



# AUC

Alberta Utilities Commission

## **Alberta Electric System Operator**

**Decision on Variance of  
AUC Decision 2013-044: Competitive Process  
Pursuant to Section 24.2(2) of the Transmission Regulation  
Part B: Final Determination**

**July 9, 2013**

**The Alberta Utilities Commission**

Decision 2013-255: Alberta Electric System Operator

Decision on Variance of AUC Decision 2013-044: Competitive Process Pursuant to  
Section 24.2(2) of the Transmission Regulation

Part B: Final Determination

Application No. 1609483

Proceeding ID No. 2555

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## Contents

<b>1</b>	<b>Introduction.....</b>	<b>1</b>
<b>2</b>	<b>Background .....</b>	<b>2</b>
<b>3</b>	<b>Test for review and variance.....</b>	<b>3</b>
<b>4</b>	<b>Condition 9 .....</b>	<b>4</b>
<b>5</b>	<b>Commission questions .....</b>	<b>5</b>
	5.1 Question 1 .....	5
	5.2 Question 2 .....	14
	5.3 Question 3 .....	18
<b>6</b>	<b>Commission findings.....</b>	<b>22</b>
<b>7</b>	<b>Order .....</b>	<b>24</b>
	<b>Appendix 1 – Proceeding participants .....</b>	<b>25</b>



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## **1 Introduction**

1. On February 14, 2013, the Alberta Utilities Commission (AUC or the Commission) issued Decision 2013-044<sup>1</sup> in Proceeding ID No. 1449. That decision approved, with conditions, the Alberta Electric System Operator's (AESO's) competitive process to determine who is eligible to apply to the Commission for the construction and operation of certain transmission facilities pursuant to Section 24.2 of the *Transmission Regulation*, AR 86/2007.

2. In Decision 2013-044, the Commission made a determination respecting the price adjustment mechanism to be included in the competitive process to be implemented by the AESO. Specifically, the Commission stated at paragraph 201 of Decision 2013-044 the following:

201. Consequently the Commission directs the AESO to structure its competitive process such that the proponents will be responsible for assessing the various risks they will face rather than having the AESO make the determination, as it has done in Schedule 8. Should all proponents be in agreement with the AESO's proposed formulaic adjustment mechanism for a specific event, then the AESO will be free to use their proposed adjustment mechanism. Otherwise, the proponents will have the opportunity to choose whatever adjustment mechanism suits their risk tolerance for a specific event. In this way, the Commission could be assured that any changes to the arrangement was the result of competitive forces since the proponents will have known the magnitude of the risk and would have factored this assessment in their financial bids.

3. Further to this determination, the Commission imposed Condition 9 which stated:

(9) The AESO structure its competitive process such that the proponents will be responsible for assessing the various risks they will face rather than having the AESO make the determination unless all proponents are in agreement with the AESO's proposed formulaic adjustment mechanism.

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<sup>1</sup> Decision 2013-044: Alberta Electric System Operator, Competitive Process Pursuant to Section 24.2(2) of the Transmission Regulation, Part B: Final Determination, Application No. 1607670, Proceeding ID No. 1449, February 14, 2013

## 2 Background

4. On April 10, 2013 the Commission received correspondence from the AESO regarding the imposition of Condition 9.<sup>2</sup> In its correspondence, the AESO indicated that it would have difficulty complying with the Commission's direction in Condition 9. As well, the AESO expressed its concern regarding the effect that Condition 9 might have on its ability to complete the competitive process

5. On April 12, 2013, the Commission, pursuant to Section 2 of AUC [Rule 016: Review and Variance of Commission Decisions](#) (AUC Rule 016), determined that it would review its findings in Decision 2013-044 as set out in paragraph 201 and Condition 9.<sup>3</sup>

6. In reaching its decision to review Decision 2013-044 on this issue, the Commission considered that it was in the public interest to ensure that the competitive process be perceived by participants to be fair and transparent and that participants not be discouraged from participating in the process. For this reason, the Commission considered that a review of its own decision was warranted. Proceeding ID No. 2555 was assigned to this review and variance process.

7. On April 19, 2013, the Commission issued a letter to all parties who had registered their participation in Proceeding ID No. 1449. Proceeding ID No. 1449 was the proceeding assigned by the Commission for the AESO's application for approval of its competitive process to determine who is eligible to apply to the Commission for the construction and operation of certain transmission facilities pursuant to Section 24.2 of the *Transmission Regulation*. In this letter, the Commission advised parties that the scope of the review would be restricted to the Commission's consideration of the potential impact that the imposition of Condition 9 may have on the AESO's competitive procurement process. The Commission also set out three questions in its letter of April 19, 2013, and invited parties to provide submissions in response to the questions posed by May 10, 2013.<sup>4</sup>

8. The Commission received responses from the AESO,<sup>5</sup> AltaLink Management Ltd. (AltaLink),<sup>6</sup> ATCO Electric Ltd. (ATCO Electric),<sup>7</sup> Elecnor S.A. (Elecnor),<sup>8</sup> Enbridge Inc. (Enbridge),<sup>9</sup> EPCOR Utilities Inc. (EPCOR),<sup>10</sup> Iccenlux, Corp. (Iccenlux),<sup>11</sup> John Laing Investments Limited (Laing),<sup>12</sup> LS Power Transmission, LLC (LS Power),<sup>13</sup> NextEra Energy Canada, ULC (NextEra),<sup>14</sup> Renewable Energy Systems Canada Inc. (RES Canada),<sup>15</sup> TAMA

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<sup>2</sup> A copy of the AESO letter of April 10, 2013 is attached to Exhibit 1, the Notice of Commission Review dated April 12, 2013.

<sup>3</sup> Exhibit 1, Notice of Commission Review.

<sup>4</sup> Exhibit 2.

<sup>5</sup> Exhibit 9.

<sup>6</sup> Exhibit 4.

<sup>7</sup> Exhibit 11.

<sup>8</sup> Exhibit 7.

<sup>9</sup> Exhibit 15.

<sup>10</sup> Exhibit 5.

<sup>11</sup> Exhibit 8.

<sup>12</sup> Exhibit 14.

<sup>13</sup> Exhibit 10.

<sup>14</sup> Exhibit 16.

<sup>15</sup> Exhibit 18.

Transmission LP (TAMA),<sup>16</sup> TransCanada Energy Ltd. (TCE),<sup>17</sup> and the Office of the Utilities Consumer Advocate (UCA).<sup>18</sup>

9. On May 22, 2013, the Commission issued a letter to all parties advising them of the opportunity to provide reply submissions by May 30, 2013.<sup>19</sup> The Commission received reply submissions from the AESO,<sup>20</sup> AltaLink,<sup>21</sup> ATCO Electric,<sup>22</sup> EPCOR,<sup>23</sup> TAMA,<sup>24</sup> TCE<sup>25</sup> and the UCA.<sup>26</sup>

10. The Commission considers the close of record for this proceeding to be May 30, 2013.

### 3 Test for review and variance

11. The Commission's authority to review a decision is found in Section 10 of the *Alberta Utilities Commission Act*, SA 2007, c. A-37.2. Section 10(1) states:

#### Reviews

**10(1)** The Commission may in accordance with the rules made under subsection (2) review any decision or order made by it under this Act or any other enactment and after the review may confirm, rescind or vary the decision or order.

12. Section 2 of AUC Rule 016 states as follows:

#### 2 Commission review on its own motion

The Commission may, at any time, review a decision on its own motion.

13. In arriving at this decision, the Commission has considered all relevant materials comprising the record of Proceeding ID No. 1449 and Proceeding ID No. 2555. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that it did not consider all relevant portions of the record with respect to that matter.

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<sup>16</sup> Exhibit 13.

<sup>17</sup> Exhibit 3.

<sup>18</sup> Exhibit 12.

<sup>19</sup> Exhibit 20.

<sup>20</sup> Exhibit 22.

<sup>21</sup> Exhibit 21.

<sup>22</sup> Exhibit 27.

<sup>23</sup> Exhibit 25.

<sup>24</sup> Exhibit 23.

<sup>25</sup> Exhibit 26.

<sup>26</sup> Exhibit 24.

#### 4 Condition 9

14. As stated above, Decision 2013-044 approved the competitive process developed and proposed by the AESO, subject to certain conditions. Condition 9 required that:

The AESO structure its competitive process such that the proponents will be responsible for assessing the various risks they will face rather than having the AESO make the determination unless all proponents are in agreement with the AESO's proposed formulaic adjustment mechanism.

15. This condition followed the determination made by the Commission in paragraph 201 of the decision which stated:

201. Consequently the Commission directs the AESO to structure its competitive process such that the proponents will be responsible for assessing the various risks they will face rather than having the AESO make the determination, as it has done in Schedule 8. Should all proponents be in agreement with the AESO's proposed formulaic adjustment mechanism for a specific event, then the AESO will be free to use their proposed adjustment mechanism. Otherwise, the proponents will have the opportunity to choose whatever adjustment mechanism suits their risk tolerance for a specific event. In this way, the Commission could be assured that any changes to the arrangement was the result of competitive forces since the proponents will have known the magnitude of the risk and would have factored this assessment in their financial bids.

16. The AESO indicated in its April 10, 2013 letter that while it recognized the intent of Condition 9 was to enhance the competitive pressures in the bidding process, it was concerned about the unintended effects that the imposition of this condition would have on the competitive procurement process.

17. The AESO's competitive procurement process identified 11 risk events that would result in a price adjustment based on a predetermined formula or index. The AESO described these risks in Schedule 8 of Appendix 1 of the revised competitive process application filed on March 30, 2012 in Proceeding ID No. 1449. The AESO proposed a standard formulaic adjustment mechanism for each risk event so that proponents would be required to assess the potential that each risk event would have on the project costs and then would be required to submit their financial bids based on their assessment of the risks. Consequently, the AESO would be able to determine the successful proponent based on one criteria, the lowest cost proposal.

18. The AESO submitted that the purpose for each of the adjustments was not the same for all 11 events. Three risk events, early or late completion, failure to meet availability or performance standards, and termination, related to the successful proponent's performance under its contractual obligations. The AESO stated that the adjustment mechanisms for these three risk events must be determined solely by the AESO because it is the AESO's statutory duty and obligation to ensure the safe, reliable and economic operation of the interconnected electric system. Consequently, the AESO considered it to be inappropriate to allow proponents to specify their own consequences for non-performance or premature termination.



19. The AESO submitted that the remaining eight risk events each have adjustment mechanisms that will be determined after discussions with the proponents at the request for proposal stage of the competitive process. As these adjustment mechanisms will be finalized in a bidding document, the AESO argued that there would be no need to allow the proponents to choose their own adjustment mechanism since the proponents could assess their risk tolerance against the prescribed adjustment mechanisms then have their risk assessment reflected in their financial bids.

20. The AESO also claimed that the imposition of Condition 9 would impair the fairness and transparency of its competitive process by introducing more subjectivity into the evaluation process. As well, because proponents would not have a clear understanding of criteria used by the AESO to evaluate their various adjustment mechanisms, this may discourage proponents from participating.

## **5 Commission questions**

21. As stated in paragraph 7, the Commission requested interested parties to respond to three questions posed by the Commission in response to the issues raised by the AESO.

### **5.1 Question 1**

22. Question 1 stated :

The AESO has indicated in its correspondence of April 10, 2013 that if proponents were allowed to submit their own adjustment mechanisms, as currently permitted under Condition 9, the winner would be determined not just by the bid price, but also by the AESO's assessment of the risk and the values of the different adjustment mechanisms.

The AESO has also stated in its correspondence that there would be difficulty with the application of Condition 9 to all 11 elements for which formulaic adjustment mechanisms are proposed.

What challenges and difficulties would participants encounter in being made responsible for assessing the various risks they will face in constructing and operating the project and in proposing the adjustment mechanism rather than having the AESO make the determination?

Is there a manner in which proponents could be confident in the process and still retain the ability to propose their own adjustment mechanisms?

Are there any of the 11 elements for which formulaic adjustments mechanisms are proposed to which the application of Condition 9 would not impair the competitive process?

## **Views of the AESO**

23. In response to the Commission's question regarding risk allocation, the AESO responded that its objective in the competitive process was to allocate the various risks of the project between proponents and ratepayers in order to promote the lowest cost proposal. Specifically, the AESO designed its process to ensure that ratepayers would be responsible for risks over which

proponents had no control because transferring those risks to proponents would either discourage their participation in the competitive procurement process or result in unacceptable risk premiums being included in their financial bids. Conversely, proponents would be responsible for risks over which they would have control because the management of the risk should manifest itself in lower overall project cost to ratepayers. Finally, ratepayers and proponents would share responsibility for certain risks, depending upon the degree to which proponents would have some control over those risks in order to avoid the potential for risk premiums to be built into the financial bids.

24. As well, the AESO repeated its submission from its April 10, 2013 letter that the purpose for the adjustment mechanism was not the same for all 11 events. Three of the events: refinancing costs, cost saving proposals, and early procurements costs, were identified by the AESO as being events that could lead to a desirable outcome, namely a decrease in project costs. The proposed adjustment mechanisms for these three events were not intended to compensate proponents for the risk that the costs may decrease. Rather, these adjustment mechanisms would prescribe how the benefits of the cost reductions would be shared between the successful proponent and ratepayers.

25. The AESO indicated that all the formulaic adjustment mechanisms would be finalized before the competitive bids were submitted. Each proponent would then make its own assessment of the risks that it faced and of the value of the adjustment mechanisms in providing compensation for the consequences of the risk event occurring and reflect this assessment in the bid price provided to the AESO. Competitive tension would be created by having the proponents assess their risk tolerances against the same adjustment mechanisms rather than allowing the proponents to choose their own. Proponents that were willing to absorb a particular risk could manifest this tolerance through the submission of a lower priced bid.

26. The AESO stated that if the proponents were allowed to choose their own adjustment mechanisms, the AESO would then be required to assess the likelihood of the risk event occurring, the impact that the risk would have on the project's cost and the value of the different adjustment mechanisms in order to evaluate the bids on an equivalent basis. The AESO believed it would be very difficult to assign values to the different adjustment mechanisms and that doing so would introduce a subjective assessment process for the AESO which would compromise the transparency and fairness of the competitive process.

27. Consequently, it was the submission of the AESO that Condition 9 should not be applied to any of the 11 events for which formulaic adjustments were proposed.

### **Views of other parties**

28. Most parties supported the views of the AESO regarding the impact that Condition 9 could have on the AESO's ability to fairly and transparently evaluate the bids submitted. Generally, parties were concerned that the imposition of Condition 9 would inject an additional level of subjectivity into the evaluation process which, in turn, would result in a degree of uncertainty that would make the competitive process less attractive to potential bidders. While some of these parties proposed permitting the submission of an alternative bid in addition to submitting a standard bid in accordance with the 11 adjustment mechanisms proposed by the AESO, none supported the retention of Condition 9 or identified any of the 11 elements to which Condition 9 could be applied.

29. The submissions and reply submissions of those parties who have recommended removal of Condition 9 have been summarized in paragraphs 30 to 54 below.

30. Elecnor considered the AESO's proposed competitive process application that was filed on March 30, 2012 established acceptable risk allocation and adjustment mechanisms. Conversely, Elecnor submitted that the AESO would find it difficult to establish a well understood scoring system to assess bids if proponents were allowed to submit their own adjustment methodologies. In turn, the introduction of a subjective evaluation process may impair and jeopardize the competitiveness of the process and discourage participation in the competitive process because proponents would be uncertain as to how their bids will be evaluated and scored objectively and how the winning bid would be determined. Elecnor stated that proponents would feel more confident with a competitive process that had a clearly articulated set of bidding and evaluation rules.

31. Enbridge stated that Condition 9, in its current form, could potentially cause barriers to entry into the market due to uncertainty of how bids could be both proposed and evaluated. Enbridge recommended that the Commission should revise Condition 9 to allow the AESO to establish price adjustment mechanisms following discussions with proponents. Enbridge stated that the competitive pressures would not be stifled by having the AESO prescribe the adjustment mechanisms, especially if the adjustment mechanisms were established as a result of discussions with proponents. Experienced proponents would be well-positioned to assess and evaluate the risk and value of any adjustment mechanism in formulating their submission. The creation of a consistent set of bidding documents, including price adjustment mechanisms, against which each proponent is required to assess its bid would provide all proponents with a clear starting point in which to plan their bid and enable the AESO to review the proposals on a comparable basis.

32. Enbridge further indicated that standardizing the adjustment mechanisms prior to the submission of bids would provide the AESO and the proponents with greater certainty and predictability and ensure that the competitive process proceeds with a reduced chance of subjectivity which, in turn, removes a variable in determining whether to participate.

33. Enbridge noted that its proposed revision to Condition 9 aligns with the AESO's objectives for the competitive procurement process and fosters investment, regulatory predictability, efficiency, a reasonable level of transparency, and is fair, open and consultative.

34. Enbridge concluded that allowing the AESO to establish price adjustment mechanisms would not inhibit market forces in the competitive process and would provide for greater certainty and predictability for potential participants, thereby removing barriers to entry into the market.

35. EPCOR noted that while participants would be faced with the challenge of assessing and mitigating the risks associated with constructing and operating the project as a matter of course in preparing their bids, the critical challenge would be encountered by the AESO in evaluating and scoring competing bids based on the unique adjustment mechanisms. The AESO's evaluation process would not be objective or transparent without the consistency in the application of the adjustment mechanisms.

36. EPCOR stated that the lack of an objective standard for evaluating and scoring bids would create challenges for proponents. Because it would be difficult for a proponent to assess its prospects of success, this could discourage the willingness of potential proponents to participate in the competitive process and increase the likelihood that an unsuccessful proponent will challenge the outcome of the process.

37. EPCOR indicated that these challenges could be remedied if the AESO structured its competitive process to include a standard set of adjustment mechanisms. Each proponent would assess the impact of the risk and the adjustment mechanism established to mitigate that risk into their financial bids. EPCOR noted that the AESO intended to use the net present value of each proponent's required financial bid as the evaluation criteria. The use of the net present value for evaluating the bids, which is based on a common set of adjustment mechanisms, would result in an objective and transparent ranking of competing bids.

38. Iccenlux agreed with the AESO that Condition 9 should be eliminated because it would significantly impair the competitive process developed by the AESO, specifically the use of consistent and objective evaluation criteria. While Iccenlux did not foresee any significant challenges or difficulties in assessing the various risks and choosing a risk adjustment mechanism, it considered that Condition 9 could introduce considerable subjectivity for the AESO in the bid evaluation process. The AESO would be required to compare and evaluate each proponent's risk adjustment mechanism and would have to do so on a subjective basis. This, in turn, creates uncertainty as to how a winner would be selected and what a proponent needs to do to win. Iccenlux preferred that a well-defined competitive process be established so that the proponents' bids could be evaluated on a comparable basis and did not support changes that would introduce subjective criteria into the process.

39. Laing agreed with the AESO's concerns regarding the lack of clarity in the evaluation process should each proponent choose its own set of risk parameters and adjustment mechanisms. Laing considered that a competitive procurement process works best when proponents are required to assess all the various risks against clearly articulated, transparent evaluation criteria and recommended that the AESO set out in its procurement documents and project agreement its position on each of the 11 risk events and rely on the proponents to assess and price each risk factor and adjustment mechanism into its bid. The AESO could then conduct its evaluation of the bids on the basis of net present value. Laing did not believe that any of the 11 events should be separately determined by the proponents.

40. Laing indicated that the only way that a competitive process could allow proponents to choose their own adjustment mechanisms would be through the AESO's procurement documents permitting specific variant elements to bids. The AESO would then have to outline the specific areas it would be interested in receiving variant bids, discuss the potential variants with proponents during the request for proposal period and pre-approve any variant elements submitted. In addition to all proponents having to submit a compliant bid, proponents must be permitted to submit a variant bid that would highlight the proponent's value for money proposition. The variant bid could then be considered by the AESO during their evaluation process.

41. Laing concluded by stating that the lack of clarity that can arise as a result of Condition 9, combined with other elements of Decision 2013-044, would make the AESO's competitive procurement process unattractive when compared with other bidding opportunities.

42. LS Power stated that overall participation in a competitive procurement process requires a review of all of the terms and conditions of the process. A participant must evaluate Condition 9 in the context of all the changes to the competitive process included in Decision 2013-044. LS Power considered that the probability of success for each potential bidder was reduced and the cost of failure was increased by other elements of Decision 2013-044. Consequently, potential bidders must have assurance that the competitive process is transparent and fair or they may determine that participation is not worth the significant cost and resources that are required and expressed concerns that Condition 9 could jeopardize the transparency and fairness of the competitive process because it was not clear how differing bids with different adjustment mechanisms would be evaluated by the AESO.

43. LS Power stated that Condition 9 would allow proponents to submit a wide spectrum of bids with no common standard, which could make comparable evaluations of the various bids extremely difficult. The challenge in allowing participants to determine the adjustment mechanisms would be with the AESO's evaluation process. The AESO's ability to evaluate every risk adjustment mechanism for each bid on a comparable basis would be extremely difficult, and would introduce additional subjectivity and uncertainty into the competitive process.

44. LS Power recommended that proponents should be required to submit a bid that conforms to the AESO's standardized requirements so that these bids could be compared using a fair, objective, and transparent evaluation process but noted that flexibility within certain elements of a conforming bid is possible and desirable and that proponents should have the opportunity to propose alternative risk sharing mechanisms to the AESO in an alternative bid. Proponents should be permitted to choose adjustment mechanisms but only from a list of pre-approved indices determined by the AESO and after consultation with the proponents. The AESO would be required to clearly describe how any adjustment mechanism would be used for each of the approved indices. Because Condition 9 has the potential to cause unfair bid adjustment, introduces subjectivity, and reduces transparency in the evaluation of proposals, LS Power recommended that the Commission eliminate this condition unless the AESO clearly states how it will assess risks before proposals are submitted.

45. NextEra was supportive of having the AESO's proposed adjustment mechanisms used in the competitive process rather than having each proponent made responsible for identifying the risk and choosing their preferred adjustment mechanisms. Otherwise, proponents will be required to determine whether it is more cost effective to assume the risk and add an appropriate risk premium to its bid or to allocate the risk to the AESO and propose the mechanism to adjust the price. NextEra believed that the degree of uncertainty, the level of complexity and the corresponding difficulty for participants will be magnified should each participant be made responsible for assessing risks and proposing their own adjustment mechanisms.

46. The difficulty would not be in the choice of adjustment mechanisms by the proponents, but in the uncertainty in trying to determine how the AESO will evaluate each proponent's bid against one another with respect to each adjustment mechanism and calculate the net present

value of the bids. NextEra indicated that proponents would only have confidence in the evaluation process if the AESO provided a financial forecasting model to them that indicated how each proponent's adjustment mechanism would be applied, and have the model available at the request for proposal stage of the competitive process. However, NextEra noted that it would likely require significant AESO resources to create this financial forecast model and the efficiency of the competitive process would be adversely impacted if the proponents expended the resources to assess whether to assume or allocate each corresponding risk and the AESO had to expend the resources to create a forecast model that incorporated each proponent's adjustment mechanisms.

47. Alternatively, NextEra stated that the use of the AESO's proposed adjustment mechanisms would provide participants with the certainty on what those mechanisms would be and how the mechanisms would be applied, and that the AESO could readily provide its forecast model to the proponents. NextEra considered this approach to be significantly more manageable and procedurally efficient for the AESO.

48. RES Canada was also supportive of the AESO's position and noted that if proponents were left to propose their own adjustment mechanisms, it would be difficult for the AESO to conduct a transparent evaluation process and would impair the AESO's ability to assess the proposals on a comparable basis because the AESO would have to evaluate the proposals based on costs as well as its valuation of the various adjustment mechanisms. Without a prior, clear understanding of the risks associated with a project and how such risks will be accounted for, RES Canada stated it would seriously reconsider its intent to participate in the process, and suspected that other parties will do the same.

49. RES Canada agreed with the Commission that qualified proponents are best positioned to assess the project's risk but believed it to be in the best interest of the competitive process if ultimate transparency and rigid guidelines were established. The AESO's proposal, with its known tabulation of project risks and standard formulaic adjustment mechanisms, would allow proponents to manifest their individual risk assessments as a component of their bids, provide for the lowest costs to be achieved and allow the AESO to compare the bids on a uniform basis.

50. RES Canada proposed, as a potential solution that would allow for proponents to propose their own adjustment mechanisms and still remain confident in the process, that proponents submit a bid that conforms to the AESO's proposed adjustment mechanisms, and also have the opportunity to submit alternate proposals utilizing a differing methodology. The AESO would have the discretion to choose whether or not to consider and evaluate the variant bid. This approach would allow the AESO to compare all proposals based on the standardized methodology on a uniform basis, while also allowing proponents to propose innovative risk assessment methodologies for the AESO's consideration.

51. TCE stated that the imposition of Condition 9 would increase uncertainty by removing clarity from the bid evaluation process and would present practical difficulties for the AESO to implement. Condition 9 would put the AESO in the position of having to subjectively evaluate and quantify the cost of the proponent's risk assessment and adjustment mechanisms as well as its financial bid, which will be virtually impossible to do in a transparent manner and as a result, could be subject to future challenge.

52. TCE stated that it would be very difficult to have any confidence in a process that provided for different adjustment mechanisms to be chosen by proponents as part of their bid submissions yet required the AESO to subjectively quantify such adjustments. TCE believed that in order to ensure confidence in the process, the AESO must be permitted to establish clear rules as early as possible in the process and to allow sufficient time for the proponents to plan and organize their bids in the most competitive manner. TCE saw no practical methodology that would allow for five different proponents to propose five different risk allocation and adjustment methodologies in respect of which a clearly articulated quantitative risk valuation could be undertaken by the AESO. While some of the adjustment mechanisms do not take into account the range of potential submissions (as they relate solely to project-financed proposals), TCE expects that the AESO will fully develop all the relevant adjustment mechanisms to include other potential financing structures when the AESO finalizes the wording of the project agreements with the proponents. Consequently, there is no need for the Commission, as an outcome of this review and variance process, to allow for adjustments within the bid submissions.

53. TCE further submitted that proponents would account for any perceived risks in the AESO's adjustment mechanisms and reflect this assessment through the inclusion of a risk premium in their bid therefore it would not be necessary to allow proponents to choose their own adjustment mechanism. Specifically, TCE agreed with the AESO that it would be inappropriate to allow proponents to specify their own consequences for contractual non-performance or termination. Adjustment mechanisms that relate directly to performance of contractual obligations (early or late completion, failure to meet availability or performance standards and termination) are three events that should not be adjusted by participants.

54. In order to promote innovative and alternative proposals, the Commission could add a qualitative component to the overall evaluation methodology having a weighting of up to 10 per cent of the bid evaluation process. TCE stated that this qualitative assessment would need to be clearly articulated by the AESO prior to the deadline for bid submission so that proponents understood the basis for the 10 per cent evaluation.

55. A summary of the submissions and reply submission of parties who expressed support for Condition 9 or supported the Commission's objective of encouraging competition for the adjustment mechanisms is provided in paragraphs 56 to 65 below.

56. AltaLink submitted that Decision 2013-044 should not be varied. Allowing proponents to assess the project's risks and choosing appropriate adjustment mechanisms for specific events promoted and encouraged participation in the competitive process since each participant would be able to structure adjustment mechanisms that aligned with their specific tolerances for risk.

57. AltaLink believed that Condition 9 would not pose any particular challenges or difficulties for participants in assessing the risks involved or proposing suitable adjustment mechanisms or impair the competitive process. The AESO has already addressed its concerns regarding subjectivity in assessing risks in the bid evaluation process with the contemplated use of selection committees and a fairness advisor. AltaLink understood the intention of having selection committees and a fairness advisor was to provide objectivity, fairness and transparency to the decision making process.

58. ATCO Electric argued that Condition 9 would not discourage participation in the competitive process and could be implemented in a fair and reasonable manner. Well-qualified participants would be able to assess the various risks they may face in constructing and operating the project and could propose appropriate adjustment mechanisms to account for such risks as part of their bids. The AESO's existing competitive process exposes proponents to a high degree of uncertainty, since proponents would be required to submit binding bids at a time when information will not be available to accurately assess the project's costs. As an example, ATCO Electric indicated that proponents will be required to submit a preferred and alternative route as part of their bid proposals, without having conducted a comprehensive public consultation program necessary to support a facility application to the Commission.

59. ATCO Electric acknowledged that implementing Condition 9 would require a more complex bid evaluation process and that to address the AESO's concerns in its April 10, 2013 letter regarding the difficulty in conducting a bid evaluation process in light of Condition 9, that there would be a need for careful review of the AESO's evaluation and selection process. In order to maintain confidence in the process and not be discouraged from participating, ATCO Electric recommended that Condition 9 be modified to include Commission approval of the AESO's bid evaluation process. ATCO Electric submitted that Commission approval was required since the AESO's current competitive process does not set out the approach by which the AESO will evaluate bids in light of Condition 9. ATCO Electric believed the AESO should be required to have its evaluation process designed and submitted to the Commission for approval after the close of the request for proposal stage, when the AESO received the final bids. ATCO Electric noted that it was not unusual for the Commission to review bid evaluation mechanisms, as under the traditional cost of service model, transmission facility owners are required to justify their selection of bidders in their tender processes through the Commission's prudence review in setting electric transmission rates.

60. TAMA indicated that it would not face undue challenges and difficulties in being made responsible for assessing the various risks in constructing and operating the project and in proposing the adjustment mechanisms and that a key competitive advantage it possesses is its ability to identify and manage project risk, which could potentially result in the lowest price impact to customers with the exception of two events, the failure to meet availability or performance standards and termination. TAMA stated that because availability and performance standards were system requirements, the remedies or penalties should be the same for each proponent. The application of Condition 9 would impair the competitive process because the AESO was best suited to assess the risk and the impact of the risk that a proponent's inability to meet availability and performance standards would have on the integrity of the transmission system. As well, TAMA believed that Condition 9 would impact the competitive process if the termination rights of the AESO were modified for each proponent. Consequently, TAMA stated that the AESO's termination rights must be consistent for all proponents while the remedies could be proponent specific.

61. TAMA submitted that the AESO would receive the lowest-risk and most competitive proposals if it allowed participants to define and price their own risk tolerance and risk adjustment mechanisms rather than having the AESO make the determination independently. Proponents should be consulted by the AESO and be given an opportunity to provide confidential input to the AESO on the identified risks, risk allocation and adjustment mechanisms as set forth in Condition 9 prior to issuance of the request for proposals. TAMA also



recommended that the adjustment mechanisms, whether proposed by the AESO or the proponents, be approved prior to the commencement of the request for proposal stage for reasons of transparency and expediency. The proponents' comments could then be used by the AESO to develop a standard final form of project development agreement for bidding purposes prior to the request for proposal bid submission deadline. The project development agreement should provide the flexibility to allow proponents to indicate their tolerance for each risk event rather than accepting the AESO's proposed risk-allocation structure. The proponents' indicated values could then be evaluated along with the proposed pricing to determine the optimal project. Once the project development agreement is finalized, the request for proposal process should be conducted using a consistent set of rules and a clear set of guidelines to ensure only conforming bids are considered. TAMA considered that the AESO and its selection panel members had the ability, expertise, and qualifications to create an assessment process that would recognize the differences in the proponent's indicated values for risk allocation and evaluate and score the comparative bids in a consistent and fair manner.

62. The UCA, as representative of the interests of Alberta ratepayers, stated that the competitive process must result in the minimization of life-cycle costs and must allocate risk to most efficiently and effectively reduce costs and mitigate risk. The UCA noted that the AESO was challenged to develop a competitive process that would elicit the best price-competitive bid from proponents while enabling them to be innovative by administering a process that is fair and measurable.

63. The UCA considered that the AESO met the challenge of providing proponents with process predictability and cost predictability by having designed a process incorporating the proposed adjustment mechanisms contained in Schedule 8 of its March 30, 2012 application.

64. However, the UCA also agreed with the views of the Commission in Decision 2013-044 that led to the imposition of Condition 9. In particular, the UCA noted that proponents would be the best ones to determine their risks relative to their competitive advantages and would bring forward innovative and competitive proposals. The UCA provided, as an example, a situation where an adjustment mechanism based on price index may not be relevant to a proponent and therefore may not incent the proponent to reduce its risk premium in response to that indexed pricing. According to the UCA, more relevant adjustment mechanisms could be proposed and considered if the proponents had the opportunity to choose its adjustment mechanism.

65. Except for the three events noted by the AESO in its April 10, 2013 letter to the Commission, namely early or late completion, failure to meet availability or performance standards and termination, the UCA submitted that the remaining eight risk events and elements should be subject to Condition 9. The UCA stated that having the proponents be made responsible for determining the adjustment mechanism would encourage innovative bids, potentially allow proponents to shift risks away from customers (and therefore relieve customers from having to provide compensation for the risk), manage and control the risks more effectively without increasing the risk premium and remove the requirement of the AESO to make an assessment on a bid when a proponent decides to decline the AESO's proposed adjustment mechanism for inflation/deflation.

## 5.2 Question 2

66. Question 2 stated:

The provision in Condition 9 allows participants to accept the AESO's proposed formulaic adjustment mechanism if all are in agreement. What would prevent participants from accepting the AESO's proposed formulaic adjustment mechanism and what process could the AESO implement to enable the participants to come to an agreement in a timely manner?

### Views of the AESO

67. In response to the Commission's inquiry regarding the timing and ability to reach a consensus on the proposed adjustment mechanisms, the AESO stated that its competitive process already provides for three rounds of discussions with proponents during the request for proposal stage regarding the provisions of the draft project agreements, including the formulaic adjustment mechanisms. These discussions are intended to permit the establishment of commercial terms that are acceptable to both the AESO and the proponents. The AESO indicated that it would be amenable to considering recommendations from proponents regarding different adjustment mechanisms, provided that the recommendations would not materially alter the project risk allocation or affect the contractual requirements that proponents are expected to meet. However, the AESO submitted there should be no requirement for it to obtain the agreement of all proponents to the formulaic adjustment mechanisms to be included in the final project agreements and stated that it must have the ability to assess the project's risks and to establish a common set of commercial terms that appropriately allocates the risks between proponents and ratepayers so that the competitive process is robust and results in an objective evaluation process to select the lowest overall project cost.

68. The AESO noted that for the three adjustment events that related to the performance of contractual obligations, each proponent will need to decide if it is prepared to accept the specified consequences for contractual non-performance or termination. In the case of the three adjustment events that would involve a sharing of the benefits of cost reductions, each proponent will need to make its own assessment of the probability of the cost-reducing changes and of the magnitude of the cost reductions. In the case of the remaining five adjustment events that could involve increased costs to proponents, the AESO does not believe that there is anything to prevent proponents from accepting the AESO's proposed adjustment mechanisms. Each proponent will need to make its own assessment of the risks that it faces and the values of the adjustment mechanisms and reflect these assessments in their individual bid prices.

### Views of the other parties

69. The responses from parties in relation to the issues raised in Question 2 were varied. Many parties did not consider it possible for all to agree on a common adjustment mechanism either in a timely way or at all, particularly as each proponent would be advocating for an adjustment mechanism that best reflected their own competitive advantages. The submissions and reply submissions of the parties are summarized below.

70. AltaLink considered that allowing proponents to propose their own adjustment mechanisms would likely encourage innovation in the bidding process, which participants could view as an opportunity to exploit a competitive advantage. Consequently, proponents may elect

not to agree to the AESO's proposed formulaic adjustment mechanisms if a better alternative is available. Otherwise, the proponents would have the option of using the adjustment mechanisms suggested by the AESO.

71. ATCO Electric submitted that it was difficult to speculate on whether all proponents would likely accept any one of the AESO's proposed adjustment mechanisms. ATCO Electric was of the view that all the provisions of the project agreements, including the exact wording of the terms and conditions for the AESO's proposed formulaic adjustment mechanisms, must be finalized by the AESO prior to the proponents entering into discussions with the AESO to determine whether agreement can be reached on the adoption of the AESO's adjustment mechanisms. Proponents would not be able to adequately assess whether they are in agreement with a particular formulaic adjustment mechanism unless the details of how that adjustment mechanism will be implemented are known, which requires that proponents review the final form of the contract terms and conditions.

72. ATCO Electric also stated that the process to have proponents agree on the AESO's proposed adjustment mechanisms must take place prior to the requirement for proponents to post security since ATCO Electric considered it unfair to have proponents commit to providing security in the absence of final contracts. Attempts to agree on adjustment mechanisms should take place at the request for proposal stage when the discussions are with the smaller group of proponents. A smaller group of proponents would also facilitate the timely conclusion of the discussions. ATCO Electric indicated that there would be two opportunities provided to proponents to comment on the provisions of the project agreements. The first opportunity would occur when the AESO prepares draft project agreements. Proponents could then attempt to agree on the AESO's adjustment mechanisms at that time. The second opportunity would be after the AESO reissues the project agreements after having considered the discussions with the proponents and whether the proponents agreed to adopt the AESO initial adjustment mechanisms. ATCO Electric suggested that the proponents' comments could be restricted to only those changes made to the project agreements by the AESO that addressed the concerns of the proponents who did not want to adopt the AESO's adjustment mechanisms. The AESO would then issue the final form of project agreements following the second round of comments. ATCO Electric also stated that proponents should be able to withdraw from the request for proposal process after the final project agreements are issued, since that will be the time when the proponents will have an understanding of the risks they are expected to bear.

73. Elecnor supported an AESO competitive process where all proponents would compete on the same conditions and adjustment mechanisms and their proposals could be scored using a well-understood evaluation process. Elecnor also supported a process that would have the AESO propose a number of adjustment mechanisms acceptable to it for the proponents' consideration and have the AESO lead a consultative process to determine which mechanism should be used.

74. Enbridge stated that it would be in all proponents' best interests to agree on a proposed price adjustment mechanism, as this would provide more certainty when evaluating the risks and benefits of participating in the competitive process. Should the proponents not be able to come to an agreement in a timely manner, the AESO would be in an informed position to prescribe the appropriate mechanism and leave it to the proponents to assess the adjustment mechanism and factor their risk tolerances into their financial bid. Enbridge noted that a proponent may decide to withdraw from the competitive process if its preferred adjustment mechanism is not accepted by

the AESO but submitted that it is more likely that the proponent will reflect its risk tolerances into its pricing.

75. EPCOR stated that undertaking a consultative process that requires as many as five proponents to agree on 11 adjustment mechanisms would be inherently time consuming and difficult to conclude since the proponents would want to promote adjustment mechanisms that reflected their particular competitive advantages. EPCOR considered that enabling the AESO to impose a common standard after reviewing the input from proponents would be a reasonable process that would allow competitive tension to shape the final adjustment mechanisms and still arrive at a solution in a timely manner.

76. Iccenlux expressed skepticism about the ability of competing proponents to come to an agreement on suitable adjustment mechanisms in a timely manner since each proponent will promote an adjustment mechanism that it believes will favour its bid. Iccenlux believed it would be unlikely that proponents will be able to agree upon all elements of a single adjustment mechanism. Accordingly, it was preferable for the AESO to develop project agreements based on the formulaic risk adjustment mechanism in Schedule 8 and allow proponents to comment on those agreements as part of the request for proposal process. Once the AESO finalized the adjustment mechanisms, the proponents would have the opportunity to factor the impact of the AESO's adjustment mechanism into their financial bid.

77. Laing stated a preference for the development of a common project agreement that all proponents could bid on. This could be accomplished by having the AESO issue a draft of the project agreement, then through a process of separate confidential meetings with each proponent, determine whether any changes to the risk allocation should be made.

78. LS Power stated that differences in risk tolerance would prevent proponents from being able to agree to a single formulaic adjustment mechanism. LS Power also noted that an adjustment mechanism may not mitigate a risk as intended and could actually create additional risk for the proponent and result in higher bid prices. LS Power believed the AESO should consult with proponents at the request for proposal phase to determine acceptable formulaic adjustment mechanisms then publish a common standard to which bids must conform and clearly state how conforming bids will be evaluated.

79. NextEra stated that proponents currently do not know how the AESO's proposed adjustment mechanism would be tied to any pertinent indices, or what assumptions the AESO would use in its forecast for each such mechanism. Consequently, proponents remain exposed to uncertainty if they believe that the adjustment mechanism will not accurately reflect the underlying risk and could provide bids that were suboptimal. Allowing proponents to propose their own adjustment mechanisms to reduce exposure to such risks would leave the AESO with the complex and difficult task of evaluating and selecting from among proposals that are based on diverse adjustment mechanisms. Proponents who believed a competitive advantage could be obtained by using an alternative adjustment mechanism would be incented to reject the AESO's proposed formulaic adjustment mechanism. To ensure timely agreement on the adjustment mechanisms, NextEra suggested that proponents be required to commit to using either the AESO-proposed mechanisms or their individually-proposed mechanisms as part of their respective response to the request for qualifications stage. If there was significant opposition to the AESO's proposed adjustment mechanisms, this would become evident from the

commitments that are submitted. The AESO could then assess the responses to determine whether to advance a proponent to the request for proposal stage. NextEra also suggested that the proponents and the AESO discuss and seek binding agreement on the acceptable adjustment mechanisms during the request for qualifications stage.

80. RES Canada noted that the AESO's competitive process, including their proposed risk adjustment mechanisms, was developed collaboratively over time through a robust stakeholder process and this implied that potential proponents have already agreed to the AESO's methodology.

81. TAMA stated that while proponents could accept the AESO's proposed formulaic adjustment mechanism, the maximum advantage to customers would be to allow proponents to provide a better value proposition through a more competitive process. According to TAMA, the AESO's proposed adjustment mechanisms may not reflect the proponent's risk profile or may prevent a proponent from taking advantage of a competitive strength. TAMA noted that it would be unusual for five proponents to disclose risk tolerance publicly and agree to common adjustment mechanisms. The resources required by proponents to evaluate their risks and develop risk adjustment mechanisms, and the burden of agreeing to a common set of adjustment mechanisms prior to the request for proposal process may discourage some proponents from participating if there was no certainty of advancement to the next stage in the process. Should the AESO be required to obtain agreement from all proponents on both the risks and risk adjustment mechanisms, the AESO would need to allow for input from proponents on a confidential basis and utilize third-party, independent consultants to assist in developing common risk adjustment mechanisms. TAMA estimated that it would take two to three months for this process to conclude. After the final risk adjustment mechanisms were developed, proponents may not be satisfied with those mechanisms and may decide to not participate in the competitive process. TAMA believed that a process that attempted to achieve total agreement from proponents would result in a reduction in the potential number of proponents and would not be in the best interests of the competitive process, proponents, interested stakeholders, and ultimately the ratepayers.

82. TCE stated it would be difficult for the AESO to convince all proponents to accept specific wording of each and every provision, and unrealistic to expect proponents to come to agreement in a timely manner on all of the adjustment mechanisms because proponents have different risk tolerances, financing structures, return expectations and corporate motivations. TCE suggested that the AESO should commence discussions regarding adjustment mechanisms as quickly as possible following the close of the request for expressions of interest stage. TCE indicated that the AESO would need to consider each of the proponents' suggested changes, especially those identified as being material concerns by each individual proponent. The AESO should finalize the adjustment mechanisms early in the competitive process so that proponents could determine whether to expend significant resources in continuing with the process. Proponents that choose to continue would know the rules established by the AESO for the competitive process and reflect their assessment of risk into their financial bids.

83. The UCA considered that proponents would view the adjustment mechanisms contained in Schedule 8 of the AESO's March 30, 2012 application as being the "default" provisions if the proponents were unable to propose alternative adjustment mechanisms as Condition 9 of Decision 2013-044 would allow. All proponents would be required to submit a bid based on the AESO's proposed adjustment mechanism and have the opportunity to provide alternative bids.

The alternative bids would have to clearly demonstrate an advantage to the AESO in order to be considered. The UCA noted that several of the risk events identified by the AESO in Schedule 8, and the adjustment mechanisms proposed to mitigate the risks, are structured such that the AESO would not have to be involved in conducting a detailed risk assessment in order to be able to evaluate the alternative bids. The UCA stated that if an alternative proposal is unreasonably complex for the AESO, a detailed risk assessment should not be performed. Instead, the AESO should have the ability to reject the proponent's alternative bid and only consider the proponent's bid based on the AESO's proposed adjustment mechanisms. The UCA suggested that to manage this evaluation process, proponents must be prepared to accept the terms of the AESO's proposed adjustment mechanisms in the event the AESO rejects the alternative bids. The acceptance of an alternative bid was a matter between the proponent and the AESO, therefore the AESO did not require agreement from all proponents prior to considering an alternative bid.

### 5.3 Question 3

84. Question 3 stated:

Condition 9 provides the participants with the opportunity to be innovative in their bidding, which would also include the manner in which the payment schedule was to be arranged. Is it the understanding of parties that the AESO payments to the successful proponent will be made in equal monthly installments over the term of the project (subject to periodic adjustment mechanisms)? Can the proponents submit bids and propose a variable payment schedule (i.e., front-end loaded payment schedule or back-end load payment schedule) as part of its bidding strategy?

### Views of the AESO

85. The AESO confirmed its intention to pay the successful proponent in equal monthly installments only for the capital portion i.e., the return of and on debt and equity while the monthly operating and maintenance payments will be escalated based on an agreed basket of indices.

86. The AESO stated that the currently drafted project agreements do not allow proponents to submit bids which propose a variable payment schedule on the capital portion of the payment. However, proponents would have the opportunity to propose alternative payment schedules during the request for proposal stage. The AESO would evaluate the merits of an alternative payment schedule that did not materially increase the risk profile of the project then consider whether this alternative payment schedule should be incorporated into the project agreements for all proponents to bid on.

87. The AESO indicated that it must retain the discretion to determine if a proposed alternative payment schedule has merit from a risk and prudence perspective, since different payment schedules would lead to different implications for the project and ratepayers. For example, a proposed front-end loaded payment schedule would likely not be acceptable to the AESO, even if it produced a lower overall project cost (on a net present value basis) because there is a risk that a proponent who recovers a major portion of their investment early on in the project may be more likely to abandon the project rather than try to resolve issues since the investment at risk in the project would be minimal. The project and the ratepayers would therefore be exposed to greater risk of default by the proponent. The AESO indicated that it

would be important near the end of the term of the project that the proponent has sufficient investment at risk to satisfy any end of term asset condition tests.

88. Conversely, the AESO explained that while a back-end loaded payment schedule may be of benefit to ratepayers as it ensures that more private investment is at risk though the term of the project and motivates the proponent to perform throughout the entire term of the project, the magnitude of back-end loading would need to be assessed to ensure that the proponent would not be exposed to a lower credit rating which could adversely impact the cost and availability of the project financing.

89. The AESO submitted that it would be important to ensure that all proponents bid on a similar payment risk profile as this would allow for a comparable evaluation of the net present value of costs to determine the successful bid. Otherwise, the AESO would be required to subjectively assess and quantify any changes in the risk profile of differing payment schedules and would have to adjust bid prices and determine the lowest price on a comparable risk adjusted basis.

### **Views of other parties**

90. It is clear from the submissions of the various parties in response to Question 3, that not all parties understood the payment mechanism being proposed by the AESO. As such, parties submitted varied positions regarding the payment mechanism given their understanding. Their comments follow.

91. AltaLink understood that the AESO payments to the successful proponent would be made in equal monthly installments over the term of the contract, subject to defined periodic adjustments. Consequently, AltaLink did not believe that the AESO had included a provision for bidders to propose alternative payment schedules. AltaLink acknowledged that ratepayers may be provided with benefits if proponents were allowed the flexibility to propose innovative payment schedules. AltaLink noted that a clearly defined evaluation methodology would be required from the AESO at the request for proposal stage.

92. ATCO Electric stated that its interpretation of the term “fixed amount” in the project agreement outline did not mean that the monthly payments for the capital and operations and maintenance were to be equal monthly payments. ATCO Electric was of the view that proponents should be able to submit a compliant bid that proposed a variable payment schedule (i.e., front-end or back-end loaded payment schedule) as part of its bidding strategy but indicated that the AESO must clarify the payment schedule matter.

93. Elecnor supported a process where all proponents would compete under the same conditions. Elecnor believed that two options were available that would not compromise the competition and fairness of the process. The first option would have all proponents bidding using the same payment schedules, whether it be a levelized, front-end or back-end loaded payment schedule. The second option would allow proponents to bid with different variable payments schedules. Elecnor stated that in the second option, proponents would need to understand how the AESO would evaluate its proposal, therefore would require the information that the AESO intended to use in its financial evaluation model.

94. Enbridge understood that the AESO payments, as adjusted, would be made in monthly installments over the term of the project. Enbridge stated that flexibility in payment schedules may allow for innovative proposals, but these proposals should be presented using a standardized net present value methodology to ensure the AESO's evaluation of proposals can be done on a comparable basis.

95. EPCOR understood that the AESO payments would be made in equal monthly installments and was of the view that a bid proposing a variable payment schedule would be considered a non-conforming bid and be rejected by the AESO. EPCOR noted that a variable payment schedule could introduce issues regarding intergenerational equality and result in an AESO transmission tariff that varied dramatically from year to year. According to EPCOR, this variability would be inconsistent with the principle of rate stability and would cause concerns from ratepayers who would experience these variations in their system access service charges.

96. Iccenlux stated that if proponents were provided the opportunity to propose payment schedule arrangements, the AESO would need to establish an evaluation methodology that took into consideration the variability of the proposed payment schedule. According to Iccenlux, this methodology would need to be known by the proponents prior to the preparation and submission of bids.

97. Laing understood that the AESO would provide monthly payments during the term of the project (subject to periodic adjustment mechanism), and that these payments would be based on the financing, operations and maintenance and life-cycle proposals of the successful proponent. Laing did not believe that any further adjustments were required for the competitive process.

98. LS Power stated that it was not clear to it as to whether the bids and the corresponding payments from the AESO could include a variable payment schedule or not, but believed that clarity was needed.

99. NextEra understood that the AESO payments would be made in equal monthly installments over the term of the project, subject to periodic adjustment mechanisms as well as bonus or penalty payments for early or late commercial operation, respectively. NextEra was comfortable with the AESO's proposed payment schedule and believed that the use of a straight-line depreciation over the life of the project would be a reasonable approximation of the usefulness of the project thereby making the equal monthly payment model a relatively simple and effective one to administer. NextEra indicated that it would be able to propose a variable payment schedule as part of its bidding strategy, but was of the view that the AESO's proposed project agreement documents would not recognize an alternative variable payment schedule as being a compliant bid. Whether or not proponents are allowed to propose alternative payment schedules, it would be a beneficial and an efficient use of the process if the AESO provided the proponents with all the financial metrics and forecasts that would be used to determine the successful proponent so that all proponents have the same understanding of the AESO's assumptions.

100. RES Canada was of the opinion that the competitive process would be best served by incorporating a high degree of uniformity and transparency in both the bidding process, where proponents would be required to submit proposals that conform to the prescribed payment schedules, and in the evaluation process. RES Canada suggested that if the Commission wanted proponents to be innovative in their proposals, all proponents should be required to submit



proposals based on the AESO's standardized methodology, and also allow the opportunity to submit alternate proposals.

101. TAMA understood that the AESO payments would be made monthly, however the payments may not be equal. Proponents should be provided with the flexibility to propose a payment schedule that allowed for optimal financing, planned operations and maintenance costs and overall risk profile, as dictated by its bidding strategy. The bidding approach taken by a proponent with respect to its payment schedule could be a competitive advantage for the proponent and would be unique to each proponent depending on its specific financial circumstances, including its access to, and cost of, capital. The ability to manage cash would be one of the differentiating factors between proponents that the AESO should evaluate during the request for proposal evaluation process.

102. TCE understood that the repayment of and on all debt and equity would be in equal monthly installments over the term of the project, subject to the change mechanism and that operations and maintenance payments, major maintenance payments and payment adjustments under Schedule 8 will be made on a monthly basis and may change in accordance with adjustment mechanisms defined in the project agreement. TCE took no position on whether proponents should be able propose a variable payment schedule. TCE believed that a known allocation of risks and well-understood set of adjustment mechanisms that applied to all proponents would be a pre-requisite to a successful, fair, transparent and objectively evaluated process that would withstand potential regulatory challenges. TCE indicated that Condition 9 reduced transparency in the process and would result in proponents not having a clear understanding of what it will take to win. TCE was concerned that an evaluation of risk, which TCE recognized as being extremely subjective, would place the competitive process, the AESO, the AUC, the participants and the ratepayers of Alberta, who need this critical transmission infrastructure, at greater risk of a complaint regarding the AESO's conduct. TCE noted that such a complaint could delay implementation of the project and would result in increased regulatory risk and financial constraint on the preferred proponent.

103. TCE suggested that a qualitative component be added to the bid evaluation process rather than rely on the AESO to subjectively evaluate individually-proposed risk adjustment mechanisms. According to TCE, following the request for expression of interest stage, the AESO should engage with proponents to discuss their concerns about the adjustment mechanisms and the proposed allocation of risks and make any necessary modifications to them to ensure strong competitive interest. TCE believed further refinements to the adjustment mechanisms may be required during the request for qualification and request for proposal stages based on discussions and consultations with proponents but in any event, the adjustment mechanisms should be finalized at least six months prior to the requirement to make a submission in the request for proposal stage. TCE proposed that rather than allow proponents to make changes to certain adjustment mechanisms, the Commission should include a qualitative element to the final bid evaluation of up to 10 per cent to assess the quality of the bids submitted. TCE noted that if there was a qualitative evaluation of the final bids, the AESO should provide a comprehensive framework of how the qualitative assessment would be performed. TCE also stated that the AESO should distribute to proponents the financial model that it intended to use to evaluate the financial submissions to ensure consistency, comparability and clarity for all proponents.

104. The UCA stated that the application of Condition 9 to the payment schedule would introduce significant complexity into the comparability of proponents' submissions. According to the UCA, assessing the merits of either front-end loaded or back-end loaded payment schedules would require the AESO to make assumptions regarding the effects of inflation or deflation which would either prove beneficial to consumers or not. The UCA also noted that in a front-end loaded payment schedule, the project agreement provisions for termination and payment adjustments (i.e., reliability, maintenance, other compliance issues) would need to be altered to protect consumer interests.

## 6 Commission findings

105. As noted previously by the Commission, the policy objective of Section 24.2 of the *Transmission Regulation* was to create a competitive process to determine eligibility to apply under the *Hydro and Electric Energy Act*, RSA 2000, c. H-16 for the construction and operation of the transmission project. The Commission's mandate, as it related to the competitive procurement process, was, as set out in paragraph 51 of Decision 2012-059,<sup>27</sup> "to be satisfied that the form and content of the competitive process will yield a result determined by competitive market forces."

106. Condition 9 of Decision 2013-044 recognized that proponents are in the best position to understand the risks they face and was intended to encourage proponents, through competition, to propose solutions that they believed would ensure a winning bid. Accordingly, the Commission directed the AESO to ensure that the competitive process would accommodate this proponent input in the course of responding to the AESO's proposed adjustment mechanisms set out in Schedule 8 to Appendix 1 of the AESO's competitive process application.

107. While most parties in this proceeding indicated that they could prepare and submit alternative solutions to the AESO's proposed adjustment mechanism as permitted by Condition 9, these parties also indicated that the selection panel assembled to assist the AESO would not be able to objectively and transparently select a preferred proponent if the process allowed individual proponents to submit unique adjustment mechanisms. Rather, these proponents indicated support for the AESO's proposed process because the bidding and evaluation processes would be known in advance and the adjustment mechanisms were common for all.

108. The AESO stated that it would be very difficult for it to determine the values of the different adjustment mechanisms, which it would be required to do in order to evaluate the bids on an equivalent basis. The AESO indicated that this subjective assessment of the different adjustment mechanisms would result in uncertainty for proponents, because they could no longer be assured that the lowest bid price would win the competition and would compromise the transparency and fairness of the competitive process. Potential bidders could be discouraged from participating in the competitive process or unsuccessful bidders could dispute and challenge the outcome. Neither of these outcomes would be desirable.

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<sup>27</sup> 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, Proceeding ID No. 1449, February 27, 2012.

109. The Commission considers that although competitive forces should be encouraged to operate throughout the procurement process, that it should not come at the expense of fairness and the integrity of the bidding and evaluation process. The AESO indicated that competitive forces will have the opportunity to manifest themselves during the request for proposal stage regarding the provisions of the draft project agreements, which includes the formulaic adjustment mechanisms, as there would be three rounds of discussions scheduled with proponents. The AESO has further stated that it would be amenable to considering recommendations from proponents regarding different adjustment mechanisms, provided that the recommendation would not materially alter the project risk allocation or affect the contractual requirements that proponents would be expected to meet. Consequently, the AESO anticipates that the competing interests of the proponents at these rounds of discussions will help to establish the commercial terms that would be acceptable to the AESO and the proponents and do so in a fair and open process. The Commission is encouraged by this commitment from the AESO and considers the AESO's approach to be supportive of the Commission's objective of encouraging and promoting competitive market forces.

110. The Commission also noted that proponents did not have a common understanding regarding the payment schedule that could be arranged with the AESO once the project was operational or whether it would be permissible for a participant to propose alternative payment schedules. The AESO provided clarification on these matters in response to the Commission Question 3. The Commission expects that the AESO will ensure that the payment schedule and ability for proponents to propose alternative payment schedules during the request for proposal stage will be clearly set out in the competitive process documentation to avoid any further uncertainty.

111. In conclusion, the Commission finds that the parties in this proceeding have demonstrated that, on balance, the benefits of permitting proponents to submit alternative adjustment mechanisms in their bids as directed by paragraph 201 and Condition 9 in Decision 2013-044 do not overcome the negative impact that would result on the fairness, openness and transparency of the competitive procurement process. Therefore, the Commission will vary Decision 2013-044 and relieve the AESO from having to comply with paragraph 201 and Condition 9.

**7 Order**

112. It is hereby ordered that:

- (1) Paragraph 201 and Condition 9 in Decision 2013-044, which required the AESO to structure its competitive process such that the proponents would be responsible for assessing the various risks they would face rather than having the AESO make the determination unless all proponents were in agreement with the AESO's proposed formulaic adjustment mechanism shall be of no force and effect.

Dated on July 9, 2013.

**The Alberta Utilities Commission**

*(original signed by)*

Tudor Beattie, QC  
Panel Chair

*(original signed by)*

Henry van Egteren  
Commission Member

*(original signed by)*

Patrick Brennan  
Acting Commission Member

## Appendix 1 – Proceeding participants

Name of organization (abbreviation) counsel or representative
Alberta Electric System Operator (AESO) L. Hall
AltaLink Management Ltd. (AltaLink) R. Block (Borden, Ladner Gervais LLP) H. Williamson (Borden, Ladner Gervais LLP) C. Hamm (Borden, Ladner Gervais LLP) K. Barnes (Borden, Ladner Gervais LLP) C. Currie
ATCO Electric Ltd. (ATCO Electric) L. Keough (Bennett Jones LLP) D. DeChamplain P. Goguen T. McGhan A. Phillips S. Ambeault L. Kizuk B. Li
Elecnor S.A. (Elecnor) M. I. Martin
Enbridge Inc. (Enbridge) R. Farquhar E. Kaus L. Jackson
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John Laing Investments Limited (Laing) T. Rogers
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