



Market Surveillance Administrator

**Application for Approval of a Settlement Agreement
Between the Market Surveillance Administrator,
Canadian Hydro Developers Inc. and TransAlta Corporation**

September 14, 2023

Alberta Utilities Commission

Decision 28217-D01-2023

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Application for Approval of a Settlement Agreement

Between the Market Surveillance Administrator,

Canadian Hydro Developers Inc. and TransAlta Corporation

Proceeding 28217

Application 28217-A001

September 14, 2023

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1 Introduction

1. On June 12, 2023, the Market Surveillance Administrator (MSA) filed a request for a hearing and approval of a settlement agreement between the MSA, Canadian Hydro Developers Inc. and TransAlta Corporation, under sections 44(2) and 51(1)(b) of the *Alberta Utilities Commission Act*. The MSA submitted its application in relation to this matter on June 28, 2023. The settlement agreement was reached after an investigation conducted by the MSA regarding conduct that occurred between October 26, 2020, and June 1, 2021, related to the Summerview 1 battery storage asset (SUM1). Canadian Hydro owns and is the market participant responsible for SUM1. TransAlta operates SUM1 on behalf of Canadian Hydro, and was responsible for its development and construction.¹

2. The Commission issued a notice of application on July 11, 2023, and granted standing to participate in the proceeding to the MSA, Canadian Hydro and TransAlta. No other requests for standing were received.

2 Application

2.1 Investigation and contraventions

3. The MSA investigation was prompted by a referral from the Alberta Electric System Operator (AESO) on August 19, 2021. The AESO procures operating reserves, including spinning reserve and non-spinning reserve, to manage system reliability.² On February 6, 2021, and May 19, 2021, the Alberta Interconnected Electric System (AIES) frequency dropped below the prescribed deadband. At the time of both frequency drops, SUM1 was dispatched to provide spinning reserve, but failed to increase its real power output in proportion to the drop in AIES frequency. As a result, the AESO suspected contraventions of ISO Rule 205.5 *Spinning Reserve Technical Requirements and Performance Standards* by Canadian Hydro.

4. TransAlta and Canadian Hydro co-operated fully with the MSA investigation. The investigation found, and TransAlta and Canadian Hydro have agreed, that contrary to ISO Rule 205.5, they failed to ensure that SUM1 was equipped with a governor that had control settings providing an immediate, automatic and sustained response to frequency deviations on the AIES (the Governor Requirement). It was found and agreed that during the relevant times, when SUM1 was dispatched to provide spinning reserve, SUM1 failed to provide the immediate, automatic and sustained response to drops in system frequency below the deadband required by ISO Rule 205.5 (the Response Requirement). It was also found and agreed that TransAlta and

¹ Canadian Hydro is a wholly owned subsidiary of TransAlta Renewables Inc., which is a subsidiary of TransAlta.

² Consolidated Authoritative Document Glossary, effective July 7, 2021, page 25.

Canadian Hydro did not take all steps which were reasonable in the circumstances to ensure SUM1 would meet the requirements of ISO Rule 205.5. The investigation concluded that by offering spinning reserve from SUM1 through the Alberta Watt Exchange Limited, Canadian Hydro misrepresented to the AESO that spinning reserve, including the required frequency response, was available from SUM1 between October 26, 2020, and June 1, 2021.

5. During this time period, Canadian Hydro derived \$1,938,921.68 from the sale of spinning reserve which SUM1 could not provide. Canadian Hydro incurred direct costs of \$7,717.01 to charge SUM1 following responses to the AESO directives, reducing the total benefit to \$1,931,204.68.

2.2 Proposed settlement

6. To address the contraventions established through the MSA's investigation and agreed to by Canadian Hydro and TransAlta, the parties have reached a settlement agreement, the terms of which include the following:

- (a) TransAlta, on behalf of itself and Canadian Hydro, will pay an administrative penalty in the total amount of \$2,470,204.68 including:
 - (i) \$1,931,204.68 to address the economic benefit received.
 - (ii) \$39,000.00 as interest on the economic benefit received.
 - (iii) \$500,000.00 as an additional administrative penalty on account of the contraventions.
- (b) TransAlta, on behalf of itself and Canadian Hydro, will pay to the MSA its costs of the investigation and the application in the amount of \$65,000.00.
- (c) TransAlta has undertaken corrective actions and has committed to take, but has not yet completed, corrective actions.
- (d) TransAlta will meet with the MSA on or before September 30, 2023, and on or before March 15, 2024, to share and discuss its progress in implementing and completing its program of corrective actions, which are intended to improve the due diligence and compliance program at TransAlta.

3 Regulatory framework

7. Under Part 5 of the *Alberta Utilities Commission Act*, the MSA has the mandate to, among other things, investigate matters and undertake activities, including enforcement, to address contraventions of the *Electric Utilities Act* and the regulations under that act, the ISO rules and to address conduct that does not support the fair, efficient and openly competitive operation of the electricity market. The MSA has the jurisdiction to investigate complaints which it is satisfied fall within its statutory mandate³ and is authorized to negotiate settlements to

³ *Alberta Utilities Commission Act*, Section 42.

resolve any matter that relates to its mandate and enter into settlement agreements.⁴ The MSA is required to file any settlement agreement with the Commission for approval in accordance with Section 51(1)(b) of the *Alberta Utilities Commission Act*.⁵

8. Under Section 56(4)(b) of the *Alberta Utilities Commission Act*, the Commission has the jurisdiction to provide direction or make any order it considers appropriate in respect of a matter brought before it by the MSA under Section 51(1)(b) of the *Alberta Utilities Commission Act*. Section 63 of the *Alberta Utilities Commission Act* authorizes the Commission to impose an administrative monetary penalty and any terms or conditions it considers appropriate if the Commission is satisfied that a person contravened the *Electric Utilities Act* or the regulations thereunder or an ISO rule. An administrative penalty under Section 63 of the *Alberta Utilities Commission Act* may include an amount of up to \$1 million per each day or part of a day upon which a contravention occurred, a one-time amount to address the economic benefit obtained as a result of a contravention, or both.⁶

9. The contraventions before the Commission in this proceeding relate to TransAlta and Canadian Hydro's compliance with ISO Rule 205.5, sections 6 and 20.8 of the *Electric Utilities Act* and Section 2(d) of the *Fair, Efficient and Open Competition Regulation*.

10. Electricity market participants are governed by, among other things, rules made by the AESO and approved by the Commission.⁷ Section 20.8 of the *Electric Utilities Act* requires electricity market participants to comply with all ISO rules which are in effect.

11. ISO Rule 205.5 prescribes the requirements for spinning reserve, which include:

- (a) The pool participant must ensure its asset is equipped with a governor system that, among other things:
 - (i) is responsive to over- and under-frequency events; and
 - (ii) has no time delays, ramp characteristics or other control settings that prevent the spinning reserve resource from providing an immediate, automatic and sustained response to frequency deviations;⁸
- (b) The pool participant must ensure that, among other things, while its asset is under dispatch to provide spinning reserve, the change in real power from the asset is continuously proportional to the measured system frequency for any change in system frequency outside the prescribed deadband of 60 ± 0.036 hertz (Hz).⁹

12. Under Section 6 of the *Electric Utilities Act*, all electricity market participants must conduct themselves in a manner that supports the fair, efficient and openly competitive operation of the electricity market. Section 2(d) of the *Fair, Efficient and Open Competition Regulation*

⁴ *Alberta Utilities Commission Act*, Section 44(1).

⁵ *Alberta Utilities Commission Act*, Section 44(2).

⁶ *Alberta Utilities Commission Act*, Section 63.

⁷ *Electric Utilities Act*, sections 20 and 20.21.

⁸ ISO Rule 205.5, Section 3(1)(b).

⁹ ISO Rule 205.5, Section 6(2).

provides that misrepresenting to any other person the availability of ancillary services¹⁰ is conduct that does not support the fair, efficient and openly competitive operation of the electricity market. As a service which, among other things, ensures the AIES frequency remains at an acceptable level within the deadband, spinning reserve is an ancillary service. The Commission considers a breach of section 2(d) of the *Fair, Efficient and Open Competition Regulation* to be a breach of section 6 of the *Electric Utilities Act*.¹¹

4 Commission findings

13. In this application, the MSA requests that the Commission approve a settlement agreement between the MSA, TransAlta and Canadian Hydro under sections 44(2) and 51(1)(b) of the *Alberta Utilities Commission Act*. The agreement involves an administrative penalty and an award of costs that the Commission will consider pursuant to sections 63 and 66 of the *Alberta Utilities Commission Act*. It also includes a program of corrective actions that TransAlta has agreed to take but not yet completed.

14. A two-stage process has been established and confirmed in prior Commission decisions¹² to assess whether a negotiated settlement and the associated administrative penalties should be approved. First, the Commission must be satisfied that a contravention occurred. If this criterion is met, the second step requires the Commission to determine if the settlement falls within a range of acceptable outcomes. In the second step, the Commission considers the criteria set out in AUC Rule 013: *Rules on Criteria Relating to the Imposition of Administrative Penalties*.

15. Section 3 of Rule 013 states that the Commission shall make its decision based on the factors relevant to each case, which include but are not limited to, the seriousness of the contravention and the co-operation of the person named in the contravention. To determine the seriousness of the contravention, the Commission is guided by the considerations listed in Section 4 of Rule 013, which include the harm that was caused, possible manipulation, deceit or artifice that led to the contravention, the persistence and systematic nature of the contravention, the duration of the contravention and other factors. The sanctions are intended to be protective and preventative, but not punitive.¹³

¹⁰ Ancillary services are those services required to ensure the interconnected electric system is operated in a manner that provides a satisfactory level of service with acceptable levels of voltage and frequency (*Electric Utilities Act*, Section 1(1)(b)).

¹¹ Decision 3110-D01-2015: Market Surveillance Administrator – Market Surveillance Administrator allegations against TransAlta Corporation et al., Mr. Nathan Kaiser and Mr. Scott Connelly, Phase 1, Proceeding 3110, July 27, 2015, paragraph 174

¹² See for example Decision 23828-D02-2020: Market Surveillance Administrator - Application for Approval of a Revised Settlement Agreement Between the Market Surveillance Administrator and the Balancing Pool, January 14, 2022, paragraph 37; and Decision 23535-D01-2018: Market Surveillance Administrator – Application for Approval of a Settlement Agreement, August 30, 2021, paragraph 25.

¹³ Decision 23013-D01-2018: Market Surveillance Administrator - Application for Approval of a Settlement Agreement Between the Market Surveillance Administrator, TransAlta Corporation and Capital Power Generation Services Inc., Proceeding 23013, Application 23013-A001, January 30, 2018, paragraph 30; Decision 3110-D03-2015: Market Surveillance Administrator allegations against TransAlta et al., Application 1610350-1, Proceeding 3110, Phase 2 – request for consent order, October 29, 2015, paragraph 22.

Has a contravention occurred?

16. The evidence before the Commission, as set out in the application and agreed statement of facts, which the Commission accepts, is that SUM1 was incapable of meeting the Governor Requirement and the Response Requirement set out in ISO Rule 205.5 from the date of commissioning to June 1, 2021. Notwithstanding, during this time Canadian Hydro offered spinning reserve on the Alberta Watt Exchange Limited, representing to the AESO that spinning reserve, including the required frequency response, was available from SUM1 when it was not. This is contrary to ISO Rule 205.5 and Section 20.8 the *Electric Utilities Act* and a breach of Section 2(d) of the *Fair, Efficient and Open Competition Regulation* and Section 6 of the *Electric Utilities Act*. The parties to the settlement agreement have agreed these contraventions occurred. After conducting its own independent assessment of the facts presented in this proceeding, the Commission confirms these contraventions.

Does the proposed settlement fall within a range of acceptable outcomes?

17. The Commission must now decide whether the proposed settlement is fair, reasonable and falls within a range of acceptable outcomes appropriate to the facts and the applicable sanctioning principles. It is not for the Commission to determine whether it might have chosen to impose the same sanctions itself.

18. The Commission has considered the factors listed in Rule 013 in assessing the reasonableness of the settlement agreement, bearing in mind that sanctions are intended to be protective and preventative, but not punitive.

19. Regarding the potential harm caused by the contraventions, the Commission is satisfied there was a possibility of a reliability impact on the AIES, however, it acknowledges there is no indication that such an impact materialized. The Commission has also taken into account that significant revenue was derived by Canadian Hydro from selling spinning reserve it was incapable of delivering.

20. The contraventions do not appear to have been willful, or part of a broader scheme. TransAlta personnel responsible for marketing operating reserves at SUM1 were not made aware that SUM1 was unable to meet the requirements of ISO Rule 205.5 and TransAlta's Trading Compliance, Finance, Settlements and Marketing employees were at all times unaware of SUM1's failure to respond to underfrequency events. While Canadian Hydro continued to sell spinning reserve after it became aware that SUM1 could not provide the required spinning reserve and waited for a direction from the AESO before ceasing sale, TransAlta took steps to enable SUM1 to provide the required frequency response as of June 1, 2021. The Commission places significant weight on the fact that TransAlta and Canadian Hydro fully and completely co-operated with the MSA in the course of its investigation and TransAlta's efforts to implement a program of corrective actions to prevent recurrence of the same or similar contraventions. These mitigating factors weigh in favour of approval of the proposed administrative penalty.

21. The Commission finds that the MSA's administrative penalty reasonably addresses the circumstances of the contraventions. Having regard to the seriousness of the contraventions and the mitigating factors acknowledged by the MSA, the Commission is satisfied that the proposed administrative penalty of \$2,470,204.68 falls within a range of acceptable outcomes, particularly

because it accounts for the net benefit from selling spinning reserve which SUM1 could not deliver, plus interest on the benefit wrongfully taken and includes an additional \$500,000 administrative penalty above the cost of doing business. The Commission is satisfied that these amounts, along with the corrective actions taken by TransAlta and that TransAlta has agreed to take but not yet completed, achieve specific and general deterrence of similar contraventions occurring in the future.

22. The settlement agreement also includes a \$65,000 payment for the MSA's costs of investigation and in respect of the application. The Commission's authority to award costs related to an investigation after the Commission conducts a proceeding is found in Section 66 of the *Alberta Utilities Commission Act*. Section 66 states:

If, in respect of a person whose affairs were the subject of an investigation, the Commission is satisfied that the person has not complied with, or is not complying with, this Act or the regulations or any other enactment within the jurisdiction of the Commission or any order, decision of the Commission, Commission rule, ISO rule or reliability standard, the Commission may, after conducting a hearing or other proceeding, order the person to pay the costs of the investigation and the hearing or other proceeding, subject to the rules under section 76(1)(h).

23. The Commission is satisfied that the amount of \$65,000 associated with the investigation and application is reasonable given the investigation and related efforts of the MSA to conduct its investigation of the contraventions and to submit an application to the AUC for approval.

24. For all the reasons stated above, the Commission finds that the proposed settlement agreement is fair, reasonable and falls within a range of acceptable outcomes, and that because the resulting settlement adequately addresses the contraventions, approval of the settlement agreement is in the public interest.

5 Order

25. The Commission orders as follows:

- (1) The Commission approves the settlement agreement between the Market Surveillance Administrator, Canadian Hydro Developers Inc. and TransAlta Corporation.
- (2) TransAlta Corporation and Canadian Hydro Developers Inc., jointly and severally, shall pay an administrative penalty in the amount of \$2,470,204.68 in the form of a certified cheque or bank draft, payable to "General Revenue Fund c/o the Minister of Finance" and delivered to the Alberta Utilities Commission, within 30 days of the issuance of this decision.
- (3) TransAlta Corporation and Canadian Hydro Developers Inc., jointly and severally, shall pay the amount of \$65,000.00 in costs to the Market Surveillance Administrator within 30 days of the issuance of this decision.

- (4) TransAlta Corporation shall meet with the Market Surveillance Administrator on or before September 30, 2023, and on or before March 15, 2024, to share and discuss its progress in implementing and completing its program of corrective actions.

Dated on September 14, 2023.

Alberta Utilities Commission

(original signed by)

Cairns Price
Commission Member