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## AUC Announces a Second Round of Consultations on Self-Supply and Export

By: Nigel Bankes

**Matters Commented On:** [AUC Bulletin 2020-01](#), Exploring market concerns and tariff issues related to self-supply and export reform, January 9, 2020; and [AUC Decision 24979-D01-2020](#), International Paper Canada Pulp Holdings ULC, Industrial System Designation and Permanent Connection Order for the Grande Prairie Pulp Mill Complex, January 10, 2020.

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*) oblige generators in Alberta to offer their generation to the power pool and to exchange energy through the pool. There are a number of exceptions to these requirements but in a series of decisions during 2019 the AUC concluded that these exceptions are narrowly framed. These decisions are EPCOR Water Services Inc., EL Smith Solar Power Plant, February 20, 2019, [Decision 23418-D01-2019](#); [AUC Decision 23756-DOI-2019](#), Advantage Oil and Gas Ltd. Glacier Power Plant Alteration, April 26, 2019; [AUC Decision 24393-D01-2019](#), International Paper Canada Pulp Holdings ULC Request for Permanent Connection for 48-Megawatt Power Plant, June 6, 2019; and [AUC Decision 24126-D01-2019](#), Keyera Energy Ltd, Cynthia Gas Plant Power Plant Application, June 25, 2019. I commented on those decisions in [Opening a Can of Worms](#) and [here](#) and [here](#).

In September of last year, the AUC, recognizing that the existing exceptions were long-standing and might no longer be optimal, issued [AUC Bulletin 2019-16](#) seeking “feedback on potential amendments to the statutory scheme which it can share with the Department of Energy” as to whether “further exemptions to the prohibition against self-supply and export are appropriate and if so, on potential regulatory solutions.” See [ABlawg post here](#). In particular, the AUC sought feedback on three options:

- Option 1: Status quo – no change to the statutory scheme is required.
- Option 2: Allow limited self-supply and export – this requires a change to the statutory scheme. This exemption could be similar to the micro-generation exemption where operators are required to size their plant to meet internal need on an annual basis, but will be allowed to export excess energy to the grid to a certain percentage of annual production. ...
- Option 3: Unlimited self-supply and export – this requires a change to the statutory scheme and may require changes to existing transmission and distribution tariff structures.

That consultation has closed and all submissions were [posted](#) on the “Engage” page of the AUC’s website as of late October. They make for interesting reading both in terms of tone and substance. Most submissions favoured option 3 (in some cases subject to conditions). Option 2

had virtually no support. Option 1 had some support principally from those who considered that it was necessary to consider the market and transmission tariff implications of Option 3 before it could be adopted.

With this latest Bulletin, the Commission, at the behest of the Department of Energy, is initiating a second round of consultations drawing in particular on the first round submissions of [Capital Power](#) in relation to market issues and [AltaLink](#) with respect to transmission tariff issues.

Capital Power's market concerns can be summed up relatively easily as a concern that large scale exemptions from the must-offer, must-exchange rules compromise the principle of a free, efficient and openly competitive market (FEOC principle) and "reduces the effectiveness of and benefits from having a competitive market." Self-supply generation already covers about 5,000 MW (of a total installed generation 16,106 MW).

AltaLink's concerns are more complicated. They may be summarized as follows. The grid (and a connection to the grid) provides important services (reliability, start-up power, voltage quality, efficiency, and facilitation of energy transactions) that are not explicitly metered or charged under the current AESO tariff structure. This is because, beyond connection charges and line loss charges, the costs of transmission are all recovered through Demand Transmission Service (DTS) contracts. DTS contracts may not reflect the costs and benefits of being connected to the grid due to net metering practices, transmission credits made available by distribution facility owners (DFOs) (effectively a flow-through of net metering benefits to distributed generation), and the ability of some load to back-off demand at peak demand times thereby reducing capacity based charges that they would otherwise incur through their DTS contracts. As a result, the AESO must recover these avoided charges from other customers to ensure that the full costs of the transmission system are covered.

AltaLink's basic position is that the current position is unfair and results in considerable cross-subsidization, and that an expansion of self-supply and export will exacerbate this problem. For these reasons AltaLink supported Option 1 "until a comprehensive review is completed of the current tariff design and legislation is completed."

These are not new concerns. AltaLink has articulated these concerns in a number of fora including: (1) AESO tariff proceedings (see [AUC Decision 22942-D02-2019](#), Alberta Electric System Operator, 2018 Independent System Operator Tariff, September 22, 2019), (2) in the AUC's, Alberta Electric Distribution System-Connected Generation Inquiry (see [Final Report December 29, 2017](#) sections 5.3.3 and 5.3.4), and (3) in the ongoing AUC initiated [Distribution System Inquiry](#).

These issues may also be raised in AltaLink's current Application to initiate a generic distribution system planning criteria inquiry, ([AUC Proceeding 25188](#)) based on AltaLink's allegation that FortisAlberta Inc. (a distribution facility owner in the same service territory as AltaLink) approached at least one customer that is currently directly connected to AltaLink's transmission system, with an offer to assist that customer in abandoning its transmission connection to allow the customer to connect to Fortis's distribution system. Furthermore, the costs of connecting distributed connected generation will be an issue in the complaint proceeding

filed by BlueEarth Renewables against Fortis (Proceeding 25058, [currently suspended](#) pending the outcome of the Review and Variance proceedings associated with the AESO tariff decision 22942.)

The AUC is seeking submission on these market and tariff issues by February 14, 2020.

The AUC's Bulletin also addresses, at least to some degree, the concerns of those who may be offside the rules as now interpreted by the AUC. The Bulletin offers two assurances. First it repeats the assurance given by the [Market Surveillance Administrator \(MSA\) in its first round email submission to the AUC](#) to the effect that "...the MSA is not currently investigating any market participants in relation to the issues raised in the Bulletin and does not intend to begin any such investigation while the Commission is consulting on these issues." Second the AUC offers its own assurance that:

The AUC considers that the approval holders for these power plants have been operating based upon a reasonable reliance on the approvals granted to them. The AUC does not consider that these operators have engaged in any form of intentional misconduct or non-compliance by operating their plants in the manner that they have. The AUC confirms that it is not investigating any market participants in relation to self-supply and export issues and does not intend to initiate any such investigations while consultation on this issue is ongoing.

## **Observations On the Way Forward**

Electricity grids around the world are being transformed by the availability of distributed generation. Electricity flows on grids will increasingly become two-way flows rather than one-way flows from major generating facilities through transmission and distribution systems to customers. Customers will increasingly become "prosumers" (i.e. consumers and producers). All parties recognize that this transformation will occur although they may debate both its intensity and the speed with which it will occur. These ideas are central to the AUC's ongoing [Distribution System Inquiry](#).

The challenge for Alberta is to get these rules in place in a timely manner so as to provide certainty and to avoid, so far as possible, disrupting investment backed expectations. Several submissions to the AUC during the first round of consultations raised concerns as to the lack of certainty arising from the AUC's (re)interpretation of the rules and many parties have referenced the uncertainty flowing from the AUC's most recent AESO tariff decision of September 2019.

But it will be challenging to put new rules in place (or confirm the application of existing rules) given the diffusion of governance authority for rule-making in the electricity sector. The account above illustrates this. It shows the following:

- The exemption rules to allow self-supply and export are created by the legislature and through regulations originating from the Department of Energy. The AUC cannot create new exemptions.

- The AUC does however have the power to authoritatively interpret the scope of those exemptions as it did in its Smith decision. This proposition however must now be qualified in light of the Supreme Court of Canada's decision in *Vavilov (Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65 \(CanLII\)](#). That decision suggests that the legislature must be deemed to consider that the Court of Appeal is better or at least as well equipped to decide these issues as is the AUC. See my post on this aspect of *Vavilov* [here](#). I don't know if there are outstanding permission to appeal applications from any of the decisions listed in the first paragraph to this post but if there are such an application will be much more viable post-*Vavilov* than pre-*Vavilov*.
- The AUC does have authority to approve the AESO transmission tariff including issues such as net metering (or not) but the basic allocation of responsibility for costs as between generation and load is prescribed by the Transmission Regulation, [Alta Reg 86/2007](#).
- Cost allocation issues come before the AUC in both AESO matters and in tariff applications brought by TFOs and DFOs. This can make it challenging (especially with issues such as DFO transmission credits) to decide what is the best, most authoritative and most holistic forum within which to deal with these issues.
- Layered on top of these applicant-driven processes we have the possibility for ministerial directed AUC inquiries (see the Alberta Electric Distribution System-Connected Generation Inquiry referenced above), AUC directed generic hearings (see the ongoing AUC's [Distribution System Inquiry](#)) and complaint-based procedures initiated by a market participant (see the complaint of BlueEarth Renewables above).

All of this suggests to me the need for some leadership. Given the diffusion of authority described above, as well as the ultimate hierarchy of authority within the administrative state, that leadership role will likely have to be assumed by the Department of Energy. This is not without its own challenges. Both the AESO and the AUC have well-developed rules in place for considering a wide range of inputs but the Department of Energy does not - and it is far more subject to lobbying and the accommodation of special interests than either the AUC or the AESO. But the current tango between the AUC and the Department in which the AUC solicits views that are passed on to the Department, which then seeks a second round of submissions (and perhaps further rounds) based principally on concerns identified by two market participants (albeit valid and well-articulated), hardly seems an appropriate basis on which to forge policy on such an important set of questions and the answers to which will have long-term implications.

Are there other options for moving forward? Here are four suggestions.

First, continue with the process that the Department and the Commission have initiated. It has been launched and it should follow its course. I do however think that the remit of this exercise should be broadened to canvass the views of parties with respect to the principles that should drive exemptions from the current must-offer, must-exchange rules and the related question of the principles that should drive cost allocation for transmission. The policies that underlie the current allocations were developed and articulated several decades ago in two policy documents (the Industrial Systems Policy Statement ([1997](#)) and the Transmission Development Policy ([2003](#))). These policies led (respectively) to the Industrial System Designation (ISD) in s 4 of the

*Hydro and Electric Energy Act*, [RSA 2000, c H-16](#), (one of the existing exemptions to the must-offer, must exchanges rules as illustrated by [AUC Decision 24979-D01-2020, Industrial Paper Canada](#)) and the Transmission Regulation. It is perhaps time to reexamine whether those policies and their statutory and regulatory implementation continue to offer appropriate guidance – the Industrial Paper Decision (see esp at paras 26 – 28) does show that it may be difficult to squeeze economically sized co-generation facilities into the ISD criteria in the *HEEA*. It is also perhaps worth recalling in this context section 117(2) of the *Electric Utilities Act*, [SA 2003, c E-5.1](#), (*EUA Act*) which provides that

(2) If the Commission designates the whole or any part of an electric system as an industrial system under section 4(5) of the *Hydro and Electric Energy Act* and is considering making a rule under subsection (1)(b) in relation to that industrial system, the Commission may impose the condition that the owner of the industrial system be responsible for paying a just and reasonable share of the costs associated with the interconnected electric system.

I don't think that the AUC has ever made use of the condition referenced here but it might be appropriate to consider what principles should guide the exercise of that discretion.

Second, (re) examine the timetable for the AUC's [Distribution System Inquiry](#) to see if it can be brought forward or expedited or abridged in some way.

Third, bring together the results of the submissions to the AUC on self-supply and export (expanded as suggested above) and the results of the [Distribution System Inquiry](#) in the form of a white paper prepared by the Department presenting different options and consult widely on those options with a view to putting in place long-term signals and solutions.

Fourth, prepare new legislation based on the consultations on the white paper. The legislation could deal comprehensively with the circumstances under which self-supply and export should be permitted, provide guidance as to transmission cost allocation issues associated with both this and distributed connected generation generally, and perhaps also consider having the AESO assume a more significant role with respect to distribution. Consideration should also be given to consolidating the provisions of the *EUA* and the *HEEA* in a single statute so that we have all the rules pertaining to the electricity sector in one place.

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