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November 26, 2007

Gordon M. Nettleton
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Toronto

Montréal

Ottawa

New York

Jamie Cameron
Alberta Energy and Utilities Board
640 - 5th Avenue SW
Calgary, Alberta T2P 3G4

Dear Mr. Cameron:

**Re: Alberta Electric System Operator (AESO) Negotiated Settlement Process –
Application # 1357161**

Please find enclosed for filing the application of the Alberta Electric System Operator (“AESO”), pursuant to a negotiated settlement, to amend Article 11 of the AESO’s approved Terms and Conditions of its Tariff, and to adjust the applicable interim payments made under Article 24 or Article 11 between the period December 17, 2004 and the date on which this Settlement is approved by the Board.

If you have any questions or concerns in this matter, please do not hesitate to contact the undersigned.

Yours very truly,

for: Gordon M. Nettleton
GMN:njm

c. Heidi Kirrmaier, Vice President, Regulatory, Alberta Electric System Operator

IN THE MATTER OF the Alberta Electric System Operator (the “AESO”) tariff and rates approved by the Alberta Energy and Utilities Board (“Board”) pursuant to sections 30 and 119 of the *Electric Utilities Act* S.A. 2003 c. E-5.1 (“Act”).

AND IN THE MATTER OF an Application for Board approval of a negotiated settlement made pursuant to section 134(1) of the Act and which concerns Article 11 of the AESO’s Tariff.

**AESO
ARTICLE 11
NEGOTIATED SETTLEMENT APPLICATION**

November 26, 2007

IN THE MATTER OF the Alberta Electric System Operator (the “AESO”) tariff and rates approved by the Alberta Energy and Utilities Board (“Board”) pursuant to sections 30 and 119 of the *Electric Utilities Act* S.A. 2003 c. E-5.1 (“Act”).

AND IN THE MATTER OF an Application for Board approval of a negotiated settlement made pursuant to section 134(1) of the Act and which concerns Article 11 of the AESO’s Tariff.

TO: Alberta Energy and Utilities Board
640 - 5th Avenue S.W.
Calgary, Alberta
Canada T2P 3G4

APPLICATION

1. The AESO is a corporation established under the Act and is responsible for carrying out the duties and obligations of the Independent System Operator as defined in the Act.
2. This Application is made pursuant to sections 30, 119 and 134(1) of the Act for approval of a negotiated settlement, the result of which concerns amendments to Article 11 of AESO’s approved Terms and Conditions of its Tariff, and the adjustment to the applicable interim payments made under Article 24 or Article 11 between the period December 17, 2004 and the date on which this Settlement is approved by the Board.

BACKGROUND

3. Legislation (the Act, Sections 16, 17, 30, and the Transmission Regulation AR 86/2007, Section 51) provides the AESO with rights allowing it to obtain and obligations to pay for certain Ancillary Services so as to ensure the ongoing safe and reliable operation of the Alberta Integrated Electric System (AIES). Article 11 specifies the compensation methodology for such Ancillary Services.
4. Amounts paid by the AESO pursuant to Article 11 (then Article 24) were approved by the Board on an interim basis as of December 17, 2004, and are subject to adjustment pending the Board’s final determination of the justness and reasonableness of contemplated Article amendments and resulting payments. The payments in question are

all in respect of Transmission Must Run (TMR) which is one type of Ancillary Service required by the AESO.

5. In Decision 2005-125, dated November 15, 2005, the Board approved certain required amendments to the then interim approved Article 24 so that new requirements found in the *Transmission Regulation* (AR 174/2004) governing the maximum compensation amounts for 'must run' services were satisfied and could take effect as of January 1, 2006. Decision 2005-125 also included several amendments to the compensation methodology, renaming of the Article to the current Article 11 and upheld the interim order for TMR compensation under Article 11.
6. At the same time, the AESO had been advised that legislative amendments to the Act and regulations were being considered. These potentially included matters affecting how the AESO would be expected to determine compensation for 'must run' services directed under its Tariff. Applications to approve and finalize the provisions of Article 11 and payments made since December 17, 2004 forward continued to be approved only on an interim basis.
7. In April 2007, amendments to the *Transmission Regulation* (AR 86/2007) were introduced. These did not impact the requisitioning of or the compensation to be paid in circumstances where Article 11 of the AESO's Terms and Conditions of Service applies. The AESO informed the Board of these conclusions in its May 4, 2007 correspondence.
8. On July 6, 2007, the AESO made application to the Board for approval to initiate a negotiated settlement process concerning the compensation to be paid by the AESO for the provision of Ancillary Services, including TMR Services and finalization of interim Article 11. Board approval of this request was granted pursuant to Decision 2007-062 issued on August 8, 2007. An extension to the initially contemplated timelines was further approved by the Board on October 30, 2007, such that the filing of a negotiated settlement would occur on November 16, 2007. Provision to file an application by November 30 in lieu of a settlement was also granted at this time. The AESO informed the Board on November 15 that the settlement would require additional time to finalize.

THE NEGOTIATED SETTLEMENT PROCESS

9. In accordance with the Negotiated Settlement Rules (Board Directive 018 dated December 19, 2006), on August 23, 2007 the AESO invited interested parties to participate in the approved formal negotiation process. A copy of this notification is found at Attachment A to this Application.
10. Seventeen parties (including an observer from the EUB) accepted the AESO's invitation to negotiate. A listing of those parties is found at Attachment B to this Application. Throughout October and November 2007, several meetings between the AESO and interested Settlement parties were held to discuss Article 11 and associated matters respecting Ancillary Service procurement. Through these discussions, the parties have been able to reach an agreement on certain matters concerning the finalization of Article 11.
11. Eleven of the parties which appear on Attachment B have signed the Settlement Agreement. A listing of these parties is found at Attachment C to this Application. ATCO Power subsequently decided to withdraw from the settlement process. A listing of registered parties who have not signed the Settlement Agreement but have advised that they do not oppose the Settlement Agreement is found at Attachment D to this Application.

SETTLEMENT BRIEF

12. A copy of the Negotiated Settlement reached by the parties is enclosed as Attachment E to this Application.
13. The Negotiated Settlement causes certain amendments to be required to Articles 1 - Definitions, and Article 11 - Ancillary Services of the AESO's Terms and Conditions of Service. These amendments are set forth in Attachment F to this Application.
14. The proposed amendments focus on the procurement of and compensation for TMR Service. While Article 11 continues to address Ancillary Services other than TMR, those aspects of the Article remain, for all intents and purposes, unchanged and are not the subject matter of the Negotiated Settlement.

15. There are three key components to the Negotiated Settlement which are reflected in the applied-for Article 11 amendments:
- (a) Transmission Must Run Services obtained by the AESO pursuant to Article 11 are treated as falling into one of two categories: Foreseeable TMR Services and Unforeseeable TMR Services. The distinction between these categories is factually dependent and based upon the circumstances giving rise to the AESO's underlying need for and timing of such services, and are defined as follows. TMR Services are Foreseeable if the AESO, taking into account reasonable procurement timing requirements, determines TMR Services are required to meet AESO Transmission Reliability Criteria which includes consideration of expected operating conditions and planned transmission outages. TMR Services are Unforeseeable if they do not constitute Foreseeable TMR Services.
 - (b) The AESO's Procurement of Foreseeable TMR Services shall adhere to a transparent process. The procurement process for these services shall be developed and codified in an ISO Rule. Until such time as the Rule is finalized, Schedule B (attached to Article 11, contained within Attachment E) shall be adhered to for the procurement of Foreseeable TMR Service.
 - (c) The compensation methodology for Unforeseeable TMR Services is primarily what is being updated in Article 11 in this application. The parties have agreed to apply this methodology retrospectively and adjust, where applicable, payments for Unforeseeable TMR Services directed by the AESO which was not under contract and where compensation was under either interim approved Article 24 or 11 from December 17, 2004 until Board approval of this settlement and thereafter. In so doing, the interim payments for Unforeseeable TMR Service approved pursuant to the Board's prior Decisions are now sought to be treated as final for rate making purposes. For clarity, the TMR services from the Rainbow units over this time frame are not considered as Unforeseeable TMR Service, and therefore the interim compensation made for this service pursuant to Interim Article 11 and 24 are not subject to finalization as a result of this Settlement. The AESO is still finalizing an agreement with ATCO for those costs.

16. Where a need for TMR Service is required by the AESO to meet operating conditions provided for in the AESO Transmission Reliability Criteria, the TMR Service is considered to be Foreseeable and thus requires the AESO to follow a transparent procurement process that incorporates bid-based competitive mechanisms through the use of expression of interest and request for proposal processes. If bids for required Foreseeable TMR Service are reflective of competitive market forces (i.e. referred to as being “contestable”), bilateral negotiations are then contemplated with resulting freely negotiated contractual arrangements. If bids are not reflective of competitive forces (i.e. a non-contestable result), or the parties in any event cannot reach mutually acceptable terms, then all outstanding matters in dispute shall then be determined through binding arbitration procedures. The AESO has confirmed that it will consult with the Market Surveillance Administrator before making any determination as to whether a process is non-contestable. The foregoing is captured in Schedule B attached to the Negotiated Settlement Agreement in Attachment E.
17. Section 11.6 found in Article 11 of Attachment E describes the agreed upon compensation methodology that is to apply to Unforeseeable TMR Services. As noted above, the parties have agreed to retrospectively apply this methodology and, where applicable, make adjustments to any payments for TMR Services that were requisitioned by the AESO after December 16, 2004 and where need for such Service did not concern TMR Services directed from Rainbow Lake.

EFFECT OF THE NEGOTIATED SETTLEMENT ON INTERIM ARTICLE 24/11 PAYMENTS

18. Since December 16, 2004, under Articles 24 and 11 the AESO has incurred costs of approximately \$4.0 million related to 5 events of Unforeseen TMR Services. The adjustment arising from the finalization of these payments in accordance with the terms of Article 11.6 as proposed herein is approximately an additional \$2.0 million to be paid. The figures provided are approximations as customer invoices have yet to be finalized.

SUBMISSION

19. The AESO submits that the Negotiated Settlement is in the public interest as it comports with the requirements of the Act and Board Directive 018. Finalization of a portion of the outstanding Article 24/11 payments provides a degree of rate and regulatory certainty and expediency. The Negotiated Settlement ensures the AESO's tariff and terms and conditions of service are just and reasonable and does not result in any undue discrimination.
20. The AESO further submits that approval of the Negotiated Settlement provides greater certainty and transparency with respect to the manner in which the AESO shall procure Ancillary Services, including TMR Services. These objectives are intended to better address the historic complexities and uncertainties that have been associated with the procurement of Ancillary Services under Article 24 and 11.

REQUESTED RELIEF


21. AESO hereby applies for Order or Orders of the Board Pursuant to sections 30, 119 and 134(1) of the Act,
 - (a) Approving the Negotiated Settlement Agreement in its entirety as set forth in Attachment E.
 - (b) Approving amendments to Article 1 and Article 11 as set forth in Attachment F.
 - (c) Subject to (d) below, for the period December 17, 2004 until the date upon which this Application is approved, approval to adjust and to treat as final for rate making purposes all costs incurred by the AESO for conscripted TMR Services paid pursuant to interim Articles 24 and 11.
 - (d) All costs incurred by the AESO for conscripted TMR Services from the Rainbow Lake facilities shall remain interim and may be subject to further adjustment.

- (e) Payments falling within (c) above will be adjusted such that prior period conscripted TMR Service is treated as Unforeseen TMR Services and the pricing provisions found in Article 11.6 shall apply.
- (f) Such other relief as the AESO may request or the Board deems appropriate.

All of which is respectfully submitted.

DATED at the City of Calgary in the Province of Alberta this 26th day of November, 2007.

ALBERTA ELECTRIC SYSTEM OPERATOR



Heidi Kirrmaier, Vice President, Regulatory

All notices and communications in connection with this Application should be directed to:

Ms. Heidi Kirrmaier
Vice President, Regulatory
Alberta Electric System Operator

Calgary, AB
Telephone: (403) 294-4456
Facsimile: (403) 294-4177

AND

Mr. Gordon Nettleton
Osler Hoskin & Harcourt LLP
2500 450 1st Street S.W.
Calgary, AB T2P 5H1
Telephone: (403) 260-7047
Email: gnettleton@osler.com
Facsimile: (403) 260-7024

ATTACHMENT "A"



Sent via e-mail

August 23, 2007

Dear Stakeholders;

Re: Negotiated Settlement Process to Finalize Article 11 – Compensation for Ancillary Services

On August 3, 2007, the Alberta Energy and Utilities Board (EUB) issued Decision 2007-062 approving the AESO's request to initiate a negotiated settlement process (NSP) in respect of Article 11 of its tariff.

Briefly, Article 11 addresses compensation by the AESO for the provision of ancillary services by market participants where the AESO requires such services to maintain system security. Article 11 was last approved on an interim basis on November 15, 2005 in Decision 2005-125.

The purpose of this NSP is to update the interim Article 11 to the extent required to ensure it is just and reasonable for all affected participants, and present the updated article to the EUB for final approval. If the NSP is not successful, the AESO has been directed by the EUB to submit an application proposing the final version of Article 11 by October 31, 2007.

The AESO agrees with the comments from some interested parties suggesting that an independent facilitator would enhance the likelihood of a successful negotiation, and to this end has retained Certus Strategies to facilitate the process.

If you wish to be an active participant in the NSP, please register with April Walters at april.walters@aeso.ca on or before September 5, 2007. Please include in your reply the following:

- 1) which organization you represent;
- 2) which individual from your organization will be the signatory to the settlement; should one be reached;
- 3) the names of others in your organization who may participate in the discussions.

Once you have registered, you will be contacted by Certus Strategies and advised of the next steps in the process. You will also receive an outline of the information required to assist the discussions going forward, prior to the first meeting which will take place in September (date to be confirmed).

Information relating to this NSP will be posted on the AESO website at www.aeso.ca and is accessible by following the path: [Tariff](#) ► [Current Applications](#) ► [Ancillary Services/Article 11 Settlement](#). The original application for amendment of Article 11 which led to EUB Decision 1005-125 is also available by following the path: [Tariff](#) ► [Previous Applications](#) ► [Article 11 Amendment](#).

If you do not wish to be an active participant in the NSP but want to monitor the process, you may do so by reviewing information posted on the AESO website as indicated above.

If you have any other questions or comments please contact either of the following:

Doyle Sullivan, P.Eng
Director, Regulatory Services
Alberta Electric System Operator
2500, 330 – 5th Avenue SW
Calgary, Alberta T2P 0L4
Phone: (403) 539-2759
Fax: (403) 539-2524
E-mail: doyle.sullivan@aeso.ca

April Walters
Executive Assistant
Alberta Electric System Operator
2500, 330 – 5th Avenue SW
Calgary, Alberta T2P 0L4
Phone: (403) 539-2463
Fax: (403) 539-2524
E-mail: april.walters@aeso.ca

We look forward to working with you.

Sincerely,

"original signed by"

Doyle Sullivan, P. Eng
Director, Regulatory Services

ATTACHMENT "B"

ATTACHMENT "B"

Registered Participants in the Article 11 Negotiated Settlement Process

Alberta Direct Connect Consumers Association

ATCO Power

Alberta Urban Municipalities Association

City of Medicine Hat

Consumers Coalition of Alberta

Direct Energy

ENMAX Corporation

EPCOR Utilities Inc.

Industrial Power Consumers Association of Alberta

Independent Power Producers Society of Alberta

Nexen Inc.

Public Institutional Consumers of Alberta

Powerex Corp.

TransAlta Corporation

TransCanada Energy Ltd

Office of the Utilities Consumer Advocate*

*As per its letter of September 21, 2007 the Office of the Utilities Consumer Advocate represents in electricity regulatory proceedings the Alberta Association of Municipal Districts and Councils, the Alberta Federation of Rural Electrification Associations Ltd., the Federation of Alberta Gas Co-ops Limited, the Canadian Federation of Independent Business, and notably the Alberta Urban Municipalities Association.

AESO Article 11 Settlement Application November 26, 2007

ATTACHMENT “C”

ATTACHMENT "C"

**Registered Participants in the Negotiated Settlement Process Who Have Signed the Final
Negotiated Settlement**

Alberta Direct Connect Consumers Association

City of Medicine Hat

ENMAX Corporation

EPCOR Utilities Inc.

Industrial Power Consumers Association of Alberta

Independent Power Producers Society of Alberta

Nexen Inc.

TransAlta Corporation

TransCanada Energy Ltd.

Office of the Utilities Consumer Advocate*

*As per its letter of September 21, 2007 the Office of the Utilities Consumer Advocate represents in electricity regulatory proceedings the Alberta Association of Municipal Districts and Councils, the Alberta Federation of Rural Electrification Associations Ltd., the Federation of Alberta Gas Co-ops Limited, the Canadian Federation of Independent Business, and notably the Alberta Urban Municipalities Association.

AESO Article 11 Settlement Application November 26, 2007

ATTACHMENT "D"

ATTACHMENT "D"

**Registered Participants in the Negotiated Settlement Process Who Neither Support Nor
Oppose the Final Negotiated Settlement**

Consumers Coalition of Alberta

Direct Energy

Powerex Corp.

Public Institutional Consumers of Alberta

ATTACHMENT "E"

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT dated for reference the 19th day of November, 2007

BETWEEN:

THE ALBERTA ELECTRIC SYSTEM OPERATOR, (hereinafter referred to as "AESO")

OF THE FIRST PART

- and -

ALBERTA DIRECT CONNECT CONSUMERS ASSOCIATION, ATCO POWER, ALBERTA URBAN MUNICIPALITIES ASSOCIATION, CITY OF MEDICINE HAT, CONSUMERS COALITION OF ALBERTA, DIRECT ENERGY, ENMAX CORPORATION, EPCOR, INDUSTRIAL POWER CONSUMERS ASSOCIATION OF ALBERTA, INDEPENDENT POWER PRODUCERS SOCIETY OF ALBERTA, NEXEN, PUBLIC INSTITUTIONAL CONSUMERS OF ALBERTA, POWEREX CORP., TRANSALTA CORPORATION, TRANSCANADA ENERGY LTD., UTILITIES CONSUMER ADVOCATE, (hereinafter referred to as the "NEGOTIATING PARTIES")

OF THE SECOND PART

WHEREAS The AESO and the Negotiating Parties (collectively "the Parties") wish to enter into the settlement set forth and described in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the mutual covenants and agreements of the Parties herein set forth, the Parties hereby covenant and agree with one another as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalized terms used in this Agreement including the recitals and Schedules shall have the meanings respectively provided for those terms as set forth below or, where no meaning is specified for a capitalized term below, the meaning provided for that term in the AESO Tariff or in that part of this Agreement where such term is utilized:

- (a) **"AESO"** is the Alberta Electric System Operator who carries out the duties and responsibilities of the Independent System Operator as set out in the Alberta *Electric Utilities Act*.
- (b) **"AESO Tariff"** means the rates and terms and conditions of service approved by the Alberta Energy and Utilities Board, or its successors, and that govern the provision of system access service by the AESO to its customers.
- (c) **"AESO Transmission Reliability Criteria"** means the transmission reliability criteria used by the AESO in the planning and operating of the Alberta Interconnected Electric System and which are available electronically on the AESO internet website.
- (d) **"Alberta Interconnected Electric System"** means interconnected transmission facilities and electric distribution systems, as defined in the Alberta *Electric Utilities Act*.
- (e) **"Ancillary Services"** means those services required to ensure that the Alberta Interconnected Electric System is operated in a manner that provides a satisfactory level of service with acceptable levels of voltage and frequency, as defined in the Alberta *Electric Utilities Act*.
- (f) **"Article 11"** means Article 11 in the AESO Tariff.
- (g) **"Bilateral Negotiation Process"** means negotiations between the AESO and a Customer concerning commercial terms for the provision of TMR Services.
- (h) **"Billing Period"** is as defined in the AESO Tariff.
- (i) **"Binding Arbitration Process"** means the process defined by Schedule B.
- (j) **"Board"** means the Alberta Energy and Utilities Board or its successors.
- (k) **"Customer"** has the definition provided in the AESO Tariff.
- (l) **"Dispute Resolution Process"** means the process administered by Article 19 of the AESO Tariff.
- (m) **"EOI"** means Expression of Interest and is an indication from the AESO to a Customer that provision of TMR Service is desired.
- (n) **"Existing Contract"** has the meaning ascribed to it in Section 11.2 of Schedule A.
- (o) **"Foreseeable TMR Service"** has the meaning ascribed to it in Section 11.4 of Schedule A and, for greater certainty, a TMR Service is a Foreseeable TMR Service if the AESO could both reasonably anticipate the need for and procure the TMR Service (taking into account reasonable procurement timing requirements) through the Foreseeable TMR Service Procurement Procedure described in Schedule B to this Settlement.

- (p) **"Foreseeable TMR Service Procurement Procedure"** means the procedure found at Schedule B to this Settlement.
- (q) **"Market Surveillance Administrator" ("MSA")** is as defined under the *Alberta Electric Utilities Act*.
- (r) **"Maximum TMR Price"** means the maximum compensation referred to in Article 11.7 of Schedule A.
- (s) **"PPA"** means Power Purchase Arrangement as defined in the *Alberta Electric Utilities Act*.
- (t) **"Request For Proposal" or "RFP"** refers to a document delivered from the AESO to a Customer for purposes related to the procurement of Foreseeable TMR Service.
- (u) **"TMR Directive"** occurs when the AESO directs a Customer to supply TMR Services.
- (v) **"TMR Services" and "Transmission Must Run Services"** are Ancillary Services required by the AESO for the safe and reliable operation of a region of the Alberta Interconnected Electric System.
- (w) **"Unforeseeable TMR Services"** has the meaning ascribed to it in Article 11.4 of Schedule A.
- (x) **"Unforeseeable TMR Service Event"** means the direction(s) of Unforeseeable TMR Service by the AESO to a Customer that result(s) from a single cause.

1.2 Agreement Viewed as a Whole

This Agreement is the result of negotiations and the Parties enter into this Agreement with the understanding that no single component of this Agreement is to be construed as representing the position of any Party on the appropriate result that would be obtained in the absence of the Agreement. This Agreement was realized as a result of broad industry negotiations and represents a balancing of interests by the Parties. Therefore no single component can be said to be acceptable to any Party independent of the entire Agreement. All components of this Agreement are inextricably linked and must be treated as such.

1.3 Schedules to Agreement

The following Schedules are attached to and forms part of this Agreement, are incorporated by reference in this Agreement, and are deemed to form a part hereof:

Schedule "A": AESO Tariff, Article 11 – Ancillary Services

Schedule "B": Foreseeable TMR Service Procurement Procedure

ARTICLE 2

AESO TARIFF, ARTICLE 11 – ANCILLARY SERVICES

2.1 Interim Tariff Replaced with Schedule A

- (a) The Parties agree Interim Article 11 as currently included in the AESO Tariff shall be replaced with the attached Schedule A: Article 11 – Ancillary Services.
- (b) The Parties agree that Article 1 of the AESO Tariff shall be amended by replacing the definition of “Maximum TMR Compensation” with:

“Maximum TMR Compensation” means the description found in Article 11.7.

and by adding in alphabetical order within Article 1 the following:

“AESO Transmission Reliability Criteria” means the transmission reliability criteria used by the AESO in the planning and operating of the Alberta Interconnected Electric System and which are available electronically on the AESO internet website.

2.2 Foreseeable TMR Service Procurement Procedure – Schedule B

The Parties agree the attached Schedule B:

- (a) Shall be incorporated by reference into and form part of the AESO Tariff until such time as a formal AESO Rule has been developed.
- (b) Sets forth the process that the AESO shall follow for the procurement of all Foreseeable TMR Services.
- (c) Shall be posted on the AESO website and, upon request, made available to any person.

2.3 Effective Date

The Parties agree that Schedules A and B shall take effect immediately upon approval by the Board.

2.4 Costs Treatment for Unforeseeable TMR Services in the Period December 16, 2004 to Present

Subject to Article 2.5, for the period in which interim approved Articles 24 and 11 were in effect (i.e., from December 16, 2004 until Board approval of this Agreement):

- (a) Any conscripted TMR Service paid pursuant to Articles 24:3 (as it was then in effect) and 11.3 shall be considered as Unforeseeable TMR Service; and

(b) The payments made by the AESO for such TMR Services shall be adjusted retrospectively using the methodology described in Article 11.6 of Schedule A to this Agreement. Any and all adjusted amounts shall be final for rate making purposes.

2.5 Costs Treatment for Foreseeable TMR Services in the Period December 16, 2004 to Present

In any event of Article 2.4, costs in respect of TMR Services at Rainbow Lake from December 16, 2004 until Board approval of this Agreement, pursuant to Articles 24.3 (as it was then in effect) and 11.3, remain interim for purposes of ratemaking and subject to adjustment and finalization by the Board.

2.6 Transmission Regulation Compliance

The Parties acknowledge and agree that the Maximum TMR Services Compensation determined in accordance with Article 11.7 accords with the maximum compensation described in Section 23 of the *Transmission Regulation*, A.R. 174/2004 or Section 51 of the *Transmission Regulation*, A.R. 86/2007, whichever is applicable.

2.7 Competitive Procurement Process

For greater certainty, the proposed Article 11 Tariff provision in Schedule A reflects the commitment of the AESO to procure Foreseeable TMR Services through competitive EOI and RFP procurement processes. The AESO will only conscript TMR Services in the event of an unforeseeable contingency.

**ARTICLE 3
APPLICATION TO THE EUB**

3.1 Regulatory Approval of this Agreement

The terms and conditions contained in this Agreement are subject to approval of the EUB and if this Agreement is not approved in its entirety by the EUB, this Agreement shall immediately terminate and shall be of no further force or effect. If this Agreement terminates in this manner, then this Agreement will not prejudice the position of any of the Parties in any regulatory proceeding following such termination.

3.2 AESO to Seek Regulatory Approval

AESO shall immediately commence the preparation of an application to be submitted for approval to the EUB, which shall reflect the terms and conditions of this Agreement, including all necessary and consequential amendments to the AESO Tariff in order to properly effect the terms and conditions of this Agreement. Negotiating Parties agree to support such application to the EUB.

**ARTICLE 4
MISCELLANEOUS**

4.1 Corresponding Changes to AESO Rules

The AESO agrees to develop, following reasonable efforts by all Parties hereto, a formal AESO Rule to revise or replace Schedule B.

4.2 Expanded Meanings

Unless the context otherwise necessarily requires, the following provisions shall govern the interpretation of this Agreement:

- (a) words used herein importing the singular number only shall include the plural and vice versa;
- (b) the terms "in writing" or "written" include printing, typewritten, or any electronic means of communication by which words are capable of being visually reproduced at a distant point of reception, including by telecopier, but for greater certainty shall not include e-mail;
- (c) "this Agreement", "the Agreement", "hereto", "herein", "hereby", "hereunder", "hereof" and similar expressions refer to this agreement and includes each Schedule attached hereto, and not to any particular Article, Section or other subdivision or portion hereof and includes each and every instrument varying, amending, modifying or supplementing this agreement;
- (d) references herein to any agreement, including this Agreement, shall be deemed to be references to the agreement as varied, amended, modified, supplemented or replaced from time to time;
- (e) the word "including", "includes" or "include" wherever used in this Agreement, means "including, without limitation", "includes, without limitation" or "include, without limitation", as the case may be;
- (f) unless otherwise specified, all references to "Articles", "Sections", "subsections" and "Schedules" are references to Articles or Sections and subsections of, and Schedules to and forming part of, this Agreement; and
- (g) the division of this Agreement into Articles, Sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

4.3 Statutory References

Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto and enforced from time to time, and to any statute or regulation that may be passed which has the effect of supplementing the statute so referred to or the regulations made pursuant thereto, and any

reference to an order, ruling or decision shall be deemed to be references to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time unless the context dictates otherwise.

4.4 Amendment of Agreement

No supplement, modification or waiver or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby.

4.5 Waiver

No waiver of any of the provisions of this Agreement shall be valid unless in writing and unless otherwise expressly provided no such waiver shall constitute or be deemed to constitute a waiver of any other provisions (whether or not similar) nor shall such waiver constitute a continuing waiver.

4.6 Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

4.7 Counterpart Execution

This Agreement may be executed in one or more counterparts. Each counterpart shall constitute an original and all counterparts together shall constitute one and the same agreement.

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first above written.

**ALBERTA ELECTRIC SYSTEM
OPERATOR**

By: _____

Name: HEIDI KIRMAIER

Title: VP, REGULATORY

By: _____

Name: _____

Title: _____

**ALBERTA DIRECT CONNECT
CONSUMERS ASSOCIATION**

By: *[Signature]*
Name: *Jack Toy*
Title: *President*

By: *[Signature]*
Name: *Andrew World*
Title: *Secretary-Treasurer*

ATCO POWER

By: _____
Name:
Title:


By: _____
Name:
Title:

**ALBERTA URBAN MUNICIPALITIES
ASSOCIATION**

By: _____
Name:
Title:

By: _____
Name:
Title:

CITY OF MEDICINE HAT

By: 
Name: Douglas Crichton
Title: Business Manager, Electric Utility

By: _____
Name:
Title:

CONSUMERS COALITION OF ALBERTA

By: _____
Name:
Title:

By: _____
Name:
Title:

DIRECT ENERGY

By: _____
Name:
Title:

By: _____
Name:
Title:

ENMAX CORPORATION

By: Deborah Emes
Name: Deborah Emes
Title: Vice-President, Regulatory

By: _____
Name:
Title:

EPCOR UTILITIES INC.

By: _____
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**INDUSTRIAL POWER CONSUMERS
ASSOCIATION OF ALBERTA**

By: _____
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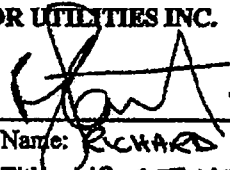
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ENMAX CORPORATION

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EPCOR UTILITIES INC.

By:  _____
Name: RICHARD STOUT
Title: VP REGULATORY AFFAIRS

By: _____
Name:
Title:

**INDUSTRIAL POWER CONSUMERS
ASSOCIATION OF ALBERTA**

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ENMAX CORPORATION

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EPCOR UTILITIES INC.

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**INDUSTRIAL POWER CONSUMERS
ASSOCIATION OF ALBERTA**

By: Don Macnamara

Name:

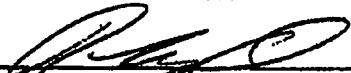
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**INDEPENDENT POWER PRODUCERS
SOCIETY OF ALBERTA**

By: 
Name: ROD CROXFORD
Title: DIRECTOR, IPPSA

By: 
Name: E.M.J. BIHRY
Title: EXECUTIVE DIRECTOR, IPPSA

NEXEN

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**PUBLIC INSTITUTIONAL CONSUMERS
OF ALBERTA**

By: _____
Name: _____
Title: _____

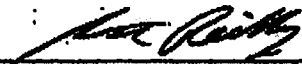
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**INDEPENDENT POWER PRODUCERS
SOCIETY OF ALBERTA**

By: _____
Name:
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By: _____
Name:
Title:

NEXEN INC.

By:  _____
Name: Steven D. Reilly
Title: VP North America

By:  _____
Name: Robert J. Black
Title: Vice President
Energy Marketing

**PUBLIC INSTITUTIONAL CONSUMERS
OF ALBERTA**

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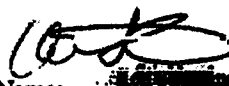
POWEREX CORP.

By: _____
Name:
Title:

By: _____
Name:
Title:

TRANSALTA CORPORATION

Ken Stickland
Executive Vice President, Legal
SD and HR&E

By:  _____
Name: **Ken Stickland**
Title: **Executive Vice President, Legal
SD and HR&E**

By: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

By: _____
Name:
Title:

By: _____
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POWEREX CORP.

By: _____
Name:
Title:

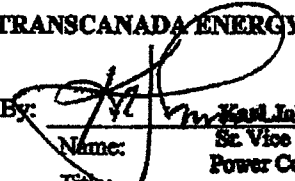
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TRANSALTA CORPORATION

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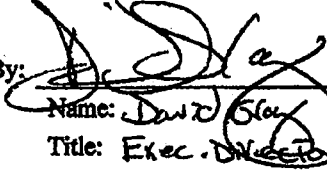
By: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

By:  _____
Name: **Karl Johansson**
Title: **Sr. Vice President
Power Commercial**

By:  _____
Name:
Title: **Kenneth W. Kunz
Vice President, Western Power**

UTILITIES CONSUMER ADVOCATE

By: 
Name: David Slay
Title: Exec. Director

By: _____
Name:
Title:

SCHEDULE A

**ARTICLE 11
ANCILLARY SERVICES**

11.1 General

Ancillary Services are provided by Customers when the AESO determines there is a need for such services to maintain system security and ensure the reliable operation of the Alberta Interconnected Electric System. Customers required by the AESO to provide Ancillary Services shall be directed to do so in accordance with AESO Operating Policies and Procedures and will be compensated as provided in Articles 11.2 – 11.7, as applicable.

11.2 Contracted Ancillary Services

If at the time the Customer is directed to provide Ancillary Services the Customer has an existing contract with the AESO to provide the Ancillary Services in question from the directed facility (the "Existing Contract"), then the amount to be paid to the Customer by the AESO for the Ancillary Services shall be determined according to the terms of the Existing Contract.

11.3 Directed Ancillary Services other than Transmission Must Run Services

If at the time the Customer is directed to provide an Ancillary Service other than TMR Service, the Customer does not have an Existing Contract, then the amount to be paid to the Customer by the AESO in respect of each Ancillary Service provided shall be the greater of the following monthly amounts. Each amount is the sum for the month of hourly compensation amounts.

- (a) The product of the MW hour directed and the highest price paid in the hour to Customers providing the same Ancillary Service pursuant to Article 11.2 and that the Existing Contract was the result of a competitive process conducted in the prior 12 months; or
- (b) The verifiable net opportunity cost related to foregone electricity sales incurred by the Customer to supply the directed Ancillary Service, taking into account offsetting pool energy receipts.

11.4 Transmission Must Run Services

TMR Services are Ancillary Services provided by Customers with generating units in response to a direction provided by the AESO to ensure safe and reliable electrical service for a region of the Alberta Interconnected Electric System.

TMR Services are Foreseeable if the AESO, taking into account reasonable procurement timing requirements, determines TMR Services are required to meet AESO Transmission Reliability Criteria which includes consideration of expected operating conditions and

planned transmission outages. TMR Services are Unforeseeable TMR Services if they do not constitute Foreseeable TMR Services.

11.5 Arrangements and Compensation for Foreseeable TMR Services

Arrangements and compensation for Foreseeable TMR Services will be made in accordance with the Foreseeable TMR Service Procurement Procedure (Schedule B).

11.6 Compensation for Unforeseeable TMR Services

If at the time the Customer is directed to provide Unforeseeable TMR Service the Customer does not have an Existing Contract, then the amount to be paid to the Customer in the applicable Billing Period for Unforeseeable TMR Service is equal to Variable Costs plus Fixed Costs, where:

- (a) Variable Costs means the hourly difference of the pool price subtracted from the Energy Price, which shall not be less than zero, multiplied by the corresponding hourly energy generated (MW.h) by the specific directed generating unit in compliance with the directive to provide Unforeseeable TMR Service, where:
 - (i) Energy Price (\$/MW.h) is the product of the Heat Rate multiplied by the Fuel Cost, added to the sum of the Variable STS Charges and Variable O&M Charge.
 - (ii) Heat Rate (GJ/MW.h) is the actual heat rate of the Customer's generating unit during the period when the unit was complying with the directive.
 - (iii) Fuel Cost for a gas generating unit is the natural gas market price (\$/GJ), being the "Daily Spot Price at AECO-C and NIT", excluding weekends, as published in the Canadian Gas Price Reporter, for natural gas on the applicable day. The Fuel Cost for a coal generating unit shall be provided by the Customer.
 - (iv) Variable STS Charges (\$/MW.h) is the actual cost of all variable charges from Rate Schedule STS of the AESO Tariff, including the applicable loss factor charge or credit.
 - (v) Variable O&M Charge (\$/MW.h) is the all-in cost (including major/minor overhauls), fixed at \$4/MWh, of providing incremental output from the unit, excluding Fuel Costs and Variable STS charges.
- (b) Fixed Costs are equal to the Average Monthly Fixed Cost multiplied by the greater of the Must Run Ratio (MRR) or the Minimum MRR, where:
 - (i) Average Monthly Fixed Cost is equal to one-twelfth of the sum of the annual costs in items (A) through (H) as follows:
 - (A) annual amortization and depreciation amounts for the Customer's investment or for the PPA acquisition cost related to the specific directed generating unit, consistent with amounts reported in the

Customer's audited financial statements, and adjusted for cogeneration infrastructure not utilized for generation purposes;

- (B) the product of the unamortized or undepreciated capital investment (UCI) multiplied by a deemed debt percentage of 70% and multiplied by a debt interest rate that is equal to the current 10-year Government of Canada Bond interest rate plus 0.5%, and where UCI is the greater of
 - (1) the Customer's initial cost of property, plant, and equipment for the specific directed generating unit, or the Customer's initial PPA acquisition cost related to the specific directed generating unit, less accumulated depreciation or amortization, as the case may be, related to the specific directed generating unit; or
 - (2) 25% of the Customer's initial cost of property, plant, and equipment for the specific directed generating unit, or the Customer's initial PPA acquisition cost related to the specific directed generating unit.
 - (C) the product of UCI, as described in (B) above, multiplied by a deemed 30% common equity percentage of capital structure multiplied by a deemed 12% rate of return on equity;
 - (D) if the Customer provides verifiable actual values for the items in both (B) and (C) then those will be used instead of the deemed values;
 - (E) the product of the tax rates multiplied by the rate of return on equity amount determined in (C), where income tax costs reflect the marginal income tax rates for both federal and provincial portions of income tax;
 - (F) total annual direct fixed operation and maintenance costs associated with the specific directed generating unit;
 - (G) total annual direct fixed fuel costs associated with the specific directed generating unit; and
 - (H) fixed charges from applicable PPAs associated with the specific directed generating unit.
- (ii) Must Run Ratio (MRR) is the ratio of the number of hours in the month when Unforeseeable TMR Services were provided to the total number of hours in the month;
 - (iii) Minimum MRR is:

- (A) 12% for the first or second Unforeseeable TMR Service Event within a rolling 12-month period in which TMR Service is directed by the AESO;
- (B) 20% for the third Unforeseeable TMR Service Event within a rolling 12-month period in which TMR Service is directed by the AESO;
- (C) 30% for the fourth Unforeseeable TMR Service Event within a rolling 12-month period in which TMR Service is directed by the AESO;
- (D) 40% for the fifth Unforeseeable TMR Service Event within a rolling 12-month period in which TMR Service is directed by the AESO; or
- (E) 50% for the sixth or any additional Unforeseeable TMR Service Event within a rolling 12-month period in which TMR Service is directed by the AESO.

If there is more than one Unforeseeable TMR Service Event in a Billing Period, the Minimum MRR shall be the highest applicable percentage described in (A) through (E) above.

In lieu of the Variable and Fixed Costs in (a) and (b) above, if a Customer can demonstrate foregone future energy sales due to a TMR directive, then the verifiable net opportunity cost related to foregone electricity sales incurred by the Customer to supply the directed TMR Service, taking into account offsetting pool energy receipts. This applies only to Customers that have responded to a TMR direction from using hydro-electric generation units.

11.7 Maximum TMR Services Compensation

The maximum monthly amount to be paid by the AESO for TMR Service results in the recovery of fixed, operating and maintenance costs, including a reasonable rate of return for the service provider, and is equal to the Average Monthly Fixed Cost plus Variable Costs as provided for in Article 11.6.

11.8 Invoicing

Customers that provide Unforeseeable TMR Service in response to a direction from the AESO will submit an invoice to the AESO within 15 business days after the later of (i) the end of the month in which the service was provided or (ii) the coming into effect of this Article 11. The amount of the invoice shall be determined in accordance with the method in 11.6 of this Article, and will separately itemize the values used for each component specified (Fixed and Variable Costs).

11.9 Audit Rights

The AESO has the right to audit Customer's invoices and source information related thereto for TMR Services, provided that any such audit is (i) conducted only on reasonable prior notice to the Customer, (ii) conducted on the Customer's premises during normal business hours, (iii) not conducted by, or the information gathered made available to, those persons at the AESO that determine Contestability for purposes of the AESO procuring TMR competitively, (iv) conducted subject to Article 20 of this Tariff, and that (v) no copies of records reviewed during the audit shall be made without the Customer's prior written consent.

SCHEDULE B

PROCEDURE FOR FORESEEABLE TMR SERVICE

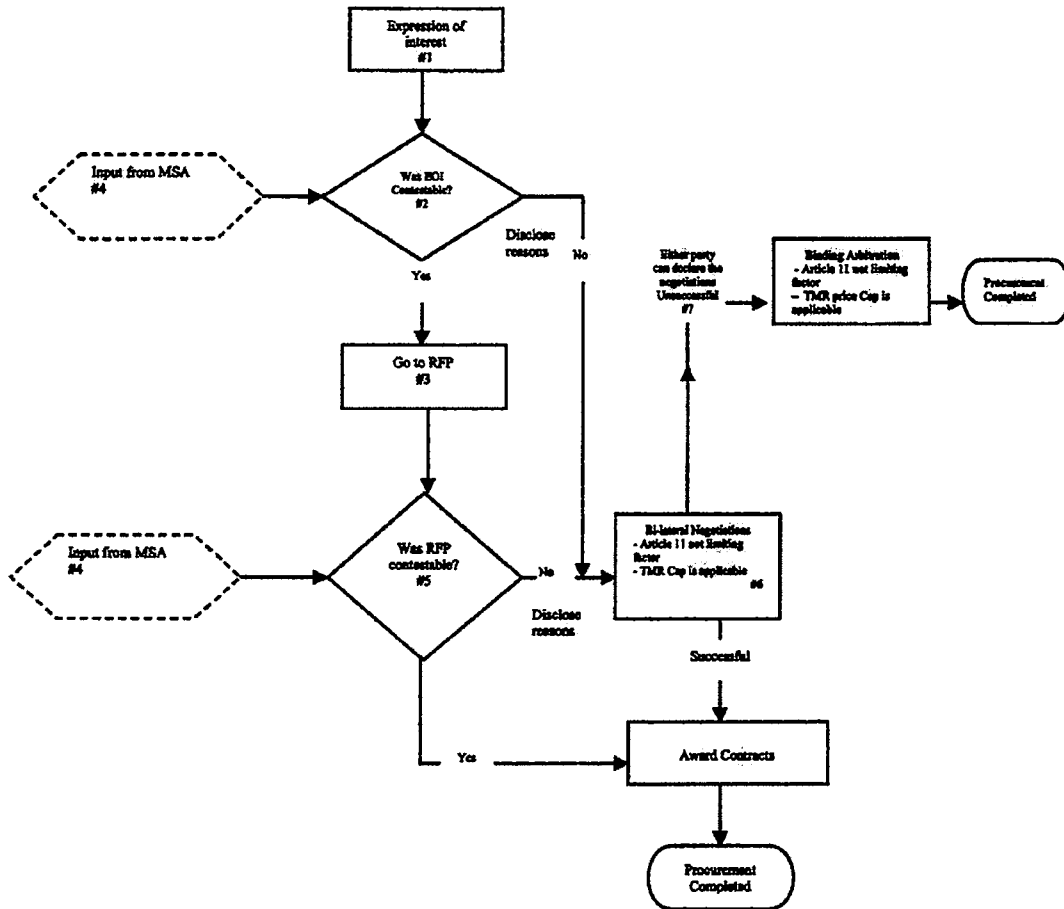
1. This Schedule shall come into force upon the approval of the Settlement Agreement by the Board and remain in force until replaced or revised through the creation of an AESO Rule following reasonable efforts by all Parties hereto to develop same.
2. The AESO shall issue an EOI inviting eligible Customers to express interest in contracting with the AESO for the supply of TMR Service, where an Existing Contract is not in effect. (Reference #1 in below diagram)
3. Based on Customer response to the EOI, the AESO shall fairly and reasonably determine if the EOI is Contestable (Reference #2 in below diagram). The advice and direction of the Market Surveillance Administrator will be sought in all such matters and, should the subsequent determination be disputed the issue of whether the EOI is Contestable may be determined by the Board. (Reference #4 in below diagram)
4. Upon determination by the AESO that the EOI is Contestable a RFP shall be issued by the AESO (Reference #3 in below diagram). The AESO shall fairly and reasonably determine if the RFP is Contestable, again after seeking the advice and direction of the MSA. (Reference #5 in below diagram)
5. If either of the EOI or RFP is deemed by the AESO not to be Contestable the AESO shall issue written reasons in that regard and a Bilateral Negotiation Process shall commence. The Bilateral Negotiation Process:
 - (a) shall be subject to the Maximum TMR Price specified by Article 11.7 of the AESO Tariff,
 - (b) may include all Customers who are effective providers of the required TMR service, although preference will be given to those who responded to the EOI/RFP, and
 - (c) shall not be limited by the pricing provisions of Article 11.6 of the AESO Tariff in respect of Unforeseeable TMR service.(Reference #6 in below diagram)
6. Any party to the Bilateral Negotiation Process may declare it unsuccessful after 30 days, at which time a Binding Arbitration Process shall commence between the AESO and the Customer (Reference #7 in below diagram). In circumstances where multiple Customers may provide TMR Services to the AESO, the AESO shall act fairly and reasonably in its selection as to the party that is subject to Binding Arbitration. The Binding Arbitration Process shall:
 - (d) be subject to the Maximum TMR Price specified by Article 11.7 of the AESO Tariff, and

- (e) not be limited by the pricing provisions of Article 11.6 of the AESO Tariff in respect of Unforeseeable TMR Service.

(Reference #8 in below diagram)

7. The Binding Arbitration Process shall employ the Dispute Resolution Process established under Article 19 of the AESO Tariff and proceed directly to Arbitration as per Article 19.3 of the AESO Tariff. Any arbitrator appointed pursuant to that Dispute Resolution Process shall have an expert understanding and knowledge of the Alberta electricity marketplace. (Reference #8 in below diagram)

PROCEDURE FOR FORESEEABLE TMR SERVICE DIAGRAM



ATTACHMENT “F”

ATTACHMENT F

AMENDMENTS TO THE AESO TARIFF

1. The following shall be added to Article 1 in alphabetical order:

“AESO Transmission Reliability Criteria” means the transmission reliability criteria used by the AESO in the planning and operating of the Alberta Interconnected Electric System and which are available electronically on the AESO internet website.

2. The definition of **“Maximum TMR Compensation”** in Article 1 shall be replaced with:

The maximum monthly amount to be paid by the AESO for TMR Service results in the recovery of fixed, operating and maintenance costs, including a reasonable rate of return for the service provider, and is equal to the Average Monthly Fixed Cost plus Variable Costs as provided for in Article 11.6.

3. Article 11 shall be replaced by the following:

ARTICLE 11 ANCILLARY SERVICES

11.1 General

Ancillary Services are provided by Customers when the AESO determines there is a need for such services to maintain system security and ensure the reliable operation of the Alberta Interconnected Electric System. Customers required by the AESO to provide Ancillary Services shall be directed to do so in accordance with AESO Operating Policies and Procedures and will be compensated as provided in Articles 11.2 – 11.7, as applicable.

11.2 Contracted Ancillary Services

If at the time the Customer is directed to provide Ancillary Services the Customer has an existing contract with the AESO to provide the Ancillary Services in question from the directed facility (the “Existing Contract”), then the amount to be paid to the Customer by the AESO for the Ancillary Services shall be determined according to the terms of the Existing Contract.

11.3 Directed Ancillary Services other than Transmission Must Run Services

If at the time the Customer is directed to provide an Ancillary Service other than TMR Service, the Customer does not have an Existing Contract, then the amount to be paid to the Customer by the AESO in respect of each Ancillary Service provided shall be the greater of the following monthly amounts. Each amount is the sum for the month of hourly compensation amounts.

- (a) The product of the MW hour directed and the highest price paid in the hour to Customers providing the same Ancillary Service pursuant to Article 11.2 and that the Existing Contract was the result of a competitive process conducted in the prior 12 months; or
- (b) The verifiable net opportunity cost related to foregone electricity sales incurred by the Customer to supply the directed Ancillary Service, taking into account offsetting pool energy receipts.

11.4 Transmission Must Run Services

TMR Services are Ancillary Services provided by Customers with generating units in response to a direction provided by the AESO to ensure safe and reliable electrical service for a region of the Alberta Interconnected Electric System.

TMR Services are Foreseeable if the AESO, taking into account reasonable procurement timing requirements, determines TMR Services are required to meet AESO Transmission Reliability Criteria which includes consideration of expected operating conditions and planned transmission outages. TMR Services are Unforeseeable TMR Services if they do not constitute Foreseeable TMR Services.

11.5 Arrangements and Compensation for Foreseeable TMR Services

Arrangements and compensation for Foreseeable TMR Services will be made in accordance with the Foreseeable TMR Service Procurement Procedure (Appendix D).

11.6 Compensation for Unforeseeable TMR Services

If at the time the Customer is directed to provide Unforeseeable TMR Service the Customer does not have an Existing Contract, then the amount to be paid to the Customer in the applicable Billing Period for Unforeseeable TMR Service is equal to Variable Costs plus Fixed Costs, where:

- (a) Variable Costs means the hourly difference of the pool price subtracted from the Energy Price, which shall not be less than zero, multiplied by the corresponding hourly energy generated (MW.h) by the specific directed generating unit in compliance with the directive to provide Unforeseeable TMR Service, where:
 - (i) Energy Price (\$/MW.h) is the product of the Heat Rate multiplied by the Fuel Cost, added to the sum of the Variable STS Charges and Variable O&M Charge.
 - (ii) Heat Rate (GJ/MW.h) is the actual heat rate of the Customer's generating unit during the period when the unit was complying with the directive.
 - (iii) Fuel Cost for a gas generating unit is the natural gas market price (\$/GJ), being the "Daily Spot Price at AECO-C and NIT", excluding weekends, as published in the Canadian Gas Price Reporter, for natural gas on the

applicable day. The Fuel Cost for a coal generating unit shall be provided by the Customer.

- (iv) Variable STS Charges (\$/MW.h) is the actual cost of all variable charges from Rate Schedule STS of the AESO Tariff, including the applicable loss factor charge or credit.
 - (v) Variable O&M Charge (\$/MW.h) is the all-in cost (including major/minor overhauls), fixed at \$4/MWh, of providing incremental output from the unit, excluding Fuel Costs and Variable STS charges.
- (b) Fixed Costs are equal to the Average Monthly Fixed Cost multiplied by the greater of the Must Run Ratio (MRR) or the Minimum MRR, where:
- (i) Average Monthly Fixed Cost is equal to one-twelfth of the sum of the annual costs in items (A) through (H) as follows:
 - (A) annual amortization and depreciation amounts for the Customer's investment or for the PPA acquisition cost related to the specific directed generating unit, consistent with amounts reported in the Customer's audited financial statements, and adjusted for cogeneration infrastructure not utilized for generation purposes;
 - (B) the product of the unamortized or undepreciated capital investment (UCI) multiplied by a deemed debt percentage of 70% and multiplied by a debt interest rate that is equal to the current 10-year Government of Canada Bond interest rate plus 0.5%, and where UCI is the greater of
 - (1) the Customer's initial cost of property, plant, and equipment for the specific directed generating unit, or the Customer's initial PPA acquisition cost related to the specific directed generating unit, less accumulated depreciation or amortization, as the case may be, related to the specific directed generating unit; or
 - (2) 25% of the Customer's initial cost of property, plant, and equipment for the specific directed generating unit, or the Customer's initial PPA acquisition cost related to the specific directed generating unit.
 - (C) the product of UCI, as described in (B) above, multiplied by a deemed 30% common equity percentage of capital structure multiplied by a deemed 12% rate of return on equity;
 - (D) if the Customer provides verifiable actual values for the items in both (B) and (C) then those will be used instead of the deemed values;

- (E) the product of the tax rates multiplied by the rate of return on equity amount determined in (C), where income tax costs reflect the marginal income tax rates for both federal and provincial portions of income tax;
 - (F) total annual direct fixed operation and maintenance costs associated with the specific directed generating unit;
 - (G) total annual direct fixed fuel costs associated with the specific directed generating unit; and
 - (H) fixed charges from applicable PPAs associated with the specific directed generating unit.
- (ii) Must Run Ratio (MRR) is the ratio of the number of hours in the month when Unforeseeable TMR Services were provided to the total number of hours in the month;
- (iii) Minimum MRR is:
- (A) 12% for the first or second Unforeseeable TMR Service Event within a rolling 12-month period in which TMR Service is directed by the AESO;
 - (B) 20% for the third Unforeseeable TMR Service Event within a rolling 12-month period in which TMR Service is directed by the AESO;
 - (C) 30% for the fourth Unforeseeable TMR Service Event within a rolling 12-month period in which TMR Service is directed by the AESO;
 - (D) 40% for the fifth Unforeseeable TMR Service Event within a rolling 12-month period in which TMR Service is directed by the AESO; or
 - (E) 50% for the sixth or any additional Unforeseeable TMR Service Event within a rolling 12-month period in which TMR Service is directed by the AESO.

If there is more than one Unforeseeable TMR Service Event in a Billing Period, the Minimum MRR shall be the highest applicable percentage described in (A) through (E) above.

In lieu of the Variable and Fixed Costs in (a) and (b) above, if a Customer can demonstrate foregone future energy sales due to a TMR directive, then the verifiable net opportunity cost related to foregone electricity sales incurred by the Customer to supply the directed TMR Service, taking into account offsetting pool energy receipts. This

applies only to Customers that have responded to a TMR direction from using hydro-electric generation units.

11.7 Maximum TMR Services Compensation

The maximum monthly amount to be paid by the AESO for TMR Service results in the recovery of fixed, operating and maintenance costs, including a reasonable rate of return for the service provider, and is equal to the Average Monthly Fixed Cost plus Variable Costs as provided for in Article 11.6.

11.8 Invoicing

Customers that provide Unforeseeable TMR Service in response to a direction from the AESO will submit an invoice to the AESO within 15 business days after the later of (i) the end of the month in which the service was provided or (ii) the coming into effect of this Article 11. The amount of the invoice shall be determined in accordance with the method in 11.6 of this Article, and will separately itemize the values used for each component specified (Fixed and Variable Costs).

11.9 Audit Rights

The AESO has the right to audit Customer's invoices and source information related thereto for TMR Services, provided that any such audit is (i) conducted only on reasonable prior notice to the Customer, (ii) conducted on the Customer's premises during normal business hours, (iii) not conducted by, or the information gathered made available to, those persons at the AESO that determine Contestability for purposes of the AESO procuring TMR competitively, (iv) conducted subject to Article 20 of this Tariff, and that (v) no copies of records reviewed during the audit shall be made without the Customer's prior written consent.

APPENDIX D

PROCEDURE FOR FORESEEABLE TMR SERVICE

1. This Schedule shall come into force upon the approval of the Settlement Agreement by the Board and remain in force until replaced or revised through the creation of an AESO Rule following reasonable efforts by all Parties hereto to develop same.
2. The AESO shall issue an EOI inviting eligible Customers to express interest in contracting with the AESO for the supply of TMR Service, where an Existing Contract is not in effect. (Reference #1 in below diagram)
3. Based on Customer response to the EOI, the AESO shall fairly and reasonably determine if the EOI is Contestable (Reference #2 in below diagram). The advice and direction of the Market Surveillance Administrator will be sought in all such matters and, should the subsequent determination be disputed the issue of whether the EOI is Contestable may be determined by the Board. (Reference #4 in below diagram)
4. Upon determination by the AESO that the EOI is Contestable a RFP shall be issued by the AESO (Reference #3 in below diagram). The AESO shall fairly and reasonably determine if the RFP is Contestable, again after seeking the advice and direction of the MSA. (Reference #5 in below diagram)
5. If either of the EOI or RFP is deemed by the AESO not to be Contestable the AESO shall issue written reasons in that regard and a Bilateral Negotiation Process shall commence. The Bilateral Negotiation Process:
 - (a) shall be subject to the Maximum TMR Price specified by Article 11.7 of the AESO Tariff,
 - (b) may include all Customers who are effective providers of the required TMR service, although preference will be given to those who responded to the EOI/RFP, and
 - (c) shall not be limited by the pricing provisions of Article 11.6 of the AESO Tariff in respect of Unforeseeable TMR service.(Reference #6 in below diagram)
6. Any party to the Bilateral Negotiation Process may declare it unsuccessful after 30 days, at which time a Binding Arbitration Process shall commence between the AESO and the Customer (Reference #7 in below diagram). In circumstances where multiple Customers may provide TMR Services to the AESO, the AESO shall act fairly and reasonably in its selection as to the party that is subject to Binding Arbitration. The Binding Arbitration Process shall:

- (d) be subject to the Maximum TMR Price specified by Article 11.7 of the AESO Tariff, and
- (e) not be limited by the pricing provisions of Article 11.6 of the AESO Tariff in respect of Unforeseeable TMR Service.

(Reference #8 in below diagram)

7. The Binding Arbitration Process shall employ the Dispute Resolution Process established under Article 19 of the AESO Tariff and proceed directly to Arbitration as per Article 19.3 of the AESO Tariff. Any arbitrator appointed pursuant to that Dispute Resolution Process shall have an expert understanding and knowledge of the Alberta electricity marketplace. (Reference #8 in below diagram)

PROCEDURE FOR FORESEEABLE TMR SERVICE DIAGRAM

