



AUC

Alberta Utilities Commission

Pembina NGL Corporation

**Application for an Order Permitting the
Sharing of Records Not Available to the Public
Between Pembina NGL Corporation
and TransCanada Energy Ltd.**

August 25, 2021

Alberta Utilities Commission

Decision 26715-D01-2021

Pembina NGL Corporation

Application for an Order Permitting the
Sharing of Records Not Available to the Public

Between Pembina NGL Corporation
and TransCanada Energy Ltd.

Proceeding 26715

Application 26715-A001

August 25, 2021

Published by the:

Alberta Utilities Commission

Eau Claire Tower

1400, 600 Third Avenue S.W.

Calgary, Alberta T2P 0G5

Telephone: 310-4AUC (310-4282) in Alberta

1-833-511-4AUC (1-833-511-4282) outside Alberta

Email: info@auc.ab.ca

Website: www.auc.ab.ca

The Commission may, within 60 days of the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

Contents

1	Decision summary	1
2	Introduction and procedural background	1
3	The Commission’s authority to allow record sharing	2
4	Submissions of the applicant	2
4.1	Is the proposed sharing of records reasonably necessary	2
4.2	Fair, efficient and openly competitive operation of the electricity market.....	3
4.3	Offer control.....	3
5	Commission findings	3
6	Order	5

**Application for an Order Permitting the
Sharing of Records not Available to the Public
Between Pembina NGL Corporation
and TransCanada Energy Ltd.**

**Decision 26715-D01-2021
Proceeding 26715
Application 26715-A001**

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 Pembina NGL Corporation for the preferential sharing of records that are not available to the public between Pembina and TransCanada Energy Ltd.

2. As discussed in greater detail below, Pembina established that the sharing of such records is reasonably necessary for it to carry out its business and that the shared records will not be used for any purpose that will not support the fair, efficient and openly competitive operation of the electricity market. On this basis, and noting the support of the Market Surveillance Administrator (MSA), the Commission has granted the application 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 July 22, 2021, Pembina filed an application¹ with the AUC pursuant to Section 3 of the *Fair, Efficient and Open Competition Regulation*, AR 159/2009. The application sought an extension to existing Order 24297-D04-2019, which permits the sharing of records not available to the public between Pembina and TransCanada, relating to Pembina's 45.8-megawatt (MW) natural gas-fired cogeneration unit and TransCanada's 46-MW cogeneration facility, both located in the town of Redwater, Alberta.

4. In its application, Pembina explained that Order 24297-D04-2019 is set to expire on December 31, 2021; however, Pembina and TransCanada recently agreed to extend the term of the RFS Excess Power Agreement, which concerns the aforementioned assets, to October 31, 2026. Pembina requested that the currently approved order be likewise extended to October 31, 2026.

5. The AUC issued notice of the application on July 27, 2021. In the notice, the Commission advised that the parties granted standing in the proceeding were limited to Pembina and the MSA, in accordance with Subsection 3(5) of the *Fair, Efficient and Open Competition Regulation*.

6. On August 5, 2021, the MSA advised the Commission that it supports the application of Pembina and does not require further evidentiary process.

¹ Application 26517-A001.

7. The Commission considers the record for this proceeding closed as of August 5, 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 Submissions of the applicant

4.1 Is the proposed sharing of records reasonably necessary

12. In its application, Pembina identified that its application constituted an extension of the term of its existing commercial arrangements with TransCanada regarding the Pembina and TransCanada cogeneration assets, from December 31, 2021 to October 31, 2026.

13. Pembina confirmed that there would be no substantive changes to the information sharing arrangements already approved between itself and TransCanada.

14. For the same reasons as presented in the original application, Pembina and TransCanada asserted that the sharing of non-public records relating to the Pembina and TransCanada cogeneration assets is reasonably necessary in order for them to carry out their business regarding the aforementioned assets. Written representations from senior officers of Pembina and TransCanada attesting to the necessity for the continued sharing of records were filed with the application.

4.2 Fair, efficient and openly competitive operation of the electricity market

15. As part of the application, Pembina and TransCanada filed written representations from senior officers of Pembina and TransCanada 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*.

16. The senior officer's written representations also identified that Pembina and TransCanada have formal systems of controls and policies which ensure that the information shared between them will be handled appropriately, including adherence to Section 2 of the *Fair, Efficient and Open Competition Regulation*.

17. Additionally, the written representations confirmed that Pembina and TransCanada have policies to safeguard information and access to information that is confidential and commercially sensitive, including non-public offer information and the confidential information of companies with which Pembina and TransCanada do business.

4.3 Offer control

18. Pembina advised that Pembina's total offer control is 0.3 per cent, and that TransCanada's offer control is 2.9 per cent, both 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*.

5 Commission findings

19. 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.

20. The Commission is satisfied that Pembina has demonstrated that (i) the extension of the existing records sharing order is reasonably necessary for Pembina to carry out its business; 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 Pembina and TransCanada will continue to 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 Pembina and TransCanada confirming that there will be no substantive changes from the existing records sharing order, that the sharing of records remains reasonably necessary for the companies to carry out their business regarding the Pembina and TransCanada cogeneration assets, and that the extended term in the application matches the extended terms of the RFS Excess Power Agreement.
- (b) Written representations from senior officers of Pembina and TransCanada 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 Pembina and TransCanada confirming that they have formal systems of controls and policies that ensure the information shared 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*.

21. 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*.

22. 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."

23. For all of the above reasons, the Commission is prepared to issue an order extending the term of Pembina and TransCanada's existing order allowing them to share records not available to the public, subject to the following terms and conditions:

- (a) The order applies to the sharing of non-public price, quantity and availability information, between Pembina and TransCanada, pertaining to the Pembina and TransCanada cogeneration assets, that may relate to the assets' participation in the Alberta electricity and ancillary services markets, as described in the application.
- (b) Pembina and TransCanada must notify the Commission of the termination of the commercial arrangements between Pembina and TransCanada as soon as is practicable and within 30 days of the termination of such commercial arrangements;

- (c) Pembina and TransCanada 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 Pembina or TransCanada with the *Fair, Efficient and Open Competition Regulation* as soon as is practicable and within 30 days of the material changes.

24. The order shall be effective from the date of this decision until the earlier of October 31, 2026, or the termination of commercial arrangements between Pembina and TransCanada.

6 Order

25. 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 Pembina NGL Corporation and TransCanada Energy Ltd., which is a separate disposition in this proceeding:

- Preferential Sharing of Records – Pembina and TransCanada Cogeneration Assets – Order 26715-D02-2021 – August 25, 2021

Dated on August 25, 2021.

Alberta Utilities Commission

(original signed by)

Fino Tiberi
Executive Director, Market Oversight and Enforcement Division
On behalf of the Alberta Utilities Commission