

Delivered via email (Matthew.Zedde@aeso.ca)

July 15, 2024

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

Attention: Matthew Zedde

Dear Mr. Zedde:

RE: Market Surveillance Administrator (MSA) – Comments on Alberta Electric System Operator (AESO) Draft ISO Rule Section 103.15 – Pilot Projects (Draft Rule 103.15) and Draft Amendments to ISO Rule Section 103.12 - Compliance Monitoring (Draft Rule 103.12)

I write to provide the MSA's comments on the AESO's draft rule and amendments captioned above (Draft Pilot Rules).

In sum, the MSA's comments are:

- the Draft Pilot Rules are unnecessary as they substantially duplicate the existing process in which the AESO seeks forbearance from the MSA in advance of any pilot project;
- the Draft Pilot Rules are unwarranted, as the AESO has not explained how the existing process does not provide certainty to market participants. At the same time, the Draft Pilot Rules would increase risk and uncertainty to firms participating in pilot projects;
- the Draft Pilot Rules purport to permit the AESO to exercise forbearance jurisdiction granted exclusively to the MSA, contrary to the scheme of the *Electric Utilities Act* SA 2003 c E-5.1 (EUA) and the rule of law.

AESO Pilot Projects and the Role of Regulatory Forbearance

In principle, the MSA is not opposed to the AESO conducting pilot projects. The regulations that govern the Alberta electricity market must evolve as the needs of the electricity industry evolve; the ways of the past may not be appropriate for the future. The MSA itself recommended significant changes to the Alberta electricity market in its advice to the Executive Council and Minister of Affordability and Utilities in December 2023.¹ Pilot projects allow the AESO and other electricity market participants to determine whether proposed changes will be technically feasible

¹ Market Surveillance Administrator, *Advice to support more effective competition in the electricity market: Interim action and an Enhanced Energy Market for Alberta*, December 21, 2023, ([Online - link begins download](#))

or have unanticipated effects on the Alberta electricity market. Conducted appropriately, in accordance with the statutory scheme and with proper oversight from the bodies with the statutory mandate and authority to do so, AESO pilot projects may therefore reduce risk to the Alberta electricity market associated with changes to the ISO rules. As the ISO rules in force from time to time may forbid conduct required to participate in an AESO pilot project, participants in such pilot projects need certainty that they will not be exposed to sanctions for non-compliance.

At the same time, the ISO rules are in place for good reason: when complied with, they ensure the reliable operation of the electric system and protect the fair, efficient and openly competitive (FEOC) operation of the Alberta electricity market. The competitive operation of the electricity market is the “touchstone running through all aspects of the legislative scheme governing the electrical industry now in effect in Alberta.”² This “core objective must necessarily inform and guide” interpretation of all relevant legislation.³ The Alberta Legislature created the MSA and cloaked it with the statutory mandate and authority to safeguard the competitive and reliable operation of the Alberta electricity market, with a specific mandate to enforce contraventions of the ISO rules.⁴ The Alberta Courts recognize the MSA’s role as the ‘electricity market watchdog,’⁵ with expertise in carrying out its statutory mandate.⁶ Any process under which the AESO conducts pilot projects must therefore respect the MSA’s statutory role as guardian of the reliable and FEOC operation of the Alberta electricity market.

To balance the need to protect the reliable and FEOC operation of the Alberta electricity market against the need for flexibility in the enforcement of the applicable legislation, the Legislature empowered the MSA with the discretion to forbear from exercising “all or portion” of its statutory mandate, including the enforcement of the ISO rules.⁷ This discretion may only be exercised when the MSA makes specific findings of fact that competition will be sufficient to protect the public interest or that appropriate safeguards are in place to protect the safe and reliable operation of the electric system.⁸ The MSA, as the electricity market watchdog with expertise in carrying out its statutory mandate, is the only entity with the specific jurisdiction to determine when an AESO pilot project will provide sufficient protection for the Alberta electricity market such that existing ISO rules affected by an AESO pilot project do not need to be enforced.

² *ATCO Electric Ltd. v. Alberta (Energy and Utilities Board)*, 2004 ABCA 215, at para. 24

³ *Ibid.*

⁴ *Alberta Utilities Commission Act SA 2003 c A-37.2 (AUCA)*, ss. 32 and 39

⁵ *Alberta (Market Surveillance Administrator) v. Enmax Energy Corporation*, 2007 ABQB 309, at para. 1; *Milner Power Inc. v. Alberta (Energy and Utilities Board)*, 2010 ABCA 236 (*Milner*) at para. 30; *TransAlta Corporation v. Market Surveillance Administrator*, 2014 ABQB 143, at para. 1; *TransAlta Corporation v. Market Surveillance Administrator*, 2014 ABCA 196, at para. 1; *TransAlta Corporation v. Market Surveillance Administrator*, 2015 ABQB 180; *Signalta Resources Limited v. Alberta Balancing Pool*, 2022 ABQB 190, at para. 9

⁶ *Alberta (Market Surveillance Administrator) v. Enmax Energy Corporation*, 2008 ABQB 54, at para. 9

⁷ *AUCA s. 57; Transmission Regulation AR 86/2007 (TRReg) s. 23.1*

⁸ *Ibid.*

The Draft Pilot Rules Substantially Duplicate the Existing Forbearance Process

The Draft Pilot Rules are unnecessary as they substantially duplicate the existing process in which the AESO seeks regulatory forbearance from the MSA in advance of any pilot project.

The AESO asks interested parties if they “prefer the current method of conducting pilot projects without an ISO rule” or the “alternative method proposed in the [Draft Pilot Rules].”⁹ As far as the MSA is aware, all past requests by the AESO for forbearance in connection with pilot projects have only been between the MSA and the AESO, so it is difficult to see how any interested party other than the MSA can meaningfully comment on whether the “current method” is preferable to the Draft Pilot Rules.

The MSA is aware of two instances in which the AESO conducted pilot projects:

- in 2012, the AESO tested wind generators’ ability to be dispatchable and participate in the energy market merit order; and
- in 2021 and 2022, the AESO tested its fast frequency response pilot project (FFR Pilot).¹⁰

Before conducting the two pilot projects set out above, the AESO requested forbearance from the MSA. In support of its request to the MSA for forbearance, the AESO provided the MSA with:

- the specific ISO rules involved;
- the period of time for which the AESO sought forbearance;
- the relevant risks to the operation of the electricity market;
- the rationale for the AESO’s request for forbearance; and
- the scope and purpose of the pilot project the AESO sought to conduct pursuant to the MSA’s forbearance.¹¹

This substantially duplicates the information that the Draft Pilot Rules require the AESO to include in its proposal for a pilot project.¹²

While the form in which the MSA has documented its forbearance decision has evolved, the only substantive difference between the process followed since 2012 and that set out in the Draft Pilot Rules is the change to the MSA’s role from providing regulatory forbearance *ex ante* if it is satisfied that the statutory requirements are met, to providing comments on proposed pilots which the AESO would consider then decide for itself whether to proceed with the pilot.¹³

⁹ AESO, *Stakeholder Comment Matrix – Development of Pilot Project ISO rule Amendments*, <https://www.aesoengage.aeso.ca/43914/widgets/184353/documents/133976> (Comment Matrix)

¹⁰ Copies of the instruments in which the MSA granted forbearance are attached as “Appendix A” hereto, all of which have previously been made public.

¹¹ See Appendix “A”

¹² Draft Rule 103.15, at s. 3(3)

¹³ Draft Rule 103.15, at s. 3(6)

The AESO has not suggested in its consultation materials that the existing forbearance process or seeking the MSA's forbearance prior to commencing a pilot project is unworkable, unwieldy, or otherwise inappropriate, or that the current process is not transparent. In other words, other than seeking forbearance from the MSA in accordance with the statutory scheme before it conducts its pilot projects, the AESO appears willing to follow the existing process.

One of the AESO's stated purposes for the Draft Pilot Rules is to "increase transparency".¹⁴ It is not apparent to the MSA how following substantially the same process, with less involvement from the MSA, increases transparency.

The AESO appears to accept the MSA's role in safeguarding the reliable and FEOC operation of the Alberta electricity market. The Draft Pilot Rules allow the MSA to require the AESO to suspend a pilot project based on a concern that the pilot project will "materially interfere" with the reliable or FEOC operation of the electricity market.¹⁵ However, nothing in the AESO's consultation materials explain how this change provides more transparency to market participants than seeking forbearance from the MSA prior to conducting a pilot project. Further, as set out below, the Draft Pilot Rules introduce significant uncertainty for pilot project participants which is not present under the existing process, contrary to the AESO's stated rationale.¹⁶

The Draft Pilot Rules Do Not Give Pilot Project Participants Certainty

The Draft Pilot Rules are unwarranted, as the AESO has not explained how the existing process does not provide certainty to participants in AESO pilot projects. At the same time, the Draft Pilot Rules would increase risk and uncertainty to firms participating in pilot projects conducted under them.

Under the existing process, the AESO seeks and the MSA considers forbearance in advance of pilot projects. If the MSA is satisfied that the information provided supports the required findings of fact, it grants forbearance. When communicating its forbearance decision, the MSA specifically lists the ISO rules which it will forbear from enforcing. This provides pilot project participants with certainty because they know that a) the decision on forbearance is made by a statutory decision maker with the authority to do so and is therefore enforceable, and b) market participants know precisely what rules will be enforced and which will not. Contrary to the AESO's stated rationale, the Draft Pilot Rules do not provide certainty in either of these ways.

As with all ISO rules, the Draft Pilot Rules are subject to the MSA's enforcement authority and the Alberta Utilities Commission's (Commission) ultimate decision-making authority. The AESO does not have the statutory authority to make findings of fact, so neither the MSA nor the Commission would be bound by the AESO's determination under section 2(2) of Draft Rule 103.15.¹⁷ Thus,

¹⁴ AESO, *Letter of Notice for Development of Proposed New Section 103.15, Pilot Rule and Proposed Amended Section 103.12, Compliance Monitoring ("Pilot Project Rule")* [sic], June 28, 2024 ([Online – Link Begins Download](#)) (Notice Letter), at p. 1

¹⁵ Draft Rule 103.15, at s. 8(1)

¹⁶ Notice Letter, p. 1

¹⁷ Draft Rule 103.15 at s. 2(2)

the AESO's determination that a pilot project "will not materially interfere with" the competitive or reliable operation of the electricity market is subject to challenge in a future proceeding brought by the MSA. Market participants may only find out, years after the fact and following the expense and inconvenience of a contested proceeding, that the AESO's determination was improper and, for that reason, the compliance exemption under the Draft Pilot Rules¹⁸ is not available. This creates significant uncertainty for market participants participating in a pilot project under the Draft Pilot Rules.

Further, the Draft Pilot Rules include a general exemption from compliance with any ISO rule for any "actions or omissions specifically required as a result of participation in a pilot project."¹⁹ While a participant in a pilot project may view its actions and resulting non-compliance with an ISO rule as required as result of its participation in a pilot, nothing in the Draft Pilot Rules binds the MSA or Commission to that view, or prevents the MSA from taking a contrary view in an enforcement proceeding. This issue could only be finally resolved through an adversarial process before the Commission, with the attendant cost, expense, and inconvenience, and the risk the Commission may rule against the market participant. At no point in a pilot project could market participants be certain their actions would not result in a successful prosecution before the Commission.

To the extent that the AESO's concern is that firms will not participate in pilot projects without certainty about which ISO rules will be enforced, it is not apparent how providing less certainty than the existing process will encourage participation in pilot projects. If the concern is that over the course of a pilot project it may become apparent that participation requires non-compliance with an ISO rule not identified in the initial request for forbearance, the existing process allows for this possibility. With respect to the FFR Pilot, the MSA initially granted forbearance in respect of some ISO rules and, when it became apparent that additional rules were implicated, the AESO sought further forbearance and provided full information to the MSA in support of its request, which the MSA granted.²⁰

The AESO has not suggested any market participant refused to participate in the FFR Pilot based on the initial forbearance granted, or that any market participant may be deterred from participating in a future pilot under the existing process. To the contrary, participants went into the FFR Pilot with full knowledge of what rules would and would not be enforced by the MSA. In other words, under the current process, market participants can be certain of their compliance obligations, in a way they would not be under the Draft Pilot Rules.

Further, under the Draft Pilot Rules, pilot project participants could have no certainty as to the length of time a pilot project will run. Under the Draft Pilot Rules, the AESO may propose a pilot project, with the MSA providing comments opposing it, and the AESO may decide to proceed with the pilot project in the face of the MSA's opposition. On the strength of the AESO's decision to proceed, firms may participate in the pilot project on the expectation the pilot project will run a full

¹⁸ Draft Rule 103.12 at s. 13(1)(f).

¹⁹ *Ibid.*

²⁰ Market Surveillance Administrator, Letter Re: AESO Fast Frequency Response Pilot Project ("FFR Pilot") [*sic*] – Update to the List of FFR Pilot Impact Rules, February 2, 2022, at pp. 1 & 2 (Appendix "A")

two years.²¹ However, the Draft Pilot Rules allow the MSA to require the AESO to suspend a pilot on notice from the MSA, with no limitation on when such a suspension could occur.²² A suspension would therefore loom over the pilot project for its entire duration.

Market participants expend significant time, effort, and money preparing for and participating in pilot projects. It is difficult to see how any firm would be willing to participate in a pilot project, with the knowledge that their efforts could disappear at any moment. This does not provide certainty, contrary to the AESO's stated rationale for the Draft Pilot Rules

The Draft Pilot Rules are Contrary to the Rule of Law

Finally, the Draft Pilot Rules are unlawful, as they purport to permit the AESO to exercise forbearance jurisdiction not granted to it by statute, when the Legislature clearly assigned forbearance jurisdiction to the MSA.

Under the Draft Pilot Rules, if the AESO is satisfied that the pilot will not "materially interfere" with the FEOC operation of the electricity market or the safe, reliable, or economic operation of the interconnected electric system, market participants (including the AESO) are excused from non-compliance with any ISO rule (even those not identified in the AESO's pilot project proposal), so long as non-compliance is a result of conduct required to participate in the pilot project.²³ This is a broad-ranging forbearance decision: by initiating a pilot project the AESO effectively decides that no ISO rule may be enforced against a participant in that pilot project. That this is a forbearance decision is shown by the AESO's statement that:

[...] the AESO historically sought a forward-looking, written regulatory forbearance from the MSA prior to commencing a pilot. However, as the Pilot Project Rule specifically authorizes compliance exceptions for market participants engaged in a pilot project, a forbearance should no longer be required.²⁴

The AESO also refers to the "potential risk of an enforcement action" which is eliminated by the Draft Pilot Rules.²⁵ The AESO's determination under s. 2(2) of Draft Rule 103.15, followed by the commencement of the pilot project is plainly intended to stand in the place of the MSA's forbearance decision.

It has long been the law in Canada that:

A decision maker may not exercise authority not specifically assigned to him or her. By acting in the absence of legal authority, the decision maker transgresses the principle of the rule of law.²⁶

²¹ Draft Rule 103.15, at s. 2(3)

²² Draft Rule 103.15, at s. 5(1)

²³ Draft Rule 103.15, at s. 2(2); Draft Rule 103.12 at ss. 13(1)(f) and 13(2)

²⁴ Notice Letter, p. 1

²⁵ *Ibid.*

²⁶ *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 29; cited in *Quebec (Attorney General) v. Guérin*, 2017 SCC 42, at para. 68

As set out above, the jurisdiction to forbear from the enforcement of any ISO rule is assigned to the MSA; no provision in the EUA or other relevant legislation gives the AESO such forbearance jurisdiction. Further, unlike the Commission²⁷ and the MSA,²⁸ the AESO has no statutory authority to make findings of fact. By purporting to authorize the AESO to exercise forbearance jurisdiction not assigned to it by statute and authorizing the AESO to make findings of fact without the statutory authority to do so, the Draft Pilot Rules authorize the AESO to act contrary to the rule of law.

The MSA, rather than the AESO, has exclusive forbearance jurisdiction for good reason. The MSA is, factually and by statute, “independent of any person who has a material interest in the Alberta electric [...] industry.”²⁹ The ISO rules in force from time to time are those which the Commission has approved because they are not technically deficient, support the FEOC operation of the electricity market, and are in the public interest.³⁰ Following approval, the MSA – with the statutory mandate to safeguard the reliable and FEOC operation of the electricity market and independent of “any person with a material interest” in the electricity market – has the statutory authority to forbear from enforcing that rule, but only upon making the required findings of fact.³¹ In sum, only a body with no interest in the electricity market, may decide if a particular ISO rule should not be enforced, and then only if reliability and competition will be assured.

Unlike the MSA, the AESO actively transacts in the electricity market: among other things, it sells system access services, and it purchases ancillary services, both of which make it an electricity market participant.³² The AESO thus has an interest in the electricity market. As an electricity market participant, the AESO itself is bound to follow the ISO rules.³³ As a matter of fairness, all who transact in the electricity market must do so based on equal application of the governing rules.³⁴ However, the Draft Pilot Rules would effectively permit the AESO to decide which ISO rules will apply to it and the entities it does business with in the Alberta electricity market. This is plainly contrary to the scheme of the EUA and the rule of law.

Conclusion

The existing forbearance process meets the AESO’s stated objectives of certainty and transparency, with the added benefit of reflecting the statutory scheme and supporting the rule of law. While the MSA supports the AESO in its efforts to innovate and modernize, this must be done in accordance with the legislative scheme and the rule of law. The Draft Pilot Rules are not in accordance with either, and therefore the Draft Pilot Rules cannot meet the requirements for

²⁷ AUCA s. 8(5)

²⁸ AUCA s. 57; TReg s. 23.1

²⁹ AUCA s. 33(1)

³⁰ EUA s. 20.21(2)(a)

³¹ AUCA s. 57(1); TReg s. 23.1

³² EUA ss. 1(1)(p.2) and 1(1)(q)

³³ EUA s. 20.8

³⁴ *Milner*, at para. 30

approval by the Commission.³⁵ Accordingly, further development of the Draft Pilot Rules should be abandoned.

The MSA looks forward to the AESO's response to the MSA's comments, as contemplated in the Notice Letter.³⁶

Daniel B.R. Johnson
Senior Legal Counsel
Market Surveillance Administrator

cc: Derek Olmstead, CEO, Market Surveillance Administrator
Andrew Wilkins, Director, Market Assessment, Market Surveillance Administrator

³⁵ EUA s. 20.21(2)(a)

³⁶ Notice Letter, at p. 2

Appendix A – MSA Forbearance Instruments

Memo



To: Mike Nozdryn-Plotnicki, MSA
Kevin Wipond, AESO
Neil Curtis, AESO
Jasmine Qadri, AESO
Miranda Keating Erickson, AESO
Kelly Gunsch, AESO
Iram Shamim
Kevin Van Koughnett, TransAlta
Iram Shamim, AESO
From: Jacques Duchesne, AESO
Mariya Goloshchapova, AESO
Date: April, 16 2012
Subject: RE: Wind Dispatch Pilot

The AESO has decided to undertake a pilot project (the "Project") aimed at testing the ability for wind market participants to be equivalent to other generators in terms of energy dispatch requirements and participation in the energy market merit order. The expected benefit of the Project is decreased uncertainty to the real-time supply and demand condition; an incentive to provide more accurate forecast data of wind generators; and improved visibility of supply conditions for the system controller.

Particularly, the project will particularly test whether:

1. it is feasible to successfully integrate wind dispatch in the Alberta energy market;
2. participants are able to stay in compliance with the AESO rules;
3. parameters for restatement can be determined (i.e. 20 minutes between restatements); and
4. does not put undue stress on AESO system controller operations.

The Project was offered to all current wind facility market participants. As of December 5, 2012, TransAlta ("Participant") is the only one who volunteered taking part in the Project. The Participant will be registering two assets – Summerview I and Blue Trail. The Project will start April 16, 2012 and will be completed by October 16, 2012.

Terms of the Project:

- A wind facility must offer at all times its Maximum Capability (MC).
- Any difference between the Available Capability (AC) and the MC will be dealt with as an acceptable operating reason (AOR).
- Participants will receive short-term forecast (10 minute average data, 12 hours ahead) from the WEPORG and will restate their AC based on that forecast.
- Restatements will be limited to no more than 1 restatement in a 20 minute period. Restatements of AC are appropriate for both increases and decreases.

- Inaccuracy or a change in the short-term forecast of the AC in real time is an AOR for restatement.
- Ramp rates will be set to 10% of the installed capacity.
- The response to dispatches from the energy market should be within 10 minutes.
- The minimum stable generation would be 0 MW.
- Dispatches will be received via ADAMs.
- Wind dispatch participants must maintain their last dispatch level until instructed by the system controller through a new energy dispatch.
- After the initiation of the project, the Participant will be meeting biweekly with the AESO evaluation team to track the progress and discuss preliminary results of the Project.
 - Depending on the conclusions of this continuous analysis of non compliance events and the other points from terms of the Project drawn by the evaluation team; the appropriate adjustments may be undertaken if evaluated to be necessary and nature specific for the wind to further participate in the pilot within the ISO rules.

For the duration of the Project, the AESO and the MSA agree that the participating wind power facilities (Summerview I and Blue Trail) will not be subject to compliance with dispatch requirements (Rule 6.6), wind power management (Rule 304.3), and mandatory energy restatements (3.5.3.2). The Participant is expected to act in good faith in the attempts to comply with dispatches and act in accord with all other relevant ISO rules. They will also be closely monitored by the AESO for the purpose of determining whether compliance with ISO rules is reasonably possible after the Project ends.

The AESO and TransAlta reserve the right to withdraw from the Project at any point of time. The MSA reserves the right to change its agreement and exercise of discretion regarding compliance with the above-mentioned ISO rules in relation to the Project, on notice to the AESO and TransAlta. The MSA also at all times reserves its discretion regarding compliance with other applicable ISO rules, standards and enactments, in accordance with its mandate.

Position	Name	Signature
Vice President Market Services	Kelly Gunsch	
Director Market Design	Miranda Keating Erickson	
Program Manager	Jacques Duchesne	
AESO Compliance	Kevin Wipond	
Project Manager	Mariya Goloshchapova	
TransAlta, Director Transmission	Kevin Van Koughnett	
Operation Systems Director	Jasmine Qadri	
Operations Project Delivery Manager	Iram Shamim	
Director for Grid and Market Operatons	Neil Curtis	
MSA, Manager Compliance	Doug Doll	

March 23, 2021

Alberta Electric System Operator
Suite 2500, 330 – 5 Avenue SW
Calgary, AB
T2P 0L4

Dear Pauline McLean and Miranda Keating Erickson:

Re: AESO Fast Frequency Response Pilot Project (“FFR Pilot”) – AESO Request for Forbearance re certain ISO rules

We are writing further to your recent request for the Market Surveillance Administrator (“MSA”) to forbear from enforcing potential contraventions by the “market participants” participating in the FFR Pilot, described below as the “FFR MPs”, and the AESO, of the following ISO rules during the FFR Pilot:

- section 3 of ISO rule 203.1, *Offers and Bids for Energy*;
- sections 2 and 4 of ISO rule 203.3, *Energy Restatement*;
- sections 2, 3, 4, and 6 of ISO rule 203.4, *Delivery Requirements for Energy*;
- sections 4, 5, and 6 of ISO rule 205.2, *Issuing Dispatches and Directives for Operating Reserves*; and
- section 9 of ISO rule 303.1, *Load Shed Service for Imports*

(the foregoing ISO rules collectively referred to as the “FFR Pilot Impact Rules”).

As part of your request, you have advised as follows with regard to the FFR Pilot:

“The AESO currently procures Load Shed Service for imports (“LSSi”) as a transmission reliability product to manage frequency risk as part of the AESO’s efforts to fulfill its intertie restoration obligations. LSSi is currently provided by loads that agree to quickly trip offline following the sudden loss of imports across the interties, which reduces the risk of firm load shed on the system. Loads have traditionally been the only feasible source of LSSi due to their ability to provide a fast response.

As a result of continued advancements, the AESO is interested in exploring the capability of new technologies, such as energy storage, to provide substantially the same service as LSSi. The AESO intends to conduct a small pilot (the “FFR Pilot”) involving market participant(s) who will provide an aggregate volume of 20 – 40 MW of fast frequency response (“FFR”) over a 12 month term (with the overall FFR Pilot occurring over a 12 – 20 month term). The objectives of the FFR Pilot are to evaluate the technical capabilities and performance of new technologies and to identify any market constraints or barriers that may limit participation and determine how best to remove them over the long term. These learnings will help inform the future design of FFR services and potentially increase the competitive market of providers.

During the FFR Pilot, the AESO will continue to maintain volumes of contracted LSSi at or above existing levels, subject to existing commercial terms. The AESO will also require participants in the FFR Pilot to conduct testing to demonstrate they are technically capable of providing FFR before they commence providing FFR services. As a result, the AESO does not believe that the FFR Pilot will impair unduly the safe, reliable and economic operation of the system.”

You also confirm that, with respect to the FFR Pilot, the following are applicable:

- the FFR Pilot will include a FFR Pilot Request for Proposals being issued by the AESO on or about March 24, 2021 for the purpose of selecting FFR service provider(s) (each successful service provider individually or collectively referred to as a “FFR MP” or the “FFR MPs” respectively);
- each FFR MP will be entering into a commercial agreement with the AESO to govern their participation in the FFR Pilot;
- among other things, each commercial agreement will require the FFR MPs to participate in the wholesale electricity market as a “market participant” and register with the AESO as a “pool participant” with respect to the unit they are utilizing for the FFR Pilot (“FFR Unit”);
- as a “pool participant” during the FFR Pilot each FFR MP will be obligated to comply with applicable ISO rules, including the FFR Pilot Impact Rules, and Alberta Reliability Standard (“ARS”); and
- the AESO will be monitoring the FFR MPs pursuant both to its statutory compliance monitoring obligations and their FFR Pilot performance, including the FFR MPs’ compliance with the ISO rules and ARS.

The MSA, pursuant to section 23.1 of the *Transmission Regulation* (“T Reg.”) may decide to “refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or carrying out any part of its mandate...”, which includes exercising its authority to enforce contraventions of ISO rules or ARS,” ...if it finds as a question of fact, that there are practices,

processes, plans, or other measures in place to protect the safe reliable and economic operation of the Alberta interconnected electric system (“AIES”).

The MSA grants forward-looking forbearance rarely and only under extraordinary circumstances. The MSA has decided to refrain from undertaking enforcement action against the FFR MPs and the AESO with respect to contraventions of the FFR Pilot Impact Rules during the FFR Term¹ having made the following findings of questions of fact pursuant to section 23.1 of the T Reg.:

- a) the FFR Pilot, including the procured volume participating in the FFR Pilot at 20 to 40 MW, is unlikely to unduly impair the safe, reliable, and economic operation of the AIES;
- b) it is in the public interest for the MSA to facilitate pilot projects which the AESO and the MSA deems to be in the public interest, from time to time and on a limited term basis, such as those that may demonstrate the usefulness of and learning about new technologies that are not yet commercial in their own right (or may have other potential applications) in an administratively efficient manner; and
- c) there are measures in place by the AESO to monitor the compliance of the FFR MPs with the ISO rules and ARS, including the AESO’s reporting obligations to the MSA of suspected contraventions of those.

Subject to there being no misstatement of any of the above findings of fact, to there being no circumstance arising from the contravention of the FFR Pilot Impact Rules that may unduly impair the safe, reliable and economic operation of the AIES and to the following, the MSA, during the FFR Pilot Term, will refrain from pursuing any enforcement action against the FFR MPs and the AESO with regard to a contravention of the FFR Pilot Impact Rules:

- that the AESO undertakes its monitoring and reporting obligations to the MSA with respect to the FFR MP’s compliance with ISO rules and ARS;
- that each FFR MP makes a reasonable effort to comply with the FFR Pilot Impact Rules with regard to their FFR Unit;
- that the AESO provides the MSA reporting on the progress of the FFR Pilot during the FFR Term in a form, manner and frequency agreed to with the MSA;
- that the AESO provides updates to the Alberta electric industry and the public on the outcomes of the FFR Pilot after the FFR Term has concluded;
- that the AESO, in its sole discretion, may withdraw its request for forbearance for the FFR MPs, in whole or in part, by providing ten days prior written notice of such withdrawal to the MSA, or the MSA, in its sole discretion, may revoke such forbearance, in whole or in

¹ The FFR Term shall commence on the date the AESO issues the FFR Pilot Request for Proposals and shall end on the earlier of April 1, 2023 from such date or the date the AESO terminates the FFR Pilot. For clarity, the FFR Term shall end for a FFR MP upon the earlier of the expiration or termination of its commercial agreement with the AESO.

part, by providing ten days prior notice to the AESO, and upon the expiration of the notice period for withdrawal or revocation, as the case may be, such forbearance will be of no further force and effect; and

- that the MSA's forbearance shall not become effective until such time that the MSA receives the AESO's signed acknowledgement and agreement to the terms and conditions outlined in this letter requesting forbearance of the FFR Pilot Impact Rules.

For clarity, FFR MPs and the AESO shall continue to be responsible for complying with all applicable ISO rules and ARS outside the scope of the FFR Pilot.

The AESO and the MSA agree to communicate this matter to the Alberta electricity industry and the public by posting a copy of this letter on their respective websites in a timely manner and at such time as mutually agreed upon.

This letter does not constitute forbearance of any ISO rules other than the FFR Pilot Impact Rules and each such other ISO rule and ARS shall remain subject to the MSA's surveillance, investigation, and enforcement thereof. During the course of the FFR Pilot, if the AESO or MSA identify any other ISO rule or ARS that may be affected by the FFR Pilot, the parties shall meet in good faith to discuss whether or not to include such ISO rule or ARS to the list of FFR Pilot Impact Rules, above. The MSA reserves its rights to make a final decision with respect to such inclusion in accordance with its legislative mandate.

If acceptable, please sign and return a copy of this letter at your earliest convenience acknowledging the granting of your request and the associated terms and conditions. This letter may be signed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Yours truly,

MARKET SURVEILLANCE ADMINISTRATOR

**Derek E. H.
Olmstead**

Digitally signed by Derek E. H.
Olmstead
Date: 2021.03.23 09:58:31
-06'00'

Derek Olmstead
Market Surveillance Administrator

The AESO hereby acknowledges the granting of the request and agrees with the associated terms and conditions outlined in this letter as of this 23rd day of March, 2021.

**INDEPENDENT SYSTEM OPERATOR, operating as the
ALBERTA ELECTRIC SYSTEM OPERATOR**



Digitally signed by
Miranda Keating Erickson
Date: 2021.03.23 16:32:24
-06'00'

Miranda Keating Erickson
Vice President, Markets

**Pauline
McLean**

Digitally signed by
Pauline McLean
Date: 2021.03.23
12:07:06 -06'00'

Pauline McLean
Vice President, Law, General Counsel and Corporate Secretary

February 2, 2022

Alberta Electric System Operator
Suite 2500, 330 – 5 Avenue SW
Calgary, AB
T2P 0L4

Dear Pauline McLean and Miranda Keating Erickson:

Re: AESO Fast Frequency Response Pilot Project (“FFR Pilot”) – Update to The List of FFR Pilot Impact Rules

We are writing further to our letter dated March 23, 2021 (the “Forbearance Letter”)¹ granting forbearance to the Independent System Operator, operating as the Alberta Electric System Operator (the “AESO”), and the FFR MPS relating to the FFR Pilot.

Following recent discussions between the AESO and the Market Surveillance Administrator (the “MSA”), the MSA understands that the AESO has identified additional ISO rules that may be affected by the FFR Pilot. These additional ISO rules include section 7 of ISO rule 203.4, section 10 of ISO rule 205.5, section 6 of ISO rule 205.6, and section 3(2) of ISO rule 303.1 (collectively, the “Additional ISO Rules”).

Based on information presented by the AESO, the MSA is satisfied that contraventions of the Additional ISO Rules in relation to the FFR Pilot are unlikely to unduly impair the safe, reliable, and economic operation of the Alberta interconnected electric system. Accordingly, the MSA has included the Additional ISO Rules in the list of FFR Pilot Impact Rules. The MSA and the AESO agree that the amended definition of “FFR Pilot Impact Rules” in the Forbearance Letter now reads as follows:

- section 3 of ISO rule 203.1, *Offers and Bids for Energy*;
- sections 2 and 4 of ISO rule 203.3, *Energy Restatement*;
- sections 2, 3, 4, 6, and 7 of ISO rule 203.4, *Delivery Requirements for Energy*;
- sections 4, 5, and 6 of ISO rule 205.2, *Issuing Dispatches and Directives for Operating Reserves*;

¹ Forbearance Letter: [AESO Fast Frequency Response Pilot Project \(“FFR Pilot”\) – AESO Request for Forbearance re certain ISO rules](#). All capitalized terms not otherwise defined shall have the meaning ascribed to such terms in the Forbearance Letter.

- section 10 of ISO rule 205.5, *Spinning Reserve Technical Requirements and Performance Standards*;
- section 6 of ISO rule 205.6, *Supplemental Reserve Technical Requirements and Performance Standards*; and
- sections 3(2) and 9 of ISO rule 303.1, *Load Shed Service for Imports*,

(the foregoing ISO rules collectively referred to as the "FFR Pilot Impact Rules").

The Forbearance Letter, as amended by this letter, is and continues in full force and effect and is hereby confirmed and the rights and obligations of all parties under the Forbearance Letter shall not be affected or prejudiced in any manner except as specifically provided for in this letter.

The AESO and the MSA agree to communicate this matter to the Alberta electricity industry and the public by posting a copy of this letter on their respective websites in a timely manner and at such time as mutually agreed upon.

If acceptable, please sign and return a copy of this letter at your earliest convenience acknowledging the granting of your request and the associated terms and conditions. This letter may be signed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Yours truly,

MARKET SURVEILLANCE ADMINISTRATOR

**Derek
Olmstead** Digitally signed by
Derek Olmstead
Date: 2022.02.02
12:25:03 -07'00'

Derek Olmstead
Market Surveillance Administrator

The AESO hereby acknowledges the granting of the request and agrees with the associated terms and conditions outlined in this letter as of this 4th day of February, 2022.

**INDEPENDENT SYSTEM OPERATOR, operating as the
ALBERTA ELECTRIC SYSTEM OPERATOR**

 Digitally signed
by Miranda
Keating Erickson
Date: 2022.02.04
16:10:29 -07'00'

Miranda Keating Erickson
Vice President, Markets

**Pauline
McLean** Digitally signed by
Pauline McLean
Date: 2022.02.03
12:42:53 -07'00'

Pauline McLean
Vice President, Law, General Counsel and Corporate Secretary