



Alberta Electric System Operator

**Request for Guidance on the Treatment of
a Line Loss Refund Related to
the Calgary Energy Centre**

June 8, 2022

Alberta Utilities Commission

Decision 27048-D01-2022

Alberta Electric System Operator

Request for Guidance on the Treatment of

a Line Loss Refund Related to

the Calgary Energy Centre

Application 27048-A001

Proceeding 27048

June 8, 2022

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1 Summary

1. In this decision, the Alberta Utilities Commission dismisses a request made by the Alberta Electric System Operator (AESO)¹ for guidance regarding the treatment of a refund associated with historical line losses as directed in Commission Decision 790-D06-2017 (the Module C decision).²

2 Background

2.1 AUC Proceeding 790: the “line loss” proceeding

2. The AESO is responsible for managing and recovering the costs of transmission line losses, as set out in Subsection 17(e) of the *Electric Utilities Act*. The costs of transmission line losses are included in the independent system operator (ISO) tariff.³ Subsection 30(4) of the *Electric Utilities Act* provides that the AESO may recover the costs of line losses from market participants by including those costs in the ISO tariff or by establishing and charging fees for those costs.

3. In 2005, Milner Power Inc. objected to a rule proposed by the AESO for the calculation of transmission loss factors (the line loss rule). The AUC’s predecessor, the Alberta Energy and Utilities Board, dismissed Milner’s objection and approved the line loss rule. Milner successfully appealed that decision and the matter was remitted to the Commission for rehearing. The Commission subsequently upheld Milner’s objection and found the line loss rule to be unlawful. The result of this finding was that, for the historical period (January 1, 2006 to December 31, 2016), some parties paid more in line loss charges than they should have, while others paid less.⁴

4. In the Module C decision, the Commission approved a modified methodology for the calculation of final line loss factors for the historical period and then directed the AESO to reissue invoices for line loss charges or credits (refunds) to those parties holding supply

¹ The AESO is referred to in Section 7 of the *Electric Utilities Act* as the Independent System Operator (ISO). In other words, the AESO is the corporation established to act as the ISO in Alberta. The ISO is referred to as the AESO throughout this decision.

² Decision 790-D06-2017: Milner Power Inc., Complaints Regarding the ISO Transmission Loss Factor Rule and Loss Factor Methodology, ATCO Power Ltd., Complaint Regarding the ISO Transmission Loss Factor Rule and Loss Factor Methodology, Proceeding 790, Phase 2 Module C, December 18, 2017.

³ Sections 33 and 34 of the *Transmission Regulation*, and subsection 30(4) of the *Electric Utilities Act*.

⁴ After finding the line loss rule to be unlawful, the Commission addressed the residual line loss issues in different modules, called Modules A, B and C.

transmission service (STS) contracts for system access service (SAS)⁵ at the relevant time, rather than to current STS contract holders.⁶ The Commission emphasized that it was only determining which market participants were to receive new invoices at first instance, for the historical period, and not which market participants might ultimately be responsible for paying those invoices (or receiving final refunds) pursuant to separate commercial agreements.

2.2 The AESO's request for guidance

5. On December 13, 2021, the AESO filed an application with the Commission requesting guidance on the treatment of a line loss refund owed to the Calgary Energy Centre (CEC) of \$8,343,537.16, for the period of February 1, 2006 to December 31, 2006. The CEC is a natural-gas-fuelled generation facility on the northern boundary of the city of Calgary. Calpine Power, LP was the holder of the STS contracts for the CEC for the period in question in 2006.

6. Effective September 11, 2008, ENMAX Energy Corporation purchased all of the shares of Calgary Energy Centre Holdings Inc., which in turn owns the shares of CEC. The AESO stated that ENMAX⁷, as the current holder of the STS contracts for the CEC, has raised the question of whether it is entitled to the refund pursuant to an assumption assignment and novation (AA&N) agreement.⁸

7. The AESO originally invoiced Calpine for interim line loss adjustments for the CEC. However, the AESO stated that Calpine was dissolved on December 18, 2007. Calpine's general partner, Calpine Canada Power Ltd., was dissolved on December 30, 2008. The AESO added that on October 4, 2021, Calpine Corporation, a Delaware corporation and former affiliate of Calpine and Calpine Canada Power Ltd., advised the AESO that it did not intend to "pursue recovery of the Calpine Power LP Module C Settlement proceeds."⁹ The AESO attempted to contact a number of Calpine entities, most of which were dissolved. None of the Calpine entities that the AESO contacted claimed any legal interest in the refund.

8. ENMAX is asserting the right to recover the refund and interest under an originating application filed with the Court of Queen's Bench of Alberta on December 15, 2021.¹⁰

9. In its application, the AESO sought to rely on the authority vested in the Commission in Subsection 8(5) of the *Alberta Utilities Commission Act*. As part of a more general request for guidance, the AESO specifically requested the Commission to confirm that the AESO's approach as outlined in the Module C Settlement Procedure (also referenced in the AESO's submissions as the Module C Settlement Update) is consistent with the Commission's intent in

⁵ Invoices under the ISO tariff are issued to electricity market participants that hold STS contracts with the AESO. Market participants are all electricity market participants exchanging or wishing to exchange electric energy and ancillary services.

⁶ Permission to appeal the Module C decision was denied in *Enmax Energy Corporation v Alberta Utilities Commission*, 2019 ABCA 222.

⁷ Exhibit 27048-X0008, ENMAX Corporation, ENMAX Energy Corporation and Calgary Energy Centre No. 2 participated in this proceeding.

⁸ Exhibit 27048-X0005, AESO application, paragraph 3(g).

⁹ Exhibit 27048-X0005, AESO application, paragraph 3(f).

¹⁰ Exhibit 27048-X0015, ENMAX Corporation, ENMAX Energy Corporation and Calgary Energy Centre No. 2 Inc. originating application, filed December 15, 2021.

the Module C decision and applicable laws. This approach would result in the refund for the CEC vesting with the Crown rather than being addressed through Rider E. The Module C Settlement Procedure is an information and guidance document, prepared by the AESO, which provides that the Module C settlement refunds owing to corporations that have been dissolved must be transferred to the Alberta Treasury Board and Finance in accordance with the *Unclaimed Personal Property and Vested Property Act* (UPPVPA).¹¹ Included in the settlement procedure is the following:

The AESO subsequently determined that Module C settlement refunds owing to corporations that have been dissolved must be transferred to Alberta Treasury Board and Finance in accordance with the *Unclaimed Personal Property and Vested Property Act* (Alberta). Any amounts that remain unpaid after the AESO has exhausted all reasonable means of refunding the amounts will accordingly not result in those amounts being addressed through Rider E.¹²

10. The AESO sought direction from the Commission on how the AESO should treat the refund when the original (interim) invoices were paid by Calpine. The AESO requested Commission guidance on three questions (the reference questions),¹³ related to the refund:

- (a) Confirmation that the AESO's approach, as outlined in the Module C Settlement Update and as further described below, is consistent with the Commission's intent in the decision and applicable laws such that the refund vests with the Crown pursuant to Section 229 of the *Business Corporations Act* (Alberta) and Subsection 15(a) of the UPPVPA; or
- (b) If the AESO's approach, as described in the Module C Settlement Update, is not aligned with the Commission's intent, should the refund be distributed through the Rider E process among all market participants paying charges or receiving refunds for the historical period through the Module C settlement process; or
- (c) How should the refund otherwise be dealt with in accordance with the decision and applicable laws?

11. The Commission notes that the AESO has characterized its application as a request for guidance. However, the reference questions it has addressed to the Commission go far beyond mere guidance, including whether the AESO's Module C Settlement Procedure complies with "applicable laws." Given the Commission's decision to dismiss the request for guidance, there is no need to address the more detailed reference questions.

¹¹ *Unclaimed Personal Property and Vested Property Act*, SA 2007, c U-1.5.

¹² Exhibit 27048-X0005, footnote 3, Module C Settlement Procedure, was updated and posted on the AESO's website on August 6, 2021. In paragraph 39 of the Module C Settlement Procedure at Exhibit 27048-X0006, the AESO states: "Also as of July 2021, the AESO has fully paid all refunds from the first Module C settlement period. The AESO has been unable to pay approximately \$11.5 million of refunds from the second and third Module C settlement periods owing to corporations that have since been dissolved." The Calgary Energy Centre refund is from the third Module C settlement period. Rider E is described in the Module C decision at paragraph 182 as: "Rider E is used to adjust loss factors to ensure that the actual cost of losses is reasonably recovered through charges and credits. The AESO must determine a calibration factor each quarter to recover or refund differences between the forecast and actual cost of losses."

¹³ Exhibit 27048-X0005, paragraph 4.

2.3 Commission process

12. The Commission issued notice of the proceeding on December 17, 2021, requesting that statements of intent to participate (SIPs) be filed by January 7, 2022. ENMAX filed a SIP and a letter indicating that it had filed materials with the Court of Queen’s Bench of Alberta to adjudicate the issue of ENMAX’s contractual entitlement to the refund. Capital Power Corporation filed a SIP, stating that it stands to be affected by the outcome of this proceeding because it holds interests in several Alberta generating facilities that were subject to line loss charges or credits during the 2006-2016 period covered by the Module C decision.

13. On January 6, 2022, the AESO responded to ENMAX’s letter, clarifying that it was not requesting a determination from the Commission of ultimate responsibility for payment of the Module C invoices pursuant to separate commercial agreements. Rather, it was asking the Commission to provide guidance to parties on the unique circumstances involving the refund, namely, the appropriate treatment of refunds where the original holder of the STS agreements and payee of the original (interim) invoices is a dissolved corporation and where all known affiliates of which have not claimed any legal interest in the refund.

14. On January 17, 2022, ENMAX filed an unsolicited submission that appended the originating application filed with the Court of Queen’s Bench of Alberta and two supporting affidavits.

15. The Commission gave the AESO the opportunity to respond to ENMAX’s submissions and Capital Power’s SIP. After receiving the AESO’s responses, the Commission received a letter from Capital Power,¹⁴ a late SIP and correspondence from the Balancing Pool,¹⁵ and ENMAX’s response to the Balancing Pool’s late SIP.¹⁶

16. For the reasons set out below, the Commission dismisses the AESO’s request for guidance related to the refund.

3 Statutory considerations related to jurisdiction

17. The AESO has rule-making authority under Section 20 of the *Electric Utilities Act*, including rules regarding practices and procedure. Section 31 of the *Transmission Regulation* provides express direction regarding the development of a line loss rule.

18. The Commission is a statutorily created public tribunal. Its jurisdiction to consider a matter must be found either within its applicable statutes or by practical necessity and necessary implication.¹⁷ A review of the Commission’s legislative authority in the *Alberta Utilities Commission Act*, the *Electric Utilities Act*, and their associated regulations provides the context for the Commission’s jurisdiction on the AESO’s request for guidance. As set out in Subsection 8(5) of the *Alberta Utilities Commission Act*, the Commission has the power to hear and determine questions of law, make orders, and grant relief. Subsection 8(2) grants the

¹⁴ Exhibit 27048-X0019, February 10, 2022.

¹⁵ Exhibits 27048-X0020 and 27048-X0021, February 14, 2022.

¹⁶ Exhibit 27048-X0023, February 23, 2022.

¹⁷ *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, [2006] 1 SCR 140, paragraphs 38, 50 and 51 and *Capital Power Corporation v Alberta Utilities Commission*, 2018 ABCA 437, paragraph 77.

Commission the power to do all things that are necessary for or incidental to the exercise of its functions.

19. Subsection 119(4) of the *Electric Utilities Act* requires the AESO to file a tariff with the Commission for approval. Subsections 122(2) and 122(3) require that the approved tariff provide the AESO with a reasonable opportunity to recover the costs and expenses of carrying out its duties, responsibilities and functions. As prescribed in Section 34 of the *Transmission Regulation*, in accordance with the ISO rules, the cost of transmission line losses must be reasonably recovered using the loss factors under the ISO tariff.

20. The Commission approves ISO rules through the provisions established in sections 20.21 and 20.6 of the *Electric Utilities Act*. The Commission has the authority to hear complaints related to the AESO as set out in sections 25 and 26. The Milner complaint about line losses was one such example.

4 Commission jurisdiction on AESO application for guidance

21. The AESO submitted that the Commission has jurisdiction over the reference questions and it should exercise its powers under subsection 8(5) of the *Alberta Utilities Commission Act* to answer the reference questions.

22. ENMAX's position is that the AESO's application calls upon the Commission to determine a private contractual matter over which the Commission has no jurisdiction.¹⁸ It noted that the commercial question of which market participant should ultimately receive the payment of the refund is the subject of a live application before the court.¹⁹ With the benefit of the additional material on the record, Capital Power advised that it supported ENMAX's jurisdiction-related submissions and the specific relief ENMAX requested.²⁰

23. The Balancing Pool took no position on the AESO's application for guidance with respect to the refund where the original holder of the STS agreements and payee of the original (interim) invoices is a dissolved corporation.

24. Section 3.4 of the Module C decision provides the Commission's findings on whether the AESO should bill current or previous contract holders for line losses in the historical period:

While the previous Line Loss Rule itself was determined to be unlawful, and the related line loss charges were determined to be interim, no party to this proceeding has suggested that the invoices for those line loss charges were issued to the wrong party during the historical period. In ordering that a compliant line loss rule replaces an unlawful rule during the historical period, and that a just and reasonable rate replace an unjust, unreasonable, unduly preferential, and arbitrarily or unjustly discriminatory interim rate, **the Commission must proceed on the basis that the invoices for the interim rates were issued to the correct parties, and that the invoices for the final rates should be issued to the same parties.**

¹⁸ Exhibit 27048-X0008, page 5.

¹⁹ Exhibit 27048-X0012, pages 3-4.

²⁰ Exhibit 27048-X0019, page 2.

...

The Commission finds that invoicing current STS holders for charges or credits for the line losses of predecessor STS holders could **create unfair advantages for some market participants that could potentially distort both the market and the structure of the industry.** The Commission notes, in this regard, that the effect of invoicing current STS holders could potentially do that which the Commission previously found to be impermissible, i.e., to bestow on a group of competitors financial benefits to which they may have no just claim. In the Commission's view, this could potentially interfere with the efficient market for electricity based on fair and open competition as required by Section 5 of the *Electric Utilities Act*. **This is not to say that market participants are not free to contractually shift liabilities for past unlawful rates they were charged. Rather, it simply recognizes that such transactions fall outside the statutory scheme and the Commission's purview.**

...Disadvantaged loss savers and undercharged loss causers are treated justly and reasonably if they receive final invoices that correct the competitive injustice wrought by unlawful interim charges. **This is consistent with the Commission's express intention throughout this proceeding. Subject to the ongoing caveat in this decision that the Commission is only determining which market participants the AESO must invoice, and that the ultimate responsibility for payment may rest with others pursuant to separate commercial agreements, the Commission finds it is just and reasonable to issue final invoices to the same party that received the original (currently interim) invoices for line losses during the historical period.**²¹ (emphasis added)

25. In the Module C decision, the Commission stated that Section 15(2)²² of the AESO's approved tariff allows for market participants to transfer an agreement for SAS or any rights under it to another market participant who is eligible for the SAS available under such an agreement and the ISO tariff, but only with the consent of the AESO. The Commission determined that the purpose of Section 15(2) of the ISO tariff was to provide the AESO and market participants with certainty about the effects of assignments in the normal course.²³

26. The Commission finds that the AESO would have been aware of the assignment from Calpine to ENMAX in relation to CEC generation assets because it was a signatory to the AA&N agreement and it recognized and consented to the assignment.²⁴

27. Consistent with the Module C decision, the Commission continues to be of the view that market participants were "free to contractually shift liabilities for past unlawful rates they were charged" and "that such transactions fall outside the statutory scheme and the Commission's purview." The Commission directed in that decision that separate commercial arrangements were to be resolved through normal legal process between claimants. In doing so, the Commission made it clear that separate contractual arrangements that may have shifted liabilities among parties were not intended to be within the purview of the Commission to adjudicate.

²¹ Module C Decision, paragraphs 124 and 126-127.

²² Section 15(2) – Assignment of the ISO tariff is now Section 12.2 – Assignment.

²³ Module C decision, paragraph 119.

²⁴ Exhibit 27048-X0013, AA&N agreement of August 7, 2007, starting at PDF page 109. Note that ENMAX describes the ENMAX Beddington Substation (162S) CTG (Combustion Turbine Generator) listed in the agreement as the Calgary Energy Centre in its originating application e.g., see paragraph 12 of Exhibit 27048-X0013, PDF page 4.

28. Although the Commission in the Module C decision did not specifically comment on how the AESO might address a refund owed to a dissolved partnership or corporation, it did recognize that the AESO would have to settle charges and refunds, the AESO would need to make all reasonable efforts in completing this task, and the AESO may ultimately need to resort to tariff rate rider, Rider E:

The Commission recognizes that the magnitude of any shortfall or surplus resulting from the settlement process will not be known until the final invoices for charges and refunds have been issued and financially settled. Only then, and only after reasonable efforts have been made to collect unpaid charges, would the amount of **any shortfall or surplus** be known. **Therefore, the Commission directs that the AESO exhaust all reasonable means to collect outstanding amounts before resorting to recovery through Rider E.**²⁵ (emphasis added)

29. No party has requested a review and variance of any of the Module C findings and, in fact, the AESO, ENMAX and the Balancing Pool cautioned the Commission against doing so.²⁶

30. In the current proceeding, the AESO stated that it reached its position, as communicated in the Module C Settlement Procedure, based on the direction and orders of the Commission in the Module C decision, the particular facts involving the refund for the CEC, and the legislative framework for unclaimed personal property in Alberta. The AESO communicated that it is not requesting that the Commission re-adjudicate, unwind or reconsider issues previously decided in the Module C decision.²⁷

31. The Module C Settlement Procedure was created by the AESO. It has not been reviewed or approved by the Commission, nor did the Module C decision contemplate that such a procedure would be reviewed by the Commission. The AESO's settlement procedure describes how it proposes to deal with unclaimed refunds, including relying on the provisions of the UPPVPA. The AESO now seeks guidance on a refund that ENMAX is claiming through a legal process outside of the AESO's settlement procedure, by way of an originating application in the Court of Queen's Bench of Alberta.

32. The excerpt from the AESO's Settlement Procedure quoted in paragraph 9 above suggests to the Commission that the AESO itself interpreted paragraph 194 of the Module C decision to require it to exhaust all reasonable means to both collect outstanding amounts still owed for historical line losses and to refund monies (i.e., issue credits) to all STS contract holders that paid excessive charges at first instance for historical line losses, before dealing with the ultimate outcome of the settlement process.

33. The scope of issues addressed in the Module C decision excluded entitlements or liabilities of STS holders or parties under private contract or agreement. As indicated above, the Commission in the Module C decision made clear that those individual contracts or agreements fall outside the statutory scheme and the Commission's purview. The Commission finds that providing a comprehensive response to the reference questions would effectively require the Commission to modify or vary the Module C decision and could potentially lead to one or more

²⁵ Module C decision, paragraph 194.

²⁶ The AESO at Exhibit 27048-X0010, page 1; ENMAX at Exhibit 27048-X0012, page 2; and the Balancing Pool at Exhibit 27048-X0021, page 1.

²⁷ Exhibit 27048-X0005, paragraph 5.

unintended consequences of indeterminate magnitude, scope and direction.

34. As a final point, while an administrative tribunal is not bound by its previous decisions or the decisions of its predecessor, the Supreme Court of Canada in *Vavilov* opined that administrative decision makers and reviewing courts must be concerned with the general consistency of administrative decisions.²⁸ The Commission recently issued a decision providing guidance on an AESO application for guidance on whether simple or compound interest should be applied to amounts owed and owing.²⁹ This panel of the Commission finds that the AESO's current request for guidance on the refund is distinguishable because, unlike the AESO's application for guidance on the interest calculation to be applied in the Module C settlement process, the current application seeks guidance beyond what is required to implement a past Commission direction or decision. As discussed herein, the Commission previously found in the Module C decision that individual contractual arrangements to reassign any legal obligations for line loss payments and rights to refunds fall outside the statutory scheme and the Commission's purview.

35. For the above reasons, the AESO's request for guidance on the treatment of the refund is dismissed.

5 Other matters

36. Three other matters were raised in the proceeding:

(a) The AESO requested that the Commission confirm that the AESO should continue to hold the refund until the Commission issues its decision. The AESO made the request because of certain provisions of timing of payment related to the UPPVPA.³⁰

(b) ENMAX requested a stay in the proceeding pending a final determination in the courts³¹ if the Commission decided to adjudicate the AESO's application.

(c) ENMAX objected to the Balancing Pool's late filing of a SIP.³²

37. For (a), the AESO's request was withdrawn because the Alberta Treasury Board and Finance advised the AESO that it will not require the AESO's compliance with the timelines of UPPVPA until the Commission's process is complete.

38. For (b), the Commission finds that ENMAX's request for a stay is moot now that the Commission has dismissed the AESO's request for Commission guidance on the treatment of the refund for the CEC.

39. Finally, for (c), the Commission notes that the Balancing Pool's filing of a late SIP and related correspondence is not consistent with the requirements in Section 32 of

²⁸ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, paragraph 129.

²⁹ Decision 26084-D01-2021: Alberta Electric System Operator, Request for Guidance on the Interest Calculation to be Applied to the Proceeding 790 Module C Settlement Process, Proceeding 26084, January 26, 2021.

³⁰ Exhibit 27048-X0005, paragraph 37(b).

³¹ Exhibit 27048-X0008, page 2.

³² Exhibit 27048-X0023.

Rule 001: *Rules of Practice*. However, as the Balancing Pool took no position on the narrow question posed by the AESO in this proceeding, and as the concerns it expressed were outside the scope of this proceeding and, hence, outside the scope of the Commission's consideration, there is no prejudice to any party from permitting the Balancing Pool's late SIP to remain on the record. This notwithstanding, the Commission reminds the Balancing Pool that, in the future, it must request permission before filing a late SIP.

6 Order

40. For the reasons set out in this decision, the Alberta Electric System Operator's application for guidance on the treatment of the refund related to the Calgary Energy Centre is dismissed.

Dated on June 8, 2022.

Alberta Utilities Commission

(original signed by)

Kristi Sebalj
Panel Chair

(original signed by)

Vera Slawinski
Commission Member

(original signed by)

Bohdan (Don) Romaniuk
Acting Commission Member