



Enel Alberta Wind Inc. General Partner of the Castle Rock Ridge Limited Partnership

Complaint Pursuant to Section 26 of the *Electric Utilities Act*
Regarding Conduct of the Alberta Electric System Operator

December 23, 2017

Alberta Utilities Commission

Decision 22367-D01-2017

Enel Alberta Wind Inc. General Partner of the Castle Rock Ridge Limited Partnership
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Alberta Electric System Operator

Proceeding 22367

Application 22367-A001

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Fifth Avenue Place, Fourth Floor, 425 First Street S.W.
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Telephone: 403-592-8845

Fax: 403-592-4406

Website: www.auc.ab.ca

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1 Introduction and process

1. On January 25, 2017, Enel Alberta Wind Inc. (Enel), the owner of the Castle Rock Ridge Wind Farm (the CRR Wind Farm), filed a written complaint¹ with the Alberta Utilities Commission regarding the conduct of the Alberta Electric System Operator (AESO), pursuant to Section 26 of the *Electric Utilities Act*² and Section 19 of AUC Rule 001: *Rules of Practice*. In summary, Enel’s complaint asserts that to satisfy the requirements of the South Alberta Transmission Reinforcement plan (SATR), the AESO made a number of major changes to the requirements for the interconnection of the CRR Wind Farm to the Alberta Interconnected Electric System (AIES). The interconnection facilities (the CRR Wind Farm interconnection) were approved by the Commission in Decision 2011-439³ and Decision 2012-005⁴. As a result of the changes made by the AESO, Enel submitted that it was required to pay a higher customer contribution than it should have. More particularly, Enel submitted that it was required to pay for facilities that were in excess of what was reasonably required to provide system access to the CRR Wind Farm, in excess of the minimum requirements to serve the CRR Wind Farm’s need, and in excess of what was required by good electric industry practice.⁵ Further, Enel submitted that it was charged for radial transmission facilities that, within five years of commercial operation, were planned to become looped as part of a regional transmission system project, namely, SATR. Enel contends that the AESO’s conduct in making these changes contravenes Section 47 of the *Transmission Regulation*, Section 8 of the 2011 Independent System Operator (ISO) Tariff (the ISO Tariff)⁶, *Construction Contribution for Connection Projects*, as well as Section 9.3(c)(iii) of the 2006 ISO Tariff,⁷ *AESO Terms and Conditions of Service*. Enel takes the position that the AESO’s conduct in interpreting and applying the ISO Tariff in determining the customer contribution to be paid by Enel for the CRR interconnection, amounts to unfair, arbitrary or discriminatory treatment of Enel.

¹ Exhibit 22367-X0003, Enel Complaint to AUC - January 24 2017, PDF pages 5-6

² *The Electric Utilities Act* S.A. 2003, c. E-5.1

³ Decision 2011-439: Alberta Electric System Operator and AltaLink Management Ltd., Castle Rock Ridge 205S and Transmission Line Development Needs Identification Document Application and Facility Application, Proceeding 778, Application Nos 1606460 and 1606668, November 1, 2011.

⁴ Decision 2012-005: Reasons to Decision 2011-439 (November 1, 2011), Alberta Electric System Operator, Need for the Interconnection of Castle Rock Ridge Wind Farm, AltaLink Management Ltd., 240-kV Castle Rock Ridge Switching Station 205S and 240-kV Double-circuit Transmission Line 1071L/1072L, January 10, 2012.

⁵ For the purposes of this decision the Commission will use the phrases “good electric industry practice” and “good transmission practice” interchangeably.

⁶ In this decision the term ISO Tariff will refer to the 2011 ISO Tariff, unless the 2006 ISO Tariff is expressly indicated.

⁷ For the convenience of the reader, the relevant sections of the ISO Tariff have been attached as Appendix 2.

2. In general terms, Enel asked the Commission to direct the AESO to reclassify a portion of the construction contribution costs that it had incurred to connect the CRR Wind Farm to the AIES, as system-related costs and to refund the amount over collected from Enel. Customer-related or participant-related costs are those costs associated with connecting a market participant to the AIES that are to be paid by a market participant. In contrast, system-related costs are those costs associated with connecting a market participant to the AIES that are to be borne by all ratepayers. Enel also asked that the AESO be directed or required, to reimburse it for its carrying costs and its legal and consultant's fees.

3. More specifically, Enel described the relief, directions and/or orders it was requesting from the Commission as follows:

- (a) Directing the AESO to comply with the terms of the Commission-approved Tariff and classify as participant related costs only such portion of the CRR Wind Farm Connection costs that are the minimum facilities required in accordance with good electrical practice to provide system access service to the CRR Wind Farm and reasonably required to meet its demand and supply forecast and reliability and operating requirements;
- (b) Directing the AESO to comply with the terms of the Commission-approved Tariff and classify as system related costs all transmission facilities which AESO required to be built for the CRR Wind Farm Connection but which were either planned to become part of the Southern Alberta Transmission Reinforcement ("SATR") Project, or required for general transmission system reliability in southern Alberta;
- (c) Directing the AESO to comply with the terms of the Commission-approved Tariff and classify as system related all transmission facilities in excess of the minimum size required to serve the CRR Wind Farm;
- (d) Where it appears to the Commission to be just and proper, granting partial, further or other relief in addition to, or in substitution for that applied for, as fully and in all respects as if the present application had been for that partial, further or other relief, in accordance with subsection 8(5)(d) of the *Alberta Utilities Commission Act*, SA 2007, c A-37.2 ("AUCA");
- (e) Directing the AESO to refund Enel for an amount of \$18,936,369 calculated as the amount of \$26,546,369 charged Enel by the AESO as per stage 6 CCD [customer contribution decision] #1 dated October 8, 2013, minus the amount of \$5,700,000 refunded by the AESO in accordance with the AESO August 29, August 2016 AESO dispute resolution decision, and minus the cost of \$1,910,000 related to the single breaker, motorized switch and associated equipment necessary to interconnect Enel's CRR Wind Farm to the AIES at the CRR Wind Farm 205S Substation (205S Substation); and
- (f) Directing the AESO to refund Enel's carrying costs in an amount of \$9,025,972 as at December 31, 2016, plus \$4,320 per diem until the date of payment.

(g) Directing the AESO to pay Enel's costs, including legal and consultant costs⁸.

4. The Commission issued a notice of application on February 9, 2017, requesting written submissions by March 1, 2017. On February 10, 2017, the AESO filed its statement of intent to participate wherein it requested dismissal of Enel's complaint referencing the AESO's decision of August 29, 2016, which is discussed below.⁹ That decision provided reasons supporting its position that:

“(i) the net construction contribution costs paid by Enel for the CRR connection project do not exceed costs that qualify as participant related, in accordance with the requirements of Section 8 of the ISO Tariff in effect in 2011; (ii) Enel is not entitled to a further adjustment or refund in respect of the net construction contribution costs; and (iii) Enel is not entitled to be paid interest or to recover its costs, including legal and consulting costs.”¹⁰

5. The Commission issued a letter on March 10, 2017,¹¹ setting out two alternative process schedules. On March 24, 2017, the Commission provided information requests (IRs) to Enel.¹² On that same date, the Commission also provided the parties with a list of documents that it intended to add to the record of the proceeding and requested that any concerns be submitted by March 31, 2017.¹³ The Commission received no objections to the inclusion of the identified documents.

6. Enel filed its IR responses on April 7, 2017.¹⁴ On April 10, 2017, the AESO requested an opportunity to file additional evidence based on the view that some of the evidence filed by Enel required a response. The AESO committed to file its evidence on April 21, 2017, in accordance with the alternative process schedule established by the Commission.¹⁵

7. Following the filing of the AESO's evidence on April 21, 2017,¹⁶ on May 5, 2017, both Enel and the Commission submitted IRs to the AESO.¹⁷ The AESO responded on May 19, 2017, in accordance with the schedule established by the Commission.¹⁸

⁸ Exhibit 22367-X0050, LT AUC re AESO SIP 2017-02-10, February 10, 2017.

⁹ Exhibit 22367-X0038, 34-AESO Decision Response to Enel's written dispute resolution submission, January 25, 2017.

¹⁰ Exhibit 22367-X0003, Enel Complaint to AUC - January 24 2017, PDF pages 5-6.

¹¹ Exhibit 22367-X0055, AUC letter - process for Proceeding 22367, March 10, 2017.

¹² Exhibit 22367-X0056, AUC information request round 1 to Enel Alberta Wind Inc. (Enel-AUC-2017MAR24-001-013), March 24, 2017.

¹³ Exhibit 22367-X0058, AUC letter to parties - List of documents to be referenced in Proceeding 22367, March 24, 2017.

¹⁴ Exhibit 22367-X0060, Enel IR Responses, April 7, 2017, and attachment exhibits 22367-X0061 through 22637-X0068.

¹⁵ Exhibit 22367-X0069, LT AUC re AESO Evidence 2017-04-10, April 10, 2017.

¹⁶ Exhibit 22367-X0071, AESO Evidence re Enel Complaint, April 21, 2017.

¹⁷ Exhibit 22367-X0073, AUC Information Request to the AESO, and Exhibit 22367-X0076, Enel IRs, May 5, 2017.

¹⁸ Exhibits 22367-X0077 through 22367-X0088, AESO IR responses and attachments to the AUC and Enel, May 19, 2017.

8. On June 2, 2017, Enel filed its rebuttal evidence.¹⁹ On June 16, 2017, both Enel and the AESO submitted that there was no need for an oral hearing and that a written process for argument and reply argument should be established.

9. The Commission provided direction for the filing of argument and reply argument in its July 14, 2017 letter.²⁰ Among other things, in the July 14, 2017 letter, the Commission asked the parties to address four questions in their respective arguments, in addition to any other submissions they cared to make. Those questions are attached as Appendix 1. Following an extension of the deadlines requested by the AESO²¹ and approved by the Commission,²² the AESO and Enel submitted argument²³ on August 11, 2017, and reply argument²⁴ on September 1, 2017.

10. On September 15, 2017, the AESO filed a letter²⁵ contending that Enel had improperly introduced new evidence in its reply argument and requested that the Commission afford these portions of Enel's reply argument no weight. In response, the Commission granted Enel permission to file this information on the record and in order to avoid any prejudice, granted the AESO an opportunity to respond.²⁶ On September 26, 2017, the AESO submitted a letter indicating that it viewed the additional Enel evidence as immaterial and it saw no need to file any additional argument.²⁷

11. The Commission considers the record of this proceeding to have closed on September 26, 2017. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding. 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 a particular matter.

2 Background

12. To provide context for the parties' positions in this proceeding, it is helpful to begin with a brief review of the uncontested chronology of events giving rise to this proceeding. For ease of reference, the date and short description of each of the key events is provided below:

¹⁹ Exhibit 22367-X0090, Reply Evidence of Enel, June 2, 2017.

²⁰ Exhibit 22367-X0094, AUC Letter Proceeding 22367 - Direction from the Commission Regarding Argument and Reply Argument, July 14, 2017.

²¹ Exhibit 22367-X0096, Letter to AUC regarding extension request of the AESO, July 17, 2017.

²² Exhibit 22367-X0097, AUC Letter - Revised schedule for argument 22367, July 18, 2017.

²³ Exhibit 22367-X0099, AESO Argument and Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017.

²⁴ Exhibit 22367-X103 Reply Argument of Enel Alberta Wind Inc. and Exhibit 22367-X0104, AESO Reply Argument, September 1, 2017.

²⁵ Exhibit 22367-X0106, AESO Letter to Commission - New Evidence in Enel Reply, September 15, 2017.

²⁶ Exhibit 22367-X0107, AUC letter further process, September 21, 2017.

²⁷ Exhibit 22367-X0108, LT AUC re Sur-Rebuttal Argument 2017-09-26, September 26, 2017.

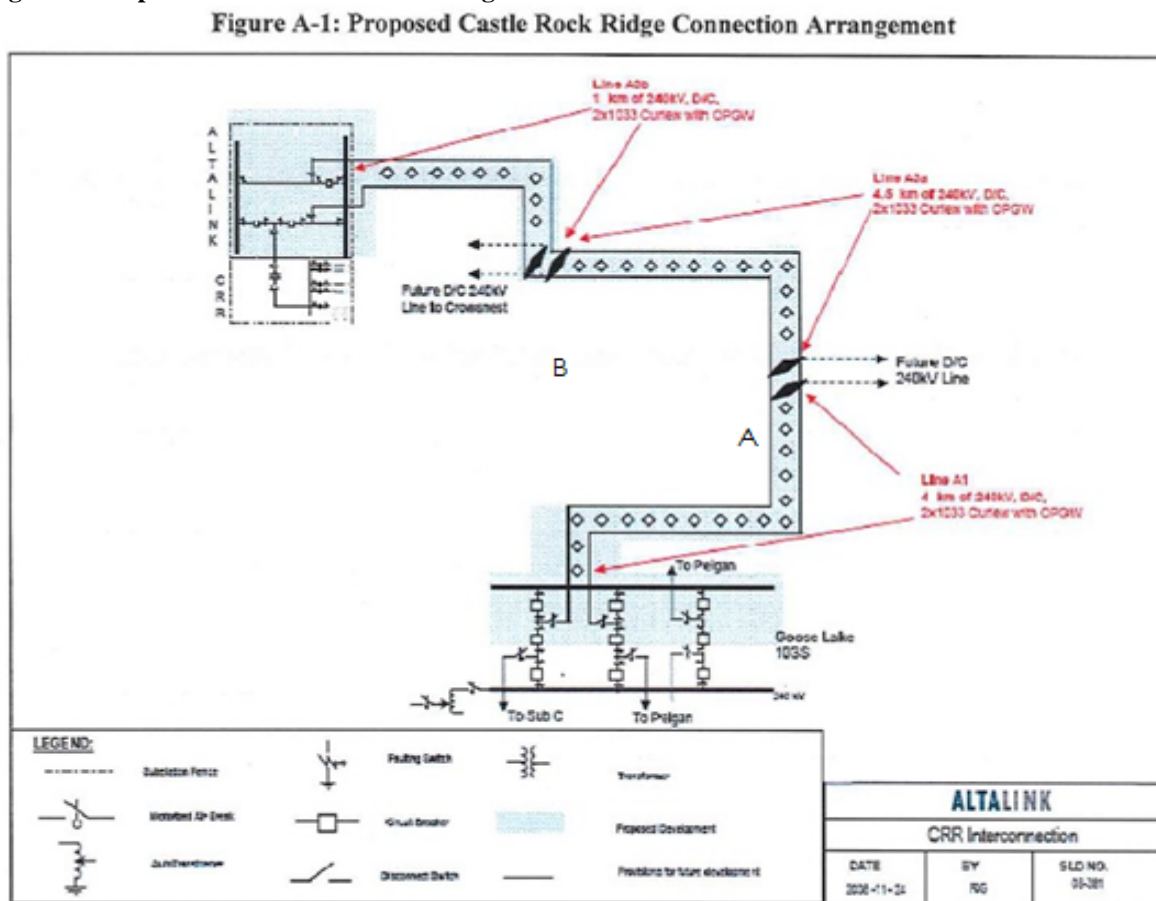
- (a) *February 14, 2002* – The CRR Wind Farm approval
Wind Power Inc. was granted Alberta Energy and Utilities Board (AUC predecessor) approval U2002-087 to develop the CRR Wind Farm.²⁸
- (b) *December 13, 2005* – Preliminary interconnection proposal
The AESO provided a preliminary interconnection proposal for the CRR Wind Farm to the AIES.²⁹
- (c) *April 18, 2006* – Construction commitment agreement
Based on the preliminary interconnection proposal, AltaLink LP and Wind Power Inc. entered into a CCA to build 7.2 kilometers (km) of single-circuit 138 kilovolt (kV) line between the CRR Wind Farm and the Goose Lake 103S Substation (Goose Lake Substation), for an estimated total cost of \$3.08 million of which \$2.98 million was allocated to Wind Power Inc. as customer contribution.
- (d) *January 12, 2007* – Draft revised interconnection proposal
The AESO provided Wind Power Inc. with a draft revised interconnection proposal. To interconnect the CRR Wind Farm, the AESO proposed a five km 138 kV transmission line running from the CRR Wind Farm into a new 240/138 kV “Hwy 785 117S station,” and a new five km 240 kV line to the Goose Lake Substation. The AESO also contemplated constructing a new Castle Rock Ridge 138 kV substation to be designated as 205S Substation, by the CRR Wind Farm, to deliver the output from both the CRR Wind Farm and the nearby proposed Riverview wind farms to the AIES.³⁰
- (e) *December 19, 2008* – AESO final interconnection proposal
The 2008 interconnection proposal estimated the total customer contribution for the interconnection to be \$13,947,544 and identified the following major transmission components to connect the CRR Wind Farm to the AIES as illustrated in the diagram below:
- A new 3-breaker ring bus 240 kV substation designated as the 205S Substation in proximity to the CRR Wind Farm’s own substation for the wind farm;
 - 1 km of double circuit 240 kV transmission line from 205S Substation to Point B;
 - 4.5 km of 240 kV double circuit transmission line from Point B to Point A; and
 - 4 km of 240 kV double circuit transmission line from Point A to the Goose Lake 103S Substation.

²⁸ Wind Power Inc. was the original developer of the Castle Rock Ridge Wind Farm. The AUC approved the transfer of the CRR power plant approval from Wind Power Inc. to Enel Alberta Wind Inc. on January 27, 2009, by issuing Power Plant Approval U2009-021.

²⁹ Exhibit 22367-X0061, ID 22367 Attachment to IR Response Enel-AUC-2017MAR24-003, April 7, 2017.

³⁰ Exhibit 22367-X0003, Enel Complaint to AUC - January 24 2017, January 25, 2017, PDF pages 11-12.

Figure 1: Proposed CRR Connection Arrangement³¹



(AESO IP RFP-05-462, December 19, 2008, pg. 21)

(f) *December 30, 2008* – SATR Needs Identification Document (NID) application. (Proceeding 171)

The AESO filed the SATR NID application with the Commission. The SATR NID did not include the facilities specifically required to connect individual wind farms (including the CRR Wind Farm) in the Pincher Creek area. Those facilities would be applied for in individual NID applications for specific wind farm interconnections in due course.

(g) *January 27, 2009* – Approvals transferred from Wind Power Inc. to Enel Alberta Wind Inc.

Wind Power Inc. was the original developer of the CRR Wind Farm. The AUC approved the transfer of the CRR power plant approval from Wind Power Inc. to Enel Alberta Wind Inc. on January 27, 2009 by issuing Power Plant Approval U2009-021.

(h) *September 8, 2009* - SATR NID approval (Proceeding 171)

³¹ Exhibit 22367-X0012, 08-AESO Interconnection Proposal (December 19, 2008), January 25, 2017, PDF page 11.

The AUC issued Decision 2009-126³² approving the SATR NID application.

(i) *June 17, 2010* - Fidler NID application (Proceeding 690)

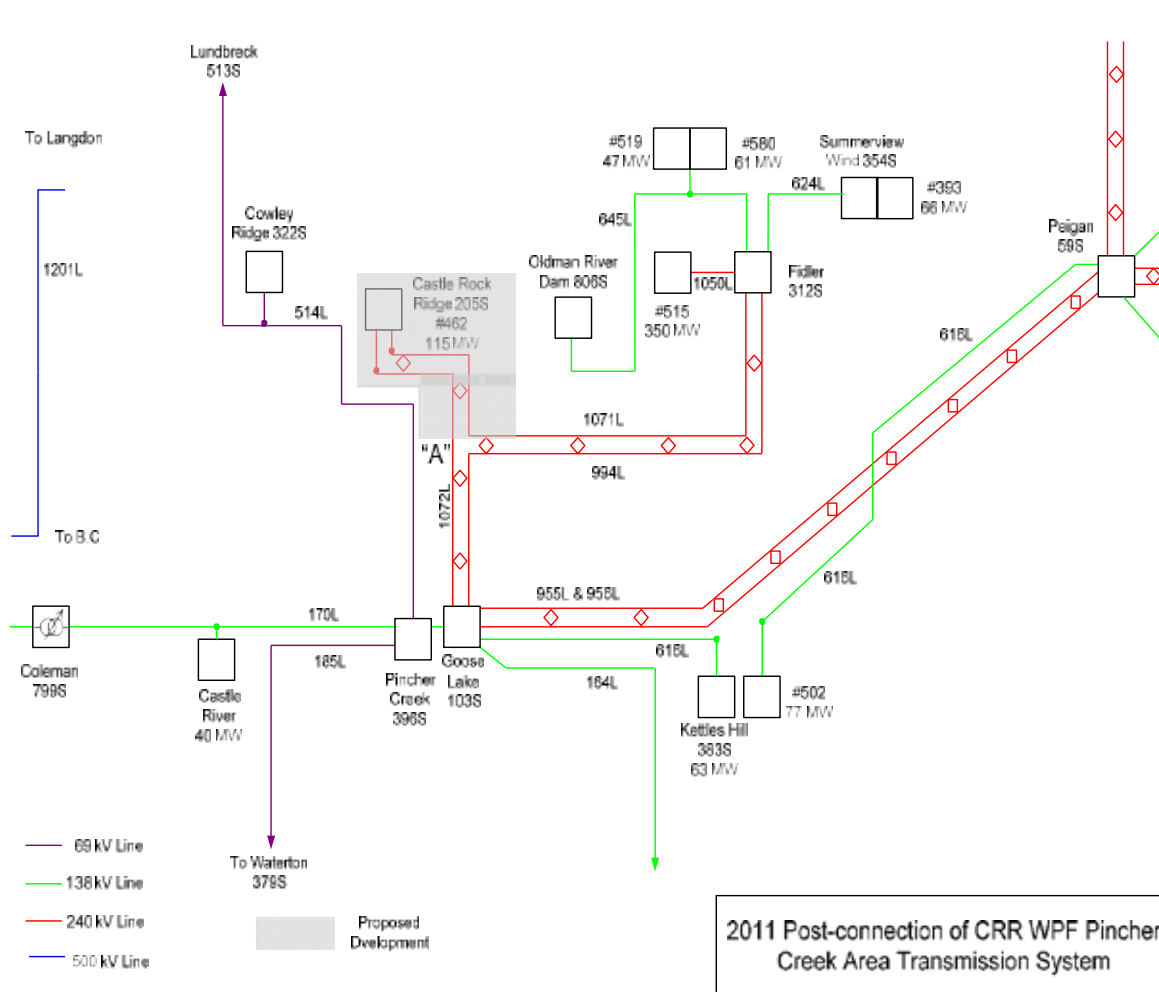
The AESO proposed the Fidler transmission development to facilitate the orderly connection of future wind farms in the Pincher Creek area. In this transmission development proposal, a 240 kV double-circuit transmission line was proposed from the Goose Lake 103S Substation to connect the CRR Wind Farm. The 240 kV transmission line was not proposed to go further west from the CRR Wind Farm to Crowsnest or Chapel Rock.

(j) *August 17, 2010* – The CRR Wind Farm Connection NID application (Proceeding 778)

The AESO filed NID Application 1606460 for the CRR Wind Farm interconnection to the AIES. This connection plan was predicated on the approval of the Fidler substation application, which was being considered in Proceeding 690 at that point in time. AltaLink filed the corresponding facility Application No. 1606668 with the AUC on October 15, 2010, seeking approval to construct and operate Castle Rock Ridge 205S Switching Station and associated 240 kV double-circuit transmission line 1071L/1072L from the 205S to Point A. Point A was about four km north of Goose Lake 103S Substation, and where the transmission lines that were to connect to the Fidler 312S Substation would be located. Below is the diagram showing the proposed connection arrangement.

³² Decision 2009-126: Alberta Electric System Operator, Needs Identification Document Application Southern Alberta Transmission System Reinforcement, Proceeding ID 171, Application 1600862, September 8, 2009.

Figure 2: Post-connection of CRR WPF Pincher Creek Area Transmission System³³



- (k) *March 2011* – Construction of the CRR Wind Farm completed
Construction was completed, and the CRR Wind Farm was ready to be interconnected to the AIES. However, Proceeding 690 had not concluded and, as a result, the transmission lines associated with the Fidler 312S Substation were not ready to connect the CRR Wind Farm by its target in-service date of September 2011.
- (l) *August 4, 2011 and August 8, 2011* – Amended CRR Wind Farm NID and facility applications (Proceeding 778)
In order to understand the amendment to proceeding 778, it is necessary to understand the context of developments in the related proceedings.

³³ Conceptual Drawing Reproduced from CRR NID, Appendix A, Figure 1-2. Proceeding 778, Exhibit 0001-00-AESO-778, Castle Rock Ridge 205S Substation and Transmission Line Needs Identification Document, PDF page 2, August 17, 2010.

A public hearing was scheduled for proceeding 690 on August 23, 2011, to consider if the need for the Fidler interconnection that had been included in the SATR NID approval from Proceeding 171 in September 2009. In response to the delay associated with approval of the Fidler NID and Enel's request that the AESO find a solution to connect the CRR Wind Farm as close as possible to its targeted in-service date, the AESO identified two options for Enel's consideration.

Option 1A proposed to connect the 205S Switching Station to Goose Lake 103S Substation by means of a new nine-kilometer segment of 240 kV double-circuit transmission line (1071L/1072) from the proposed Castle Rock Ridge 205S Switching Station to the existing Goose Lake 103S Substation.

Option 2A, the less expensive option, involved the construction of a system switching station at Point A and a single circuit 240 kV transmission line on H-frame structures from the switching station at Point A to the CRR Wind Farm. A disadvantage identified with option 2A was that costs already incurred on the project, such as consultation, initial engineering and design and material procurement would be included in the single circuit option costs. Furthermore, AltaLink advised that the related re-work in respect of the single circuit option, would further delay the already delayed in-service date.

Reserving its rights to challenge the cost estimates and classification with the AESO, Enel identified option 1A as its preferred option.

Both the AESO³⁴ and AltaLink³⁵ amended their respective applications. The amendments included the four-kilometre route of the proposed 240 kV double-circuit transmission line 1071L/1072L from the existing Goose Lake 103S Substation to Point A. This segment was originally a part of the Fidler NID application (Proceeding 690). In so doing, the 205S Switching Station would be connected to Goose Lake 103S Substation through Point A.

During preparation of the above-mentioned amendment application, the AESO advised Enel that the \$25.2 million cost of the proposed development identified in the CRR Wind Farm NID would be participant-related.

(m) *November 1, 2011* – Approval of the amended CRR Wind Farm NID and facility applications (Proceeding 778)

The AUC approved the combined CRR Wind Farm NID and facility applications as amended and issued the necessary permits and licenses (P&L).³⁶

³⁴ Proceeding 778, 054.00.AESO-778, Castle Rock Ridge 205S Substation and Transmission Line Development NID Amendment, August 4, 2011.

³⁵ Proceeding 778, 058.01.AESO-778, Castle Rock Ridge Amended Facilities Application, August 8, 2011

³⁶ Decision 2011-439: Alberta Electric System Operator and AltaLink Management Ltd., Castle Rock Ridge 205S and Transmission Line Development Needs Identification Document Application and Facility Application., November 1, 2011.

- (n) *December 1, 2011* - Decision 2011-468 issued (Proceeding 690)
The AUC issued Decision 2011-468³⁷ on December 1, 2011, confirming that the need for the Fidler interconnection had not been contemplated by the AESO in the SATR NID.
- (o) *May, 2012* – The CRR Wind Farm connected to AIES and commenced commercial operation.³⁸
- (p) *October, 2012*- Withdrawal of Fidler application and application for amended SATR NID
The AESO withdrew its application in Proceeding 690, and filed Application 1608960 (Proceeding 2284) on October 26, 2012, for the NID pertaining to the Fidler substation and associated transmission lines.
- (q) *December 14, 2012* Goose Lake to Chapel Rock SATR NID application filed (Proceeding 2349)
- (r) *January 27, 2014* – Approval of Decision 2014-004 (Proceeding 2349)
The AUC approved the Goose Lake to Chapel Rock Southern Alberta Transmission Reinforcement NID amendment application.³⁹
- (s) *February 18, 2016* - The AESO and Enel conclude informal dispute resolution under the *ISO Rules*.⁴⁰
- (t) *June 30, 2016* - Enel submits written dispute to the AESO under the *ISO Rules*.⁴¹
- (u) *August 29, 2016* - The AESO issues its decision on dispute resolution.⁴²

Decision 2012-005: Reasons to Decision 2011-439 (November 1, 2011), Alberta Electric System Operator Need for the Interconnection of Castle Rock Ridge Wind Farm, AltaLink Management Ltd., 240-kV Castle Rock Ridge Switching Station 205S and 240-kV Double-circuit Transmission Line 1071L/1072L, January 10, 2012.

U2011-385, Needs Identification Document, Approval No. U2011-385, November 1, 2011.

U2011-386, Substation, Permit and Licence No. U2011-386, November 1, 2011.

U2011-387, Transmission Line, Permit and Licence No. U2011-387 (Rescinded), November 1, 2017.

U2011-388, Transmission Line, Permit and Licence No. U2011-388 (Rescinded), November 1, 2011.

U2011-389, Substation, Permit and Licence No. U2011-389 (Rescinded), November 1, 2011.

³⁷ Decision 2011-468: Alberta Electric System Operator, Needs Identification Document, Application No. 1606281, AltaLink Management Ltd., Fidler 312S Substation and 240-kV Transmission Line, Interconnection, Pincher Creek Area, Determination of Preliminary Issues, Application No. 1606667, Proceeding ID No. 690, December 1, 2011.

³⁸ Enel Wind Farm was connected prior to final approvals. A temporary approval was issued in Decision 2012-247: Enel Alberta Wind Inc. and AltaLink Management Ltd. Castle Rock Ridge Power Plant, Substation and Interconnection, Applications No. 1608666 and No. 1608663, Proceeding ID No. 2026, September 17, 2012.

³⁹ Decision 2014-004: Alberta Electric System Operator, Goose Lake to Chapel Rock Southern Alberta Transmission Reinforcement Needs Identification Document Amendment, Application No. 1609122, Proceeding ID No. 2349, January 27, 2014.

⁴⁰ Exhibit 22367-X0036, 32-Letter from AESO to Enel, January 25, 2017.

⁴¹ Exhibit 22367-X0037, 33-Enel Dispute Resolution Submission, January 25, 2017.

(v) *January 24, 2017* - Enel files its complaint with the Commission (Proceeding 22367).

3 Legislative framework and preliminary issue

3.1 General legislative framework

13. As this complaint relates to the conduct of the AESO in providing system access service to Enel, a brief review of the relevant statutory framework provides some context for the discussion that follows.

14. The *Electric Utilities Act* establishes the ISO as an independent agency and sets out its mandate and duties. The AESO is the non-profit organization carrying out the functions of the ISO. Section 17 of the *Electric Utilities Act* provides that the ISO's duties include, amongst other things:

(g) to provide system access service on the transmission system and to prepare an ISO tariff;

(h) to direct the safe, reliable and economic operation of the interconnected electric system;

(i) to assess the current and future needs of market participants and plan the capability of the transmission system to meet those needs;

(j) to make arrangements for the expansion of and enhancement to the transmission system;

15. Section 20(1) of the *Electric Utilities Act* states that the ISO may make rules respecting, *inter alia*, the practice and procedures of the ISO, the exchange of electric energy through the power pool, the operation of the AIES, and planning the transmission system, including criteria and standards for the reliability and adequacy of the transmission system.

16. Section 33 of the *Electric Utilities Act* states that the ISO “must forecast the needs of Alberta and develop plans for the transmission system to provide efficient, reliable and non-discriminatory system access service and the timely implementation of required transmission system expansions and enhancements.”

17. Sections 8 and 10 of the *Transmission Regulation* indicate that the ISO must forecast the needs of Alberta and plan the transmission system to meet those needs. Section 15 of the *Transmission Regulation* outlines the matters the ISO must take into account when making rules and exercising its duties.

18. Section 90 of the *Electric Utilities Act* provides that the ISO is immune from liability for “acts” that include acts and omissions carried out in the exercise of its mandate, unless the acts

⁴² Exhibit 22367-X 0038, 34-AESO Decision Response to Enel's written dispute resolution submission, January 25, 2017.

constitute wilful misconduct, negligence or breach of contract or the acts were not carried out in good faith.

19. When read as a whole, the Commission finds that the statutory scheme makes clear the fundamental importance of planning the transmission system so that the structure of the Alberta Electric industry is not distorted by unfair advantages given to any participant.⁴³ The scheme establishes the ISO as the operator of the AIES. One of the mandates of the ISO as operator of the AIES is to provide generators and other market participants with access to the transmission system. The ISO is given broad powers to carry out this role.

20. The Commission's role vis-à-vis the AESO, acting as the ISO, is detailed within the provisions of the *Alberta Utilities Commission Act* and the *Electric Utilities Act*. The Commission not only rules on matters brought before it by the AESO but also rules on complaints relating to the conduct of the AESO. The Commission notes that the AESO's exercise of its authority is not unlimited and is subject to a number of checks. First, it has a statutory duty to act fairly and responsibly.⁴⁴ Second, the ISO Tariff must be approved by the Commission and Section 11 of the *Liability Protection Regulation* sets out the Commission's obligations when considering an ISO Tariff application. Third, the Commission must approve needs identification documents prepared by the AESO and adjudicate if the need for new transmission infrastructure is contested by an interested party. Fourth, a person who has a concern about the conduct of the AESO may make a complaint about that conduct to the Commission, pursuant to Section 26 of the *Electric Utilities Act*.

3.2 Section 26 - complaints about the ISO

21. Section 26 of the *Electric Utilities Act* authorizes the Commission to rule on complaints made by any person about the conduct of the AESO. That section details the circumstances in which a complaint must be dismissed, as well as the Commission's discretion and remedial powers when considering a complaint. Section 26 states, in part:

Complaints about ISO

26(1) Any person may make a written complaint to the Commission about the conduct of the Independent System Operator.

(2) The Commission must dismiss the complaint, giving reasons for the dismissal, if the Commission is satisfied that

- (a) the substance of the complaint has been or should be referred to the Market Surveillance Administrator for investigation,
- (b) the complaint relates to a matter the substance of which is before or has been dealt with by the Commission or any other body, or

⁴³ *The Electric Utilities Act* S.A. 2003, c. E-5.1s. 5.

⁴⁴ *The Electric Utilities Act* S.A. 2003, c. E-5.1 s. 16.

- (c) the complaint is frivolous, vexatious or trivial or otherwise does not warrant an investigation or a hearing.
- (3) The Commission may, in considering a complaint, do one or more of the following:
- (a) dismiss all or part of the complaint;
 - (b) direct the Independent System Operator to change its conduct in relation to a matter that is the subject of the complaint;
 - (c) direct the Independent System Operator to refrain from the conduct that is the subject of the complaint.
22. Neither the AESO nor a complainant is entitled to appeal a decision of the Commission on a complaint.⁴⁵

3.2.1 Commission's jurisdiction to consider Enel's complaint

23. As will be discussed below, the substance of the complaint is that the AESO acted improperly in interpreting and applying the ISO Tariff. This is the conduct complained of and for which Enel seeks relief under Section 26 of the *Electric Utilities Act*. Neither the AESO nor Enel have challenged the Commission's jurisdiction to consider and decide the merits of the complaint filed by Enel nor the ability of the Commission to order the relief sought by Enel. Indeed, as summarized below, in response to Question 4 posed in the Commission's July 14, 2017 letter to the parties, both the AESO and Enel offered argument in support of the Commission's jurisdiction. However, the Commission must be independently satisfied that its jurisdiction to review the conduct of the AESO under Section 26 of the *Electric Utilities Act*, and more particularly, the authority that section provides to require the AESO "to change its conduct," is broad enough to include reviewing the AESO's interpretation or application of the ISO Tariff and potentially substituting its interpretation or application for that of the AESO's, through the issuance of a direction.

3.2.1.1 Position of the parties

24. The AESO submitted that the Commission has the jurisdiction to determine which interpretation of the ISO Tariff is correct; that of Enel or that of the AESO. It follows that if the Commission were to accept Enel's interpretation, the Commission could, pursuant to Section 26(3)(b) of the *Electric Utilities Act*, order the AESO to change its behaviour so as to administer Section 8 in a manner consistent with the Commission's interpretation. The AESO submitted that this would require it to re-determine Enel's construction contribution under Section 8 in accordance with the Commission's interpretation and refund to Enel any re-determined system-related costs that have been paid by Enel.⁴⁶

⁴⁵ Section 26(4) *Alberta Utilities Commission Act*

⁴⁶ Exhibit 22367-X0099, AESO Argument, August 11, 2017, PDF page 41.

25. Enel explained that pursuant to Section 103.2(5)(3)(a) of the *ISO Rules*, Enel requested arbitration of the dispute with the AESO and the AESO refused Enel's request to arbitrate, indicating that “the Alberta Utilities Commission has the statutory jurisdiction and expertise to determine ISO Tariff -related issues and to determine complaints made pursuant to Section 26 of the *Electric Utilities Act*.”⁴⁷

26. Enel stated that it now seeks resolution of this dispute from the AUC, pursuant to the ISO Tariff and the *ISO Rules*. Enel argued that Section 26 of the *Electric Utilities Act* allows parties to make a complaint to the AUC about the conduct of the AESO. Conduct would include the August 2016 dispute resolution decision and the conduct of the AESO leading up to it.⁴⁸

3.2.1.2 Commission findings

27. Section 26 of the *Electric Utilities Act* states that “[a]ny person” may complain about the conduct of the AESO. Conduct is defined in Section 1(1)(f) as including acts and omissions. On its face, Section 26(1) appears to confer broad discretion with respect to those who can complain and the subject matter of the complaint. The types of questions that a Section 26 complaint may address has been examined by the Commission in a prior proceeding. Specifically, the Commission held in Decision 2010-104 that examples of the types of complaints that the Commission considers Section 26 was intended to address include but are not limited to, the following:

- complaints about the AESO’s compliance with Commission rules
- complaints about the AESO’s consultation with interested parties
- complaints about the AESO relating to procedural rights in the AESO processes that do not relate to the making of rules or setting of fees⁴⁹

28. As stated in Decision 2010-104, the list above was not meant to be exhaustive. The nature of prior complaints about the conduct of the AESO have generally been behavioural in nature, in circumstances where the AESO’s conduct has had an alleged adverse effect on a person’s position. The Commission considers that the policy reason behind Section 26 is to provide market participants with an opportunity for redress in circumstances where the AESO’s decisions have had a negative effect and where the AESO’s conduct is at issue and where there is no clear alternative mechanism available to address the subject matter of the complaint.

29. Enel has suggested that the actions taken by the AESO in interpreting and applying the ISO Tariff to Enel’s request for connection of the CRR Wind Farm to the AIES constitute unfair and discriminatory treatment of Enel. This behaviour or conduct is the subject of the Section 26 complaint.

⁴⁷ Exhibit 22367-X0039, 35-AESO letter of September 30, 2016, rejecting Enel’s request for arbitrat, January 25, 2017, PDF page 1.

⁴⁸ Exhibit 22367-X0101, Written Augment of Enel Alberta Wind Inc., August 11, 2017, PDF page 51.

⁴⁹ Decision 2010-104: Lavesta Area Group Written Complaint about the Conduct of the Independent System Operator, Proceeding 398, Application 1605627, March 10, 2010.

30. The Commission agrees with both the AESO and Enel that the Commission has jurisdiction under Section 26 of the *Electric Utilities Act* in the circumstances of this proceeding. The Commission's jurisdiction is engaged to review the AESO's behaviour or conduct leading up to the issuance of the August 2016 AESO dispute resolution decision and to the findings in that decision, insofar as that conduct relates to the interpretation or application of the ISO Tariff to connect the CRR Wind Farm to the AIES.⁵⁰ Having made this finding of jurisdiction to consider the complaint, the Commission has the jurisdiction under Section 26(3)(b) and (c) to direct the AESO to change its conduct or to refrain from the conduct that was the subject of the complaint. Accordingly, should the Commission find that the AESO acted improperly in interpreting or applying the ISO Tariff, it may, if required to address the complaint, substitute its own interpretation of the ISO Tariff for the AESO's and direct the AESO to take certain actions as a result.

3.3 Preliminary issue under Section 26 of the Electric Utilities Act

3.3.1 Introduction

31. Section 26(2) of the *Electric Utilities Act* directs the Commission to address, as a preliminary issue, whether any of the criteria established by that subsection are satisfied such that the complaint must be dismissed.

32. For the reasons expressed below, only subsection 26(2)(b) has possible application to this proceeding. The parties were, therefore, asked to offer argument on whether the complaint relates to a matter the substance of which has been dealt with by the Commission. More specifically, the parties were asked to respond to the following questions 1.1a. and 1.1b. which are also attached as Appendix 1 for reference:

1.1 In previous decisions, the Commission has indicated that the contributions of end-use customers matter when the Commission considers the reasonableness of transmission project expenditures and that any cost classification issues should be raised at the earliest opportunity so that the Commission can weigh the economic effects of the proposed development. More specifically, the Commission has stated that, "the determination of system versus participant classification of a project is properly identified, evaluated and determined in a NID/facility application through the application of the ISO tariff terms and conditions of service in effect at the time." In view of the foregoing:

a. Is there any significance or consequence to any or all of the following: The needs identification document and facility application for the Castle Rock Ridge interconnection project identified, among other things, that the AESO deemed the whole of the connection project costs as customer-related costs?

- Enel did not raise the cost classification issue at the time of the amended needs identification document and facility application for the Castle Rock Ridge interconnection project in August of 2011.

⁵⁰ Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF pages 51 and 56.

- On October 6, 2011, Enel submitted a letter to the Commission in Proceeding 778 supporting the needs identification document and facility application for the Castle Rock Ridge interconnection project.
 - Enel did not raise the cost classification issue at the time of Proceeding 690.
 - Enel did not request the reclassification of the costs from the AESO until January of 2015.
- b. Is it still open to Enel to seek reclassification of its costs relating to the Castle Rock Ridge interconnection project? [footnotes removed]⁵¹

3.3.2 Views of Enel

33. Enel offered extensive submissions in response to the Commission's questions. Its key arguments are summarized below.

34. Enel submitted that the Commission's decisions cited in questions 1.1a. and 1.1b were all issued after the dispute resolution process was initiated between the AESO and Enel under the ISO Tariff. Neither the AESO nor Enel had the benefit of those decisions in that process, much less at the time of the events giving rise to it.⁵²

35. Enel took the position that Decision 21306-D01-2016 (the CNRL decision) should be distinguished on the basis that:⁵³

- a. CNRL was attempting to revise a cost sharing arrangement that had squarely been the subject of a previous Commission proceeding. In contrast, the primary issues and the substance of the current proceeding concern the conduct of the AESO in its interpretation and application of the ISO Tariff provisions and whether that conduct amounts to unfair or discriminatory treatment of Enel. Neither of those issues has or could have been before the Commission in any previous proceeding since they crystallized only after the dispute resolution procedures mandated by the ISO Tariff and the *ISO Rules* had been exhausted.
- b. In the CNRL decision, the Commission had to grapple with whether it was in the public interest for the ratepayer to bear certain costs. No such public interest determination is at stake in this case because the principles regarding the degree to which costs should be allocated to the system are already settled and Enel is not asking the Commission to revisit those principles in this case.

⁵¹ Exhibit 22367-X0094, AUC Letter Proceeding 22367 - Direction from the Commission Regarding Argument and Reply Argument, July 14, 2017.

⁵² Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 47.

⁵³ Decision 21306-D01-2016: Determination of Compensation for 9L66/9L32 Transmission Line Relocation, Proceeding 21306, August 16, 2016.

36. Further, Enel contended that:⁵⁴
- a. The issues raised in this proceeding could not have been brought before the Commission in the NID proceeding because Enel was bound by the dispute resolution procedures mandated by the ISO Tariff. These procedures required Enel to bring its complaint to the AESO before it could bring its complaint to the Commission. Under subsection 4(1) of Section 1 of the ISO Tariff, it is mandatory for market participants to utilize the dispute resolution procedure set out in Section 103.2 of the *ISO Rules* regarding any dispute concerning the application, interpretation or enforcement of the ISO Tariff. Enel proceeded through each of the first and second steps of that process and when it proposed, at the third step, that the matter be resolved through arbitration, the AESO refused and directed Enel to file a complaint with the Commission, as the body with “the statutory jurisdiction and expertise to determine ISO Tariff-related issues, and to determine complaints made pursuant to Section 26 of the *Electrical Utilities Act*.” In filing this complaint, Enel was complying with that direction.
 - b. Enel reasonably expected, based on the AESO’s representations, that the cost estimates and classification would be revised and it had expressly reserved its rights to challenge cost classification with the AESO. There is, therefore, no significance to the fact that in the amended CRR Wind Farm NID application, the AESO identified the whole of the costs as participant-related costs; or to the fact that Enel supported the amended CRR Wind Farm NID application and did not raise the cost classification issue with the Commission at that time. It should also be appreciated that Enel was under economic duress by the time of the amended CRR Wind Farm NID application as the CRR Wind Farm was effectively stranded and it was the AESO that was responsible to raise the issue of cost classification with the Commission. The AESO failed to do so.

3.3.3 Views of the AESO

37. The AESO’s key arguments in response to the Commission’s questions were as follows.

38. The determination of the system-related versus participant-related cost classification of the CRR Wind Farm interconnection was properly identified, evaluated, and determined within the amended CRR Wind Farm NID and facility application. It is notable that Enel did not raise concerns or objections in respect of the cost classification for the CRR Wind Farm in either the CRR Wind Farm NID application process, Proceeding 778, or in Proceeding 3585,⁵⁵ which considered the prudence of the costs of the project.⁵⁶

39. A cost reclassification is available to Enel only in limited circumstances in accordance with subsection 2(4) of Section 9 of the ISO Tariff, which, subject to the occurrence of an event listed in subsection 2(3), permits construction contribution adjustments to be made up to 20 years following commercial operation. Enel may be eligible for such further classification adjustments

⁵⁴ Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 47.

⁵⁵ AltaLink Management Ltd. 2012 and 2013 Deferral Accounts Reconciliation Application, Proceeding 3585, Application 1611090-1.

⁵⁶ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 38, paragraphs 141 and 142.

in the event that the CRR Wind Farm to Chapel Rock transmission line is completed before May 2032.

3.3.4 Commission findings

40. The *Electric Utilities Act* directs the Commission to dismiss a complaint if it is satisfied that any of the criteria in Section 26(2) has been met. For the reasons that follow, the Commission finds that none of those criteria is satisfied in the circumstances of this proceeding.

41. Subsection 26.2 (a) directs the Commission to consider whether to refer the complaint to the Market Surveillance Administrator (MSA). Given the substance of the complaint, the Commission has not referred it to the MSA for investigation. While not determinative, the Commission notes that no argument has been advanced by the parties that it should be. In the circumstances of this complaint, subsection 26(2)(a) is, therefore, not applicable.

42. Subsection 26(2)(c) directs the dismissal of a complaint found to be frivolous, vexatious, trivial or otherwise not warranting an investigation or a hearing. In Decision 2005-150,⁵⁷ the Commission's predecessor adopted the following definitions for each of these terms from Black's Law Dictionary, 7th Edition:

Frivolous – lacking a legal basis or legal merit; not reasonably purposeful.

Vexatious – without reasonable or probable cause or excuse; harassing; annoying.

Trivial – trifling; inconsiderable; of small worth or importance.

43. The AESO has not argued, and the Commission does not independently consider, Enel's complaint to be frivolous, vexatious or trivial. The Commission considers Enel's allegations to have an arguable basis related to a course of conduct of the AESO in interpreting and applying the ISO Tariff.

44. Subsection 26(2)(b) of the *Electric Utilities Act* directs dismissal if the complaint relates to a matter the substance of which has been dealt with by the Commission or any other body.

45. The purpose of a similar subsection (now Section 25 and previously Section 58(2)(a) of the *Electric Utilities Act*) has been considered by the Commission and described as follows:

In the Commission's opinion, the purpose of subsection 58(2)(a) is to address the conflicts that could arise in circumstances where a complaint and a matter brought forward by the MSA are premised on common issues. Specifically, the Commission finds that subsection 58(2)(a) embodies a number of common law doctrines designed to ensure

⁵⁷ Decision 2005-150: Milner Power Inc. Complaint Against the Proposed AESO Line Loss Rule, Application No.1414213, December 30, 2005.

the integrity, fairness and finality of the decision making process. Those doctrines include: abuse of process, collateral attack, issue estoppel, *res judicata* and *lis pendens*.⁵⁸

46. Although not in the context of a complaint under subsection 26(2) or its predecessor, in *Maxim Power Corp. v. Alberta (Utilities Commission)*⁵⁹ the Alberta Court of Appeal considered the issue of duplicative processes and regulatory and cost efficiency in decision making. The Court was presented with the question of whether the Commission was required to rule on certain issues regarding the approval of a municipally owned electrical generating unit notwithstanding that Section 95 of the *Electric Utilities Act* specifically delegated decision-making authority for those issues to the Minister of Energy. In considering that issue, the Court of Appeal commented on the general objectives of the *Electric Utilities Act* as follows:

...the idea that it [the AUC] could reconsider the very matter assigned by section 95(12) to the Minister is contrary to the purpose of the *Electric Utilities Act*, that is, to provide "... a framework so that the Alberta electric industry can ... be effectively regulated in a manner that minimizes the cost of regulation ..." section 5(h). Considering the same issue twice does not minimize costs or make for effective regulation. Nor does the possibility of conflicting decisions.⁶⁰

47. The above cited cases involved circumstances where the Commission was being asked to decide a matter, the substance of which had already been decided by or was within the jurisdiction of, another body. One case considered the predecessor to Section 25 of the *Electric Utilities Act* and the other considers more generally the provisions of the *Electric Utilities Act*. These differences notwithstanding, the commentary offered in those cases regarding the purpose of what is now Section 25 of the *Electric Utilities Act* and certain other provisions of the *Electric Utilities Act*, are equally applicable to situations where the Commission is being asked to determine a matter, the substance of which has already been dealt with by the Commission in another proceeding. In such circumstances, the purpose or object of these provisions is still to provide for, among other things, effective regulation that minimizes cost and ensures the integrity, fairness and finality of the decision-making process.

48. The approach to be taken when considering whether a substantially similar subsection of the *Electric Utilities Act* is satisfied has also been discussed previously by the Commission in a prior proceeding. The Commission commented as follows:

...the Commission finds that the plain and ordinary meaning of the first part of subsection 58(2) is that a complaint will relate to a matter the substance of which is or has been before the Commission if there is a logical or reasonable connection between

⁵⁸ Decision 2014-135: TransAlta Corporation, TransAlta Energy Marketing Corp., TransAlta Generation Partnership, Mr. Nathan Kaiser and Mr. Scott Connelly, Complaints about the conduct of the Market Surveillance Administrator, Application Nos. 1610340, 1610342, 1610343, Proceeding No. 3109, May 15, 2014, PDF page 19, paragraph 86.

⁵⁹ *Maxim Power Corp. v. Alberta (Utilities Commission)*, 2010 ABCA 213 (CanLII) ["Maxim"].

⁶⁰ *Maxim Power Corp. v. Alberta (Utilities Commission)*, 2010 ABCA 213 (CanLII) ["Maxim"].

the substance or essence of the complaint and the substance or essence of the other matter.⁶¹

49. As indicated by the Commission in the decision in that prior proceeding, the plain language of subsection 26(2)(b) mandates a two-step analysis. The Commission must first identify the substance or essence of the complaint and then consider whether that substance or essence has some reasonable or logical connection to that of another matter previously determined by the Commission or some other body.

50. In the present complaint, the questions associated with that two-step analysis more specifically become the following: a) Is the substance or essence of Enel's complaint one of cost classification? and b) Has the Commission dealt with the substance of that matter when it approved the CRR Wind Farm NID? These questions arise because the relief sought by Enel in this complaint includes a request that the AESO be directed to reclassify certain of the CRR Wind Farm interconnection costs, and because Decision 2011-439 was based, in part, on evidence that Enel supported the classification of those CRR Wind Farm interconnection costs as participant-related rather than system-related costs.

51. As noted above, to assist in its consideration of these matters, the Commission asked the parties to respond to Question 1 posed in its July 14, 2017 letter reproduced in Appendix 1. Among other things, Question 1 implicitly asked the parties to comment on whether the CNRL decision was relevant.

52. In the CNRL decision, the Commission considered a request by CNRL to revise the classification of transmission line relocation costs that had been determined to be participant-related costs in a previous NID proceeding. CNRL requested reclassification of the cost of a transmission line as a system-related cost. In a ruling, in another proceeding that reviewed the CNRL decision and provided direction to parties with respect to the timing of when the classification of costs should be addressed, the Commission stated:

...the determination of system versus participant classification of a project is properly identified, evaluated and determined in a NID/facility application through the application of the ISO tariff terms and conditions of service in effect at the time.⁶²

53. The Commission noted that CNRL had agreed to the proposed allocation of the cost of a transmission line as participant-related costs at the time of the NID proceeding and that as a result, "actions were taken on the basis of the information presented in the proceeding that led to

⁶¹ Decision 2014-135: TransAlta Corporation, TransAlta Energy Marketing Corp., TransAlta Generation Partnership, Mr. Nathan Kaiser and Mr. Scott Connelly Complaints about the conduct of the Market Surveillance Administrator Application Nos. 1610340, 1610342, 1610343, Proceeding No. 3109, May 15, 2014, at paragraph 44.

⁶² Exhibit 22093-X0050, Alberta Electric System Operator, Application for 2017 Independent System Operator Tariff Update, Commission ruling on motion from ATCO Electric Ltd. to compel full and adequate responses to information requests, Primary Service Group request for Commission direction and relief, and Commission-initiated request for comments, February 1, 2017, PDF, paragraph 33.

that decision which cannot now be undone.”⁶³ The Commission found that the request to reclassify the line move costs as system-related costs after the NID had been approved represented a collateral attack on the Commission’s NID decision, and so denied CNRL’s application.

54. In this complaint proceeding, both parties offered argument on, among other things, whether the facts in the CNRL case can be distinguished from those in this proceeding and whether Enel’s support for the amended CRR Wind Farm NID application, in which the AESO advised the Commission that the whole of the connection costs would be participant-related costs, and/or its failure to raise its cost classification issues with the Commission during that application, affect Enel’s present ability to pursue this complaint.

55. Given the Commission’s finding as to the substance of the complaint (discussed below), it is not strictly necessary for the Commission to address the majority of those arguments. However, a reiteration of the Commission’s expectations as expressed in the CNRL decision (and those other decisions mentioned in the Commission’s July 14, 2017 letter to the parties), and a brief comment on the key distinguishing factor between the current proceeding and the CNRL decision, is warranted.

56. As discussed in the CNRL decision, information provided to the Commission about a market participant’s willingness to pay the costs of a proposed project is of considerable significance. Such information fundamentally affects the Commission’s evaluation of the original application and any subsequent examination of the prudence of project expenditures and potentially leads to decisions that cannot be undone. In the circumstances of the CRR Wind Farm interconnection, Enel’s reported support for the amended CRR Wind Farm NID interconnection application, and its failure to raise concerns to the AUC with the facilities proposed and approved in that application, led to the approval of permits and licenses authorizing the construction of facilities as they were described in Proceeding 778. Those decisions cannot now be undone. However, in the present circumstances, the Commission finds the CNRL decision can be distinguished. The key distinction is in the Commission’s finding as to the substance or essence of the complaint.

57. As noted above, the Commission conducts a two-step analysis when considering Section 26(2)(b). It first considers what the issue is, and then whether the issue has previously been determined or if the issue is being dealt with in another proceeding. Although the relief sought by Enel in this proceeding includes a request for a direction requiring the AESO to comply with the terms of the Commission-approved ISO Tariff and reclassify certain costs associated with the CRR Wind Farm interconnection, the Commission does not consider cost reclassification to be the substance or essence of this complaint.

58. Rather, the Commission finds that the substance of this complaint concerns the conduct of the AESO in its interpretation and application of the ISO Tariff provisions and whether the

⁶³ Decision 21306-D01-2016: (CNRL decision) Canadian Natural Resources Limited, Determination of Compensation for 9L66/9L32 Transmission Line Relocation, Proceeding 21306, August 16, 2016, PDF page 27, paragraph 111.

AESO's conduct is inconsistent with the legislation, the ISO Tariff or otherwise amounts to improper, unfair or discriminatory treatment of Enel. This finding is supported by Enel's consistent characterization of the dispute in those terms beginning significantly, with its attempt to pursue resolution of the dispute initially through the ISO Tariff provisions concerning "the application, interpretation or enforceability of the ISO Tariff" ⁶⁴ This same characterization is echoed in Enel's description of the nature of and grounds for its complaint to the Commission which stated:

⁶⁴ 2011 ISO Tariff, Subsection 4(1) of Section 1 Applicability and Interpretation of ISO Tariff.

NATURE OF THE COMPLAINT

TAKE NOTICE that Enel brings the present complaint before the Alberta Utilities Commission (“**Commission**” or “**AUC**”) pursuant to section 26 of the *Electric Utilities Act*, SA 2003, c.E-5.1 (the “*EUA*”) and section 19 of the *Alberta Utilities Commission Rule 001: Rules of Practice* (“*Rules of Practice*”) concerning certain conduct of the Alberta Independent System Operator (“**ISO**” or **Alberta Electric System Operator** “**AESO**”) in failing to provide system access service to Enel for the Castle Rock Ridge (“**CRR**”) Wind Farm in accordance with the terms of the AESO Tariff (“**Tariff**”).

...

... the grounds of the present complaint are that by refusing to provide system access service in accordance with the Tariff, the AESO’s conduct is inconsistent with or in contravention of the *EUA*, established regulatory principles, and is otherwise unjust, unreasonable, unduly preferential, and arbitrarily or unjustly discriminatory.⁶⁵

59. As to the second step of the Section 26(2)(b) analysis, the Commission finds issues concerning the conduct of the AESO in its interpretation and application of the ISO Tariff provisions and whether that conduct is inconsistent with the legislation, the ISO Tariff or otherwise amounts to improper, unfair or discriminatory treatment of Enel, were not matters dealt with by the Commission in Proceeding 778 or in any other previous proceeding. The Commission is prepared to proceed to deal with the complaint insofar as it relates to allegations with respect to the conduct of the AESO. Allegations that the AESO’s interpretation and application of the ISO Tariff resulted in Enel experiencing unfair and discriminatory treatment were not before the Commission in the CRR Wind Farm NID application. Although the Commission is of the view that parties in a proceeding should raise all matters, including matters related to the conduct of the AESO, that are relevant and which may help inform the Commission on the matters before it, the fact is that Enel did not raise these conduct-related concerns. The Commission is prepared to accept Enel’s explanation that it did not raise these concerns given that the AESO was aware of its concerns at the time of the CRR Wind Farm NID proceeding and Enel’s understanding that it was required by the ISO Tariff to utilize a dispute resolution process that could result in a change to the cost classification for the CRR Wind Farm interconnection project. As such, it cannot be concluded that the substance or essence of this complaint has some reasonable or logical connection to that of another matter previously determined by the Commission.

60. Further, and although not determinative, it is notable that the AESO did not argue Section 26(2)(b) as a bar to this proceeding in advance of the Commission’s July 14, 2017 questions, or in response to those questions. Instead, the AESO has consistently indicated that it considers the Commission to have jurisdiction to hear and determine the substantive interpretative issues raised by this complaint and to order the appropriate relief.⁶⁶

⁶⁵ Exhibit 22367-X0003, Enel Complaint to AUC - January 24, 2017, PDF pages 3 and 6.

⁶⁶ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 41, paragraphs 159.

61. For all of the above reasons, the grounds identified in Section 26(2) are not met. Accordingly, the Commission does not dismiss the complaint pursuant to the provisions of subsection 26(2)(b) of the *Electric Utilities Act*.

4 Duress

62. At various points in its application and argument, Enel explained that the reason it did not raise the issue of cost classification in the CRR Wind Farm NID application was because by that time, it was under duress, given that the CRR Wind Farm had been built but not connected to the AIES, due to the AESO's repeated changes in plans. Enel stated that it had an obligation to mitigate its damages and obtain the fastest approval possible, all the while maintaining its reservation of right to contest the AESO's construction contribution determination. Although offered as an explanation for its actions in not raising these issues in front of the Commission during the proceedings to approve the interconnection facilities, it was unclear if Enel relied on the concept of economic duress in support of its complaint about the conduct of the AESO.

63. Neither party to this proceeding made submissions on the legal concept of economic duress or provided an analysis of whether Enel was under duress.

64. The legal concept of economic duress was articulated by the Alberta Court of Appeal as follows:

The test for economic duress in a commercial setting requires a) an illegitimate form of pressure, b) which was sufficient to overcome the will of the protesting party, such that it vitiated any consent or agreement; and c) which caused the entering into of the challenged transaction.⁶⁷

In other words, economic duress requires that there be illegitimate pressure, which only leaves the threatened party with no practical alternative but to comply with the demand.⁶⁸

65. In Decision 3473-D02-2015, the Commission found that “a market participant seeking a new connection to the transmission system has no inherent guarantee that it will receive system access service by a specified target in-service date.”⁶⁹ In line with this approach and considering the legal test articulated above, Enel's desire to connect the CRR Wind Farm to the AIES as quickly as possible and to agree with proposals made by the AESO to facilitate that desire does not alone constitute economic duress. There must also be evidence of illegitimate pressure by the AESO. The Commission finds that Enel has failed to satisfy that evidentiary burden.

⁶⁷ Attila Dogan Construction & Installation Co. v. AMEC Americas Ltd., 569 A.R. 308 (C.A.), additional reasons 2015 CarswellAlta 12 (C.A.).

⁶⁸ Stott v. Merit Investment Corp. (1988), 48 D.L.R. (4th) 288 (Ont. C.A.), [1988] S.C.C.A. No. 185.

⁶⁹ Decision 3473-D02-2015: Alberta Electric System Operator, Compliance with Directions 5 through 8 from Decision 2014-242: Module 2, Proceeding 3473, Application 1610935-1, August 26, 2015, PDF page 38, paragraph 150.

5 Remaining substantive issues

66. Enel offered extensive submissions in support of its position that the AESO's conduct in interpreting and applying the ISO Tariff amounted to unfair, arbitrary or discriminatory treatment of Enel. Enel's key issues and arguments can be summarized as follows:

- a. The determination of the construction contribution for the CRR Wind Farm interconnection project is governed by a combination of Section 8 of the ISO Tariff, Section 47 of the *Transmission Regulation* and the regulatory principle of cost causation.
- b. Enel's construction contribution for the CRR Wind Farm interconnection was determined contrary to Section 47 of the *Transmission Regulation* and certain keystone regulatory principles including the principle of cost causation.
- c. Enel's construction contribution was established contrary to subsections 2, 3(3)(c) and 4 of Section 8 of the ISO Tariff because Enel was improperly charged for:
 - facilities in excess of those reasonably required to provide system access service for the CRR Wind Farm,
 - facilities in excess of the minimum required to meet its needs, and
 - facilities in excess of good electric industry practice.
- d. Enel's construction contribution was established contrary to subsection 3(3)(b) of Section 8 of the ISO Tariff because Enel was charged for "radial transmission facilities which, within five years of commercial operation, were planned to become looped as part of a regional transmission system project (namely, SATR).

67. While there is considerable overlap of the arguments and evidence relied on by Enel, an effort has been made to address each of the above issues in turn.

5.1 Section 47 of the Transmission Regulation

5.1.1 Views of Enel

68. Enel argues that:

- a. Allocation of transmission costs to generation units is governed by Section 47 of the *Transmission Regulation*, which, as a default, allocates all bulk system transmission costs to load customers.
- b. Section 47 of the *Transmission Regulation* has been interpreted by the Commission to mean that in practical terms, local interconnection costs applied to market participants will or must be restricted to the cost of radial transmission facilities "required to connect generating units to the transmission system." Local interconnection costs, which are the fees applied to a market participant under the *Transmission Regulation*, cannot include

the costs associated with the broader plans the AESO has for bulk transmission system development in an area.

- c. Provisions of the *Transmission Regulation* provide context. Specifically, Section 28(1) requires the AESO to define and provide for the recovery of local interconnection costs in the ISO Tariff. Section 29 outlines a generating owner's contribution.⁷⁰
- d. In Decision 3473-D02-2015, the Commission has reinforced the practice of excluding market participants from being charged for system-related costs.
- e. To impose system-related costs on market participants when connecting generating units is inconsistent with the keystone regulatory principle of cost causation⁷¹ and contradicts established rate design principles and processes for functionalizing costs because the AESO's construction contribution decision:
 - Does not send appropriate price signals that reflect cost causation.
 - Discriminates against the CRR Wind Farm and causes the effective subsidization of other customers.
 - Results in impractical, unacceptable, inconvenient, and difficult to understand rates that led Enel to bring forward its complaint.⁷²

69. Against this backdrop, Enel contended that the CRR Wind Farm interconnection was a part of a system project (SATR) and that this is supported by the following:

- a. In the 2014 ISO Tariff application, the AESO included a cost causation study⁷³ conducted by London Economics International LLC, which categorized the SATR project as a "special project" of the bulk transmission system.⁷⁴
- b. In its amended SATR NID application,⁷⁵ the AESO stated that these 240 kV costs are system-related costs, and this was confirmed by the Commission in Decision 2014-004.⁷⁶ Specifically, Enel pointed to the Commission's January 27, 2014, findings in respect of the SATR NID amendments where the Commission stated that it "...recognizes that the

⁷⁰ Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 24, paragraph 61.

⁷¹ Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 26, paragraph 65.

⁷² Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 26, paragraph 66.

⁷³ Exhibit 22367-X0103, Reply Argument of Enel Alberta Wind Inc., September 1, 2017, PDF page 3, paragraph 5.

⁷⁴ Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 26, paragraph 66.

⁷⁵ Exhibit 22367-X0103, Reply Argument of Enel Alberta Wind Inc., September 1, 2017, PDF pages 2-3, paragraph 4.

⁷⁶ Exhibit 22367-X0103, Reply Argument of Enel Alberta Wind Inc., September 1, 2017, PDF page 2-3, paragraph 4.

first portion of this transmission line, from Goose Lake 103S Substation to Castle Rock Ridge 205S substation, has already been constructed.”⁷⁷ Enel argued that this comment is consistent with Enel’s categorization of the CRR Wind Farm interconnection as part of the SATR plan and, therefore, a system-related cost.

- c. The Stantec report,⁷⁸ which was the only independent evidence available to the Commission in this proceeding, established that, from a technical perspective, the only cost driver for the contested Enel facilities was the SATR plan.⁷⁹ The facilities reasonably required to interconnect the CRR Wind Farm to the transmission system, even assuming a 240 kV connection, were limited to:
- A single span of 240 kV circuit between the CRR Wind Farm collector station and either the 205S Substation or Goose Lake Substation.
 - A single 240 kV breaker and associated equipment.
- d. The AESO’s own conduct supports the view that all those facilities in excess of the facilities identified by Stantec should be characterized as bulk system-related costs. This is because:
- Those facilities were not identified in first interconnection proposal for the CRR Wind Farm but rather, only after the AESO developed a plan for SATR.
 - The AESO has, on numerous occasions, acknowledged that a 138 kV connection was no longer an option due to the proposed 240 kV development contemplated by the SATR NID approval.
 - The AESO effectively agreed with Stantec, when, in the December 14, 2012 SATR NID amendment application, the AESO expressly identified that virtually all of the CRR Wind Farm costs would be reclassified as system-related costs.
- e. The AESO’s reliance in its reply argument on Section 12(1)(b) of *ISO Rule 502.2* as justification for the required 1033kcmil conductor offers further support for the characterization of these costs as system-related costs, because that rule applies only to bulk system facilities.⁸⁰

70. Further, Enel argued that the *Transmission Regulation* requires the AESO to define and provide for recovery of local interconnection costs in the ISO Tariff. Enel submitted that while the ISO Tariff does not define local interconnection costs, the concept of local interconnection

⁷⁷ Exhibit 22367-X0103, Reply Argument of Enel Alberta Wind Inc., September 1, 2017, PDF page 7, paragraph 19.

⁷⁸ Exhibit 22367-X0042, 38-Stantec Report, January 15, 2017.

⁷⁹ Exhibit 22367-X0103, Reply Argument of Enel Alberta Wind Inc., September 1, 2017, PDF page 7, paragraph 20.

⁸⁰ Exhibit 22367-X0103, Reply Argument of Enel Alberta Wind Inc., September 1, 2017, PDF page 12, paragraph 38.

costs was discussed in the decision of the Commission's predecessor in respect of the AESO's 2006 ISO Tariff, as further discussed in Enel-AUC-2017MAR24-011.⁸¹

5.1.2 Views of the AESO

71. The AESO emphasized its broad duties relating to the transmission system as set out in the *Electric Utilities Act*, the *Transmission Regulation*, and other related regulations.⁸² It argued that Enel's submissions ignore the AESO's legislated obligations to:

- (a) Assess the current and future needs of market participants and plan the capability of the transmission system to meet those needs,
- (b) Forecast the needs of Alberta and develop and implement transmission system plans to provide efficient, reliable, and non-discriminatory system access service, and
- (c) Make assumptions about future load growth, the location of future generation additions and other assumptions in support of its transmission system planning.⁸³

72. The AESO cited Decision 2005-096 as offering relevant commentary on its construction contribution policy:

...The generator contribution policy described in the *Transmission Regulation* may be considered more of a bottom up approach, in the sense that the generators local interconnection costs are determined first, and deemed participant-related. Any further residual incremental system enhancement costs not fitting the definition of local interconnection costs are deemed system-related, and thus excluded from the contribution policy.⁸⁴

73. The AESO asserted that in Decision 2005-096, the Commission directed it to "... approach any situation in which there may be 'shades of grey' in the cost classification exercise, with the position that a debatable interconnection project cost should be presumed initially to be customer-related (i.e., participant-related) unless clearly demonstrated otherwise."⁸⁵

74. In accordance with Section 10(1)(a) of the *Transmission Regulation*, the AESO is required to prepare a 20-year transmission plan. Pursuant to Section 10(2), the AESO is required to identify the transmission facility projects it proposes to initiate within five years of the date of the plan and within five years of each update of the plan.⁸⁶ The AESO explained that the SATR project presented a significant planning challenge of developing a project that could be flexible enough to accommodate 7,500 megawatt (MW) of geographically dispersed interconnection

⁸¹ Exhibit 22367-X0060, Enel IR Responses, April 7, 2017,; and Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 6, paragraph 12.

⁸² Exhibit 22367-X0099, AESO argument, paragraph 12.

⁸³ Exhibit 22367-X0038, 34-AESO Decision Response to Enel's written dispute resolution submission, January 25, 2017, PDF page 26, paragraph 101.

⁸⁴ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 9, paragraph 29.

⁸⁵ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 11, paragraph 30.

⁸⁶ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 7, paragraph 17.

requests.⁸⁷ Given the inherent challenge of the SATR project, the AESO's planning had to be dynamic in order to allow it to respond to changes in the forecast and location of load demand and generation capacity growth.⁸⁸

5.1.3 Commission findings

75. For the reasons that follow, the Commission is not satisfied that Enel's construction contribution was established contrary to the *Transmission Regulation*.

76. Enel offered extensive argument in an effort to demonstrate that the majority of the facilities required for the CRR Wind Farm interconnection were system-related.

77. Enel considers that because the costs in dispute are related to the AESO's long-term plans for the bulk transmission system, they cannot be charged to a market participant unless they fall within the provisions of Section 29 of the *Transmission Regulation*. However, the Commission does not share Enel's interpretation of the ISO Tariff and applicable legislation. Rather, the Commission finds that the matter in dispute between Enel and the AESO relates to local interconnection costs, as defined in subsection 28(1) of the *Transmission Regulation*.

78. Although the present proceeding is a complaint that involves the AESO's interpretation and application of the ISO Tariff, Enel refers to Section 47 of the *Transmission Regulation*, which outlines the Commission's duties when considering an application for approval of the ISO Tariff. Enel also refers to sections 28 and 29, which define local interconnection costs and generating unit owner's contribution, respectively.

79. Enel states that the AESO's customer contribution decision with respect to the CRR Wind Farm interconnection, is contrary to the principle articulated in Section 47 of the *Transmission Regulation*, which requires the Commission to ensure:

(a) ...

- (i) the just and reasonable costs of the transmission system are wholly charged to DFOs, customers who are industrial systems and persons who have made an arrangement under section 101(2) of the Act, and exporters, to the extent required by the ISO tariff, and...

80. Enel's interpretation emphasizes the allocation of most transmission system costs to load, rather than as a construction contribution. Specifically, Enel's interpretation appears to be that costs of transmission facilities that are conceived as being part of the "bulk" transmission system means that they are costs to which subsection 47(a)(i) applies. These costs, must be "wholly charged" to distribution facilities owners, customers who are industrial systems, and persons who have made an arrangement under Section 101(2) of the *Electric Utilities Act*. Under this view, once costs are associated with the bulk transmission system, they are not local interconnection

⁸⁷ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 9, paragraph 25.

⁸⁸ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 9, paragraph 26.

costs recoverable from the owners of generating units pursuant to subsection 47(b) of the *Transmission Regulation*, which states that the Commission must ensure:

- (b) ...owners of generating units are charged local interconnection costs to connect their generating units to the transmission system, and are charged a financial contribution toward transmission system upgrades and for location-based cost of losses.

81. The Commission finds that Enel’s interpretation is not supported by the plain and ordinary meaning of this section and the overall framework of the *Electric Utilities Act*.

82. As stated above, under both subsection 47(a) and 47(b) the Commission “must ensure” that the relevant provisions are applied. There is nothing in the plain and ordinary meaning of these provisions that requires that the costs of a project that the AESO has referred to as a system project, at some point in its planning process, to be a cost recovered under subsection 47(a), to the exclusion of whole or partial cost recovery as a local interconnection cost recovered from the owners of generating units under subsection 47(b). Therefore, the Commission is not persuaded that the AESO has charged costs to Enel in a way that violates the categorization principles for cost recovery outlined in Section 47 of the *Transmission Regulation*.

83. Further, as previously described by the Commission in its past decisions, the exercise of classifying costs as either participant-related or system-related is an approach that requires the AESO to make classifications based on “shades of grey.” In line with the approach articulated in Decision 2005-096,⁸⁹ when determining the cost allocation of a connecting market participant, the initial presumption is that costs should be classified as participant-related, unless clearly demonstrated otherwise.

84. The Commission does not agree with Enel’s contention that subsequent changes to the ISO Tariff are reflective of a departure from this presumption or an intention to create a more generous opportunity for classification of costs as system-related costs. This observation is reinforced by the addition of subsection 7 of Section 8 to the ISO Tariff, which was also approved by the Commission in Decision 2010-606. Subsection 7(1) states, in part:

Determination of Construction Contribution

7(1) The construction contribution will be calculated in accordance with the construction contribution provisions of the ISO tariff in effect on the date on which the Commission issues permit and licence for the connection project.

85. With respect to whether the AESO classification of costs is contrary to the principles of Section 47 of the *Transmission Regulation*, Enel has not satisfied the Commission that the use of this approach was contrary to those principles because these costs may indeed be classified as local interconnection costs.

⁸⁹ Decision 2005-096: Alberta Electric System Operator (AESO), 2005/2006 General Tariff Application, Application No. 1363012, August 28, 2005.

5.2 Subsections 2, 3(3)(c) and 4 of Section 8 of the ISO Tariff⁹⁰

5.2.1 Views of Enel

86. In Enel's submission, requiring it to pay for the cost of the contested 240 kV facilities, rather than the 138 kV facilities, would yield a discriminatory, arbitrary, and unjust result.⁹¹ This is because the decision to utilize 240 kV facilities was largely driven by or based on, the AESO's assessment of system planning requirements and considerations. Furthermore, while Enel agreed that it is the AESO's prerogative to address long-term system needs and the CRR Wind Farm's interconnection facilities at the same time, this does not give the AESO the right to require Enel to pay the entire cost of the facilities constructed in excess of what was required to provide it with system access service.⁹² In other words, while the AESO has the discretion to add facilities to a project when it is prudent to do so, it does not follow that the AESO may impose costs associated with a project that provides no benefit to the market participant.⁹³ Accordingly, by refusing to classify facilities that the AESO has justified on the basis of system planning considerations, Enel submitted that the AESO had acted contrary to the requirements of subsection 3(3)(c) of Section 8 of the ISO Tariff, and discriminated against Enel.⁹⁴

87. Enel submitted that the Stantec report⁹⁵ established the following matters:

- a. The facilities required by the AESO to interconnect the CRR Wind Farm were far in excess of what was required to provide system access service, in excess of the minimum required to meet the CRR Wind Farm's needs and in excess of those required by good electric industry practice. The requirement for those facilities was driven by the overall need for system reinforcement.
- b. The facilities reasonably required to connect the CRR Wind Farm were limited to a single circuit radial line from the Goose Lake Substation to the CRR Wind Farm 205S Substation with a single breaker; or even when assuming a 240 kV connection, they were limited to:
 - a single span of 240 kV circuit between CRR Wind Farm collector station and either the CRR Wind Farm 205S Substation or Goose Lake Substation, and
 - a single 240 kV breaker and associated equipment.

⁹⁰ Subsection 2 of Section 8 of the ISO Tariff was not specifically contested and is included for the convenience of the reader.

⁹¹ Exhibit 22367-X0103, Reply Argument of Enel Alberta Wind Inc., September 1, 2017, PDF page 7, paragraph 22.

⁹² Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 31, paragraph 85.

⁹³ Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 25, paragraph 64.

⁹⁴ Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 31, paragraph 86.

⁹⁵ Exhibit 22367-X0042, 38-Stantec Report, January 25, 2017.

88. Enel also argued that the AESO was unable to point to another comparably sized windfarm charged for similar facilities and the AESO has confirmed that three other windfarms in the Pincher Creek area will be connected via 138 kV transmission lines. This is further evidence that it was system development considerations that supported the facilities used to interconnect Enel.

89. Enel submitted that it was obvious that a switching station with three 240 kV breakers, seven 240 kV manual disconnect switches and a 240 kV transmission line hung on steel towers were in excess of the facilities required to interconnect the 76 MW CRR Wind Farm.

90. Enel also pointed to the amended SATR NID application, which indicated that certain costs associated with the CRR Wind Farm interconnection would be reclassified as system-related costs and noted that the AESO has since issued a refund to Enel for part of the cost of those facilities. Enel argued that this conduct on the part of the AESO provides further evidence that the facilities were system facilities and in excess of those required for the CRR Wind Farm.

91. Enel further noted that subsection 4 of Section 8 the 2011 ISO Tariff requires the connecting market participant to pay for the costs of facilities in excess of facilities required by good electric industry practice. Given this, Enel submitted that a corollary of the rule requiring participant-related classification of facilities in excess of good electric industry practice is that Enel should not be required to pay for facilities in excess of good electric industry practice that it did not request.⁹⁶

5.2.2 Views of the AESO

92. The AESO submitted that the “minimum size required to serve the market participant” cannot be determined solely based on the participant’s needs. Rather, the determination must be made having regard to the participant’s needs in the context of and, with regard for, the AESO’s legislated obligations including the assessment of optimal development in the area, functional specifications, *ISO Rules* for new facility reliability and broader transmission plans. The AESO stated that it advised Enel that it considered the proposed CRR configuration to be “the minimum requirements to meet good transmission practice for interconnection to the 240 kV line in the area, and that any other configuration was not an option”.⁹⁷

93. The AESO also noted that Enel had been inconsistent in the identification of the minimum size required to serve its needs.

94. The AESO also argued that Enel’s assertion and Stantec’s opinion that Enel required only 266.8, 477 or 795 kmil for the CRR Wind Farm interconnection is contrary to *ISO Rule* 502.2 s 12(1)(b).⁹⁸

⁹⁶ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 33, paragraph 118.

⁹⁷ Exhibit 22367-X0013, 09-AESO letter to Enel, January 25, 2017, PDF page 2.

⁹⁸ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 33, paragraph 118.

95. The AESO also commented that, contrary to Enel's assertions, the AESO's IR responses identified that for comparable windfarms to connect into the existing system, the wind farms would be connected at 240 kV.⁹⁹

5.2.3 Commission findings

96. For the reasons that follow, Enel has failed to satisfy the Commission that the facilities required for the CRR Wind Farm interconnection were in excess of what was required, or that requiring Enel to pay for the cost of the contested 240 kV facilities would yield a discriminatory, arbitrary, or unjust result.

97. The Commission finds that there is conflicting evidence on the record of this proceeding with respect to whether the facilities used were in excess of what was required and what factors should be used to make that determination. The Commission does not support Enel's contention that the AESO's consideration of broader factors, when setting the standards for the CRR Wind Farm connection facilities, is evidence that such facilities are in excess of what was required to provide system access service. Based on the record of the proceeding, the Commission understands that some additional costs are typically included in functional specifications for connection facilities. However, the Commission finds that even if Enel's argument regarding the facilities being in excess were to succeed on this ground, it is not determinative given the findings below.

98. The primary principle that the Commission relies upon in determining if the AESO cost contribution decision was discriminatory or unjust is the principle of cost causation. The Commission considers that at present, the CRR Wind Farm is the only project using the contested facilities and these facilities were constructed after the AESO received an interconnection request from Enel. In other words, the Commission in assessing the AESO's interpretation of the ISO Tariff, relies on whether the transmission facilities proposed are radial as the key factor in determining whether the AESO's cost contribution decision was reasonable.

99. In this case, the AESO followed an established classification framework that started with the assumption that the CRR Wind Farm interconnection costs were participant-related, which is consistent with the fact that the CRR Wind Farm interconnection facilities would not have been built but for the construction of the CRR Wind Farm.

100. The Commission further notes that subsection 4 of Section 8 was added to the ISO Tariff as part of an AESO proposal in the ISO Tariff proceeding considered by the Commission in Decision 2010-606.¹⁰⁰ This provision provides that optional connection facilities specifically requested by a market participant should be considered with regard to comparisons with facilities consistent with good electric industry practice rather than facilities in excess of "AESO standard facilities." While the Commission's acceptance of this proposal altered how the AESO prepares

⁹⁹ Exhibit 22367-X0080, AESO-ENEL-2017MAY05-001 - 012 Responses, May 19, 2017, PDF page 15; and Exhibit 22367-X0103, Reply Argument of Enel Alberta Wind Inc., September 1, 2017, PDF page 8, paragraph 24.

¹⁰⁰ Decision 2010-606: Alberta Electric System Operator, 2010 ISO Tariff, Application No. 1605961, Proceeding ID. 530, December 22, 2010.

customer contribution decisions for connection projects, it did not alter the AESO's primary classification as between participant-related and system-related costs. The Commission rejects Enel's suggestion that because a provision allowing for an assessment of requested facilities against good electric industry practice exists in the ISO Tariff, this standard should be used in the AESO's assessment of participant-related and customer-related costs.

101. For these reasons, the Commission rejects Enel's argument that the AESO's decision leads to an arbitrary, discriminatory or unjust result because Enel was required to pay for interconnection facilities that were allegedly in excess of what was required and in excess of good electric industry practice.

5.3 Subsection (3)(3)(b) of Section 8 and subsection 2 of Section 9 of the ISO Tariff

102. Enel advanced extensive argument based on subsection (3)(3)(b) of Section 8 of the ISO Tariff. That subsection identifies when the costs associated with radial transmission facilities will qualify as system-related costs. It states:

(3) System-related costs will be those costs related to a connection project including non contiguous components of the project and any costs associated with:

[...]

(b) radial transmission facilities which, within five (5) years of commercial operation, are planned to become looped as part of a critical transmission development or regional transmission system project:

(i) in the ISO's most recent long-term transmission system plan;

(ii) in a needs identification document filed with the Commission; or

(iii) as the ISO reasonably expects will be required in the future;

and

[...]

103. Subsection 2 of Section 9 of the ISO Tariff was also mentioned by both parties in their respective arguments. That subsection recognizes the AESO's discretion to adjust construction contributions previously determined and offers examples of events that may warrant such an adjustment. That section reads:

Section 9, Changes to System Access Service After Energization

Event Resulting in Adjustments to Construction Contributions

2(1) The ISO may decide that certain events warrant an adjustment to the construction contribution that had previously been determined by application of the ISO's construction contribution provisions to a connection project.

(2) Events which may result in construction contribution adjustments include:

- (a) a market participant materially increasing or decreasing contract capacity or investment term or terminating system access service, prior to the expiry of the investment term for a connection project;
 - (b) one or more additional market participants using facilities originally installed for any existing market participant, resulting in sharing of facilities as provided for in subsection 3 below;
 - (c) facilities previously classified as system-related being reclassified as participant-related to meet changes in market participant requirements;
 - (d) facilities previously classified as participant-related being reclassified as system-related;
 - (e) a material error in the original construction contribution determination;
 - (f) a material variance in the estimated or actual cost of the connection project compared to the original estimate; or
 - (g) a material reduction to the period of advancement of transmission facilities included as part of a critical transmission development or regional transmission system project under the provisions of subsection 3(2)(k) of section 8 of the ISO tariff.
- (3) The market participant, the ISO or the owner of the transmission facilities may initiate a determination of an adjustment to a construction contribution as a result of an event described in subsection 2(2) above.
- (4) No adjustments to construction contribution will be made more than twenty (20) years after commercial operation of a connection project.
- (5) Where an event requires the addition of new equipment at an existing point of delivery or point of supply, the construction contribution will be determined under the provisions of section 8 of the ISO tariff rather than this section 9.

104. To facilitate its understanding of the parties' positions, relative to the above provisions, the Commission asked that, in addition to any other submissions they cared to make, the parties address the following questions posed in the Commission's July 14, 2017 letter as follows and which is also attached as Appendix 1.

- 2.1 Is the application of sub-sections (2)(1), (2)(2) and / or (2)(2)(d) of Section 9 of the 2011 ISO Tariff restricted to circumstances involving changes to system access service after energization?
- 2.2 If the answer to the above question is 'yes', with reference to the filed evidence, please identify:

Any "change to system access service after energization" that would warrant an adjustment to the construction contribution costs previously determined.

The "change to system access service after energization" that initiated the AESO's review of Enel's previously determined construction contribution costs and the resulting \$5.7 million adjustment.

- 3.1 Having regard to the language of Subsection 3(3)(b) of Section 8 of the 2011 ISO Tariff, is its application dependent upon whether the “plan” to loop the radial transmission facilities exists before or after the date of commercial operation?
- 3.2 In the interpretation of Sub-section 3(3)(b) of Section 8 of the 2011 ISO Tariff, should any significance be attributed to, or any guidance be drawn from, the historical evolution of the language of that ISO Tariff provision?

5.3.1 Views of Enel

105. In summary, Enel’s arguments and its response to the Commission’s July 14, 2017 questions shown above were, as follows.

106. All of the scenarios identified by subsection 3(3)(b) are satisfied on the evidence. Enel was charged for radial transmission facilities that within five years of commercial operation, were planned to become looped as part of a regional transmission system project (SATR):

- In the ISO’s most recent long-term transmission system plan.
- In NIDs document filed with the Commission.
- As the ISO reasonably expected in the future.

107. The AESO’s long-term transmission plans for 2009 and 2012 identify SATR as a regional transmission project requiring multiple new 240 kV and/or 500 kV transmission system loops and substations. The AESO confirmed that it gave consideration to SATR planning requirements when developing the December 2008 revised interconnection proposal, which introduced the 240 kV double circuit with three-breaker switching station configuration for the CRR Wind Farm interconnection. The revised interconnection proposal also indicated that the SATR contemplated two 240 kV double circuits from GooseLake to Crowsnest, that would initially terminate at the CRR Wind Farm. Because the interconnection proposals for the CRR Wind Farm were changed after 2008 to include many of those facilities contemplated for SATR, it should be inferred that the AESO’s long-term transmission plans in 2009 and 2012 anticipated that the CRR Wind Farm would be looped within five years of commercial operation.

108. The CRR Wind Farm interconnection was also planned to become looped within five years of commercial operation in a number of NIDs filed with the Commission. Enel relied on the following:

- a. While the 2008 SATR NID identified a route in general terms and did not set out many interconnections in great detail, changes made to the December 2008 interconnection proposal allow one to infer that the AESO contemplated looped transmission facilities for the CRR Wind Farm. The AESO indicated that transmission lines that were initially to be terminated at the CRR Wind Farm would be extended to the future Crowsnest substation.
- b. Since 2009, the Commission has approved applications for SATR NID projects, which have consistently contemplated, expressly or by implication, looped transmission facilities to, or in

the vicinity of, the CRR Wind Farm. For example, the AESO's December 30, 2008 NID application for the SATR project showed a plan to loop transmission facilities from Goose Lake to Crowsnest, passing through the CRR Wind Farm.

- c. In the same year that the CRR Wind Farm commenced commercial operation (2012), the AESO filed an amended SATR NID. That NID application expressly recommended 240 kV radial facilities from Goose Lake Substation to the 205S Substation and onwards to Chapel Rock to become looped as part of a regional transmission project. The amended SATR NID also identified that the AESO's recommended alternative (via the CRR Wind Farm) would result in the AESO deeming substantially all of the participant-related costs to be system-related. Specifically, in that NID, the AESO advised the Commission that "The cost of the CRR developments are now estimated to be approx. 27M of which one motorized disconnect switch and related facilities are deemed to be participant-related costs."¹⁰¹ It is important to note that the amended SATR NID was filed before the AESO prepared the final customer contribution decision for the CRR Wind Farm in 2013.
- d. The final customer contribution decision was made on October 8, 2013. The AESO has acknowledged that by that date, it was planning to loop the CRR Wind Farm facilities in the amended SATR NID application.

109. Finally, Enel submitted that at the time Decision 2009-126¹⁰² was issued in respect of the NID application for the SATR project, and well before the CRR Wind Farm began commercial operation in May of 2012, the AESO must be deemed to have reasonably expected that the Goose Lake to Crowsnest project would be built using a looped system as part of a regional transmission system, and that the CRR Wind Farm would be connected to that system.¹⁰³ In support of this view, Enel noted that:

- The AESO's revised interconnection proposal from December indicated that there would be looped facilities to the CRR Wind Farm.¹⁰⁴
- The AESO has confirmed that as at December 2008, it expected a looped line to Crowsnest through or, in the vicinity of, the CRR Wind Farm.¹⁰⁵
- In Decision 2009-126, the Commission established a monitoring process to support the staged development of the SATR project, which required the AESO to be reasonably certain that a transmission facility would be needed in the future, and tasked the AESO to

¹⁰¹ Exhibit 22367-X0003, Enel Complaint to AUC - January 24 2017, January 25, 2017, PDF page 5, paragraph 8.

¹⁰² Decision 2009-126: Alberta Electric System Operator, Needs Identification Document Application Southern Alberta Transmission System Reinforcement, Application No. 1600862, Proceeding ID. 171, September 8, 2009.

¹⁰³ Exhibit 22367-X0101, Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 37, paragraph 111.

¹⁰⁴ Exhibit 22367-X0101, Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 37, paragraph 112.

¹⁰⁵ Exhibit 22367-X0101, Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 37, paragraph 112.

develop a monitoring process to determine if identified milestones had been met.¹⁰⁶ In other words, by virtue of the Commission’s approval of a milestone process, the AESO must be taken to have reasonably expected that the Goose Lake to Crowsnest project would be required in the future.¹⁰⁷ In addition, Enel submitted that the Commission should also take into account that applicable SATR project milestones had been met by July 2010, and that the AESO filed its SATR amendment application in December 2012, based on the AESO’s evidence that the CRR Wind Farm to Crowsnest [Chapel Rock] facilities were still needed.¹⁰⁸

110. Enel submitted that subsection 3(3)(b) of the ISO Tariff does not require the looping plan to exist as at or before the date of commercial operation. According to Enel, so long as the plan to loop is made within five years before or after the date of commercial operation, May 2012, in the CRR Wind Farm case, the language of subsection 3(3)(b)(iii) of the ISO Tariff is satisfied.¹⁰⁹

111. In its reply argument, Enel asserted that there is no basis for the AESO’s argument that the determination of cost contributions must be made on the basis of facts and circumstances known to the AESO as at the date the cost determination is made and that the facts before and after that date should be ignored. In support of this argument, Enel contended that:

- a. Subsection 7 of Section 8 of the ISO Tariff does not refer to the effective date for making a cost contribution. It simply provides direction as to which version of the ISO Tariff applies to the determination of cost contributions. Enel disagrees that “subsection 7 of Section 8 of the Tariff means that the construction contribution provisions are to be based on a ‘snapshot’ of selected facts and the AESO’s assumptions as of November 1, 2011.”¹¹⁰
- b. The permit and license issued on November 1, 2011 did not make a determination on costs. That decision was not made until 2013. However, even if November 1, 2011 was the only date to consider looped facilities were contemplated in NIDs filed with the Commission prior to that date. As a result, subsections 3(3)(b)(ii) and (iii) were satisfied.
- c. Although it is not necessary to have recourse to Section 9 of the ISO Tariff to determine this complaint, there is nothing in the wording of subsection 2(2)(d) of Section 9 of the ISO Tariff that requires the reason for reclassification to be linked to changes to system access service after energization. The wording of subsection 2(1) contains no such limitation, and does not otherwise restrict the AESO from deciding to adjust a previously determined construction contribution. Use of the word “includes” in subsection 2(2)

¹⁰⁶ Exhibit 22367-X0101, Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 37, paragraph 113.

¹⁰⁷ Exhibit 22367-X0101, Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 38, paragraph 115.

¹⁰⁸ Exhibit 22367-X0101, Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 38, paragraph 116.

¹⁰⁹ Exhibit 22367-X0101, Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 38, paragraph 117.

¹¹⁰ Exhibit 22367-X0103, Reply Argument of Enel Alberta Wind Inc., September 1, 2017, PDF page 9, paragraph 26.

suggests that the list of events that may trigger a contribution adjustment is not exhaustive.¹¹¹ Furthermore, as subsection 2(2)(e) of Section 9 of the ISO Tariff allows for adjustments where there has been a material error in the original construction contribution, it would be unjust, unfair, and discriminatory to only allow changes if there has been a change to system access service after energization.

- d. Once the AESO filed its amended SATR NID application in December 2012 expressly acknowledging the intention to loop the CRR Wind Farm interconnection, there was no impediment to the immediate reclassification of the associated costs as system-related costs under Section 9.
- e. The AESO's action to reclassify the costs on December 4, 2015, well after energization, is evidence that even the AESO interprets this subsection in the same way as Enel. That is, the subsection imposes no restriction on when contribution adjustments may be made, or on which events the AESO may rely on to permit a change.¹¹²

5.3.2 Views of the AESO

112. The AESO's arguments on this issue and its response to the questions posed in the Commission's July 14, 2017 letter¹¹³ are summarized as follows.

113. In combination, subsection 7(1) and subsection 3(3)(b) of Section 8 of the ISO Tariff, direct that construction contributions are to be calculated in accordance with ISO Tariff provisions in effect on the date of cost determination; i.e., the date of the P&L and based on the facts and circumstances known to the AESO at that date.¹¹⁴ Events before and after that date are irrelevant and do not inform or instruct how Section 8 of the ISO Tariff should be interpreted or applied.¹¹⁵

114. More specifically, these subsections require that any plan to loop a radial connection project within five years of commercial operation must exist as at the date the Commission issues the P&L for the interconnection project,¹¹⁶ which was, in this case, November 1, 2011. This is clear from the plain language of subsection 3(3)(b) of Section 8 in particular. The historical evolution of the language of that the ISO Tariff provision is irrelevant and not to be used as direct evidence of the intent of the drafter.

115. As the CRR Wind Farm interconnection P&L was issued on November 1, 2011,¹¹⁷ the AESO made its classification in accordance with the subsection 3 of Section 8 provisions of the ISO Tariff, using the facts and circumstances known to the AESO on that date.¹¹⁸

¹¹¹ Exhibit 22367-X0101, Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 52.

¹¹² Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 52.

¹¹³ The Commission questions are attached as Appendix 1.

¹¹⁴ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 26, paragraph 95.

¹¹⁵ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 29, paragraph 103.

¹¹⁶ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 40, paragraph 151.

¹¹⁷ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 26, paragraphs 97 and 98.

¹¹⁸ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 27, paragraph 99.

Based on those facts and circumstances, there was no expectation that the CRR Wind Farm interconnection would be looped. Accordingly, subsection 3(3)(b) of Section 8 of the ISO Tariff did not permit the AESO to classify the costs disputed by Enel to be system-related costs.¹¹⁹

116. Regarding events after November 1, 2011, nothing has occurred to date that would entitle Enel to a further refund. The AESO acknowledges that the amended SATR NID included looped transmission facilities to the CRR Wind Farm substation. However, construction contribution provisions are not revised to reflect later system developments, except in accordance with subsection 2 of Section 9. Although the application of that subsection is not restricted to circumstances involving a change to system access service after energization, that subsection does require evidence of a change in circumstances or facts from those that existed at the time the construction contribution provisions were applied before an adjustment to construction contribution can be made. The filing of a NID application that contemplates the looping of a connection project does not, by itself, permit an adjustment to the construction costs that were classified as participant-related.¹²⁰

5.3.3 Commission findings

117. To assess whether the AESO has interpreted the ISO Tariff in an arbitrary, discriminatory or unjust manner the Commission must deal with two interpretive issues.

118. For subsection 3(3)(b) of Section 8 of the ISO Tariff to apply, as it existed in 2011, the evidence must establish that a plan to loop the CRR Wind Farm interconnection within five years of its commercial operation existed at the date of the P&L. This could have been demonstrated by reference to the AESO's then-existing long-term transmission system plan, a NID filed with the Commission or evidence that suggested that such a plan was otherwise reasonably expected to be required in the future by the AESO. The evidence does not satisfy any of those criteria. Therefore, the Commission finds that Enel's construction contribution was not determined contrary to subsection 3(3)(b) of Section 8 of the ISO Tariff.

119. Adjustments to construction contributions under subsection 2 of Section 9 of the ISO Tariff are not contingent on changes to system access after energization or to a change in circumstances from those that existed at the time of the original cost contribution classification. However, adjustments to construction contributions under that subsection are discretionary, not mandatory. Consequently, the Commission finds that Enel has failed to satisfy the Commission that the AESO's decision not to exercise its discretion to adjust the construction contribution, except under the refund provisions contained in subsections 2 and 3 of Section 9, was arbitrary, unfair, discriminatory or otherwise inconsistent with the governing legislation, the ISO Tariff provisions or applicable regulatory principles.

120. The Commission's reasons in support of each of the above findings are detailed below.

¹¹⁹ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 29, paragraph 102.

¹²⁰ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 31, paragraph 111.

5.3.3.1 Cost classification to be determined on facts known to the AESO on the date of P&L

121. Enel and the AESO offered diametrically opposed views as to the facts and circumstances to which the criteria established by subsection 3(3)(b) of Section 8 of the ISO Tariff are to be applied and more specifically, as to whether the plan to loop the radial transmission facilities must exist at the date of the P&L in order for the costs of the interconnection project to be classified as system-related costs.

122. The relevant parts of subsections 3(3)(b) and 7 of Section 8 of the ISO Tariff, as it existed in 2011,¹²¹ as well as those of article 9.3 in the 2006 ISO Tariff, which is the predecessor to subsection 3(3)(b), are reproduced below.

123. Subsection 3(3)(b) reads:

3(3) System-related costs will be those costs related to a connection project including non-contiguous components of the project and any costs associated with:

(b) radial transmission facilities which, within 5 years of commercial operation, are planned to become looped as part of a critical transmission development or regional transmission system project

(i) in the ISO's most recent long-term **transmission system** plan;

(ii) in a **needs identification document** filed with the **Commission**; or

(iii) as the **ISO** reasonably expects will be required in the future;

124. Article 9.3, the predecessor to subsection 3(3)(b) states:

9.3 The AESO will classify project costs as either system-related costs or Customer – related costs, as follows. ...

(c) System-related costs are those project costs associated with

...

(ii) radial transmission extensions if the transmission development plan (as that plan exists on the date the project is commissioned) proposes that the radial transmission extension becomes looped within five years. ... [Emphasis added]

125. Subsection 7 of Section 8 of the ISO Tariff provides the following direction:

7(1) The construction contribution will be calculated in accordance with the construction contribution provisions of the ISO tariff in effect on the date on which the Commission issues permit and license for the connection project.

¹²¹ The Commission notes that the 2014 ISO Tariff contains similar provisions.

126. The Alberta Energy and Utilities Board, the Commission's predecessor, held that it is reasonable to apply the principles of statutory interpretation to the interpretation of the ISO Tariff provisions. Those principles require that the words of an act be read in their entire context, in their grammatical and ordinary sense, and harmoniously with the scheme and object of the Act and the intention of Parliament.¹²² The application of those principles in this context would similarly require interpretation of the ISO Tariff provisions in their grammatical and ordinary sense, harmoniously with the relevant statutory framework, established regulatory principles and with the purpose and objectives of the legislation and of the ISO Tariff as a whole.

127. Applying those principles to the ISO Tariff provisions at issue, the Commission agrees with Enel that neither the plain language of subsection 3(3)(b), nor that of subsection 7, expressly directs the determination of cost contributions to be based solely on the facts and circumstances known to the AESO as at the date of the P&L for the interconnection project. In other words, subsection 7 offers no express direction as to the relevant information that must be available at the time of the P&L for the purposes of applying the construction contribution provisions of the tariff in effect.

128. Subsection 3(3)(b) requires evidence of a plan to loop the transmission facility within five years of its commercial operation, but it is silent as to whether there is a critical date on or by which that plan must exist in order for that subsection to apply. More specifically, subsection 3(3)(b) contains no express requirement that the plan to loop the facility exist at the date of the P&L or some other date.

129. As the language of these provisions is neither plain nor unambiguous as to whether the plan to loop the radial transmission facilities must exist as of a particular date, and more specifically as of the date of the P&L, as argued by the AESO, a more contextual and purposive approach to the interpretation of those provisions is required.

130. In answer to the Commission's questions, Enel argued that in interpreting subsection 3(3)(b), the Commission should have regard for the historical context. In particular, the Commission should take into account that:

- a. Subsection 3(3)(b) of Section 8 of the ISO Tariff eliminated the words "...as that plan exists on the date the project is commissioned" used in the predecessor 2006 ISO Tariff provisions.
- b. Consistent with the statutory interpretation principle of purposeful change, it must be assumed that this change in the language of the ISO Tariff reflected an intention to dispense with that requirement. That is, under the ISO Tariff, there was no longer a requirement that the looping plan needed to be in existence on the date of commissioning.¹²³

131. Enel relied on Decision 2010-606 as affording further support for its interpretation. In that decision, the Commission commented that the proposed list of expenditures to be designated as system-related costs in subsection 3(3) of Section 8 "generally expands the opportunity to

¹²² Nova Gas 2002, AEUBD No 42, at paragraphs 30-31.

¹²³ Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 54.

have costs designated as system-related costs, to the benefit of customers seeking new or expanded connections at the cost of existing customers.”¹²⁴

132. The Commission agrees with Enel that the historical language may be useful to inform interpretation insofar as prior enactments may throw some light on the intention in repealing, amending, replacing or adding to the ISO Tariff provisions.

133. However, the Commission finds that neither the change that occurred in the language of the 2006 and 2011 ISO Tariff provisions, nor the comments, of the Commission in Decision 2010-606 are determinative of the interpretative issue under consideration. This is because:

- a. While the date the project is commissioned means the same thing as the date of P&L and the phrase, “...as that plan exists on the date the project is commissioned” was not continued in subsection 3(3)(b) of the ISO Tariff, it was, nevertheless, maintained as part of the ISO Tariff generally through the inclusion of the then new, subsection 7. Under the 2006 ISO Tariff, there was no equivalent to subsection 7. Accordingly, it cannot be said that the phrase was eliminated and that some clear intent can or should be drawn from that one change without the context of other changes made at the same time, as was asserted by Enel.
- b. The comments made by the Commission in 2010-606 relate to the whole of subsection 3(3) and not to subsection 3(3)(b) in particular.

134. Given that the AESO’s statutory mandate to draft the ISO Tariff is located in the *Electric Utilities Act*, and the *Transmission Regulation* promulgated thereunder gives the Commission direction on what factors to take into account when approving the ISO Tariff, the Commission considers that the *Electric Utilities Act* and its regulations provide the framework for interpreting the ISO Tariff.

135. Moving then to the consideration of the purpose and objective of certain types of ISO Tariff provisions and certain ISO Tariff concepts, principles and objectives more generally, these have been the subject of the Commission’s consideration and comment on prior occasions.

136. For example, in Decision 3473-D02-2015,¹²⁵ the Commission offered an overview of certain ISO Tariff classification concepts and, in particular, those associated with the assignment of interconnection costs. The Commission observed that:

52 ...it is reasonable to assume that a market participant seeking a new connection or contract capacity increase would have a strong financial preference that any cost that might be triggered by the project be classified as “system-related” rather than “participant-related.”

¹²⁴ Decision 2010-606: Alberta Electric System Operator, 2010 ISO Tariff, Application No. 160596, Proceeding ID. 530, December 22, 2010, PDF page 102, paragraph 528.

¹²⁵ Decision 3473-D02-2015: Alberta Electric System Operator, Compliance with Directions five through eight from Decision 2014-242: Module 2, Proceeding 3473, Application 1610935-1, August 26, 2015.

...

93. The “participant-related” and “system-related” classification of costs was intended to change the behaviour of an end-use customer when requesting and/or maintaining an in-service date for a project that is part of a planned loop, but radial to the existing system at the time of energization....

...

234. The fact that market participants that request connection facilities incur material costs in relation to required facilities being classified as participant-related may not provide sufficient incentive to avoid the stranding of required facilities classified as system-related. The decision making of a critical path customer may simply be “wrong,” or at least “regrettable with the benefit of hindsight,” yet the ability to have certain transmission facilities required for service designated, in advance, as system-related, inherently shields a critical path end-use customer from risks it may be the only party to be in a reasonable position to control.

137. In Decision 2005-096, the Alberta Energy and Utilities Board stated:

Provision of Economic Signal(s)

...The Board considers that customer contributions are suitable in circumstances where service to a customer may impose costs on other customers for which they should not be responsible. An appropriate contribution policy therefore provides a suitable balance to an unlimited obligation to serve by imposing economic discipline on siting decisions. It transfers the economic burden of connection of new customers from the utility and its existing customers to the new customer. In other words, it exerts some of the discipline of the utility’s economics on the economic decision-making of the customer. The Board considers that customer contributions should relate only to the local connection costs of the system expansion. The deep system costs of expansion are properly the responsibility of all customers, form part of the utility’s revenue requirement and should be recovered all customers through rates.

The Board’s views on the underlying purpose of a contribution policy have not changed since Decision 2002-082 was issued. As such, it remains important to the Board that the AESO’s contribution policy should continue to exert an economic discipline on siting decisions by sending price signals reflective of the AESO’s economics to an interconnecting customer.¹²⁶

138. In the above decisions, the Commission has articulated the following four principles:

139. Firstly, the Commission recognized that a balance must be struck between certainty of classification and having effective price signals.

140. Secondly, it characterized the exercise of classifying costs as either participant-related or system-related as an approach that requires the AESO to make classifications based on “shades

¹²⁶ Decision 2005-096: Alberta Electric System Operator (AESO), 2005/2006 General Tariff Application, Application No. 1363012, August 28, 2005, PDF page 47.

of grey.” In line with the approach articulated in Decision 2005-096, when determining the cost allocation of a connecting market participant, the initial presumption is that costs should be classified as participant-related, unless clearly demonstrated otherwise.

141. Thirdly, it consistently considered the “in advance” classification provisions set out in subsection 3(3) of Section 8 of the ISO Tariff to be an exception to the expectation that reclassification as between participant-related and system-related costs, will be carried out through the application of the contribution refund provisions, as set out in subsection 2 of Section 9 of the ISO Tariff.

142. Finally, it expressly acknowledged that the legislative framework obliges the AESO to make planning decisions in advance and so is set up to ensure that there is inherent flexibility to change a project’s, or a portion of a project’s, classification. However, on a practical level, at key points in the cycle of project development and execution, major decisions of the AESO and the transmission facility owner become irreversible.

143. The Commission considers that the interpretation of subsections 3(3)(b) and 7 of Section 8 most consistent with the principles of interpretation, the purpose and object of the legislative framework and the principles underlying contribution and investment tariff provisions (as they have been described above), is that advocated by the AESO. More specifically, the Commission agrees with the AESO that in combination, subsections 3(3)(b) and 7 of Section 8 require the determination of cost contribution under subsection 3(3)(b) to be made on the facts and circumstances known to the AESO as at the date of the P&L for the interconnection project. Stated another way, to avoid participant-related costs, the evidence must establish that, at the date of the P&L, there was a plan to loop the radial transmission facilities within five years of commercial operation. The Commission’s reasons in support of the above finding are as follows.

144. Consistent with the principles of interpretation, subsection 3(3)(b) of Section 8 must be read in context and therefore with regard for subsection 7. Subsection 7 specifically identifies that the construction contribution is to be determined on the basis of the ISO Tariff in effect on the date of the P&L. While not express, the reasonable inference is that the determination is likewise to be made on the basis of the facts in existence as at that same date. Enel has offered no reasonable justification to support a contrary interpretation and in the Commission’s view, any other interpretation would result in unworkable uncertainty and potentially discriminatory, arbitrary or unjust determinations.

145. Further, the Commission considers that this interpretation strikes a balance between certainty of classification and price signals as well as between the AESO’s legislatively imposed right and obligation to plan the system (and to adjust that plan as needs change), and a connecting customer’s right to be able to rely on the information provided by the AESO.

146. Under this interpretation, the AESO has the flexibility to alter system plans that affect system-related costs up until the P&L interconnection proceeding. Changes to the allocation of participant-related versus system-related costs can be made before that time by the AESO as they feel necessary and a market participant must accept this. However, at the time of the P&L, the ISO Tariff provisions fix the classification, but only in one direction. The AESO must provide

information that generators, at some point are able to rely on to make their business decisions. One of the business decisions that connecting generators need to make is whether to support or contest the NID application put forward by the AESO which includes the facilities required and how the costs of those facilities is to be allocated. As a practical matter, this information must be provided when the P&L application is being considered by the Commission. If determined to be system-related costs at the time of the P&L, the costs will remain system-related. However, if determined participant-related, that classification can be changed to system-related, resulting in the possibility of refunds. Before the P&L is issued, the interconnection customer bears the risk in relying on the AESO's information, while after the P&L is issued, the market participant's situation can only improve. After that point (the date of the P&L), if the AESO states that a project will be system-related and subsequently, a long-term plan changes and the costs would be participant-related the market participant is insulated against this type of reclassification. Conversely, a market participant may get a refund if some costs that were originally classified as participant-related are reclassified as system-related costs.

5.3.3.2 Evidence does not support the existence of a plan to loop the CRR Wind Farm interconnection at P&L

147. Based on its determination that subsections 3(3)(b) and (7) of Section 8 of the ISO Tariff require evidence of a plan to loop the radial transmission facilities at the date of P&L, it is not necessary for the Commission to consider Enel's arguments and the evidence relied on to demonstrate the existence of such a plan before or after that date. Instead, the Commission must consider whether any or all of the criteria stipulated by subsection 3(3)(b) were satisfied at the date of P&L for the CRR Wind Farm interconnection.

148. The Commission issued P&L for the CRR Wind Farm interconnection project on November 1, 2011. At that date, the AESO's then most recent long-term transmission system plan was the *AESO 2009 Long-term Transmission Plan*. It did not expressly include a plan to loop the CRR Wind Farm interconnection within five years of its commercial operation and Enel has failed to persuade the Commission that the inclusion of such a plan should be inferred from the language of various interconnection proposals issued to Enel over time.

149. Also at that date, the only then current and active NID applications filed with the Commission were the Fidler 312S NID, which was filed June 16, 2010, and the CRR Wind Farm 205S Substation NID, which was filed August 30, 2010. Neither of those NIDs contemplated that the CRR Wind Farm interconnection would be looped. In this regard, Enel has acknowledged in its argument the following:

“As a result of the Fidler NID application, the CRR interconnection contemplated by the SATR approval would no longer be possible, since the route from Goose Lake to Fidler did not pass by CRR. Accordingly, and in an effort to preserve an interconnection for CRR, on August 30, 2010, the AESO filed an application for approval of the Castle Rock Ridge 205S Substation and Transmission Line NID (“CRR NID”) with an in-service date

of September 2011. The CRR NID provided for a connection of CRR to the AIES from Point A on the Goose Lake to Fidler line ...”¹²⁷

150. Enel also acknowledge that, the CRR Wind Farm NID indicated that the GooseLake 103S Substation to Chapel Rock 491S Substation loop would connect through Fidler 312S Substation and not through the CRR Wind Farm 205S Substation.

151. The AESO’s evidence in this proceeding is that based on the facts known to the AESO on November 1, 2011, it had no reasonable expectation that the CRR Wind Farm interconnection would be looped. The Commission is not persuaded by Enel’s attempt to refute this evidence.

152. Based on the Commission’s interpretation of the ISO Tariff provisions as described above, and the application of those provisions to the facts known to the AESO at the date of the P&L, none of the criteria established by subsection 3(3)(b) is satisfied. On that basis, the Commission finds that Enel’s construction contribution was not determined contrary to subsection 3(3)(b) of Section 8 of the ISO Tariff.

5.3.3.3 Subsection 2 of Section 9 of the ISO Tariff applies but was not contravened

153. Throughout this proceeding, Enel has consistently argued that it is neither appropriate nor necessary to have regard to the provisions of subsection 2 of Section 9 of the ISO Tariff to determine this complaint. This is because Enel contends that the AESO improperly characterized the costs of the interconnection project in the first instance. For the reasons already described, the Commission has rejected those arguments.

154. However, in its argument, Enel¹²⁸ submitted that if recourse to subsection 2 is required, a proper application of that subsection allows for immediate reclassification of the CRR Wind Farm interconnection costs as system-related. Enel argues that subsection 2 contains a non-exhaustive list of events that may warrant future adjustments to construction contributions and, contrary to the assertions of the AESO, that subsection does not require either Commission approval of the construction of looped transmission facilities or a change in circumstances from those that existed at the time of the original classification. The AESO has expressly acknowledged that the amended SATR NID application expressly contemplates that the CRR Wind Farm will be looped as part of that regional transmission system project and in Enel’s view, that is sufficient to trigger the immediate reclassification of the majority of its connection costs as system-related.

155. As previously noted, the AESO acknowledges that the amended SATR NID included looped transmission facilities to the CRR Wind Farm substation. However, it argued that construction contribution provisions are not revised to reflect later system developments, except in accordance with subsection 2 of Section 9. The AESO argued that while the application of that subsection is not restricted to circumstances involving a change to system access service after

¹²⁷ Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 12, paragraph 27.

¹²⁸ Exhibit 22367-X0101, Written Argument of Enel Alberta Wind Inc., August 11, 2017, PDF page 36, paragraph 105.

energization, it does require evidence of a change in circumstances or facts from those that existed at the time the construction provisions were applied before an adjustment to construction contribution can be made. In the AESO's view, the filing of a NID application that contemplates the looping of a connection project does not, by itself, permit an adjustment to the construction costs that were classified as participant-related.¹²⁹

156. The Commission rejects the AESO's interpretation of subsection 2 of Section 9.

157. The AESO did not clearly demonstrate how the language of subsection 2 supports its interpretation and, in addition, the Commission finds no support for it in the plain language of that subsection. More specifically, the Commission finds no language in that subsection that makes adjustments to construction contributions contingent "on a change in certain circumstances or facts from those that existed at the time that the construction contribution provisions were applied," as was asserted by the AESO.¹³⁰

158. However, it does not necessarily follow that the AESO's refusal to reclassify certain of the CRR Wind Farm interconnection costs as system-related costs (upon its inclusion of looped transmission facilities to the CRR Wind Farm substation in the amended SATR NID), constitutes conduct that supports Enel's complaint.

159. Adjustments to construction contributions under subsection 2 are discretionary, not mandatory. Subsection 2(1) of Section 9 of the ISO Tariff reads:

2(1) The ISO may decide that certain events warrant an adjustment to the construction contribution that had previously been determined by application of the ISO's construction contribution provisions to a connection project.

160. Enel has failed to satisfy the Commission that the AESO's decision not to exercise its discretion to adjust the construction contribution except under the refund provisions, was arbitrary, unfair, discriminatory or otherwise inconsistent with the governing legislation, ISO Tariff provisions or applicable regulatory principles.

6 Interest

161. In its complaint, Enel sought a direction that the AESO be required to refund Enel's carrying costs (on the amounts improperly charged to it as customer-related costs) in an amount of \$9,025,972 as at December 31, 2016, plus \$4,320 per diem until the date of payment.

162. As Enel has failed to satisfy the Commission that its construction contribution was improperly determined on any of the grounds alleged, there is no need for the Commission to consider or make any finding on interest.

¹²⁹ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 31, paragraph 111.

¹³⁰ Exhibit 22367-X0099, AESO argument, August 11, 2017, PDF page 31, paragraph 110.

7 Legal and consultant costs

163. Enel asked for its legal and consultant costs incurred in connection with its complaint application. The AESO also made submissions arguing against an award of costs for this proceeding. In Bulletin 2008-017, the Commission indicated that the Commission was not going to establish a cost recovery regime in connection with market related proceedings, including complaints about the ISO's conduct.

8 Decision

164. For the reasons provided above, the Commission dismisses Enel's complaint against the AESO under Section 26 of the *Electric Utilities Act*.

Dated on December 23, 2017.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Panel Chair

(original signed by)

Henry van Egteren
Commission Member

(original signed by)

Carolyn Hutniak
Commission Member

Appendix 1 – July 14, 2017 AUC Letter Proceeding 22367 - Direction from the Commission Regarding Argument and Reply Argument



Direction Letter from
the Commission

July 14, 2017

To: Parties currently registered on Proceeding 22367

**Enel Alberta Wind Inc.
Complaint Regarding Conduct of the Alberta Electric System Operator
Proceeding 22367
Application 22367-A001**

Argument for Proceeding 22367

1. On April 13, 2017, the Alberta Utilities Commission issued a letter to interested parties advising that an oral hearing for this proceeding, if required, would be held August 1, 2017 through August 3, 2017. By letter dated June 29, 2017, the Commission cancelled the oral hearing and informed parties that argument would proceed in writing.
2. The Commission has decided that argument and reply should be submitted via simultaneous filing. In the Commission’s view this argument schedule is procedurally fair to all parties and promotes an efficient proceeding. The schedule is as follows:

Argument from Enel Alberta Wind Inc. (Enel) and the Alberta Electric System Operator (AESO)	August 4, 2017
Reply Argument from Enel and the AESO	August 18, 2017

3. In addition to any other matters the parties wish to address, the Commission asks that both Enel and the AESO respond to the following questions in their written arguments.

Question 1

- 1.1 In previous decisions, the Commission has indicated that the contributions of end-use customers matter when the Commission considers the reasonableness of transmission project expenditures and that any cost classification issues should be raised at the earliest opportunity so that the Commission can weigh the economic effects of the proposed development.¹ More specifically, the Commission has stated that, “the determination of system versus participant classification of a project is properly identified, evaluated and determined in a NID/facility application through the application of the ISO tariff terms and conditions of service in effect at the time.” In view of the foregoing:

¹ Exhibit 22093-X0050, Alberta Electric System Operator, Application for 2017 Independent System Operator Tariff Update, Commission ruling on motion from ATCO Electric Ltd. to compel full and adequate responses to information requests, Primary Service Group request for Commission direction and relief, and Commission-initiated request for comments, February 1, 2017, PDF, paragraph 33.
See also Decision 21306-D01-2016: Canadian Natural Resources Limited, Determination of Compensation for 9L66/9L32 Transmission Line Relocation, August 16, 2016, paragraphs 110-114.

- a. Is there any significance or consequence to any or all of the following:
 - o The needs identification document and facility application for the Castle Rock Ridge interconnection project identified, among other things, that the AESO deemed the whole of the connection project costs as customer-related costs.²
 - o Enel did not raise the cost classification issue at the time of the amended needs identification document and facility application for the Castle Rock Ridge interconnection project in August of 2011.
 - o On October 6, 2011, Enel submitted a letter to the Commission in Proceeding 778 supporting the needs identification document and facility application for the Castle Rock Ridge interconnection project.
 - o Enel did not raise the cost classification issue at the time of Proceeding 690.³
 - o Enel did not request the reclassification of the costs from the AESO until January of 2015.
- b. Is it still open to Enel to seek reclassification of its costs relating to the Castle Rock Ridge interconnection project?

Question 2

- 2.1 Is the application of sub-sections (2)(1), (2)(2) and / or (2)(2)(d) of Section 9 of the 2011 ISO Tariff restricted to circumstances involving changes to system access service after energization?
- 2.2 If the answer to the above question is ‘yes’, with reference to the filed evidence, please identify:
 - a. Any “change to system access service after energization” that would warrant an adjustment to the construction contribution costs previously determined.
 - b. The “change to system access service after energization” that initiated the AESO’s review of Enel’s previously determined construction contribution costs and the resulting \$5.7 million adjustment.

² Exhibit 0066.01.ENEL-778, Enel letter to AUC, May 13, 2011, PDF.

³ Proceeding 690, Alberta Electric System Operator NID and AltaLink Management Ltd., Fidler 312S Substation and 240-kV Transmission Line Interconnection, Determination of Preliminary Issues, December 1, 2011.

Question 3:

- 3.1 Having regard to the language of Sub-section 3(3)(b) of Section 8 of the 2011 ISO Tariff, is its application dependent upon whether the “plan” to loop the radial transmission facilities exists before or after the date of commercial operation?
- 3.2 In the interpretation of Sub-section 3(3)(b) of Section 8 of the 2011 ISO Tariff, should any significance be attributed to, or any guidance be drawn from, the historical evolution of the language of that tariff provision?

Question 4:

- 4.1 Having regard to the language of Section 26 of the *Electric Utilities Act*, does the Commission have the jurisdiction to grant the relief requested by Enel?

Conclusion

4. If you have questions regarding the above process, please contact the undersigned at 403-592-4499 or shanelle.h.sinclair@auc.ab.ca or Heather Gnenz at 403-592-4419 or by email at heather.gnenz@auc.ab.ca.
5. The writer has been authorized to write this letter on behalf of the Commission.

Sincerely,

Shanelle Sinclair
Commission Counsel

Appendix 2 – ISO Tariff excerpts

2006 ISO Tariff

Article 9 Customer and System Contribution Policy

Subsection 9.3 – Classification of System and Customer-Related Costs:

The AESO will classify project costs as either system-related costs or Customer-related costs, as follows.

- (a) For a Point of Delivery Customer, subject to Article 9.3(c), Customer-related costs are those costs of a contiguous project in respect of Radial transmission extensions and enhancements at existing adjacent substations. Such costs will normally include the point of interconnection, new transmission line, communication at the point of interconnection, communication enhancements at adjacent substations, a new breaker at an existing substation if required, and other enhancements required to complete the customer's interconnection.
- (b) For a Point of Supply Customer, subject to Article 9.3(c), Customer-related costs are those costs of a contiguous project in respect of Radial transmission extensions. Such costs will normally include the point of interconnection, new transmission line, communications at the point of interconnection back to the existing system, and a new breaker at an existing substation if required.
- (c) System-related costs are those project costs associated with:
 - (i) Looped transmission facilities;
 - (ii) Radial transmission extensions if the transmission development plan (as that plan exists on the date the project is Commissioned) proposes that the Radial transmission extension becomes Looped within five years. The Customer will pay the cost of advancing that part of the project from the date established in the transmission development plan, calculated as the difference between the present values of the capital costs of the advanced and as-planned projects using the discount rate as determined under Article 9.14; and
 - (iii) Where, in the sole opinion of the AESO, economics or system planning dictate that a facility larger than that required to serve the Customer is to be installed, then the AESO will classify that portion of the project deemed to be in excess of the Customer's needs as system-related costs. As the need to serve additional POCs arises, these system-related costs may be reclassified as Customer-related costs and allocated to the new Customers. The capacity between the Customer's requirements and the minimum size of facilities required to serve the Customer is not considered to be in excess of the Customer's requirements.
- (d) Where the Customer requests an interconnection configuration that, in the sole opinion of the AESO, exceeds AESO Standard Facilities, the Customer must pay all customer and system costs in excess of AESO Standard Facilities.

2011 ISO Tariff¹³¹

Section 8, Construction Contribution for Connection Projects

Subsection 2 – Connection Costs

2 The costs of a connection project for a **market participant** will be those costs reasonably associated with facilities that:

- (a) an **owner** of a **transmission facility** will own and operate;
- (b) are required to:
 - (i) provide **system access service** to a new **point of delivery** or **point of supply**; or
 - (ii) increase the capacity of or improve **system access service** to an existing **point of delivery** or **point of supply**; and
- (c) are reasonably required to meet the **market participant**'s:
 - (i) demand and supply forecast; and
 - (ii) reliability and operating requirements.

Subsection 3 - Classification of Participant-Related and System-Related Costs:

3(1) All costs of a connection project will be classified as either participant-related or system-related.

(2) Participant-related costs will be those costs related to a contiguous connection project including costs associated with:

- (a) the connection substation for the **point of delivery** or **point of supply**, including in out line configurations, where required;
- (b) new radial transmission lines, including double-radial configurations, with only one (1) transmission source from the **transmission system** to the connection substation;
- (c) a share of existing **transmission facilities** that were constructed to connect another **market participant**, where the existing facilities originally began **commercial operation** within the past twenty (20) years and where the share is determined in accordance with subsection 3 of section 9 of the **ISO tariff**;
- (d) line moves or burials of existing transmission line;
- (e) communication at the **point of delivery** or **point of supply**;
- (f) communication enhancements required at the nearest substation with communications equipment to allow direct communication between it and the connection substation;
- (g) breakers and associated equipment required for the connection of the new radial transmission line to an existing substation;

¹³¹ Alberta Electric System Operator, 2nd Refiling of 2005/2006 GTA, EUB Order U2005-464, Appendix 1.

- (h) salvage labour required to remove existing **transmission facilities** to allow the installation of new or replacement facilities for a connection project, except where the cost of the removed facilities is treated as a capital maintenance cost by the **owner** of the **transmission facility**;
 - (i) changes to protection systems, equipment or settings related to the addition of a **generating unit** on an **electric distribution system** served through the connection substation;
 - (j) a **remedial action scheme**, if required;
 - (k) a phasor measurement unit, if required;
 - (l) the advancement of **transmission facilities** included as part of a critical transmission development or regional **transmission system** project under subsection 3(3)(b) below, calculated as the difference between the present values of the capital costs of the advanced and the as-planned facilities using the discount rate provided in subsection 11 below;
 - (m) facilities previously classified as system-related under subsection 3(3)(c) below and now reclassified as participant-related to meet the requirements of the connection project; and
 - (n) other facilities required to complete the **market participant's** connection, including **transmission facilities** required to enable the **market participant** to meet all relevant technical requirements for the connection project.
- (3) System-related costs will be those costs related to a connection project including non contiguous components of the project and any costs associated with:
- (a) looped **transmission facilities**, which are facilities that increase the number of electrical paths between any two (2) substations, excluding the substation serving the **market participant** and which exclude any new radial transmission line;
 - (b) radial **transmission facilities** which, within five (5) years of **commercial operation**, are planned to become looped as part of a critical transmission development or regional **transmission system** project:
 - (i) in the **ISO's** most recent long-term **transmission system** plan;
 - (ii) in a **needs identification document** filed with the **Commission**; or
 - (iii) as the **ISO** reasonably expects will be required in the future;and
 - (c) **transmission facilities** in excess of the minimum size required to serve the **market participant** where, in the opinion of the **ISO**, economics or system planning support the development of such facilities.

Subsection 4 – Facilities in Excess of Good Electric Industry Practice

4 A **market participant** must pay, as part of the **construction contribution**, any participant related costs of facilities which are deemed, in the opinion of the **ISO**, to be in excess of those required by **good electric industry practice**.

Subsection 7 – Determination of Construction Contribution

- 7(1) The **construction contribution** will be calculated in accordance with the **construction contribution** provisions of the **ISO tariff** in effect on the date on which the **Commission** issues permit and licence for the connection project.
- (2) A **market participant** must pay **construction contribution** amounts to the **owner** of the **transmission facility** in accordance with the financial obligation provisions of section 5 of the **ISO tariff**.
- (3) For a **market participant** receiving service under Rate DTS, the **construction contribution** is calculated as the demand-related costs less the local investment determined under subsection 8 below.
- (4) For a **market participant** receiving service under Rate STS, the **construction contribution** is equal to the supply-related costs.
- (5) In addition, a **market participant** receiving service under Rate STS must pay the **ISO** any **owner's** contribution for a **generating unit** required under section 10 of the **ISO tariff**.

Section 9, Changes to System Access Service After Energization

Subsection 2 – Event Resulting in Adjustments to Construction Contributions

- 2(1) The **ISO** may decide that certain events warrant an adjustment to the **construction contribution** that had previously been determined by application of the **ISO's construction contribution** provisions to a connection project.
- (2) Events which may result in **construction contribution** adjustments include:
- (a) a **market participant** materially increasing or decreasing **contract capacity** or investment term or terminating **system access service**, prior to the expiry of the investment term for a connection project;
 - (b) one or more additional **market participants** using facilities originally installed for any existing **market participant**, resulting in sharing of facilities as provided for in subsection 3 below;
 - (c) facilities previously classified as system-related being reclassified as participant-related to meet changes in **market participant** requirements;
 - (d) facilities previously classified as participant-related being reclassified as system-related;
 - (e) a material error in the original **construction contribution** determination;
 - (f) a material variance in the estimated or actual cost of the connection project compared to the original estimate; or
 - (g) a material reduction to the period of advancement of **transmission facilities** included as part of a critical transmission development or regional **transmission system** project under the provisions of subsection 3(2)(k) of section 8 of the **ISO tariff**.

- (3) The **market participant**, the **ISO** or the **owner** of the **transmission facilities** may initiate a determination of an adjustment to a **construction contribution** as a result of an event described in subsection 2(2) above.
- (4) No adjustments to **construction contribution** will be made more than twenty (20) years after **commercial operation** of a connection project.
- (5) Where an event requires the addition of new equipment at an existing **point of delivery** or **point of supply**, the **construction contribution** will be determined under the provisions of section 8 of the **ISO tariff** rather than this section 9.

Appendix 3 – Proceeding participants

Alberta Electric System Operator (AESO or ISO) Tom Sloan
Enel Alberta Wind Inc. (Enel) Lewis L. Manning - Lawson Lundell Barristers & Solicitors
1576834 Alberta Ltd. (Heritage Wind Farm Development Inc.) Allan Kettles

Alberta Utilities Commission
Commission panel Neil Jamieson, Panel Chair Henry van Egteren, Commission Member Carolyn Hutniak, Commission Member
Commission staff Shanelle Sinclair (Commission counsel) Maria Baitoiu Tom Chan Heather Gnenz Jay Halls

Appendix 4 – Abbreviations

Abbreviation	Name in full
AESO	Alberta Electric System Operator
AIES	Alberta Interconnected Electric System
AUC or Commission	Alberta Utilities Commission
CCD	Customer Contribution Decision
CNRL	Canadian Natural Resources Limited
CRR	Caste Rock Ridge
GEIP	Good electric industry practice
IP	Interconnection Proposal
NID	Needs Identification Document
MSA	Market Surveillance Administrator
P&L	Permit and License
SATR	South Alberta Transmission Reinforcement plan