

*The Board of Governors on February 27, 2009 approved the recommendations embodied in this report and FURTHER that, staff be applauded on securing this program given it will produce cash flow.*

February 17, 2009

<b>ACTION REQUIRED</b>
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To: The Board of Governors of Exhibition Place  
From: Dianne Young, CEO  
Subject: **Agreement with Direct Energy Services Limited – Demand Response**

**Summary:**

In 2007, the Ontario Power Authority (OPA) released its Demand Response 3 Program (DR3) which is designed to encourage companies/businesses to curtail electrical use during periods of high demand in Ontario through either the reduction in electrical load requirements or the self-generation of electricity through natural gas fired generators. To encourage participation in DR3, the OPA will pay businesses an “availability” fee simply to commit to reduction/generation and be available to be called and in addition, OPA will pay a curtailment or utilization fee when the surplus electricity is called on. If the OPA calls for the power, failure to supply by businesses could lead to penalties being imposed by the OPA.

DR3 is open to Direct Participants which can provide a curtailment of at least 5.0 MW or to Aggregators capable of providing a curtailment of at least 25.0 MW. An Aggregator is a company which aggregates curtailment from more than one Contributor. Direct Energy Business Services Limited (Direct Energy) has an agreement with the OPA as does CPower, Inc. (CPower). These two companies, as joint venture partners, have put together an Aggregator proposal that is risk-free for Contributors protecting them from any exposure to the OPA’s performance set-off penalties and which also includes the development of a curtailment plan specific to each Contributor at no up-front cost to the Contributor. Attachment I to this report is confidential as it involves the security of property belonging to the City of Toronto or one of its agencies, boards, and commissions and it is recommended that this information not be disclosed in order to protect the economic interests and competitive and legal position of the Board.

The trigeneration plant within the Direct Energy Centre easily falls within DR3 and therefore, it is recommended that the Board enter an agreement with Direct Energy and CPower as an Aggregator so that the Board can be qualified to receive payments as soon as possible. Following enrollment of the trigeneration plant, Direct Energy will complete a full engineering study to understand other DR3 opportunities across Exhibition Place.

**Recommendation:**

**It is recommended that the Board:**

- 1. Subject to approval of City Council, enter into an agreement with Direct Energy and CPower to jointly act as an “Aggregator” with respect to the OPA’s Demand Response Program on the terms and conditions set out in this report and such other terms and conditions as required by the City Solicitor and the CEO; and,**
- 2. Request staff report back to the Board following the detailed engineering study by Direct Energy with respect to the entire grounds.**

**Financial Impact:**

Participation in DR3 for the trigeneration plant alone has the potential of a positive cash-flow of \$360,000 to \$595,200 depending on the utilization by the OPA.

**Decision History:**

Agreements for a period of more than one year must be approved by the Board in accordance with By-law 2-07.

**Issue Background:**

The trigeneration plant within the Direct Energy Centre easily falls within DR3 and under the rules of the OPA program, Exhibition Place can only be part of DR3 through an Aggregator. Direct Energy and CPower have an Aggregator agreement with OPA and have made a proposal to Exhibition Place to be one of its Contributors under the terms and conditions set out below. Exhibition Place staff recommend that the Board enter an agreement with Direct Energy and CPower so that the Board can be qualified to receive payments under DR3 as soon as possible for the trigeneration plant. A further study will be conducted for the remainder of the Exhibition Place site by Direct

Energy and if appropriate, there will be an amendment to this proposed agreement with Direct Energy to include other opportunities.

**Comments:**

In 2008, the OPA released its DR3 designed to encourage companies/businesses to decrease electrical use during periods of high demand in Ontario through either the reduction in electrical load requirements or the self-generation of electricity through natural gas fired generators. The trigeneration plant within the Direct Energy Centre falls within the latter category of self-generation.

From the perspective of the OPA, this “load shedding” (a) relieves congestion on the electrical transmission and distribution infrastructure in the province; (b) allows the OPA to avoid importing expensive outside generation from USA; (c) allows OPA to eliminate coal-fired generation by 2013; and (d) defers the building of additional conventional generation. From the perspective of a business entity, DR3 provides an opportunity to create clean power while at the same time earning revenue.

To encourage participation in DR3, the OPA will pay businesses a “stand-by” fee simply to be available and then will pay a curtailment or utilization fee when the surplus electricity is called on. If the OPA calls for the power, failure to supply by the business could lead to penalties being imposed. There are complicated rules to the DR3 Program relating to seasonal availability requirements, curtailment requirements, curtailment resources and event notification which will require substantial administration to manage.

DR3 is open to Direct Participants which can provide a curtailment of at least 5.0 MW or to Aggregators who are capable of providing a curtailment of at least 25.0 MW. An Aggregator is a company which aggregates curtailment from more than one Contributor to provide a portion of the Aggregator’s contracted MW savings. Initially, Toronto Hydro Energy Services (THESL) had an agreement with the OPA to be an Aggregator but has now withdrawn from the Program. However, Direct Energy has an agreement with the OPA as does CPower, which has been a “demand response provider” in the USA for many years. These two companies have put together a proposal to act as an Aggregator for Contributors that is risk-free for the Contributors with no exposure to the OPA’s performance set-off penalties and also includes the development of a curtailment plan specific to the Contributor at no up-front cost to the Contributor. To date, some of the companies that are Contributors to the Direct Energy Aggregator agreement with OPA include Scotiabank Place, Woodbine and Western Fair.

As indicated above, the trigeneration plant within the Direct Energy Centre easily falls within DR3 and therefore, it is recommended that the Board enter an agreement with Direct Energy and CPower as an Aggregator so that the Board can qualify to receive payments under DR3 as soon as possible. Following enrollment of the trigeneration plant, Direct Energy will complete a full engineering study to understand other DR3 opportunities at Exhibition Place and will be included within the Aggregator agreement as a second phase.

- a) Term: Up to five (5) years commencing on approval of City Council.
- b) Phases: The first phase of the agreement with Direct Energy/CPower will only be for the Trigeneration Plant but additional measure across the Exhibition Place site may, at the sole option of the Board, be added following completion by Direct Energy of a curtailment plan and the acceptance by the Board of this plan.
- c) Financial Protection: The Board will have no out-of-pocket cost obligations with respect to any deficiency payments assessed by the OPA.
- d) DR3 Program Representation: Aggregator will represent the Board’s demand response resources in the DR3 Program and manage the Board available curtailment capacity.
- e) Meter Installation: If required, the Aggregator will install interval metering as required by the OPA as a one-time expense to be deducted from the Exhibition Place share of the program revenue.
- f) Engineering: Aggregator will conduct engineering site assessments for the trigeneration plant and for other potential curtailment measures across Exhibition Place at no cost to the Board. There will be no obligation of the Board to agree to any other curtailment measures except for the trigeneration plant.
- g) Equipment Operation and Maintenance: The Board shall operate and maintain the equipment for DR3 in accordance with good engineering and operating practices to meet the curtailment Plan measurement and verification requirements.

- h) Performance: In the event the Client performs at less than 80% of their committed level in a month, they will not receive any Availability Payment or Utilization Payment for the month during which such under- or non-performance occurs.
- i) Liability: Both parties' liability under the Agreement would be limited to the amount of payments to the Board in the 6 months preceding the date of the incident which results in any claim.
- j) Termination:
  - i) The agreement will automatically terminate if the OPA cancels or discontinues the DR3 Program;
  - ii) Aggregator may at its discretion terminate this agreement immediately upon written notice if the Board has failed on more than one occasion to perform at or above 80% of its monthly committed levels;
  - iii) Board may, within 10 days of receiving notice of any material amendments to the DR3 User's Manual, terminate this agreement by providing written notice to the Aggregator of its objection to such amendments. Such termination will become effective 30 days after it is given; and,
  - iv) Either party may immediately terminate this agreement if the other party has committed a material breach which it fails to remedy within 10 days of being notified of such breach. All such notices shall be in writing. For any written notice of termination to be enforceable under this sub-section, such written notice of termination shall be provided to and from both Aggregators, as the case may be.