

**MONTE S. FORSTER\***  
**Barrister & Solicitor**

**FILED ELECTRONICALLY**

March 19, 2008

Alberta Utilities Commission  
Fifth Avenue Place,  
4th Floor, 425 - 1 Street SW  
Calgary, Alberta  
T2P 3L8

**Attention: Douglas Larder, Q.C., Executive Director - Law**

Dear Mr. Larder:

**Re: Alberta Energy and Utilities Board ("Board") Decision 2007-106; Alberta Electric System Operator 2007 General Tariff Application (Application No. 148557); Application for Review by the Alberta Direct Connect Consumers Association, the Industrial Power Consumers Association of Alberta, the Independent Power Producers Society of Alberta, the Public Institutional Consumers of Alberta, StatoilHydro Canada Ltd., TransCanada Energy Ltd., and TransCanada Keystone Pipeline GP Ltd. (jointly, the "Applicants")**

I am enclosing an application for review of Board Decision 2007-106 on behalf of the above referenced Applicants. I trust you will find the enclosed satisfactory.

Yours truly,

A handwritten signature in black ink, appearing to read 'Monte S. Forster', with a long horizontal flourish extending to the right.

**MONTE S. FORSTER**

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**THE ALBERTA UTILITIES COMMISSION**

**IN THE MATTER OF** the Alberta Utilities Commission Act, S.A. 2007, c. A-37.2, the Electric Utilities Act, S.A. 2003, c. E-5.1, and Alberta Utilities Commission Rule 016;

**AND IN THE MATTER OF** the Alberta Electric System Operator 2007 General Tariff Application, being Application No. 1485517 filed November 3, 2006 with the Alberta Energy and Utilities Board;

**AND IN THE MATTER OF** Alberta Energy and Utilities Board Decision 2007-106 issued December 21, 2007 in Application No. 1485517;

**AND IN THE MATTER OF** an Application for Review and Variance pursuant to Alberta Utilities Commission Rule 016 of certain determinations by the Alberta Energy and Utilities Board in Decision 2007-106.

**APPLICATION FOR REVIEW OF**

**ALBERTA ENERGY AND UTILITIES BOARD DECISION 2007-106**

The Alberta Direct Connect Consumers Association, the Industrial Power Consumers Association of Alberta, the Independent Power Producers Society of Alberta, the Public Institutional Consumers of Alberta, StatoilHydro Canada Ltd., TransCanada Energy Ltd., and TransCanada Keystone Pipeline GP Ltd. (jointly, the “Applicants”) hereby apply pursuant to sections 10(1) and 80(4) of the Alberta Utilities Commission Act, S.A. 2007,

c. A-37.2 and sections 3(1), 11, 12, 13 and 14 of Alberta Utilities Commission (“Commission”) Rule 016 for review of the determination by the Alberta Energy and Utilities Board (“Board”) in Decision 2007-106 to impose 12% prepaid O&M charges for standard transmission facilities.

## **STATEMENT OF FACTS RELEVANT TO THE APPLICATION**

1. The Alberta Electric System Operator (“AESO”) filed a Phase I and Phase II General Tariff Application on November 3, 2006 (the “2007 GTA”) with the Board. As a part of the 2007 GTA, the AESO proposed to assess prepaid Operation and Maintenance (“O&M”) charges on optional transmission facilities but not on standard facilities required by customers interconnecting to the Alberta transmission system.
2. The AESO determined that even though Board Decision 2005-096 provided for a charge based on 12% of the cost of both standard and optional facilities, it would be inappropriate to impose such costs on standard facilities, as assessing such charges on standard facilities would lead to double recovery of some O&M costs. The AESO accordingly proposed to amend its prepaid O&M charge to reflect only the cost of optional facilities (if any) built for a new customer interconnection.<sup>1</sup>
3. The AESO notes in the 2007 GTA<sup>2</sup> that it raised its proposal to amend its prepaid O&M charge to reflect only the cost of optional facilities built for new customer interconnections during stakeholder consultations and sought input on its

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<sup>1</sup> Decision 2007-106, page 105.

<sup>2</sup> Exhibit 007, AESO Application 6.5.2, page 15.

- proposal. Stakeholders who participated in the discussions relevant to the AESO's proposal apparently either agreed with the proposal or were silent.
4. The AESO continued to support its position in final argument. Also, during argument, TransCanada offered its support of the AESO's position.<sup>3</sup> No intervener who filed argument opposed the AESO's proposal.
  5. The Board correctly noted the position of the AESO that "because O&M costs associated with standard service are properly recovered through average rates, it is not necessary to include an O&M amount as part of the customer related cost of standard facilities used to determine the contribution."<sup>4</sup> However, the Board nonetheless rejected the AESO proposal.<sup>5</sup>
  6. The Board stated that it considered it "appropriate to send economic signals to AESO customers that appropriately reflect the cost causation consequences of a customer's decisions."<sup>6</sup> The Board stated:<sup>7</sup>

While the Board agrees with the AESO that a signal reflecting incremental TFO O&M costs should be provided to customers seeking new or expanded interconnections, the Board does not agree with the AESO's proposal to provide this signal only in respect of the "optional" portion of an interconnection project. To the extent that the incremental capital costs of a new interconnection are at least proportionally related to incremental TFO O&M costs, it would be

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<sup>3</sup> TransCanada Argument, page 65.

<sup>4</sup> See Decision 2007-106 apparently referring to Exhibit 080, BR.AESO-012 (b).

<sup>5</sup> Decision 2007-106, pages 106 to 107.

<sup>6</sup> Decision 2007-106, page 106.

<sup>7</sup> Decision 2007-106, page 106.

inappropriate to effectively confine this relationship to the optional portion of facility capital costs. If TFO O&M costs are related to facility capital costs, it does not follow that an estimate of incremental TFO O&M costs for the purpose of the economic signal should be generated only by the optional component of capital cost.

7. As reaffirmed by the Board in Decision 2007-106, a 12% O&M charge is to be applied separately to the capital cost of AESO standard facilities required to serve a customer and to any optional facilities requested by the customer. The 12% charge reflects the present value of future incremental O&M costs related to the customer facilities.

#### **GROUND UPON WHICH THE APPLICATION IS MADE**

8. It appears the Board failed to recognize in Decision 2007-106 that both the capital costs of standard facilities and the O&M costs associated with standard facilities are recovered, on an ongoing basis, through the AESO's DTS rate. It appears that the Board recognized that the capital related costs associated with interconnection costs up to the maximum investment level are recovered through ongoing tariff charges (and therefore did not attract a customer contribution) but failed to recognize that the O&M costs associated with the same capital assets are also recovered through the tariff.
9. The Applicants agree that it is proper to send economic signals to AESO customers that appropriately reflect cost causation consequences of a customer's decision. However it submitted that the Board erred in concluding that charging a

- customer a prepaid amount of O&M costs through a contribution and then also charging that same customer for the same services through the AESO tariff that includes the TFO charges for the same O&M services appropriately reflects cost causation.
10. Where a customer's costs for standard facilities exceeds the local investment allowance (i.e. where the customer is required to pay a contribution), it is unreasonable to require the customer to prepay (as part of the customer contribution) a lump sum related to the present value of future O&M costs on standard facilities and for the AESO to collect, on an on-going basis, through the AESO DTS tariff, amounts related to current O&M costs on the same standard facilities. Such treatment effectively double-charges for O&M costs on standard facilities.
  11. The problem of double-charging occurs because the POD cost function is derived from costs that excluded O&M costs. Since the maximum investment levels are derived from the POD cost function, they also currently include no provision for O&M costs. However, in determining the level of a customer contribution, the 12% prepaid O&M costs are included in the determination of the contribution.
  12. It is submitted that the Board's decision to deny the AESO's proposed amendments to Article 9.4 of the AESO's Terms and Conditions does not send an appropriate economic signal to AESO customers and does not reflect cost causation. Rather, the price signal reflects an inappropriate added charge. It is submitted that the Board's determination amounts to an error of fact or of fact and law warranting review.

## **STATEMENT OF PREJUDICE SUFFERED BY THE APPLICANTS**

13. Customers will be prejudiced through paying twice for the same O&M costs where POD costs exceed the AESO's maximum investment levels. A POD with a cost of \$10 million will have an additional customer contribution of \$1.2 million (12% of \$10 million) for prepaid O&M costs if the system investment based on the customer load characteristics and term does not cover the cost. A POD with a cost of \$30 million will have an additional customer contribution of \$3.6 million for prepaid O&M costs if the system investment based on the customer load characteristics and term does not cover the cost. In both examples above, the customer will be double-charged for the level of O&M related to the maximum local investment allowance. The greatest prejudice occurs where the entire portion of the additional O&M charge exceeds the AESO's maximum investment allowance. In this case, the customer's entire contribution will be related to the 12% prepaid O&M charge and the entire contribution will be double-charged.

## **STATEMENT OF REMEDY SOUGHT**

14. The Applicants submit that there is a substantial doubt as to the correctness of the Board's decision to reject the AESO's proposed amendment to Article 9.4 of the AESO's Terms and Conditions. The Board's error will create a significant inequity through double counting of AESO charges.
15. The simplest way for the Board to rectify this inequity is to direct the AESO to charge 12% prepaid O&M expenses on optional facilities only. This is consistent with the practice prior to Decision 2005-096. This remedy eliminates the double-

counting concern and ensures there is no cross-subsidy between customers receiving postage stamp service and a customer who has requested optional facilities or has an interconnection cost that exceeds the maximum investment allowance. No further analysis is required in this alternative. It is consistent with the Board approved POD Cost Function, the average investment, and the maximum investment levels, since all of these were derived from costs that excluded the 12% O&M cost.

16. An alternative approach is to attempt to correct the problem by adjusting the maximum investment level to recognize prepaid O&M costs. This is more complex and will not produce a more accurate result than simply removing the charge from standard facilities. This approach would require a revised analysis<sup>8</sup> including new data for TFO Project costs that includes 12% prepaid O&M costs and determination of a new Investment Function.
17. The Applicants will ultimately seek a decision by the Commission varying Decision 2007-106. At this time, the Applicants respectfully request that the Commission grant review of Decision 2007-106 on the grounds and for the purposes detailed herein and that the Commission issue a notice of review in accordance with section 13 of Rule 016.
18. The Applicants submit that implementation of the AESO's approved investment policy (as approved by the Board in Decision 2007-106) should not be delayed by reason of the present review application. The AESO's presently approved maximum investment level would be impacted only if the Commission chose the

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<sup>8</sup> Described in Section 8.1.2.2 of Decision 2007-106.

alternative approach (discussed above) to remedying the inequity. Even in this case, the effect on the investment policy of any ruling by the Commission in the present review application would be to further increase the AESO's maximum investment level. In the Applicants' submission, it would be inappropriate to delay presently approved increases to the maximum investment level due to the possibility of future increases to the investment level.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 19<sup>TH</sup> DAY OF MARCH 2008.**



Per: \_\_\_\_\_

**MONTE S. FORSTER**  
**Counsel for the Applicants**

Please direct all documentation relating to this Application to the following:

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