

November 13, 2020

To Registered Participants in Proceeding 790 and Other Interested Parties

Dear Stakeholder:

Re: **Stakeholder Feedback on AESO Intent to Request Guidance from the Alberta Utilities Commission on the Interest Calculation to be Applied in the Module C Settlement Process**

In its November 3, 2020, [Notice of Intent to Request Guidance](#), the Alberta Electric System Operator ("AESO") provided parties impacted by the Module C resettlements in Proceeding 790 with an opportunity to review and comment on the proposed question ("Question") for which guidance would be requested from the Alberta Utilities Commission. The attached written comments were received from the following parties:

- [Balancing Pool](#)
- [Capital Power](#)
- [City of Medicine Hat](#)
- [ENMAX Energy](#)
- [Heartland Generation Ltd.](#)
- [Milner Power Inc.](#)
- [Powerex Corp.](#)
- [TransAlta Corporation](#)
- [TransCanada Energy Ltd.](#)

Thank you to all parties who participated in this stakeholder comment process. All written comments received will be reviewed and considered in the AESO's finalization of the language to be used in the Question.

Yours truly,

John Martin
Senior Special Projects Advisor

cc: Dennis Frehlich, P. Eng., Vice-President, Grid Reliability, AESO
Pauline McLean, Vice-President, Law, General Counsel and Corporate Secretary, AESO

Attachments

From: [Roche, Patrick](#)
To: [John Martin](#)
Cc: [Sharleen Gatcha](#)
Subject: Module C interest calculation question
Date: November 10, 2020 8:40:22 AM

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials.***

Good morning:

We are counsel to the Balancing Pool in Proceeding 790. We confirm that that the Balancing Pool supports the current language in the proposed Question as set out in the AESO's correspondence of November 3, 2020.

Yours truly,

Patrick Roche

Patrick Roche

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November 10, 2020

Alberta Electric System Operator
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2500, 330 - 5th Ave SW
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Via email

Attention: John Martin
Senior Special Projects Advisor
Alberta Electric System Operator

Dear Mr. Martin,

Re: Alberta Electric System Operator Intent to Request Guidance from Alberta Utilities Commission on Interest Calculation in Module C Settlement Process

On November 3rd, 2020, the Alberta Electric System Operator ("AESO") issued a notice informing stakeholders of its intent to request "guidance" from the Alberta Utilities Commission ("AUC" or "Commission") regarding the direction to award and charge interest specified in Decision 790-D06-2017.¹ Specifically, the AESO notes that it intends to pose a question to the Commission on whether simple or compound interest is to be applied to historic line loss adjustments resulting from AUC Proceeding 790. The AESO is now soliciting stakeholder feedback on the question it proposes to raise.

Capital Power provides its views below regarding the AESO's proposed request to the Commission and the question itself. In sum, it is unclear on what basis the AESO is now seeking AUC intervention on the matter of interest. The AESO provided a specific rationale for applying simple interest, referencing previous AUC applications. The AESO is properly administering interest in line with the Commission's Module C decisions such that there is no need to raise any question with the AUC.

It must also be noted at the outset that neither the application of interest nor the rate itself (i.e. the Bank of Canada's Bank Rate plus 1.5%) are open to dispute. These issues have been adjudicated and all related processes are now closed. They must be considered out of scope and any attempt to draw them into these discussions must be disregarded.

A. The Procedural Basis for the AESO's Proposed Request to the Commission is Unclear

As a preliminary matter, it is unclear by what procedure the AESO intends to request the Commission's "guidance" on the question raised in its notice. Proceeding 790 is now closed.

¹ AESO, Stakeholder Notice of AESO Intent to Request Guidance on Module C Interest Calculation (3 Nov 2020), online: <<https://www.aeso.ca/assets/Uploads/AESO-Intent-to-Request-Guidance-on-Module-C-Interest-Calculation-Final.pdf>> [Guidance Notice]

Decision 790-D08-2020 imposes no further filing or other obligation on the AESO so as to invoke further Commission oversight in the Module C process. To Capital Power's understanding, this was by design. At this stage in the Module C process, the AESO's obligation is to implement the Module C remedy – not to raise further questions for AUC adjudication that could easily unwind any goal of expedient settlement.

The Commission is no doubt the master of its own procedure. However, Capital Power submits that it would be beneficial for the Commission to first consider a threshold question concerning the nature and extent of its jurisdiction to re-open Proceeding 790 at the request of a party who seeks to frame additional issues pertaining to Module C settlement. Capital Power's proposed question is set out at the end of this letter.

Clarity as to the Commission's continuing jurisdiction to determine matters relating to Module C settlement is of particular importance given the ongoing potential for parties to make requests to the AUC as remaining historical years are invoiced. Such clarity is also important given the interest of all Proceeding 790 parties in the *finality* of the Commission's past decisions as they prepare for or await payment of historical line loss adjustments. Those parties reasonably require certainty as to their obligations and entitlements during a 60 day "due date delay" period that was never intended for use in determining adjustment amounts themselves, but rather for market participants to have a reasonable window in which to arrange funds for payment.²

Capital Power further submits that the AESO and those that support its request must recognize that AUC adjudication of the matters raised in its Guidance Notice will likely result in further delaying Module C's ultimate resolution. As explained below, to the extent there is a jurisdictional and substantive basis for the AUC to hear parties on these matters, it is unclear whether other aspects of the AESO's settlement process also require Commission approval. Moreover, any AUC-directed changes impacting settlement amounts will necessarily require further post-settlement adjustments, as the AESO has proposed to continue with its current billing procedures "unless the AUC issues guidance to do otherwise."

To be clear, Capital Power does not favor initiating further AUC process. As noted at the outset, the AESO has properly applied simple interest to adjustment amounts. However, should the AESO proceed with its request, it may be more expedient for the AESO to file its entire *Settlement Procedure* with the Commission to mitigate any risk of other settlement-related issues materializing.

B. The Proceeding 790 Decisions Empower the AESO to Administer Interest

Capital Power submits that the question raised in the Guidance Notice is unnecessary in light of the AESO having sufficient authority under the Commission's Proceeding 790 decisions to compute interest as part of its overall implementation of the Module C remedy. Should the AESO proceed to bring any question(s) to the Commission, it would be valuable to first confirm whether Commission approval is, in fact, required on the matter.

The AESO's Guidance Notice states that parties offered differing views regarding whether simple or compound interest ought to be applied after updates were made on October 15, 2020 to the "Module C adjustment workbooks" and the *Module C Settlement Procedure* document.³ On October 15, the AESO communicated that it would be calculating interest on

² See AUC Decision 790-D06-2017 (18 December 2017) at para 164.

³ Guidance Notice, *supra* note 1 at 1.

historic line loss adjustment amounts on a simple (uncompounded) basis.⁴ Capital Power considers this approach to be correct. Moreover, the history of Proceeding 790 provides no indication that the issue of interest required further approval after being resolved in the 790-D04-2016 decision.

To confirm the AESO's compliance with the Commission's interest directions, Capital Power sought further detail on the AESO's interest calculations when the AESO's first Module C compliance filing ("Compliance Filing 1") was being considered in Proceeding 790.⁵ It was unclear, at that time, how final line loss adjustment amounts would be determined after calculating the historical period loss factors. Accordingly, Capital Power requested that the AESO be directed by the Commission to file for approval a settlement procedures document outlining activities such as the application of interest to the historical period adjustment amounts.⁶

The AESO opposed Capital Power's request, arguing that the Commission did not reserve for itself an oversight role regarding settlement procedures.⁷ The Commission sided with the AESO on this issue, finding that while the proposed historical period loss factor methodology required its approval, related procedure documents did not.⁸

The AESO's contemplated approach to settlement procedures was again noted in both the December 2019 and July 2020 versions of its second Module C compliance filing ("Compliance Filing 2"). The AESO stated as follows in Compliance Filing 2:

As is permitted for the *Procedure to Determine Transmission System Losses for Loss Factor Calculations*, the AESO anticipates amending the *Settlement Procedures* document from time to time, including to address additional questions that may be asked by stakeholders.⁹

It is clear from the above that further AUC oversight of interest and other aspects of Module C settlement could have been directed at numerous occasions over the past two years and at the very least, prior to the commencement of invoicing. The Commission made no such direction, including in its recent Compliance Filing 2 decision, where the Commission clearly turned its mind to the AESO's interest-related obligations at section 4.5.¹⁰

Proceeding 790 is now closed, and the first invoice has now been issued.¹¹ In light of these developments – combined with the AESO's clear authorization to make changes to its *Settlement Procedure* document and otherwise administer its settlement process without obtaining prior AUC approval – seeking a Commission decision on the question set out in the Guidance Notice now is unwarranted, even if the Commission possesses the requisite jurisdiction to consider the request. The finality of the Commission's Module C decisions, as well as the expedient implementation of the relief those decisions direct, both warrant the

⁴ *Ibid* at 5.

⁵ Capital Power, "Capital Power Submission - AESO Module C Methodology Compliance Filing," (24 Aug 2018), Exhibit 790-X3509 at 2.

⁶ *Ibid*.

⁷ AESO, "AESO Reply Argument - Module C Compliance Filing" (23 Nov 2018), Exhibit 790-X3554 at para 20.

⁸ AUC Decision 790-D07-2019 (9 April 2019) at para 94.

⁹ AESO, "Module C Payment Plan Filing in Compliance With Decision 790-D06-2017" (6 December 2019), Exhibit 790-X3565 at para 38; AESO, "Amended Module C Payment Plan Filing in Compliance With Decision 790-D06-2017" (28 July 2020), Exhibit 790-X3565.01 at para 44.

¹⁰ AUC Decision 790-D08-2020 (23 Sept 2020)

¹¹ Guidance Notice, *supra* note 1 at 2.

AESO proceeding with its Commission-assigned duty to administer adjustments, with regard to interest and in all other respects.

C. Should the AESO Proceed in Seeking an AUC Decision on Interest, Clarity on Other Potential Approval Requirements Should Also Be Obtained

In now contemplating the need for Commission “guidance” on the application of interest, the AESO appears to have changed its previously held view regarding the need for AUC oversight of settlement activities. If such oversight now has merit in relation to interest, Capital Power submits that there is no basis for limiting the question brought to the Commission to only one among potentially many settlement activities that may be of concern to parties or require Commission approval. For example, the *Settlement Procedure* document indicates that Module C adjustments may affect market participants’ security requirements.¹² While the AESO, in bringing these additional security requirements to market participants’ attention, has granted market participants the alternative of making early payment, it has not offered any *pro rata* reduction to those parties’ interest payments should they do so. In this and any other case involving early payment of adjustment amounts, market participants will have over-paid interest for the period between the date of any early payment and their final settlement date. It is not clear whether such a result was intended by the Commission.

Parties cannot reasonably be expected to prepare for payment in the face of new or changing payment obligations and ongoing referrals to the AUC of invoicing-related questions. Accordingly, to the extent the AESO brings the question raised in its Guidance Notice to the Commission, Capital Power proposes that it clarify any further approval requirements implicated by settlement-related matters, either as raised in the *Settlement Procedure* document or otherwise. Again, the AESO may also wish to consider filing the *Settlement Procedure* as a whole with the Commission, as Capital Power previously proposed in Proceeding 790.

D. The Scope of the AESO’s Proposed Question Must Be Revised If It Continues to Seek an AUC Decision

The question posed by the AESO appears to be premised on the assumption that an AUC determination on the matters raised in the Guidance Notice is possible or necessary, notwithstanding the issues noted above in this letter. This, in Capital Power’s view, warrants additional questions being posed to the Commission in order to clarify the nature and extent of its continuing jurisdiction, if any, in relation to Module C settlement when faced with a request to decide an issue raised by a party, as well as to delineate the extent to which the AESO’s settlement activities require AUC approval on a going-forward basis. Accordingly, to the extent the question set out in the Guidance Notice is posed to the Commission, Capital Power submits that the following threshold questions should also be posed and that a minimum process be afforded for interested parties to comment on same:

- 1) To what extent, if any, does the Commission have jurisdiction to re-open Proceeding 790 to consider and decide on issues posed by a party concerning Module C settlement activities?
- 2) Does the AESO require Commission approval before computing interest for the purposes of determining historical line loss adjustment amounts to be invoiced to market

¹² AESO, *Module C Settlement Procedure* (15 October 2020) at para 11, online: <https://www.aeso.ca/assets/Uploads/Module-C-Settlement-Procedure-2020-10-15.pdf>.

participants pursuant to the Commission's directions in Decisions 790-D06-2017 and 25150-D02-2020?

- 3) If the answer to question 2) is "yes," are any other settlement-related matters raised in the AESO's *Settlement Procedure* document or otherwise subject to Commission approval?

Lastly, Capital Power submits it is unreasonable for the settlement process to continue for the second and third settlement periods (covering the years from 2006–13) in light of the AESO's proposed request. Halting invoicing for these years would be consistent with the AESO's applied-for approach in Proceeding 25150, where the AESO contemplated "that invoicing would be delayed if additional time was required to address questions or concerns raised by stakeholders during the review period."¹³ While all parties seek an expedient resolution to Module C, parties subject to net charges for a period cannot reasonably be expected to arrange payment for amounts subject to modification – or even adjudication – up to the eve of their payment due date.

Conversely, to the extent billing proceeds in spite of an unresolved AUC process concerning interest, Module C's implementation should not be marred by multiple rounds of adjustments to correct errors that could and should have been rectified in advance of invoicing. At this stage of Module C's implementation, parties are reasonably entitled to certainty and finality with respect to the amounts to be settled pursuant to the Commission's directions. In Capital Power's view, the most expedient path to such certainty and finality would be for the AESO to administer those settlement-related matters that have been reserved to it following Decision 790-D08-2020, including the computation of interest.

Yours sincerely,

Original Signed by

Daniel Jurijew

Vice-President, Government Relations and Regulatory and Environmental Policy

¹³ See Alberta Electric System Operator, "Application of the Alberta Electric System Operator" (3 December 2019), Exhibit 25150-X0002 at para 40; Alberta Electric System Operator, "Reply of the Alberta Electric System Operator to Intervener Submissions Regarding the Application" (21 February 2020), Exhibit 25150-X0061 at para 70; Alberta Electric System Operator, Information Request Response AESO-AUC-2020APR06-002(a) (20 April 2020), Exhibit 25150-X0063; and Alberta Electric System Operator, "Final Reply Submission" (15 May 2020), Exhibit 25150-X0079 at para 3.



Utilities Business Development and Support

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November 10, 2020

Alberta Electric System Operator
2500, 330 5th Ave SW
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Attention: John Martin

RE: Interest Calculation for Module C settlement

The AESO has invited parties to provide feedback on the following question:

“Should the interest attributable to the monthly Module C amounts, as directed in paragraph 149 of Decision 790-D06-2017, be determined using a monthly Compound Interest calculation or a Simple Interest calculation with no monthly compounding?”

The City submits that the Commission’s objective in awarding interest was to give due consideration to the time value of money related to the unjust gains and losses accrued for over a lengthy period. The Commission made this clear at paragraph 78 of Decision 790-D04-2017, as follows:

However, the Commission considers that the reallocation of the costs of losses only addresses part of the injustice of some parties paying too much and other parties paying too little. As noted by several parties,⁸² losses are a zero-sum game, so money awarded unjustly to one party was money taken unjustly from another party and vice versa. Given the zero-sum nature of line loss cost recovery and the fact that the original complaint was filed over a decade ago, to help remedy the gains that unjustly accrued to some parties and the costs that were unjustly imposed on other parties, the Commission finds that it is just and reasonable to consider the time value of money dating back to January 1, 2006 and that awarding (and charging) interest is a practical and just and reasonable method of doing so.

Therefore, the City proposes refining the question to the following:

“Should the interest attributable to the monthly Module C amounts, as directed in paragraph 149 of Decision 790-D06-2017, be determined using Time Value of Money principles which accounts for the timing of the cash flows and compounding or a Simple Interest calculation with no monthly compounding?”

The City notes that the AESO’s proposed use of simple interest was predicated on the Commission’s approval of various utility decisions related to deferral account adjustments such as:

- AltaLink Management Ltd.’s 2014-2015 transmission deferral accounts reconciliation (Proceedings 22542, 24329, and 24919)
- ATCO Electric Transmission’s 2013-2014 transmission deferral accounts (Proceedings 21206 and 23114)
- ATCO Electric Transmission’s 2018-2019 general tariff application (Proceedings 23114 and 24805)
- Distribution facility owner annual applications for electric transmission access charge deferral accounts (Proceeding 3334)

The City submits that the nature of deferral account adjustments referenced by the AESO differ considerably from the remedy required in the Module C proceeding to unwind unjust gains accrued for over a decade. Simply put, the lengthy period in which parties unjustly gained from paying too little, or unjustly lost from paying too much, compels a remedy that provides for a full compensation of the time value of money. In other words, the lengthy unwinding exercise compels the use of compound monthly interest.

Regards,

Travis Tuchscherer
Manager Energy Marketing and Analytics



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November 10, 2020

Alberta Electric System Operator
2500, 330 - 5th Ave. SW
Calgary, AB T2P 0L4

Attention: Mr. Dennis Frehlich, Vice-President, Grid Reliability

Dear Sir:

Re: Alberta Electric System Operator (AESO) Intent to Request Guidance from the Alberta Utilities Commission (Commission) on the Interest Calculation to be Applied in the Module C Settlement Process

ENMAX Energy Corporation (ENMAX Energy) is writing to provide its comments on the AESO's intent to request guidance from the Commission with respect to the Module C settlement process interest calculation.¹

As described further below, it is ENMAX Energy's primary submission that there is no need for the AESO to follow through on its stated intention to request guidance from the Commission – the Commission has already clearly ordered that interest be calculated in accordance with Rule 023: *Rules Respecting Payment of Interest (Rule 023)*, which contemplates interest calculated using a rate equal to the Bank of Canada's Bank Rate plus 1½ per cent (i.e., simple interest). As a result, no further guidance from the Commission is required.

In the alternative, and only to the extent that the AESO rejects this primary submission, ENMAX Energy submits that the AESO's request for guidance should be modified to focus on Decision 790-D04-2016 (**Preliminary Issues Decision**) where the Commission determined the amount of carrying charges in accordance with Rule 023.

Finally, ENMAX Energy submits that the settlement process, which is currently ongoing, should be held in abeyance if the AESO proceeds to request guidance from the Commission.

To be clear, it is ENMAX Energy's stated position that no amounts (neither debits nor credits) arising from the Commission's Module C Decision in Proceeding 790, Decision 790-D06-2017 dated December 18, 2017 (**Module C Decision**) were accrued or accruing until, at the very earliest, the rendering of the Module C Decision, and nothing in this letter shall be construed nor relied upon as a waiver of that position. At the time of the Preliminary Issues Decision there were numerous and significant uncertainties including, among other things, the outcome of the Module C Decision (the Module C Decision had not even been released at that time), the methodology to be employed to make any retroactive adjustments and the timing and amounts of any revised invoices from the AESO.

¹ Correspondence from the AESO dated November 3, 2020 (AESO Intent to Request Guidance Letter).

The AESO should not seek guidance from the Commission

The AESO proposes to seek guidance from the Commission on the following question: “*Should the interest attributable to the monthly Module C amounts, as directed in paragraph 149 of Decision 790-D06-2017, be determined using a monthly Compound Interest calculation or a simple Interest calculation with no monthly compounding?*” (Question).

With respect, the reference in the Question to Decision 790-D06-2017² is misplaced. While this decision requires the AESO to set out interest charges separately on its statements, it is the Preliminary Issues Decision that expressly determined the amount of carrying charges in the Module C settlement process in accordance with Rule 023.

In the Preliminary Issues Decision, the Commission found that it would be reasonable to set the rate of interest in a manner consistent with the guidance provided in Rule 023 – namely, “to set the rate of interest equal to the Bank of Canada’s Bank Rate plus one and one half per cent to be applied from the date on which the recalculated loss factors become effective to January 1, 2006.”³

The Court of Appeal in *Milner Power Inc. v. Alberta Utilities Commission*⁴ (**Milner Power**) affirmed that the Commission in the Preliminary Issues Decision applied interest in accordance with Rule 023. This was one of the very questions brought before the Court by the permission to appeal applicants (Milner Power Inc. (**Milner**), PowerEx Corp. (**PowerEx**) and ATCO Power Canada Ltd. (**ATCO**)). Those parties sought relief on the basis of the assertions that “the Commission fettered its discretion by setting a rate provided for in one of the Commission’s Rules without considering whether another rate would be more appropriate” and “that the Commission erred in relying on Rule 023 or in failing to give the applicants the opportunity to justify departing from Rule 023”⁵ (among other things).

The Court of Appeal in *Milner Power* held that the Commission made no error relative to the rate of interest, finding that “[t]he Commission’s resort to its Rules Respecting Payment of Interest (Rule 023), far from representing a fettering of discretion, represented an exercise of discretion”⁶ which was “within the range of options the parties could have reasonably anticipated.”⁷ The Court of Appeal did not grant permission to appeal the Preliminary Issues Decision and there was no subsequent leave to appeal application to the Supreme Court of Canada.

Based on the foregoing, the Court of Appeal in *Milner Power* has definitively and finally determined the approach to calculate carrying charges in the Module C settlement process as being in accordance with Rule 023. Any reconsideration or relitigation of that issue would violate the principles of *res judicata* and would effectively amount to an improper collateral attack on both the Preliminary Issues Decision and the Alberta Court of Appeal’s decision in *Milner Power*.

² AUC Decision 790-D06-2017, Complaints Regarding the ISO Transmission Loss Factor Rule and Loss Factor Methodology, Phase 2 Module C (December 18, 2017 (Module C Decision)).

³ Preliminary Issues Decision at para. 80.

⁴ 2019 ABCA 127.

⁵ *Milner Power* at para. 22 [Emphasis Added].

⁶ *Milner Power* at para. 48.

⁷ *Milner Power* at para. 49.

It cannot be argued that carrying charges under Rule 023 are calculated by compounding interest. Rule 023 is frequently applied by the Commission, including where there is a variance between interim and final rates (as is the case here).⁸

When the Commission applies Rule 023, interest is not compounded.⁹ Even when the Commission deviates from Rule 023 interest (which has not been ordered here), it does so expressly and typically orders a weighted average cost of capital and not compound interest.¹⁰ Accordingly, there is no ambiguity on how to calculate carrying charges “consistent with the guidance provided in” Rule 023.¹¹ On the basis of the foregoing, there is no reason for the AESO to request further guidance from the Commission.

The AESO Intent to Request Guidance Letter states that further guidance from the Commission is necessary on the basis of feedback received from “various registered participants in Proceeding 790” that expressed concern about the AESO’s calculations on the basis of simple interest. Such concerns do not support a request for guidance to the Commission. Regardless of whether this feedback came from participants that sought permission to appeal the Preliminary Issues Decision on the issue of carrying charges or other market participants, that matter was finally decided by the Court of Appeal in *Milner Power* and the participants are estopped from revisiting the issue.

Had any party believed that the Module C Decision determined how to calculate the amount of interest in the Module C settlement process, it should have challenged it at the appropriate time, including during the permission to appeal proceedings that resulted in *Milner Power*. No party took that step, likely on the basis that the Module C Decision makes no findings about how to calculate carrying charges in the Module C settlement process.

The AESO is required to conduct itself consistent with a fair, efficient and openly competitive electricity market.¹² Such a market requires that administrative rules and decisions be final after all reviews and appeals have been exhausted. The Commission’s decision on the application of Rule 023 was considered at the time of the Preliminary Issues Decision as affirmed by the Court of Appeal. That decision is final and binding and it is manifestly unfair to subject market participants to continued uncertainty about the level of carrying charges ordered in the Module C settlement process.

If market participants do not believe that the AESO is acting in compliance with the Commission’s decisions, they are free to raise the issue with the Commission directly.

In the alternative, if the AESO asks for guidance, it should rephrase the Question

As described above, it is the Preliminary Issues Decision, not the Module C Decision, that determined interest for the Module C settlement process.¹³ Therefore, if the AESO decides to request guidance from the Commission, the Question should be rephrased to more accurately capture the history of this issue which is grounded in the Preliminary Issues Decision.

⁸ Rule 023 is also applied when there is a variance between actual and forecast costs that are subject to a deferral account.

⁹ This is evident from the extensive number of decisions referred to by the AESO in its October 15, 2020 Updates to Proceeding 790 – Module C Adjustments to Workbooks and Settlement Document.

¹⁰ See for example Decision 2010-348, Decision 2014-268 and Decision 3378-D01-2016.

¹¹ As suggested in the AESO Intent to Request Guidance Letter, PDF 4.

¹² *Electric Utilities Act*, for example, ss 16, 17, 18.

¹³ Preliminary Issues Decision at para. 80; as affirmed in *Milner Power* at paras. 20, 48-50.

These revisions are supported by:

1. The text of the Preliminary Issues Decision, which expressly orders carrying charges to be determined “consistent with the guidance provided” in Rule 023;¹⁴
2. The Court of Appeal record where Milner, Powerex and ATCO expressly challenged the Rule 023 carrying charges imposed in the Preliminary Issues Decision;¹⁵
3. *Milner Power*, where the Court of Appeal made it clear that the process leading to determining the amount of carrying charges in the Preliminary Issues Decision was in issue;¹⁶
4. The absence of a challenge to the Module C Decision on the issue of carrying charges;
5. The fact that the Module C Decision excerpt referred to in the AESO Intention to Request Guidance Letter¹⁷ concerns the transparency of the interest calculation and does not speak to the how interest should be calculated; and
6. The absence of language in the Module C Decision that reviewed or varied the Preliminary Issues Decision and, in particular, with respect to the calculation of carrying charges pursuant to Rule 023.

Based on the foregoing, if the AESO chooses to seek the Commission’s guidance on the interest calculation, it should do so by the following question:

Question: Whether carrying charges under Rule 023, as contemplated in Decision 790-D04-2016, are calculated by compounding interest?

This question is properly focused on the operative and applicable decision (being the Preliminary Issues Decision) where the Commission determined how carrying charges should be calculated.

The settlement process must be held in abeyance if the request for guidance is made

Finally, the AESO must stop the settlement process if it proceeds with a request for guidance. As the AESO notes, the interest calculation affects all Module C adjustments. It is neither efficient nor fair for market participants to settle statements if the interest calculation is in doubt. The effect of continuing with the settlement process would be to add further uncertainty to an already uncertain process.

If you have any questions with respect to the above noted matter, please contact me at pkhan@enmax.com or 403-689-0198.

Yours truly,



Parvez Khan
Director, Legal Services

Cc: Pauline McLean, Vice-President, Law, General Counsel and Corporate Secretary, AESO

¹⁴ Preliminary Issues Decision, para. 22.

¹⁵ Preliminary Issues Decision, para. 22.

¹⁶ Preliminary Issues Decision, para. 22.

¹⁷ As follows: “the Commission directed the AESO to “set out the interest attributed to the monthly amounts for each market participant when it issues updated statements of account for the historical line loss charges.” (Module C Decision, para. 149)

November 10, 2020

Alberta Electric System Operator
2500, 330 – 5th Ave SW
Calgary, AB T2P 0L4

Attention: John Martin, Senior Special Projects Advisor

Dear Mr. Martin,

Re: AESO Intent to Request Guidance from the Alberta Utilities Commission on the Interest Calculation to be Applied in the Module C Settlement Process

On November 3, 2020, the Alberta Electric System Operator (“AESO”) issued a letter to registered participants in Proceeding 790 and other interested parties stating its intent to request guidance from the Alberta Utilities Commission (“AUC” or “the Commission”) on the limited issue of interest calculation. This comes as a result of the AESO changing its approach, on October 15, from calculating monthly compounded interest to simple interest. After further consideration and feedback from interested parties, the AESO will not take a position on how interest is calculated but instead rely on the Commission’s guidance. The AESO, provided stakeholders with an opportunity to review and comment on the question it will pose to the AUC which is provided below:

Question: **Should the interest attributable to the monthly Module C amounts, as directed in paragraph 149 of Decision 790-D05-2017, be determined using a monthly Compound Interest calculation or a Simple Interest calculation with no monthly compounding?**

Heartland Generation Ltd. (“Heartland Generation”) submits that the Question should be altered as follows:

Question: **Should the interest attributable to the monthly Module C amounts to reflect the time value of money, as directed in paragraph 149 of Decision ~~790-D05-2017~~ 790-D06-2017, be determined using a ~~monthly Compound Interest calculation or a Simple Interest calculation with no monthly compounding~~ Simple or Compound Interest calculation, and what frequency of compounding should be applied (i.e. monthly or annual compounding)?**

The above amendments will retain the narrow scope of the request to the AUC, as intended by the AESO, and tie the question back to the stated reason that the Commission awarded interest in Decision 790-D06-2017.

Heartland Generation is directly and adversely affected by how interest is calculated and does not believe the record is complete before the AUC on the issue of interest compounding. Therefore, Heartland Generation requests that the AESO recommend that the AUC afford stakeholders an opportunity to make further submissions on the limited scope of whether simple interest or compound interest most best accounts for the time value of money awarded to parties by the Commission in Decision 790-D06-2017.

Further, it is important that the AESO's request to the AUC be concurrent with the Module C settlement process and proceed in parallel as to not delay or disrupt this ongoing process. A delay to the Module C settlement due to the interest calculation is not warranted as altered interest amounts can be trued-up following primary settlement or once the AUC has provided guidance on whether the losses settlement should be calculated using simple interest or compound interest.

Please contact me at Kurtis.Glasier@heartlandgeneration.com or 587-228-9617 if you have any questions or concerns.

Sincerely,



Kurtis Glasier
Senior Regulatory Advisor



November 10, 2020

Sent Electronically

Alberta Electric System Operator ("AESO")
2500, 330 – 5th Avenue SW
Calgary, AB T2P0L4

Attention: Mr. Dennis Frehlich, Vice-President, Grid Reliability

Dear Dennis:

AESO letter to stakeholders dated November 3, 2020; Milner Power Inc. ("Milner") reply

Milner is in receipt of the AESO's proposed question to the Commission as set out at page 2 of the AESO's stakeholder letter of November 3, 2020. That question reads as follows:

Question: **Should the interest attributable to the monthly Module C amounts, as directed in paragraph 149 of Decision 790-D06-2017, be determined using a monthly Compound Interest calculation or a Simple Interest calculation with no monthly compounding?**

Milner has no suggested revisions to the narrow question that the AESO has proposed provided that the AESO's question, as it relates to compound versus simple interest, is understood to be made in the context of the Commission's clear decision that interest is meant to reflect the time value of money.

The matter of simple versus compound interest is a critical one to Milner. Based on its currently anticipated payment under the Loss Factor proceeding, Milner stands to see an estimated \$2 million reduction in its overall remedy as a result of the AESO's suggested change to a simple interest calculation.

Needless to say, the matter is anything but trivial for Milner and we acknowledge the AESO's current effort to seek the Commission's clarification on how interest should be applied. Milner reminds the AESO of the submission it made on this matter by its counsel, Mr. Monte Forster, on October 23rd, 2020 (see attached).

Sincerely,

Rob Watson

Vice President
Milner Power Inc.

cc: Bob Emmott, President and COO, Maxim Power Corp.
Monte Forster, Legal Counsel

MONTE S. FORSTER*
Barrister & Solicitor

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SENT ELECTRONICALLY

October 23, 2020

Alberta Electric System Operator
2500, 330-5th Avenue SW
Calgary, AB T2P 0L4

Attention: Mr. Dennis Frehlich, Vice-President, Grid Reliability

Dear Sirs/Madams:

RE: Alberta Electric System Operator ("AESO") October 15, 2020 notice of change to interest calculations awarded under Alberta Utilities Commission ("Commission") Decision 790-D04-2015; Milner Power Inc. letter in response

1. Introduction and Summary

This letter is written on behalf of Milner Power Inc. ("Milner"). As you are aware, Milner is a payee under the Commission's rulings in Commission Proceeding 790 and related proceedings.

We are in receipt of the AESO's process document dated October 15, 2020. This letter is neither a motion nor an application. Nor is this letter a request that the AESO undertake a review, at this time, of the reversal of its position, held prior to October 15, 2020, to award compound interest on the funds to be paid out to those parties harmed by reason of the AESO's loss factor calculations during the period January 1, 2006 to December 31, 2016 (the "historical period"). Milner wishes to be absolutely clear that, notwithstanding Milner's concerns regarding the AESO's decision regarding interest, Milner does not want the AESO's currently scheduled payments to be affected in any way. Milner reserves its right to and intends to contest the AESO's October 15, 2020 decision regarding the nature of the interest to be awarded and will do so at a later date.

Milner is deeply concerned regarding the AESO's last minute about-face with respect to the nature of the interest to be awarded to those parties harmed by the AESO's line loss rates during the historical period. Milner is also concerned that the AESO undertook this reversal of position without consultation with Milner. Consultation is necessary for the AESO to comply with its own published processes. Milner requests that the AESO provide

all questions/submissions by all parties to whom the AESO deferred in reversing its decision on compound interest in unredacted form.

2. Submissions

Milner here registers its concern with respect to the AESO's about-face evidenced by the AESO's October 15, 2020, notice, wherein the AESO addresses the manner in which the AESO intends to calculate the interest the Commission directed in Decision 790-D04-2016 be paid to payees. Milner considers the question of the appropriate nature of the interest (simple or compound) to be awarded to payee-parties to be procedurally separate from the AESO's repayment of principal, and, you may consider this letter notice that Milner intends at an appropriate future time to challenge the AESO's determination to award simple interest to Milner and to other parties similarly situated.

Milner is also concerned that the AESO has apparently made its October 15, 2020, determination—which is a complete reversal from its October 6, 2020 determination and prior determinations, on the basis of the submissions of one or more as yet unnamed stakeholders,¹—presumably payors under the Commission's rulings in Proceeding 790 and related proceedings—without consultation with Milner or, as it appears, any party who is to receive recompense from the AESO pursuant to the Commission's noted rulings.

The AESO states the following in its October 15, process document:

Interest Now Calculated Without Compounding

The September 23 workbooks calculated interest on Module C adjustments from the original production month to the month of cash settlement as directed by the Commission, calculated using an interest rate equal to the Bank of Canada's Bank Rate plus 1½% compounded monthly. Upon review of recent decisions by the Alberta Utilities Commission ("Commission") involving interest on deferral account balances and adjustments from interim to final rates, the AESO determined that interest should be calculated on a simple (uncompounded) basis.²

The AESO refers to some Commission decisions, which the AESO says support its about-face in the manner of awarding interest.

We respond, first, that a change from compound to simple interest is not a matter of "process." The change is substantive and if pursued will cause material loss to Milner and all parties receiving compensation for their earlier overpayments, to their material detriment, and to the material benefit of those parties underpaying during the historical period.

Second, in Milner's respectful submission, not only is the change a materially substantive change, the AESO has erred in making the change. The decisions to which the AESO refers may or may not be relevant. However, one thing that the AESO might note from the

¹ The AESO stated in a letter dated October 15, 2020 '[a]fter receiving questions from stakeholders and reviewing the matters being questioned, the AESO published updates to the workbooks and procedure document today, October 15, 2020. The updates affect the calculation of interest in the workbooks as described below.'

² AESO October 15, 2020 process document.

decisions to which the AESO refers is that the question of the nature of the interest award was *not a matter the Commission was called upon to address*. In each case, the *applicant applied for* simple interest: Which one would expect a utility holding a deferral account balance to do. The decisions noted by the AESO in its October 15, 2020 process document thus carry the same weight as would the same position carry if advanced by payors in the present case.

We also note, assuming any weight at all should be placed on the decisions to which the AESO refers, that the extent of time-delay is also a material consideration in a properly directed tribunal determining the applicability of compound interest—which is the only interest that provides for the time-value of money—with a *reduction* in the amount of delay *lowering* the differential between simple and compound interest. Manifestly, the cases to which the AESO refers concerned delays different in kind from the delays experienced in the present case.

With respect, the AESO has misconstrued the import of the decisions to which it refers.

Additionally, it is obvious that the Commission's Preliminary Module C Decision (Decision 790-D04-2016) trumps decisions by the Commission in other proceedings. Further, tying any determination to the precise wording of Commission Rule 023 is also unhelpful, as the Commission in Decision 790-D04-2016 did not directly apply Rule 023.

We note that the Commission was express in Decision 790-D04-2016 that it intended to *preserve the time-value of the monies awarded* those parties injured by the AESO's line loss rule and the application of its unlawful loss factor methodology during the historical period. As an example, the Commission said, in part, in that decision, in setting out Issue E:

Issue E: *It is just and reasonable to account for the time value of money* dating back to January 1, 2006 and awarding (and charging) interest is both a practical and just and reasonable method of doing so.³

Importantly, the Commission also reiterated its concerns regarding the *dual nature* of the injustices caused by the AESO's MLF loss factor methodology during the historical period. The Commission added:

Given the zero-sum nature of line loss cost recovery and the fact that the original complaint was filed over a decade ago, to help remedy the gains that unjustly accrued to some parties and the costs that were unjustly imposed on other parties, the Commission finds that it is just and reasonable to consider the time value of money dating back to January 1, 2006 and that awarding (and charging) interest is a practical and just and reasonable method of doing so.⁴

And further:

... the Commission must address the fact that, due to the interim nature of the ISO tariff bills since January 1, 2006, some parties had funds at their disposal that they should not have had, while others did not have funds at their disposal that they

³ Decision 790-D04-2015, para. 5.

⁴ Ibid. para. 78.

should have had. Awarding interest helps to rectify the issue of the time value of the money unjustly at the disposal of, or unjustly denied to, each party, respectively.⁵

The leading case on the need for interest to be compounded in order to fully compensate a party who has suffered a reduction in its award due to delay in recovery of the award is *Bank of America Canada v Mutual Trust Co.*⁶ The Supreme Court ruled in *Bank of America*, in part:

24 Simple interest makes an artificial distinction between money owed as principal and money owed as interest. *Compound interest treats a dollar as a dollar and is therefore a more precise measure of the value of possessing money for a period of time. Compound interest is the norm in the banking and financial systems in Canada and the western world* and is the standard practice of both the appellant and respondent.⁷

The Court added:

51 Additionally, it would be illogical and unfair to the plaintiff to change to a simple rate of interest charged upon the judgment at the post-judgment phase. This would delay but not eliminate the period when the defendant gains a benefit that belongs to the plaintiff by not paying compound interest. *It would encourage the defendant to delay paying the judgment award.*⁸

The AESO will recall the number of times the Commission expressed its concerns with respect to incentives on the part of the payor-parties to delay the 790 Proceeding.⁹ The AESO is of course also aware that Milner has contested the Commission's determination in Decision 790-D04-2016 to limit (without the benefit of evidence) the interest awarded to payees to the Bank of Canada rate plus 1 ½ percent. This too has had the effect of inciting those parties required to pay under the Commission's Proceeding 790 determinations to further delay, thus militating against the Commission's own efforts to mitigate the harms and injustices caused by delays. With respect, the AESO's erroneous October 15, 2020 about-face has served to once again cite delay and the injustices consequent to that delay.¹⁰

⁵ Ibid. para. 81.

⁶ *Bank of America Canada v Mutual Trust Co* [2002] 2 S.C.R. 601. ("*Bank of America*") Cited numerous times, e.g. *Pasko v. Willis*, [2004] A.J. No. 1426; 2004 ABCA 395; *Eli Lilly and Co. v. Apotex Inc.*, [2019] F.C.J. No. 1554; *Hewlett-Packard France v. Matrox Graphics Inc.*, [2020] Q.J. No. 152.

⁷ *Bank of America*, at the noted paragraph. (Emphasis added.)

⁸ Ibid., at the noted paragraph. (Emphasis added.)

⁹ See in particular Commission Decision 790-D02-2015 paras. 259-261.

¹⁰ We note that the CRTC in *Telecom Decision CRTC 2015-70* not only saw the justice of and therefore need to award compound interest to preserve the time-value of the monies Bell Canada was directed to repay to its customers, but, as well, did not make the same error as the Commission in the level of interest to be awarded. The CRTC ruled:

38 The Commission [CRTC] considers that Bell Canada et al. have benefited from the additional revenue related to the expired exogenous events, while customers have not benefited from lower rates, as they should have. For that reason, and considering the scale of the applicants' errors in not reversing the time-limited exogenous factors addressed above, the Commission finds that it would be appropriate under the circumstances to require Bell Canada et al. to add compound interest to the amounts credited to customers for the period of time they were overcharged.

Again, it is obvious that the Commission Decision 790-D04-2016 trumps decisions by the Commission in other proceedings and rulings by other administrative tribunals. Nonetheless, the principles are clear; the time-value of money is preserved *only* through compound interest.

Milner again expresses its concern that the AESO has chosen to make such a material and substantive change to the level of compensation to be awarded to Milner and other parties who are to receive recompense from the AESO, on the basis of submissions by one or more parties who interests are clearly in opposition to the interests of Milner and other payees, without any consultation or warning. This is improper and contrary to the AESO's own commitments to be fair and transparent in its actions. Milner requests that the AESO provide all questions/submissions by all parties to whom the AESO deferred in reversing its decision on compound interest.

3. Conclusion

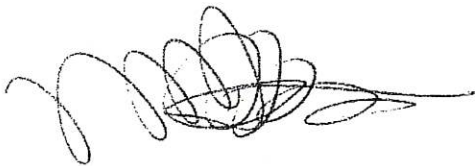
With respect, the AESO's about-face regarding interest is improper, both (a) based on the Commission's ruling in Decision 790-D04-2015 and (b) due to the AESO's failure to consult with parties who have been negatively affected by the AESO's determinations.

This letter is not intended as a motion or application. Further, Milner expects that the AESO will continue with its scheduled payments in accordance with its present timetable. Milner reserves its right to contest the AESO's October 15, 2020, decision at a later date.

Finally, Milner requests that the AESO provide all questions/comments received from parties from whom the AESO received questions/submissions regarding the nature of the AESO's interest calculations.

Should the AESO have any questions concerning the content of this letter, we ask that you please contact the writer or Mr. Robert Watson V.P. Canadian Facilities with Milner.

Yours sincerely,



Per: _____

MONTE S. FORSTER
Counsel for Milner Power Inc.

cc. Robert Watson, Milner Power Inc.

³⁹ The Commission considers that the interest rate used to calculate compound interest should match the cost of debt that applied to each applicant over the period of time customers were overcharged. In addition to being the interest rate that companies would be charged by financial institutions when they borrow funds, the cost of debt is also the interest rate that the Commission directed the large ILECs to apply annually to funds to be included in their deferral account.

From: [Clarke Lind](#)
To: [John Martin](#); [Dennis Frehlich](#)
Cc: [Dan O'Hearn](#)
Subject: Module C Settlement Adjustments - AUC Guidance Request Response from PWX
Date: November 10, 2020 12:54:36 PM

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials.***

Dear John and Dennis,

Thank you for swiftly replying to Powerex's October 22 correspondence, which related to the calculation of interest on payments for the Module C settlement process.

As outlined in the AESO's November 3, 2020 notice, Powerex supports the AESO's intent to request guidance from the Alberta Utilities Commission on the question outlined below regarding the interest calculation to be applied to the Module C settlement process.

Additionally, Powerex supports the AESO's intent to request that the Commission provide guidance on the interest calculation, while concurrently proceeding with the current settlement process to ensure that there are no delays to that process.

Re: the Question the AESO proposes to seek guidance from the Commission:

Should the interest attributable to the monthly Module C amounts, as directed in paragraph 149 of Decision 790-D06-2017, be determined using a monthly Compound Interest calculation or a Simple Interest calculation with no monthly compounding?

Powerex request that the AESO remove 'monthly Compound Interest calculation' and replace it with 'Compound Interest calculation'. Should the Commission support using a compound interest calculation, the Commission should have the ability to determine the compound interest interval. For ease of reference, Powerex provides a blackline of its proposed revisions below:

Should the interest attributable to the monthly Module C amounts, as directed in paragraph 149 of Decision 790-D06-2017, be determined using a ~~monthly~~ Compound Interest calculation or a Simple Interest calculation ~~with no monthly compounding~~?

Thank you for your time and please let me know of any questions.

Clarke Lind

Senior Market Policy Analyst | Powerex Corp.
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any attachments. If you have received this email in error, please notify the sender and delete this email and attachments from your system immediately. Thank you.



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Andrea Sam
Legal Counsel

November 10, 2020

Sent via e-mail john.martin@aeso.ca

Alberta Electric System Operator
Calgary Place
2500, 330 - 5th Ave SW
Calgary, AB T2P 0L4

Attention: John Martin, Senior Special Projects Advisor

Dear Mr. Martin:

Subject: Module C Interest Calculation

This letter represents TransAlta Corporation's (**TransAlta**) submissions on the Alberta Electricity System Operator's (**AESO**) request for feedback on its proposed question to the Alberta Utilities Commission (**AUC**) on the interest calculation to be applied in the Module C settlement process (the **Interest Question**).

TransAlta's position is that the Interest Question is not necessary. The AUC provided sufficient guidance on this issue, in its precedents and decisions in Proceeding 790.¹ The precedents and decisions support applying simple interest to the Module C adjustments.

It is unclear what the AESO's rationale is for seeking guidance on the Interest Question. TransAlta believes that if the AESO intends to put the Interest Question to the AUC, that it first establishes why compound interest should even be considered. The AUC specifically referenced *Rule 023: Rules Respecting Payment of Interest* in Decision 790-D04-2016 which, to our knowledge, has almost always applied simple interest without compounding. The AESO has not provided any reason to detract from the AUC's standard practice nor is this settlement process unique in any way to warrant different treatment.

However, if the AESO is adamant that AUC guidance is required on the Interest Question, without entertaining TransAlta's requests made above, then we believe the question posed to the AUC should be, "Does Rule 023 permit carrying charges to be calculated by compounding interest?"

¹ See AESO references to previous AUC decisions as well as 790-D04-2016 and 790-D06-2017.

Finally, this settlement process has been ongoing for years. Interested parties had ample time to raise concerns about the Interest Question and had not done so. Raising the Interest Question now only serves to delay and complicate settlement. For the benefit of all parties involved, the AESO should continue its course of finalizing the settlement process, using simple interest, so that there is no further delay.

Yours truly,

TRANSALTA CORPORATION



ANDREA SAM
Legal Counsel

November 10, 2020

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Via email

**Attention: Mr. John Martin,
Senior Special Projects Advisor**

Dear Mr. Martin,

Re: Alberta Electric System Operator ("AESO") Intent to Request Guidance from the Alberta Utilities Commission ("Commission") on the Module C Interest Calculation

TransCanada Energy Ltd. ("TCE") writes in response to the AESO's letter dated November 3, 2020 inviting parties to provide feedback on a proposed question upon which the AESO intends to seek Commission guidance ("Letter"). This proposed question is with respect to the appropriate form of interest to be applied to the Module C settlement amounts. TCE supports the AESO's request for guidance and the Module C settlement process as outlined in the letter, which maintains the current ongoing settlement schedule. With respect to the request for guidance, TCE recommends a minor adjustment to the AESO's proposed question, as explained below.

The evidentiary record for Proceeding 790 is extensive. Yet, there is no evidence or Commission determinations on the record regarding whether interest should be applied to financial settlements using compound or simple interest. Further, the unique nature of Proceeding 790 does not align with Commission precedents on this matter, to the extent that one exists. For these reasons, TCE submits that the AESO's decision to seek Commission guidance on this matter is both reasonable and appropriate.

The AESO's proposed question is:

Question: Should the interest attributable to the monthly Module C amounts, as directed in paragraph 149 of Decision 790-D06-2017, be determined using a monthly Compound Interest calculation or a Simple Interest calculation with no monthly compounding?

While this question is succinct and clear, TCE is concerned that the scope of the question as proposed is too narrow. Compound interest can be calculated using different compounding periods, which determines the number of times interest is compounded in a year. The fact that interest is to be calculated on monthly Module C amounts does not necessitate monthly

compounding.¹ While monthly compounding is common, TCE recommends that the AESO also seek the Commission's guidance as to the appropriate compounding period. On this basis, TCE recommends that the AESO revise the question to:

Question: Should the interest attributable to the monthly Module C amounts, as directed in paragraph 149 of Decision 790-D06-2017, be determined using a ~~monthly~~ Compound Interest calculation or a Simple Interest calculation with no ~~monthly~~ compounding? If the interest is to be determined using Compound Interest, how many compounding periods per year should be applied?

As mentioned above, the record to Proceeding 790 does not include evidence on the matter of compound versus simple interest. TCE believes that the Commission would benefit from submissions from all affected parties when considering the AESO's question. TCE, accordingly, respectfully requests that the AESO indicate when it submits its request for guidance to the Commission parties' desire to make submissions.

If you have any questions, please contact the undersigned.

Yours truly,

Original Signed by

Mark Thompson
Manager, Market Services

¹ For example, an equivalent monthly compounding rate can be derived from an annual compounding rate.