

April 15, 2020

Jay Halls
Application Officer
Alberta Utilities Commission
Eau Claire Tower
1400, 600 Third Avenue SW
Calgary, Alberta T2P 0G5

**Re: Alberta Electric System Operator (“AESO”)
Interim Approved 2020 ISO Tariff Rates
Request for Approval for the AESO to Permit the Deferral of Payment of 2020 Interim
Refundable DTS Charges**

Introduction

1. On January 31, 2020, the AESO filed with the Alberta Utilities Commission (“**Commission**”) the *2018 ISO Tariff Compliance Filing Pursuant to Decision 22942-D02-2019 and 2020 ISO Tariff Update Application*.¹
2. Regarding the *2020 ISO Tariff Update Application*, the relief requested by the AESO included a request that 2020 ISO tariff rates:
 - ... be approved on an interim refundable basis no later than March 1, 2020 and effective no later than April 1, 2020 in order to minimize amounts recovered or refunded through Rider C, *Deferral Account Adjustment Rider*, reduce deferral account balances, and potentially reduce amounts transferred between market participants in future deferral account reconciliations.²
3. On February 28, 2020, the Commission issued Decision 25175-D01-2020 approving, on an interim refundable basis, the 2020 ISO tariff rates, effective April 1, 2020 (“**2020 ISO Rates**”).
4. On March 18, 2020, the Government of Alberta directed that consumers experiencing financial hardship as a direct result of the COVID-19 pandemic be given the option to defer payment of their utility accounts. The initial deferred payment period will last for 90 days with the potential for an extension (“**Utility Payment Deferral Program**”). The Utility Payment Deferral Program is available to residential, farm and small business consumers who use less than 250,000 kilowatt hours of electricity per year (“**Retail Consumers**”) and obtain their electricity services from competitive electricity retailers, regulated rate option providers for electricity, rural electrification associations or the City of Medicine Hat (collectively, the “**Retail Electricity Service Providers**”).

¹ Exhibits 25175-X0002 to 25175-X0009.

² Exhibit 25175-X0002, para 8.

5. The Utility Payment Deferral Program will result in deferred collection of accounts by the Retail Electricity Service Providers in respect of Retail Consumers that register for the Utility Payment Deferral Program (“**Eligible Retail Consumers**”).
6. The Government of Alberta has directed the AESO to explore opportunities to mitigate system access service transmission costs during these challenging economic times, and the AESO has determined that it would be appropriate as a result of the COVID-19 pandemic to establish two programs to temporarily permit the deferral of payment of the charge determined under Rate DTS, *Demand Transmission Service*, of the ISO tariff, based on the 2020 ISO Rates (“**Rate DTS**”).
7. The first payment deferral program would permit each legal owner of an electric distribution system and the City of Medicine Hat (each, a “**DFO**”) to defer payment, for at least 90 days, of the charge determined under Rate DTS in respect of the transmission of electric energy consumed by Eligible Retail Consumers (“**Retail Consumers Deferral Program**”). The payment deferral would be in respect of Rate DTS charges incurred in each of the three AESO settlement periods from March 1, 2020 to May 31, 2020 (Retail Consumers Deferral Period or “**RC Deferral Period**”) and that would otherwise be payable in the month following the respective settlement periods.³
8. As a result of the flow-through of the Rate DTS charge from a DFO to Retail Electricity Service Providers, payment by Eligible Retail Consumers of the transmission charge portion of their Electricity Utility Provider’s invoice would be deferred for at least the duration of the RC Deferral Period and, following the conclusion of the RC Deferral Period or any extension (Extended Retail Consumers Deferral Period or “**Extended RC Deferral Period**”), the deferred transmission charges would be recovered in alignment with the Government of Alberta’s implementation plan for the Retail Consumers Deferral Program, the details of which are being finalized, as they require input from multiple parties.
9. In order to implement the proposed March 2020 deferral, the AESO would need to account for the Rate DTS charge payment deferral in the AESO’s April 22, 2020 statements of account to DFOs.
10. The second payment deferral program would permit the following transmission-connected consumers (“**Transmission-Connected Market Participants**”) to defer payment of any increase to the charge determined under Rate DTS and incurred during each of three settlement periods from April 1, 2020 to June 30, 2020 (Transmission-Connected Deferral Period or “**TC Deferral Period**”) and any extension (Extended Transmission-Connected Deferral Period or “**Extended TC Deferral Period**”):
 - (a) persons who have entered into an arrangement directly with the AESO for the provision of system access service under subsection 101(2) of the *Electric Utilities Act* (“**EUA**”);
 - (b) the legal owners of industrial systems that have been designated as such by the Commission; and
 - (c) the City of Medicine Hat;

³ For example, the Rate DTS charge incurred during the March 2020 settlement period will be invoiced in the AESO’s April 22, 2020 statement of account to a DFO and would normally be payable by the April 29, 2020 due date.

(“Transmission-Connected Deferral Program”).

11. The purpose of the two proposed payment deferral programs is to mitigate some of the financial pressure on Eligible Retail Consumers and Transmission-Connected Market Participants resulting from the COVID-19 pandemic and arising from the 2020 ISO Rates.
12. The AESO’s proposed minimum 90-day payment deferral under both proposed programs is conceptually aligned with the 90-day payment deferral directed by the Government of Alberta for the Utility Payment Deferral Program, with the possibility of an extension. Additionally, the AESO considers its proposed minimum 90-day payment deferral for Transmission-Connected Market Participants to be appropriate because it is specific to Transmission-Connected Market Participants who obtain system access service directly from the AESO and can, therefore, be implemented quickly and efficiently.
13. However, the AESO does not have authority or discretion under the ISO tariff or under the EUA to permit the deferral of payments by market participants for the receipt of system access service that are due in accordance with the tariff. More specifically, subsection 2 of Rate DTS is prescriptive. It directs that the AESO must determine the charge under Rate DTS in a settlement period (calendar month) in accordance with subsections 3 through 7 of Rate DTS as the sum of the connection charge, the operating reserve charge, the transmission constraint rebalancing charge, the voltage control charge and the other system support services charge. Subsection 31(a) of the EUA prescribes that a market participant who obtains system access service must pay the AESO the rates prescribed in the ISO tariff.
14. The AESO also does not have the authority or discretion to withhold the issuance of statements of account for system access service. Subsection 3(1) of Section 13 of the current ISO tariff is also prescriptive. It provides that the AESO must issue a statement of account no later than fifteen business days after the end of each settlement period. In accordance with subsection 7(1) of Section 13, a market participant must pay the amounts shown on a statement of account no later than the twentieth business day after the end of settlement period.

Application for Approval to Permit Deferral of Payment of Rate DTS Charges

15. Due to the AESO’s lack of authority or discretion to enable the proposed payment deferral programs, the AESO considers an application to the Commission to be required in order to implement and administer the payment deferral programs.

Retail Consumers Deferral Program

16. Pursuant to subsection 8(2) of the *Alberta Utilities Commission Act* (“**AUC Act**”), and with respect to the Retail Consumers Deferral Program, the AESO requests that, on or before Friday April 17, 2020, the Commission make an order to provide for the following:
 - (a) Concerning Rate DTS system access service obtained by a DFO during each of the three settlement periods in the RC Deferral Period, March 1, 2020 to May 31, 2020, the AESO shall permit a DFO to defer payment of their charge determined by the AESO under Rate DTS in

respect of the transmission of electric energy distributed by a DFO to Eligible Retail Consumers.⁴

- (b) In the event that the Government of Alberta requests the AESO to extend the RC Deferral Period beyond May 31, 2020, the AESO may continue to permit payment deferrals during the Extended RC Deferral Period requested by the Government of Alberta and, prior to doing so, the AESO shall inform the Commission in writing.
 - (c) The AESO shall accrue in a deferral account for each DFO the amount of deferred payments under the Retail Consumers Deferral Program and associated carrying costs, based on the actual borrowing rate incurred by the AESO, being a cost-based interest charge applied to the deferral amount and calculated monthly.
 - (d) Following the conclusion of the RC Deferral Period or any Extended RC Deferral Period, the amount of deferred payments and associated carrying costs shall be recovered by the AESO in a manner consistent with the implementation plan that is finalized by the Government of Alberta regarding the Retail Consumers Deferral Program.⁵
 - (e) In the event that the AESO is unable to recover from a DFO the entire balance of its deferral account, the AESO may apply to the Commission for approval to recover the remaining balance of the deferral account under such regulatory options available to the AESO and as it considers appropriate at the time.
17. In the alternative to the relief requested in paragraph 16 above, in the event that the Commission is unable to make a final order on or before Friday April 17, 2020, as requested, the AESO requests that the Commission grant the above requested order on an interim basis, pursuant to the Commission's authority under subsection 8(5)(c) of the AUC Act. As stated above, in order to implement the proposed March 2020 payment deferral, the AESO would need to account for the Rate DTS charge payment deferral in the AESO's April 22, 2020 statements of account to DFOs. Therefore, the AESO respectfully submits that it is essential that the AESO be given the authority to permit the proposed payment deferral of the Rate DTS charge by April 17, 2020, which aligns with the Government's direction regarding the Utility Payment Deferral Program.

Transmission-Connected Deferral Program

18. Pursuant to subsection 8(2) of the AUC Act, and with respect to the Transmission-Connected Deferral Program, the AESO requests that, prior to May 1, the Commission make an order to provide for the following:

⁴ For the purpose of issuing the AESO's April 22, 2020 statements of account to DFOs in respect of system access provided during the March 2020 settlement period, the AESO will need to calculate the amount of the payment deferral for each DFO by estimating the percentage of Eligible Retail Consumers in each DFO service area. The AESO expects to be able to improve the estimates for statements account issued in subsequent months.

⁵ Details regarding how the AESO will recover, on a month-by-month basis, the balance of each DFO deferral account over the twelve-month period have not yet been determined because the process to be undertaken by the AESO will require the input of multiple parties, including the Government of Alberta.

- (a) Concerning Rate DTS system access service obtained by a Transmission-Connected Market Participant during the TC Deferral Period, April 1, 2020 to June 30, 2020, the AESO shall permit Transmission-Connected Market Participants to defer payment of any increase to their charge determined by the AESO under Rate DTS compared to the rates in effect prior to April 1, 2020.
- (b) In the event that the Government of Alberta requests the AESO to extend the TC Deferral Period beyond June 30, 2020, the AESO may continue to permit payment deferrals during the Extended TC Deferral Period requested by the Government of Alberta and, prior to doing so, the AESO shall inform the Commission in writing.
- (c) The AESO shall accrue in a deferral account the amount of deferred payments under the Transmission-Connected Deferral Program and associated carrying costs, based on the actual borrowing rate incurred by the AESO, being a cost-based interest charge applied to the deferral amount and calculated monthly.
- (d) The AESO shall, over a period of three months following the conclusion of the TC Deferral Period or an Extended TC Deferral Period, recover from Transmission-Connected Market Participants whose payment of incremental Rate DTS charges is deferred, the amount accrued in the deferral account for their deferred payments and carrying costs.
- (e) Commencing in the month (settlement period) following the conclusion of the TC Deferral Period or an Extended TC Deferral Period, the AESO shall include in its statement of account (statement) for each applicable Transmission-Connected Market Participant the amount of the deferred payment and associated carrying cost for the April 2020 settlement period. The AESO shall continue to include in each subsequent monthly statement the amount of the deferred payment and carrying cost for each remaining month in the TC Deferral Period and any Extended TC Deferral Period until the deferral account balance is nil.⁶

General

- 19. The AESO requests that the Commission make the above requested orders without giving notice and without holding a hearing pursuant to subsection 9(1) of the AUC Act.
- 20. Pursuant to subsection 8(5)(d) of the AUC Act, the AESO requests that the Commission grant such partial, further or other relief that it considers to be just and proper in the circumstances, as if such partial, further or other relief has been applied for.

Basis for the Requested Orders

- 21. As stated above, the AESO is requesting that the proposed order regarding the Retail Consumers Deferral Program, if granted either final or on an interim basis, be effective by April 17, 2020 so that

⁶ For example, with the Transmission-Connected Deferral Period being April 1, 2020 to June 30, 2020, the deferred payment and carrying charge for April 2020 will be added to the July 2020 statement, the May 2020 amounts will be added to the August 2020 statement, and the June 2020 amounts will be added to the September 2020 statement. If the Transmission-Connected Deferral Period were extended to July 31, 2020, then the April 2020 amounts will be added to the August 2020 statement, and so forth.

the respective payment deferrals can be reflected in the AESO's April 22, 2020 statements of account for Rate DTS system access service provided in March 2020.

22. The AESO is requesting that the proposed order regarding the Transmission-Connected Deferral Program, if granted, be effective by May 1, 2020 so that the respective payment deferrals can be reflected in the AESO's May 22, 2020 statements of account for Rate DTS system access service provided in April 2020.
23. Subsection 14(3) of the EUA requires the AESO to be managed so that, on an annual basis, no profit and no loss results from its operation. For this reason, the AESO is requesting approval to accrue in deferral accounts the amounts of the deferred payments and accrued carrying costs under both the Retail Consumers Deferral Program and the Transmission-Connected Deferral Program.

Jurisdiction of the Commission to Grant the Requested Orders

24. The EUA does not grant the Commission express authority to order or permit tariff payment deferrals.
25. Subsection 8(2) of the AUC Act provides:

(2) The Commission, in the exercise of its powers and the performance of its duties and functions under this Act or any other enactment, may act on its own initiative or motion and do all things that are necessary for or incidental to the exercise of its powers and the performance of its duties and functions.

26. In Decision 2014-169, the Commission found that subsection 8(2) codifies the common law doctrine of jurisdiction by necessary implication:

With respect to Section 8(2) of the *Alberta Utilities Commission Act*, the Commission agrees with the interpretation advanced by the ATCO Utilities and finds that the wording of the provision is consistent with it representing a codification of the common law doctrine of necessary implication. If the interveners are to successfully rely upon this provision as being a source of the requisite jurisdiction, they must, at minimum, demonstrate the necessity of the relief requested to the satisfaction of the appropriate Commission mandate or, alternatively, establish that the requested exercise of jurisdiction is incidental to another express power.⁷

27. In Decision 2014-169, the Commission cited the Supreme Court of Canada in *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)* 2006 SCC 4, where the court held that the application of the doctrine was only appropriate when:⁸

⁷ Decision 2014-169, *ATCO Utilities (ATCO Gas, ATCO Pipelines and ATCO Electric Ltd.) Errata to Decision 2014-169 2010 Evergreen Proceeding for Provision of Information Technology and Customer Care and Billing Services Post 2009 (2010 Evergreen Application)*, February 6, 2015, at para 140.

⁸ *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)* 2006 SCC 4 at para 73.

- (a) The jurisdiction sought is necessary to accomplish the objectives of the legislative scheme and is essential to the tribunal fulfilling its mandate;
- (b) The enabling act fails to explicitly grant the power to accomplish the legislative objective;
- (c) The mandate of the tribunal is sufficiently broad to suggest a legislative intention to implicitly confer jurisdiction;
- (d) The jurisdiction sought must not be one which the tribunal has dealt with through the use of expressly granted powers, thereby showing an absence of necessity; and
- (e) The Legislature did not address its mind to the issue and decide against conferring the power upon the tribunal.

28. The Commission noted in Decision 2014-169 that the criteria for the “application of the doctrine of necessary implication are prescriptive and conjunctive. The doctrine cannot support a finding of implied jurisdiction unless all of the identified criteria are met.”⁹

29. The Commission has consistently applied Dredger’s modern principle of statutory interpretation:

The Supreme Court of Canada explained Driedger’s principle and its application to the statutory scheme administered by the Commission in *ATCO Gas & Pipelines Ltd v Alberta (Energy and Utilities Board)*. The Court stated that the principle requires that “the words of an act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.” The court clarified that it looks first at the grammatical and ordinary meaning of a provision and then examines the entire statutory context and legislative intent. The Court concluded: “the ultimate goal is to discover the clear intent of the legislature and the true purpose of the statute while preserving the harmony, coherence and consistency of the legislative scheme.”¹⁰ [emphasis added, footnotes omitted]

30. Regarding the five prescriptive and conjunctive criteria articulated by the Supreme Court of Canada for the application of jurisdiction by necessary implication, and having regard to the modern principle of statutory interpretation, the AESO submits the following:

- (a) The making of the requested order would accomplish the objects of the legislative scheme and is essential to the Commission fulfilling its mandate. Pursuant to subsection 8(1) of the AUC Act, the Commission “has all the powers, rights, protections and privileges that are given to it or provided for under [the AUC Act] and under any other enactment and by law.” [emphasis added] Subsection 122(2) of the EUA provides that when the AESO is the applicant for a tariff approval, the Commission must have regard for the principle that a tariff approved by it must provide the AESO with a reasonable opportunity to recover all of the items referred to in

⁹ Decision 2014-169, at para 144.

¹⁰ Decision 23418-D01-2019, *EPCOR Water Services Inc., E.L. Smith Solar Power Plant*, February 20, 2019, at para 84.

subsection 122(1) that are applicable to the AESO. The cost items referred to in subsection 122(1) include costs that are required to be paid by the AESO under the EUA and financing costs. Subsection 30(2) of the EUA provides that the rates to be charged by the AESO for each class of service must reflect the prudent costs that are reasonably attributable to each class of system access service and must be sufficient to recover the amounts to be paid by the AESO under the approved tariff of each owner of each transmission facility.

Subsection 121(2) of the EUA provides that, when considering whether to approve a tariff application, the Commission must ensure that the tariff (a) is just and reasonable; and (b) is not, among other things, unduly preferential, arbitrarily or unjustly discriminatory.

The AESO submits that, in light of the in the financial pressures arising from the COVID-19 pandemic, as recognized by the Government of Alberta, it would be just and reasonable to permit the:

- (a) deferral of payment of Rate DTS charges through the Retail Consumers Deferral Program, and
- (b) deferral of payment of Rate DTS charge increases through the Transmission-Connected Deferral Program,

which arise from the 2020 ISO Rates during each of the RC Deferral Period and the TC Deferral Period and any extension to those periods.

The AESO also submits that it would not be unduly preferential, arbitrary or unjustly discriminatory to permit the deferral of all Rate DTS charges for Eligible Retail Consumers and limit payment deferrals for Transmission-Connected Market Participants to the amount of Rate DTS charge increases. In Decision 24257-D01-2019,¹¹ the Commission stated that differences in rates must be assessed on the presence or absence of sufficient rationale or logic and fact-based evidence justifying the distinction.

As a matter of policy, the Government of Alberta has:

- (a) directed that Eligible Retail Consumers will be permitted to defer the entire amount of their Retail Electricity Provider's invoice during the Deferral Period; and
- (b) requested that the AESO permit Transmission-Connected Market Participants to defer payment of Rate DTS charge increases that they would otherwise incur during the Deferral Period.

Under the two deferral programs, both the DFOs and the Transmission-Connected Market Participants will ultimately pay the actual 2020 ISO rates applicable to the transmission of electric energy consumed by Eligible Retail Consumers during the RC Deferral Period and Transmission-Connected Market Participants during the TC Deferral Period and any extension

¹¹ 24257-D01-2019, *Evergreen Gas Co-op Ltd., Franchise Agreement with the Town of Drayton Valley*, May 2, 2019, at paras 19 and 21.

to those periods. The AESO will recover its carrying costs associated with both deferral programs. The Transmission-Connected Deferral Program will not result in the transfer of costs from one group of market participants to another. Under the Retail Consumers Deferral Program, there will be, in effect, a transfer of the AESO's carrying costs from Eligible Retail Consumers to DFOs and for which DFOs, will in turn, need to determine how those costs should be appropriately allocated to and recovered from their customer base. The AESO submits that based on the Government of Alberta's policy decisions, there is a sufficient rationale and fact-based evidence that justifies the temporary distinction between the two deferral programs such that Eligible Retail Consumers will be permitted to defer payment of their entire transmission charge, without incurring carrying costs, while Transmission-Connected Market Participants will be limited to deferring payment of Rate DTS charge increases, while incurring carrying costs.

- (b) Neither the EUA nor the AUC Act grant the Commission the power to accomplish the legislative objective of ensuring that the AESO tariff rates are just and reasonable in extreme circumstances such as the COVID-19 pandemic by explicitly permitting the deferral of payments or payment increases under the ISO tariff.
- (c) The mandate of the Commission to ensure that tariff rates are just and reasonable is sufficiently broad to suggest a legislative intention to implicitly confer jurisdiction to grant the requested orders.
- (d) The making of the orders requested by the AESO is not one which the Commission has dealt with through the use of expressly granted powers; there are no such expressly granted powers.
- (e) The Legislature has not addressed its mind to the issue of permitting tariff payments to be deferred and, therefore, has not decided against conferring such power upon the Commission.

31. The AESO submits that has the Commission has, by necessary implication, the jurisdiction to grant the requested orders.

Jurisdiction of the Commission to Make Orders Without Notice or Holding a Hearing

32. Unless otherwise expressly required, subsection 9(1) of the AUC Act provides the Commission with authority to make orders and decisions without giving notice and without holding a hearing:

9(1) Unless expressly provided by this Act or any other enactment to the contrary, and subject to this section, any order or decision that the Commission is authorized to make may be made without giving notice and without holding a hearing.

33. Subsection 9(2) of the AUC Act requires that the Commission give notice of an application and hold a hearing when it appears to the Commission that its decision or order may directly and adversely affects the rights of a person:

(2) If it appears to the Commission that its decision or order on an application may directly and adversely affect the rights of a person, the Commission shall

(a) give notice of the application in accordance with the Commission rules,

(b) give the person a reasonable opportunity of learning the facts bearing on the application as presented to the Commission by the applicant and other parties to the application, and

(c) hold a hearing.

34. Based on the reasons discussed above regarding why there will be no undue preference or unjust discrimination caused by the two payment deferral programs, the AESO submits that no group of market participants would be directly and adversely affected by the Commission granting the requested orders. Although the AESO's carrying costs to be recovered from DFOs under the Retail Consumers Deferral Program cannot be flowed through to Eligible Retail Consumers, DFOs can determine how those costs should be appropriately allocated to and recovered from their customer base.
35. The AESO further submits that in the current circumstances of the COVID-19 pandemic, it would be appropriate and reasonable for the Commission to grant the orders requested by the AESO without notice or a regulatory process and to enable the orders to be effective by May 1, 2020.
36. Although the AESO is requesting that the Commission not provide formal notice of this application, the AESO has informed market participants of this application by way of a posting to the AESO's website and will be providing further notification in the AESO's April 16, 2020 stakeholder newsletter. If the Commission grants the orders requested by the AESO, the AESO will also notify DFOs and Transmission-Connected Market Participants of the respective deferral programs. The AESO will provide Transmission-Connected Market Participants with instructions for participating, if they choose to do so. The AESO will coordinate with DFOs, other direct stakeholders, and the Government of Alberta, regarding how the Retail Consumers Deferral Program will be undertaken and administered as between the AESO and a DFO.

Yours truly,

<Electronically submitted>

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