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EONY Generation Limited

August 31, 2016

Hon. Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza, Agency Building 3
Albany, NY 12223-1350

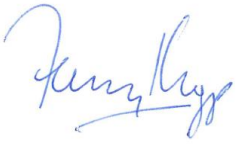
Re: CASE 15-E-0302 – Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard

CASE 16-E-0270 – Petition of Constellation Energy Nuclear Group LLC; R.E. Ginna Nuclear Power Plant, LLC; and Nine Mile Point Nuclear Station, LLC to Initiate a Proceeding to Establish the Facility Costs for the R.E. Ginna and Nine Mile Point Nuclear Power Plants

Dear Secretary Burgess:

Pursuant to Section 3.7 of the New York State Public Service Commission's ("Commission") Rules of Procedure, Energy Ottawa Inc. hereby files a "Petition for Rehearing of Energy Ottawa Inc." of the Commission's order issued on August 1, 2016 in the above-referenced cases.

Sincerely,



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cc: Active Parties Case 15-E-0302 (via email)

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STATE OF NEW YORK
BEFORE THE
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard	)))	Case 15-E-0302
Petition of Constellation Energy Nuclear Group LLC; R.E. Ginna Nuclear Power Plant, LLC; and Nine Mile Point Nuclear Station, LLC to Initiate a Proceeding to Establish the Facility Costs for the R.E. Ginna and Nine Mile Point Nuclear Power Plants	)))))	Case 16-E-0270

PETITION FOR REHEARING OF ENERGY OTTAWA INC.

I. INTRODUCTION

Pursuant to Public Service Law Section 22 and Section 3.7 of the New York Public Service Commission's ("Commission") Rules and Regulations, Energy Ottawa Inc. ("Energy Ottawa") hereby respectfully petitions for rehearing of the order issued by the Commission in the above-captioned proceedings on August 1, 2016 ("the CES Order").[1] In the CES Order, the Commission undertook the following key actions: (i) adoption of the State Energy Plan's ("SEP") goal of deriving 50% of the State's electricity supply from renewable resources by 2030; and (ii) establishment of a Clean Energy Standard ("CES") comprised of two core elements – a Renewable Energy Standard ("RES") and a Zero-Emissions Credit ("ZEC") requirement.[2] In this petition, Energy Ottawa respectfully requests that the Commission issue an order on rehearing which addresses certain errors of law and fact, and which addresses new

[1] Case 15-E-0302 – *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, and Case 16-E-0270 – *Petition of Constellation Energy Nuclear Group LLC; R.E. Ginna Nuclear Power Plant, LLC; and Nine Mile Point Nuclear Station, LLC to Initiate a Proceeding to Establish the Facility Costs for the R.E. Ginna and Nine Mile Point Nuclear Power Plants*, Order Adopting a Clean Energy Standard (August 1, 2016).
[2] CES Order, pp. 12-13.

circumstances that warrant a different determination. Energy Ottawa requests that such order on rehearing grant all forms of existing renewable generation (and, in particular, small hydroelectric resources) the opportunity to participate either in the State's new Renewable Energy Credit ("REC") market or the newly-created ZEC program.

The basis for Energy Ottawa's petition is the following: (a) the CES Order unfairly and unduly discriminates between different sources of existing zero-emissions generation; (b) the Commission erred in rejecting arguments highlighting the potential for environmental attributes associated with existing renewable generation to be exported to neighboring jurisdictions; (c) the Commission erred in incorporating the environmental attributes associated with existing renewable generation into the State's overall baseline without providing any compensation for the economic value of those attributes; and (d) the establishment of a Tier 2 Maintenance Resource program in the RES and its accompanying eligibility criteria is not supported by the record.

II. DESCRIPTION

Energy Ottawa is a diversified energy company whose core businesses are renewable energy production, energy services, and energy infrastructure management. Energy Ottawa is the parent company of EONY Generation Limited ("EONY"), which owns and operates four small hydroelectric generating stations in New York, representing a combined capacity of approximately 23 megawatts ("MW"): (i) Moose River, a 12.2 MW run-of-river facility located in Lyonsdale, Lewis County; (ii) Dolgeville, a 5 MW run-of-river facility located in Dolgeville, Herkimer County; (iii) Philadelphia, a 3.6 MW run-of-river facility located on the Indian River in Jefferson County; and (iv) Diana, a 1.8 MW run-of-river facility located in Harrisville, Lewis County. All four facilities owned and operated by EONY are licenced by the U.S. Federal

Energy Regulatory Commission ("FERC") and have been designated by FERC as Qualifying Facilities ("QFs").

In addition, Energy Ottawa either owns and/or operates hydroelectric facilities, gas-to-energy generating plants, and solar energy facilities in the Canadian provinces of Ontario and Québec. With an overall generation portfolio of 79 MW, Energy Ottawa is the largest municipally-owned generator of renewable energy in the province of Ontario. The company is a wholly-owned subsidiary of Hydro Ottawa Holding Inc., which is owned by the City of Ottawa and governed by an independent Board of Directors.

Energy Ottawa remains committed to the highest standards of environmental responsibility and to the development of innovative sources of renewable generation. Energy Ottawa is pleased to operate in North American jurisdictions – New York, Ontario, and Québec – which are leaders in the adoption of robust public policies addressing climate change and promoting clean energy.

As the owner and operator of approximately 23 MW of small hydroelectric capacity in the State of New York, Energy Ottawa has a direct and substantial interest in the outcome of this proceeding, as it will be impacted by the implementation of the CES Order. Energy Ottawa's engagement in this proceeding will not prejudice the interest of any other party to this proceeding and is therefore in the public interest.

III. BACKGROUND

Energy Ottawa believes that it is critical to acknowledge and emphasize the full genesis and robust evidentiary record underlying the CES Order and the CES proceeding.

The CES proceeding was an offshoot of the Large-Scale Renewable ("LSR") track established in February 2015 under the larger, ongoing Reforming the Energy Vision ("REV")

proceeding ("REV Order").[3] Pursuant to the Commission's directives in launching this new track, staff from the Department of Public Service and the New York State Energy Research and Development Authority ("NYSERDA") published an LSR Options Paper on June 1, 2015.[4]

Shortly after the issuance of the LSR Options Paper, New York Governor Andrew Cuomo released the SEP, which, among other things, established the over-arching target of achieving 50% of the State's electricity supply from renewable energy resources by 2030.[5] Approximately five months later, in early December 2015, Governor Cuomo directed the Department of Public Service to implement this "50 by 30" goal by way of a CES program. This, in turn, triggered an expansion of the Commission's LSR proceeding, so as to incorporate consideration and implementation of the CES.[6] In short order, staff from the Department of Public Service filed its White Paper on Clean Energy Standard ("CES White Paper").[7] The scope of the proceeding was then expanded further, to consider issues related to the risk of premature retirement of certain nuclear generation facilities in the State.[8] In April 2016, Department of Public Service staff issued their Clean Energy Standard White Paper – Cost Study ("CES Cost Study").[9] Over the course of this lengthy, comprehensive proceeding, the Commission extended numerous opportunities for public comment, whether through written

[3] Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting Regulatory Policy Framework and Implementation Plan (February 26, 2015).
[4] Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Large-Scale Renewable Energy Development in New York: Options and Assessment (June 1, 2015).
[5] New York State Energy Planning Board, *2015 New York State Energy Plan* (June 25, 2015), p. 112.
[6] Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Expanding Scope of Proceeding and Seeking Comments (January 21, 2016).
[7] Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Staff White Paper on Clean Energy Standard (January 25, 2016).
[8] Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Further Expanding Scope of Proceeding and Seeking Comments (February 24, 2016).
[9] Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Clean Energy Standard White Paper – Cost Study (April 8, 2016).

submissions, technical conferences, and public statement hearings. Most recently, the proceeding culminated in the Commission issuing the CES Order on August 1, 2016.

IV. ARGUMENTS

Section 3.7 of the Commission's Rules and Regulations states that "[r]ehearing may be sought only on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination."[10] Notwithstanding the robust evidentiary record established in this proceeding, as described above, Energy Ottawa respectfully argues that many of the provisions in the CES Order are not supported by the record and that the Commission did not provide a reasoned explanation for their inclusion. The Commission should therefore grant rehearing on those matters and revise the CES Order accordingly. Moreover, in the weeks following the issuance of the CES Order, new circumstances have arisen that warrant the Commission's attention and a different determination in this proceeding. These matters are examined and explained in further detail in the arguments set forth below.

A. The CES Order unfairly and unduly discriminates between different sources of existing zero-emissions generation.

The CES Order is egregiously flawed in its preferential treatment of specific forms of zero-emissions generation. In particular, this flaw is on full display in the ZEC and Tier 2 Maintenance Resource programs established in the order. While the former carves out significantly generous incentives for existing nuclear energy facilities, the latter offers only modest support to a very limited subset of existing zero-emissions generation resources.

In explaining its underlying rationale for the approach taken in creating the ZEC program, the CES Order does several things. First, it fully accepts the basic premise outlined by Department of Public Service staff in the CES White Paper that historically-low natural gas

[10] 16 NYCRR § 3.7(b).

prices have impaired the financial viability of upstate nuclear power plants, to the point where these otherwise fully-licensed and operational facilities are facing the demonstrable risk of premature retirement.[11] Moreover, the CES Order acknowledges that, based on current market conditions, the loss of zero-emissions attributes of nuclear generation will result in several negative outcomes – e.g. increased air emissions due to greater reliance on existing or new fossil-fuel plants; barriers to compliance with federal carbon standards; reduced fuel diversity; and significant adverse economic impacts on consumers and the State of New York as a whole.[12]

The evidentiary record in this proceeding includes compelling information that (i) underscores how the same factors which are eroding the economics of existing nuclear facilities are producing similar effects on existing hydropower facilities and (ii) highlights the adverse consequences which are very likely to occur in the absence of adequate support for other, non-nuclear existing sources of zero-emissions energy.[13] However, notwithstanding the evidence presented, as well as its recognition that hydropower represents the second-largest zero-emitting portion and the largest renewable portion of the state's total electric generation mix,[14] the CES Order nevertheless unreasonably and inexplicably minimizes and dismisses the prospects of negative outcomes coming to fruition in the absence of any action to value the environmental attributes associated with existing hydropower generation. The CES Order provides no reasoned explanation whatsoever for why different forms of existing zero-emissions generation should be subject to such drastically different treatment , despite the fact that they are challenged by the same factors and provide the same types of benefits to consumers, to the State, and to the market.

[11] CES Order, p. 45.
[12] CES Order, p. 19.
[13] For example, the comments of Ampersand Hydro, Brookfield Renewable Energy Group, and Gravity Renewables Inc. on the CES White Paper all provide specific evidence outlining the extraordinarily challenging market environment for small hydroelectric resources in New York, on account of depressed wholesale prices, and identifying the micro- and macro-level economic benefits which their facilities provide to local communities within the State as well as to the larger State economy and energy market.
[14] *Supra*, p. 19.

If anything, the CES Order seems to subtly hint at awareness on the Commission's part that its approach in this regard is perhaps flawed or incomplete. In its brief discussion of the Tier 2 Maintenance Resource program in the Introduction and Summary section, the CES Order directs Department of Public Service staff "to develop and recommend for Commission consideration as part of an implementation plan whether there should be changes to the maintenance program to align support with zero-emissions facilities."[15] The inference in this instance is that the Commission is leaving the door open to more consistent, uniform treatment of zero-emissions generation at a juncture in the future as yet to be determined. Nevertheless, there is no reasoned, compelling explanation for why the Commission is not incorporating this approach as part of its initial, immediate plan of action.

It is difficult to deduce any other inference from the CES Order than the Commission having taken arbitrary and capricious action in extending such unduly preferential and discriminatory treatment to one class of existing zero-emissions generation. Among other things, the discriminatory preference granted to existing nuclear generation will afford these resources an undue competitive advantage over other sources of existing zero-emissions generation, and is therefore directly in conflict with the principles and the effective administration of a competitive electricity market.

At a minimum, the Commission should issue an order upon rehearing that grants all existing zero-emissions generation the same form, manner, and level of compensation. One option for achieving this fair and non-discriminatory outcome is for the Commission to extend eligibility for the ZEC program to all existing generators of zero-emissions energy within the State.

[15] CES Order, p. 18.

B. The Commission erred in rejecting arguments highlighting the potential for environmental attributes associated with existing renewable generation to be exported to neighboring jurisdictions.

The tone and substance of the Commission's statements over the course of the REV, LSR, and CES proceedings have signalled that the Commission has appropriately remain seized with fulfilling the imperative for designing market structures and policy incentives which will enable New York to remain competitive in an evolving energy landscape.[16] Nevertheless, there are provisions and findings within the CES Order which will in fact undermine the State's ability to retain this competitiveness. One such example includes the Commission's erroneous rejection of evidence submitted for the record which identifies where opportunities already exist for in-state renewable generators to export their energy and environmental attributes to neighboring jurisdictions and markets.

In the CES Order, the Commission dismisses the prospect of a mass flight of clean energy attributes from existing renewable generation into other states as "merely hypothetical."[17] However, this finding is contradicted by numerous sources of evidence available on the record. First and foremost, this finding is contrary to arguments set forth in the CES White Paper itself. In the CES White Paper, Department of Public Service staff recommended the establishment of a specific tier under the proposed RES which, among other things, would provide sufficient incentives for in-state resources that have "material revenue opportunities" for their RECs in alternative markets to keep their RECs within New York.[18] Moreover, several commenters cited numerous, specific examples of developments occurring in neighboring jurisdictions which present real, tangible, attractive opportunities for existing in-state generators to export energy

[16] For example, see the Commission's discussion in its February 2015 REV Order of the need to attract private investment, properly aligning prices and incentives, and designing a market structure to increase renewable resource penetration. REV Order, pp. 82-83.
[17] CES Order, p. 116.
[18] CES White Paper, pp. 22-24.

and environmental attributes outside of the State.[19] Similarly, the LSR Options Paper observed that "[i]t is inevitable that in the absence of a New York policy stimulating demand that creates sufficient value for Legacy LSR RECs, the energy and RECs from some or all of these resources are likely to leave the market."[20]

The Commission provides no reasoned explanation in the CES Order regarding why it opted to dismiss this evidence and how, in the face of such evidence, it arrived at a conclusion that out-of-state opportunities for existing in-state renewable generators are "merely hypothetical." Energy Ottawa believes that the absence of such an explanation is tantamount to the Commission having made an error of fact, and thus serves as grounds upon which to request rehearing of the CES Order.

In addition, related to the subject of potential export opportunities for existing renewable generation, Energy Ottawa wishes to call attention to new circumstances that have arisen subsequent to the issuance of the CES Order which warrant a different determination by the Commission. On August 8, 2016, the Governor of Massachusetts signed legislation which will, among other things, obligate electric utilities in the state to enter into long-term contracts for clean energy supplies totalling 9.45 million MWhs.[21] Hydropower resources from adjacent control areas are eligible under the parameters of this mandated solicitation, meaning there is now even greater competition and export opportunities for existing supply in New York. As part of the CES proceeding, the Commission, the public, and parties did not have the chance to evaluate the potential risks and costs associated with this new policy development in

[19] For example, see the comments of Brookfield Renewable Energy Group and H.Q. Energy Services (U.S.) Inc. on the CES White Paper. Brookfield's comments included an entire appendix highlighting opportunities for New York's hydropower generators in adjoining service territories. Both Brookfield and H.Q. Energy Services also drew attention to a joint Clean Energy Request for Proposals issued by several New England states in 2015, which granted eligibility to out-of-state renewable resources.
[20] LSR Options Paper, p. 29.
[21] Bill H.4568, *An Act to promote energy diversity*. (Available: https://malegislature.gov/Bills/189/House/H4568).

Massachusetts. Given the nature of this development, and the material revenue opportunity it may present for existing supply in New York, Energy Ottawa believes that limited rehearing of the CES Order is warranted.

C. The Commission erred in incorporating the environmental attributes associated with existing renewable generation into the State's overall baseline without providing any compensation for the economic value of those attributes.

In choosing to exclude existing renewable generation from the ZEC program and to limit support for existing renewable generation to the Tier 2 Maintenance Resource program, the Commission has, by extension, incorporated the environmental attributes associated with this generation into the State's overall baseline for achieving the 50 by 30 goal.

This action on the Commission's part represents an egregious error of law and fact. The Commission lacks any authority to claim as its own, or as belonging to the State, the environmental attributes which are the rightful property of the renewable generators themselves. This gap in Commission authority is explicitly acknowledged in the LSR Options Paper, which states the following, in the context of a discussion around Legacy LSR projects:

> However, under these contracts New York has no residual post-contract rights to RPS Attributes. It is inevitable that in the absence of a New York policy stimulating demand that creates sufficient value for Legacy LSR RECs, the energy and RECs from some or all of these resources are likely to leave the market. This departure would impact New York's ability to claim that renewable energy supply toward RPS goals, as the right to make such claims accrues to the rightful purchasers of the associated RECs.[22]

Moreover, consistent with the above discussion, it is not lawful for the Commission to constrain the ability of existing renewable generators to sell their environmental attributes into whichever market in which they may wish to participate.

In structuring the CES program in the manner laid out in the CES Order, the Commission has essentially absorbed existing renewable generation into its calculation of the State's baseline,

[22] LSR Options Paper, p. 29.

with the procurement of new Tier 1 resources intended to fill the gap between the baseline and the total generation required to meet the 50 by 30 target. According to the Commission's calculations, this baseline level of renewable resources is equivalent to approximately 41.3 million MWhs. This baseline will need to be supplemented by procurement of 29.2 million MWhs in new, incremental generation, in order to achieve the approximately 70.5 million MWhs which represent the total load reflected in the 50 by 30 target.[23] In effect, the Commission has seemingly assumed that all existing renewable generation will remain in the State and that no further compensation or support is required to ensure this outcome.

As discussed above, this assumption is flawed, as there are indeed tangible incentives in place in neighboring jurisdictions and markets which could attract existing generation from New York and with which the State will therefore have to compete in order to retain the environmental attributes associated with existing in-state renewable generation. The Commission has therefore erred in pre-supposing that these environmental attributes will simply remain in the State in the absence of recognition and compensation extended in their direction.

In the CES Order, the Commission remarks that "[i]f any of the renewable resources currently counted in the baseline sell RECs into other markets at some point in the future, the Commission may adjust the baseline in the future accordingly."[24] This is neither a credible nor a permissible posture for the Commission to adopt, in light of the evidence presented on the record signalling the strong probability of RECs being sold out-of-state, and the inability of the Commission to lay claim – either deliberately or inadvertently – to environmental attributes whose purchases and sales are executed pursuant to the decisions of renewable generators and other REC market participants, not to decisions of the State.

[23] CES Order, p. 85.
[24] *Ibid.*

These errors of facts and law in the CES Order necessitate an order on rehearing by the Commission. Such a rehearing order must appropriately compensate existing renewable generators for the economic value of their environmental attributes which the Commission wishes to see incorporated into the State's CES baseline. Options in this regard which Energy Ottawa believes are supported by the record include granting existing renewable generation the opportunity to participate meaningfully in the State's new REC market.

D. The establishment of a Tier 2 Maintenance Resource program in the RES and its accompanying eligibility criteria is not supported by the record.

In the CES Order, the Commission offers no reasoned explanation or factual basis for how it reached a determination that establishment of a Tier 2 Maintenance Resource program under the RES was appropriate and supported by the record. The discussion in the applicable sub-section of Section VI, which outlines the details of the new RES framework, is very brief. It includes only assertions which seek to refute the CES White Paper's support for the proposed creation of a Tier 2 that would have been subdivided into separate tiers with the intention of providing targeted incentives to attract RECs from renewable supply in New York which either do or do not have alternative markets for potential sale. Nowhere in the CES Order's overview of the Tier 2 program does the Commission point to specific evidence or facts submitted for the record that would justify or make a compelling case in favour of the institution of Tier 2. In fact, Energy Ottawa is not aware of any evidence in the record for this proceeding which called out for establishment of a Maintenance Resource program. Rather, evidence and dialogue with stakeholders concentrated on the appropriate number of tiers and which resources should be eligible for inclusion thereunder. Although the LSR Options Paper did examine maintenance tiers in the larger context of a tiered approach for treatment of incremental LSRs and renewable

generation already in operation,[25] the sections of the LSR Options Paper cited above make clear that the LSR Options Paper saw significant risks in not providing an adequate level of support to existing renewable generation.

Importantly, the record in this proceeding is also not supported by any evidence which evaluates the projected costs associated with the Tier 2 Maintenance Resource program, as well as the cost implications of precluding the vast majority of existing renewable resources from participating in the State's new REC market. The scope of the CES Cost Study published by Department of Public Service staff was limited to the proposals outlined in the CES White Paper. Of note, the CES Cost Study explicitly states that "[m]odeling of the costs to supply Tier 2 is primarily based on assessment of opportunity cost."[26] With the CES Order having adopted a much more restrictive, limited Tier 2 than that which was proposed in the CES White Paper, the opportunity costs associated with inadequate support for existing renewable generation can now be expected to be much greater than what was originally projected in the CES Cost Study analysis.

Similarly, the issuance of the CES Order marked the first occasion in which parties and public stakeholders were presented with the eligibility criteria for Tier 2 Maintenance Resources. As enumerated in Appendix D of the CES Order, these criteria impose strict requirements upon eligible existing renewable facilities to demonstrate that they lack sufficient revenue and that markets are failing to internalize the value and benefits of these zero-emissions resources. However, the public comment window offered no opportunity for these criteria and requirements to be reviewed and evaluated by a wider stakeholder audience. In turn, the CES Order offers no

[25] LSR Options Paper, p. 50.
[26] CES Cost Study, p. 267.

reasoned explanation for how the Commission determined the appropriateness and cost-effectiveness of these criteria.

There is no reasoning provided, for example, in support of the 5 MW limit for run-of-river hydroelectric facilities. The effect of this restriction will be exclusion of a multitude of small-scale hydro resources from Tier 2 eligibility, and as a result, a much more magnified risk of a decrease in the State's overall CES baseline, with these facilities potentially closing due to deteriorating economics or pursuing alternative markets for their RECs. And once again, these risks will now play out against a backdrop of incomplete understanding of the full cost impacts of such potential outcomes and scenarios.

Due to the absence of any reasoned explanation on the Commission's part regarding the basis for adopting the Tier 2 Maintenance Resource program and the accompanying eligibility criteria, along with the absence of any evidence on the record supporting such adoption, the Commission's action can be considered as arbitrary and capricious. Energy Ottawa therefore requests that the Commission remedy this error in an order on rehearing. Actions which are demonstrably supported by the record include granting existing renewable generation the opportunity to participate in the State's new REC market or expanding the eligibility criteria for the ZEC program to include all existing sources of zero-emissions generation.

V. CONCLUSION

For the reasons set forth above, Energy Ottawa respectfully submits this petition for rehearing, and requests that the Commission proceed in a manner consistent with the arguments set forth herein. In particular, Energy Ottawa requests that such order on rehearing grant all forms of existing renewable generation (including small hydroelectric resources) the opportunity to participate either in the State's new REC market or the ZEC program.

Respectfully submitted,

/s/ Franz Kropp
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Dated: August 31, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties in Case 15-E-0302 via electronic mail, in accordance with Rule 3.2(b)(2) of the Commission's Rules and Regulations.

Dated at Ottawa, Canada this 31st day of August, 2016.

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