October 17, 2024

Via Electronic Submission

Ambassador Katherine Tai
United States Trade Representative
Office of the U.S. Trade Representative
600 17th St. NW
Washington DC, 20508

Comments Regarding Foreign Trade Barriers to U.S. Exports for 2025 Reporting—Canada [Docket Number USTR-2024-0015]

Dear Ambassador Tai:

The American Clean Power Association (ACP) and American Council on Renewable Energy (ACORE) welcome the opportunity to provide comments on the United States Trade Representative's (USTR) request for information on significant foreign trade barriers for the 2025 National Trade Estimate (NTE) Report. We appreciate the opportunity to bring attention to certain unreasonable and discriminatory measures imposed by the government of the Canadian province of Alberta with respect to its energy market that burden and restrict U.S. trade.

The Alberta Electric System Operator (AESO), the independent system operator for Alberta's provincial electrical grid, has imposed several structural barriers that are impeding the ability of U.S. energy producers from fully accessing and participating in the Alberta energy market. U.S. energy producers have made approximately $1 billion in investments in energy infrastructure, including renewable power generation, that serve the Alberta and Montana markets. However, the AESO's anti-competitive restrictions impose technical barriers that impact the provision of cross-border energy sales and services that benefit the U.S. and Alberta markets. These restrictions have also eroded the value of U.S. investments and are jeopardizing billions of additional planned investments in clean energy projects, such as solar generation, wind repowering, and significant transmission reinforcement, that were spurred on by the Inflation Reduction Act.

These measures also create a serious public safety issue in Montana. Because the energy grids of Montana and Alberta are linked via the Montana Alberta Tie Line (MATL), fluctuations in one grid can impact the stability of the other grid. The AESO's discriminatory restrictions on electricity imports from Montana, such as curtailment and transmission capacity limitations (see below), can lead to "uncontracted frequency response" from Montana's grid, undermining its reliability. To comply with North American Electricity Reliability Corporation (NERC) standards, Alberta should be maintaining sufficient electricity reserves on its territory; instead, it exploits Montana's electricity (paid for by Montana consumers) during times of emergency without providing compensation. The size disparity between the grids exacerbates the problem, as Alberta's larger grid could suddenly and massively import energy from Montana during an emergency, potentially destabilizing the Montana grid and causing blackouts. This not only imposes economic burdens on Montana but also endangers public safety, including the potential to cause property damage, injuries, and fatalities.

With this context in mind and given the potential for Alberta to impose additional unreasonable and discriminatory policies, we respectfully request that USTR include the following AESO energy restrictions in its 2025 NTE Report:

I. Policies Creating Inconsistent Opportunities for Importers to Access the Alberta Energy Market

The AESO provides separate and unequal points of access to the Alberta energy market. Local energy generators take service for the Alberta energy market under a firm-like service arrangement under the Rate Supply Transmission Service.[1] This model effectively provides local energy generators guaranteed access to the Alberta energy market. By contrast, importers are offered access to the Alberta energy market under the Rate Import Opportunity Service. The concept of an opportunity service (or interruptible service) is that a customer agrees to take a lesser (i.e., less reliable, recallable) service because of a reduced rate than it otherwise would have paid for the greater (i.e., more reliable, non-recallable) service.

[1] A firm service is a type of energy delivery service that guarantees capacity and supply under virtually all conditions. Rate STS is a "firm-like" service rather than a "firm" service since there are no transmission rights in Alberta for any participants.

In practice, this arrangement means that domestic producers have nearly unfettered access to the Alberta energy market, while importers have no guarantees of participating whatsoever. The "opportunities" importers may be granted can provide openings for participation, but they do not provide the certainty needed to plan and invest in energy production for the Alberta and Montana markets.

II. Restrictions on Transmission Under the Pretext of "Reliability"

The AESO is curtailing imported electricity under the pretext of maintaining the "reliability" of the Alberta Interconnected Electricity System. In reality, it is the AESO that has failed to address reliability concerns affecting the dispatch of imported energy in a timely manner and has allowed the reliability of the Alberta Interconnected Electricity System to degrade over time. In particular, the AESO has allowed the Available Transfer Capacity over the Alberta-British Columbia and MATL combined path to materially degrade from its total transfer capacity of 1,110 MW to a base of 325 MW, a 785 MW difference. As a result, U.S. energy importers are bearing the brunt of the AESO's failure to properly maintain the grid in the form of a discriminatory cap.

III. Discriminatory Transmission "Congestion" and Supply Chain Rules

The AESO's Supply Surplus Rule (Surplus Rule) and the Transmission Congestion Management Rule (TCM Rule) discriminate against energy importers by favoring equally priced domestic supply to be dispatched in priority to imported energy in times of supply surplus or transmission congestion.[2] Further, these policies create tremendous inconsistency in markets and are distortive.

For example, the opportunities for energy transmission provided by importers can change at any time, introducing a tremendous amount of uncertainty for U.S. participants in the Alberta energy market. This uncertainty complicates U.S. firms' decision-making on whether to purchase firm transmission rights in the United States and secure power purchase agreements from U.S. generators to enter into supply agreements with Alberta customers.

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[2] *Id.*

These policies also have a chilling effect on capital investment decisions, as they create a disincentive for U.S. electricity producers to invest in additional energy production capacity for the purpose of supplying the Alberta market.

IV. Preferential Energy Provisioning Rules

The AESO has imposed scheduling rules that are preferential to domestic energy producers. Importers must submit offers to provide quantities of energy in single "flowing hour" time blocks. At the start of the flowing hour, importers treat their single time block (arranged two hours in advance) as a single dispatch of energy. They must maintain the scheduled amount of energy for the full operating hour, without any opportunity to make changes, such as increasing energy supply, even when additional energy might be needed in the market. In contrast, Alberta energy producers are able to provide offers across seven time blocks. This affords them with the ability and opportunity to supply greater amounts of energy across a broader market and at different price points than importers; they are also able to make arrangements for that energy supply to be made readily available as needed.[3] These scheduling rules structurally disadvantage importers and do not allow them to compete in the Alberta market on fair, reasonable, and non-discriminatory terms.

V. Proposed Measures

Alberta is considering measures that would make its energy regime even more discriminatory, unreasonable, and disruptive to U.S. trade. The AESO has signaled its intent to formally entrench discriminatory trade practices within the design of Alberta's Restructured Energy Market (REM). In particular, within its "options paper" proposal for the Day-Ahead Market (DAM), a key component of the REM initiative[4] the AESO stated that "import participation in selling products that require physical commitment will be limited," under the reasoning that imports are unable to physically commit to the Alberta market in the same way that domestic generators can. As with existing AESO policies, this proposal seeks to blame "instability" on imports, rather than on the barriers created and maintained by the AESO itself.

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[3] *See* AESO, ISO Rules Section 201.5 – Energy Market Block Allocation; AESO, ISO Rules Section 203.1 – Offers and Bids for Energy.

[4] See AESO – Stakeholder Updates, Day-Ahead Market (https://www.aesoengage.aeso.ca/rem-technical-design)

Further, Canadian oil and gas producer Suncor Energy recently filed a complaint before the Alberta Utilities Commission seeking additional disadvantages to be imposed on importers. Specifically, Suncor requested that Independent System Operator (ISO) Rule 203.1 be amended to impose an unjustified, discriminatory fee on imported energy. If implemented, the rule would protect Alberta-based generators from competition from U.S.-based generators, particularly from Montana. This is a curious demand given that Suncor is a net-exporter to the United States with a significant portion of its oil production, equaling roughly 746,000 barrels per day, selling to U.S.-based customers.[5]

VI. Implications

The limited and inconsistent access to the Alberta energy market afforded by the AESO to importers under the opportunity service arrangement – coupled with the AESO's structural barriers related to reliability, scheduling, and curtailment – makes it impossible for importers to dedicate capacity to the Alberta market and make investments in the region's energy future. The AESO's policies have significantly impacted energy markets along the MATL to the detriment of U.S. energy importers, increased consumer prices in Alberta, and put the safety of consumers in Alberta and Montana at risk.

It is also worth noting that senior Alberta officials have been travelling to the United States – Alberta's number one trading partner [6]– in an effort to "reduce barriers" and promote greater market access to the U.S. market for Canadian exporters of oil and gas, including oil from Alberta's oil sands.[7] Unfortunately, Alberta's approach to electricity markets has not been reciprocal, despite the AESO's statement that: "Blessed with ample wind and solar resources, and supported by the province's competitive electricity

[5] See: 2024 Report to Shareholders, Q1 2024 (https://www.suncor.com/-/media/project/suncor/files/investor-centre/quarterly-reports-2024/2024-q1-suncor-energy-quarterly-report-en.pdf?modified=20240613191544&created=20240507101021)

[6] Government of Alberta, Market Profiles, "United States," accessed October 17, 2024: https://export.alberta.ca/market-profiles/united-states/

[7] See quote from Shane Getson, parliamentary secretary for Economic Corridor Development: "Alberta relies on the free flow of trade and investment for its economic prosperity. That is why working with our partners to reduce barriers and bring transparency and consistency to trade across this important region is so important. I am excited to engage with U.S. legislators and officials so we can ensure Alberta's industries have access to the market opportunities they need to thrive – broadening our commercial ties with certainty and forging bonds with job creators across the continent." https://www.alberta.ca/release.cfm?xID=9095506DF777F-C1B3-3116-68EF15405F2556D4.

market, Alberta is attracting significant private investment in renewables generation and energy storage projects, estimated at more than $4 billion since 2019."[8] U.S. electricity exporters are simply seeking similar treatment to ensure that the benefits of reliability, safety, and affordability that comes with clean energy exports are shared by electricity consumers in Montana and Alberta.

Ensuring a level playing field for trade and enabling market access on fair, non-discriminatory terms must continue to be strategic objectives of United States trade policy. As such, we strongly urge USTR to engage with the Government of Canada to seek immediate removal of these unreasonable and discriminatory measures that burden and restrict U.S. trade and ensure future trade barriers are not imposed. As billions in additional clean energy investments are currently on hold and could be canceled if this long-standing issue is not addressed, USTR should also take immediate action under U.S. trade law to incentivize Alberta to remove its market access restrictions and provide equal treatment to all players in the Alberta energy market. We appreciate your attention to our concerns.

If you have questions about these comments, please contact Jeremy Horan at horan@acore.org.

Respectfully,

/s/Jeremy T. Horan

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[8]Alberta Electric System Operator (AESO) website, "Future of Electricity: Alberta's Power System Transition; Renewables are on the Rise," accessed October 15, 2024 at: https://www.aeso.ca/future-of-electricity/albertas-power-system-in-transition/