

ANNOUNCEMENT

February 21, 2020

Supreme Court of Canada Upholds Balancing Pool's PPA Dispute Rights

On February 20, 2020, the Supreme Court of Canada affirmed the Balancing Pool's right to dispute claims on behalf of consumers when it denied a leave application filed by TransAlta Generation Partnership ("TransAlta").

The Balancing Pool's right to independently dispute claims under a Power Purchase Arrangement ("PPA") is a critical safeguard for consumer interests. It ensures that consumers do not pay for unproven or unjustified claims and is an essential part of the Balancing Pool's mandate.

In March 2015, TransAlta made a multimillion-dollar claim under the Keephills PPA. The Balancing Pool Regulation requires the Balancing Pool pay the full amount of the claim before it is investigated or proven. When the Balancing Pool investigated TransAlta's claim, it concluded that the claim did not meet the PPA requirements for relief and should be disputed. However, when the Balancing Pool sought to challenge the claim and recover the funds through the PPA dispute resolution procedure, TransAlta applied to the Court of Queen's Bench seeking a ruling that the Balancing Pool had no right to bring such a challenge.

The Court of Queen's Bench and the Alberta Court of Appeal confirmed that the Balancing Pool has an independent right to dispute claims under a PPA. TransAlta then sought leave to appeal with the Supreme Court of Canada, which was denied on February 20, 2020.

The Balancing Pool will now exercise its dispute rights by challenging the merits of TransAlta's claim through the PPA dispute resolution procedure.

Background

For certain extraordinary events, the PPAs and their supporting legislative framework permit a PPA party to seek financial relief from the Balancing Pool at a cost to Alberta electricity consumers. The Balancing Pool's mandate includes a requirement to protect consumer funds by investigating and, where appropriate, disputing claims made by parties under PPAs.