Northern Industrial Electricity Rate Program (NIER Program)

Program Rules

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These program rules ("Program Rules"), as amended from time to time, apply to this NIER Program ("NIER Program"), starting effective April 1, 2017, for the five year period commencing April 1, 2017 and ending March 31, 2022.

The program rules for the original NIER Program, which existed for the period of April 1, 2010 to March 31, 2013 (the "Original NIER Program"), continue to apply in the form and manner in which they existed on December 14, 2012 to the rebate period from April 1, 2010 to March 31, 2013. The program rules for the first extended NIER Program which existed for the period of April 1, 2013 to March 31, 2016 (the "Extended NIER Program"), continue to apply in the form and manner in which they existed on November 14, 2013 to the rebate period from April 1, 2013 to March 31, 2016. The program rules for the second extended NIER Program which existed for the period of April 1, 2016 to March 31, 2017 (the "2016/17 Extended NIER Program"), continue to apply in the form and manner in which they existed for the rebate period from April 1 2016 to March 31, 2017.

Current Participants will be required to enter into an agreement to amend existing conditional funding agreements entered into with the Ministry of Northern Development and Mines ("MNDM") under the 2016/17 Extended NIER Program, or a new conditional funding agreement at MNDM's sole discretion. Selected new applicants will be required to enter into new conditional funding agreements with the MNDM. Rebates are subject to the NIER Program Agreement's terms and conditions, as may have been amended. In the event of a conflict or inconsistency between a NIER Program Agreement and the Program Rules, the NIER Program Agreement shall prevail.

"Qualifying Participants" means collectively the Current Participants and selected new applicants.

"NIER Program Agreement(s)" means, as applicable, either an individual one of the following or collectively all of the

1) NIER Program conditional funding agreements with new selected applicants in accordance with the Program Rules, and
2) NIER Program conditional funding agreements with Current Participants as amended by agreement in accordance with the Program Rules.

"Current Participant" means a 2016/17 Extended NIER Program participant with whom MNDM had entered into a signed NIER Program Agreement prior to March 31, 2017 or sub-metered indirect 2016/17 Extended NIER Program participants existing prior to March 31, 2017, and in all cases who have met the eligibility requirements for Current Participants set out in these Program Rules.

### 1.0 Program Overview

In Northern Ontario and across the world, industries are investing in energy conservation programs and infrastructure to foster and maintain a globally competitive advantage.

Northern Ontario’s largest forestry, mining and steel production companies are also its largest electricity consumers and continue to be cornerstones of the northern economy. Promising new economic development opportunities and growth in the knowledge based economy are fuelling innovation and rapid technological advancement in these traditional industries. Improving performance of equipment and/or production processes provides energy and non-energy related benefits that may include:

- Increased system efficiency and reduced energy consumption
- Greater reliability and reduced maintenance costs
- Improved financial performance increasing competitiveness, and
- Reduced environmental impact

New technologies and a growing "culture of conservation" are shifting the view of energy as a manageable input to production in the global economy.
The Original NIER Program was a three-year program that provided approximately $340 million in electricity rebates to eligible large industrial companies located in Northern Ontario. The Original NIER Program rebate period ended on March 31, 2013. The Extended NIER Program was a three-year program extension that provided approximately $336 million in electricity rebates to eligible large industrial companies located in Northern Ontario. The Extended NIER Program rebate period ended on March 31, 2016. The 2016/17 Extended NIER Program was a one-year program extension that was available to provide approximately $120 million to eligible large industrial companies located in Northern Ontario. The 2016/17 Extended NIER Program rebate period ended on March 31, 2017.

Building on this success, the Ontario government is implementing the renewed NIER Program, with an initial duration of five years, to continue supporting Northern Ontario’s largest industrial electricity consumers in their efforts to reduce their electricity costs, in order to sustain jobs and maintain global competitiveness. This phase of the NIER Program will operate over the fiscal years\(^1\) beginning in 2017-18 and ending on March 31st, 2022, with an annual spending limit of up to $120 million for the fiscal year for electricity price relief, subject to approval of annual program funding. The program will continue to be administered by MNDM.

The NIER Program is a non-entitlement, discretionary program and is subject to, among other things, meeting and maintaining all eligibility and program requirements. Qualifying levels of eligible electricity consumption must be, as measured and verified through approved metering installations, both

(i) purchased directly or have historically purchased as a sub-metered customer from the Independent Electricity System Operator (“IESO”) administered electricity market or from a local distribution company, including Hydro One Inc., and

(ii) consumed at each of the individual qualifying facilities.

The NIER Program will provide Qualifying Participants with an electricity cost rebate of two cents per kWh of electricity consumed during the period provided for in the NIER Program Agreement, where such consumption is verified in accordance with these Program Rules and the NIER Program Agreement, subject to the following:

Rebates and Rebate Caps

Facility Annual Caps

Subject to the Full Funding Annual Cap, described below, the annual rebate for each eligible facility will be capped (“Facility Annual Cap”) based upon that facility’s average annual eligible electricity consumption over the period starting April 1, 2013 through March 31, 2016 (the “2013-2016 Period”). Prior to entering into any NIER Program Agreement, the determination of Facility Annual Caps may be reduced by MNDM, at its discretion, taking into consideration any structural reductions of eligible electricity consumption from the 2013-2016 Period. In addition, prior to entering into any NIER Program Agreement with Current Participants that are, and those Current Participants that were previously associated with, sub-metered indirect Current Participants, the determination of Facility Annual Caps may be determined by MNDM, at its discretion, not to exceed the overall previous facility annual caps amount that would be based upon the average annual eligible electricity consumption for the 2013-2016 Period. For new applicants without consumption history during the 2013-2016 Period, or other period satisfactory to MNDM, the Facility Annual Cap will be the applicant’s reasonable estimate of the facility’s first 12 months of eligible electricity consumption as set out in its Energy Management Plan (“EMP”), which estimate is subject to MNDM’s acceptance.

Qualifying Participant’s Overall Annual Caps

- The overall, aggregate annual rebate for each Qualifying Participant will be capped (the “Full Funding Annual Cap”) at a maximum amount based on electricity consumption that shall be the lesser of:
  (i) The aggregate of the Qualifying Participant’s Facility Annual Caps; or,
  (ii) A maximum rebate of $20 million per year for each recipient based on 1TWh (1,000,000 MWh) of electricity consumption, per annum.

\(^1\) References to fiscal year in these Program Rules means the Ontario government fiscal year, April 1\(^{st}\) to March 31\(^{st}\) of the following year.
Transfer of a Facility Annual Cap

• Rebate caps, including Facility Annual Caps, are not shareable. Rebate caps, including Facility Annual Caps may be transferable to another person at MNDM’s discretion, subject to any terms or conditions MNDM may impose, in addition to potential transfers by Multiple Facility Participants described below.

Participants with Multiple Facilities – Transfer Requests

• Qualified Participants that have entered into a NIER Program Agreement and that have multiple eligible facilities, each with a Facility Annual Cap set out in the NIER Program Agreement, (“Multiple Facility Participants”), may submit a request to MNDM, prior to March 31, 2021, for an irreversible transfer of all or part (but in any event not less than $250,000) of one of its Facility Annual Caps for the remainder of the term of its NIER Program Agreement, from: (i) one of such eligible facilities that has or will be decreasing its electricity consumption below the amount corresponding to its Facility Annual Cap on an intended permanent basis (a “Reducing Facility), to (ii) another of such eligible facilities that has or will be increasing its electricity consumption above the amount corresponding to its Facility Annual Cap at a minimum for the remainder of the term of the NIER Program Agreement] (the “Increasing Facility”).

• Transfer of all or any part of a Facility Annual Cap from a Reducing Facility to an Increasing Facility is entirely at MNDM’s sole and absolute discretion and subject to any terms or conditions MNDM may impose.

• In addition to the above, factors that may support a Multiple Facility Participant’s transfer request may include (without limitation):
  (i) Eligible capital expenditures made or to be made at the Increasing Facility to increase production, increase electricity consumption, or to maintain or create jobs;
  (ii) Maintenance or creation of jobs;
  (iii) A narrow time period between the start of the decrease and increase in electricity consumption at the applicable facilities, particularly if such consumption transitions begin within a continuous 12 month period; and
  (iv) Such other factors as determined by MNDM.

• Such decision may include consideration of other factors not within the Multiple Facility Participant’s control, including but not limited to applications in the Program Queue. In no event shall a transfer increase the participant’s Full Funding Annual Cap. The Multiple Facility Participant must be in compliance with the terms of its NIER Program Agreement and the NIER Program Rules and otherwise continue to meet and maintain all eligibility requirements. For any MNDM approved transfer, the Multiple Facility Participant will be required to enter an agreement amending its NIER Program Agreement on such terms and conditions the Ministry may impose.

• Multiple Facility Participants are encouraged to contact MNDM for further information on the transfer request process and requirements.

The foregoing regarding Rebates and Rebate Caps is subject to Section 3.2 of these Program Rules, including limitations on NIER Program funding, downward adjustments of all rebate caps, including Facility Annual Caps, as a result of structural reductions of consumption at a facility, reductions where a facility is no longer owned and controlled by a participant Qualifying Participant and other reductions as are provided for in the NIER Program Agreement.

All references in these Program Rules to electricity, including being “eligible” or “consumed” or “purchased”, means electricity purchased by a participant directly from either the IESO administered electricity market or from a local distribution company, including Hydro One Inc., and consumed at each of the individual facilities which is measured or verified by the IESO or a distribution company, as the case may be, at an approved metering installation.
2.0 Program Objective

The objective of the NIER Program is to assist Northern Ontario’s largest industrial electricity consumers develop and implement long-term efficiency and sustainability measures. As an incentive program, the NIER Program is intended to provide a bridge for Qualifying Participants to achieve greater electricity efficiency by committing to the development and implementation of an EMP.

It is recognized that Northern Ontario’s industry sectors and individual companies have unique operating models, techniques and production cycles which will influence the manner in which electricity conservation and efficiency techniques are developed, measured and reported. It is also recognized that in some circumstances, the benefits of implementing energy savings are not immediately realized and, in the case of new and ongoing capital projects, may take several years to achieve desired results. It is also recognized that many companies in Northern Ontario have already made significant investments in energy conservation through participation in the Original NIER Program, the Extended NIER Program and the 2016/17 Extended NIER Program, capital projects and/or by participation in one of many energy conservation programs administered by the IESO (and formerly by the Ontario Power Authority prior to its amalgamation with the IESO).

Acknowledging the unique circumstances of industry sectors, individual companies and efforts currently underway, the NIER Program is intended to:

- Support continuing efforts of companies already engaged in energy savings programs to further advance their objectives while assisting other companies to begin the process of comprehensive energy management planning.
- Allow Qualifying Participants an opportunity to tailor and optimize their electrical savings and efficiency projects and/or programs to the specific circumstances of their operations.

Supported by electricity rate rebates, it is the expectation of the NIER Program that by Qualifying Participants committing to the development and implementation of a comprehensive EMP, energy efficiency and conservation targets are achievable.

Through the successful implementation of an EMP, northern industries which are Qualifying Participants will continue to maintain global competitiveness, create and protect jobs, and continue their substantial contribution to the overall economic prosperity of Northern Ontario.

3.0 Eligibility

3.1 Current Participants

In order for Current Participants to participate in the NIER Program, they must be in good standing in respect of the 2016/17 Extended NIER Program, unless decided otherwise by MNDM in its sole discretion, and they must enter into a NIER Program Agreement.

Current Participants are not required to submit a new application, unless otherwise requested by MNDM, however; Section 5.0 (Administration) of these Program Rules sets out additional requirements for maintaining eligibility throughout the duration of the program.

3.2 New Applicants

New applicants to the NIER Program must meet and maintain all the following criteria in order to be considered for selection into the NIER Program. Section 5.0 (Administration) of these Program Rules sets out additional requirements for maintaining eligibility throughout the duration of the program.

An application will not be considered to have been received unless it is determined by MNDM, in its sole and absolute discretion, to be complete. An application will not be considered complete by MNDM unless all of the application materials, including a developed EMP and any additional information and documents requested by MNDM or its agents, have been submitted by the applicant to MNDM’s satisfaction within the time specified within these Program Rules or by MNDM.
Applications, Available Funding and Caps

“Full Funding Annual Cap” has the meaning set out in Section 1 of these Program Rules.

“Rebate Funding Shortfall” means the difference between a selected new applicant’s Full Funding Annual Cap and the maximum rebate based on the Unallocated Funding at the effective date of its NIER Program Agreement.

“Unallocated Funding” means unallocated NIER Program funding, as determined by MNDM, which is approved and available, determined as of the date a new applicant is selected for the NIER Program and permitted to enter into a NIER Program Agreement.

“Applications in the Program Queue” means any complete NIER Program application that has been accepted but not assessed by MNDM due to there being less than $250,000 of unallocated and approved NIER Program funding, as determined by MNDM, as at the date of the applicant’s complete application to the NIER Program.

Acceptance of Applications

Acceptance of new applications to the NIER Program will commence on, and be subject to receipt of, future notice from MNDM, which will be posted on the Website (see Section 5.0 (Administration)). The notice will specify the date on which new applications may be accepted. Until such time and subject to such notice, MNDM will not be accepting or evaluating new applications and any applications that may be received prior to such notice will not be accepted or evaluated nor shall they be considered to be an Application in the Program Queue, subject to the following paragraph.

Applications already submitted under the 2016/17 Extended NIER Program by applicants who are not Current Participants will be considered and evaluated as new applications under the NIER Program, and will be assessed in the order such applications were originally received by MNDM; however, assessment of these applications under the NIER Program shall not commence until the date of acceptance of new applications set out in any notice described in the foregoing paragraph.

Upon and following the commencement date of acceptance of applications set out in any notice described above, when less than $250,000 of unallocated NIER Program funding is approved and available, as determined by MNDM, a notice will be posted on the Website (see Section 5.0 (Administration) of these Program Rules) indicating that, although new applications will continue to be accepted, they will not be assessed unless and until unallocated and approved NIER Program funding in the amount of at least $250,000 becomes available, as determined by MNDM. If $250,000 or more of unallocated and approved NIER Program funding becomes available, as determined by MNDM, complete Applications in the Program Queue will be assessed by MNDM in the order in which they were received, one such application at a time, except where the funding is allocated to address a Rebate Funding Shortfall as described below.

Upon an applicant’s acceptance into the NIER Program, in the event that Unallocated Funding is less than a new selected applicant's Full Funding Annual Cap, the NIER Program Agreement would provide for a maximum annual rebate equal to the Unallocated Funding in order to ensure that approved overall NIER Program funding is not exceeded. The new selected applicant would still be required to meet all regular NIER Program and contractual requirements including the full development and implementation of an EMP.

If additional, unallocated and approved NIER Program funding were to become available for disbursement, as determined by MNDM, then MNDM would consider, in its sole and absolute discretion, allocating such funding to a fully compliant participant with a Rebate Funding Shortfall up to the amount of such Rebate Funding Shortfall. In the event that the Rebate Funding Shortfall for that new recipient is reduced to zero, and more than $250,000 of new unallocated and approved NIER Program funding becomes available, as determined by MNDM, the next complete Application in the Program Queue will be assessed by MNDM in the order in which the applications were received.

Eligible Facilities

Each individual facility of the applicant must satisfy all the following criteria to qualify for participation in the NIER Program. The individual facility must be:

- directly owned and controlled by the applicant;
• a production or processing facility that consumes a minimum of 50,000 megawatt hours (MWh) of electricity per year, as measured by the IESO or a local distribution company at an approved metering installation. This electricity must be both purchased by the applicant from the IESO administered electricity market or from a local distribution company, including Hydro One Inc. and consumed at each of the individual qualifying facilities;

• classified as being within one of the following North American Industry Classification System (NAICS) 2002 industry sectors:
  ○ 21 Mining and Oil and Gas Extraction, and
  ○ 31-33 Manufacturing, with the exception of facilities that are designated as Sawmills and Wood Preservation (3211) which would not be eligible for the NIER Program;

• located in Northern Ontario, defined as being within the collective territorial Districts of Kenora, Rainy River, Thunder Bay, Cochrane, Algoma, Sudbury, Timiskaming, Nipissing, Manitoulin, and Parry Sound; and

• a market participant purchasing electricity from the IESO administered electricity market or from a local distribution company, including Hydro One Inc.

Where applicable, applicants may identify more than one directly owned and operated eligible facility in their application for the NIER Program. Applicants shall not submit more than one application.

New applicants must clearly demonstrate to MNDM’s satisfaction that they meet all these eligibility criteria in their application and EMP submission.

Solvency

Qualified Participants must demonstrate ongoing solvency or other measure of operational viability for the duration of the period ending March 31, 2022 to the satisfaction of MNDM. MNDM, at its sole discretion and under such terms and conditions as MNDM deems appropriate, may accept, Qualified Participants’ demonstration of ongoing solvency or other measure of viability for some lesser period where there is a planned permanent closure of an otherwise eligible facility.

As part of their application, new applicants will be required to submit:

i. Audited annual financial statements from the two most recent fiscal years of the applicant;

ii. Total capital expenditures from the most recent fiscal year of the applicant;

iii. Annual forecast sales or production and EBITDA for each facility for each of the applicant’s fiscal years up to March 31, 2022; and

iv. Forecast of total capital expenditures for each facility for the applicant’s fiscal years ending March 31, 2022 and a list of projects associated with expenditures.

New applicants under evaluation will be subject to review and evaluation by a qualified Financial Reviewer to be retained by MNDM, for MNDM’s sole benefit, to provide the necessary due diligence to assess, among other things, the new applicant’s solvency and operational viability.

MNDM, at its sole discretion and under such terms and conditions as MNDM deems appropriate, and subject to meeting other eligibility requirements, may permit, Current Participants that are operating under the Companies’ Creditors Arrangement Act (CCAA) or other debt relief legislation to participate in the NIER Program.

Prepare and Implement an Energy Management Plan

Participation in the NIER Program is subject to, among other things, the submission of an EMP for each facility, which must be satisfactory to MNDM, detailing proposed steps and methods for improving electrical efficiency and sustainability over the duration of the program.

The EMP must at a minimum satisfactorily meet the requirements set out at Section 4.0 of these Program Rules – “Energy Management Plan Requirements”.

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4.0 Energy Management Plan Requirements

Comprehensive energy management planning is a process of monitoring, controlling, and evaluating energy use in an organization, then taking action to achieve conservation and efficiency targets. It begins with analyzing energy consumption and identifying opportunities to save energy and estimating the potential for how much energy each opportunity will save. While periodic energy audits may provide a snapshot in time and where isolated efficiency projects provide temporary energy savings, comprehensive energy management planning is a process of continuous improvement.

This section sets out the required contents of a comprehensive EMP. While the NIER Program focuses on electrical energy efficiency, it is important for Northern Ontario industries which are Qualifying Participants to consider all energy sources such as natural gas, coal, diesel, or renewable fuels such as biomass, in order to have a complete understanding of opportunities for energy cost reduction and potential for self-generation. Accordingly, MNDM highly recommends Qualifying Participants consider developing EMPs that account for all their energy needs, in conjunction with the requirements for the NIER Program.

Climate change adaptation supports the long-term resiliency and sustainability of northern industries in the face of climate uncertainty and may support energy management planning goals.

EMPs and quarterly report submissions may also, but are not required to, highlight activities undertaken that support the Ontario Government’s Climate Change Action Plan. Such measures could include, but are not limited to:

- Undertaking climate change risk assessments and identifying short and long-term mitigation measures;
- Investments in adaptive technology;
- Abatement of Green House Gas (GHG) and other emissions; and
- Ongoing measures to improve energy efficiency.

Despite anything contained in the Program Rules or the NIER Program Agreement, Qualifying Participants will be solely responsible for ensuring the technical, regulatory, financial, economic and overall viability of their EMPs, and MNDM shall have no responsibility whatsoever to independently assess the viability of any application or project nor any liability whatsoever in the event that an EMP turns out not to be viable in any respect.

Required Contents of an Energy Management Plan

Current Participants can continue to implement their MNDM approved EMP and provide updates through the quarterly reporting process. They are not required to submit revised EMPs, unless otherwise requested by MNDM in its discretion; however, an action plan submitted in the last quarterly report and accepted by MNDM under the 2016/17 Extended NIER Program for each EMP (with updates acceptable to MNDM, including the identification of new and ongoing measures planned to improve electricity efficiency and overall facility competitiveness for fiscal years 2016-17 and beyond) will be incorporated into and form part of any rebate agreements entered into under the NIER Program, and Current Participants will be required to adhere to those action plans.

New applicants are to submit a separate EMP for each facility proposed for inclusion under the NIER Program, which must include the following sections.

Section 1: Executive Summary

The EMP should begin with a brief overview highlighting the contents of the EMP with supporting tables and charts summarizing key numbers (e.g.: energy performance, conservation targets, projects, etc.).

Section 2: Background

This section should describe the nature of the applicant’s business and its operations to set context for the EMP. While Section 3 requires detailed information on electrical consumption, costs, production and specifics on existing and proposed conservation initiatives, this section should identify:
1. Process descriptions, physical location and access to resources, life of operation, plant operations and factors that affect energy use and future energy requirements.
2. The applicant’s Corporate Energy Policy (if one exists) or a statement of the applicant’s desired objectives via participation in the NIER Program.
3. Key challenges and constraints to achieving energy reduction goals (e.g. resources, capital, expertise, corporate commitment, data, commodity prices, etc.).
4. The members of the applicant’s energy team (if applicable) and full contact details.
5. Any other relevant information with respect to electricity conservation and the nature of the applicant’s industry with respect to the program requirements of the NIER Program.

Section 3: Baseline Information Requirements

This section should provide details about the applicant's electricity consumption for the facility, the sources of the electricity and annual costs by source, where applicable. The more detail that is presented in this section, the easier it will be to demonstrate progress and the overall success of the EMP.

A. Electricity Consumption Baseline Requirements

For each year of the past three billing years prior to the application, or for each year that data exists where less than three years of data exists, please identify the following:

i. Electricity supply sourcing (i.e. purchased/self-generated) with a description of how supply/consumption is measured and recorded for each source identified;
ii. Annual electricity consumption in megawatt hours (MWh) by source, with supporting documentation; and
iii. The baseline analysis will be used as a point of comparison for future electricity use. Develop a baseline analysis of electricity consumption, including:
   a. Description/definition of significant energy users;
   b. Description of key energy use drivers (i.e. weather, production levels, product mix, tonnes milled, etc.);
   c. Description of the correlation between significant electricity users and key drivers;
   d. Data to justify key assumptions used in developing the baseline analysis;
   e. A baseline period that is representative of typical operating conditions and captures the effects of changes in each of the key energy use drivers identified (for example, if weather is identified as a key energy use driver, the baseline period must be at least one year).

B. Production Baseline Data Requirements

Identify the categories of products produced at the facility, and for each year of the past three complete fiscal years, and for each product:

i. Provide the annual volumes of production; and
ii. Provide energy intensity calculations.

For new applicants, without a prior three year production history, the period may be a different recent period, or the new applicant’s reasonable estimate, which period or estimate must be satisfactory to MNDM.

C. Forecast Data for The NIER Program Duration 2017-2022

Identify the following forecasted or actual data for the fiscal year 2017-2022:

1. Electricity Forecast Data
   i. Explain electricity supply sourcing (e.g. purchased/self-generated);
   ii. Provide the forecast annual electricity consumption in MWh by source; and
iii. Describe how supply/consumption will be measured and recorded for each source of electricity.

2. Production and Electricity Consumption Forecast Data

Identify the categories and grades of products produced at the facility and for each product for each fiscal year beginning in 2017 to 2022:

i. Provide the forecasted annual volumes of production;
ii. Identify forecasted electricity consumption in MWh per unit of production by facility; and
iii. Identify any anticipated events or foreseen circumstances that may influence production and consumption forecasts.

Section 4: Efficiency and Conservation Targets

While the EMP must identify and achieve efficiency and conservation targets, the scale and complexity of any given measure will influence the effort and time it takes to realize efficiency targets. Other circumstances such as variation in production cycles may also make it difficult to measure progress at regular intervals.

As a process of continuous improvement, energy management planning is about achieving long-term sustainability and the NIER Program will consider both measured results (quantifiable data) and results or actions that demonstrate progress towards achieving targets, including activities supporting Ontario’s Climate Change Action Plan, in its review and evaluation of participants.

Demonstrating quantifiable results could include, but not be limited to:

- Reduction in electricity use while maintaining production levels (net savings);
- Maintaining stable electricity consumption use while increasing production levels (improved efficiency); and
- Reduction of electricity consumed directly from the grid through self-generation projects such as a co-generation plant.

These results can be achieved by such measures as replacing or upgrading inefficient equipment and/or shifting to more efficient production techniques. These results can also be measured in overall electricity costs, which may be further reduced by modifications in operations to shift consumption away from system-peaking hours to off-peak hours. While a reduction in overall electricity use may be attributable to decreased production levels for a variety of circumstances, it may still be possible to demonstrate efficiencies in such scenarios.

The EMP should describe what the demonstration of on-going progress could include, such as but not limited to, such actions as:

- Achieving key milestones in an EMP such as actions demonstrating progress towards the implementation of capital projects or making commitments to invest in new electrical efficiency capital projects.
- Establishment and filling of a dedicated Energy Manager position to demonstrate a corporate commitment towards conservation and efficiency.
- Efforts made towards achieving third-party certification such as the proposed ISO 50 001 certification for energy management systems.
- Efforts made towards meeting Ontario’s Climate Change Action Plan.
- For companies just beginning comprehensive energy management planning, initial steps such as completing energy audits or employee energy awareness programs to demonstrate progress towards electricity efficiency and sustainability.

MNDM acknowledges that many Northern Ontario companies have made significant investment and effort towards achieving energy efficiency. For example, various participants in the Original NIER Program have been successfully implementing EMPs since the program’s inception in 2010. In addition, a number of industrial facilities have also been involved in one or more of the IESO’s conservation and demand management or other programs and continue to achieve ongoing results.
In recognition of these efforts, participation in relevant and progressive electricity conservation and efficiency programs, including activities supporting Ontario’s Climate Change Action Plan, will contribute to the requirements of the NIER Program and allow Qualifying Participants to advance their existing goals and/or establish new conservation targets and objectives.

Where desirable in MNDM's opinion, MNDM may work with new applicants to assist them to identify and define electricity efficiency and sustainability measures suitable to the nature and circumstances of their operations to meet the program objectives of the NIER Program.

Accordingly, in this section:

1. Describe measures/initiatives undertaken by the applicant since the beginning of the 2017-18 fiscal year to reduce electricity consumption at the facility.
2. Specify the impact these measures have had at the gross levels by year (e.g. load shifted savings, demand reduction, emergency reserve, etc.) and characterize their overall success.
3. Develop an Action Plan. In a section entitled “Action Plan”, identify new and ongoing measures planned to improve electricity efficiency and overall facility competitiveness for the fiscal year 2017-18 and beyond. Describe in detail the measures, initiatives and/or projects currently in place or planned, and for each measure:
   i. Quantify the impact/savings that the measure is projected to have at the facility;
   ii. Provide a schedule showing estimated dates for initiation, milestones and completion;
   iii. Provide forecast operating and capital cost schedules associated with the measure;
   iv. Indicate whether the measure has been committed to or approved at the time of the submission of this plan and if not, describe what conditions/preconditions are necessary to secure the commitment or the approval;
   v. Indicate when the condition(s) must be in place in order for the measure to achieve the projected impacts savings described in (i) above; and
   vi. Indicate if the measure is subject to conditions of project financing and provide financial details including expectations relative to other relevant provincial programs.
4. Set out implications of the implementation of the EMP on your company’s labour force (e.g. new jobs created, jobs maintained, etc.), or broader labour force implications influenced by the EMP (e.g. local direct and/or indirect jobs and economic spin-offs for Northern Ontario suppliers, services, construction, etc.).

Section 5: Certification

Each EMP must be accompanied by a signed endorsement from a recognized engineering firm and/or an accredited professional specializing in areas of electrical power, conservation projects, technology, monitoring and verification. Each EMP shall be prepared, signed and dated by a P.Eng. pursuant to the Professional Engineers Act (Ontario) or by an accredited professional specializing in areas of electrical power, conservation projects, technology, monitoring and verification.

Each EMP will be subject to review and evaluation by a qualified Technical Reviewer to be retained by MNDM, for MNDM’s sole benefit, to provide the necessary due diligence to assess, among other things, EMP efficiency and conservation targets and the applicants’ capacity for implementation and adherence to the Program Rules.

Accurate and routine measurement of energy savings from the energy efficiency projects detailed above can reduce uncertainty about the efficacy of the projects and help guide the selection of future projects. Regular reporting and monitoring will also assist in future estimates of savings. Progress towards achieving efficiency and conservation targets of approved EMPs will be subject to quarterly review by MNDM as detailed in Section 5.0 (Administration) of these Program Rules, below.
5.0 Administration

Application Process

The application material, including the application form and instructions for ensuring a complete submission, can be found on the Website. Upon receipt of an application package, MNDM will endeavour to advise applicants whether the submission is complete within 15 working days of receipt.

Rebate Disbursement

Rebates will be disbursed on a quarterly basis based on the Province’s fiscal year and commence in the quarterly period immediately following the quarterly period in which the approved new applicant enters into a NIER Program Agreement. For disbursement of any retroactive rebates to which a Qualifying Participant might be eligible, see “Retroactivity” below.

On-going quarterly rebates are subject to meeting all terms and conditions, including Quarterly Reporting requirements (see Quarterly Reporting below). Upon demonstration of satisfactory results and substantial progress in successfully implementing the approved EMP, quarterly rebates will normally be disbursed within 45 days from the end of the quarter for which the rebate is calculated or on such dates as MNDM may determine.

Rebates will not be paid unless and until each individual facility of the selected new applicant consumes a minimum of 50,000 MWh of eligible electricity during the year and meets other eligibility requirements specified below during the year, subject to the NIER Program Agreement.

Review of Energy Management Plan

MNDM reserves the right, at its sole and absolute discretion, to impose additional terms and conditions relating to the obligation of the Qualifying Participant to make satisfactory changes and improvements to each EMP in accordance with prescribed milestones and timelines, the failure to comply could constitute an event of default for the purposes of the NIER Program Agreement.

Quarterly Reporting

NIER Program participants are required to submit quarterly reports within 20 days from the end of the quarter. Participants will be required to submit quarterly summary reports which shall include, but not be limited to, the following information with respect to the preceding quarter:

- Details regarding the status of the implementation of the EMP, including but not limited to achievement of the milestones;
- Details regarding how the objectives of the EMP have been met;
- Forecast for at least upcoming 12 months on a rolling quarterly basis;
- Data required for the measurement of performance identified in the EMP;
- Details on variance from actual to forecast must be included;
- Risks of not achieving targets and milestones identified in this reporting cycle and updates on previously identified risks;
- Updated forecasts and actuals, compared to the baseline information provided in the application; and
- Opportunities identified for additional savings measurements.

The 4th Quarterly Report in each fiscal year shall set out the number of full-time equivalent employees of the Qualifying Participant on an annual basis.

Quarterly reports will be subject to review and evaluation by MNDM’s Technical Reviewer to be retained to assess progress towards meeting EMP objectives and adherence to Program Rules.
Commencement

Quarterly reporting will commence at the end of the Qualifying Participant’s first full fiscal quarter following entering into a NIER Program Agreement.

Retroactivity

Current Participants which enter into NIER Program Agreements, as required by the Program Rules, no later than December 31, 2017, would be eligible for retroactive rebates based on eligible electricity purchased and consumed at eligible facilities from and after April 1, 2017, subject to the NIER Program Agreements.

New selected applicants that enter into NIER Program Agreements prior to March 31 of a fiscal year would be eligible for retroactive rebates based on eligible electricity purchased and consumed at eligible facilities from and after April 1 of the same fiscal year, subject to the NIER Program Agreements, but in any event not for any prior fiscal years that these Rules may apply to.

If, and to the extent applicable, Qualifying Participants are entitled to rebates in respect of eligible electricity already consumed from April 1 of the applicable fiscal year up the end of the last fully completed quarter prior to their entering into a NIER Program Agreement, such rebates may be disbursed upon receipt by MNDM of satisfactory quarterly reports for the completed quarters.

Maintaining Minimum Electricity Consumption

Qualifying Participants must maintain a minimum annual electrical consumption rate of 50,000 MWh per year per facility from the IESO administered electricity market or from a local distribution company, including Hydro One Inc.

In the event that a participating facility consumes less than 50,000 MWh per year in any given year throughout the duration of the NIER Program, that Qualifying Participant’s facility can remain in the NIER Program if it can be demonstrated, to the satisfaction of MNDM, that the lower consumption is wholly and demonstrably attributable to the achievement realization of energy efficiencies.

Maintaining Operations

Planned or unforeseen events of outage, shutdown or other matters contributing to the ceasing of commercial operations, will render a participant's facility ineligible to continue in the NIER Program, subject to the NIER Program Agreement, and at MNDM’s sole and absolute discretion and on such terms that MNDM may impose.

Facilities

Each individual facility must continue to be directly owned and controlled by the participant. Where a facility no longer meets the forgoing criteria, that facility will not be considered a facility for the purpose of the NIER Program for the transferor and there will be a corresponding reduction in the participant-transferor's Caps. Rebate caps, including Facility Annual Caps, may be transferable to a purchaser of a facility at MNDM’s discretion, subject to any terms or conditions MNDM may impose.

Website

Any reference to “Website” in these Program Rules means MNDM’s NIER Program website at http://www.mndm.gov.on.ca/en/northern-development/business-support/northern-industrial-electricity-rate-program or such other website as MNDM may designate from time to time.

Application Period

See Section 3.2 of these Program Rules, “Acceptance of Applications”.
Legal Agreement

All Qualified Participants will be required to enter into a NIER Program Agreement. The NIER Program Agreement which Current Participants will enter into will reflect the changes in the NIER Program and MNDM requirements.

Coordination with Other Energy Programs

Subject to the portion of these Program Rules, below, dealing with the IEI Program, nothing in the NIER Program restricts Qualified Participants from applying to other energy programs aimed at reducing energy costs and conservation subject to the requirements, including restrictions, of such other programs.

Industrial Electricity Incentive (IEI)

Any load settled under the IESO’s Industrial Electricity Incentive (IEI) program is not eligible to receive NIER rebates, which will be provided for in the NIER Program Agreement. NIER rebates will be paid based on eligible electricity volumes that will be net of IEI Eligible Incremental Electricity as defined in the IEI Stream 1, and IEI Stream 2 and IEI Stream 3 Program Rules, as applicable, and any other electricity volumes specified under the IEI program.

In order to ensure the forgoing, consultations and sharing of information will take place among MNDM, the Ministry of Energy and the IESO.

Applicants and current participants should reference the IEI Program Rules for further details on the IEI program ([http://www.ieso.ca/sector-participants/energy-procurement-programs-and-contracts/industrial-electricity-incentive-program](http://www.ieso.ca/sector-participants/energy-procurement-programs-and-contracts/industrial-electricity-incentive-program)).

Additional Rules

Where MNDM may take an action or make a determination under these Program Rules, the decision to take such action or make such determination shall be at MNDM’s sole and absolute discretion. Any reference to MNDM’s discretion in these Program Rules shall mean MNDM’s sole and absolute discretion.

From time to time MNDM, in its discretion, may amend the NIER Program and the Program Rules without prior notice. Without limiting the generality of the foregoing, such changes may apply to new applications, applications already submitted and to NIER Program participants which have entered into a NIER Program Agreement. Notice of any amendments will be posted on the Website and will apply to any applications in progress, future applications, selected applications and NIER Program Agreements as may be specified on the notice.

MNDM may, but is not obligated to, request clarification, additional information, documentation and statements in relation to any application at any time and may establish the time frame in which the request is to be responded to.

MNDM may reject any incomplete application, any application that does not satisfy all of the eligibility requirements or is ineligible and any application in respect of which information is not satisfactory to MNDM or its advisers in any respect in its discretion.

Notwithstanding anything contained in these Program Rules, MNDM reserves the right, in its discretion, to reject any application in whole or part whether or not completed properly and whether or not it contains all necessary information and reserves the right to discuss different or additional proposals to those included in any application.

No commitment has been made by MNDM to enter into any NIER Program Agreement and neither the issuance of a notice of selection nor the participation by MNDM or any of its representatives in the NIER Program process will create a commitment or any form of agreement between MNDM and any applicant or Current Participant. No binding commitment will be created unless and until MNDM and a Qualified Participant, each in its discretion, enter into a definitive written NIER Program Agreement.
MNDM reserves the right to cancel any part or all of the NIER Program at any time and for any reason or to suspend the NIER Program including suspending the acceptance or assessment of applications, in whole or in part for any reason for such period of time as MNDM shall determine in its discretion, in each case without any obligation or any reimbursement to any applicant or Current Participant.

Each Qualifying Participant shall be solely responsible for its own costs and expenses relating to the NIER Program, including costs related to the preparation and submission of its application and the development and implementation of its EMPs, whether or not an application is accepted or the NIER Program is suspended, revoked, amended or revised. Under no circumstances shall MNDM be liable for any claims for compensation or damages, including any indirect, punitive or consequential damages associated with a selected new applicant or Current Participant’s participation in the NIER Program or an applicant’s submission of an application. Qualifying Participants irrevocably and unconditionally waive any such claims against MNDM, whether relating to an alleged breach by MNDM of the Program Rules or otherwise.

MNDM shall not be liable for any delays in processing, reviewing, accepting or rejecting an application or providing a notice of selection or entering into any NIER Program Agreement.

MNDM reserves the right, in its discretion, to waive any informality, irregularity or non-compliance with respect to an application or with respect to an applicant or Current Participant’s compliance with these Program Rules, including by extending any deadline, which for clarity may be any deadline affecting MNDM, the Current Participant or the applicant.

The rights reserved to MNDM in these Program Rules are in addition to any other express rights or any other rights existing under the Program Rules, the NIER Program Agreement or at law or in equity including any rights which may be implied in the circumstances, and MNDM shall not be liable for any claim, losses, liabilities, penalties, obligations, payments, costs and expenses or any direct or indirect damages incurred or suffered by any applicant, Current Participant or any third party resulting from MNDM exercising any of its express or implied rights under the NIER Program, including the right to exercise its discretion hereunder. In submitting an application, each applicant agrees that it waives any rights it may have to bring a claim or otherwise as against MNDM for failing to issue the applicant a notice of selection or for issuing a notice of selection to another applicant.

Each applicant and Current Participant agrees that, in no circumstances shall it nor any third party be entitled to recover any damages as against MNDM, whether such claim for damages arises in contract, tort, warranty, equity, negligence, intended conduct, detrimental reliance or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of MNDM, and including any claim by the applicant or Current Participant that MNDM has failed to comply with these Program Rules.

Applicants and Current Participants authorize the collection by MNDM of the information set out in the application and otherwise collected in accordance with the terms hereof, and the use and sharing of such information for the purposes set out in or incidental to these Program Rules and the NIER Program Agreement, and for the purpose of offering, managing, directing and evaluating the NIER Program generally. Applications and the NIER Program Agreement will provide further for the collection and sharing of information.

MNDM may extend the time to meet the requirements of these Program Rules at its discretion. Any such extension of time shall only be valid and binding on MNDM if provided in writing by an authorized representative of MNDM. Any failure to meet the revised time requirement shall have the same consequences as if the original time requirement had not been met.

Despite the fact that these Program Rules were drafted by MNDM and its advisors, applicants and Current Participants acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision in these Program Rules shall not be construed against MNDM in favour of the applicant or Current Participant when interpreting such term or provision, by virtue of such fact.