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Another Interconnection Application Crashes Out

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Decision Commented On: AUC Decision 24126-D01-2019, Keyera Energy Ltd, Cynthia Gas Plant Power Plant Application, June 25, 2019

In its *Smith* decision earlier this year, the Alberta Utilities Commission (AUC) concluded that a self-generator could only avoid the general "must offer, must exchange" obligations imposed by the Electric Utilities Act, SA 2003, c E-5.1, (*EUA*; and regulations) and the Hydro and Electric Energy Act, RSA 2000, c H-16, (HEEA) if it fell within one of the prescribed exceptions in the legislative scheme. ABlawg commented on the *Smith* decision here: Opening a Can of Worms. The AUC followed its Smith decision with two further interconnection applications in April and early June: AUC Decision 23756-DOI-2019, Advantage Oil and Gas Ltd. Glacier Power Plant Alteration, April 26, 2019; and AUC Decision 24393-D01-2019, International Paper Canada Pulp Holdings ULC Request for Permanent Connection for 48-Megawatt Power Plant, June 6, 2019. I commented on these latter two decisions here.

In this decision, the AUC approved Keyera application to build a 12.9 MW natural gas fired power plant to be built on the site of Keyera's sour gas processing facility (subject to satisfying a condition with respect to noise issues). Once again, however, the AUC denied Keyera's interconnection application because Keyera was proposing to both self-supply and export any surplus generation to the grid but did not qualify for any of the statutory exceptions to the 'must offer, must exchange' rules which applies to a facility's entire generating capacity. In terms of outcome therefore, there is nothing new here. However, the AUC does elaborate on its earlier decisions in a couple of ways. First, the Commission elaborates on the 'requirement to take service' provision of section 101 of the *EUA*. Second, the Commission discusses the interplay between the statutory regime and the Independent System Operator's (ISO or the Alberta Electric System Operator (AESO)) Rules.

Requirement to Take Service

Section 101 of the *EUA* provided that:

> Owner's right to provide electric distribution service
> **101 (1)** A person wishing to obtain electricity for use on property must make arrangements for the purchase of electric distribution service from the owner of the electric distribution system in whose service area the property is located.
>
> **(2)** If the person has an interval meter and receives electricity directly from the transmission system, the person may, with the prior approval of

(a) the owner of the electric distribution system in whose service area the person's property is located, if any, and

(b) the Independent System Operator,

enter into an arrangement directly with the Independent System Operator for the provision of system access service.

(3) No person other than the owner of an electric distribution system may provide electric distribution service on the electric distribution system of that owner.

Subsection (1) establishes the general principle or rule; a person must take electric distribution service from the owner of the distribution service within which that person's property falls. The determination of distribution service areas is made in accordance with section 28 of the Hydro and Electric Energy Act, RSA 2000, c H-16, (*HEEA*).

Subsection (2) establishes an exception, but in order to trigger the exception a party must: (1) have an interval meter, (2) be able to connect directly to the transmission system, (3) have the approval of both the AESO and the owner of the electric distribution system, and (4) enter into a supply transmission service contract with the AESO.

In this case, Keyera represented that it had the approval of both FortisAlberta (the owner of the distribution system) and the AESO (we'll return to the AESO below) and that in effect, section 101 served as an additional head of exemption to the exemptions previously canvassed in *Smith*. The AUC disagreed:

> The Commission finds that whether a person is connected via the distribution or the transmission system under Section 101 of the *Electric Utilities Act* does not affect their ability to generate a portion of their energy needs through on-site generation. The ability to supply one's own electricity needs is enabled by other provisions in the statutory scheme that allow for exemptions in certain circumstances. Section 101(2) does not constitute an applicable exemption such as those found in Subsection 2(1)(b) of the *Electric Utilities Act*, the Micro-generation Regulation and Section 4 of the *Hydro and Electric Energy Act*; Section 101(2) simply provides an alternate means through which a person may arrange for the purchase of electricity service. (at para 34)

The Relationship Between the Statutory Regime and the AESO Rules

In support of its application, Keyera referenced both a section of the AESO's Rules and an AESO Information Document.

Subsection 3(2)(a) of Section 203.1: Offers and Bids for Energy, (ISO Rule 203.1) of the Rules provides as follows:

> 3(1) A pool participant must, for each settlement interval, submit an offer for each of its source assets with a maximum capability of five (5) MW or greater.

> (2) A pool participant must not, notwithstanding subsection 3(1), submit an offer for: (a) any of its source assets with a maximum capability of less than five (5) MW; and (b) capacity that is committed under a contract for long term adequacy.

Section 2 of AESO's Information Document: Energy Offers and Bids – ID #2012-008R in turn discusses the obligations for offers above and below 5 MW - specifically for generators with on-site load:

> **Net-to-Grid Offer Requirements**
>
> Subsection 3 of Section 203.1 sets out the obligation for all source assets five (5) MW or greater to submit offers. Pool participants with on-site load may choose to offer their energy net-to-grid rather than offering their gross generation. They may do so by entering the source asset's maximum capability as only the energy that they expect to export to the grid, rather than the entire generating capacity of the source asset. The AESO then deems the source asset's size to be equivalent to such maximum capability. If a pool participant expects to export energy net-to-grid of more than five (5) MW (i.e. their maximum capability is greater than five (5) MW), the pool participant is obligated to submit offers.

Keyera's position was that since it had been granted a Supply Transmission Service (STS) contract by the AESO, it fell below the 5MW threshold for the must offer obligation and that therefore it was in compliance with the *EUA*.

There were two problems with Keyera's position. The first was that the AESO had resiled from its earlier position. The second was that the AUC did not accept that the AESO Rule could trump the legislative scheme (and it would appear from the AESO's response on the first issue that the AESO agrees with AUC).

As for the first problem, the record of the proceedings contains a letter from the AESO to the AUC (May 23, 2019) in which the AESO stated as follows:

> The Alberta Electric System Operator ("AESO") has reviewed the record of this proceeding, and is writing to provide the following clarification regarding Keyera's statement that it has been "granted a Supply Transmission Service (STS) contract from the AESO for 4.9 MW."
>
> Keyera's proposed Cynthia Gas Power Plant is currently being considered by the AESO as part of AESO Project 2012.
>
> Keyera is correct that the AESO previously confirmed that a Rate STS contract capacity of 4.9 MW was acceptable to the AESO for the proposed power plant. However, this confirmation was provided prior to the issuance of Commission Decision 23418-D01-2019 on February 20, 2019 [the *Smith* decision].

> Subsequent to the issuance of Decision 23418-D01-2019, the AESO on April 15, 2019 advised Keyera that the AESO was suspending further consideration of Keyera's request for system access service for the power plant, pending:
>
> > i. Keyera amending its request to reflect a Rate STS contract capacity that is equivalent to the maximum capability of 13.4 MW of the proposed power plant; or
> >
> > ii. alternatively, Keyera obtaining approval from the Commission to self-supply electric energy for its own use and to export electric energy in excess of what is required on-site.
>
> The AESO subsequently clarified to Keyera on May 2, 2019 that a Rate STS contract capacity that was less than the maximum capability of Keyera's proposed power plant was not acceptable to the AESO, in the absence of a Commission approval permitting Keyera to export less than the entire maximum capability of the proposed power plant to the interconnected electric system. (Footnotes omitted)

When asked by the AUC for its comments, Keyera responded that it "had no issue" with the AESO's letter (at para 27).

As for the second problem, the AUC took the view that the main rule was that a generator had to offer its entire generation to the pool based on section 18(2) of the EUA as further particularized by section 2(f) of the Fair, Efficient and Open Competition Regulation, Alta Reg 159/2009, (FEOC Regulation). The exceptions to the main rule include sections 2, 41, 99 and 142 of the EUA as well as other regulations canvassed in *Smith* and in my post on *Smith*. In this case Keyera sought to rely on section 2(f)(iii) of FEOC Regulation which provides that the must offer rule does not apply where "the *Electric Utilities Act*, its regulations or the ISO does not require the electric energy to be offered" (emphasis added). Since ISO's Rule 203(1) quoted above as clarified by the AESO in its Information Document only requires offers where a party expects to export more than 5MW *net*, and since Keyera's STS contacts was for less than 5 MW, Keyera was of the vied that it was covered by the exception.

The AUC did not buy that interpretation, or at least did not buy the proposition that the AESO's rule and practice could trump the *Act*:

> When read together, the ISO Rule 203.1 and the AESO Information Document could suggest that a pool participant may offer a portion of its on-site generation to the AIES. This is not consistent with the Commission's interpretation of the legislative scheme. The wording of ISO Rule 203.1 alone does not support this interpretation; rather, it is dependent upon the information contained in the AESO Information Document, which is intended for information only and over which the legislative scheme takes precedence. The Commission finds that ISO Rule 203.1 is only applicable in circumstances, such as an industrial system designation, where an exemption to self-supply has been granted. For the reasons stated above, the Commission finds that Keyera has not demonstrated that the exemption contemplated by Subsection 2(f)(iii) of the Fair, Efficient and Open

> Competition Regulation applies in these circumstances. Moreover, the Commission notes that the AESO has taken steps to notify Keyera that its request for system access service has been suspended pending Commission approval. (at para 38)

Neither could Keyera take advantage of section 2((1)(b) of the *EUA* (which states that theAct does not apply to "electric energy produced on property of which a person is the owner or a tenant, and consumed solely by that person and solely on that property" since:

> The electric energy produced on Keyera's property will not be consumed solely by Keyera and will not be consumed solely on Keyera's property. Consequently, two of the three pre-conditions required for the Subsection 2(1)(b) exemption to apply are not met; and Keyera has not demonstrated that it falls within another applicable exemption. (at para 41)

This post may be cited as: Nigel Bankes, "Another Interconnection Application Crashes Out" (June 28, 2019), online: ABlawg, http://ablawg.ca/wp-content/uploads/2019/06/Blog_NB_AUCDecision.pdf