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Alberta Utilities Commission  
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**Attention: Fino Tiberi, Executive Director, Market Oversight and Enforcement**

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Our reference: 1001284684

Dear Mr. Tiberi:

**Proceeding 28829 – BHE Canada Complaint Against the Alberta Electric System Operator**

We are legal counsel to the Alberta Electric System Operator (“AESO”) in this matter and write on its behalf. On February 9, 2024, BHE Canada<sup>1</sup> (“BHEC”) filed a wide-ranging complaint regarding the AESO. After 44 pages of background submissions, the merchant powerline operator argues for what would likely amount to billions of dollars of public investment to further its own economic interests. BHEC also seeks to overhaul the regulatory scheme in place when it acquired the MATL facility, while circumventing policy initiatives currently under consideration, given that many of BHEC’s concerns are already being dealt with by the AESO or policymakers in other forums.

The AESO writes to request that the Commission seek comments from potentially impacted parties about the appropriate scope of the process to address BHEC’s complaint, and/or the Commission’s initial treatment of the complaint.

BHEC’s filing comprises six separate complaints on seven different grounds, implicating at least 11 separate AESO duties and obligations. BHEC seeks changes to two ISO Rules, the rapid evaluation, selection, and implementation of frequency stability mitigation procurement from among 12 different options, two new programs, a new suite of Alberta Reliability Standards, and jumpstarted Market Surveillance Administrator processes. According to the complaint, the Commission should begin and conclude its adjudication of these substantive matters, which are intrinsically interconnected, within 20 weeks. Plus, the AESO should develop and implement its compliance with the Commission’s decision and directions within that same timeframe (i.e., by July 1, 2024).

Given the expansive claims and entitlements asserted by BHEC, it is apparent on the face of the complaint that there is no air of reality to the July 1, 2024 timing. In fact, the July 1 date should be disregarded for several reasons:

- **BHEC’s complaint is an attempt to short-circuit through litigation fundamental policy questions that are, and should be, addressed in other forums.** BHEC’s complaint appears to consist of attempts to increase the revenue it earns from its merchant intertie facility, under the guise of questioning the AESO’s response to the reliability challenges faced by Alberta’s system today.

The fact that most of BHEC’s concerns are already being addressed belies the urgency BHEC claims. How best to respond to the increasing penetration of inverter-based generation is a significant issue faced

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<sup>1</sup> The complaint defines “BHE Canada” as BHE Canada Limited and MATL Canada G.P. Ltd., as the General Partner of MATL Canada L.P.

by every decarbonizing electrical grid in the world. Alberta is no different and is fully engaged in finding solutions to these challenges. Examples include:

- the AESO's Reliability Roadmap work and resulting, ongoing Fast Frequency Response Procurement;
  - the AESO's Long-term Transmission Plan work that identifies reliability challenges and planned responses, including intertie restoration options and timelines;
  - the AESO's accelerated Market Pathways consultation process (which BHEC attended regularly);
  - the Commission's Renewables Inquiry;<sup>2</sup> and
  - the Province's legislative review of the electricity framework in general (e.g., the recent transmission green paper), and the *Transmission Regulation* in particular.
- **The alleged \$2.8 billion annual public benefit is highly speculative and should not be allowed to create a false sense of urgency.** Even a cursory review of BHEC's economic analysis suggests significant methodological flaws. Moreover, this number on its face ignores the steep costs BHEC's requests would impose across the board, to both ratepayers and other market participants, that might well outweigh the claimed benefits. Consumer savings *and* costs of the various measures are unclear at this stage and demand careful, rather than rushed analysis.
  - **A rushed process risks material flaws and unintended consequences.** The relief seeks, essentially, an instant Commission decision concerning many fundamental characteristics of grid operation. But depriving the Commission, the AESO and impacted parties of important facts, viewpoints and other considerations would compromise the Commission's ability to make a fully informed decision.
  - **It is not possible to consider the complaint in a procedurally fair manner within the timeframe provided.** Many parties would be impacted by BHEC's proposals, and indeed the AESO's ongoing consultation on the reliability issues BHEC describes shows that stakeholders disagree significantly on many of the measures BHEC seeks to impose. The July timing would deny stakeholders the opportunity to meaningfully understand the impacts and provide informed views to the Commission, contrary to the Commission's procedural fairness obligations. What is more, the intersection between BHEC's proposed proceeding scope and multiple other processes could cause cascading delays.
  - **The request is unrealistic about the work required to implement the relief sought.** Even assuming, hypothetically, that the Commission were to agree with each aspect of the complaint that is within the AESO's power to implement, the AESO would still require many months to make the requested changes.

There is significant work underway related to the electricity policy environment in Alberta. BHEC's complaint touches on material aspects of the framework today, including how ratepayer funds should be allocated and major reliability challenges are addressed. Regulatory efficiency therefore demands careful scoping to avoid significant wasted effort by many parties potentially impacted by the proceeding and that the Commission has sufficient time available to craft an efficient process.

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<sup>2</sup> See AUC proceedings 28501 and 28542, Modules A and B of the AUC inquiry into the ongoing economic, orderly and efficient development of electricity generation in Alberta.

Accordingly, the AESO requests that that the Commission seek, as a preliminary procedural step, detailed scoping submissions from all potentially affected parties, including the AESO, about: (a) how the Commission should appropriately respond to the complaint at first instance, and (b) what workable and practical proceeding scope(s), if any, might be to address all or portions of the complaint.

Please contact the writer if you have any questions.

Yours very truly,  
**Norton Rose Fulbright Canada LLP**



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