



Alberta Electric System Operator

**Competitive Process Pursuant to
Section 24.2(2) of the Transmission Regulation
Part A: Statutory Interpretation**

February 27, 2012

The Alberta Utilities Commission

Decision 2012-059: Alberta Electric System Operator

Competitive Process Pursuant to Section 24.2(2) of the Transmission Regulation

Part A: Statutory Interpretation

Application No. 1607670

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Contents

1	Introduction	1
2	Background	1
3	Legislative mandate	2
3.1	AESO position	3
3.2	Other parties' positions	3
3.3	Legislative overview – stages of approval in the standard approval process.....	4
3.3.1	Legislative exceptions to the standard process	5
3.3.2	CTI and the competitive process.....	5
3.4	Commission interpretation of the competitive process provisions	7
4	Requests for direction requiring the filing of additional information	11
5	Competitive process models considered by the AESO	14
6	Pro forma agreements and key terms	20
7	Other issues	22
7.1	Competitive process issues.....	22
7.1.1	Selection criteria	22
7.1.2	Conflicts of interest	23
7.1.3	Financial security	24
7.1.4	Honoraria	25
7.1.5	Affordability requirement.....	25
7.1.6	Competitive process compliance monitoring	27
7.1.7	Land access issues.....	28
7.2	Construction and operation of competitively procured transmission facilities.....	29
7.2.1	Level playing field/cross-subsidy concerns.....	29
7.2.2	Construction, operation and maintenance of competitively procured facilities	30
7.2.3	Safe and reliable operation	31
7.2.4	Supervening events and dispute resolution provisions.....	32
7.2.5	End of term provisions	32
7.2.6	Incentive payments.....	33
8	Next steps	33
9	Order	34
	Appendix 1 – Proceeding participants	35
	Appendix 2 – Summary of Commission directions	37
	Appendix 3 – Legislative provisions	38

1 Introduction

1. On September 15, 2011, the Alberta Utilities Commission (AUC or the Commission) received an application from the Alberta Electric System Operator (AESO) requesting approval of a competitive process to determine who is eligible to apply to the Commission for the construction, operation or both, of certain transmission facilities pursuant to Section 24.2 of the *Transmission Regulation*, AR 86/2007 and for such further and other relief as the Commission deems appropriate. The transmission facilities that would be subject to the competitive process are critical transmission infrastructure designated under the *Electric Utilities Act*, SA 2003, c. E-5.1.¹

2. In its application, the AESO stated that the first critical transmission infrastructure to which the competitive process would apply would be the two single-circuit 500-kilovolt (kV) alternating current transmission facilities between the Edmonton and Fort McMurray regions (Fort McMurray project). The AESO requested approval of the competitive process by June 2012 to facilitate construction of those first facilities by 2017.

2 Background

3. The Commission issued notice of the application on September 23, 2011, and established a process schedule on October 12, 2011.

4. In compliance with this process schedule, interested parties and the Commission prepared information requests (IRs) respecting the AESO's competitive process application. In its covering letter for the IRs, the Commission expressed concern regarding an absence of information that the Commission considered necessary for its determination of the application.

5. The Commission reviewed the responses to IRs that were provided by the AESO and observed that for a significant number, the response of the AESO was to indicate that the information requested was under development, not applicable or may be uniquely defined for each project by the AESO (and, by implication, not be subject to Commission review).

¹ See Section 24.2(2) of the *Transmission Regulation*.

6. On November 29, 2011, the Commission received intervenor evidence from AltaLink Management Ltd. (AltaLink) respecting the AESO's competitive process application. AltaLink stated, in part:

[11] In order for the Commission to approve the AESO's application as being in the public interest, the AESO's Application must provide sufficient detail to allow the AUC and interested parties to fully understand and assess what is being proposed. The AESO's proposal, which would leave it to the AESO to develop key aspects of its competitive process after a Commission approval, is inconsistent with the applicable legislation and would require the Commission to abdicate its legislative mandate to determine the prudence of the resulting tariff and terms and conditions of service.²

7. AltaLink's submission requested that the Commission direct the AESO to refile its application and provide the detail which AltaLink has identified, at a minimum, as missing.³

8. On December 2, 2011, the Commission suspended the proceeding process and invited comments from parties as to whether there was sufficient material on the record of this proceeding to continue, and whether the alternative models for the competitive process had been adequately developed by the AESO.

9. The Commission requested comments from registered parties and the AESO on these matters by December 19, 2011.

10. On December 19, 2011, the Commission received responses from the AESO, AltaLink, ATCO Electric Ltd. (ATCO Electric), NextEra Energy Canada, ULC (NextEra), EPCOR Utilities Inc. (EPCOR), the Office of the Utilities Consumer Advocate (UCA), TransCanada Energy (TransCanada), Industrial Power Consumers Association of Alberta (IPCAA), LS Power Development, LLC (LS Power) and Iccenlux, Corp (Iccenlux).

11. In its response, ATCO Electric requested that the comments from stakeholders respecting the AESO Competitive Procurement Process Discussion Paper (September 2010) be placed on the record of this proceeding. No parties objected to this request.

12. The Commission considers that these materials are relevant to this proceeding and has therefore placed the AESO Competitive Procurement Process Discussion Paper (September 2010), related stakeholder comments and the AESO's responses on the record of this proceeding.

3 Legislative mandate

13. There has been a fundamental difference of views expressed by the applicant and various parties regarding the mandate or role of the Commission for this application. The Commission has been asked by a number of parties to clarify its understanding of the applicable legislation and its role related to the AESO's competitive process application in order to define the necessary requirements, information and process to deal with this application. The purpose of this decision is to provide parties with the clarification necessary to proceed.

² Exhibit 33, AltaLink evidence, paragraph 11.

³ Exhibit 33, AltaLink evidence, paragraphs 12 and 13.

3.1 AESO position

14. The AESO submitted that the Commission is required by the legislation to approve the competitive process but not the resulting arrangements or outcomes from the competitive process. It was the AESO's position that Commission approval of the resulting arrangements would be contrary to the legislative objective that these arrangements be determined by the outcome of the competitive process.

15. In addition, the AESO submitted that it requires the flexibility to negotiate commercial arrangements as necessary on a project-by-project basis and that Commission approval of the resulting arrangements flowing from the competitive process would impede this flexibility.

16. In summary, the AESO has argued that the scope of review of the competitive process should be restricted to information that will demonstrate that the selection process is a fair one and one that allows for any qualified party to submit a proposal.

3.2 Other parties' positions

17. It was the position of AltaLink, ATCO Electric, IPCAA and the UCA that the Commission's mandate to approve the competitive process extended further than simply determining whether the process to select a qualified party was fair. It was the position of these parties that further information was required to be filed to address the resulting outcomes as part of the scope of the Commission's approval of the competitive process.

18. Iccenlux and NextEra were generally supportive of the approach taken by the AESO although would not object to additional information being provided.

19. TransCanada and EPCOR agreed with the position of the AESO that the Commission's role in assessing whether to approve a competitive process was limited to determining whether the application would result in a fair and open process.

Commission findings

20. In *ATCO Electric Ltd. v. EUB*,⁴ the Alberta Court of Appeal summarized the principles of statutory interpretation as applied in Alberta:

In interpreting the Board's roles and responsibilities under the applicable statutory legislation, one must bear in mind that this is governed by the purposive and contextual approach to statutory interpretation repeatedly endorsed by the Supreme Court of Canada.... The purposive approach requires that a court assess legislation in light of its purpose since legislative intent, the object of the interpretive exercise, is directly linked to legislative purpose. The contextual approach requires, in turn, that the words chosen must be assessed in the entire context in which they have been used. Any attempt to deduce legislative intent therefore cannot be undertaken in a vacuum.

21. Accordingly, questions of statutory interpretation generally require an examination of:

- the broad context of the legislation
- the purpose, context and wording of a provision within the legislation

⁴ [2004] AJ No. 823, paragraph 127.

22. The legislative framework that governs the provision of electricity service in Alberta is established principally through the provisions of the *Electric Utilities Act*, and the provisions of the *Hydro and Electric Energy Act*. These two pieces of legislation work as companion legislation with the former establishing the duties and obligations of utilities and the AESO to provide service to customers in the electricity market, and the recovery of expenditures through a tariff while the latter focuses on the construction and operation of the physical assets used to deliver electricity. The *Transmission Regulation* further supplements the legislative framework as it pertains to the provision and costing of transmission services in Alberta.

23. As such, in determining the scope of the competitive process provisions found in the *Transmission Regulation* as applied to critical transmission infrastructure, the Commission has considered the competitive process provisions in the context of the overall legislative scheme in Alberta in which transmission services are identified, developed, constructed, operated, owned and ultimately paid for by electricity customers.

24. The competitive process provisions are part of the critical transmission infrastructure provisions, which serve as an exception to some steps and approvals in the standard approval process. The principal legislative provisions are attached as [Appendix 3](#) to this decision. A brief overview of the standard approval process for transmission facilities is provided here for context.

3.3 Legislative overview – stages of approval in the standard approval process

25. The standard regulatory approval process requires that before utility transmission facility projects can be constructed, put into operation or included as part of the rate base of a utility, a number of regulatory approvals are required. Commission approval is required at three major stages of decision-making: (1) approval of the need to develop a transmission project, (2) approval for the construction and operation of the transmission facility and (3) approval to include the costs of the transmission facilities in the rates the utility charges its customers.

Need

26. It is the responsibility of the AESO to identify when new transmission facilities are needed and to bring an application to the Commission for approval of the need for those new transmission facilities.⁵

27. At the need approval stage, the Commission's role is to approve the actions proposed to be taken by the AESO. For a need-initiated transmission project, the approved action is for the AESO to direct a transmission facility owner (TFO) to apply to build the transmission facility based on the approved need. The approval also signals the Commission's general acceptance of the expected costs of the proposed solution to the approved need, including the expected reasonable and prudent expenditures incurred by the TFO to fulfill the approved need. Approval of this action is not, however, an approval of actual expenditures and does not allow the Commission to approve the inclusion of any imprudent expenditures in rates to be collected from customers.

Facility approval – permission to construct and operate

28. The AESO must determine which TFO is eligible to apply to the Commission for the construction or operation or both of transmission facilities for which need has been approved.

⁵ Section 34 of the *Electric Utilities Act*.

The TFO in whose service territory the transmission facility is proposed to be built is assigned the project.⁶ The AESO then directs that TFO to bring an application under the *Hydro and Electric Energy Act* to the Commission to obtain the necessary operating permits and connection orders for the proposed transmission facilities. These facilities are commonly referred to as direct assign facilities.

29. Section 17 of the *Alberta Utilities Commission Act* requires the Commission to consider whether the proposed facility is in the public interest having regard to the social, economic and environmental impacts of the proposed facility.⁷

Rates charged to customers

30. TFOs generally do not charge rates directly to customers. Rather, they charge rates to the AESO. The Commission is responsible for approving the rates that the TFOs propose to charge to the AESO for the use of their transmission facilities.

31. These rates are set prospectively by relying on forecasts of revenue required to provide utility service. The TFO forecasts the capital investment amounts it will require for the construction of assets to provide transmission service. These amounts are trued-up to reflect actual costs when the actual costs are known – after the investments have been made and the facility is in service, and to the extent the investments are considered prudent.

3.3.1 Legislative exceptions to the standard process

32. Recently, amendments were introduced into the *Electric Utilities Act*, *Hydro and Electric Energy Act* and *Transmission Regulation* to provide for the construction and operation of critical transmission infrastructure (CTI).

33. With the creation of CTI, the legislation has now established two streams of regulatory treatment for the development of transmission projects: (1) need-initiated that continue to follow the standard regulatory process and (2) Alberta government-designated (or CTI projects).

3.3.2 CTI and the competitive process

34. For CTI projects, the standard approval process, need, facilities and cost recovery through rates, has been altered. There are also two separate regulatory paths for selection of the proponent found within the provisions governing CTI projects, one in which the proponent is determined by the Minister and one in which the proponent is determined by the competitive process. The determination as to who is entitled to construct and operate the transmission facilities and the manner in which costs are recovered differs between CTI projects which the Alberta government designates and CTI projects which fall under the competitive process provided for under the *Transmission Regulation*.

Need

35. If the transmission facility is designated as CTI, the AESO is not required to submit an application to the Commission for approval of the need for the transmission facility. That is,

⁶ Section 24 of the *Transmission Regulation*.

⁷ Section 19 of the *Hydro and Electric Energy Act* establishes the power of the Commission to alter, approve or deny any application for approval, permit or licence.

there is no Commission approval of the need for a CTI project as that determination has been transferred from the Commission to the Government of Alberta.

Facility permit – authorization to construct and operate

36. The Minister may determine who is eligible to apply for the construction or operation or both of CTI projects. In such an event, rather than directing a TFO to apply for the permit based on service territory, the AESO must follow the determination of the Minister and must direct the entity whom the Minister has chosen to apply for facility approval.⁸

37. For all other CTI projects, the AESO is required to use a competitive process.⁹

38. Once eligibility is determined, whether it be by Minister designation or as a consequence of the competitive process, Section 41.3 of the *Electric Utilities Act* requires the AESO to direct the eligible person to bring an application for facility approval under the *Hydro and Electric Energy Act*.¹⁰ Specifically, the section reads as follows:

41.3 Subject to the regulations and an order under section 41.1(1), the Independent System Operator must, in a timely manner, direct a person determined under the regulations to make an application in a timely manner to the Commission under the *Hydro and Electric Energy Act* for an approval of critical transmission infrastructure.

39. In Decision 2011-436¹¹ (Heartland Transmission Project), the Commission concluded the following:

152. The government of Alberta's approval of need for a new transmission project, which is manifested by designating a project as critical transmission infrastructure, must be considered an approval of the need to expand or enhance the system, and an approval of the preferred technical solution to address the need. The Commission concludes that the effect of Section 13.1 is that the need for a critical transmission infrastructure project, the technical solution to address that need and the inherent impacts of the technical solution are all considered to be in the public interest.

153. As explained below, interpreting Section 13.1 in this way does not mean that ... any ... specific facility application for a critical transmission infrastructure project, is automatically deemed to be in the public interest. Since 2004, the legislative framework for new transmission approvals in Alberta has included two public interest determinations, one for the need application and one for the facility application. The effect of the *Electric Statutes Amendment Act* was simply to transfer the first public interest determination from the Commission to the legislature. The Commission retains its jurisdiction to make the second public interest determination, in other words, whether approval of the specific application to meet the need ... is consistent with the technical solution identified in the first stage, and whether the proposed facilities minimize, or mitigate to an acceptable degree, the potential adverse impacts on more discrete parts of the community, having regard to the social, economic and environmental impacts of approving that specific application. To accomplish this, it may be necessary for the Commission to exercise its jurisdiction to make necessary changes to the application

⁸ Section 24.1(1) of the *Transmission Regulation*.

⁹ Section 24.2(2) of the *Transmission Regulation*.

¹⁰ Section 41.3 of the *Electric Utilities Act*.

¹¹ Decision 2011-436: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc., Heartland Transmission Project, Application No. 1606609, Proceeding ID No. 457, November 1, 2011.

pursuant to Section 19 of the *Hydro and Electric Energy Act*. For example, in Decision 2009-028,¹² the Commission was considering an application for a 240-kilovolt transmission line from Pincher Creek to Lethbridge. In that decision the Commission directed a change to the specifications of the proposed line. Specifically, it directed the applicants to use monopole towers instead of the lattice towers described in the application for a portion of the proposed line leading up to and within the Oldman River valley.

154. In an extreme case the Commission may reject an application for a specific project where it determines that the transmission facility, as proposed, will have unacceptable impacts, whether those impacts be provincial in scope or site specific, and that those impacts cannot be minimized or mitigated to an acceptable degree by Commission-ordered changes to the plans, specifications or routing of the proposed facility. What the Commission cannot do, however, is reject the application by finding that any application that meets the need would not be in the public interest only because of the social, economic and environmental impacts inherent in the technical solution and that would occur regardless of the design, configuration or routing proposed in the application. To do so would be to find that those inherent impacts are not in the public interest, which would be contrary to the express direction of subsection 17(2) of the *Alberta Utilities Commission Act*.

Recovery of costs – tariff

40. Section 37 of the *Electric Utilities Act* requires each owner of a transmission facility to submit to the Commission for approval a tariff setting out the rates to be paid by the AESO to the owner for the use of the owner's transmission facility. This section was not legislatively exempted from application to CTI projects. By definition, a tariff also includes the terms and conditions of service that must be performed.

41. An owner is defined under the *Electric Utilities Act* as the operator, owner, manager or lessee of the transmission facility or agent for one of these entities (Section 1(1)(jj)).

42. Further legislative direction is provided under the *Transmission Regulation*, as it pertains to the recovery of costs for transmission projects. Section 25(1) permits the AESO to develop rules regarding cost reporting for need-initiated transmission projects and CTI projects for which the Minister determines eligibility. Moreover, Section 25 expressly confirms that the TFO must demonstrate that its tariff is just and reasonable (Section 25(3)) and that the Commission retains responsibility to determine a TFO or other person's prudence in managing a transmission facility project. However, the *Transmission Regulation* specifically exempts Section 25 from application to transmission facilities to which the competitive process applies.

3.4 Commission interpretation of the competitive process provisions

43. As noted above, the legislative scheme for the development of transmission projects in Alberta requires Commission approval throughout the various stages of development and throughout the full lifecycle. The introduction of the competitive process appears to be intended to address only two matters: (1) eligibility for applying for approval for the construction or operation, or both, of a transmission facility and (2) determination of the bid prices and recovery of them through rates.

¹² Decision 2009-028: AltaLink Management Ltd., Transmission Line from Pincher Creek to Lethbridge, Application No. 1521942, Proceeding ID. 19, March 10, 2009.

44. The specific provisions under review are found in Section 24.2 of the *Transmission Regulation* and state:

Competitive process to develop certain transmission facilities

24.2(1) For the purposes of this section, “competitive process” means a fair and open process that allows any qualified person, as determined by the ISO, to submit a proposal in respect of a transmission facility, including a financial bid, as the method to determine the person referred to in subsection (2).

(2) The ISO must develop a competitive process to determine the person who is eligible to apply for the construction or operation, or both, of the transmission facilities referred to in section 24(3)(a), (c) and (d).

(3) Before the ISO implements a competitive process developed under subsection (2), the ISO must obtain the Commission’s approval of the competitive process.

(4) Where the Commission approves a competitive process developed under subsection (2), the Commission must consider any resulting arrangements as prudent.

(5) The competitive process developed under subsection (2) must not exclude

- (a) a TFO, whether or not the TFO has undertaken any work or provided any services to the ISO in respect of a proposed transmission facility, or
- (b) any other person that has undertaken any work or provided any services to the ISO in respect of a proposed transmission facility

unless the TFO or other person does not have the necessary qualifications to participate in the competitive process.

(6) Subject to subsection (7), the ISO may request, and a TFO or other person must provide, any records to the ISO that are necessary to develop and implement a competitive process.

(7) If there is a dispute between the ISO and a TFO or other person regarding whether a record is necessary for the purposes of the ISO as referred to in subsection (6), the matter must be determined by the Commission.

(8) A competitive process that is approved by the Commission may be used by the ISO for more than one transmission facility project.

45. As outlined in the subsections above, any new transmission facility requires a number of steps to be completed before it is placed in service and its costs are charged to consumers. First, the need for the project is determined. Second, the project is assigned to a proponent. Third, the proponent to whom the project has been assigned applies to the Commission for approval to construct and operate the facility (this process includes approval of the specific route and other matters). The final step is the approval of the rates to be charged by the proponent to recover the costs of constructing and operating the transmission facility.

46. Some of these steps have been modified by the legislative provisions that apply to CTI projects. For CTI projects, in step one, the need for the project is determined by the lieutenant-governor in council. In step two, the CTI project is not assigned by the AESO to an existing TFO based on historical operating territory. Instead, there are two assignment options.

The CTI project may be assigned to a proponent by the Minister or by the AESO after completion of a competitive process established under the CTI provisions.

47. There is no change to step three, the application to the Commission for approval to construct and operate the facility.¹³ The fact that there is a competitive process to determine who is eligible to apply under the provisions of the *Hydro and Electric Energy Act* does not remove Commission oversight from the project itself and the risk that the project may not be approved as originally submitted.¹⁴ There are no legislative provisions that provide for any different treatment for CTI projects initiated through the competitive process at this approval stage. Consequently, the Commission concludes that a reasonable interpretation of “resulting arrangements” cannot include facility permits and orders required under the *Hydro and Electric Energy Act*.

48. These interpretations are not controversial. There is no disagreement among parties about the effects of the competitive process provisions for CTI projects on these first three steps.

49. Section 24.2(2) of the *Transmission Regulation* contemplates that the AESO must develop a competitive process to determine eligibility to apply under the *Hydro and Electric Energy Act* for the construction of the project, for the operation of the project, or both. That is, for CTI projects that have been targeted for the competitive process, selection of the person eligible to apply under the *Hydro and Electric Energy Act* for approval to construct the project, approval to operate the project or approval to both construct and operate the project must be the result of a competitive process. The AESO has the option of conducting a separate competitive process for each of these functions or may choose, as the AESO has done in this application, to propose a competitive process that encompasses both the construction and operation functions.

50. In any case, the definition of a competitive process found in Section 24.2(1) specifically references a financial bid. In the Commission’s view, a competitive process developed by the AESO and approved by the Commission must include a financial bid.

51. Section 24.2(3) of the *Transmission Regulation* requires the AESO to obtain the approval of the Commission prior to the AESO implementing any competitive process that it develops. Further, Section 24.2(4) of the *Transmission Regulation* directs the Commission to consider any “resulting arrangements as prudent.” The Commission must therefore be satisfied that the form and content of the competitive process will yield a result determined by competitive market forces. It is the operation of competitive market forces that justifies the removal of a regulatory assessment of prudence.

52. Once a successful bidder is chosen, that bidder becomes a TFO and the monopoly supplier of the transmission services for the new transmission facility during the life of the contract. The arrangements that were included in the bid and were the basis of the acceptance of

¹³ While the language of the *Transmission Regulation* does not specifically refer to connection orders, a purposive reading of the legislation supports the conclusion of the Commission that a connection order would also be required of the successful proponent. Further, the Commission would require a successful proponent to also meet the requirements of Section 23 of the *Hydro and Electric Energy Act* if the holder of the permit or order is a corporation.

¹⁴ See sections 14, 15 and 18 of the *Hydro and Electric Energy Act*. Section 19 of the *Hydro and Electric Energy Act* established the power of the Commission to approve, amend or deny an application. As well, Section 23 of the *Hydro and Electric Energy Act* establishes the requirements that must be met for a corporation to hold an approval, permit or licence.

that bid, would include a financial bid and would pass through the competitive bid prices to customers in the form of rates which the Commission would have to consider to be prudent.

53. The AESO's interpretation and preferred approach would allow for financial bids to be made and after acceptance of the bid, subsequently renegotiated with the successful bidder before finalization of the terms and also during the life of the contract. This approach would circumvent the intention of the Government of Alberta to have the proponent and the financial terms of the arrangement determined by the competitive process. That is, if it were possible for the AESO to simply propose to use a competitive process to determine eligibility and thereafter negotiate all of the remaining terms and conditions bilaterally with the successful proponent after the fact, there would be no purpose served by the Government of Alberta's requirement that the Commission approve the competitive process in the first place. In the Commission's view, it was not the Government of Alberta's intention to establish a competitive process to choose the monopoly supplier for the duration of the contract term and then allow the AESO to conduct bilateral negotiations with that monopoly supplier. Nor was it the Government of Alberta's intention that the AESO would have unfettered discretion with respect to the development, construction, operation and rates to be charged to customers for CTI projects for the duration of the contract term.

54. It is not enough that the competitive process select the monopoly supplier. It must also establish in a transparent manner, the price or prices to be charged by that monopoly provider over the life of that contract along with the terms and conditions of service. Those prices could be adjusted from time to time through a formula or other similar mechanism, because that formula or mechanism would have been included in the bid proposal submitted by the successful bidder. However, prices cannot be determined through bilateral negotiations because those negotiations would not bring competitive pressures to bear on the monopoly supplier nor would the process be open and transparent.

55. In addition, the legislative scheme, and in particular, Section 39 of the *Electric Utilities Act* does not exempt TFOs that are created through the competitive process from all of the obligations set out in this section. Resulting arrangements arising from the approved competitive process cannot exempt the successful proponent from core responsibilities and duties for TFOs to provide safe and reliable service and from compliance with applicable legislation. As such, any competitive process which is proposed for approval would have to include the requirements and obligations that apply to an incumbent TFO including, but not limited to, those found in the *Electric Utilities Act*, *Transmission Regulation*, *Hydro and Electric Energy Act*, *Public Utilities Act*, *Surface Rights Act*, Alberta Utilities Commission rules, ISO rules, ISO Tariff, and Alberta Reliability Standards. In addition, in order for all TFOs to be treated equivalently, the generic transmission terms and conditions of service approved by the Commission should also apply to any TFO established through the competitive process.

56. Where any changes to arrangements are necessary during the life of the project, the *Transmission Regulation* does not allow bilateral negotiation to determine new prices or other arrangements. The *Transmission Regulation* contemplates that some sort of competitive process would have to be used and that process would have to be approved by the Commission at that time or in advance.

4 Requests for direction requiring the filing of additional information

57. AltaLink indicated that its November 29, 2011 filing should be described as a preliminary submission because it considered that the application lacked detail and did not contain sufficient information. Accordingly, AltaLink submitted that interested parties and the Commission cannot meaningfully assess the application's merits or determine if the application should be approved in the public interest.

58. AltaLink submitted that it is clear from both the application and the AESO's information request responses that the application is very much a work-in-progress and was filed prematurely and that given the nature of the application and the context in which it was filed, the application should not be permitted to proceed until additional detail has been filed.

59. Alternatively, AltaLink requested that the Commission suspend further processing of the application until the AESO provides comprehensive responses to all IRs.

60. In response, the AESO maintained that there was sufficient material on the record of the proceeding to continue and that AltaLink's concern about insufficient information appeared to stem from AltaLink's view that the specific terms of the commercial agreements must be known before the Commission can determine that the resulting arrangements are prudent. The AESO submitted that while it described the sorts of provisions that will be included in commercial agreements in its application and in IRs, the actual terms of the agreements will not be established until the AESO implements the competitive process. The AESO argued that the Commission does not have a mandate to determine the prudence of the resulting arrangements and therefore it is not necessary for the actual terms of the agreements to be known. Accordingly, the AESO submitted that the Commission should reinstate a process schedule for this proceeding as soon as possible.

61. IPCAA indicated that it shared AltaLink's concern that key details of the process were not fully developed and therefore would not be subject to review by the Commission. As such, IPCAA submitted that it would support a decision by the Commission to request a refiling of the application by the AESO, with specific attention to the risks associated with the competitive process, the mechanisms for transfer of risks between ratepayers and the bids from alternative suppliers, and the risks associated with successful award of contract to a new transmission provider.

62. ATCO Electric submitted that there was insufficient relevant material on the record to continue the proceeding at this time. ATCO Electric expressed particular concern that the AESO's application and responses to IRs had not provided sufficient analysis, evidence or assurance that all significant issues and risks associated with the AESO's competitive model had been identified and adequately considered.

63. ATCO Electric submitted that AESO statements suggest that it intends to ensure, through a contract, that areas of concern will be addressed or that specific terms and concepts will be fully developed subsequent to the Commission's decision. However, with respect to certain other issues, ATCO Electric submitted that the AESO provided no indication that they will be addressed at all.

64. ATCO Electric noted that it had submitted IRs to the AESO on a number of matters to determine whether key issues had been contemplated by the AESO and to obtain evidence of the AESO's findings in respect of those issues, prior to implementation of the competitive process, including:

- assurance that the risks of integrating non-regulated transmission into a long-standing regulated transmission system had been fully identified and adequately mitigated, including future regulated and non-regulated additions
- analysis demonstrating how the AESO considers that lifecycle costs would be minimized through competitive transmission
- additional detailed on how the AESO expects to monitor, coordinate, and enforce ongoing compliance with respect to safety, engineering, operation, and construction requirements for existing and future facilities
- additional information as to how the AESO planned to measure its stated objectives, and report on progress and success of the undertaking
- relevant AESO research of similar undertakings in other jurisdictions
- information on AESO back-up plans in the event of unintended consequences

65. ATCO Electric submitted that the AESO's responses referred to a narrowly defined mandate to develop a competitive process for qualification and selection of a successful bidder rather than acknowledge the importance of evaluating this proposed change from a much broader perspective. Given the importance of the competitive process to future transmission development, ATCO Electric submitted that the AESO must provide additional information to allow the merits of the application to be assessed.

66. Iccenlux submitted that there was sufficient material on record for the Commission to continue with the assessment of the AESO's competitive process application. Furthermore, Iccenlux submitted that any additional information that the Commission considered necessary could be provided in the context of the proceeding such that suspension would not be required.

67. TransCanada submitted that most of the information necessary to assess whether the AESO's proposed competitive process will result in a fair and open process has already been provided in the AESO's application. However, TransCanada submitted that areas where additional information was necessary include:

- a comprehensive description of, and methodology for determining, the affordability requirement
- standardized criteria for the evaluation of request for qualifications (RFQ) and request for proposal (RFP) submissions, including the financial evaluation of RFP bids
- measures to ensure that compliance with the competitive process prior to, during and upon commercial operations, (including the role of the Fairness Advisor)
- measures to ensure that there is a level playing field for all potential proponents

68. TransCanada suggested that the above-noted matters and any other material issues considered relevant by the Commission should be considered through a technical conference to be held prior to conducting a hearing on the application. TransCanada submitted that the technical conference approach would permit the AESO, stakeholders, and AUC representatives to collectively work together to raise, address and potentially resolve issues and concerns, thereby potentially narrowing the set of issues needing to be determined in the hearing.

Furthermore, TransCanada submitted that holding a technical conference would ensure that the process for approval of the competitive process moves forward without undue delay.

69. NextEra submitted that it would be unreasonable to require the AESO to file detailed information that could only be determined by the AESO in the context of a specific project or only once the development of a specific project is sufficiently advanced. To yield maximum benefits for all stakeholders, NextEra submitted that the AESO must be allowed sufficient discretion and flexibility to apply the generic process to be applied to different projects and different circumstances.

70. LS Power submitted that the competitive process proposed by the AESO is consistent with the requirements of the *Transmission Regulation* and the Commission's rules. LS Power submitted that the Commission should either:

- approve the application based on the information on record
- approve the application only for the Fort McMurray project, while requesting the AESO to file a new application with more detail for future implementation of the competitive process
- require the AESO to quickly file the information that the Commission believes is necessary and enact a procedural schedule that concludes prior to June 2012

71. LS Power noted that the AESO has indicated that there is a need for the Fort McMurray project to be in service by the 2017 timeframe. LS Power submitted that time is of the essence to meet this timeframe. As such, LS Power submitted that the Commission should act quickly in order to allow sufficient time for the implementation of the competitive process prior to development and construction of the needed facilities. Conversely, LS Power expressed concern that a significant delay in the approval of the competitive process may require the AESO to assign the Fort McMurray project to an incumbent transmission owner, thereby denying the benefits of the competitive process to Alberta customers.

Commission findings

72. As noted in Section 3 above, in order to approve a competitive process filed by the AESO, the Commission must be satisfied that matters (such as rates) that the *Transmission Regulation* has excluded from the standard regulatory process in favour of a competitive process actually will have been determined within the transparent competitive process that the Commission has approved. Moreover, any modifications that are required and have not been provided for as part of the approved competitive process, but, rather, are contemplated as part of the competitive package to be negotiated bilaterally and privately between the AESO and the successful proponent, cannot be accepted by the Commission.

73. Having reached this determination, the Commission will not specifically direct the AESO to refile its application. Rather, as further described in the following sections, the AESO and all interested parties will be provided with the opportunity to supplement the evidence currently on the record as they deem necessary having now had the benefit of the Commission's views set out in this decision.

74. The Commission has established a revised schedule which provides an additional deadline by which the AESO could file additional evidence. Subsequent to this, the revised

schedule provides an opportunity for interveners to provide evidence after assessing any supplementary filings by the AESO.

75. The Commission does not agree with the view of TransCanada that the outstanding details of competitive process commercial agreements should be dealt with by way of a technical process rather than within the competitive process proceeding schedule. The Commission considers that TransCanada's proposal for a technical process could unnecessarily delay the Commission's consideration of the application.

5 Competitive process models considered by the AESO

76. In Section 9 of the application, the AESO outlined a final set of objectives it had established for the competitive process following consideration of comments received during the stakeholder consultation process held prior to filing. Specifically, the AESO indicated that it determined that the competitive process:

- (a) must result in the minimization of life-cycle costs through the use of competitive pricing
- (b) must create opportunity for maximum innovation throughout the life cycle of the facilities
- (c) must create opportunity for new market entry
- (d) must allocate risk to most efficiently and effectively reduce costs and mitigate risk
- (e) must foster efficient investment, operation and maintenance of assets across the life cycle of the facilities
- (f) must foster regulatory predictability
- (g) must be straightforward and efficient
- (h) must clearly state the accountabilities of each party involved
- (i) must achieve a reasonable level of transparency and consistency over time
- (j) must ensure the facilities are designed to meet standards for performance and reliability and do not jeopardize the Alberta interconnected electric system
- (k) must be fair, open and consultative
- (l) must consider obligations typically assumed by the incumbent transmission facility owner
- (m) must provide transparent selection criteria to address the principles outlined above

77. In its response to IR AltaLink.AESO-022,¹⁵ the AESO indicated that it had not endeavored to assign weightings or rank this list of competitive process objectives.

78. With these objectives in mind, the AESO considered three possible models in developing the competitive process for critical transmission infrastructure projects.

79. The three models assessed by the AESO were:

1. The Engineering, Procurement and Construction Model (AESO EPC) – under this model, the successful proponent is responsible for the upfront development work, engineering, procurement, construction management, and financing of all of those activities. Upon energization of facilities, the successful proponent transfers ownership of the facilities to

¹⁵ Exhibit 30.01, page 25.

- the incumbent TFO who maintains and operates the facilities through to decommissioning of the facilities.
2. The Transmission Facility Owner Engineering, Procurement and Construction Model (TFO EPC) – under this model the AESO would direct assign a transmission project to the incumbent TFO. The incumbent TFO would be responsible for all upfront development work and would own, operate and maintain the facilities from energization through to decommissioning. Only the engineering, procurement, and construction management components of a transmission project would be subject to a competitive process.
 3. The Single Owner Model (AESO OWN) – under this model the successful proponent would own the facilities and would be responsible for all project activities including the upfront development work, engineering, procurement, construction management, financing, as well as operation and maintenance of the facilities.
80. The method used by the AESO to select a competitive model involved a number of steps:
1. The AESO articulated objectives, principles and goals to guide the development of a fair and open competitive process and initially identified two models (models AESO EPC and AESO OWN) that were intended to provide a reasonable balance between high-level uniformity in the regulatory requirements, long-term operational consistency and reduced lifecycle costs.¹⁶
 2. The AESO explained that while other options may exist, the two models identified were intended to form bookends of competitive models that would allow for the injection of competitive pressures in developing critical transmission infrastructure.¹⁷ The AESO subsequently added the third model (TFO EPC) in response to stakeholder input.
 3. A review of the current transmission market was undertaken to determine which key design features were needed in a competitive model in order to effect change, both in terms of creating opportunities for new entrants and to move away from price making through cost of service rate making and towards price takers as seen in competitive markets.¹⁸
 4. The AESO retained Power Advisory LLC to review the competitive procurement activities for electric transmission industry in other jurisdictions. The study, *Review of Experience with Competitive Procurement for Transmission Facilities*, December 14, 2010, examined the experience in Texas, Ontario, Brazil and the United Kingdom.¹⁹

¹⁶ Alberta Electric System Operator, Discussion Paper: Competitive Procurement Process for Critical Transmission Infrastructure, September 17, 2010, Section 2.2, page 6.

¹⁷ Ibid., Section 3.4, page 12.

¹⁸ Alberta Electric System Operator, Competitive Process for Critical Transmission Infrastructure: Draft Recommendation Paper, March 31, 2011, Section 3.4.4, page 16.

¹⁹ Ibid., Appendix B.

5. The AESO consulted with stakeholders and sought comments regarding additional alternatives, including associated advantages and disadvantages of each competitive model.
6. Selection of a preferred model was based on an assessment of the three models (AES EPC, TFO EPC and AESO OWN) against the objectives that were established by the AESO in consultation with stakeholders.

81. The AESO determined that the AESO OWN model provided the best fit with the goals and objectives established for the process because, in its view, this model allows for entry of a new market participant (new transmission facility owner) who will have responsibilities and accountabilities largely similar to those of an incumbent transmission facility owner. With the AESO OWN model, the AESO submitted that the successful proponent will have the ability to innovate across all aspects of the project, including financial innovation. It will also have the ability to optimize costs across the life cycle of the asset particularly if predictable pricing is applied to various project components.

82. The AESO rejected the AESO EPC model because it only allowed for new entry into specific components of the transmission project – engineering, procurement and construction management. It was determined that while cost efficiencies could be achieved in the development and construction of a transmission project, no cost efficiencies would be realized over the lifecycle of the transmission facility as it is transferred, once construction is complete, to the incumbent transmission facility owner, which would be responsible for operating and maintaining the facility.

83. The AESO rejected the TFO EPC model because it considered that the model did not meet the requirements of the *Transmission Regulation* and therefore could not be considered. The AESO reasoned that because the facility would involve a direct assign by the AESO to the incumbent transmission facility owner, the requirement under the *Transmission Regulation* that the determination of the person who is eligible to apply for the construction, operation or both of a CTI project must be based on the competitive process would not be met.

Commission findings

84. The Commission has reviewed the objectives identified by the AESO. Within this list, the Commission recognizes that certain objectives are mandatory, such as (j), while others, such as (b), are not. As such, all objectives would not have equal weighting. As well, it is possible that not all objectives can be achieved, and in some instances, may be in conflict.

85. The Commission would like to hear from the AESO and parties which objectives they consider to be mandatory or most important, and where certain objectives may be in conflict with others, proposed approaches to minimize the impact of these conflicts.

AESO OWN model

86. In its process suspension letter dated December 2, 2011, the Commission requested that parties provide comment on whether the alternative models that were not developed by the AESO or presented in the application should be considered in addition to the AESO's proposed model. In response, the AESO stated that the Single Owner Model was selected as the basis for the competitive process after extensive stakeholder consultation and any intervener wanting to

advocate a different model could have filed evidence doing so by the November 29, 2011 deadline which no intervener had.

87. A review of the comments provided by stakeholders in response to the AESO's Competitive Procurement Process Discussion Paper and its Competitive Process for Critical Transmission Infrastructure Draft Recommendation Paper reveals that a number of parties put forward suggestions to refine the AESO OWN model. The refinements to the AESO OWN model put forward by parties include:

- ABB Inc. submitted that the “AESO may want to consider an additional alternative to either the “Own” or “EPC” alternatives. An additional option may be a hybrid of the “Own” and “EPC” options – similar to the EPC options except that the transfer would be to any qualified new or incumbent TFO.”²⁰
- Brookfield Asset Management Inc. (Brookfield) recommended that “By extension of the Own Alternative, we recommend that the selected proponent be licensed as a TFO and as such have all the rights and obligations as the existing incumbents in the Province. This avoids extensive changes to the underlying regulatory framework.”²¹

Brookfield further submitted that “We don't see the need for a specific CTI contract. Once selected, the proponent (if a new entrant) applies for TFO status and this has all the obligations of the incumbent TFOs in the development, construction and regulatory approval requirements for the CTI.”²²

- EPCOR submitted that it “has an overriding concern that, structured poorly, both processes could result in higher costs compared to what we have today. In particular, our concern is with any process that requires a binding, up-front bid, before sufficient engineering and siting work has been carried out for bidders to have a good understanding of what they are bidding on. In our view, this may only serve to drive up costs as bidders will almost certainly add higher contingencies to account for design and cost risk that is present until sufficient design and siting work has been completed. It may make more sense to divide the process in two with an upfront design and siting component that could be performed by either the incumbent TFO or under a competitive contract. Once sufficient engineering and siting work has been completed a reasonably specific bid package for final design, procurement, construction and operation could be put to bid.”²³
- LS Power submitted that “However, in our opinion, requiring a developer to provide fixed or predictable pricing for operation and maintenance expenses over such a long term will not be in the interest of ratepayers. An alternative method for handling operation and maintenance expenses is to request fixed pricing for an initial period (5 years for example) followed by cost based pricing or indexed unit price methodology for the remainder of the contract term.”²⁴
- NextEra Energy Canada submitted that “NextEra Energy Canada submits that a competitive bid, cost of service model would be effective for Alberta transmission

²⁰ Stakeholder Comment Matrix, September 17, 2010, page 6.

²¹ Stakeholder Comment Matrix, September 17, 2010, page 4.

²² Stakeholder Comment Matrix, September 17, 2010, page 8.

²³ Stakeholder Comment Matrix, September 17, 2010

²⁴ Stakeholder Comment Matrix, March 31, 2011, page 6.

development. NextEra Energy Canada understands that AESO is looking for alternatives to the cost of service model; however, unless the risk is appropriately balanced in the cost recovery/pricing arrangements, the ratepayers will ultimately pay for the risk premium that proponents will build into their bids.”²⁵

NextEra Energy Canada submitted that “NextEra Energy Canada believes that a competitive process is viable using traditional cost of service or performance based regulation (PBR). AESO could consider using PBR where there are fixed price estimates for all components of the project but profits would depend on the extent to which the actual costs are less than the estimate. This is a flexible model that could be used to incent proponents to control their costs under a cost of service model. This would result in less risk to the ratepayer.”²⁶

“Another model that AESO could consider is one proposed by the Ontario Energy Board (OEB). The OEB has proposed a two stage process that lends itself to giving both the regulator and the proponent greater certainty with respect to project costs.” In the Ontario model, the process has effectively been divided into two parts; first the development of a given project, and second the construction, ownership and operations and maintenance of the project. ... Upon completion of the development stage, the proponent can request approval to continue with construction. At this point, there is certainty regarding the project’s route and more certainty of the expected project cost therefore a proponent could be better prepared to abide by a fixed price project budget.”²⁷

88. The Commission has considered the comments submitted by stakeholders and agrees that while it is more straight-forward to establish a competitive process for the construction function, the operations function would be subject to far greater uncertainty. As a number of stakeholders have indicated, under the AESO OWN model, transmission developers are effectively being asked to bid a fixed price and guarantee a schedule for an incompletely specified transmission facility to be built at an unknown time in the future. Once it is built, the successful proponent will be required to operate it for forty years and must respond to future requirements such as changing performance requirements and changing standards (e.g., reliability, safety, functional design).

89. As stated previously, a competitive process that includes an after-the-fact private bilateral negotiation to determine any changes to arrangements which may be necessary during the life of the project could not be approved by the Commission, because such a process would not be open and transparent nor would it be the result of competitive forces and therefore would not comply with the provisions of the *Transmission Regulation*. In the Commission’s view, in order to approve a competitive process filed by the AESO, the Commission must be satisfied that matters that the *Transmission Regulation* has excluded from the standard regulatory process in favour of a competitive process actually will have been determined by competitive market forces in the competitive process that the Commission has approved.

90. Accordingly, the AESO OWN model must be redesigned to remove any after-the-fact negotiations. The Commission however notes that the proposed use of a formula or similar type mechanism within the AESO OWN model could satisfy this requirement.

²⁵ Stakeholder Comment Matrix, March 31, 2011, page 2.

²⁶ Stakeholder Comment Matrix, March 31, 2011, pages 2-3.

²⁷ Stakeholder Comment Matrix, March 31, 2011, pages 3-4.

91. The Commission considers that restructuring the AESO OWN model in this fashion would be responsive to the concerns expressed by stakeholders in that it may serve to mitigate uncertainties faced by prospective proponents and, in turn, minimize the extent of risk premiums contained in bids and allow for determination of these matters in a transparent manner.

92. Further, the Commission considers that these types of refinements to the AESO OWN model would not preclude the achievement of the objectives that the AESO has established, or any particular weighting of the objectives.

TFO EPC model

93. In its letter of December 19, 2011, AltaLink indicated that the AESO's application fails to properly consider the TFO EPC model because it concluded that the only competitive process that is consistent with Section 24.2(2) of the *Transmission Regulation* is a competitive process that determines the person eligible for both the construction and operation of transmission facilities referred to in Section 24(3)(a), (c) and (d). AltaLink submitted that Section 24.2(2) of the *Transmission Regulation* reads as follows:

(2) The ISO must develop a competitive process to determine the person who is eligible to apply for the construction or operation, or both of the transmission facilities referred to in section 24(3)(a), (c) and (d). [Emphasis added.]

94. AltaLink submitted that the TFO EPC model is a competitive process for the determination of the person eligible to apply for the construction of transmission facilities referred to in Section 24(3)(a), (c) and (d) of the *Transmission Regulation* and that Section 24.2(2) of the *Transmission Regulation* does not require that both the operation and construction be provided for through the competitive process.

95. In its letter of December 19, 2011, ATCO Electric indicated that it had proposed a model entitled, EPCM/EPC Managed by TFO as an alternative to the AESO OWN and AESO EPC models. ATCO Electric indicated that the AESO had rejected this model as it did not meet the AESO's stated objectives of creating opportunity for new market entry, and did not best meet goals of minimizing lifecycle costs, creating opportunity for maximum innovation, allocating risks most efficiently and fostering efficient investment, although no specific analysis was presented. ATCO Electric also noted that the AESO had determined that ATCO Electric's suggested model could not be considered as it did not meet the *Transmission Regulation* requirement that determination of the person eligible to apply for the construction, operation, or both, of a CTI facility be based on the competitive process.

96. The Commission considers that developing separate models that only consider construction or operation functions would not be precluded under Section 24.2(2) of the *Transmission Regulation*. However, the legislative scheme does not envision a hybrid model in which eligibility for one of the functions is determined through a competitive process while eligibility for the remaining function is determined based on geographic service territories (direct assigned) or by the Minister. A plain reading of the section, and in particular, the use of the conjunction "or" between "construction" and "operation" provides the AESO with the choice of developing a competitive process for each of construction or operation or with the choice of developing a single competitive process for both; however, a competitive process must determine the successful proponent for both functions.

97. Given the above, the Commission would welcome any additional evidence from the AESO or any other party that would assist the Commission in determining whether alternative models, such as the creation of two separate competitive processes, one for each function, should be considered.

6 Pro forma agreements and key terms

98. The AESO stated that its implementation of the competitive process for a proposed transmission facility will require it to establish the commercial arrangements for the construction and operation of the facility by the successful proponent in the competitive process. The AESO indicated that it expects to be involved in negotiations to establish final commercial arrangements with the proponents that participate in a competitive process for a proposed facility.

99. In particular, the AESO noted that at the RFP stage, it expects that the three short-listed proponents will have two opportunities to review and comment on the commercial arrangement provisions prior to the bid submission date. The AESO submitted that to ensure that the arrangements it makes with proponents achieve the objectives of the competitive process, it requires the flexibility to change the commercial arrangements as necessary to reflect the outcome of commercial negotiations. Conversely, the AESO submitted that requiring Commission approval of the resulting arrangements would run contrary to the legislative objective to have these arrangements determined by the outcome of the competition.

100. AltaLink submitted that because the AESO's competitive process application and evidence has not disclosed details of key terms and concepts, there is no basis for parties to be assured that the competitive process will work as expected or achieve the desired outcomes. In consideration of the above, AltaLink submitted that the AESO should provide the key terms of the various agreements and arrangements associated with the competitive proposal, including a description of the AESO's rationale for adopting such key terms.

101. TransCanada submitted that the definition of key terms within the application and in information request responses was sufficient for the Commission to determine whether the application will result in a fair and open competitive process.

102. While acknowledging the value of having more details about competitive process commercial agreements, TransCanada submitted it is not necessary to provide additional detail at the level suggested by AltaLink at the current stage in the development of the AESO's proposed competitive process. TransCanada submitted that there will always be commercial terms and issues that are appropriately amended much further in the process, in regard to matters such as:

- termination rights and obligations
- incentive payments
- change orders, adjustments and approval processes for such changes
- assignment provisions
- force majeure and relief clauses
- dispute mechanisms
- detailed descriptions of the roles and responsibilities
- descriptions and amounts of security requirements

103. TransCanada submitted that defining terms and conditions to the degree sought by AltaLink is not consistent with industry standards and could result in significant delay.²⁸ TransCanada submitted that the Commission does not need to approve the details of the commercial agreements. Furthermore, TransCanada submitted that the AESO ought to have the flexibility to refine terms that may significantly impact the successful outcome of the competitive process, without having to seek re-approval from the Commission, since such a requirement could lead to inefficiencies inconsistent with the objectives of the competitive process. TransCanada submitted that Commission approval of significantly more detailed, finalized agreements could constrain the AESO from exercising its discretion to create workable terms and conditions in a commercial arrangement.

104. Having regard for its general view that an approved generic process should apply to multiple projects to be administered at the AESO's discretion, NextEra submitted that the additional information which would be of greatest assistance in reviewing the application, and which should be included by the AESO as part of any supplemental information it may file, are the forms of agreement or key terms for each of the main agreements contemplated by the proposed competitive process, namely the Proponent Agreement, Project Development Agreement and Project Agreement. NextEra submitted that while it generally considers that implementation of the competitive process should not be delayed beyond the planned start date of June 2012, a minor delay would be acceptable if needed for purposes of allowing the AESO sufficient time to prepare and file these forms of agreement.

105. The UCA submitted that while it appreciates the AESO's efforts to provide its conception of a competitive process that can be deemed as sufficient under the *Transmission Regulation*, the UCA submitted that there is not sufficient information on the record at this stage. In particular, the UCA submitted that without fully knowing what is included in the pro forma contract, an option may be to provide the pro forma contracts which would form part of the competitive process and, thus, part of the filing.

Commission findings

106. The central debate among the parties relates to the degree to which contract terms should be specified in pro forma commercial arrangements that will be available for discussion in this proceeding or alternatively left for bilateral negotiations after a competitive process has been approved.

107. As discussed in Section 3 above, the Commission cannot approve a competitive process that contemplates the reliance on bilateral negotiations between the AESO and the successful bidder of substantive changes to arrangements because these changes would be neither open and transparent nor would they be determined by competitive market forces.

108. In describing its preferred AESO OWN model, the AESO discussed risk considerations and indicated that predictable pricing in the tender process is most successful when projects are well defined and that project uncertainty results in risk premiums being added to bidder pricing. The Commission agrees that uncertainty will result in risk premiums being added to bidder pricing. However, bidders must also consider the risk that if they build too high of a premium into their bid price, they may not be selected.

²⁸ Exhibit 33, AltaLink evidence, page 4 of 6.

109. As stated in Section 3 of this decision, the principal elements that must be satisfied in order to comply with the requirements of the *Transmission Regulation* are:

- the TFO must comply with the duties and obligations found in Section 39 of the *Electric Utilities Act* and
- the competitive process cannot include or rely on after-the-fact bilateral negotiations.

110. Apart from this, the AESO is free to develop whatever key terms and conditions it considers necessary in order to ensure a robust, open and transparent bidding process.

111. The Commission acknowledges the concern of TransCanada that the clarification of terms and conditions could result in delay, however this concern does not override the Commission's finding above that it is not consistent with the legislative framework for the competitive process that key terms of a long term arrangement would be negotiated bilaterally outside of the competitive process.

7 Other issues

112. AltaLink provided a list of elements of the application that, in its view, the Commission should direct the AESO to refile.²⁹ A number of submissions filed in response commented on the need for additional information about several additional aspects of the AESO's competitive process application not dealt with in other sections of this decision.

113. The Commission has grouped submissions commenting on the need for additional information as follows:

- comments related to the competitive process framework devised by the AESO (competitive process issues)
- comments related to the activities involved in determining the location and specification of the project to ultimately be built following the conclusion of the competitive process (project definition)
- comments related to the construction and subsequent operation of facilities built pursuant to a competitive process (construction and operation matters)

114. In the subsections that follow, the Commission provides its preliminary comments on the issues identified by parties to assist the AESO and parties in determining whether they need to file additional evidence.

7.1 Competitive process issues

7.1.1 Selection criteria

115. AltaLink submitted that the AESO should provide:

- a comprehensive description of the selection criteria and weightings for RFQ and RFP evaluations, including descriptions of the methodology, rationale, and underlying parameters and assumptions used by the AESO to devise the selection criteria and associated weightings

²⁹ Exhibit 33, AltaLink evidence, paragraph 12.

- copies of any studies or analysis it undertook to devise its proposed selection criteria, including a discussion of any alternatives to the proposed selection criteria that were considered³⁰

116. TransCanada submitted that the AESO should provide additional information on how individual competitive process submissions will be selected, including, in particular, a more thorough description of the selection criteria and weightings the AESO expects to use for its RFQ and RFP evaluations, and should clearly establish how individual submissions will be assessed against these criteria within each category.

Commission findings

117. The AESO has set out the basic mechanics of its proposed competitive process, consisting of a request for expression of interest (REI) stage, a request for qualifications (RFQ) stage, and the request for proposals (RFP) stage in Section 7 of the application. The Commission considers the AESO's general approach to be relatively straightforward.

118. Based on the Commission's initial review of record on this proceeding, the Commission considers that the AESO has been reasonably clear in setting out the assessment criteria it currently expects to apply to RFQ and RFP submissions. In particular, the Commission observes that in Appendix E to the AESO's June 1, 2011 recommendation paper,³¹ the AESO provides a matrix describing the primary criteria by which it currently intends to evaluate RFQ responses, including a description of the high-level rationale for each criterion identified and the currently proposed weighting.

119. While parties may file evidence and argument on selection criteria during the balance of the current proceeding, the Commission considers that there is no basis to specifically direct or recommend that the AESO supplement its evidence on selection criteria at this time.

7.1.2 Conflicts of interest

120. EPCOR noted that while the AESO deals with potential conflicts of interest in its application, because it may wish to form consortiums to participate in the competitive process, it would be useful at an early stage of the current process to specify how conflicts of interest will be assessed by the AESO.

Commission findings

121. The Commission considers that the AESO has provided a relatively clear statement as to how it would expect to determine whether a prospective participant should be excluded from a future competitive process in its response to IR AUC.AESO-007.³² This response is reproduced, in part, below:

The AESO anticipates that parties who participated in the development, monitoring, evaluation or implementation of the competitive process would be prohibited from participating in the bidding process as an individual entity, or as part of a consortium.

³⁰ Exhibit 33, AltaLink evidence, page 4 of 6.

³¹ Exhibit 27.01.

³² Exhibit 27.01.

122. Apart from the above-noted conflict, the Commission is not aware of any other criteria that the AESO currently expects to apply to restrict participation in a future competitive process.

123. The Commission interprets EPCOR's primary concern as wanting to know what is and is not acceptable in advance in order to assess different options for participating in a future competitive process. In the Commission's view, absent evidence to the contrary, EPCOR could, if necessary, seek the AESO's advice as to the acceptability of specific participants in a future competitive process bid team before committing significant resources to a person or organization.

124. However, the Commission is interested in further exploring the concept raised in EPCOR's submission that consortiums could be formed for the purpose of participating in specific future competitive processes. The Commission would be interested in receiving additional evidence related to the potential use of consortiums in future competitive processes and to what extent the AESO may wish to entertain the use of consortiums in this competitive process. In particular, the Commission is interested in understanding under what conditions consortium participation would not be acceptable, particularly in view of AESO objective (c), namely, creating an opportunity for new market entrants .

7.1.3 Financial security

125. AltaLink submitted that the AESO should provide comprehensive descriptions of the amount of, and rationale for, each type of security it proposes to require from participants in its proposed competitive process.

Commission findings

126. While AltaLink was the only party to specifically raise financial security as a concern, the Commission observes several parties requested that the AESO clarify its intentions with respect to financial security requirements in their IRs.

127. Based on the Commission's review of these IRs and the AESO's responses to these questions, the Commission understands that the AESO has generally proposed to apply security requirements to competitive process participants to help assure that participants that are selected to proceed to subsequent stages of its proposed process are incented to follow through.

128. The Commission further understands that some parties are concerned that if set too high, financial security requirements may act as a disincentive to participating in competitive processes.

129. As with many aspects of the AESO's competitive process proposals, the Commission considers that its decisions regarding the need, level and conditions under which financial security is required must be balanced with consideration about the potential for security requirements to impact participation and thus competitive pressures. The Commission considers that the AESO is well positioned and qualified to make this determination while ensuring that there are no unreasonable barriers to entry.

130. Notwithstanding, the Commission would be interested in receiving any additional evidence from the AESO or any other party that would assist the Commission in determining how such balance may best be achieved.

7.1.4 Honoraria

131. EPCOR submitted that the competitive process should outline how the AESO will weigh the factors used to determine honoraria, so that prospective competitive process participants will have a better sense of what honorarium levels can be expected.

Commission findings

132. While certain parties have expressed concern that honoraria should be known for the benefit of proponents interested in participating in future competitive processes, it is not clear to the Commission that awareness of honoraria offered is a concern at this time.

133. For the purposes of the current proceeding, Commission considers that its primary role is to consider the trade-off between the cost of making honoraria available to participants in future competitive processes, and the impact that offering honoraria can be expected to have on the level of participation in competitive processes.

134. In this regard, while certain interveners have expressed concerns about the need for honoraria in light of the cost they expect to incur in preparing submissions for future competitive processes in their submissions or IRs, the Commission has limited information on the anticipated cost of preparing RFQ and RFP submissions.

135. As such, the Commission invites parties having such concerns to assist the Commission's understanding about the costs associated with competitive process participation by filing evidence that would help the Commission to understand the expected cost of preparing RFQ and RFP submissions, and how an honorarium would be expected to impact the decision to participate in a future competitive process.

7.1.5 Affordability requirement

136. AltaLink submitted that the AESO should provide a comprehensive description of its proposed affordability requirement, including the rationale and methodology used to develop the requirement, underlying parameters and assumptions, and any alternatives considered.

137. AltaLink noted that a number of parties asked the AESO to define its conception of the affordability requirement. However, AltaLink noted that while the AESO stated that affordability is a concept used in the context of public-private partnerships,³³ it failed to provide detail with respect to the principle and methodology for determining affordability.³⁴ Given that the AESO expects the Commission to have no approval role once the process itself is approved, and that the AESO is applying for a process that provides the AESO with a great deal of flexibility, AltaLink submitted that the affordability requirement will play a critical role in ensuring that the new process will lead to life cycle cost minimization and will not result in unreasonable costs to consumers.

138. EPCOR submitted that the AESO's application should provide detail as to the mechanism or formula by which the affordability requirement will be determined for any project. EPCOR further submitted that any RFP issued under this process should then include the calculated affordability requirement, so that potential bidders can determine commercial viability of participating in the process in advance of committing resources.

³³ AUC.AESO-023.

³⁴ AltaLink.AESO-011, UCA.AESO-002 and AE.AESO-010.

139. TransCanada indicated that it sought additional information on the AESO's proposed affordability requirement. TransCanada noted that the AESO will use the affordability requirement to determine whether the competitive process results are acceptable from a cost perspective. As such, TransCanada submitted that transparency in the manner and assumptions under which this cost estimate will be developed is necessary to ensure an open process. TransCanada submitted that the AESO will need to identify how the transfer of risk from rate payers to shareholders is incorporated into the affordability requirement, so that the AESO's contemplated affordability requirement establishes an appropriate "ceiling price" under a different risk allocation approach.

Commission findings

140. The affordability requirement as applied to the AESO's proposed competitive process is referenced in Clause 4(b) of the AESO's proposed RFP outline,³⁵ reproduced below:

- (b) **Affordability Requirements and Baseline Modeling** – The AESO may describe:
 - (i) an affordability requirement for a Project, such requirement being an amount determined as the maximum acceptable net present value of such Project; and
 - (ii) how the affordability requirement is determined.

141. The AESO was asked to describe the purpose of the affordability requirement and provide a sample calculation illustrating its application to a specific project in IR AUC.AESO-023. The AESO's response is provided below:

Affordability is a concept that is used in public-private partnership projects to establish a "budget" or a "not to exceed" amount for a project. In some instances this budget amount is also supplemented by a scope ladder with prioritized items that can be added or deducted from the scope of work in order to meet the budget. This allows bidders to bid the maximum scope of work or deliverables for a given budget. The affordability requirement will also allow the AESO to determine if the scope of a project needs to be revisited.

142. In IR AltaLink.AESO.011,³⁶ the AESO was requested to define the term "affordability requirement" and explain how it proposed to determine the amount. In its response, the AESO indicated that both the definition and determination of the affordability requirement were under development.

143. The submission of EPCOR appears to be concerned with the disclosure of how the AESO expects to apply its affordability requirement to specific projects in advance so that it can better assess potential outcomes of a competitive process before committing resources to the preparation of a bid. TransCanada's comments regarding the need for transparency to ensure an open process appear to be motivated by the same concern.

³⁵ Application, Schedule 3.

³⁶ Exhibit 30.01.

144. Section 24.2(1) of the *Transmission Regulation*, authorizes the AESO to determine whether a party is qualified under the competitive process that has been approved by the Commission. The Commission considers that as part of its determination as to whether a party is qualified, the AESO can apply an affordability requirement to allow it to determine if the scope of a project needs to be revisited if it determines that all bids received are unaffordable and therefore no person is qualified to apply for the construction or operation, or both, of CTI.

145. Nonetheless, the AESO's response to IR AUC.AESO-023 is incomplete, as the AESO did not provide the illustrative example calculation requested. The Commission similarly finds the AESO's response to AltaLink.AESO-011 to be unhelpful. The Commission would be interested in further information from the AESO regarding the use and calculation of the affordability requirement in the context of its proposed competitive process.

146. The AESO also acknowledged that implementation of the AESO OWN model will require additional AESO resources to implement the competitive process, including expert panel members for the evaluation stages, four additional staff to be hired, an owner's engineer capability, and potentially a third-party capability for field-based monitoring. Other costs identified were:

- The potential cost for an independent third-party to carry out condition inspections.³⁷
- The potential cost for a third-party to perform quality assurance inspections.³⁸
- The cost for an independent third-party to advise the AESO with respect to assessing the successful proponent's operations and maintenance plans. This will be undertaken as part of the evaluation process as well as on an ongoing basis for the life of the project.³⁹

147. The Commission considers that any expected incremental costs as a result of specific bid arrangements should be accounted for in any affordability assessments conducted by the AESO when it is evaluating or assessing bids from proponents.

148. The Commission would be interested in receiving any additional evidence from the AESO or any other party to address this matter.

7.1.6 Competitive process compliance monitoring

149. AltaLink submitted that the AESO should provide a comprehensive description of the manner in which the AESO will demonstrate that it has complied with any competitive process approved by the Commission at the conclusion of each project. AltaLink submitted that the compliance procedures should be transparent, and that the AESO should be required to explain the consequences in the event that compliance cannot be demonstrated.

150. TransCanada submitted that additional information should be provided regarding measures to ensure that compliance with the competitive process prior to, during and upon commercial operations. In particular, TransCanada submitted that the Independent Fairness Advisor proposed by the AESO would have a critical role in ensuring and demonstrating that the AESO has complied with the approved competitive process. More generally, TransCanada submitted that the AESO should refine the manner by which it will demonstrate compliance at

³⁷ Exhibit 27.01, AUC-AESO-013(c).

³⁸ Ibid., AUC-AESO-017(c).

³⁹ Ibid., AUC-AESO-028(a).

different stages of a project, including during the RFQ and RFP stages, and upon execution of project agreements.

Commission findings

151. The Commission invites the AESO and other parties to address this matter, in determining whether to file or supplement their evidence within the current proceeding.

7.1.7 Land access issues

152. EPCOR submitted that the application should provide information on the manner in which the AESO will lead proponent activities related to consultation or due diligence activities involving land access issues. In particular, EPCOR submitted that the AESO should provide a list of route development activities that prospective competitive process participants should rely on the AESO to lead as they develop their RFP responses. If these activities do not include stakeholder consultation, siting, geotechnical and environmental activities, the AESO should specify whether or not proponents can undertake these activities in a manner that the proponents deem to be prudent.

153. IPCAA submitted that the AESO should consider matters such as the coordination of rights-of-way and other related activities by a third-party to the bid process, to avoid duplicate efforts and unnecessary costs.

154. TransCanada and EPCOR have also pointed out that the AESO OWN model imposes an additional burden on landowners. TransCanada submitted that the AESO needs to address impacts on landowners from having multiple companies all having been deemed qualified bidders, approaching landowners and consulting with stakeholders during the development phase. EPCOR submitted that the AESO's proposal is clear that participants are each responsible to conduct their own due diligence activities and that some siting information must be collected by proponents to make meaningful submissions under the competitive process. EPCOR submitted that, from a societal perspective, multiple parties carrying out the same work is inefficient.

Commission findings

155. The AESO addressed this concern to some extent in response to an interrogatory.⁴⁰ The AESO stated that where due diligence activities require access to land or consultations with stakeholders with land interests, the AESO will work with the proponents to co-ordinate their activities, with a view to achieving efficiencies and to minimizing impacts and disruption. However, the AESO does not propose to conduct due diligence activities itself.

156. It has been the Commission's experience that consultation with landowners and the examination of potential routes when there is only one proponent can be disruptive for landowners. All efforts should be made to minimize the impact of multiple consultation activities on landowners.

157. It is not clear to the Commission what role the AESO will play in the coordination of activities or the extent to which this role will mitigate impacts and disruptions to landowners and further information would be of assistance. The Commission considers that further clarification

⁴⁰ Exhibit 27.01, AUC-AESO-010(a).

and information from the AESO on these matters would assist interested parties and the Commission.

158. Notwithstanding, all applicants must comply with AUC Rule 007: *Rules Respecting Applications for Power Plants, Substations, Transmission Lines, and Industrial System Designations*, respecting consultation with landowners and local jurisdictions (e.g., municipal districts, counties).

7.2 Construction and operation of competitively procured transmission facilities

159. Issues dealt with in this section pertain to the implementation phase of projects to be constructed as a result of a competitive process. The following issues were raised by parties and are discussed under separate subheadings:

- level playing field/cross-subsidy concerns
- construction operation and maintenance
- assurance of safe and reliable operation
- provisions of the AESO's proposed competitive process agreement outlines that deal with supervening events and dispute resolution provisions relating thereto
- end of term provisions
- incentive payments

7.2.1 Level playing field/cross-subsidy concerns

160. EPCOR submitted that the competitive procurement process should address and resolve any cross-subsidy or "level playing field" competitive issues arising from the potential that incumbent TFOs may participate in the competitive process. If incumbent TFOs are expected to adopt any special or unique procedures to mitigate such potential concerns, EPCOR submitted that such procedures should be clearly outlined as part of the competitive process.

161. TransCanada noted that in its March 2011 draft recommendation paper, the AESO indicated that it would consider "the inherent competitive circumstances held by potential bidders including circumstances related to cost recovery methods, taxes, subsidies or financing, and whether any necessary provisions are required in the process or the RFQ/RFP documents to address such circumstances."⁴¹ However, TransCanada submitted that as of yet, the AESO has provided very little information as to how it intends to address concerns to ensure that no competitive advantage exists.

Commission findings

162. While the level playing field issue appears to have been raised primarily from the standpoint of potential competitors to incumbent TFOs, the Commission is also concerned about the need to protect TFO rate payers.

163. If an incumbent TFO were to be selected to construct, operate, or own a new transmission facility through the competitive process, the inclusion of forecast costs under the traditional cost of service tariffs of incumbent TFOs could enable incumbent TFO's to cross-subsidize their participation in future competitive processes.

⁴¹ Exhibit 27.04, Section 4.5.2, AESO Response, March 31, 2011 Draft Recommendation Paper.

164. The Commission considers that these matters can be addressed in the context of a general tariff application for a TFO that has both direct assigned and competitively procured transmission facilities and the Commission invites parties to provide any additional evidence as to why this matter cannot be dealt with in this manner.

7.2.2 Construction, operation and maintenance of competitively procured facilities

165. AltaLink submitted that the AESO should provide a detailed description of the roles and responsibilities of each of the AESO, the Commission, and the successful proponent (and TFO if the ultimate owner is different than the successful proponent) in ensuring that transmission facilities constructed under the competitive process are constructed, owned, operated and maintained safely, reliably, efficiently and cost effectively in the public interest:

- at the time they are placed into service
- during the full term of the arrangement to ensure appropriate levels of routine maintenance, and response to unexpected events, unplanned maintenance, new standards, et cetera
- at the conclusion of the arrangement, including such issues as decommissioning, renewal and any transfer of ownership

Commission findings

166. With respect to the issues raised by AltaLink, the Commission has no specific concerns at this time about the AESO's ability to set out the functional specifications of competitively procured transmission facilities or about the AESO's ability to ensure that competitively procured facilities are ultimately built to such specifications.

167. The Commission considers that there is a basis for further investigation during the competitive process proceeding to ensure that successful proponents can be expected to maintain installed assets on an optimal basis over their life cycles.

168. Under the standard regulatory framework, incumbent TFOs are subject to an ongoing duty to conduct themselves prudently in respect of all aspects of their operations. As such, the incumbent TFOs bear an ever present risk that decisions they make in regards to capital maintenance may be judged by the Commission to have been imprudent, with the consequence that expenditures judged to have been made imprudently, may be disallowed. Activities related to the inspection and to support decisions to undertake asset replacements or upgrades represent significant components of the revenue requirements of incumbent TFOs.

169. Whereas incumbent TFOs are generally assumed to operate transmission facilities on an ongoing basis, the AESO's competitive process framework contemplates arrangements with a fixed term. In contrast, because the competitive process arrangements contemplated in the application tie successful proponents emerging from future competitive processes primarily to a fixed compensation regime, the Commission considers that there is a need to take into account the fact that successful proponents operating under this type of arrangement have a fundamental incentive under fixed compensation regimes to minimize costs.

170. Accordingly, the Commission considers that successful proponents may have an underlying incentive to adopt a "going out of business" strategy to their capital maintenance decision making resulting in sub-optimal maintenance practices. The establishment of optimal

end of contract term asset condition standards, effective end of term inspections, and an effective system of rewards and/or penalties is important.

171. The inspection function contemplated in the AESO's proposed framework therefore plays a critical role, insofar as the establishment of asset condition standards, inspections against those standards, and the prospect of penalties for failing to meet agreed upon standards must work together to incent successful proponents to make prudent investments.

172. The AESO's proposal which identifies the basic need for an inspection function provides little or no information on what criteria and tests will be applied, what resources will be required to conduct this function effectively, or what such resources will cost.

173. The Commission would be interested in the merits of implementing different arrangements, including arrangements that do not include a fixed term, but rather require the proponent to provide ongoing transmission services in a manner similar to existing TFOs.

7.2.3 Safe and reliable operation

174. AltaLink submitted that the AESO should provide a comprehensive analysis that demonstrates that implementation of the competitive process will provide outcomes, in terms of safety, reliability, efficient operation of the system and cost, which are equal to or better than outcomes that could be expected under the current regime for construction, operation, maintenance and ownership of transmission facilities.

175. EPCOR submitted that the AESO should provide details as to whether or not a successful proponent of a competitive process will be expected to meet all other existing statutory responsibilities and duties of a TFO under existing (and future) legislation. If so, the AESO should explain how it expects to deal with potential conflicts between these TFO responsibilities, including statutory performance standards, and the terms and conditions of the commercial agreements. If the successful proponents will not be required to meet all statutory responsibilities, then the responsibilities that a successful proponent will be required to meet should be outlined.

176. TransCanada submitted that AltaLink's request should be denied. TransCanada submitted that this issue was addressed by the AESO in its response to IR AUC.AESO-005(a), in which the AESO stated that the successful proponent will not be exempt from any obligations typically assumed by the incumbent transmission facility owner.

177. TransCanada submitted that AltaLink's comment regarding the need to clarify roles and responsibilities relating to such areas as safety, reliability, efficiency of the facility and the overall review of the project can be addressed by the Commission at the time a successful proponent seeks approval from the Commission for the construction of a specific facility project.

Commission findings

178. The Commission disagrees with TransCanada that outcomes related to the safe and reliable operation of the transmission project should be addressed by the Commission at the time a successful proponent seeks approval from the Commission for the construction of a specific facility project. As discussed above in Section 3.4 of this decision, the Commission considers that the resulting arrangements arising from the approved competitive process must ensure that the successful proponent will comply with the core responsibilities and duties for transmission

facility owners as required by Section 39 of the *Electric Utilities Act* including the duty to provide safe and reliable service.

7.2.4 Supervening events and dispute resolution provisions

179. EPCOR submitted that the application should provide detailed information as to the specific events that would be considered a force majeure, no fault, or relief event and what relief the AESO and a proponent can expect under each type of scenario. AltaLink submitted that the AESO should provide a comprehensive description of the dispute resolution mechanisms that would address such events.

180. In response to an information request⁴² for further information regarding the dispute resolution process, the AESO indicated:

- (a) The AESO does not expect the Commission to retain the power and authority for final adjudicative relief of disputes under the project agreement. The AESO anticipates that the project development agreement and project agreement will contain dispute resolution mechanisms that are similar to those used in commercial contracts in industry.
- (b) The AESO does not expect that UCA or other interveners will be notified and involved in disputes under the project development agreement and project agreement as these commercial agreements are the result of a competitive process.

Commission findings

181. As stated previously, a competitive process that includes an after-the-fact private bilateral negotiation to determine any changes to arrangements which may be necessary during the life of the project could not be approved by the Commission, because such a process would not be open and transparent nor would it be the result of competitive forces and therefore would not comply with the provisions of the *Transmission Regulation*. Accordingly, the AESO's dispute resolution provisions must not include any bilateral after-the-fact negotiations.

7.2.5 End of term provisions

182. AltaLink submitted that the AESO should provide a comprehensive description of the terms of any assignment at the end of term and the rationale for such terms.

Commission findings

183. The Commission understands AltaLink's request for further clarification of end of term assignment provisions relates to Clause 11 of the AESO's proposed project agreement outline, reproduced below:

End of Term

In the event that the Project Assets are not decommissioned at the end of the term, the AESO will have the option upon the expiry of the term to either:

- (a) direct Project Asset transfer to an AESO designate for a nominal amount; or

⁴² Exhibit 31, Information Request UCA-AESO 9(a)- (b).

- (b) permit the Successful Proponent to continue operation and maintenance of the Project Assets for a secondary term whereby compensation would consist only of the operations and maintenance and major maintenance costs plus margin.

184. In general, it appears as though the default assignment contemplated in the project assignment Clause 11(a) will be to the incumbent TFO. As discussed in Section 3 of this decision, the legislative scheme does not allow for the direct assignment of CTI if the facilities were subject to a competitive process. For these CTI facilities, eligibility to apply for an operating licence under the *Hydro and Electric Energy Act*, must be determined through a competitive process. Once the right to operate the facilities under the current competitive process has expired, through the terms of the agreement, the AESO must use a competitive process to determine who is eligible to bring forward an application for operating the facility going forward. The AESO does not have the ability to use its direct assign authority under Section 24 of the *Transmission Regulation* for these CTI assets, nor can it simply negotiate a further term as this latter exercise would not be the result of a transparent competitive process.

7.2.6 Incentive payments

185. AltaLink submitted that the AESO should provide a comprehensive description of the plan for, manner of calculation of, and rationale for, incentive payments and of any alternatives considered.

Commission findings

186. AltaLink did not specify which types of incentive payments it was concerned about.

187. The Commission notes that the Project Development Agreement will set out Preferred Proponent project development responsibilities and also contain certain provisions for incentive payments. Incentive payments include a proposal to commence the payment of the agreed upon monthly payment amounts early, as a means of incenting earlier project delivery. Provisions are also proposed to allow successful proponents to request that the AESO consider proposals under which the proponent could be allowed to change the terms of its service to the AESO, in exchange for an agreed upon adjustment in its compensation.

188. While the Commission considers that parties may have differing views about the necessity or effectiveness of the AESO's proposed incentive mechanisms, the Commission considers that it has a reasonable understanding of the AESO's proposal at this time, and, as such, the Commission has no specific need at this time for additional evidence from the AESO.

8 Next steps

189. The Commission has identified several aspects of the application that the Commission currently believes to be deficient and the Commission is presently of the view that the application could not be approved as filed.

190. The Commission considers that the AESO should be given the opportunity to supplement its filing following its review of this decision. However, due to the relatively broad scope of the matters covered, the Commission considers that the AESO should be given a reasonable opportunity to assess this decision before determining what, if any, additional evidence the

AESO intends to file, and the date by which it can reasonably prepare such evidence in light of such assessment.

191. The Commission therefore directs the AESO, on or before **March 12, 2012, at 4 p.m.** to advise the Commission as to whether, and if so when, it would expect to file additional evidence reflecting the Commission views set out in this decision.

192. Further to the Commission's determination in Section 4 that other interested parties, should have an opportunity to file evidence after the AESO has filed its supplemental evidence, the Commission will advise parties as to the deadline for such submissions following the receipt of the AESO's expected March 12, 2012 submission.

193. The Commission also anticipates setting out a process schedule for the balance of the proceeding upon receipt of the AESO's submission.

9 Order

194. It is hereby ordered that:

- (1) The AESO advise the Commission as to whether, and if so when, it would expect to file additional evidence reflecting the Commission views set out in this decision on or before March 12, 2012, at 4 p.m.

Dated on February 27, 2012.

The Alberta Utilities Commission

(original signed by)

Willie Grieve, QC
Chair

(original signed by)

Neil Jamieson
Commission Member

(original signed by)

Moin A. Yahya
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) counsel or representative
Alberta Electric System Operator (AESO) D Davies (Macleod Dixon) N. Weigel R. Senko J. Hocking M. Mitchell
ATCO Electric Ltd. (ATCO Electric) L. Keough (Bennett Jones LLP) K. Worton (Bennett Jones LLP) D. DeChamplain T. McGhan L. Kizuk B. Yee
AltaLink Management Ltd. (AltaLink) R. W. Block (Borden, Ladner Gervais LLP) C. Hamm (Borden, Ladner Gervais LLP) H. Williamson (Borden, Ladner Gervais LLP) S. Sanheim (Borden, Ladner Gervais LLP) Z. Lazic R. Marx J. Halland
Bow City Power Ltd. (BCPL) G. MacDonald
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TransCanada Energy Ltd. (TransCanada) V. Kostas A. Jin
Office of the Utilities Consumer Advocate (UCA) C. R. McCreary (Reynolds, Mirth, Richards & Farmer LLP)

The Alberta Utilities Commission
Commission Panel W. Grieve, QC, Chair N. Jamieson, Commission Member M. Yahya, Commission Member
Commission Staff C. Wall (Commission counsel) W. Frost W. MacKenzie B. Shand J. Halls

Appendix 2 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. The Commission therefore directs the AESO, on or before **March 12, 2012, at 4 p.m.** to advise the Commission as to whether, and if so when, it would expect to file additional evidence reflecting the Commission views set out in this decision.. Paragraph 191

Appendix 3 – Legislative provisions

[\(return to text\)](#)

Hydro and Electric Energy Act

Purposes of Act

2 The purposes of this Act are

- (a) to provide for the economic, orderly and efficient development and operation, in the public interest, of hydro energy and the generation and transmission of electric energy in Alberta,
- (b) to secure the observance of safe and efficient practices in the public interest in the development of hydro energy and in the generation, transmission and distribution of electric energy in Alberta,
- (c) to assist the Government in controlling pollution and ensuring environment conservation in the development of hydro energy and in the generation, transmission and distribution of electric energy in Alberta,

Transmission Lines

Critical transmission infrastructure

13.1(1) In this section, “critical transmission infrastructure” means critical transmission infrastructure as defined in the *Electric Utilities Act*.

(2) The construction, connection and operation of a transmission line or part of a transmission line that is designated as critical transmission infrastructure is required to meet the needs of Alberta and is in the public interest.

Permit

14(1) No person shall construct a transmission line or any part of a transmission line unless the person is the holder of a permit issued by the Commission.

Licence

15 No person shall operate a transmission line unless the person is the holder of a subsisting licence to operate the transmission line, issued by the Commission.

16(1) Unless the Commission otherwise directs, sections 14 and 15 do not apply

- (a) to a person transmitting or proposing to transmit electric energy over the person’s own land solely for the person’s own use by means of a line that does not cross a public highway, or
- (b) to the owner of an industrial system transmitting or proposing to transmit electric energy
 - (i) over land of which the owner of the industrial system is the owner or tenant, or
 - (ii) across a public highway dividing land that is owned or leased by the owner of the industrial system for use solely by that industrial system.

General Matters

Connections

18(1) The owner or operator of a power plant, transmission line or electric distribution system shall not connect that power plant, transmission line or electric distribution system, or cause or permit it to be connected,

(a) to any other power plant, transmission line or electric distribution system, unless the connection is in accordance with an order under this section, or

(b) to any industrial system or other service where the connection may seriously affect the operation of an interconnected electric system or a communications system as prescribed in the regulations.

(2) The Commission, either on its own initiative or on application or complaint in writing, may, with the authorization of the Lieutenant Governor in Council and by order in writing directed to the owner of a power plant, transmission line or electric distribution system,

(a) if on the application of the owner or operator, approve the plans of the owner subject to any modification or alteration the Commission considers desirable, or deny the application,

(b) require the owner to connect the owner's works with other works or proposed works owned by the owner or by any other owner of a power plant, transmission line or electric distribution system,

(c) require the owner to suspend the use of any connection if, in the opinion of the Commission, the continuation of a connection may seriously affect the operation of any interconnected electric system or communications system, or

(d) require the owner to share and participate or otherwise combine its interests for the transmission or distribution of electric energy with any other owner of a transmission line or electric distribution system, and may prescribe any terms and conditions the Commission considers suitable.

(3) Repealed 2003 cE-5.1 s164.

(4) Notwithstanding subsection (2), the Commission may issue a direction under that subsection without the authorization of the Lieutenant Governor in Council when the interconnection is not for the purpose of interprovincial or international transmission of electric energy.

(5) The owner or operator of a power plant, transmission line or electric distribution system applying for an order for the connection of its works with other works or proposed works shall file with the Commission

(a) particulars of the proposed connection,

(b) if the other works or proposed works are those of another owner, particulars of the operating agreement with the other owner, and

(c) any related information that the Commission requires.

(6) When the Commission directs anything to be done under this section, it may also order when or within what time and on what terms and conditions, except as to the amount, as to payment of compensation or otherwise and under what supervision the thing directed to be done is to be carried out.

(7) When as a result of an order under this section compensation is payable and agreement on the amount of compensation cannot be reached, the amount shall be determined by the Alberta Utilities Commission on the application of an interested party.

Power of Commission re applications

19(1) On an application for an approval, permit or licence under this Part, or for an amendment of an approval, permit or licence, the Commission may grant the approval, permit, licence or amendment subject to any terms and conditions that it prescribes or may deny the application.

(1.1) Notwithstanding subsection (1), the Commission shall not refuse an approval of a transmission line or part of a transmission line designated as critical transmission infrastructure as defined in the *Electric Utilities Act* on the basis that, in its opinion, it does not meet the needs of Alberta.

(2) Without restricting the generality of subsection (1), the Commission may do one or more of the following:

- (a) require changes in the plans and specifications of a hydro development, power plant or transmission line;
- (b) require changes in the location of a hydro development, power plant or transmission line;
- (c) prescribe a date before which the construction of, or operation of, the hydro development, power plant or transmission line must commence;
- (d) prescribe the location and route of the transmission line as precisely as it considers suitable;
- (e) prescribe the location of the right of way of the transmission line and the relationship of its boundaries to the transmission line or any part of the transmission line.

Corporations

23 No corporation shall acquire an approval, permit or licence by application, assignment or transfer unless the corporation is

- (a) registered under the *Companies Act*,
- (b) registered, incorporated or continued under the *Business Corporations Act*,
- (b.1) registered, incorporated or continued under the *Cooperatives Act*,
- (c) incorporated by an ordinance or an Act of the Legislature that empowers it to engage in the business of generation or transmission of electricity,
- (d) a bank,
- (e) a railway company incorporated under an Act of the Parliament of Canada,
- (f) a loan corporation or trust corporation,
- (g) an insurer licensed under the *Insurance Act*,
- h) a municipal corporation, or
- (i) a co-operative association.

Electric Utilities Act

Interpretation

1(1) In this Act,

(o) “electric utility” means an isolated generating unit, a transmission facility or an electric distribution system that is used

(i) directly or indirectly for the public, or

(ii) to supply electricity to members of an association whose principal object is to supply electricity to its members, the owner of which

(iii) is required by this Act or the regulations to apply to the Commission for approval of a tariff,

(iv) is permitted by this Act or the regulations to apply to the Commission for approval of a tariff, and has applied for that approval, or

(v) passes a bylaw that has been approved by the Lieutenant Governor in Council under section 138, but does not include an arrangement of conductors intended to distribute electricity solely on property of which a person is the owner or a tenant, for use solely by that person and solely on that property or a facility exempted by Commission rules made under section 117;

(jj) “owner”, in respect of a generating unit, a transmission facility or an electric distribution system, means the owner, operator, manager or lessee of that unit, facility or system, or any person who is acting as an agent for the owner, operator, manager or lessee, and in the event that one of those persons becomes bankrupt or insolvent, includes any trustee, liquidator or receiver appointed in respect of the bankruptcy or insolvency;

Purposes of the Act

5. The purposes of this Act are:

(h) to provide for a framework so that the Alberta electric industry can, where necessary, be effectively regulated in a manner that minimizes the cost of regulation and provides incentives for efficiency.

Duties of Independent System Operator

17 The Independent System Operator has the following duties:

(g) to provide system access service on the transmission system and to prepare an ISO tariff;

(j) to make arrangements for the expansion of and enhancement to the transmission system;

(m) to perform any other function or engage in any activity the Independent System Operator considers necessary or advisable to exercise its powers and carry out its duties, responsibilities and functions under this Act and regulations.

Complaints about ISO

26(1) Any person may make a written complaint to the Commission about the conduct of the Independent System Operator.

(2) The Commission must dismiss the complaint, giving reasons for the dismissal, if the Commission is satisfied that

- (a) the substance of the complaint has been or should be referred to the Market Surveillance Administrator for investigation,
 - (b) the complaint relates to a matter the substance of which is before or has been dealt with by the Commission or any other body, or
 - (c) the complaint is frivolous, vexatious or trivial or otherwise does not warrant an investigation or a hearing.
- (3) The Commission may, in considering a complaint, do one or more of the following:
- (a) dismiss all or part of the complaint;
 - (b) direct the Independent System Operator to change its conduct in relation to a matter that is the subject of the complaint;
 - (c) direct the Independent System Operator to refrain from the conduct that is the subject of the complaint.
- (4) A decision of the Commission under subsection (2) or (3) is final and may not be appealed under section 29 of the *Alberta Utilities Commission Act*.

ISO tariff

30(1) The Independent System Operator must submit to the Commission, for approval under Part 9, a single tariff setting out

- (a) the rates to be charged by the Independent System Operator for each class of system access service, and
- (b) the terms and conditions that apply to each class of system access service provided by the Independent System Operator to persons connected to the transmission system.

(2) The rates to be charged by the Independent System Operator for each class of service must reflect the prudent costs that are reasonably attributable to each class of system access service provided by the Independent System Operator, and the rates must

- (a) be sufficient to recover
- (i) the amounts to be paid under the approved tariff of the owner of each transmission facility,

Payments by ISO

32 The Independent System Operator must

- (a) pay the rates set out in the approved tariff of the owner of each transmission facility;

Transmission facilities directions and proposals

35(1) The Independent System Operator may, at the time of preparing a needs identification document, after submitting a needs identification document to the Commission or after receiving Commission approval of a needs identification document,

- (a) direct the owner of a transmission facility to submit, for Commission approval under the *Hydro and Electric Energy Act*, a transmission facility proposal to meet the need identified, or
- (b) request market participants to submit, for approval by the Independent System Operator, a proposal to meet the need identified.

(2) The owner of a transmission facility must comply with a direction from the Independent System Operator under subsection

(1) unless the owner gives written notice to the Independent System Operator, giving reasons, that

(a) a real and substantial risk of damage to its transmission facility could result if the direction were complied with,

(b) a real and substantial risk to the safety of its employees or the public could result if the direction were complied with, or

(c) a real and substantial risk of undue injury to the environment could result if the direction were complied with.

(3) Subject to subsection (2), on receiving a direction the owner of a transmission facility must prepare an application to meet the requirements or objectives of the direction and apply to the Commission for approval under the *Hydro and Electric Energy Act*

Transmission facility owner's tariff

37(1) Each owner of a transmission facility must submit to the Commission for approval a tariff setting out the rates to be paid by the Independent System Operator to the owner for the use of the owner's transmission facility.

(2) Subsection (1) does not apply to

(a) the City of Medicine Hat with respect to transmission facilities in the service area of the City, or

(b) the owners of transmission facilities to which section 153 applies during the period that the rates referred to in section 153 have effect.

Joint tariff

38 One or more owners of transmission facilities may agree with the Independent System Operator to prepare and submit to the Commission for approval one joint tariff that sets out the rates and terms and conditions applicable to the Independent System Operator and the owner.

Duties of transmission facility owners

39(1) Each owner of a transmission facility must operate and maintain the transmission facility in a manner that is consistent with the safe, reliable and economic operation of the interconnected electric system.

(2) Each owner of a transmission facility must, in a timely manner, assist the Independent System Operator in any manner to enable the Independent System Operator to carry out its duties, responsibilities and functions.

(3) Each owner of a transmission facility must

(a) establish, in conjunction with owners of electric distribution systems, procedures and systems for load shedding in emergencies;

(b) provide the Independent System Operator in a timely manner with descriptions, ratings and operating restrictions relating to their transmission facility;

(c) inform the Independent System Operator in a timely manner of anticipated changes in their transmission facility that could affect the Independent System Operator in carrying out its duties, responsibilities and functions, including

(i) the capability of the transmission facility,

(ii) the status and availability of the transmission facility, including maintenance schedules, and

- (iii) additions to, alterations to or decommissioning of transmission facilities or any part of them;
 - (c.1) install and remove meters and perform metering, including verifying meter readings and verifying accuracy of meters that are directly connected to the owner's transmission facility;
 - (d) comply with standards and practices established by the Independent System Operator to enable the Independent System Operator to carry out its duties, responsibilities and functions;
 - (e) provide the Independent System Operator with use of the owner's transmission facility for the purpose of carrying out
- (4)** The owner of a transmission facility may refuse to comply with a direction from the Independent System Operator only if the owner notifies the Independent System Operator that the owner considers that
- (a) a real and substantial risk of damage to its transmission facility could result if the direction were complied with;
 - (b) a real and substantial risk to the safety of its employees or the public could result if the direction were complied with;
 - (c) a real and substantial risk of undue injury to the environment could result if the direction were complied with.

Critical Transmission Infrastructure

Designation of critical transmission infrastructure

41.1(1) The Lieutenant Governor in Council may designate as critical transmission infrastructure a proposed transmission facility if it is contained in a plan that is prepared by the Independent System Operator pursuant to this Act or the regulations and if the transmission facility

- (a) is an intertie,
 - (b) is to serve areas of renewable energy,
 - (c) is a double circuit transmission facility that is designed to be energized at a nominal voltage of 240 000 volts,
 - (d) is designed to be energized at a voltage in excess of 240 000 volts, or
 - (e) is, in the opinion of the Lieutenant Governor in Council, critical to ensure the safe, reliable and economic operation of the interconnected electric system.
- (2)** An order under subsection (1)
- (a) must for each transmission facility designated as critical transmission infrastructure
 - (i) describe the technical solution, which may include voltage, transmission capacity expressed in megawatts and alternating current or direct current,
 - (ii) that is linear in nature, describe the approximate geographic starting point and the approximate geographic end point of the critical transmission infrastructure,
 - (iii) that is not linear in nature, describe the approximate geographic area of the location of the critical transmission infrastructure, and
 - (iv) contain or address any matters required by the regulations made under section 142,

(b) may vary from the description of the proposed transmission facility contained in the plan prepared by the Independent System Operator referred to in subsection (1), and

(c) may contain any other matter that the Lieutenant Governor in Council considers necessary.

Non-application of ss34 to 36

41.2 Sections 34, 35 and 36 do not apply to critical transmission infrastructure.

Direction to apply

41.3 Subject to the regulations and an order under section 41.1(1), the Independent System Operator must, in a timely manner, direct a person determined under the regulations to make an application in a timely manner to the Commission under the *Hydro and Electric Energy Act* for an approval of critical transmission infrastructure

Staged development of CTI referred to in Schedule

41.4(1) The Independent System Operator, with respect to the critical transmission infrastructure referred to in section 1(1) of the Schedule, shall, subject to the regulations, specify and make available to the public milestones that the Independent System Operator will use to determine the timing of the stages of the expansion of the terminals referred to in section 1(1)(a) and (b) of the Schedule.

(2) The transmission facilities referred to in section 4 of the Schedule shall be developed in stages in accordance with subsection (3).

(3) The facility referred to in section 4(a) of the Schedule shall be developed first, which may initially be energized at 240 kV, and the Independent System Operator shall, subject to the regulations, specify and make available to the public milestones that the Independent System Operator will use to determine the timing of

Regulation by the Commission

Division 1

General Matters

Application of this Part

116(1) This Part applies

- (a) to electric utilities operating in Alberta,
- (b) to owners of electric utilities operating in Alberta
- c) to electric utilities owned by the Crown, and
- (d) to the ISO tariff.

(2) In this Part, “tariff application” means an application to the Commission under section 119(1) for approval of the tariff of an owner of an electric utility or the ISO tariff

Preparation of tariffs

119(1) Each owner of an electric utility must prepare a tariff in accordance with this Act and the regulations and apply to the Commission for approval of the tariff.

(4) The Independent System Operator must prepare a tariff relating to the transmission system in accordance with Part 2 and apply to the Commission for approval of the tariff.

Matters the Commission must consider

121(1) On giving notice to interested parties, the Commission must consider each tariff application.

(2) When considering whether to approve a tariff application the Commission must ensure that

(a) the tariff is just and reasonable,

(b) the tariff is not unduly preferential, arbitrarily or unjustly discriminatory or inconsistent with or in contravention of this or any other enactment or any law, and

(3) A tariff that provides incentives for efficiency is not unjust or unreasonable simply because it provides those incentives.

(4) The burden of proof to show that a tariff is just and reasonable is on the person seeking approval of the tariff

Tariff must be approved

125 The owner of an electric utility and the Independent System Operator shall not put into effect a tariff that has not been approved by the Commission.

127 The owners of an electric utility and, in respect of the ISO tariff, the Independent System Operator

(a) must provide and maintain service that is safe, adequate and proper,

(b) shall not withhold a service that the Commission has ordered it to provide, and

(c) shall not act in a manner that is unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory or inconsistent with or in contravention of this or any other enactment or any law.

Transmission Regulation

Interpretation

1(1) In this Regulation,

(g) “ISO’s own administrative costs” means

(iii) the transmission-related costs and expenses required to be paid, or otherwise appropriately paid, by the ISO, except for the following:

(A) costs for the provision of ancillary services;

(B) costs of transmission line losses;

(C) amounts payable under TFO transmission tariffs

(k) “TFO” means the owner of a transmission facility;

Assistance to the ISO

14(1) As part of the duties of a TFO under section 39 of the Act, the TFO must, as directed by the ISO, assist the ISO in

- (a) preparing and updating forecasts,
- (b) preparing, maintaining and updating the transmission system plan, and
- (c) preparing and updating needs identification documents.

Transmission Facility Projects

General rules for constructing transmission facilities

24(1) Subject to subsections (2) and (3), when making rules under section 20 of the Act and in exercising its duties under section 17 of the Act, the ISO must

(a) determine, on the basis of geographic areas under sections 28 and 29 of the *Hydro and Electric Energy Act*, who is eligible to apply for the construction or operation, or both, of transmission facilities in those areas after August 12, 2004, based on which TFO is operating in those areas, and

(b) with respect to a transmission facility that existed on August 12, 2004, provide that the owner of that transmission facility, or any successor of the owner of the transmission facility, continues to be responsible for upgrades and enhancement to the transmission facility.

(2) The ISO may grant or provide for exceptions to subsection (1), including authorizing alternative arrangements or agreements between TFOs, if

(a) those arrangements or agreements result in the safe, reliable and efficient operation of the transmission system, and

(b) those arrangements or agreements are filed with the Commission for information.

(3) Subsection (1) does not apply in respect of

(a) a transmission facility to which section 27 applies,

(b) critical transmission infrastructure in respect of which the Minister has made a determination under section 24.1(1),

(c) section 4 of the Schedule to the Act, or

d) other critical transmission infrastructure that is designated under section 41.1 of the Act after June 1, 2010.

Critical transmission infrastructure

24.1(1) The Minister may determine who is eligible to apply for the construction or operation, or both, of critical transmission infrastructure.

(2) The ISO must have regard to a determination made by the Minister under subsection (1) when carrying out the ISO's functions under the Act and regulations, including when giving a direction under section 41.3 of the Act.

(3) The Commission, when considering approval of the matters in section 142(1)(l)(iii)(B) and (C) of the Act, must have regard to a determination made by the Minister under subsection (1).

(4) Any determination made by the Minister on or before December 9, 2009 under this section continues in effect.

Competitive process to develop certain transmission facilities

24.2(1) For the purposes of this section, “competitive process” means a fair and open process that allows any qualified person, as determined by the ISO, to submit a proposal in respect of a transmission facility, including a financial bid, as the method to determine the person referred to in subsection (2).

(2) The ISO must develop a competitive process to determine the person who is eligible to apply for the construction or operation, or both, of the transmission facilities referred to in section 24(3)(a), (c) and (d).

(3) Before the ISO implements a competitive process developed under subsection (2), the ISO must obtain the Commission’s approval of the competitive process.

(4) Where the Commission approves a competitive process developed under subsection (2), the Commission must consider any resulting arrangements as prudent.

(5) The competitive process developed under subsection (2) must not exclude

(a) a TFO, whether or not the TFO has undertaken any work or provided any services to the ISO in respect of a proposed transmission facility, or

(b) any other person that has undertaken any work or provided any services to the ISO in respect of a proposed transmission facility unless the TFO or other person does not have the necessary qualifications to participate in the competitive process.

(6) Subject to subsection (7), the ISO may request, and a TFO or other person must provide, any records to the ISO that are necessary to develop and implement a competitive process.

(7) If there is a dispute between the ISO and a TFO or other person regarding whether a record is necessary for the purposes of the ISO as referred to in subsection (6), the matter must be determined by the Commission.

(8) A competitive process that is approved by the Commission may be used by the ISO for more than one transmission facility project.

Transmission facility project cost reporting

25(1) For those transmission facility projects that the ISO directs or may direct a TFO under section 35(1)(a) of the Act or a person under section 41.3 of the Act to submit for Commission approval, the ISO must make rules or establish practices respecting the preparation of cost estimates, project scope documents and schedule documents for projects to ensure that

(a) cost estimates prepared by a TFO or other person under this section are reasonable for the purpose of making transmission system planning decisions,

(b) cost estimates are prepared by a TFO or other person in a consistent manner and to an appropriate level of detail,

(c) scope change, schedule change and cost variance reports are prepared and retained showing changes to the original scope and original schedules prepared by the ISO in its specification or needs identification document, and

(d) a project cost summary is prepared that identifies the original cost estimate, original scope and original schedule and a summary of any changes or cost variances that occurred.

(2) The ISO may satisfy itself that the cost estimates prepared by a TFO or other person under this section are reasonable, but in doing so may only examine issues that are relevant to the intended use of the cost estimates.

- (3) Nothing in the ISO rules or practices relieves a TFO from the burden of proof required by section 121(4) of the Act to show that its tariff is just and reasonable.
- (4) Nothing in this section, section 5 or the ISO rules or practices affects
- (a) the responsibility of the Commission to determine a TFO's or other person's prudence in managing its activities,
or
 - (b) the authority of the Commission to establish its own reporting requirements.
- (5) In addition to its duties under section 17 of the Act, the ISO may do either or both of the following:
- (a) certify to the Commission that a cost was incurred to meet a need identified by the ISO or a direction of the ISO;
 - (b) notify the Commission of any concern or issue the ISO has with respect to the costs of a transmission facility project referred to in subsection (1), but the Commission must not require the ISO to make any statement with respect to a TFO's or other person's prudence in managing a transmission facility project.
- (6) Within a reasonable period after rules are made under subsection (1), a TFO must apply to the Commission to make its tariff consistent with those rules.
- (7) This section does not apply to transmission facilities to which the competitive process described in section 24.2 applies.

Competitive tenders

- 26 (1)** In making rules under section 20 of the Act, and in exercising its duties under section 17 of the Act, the ISO
- (a) must provide for the competitive tender of construction costs, including materials and equipment, for the construction of a transmission facility by a TFO or other person who is the applicant for construction of a transmission facility referred to in section 24(1) or 24.1, and
 - (b) may exempt or provide for exemptions from the competitive tender when the circumstances warrant.
- (2) When considering a tariff application by a TFO, the Commission must judge the prudence of the costs incurred under an exemption provided by or under the rules referred to in subsection (1).
- (3) Within a reasonable period after rules are made under subsection (1), a TFO must apply to the Commission to make its tariff consistent with those rules.

Applications to the Commission in respect of critical transmission infrastructure

- 38.1** In addition to its duties under sections 17 and 33(1) of the Act, the ISO must, at the time a TFO or other person makes an application for Commission approval under the *Hydro and Electric Energy Act* in respect of critical transmission infrastructure,
- (a) provide the Commission with transmission substation and line configurations in respect of that critical transmission infrastructure in no less detail than the ISO would provide in a needs identification document if such a document had been required for the critical transmission infrastructure, and
 - (b) certify to the Commission as to whether the technical aspects of the application by the TFO or other person meet the requirements set out by the ISO in the transmission system plan in respect of that critical transmission infrastructure.

Recovery of pre-construction costs

39 If an application under section 37 has been approved by the Commission under that section, if a needs identification document has been approved by the Commission under section 34 of the Act or if a direction has been given by the ISO under section 41.3 of the Act, a TFO may include in its tariff pre-construction costs, including

- (a) feasibility studies,
- (b) engineering,
- (c) purchase of equipment and materials, and
- (d) purchase of land or options to purchase land for future use or acquire a right or interest in land for future use as a right of way, as may be necessary, for long lead-time projects.

Recovery of other secondary costs

41 (1) A TFO or DFO may include in its tariff any one or more of the following, as applicable:

- (a) costs or expenses incurred as a consequence of a direction given by the ISO under this Regulation or any other enactment;
- (b) costs and expenses
 - (i) of a maintenance upgrade, enhancement or other modification to a transmission facility referred to in section 11(6),
 - (ii) incurred in implementing an expansion or enhancement to the transmission system access service interconnection or a transmission facility project referred to in section 12,
 - (iii) incurred in order to implement the standards and rules under section 5, or
 - (iv) incurred in order to implement the reliability standards.

(2) In addition to its duties under section 17 of the Act, the ISO may do either or both of the following:

- (a) certify to the Commission that a cost was incurred under subsection (1);
- (b) notify the Commission of any concern the ISO has with respect to a cost referred to in subsection (1),

but the Commission must not require the ISO to make any statement with respect to the prudence of a TFO or a DFO in incurring a cost under subsection (1).

Prudence of activities and costs

46 (1) The Commission must consider that

- (a) the costs and expenses referred to in sections 39, 40 and 41 that are included in a TFO's tariff or a DFO's tariff, and
- (b) the ISO's own administrative costs that have been approved by the ISO members are prudent unless an interested person satisfies the Commission that those costs or expenses are unreasonable.

(2) The Commission must consider that payments that are included in a TFO's tariff made by a TFO to an owner or occupant of land pursuant to any agreement between the TFO and the owner or occupant that

- (a) grants the TFO the right of entry in respect of the surface of the land, or
- (b) provides for compensation resulting from or related to the use of the land for the purposes of locating transmission facilities on it, are prudent unless an interested person satisfies the Commission that the payments are unreasonable.

ISO tariff - transmission system considerations

47 When considering an application for approval of the ISO tariff under sections 121 and 122 of the Act, the Commission must

- (a) ensure
 - (i) the just and reasonable costs of the transmission system are wholly charged to DFOs, customers who are industrial systems and persons who have made an arrangement under section 101(2) of the Act, and exporters, to the extent required by the ISO tariff, and
 - (ii) the amount payable by a DFO is recoverable in the DFO's tariff,
- (b) ensure owners of generating units are charged local interconnection costs to connect their generating units to the transmission system, and are charged a financial contribution toward transmission system upgrades and for location-based cost of losses, and
- (c) consider all just and reasonable costs related to arrangements and agreements described in section 9(5) of the Act