

February 13, 2017

**To: Alberta Utilities Commission (“AUC” or “Commission”)**

**Re: Forwarding Notice – Final Proposed New “technical feasibility exception” Alberta Reliability Standard Definition (“New technical feasibility exception definition”)**

The Alberta Electric System Operator (“AESO”) recommends that the Commission approve the final proposed New technical feasibility exception definition, pursuant to Section 19 of the *Transmission Regulation*.

Consistent with the AESO’s drafting principles for authoritative documents, the AESO has determined that it is appropriate for defined terms used in the Alberta reliability standards to go through the same consultation and forwarding process as the Alberta reliability standards themselves.

## Background

On September 14 and September 15, 2015, respectively, the Commission approved the New Critical Infrastructure Protection (“CIP”) Alberta Reliability Standards (“CIP ARS”) and associated CIP Alberta Reliability Standards Definitions (“CIP ARS Definitions”). The CIP ARS and CIP ARS Definitions are based on the North American Electric Reliability Corporation’s (“NERC”) Version 5 CIP Reliability Standards (“NERC v.5 CIPs”).

A number of the NERC v.5 CIP requirements include the phrase “where technically feasible” to recognize that a wide range of equipment already installed by Responsible Entities in the United States has not been designed nor can be easily upgraded to fully align with the applicable NERC v.5 CIP requirements. The US Federal Energy Regulatory Commission (“FERC”) has determined that this phrase should be treated as an exception to strict compliance with the applicable CIP requirements on the basis of technical feasibility, referred to as a “technical feasibility exception” (“TFE”)¹.

NERC has created an authoritative process by which Responsible Entities in the United States can request and receive TFEs, outlined in NERC’s Appendix 4D to the Rules of Procedure, *Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards* (“Appendix 4D”). Appendix 4D allows a Responsible Entity in the United States to request and receive an exception to a NERC v.5 CIP requirement that includes the phrase “where technically feasible”, provided the compensating or mitigating measures achieve a level of security for the bulk electric system that is at least comparable to strict compliance with the applicable NERC v.5 CIP requirement.<sup>2</sup>

The AESO has determined that a TFE process similar to that set out in Appendix 4D should be developed in Alberta to allow Responsible Entities to request and receive TFEs. Accordingly, on October 18, 2016, the AESO issued a Consultation Letter providing notice to and seeking feedback from market participants and other interested parties relating to two Alberta reliability standards that will allow the AESO to implement this process: proposed New CIP-SUPP-002-AB, *Cyber Security – Supplemental CIP Alberta Reliability Standard Technical Feasibility Exceptions* (“New CIP-SUPP-002-AB”) and proposed Amended CIP-SUPP-001-AB1, *Cyber Security – Supplemental CIP Alberta Reliability Standard* (“Amended CIP-SUPP-001-AB1”). The authoritative elements of the TFE process are set out in proposed

<sup>1</sup> *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706 122 FERC 61.040 (2008) at para 184.

<sup>2</sup> Note that FERC emphasized at paragraph 183 in Order No. 706 that where it is not technically feasible to comply with a CIP requirement, the granting of a TFE should nevertheless ensure that the reliability of the bulk power system is protected to an equal or greater degree than if the CIP requirement had been met.

New CIP-SUPP-002-AB, which will allow the AESO to approve or disapprove a TFE request, submitted by a Responsible Entity, in relation to CIP ARS requirements that use the phrase “where technically feasible”. In combination with the proposed New “technical feasibility exception” definition, proposed New CIP-SUPP-002-AB will ensure that TFE requests that are approved by the AESO achieve a comparable or higher level of reliability of the bulk electric system than compliance with the applicable CIP ARS requirement.

The definition of “technical feasibility exception” has been drafted to clarify that the AESO may grant a variance to certain CIP ARS requirements where it is not technically feasible for a Responsible Entity to meet the requirement, but comparable or higher level of reliability of the bulk electric system will be maintained by allowing the variance.

The following new term, along with its related definition is proposed for incorporation into the AESO's [Consolidated Authoritative Document Glossary](#) (“CADG”) for use in the Alberta reliability standards:

- a) technical feasibility exception

## AESO Consultation

On October 18, 2016, the AESO posted a [Consultation Letter](#) on its website requesting written comments from market participants and other interested parties with respect to the proposed New technical feasibility exception definition, and notified market participants in the AESO Stakeholder Newsletter.<sup>3</sup>

On November 29, 2016, the AESO posted written comments received from market participants and other interested parties, in response to the Consultation Letter, on its website and notified market participants in the AESO Stakeholder Newsletter. Please see the [Market Participant Comments on Consultation Letter](#) for a summary of written comments received.

On January 26, 2017, the AESO posted its replies to market participant comments, including the final proposed New technical feasibility exception definition, on its website and notified market participants in the AESO Stakeholder Newsletter. Please see the [AESO Reply to Market Participant Comments Letter](#) for a summary of replies to written comments received, as well as the rationale or basis for the position of the AESO that explains why certain positions were rejected or accepted.

## Related Forwarding Notice to the Commission

On February 13, 2017, the AESO issued a Forwarding Notice to the Commission recommending the approval of the final proposed New CIP-SUPP-002-AB and Amended CIP-SUPP-001-AB1. The final proposed New technical feasibility exception definition was developed in conjunction with the drafting of the final proposed New CIP-SUPP-002-AB and Amended CIP-SUPP-001-AB1.

## Attachments to Forwarding Notice

The following documents are attached to this Forwarding Notice:

1. October 18, 2016 Consultation Letter;
2. November 29, 2016 Market Participant Comments on Consultation Letter;
3. January 26, 2017 AESO Reply to Market Participant Comments Letter; and
4. [Clean copy](#) of the proposed New technical feasibility exception definition.

<sup>3</sup> Section 19(4) of the *Transmission Regulation* states that, before adopting or making a reliability standard, “the ISO must consult with those Market Participants that it considers are likely to be directly affected”.

**Proposed Effective Date**

The AESO recommends that the Commission approve the final proposed New technical feasibility exception definition to become effective in conjunction with final proposed New CIP-SUPP-002-AB and Amended CIP-SUPP-001-AB1.

The AESO submits that the final proposed New technical feasibility exception definition complies with the requirements of the *Transmission Regulation*, is not technically deficient and is in the public interest.

If you have any questions, please contact the undersigned.

Sincerely,

*"Original Signed By"*

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Attachments