



Balancing Pool

**Application for Orders Permitting the Sharing
of Records Not Available to the Public Between
the Balancing Pool, URICA Energy Real Time Ltd.
and Small Scale Power Producers**

April 16, 2021

Alberta Utilities Commission

Decision 26308-D01-2021

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Proceeding 26308

Application 26308-A001

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1 Decision summary

1. In this decision, the Alberta Utilities Commission considers whether to approve an application brought under Section 3 of the *Fair, Efficient and Open Competition Regulation*, by the Balancing Pool, for either orders to permit the preferential sharing of records that are not available to the public between the Balancing Pool, URICA Energy Real Time Ltd. and small scale power producers for which the Balancing Pool is acting as the electricity market participant, or a determination that orders are not required in these cases. As part of the present application, the Balancing Pool also asked for an order, if necessary, permitting the preferential sharing of records that are not available to the public between the Balancing Pool, URICA, Innisfail Solar Corporation, Elemental Energy Inc. (EEI) and Elemental Energy Renewables Inc. (EERI), as Innisfail Solar has requested that the Balancing Pool act on its behalf as an electricity market participant.

2. The Commission has determined that individual orders will be required for each small scale power producer that requests the Balancing Pool to act on its behalf as an electricity market participant. Additionally, the Commission has granted the application for an order between the Balancing Pool, URICA, Innisfail Solar, EEI and EERI to permit the sharing of records pertaining to the electricity and ancillary services markets under Subsection 3(3) of the *Fair, Efficient and Open Competition Regulation*.

2 Introduction and procedural background

3. On February 9, 2021, the Balancing Pool filed an application¹ with the AUC pursuant to Section 3 of the *Fair, Efficient and Open Competition Regulation*, AR 159/2009.

4. In its application, the Balancing Pool requested that the Commission determine whether the Balancing Pool requires orders permitting the preferential sharing of records not available to the public when the Balancing Pool is acting as the market participant for small scale power producers. Although the Balancing Pool is generally required to act as the market participant on behalf of small scale power producers, per the *Small Scale Generation Regulation*, it does not have the necessary resources to submit offers into the electricity market on a constant basis, and therefore, has retained the services of URICA, which provides 24-hour real-time dispatch-desk service for operational energy market services, ancillary services, dispatch-down services and energy restatement with respect to the small scale power producers. If an order is required, it requested that such an order be granted permitting the sharing of records not available to the public among the Balancing Pool, URICA, Innisfail Solar, EEI and EERI.

¹ Application 26308-A001.

5. The AUC issued notice of the application on February 23, 2021. In the notice, the Commission advised that the parties granted standing in the proceeding were limited to the Balancing Pool and the Market Surveillance Administrator (MSA), in accordance with Subsection 3(5) of the *Fair, Efficient and Open Competition Regulation*.

6. On March 9, 2021, the MSA advised the Commission that while it was supportive of the Balancing Pool's information sharing arrangements with URICA, individual record sharing orders would still be necessary for every small scale power producer, with the exception of those with less than 5-megawatt (MW) capacity, as they are not required to submit price-availability offers into the market. The MSA further indicated that it did not object the granting of an order to permit the sharing of non-public records between the Balancing Pool, URICA, Innisfail Solar, EEI and EERI. The MSA stated that it would not require an evidentiary process.

7. The Commission considers the record for this proceeding closed as of March 9, 2021.

8. In reaching the determinations contained 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 that matter.

3 The Commission's authority to allow record sharing

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

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

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

10. Another factor that the Commission considers in making a determination on the sharing of records is market-share offer control. Subsection 5(5) of the *Fair, Efficient and Open Competition Regulation* states that a market participant shall not hold offer control in excess of 30 per cent of the total maximum capability of generating units in Alberta.

11. The Commission is also cognizant of the requirement in Section 6 of the *Electric Utilities Act* that “[m]arket participants are to conduct themselves in a manner that supports the fair, efficient and openly competitive operation of the market.”

4 Discussion of issues and Commission findings

4.1 Requirement for individual orders

12. Under Section 7 of the *Small Scale Generation Regulation*, the Balancing Pool has a statutory obligation to act as the electricity market participant on behalf of a small scale power producer, unless the owner of the qualified small scale generating unit requests otherwise.

13. The Balancing Pool explained that it does not have adequate personnel or the resources to accept energy or ancillary services dispatch orders in order to manage the output of small scale power producers in the Alberta energy or ancillary services markets on a 24-hour basis as required of an electricity market participant.

14. To meet this obligation, the Balancing Pool has entered into commercial arrangements with URICA, which provides a 24-hour real-time dispatch-desk service to clients for operational energy-market services, ancillary services, dispatch-down services and energy restatements for events at generators as required by the independent system operator (ISO) rules. These arrangements necessitate that the Balancing Pool share records, including share offer information not available to the public, for small scale power producers relating to the dispatch of electricity services with URICA.

15. The Balancing Pool submitted that because it must act on behalf of small scale power producers pursuant to Section 7 of the *Small Scale Generation Regulation*, Subsection 3(2)(e) of the *Fair, Efficient and Open Competition Regulation* permits the sharing of records without requiring an order from the Commission. Alternatively, the Balancing Pool suggested that a master order could be granted by the Commission to cover all such cases arising in the future.

16. Additionally, the Balancing Pool requested clarification on the following matters:

- (a) What process should be followed for all subsequent applications of this kind, and
- (b) Is an order required to permit the sharing of non-public information if the small scale power producer’s generation capacity is less than 5 MW.

17. The starting point for interpreting statutory provisions is Driedger’s modern principle of statutory interpretation. The Supreme Court of Canada explained Driedger’s principle and its application to the statutory scheme administered by the Commission in *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*.² The court stated that the principle requires that “the words of an act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.”³

² *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4, paragraph 37.

³ *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4, paragraph 37.

The court clarified that it looks first at the grammatical and ordinary meaning of a provision and then examines the entire statutory context and legislative intent. The court concluded, “the ultimate goal is to discover the clear intent of the legislature and the true purpose of the statute while preserving the harmony, coherence and consistency of the legislative scheme.”⁴

18. Subsection 3(2)(e) of the *Fair, Efficient and Open Competition Regulation* states that:

(2) Records that are not available to the public...may be shared:

(e) by an electricity market participant with another person, where required or permitted to do so by any enactment, except an ISO rule

19. As noted above, Section 7 of the *Small Scale Generation Regulation* requires the Balancing Pool to act as the market participant on behalf of small scale power producers in dealings with the ISO, concerning the small scale power producer’s supply of electricity to the interconnected electric system, unless the small scale power producer notifies the Balancing Pool otherwise. As a market participant, the Balancing Pool is subject to the requirements of the *Fair, Efficient and Open Competition Regulation*. The exemption in Subsection 3(2)(e) that permits the sharing of records by a market participant (in this case, the Balancing Pool) with another person must be required or permitted by a legislative enactment. The legislative requirement to act as the market participant is just that, a requirement to act. The *Small Scale Generation Regulation* does not consider how the Balancing Pool will carry out its responsibilities as a market participant. There are no provisions set out in the *Small Scale Generation Regulation* which require or permit the Balancing Pool, when acting as a market participant, to share records.

20. Because the Balancing Pool is required to act as the market participant for a small scale power producer, the Commission finds that, consistent with the legislative scheme, the exemption in Subsection 3(2)(e) is applicable and there would be no need for a Commission order permitting the sharing of records not available to the public between the small scale power producer and the Balancing Pool.

21. While an order is not required between the Balancing Pool and the small scale power producer, this exemption does not apply between URICA and the small scale power producer. As noted above, the *Small Scale Generation Regulation* does not address how the Balancing Pool would provide the market participant services. Based on the legislation, URICA is not, nor can it be, the market participant acting for the small scale power producer, and the small scale power producer is not the market participant. Because the exemption set out in Subsection 3(2)(e) is limited to the market participant and another person, it cannot be relied on to support the sharing of records not available to the public between URICA and the small scale power producer.

22. In response to the Balancing Pool’s request that the Commission issue a master order, the Commission finds that Subsection 3(3) of the *Fair, Efficient and Open Competition Regulation* would support the issuance of a master order; however, the Commission’s preference at this time

⁴ *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4, paragraph 37.

is to issue preferential sharing of records orders for each small scale generating unit. In its application, the Balancing Pool indicated that the Innisfail Solar Project (asset ID INF1) is the only small scale power producer for which it is currently acting as the market participant. If circumstances change, warranting different arrangements due to volume or efficiency concerns, the Balancing Pool may bring forward a request for a master order to the Commission.

23. The Balancing Pool has also requested direction concerning the filing requirements for future applications it anticipates receiving from small scale power producers. These applications must meet the minimum filing requirements for preferential sharing of records applications, as communicated on the AUC's website, but may rely upon representations regarding the Balancing Pool and URICA as contained within the present application, provided they have not changed. Any changes must be clearly identified in the new application.

24. Provided the record-sharing arrangements with small scale power producers are approved, the Commission will issue separate orders for each small scale generating unit. If the Balancing Pool and the MSA would prefer a specific form of order, they may draft one that is mutually agreeable and the Balancing Pool may provide it with the next small scale power producer preferential sharing of records application that is submitted to the Commission.

25. Finally, the Commission agrees with the MSA that small scale power producers with a capacity of 5 MW or less do not require an information sharing order, as they will not be submitting offers into the electricity market.

4.2 Innisfail Solar Corporation

26. The Balancing Pool advised that it will be acting as the market participant for Innisfail Solar regarding INF1, which has been qualified as a small scale generating unit under Subsection 2(1) of the *Small Scale Generation Regulation*. Innisfail Solar is owned by EEI, and EERI is the asset and project manager of INF1. As part of its application, the Balancing Pool requested an order, if necessary, granting the sharing of non-public records between the Balancing Pool, URICA, Innisfail Solar, EEI and EERI.

27. Written representations from senior officers of the Balancing Pool and Innisfail Solar attesting to the necessity for the sharing of records with URICA was filed with the application along with written representations from senior officers of URICA, Innisfail Solar, EEI and EERI indicating that the records subject to preferential information sharing will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the Alberta electricity market, including but not limited to, the conduct referred to in Section 2 of the *Fair, Efficient and Open Competition Regulation*.

28. The aforementioned written representations also identified that the Balancing Pool, URICA and Innisfail Solar each have a formal program for internal compliance in place regarding the information sharing requirements under the *Fair, Efficient and Open Competition Regulation*.

29. The Balancing Pool further advised that its total offer control is zero per cent, that URICA's total offer control is zero per cent and that EEI's total offer control is 0.2 per cent, all

of which are less than the offer-control limit of 30 per cent, as set out in Subsection 5(5) of the *Fair, Efficient and Open Competition Regulation*.

30. Subsection 3(3) of the *Fair, Efficient and Open Competition Regulation* authorizes the Commission to issue an order permitting the sharing of records on any terms and conditions that the Commission considers appropriate, provided that certain requirements are satisfied. For the reasons that follow, the Commission finds that those requirements have been met.

31. The Commission is satisfied that the Balancing Pool and Innisfail Solar have demonstrated that (i) the sharing of records with URICA is reasonably necessary for the Balancing Pool to carry out its business as electricity market participant on behalf of Innisfail Solar; and (ii) the subject records will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the Alberta electricity market, including the conduct referred to in Section 2 of the *Fair, Efficient and Open Competition Regulation*. The Commission is further satisfied that the Balancing Pool, Innisfail Solar, EEI, EERI and URICA will conduct themselves in a manner that supports the fair, efficient and openly competitive operation of the market. In making these findings, the Commission has relied on:

- (a) Submissions from the Balancing Pool stating that it does not have adequate personnel or the resources required to monitor facility operations on a 24-hour basis.
- (b) Written representations from senior officers of the Balancing Pool, Innisfail Solar, EEI, EERI and URICA confirming that any records subject to preferential information sharing will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the Alberta electricity market and that they will conduct themselves in a manner that supports the fair, efficient and openly competitive operation of the market.
- (c) Written representations from the Balancing Pool confirming that it has a formal system of controls and policies that ensure the information shared with URICA will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the Alberta electricity market, including the conduct referred to in Section 2 of the *Fair, Efficient and Open Competition Regulation*. The Commission understands that all officers and employees of the Balancing Pool are required to comply with these policies.
- (d) Written representations from URICA that it has a formal system of controls and policies that ensure the information shared with URICA will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the Alberta electricity market, including the conduct referred to in Section 2 of the *Fair, Efficient and Open Competition Regulation*. The Commission understands that all officers and employees of URICA are required to comply with these policies.

32. The Commission also finds that offer-control figures for all entities involved (both before and after any approval to share records) are less than the offer-control limit of 30 per cent, as set out in Subsection 5(5) of the *Fair, Efficient and Open Competition Regulation*.

33. Finally, the Commission considers the MSA's support of this application to be a contributing factor in its determination to permit the sharing of records, given the MSA's mandate under Subsection 39(2)(a)(vi) of the *Alberta Utilities Commission Act* to survey, investigate or enforce the "arrangements, information sharing and decisions relating to electricity market participants exchanging or wishing to exchange electric energy and ancillary services or any aspect of those activities."

34. For all of the above reasons, the Commission is prepared to issue an order allowing the Balancing Pool, Innisfail Solar, EEI and EERI to share records not available to the public with URICA, subject to the following terms and conditions:

- (a) The order applies to the sharing of non-public price, quantity and availability information, between the Balancing Pool, Innisfail Solar, EEI, EERI and URICA, pertaining to the Innisfail Solar Project, that may relate to INF1's participation in the Alberta electricity and ancillary services markets, as described in the application.
- (b) The Balancing Pool, Innisfail Solar, EEI, EERI and URICA must notify the Commission of the termination of the commercial arrangements between the Balancing Pool, Innisfail Solar, EEI, EERI and URICA as soon as is practicable and within 30 days of the termination of such commercial arrangements;
- (c) The Balancing Pool, Innisfail Solar, EEI, EERI and URICA must notify the Commission of any material changes to the information and continued applicability of any representations included within its application that may affect the compliance of the Balancing Pool, Innisfail Solar, EEI, EERI or URICA with the *Fair, Efficient and Open Competition Regulation* as soon as is practicable and within 30 days of the material changes.

35. Last, the Commission notes that in Decision 25438-D01-2020, it approved the sharing of non-public records for INF1 among Innisfail Solar, EEI, EERI and URICA.⁵ As the Balancing Pool will now be acting as the market participant for Innisfail Solar, the Balancing Pool indicated that the sharing arrangements approved by the Commission in Decision 25438-D01-2020 would be terminated concurrent with the approval of this application.

36. The order shall be effective from the date of this decision until the earlier of June 1, 2029, or the termination of commercial arrangements between the Balancing Pool, Innisfail Solar, EEI, EERI and URICA.

⁵ Decision 25483-D01-2020: Innisfail Solar Corporation – Preferential Sharing of Records Between Innisfail Solar Corporation, Elemental Energy Inc., Elemental Energy Renewables Inc. and URICA Real Time Energy Ltd., Proceeding 25483, Application 25483-A001, April 15, 2020.

5 Order

37. Pursuant to the provisions of Section 3 of the *Fair, Efficient and Open Competition Regulation*, the Commission grants the application for the sharing of records set out in the following order granted to the Balancing Pool, Innisfail Solar Corporation, Elemental Energy Inc., Elemental Energy Renewables Inc. and URICA Energy Real Time Ltd., which is a separate disposition in this proceeding:

- (1) Preferential Sharing of Records Between the Balancing Pool, Innisfail Solar Corporation, Elemental Energy Inc., Elemental Energy Renewables Inc. and URICA Energy Real Time Ltd. – Innisfail Solar Project INF1 – Order 26308-D02-2021 – April 16, 2021

Dated on April 16, 2021.

Alberta Utilities Commission

(original signed by)

Vincent Kostas
Acting Commission Member