



Suncor Energy Products Inc.

Preferential Sharing of Records between
Suncor Energy Products Inc., ACCIONA Wind
Energy Canada Inc. and Enbridge Wind Power
General Partnership

August 31, 2010

ALBERTA UTILITIES COMMISSION

Decision 2010-426: Suncor Energy Products Inc.

Preferential Sharing of Records between Suncor Energy Products Inc.,

ACCIONA Wind Energy Canada Inc. and Enbridge Wind Power General Partnership

Application Nos. 1605990 and 1605991

Proceeding ID. 546

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**SUNCOR ENERGY PRODUCTS INC.
PREFERENTIAL SHARING OF RECORDS
BETWEEN SUNCOR ENERGY PRODUCTS INC.,
ACCIONA WIND ENERGY CANADA INC.
AND ENBRIDGE WIND POWER
GENERAL PARTNERSHIP**

**Decision 2010-426
Application Nos. 1605990 and 1605991
Proceeding ID. 546**

1 INTRODUCTION AND BACKGROUND

1. On March 15, 2010, Suncor Energy Products Inc. (Suncor) filed an application with the Alberta Utilities Commission (AUC or Commission) pursuant to section 3 of the *Fair, Efficient and Open Competition Regulation* requesting that the Commission issue an order permitting the sharing of records not available to the public (Preferential Records) between Suncor and two of its co-owners and joint venture partners, ACCIONA Wind Energy Canada Inc. (ACCIONA) and Enbridge Wind Power General Partnership (Enbridge) regarding the Chin Chute Windfarm. A similar application was filed by Suncor involving the same joint venture partners on March 16, 2010, regarding Suncor's Magrath Windfarm. The Commission registered the application regarding the Chin Chute Windfarm as Application No. 1605990 and the application regarding the Magrath Windfarm as Application No. 1605991 (Applications). Together, these Applications comprise Proceeding ID. 546.
2. Under the terms of the joint venture agreements (JVAs)¹ Suncor is the windfarm manager and is responsible for managing and administering the agreements with the Alberta Electric System Operator (AESO), including the sale of electricity from the 30 megawatt windfarms. Suncor submitted that, as windfarm manager, it has access to Preferential Records.
3. The joint venture partners have established a committee to manage and control the business and affairs of the windfarms (Management Committee). The Management Committee exercises overall supervision and control of all matters arising under the JVAs. In addition, Suncor submitted that under the terms of the JVAs, each co-owner (and each member of the Management Committee), is entitled to access, inspect, request copies of or make copies of any of the records of the windfarms, including Preferential Records.
4. The Commission issued a Notice of Proceeding regarding the Applications on April 5, 2010. In the Notice of Proceeding, the Commission advised that the parties granted standing in the proceeding were limited to Suncor and the Market Surveillance Administrator (MSA) in accordance with subsection 3(5) of the *Fair, Efficient and Open Competition Regulation*. The Notice of Proceeding established a process and schedule for the MSA to determine whether it would intervene in the proceeding and to advise the Commission as to whether it required an evidentiary process.

¹ A copy of the Chin Chute and Magrath JVAs were filed as appendices to the Applications.

5. On April 8, 2010, the MSA filed a Statement of Intent to Participate (SIP) and advised that it objected to the Applications on the basis that wind assets such as those involved in the Applications are not required or allowed to make price and quantity offers to the power pool or for the provision of ancillary services. The MSA stated that the prohibition set out in subsection 3(1) of the *Fair, Efficient and Open Competition Regulation* does not come into play and there is therefore no requirement or basis for an application and order pursuant to subsection 3(3) of the *Fair, Efficient and Open Competition Regulation*.

6. On May 17, 2010, the Commission issued a schedule for a private written hearing and on June 15, 2010 the Commission requested that the parties address any reference to an ISO rule or enactment that would preclude Suncor's assets from making price and quantity offers into the power pool or for the provision of ancillary services as part of written argument and reply argument.

7. The MSA and Suncor submitted written argument on June 25, 2010 and June 28, 2010, respectively. The MSA provided its reply argument on July 6, 2010. Accordingly, the record for Proceeding ID. 546 closed on July 6, 2010.

8. A glossary of abbreviations used in this Decision can be found in [Appendix 2](#).

9. In reaching the determinations contained within this Decision, the Commission has considered all relevant materials comprising the record of this proceeding, including portions of the record that are not available to the public. 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 the Commission did not consider all relevant portions of the record with respect to that matter.

2 RELEVANT STATUTORY AND REGULATORY PROVISIONS

10. The relevant statutory provisions respecting the sharing by market participants of records that are not available to the public are found in the *Fair, Efficient and Open Competition Regulation*, and the *Alberta Utilities Commission Act* and the *Electric Utilities Act* under which this regulation was enacted.

11. Section 5 of the *Electric Utilities Act* lists some of its purposes as follows:

- (b) to provide for a competitive power pool so that an efficient market for electricity based on fair and open competition can develop, where all persons wishing to exchange electric energy through the power pool may do so on non-discriminatory terms ...;
- (c) to provide for rules so that an efficient market for electricity based on fair and open competition can develop in which neither the market nor the structure of the Alberta electric industry is distorted by unfair advantages of government-owned participants or any other participant;

...

- (e) to enable customers to choose from a range of services in the Alberta electric industry, including a flow-through of pool price and other options developed by a competitive market, and to receive satisfactory service;

...

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

12. The *Electric Utilities Act* further states in section 6 that “[m]arket participants are to conduct themselves in a manner that supports the fair, efficient and openly competitive operation of the market.”

13. It is abundantly clear, therefore, that competition and the amelioration of anti-competitive market power is the thrust of the legislation governing electricity in Alberta. The *Fair, Efficient and Open Competition Regulation* adds clarity to what is allowed and forbidden by the various market participants.

14. Specifically, subsection 3(1) of the *Fair, Efficient and Open Competition Regulation* establishes that a market participant will not share records that are not available to the public relating to any past, current or future price and quantity offer made to the power pool or for the provision of ancillary services. Subsection 3(2) of the *Fair, Efficient and Open Competition Regulation* establishes instances where records that are not available to the public may be shared. Subsection 3(3) of the *Fair, Efficient and Open Competition Regulation*, which allows the Commission to issue an order permitting the sharing of records, states:

(3) The Commission may, on application by a market participant that is otherwise prohibited from sharing records referred to under subsection (1), issue an order permitting the sharing of those records on any terms and conditions the Commission considers appropriate where the market participant establishes that

- (a) the records will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the electricity market, including the conduct referred to in section 2, and
- (b) the sharing of the records is reasonably necessary for the market participant to carry out its business.

15. Section 2 of the *Fair, Efficient and Open Competition Regulation* identifies conduct by a market participant that does not support the fair, efficient and openly competitive operation of the market. Relevant to the sharing of records, proscribed conduct would include:

- (h) restricting or preventing competition, a competitive response or market entry by another person, including
 - (i) a market participant directly or indirectly colluding, conspiring, combining, agreeing or arranging with another market participant to restrict or prevent competition, ...

...

- (j) manipulating market prices, including any price index, away from a competitive market outcome;

16. The sharing by market participants of their non-public records has the potential to allow collusion and price-fixing by these participants, especially if the participants have a substantial market share or market power. Such collusion is harmful to the marketplace as a whole, especially consumers. It is, therefore, incumbent upon the Commission to carefully scrutinize record-sharing agreements in order to maintain the competitive environment that the *Electric Utilities Act* so ardently emphasizes as its goal.

17. Adam Smith had famously observed that “[p]eople of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.”² The *Electric Utilities Act* and the *Fair, Efficient and Open Competition Regulation*, therefore, give life to Adam Smith’s entreaty that “though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies; much less to render them necessary.”³

18. Additionally, the *Electric Utilities Act* stresses that any regulatory framework should minimize the costs of regulation and allow for efficiencies.

19. With that in mind, the Commission must look to any record-sharing agreement under the twin lenses established by subsection 3(3) of the *Fair, Efficient and Open Competition Regulation*.

3 DISCUSSION AND FINDINGS

3.1 Fair, Efficient and Openly Competitive Operation of the Market

20. The Management Committee established by the joint venture partners of each windfarm exercises overall “offer control,” as defined in the *Fair, Efficient and Open Competition Regulation*. However, the authority to submit offers to the AESO has been delegated to Suncor, in its capacity as windfarm manager. Suncor makes these offers based on information it receives from ACCIONA (as windfarm operator) regarding actual availability of electricity from the windfarm.⁴

21. As part of the Applications, Suncor provided an affiliate list for each of the joint venture partners.⁵ In accordance with subsection 5(5) of the *Fair, Efficient and Open Competition Regulation* and based on the submissions in this proceeding, the Commission understands that Suncor’s, ACCIONA’s and Enbridge’s offer control to be below the limit specified in the *Fair, Efficient and Open Competition Regulation*.

22. The roles of the windfarm manager and the windfarm operator were addressed in the Applications and the JVAs. Suncor, as the Windfarm Manager, is responsible for managing and

² Adam Smith, *The Wealth of Nations* (Bantam Classic: New York, NY, 2003), Chapter I, Book X, Part II, page 177.

³ *Ibid.*

⁴ Exhibits 13 and 14, paragraph 15, page 4.

⁵ Exhibits 13 and 14, Appendices 2-4.

administering the sale of electricity with the AESO and in this capacity, Suncor submitted that it has access to Preferential Records.⁶

23. Although the JVAs authorize the co-owners to access (and audit) any records related to the windfarms, Suncor submitted that as a practical matter, the Preferential Records are maintained by Suncor and only shared with the co-owners at their request.⁷ As part of the Applications, Suncor included written representations from senior officers of Suncor, ACCIONA and Enbridge indicating that the non-public offer information would not be used for any purpose that does not support the fair, efficient and openly competitive operation of the market, including the conduct referred to in section 2 of the *Fair, Efficient and Open Competition Regulation*.⁸

24. Representations from ACCIONA and Enbridge confirmed that each company has in place a formal program for internal compliance to ensure that the Preferential Records will not be used for anti-competitive purposes.⁹

25. In the Applications, Suncor identified ACCIONA's internal compliance program, which among other things, requires:

- (a) employees to sign a code of conduct which requires that the employees of ACCIONA comply with applicable law;
- (b) ACCIONA to inform employees of the confidential nature of the information and limit access to the information to those individuals who must use the information;
- (c) a compliance officer to monitor compliance with the *Fair, Efficient and Open Competition Regulation* and rectify any violations; and
- (d) notifying relevant employees of the confidentiality obligations set forth under the regulation and the publication of standards of conduct on a website accessible to all employees.¹⁰

26. Similarly, Suncor submitted that Enbridge's formal program for internal compliance requires, among other things, that:

- (a) employees not disclose proprietary and confidential information to anyone other than those who need to know it in furtherance of the businesses of Enbridge;
- (b) employees return all proprietary and confidential information in their possession forthwith upon termination of their employment with Enbridge;
- (c) Enbridge and its employees comply with all applicable Canadian, U.S. or other foreign competition and antitrust legislation;
- (d) employees strictly adhere to a "statement of business conduct" and that failure to comply may result in disciplinary action up to and including termination;

⁶ Exhibits 13 and 14, paragraph 11, page 3.

⁷ Exhibits 13 and 14, paragraphs 18 and 19, page 4.

⁸ Exhibits 18 and 24, paragraph 2; Exhibits 19 and 25, paragraph 2; Exhibits 20 and 26, paragraph 1.

⁹ Exhibits 19 and 25, paragraph 4; Exhibits 20 and 26, paragraph 3.

¹⁰ Exhibits 19 and 25, paragraph 4.

- (e) each employee certify on the commencement of employment and annually thereafter, compliance with the statement of business conduct;
- (f) a chief compliance officer coordinate compliance and monitor, investigate and report on any non-compliance;
- (g) an audit services department conduct regular audits; and;
- (h) all records at Enbridge be governed by a records classification and retention schedule policy for which compliance is mandatory.¹¹

Commission Findings

27. In determining whether the records shared will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the electricity market, the Commission has considered the following:

- the details of the compliance program described by ACCIONA's representation;
- the program for internal compliance detailed in Enbridge's representation;
- the roles that ACCIONA and Enbridge have as part of the JVs and the purposes for which they intend to use the Preferential Records;
- the size of the windfarms and the degree of offer control (if any) that the windfarms confer upon the joint venture partners; and
- the representations of the joint venture partners that the Preferential Records will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the market.

28. The representations of ACCIONA and Enbridge regarding the formal program for internal compliance to manage confidential information, including information sharing requirements as contemplated by the *Fair, Efficient and Open Competition Regulation* give the Commission some degree of comfort that no confidential information will be shared between Suncor and ACCIONA or Enbridge for the purposes of price-fixing, price-manipulation or any other conduct proscribed by the *Fair, Efficient and Open Competition Regulation*. The Commission is further satisfied that the current arrangement also will prevent the parties from tacitly colluding by revealing any non-public information to each other that may give them an anti-competitive advantage in the market.

29. Based on submissions of the parties, the Commission finds that Suncor has established that the records will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the electricity market.

¹¹ Exhibits 20 and 26, paragraph 3.

3.2 Reasonably Necessary

30. Suncor submitted that the Management Committee exercises overall supervision and control of all matters arising under the JVAs. In addition, the Management Committee exercises overall control of the business and affairs of the windfarms.¹²

31. In the event that ACCIONA or Enbridge wish to exercise their rights under the JVA and access Preferential Records, Suncor, as windfarm manager, would be required to share the Preferential Records with its co-owners.¹³

32. Among other things, Suncor is responsible for the following:

- together with ACCIONA, preparing operating budgets for Management Committee approval;
- negotiating and executing all third party contracts, including contracts with the AESO and contracts for the physical delivery of power;
- maintaining prudential requirements with the AESO;
- conducting all power pool administration;
- preparing and delivering all accounting reports to the other co-owners as well as collecting and distributing revenue from the windfarms; and
- providing monthly and annual summaries of power sales.¹⁴

33. Among other things, ACCIONA is responsible for the following:

- together with Suncor, preparing operating budgets for Management Committee approval;
- ensuring all necessary maintenance and repairs are carried out;
- negotiating and executing all third party contracts related to the operation of the windfarm;
- monitoring equipment performance and warranties;
- advising of the actual power production availability of the windfarms;
- providing detailed monthly operations statements and comparative operating budget summaries to the co-owners; and
- performing the day to day functions of a windfarm operator.¹⁵

¹² Exhibits 13 and 14, paragraph 12, page 3.

¹³ Exhibits 13 and 14, paragraph 14, page 4.

¹⁴ Exhibits 13 and 14, paragraph 9, pages 2-3.

¹⁵ Exhibits 13 and 14, paragraph 10, page 3.

34. A senior officer from each of Suncor, ACCIONA and Enbridge provided a representation indicating that the Preferential Records shared would only be used to facilitate the sale into the Alberta power pool of electricity produced by the windfarms, to facilitate the rights of the co-owners to access and audit all windfarm records and to facilitate the proper calculation of payments under the windfarm JVAs.¹⁶

35. As noted previously, the MSA stated in its SIP that wind assets, such as those involved in the Applications, are not required or allowed to make price and quantity offers to the power pool or for the provision of ancillary services.¹⁷ The MSA indicated that there is no requirement or allowance for wind assets to make price and quantity offers and evidence of this could be found in a November 22, 2007 letter from the AESO (AESO letter) regarding the applicability of Must Offer Must Comply (MOMC) rules to wind generation. However, in argument, the MSA conceded that it was not aware of any ISO rule or enactment that explicitly deals with the offer exemption for wind.¹⁸

36. In its argument submission, Suncor acknowledged that the AESO letter indicated wind generation is currently not obliged to comply with the ISO MOMC rules, because wind is considerably more variable than other generation sources.¹⁹ However, to support the Applications, Suncor argued that wind generators are subject to ISO rule 3.[7] – *Standing Offers and Bids* (ISO rule 3.7). Further, Suncor indicated that the fact that AESO uses ISO rule 3.7 to deal with wind generation does not alter the fact that the rule results in offers being made to the power pool by wind generation. It simply means making the offers is effectively automatic.²⁰

37. Suncor submitted that all generators that are transmission or distribution connected are required to register with the AESO as supply assets. Further, a generator with a capacity equal to or greater than 5 MW must submit offers and be dispatchable. Suncor acknowledged that wind is an exception to the above-mentioned rules.²¹

38. In reply argument the MSA indicated that the term “price and quantity offer”, including its conjunctive form, is consistent with the reality that in the power pool market participants must pair a specific price with a specific quantity and that the offer serves to commit the market participant. Insofar as the quantity component of the offer is concerned, wind assets cannot make such a commitment because wind assets run when the wind blows and get paid accordingly. In addition, the MSA argued that the price information is available to the public in advance. The MSA submitted that uncertain quantity and public price information is not the kind of price and quantity offer described in subsection 3(1) of the *Fair, Efficient and Open Competition Regulation*, given the concerns underlying the enactment.²²

39. As well, the MSA argued that other provisions of the *Fair, Efficient and Open Competition Regulation* also provide useful context and support for the MSA’s interpretation that wind assets price and quantity offers are not captured by subsection 3(1) of the regulation. The

¹⁶ Exhibits 18 and 24, paragraph 3; Exhibits 19 and 25, paragraph 3; Exhibits 20 and 26, paragraph 1.

¹⁷ Exhibit 2, MSA SIP dated April 8, 2010, page 1.

¹⁸ Exhibit 10, MSA Written Argument dated June 25, 2010, page 1.

¹⁹ Exhibit 11, Final Argument of Suncor Energy Products Inc. June 28, 2010, paragraph 13, page 3.

²⁰ Exhibit 11, Final Argument of Suncor Energy Products Inc. June 28, 2010, paragraph 14, page 3 and paragraph 26, page 6.

²¹ Exhibit 11, Final Argument of Suncor Energy Products Inc. June 28, 2010, paragraph 12, page 3.

²² Exhibit 12, MSA Reply Argument dated July 6, 2010, paragraph 5, page 1, and paragraph 9, page 2.

MSA noted that subsection 5(1)(e) defines offer control to exclude the maximum capability of each generating unit where a market participant is not required by the ISO to make a price and quantity offer to the power pool. In addition, the MSA submitted that the reason for the exclusion is that wind assets are not susceptible to dispatch or, put another way, wind generation is not within the control of the market participant in the same manner as other forms of generation.²³

40. The MSA further argued that subsection 6(1) of the *Fair, Efficient and Open Competition Regulation* requires the ISO to make public the price, quantity and asset identification associated with each offer made to the power pool that is *available for dispatch* and the MSA submits that wind assets are not included in the information made available to the public by the ISO pursuant to this subsection.²⁴

41. The MSA noted the Commission's comments in Decision 2010-233²⁵ and Decision 2010-258²⁶ regarding concerns such as price-fixing and collusion. The MSA agreed with those comments and submitted that it was difficult to see how the types of records at issue in this proceeding could raise such anti-competitive concerns.²⁷

42. Finally, the MSA noted that Suncor confirmed that wind generation is not presently dispatchable and is not obligated to submit offers into the market. The fact that wind is subject to a \$0 standing offer and that this fact is well known within the industry makes the price aspect available to the public.²⁸

Commission Findings

43. At issue before the Commission is whether the sharing of offer quantities with a zero price or otherwise understood to be zero price requires an order from the Commission pursuant to section 3 of the *Fair, Efficient and Open Competition Regulation*. While the nature of wind generation in these Applications clearly falls within these parameters, that is, there is a zero price standing offer for wind, there are other circumstances in which generation, other than wind generation, is subject to a zero price standing offer. Therefore, the Commission has established a generic proceeding, Proceeding ID. 725, to address whether and to what extent the sharing of offer quantities with a zero price or otherwise understood to be zero price requires an order from the Commission pursuant to section 3 of the *Fair, Efficient and Open Competition Regulation*.

44. Notwithstanding, the Commission has provided its findings in response to the Applications before it in response to these windfarms. In reaching its determination, the Commission has considered the following:

- whether there are any ISO rules exempting wind generators from the requirement to submit offers; and

²³ Exhibit 12, MSA Reply Argument dated July 6, 2010, paragraph 10, page 2.

²⁴ Exhibit 12, MSA Reply Argument dated July 6, 2010, paragraph 11, page 2.

²⁵ Decision 2010-233: Balancing Pool, Preferential Sharing of Records between the Balancing Pool and Capital Power Generation Services Inc. (Application No. 1605811, Proceeding ID. 462) (Released: May 31, 2010)

²⁶ Decision 2010-258: TransAlta Generation Partnership, Preferential Sharing of Records between TransAlta Generation Partnership and Capital Power Generation Services Inc. (Application No. 1605887, Proceeding ID. 486) (Released: June 7, 2010).

²⁷ Exhibit 12, MSA Reply Argument dated July 6, 2010, paragraph 8, page 2.

²⁸ Exhibit 12, MSA Reply Argument dated July 6, 2010, paragraph 6, page 2, and paragraph 12, pages 2-3.

- what impact, if any, dispatch control may have.

45. Although the AESO letter provided by MSA in its submission is consistent with Suncor's submission that wind was exempt from the rule requiring generators with capacity equal to or greater than 5 MW to submit offers and be dispatchable, the existing ISO rules have not been updated to reflect the AESO's intention to exempt windfarms from certain rules including ISO rule 3.5 – *Offers and Bids*.²⁹

46. The Commission notes that Suncor made reference to a "\$0 standing offer" for wind assets and used this term interchangeably with ISO rule 3.7. The Commission does not consider ISO rule 3.7 to be a "\$0 standing offer rule," but rather a rule pertaining to "standing offers and bids" which is neither price, nor asset specific. Further, in ISO rule 3.7, there is no exemption for wind in the rule itself and there is no letter from the AESO providing wind generation with an exemption from ISO rule 3.7. The offer practices of wind may be well known in industry, but based on the submissions in this proceeding, and the absence of authoritative documents on the subject of wind being required or allowed to offer to the power pool, there is some confusion as to what rules wind is following or is exempt from following. Accordingly, the Commission finds that there are no exemptions set out in the ISO rules exempting wind generators from the application of the rules.

47. The Commission notes that subsection 5(1)(e)(i) of the *Fair, Efficient and Open Competition Regulation* includes minimum stable generation and must run volumes over which market participants arguably have little control. The Commission finds that subsection 5(1)(e) of the *Fair, Efficient and Open Competition Regulation* does not support the MSA's interpretation of subsection 3(1) as the subsection could have been provided to allow for a more accurate representation of offer control where an agency relationship or Power Purchase Arrangement exists. In addition, based on the submissions and references to ISO rules and enactments in this proceeding, it is not clear that wind is exempt from the requirement to offer to the power pool.

48. As a result, the Commission is not persuaded that wind units should specifically be excluded simply on the basis of lack of dispatch control as has been suggested by the MSA. As well, the Commission is not satisfied based on the submissions in this proceeding that wind offer records would not be considered in the context of subsection 3(1) of the *Fair, Efficient and Open Competition Regulation*.

49. The Commission notes the MSA's submission regarding the Commission's comments in Decisions 2010-233 and 2010-258 regarding concerns related to price-fixing and collusion. However, the Commission considers that price-fixing and collusion or other forms of prohibited conduct in section 2 could be the result of a variety of information sharing arrangements and could occur at a variety of different prices and as such the Commission needs to concern itself with possible price-fixing and collusion regardless of the level of the price.

50. The Commission considered the submissions of the parties regarding the nature of the Preferential Records that will be shared, the interest each co-owner has in the joint venture partnership and the role that each co-owner has in making decisions for the windfarms as part of the Management Committee. In addition, the Commission considered the contractual obligations

²⁹ http://www.aeso.ca/downloads/Wind_momc_letter.pdf

under the JVs and the representations of Suncor, ACCIONA and Enbridge that the shared information facilitates the sale of electricity produced by the windfarms, facilitates the rights of the co-owners to access and audit all windfarm records and facilitates the proper calculation to access and audit all windfarm records. For these reasons, the Commission finds that Suncor has established that the sharing of the records as described in the Applications is reasonably necessary for Suncor to carry out its business.

3.3 Terms and Conditions

51. In its Applications, Suncor requested that the term of the order issued by the Commission be from September 1, 2010 until the date on which the JVs are terminated.³⁰

Commission Findings

52. Subsection 3(3) of the *Fair, Efficient and Open Competition Regulation* authorizes the Commission to issue an order permitting the sharing of records on any terms and conditions that the Commission considers appropriate.

53. Section 7 of the *Fair, Efficient and Open Competition Regulation* states that the regulation expires on June 1, 2029. As such, the Commission's authority to grant the order requested by Suncor will also expire on June 1, 2029.

54. The Commission finds that Suncor did not provide a compelling reason for an order with a term that could be beyond the term of the regulation.

55. Accordingly, the Commission approves the order requested by Suncor until the earlier of June 1, 2029 or the termination of the JVs between Suncor and ACCIONA and Enbridge.

4 ORDER

56. IT IS HEREBY ORDERED THAT, pursuant to the provisions of section 3 of the *Fair, Efficient and Open Competition Regulation*, that Suncor Energy Products Inc. be permitted to share records referred to in subsection 3(1) of the *Fair, Efficient and Open Competition Regulation* with ACCIONA Wind Energy Canada Inc. and Enbridge Wind Power General Partnership until the earlier of June 1, 2029 or the termination of the Chin Chute Windfarm Joint Venture Agreement or the Magrath Windfarm Joint Venture Agreement, subject to the following terms and conditions.

4.1 Chin Chute Windfarm

- That the order only apply to the sharing of non-public offer information referred to in Application No. 1605990;
- that Suncor Energy Products Inc. notify the Commission of the termination of the agreement between Suncor Energy Products Inc., ACCIONA Wind Energy Canada Inc. and Enbridge Wind Power General Partnership regarding the Chin Chute Windfarm; and

³⁰ Exhibits 13 and 14, paragraph 4, page 2; Exhibits 17 and 23, Article 11.1.

- that Suncor Energy Products Inc. notify the Commission of any material changes to the information contained within its Application that may impact the compliance of Suncor Energy Products Inc., ACCIONA Wind Energy Canada Inc. or Enbridge Wind Power General Partnership with the *Fair, Efficient and Open Competition Regulation*.

4.2 Magrath Windfarm

- That the order only apply to the sharing of non-public offer information referred to in Application No. 1605991;
- that Suncor Energy Products Inc. notify the Commission of the termination of the agreement between Suncor Energy Products Inc., ACCIONA Wind Energy Canada Inc. and Enbridge Wind Power General Partnership regarding the Magrath Windfarm; and
- that Suncor Energy Products Inc. notify the Commission of any material changes to the information contained within its Application that may impact the compliance of Suncor Energy Products Inc., ACCIONA Wind Energy Canada Inc. or Enbridge Wind Power General Partnership with the *Fair, Efficient and Open Competition Regulation*.

Dated on August 31, 2010.

ALBERTA UTILITIES COMMISSION

(original signed by)

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Moin A. Yahya
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APPENDIX 1 – PROCEEDING PARTICIPANTS

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APPENDIX 2 – ABBREVIATIONS

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

Abbreviation	Name in Full
ACCIONA	ACCIONA Wind Energy Canada Inc.
AESO	Alberta Electric System Operator
AUC or Commission	Alberta Utilities Commission
Enbridge	Enbridge Wind Power General Partnership
JVA	Joint Venture Agreement
MSA	Market Surveillance Administrator
MOMC	Must Offer Must Comply
MW	Megawatt
SIP	Statement of Intent to Participate
Suncor	Suncor Energy Products Inc.