



Alberta Direct Connect Consumers Association *et al*

**Decision on Preliminary Question
Review and Variance of Alberta Energy and Utilities Board
Decision 2007-106**

September 18, 2008

ALBERTA UTILITIES COMMISSION

Decision 2008-090: Alberta Direct Connect Consumers Association *et al*

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Review and Variance of Decision 2007-106

Application No. 1566390

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

Telephone: (403) 592-8845

Fax: (403) 592-4406

Web site: www.auc.ab.ca

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Calgary Alberta

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DECISION ON PRELIMINARY QUESTION

REVIEW AND VARIANCE: DECISION 2007-106

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1 INTRODUCTION

On December 21, 2007, the Alberta Energy and Utilities Board (Board), the predecessor to the Alberta Utilities Commission (AUC or Commission), released Decision 2007-106 respecting its findings on the Alberta Electric System Operator's (AESO) 2007 General Tariff application (2007 GTA).

In the 2007 GTA, the AESO requested approval of its forecast revenue requirement amounts for wire costs, ancillary services, transmission line losses, and the AESO's own costs for 2007 rate setting purposes. The AESO also requested approval of new rate schedules and changes to the terms and conditions (T&Cs) of providing system access service, including an amendment to Article 9.4 of the T&Cs (Article 9.4) dealing with prepaid Operations and Maintenance (O&M) charges calculated on the costs of interconnection facilities.

The Board did not approve the AESO's proposed amendment to Article 9.4 and set out its reasons for that decision in Decision 2007-106.

On March 19, 2008, the Commission received an application for a review and variance of Decision 2007-106 (R&V Application) from 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) with respect to the Board's decision to reject the AESO's proposed amendment to Article 9.4.

The Commission issued notice of the R&V Application on March 28, 2008 and established a deadline of April 10, 2008 for interested party submissions and April 24, 2008 for reply submissions from the Applicants. Submissions were received from the AESO, AltaLink Management Ltd., ATCO Electric Ltd., the Dual Use Customers, Inter Pipeline Fund, TransAlta Corporation and the Utility Consumer Advocate, all of whom submitted that the issue raised by the Applicants had met the preliminary test for review. The Applicants filed their reply submission on April 24, 2008. No other submissions were received by the Commission; therefore, the Commission considers the record of this proceeding to have closed on April 24, 2008.

2 BACKGROUND

In the 2007 GTA, the AESO proposed, *inter alia*, to amend Article 9.4 dealing with the inclusion of a 12% prepaid O&M charge calculated on the costs of new or expanded interconnection facilities.

While the Board's disposition regarding the prepaid O&M charge in the 2007 GTA is the basis for the R&V Application, the prepaid O&M charge was first addressed by the Board in its reasons for decision regarding the AESO's 2005/2006 General Tariff Application (2005/2006 GTA).¹

2.1 Decision 2005-096 – Prepaid O&M Charge

In Decision 2005-096² relating to the 2005/2006 GTA, the Board accepted the AESO's evidence that, on average, an incremental O&M cost of \$0.12 is generated (to Transmission Facility Owners (TFOs)) by each \$1.00 of capital investment in an interconnection facility. In keeping with the emphasis on reflecting cost causation discussed throughout Decision 2005-096, the Board indicated that the addition of a 12% prepaid O&M charge to the capital costs of an interconnection may be beneficial from the standpoint of economic efficiency and from the standpoint of sending appropriate economic siting and facility development signals through the AESO's contribution policy.³

The Board however, did not agree with the AESO's proposal in the 2005/2006 GTA that the O&M charge should only be applied to the deemed "optional facility costs" of an interconnection, and in Decision 2005-096, directed that the AESO impose the 12% prepaid O&M charge as follows:

- The surcharge will be determined separately for the optional and non-optional facilities;
- The portion of a DTS [Demand Transmission Service] interconnection project's prepaid O&M surcharge based on cost of the optional facilities will be fully charged out to the interconnecting DTS customer, consistent with the Board's disposition of other optional facility costs; and,
- The portion of the prepaid O&M surcharge related to non-optional facilities is added to other non-optional facility costs and evaluated against the maximum investment function to determine the amount of customer contribution that may be required in respect of the standard facility portion, if any.⁴

2.2 2007 GTA – Amendment to Article 9.4

In the 2007 GTA, the AESO proposed to amend Article 9.4 to reflect the same proposition applied for in the 2005/2006 GTA, and which was subsequently rejected by the Board in Decision 2005-096; namely, that Article 9.4 be amended so that the 12% prepaid O&M charge would only apply to the cost of any optional facilities built for a new customer connection, not to the non-optional, or, AESO Standard Facilities.⁵

¹ AESO 2005/2006 Phase I and II General Tariff Application (Application No. 1363012)

² Board Decision 2005-096 relating to AESO 2005/2006 Phase I and II General Tariff Application.

³ Ibid at page 68

⁴ Decision 2005-096 at page 69

⁵ "AESO Standard Facilities" mean the least-cost interconnection facilities which meet good transmission practice including applicable reliability, protection, and operating criteria and standards, and generally consist of a single radial transmission circuit and a single transformer to supply an individual Point of Connection (from 2007 GTA, Section 7 – Proposed Tariff at page 1).

The AESO submitted a number of reasons why the Board's direction in Decision 2005-096 regarding the prepaid O&M charge should be reconsidered in the 2007 GTA. The AESO stated that the Board's rationale for varying the AESO's original proposal in Decision 2005-096 did not take into account the ongoing re-assessment of the maximum investment function caused by applying the so-called "80/20" rule within the AESO's contribution policy. The AESO also expressed concerns that applying a prepaid O&M charge on standard facilities would require new procedures and processes to ensure O&M costs are correctly recovered and are not recovered in other components of the TFO's revenue requirement.⁶

In addition, the AESO expressed concerns that applying a prepaid O&M charge to standard facilities could compromise harmonization efforts between the AESO and distribution companies, since distribution companies include an O&M charge only on optional facilities. The AESO also submitted that its proposed amendment to Article 9.4 would be beneficial because it would avoid intergenerational inequity, reduce tariff complexity and would respond to the concerns of stakeholders who had opposed the charge during stakeholder consultations.⁷

The AESO argued that applying an O&M charge for facilities in excess of standard would send an appropriate price signal to customers that their postage stamp rate reflects only costs associated with the standard level of service provided by the AESO. Finally, the AESO noted 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.⁸

Apart from the evidence filed by the AESO in support of its proposed amendment to Article 9.4 in the 2007 GTA and a few IR requests made by interveners regarding same, there was very little evidence or argument filed by interveners on the issue of prepaid O&M charges on Standard Facilities.⁹

3 DECISION 2007-106 – AMENDMENT TO ARTICLE 9.4

The Board released Decision 2007-106 regarding the 2007 GTA on December 21, 2007. With respect to the AESO's proposal to amend the 12% prepaid O&M charge to reflect only the cost of any optional facilities built for a new customer interconnection, the Board reiterated that it considered it appropriate to send economic signals to AESO customers that appropriately reflected the cost causation consequences of a customer's decisions. The Board stated that it did not agree with the AESO's proposal to provide this signal only in respect of the "optional" portion of an interconnection project.

The Board noted that no evidence was filed that indicated that the addition of new Points of Delivery (PODs) or expansions to PODs did not generate some level of TFO O&M costs above and beyond the incremental capital costs of new interconnection facilities. Absent such

⁶ Decision 2007-106 at page 105

⁷ Ibid

⁸ Ibid at page 106

⁹ TransCanada Energy Ltd. indicated in its argument that it was in agreement with the AESO's proposed treatment of prepaid O&M (Ibid at page 106)

evidence, the Board found that projected incremental TFO O&M costs should be reflected in the AESO's contribution policy.

The Board stated that, to the extent that the incremental capital costs of a new interconnection were at least proportionally related to incremental TFO O&M costs, it would be inappropriate to confine this relationship to the optional portion of facility capital costs. If TFO O&M costs were related to facility capital costs, the Board stated that it did 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 the capital cost.

The Board also considered that at the time an estimate of the incremental TFO O&M costs was provided, any amount of the incremental TFO O&M costs deemed to be related to the optional portion of the new interconnections should be borne entirely by the interconnecting customer. Furthermore, the Board considered that the estimated increment of TFO O&M cost related to constructing standard facilities should be evaluated against the maximum investment allowance established by the Board.

It was also noted that because the AESO had not filed any further information regarding the relationship between incremental TFO O&M costs and interconnection facility capital costs as required in a Decision 2005-096 directive to be completed for the AESO's 2008 GTA, the Board found that it did not have any basis on which to revise its finding in Board Decision 2005-096 that, on average, \$0.12 of incremental TFO O&M costs will be generated by each \$1.00 of capital investment in an interconnection facility.

In Decision 2007-106, the Board rejected the AESO's proposal to confine the prepaid O&M charge to optional facility costs only. However, in order to avoid potential confusion regarding the use of the word "prepaid", the Board directed the AESO to amend Article 9.4 to read as follows:

9.4 Operations and Maintenance

For customers taking service under Rate DTS, an operations and maintenance charge of 12% will be added separately to the costs of:

- (a) AESO Standard Facilities required to provide service to the customer where these costs are eligible for Local Investment determined in accordance with Article 9.6; and
- (b) facilities which exceed the AESO Standard Facilities required to provide service to the Customer.

4 GROUND FOR REVIEW AND REMEDY SOUGHT

Relying on AUC Rule 016, the Applicants argued that the Board erred in rejecting the AESO's amendment to Article 9.4 in Decision 2007-106. In particular, the grounds raised by the Applicants in the R&V Application were as follows:¹⁰

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 costs associated with interconnection costs up to the maximum investment

¹⁰ R&V Application at pages 4 through 6

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 is 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 O&M costs on the same 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.

The Applicants submitted that the Board's error in rejecting the AESO's proposed amendment to Article 9.4 of the AESO's T&C's would create a significant inequity through double counting of AESO charges and proposed the following remedies:

15. The simplest way for the Board [sic] to rectify this inequity is to direct the AESO to charge 12% prepaid O&M expenses on optional facilities only. This is consistent with 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 had an interconnection 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 analysis¹¹ including new data for TFO Project costs that includes 12% prepaid O&M costs and determination of a new investment function.

5 RESPONSES FROM INTERESTED PARTIES AND REPLY

On March 28, 2008, the Commission notified interested parties of the R&V Application and provided them with an opportunity to comment, before April 24, 2008, prior to the Commission determining the preliminary question of whether Decision 2007-106 should be reviewed. Comments were received by seven parties,¹² all of whom submitted that the issue raised by the Applicants had met the preliminary test for review. While most of the parties simply stated that the preliminary test had been met or agreed with other comments filed, the following parties had more detailed comments:

- Excerpt from letter filed by the AESO dated April 9, 2008:

“In the AESO’s opinion, Application No. 1566390 provides reasonable grounds to suggest an error of fact, and accordingly raises a substantial doubt as to the correctness of the Alberta Energy and Utilities Board determination in section 8.3 of Decision 2007-106 in respect of the Prepaid O&M Charge. Specifically, as stated by the Applicants, the Decision appears not to account for the fact 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.

This fact is consistent with the AESO’s position during its 2007 tariff proceeding that “O&M costs associated with standard service obtained through Standard Facilities are properly recovered through average rates, and therefore including an O&M amount in the customer related costs for standard facilities (used to determine the contribution) is not necessary.” (AESO Argument, page 87) As Decision 2007-106 did not address that aspect of the O&M charge, its omission indicates reasonable grounds to suggest the preliminary question has been satisfied, and the AUC should accordingly grant the application for review of the Prepaid O&M Charge determination in Decision 2007-106.”

- Excerpt from letter filed by the Dual Use Customers (DUC) dated April 9, 2008:

“Decision 2007-106 does not appear to account for the fact that both the capital costs of standard facilities and the O&M costs associated with standard facilities are included as part of the AESO’s revenue requirement and recovered via the DTS rate.

During the AESO’s 2007 tariff GTA process the DUC was in support of the recommendation of the AESO that the 12% O&M charge should only apply to optional facilities only [sic]. As there was no opposition to this recommendation the DUC did not comment to support this recommendation during argument or reply argument.”

¹¹ Described in Section 8.1.2.2 of Decision 2007-106

¹² The seven parties submitting comments were: AESO, AltaLink Management Ltd., ATCO Electric Ltd., the Dual Use Customers, Inter Pipeline Fund, TransAlta Corporation and the Utility Consumer Advocate.

- Excerpt from letter filed by TransAlta Corporation dated April 10, 2008:

“The potential for inappropriate collection of costs through the AESO tariff arising from the imposition of a prepaid O&M charge on both standard and optional facilities is a matter that ought to be reviewed.

TransAlta would also suggest that in undertaking the review, the Commission should clearly distinguish between three potential categories:

- (i) O&M costs related to facilities beyond those deemed as standard facilities (i.e., the so-called optional facilities),
- (ii) O&M costs related to that portion of standard facilities that have nonetheless been the subject of a required customer contribution under the AESO’s investment policy, and
- (iii) O&M costs related to that portion of standard facilities for which a customer contribution was not required under the AESO’s investment policy.

TransAlta can see no valid reason why this third category should be the subject of prepaid O&M requirements, nor to TransAlta’s knowledge was any such proposal advanced as part of the evidence in the proceedings leading to Decision 2007-106. TransAlta would also suggest that the second category is a matter where the prepaid O&M charge may be appropriate, but again is not aware of any evidence in the proceedings that proposed such a charge. We are accordingly of the view that the parameters of Rule 016, as approved by the Commission, have been met and that the Applicants have raised a substantial doubt as to the correctness of Decision 2007-106, as contemplated by section 12(a) of that Rule.”

5.1 Reply by Applicants

The Applicants replied to the comments on April 24, 2008 by noting the unanimous agreement to the review request by parties who filed responses. With respect to TransAlta’s comments, the Applicants agreed that the Commission should clearly distinguish between the three potential categories of costs identified in TransAlta’s letter, but confirmed that the Applicants were seeking relief only with respect to the payment of O&M costs in TransAlta’s third described category, namely O&M costs related to that portion of standard facilities covered by AESO’s investment policy.

6 DISCUSSION – PRELIMINARY QUESTION

In response to requests for review and variance, and as set out in AUC Rule 016, the Commission adopts a two-stage process: first, the Commission determines the preliminary question as to whether the decision in question should be reviewed; second, if the Commission grants an application for review, a proceeding on the merits is initiated. As per s. 12(a)(i) of AUC Rule 016, in order to merit a review, the Applicants must show that there is a substantial doubt as to the correctness of the Board’s Decision.

In the R&V Application, the Applicants allege that there is substantial doubt as to the correctness of the Board’s determination in Decision 2007-106 to reject the AESO’s proposed amendment to Article 9.4 in which the AESO sought to restrict the application of the 12% O&M charge to optional interconnection facilities only.

Although the Board had ruled against the same proposal by the AESO in Decision 2005-096, in the 2007 GTA proceeding there was very little intervenor evidence or argument filed on the topic of the application of the prepaid O&M charge on Standard Facilities. As a result, the Board's determination in Decision 2007-106 - that the application of an O&M charge to both Standard and optional facilities was appropriate in order to reflect the incremental O&M costs attributable to the building of any new facility –was based on the Board's assessment that there was a lack of persuasive evidence to support any change to the Board's original decision on the issue.

To the extent that there is a relationship between the level of capital investment on interconnection facilities and incremental TFO O&M costs, the Commission notes the views of the Board that it is appropriate that an economic signal be sent to interconnecting customers that reflects the incremental cost that will be imposed on existing customers as a result of a new or expanded customer interconnection.

However, having considered the R&V Application and the submissions of interested parties on the R&V Application; and recognizing the lack of argument during the proceeding of the 2007 GTA with respect to the issue of the prepaid O&M charge, the Commission finds that sufficient doubt has been raised with respect to the correctness of the Board's decision to direct the AESO to apply the 12% O&M prepaid charge on Standard Facilities. The Commission has determined that a proceeding is warranted, which would provide for a focused investigation of the principles relating to a prepaid O&M charge in the context of the AESO's contribution policy, and the impacts of the application of such a charge.

7 DECISION

The Commission finds that the requirements for granting the R&V Application as set forth in Commission Rule 016 have been met, and the Commission will issue a Notice of Review in due course to initiate a proceeding to address the following question:

Did the Board err in failing to adequately consider the effects of the 12% prepaid O&M charge within the context of the AESO's contribution policy?

Dated in Calgary, Alberta on September 18, 2008.

ALBERTA UTILITIES COMMISSION

(original signed by)

Carolyn Dahl Rees
Vice-Chair

(original signed by)

Bill Lyttle
Commissioner

(original signed by)

Mark Kolesar
Acting Commission Member