REGULATORY LAW CHAMBERS

ENERGY REGULATORY REPORT

This monthly report summarizes matters under the jurisdiction of the Alberta Energy Regulator ("AER"), the Alberta Utilities Commission ("AUC") and the National Energy Board ("NEB") and proceedings resulting from these energy regulatory tribunals. For further information, please contact a member of the RLC Team.

Regulatory Law Chambers is a Calgary based boutique law firm, specializing in energy and utility regulated matters. RLC works at understanding clients' business objectives and develops legal and business strategies with clients. RLC follows a team approach, including when working with our clients and industry experts. Visit our website to learn more about RLC.

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ALBERTA COURT OF APPEAL

Canadian Natural Resources Limited v Municipal District of Greenview No. 16 Subdivision and Development Appeal Board, 2019 ABCA 143

Permission to Appeal - Granted

In this decision, the applicants, Canadian Natural Resources Limited ("CNRL") and Shell Canada Limited ("Shell"), sought permission to appeal a decision of the Municipal District of Greenview No. 16 Subdivision and Development Appeal Board ("SDAB"). The SDAB upheld the decision of the Municipal Planning Commission to issue a development permit for a work camp that was located 140 and 250 meters respectively from CNRL's and Shell's sour gas facilities.

Section 10(1) of the *Subdivision and Development Regulation* ("*SADR*") provides that "a development authority must send a copy of a development application for a development that results in a permanent dwelling, public facility or . . . ", as defined by the AER, to the AER if any of the land ... is within 1.5 kilometers of a sour gas facility or a lesser distance agreed to, in writing, by the AER and the subdivision authority". The AER must provide the development authority with its comments as to the necessary minimum setbacks: section 10(2) of the *SADR*. The development authority "shall not approve" an application that does not conform to the AER's setbacks unless the AER gives written approval to a lesser setback distance (section 10(3) of the *SADR*).

CNRL and Shell submitted that this did not occur.

The SDAB found that the camp met the definition of a "Work Camp" and that the provisions of the Land Use Bylaw were not "relaxed, varied, or misinterpreted", with the result that the development permit was not an appealable decision under section 685(3) of the *Municipal Government Act* ("*MGA*"). The appeal was dismissed.

Legislation

Section 688(3) of the *MGA* provides that a single judge of the ABCA may grant leave to appeal a decision of the SDAB "if the judge is of the opinion that the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success."

An appeal will generally be of "sufficient importance" where it has "implications that go beyond the dispute between the parties." In rare cases, however, an appeal that has no implications except as between the parties may still be sufficiently important to warrant granting leave, especially where the impact of the decision on the applicant will be severe, and the proposed appeal is meritorious.

Whether a proposed appeal has a reasonable chance of success depends to some extent on what standard of review governs the SDAB decision. In a previous decision, the ABCA held that an SDAB's interpretation of the *MGA* and of a municipal land use bylaw attracts a standard of reasonableness.

An appeal lies under section 688(3) of the *MGA* only in respect of a question of law. No appeal lies in respect of the SDAB's findings of fact or issues of mixed fact and law.

Proposed Grounds of Appeal

CNRL and Shell sought permission to appeal on the following grounds:

- Ground 1: the SDAB erred in law or jurisdiction in finding that the issuance of Development Permit D19-259 was not an appealable decision under section 685(3) of the *MGA*;
- Ground 2: the SDAB erred in law or jurisdiction by abusing its discretion under section 687(3) of the *MGA*; and
- Ground 3: the SDAB erred in law or jurisdiction by failing to consider section 619(1) of the *MGA*.

Legal Tests

Sufficient Importance

The ABCA found that CNRL and Shell established that the grounds of appeal submitted, offered sufficient importance to merit a further appeal.

This matter involved the intersection of the AER's authority over the energy sector and its role in prescribing setbacks around sour gas facilities to ensure public safety with the authority of the SDAB in approving development permits. It involved the

question of whether, even though the AER interpreted the term "public facility" in section 10(1) of the *SADR* as including this camp, the SDAB may nonetheless exercise its discretion under section 687(3) of the *MGA* to vary the setback limits between the camp and sour gas facilities, so long as it has some regard to the AER's decision.

Reasonable Chance of Success

Ground 1

With respect to the SDAB's decision that the Horizon North and Devco development was a Work Camp, the ABCA previously held that whether a proposed development meets the definition of a specific use "is a question within the mandate of the SDAB, and is at best a question of mixed fact and law on which permission to appeal is not possible or appropriate."

CNRL's and Shell's argument was primarily that the SDAB did not take into account the factual circumstances of the development. This was a question of mixed fact and law.

Accordingly, the ABCA found there was no appeal with respect to CNRL and Shell's contention that the camp was not actually a "Work Camp."

The ABCA found that CNRL's and Shell's argument that the SDAB erred in law or jurisdiction in finding that the issuance of Development Permit D18-259 was not an appealable decision under section 685(3) of the *MGA* had a reasonable chance of success.

Ground 2

The ABCA found that CNRL's and Shell's arguments that the SDAB erred in law or jurisdiction by abusing its discretion under section 687(3) of the *MGA* had a reasonable chance of success.

Ground 3

The interpretation of section 619(1) of the *MGA* was a legal question raised on the facts of the case. The ABCA found that the interpretation of section 619(1) of the *MGA* advocated by CNRL and Shell was arguable.

Findings

The ABCA concluded that CNRL's and Shell's arguments that the SDAB erred in law or jurisdiction by failing to consider section 619(1) of the *MGA* had a reasonable chance of success.

The ABCA granted CNRL and Shell leave to appeal on the following questions:

(a) whether the SDAB erred in law or jurisdiction in finding that the issuance of Development Permit D18-259 was not an appealable decision under section 685(3) of the *MGA*;

(b) whether the SDAB erred in law or jurisdiction by abusing its discretion under section 687(3) of the *MGA*; and

(c) whether the SDAB erred in law or jurisdiction by failing to consider section 619(1) of the *MGA*.

ALBERTA ENERGY REGULATOR

AER Bulletin 2019-08: Reminder of Increased Risk of Fire During Drier Months

Flare Stacks - Fire Risk

The AER reminded licensees that the risk of grass and brush fires that start at flare stacks increases in the drier seasons.

The AER recommended that operators follow a regular maintenance schedule for flare stacks and that flares be regularly examined for carbon or soot buildup around the flare tip.

The AER indicated that proactive fire-control measures should also be in place. These include acquiring and maintaining fire suppression equipment and communicating with local fire departments to coordinate response procedures should an emergency situation arise.

Operators and licensees must adhere to AER *Directive 060: Upstream Petroleum Industry Flaring, Incinerating and Venting and Alberta's Forest and Prairie Protection Act*.

ALBERTA UTILITIES COMMISSION

ATCO Pipelines 2019 Interim Revenue Requirement Application (AUC Decision 24285-D01-2019)

Interim Revenue Requirement

In this decision, the AUC considered ATCO Pipelines ("ATCO")'s request for a 2019 interim revenue requirement. The AUC approved a 2019 interim revenue requirement in the amount of $277,821,000 to be collected by ATCO by way of a one-time charge of $115,759,000, effective May 1, 2019, and a monthly rate of $23,151,800, effective June 1, 2019, for the remaining seven months of 2019.

The AUC approved a 2019 interim revenue requirement increase of $12,595,000, which was 59 percent of the original applied for increase.

The AUC found that ATCO's request to recover 100 percent of its revised 2019 revenue shortfall was not reasonable as it included contentious items identified by interveners in the general rate application and in Proceeding 23799, which, while material, were not probable. These items were not yet adjudicated, and the revenue requirement of the items remained uncertain.

ATCO's revenue requirement was billed to NOVA Gas Transmission Ltd. ("NGTL") on a monthly basis and was included within NGTL's revenue requirement and rates. Any impact to end-use customers was, therefore, subject to rate determinations of NGTL by the NEB. As a result, the AUC's analysis of rate shock was predominately focused on the proposed increase of the interim rate, with an understanding that changes in ATCO's revenue requirement would have an impact on NGTL's rates and rate design.

The AUC found that by collecting a portion of the increase that would result from the future implementation of ATCO's final 2019 revenue requirement effective May 1, 2019, promoted rate stability for customers. Any potential rate shock is minimized by permitting a gradual revenue requirement increase. In addition, the AUC's approval of an interim increase to the revenue requirement that will be charged to NGTL on a monthly basis attempted to preserve intergenerational equity by ensuring that the current revenue requirement is charged to current customers. Any direct rate impact to end-use customers will ultimately be subject to the determinations of the NEB on NGTL's rates.

The AUC found that this 2019 interim rate was reasonable as it allowed the following:

(a) recovery of the portion of the requested revenue requirement increase that was probable and material;

(b) the continued financial integrity of ATCO; and

(c) reliable service to customers.

The 2019 interim revenue requirement will be trued up when the AUC approves ATCO's final 2019-2020 revenue requirement in the general rate application.

AltaGas Utilities Inc. Application for Approval of an Exemption Extension for Rule 004 and Rule 028 (AUC Decision 23948-D01-2019)

Exemption Extension - Rule 004 - Rule 028

In this decision, the AUC considered an application from AltaGas Utilities Inc. ("AltaGas") for an extension of previously granted temporary exemptions from specific sections of Rule 004: *Alberta Tariff Billing Code* and Rule 028: *Natural Gas Settlement System Code Rules*.

The AUC granted AltaGas an extension of the Rule 004 exemptions until April 30, 2019, and of the Rule 028 exemptions until December 31, 2021.

Background

Rule 004: Alberta Tariff Billing Code

Rule 004 defines the business processes and mechanics for the production and transmission of timely and accurate tariff bill-ready information to retailers by electricity and natural gas distributors for distribution and system access service in Alberta.

On April 4, 2011, Rule 028 came into effect. AltaGas explained that in 2012, both its resources and those of the billing system vendor were focused on becoming compliant with Rule 028. Accordingly, AltaGas did not proceed with the implementation of

its customer information and billing system ("CIS"), which it had previously outlined as necessary for achieving Rule 004 compliance. As a further consequence of the Rule 028 compliance effort, the filing of a revised compliance plan pursuant to the AUC's deadline of December 31, 2012, was overlooked by AltaGas.

Rule 028: Natural Gas Settlement System Code Rules

Rule 028 defines the business processes and mechanics for how natural gas settlement is to be carried out in the Alberta natural gas retail market.

The Current Application

Compliance with all Rule 004 and Rule 028 exemptions was expected to be achieved as part of the CIS, replacement project originally planned for implementation by mid-2019. The CIS replacement program proceeded as scheduled until the first quarter of 2018 when AltaGas was unable to come to an agreement on pricing with the vendor. This led to a delay in the CIS replacement project, as well as a need for AltaGas to examine alternative options to address Rule 004 and Rule 028.

AUC Authority

The AUC's authority to impose and also to grant relief from time limits derives from section 23 of the *Alberta Utilities Commission Act*.

Section 6.1.5 of Rule 004 expressly allows a regulated party to apply to the AUC for a temporary exemption from all or any provision of Rule 004. Under section 6.1.5(2) of Rule 004, the AUC may approve an exemption with or without conditions, and the exemption will remain in effect for the period of time specified, or until revoked by the AUC.

The AUC noted that over the years and through a number of decisions, AltaGas was granted multiple temporary exemptions from certain sections of Rule 004 and Rule 028. On these previous occasions, temporary exemptions were granted to allow AltaGas an opportunity to achieve compliance with these rules for reasons that included: evidence that the effort and cost associated with temporary solutions would be significant and not in the public interest; evidence of limited customer and market impact; and, AltaGas' expected compliance timelines.

Exemption Request

Exemptions to the AUC rules are granted with the expectation and intention that they will be temporary and of a reasonable duration.

AltaGas' temporary exemptions extended over 14 years in the case of Rule 004 and eight years for Rule 028. Excessive cumulative exemptions and extensions strain the credibility of a temporary exemption, undermine the integrity, purpose, and object of AUC rules, and circumvent the AUC's expectation of compliance.

Rule 004

The AUC granted the extension of the Rule 004 exemptions to April 30, 2019, finding it was in the public interest.

In granting the requested extension to the exemptions concerning Rule 004, the AUC expected full compliance by AltaGas with Rule 004 by April 30, 2019.

Pursuant to Section 6.1.1 of Rule 004, the AUC approved AltaGas' Tariff Billing Code Compliance Plan as filed with an effective date of April 30, 2019, and directed AltaGas to submit the self-certification statement letter by May 15, 2019, as requested in the application.

Rule 028

AltaGas requested an extension of the Rule 028 exemptions to December 31, 2021. This was more than two years beyond the timeline for full compliance with Rule 028 identified in the last extension application (Proceeding 20885). The reason offered by AltaGas for the delay was the same as that offered in many of AltaGas' previous applications seeking exemptions from the requirements of Rule 004 and Rule 028: the need to amend or replace its CIS.

The AUC granted the requested extension to Rule 028 exemptions as it was in the public interest to do so. The AUC received no evidence that adverse effects were reasonably expected to result from the requested extension of the Rule 028 exemptions. The cost and effort associated with any interim solution to achieve compliance with Rule 028 would be duplicated upon implementation of the full CIS.

The AUC granted AltaGas' requested extension of the Rule 028 exemptions to December 31, 2021. At that time, full compliance with Rule 028 will be required.

Milner Power Inc. and ATCO Power Ltd. Complaints Regarding the ISO Transmission Loss Factor Rule and Loss Factor Methodology (AUC Decision 790-D07-2019)

Loss Factor Methodology

In this decision, the AUC found that the Alberta Electric System Operator ("AESO")'s proposed Modified Module B methodology for calculating loss factors from January 1, 2006, to December 31, 2016, (the "historical period") was compliant with the AUC's directions in Decision 790-D06-2017. The AUC directed the AESO to apply the Modified Module B methodology to calculate loss factors for the historical period. The AUC also approved the AESO's request to split the compliance filing to Decision 790-D06-2017 and directed the AESO to file a second compliance filing to address issues related to the collection and reimbursement of loss charges calculated for the historical period.

There are only two approved methodologies for calculating loss factors: the Module B methodology to be applied going forward (pursuant to Decision 790-D03-2015 (Phase 2, Module B)), and the Modified Module B methodology to be applied to the historical period (pursuant to Decision 790-D06-2017 (Phase 2, Module C)).

Issues Related to the Collection and Reimbursement for Loss Charges

The AUC found that dividing the compliance filing will assist in completing the Modified Module B calculations more quickly. Therefore, the AUC approved the AESO's proposal to file a second compliance filing. The second compliance filing will consider issues related to the collection and reimbursement of loss charges, including Rider E adjustments.

Compliance Filing Requirement in Decision 790-D06-2017

In Decision 790-D06-2017, the AUC approved the use of the Modified Module B methodology for calculating line losses for the historical period.

There are distinctions between the Module B methodology and the Modified Module B methodology. The Module B methodology was approved on a go-forward basis effective January 1, 2017, as ISO Rules Section 501.10 Transmission Loss Factors, ("ISO Rule 501.10"). The Modified Module B methodology was approved for use during the historical period based on the Module B methodology but with modifications. Specifically, when calculating loss factors for the historical period, the aggregation of generating units is not permitted. In addition, the Modified Module B methodology must use actual, rather than forecast, data.

Incremental Loss Factor Methodology

The AUC found that the AESO's proposed compliance filing was consistent with the requirement for an incremental loss factor methodology, because the Module B methodology was approved as an incremental loss factor methodology and, other than replacing the word "must" with "will" there were no material differences between subsection 8(1) and the AESO's proposed Modified Module B methodology for the historical period.

Location as the Metering Point Identifier

The AUC found that the AESO's proposed changes satisfied and were consistent with the AUC's previous directions.

Keeping Load Constant and Scaling Up Other Generation

The AUC found that the AESO's March 12, 2019, compliance filing update, which applied to fewer than 10 locations, was a reasonable adjustment to implement the AUC's broader direction of applying the Modified Module B methodology to the historical period and was consistent with the AUC's previous directions in this regard.

Using the Energy Market Merit Order to Determine Loss Factors

The AUC found that the AESO's proposed methodology for the historical period, as amended by the March 12, 2019, compliance filing update, was materially comparable to the lawful rule approved in Decision 790-D05-2016 and, as such, was reasonably capable of meeting the same legislative and regulatory requirements.

Applying Collars to Adjust Loss Factors

The AUC found that the AESO proposed Modified Module B methodology for implementing collars during the historical period was consistent with the AUC's findings. The AUC found that Milner's proposal to use previous collars based on forecast data for the years 2006 through 2008, was without merit.

Shift Factors

The AUC found that the AESO's application of shift factors in its March 12, 2019 compliance filing update, was consistent with the AUC's previous directions.

Treatment of the Bow River Hydro System

The AUC found that no additional details were required in the AESO's proposed methodology regarding the treatment of loss factor calculations for multiple generating unit systems during the historical period.

Subsection 5(4) of ISO Rule 501.10 allows the multiple generating units of the Bow River Hydro System to be aggregated into a single source asset for the purpose of calculating loss factors.

Exclusion Provisions

The AUC found the AESO's proposal to refrain from materially changing the exclusion provisions in section 8 of ISO Rule 501.10 for the historical period to be reasonable.

The exclusion provisions in ISO Rule 501.10 were previously approved by the AUC as part of the Module B methodology. The AUC further directed that the Module B methodology be used for the historical period with modifications related to using actual data and eliminating aggregation. The AESO proposed no material changes to the exclusion provisions in section 8 of ISO Rule 501.10 for the historical period. The AESO opposed the addition of "thresholds" to limit the number of excluded hours because it considered such limits to be arbitrary and because they might introduce a greater need for manual interventions when calculating loss factors.

Summary

The AUC found that the AESO complied with the AUC's direction from Decision 790-D06-2017. The AUC confirmed that although the proposed methodology for the historical period required AUC approval, the related procedure documents in this proceeding did not, because these procedures will likely evolve as necessary to implement the Modified Module B methodology.

The AUC ordered that the AESO's proposed Modified Module B methodology applied to calculate line losses for the historical period. The AUC further ordered that the AESO file a second compliance filing to address issues related to the collection and reimbursement of loss charges calculated for the historical period.

EPCOR Distribution & Transmission Inc. 2017 Performance-Based Regulation Capital Tracker True-Up Application - Module One (AUC Decision 23571-D01-2019)

PBR Regulation - Capital Tracker True-Up

In this decision, the AUC directed EPCOR to revise its accounting test for 2017 in a compliance filing.

AUC Process for Reviewing the 2017 Capital Tracker True-Up Application

The three criteria that must be satisfied in order for each project or program to receive capital tracker treatment are:

- Criterion 1 - the project must be outside the normal course of the company's ongoing operations.
- Criterion 2 - ordinarily the project must be for replacement of existing capital assets or undertaking the project must be required by an external party.
- Criterion 3 - the project must have a material effect on the company's finances.

Overview of Programs and Projects Included in the 2016 Capital Tracker True-Up Application

As part of the 2017 capital tracker true-up, EPCOR applied for the true-up of 25 programs or projects approved by the AUC for capital tracker treatment on a forecast basis in Decision 20407-D01-2016, with subsequent updates approved in the compliance filing Decision 21430-D01-2016. EPCOR also applied for the true-up of the following programs and projects in this application, on the basis that they

satisfied all capital tracker criteria for 2017 on an actual basis:

- Vehicles – Growth and Life Cycle Replacements Project; and
- Replacement of Aerial Ground Rods and Underground Distribution Equipment Ground Grids Project.

The AUC accepted EPCOR's grouping of projects and programs as proposed.

Criterion 1

The AUC found that it was reasonable for EPCOR to incur the additional costs to install the six-way ductline. The AUC accepted EPCOR's evidence that the $1.7 million of capital additions on Circuit 24C related to the six-way ductline, was a prudent decision.

The AUC found the actual costs for all other 2017 actual capital additions were prudent.

Based on the project assessment under Criterion 1, the AUC approved the need, scope, level, timing and the prudence of actual capital additions for each project or program that EPCOR included in the 2017 true-up, subject to some adjustments and AUC directions, and with the exception of the Replacement of Aerial Ground Rods and Underground Distribution Equipment Ground Grids Project and the Vehicle Growth and Life Cycle Replacements Project. The AUC did not make a determination as to whether all of EPCOR's programs or projects included in the 2017 true-up satisfied the project assessment requirement of Criterion 1.

Since the AUC was unable to approve the 2017 actual cost of debt as part of the weighted average cost of capital, the AUC did not make a determination as to whether all of EPCOR's programs or projects included in the 2017 true-up satisfied the accounting test requirement of Criterion 1.

The AUC directed EPCOR to revise its accounting test for 2017, based on directions as set out in the previous sections of this decision, and to reassess whether the capital tracker projects or programs included in the 2017 true-up satisfied the accounting test requirement of Criterion 1.

Criterion 2

The AUC found there was no need to undertake a reassessment of the projects or programs included in EPCOR's 2017 capital tracker true-up application against the Criterion 2 requirements because the driver or drivers did not change since the AUC undertook and approved the proposed programs.

Criterion 3

The AUC directed EPCOR to revise its accounting test based on approved 2017 actual capital additions. Accordingly, because EPCOR's accounting test for 2017 needs to be revised, the AUC did not determine whether any of EPCOR's programs or projects included in the 2017 true-up application satisfied the materiality test requirement of Criterion 3.

The AUC directed EPCOR to reassess whether its programs or projects included in the 2017 true-up application satisfied the two-tiered materiality test requirement of Criterion 3. For this reassessment, the AUC directed EPCOR to use the approved 2017 threshold amounts.

For the 2017 capital tracker true-up application, EPCOR used the 2017 four basis point threshold of $0.104 million and the 40 basis point threshold of $1.038 million, calculated by escalating the respective 2012 amounts by the approved 2013, 2014, 2015, 2016, and 2017 I-X index values. EPCOR then assessed each of the capital tracker projects included in the 2017 true-up application against the two-tiered materiality test, in accordance with the requirements set out in Decision 2013-435.

2017 True-Up Application K Factor Calculations

The AUC directed EPCOR to file its proposal to true-up the difference between its applied-for 2017 capital tracker true-up costs, approved to be collected in Decision 23896-D01-2018 (Errata), and the 2017 actual K factor as part of the compliance filing to this decision.

Piikani Transmission Holding Limited Partnership Application to Encumber Assets Pursuant to Sections 101(2)(d)(i) and 102(1) of the Public Utilities Act (AUC Decision 24105-D01-2019)

Transmission Assets

In this decision, the AUC approved Piikani Transmission Holding Limited Partnership ("PTHLP"), 1792191 Alberta Corp., and 1656877 Alberta Ltd.'s application allowing each of them to enter into credit facilities and to mortgage and encumber their respective present and after-acquired property and all other assets pursuant to certain security granted to the Toronto Dominion Bank ("TD Bank").

The approval of the financing arrangements enabled PTHLP to purchase its partnership units in PiikaniLink, L.P.

Background

The PTHLP requested approval for PTHLP, 1792191 Alberta Corp. and 1656877 Alberta Ltd. to enter into certain credit facilities and to mortgage and encumber property for the purpose of executing the purchase of transmission assets effective December 1, 2018, pursuant to sections 101(2)(d)(i) and 102(1) of the *Public Utilities Act*.

On March 6, 2017, PTHLP entered into a limited partnership agreement with AltaLink Limited Partnership ("AltaLink, L.P.") and AltaLink Management to form PiikaniLink Limited Partnership ("PiikaniLink, L.P."). Under this partnership agreement, PTHLP and AltaLink, L.P. were limited partners, and AltaLink Management was the general partner. PTHLP owned the majority of the limited partnership units of PiikaniLink, L.P. As the general partner, AltaLink Management held legal title to the transmission assets of the PTHLP partnership for the benefit of the partnership. AltaLink Management was also the general partner of AltaLink, L.P.

In Decision 22612-D01-2018, the AUC approved, with conditions, the application of AltaLink Management to transfer certain transmission assets, specifically the 240-kilovolt transmission line between the Goose Lake Substation and the North Lethbridge Substation, and a portion of the Peigan 59S Substation located on Piikani Reserve No. 147 (the "PiikaniLink, L.P. transmission assets"), to PiikaniLink, L.P. and determined that the corporate entities that were the partners of PiikaniLink, L.P. should be designated as an owner of a public utility under the *Public Utilities Designation Regulation*. Because the formal designation requires an order from the Lieutenant-Governor in Council, each of the corporate owners, 1792191 Alberta Corp. and 1656877 Alberta Ltd., were directed by the AUC to conduct themselves as if they had been designated.

Section 101(2)(d)(i) of the *Public Utilities Act* requires that an owner of a public utility, as designated under section 101(1), obtain approval of the AUC to "sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part of them."

The PTHLP Application

In its application, PTHLP requested approval to:

(a) execute a loan agreement (as amended, supplemented, restated or replaced from time to time (the "loan agreement")) between PTHLP, as borrower, and TD Bank, as lender, in the amount of $10,700,000, with two additional demand loan options in the amount of $650,000 and $1,000,000; and

(b) enter into an interest rate swap arrangement with TD Bank, pursuant to which PTHLP will manage its interest rate exposure under the loan agreement (as amended, supplemented, restated or replaced from time to time (the "swap agreement")). The loan agreement and the swap agreement collectively were the "credit documents."

Each of the loans PTHLP sought was required for different purposes.

The $10.7 million financing loan was for PTHLP to secure the funds required to inject its share of the equity needed to fund 51 percent of the limited partnership units in PiikaniLink, L.P. The $650,000 demand loan option was to fund the PTHLP equity required for the potential purchase of a TransAlta Corporation substation located on the Piikani Nation Reserve. PTHLP indicated that the $650,000 tranche would only be drawn down if PiikaniLink, L.P. successfully purchased and transferred the TransAlta substation. The $1 million demand loan option was to fund PTHLP equity required for future, normal course business capital additions made by PiikaniLink, L.P. PTHLP submitted that the $1 million

would only be drawn in increments as and when PTHLP was required to inject equity into PiikaniLink, L.P.

Approval Required

The AUC found that the proposed transaction was outside the ordinary course of PiikaniLink, L.P.'s business and required AUC approval pursuant to section 101(2)(d)(i) of the *Public Utilities Act*.

In this application, as PiikaniLink, L.P. was a new entity, there was no history of past events of this utility to consider regarding the nature of this transaction. Consequently, the AUC considered the nature of the transaction from the perspective of a generic transmission utility.

The AUC noted that obtaining financing and granting of security to obtain that financing was typically within the ordinary course of business for a transmission utility. However, in this circumstance, the financing requested, and security granted represented just over half of the value of the partnership, and the consequences of default on the financing could result in a request for new ownership of PTHLP's partnership interest. Moreover, the financing of PTHLP's equity interest in PiikaniLink, L.P. was not an activity that occurred on a frequent basis.

The AUC also found that the swap agreement did not pose any additional risk of default of the credit documents and could reduce the risk of default by mitigating the interest rate exposure of PTHLP to market volatility. The swap agreement was subject to the condition that no event of default or potential event of default occurred.

No-Harm Test

In deciding an application for AUC approval of a transaction outside of the ordinary course of business under sections 101 and 102 of the *Public Utilities Act*, the AUC traditionally applied a no-harm test. The AUC's predecessor, the Alberta Energy and Utilities Board (the "Board"), articulated that it should weigh the potential positive and negative impacts of the transactions to determine whether the balance favours customers or at least leaves them no worse off. The Board also determined that where harm is identified, some form of mitigation may be necessary in order for the transaction to proceed.

The AUC addressed the following questions:

(a) What impact would the transaction have on PiikaniLink, L.P.'s rates and charges passed on to ratepayers?

(b) What was the likelihood that PTHLP will default on its loan payments to TD Bank?

(c) In the event of default, what would be the effect on PiikaniLink, L.P. and on its ability to continue to provide transmission services?

The AUC found that the applicants satisfied the requirements of the no-harm test.

The AUC found that the customers of PiikaniLink, L.P. would be no worse off after the transaction was completed and therefore not harmed by PTHLP, 1792191 Alberta Corp. and 1656877 Alberta Ltd.'s request to enter into certain credit facilities and to mortgage and encumber property for the purpose of executing the purchase of transmission assets.

Loan Agreement

The loan agreement between PTHLP and TD Bank provided for one draw of $10.7 million and two additional demand loan options in the amounts of $650,000 and $1 million.

The AUC found that the $10.7 million loan facility was reasonable and consistent with the purpose noted in the loan agreement. The AUC considered the $10.7 million loan to pose the biggest risk of default as it is the most material. PTHLP stated that the $10.7 million would provide the equity needed to fund its portion of the limited partnership units in PiikaniLink, L.P. PTHLP also confirmed that the $10.7 million loan amount in the application was separate and distinct and had a different purpose than the loan approved in Decision 22612-D01-2018.

The AUC found that the purpose of the $650,000 option was reasonable and consistent with what was set out in the loan agreement. In considering the two demand loan options, the AUC noted that the $650,000 tranche was speculative and will only be drawn down if PiikaniLink, L.P. was successful in purchasing the TransAlta substation. PTHLP confirmed that this was the only instance in which the demand loan will be drawn down. Further, the AUC considered that the loan agreement also stipulated that the AUC must have approved the transfer of assets and issued all permits and

connection orders before the $650,000 would be disbursed by TD Bank.

The AUC was satisfied that the purpose of the $1 million option was reasonable and consistent with the purpose noted in the loan agreement.

The AUC was satisfied that the loan agreement did not contain any section, term, or condition that could adversely affect the customers of the public utility, PiikaniLink, L.P.

The AUC found that the ratepayers would continue to receive safe and reliable transmission service under the new PiikaniLink, L.P. utility because AltaLink Management, as the general partner, would continue to operate the transmission assets.

Summary

Pursuant to sections 101(2)(d)(i) and 102(1) of the *Public Utilities Act*, the AUC approved PTHLP, 1792191 Alberta Corp. and 1656877 Alberta Ltd. to enter into certain credit facilities and to mortgage and encumber property for the purpose of executing the purchase of transmission assets.

AUC Bulletin 2019-04: Errata Decisions to Correct Typographical, Spelling and Calculation Errors

Errata - Corrigenda

Section 48.1 of Rule 001: *Rules of Practice* provides that "[t]he Commission may, without notice, correct typographical, spelling and calculation errors and other similar types of errors made in any of its orders, decisions or directions."

Notwithstanding the wording of section 48.1, the AUC provided parties with notice and issued an errata decision when correcting typographical, spelling and calculation errors and other similar types of errors in its decisions. The errata decision indicated the changes required and attached an amended version of the original decision.

If typographical, spelling, calculation errors, and other similar types of errors are detected within 30 days of the date of issuance, the AUC will no longer issue an errata decision. The AUC will make these corrections and substitute the corrected version on its website and in the eFiling System within 30 days of issuance of the decision without notice to parties.

Decisions which require a correction that is not in the nature of a typographical, spelling, calculation error and other similar type of error, and errors of any type that are detected after 30 days of issuance and which in the view of the AUC require correction, will be corrected through the issuance of a Corrigenda decision. The Corrigenda decision will indicate the changes required and attach an amended form of the original decision.

These changes took effect on April 8, 2019.

AUC Announcement: Listen to Hearings and View Exhibits Online

Hearing Webcasts

The AUC launched a revision to the live stream broadcasting for hearings. In addition to audio, this revision will visually display exhibits as they are displayed during a hearing.

Access to the hearing webinar is available on the AUC website home page at www.auc.ab.ca through the link "Listen to a hearing."

Archived hearings webcasts will continue to be available for up to 30 days after the conclusion of the hearing.

AUC Announcement: Consultation Tool Launched April 22, 2019

AUC Engage

The AUC launched a new consultation tool called "AUC Engage" on April 22, 2019. The Engage tool allows participants to log in and participate in discussions regarding AUC rules and potential changes to the requirements and processes that shape application and technical regulatory requirements. This tool replaced the "Rule-related consultations" link found on the AUC website and will supersede Discussion Communities in the eFiling System. All rule-related consultation documents are accessible under the "Regulatory Documents" dropdown list on the AUC website.

AUC staff will initiate discussions in the forum by topic, and participants will be able to converse and provide their comments or proposed changes to rules in upcoming consultations. Observers and participants can also receive email notifications of discussion updates.

Participants in this forum will be able to provide AUC staff with suggestions about recommended changes

to improve and modernize rules considered by the AUC as part of its ongoing consultation processes.

Participants interested in AUC rule-related consultations can register through AUC Engage, which is accessible through the AUC website by clicking “Register now.” Participants may request to have access to all consultations or specific consultations on the main page of the AUC Engage website or on each consultation page.

AUC Announcement: Watch AUC Public Hearing Through Livestream Video

Public Hearing - Live Stream

On April 29, 2019, the AUC started broadcasting video in addition to the audio and exhibit display for oral hearings.

In the Calgary and Edmonton hearing rooms, the service shows the hearing room presenters in real-time. Hearings located outside of Calgary and Edmonton will continue to feature only audio webcasting.

Access to the live broadcast is available through the AUC website home page.

Archived hearing webcasts and audio for off-site hearings will continue to be available.