

April 15, 2016

Via Email: regulatorypolicy@auc.ab.ca

Heather Gnenz
Alberta Utilities Commission
Market Oversight and Enforcement Division
400, 425 First Street SW
Calgary, AB T2P 3L8

Dear Ms. Gnenz

Re: **Alberta Electric System Operator (“AESO”) – Stakeholder Comments re Bulletin 2016-06, Notice of consultation process for standardization of confidentiality undertaking**

Enclosed please find the AESO’s comment matrix with respect to the consultation process for the standardization of the confidentiality undertaking referenced in Section 13 of proposed new AUC Rule 001.

I confirm that one representative of the AESO will attend the April 26, 2016 consultation meeting in Calgary.

If you have any questions, please do not hesitate to contact Brenda Hill, Regulatory Coordinator at brenda.hill@aeso.ca or (403) 539-2850.

Sincerely,

Electronically Signed by

Heidi Kirrmaier
Vice President, Regulatory

cc: Andrea Klaiber-Langen, AESO

Appendix B

Proposed Confidentiality Undertaking

[Stakeholder: Alberta Electric System Operator (“AESO”)]

Instructions:

- (1) Please provide the name of your organization in the space provided above.
- (2) For each proposed section, please provide your organization’s viewpoint in the stakeholder comment boxes. If your organization is in favour of the proposed change or does not recommend any changes to that section, please state this for clarity. Blank boxes will be interpreted as support for the section as drafted.
- (3) Unless otherwise indicated, section references in this document refer to sections in the draft standard form of confidentiality undertaking.
- (4) The content of the column entitled “proposed form wording” reflects the wording proposed for the form. A comparison to the previous form of undertaking used by the AUC has not been included as the form has changed significantly and comparison to the previous version is not applicable. The “Statutory declaration of receipt (destruction of confidential information)” has also changed and comments are welcome for this portion of the attachment to Rule 001.
- (5) Please save and email a Word version of the document to regulatorypolicy@auc.ab.ca by 12 p.m. (noon) on Friday, April 15, 2016.
- (6) As set out in the bulletin, all comments received will be posted on the AUC’s website (www.auc.ab.ca) under <http://www.auc.ab.ca/rule-development/rule001/Pages/default.aspx>. The AUC will consolidate the responses received and post this consolidation on the website. All comments received will be discussed in the consultation meeting scheduled for April 26, 2016.

Section	Subsection	Proposed form wording	Stakeholder comment	AUC response
Confidentiality Undertaking				
Whereas (party who obtained the confidentiality order)		Whereas [insert name of party who obtained confidentiality order] (grantee) applied to the Commission under Section 13 of Rule 001: <i>Rules of Practice</i> for confidential treatment of certain records, reports, documents or information in connection with the above-mentioned proceeding;	The AESO suggests defining the term “proceeding” and using the defined term throughout the undertaking.	
Whereas (date of ruling)		And whereas the Commission in its ruling dated [insert date of ruling] (ruling) granted the grantee confidential treatment of certain records, reports, documents or information, or portions thereof, as	No suggested change.	

Section	Subsection	Proposed form wording	Stakeholder comment	AUC response
		specified in the ruling (the confidential information);		
And whereas (name of recipient)		And whereas <u>[insert name of recipient]</u> (recipient), who is a party to, or is acting on behalf of a party, in this proceeding, wishes to be granted access to the confidential information for the purpose of participating in this proceeding;	The AESO seeks to clarify the meaning of the term “party” in this provision. The AESO seeks confirmation that each individual recipient within an organization (or counsel) that will have access to the confidential information and related materials is required to sign a separate undertaking.	
Now therefore		Now Therefore, in consideration of receiving access to the confidential information, the recipient agrees and undertakes as follows:	The AESO suggests that “Therefore” be lower-case.	
1)		I have read the ruling and agree to observe its terms and conditions as they relate to the access, use and protection of the confidential information.	No suggested change.	
2)		I will only use the confidential information and all evidence, transcripts, notes, working papers, calculations, analysis or other materials based on or using the confidential information that I receive, review or prepare during the course of the proceeding (related materials) for the purpose of participating in Proceeding [insert proceeding no.] and any appeal, review or rehearing from the Commission’s decision in this proceeding.	The AESO suggests removing the words “during the course of the proceeding” from this provision, so that the materials from an appeal, review or rehearing will be included in the definition of “related materials”.	
3)		I will maintain all of the confidential	No suggested change.	

Section	Subsection	Proposed form wording	Stakeholder comment	AUC response
		information and related materials in confidence. I will not disclose the confidential information or related materials to any person except to the Commission or to a person who is authorized by the Commission to receive access to the confidential information and who has executed and filed with the Commission an undertaking, unless otherwise required by law, in which case, I will promptly give written notice to the Commission and the grantee that such disclosure has been required		
4)		I will not copy or reproduce the confidential information or related materials except in connection with my participation in Proceeding [insert proceeding no.] .	No suggested change.	
5)		I will use all reasonable and necessary efforts to safeguard the confidential information and related materials from any unauthorized disclosure or use.	The AESO suggests that this provision be amended to include reference to handling the confidential information and related materials in accordance with the confidentiality protocol to be provided to the Commission under proposed new section 13.9(a) of AUC Rule 001.	
6)		I shall save harmless and indemnify the Commission from and against all claims, actions, proceedings, demands, losses, damages, costs, and expenses which may be brought against the Commission or which the Commission may suffer, sustain, pay or incur, resulting from, or arising in connection with, the unauthorized use or disclosure by myself of the confidential information or the related materials.	The AESO suggests the insertion of a provision whereby the recipient acknowledges that any breach of the terms of the confidentiality undertaking will cause material and irreparable harm and damage to the grantee, and that the grantee will be entitled to injunctive relief to prevent breaches of the undertaking and to specifically enforce the terms and provisions	

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			of the undertaking, in addition to any other remedy to which the grantee may be entitled under law.	
7)		Subject to paragraphs 11 and 12, within 30 days of the expiration of any appeal or review period of the Commission’s decision in respect of Proceeding [insert proceeding no.] , unless otherwise directed by the Commission, I will:	The AESO suggests that the recipient be permitted to retain one copy of all confidential information and related materials, as the confidential information and related materials may be the subject of corporate decision records or other internal documents that the recipient is required to maintain. The recipient may also need to defend against claims related to the confidential information or related materials.	
	a)	Expunge all electronic copies of the confidential information and related materials from all electronic apparatus and data storage media in my possession and under my direction and control;	The AESO suggests revising the wording to read “in my possession <u>or</u> under my direction and control.”	
	b)	Deliver to the grantee or destroy all paper copies of the confidential information and related materials in my possession or under my direction and control; and	No suggested change.	
	c)	Provide an originally executed statutory declaration in the form attached to both the Commission and to the grantee.	No suggested change.	

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8)		I will promptly report a violation of this undertaking to the Commission and to the grantee.	No suggested change.	
9)		I acknowledge that a breach of the terms of the ruling or this undertaking may be the subject of contempt proceedings in the Alberta Court of Queen’s Bench by the Commission.	No suggested change.	
10)		I agree that no failure or delay by the Commission in exercising any right or privilege in respect of a breach of this undertaking or of the ruling, shall operate as a waiver.	No suggested change.	
11)		In the event that any Commission decision in respect of this proceeding is the subject of a review application pursuant to Section 10 of the <i>Alberta Utilities Commission Act</i> and Rule 016: <i>Review of Commission Decisions</i> :	No suggested change.	
	a)	I may use the confidential information and related materials for the purpose of my participation in any such review or variance proceeding, subject to the ruling and the terms and conditions of this undertaking related to the access, use and protection of the confidential information;	<p>The AESO seeks confirmation that this section is necessary given the wording of section 2. If this section is necessary, the AESO suggests beginning the section with the words: “Notwithstanding the previous sections of this confidentiality undertaking...”.</p> <p>The AESO suggests that this provision be amended to refer to “the access, use and protection of the confidential information and related materials”.</p>	
	b)	<p>I will, within 30 days following the release of the Commission’s final disposition of any review application:</p> <p>i. Expunge all</p>	<p>The AESO suggests revising the wording in (i) to read “in my possession <u>or</u> under my direction and control.”</p> <p>The AESO suggests that the</p>	

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		<p>electronic copies of the confidential information and related materials from all electronic apparatus and data storage media in my possession and under my direction and control;</p> <p>ii. Deliver to the <u>grantee</u> or destroy all paper copies of the confidential information and related materials in my possession or under my direction and control; and</p> <p>iii. Provide an originally executed statutory declaration in the form attached to both the Commission and to the grantee.</p>	<p>recipient be permitted to retain one copy of all confidential information and related materials, as the confidential information or related materials may be the subject of corporate decision records or other internal documents that the recipient is required to maintain. The recipient may also need to defend against claims related to the confidential information or related materials.</p>	
12)		<p>In the event that any Commission decision in respect of this proceeding is the subject of a permission to appeal application or appeal:</p>	<p>No suggested change.</p>	
	a)	<p>I may use the confidential information and related materials for the purpose of my participation in any such permission to appeal application or appeal except to the extent that a court of</p>	<p>The AESO seeks confirmation that this section is necessary given the wording of section 2. If this section is necessary, the AESO suggests beginning the section with the words: “Notwithstanding the previous sections of this confidentiality undertaking...”.</p>	

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		<p>competent jurisdiction grants any contrary order with respect to the confidential information or related materials;</p>	<p>The AESO suggests clarifying that use of the confidential information and related materials in a permission to appeal application or appeal is subject to the terms of the confidentiality undertaking.</p>	
	<p>b)</p>	<p>I will, unless otherwise directed by a court of competent jurisdiction, within 30 days following the release of a final decision disposing of the appeal (a decision dismissing the application for permission to appeal or a final decision on appeal):</p> <ul style="list-style-type: none"> i. Expunge all electronic copies of the confidential information and related materials from all electronic apparatus and data storage media in my possession and under my direction and control; ii. Deliver to the <u>grantee</u> or destroy all paper copies of the confidential information and related materials in my possession or under my direction and control; and iii. Provide an originally executed statutory 	<p>The AESO suggests revising the wording in (i) to read “in my possession <u>or</u> under my direction and control.”</p> <p>The AESO suggests that the recipient be permitted to retain one copy of all confidential information and related materials, as the confidential information or related materials may be the subject of corporate decision records or other internal documents that the recipient is required to maintain. The recipient may also need to defend against claims related to the confidential information or related materials.</p>	

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		declaration in the form attached to both the Commission and to the grantee.		
Made (place and date)		Made at _____,	No suggested change.	
Signatures		Recipient signature Witness name Witness signature	No suggested change.	
General comments on undertaking			No additional comments.	
STATUTORY DECLARATION OF RECIPIENT (DESTRUCTION OF CONFIDENTIAL INFORMATION)				
Declaration name		I, _____ of _____ in the _____ of _____, do solemnly declare as follows:	No suggested change.	
1)		I had within my care and control records, reports, documents or information, or portions thereof, that were granted confidential treatment (confidential information) by the Commission in its ruling dated [insert date of ruling] (ruling) in Proceeding [insert proceeding no.] pursuant to Section 13 of Rule 001: <i>Rules of Practice</i> , and had within my care and control evidence, transcripts, notes, working papers, calculations, analysis or other materials based on or using the confidential information that I received, reviewed or prepared during the course of the proceeding (related	The AESO suggests revising “care and control” to “in my possession <u>or</u> under my direction and control” to align with the confidentiality undertaking. The AESO suggests removing the words “during the course of the proceeding” from this provision, so that the materials from an appeal, review or rehearing will be included in the definition of “related materials”.	

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		materials).		
2)		I executed an undertaking in accordance with the ruling and Section 13 of Rule 001: <i>Rules of Practice</i> (undertaking) to have access to the confidential information and related materials for the purposes of my participation in the above-noted proceeding.	No suggested change.	
3)		I have made no use of the confidential information or related materials except as permitted pursuant to the ruling and undertaking.	No suggested change.	
4)		I have not disclosed the confidential information or related materials in any manner except as permitted by the ruling and undertaking.	No suggested change.	
5)		I have expunged all electronic copies of the confidential information and related materials from all electronic apparatus and data storage media in my possession or under my direction and control.	No suggested change.	
6)		I have delivered to the grantee or have destroyed, all paper copies of the confidential information and related materials in my possession or under my direction and control.	No suggested change.	
Declaration		And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.	No suggested change.	
Signatures and seal		Recipient signature Declared before me at the _____ of _____ in the province of	No suggested change.	

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		<p>_____</p> <p>this ____ day of</p> <p>_____, 20__.</p> <p>_____</p> <p>_____</p> <p>A Commissioner for Oaths in and for Alberta or</p> <p>a Notary Public (with seal affixed)</p>		
General comments on Statutory Declaration			No additional comments.	