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Matthew Peltier
Energy Supply Policy Division
Ministry of Energy
7th floor, 77 Grenville Street
Toronto, ON, M7A 2C1

Subject: Proposed amendments to O. Reg. 429/04 – PPAs with off-site non-emitting generators

Dear Mr. Peltier:

Thank you for this opportunity to submit feedback relating to proposed amendments to O. Reg. 429/04 (“the Regulation”), which addresses the treatment of corporate power purchase agreements (PPAs).¹ The Business Renewables Centre-Canada (BRC-Canada) appreciates the opportunity to provide these comments and commends the Ministry of Energy (the “Ministry”) for an open and transparent consultation on this important topic.

BRC-Canada strongly supports the overall initiative to enable corporate PPAs. However, BRC-Canada is not supportive of certain restrictions that are:

- Already included in the proposed Regulation amendments, particularly
 - limiting eligible customers and eligible generators to market participants, and
 - excluding energy storage from eligible generators, and
- Under contemplation by the Ministry, particularly
 - requiring generation facilities to obtain a local municipal support resolution, and
 - restricting the location of generation facilities on prime agricultural lands.

We explain how these restrictions are impediments to the program’s utility further in the sections below. BRC-Canada recommends that these restrictions be excluded from the final amendments. We encourage further discussion with the Ministry, within the existing implementation timeline, to understand the context of these restrictions and to identify alternative solutions that are less restrictive.

¹ ERO number 019-8666, <https://ero.ontario.ca/notice/019-8666>

About BRC-Canada and the Corporate PPA Opportunity

BRC-Canada² is a non-profit organization seeking to catalyze the market for non-utility procurement of clean energy across Canada. Our participants include buyers, suppliers and entities that help facilitate transactions of PPAs between buyers and suppliers (see Appendix A for a list of BRC-Canada buyer participants). BRC-Canada is modeled after the Clean Energy Buyers Association (CEBA) in the U.S.³

BRC-Canada's catalyst role has supported 3.31 GW worth of renewable energy procurement deals through corporate PPAs in Alberta, enabling the financing of 4.10 GW of project capacity. This has helped bring \$6.4 billion in capital investment to Alberta to support the development of enough low-cost power for the annual energy needs of 1.7 million homes.⁴

These Alberta deals have involved numerous buyers with operations (and the associated electricity demand) in Ontario. Buyers are investors and job-creators. Increasingly, they are responding to global financial and customer demands for environmental targets within environmental, social and governance (ESG) plans. To meet those targets, they must source their power from non-emitting supply, instigating their demand for renewable energy. Because of this expectation from their stakeholders, these job-creators consider the opportunity for accessing low-cost, non-emitting power when siting their facilities and investing capital in new operations.⁵

Looking to attract these job-creators,⁶ jurisdictions with different electricity systems across North America and the world have designed tailored programs to enable corporate renewable energy procurement. This includes Nova Scotia and Saskatchewan, both of which have active programs and were motivated by existing industry and prospective investors demanding this opportunity.⁷ The direct benefits of the renewable energy investment and its low-cost power to the grid are mere icing; the cake is attracting modern investors and industry.

² <https://businessrenewables.ca/>

³ <https://cebuyers.org>

⁴ <https://businessrenewables.ca/deal-tracker>

⁵ See, e.g., <https://www.cbc.ca/news/canada/calgary/amazon-hub-calgary-investment-1.6241214> (stating that Amazon chose Calgary for its \$4.3B data centre hub “because it's well-placed in the region, is connected to national and international infrastructure, and *offers access to renewable energy that will help allow the company to fulfil its emission reduction goals*” (emphasis added).)

⁶ <https://businessrenewables.ca/resource/fact-sheet-albertas-corporate-renewables-procurement-advantage>

⁷ <https://businessrenewables.ca/resource/fact-sheet-enabling-corporate-renewable-energy-procurement-across-canada>

Key Attributes of Successful Programs

Many of these programs have been successful, while others have failed to offer a workable opportunity for job-creators to obtain non-emitting power cost-effectively. A successful program — one that enhances the jurisdiction's appeal for ESG-oriented companies — must be marketable to those job-creators.

BRC-Canada has prepared a fact sheet series summarizing the opportunities, drivers, and key design principles for successful programs enabling corporate renewable energy procurement.⁸ To be marketable requires that the program commit to:

1. Consulting with buyers and developers to optimize attractiveness to both parties;
2. Allowing buyers visibility and input into the source of the renewable energy;
3. Ensuring buyers are confident in the materiality of the renewable energy;
4. Tapping into market competition to secure lowest-cost energy; and
5. Enabling flexibility in participation to accommodate the broad diversity of prospective buyers.

In addition, to work and be sustainable, the program must allocate a fair share of the benefits and costs of new renewable energy between the buyer and non-participating grid consumers.

BRC-Canada offers the following comments with these principles in mind.

Feedback on Regulatory Amendment Proposal

BRC-Canada commends the Ontario government's efforts to design a workable approach to enabling some electricity customers to procure renewable energy through PPA. Many aspects of the proposed program design (reflected in the proposed amendments to the Regulation) are thoughtful and meet the design principles required for marketability of the program. BRC-Canada applauds the core framework of the proposal and its innovative approach to enabling "buyers" (our term for electricity consumers entering PPAs for non-emitting electricity) to internalize the benefits of avoided Global Adjustment costs. At the same time, we offer some constructive feedback that would improve the marketability of the program for a broader set of job-creators who need access to economic renewable energy options.

How the Proposed Amendments Serve the Principles for Successful Program Design

First, BRC-Canada applauds the consultative approach in developing these amendments to the Regulation. We encourage the Ministry to continue with open and transparent engagement around any further changes to the proposed amendments, and for the continuous improvement of the program going forward, as it is implemented.

⁸ <https://businessrenewables.ca/resource/fact-sheet-designing-programs-corporate-renewables-procurement>

Second, BRC-Canada applauds the market-based approach of recognizing eligible purchase agreements (“PPAs”) arrived at privately by market participants and eligible generators. This approach of placing the choice of non-emitting generation and PPA construct in the hands of buyers accomplishes three of the core principles necessary to ensure marketability:

1. Buyers get to choose their preferred sources to meet their ESG goals and suit their economic resources and risk tolerance.
2. Buyers can have confidence in the materiality of their procurement, seeing the direct connection between their purchase and the additional clean energy they seek.
3. Buyers can employ procurement mechanisms or other market-based approaches that will achieve the best mix of lowest-cost and highest-value clean energy.

Finally, BRC-Canada feels that the cost offsetting approach — tying the power procured under eligible purchase agreements to Global Adjustment charges by offsetting peak hour demand for base period calculations — is both fair and enables job-creators to meet their goals with renewable energy procurement.

How the Proposed Amendments Could be Improved

However, certain restrictions in the amendments or suggested in the consultation materials reduce flexibility and choice. Together, these will make the program unavailable or undermine its appeal to some job-creators who wish to have the opportunity to buy clean energy in Ontario in order to bring, or increase, investment in the province. As such, the proposed design falls short of BRC-Canada’s program principle of “enabling flexibility in participation to accommodate the broad diversity of prospective buyers.”

Eligible purchase customers should not be limited to Class A market participants

BRC-Canada is not aware of any rationale to limit the class of eligible purchase customers to Class A market participants or the class of eligible generators to market participants. Customers who may be large discrete load consumers should not be excluded from the important opportunity that the Ministry recognizes by developing these amendments. Excluding prospective buyers and generators would limit the potential of the program.

Hybrid renewable-storage facilities should not be excluded from the eligible generators

The proposal indicates that the Ministry recognizes the “interest in pairing [eligible renewable energy sources] with energy storage” but that including this technology would introduce “complexity to implement.”

BRC-Canada submits that pairing renewable energy generators with storage contributes to electricity system reliability and affordability. Therefore, excluding energy storage facilities from the class of eligible generators will prevent these potential added benefits from accruing to the grid through this new program. Moreover, it rules out one potentially attractive facility configuration that would support the economics of a PPA under this program, by enabling

buyers and generators to shift low-cost energy generation from wind and solar to peak demand hours, when the grid most needs the energy.

BRC-Canada recommends including energy storage alongside non-emitting generation technologies. More clarity from the Ministry about how their inclusion would introduce implementation complexity would provide the opportunity for stakeholders to understand this complexity better and offer design options that could mitigate concerns.

Feedback on Specific Questions Posed by the Ministry

The Ministry indicated particular interest in feedback on three specific issues. We offer focused comments on these issues below.

[The mechanics of financial settlement \(including peak demand factor calculations\)](#)

BRC-Canada submits that the approach of offsetting peak demand “virtually” through the assignment of clean energy under contract to the buyer (market participant) offers a fair allocation of Global Adjustment costs. Further explanation of the policy intent with the peak demand factor calculations would be useful, to assess whether the calculations achieve that intent. This could include illustrations of specific examples, for greater clarity.

It would also help to understand what specific information the Ministry is seeking from the eligible purchase agreements. In particular, how the Ministry will incorporate information from the agreements into the administrative task of calculating peak demand factor, as well as any auditing/verification role the Ministry sees as necessary for this program, would be useful context. Based on what information is necessary, the Ministry can then seek feedback on options for providing this information and options for redacting commercially sensitive provisions, if agreements are, in fact, necessary.

Requiring divulgence of commercially sensitive information in private agreements can pose a barrier to market participation and undermine the marketability of the program. It can impact commercial interests and undermine competitiveness for both energy buyers and developers. This tension needs to be considered alongside a precise articulation of the public interest need for the information in finding a balance for specific informational requirements.

It appears that the calculations prevent a buyer from receiving a negative peak demand factor. However, it also appears that the calculations allow for net surplus generation (greater generation under contract than consumed by the buyer facilities) in any one peak demand hour to offset net consumption in other peak demand hours. Assuming this is the correct interpretation of the calculations in the proposed amendment, this is appropriate.

[Municipal support resolution requirement for generation facilities on municipal lands](#)

The Ministry has asked for feedback on “the implementation of a proposed requirement that new generation facilities obtain a local municipal support resolution stating support for the new generation facility on their municipal lands in order to be eligible under the proposed

amendments.” Unfortunately, BRC-Canada is unable to find a set definition for “municipal lands” in Ontario legislation and is not aware of a definition referenced by the Ministry in this proposal.

To the extent that there is a settled definition of “municipal lands” in Ontario law, our research suggests that the term refers to land owned by the municipality.⁹ In that case, the proposed requirement is redundant, as the municipality’s support and consent will already be required where it has a direct ownership interest in the land.

If the definition includes private land located within a municipality’s boundaries, then there may be adverse implications for project development. Additional restrictions would likely lead to higher system costs and rates. These restrictions would limit the opportunity for renewable energy development in regions that are relatively close to load centres, pushing the supply of projects away from load and requiring more transmission infrastructure.

The private-sector buyer, who is motivated to secure non-emitting generation for ESG purposes, is also motivated to consider issues of social licence and local support in their own balancing of ESG priorities, cognizant of the effect on their brand and local relationships.

To ensure clarity for all stakeholders and to allow for specific feedback, BRC-Canada recommends that the Ministry provide a definition for what is considered municipal lands.

Restricting new generation facilities on prime agricultural lands

BRC-Canada recommends against restrictions on prime agricultural lands. There is a functional marketplace guiding land use for renewable energy: the higher agricultural production value of land is internalized as an opportunity cost in the landowners’ expectations for lease rates. All else being equal, generators and buyers will seek lower-cost opportunities for new generation through the operation of these market principles.

Where possible, the program should minimize interference with landowner decisions and free determination of landowners to use their land as they see fit. We believe landowners are in the best position to determine how to protect and sustain their agricultural operations on their land. They are also best-placed to assess the highest-value use of their land and can account for the greater opportunity cost of development on higher-yield agricultural land through higher lease rate expectations. In practice, these leases commonly enable landowners to remain on the farm that may have been in their family for generations by supplementing their volatile and uncertain agricultural revenues with predictable lease revenues.

By contrast, a “prime agricultural land” restriction requires a complex assessment of agricultural productivity that collects dozens of parameters relevant to productivity into a

⁹ See Mining Act, RSO 1990, c M.14, s. 29(1)(h). See also the spent version of the Municipal Act, RSO 1990, c M.45, 210.1(3)(c). Both instances use “municipal land” in contexts that clearly refers to land owned or leased by the municipality.

limit set of land classifications. This process removes the nuance of land-use decisions and is less effective than market forces and landowners' unique knowledge of their land.

Landowners are best placed to assess the highest value purpose for their land, recognizing the entire constellation of factors, including:

- the revenues from renewable energy project leases;
- the opportunities to farm alongside the renewable energy project
- the future market for agricultural products and how to weigh the risks of those market prices against the certainty of land lease payments from renewable energy projects;
- the effort and labour involved in agricultural production;
- the diversification of revenues to mitigate risks of relying on any one sector; and
- many other complex and context-specific factors that centralized command-and-control government regulation is ill-suited to identify, assess, and balance.

In fact, BRC-Canada has found that this issue is commonly overstated when it arises. As part of a consultation on renewable energy and land impacts in Alberta, BRC-Canada commissioned a third-party analysis of agricultural land pressures during a period of rapid renewable energy expansion.¹⁰ Solar and wind projects combined were a minor driver of agricultural land loss and the vast majority impacted only low-suitability agricultural land, proof of the effectiveness of market forces in choosing land with fewer opportunity costs for landowners. In fact, solar projects had impacted no high-suitability agricultural land and wind projects only impacted 63 hectares; a mere fraction (about one-fourteenth) of the high-suitability land removed by other forms of industrial expansion.

Minor Typographical Error

Subsection 3(1) and 3(2) of the proposed amendments references subsection 11(1) of the Regulation. We believe that these two amendments should reference subsection 11(2) of the Regulation.

Request for Further Information and Consultation

BRC-Canada supports proceeding with the program implementation without further delay. However, the restrictions introduced in the draft amendments (particularly the limitation of buyers and generators to “market participants” and the exclusion of facilities with energy storage) and the additional restrictions suggested by the Ministry (municipal support and agricultural land restrictions) will artificially limit the opportunities of this program.

¹⁰ BRC-Canada, *Submission to Module A of the Alberta Utilities Commission inquiry into the ongoing economic, orderly and efficient development of electricity generation in Alberta*, December 2023, 15-18, Appendix B, <https://businessrenewables.ca/resource/brc-canada-auc-module-submission>

In light of these issues in the design, BRC-Canada requests further information and discussion to inform potential solutions to address the concerns raised by the Ministry. BRC-Canada is confident that these additional discussions can be accommodated within the present timeline, given the delayed implementation to May 2025.

Appendix A: BRC-Canada Buyer Participants

- Amazon
- Amble Ventures Inc.
- Anheuser-Busch
- Bow Valley College
- Business Development Bank of Canada
- Canadian Tire Corporation, Limited
- Canmore, Town of
- Cargill
- Celestica Inc.
- City of Edmonton
- Deep Sky
- Edmonton Public School Board
- General Motors
- Gibson Energy Inc.
- IBM Canada Ltd.
- Maple Leaf Foods
- Marriott International
- Oxford Properties Group
- Purolator
- RBC
- Rogers
- Starbucks
- TELUS Corporation
- Town of Banff
- Trans Mountain Corporation
- UPS