitive investment. Recommendations #2, #3 and #4 propose governance reforms that evolve and enhance the mandates of the IESO and Ontario Energy Board ("OEB") in support of Recommendation #1, while ensuring effective governance and oversight of sector evolution. Recommendation #5 addresses the critical role of government in providing clear, long-term policy direction for the sector. And finally, Recommendation #6 identifies the need to ensure that Ontario's market has the conditions necessary for supporting competitive investment.

**Recommendation #1:** Design and implement a framework for resource planning and procurement that: (i) relies on independent agency-led all-source integrated resource plans ("IRPs") and competitive procurement processes resulting in the award of long-term commercial contracts<sup>2</sup>; (ii) honors existing contracts and leverages existing investments; and (iii) evolves the IESO-administered market ("IAM") as the market for the reliable, efficient and competitive dispatch of resources.

**Recommendation #2:** Establish the IESO as the independent agency responsible for developing an all-source IRP, administering competitive procurement of long-term contracts, and evolving the IAM in accordance with legislated purposes.

**Recommendation #3:** Enhance the OEB's mandate to include responsibility for review and approval of the IESO's all-source IRP and competitive procurement in accordance with best practices and the policy direction set by government.

**Recommendation #4:** Enhance the OEB's existing oversight by: (i) strengthening processes governing market rule amendments; and (ii) consolidating market monitoring, compliance, and enforcement functions under the OEB.

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<sup>2</sup> For the purposes of this submission an "all-source IRP" means both an integrated resource plan that establishes the technology-neutral resource needs for Ontario's bulk electric system, and the plan to competitively procure required resources through an all-source competitive procurement process, i.e., request for proposal ("RFP").

**Recommendation #5:** Ensure clear and legislatively-enshrined purposes and principles to set government policy direction and govern the actions of independent agencies in enacting all-source IRP and competitive procurement processes developed through meaningful stakeholder engagement.

**Recommendation #6:** Ensure the conditions necessary for effective competition by addressing government-owned investment in the sector.

### III. Detailed Recommendations

#### **Recommendation #1 – A Made-in-Ontario Approach to Competitive Procurement**

*Design and implement a framework for resource planning and procurement that: (i) relies on independent agency-led all-source integrated resource plans (“IRPs”) and competitive procurement processes resulting in the award of long-term commercial contracts; (ii) honors existing contracts and leverages existing investments; and (iii) evolves the IESO-administered market (“IAM”) as the market for the reliable, efficient and competitive dispatch of resources.*

The challenges of Ontario’s electricity sector today are meaningfully different than those that drove market liberalization in the 1990s and 2000s. In order for Ontario’s planning and procurement framework to be capable of attracting the volume and diversity of investment necessary to ensure reliable, affordable and sustainable supply, the legislative and regulatory framework must evolve. Capital Power recommends that Ontario adopt a legislative and regulatory framework designed to support enhanced independent agency-led resource planning, competitive processes for long-term commercial contracts, and the evolution of the IAM to ensure it is focused on integrating all competitive technologies, optimizing short-term resource dispatch, facilitating competition between resources, and minimizing the need for out-of-market payments that distort market prices. The key elements of our recommendation for a made-in-Ontario approach to long-term planning and competitive procurement are described below.

##### *i) Independent agency-led planning and competitive procurement*

As the electricity sector evolves to meet the goals of electrification and decarbonization, it is critical that prudent regulation serves to further the reliability, affordability and sustainability of electricity supply necessary to support Ontario’s growing economy. This requires a framework that empowers independent agencies to lead highly specialized planning and procurement processes, leaving government to focus on the important role of setting clear policy direction and goals.

Evolutionary pressures on the electricity sector are not unique to Ontario, but the history of the province’s market structure evolution and its supply/demand dynamics pose unique challenges for competitively incenting reliable, affordable, and sustainable supply.

First, historical reliance on government directives to procure new supply has resulted in a series of unpredictable government intervention in the sector that has created uncertainty for investors. Reliance on government directives and out-of-market payments has also served to diminish market transparency with respect to procurement decisions and allocation of investment risk borne by ratepayers, as well as weaken agency accountability to responsibly evolve the market.

Second, opportunities to earn revenues through a market based on marginal-cost dispatch in the IAM, and/or the IESO-administered capacity auctions as currently proposed are not sufficient to attract and sustain required new investment and reinvestment in critical assets given Ontario's existing market framework. Investable markets must provide investors a reasonable opportunity to recover fixed costs and earn a return on and of capital. Revenues in the IAM are determined by market pricing driven by competition for dispatch. In Ontario, a significant portion of supply in the market is insulated from market exposure due to either being contracted or subject to rate-regulation, and therefore lacks meaningful incentives to respond to market prices. There is also lack of clarity with respect to capacity auction eligibility and supply and demand fundamentals that will ultimately determine pricing, among other issues. These considerations impede the ability of the capacity market and IAM frameworks to collectively provide an effective signal that can be relied upon by investors to commit to long-term investments.

To be clear, these unique features do not diminish the value of competition to Ontario's electricity sector, but rather serve as a guide for how to approach competition in the sector. Capital Power believes the most appropriate and effective approach for Ontario to attract diverse and cost-effective investment is through competitive processes for long-term commercial contracts. Long-term commercial contracting offers investors a reasonable opportunity to recover fixed costs, earn a return on and of capital, and appropriately tailor risk allocation between parties.

Under the current framework, there is a lack of clarity regarding the types of competitive processes and revenue mechanisms available to existing and potential investors, and this lack of clarity risks driving inefficient market entry and exit decisions during a critical time in Ontario's planning cycle. Capital Power recommends resolving this lack of clarity by enshrining in legislation explicit support for a competitive investment framework that relies on long-term commercial contracts to attract required investment in Ontario. The legislative and regulatory framework should explicitly commit the IESO to incorporating all-source competitive processes for long-term contracts when procuring needed resources.

*ii) Honouring contracts and leveraging existing investments*

Existing investments are critical to supporting the reliability and affordability of Ontario's market evolution, and existing agreements with existing assets need to be honoured to ensure that Ontario's market evolution preserves and enhances investor confidence. Allowing existing assets to compete with new supply is also critical to preserving investor confidence as well as enabling effective competition and avoiding the costs of stranded investment. Existing assets represent a cost-effective source of energy and capacity for the system, and also provide opportunities for low-cost "brownfield" expansions, and as such should be considered in all-source IRP planning and eligible to compete in competitive procurement. These actions will signal to investors that competitive procurement mechanisms will provide reasonable long-term opportunities to earn a return on and of capital and preserve Ontario's reputation as a jurisdiction "open for business" and committed to ensuring value for ratepayers.

*iii) Evolving the IESO-administered market*

As discussed above, the function and structure of the IAM are inadequate for incenting needed investment in Ontario. Out-of-market mechanisms, contracts, and guaranteed regulated rates of return for certain types of assets have been relied upon to incent investment since the early 2000s, diminishing the role of the IAM in this key respect. The IAM continues to serve an important role in its function as a market for competitive dispatch, but its continued evolution to

support real-time optimization should not undermine long-term investment incentives that are better addressed through competitive, long-term contracts.

Legislative amendments are required to appropriately scope the purpose and economic function of the IAM and authorize the IESO to develop and operate the market in accordance with its purposes. Capital Power recommends that the purposes of the IAM should be limited to: inclusion and integration of all competitive technologies, optimization of short-term resource dispatch, facilitation of competition between resources in real-time and day-ahead markets, provision of open access to transmission, and the operation of an efficient and reliable grid. The IAM and its related auctions should not be relied on for providing long-term market signals for investment.

## **Recommendation #2 – Evolving the Role of IESO**

*Establish the IESO as the independent agency responsible for developing an all-source IRP, administering competitive procurement of long-term contracts, and evolving the IAM in accordance with legislated purposes.*

Capital Power believes that the IESO, as market operator and system planner, is the agency best-suited to perform planning and procurement activities in Ontario. The IESO is in the best position to develop system forecasts and identify future system needs with consideration to costs and benefits of investment in generation and transmission.

The legislative and regulatory framework should be evolved to empower the IESO to undertake planning and procurement activities in a manner that leverages its specialized expertise, effectively engages stakeholders, and transparently communicates system needs and procurement plans in accordance with timelines needed to attract competitive investment. In order to achieve this, legislation should require the IESO to conduct meaningful stakeholder engagement to develop an all-source IRP that assesses system needs and sets competitive, technology-neutral procurement targets aimed at attracting the lowest cost supply mix based on forecasted demand, reliability requirements, and government policy direction. In short, the all-source IRP should be designed to further the goals of maintaining reliability, affordability and sustainability of the system and must forecast need with enough detail and enough lead time to support competitive investment.

## **Recommendation #3 – Enhancing OEB Oversight of Planning and Procurement**

*Enhance the OEB's mandate to include responsibility for review and approval of the IESO's all-source IRP and competitive procurement in accordance with best practices and the policy direction set by government.*

The OEB is the independent economic regulator of Ontario's energy sector and its core purpose is to regulate Ontario's energy utilities in the public interest.<sup>3</sup> Accordingly, Capital Power believes that responsibility for review and approval of the all-source IRP should rest with the OEB.

To facilitate effective OEB oversight over IESO-led planning and procurement, the IESO's all-source IRP should be submitted to the OEB for review and approval. The purpose and scope of the OEB's review should be aimed at ensuring that the IESO has conducted meaningful stakeholder engagement to develop a resilient plan based on reasonable assumptions that will

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<sup>3</sup> Ontario Energy Board, *Ontario Energy Board Modernization Review Panel: Final Report*, October 2018, pg. 4, <https://www.ontario.ca/document/ontario-energy-board-modernization-review-panel-final-report>.

achieve the objectives of the sector outlined in legislation. It should be incumbent upon the IESO to demonstrate that its plan meets these criteria. This will drive increased IESO accountability and improve independent decision-making and consultation.

Guiding the OEB's review and approval of the all-source IRP should be consideration of costs, prudence, government's policy goals and relevant legislative purposes. Questions guiding review and approval of the all-source IRP should include:

- Does the IRP meet the policy goals and legislative purposes outlined by government?
- Is the IESO's IRP based on a technology-neutral needs assessment that considered both forecasted load and expected resource retirements?
- Insofar as new resources are required, has the IESO included a plan to conduct a competitive all-source procurement process with robust bid evaluation?
- Where a single-source procurement or non-competitive process has been proposed, has the IESO demonstrated that competition over the long run will not be negatively impacted?

Transparent processes through which these and other questions can be asked will serve to drive effectiveness and accountability in planning and procurement decisions, while identifying areas where non-competitive procurement is being relied upon due to policy reasons, intervention or market failure. Through such processes, investors also gain needed confidence that procurement targets have been appropriately vetted.

Capital Power recognizes the need to avoid duplicative, inefficient and costly regulatory processes. Accordingly, enhanced OEB oversight should be clearly scoped and focused on ensuring that the IESO's plan meets legislative objectives and requirements. Enhanced OEB oversight should not be for the purpose of duplicating the IESO's efforts or relitigating matters already settled through the IESO's processes.

#### **Recommendation #4 – Enhancing OEB Oversight of Market Rules, Monitoring, Compliance and Enforcement**

*Enhance the OEB's existing oversight by: (i) strengthening processes governing market rule amendments; and (ii) consolidating market monitoring, compliance, and enforcement functions under the OEB.*

The effectiveness of the OEB's existing oversight functions can be enhanced through the following improvements:

##### *i) Strengthening processes governing IAM market rule amendments*

Under the current framework, the OEB is the final adjudicator of market rule amendments and market rules appeals. However, the legislation does not provide detailed guidance regarding the process the OEB should undertake when reviewing and approving proposed amendments to the IESO's market rules, nor does it provide stakeholders with transparency necessary to understand aspects of the evidence and framework considered by the OEB in its decisions. This obscures awareness of the analytical framework that is applied by the OEB in its determination of whether to approve or deny proposed market rule amendments, thereby weakening a core governance feature of the existing framework. Capital Power recommends that the OEB's oversight function as it relates to market rule amendments be enhanced through procedural reforms designed to provide needed transparency and provide stakeholders the ability to raise concerns with the OEB prior to initiating a formal appeal of the proposed amendment.



ii) *Consolidating market monitoring, compliance, and enforcement functions under the OEB.*

Consistent with its role as final adjudicator of market rule amendments, the OEB should be the sole agency responsible for adjudicating disputes regarding market rule interpretation and allegations of non-compliance with market rules and regulatory requirements. Further, market monitoring, compliance and enforcement functions should be consolidated under the OEB.

Consolidated functions would include:

- monitoring for compliance with market rules (IESO and market participants)
- investigating participant conduct
- bringing forward allegations of non-compliance to OEB for independent adjudication

Such consolidation, along with independent compliance and enforcement will facilitate effective adjudication of disputes and enforcement of compliance with market rules, and legislative and regulatory requirements.

**Recommendation #5 – Providing Clear, Long-term Policy Direction**

*Ensure clear and legislatively-enshrined purposes and principles to set government policy direction and govern the actions of independent agencies in enacting all-source IRP and competitive procurement processes developed through meaningful stakeholder engagement.*

Clear, long-term policy direction provides certainty for all stakeholders in the market, including investors and independent agencies. It is required to ensure the execution by the independent agencies of their respective mandates is aligned with the broad purposes and objectives for the market, and to ensure alignment across agencies. This is best achieved through setting clear objectives for the sector and enshrining them in legislation, as well as establishing an effective governance framework with well-defined agency roles, mandates, and accountabilities. While broad sector objectives already exist under the *Electricity Act* (the “Act”), the Act should be revisited and updated to define the purposes guiding sector evolution, the procurement framework required to support the energy transition, and governance model needed to empower the agencies in their new and evolved roles.

Broad sector objectives need to include explicit reference to use of all-source RFPs and long-term commercial contracts as the main mechanisms for competitive supply procurement in Ontario. References to procurement through government directive should be removed. It is reasonable to expect that in some instances the conditions for effective competition may not exist and that government may wish to retain the authority to engage in sole-source procurement. Sole-source procurement should only be used as a last-resort and once all competitive methods have been exhausted, and any sole-source decisions must be subject to OEB review to ensure they meet the goals of the Act and do not undermine competition in the long-term. The prospect of resources being procured outside of transparent and competitive processes introduces a level of policy and regulatory uncertainty that undermines broad investor confidence in the market, shields investment decisions from competitive pressures, and ultimately increases costs to the ratepayer. Meeting the challenges of Ontario’s electricity sector over the long-term is going to require a non-discriminatory approach to competitive procurement. Loopholes and backstops that have the power to undermine competition and diminish investor confidence should be avoided.

Lack of clear policy direction can create regulatory uncertainty for investment in a number of ways, including instances where the actions of independent agencies are seen as misaligned with and/or counter to the broad objectives and direction of government. A recent example of this in Ontario relates to the IESO’s initiation of a “gas phase-out” study without any public

direction from government. The IESO actions, however well-intentioned, seem inconsistent with government's views regarding the important role of gas on the system. Instances of misalignment like this create concerns for investors and would benefit from government providing clear, long-term policy direction.

#### **Recommendation #6 – Ensuring Conditions for Effective Competition**

*Ensure the conditions necessary for effective competition by addressing government-owned investment in the sector.*

A Made-in-Ontario approach to planning and competitive procurement as well as real-time market operations must also acknowledge the impact of government-owned, rate-regulated supply. The current framework impairs investment signals by providing regulated rates of return to government-owned entities, while requiring private investors to earn returns from the IAM, evolving capacity auctions, and uncertain opportunities for future contracts. The impact of differences between revenue opportunities enjoyed by rate-regulated, government-owned investment and those revenue opportunities available to private investors, must be considered in the design of contracts and revenue mechanisms. Investor-owned firms must be afforded an equal opportunity to compete for long-term contracting that provides a reasonable opportunity to earn a return on and of capital. Government-owned resources must, to the greatest extent possible, be required to compete on a level playing field with investor-owned supply.

#### **IV. Conclusion**

The foregoing recommendations for enhancements to Ontario's long-term energy planning and procurement framework seek to evolve the role of the IAM; establish the IESO as the agency responsible for planning and competitive procurement through long-term commercial contracting; and enhance the OEB's oversight of IESO-led planning and procurement and market evolution. These recommendations rely on clear, long-term policy direction from government and a commitment to the important role of competition, both in legislation and in practice. Capital Power is committed to Ontario and delivering value to the ratepayer through the safe and reliable operation of our assets. We look forward to discussing these recommendations with the Ministry and participating in all future stakeholder engagement on these matters.