

September 30, 2016

Via Email (lmanning@lawsonlundell.com)

Lewis L. Manning
Lawson Lundell LLP
Bow Valley Square 2
3700, 205 5 Avenue S.W.
Calgary AB T2P 2V7

Dear Mr. Manning:

Re: Decision of the Alberta Electric System Operator (“AESO”) dated August 29, 2016 (“Decision”) regarding the construction contribution costs charged in respect of the classification of participant-related costs for the Castle Rock Ridge (“CRR”) connection project.

The AESO acknowledges receipt of your September 26, 2016 cover letter and the Notice of Arbitration (“Notice”) of Enel Alberta Wind Inc. (“Enel”) respecting the AESO’s Decision. The Notice requests that the AESO agree to enter into arbitration under Section 103.2, subsection 5(3) of the ISO rules, *Dispute Resolution* (“Section 103.2”). That subsection provides:

5(3) If a written dispute is not resolved to the market participant’s satisfaction, the market participant may:

(a) agree with the ISO to seek resolution through a mediation or arbitration process; or

(b) pursue any other remedies available to it under the law, including filing a complaint with the Commission or Market Surveillance Administrator, or commencing a court action.

The AESO does not agree to have the issues raised in the Notice resolved through an arbitration process, given that (i) the costs that Enel seeks to have declared as system-related costs would be borne by ratepayers, and (ii) the Alberta Utilities Commission has the statutory jurisdiction and expertise to determine ISO tariff-related issues and to determine complaints made pursuant to section 26 of the *Electric Utilities Act*.

The decision cited in the cover letter, *Balancing Pool v TransAlta Corporation* 2009 ABQB 631 (“*Balancing Pool*”), does not require the issues raised by Enel to be referred to arbitration. The *Balancing Pool* decision relates to an arbitration clause that granted either party the discretion to unilaterally invoke arbitration. Once the discretion is exercised, arbitration becomes mandatory. No such arbitration clause exists in the present case and Section 103.2, subsection 5(3) of the ISO rules requires the agreement of

both a market participant and the AESO for a dispute to be resolved through arbitration. The existence of arbitration as a dispute resolution option in Section 103.2 expressly permits the AESO to engage in arbitration when, in its discretion, such a process is suitable for the subject matter of the dispute.

Sincerely,

“Original Signed By”

Tom Sloan
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