

Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances*



Minutes from Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances* (“Section 103.14”)

Location: AESO BP Location, Meeting Room 6006, 6th floor of the BP Centre located at 240 – 4th Ave SW Calgary, AB T2P 2H8

Date: June 20, 2019

Time: 9:30 a.m. to 12:00 p.m.

Attendees:

Company
Acciona, S.A. (“Acciona”)
Alberta Electric System Operator (“AESO”)
AltaLink Management Ltd. (“AltaLink”)
ATCO Electric (“ATCO Electric”)
ATCO Power (“ATCO Power”)
Best Consulting Solutions Inc. (“Best Consulting”)
Canadian Natural Resources Limited (“CNRL”)
Capital Power Corporation (“Capital Power”)
City of Lethbridge
ENMAX Energy Corporation (“EEC”)
ENMAX Power Corporation (“EPC”)
EPCOR Distribution & Transmission Inc. (“EDTI”)
Government of Alberta
Market Surveillance Administrator (“MSA”)
NRG Curtailment Solutions Canada, Inc. (“NRGCS”)
Suncor Energy Inc. (“Suncor”)
TC Energy Corporation (“TCE”)
TransAlta Corporation (“TransAlta”)

Consultation Session Overview and Introductions

- The AESO welcomed stakeholders to the session, reviewed safety procedures, reviewed the agenda, and provided an overview of the consultation session.
- The AESO advised everyone that: the session is being recorded and that the positions and comments raised are not binding; personal information is collected in accordance to *Freedom of Information and Protection of Privacy Act*; and minutes will be available on the AESO website for review.
- All attendees introduced themselves.

ISO Rule Development Process

- The AESO explained that:
 - section 20 of the *Electric Utilities Act* (“EUA”) grants the AESO authority to develop ISO rules; and

Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances*



- there are updated ISO rule development requirements under Alberta Utilities Commission (“AUC”) Rule 017, *Procedures and Process for Development of ISO Rules and Filing of ISO Rules with the Alberta Utilities Commission*, which set out stakeholder engagement and AUC application requirements.
- The AESO also presented its ISO rule development process overview with respect to proposed new Section 103.14 and noted that the AESO is currently consulting with the consultation group on the development of the proposed new Section 103.14.

Proposed New Section 103.14 and Stakeholder Feedback to Date

- The AESO summarized the reasons for the proposed new Section 103.14:
 - firstly, to give the AESO the proper authority to consider stakeholder requests,
 - secondly, to standardize the critical elements that need to be in the ISO rules as it relates to waivers and variances, and
 - thirdly, to strike a balance between authoritative information that needs to be in an ISO rule and certain guidance information which belongs in an information document (“ID”).
- The AESO stated that it received lots of suggestions which will be deferred to an ID as opposed to being added to the proposed new Section 103.14.
- The AESO summarized the stakeholder feedback received to date. Significant focus was on: grounds for requesting a waiver or variance, the AESO’s process for evaluating requests, timelines of the review process, revocation of approved waivers and variances, and stakeholder engagement.
- The AESO reviewed the proposed subsection 1 of the proposed new Section 103.14, *Applicability* and explained that essentially, all parties that are named in the technical ISO rules are named in the applicability section.
- The AESO then reviewed feedback received on the applicability, stating that it was generally supportive. However, one stakeholder commented that the proposed new Section 103.14 should not be used by the AESO to give itself waivers and variances. The AESO confirmed that the AESO has no intention of giving itself a waiver or variance, as that would be highly inappropriate.
- There was a discussion about the term “electricity market participant”.
 - ATCO Electric had questions with respect to the applicability of the proposed new Section 103.14. It wanted to know if the definition of “electricity market participant” is going to the AUC for approval as it is not currently part of the AESO’s *Consolidated Authoritative Document Glossary* and questioned what registration would look like: currently, Stakeholders are defined as “market participants” whether related to ISO rules or the Alberta reliability standards (“ARS”), so is the “electricity market participant” definition applicable only to ISO rules.
 - The AESO mentioned that it does not intend to go through the ARS and make a wholesale change based on the changes to legislation just yet. On a case-by-case basis, the AESO is assessing whether “market participants” should be “electricity market participants”. The AESO mentioned that it is on the AESO’s radar to update its Authoritative Documents once it determines where to do so first.
 - Specifically with respect to the ARS, the AESO stated that “electricity market participant” is applicable, but for ISO rules it is not yet consistent.
 - ATCO Electric wanted clarification with respect to how it should register in the future – as a “market participant” or an “electricity market participant”.
 - The AESO noted that on the registration side, it has not been looked at and this issue will be taken offline. The AESO also noted that in the legislation a “market participant” is a “capacity market participant”, “electricity market participant”, or both, but now the definition has been separated.

Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances*



- The AESO presented subsection 2 of the proposed new Section 103.14, *Applicable ISO rules*, listing the ISO rules proposed to be in scope as being appropriate subject matter for the potential waiver and variance rule, which are Section 304.3 of the ISO rules, *Wind and Solar Power Ramp Up Management* (“Section 304.3”); Section 304.9 of the ISO rules, *Wind and Solar Aggregated Generating Facility Forecasting* (“Section 304.9”); Division 502 of the ISO rules, *Technical Requirements, of Part 500, Facilities* (“Division 502 rules”); and any predecessor document to the ISO rules previously identified. The AESO proposes that it may either grant, in whole or in part, or deny a request for a waiver or variance submitted in accordance with the proposed new Section 103.14.
- The AESO presented the stakeholder feedback on the proposed new Section 103.14 scope, which it stated was generally supportive. As well, the AESO stated that if waivers or variances are granted for the same issue for long durations, it will look at amending the subject rule. The AESO explained that this is something the AESO is currently monitoring and it will continue to do so in the future. The AESO noted that stakeholders suggested that it could expand the scope of the proposed new Section 103.14 to include waivers or variances for operational ISO rules. The AESO noted that, currently, it is appropriate to consider waivers or variances during consultation/development of new or amended operational ISO rules. On a go-forward basis, as the AESO gathers more experience with this process, should a stakeholder find other operational ISO rules that Section 103.14 may apply to, it should provide such feedback.
- There was a discussion on the scope of the proposed new Section 103.14, specifically the following was discussed:
 - TransAlta agreed that there may be other ISO rules where waivers and variances may apply and asked whether it made sense to constantly be amending a brand new ISO rule instead of using blanket language. TransAlta stated that blanket language could be embedded into the new ISO rules instead of having to go back and change the rule every time an amendment is identified. TransAlta acknowledged there is process that has to be followed in ISO rule development and time that needs to be spent on the process, so those considerations need to be taken into account. Further, TransAlta asked what happens if there are problems identified in an ISO rule requirement without a waiver and variance provision, and if related requests for waivers and variances are put it in a holding pattern until the AESO makes a decision about whether or not to add the ISO rule requirement to the proposed new Section 103.14.
 - The AESO responded that on a go-forward basis, if it is appropriate to apply waivers and variances to a new rule coming up, the AESO will propose an amendment to Section 103.14 as part of that application.
 - As for existing waivers and variances language, the AESO is proposing as part of this application and this consultation to amend the existing Division 502 rules, Section 304.3, and Section 304.9 to delete the waivers and variances language. This will be a bit more paperwork, but should not be too cumbersome. With respect to making the proposed new Section 103.14 more broadly applicable, the current thinking of the AESO is that it would require a lot more investigation as to whether that is appropriate, whether there are any difference to the operational rules and what that might look like. Currently, about 90% plus of waivers and variances the AESO sees come from the identified set of ISO rules, so it is trying to deal with those as quickly and as effectively as possible. Again, on a go-forward basis, if stakeholders have proposals for other ISO rules to be included, or if there are consistent requests coming in for other things, the AESO would consider an amendment to the proposed new Section 103.14 to add another ISO rule to the scope.
 - The AESO also confirmed that, if ISO rule requirements do not have a waiver or variance provision, then, yes; the related waiver and variance requests get put in a holding pattern, which is no different than the current process. If there is not currently waivers and variances authority in a rule, then that is how related requests would be treated at the moment.

- The AESO has seen the occasional operational rule waiver or variance request, however the operational rule requests have not yet resulted in a rule proposal from any parties, and as such the AESO has not seen issues with other ISO rules in the past.
- The AESO acknowledged that limitations in other ISO rules could certainly become an issue going forward, and that the proposed new Section 103.14 would be a starting point to set the process around waivers and variances, which could potentially be leveraged in the future, if appropriate.
- The AESO summed up that there are operational rules in Division 502 rules which will ideally cover off a portion of concerns, but also the reason Section 304.3 and Section 304.9 were added was because the AESO was seeing these requests on a fairly consistent basis.
- The AESO noted that it is in agreement with the last point on the *Applicable ISO Rules Feedback* slide– *If several waivers or variances are granted for the same issue for long durations, the rule should be amended.* This could be a possibility, depending on the nature of the requirement. The waivers and variances provision is intended to cover the 1% or less of the cases for which the requirements don't fit properly.

Grounds for Requesting a Waiver or Variance

- The AESO presented subsection 3 of the proposed new Section 103.14, *Grounds for requesting a waiver or variance*, noting it added some points that were not developed from stakeholder feedback, including the following around technology:
 - Would have suboptimal results compared with the use of alternate technology that would meet or exceed the objectives of the proposed new Section 103.14; and
 - Does not allow for testing the application of technology that was not considered during the development of the requirements.
- The AESO explained that as the industry moves forward with technology, it wanted to keep a hook in the proposed new Section 103.14 that allows stakeholders to make proposals if reliability is protected or criteria are met in order to get a variance.
- The AESO noted that there was broad support around the grounds for requesting a waiver or variance; however, stakeholders brought up timing as an issue with respect to compliance. The AESO has addressed this issue by adding new grounds to the proposed new Section 103.14. The AESO also noted that a “lack of appropriate planning should not qualify as a “good faith” effort to achieve compliance with a requirement”, and this has also been incorporated in the proposed new Section 103.14.
- The AESO explained that it received a stakeholder suggestion that the concept of trade-offs should be brought to the grounds relating to incurrence of significant and unnecessary costs so that complying does not have greater benefits than not complying. The AESO noted that it incorporated this suggestion into the proposed new Section 103.14.
- Lastly, the AESO mentioned that it received suggestions that the AESO includes some examples of grounds in the rule, and the AESO noted it will do so in the ID.

Criteria for Evaluating a Request

- The AESO presented subsection 4 of the proposed new Section 103.14, *Criteria for evaluating a request*, and stated that one additional criterion was added to the draft that was posted on the AESO website. The AESO explained that it will evaluate requests for waivers or variances following the set of criteria outlined in this subsection once it receives a request.
- The AESO highlighted the fact that in some cases, there is already criteria for evaluating a waiver or variance request specified in the applicable section of the ISO rules, so that has been added to the proposed new Section 103.14 and will be maintained going forward. The AESO noted that apart from

Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances*



that one addition, the criteria are the same as what was previously published for stakeholders as proposed content.

- The AESO presented the stakeholder feedback received, noting there was broad support from stakeholders for all the criteria, with some specific tweaks. The AESO noted, with respect to the “economic impact” criteria, it was referring to the economic impact to all ratepayers and not just market participants. The AESO noted that stakeholders requested examples of sufficient criteria in the ID. The AESO also noted that stakeholders asked for clarification regarding the “public interest”. With respect to “public interest”, the AESO explained that it decided to instead remove the “public interest” criteria because it would be covered by the other criteria.
- The AESO stated that it disagreed with adding the MSA’s proposed edit to the criteria subsection of the proposed new Section 103.14, which stated that the MSA must be consulted when the AESO assesses “material impacts on a fair, efficient, openly competitive market”.
- There was a discussion about the MSA’s requested change.
 - The MSA asked the AESO if it would reach out to the MSA if it was not mandatory to do so.
 - The AESO responded that it would assess this on a case-by-case basis, but the intention at this point is not to reach out. The AESO’s position is that its obligation is to apply the ISO rules as it sees, and to the extent that the MSA would want to review same, or has a difference of opinion; the MSA’s mandate can take over at that time. The AESO noted that the assessment of a waiver or variance request involves multiple and potentially overlapping criteria. Even if there were Fair, Economic and Openly Competitive Regulation (“FEOC”) impacts, it may be outweighed by other factors. If the AESO and the MSA have a conversation solely on FEOC, that would not give the full picture of the assessment.
 - The AESO noted it is aware of its obligation to share information with the MSA, but to involve the MSA by default on the front end of everything is more problematic.
 - The MSA further wanted to know how it would be aware that an assessment is in front of the AESO if it is not notified. The MSA asked if the AESO was suggesting that the MSA address its concern through other channels rather than through the proposed new Section 103.14.
 - The AESO confirmed there is some discussion ongoing internally with respect to sharing of information and providing updates to the MSA and the AESO is uncertain if the discussion directly relates to this topic.
 - The MSA wanted the AESO to confirm it had no issues with providing information to the MSA that it is working on a file which the AESO received from a market participant relating to FEOC.
 - The AESO noted the issue is more around the AESO voluntarily providing information as opposed to the MSA requesting specific information as the legislation dictates, and stated that it is happy to take the conversation offline. It is more of a process piece.
 - TransAlta commented that the MSA’s involvement can be useful if the electricity market participant’s waiver request gets denied even though it may follow all the criteria listed, it may be useful to have a discussion with the MSA to make the determination as to how the request can be reassessed. TransAlta noted that it previously submitted waivers which were denied and TransAlta did not agree with the decision made based on the criteria. This may be an opportunity to use the MSA’s knowledge and expertise for helping this process.
- There was a discussion around the proposed Information Document (“ID”).
 - Capital Power asked when the AESO will have a proposed draft of the ID ready.
 - The AESO confirmed this will happen on the day the ISO rule is approved. The AESO stated that it does not propose circulating a draft in advance of posting at this time, explaining that, traditionally, the AESO posts IDs when the ISO rules become effective, but that is more complicated to gauge right now as the AESO has less certainty of what the timelines are once things are submitted to the AUC. In the past, the AESO could confirm a schedule. The AESO is

Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances*



currently working on an ID and is getting more information, but it currently has no intention of posting a draft ID.

- There was a discussion around subsection 4(j), which states one of 10 circumstances that an electricity market participant can use when requesting a waiver or variance.
 - CNRL asked the AESO to further explain subsection 4(j) *does not allow for testing the application of technology that was not considered during the development of the requirements.*
 - The AESO explained that 4(j) could be an appropriate ground if a requirement of the subject ISO rule goes through consultation and, at the time, that particular technical solution was not considered, there could be a breakthrough shortly after, so the AESO is ensuring it is able to respond to changes in technology. The AESO further added that this point would apply more to a time-limited variance versus a waiver. If new technology has come out that might work in a certain scenario but our current technical requirements would preclude it, the AESO may, in limited circumstances consider a short testing period to try out such technology. The AESO noted this may never be used, but it was added to allow testing of new technology as it is at the forefront of everyone's minds these days.
 - ATCO Electric asked if the AESO would be able to share examples of scenarios where an individual's use of new technology has resulted in a waiver or variance request.
 - The AESO clarified that there weren't any specific examples, just that it could imagine there might be scenarios in which new technology would come along. The AESO undertook to follow up and include such information in the ID.

Submission of Information Feedback

- The AESO presented subsection 5 of the proposed new Section 103.14, *Submission of Information*. The AESO stated that it would publish a waivers and variances request form on its website. The AESO highlighted that the stakeholder may receive information requests and must advise the AESO as soon as possible should a fundamental change be made to its application.
- The AESO presented stakeholder feedback received, which was in broad agreement with respect to requests being made in writing, however stakeholders commented that a request date field should be included on the waivers and variances request form allowing the electricity market participants to request a date for an AESO decision. The AESO spoke to this comment stating that it cannot guarantee that the request date will be honoured as there are a number of waiver and variance requests underway at any given time. The AESO also stated that there were stakeholder comments that the proposed new Section 103.14 should include language that allows the AESO or the market participant to request a meeting to discuss considerations related to the request. To this, the AESO commented that the proposed new Section 103.14 does not preclude meetings and that the AESO will include some information in the ID with respect to when such meetings may be appropriate and what may happen at such meetings.

Evaluation Process

- The AESO presented subsection 6 of the proposed new Section 103.14, *Evaluation Process*.
- The AESO summarized the stakeholder comments received on the subsection stating that there was broad support overall for this process. However, there was a request that the AESO define a reasonable timeline for the entire review process, such as 30 days. The AESO noted that to date no decision has been made in 30 days. There might be specific waivers or variances to ISO rule requirements where a decision might be made in 30 days, such as submitting a report within 30 days of a specific event. Such decisions, which are more administrative and do not have big reliability impact, could be decided in 30 days. However, most technical requirements require the AESO to investigate reliability and fairness impacts; therefore, it takes time to review. In some instances, there is a requirement for a temporary operating instruction which takes time to negotiate with the market participant. The AESO proposed putting some guidance in the ID and over time expects that it will be

Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances*



able to provide more solid guidance, similarly to the 60-day turnaround time referred to in the *Deferral of Model Revalidation Testing*.

- There was a discussion on the stakeholder request for a defined timeline.
 - ATCO Electric commented that there could be an instance where a waiver is applied for and the market participant has to be compliant by a certain date. If the waiver is applied for well in advance, but the AESO has not made a decision right before the compliance date, the market participant may end up not being compliant since it does not have a decision. ATCO Electric asked how this would be treated and if the market participant compliance issue would be held until the market participant receives an AESO decision. ATCO Electric explained that this has happened in the past on Technical Feasibility Exception (“TFEs”), where the compliance date approached and the market participant didn’t know if it would be compliant or off-side.
 - The AESO explained that there was feedback around this, specifically that the AESO should provide an opinion to the MSA that the applicant should not be deemed non-compliant during the review of a request until the decision is rendered. The AESO stated that it must act within its mandate.
 - The AESO stated that it regularly works with the MSA on compliance monitoring and makes referrals when it believes non-compliance is suspected. The AESO also explained that the AESO and the MSA’s discretion cannot be bound. The AESO noted that in any given circumstance, there are a number of variables and asked stakeholders, if there are many other market participants in the queue, whether an applicant’s deadline should be considered when determining one applicant’s allowance to jump the queue?
 - The AESO explained that sometimes when reviewing applications, the AESO needs more analysis, so it is very hard to set timelines or promise that answers will be given before non-compliance happens. The AESO noted that it is also looking at ways to create efficiencies on its end - such as delegating decisions, standardizing information, different tracks for different types of variance requests - so it does not want applicants to find themselves in a position of non-compliance if the AESO can help it, but this scenario cannot be predicted in advance.
 - The AESO agreed with explaining a delay if a decision will be rendered beyond a reasonable timeframe, like 6 months, for example, while noting some decisions have taken longer than 6 months. The AESO noted that the proposed new Section 103.14 does mention that the AESO will provide updates on progress before a decision is rendered. A regulator would rarely promise a party a decision on the day it believes it will get it because too many variables can change that. The AESO agrees to give a high level progress update.
 - ATCO Electric agreed that this evaluation process sounds reasonable, as long as communication lines are open with the market participants so that it may make financial decisions on its progress.
- The AESO noted another suggestion was that market participants should be allowed to provide additional information before denying a request. The AESO encouraged market participants to provide complete information, if possible, when submitting a request and noted that proposed new Section 103.14 has the requirement that each applicant make the AESO aware of any new information that comes up during an application. If the AESO makes a decision and the applicant believes some facts or information were missed, there is nothing precluding the applicant from making another request.
- There was a discussion regarding who at the AESO reviewed waivers and variance requests.
 - TransAlta wanted to know if it can assume if it is a technical rule it is getting waiver on, that the technical subject-matter expert (“SME”) at the AESO will be involved in the decision. As well, based on previous experience, a sit-down meeting is required with the technical SME to discuss the potential solution or proposal to the problem. TransAlta asked if this opportunity be contemplated in the ID to ensure it is available.

Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances*



- The AESO confirmed that the technical SME is absolutely involved in the AESO decisions regarding waivers and variance requests, explaining further that sometimes market participants aren't even sure that a waiver or variance is required, so sometimes a discussion with a technical SME results in a market participant submitting a waiver and variance application.
- There was a question regarding the AESO's rationale for denying waivers and variances.
 - EPCOR asked if there are any requirements for the AESO to provide rationale as to why a waiver is denied.
 - The AESO established that such requirement exists.
- The AESO then described another stakeholder suggestion, to add a requirement to the proposed new Section 103.14, requiring the AESO to provide clarification of the dispute mechanism available should a waiver or variance request be denied. The AESO confirmed that dispute resolutions are already covered under Section 103.2 of the ISO rules, *Dispute Resolution* ("Section 103.2"). The AESO explained that another option available to stakeholders is to file a complaint with the MSA or AUC; however, ideally the applicant would come back to the AESO for a discussion to ensure there wasn't a breakdown in the process and that no information was missed.
- The AESO explained there is an informal discussion step in Section 103.2, so that should be the first step taken, but all remedies are still available. The AESO noted that in practical terms, this is what happens once the AESO sends out a letter denying the request and providing reasons for doing so. The applicant usually comes back with clarification of the denial, and then the AESO usually reconsiders, even though a decision has been rendered. It also explained that there are also scenarios when a party is proposing a remediation or mitigation plan that does not really meet the bar for reliability, the AESO and applicant may come to a mutual agreement.
- The AESO presented another stakeholder comment, which was a request to add a requirement for the AESO and market participants to collaboratively agree on next steps should a waiver or variance request be denied. The AESO noted that if the answer to a waiver or variance request is 'no' and a party is non-compliant, it could be inappropriate for the AESO to suggest certain mitigation or remediation, with the exception of specific technical suggestions; however, such discussions would likely end up with the MSA. The AESO noted that there potentially could be some next steps considered if it is related to process.
- The AESO explained that legislation requires the AESO make records available to the MSA, and there will be guidance in the ID to indicate that records may be provided to the MSA for the purpose of carrying out its mandate. The AESO stated that this is more of a process piece and the AESO has yet internally to settle on what that looks like; however, there are no problems complying with the legislative requirements.
- The AESO summarized the MSA's request that the MSA gets one month to review written waiver or variance requests prior to the AESO decision. The AESO explained that the AESO will act within its mandate to implement the ISO rules.
- There was a question from CNRL regarding timelines.
 - Specifically CNRL asked if the AESO tracks the backlog and average time required for processing waivers and variances requests and asked what about the AESO's current backlog level.
 - The AESO responded that it should be called a front log as it is working on all requests at once and typically gets AESO decisions fairly quickly, and ventured a guess that there may currently be one dozen active requests.
- There was a question regarding how many waivers and variances are approved.
 - The MSA asked how many waivers and variances requests are approved each year.

Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances*



- The AESO could not confirm an amount, but noted it gets about 25 – 35 variance requests in a year. It is not a 1:1 relationship for requests and approvals as the requests all get decided upon at different times; however, for the requests that the AESO has authority over, approval is probably over 80%.
- There was a discussion regarding the AESO's authority to grant waivers and variances.
 - ATCO Electric asked about the process when the AESO does not have an authority to grant waivers and variances.
 - The AESO confirmed it sends a letter to the applicant letting them know the AESO does not have authority and the process stops there.
 - ATCO Electric requested a list or appendix of the rules the AESO has authority over, and those it does not as it would be helpful for market participants to know what to spend time on and also asked if the list could become a part of the ID.
 - The AESO stated that it has that list, but it is not a published list. The AESO noted that if a party makes a request and the AESO does not have authority, the applicant is welcome to apply for an amendment to the ISO rules. It explained that there is not a standardized section in the ISO rules that specifies which ISO rules market participants can apply for waivers and variances to; therefore, the ISO rules can be easily interpreted, or not read at all.
 - ATCO Electric explained that some market participants that apply are not aware that the AESO must have specific authority to approve such requests.
 - The AESO explained that, with respect to the Division 502 rules, the AESO's current authority for waivers and variances is restricted to requirements that are outlined in the project functional specification document. The AESO further explained that with some specific requirements in the ISO rules, the problem with this is that not every project is issued a functional specification and, as a result, this approach does not work.
 - The AESO noted that the proposed new Section 103.14 is not restricted to functional specification documents as being the only vehicle for waivers and variances. If the AESO believes it is appropriate to grant a waiver or variance, it can do so outside of a functional specification document under this proposed framework.

Content of a Waiver or Variance

- The AESO summarized subsection 7 of the proposed new Section 103.14, *Content of a waiver or variance*, specifically the subsection states that the AESO must include the effective date in an approved waiver or variance, and any one of conditions, expiry date, mitigation or remediation plans, including milestones, and reporting requirements.
- The AESO noted there was broad support for this content from stakeholders, including that the process should include opportunity for market participants to provide input into the drafted content of an approved waiver or variance, and that waiver and variance effective dates should not be retroactive. The AESO stated that it took both of these suggestions under consideration and will address them in the ID. Allowing market participants to provide input into the drafted content is a valuable step to take which is currently being tested in case the AESO misunderstood information through an information request exchange, so when it is captured in complex conditions, this is valuable.
- There was a discussion about the amount of information that will be in the ID rather than in the proposed new Section 103.14.
 - ATCO Power noted that a lot of the information is being deferred to the ID, and in order to provide proper feedback on the proposed new Section 103.14 itself, it would be good to see both before it actually take place. ATCO Power explained that sometimes seeing the ID will affect how stakeholders view the ISO rules and if the ID is made available after the proposed new Section 103.14 becomes effective, then it is too late to provide comments on how the

Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances*



proposed new rule works. ATCO Power asked if it would be possible to have a draft ID in order to be able to get a holistic view of the impact of the proposed new Section 103.14.

- The AESO noted the June 20, 2019 presentation is a way to actually see the ID content, and if there is feedback, it is welcome. The AESO also noted that from a rule development, AUC Rule 017, and EUA perspective, the rule needs to be able to stand on its own and that the AUC will not approve ISO rules on the condition that the ID is reflective of certain material. The AESO further stated that if one is to review the proposed new Section 103.14 and feels that a critical aspect of implementation or application is missing and needs to be included for the proposed new Section 103.14 to be complete, then that is feedback that the AESO requires.
- The AESO noted that IDs are helpful guidance materials, but theoretically don't need to be produced at all in order for the ISO rules to actually function. It explained that IDs are meant to be helpful, not to be inherently part of the ISO rules.
- ATCO Power noted that if stakeholders still don't agree with information that is being deferred to the IDs, then the stakeholders would provide feedback on the same items again.
- The AESO mentioned that information that needs to be put into the ISO rules rather than IDs would be along the lines of something that needs to be hard-coded because it is critical and that without it, the ISO rule cannot stand on its own or is technically deficient.
- EEC wanted to make sure that the IDs do not contain any mandatory requirements that are not in the rule, specifically referring to ID #2018-019T, *Determination of Rate STS, Rate DTS and Metering Levels for a DFO*.
- The AESO confirmed there will be no mandatory information in the IDs because it is informational, not authoritative.
- There was a discussion around the effective date of the proposed new Section 103.14 and its impact on current waiver and variance requests.
 - TransAlta asked for clarification about the impact of the proposed new Section 103.14 on waiver and variance requests that were submitted to the AESO prior to the rule's effective date. Specifically, TransAlta wanted to understand what happens to the market participant requests that have been submitted to the AESO and are still being reviewed by the AESO when the proposed new Section 103.14 comes into effect. TransAlta stated its concern that it may be denied requests for waivers or variances to certain technical rule requirements because the AESO did not have the authority to grant the waiver or variance at the time. However, the same request may be granted under the proposed new Section 103.14.
 - TransAlta explained that as a result of this change, there is a zone of potential non-compliance that should not be treated as such because the waiver and variance process is underway. It also stated that market participants should not be held accountable for non-compliance for that period of time.
 - The AESO explained that any waivers and variances that are currently in the queue will continue to be assessed by the AESO and once the proposed new Section 103.14 comes into effect, the AESO will assess the waivers and variances requests by those new criteria. The AESO stated that requests that have not yet been assessed will be worked at using the ISO rules that are in effect at the time.
 - The AESO further explained that, with respect to requests that have been denied in the past, the AESO cannot retroactively give itself authority to pretend that it could grant such waivers in the past. The AESO only has authority on the effective date of the proposed new Section 103.14 and, should the applicant re-submit its request, the AESO can re-assess and grant waivers following the proposed new rule. The AESO noted that the conversation may need to be shifted to the MSA for that period of potential non-compliance.

Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances*



- TransAlta clarified that it wants all parties to understand that there is a zone in which market participants can potentially be non-compliant that should not be treated as such because the waiver process was underway and the AESO had already determined at that point that it did not have the right for governance at that time, but the market participant should not be “held accountable”.
- The AESO redirected the comment to the MSA and clarified that the market participant would be non-compliant; the issue would be to what extent are there consequences for that.
- The MSA acknowledged that there are two ways to receive this information, stating that, on the one hand, it can receive a referral from the AESO if the AESO was aware of the non-compliance or it can get a self-report from the market participant and make a judgment on a case-by-case basis.

Ongoing Management of a Waiver or Variance

- The AESO summarized subsection 8 of the proposed new Section 103.14, Ongoing management of a waiver or variance, noting the requirement that market participants must notify the AESO of any material change with respect to the waiver or variance, the ability to transfer a waiver or variance to a new owner, and that the AESO may amend or revoke a waiver or variance and the criteria under which it would do that revocation.
- The AESO reviewed the various feedback on this subsection, including feedback regarding criteria for the process for the AESO to follow when considering revocation, for which the AESO noted it will be providing guidance in the ID. The AESO also noted that it is so far unaware of any revocations, but it does want to have the requirement in the proposed new Section 103.14 in case a situation comes up.
- The AESO also mentioned stakeholder feedback that 30 days’ notice from the AESO for revoking a variance isn’t sufficient in all circumstances and the AESO agrees that the notice period will be dependent on the requirement itself. The AESO further mentioned that it received stakeholder feedback that the proposed new Section 103.14 should include a requirement that allows for a dispute to be filed should the AESO revoke a waiver or variance; however, the AESO mentioned this is not necessary as disputes are covered under Section 103.2.
- The AESO noted that stakeholders provided suggested additions to subsection 8 such as a suggestion that the proposed new Section 103.14 include criteria to be used to determine a “material change”, or include a description of “material change” in the ID. The AESO noted that it is difficult to identify all the criteria that may constitute a material change; however, in the past most material changes have been around remediation. The AESO provided additional information on the hypothetical situations that may constitute a material change, particularly if there is a fundamental change in system conditions where the waiver that had already been granted is impacting reliability in a way that was not originally anticipated. In this case, there would be a discussion and a plan to remediate.
- The AESO presented a stakeholder comment that there should be a process to apply for an extension without having to re-file another waiver or variance and the new legal owner of a facility should be required to confirm that the facts relating to the variance are still accurate.
- The AESO stated that it plans to provide guidance with respect to all of the discussed subsection 8 feedback in the ID.

Confidentiality

- The AESO noted that stakeholders commented that all aspects of the process should remain confidential to protect commercially sensitive information or to avoid jeopardizing the reliability and security of the grid. The AESO explained that the organization is bound by Section 103.1 of the ISO rules, Confidentiality (“Section 103.1”) already, but it is also able to aggregate records. The AESO noted that, with respect to the reliability standards variances, the AESO publishes a very high level annual report and mentioned that the AESO will look at posting something similar for the Division 502

Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances*



rules at an aggregated level since there could be benefit to market participants, but it has not yet landed on a decision.

- The AESO stated some stakeholders requested disclosure of some waiver and variance information, including disclosure around the requests and the AESO's rationale for approving/denying. The AESO summarized the reasons stakeholders gave for asking for this information, which included: assisting in improving understanding of market participants to allow for complaints or proposals to improve ISO rules, and to level the playing field. The AESO noted it usually publishes what it can in the IDs if there is something to be learned since it helps the AESO and market participants alike. The AESO confirmed it is common practice for them to regularly update IDs with any information that may be helpful or relevant to market participants as it becomes available.
- There was a discussion around the disclosure of waiver and variance information and related ID updates.
 - EEC noted that it provided some feedback around transparency, primarily with regards to companies requesting variances based on cost and the potential implications on a competitive basis between companies. Specifically, if a company is requesting a variance because complying with a rule costs too much and that variance was granted, but if that information was not shared with the other market participants that would become a competitive advantage for the market participant who received the variance. EEC suggested that, as part of the proposed new Section 103.14, the information is made public even if that information was aggregated and anonymized.
 - The AESO confirmed with EEC that having a column in the disclosure report for the grounds for the waiver or variance would address EEC's request.
 - The MSA added that in general it is supportive of transparency to the degree that it is acceptable from a competition point of view. The MSA encourages the current work that is being done, including high level reporting because similar comments can be made from a FEOC perspective. Should there be technical reasons that a generator qualifies to sell a certain ancillary service or energy instrument that does not necessarily meet the way the rule is written but it found a way to receive a variance, it would be good for everyone in the market to understand that an avenue is available to them. The MSA stated that high level reporting to ensure a level playing field from a FEOC competition perspective would be very helpful.
 - Further to that, EEC noted that it is aware the AESO provides an ID based on requests that are submitted, so it is confidential. However, when looking at the ID it is difficult to pinpoint the content or purpose of the changes. It noted that, even though the IDs are very helpful, it is hard to identify the intent of the request that triggered such changes. Specifically, EEC noted that, if there are updates to IDs, market participants have to look through previous IDs to track the intent of the changes.
 - The AESO noted it has identified that the revision history is not as helpful as it could be, so on a go forward basis; the intention is to have more detail in the revision history. The AESO explained that currently the AESO is thinking about whether it is useful to identify the impetus for the change, or if it is something that needs to be part of the reporting as a footnote that prompted a change to an ID and reference that ID.
- There was a request for confirmation around the handling of confidential information that accompanies a request by the AESO.
 - ATCO wanted to confirm that variances of confidential nature or those with cyber security implications should be sent to the AESO through a secure SharePoint site as it has done in the past with TFEs.
 - The AESO confirmed that the organization uses SharePoint for confidential sharing of information, and if a market participant is making a confidential request with sensitive attachments, to let the AESO know first and the organization will set up a SharePoint site for

Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances*



that specific company with restricted permissions. The AESO further explained that information requests and published decisions will be shared on that secure site, and once the request has been completed the site will be shut down.

Addressing the Waivers and Variances requirements in the existing ISO rules

- The AESO presented the options on which it requested stakeholder feedback regarding how to deal with the waivers and variances language in the existing ISO rules.
- The AESO reviewed the feedback it received, explaining that the majority of the market participants supported going into the existing ISO rules and completing the mentioned amendments, so the AESO plans to create a comprehensive filing with all the associated rules that are impacted. The AESO explained that it is getting rid of the requirement that waivers and variances must be specified in the project functional specification document; the only thing that will be kept is that the waiver or variance needs to be provided in writing, in some form or another. This requirement will reside in the proposed new Section 103.14.
- The AESO mentioned that there was a stakeholder suggestion that existing waivers and variances requirements should not be affected by the proposed new Section 103.14, and that the ISO rules should include language stating that existing waivers and variances will continue to apply. The AESO noted that the proposed new Section 103.14 will apply to all existing waivers and variances and particularly the management of same. The AESO further explained that this pertained to situations including where there is a transfer to a new facility, where the market participant has the requirement to notify the AESO of a material change, or where there may be a revocation.
- The AESO also presented its proposal regarding grandfathering, stating that it will not propose a grandfathering or exemption of the management of existing waivers or variances that apply to the technical rules. The AESO stated that it does not intend to commence a review of all existing waivers and variances, explaining that, should a waiver or variance expire and the market participant will require an extension, the extension will be applied for under the proposed new Section 103.14.
- There was a question regarding expiration of waivers and variances.
 - Specifically, ATCO Electric asked if waivers always have an expiry.
 - The AESO confirmed that waivers did not always expire.
- The AESO went on to review the feedback on general technical requirements, specifically, stakeholder comments that the AESO should demonstrate the process by which it selects the most economically efficient rule requirements considering the expenditures required to achieve reliability goals, and during the consultation stage. Specifically, feedback received requested that the AESO work with affected parties that would incur significant costs to comply with proposed new requirements to clarify whether a waiver or variance would be approved.
- The AESO explained that it cannot guarantee if a waiver or variance will be approved. Therefore, if there are issues with requirements, market participants are encouraged to participate during the consultation stage. Further, the AESO mentioned that under the new legislation and AUC Rule 017, the AESO is required to demonstrate that the ISO rule requirements are FEOC, and attach any analysis that it has done related to the development of the ISO rule. The AESO explained that the tricky part becomes quantifying reliability, which is unlike the costs, which are often easy to come up with, then the case needs to be made that reliability is worth more than that. The AESO stated that, in its opinion, there definitely needs to be consideration given and demonstration of that consideration in terms of the AESO showing that any rule requirements are economically efficient.
- There was a discussion regarding grandfathering.
 - EEC asked if the AESO gave any consideration to having a grandfather strategy as part of the proposed new Section 103.14. Specifically, looking at a generation cost certainty. As new rules come out, having the ability to provide cost certainty and trade off against reliability is important.

Stakeholder Consultation Session on the Development of the Proposed New Section 103.14 of the ISO rules, *Waivers and Variances*



- The AESO confirmed that it did take it into consideration; however the AESO does not believe there are any impacts on the validity of current waivers and variances. Specifically looking at new rules, the AESO is aware that grandfathering is always an issue when it comes out, and there is always consideration given to the economics. The AESO noted that if the changes cost a market participant an exorbitant amount of money, then the AESO looks at the economic impact. The AESO stated that consultation is the best time to approach the discussion if a market participant believes its facility should be grandfathered because the cost far outweighs the improvement of reliability. Further it explained that even if a new generating rule came in that was not grandfathered, market participants could apply for waivers and variances; however, if the argument for grandfathering cannot be made during the consultation on the rule, it would be hard to get a waiver once the rule comes into effect. The AESO provided another example, which was a facility that is retiring and it does not make sense to grandfather all facilities.
- The MSA posed a clarification question with respect to the extent that the AESO has grandfathered in the past, if it is always recorded in the rule that the grandfathering has or is occurring.
- The AESO noted that there is language in the rule that addresses the applicable grandfathering approach. It also includes language around new upgrades that will be governed by new rules.

Wrap Up and Next Steps

- The AESO wrapped up the presentation and communicated next steps, which include taking into consideration feedback and, if necessary, amending the proposed new Section 103.14, posting the final draft of the proposed new Section 103.14 on the AESO website with a request for stakeholder to comment by a specified date.
- The AESO explained that it has 15 calendar days from the specified date to respond to the stakeholder comments, so it is important that stakeholders submit its comments on time.
- Following that, the AESO will file an application with the AUC requesting approval of the proposed new Section 103.14.
- The AESO thanked attendees for coming and participating to the consultation session.