



AUC

Alberta Utilities Commission

Balancing Pool

**Application for an Order Permitting the Sharing
of Records Not Available to the Public Regarding
the Brooks Solar II Power Plant**

January 26, 2022

Alberta Utilities Commission

Decision 27093-D01-2022

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Application for an Order Permitting the Sharing
of Records Not Available to the Public Regarding
the Brooks Solar II Power Plant

Proceeding 27093

Application 27093-A001

January 26, 2022

Published by the:

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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 the preferential sharing of records that are not available to the public between the Balancing Pool, Brooks Solar II Corporation (Brooks Solar), Elemental Energy Inc. (Elemental Energy), Elemental Energy Renewables Inc. (EERI) and URICA Energy Real Time Ltd. (URICA).

2. As discussed in greater detail below, the Balancing Pool 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 Alberta energy market under subsection 3(3) of the *Fair, Efficient and Open Competition Regulation*.

2 Introduction and procedural background

3. On January 12, 2022, the Balancing Pool filed an application¹ with the AUC pursuant to Section 3 of the *Fair, Efficient and Open Competition Regulation*. The application seeks an order from the Commission permitting the sharing of records not available to the public between the Balancing Pool (acting in its capacity on behalf of a small scale power producer, per Section 7 of the *Small Scale Generation Regulation*), Brooks Solar, Elemental Energy, EERI and URICA. The requested order relates to the Brooks Solar II Power Plant, located in Newell County, which has a combined maximum capability of 26.5 megawatts (MW), with 12.5 MW at asset ID BRK1 and 14.0 MW at asset ID BRK2.

4. Brooks Solar, which holds the power plant approval for BRK1 and BRK2, is a subsidiary of Elemental Energy. EERI is contracted as the asset and project manager of BRK1 and BRK2.

5. Section 7 of the *Small Scale Generation Regulation* states that “unless...request[ed] otherwise, the Balancing Pool (a) must act as the electricity market participant on behalf of the small scale power producer in dealings with the ISO in respect of the electric energy supplied by the small scale power producer’s small scale generating unit.” Brooks Solar qualifies as a small scale power producer and is therefore represented as an electricity market participant by the Balancing Pool.

¹ Application 27093-A001.

6. In its application, the Balancing Pool indicated that it has entered into commercial arrangements with URICA, which, among other things, appoint URICA as an agent of the Balancing Pool to provide 24-hour real-time dispatch-desk service for operational energy market services and energy restatements for events at BRK1 and BRK2. These arrangements will make it necessary for the Balancing Pool, Brooks Solar, Elemental Energy, EERI and URICA to share with each other certain records that are not otherwise available to the public, including operational and dispatch information, energy price, volume pairs and available capability. The agreement between the companies is for services to be provided until the earlier of June 1, 2029, or the termination of the commercial arrangements.

7. The AUC issued a notice of the application on January 14, 2022. In the notice, the Commission advised that the parties granted standing in the proceeding were limited to the Balancing Pool and the MSA, in accordance with subsection 3(5) of the *Fair, Efficient and Open Competition Regulation*.

8. On January 17, 2022, the MSA advised the Commission that it supports the application of the Balancing Pool and does not require further evidentiary process.

9. The Commission considers the record for this proceeding closed as of January 17, 2022.

10. 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

11. 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 offers 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.

12. 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.

13. 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

14. The Balancing Pool does not have an internal 24-hour real-time dispatch desk in order to address events at power producers as required by the independent system operator (ISO) rules. URICA provides this 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 ISO rules and has the necessary expertise and resources to assist the Balancing Pool.

15. For this reason, the Balancing Pool asserted that the sharing of non-public records relating to BRK1 and BRK2 is reasonably necessary in order for it to carry out its business regarding BRK1 and BRK2. Written representations from senior officers of the Balancing Pool, Brooks Solar, Elemental Energy and EERI, attesting to the necessity for the sharing of records with URICA, were filed with the application.

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

16. As part of the application, written representations from senior officers of the Balancing Pool, Brooks Solar, Elemental Energy and EERI were filed 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*.

17. The senior officers’ written representations also identified that the Balancing Pool, Brooks Solar, Elemental Energy and EERI have formal systems of controls and policies which ensure that the information shared with URICA will be handled appropriately, including adherence to Section 2 of the *Fair, Efficient and Open Competition Regulation*.

18. Additionally, the written representations from the senior officers of the Balancing Pool confirmed that the Balancing Pool has in place a *Code of Conduct for Directors and Officers* and a *Code of Conduct for Employees* that require all directors, officers and employees to comply with applicable laws, rules and regulations, including the protection of confidential information.

19. Similarly, the representations from senior officers of Brooks Solar, Elemental Energy and EERI indicated that they have in place a *Code of Conduct and Ethics Policy* and a *Confidentiality Policy*, which require all employees and other persons conducting business on the premises to comply with the applicable laws, rules and regulations, including the protection of confidential information.

20. A written representation from a senior officer of URICA was filed with the application, which confirms that any records 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 but not limited to the conduct referred to in Section 2 of the *Fair, Efficient and Open Competition Regulation*. The senior officer of URICA confirmed that URICA has a formal compliance plan and program in place to safeguard confidential and commercially sensitive information and access to such information, including non-public quantity-offer information and the confidential information of companies with which URICA does business. All of URICA's employees, officers and affiliates are required to acknowledge and comply with the compliance plan and the *Fair, Efficient and Open Competition Regulation*. Access to secured information is strictly controlled and monitored.

4.3 Offer control

21. The Balancing Pool advised that the Balancing Pool's total offer control is zero per cent, that Brooks Solar, Elemental Energy and EERI's total offer control is 0.5 per cent and that URICA's offer control is zero 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*.

5 Commission findings

22. 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.

23. The Commission is satisfied that the Balancing Pool has demonstrated that (i) the extension of the existing records sharing order is reasonably necessary for the Balancing Pool 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 the Balancing Pool, Brooks Solar, Elemental Energy, 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 an internal 24-hour real-time dispatch desk in order to address events at power producers as required by the ISO rules.

- (b) Written representations from senior officers of the Balancing Pool, Brooks Solar, Elemental Energy, 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 operation of the market.
- (c) Written representations from the Balancing Pool, Brooks Solar, Elemental Energy and EERI confirming that they have formal systems of controls and policies that ensure the information shared with the Balancing Pool, Brooks Solar, Elemental Energy and EERI 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 employees and others conducting business on behalf of the Balancing Pool, Brooks Solar, Elemental Energy and EERI are required to comply with these policies.
- (d) Written representations from URICA stating 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.

24. 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*.

25. 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."

26. For all of the above reasons, the Commission is prepared to issue an order allowing the Balancing Pool, Brooks Solar, Elemental Energy 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, Brooks Solar, Elemental Energy, EERI and URICA, pertaining to BRK1 and BRK2, that may relate to BRK1 and BRK2's participation in the Alberta energy market, as described in the application.
- (b) The Balancing Pool, Brooks Solar, Elemental Energy, EERI and URICA must notify the Commission of the termination of the commercial arrangements between the Balancing Pool, Brooks Solar, Elemental Energy, EERI and URICA as soon as is practicable and within 30 days of the termination of such commercial arrangements.

- (c) The Balancing Pool, Brooks Solar, Elemental Energy, 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, Brooks Solar, Elemental Energy, EERI or URICA with the *Fair, Efficient and Open Competition Regulation* as soon as is practicable and within 30 days of the material changes.

27. 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, Brooks Solar, Elemental Energy, EERI and URICA.

6 Order

28. 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 as set out in the following order granted to the Balancing Pool, Brooks Solar II 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 – Brooks Solar II Power Plant –
Order 27093-D02-2022

Dated on January 26, 2022.

Alberta Utilities Commission

(original signed by)

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