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REGULATORY
LAW CHAMBERS

ENERGY REGULATORY REPORT

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*This monthly report summarizes energy decisions or resulting proceedings from applications before the Alberta Energy Regulator ("**AER**"), the Alberta Utilities Commission ("**AUC**") and the National Energy Board ("**NEB**"). For further information, please contact Rosa Twyman at Rosa.Twyman@RLChambers.ca or 403-930-7991 or Vincent Light at Vincent.Light@RLChambers.ca or 403-930-7994.*

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ALBERTA ENERGY REGULATOR

Closure of Priority List for Public Lands Act Applications
AER Announcement

On August 8, 2014, as a follow up to AER Bulletin 2014-25, the AER announced that it would be closing the priority list under the *Public Lands Act* ("*PLA*"). The AER is responsible for energy-related applications under the *PLA*, including licences of occupation, mineral surface leases, pipeline agreements, pipeline installation leases, regulatory vegetation control easements, oil sand exploration applications and coal exploration program applications. Timelines for applications under the *PLA* are summarized in the announcement as follows:

Application Type	Processing Timeline (business days)
Regular Authorizations	
Enhanced Approval Process (EAP) standard	30
EAP nonstandard	45
Oil and gas environmental field report (EFR)	60[a]
Major projects EFR	90[a]
Oil sands exploration and coal exploration	60[a]
Temporary Field Authorization	5
Maintenance[b]	
Renewal	TBD
Cancellations - No entry - Reclamation certificate	TBD
Assignments	TBD

[a] Includes the 30-day period to submit a statement of concern.
[b] Changes to the systems that handle PLA applications need to be made before processing timelines can be established for maintenance activities.

AER Requires Operators in the Peace River Area to Capture all Casing and Tank Top Gas
AER Announcement

The AER announced effective August 15, 2014 that certain changes to Directive 060: *Upstream Petroleum Industry Flaring, Incinerating and Venting* now require companies in the Peace River region to capture all casing and tank top gas, unless granted an extension by the AER. The AER noted it will be conducting compliance checks in the area from August 18 to 31, 2014.

Husky Oil Operations Limited, Application for Special Gas Well Spacing (Confidential until August 1, 2014) (ERCB Decision 2009-070)
Well Spacing - Confidentiality

This decision was rendered on December 1, 2009, but was partially subject to a confidentiality order until August 1, 2014 for the seismic data provided. The decision itself was rendered public with the seismic data and interpretations redacted in December 2009 by the predecessor to the AER, the Energy Resources Conservation Board (ERCB).

The seismic data discussed in the decision was owned by Husky Oil Operations Limited, however, the application was made by Birchill Exploration Corp., who in turn required permission to use the seismic data in the special gas well spacing application. Penn West Petroleum Ltd. also requested a confidentiality order for its seismic data and interpretations. Both applications for a confidentiality order were granted pursuant to section 13 of the *Energy Resources Conservation Board Rules of Practice* (now replaced by section 49 of the *Alberta Energy Regulator Rules of Practice*) until August 1, 2014.

ALBERTA UTILITIES COMMISSION

ENMAX Cavalier GP Inc. and Encana Corporation Cavalier Power Plant and Transmission Line PCES-01L Ownership Change (Decision 2014-223)
Ownership Change

ENMAX Cavalier GP Inc. ("ECGP") applied to the AUC to transfer ownership of the 115-megawatt gas-fired Cavalier power plant located near Strathmore, Alberta from Encana Corporation ("Encana") to ECGP, along with ownership of transmission line PCES-01L connecting the Cavalier power plant to the Namaka 428S substation.

ECGP noted that a Ministerial authorization was required to transfer ownership pursuant to section 95 of the *Electric Utilities Act*, and therefore requested that any approval be made effective on the date of the ministerial authorization.

The AUC held that there were no outstanding concerns from the public or from industry. However, absent the required Ministerial authorization, the AUC held that it was not prepared to approve the transfer. The AUC stated that it was prepared to grant the approval upon receipt of the Ministerial authorization. The AUC therefore directed ECGP to file a copy of the authorization from the Minister.

Capital Power Generation Services Inc. Genesee Generating Station Units 4 and 5 (Decision 2014-226)
Generating Units Approval – Confidentiality – Standing

Capital Power Generation Services Inc. ("Capital Power") applied to the AUC for approval of two new generating units at the existing Genesee Generating Station, to be designated as Genesee Generating Station Units 4 and 5. The two proposed generating units consist of a natural gas turbine generator paired with a heat recovery steam generator, in a combined cycle process. The two proposed generating units would have a total capability of 1,050 MW and be installed adjacent to the Genesee Generating Station on a brownfield site.

The AUC approved the application on the basis that:

(a) It met the requirements of AUC Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments*; and

(b) It would have minimal impacts on the environment and local residents, or that those impacts could be sufficiently mitigated.

However, the AUC conditioned the approval to include a requirement that Capital Power conduct a post-construction noise monitoring survey under representative operating conditions in accordance with AUC Rule 012: *Noise Control*.

Accordingly, the AUC granted the application and issued Power Plant Approval No. U2014-287.

The AUC also considered two interlocutory motions in the course of Capital Power's application:

(a) An application by the Gunn Métis Local 55 ("Gunn Métis"); and

(b) Several applications for standing from landowners, the Pembina Institute, and the Gunn Métis.

The Gunn Métis had applied for a confidentiality order relating to a map detailing the exact location of traditional harvesting grounds of the Gunn Métis, and an affidavit of a member setting out the nature of such activities.

In weighing its responsibilities to determine such applications under section 13 of AUC Rule 001: *Rules of Practice*, the AUC applied the test used by the Supreme Court of Canada in *Sierra Club of Canada v Canada Minister of Finance* ("*Sierra Club*"). The Supreme Court of Canada, in *Sierra Club*, held that a confidentiality order should only be granted when:

(a) Such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and

(b) The salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

The AUC held that the information was sensitive and personal in nature and that its disclosure would represent a real and substantial risk to the Gunn Métis' interests and constitutionally protected rights. On this basis, the AUC held that the public interest in disclosing the contents of the map were outweighed by the negative impacts on the Gunn Métis' ability to exercise their rights on traditional harvesting grounds, and granted the confidentiality order for the map.

The AUC did not grant a confidentiality order for the affidavit, as the AUC found that the general nature of the interests described, and the lack of any specific personal or commercial interests or effects disclosed did not meet the test under section 13 of AUC Rule 001: *Rules of Practice*.

The AUC dismissed all of the applications requesting standing, as the AUC held that none of the applicants had

demonstrated a sufficient degree of connection or location between the work proposed and the right asserted. The AUC cited both *Cheyne v Alberta (Utilities Commission)* and *Sawyer v Alberta (Energy and Utilities Board)* in determining the relevant standard against which they would address the test for standing under section 9(2) if the *Alberta Utilities Commission Act*.

Specifically, the AUC declined to grant standing to many landowners on the basis that they were too far removed from the project to have any degree of connection or location to the proposed work, as the landowners were located between 9 and 15 kilometres from the proposed site. The AUC also held that many of the concerns expressed were either general in nature, and failed to explain how the project may result in adverse impacts on their rights, or that the concerns did not accurately reflect the project as applied for.

The AUC dismissed the Gunn Métis request for standing on the basis that the above referenced map (filed on a confidential basis) disclosed that the Gunn Métis' rights to traditional harvesting activities would be far enough afield from the proposed work to prevent any direct and adverse effects. The AUC did not specifically disclose how far the Gunn Métis' asserted rights were from the project in order to protect the confidential locations of these traditional harvesting grounds.

Balancing Pool Preferential Sharing of Records between the Balancing Pool, Capital Power Generation Services Inc., Capital Power L.P. and Certain Market Participants Yet to be Identified – Part B (Decision 2014-231)
Preferential Sharing of Records

This decision is a follow-up decision to Decision 2014-056, released in March 2014, and Decision 2014-141, released in May 2014, establishing a framework for the preferential sharing of records between the Balancing Pool, Capital Power Generation Services Inc., Capital Power L.P and several buyers of strip contracts, yet to be identified, pertaining to the power purchase arrangements from the Genesee #1 and Genesee #2 generating units. This second decision would address the identification, compliance programs and offer control of the strip buyers once identified.

In Decision 2014-141, the AUC held that since the Balancing Pool would retain control of some of the strip contracts, the Balancing Pool was ordered to provide further information on its own compliance framework consistent with the requirements of the *Fair, Efficient and Open Competition Regulation*. The AUC accepted the Balancing Pool's submissions, and held that the Balancing Pool's compliance framework met the terms, conditions and requirements as set out in Decision 2014-141.

For its Part B filings, the Balancing Pool complied with further directions of the AUC in Decision 2014-141 by filing, on a confidential basis, the identities of potential strip buyers along with either a signed preferential sharing agreement or an undertaking from a senior officer of the potential buyer to do so. The Balancing Pool further submitted that each potential buyer either confirmed that compliance policies and procedures are in place, or will be in place, to manage confidential information. The Balancing Pool also submitted that the offer control of each of the potential buyers did not exceed the 30 percent limitation in section 5(5) of the *Fair, Efficient and Open Competition Regulation*. The AUC accepted the Balancing Pool's submissions and found that the application satisfied the requirements of Decision 2014-141.

The AUC also approved a request from the Balancing Pool to conduct a further sale of strip contracts from the power purchase arrangements from the Genesee #1 and Genesee #2 units under the same process. The AUC therefore determined that a further application for preferential sharing of records until May 22, 2015 was not necessary to conclude subsequent strip sales to the potential buyers identified by the Balancing Pool.

The AUC therefore ordered that Proceeding ID No. 2959 will remain open for further submissions of successful bidders in each strip sale process. The AUC, upon notification of the successful bidders, would then make an order between the Balancing Pool, Capital Power Generation Services, Capital Power L.P. and any of the 11 potential bidders for preferential sharing of records.

ECNG Energy L.P. Audit Exemption Request (Decision 2014-238)
Audit Exemption

ECNG Energy L.P. ("ECNG") applied for an exemption under section 41(1)(a) of the *Gas Utilities Act Code of Conduct Regulation* ("*GUACCR*"). Section 37 of the *GUACCR* requires a gas distributor and its affiliates to each appoint an independent auditor to perform an annual compliance audit.

ECNG had formerly been an affiliate of AltaGas Utilities Inc. ("AltaGas"), and was indirectly held by AltaGas Ltd. until December 16, 2013. Pursuant to Decision 2014-109, the AUC recognized that ECNG was no longer an affiliate of AltaGas. As part of that decision, the AUC also directed ECNG to either file a request for approval of an auditor or to request an exemption for the period in 2013 during which ECNG was an affiliate of AltaGas.

The AUC held that ECNG's request for an exemption would not negatively affect the public interest, as it was satisfied that ECNG no longer had gas distribution customers in AltaGas' service territory, and that since the two companies were no longer affiliates, non-compliance issues were unlikely to arise. The AUC therefore approved ECNG's request for an audit exemption.

Langdon Waterworks Limited Interim Rate Request (Decision 2014-240)
Interim Rates

Langdon Waterworks Limited ("LWW") applied for interim rates based on their general rate application submitted on March 3, 2014. LWW proposed the interim rates because the final rates would not become effective until July, 2014 at the very earliest. The interim rate requested would result in an increased fixed charge per month of $60 (from $37) and an increase in the consumption charge per cubic meter of water to $1.347 (from $1.213).

The AUC found that the increase to the monthly fixed charge and the increase to the consumption charge would result in a rate shock to the average consumer. The AUC also held that the interim rates did not operate to achieve a smooth transition from current rates to final rates, as the interim consumption charge applied for was higher than both the current rates and the proposed final rates.

The AUC balanced these findings against the forecast financial hardship on LWW, whom had projected a shortfall of $450,000, which the AUC found to be material and imposed a financial hardship.

The AUC therefore approved an interim monthly fixed charge of $40, instead of the proposed $60. The AUC also approved the interim consumption charge of $1.347 as applied for. However, the AUC declined to make the interim rates effective on July 1, 2014, as it held that it lacked the jurisdiction to impose retroactive rates, citing *Calgary (City) v Alberta (Energy and Utilities Board),* 2010 ABCA 132. The interim rates were therefore set prospectively, to become effective on September 1, 2014.

ENMAX Balzac GP Inc. and Encana Corporation Balzac Power Plant and Transmission Line PCESV2L Ownership Change (Decision 2014-241)
Ownership Change

ENMAX Balzac GP Inc. ("EBGP") applied to the AUC to transfer the entirety of the 50 percent ownership stake held by Encana Corporation ("Encana") in the 120-megawatt gas-fired Balzac power plant located near Calgary, Alberta from Encana to EBGP, along with ownership of transmission line PCES02L connecting the Balzac power plant to the Balzac 391S substation.

EBGP noted that a Ministerial authorization was required to transfer ownership pursuant to section 95 of the *Electric Utilities Act*, and therefore requested that any approval be made effective on the date of the ministerial authorization.

The AUC held that there were no outstanding concerns from the public or from industry. However, absent the required Ministerial authorization, the AUC held that it was not prepared to approve the transfer. The AUC stated that it was prepared to grant the approval upon receipt of the Ministerial authorization. The AUC therefore directed EBGP to file a copy of the authorization from the Minister with the AUC.

Alberta Electric System Operator 2014 ISO Tariff Application and 2013 ISO Tariff Update (Decision 2014-242)
Tariff Application

On July 17, 2013 the Alberta Electric System Operator ("AESO") applied for approval of its general tariff application for 2014 ("2014 GTA"), and updates to its 2013 tariff.

With respect to its 2013 tariff update, the AESO sought approval of the following items:

(a) Updated dollar amounts for 2013 rates;

(b) Updated investment level calculated for AESO's 2013 contribution policy;

(c) Export opportunity merchant service Rate XOM, applicable to exports over the Montana-Alberta intertie ("MATL Intertie"); and

(d) Various other rate and rider schedules and terms.

The AUC had previously approved the 2013 tariff updates on an interim refundable basis, and directed the AESO to test the tariff update concurrently with its 2014 GTA. The AUC found that there were no objections to revised rate levels, and that the AESO applied the functionalization, classification, and allocation of revenue requirement as set out in Decision 2010-606 approving the AESO's 2010 GTA.

The AUC therefore approved the 2013 updates, but provided that the Load Shed Service for Imports ("LSSi") costs would be subject to any further findings in respect of the 2014 GTA for LSSi and for transmission line loss costs.

With respect to the 2014 GTA, the AESO sought approval for the following:

(a) Bulk system, regional system and point of delivery ("POD") cost functionalization, and bulk and regional system cost classifications for 2014, 2015, and 2016;

(b) The proposed 2014 tariff, including rates, riders, terms and conditions;

(c) Confirmation that the AESO's entire forecast revenue requirement is subject to deferral account treatment;

(d) Confirmation that the AESO shall continue to apply Rider C and an annual deferral account reconciliation process to ensure recovery of all actual costs, with the exception of line losses,

pending a decision from the AUC on that matter; and

(e) Confirmation that the AESO has complied with outstanding directions from the AUC.

The AESO's tariff is split into two broad categories:

(a) The AESO's cost and expenses, which consist mainly of:

(i) Administrative costs;

(ii) Ancillary services costs;

(iii) Transmission line losses; and

(iv) Transmission Facility Owner tariff costs (also known as wires costs); and

(b) The proposed allocation of costs and expenses as between rate classes.

Prior to the oral portion of the hearing, the AESO removed from their application:

(a) The *pro forma* construction commitment agreement; and

(b) Two parts of the proposed terms and conditions relating to cancellations and to the form and provision of financial security for projects eligible for local investment.

The AUC directed the AESO to file an application for approval of the *pro forma* construction commitment agreement by December 31, 2014.

Bulk System Costs

Bulk system costs were originally agreed to as part of a negotiated settlement that was approved in Decision 2013-421, however, the negotiated settlement did not include the allocation methodology for bulk system costs. The AESO proposed to continue applying the 12 coincident peak methodology (the "12CP Method") based on system peak usage, which the AESO argued created incentives for consumers to achieve a flatter Alberta internal load profile by shifting their demand usage to non-peak hours, thereby achieving a more efficient use of system resources. As a consequence, the AESO argued that the 12CP Method would allow for the deferral of system upgrade projects compared to other methods and represents a considerable amount of load diversity on the bulk system. The Dual Use Coalition ("DUC"), the Alberta Direct Connect Consumers Association ("ADC") and the Industrial Power Consumers Association of Alberta ("IPCAA") supported the AESO's position in this regard.

The Consumers' Coalition of Alberta ("CCA") proposed an alternative methodology for bulk system cost allocations, using the higher of hourly coincident peak demand throughout a given month, or 85 per cent of the customer's peak demand between hour 7 and hour 23. The CCA argued that its system accounted for localized peak usage hours that may not coincide with monthly system-wide usage peaks that occur in the 12CP Method. As a result, the CCA argued that the 12CP Method would not avoid local system upgrades given the load diversity on the Alberta system. The Utilities Consumer Advocate ("UCA") further argued that the 12CP Method allowed some customers to game the system by reducing load during peak hours, thereby avoiding system peak transmission charges. The AESO contended that avoidance of peak transmission charges and high pool price hours was simply an appropriate response to the price signals under the tariff, and further added that a consumer would not be able to predict with any degree of certainty what the coincident peak hour in a given month would be, and therefore would be unable to game the system.

The AUC accepted the arguments of the AESO as a reasonable method to collect bulk demand charges, and approved the continued application of the 12CP Method.

Regional Costs

With respect to regional costs, the AESO proposed to maintain the structure of the existing demand transmission service ("DTS") rates for allocating and collecting regional system charges. In contrast, the DUC proposed a demand-distance (megawatt-kilometer) based charge, on the basis that a customer located further from the bulk system, inherently uses more of the regional system than an identical customer being fed directly from the 240-kV bulk system. As the regional costs are approximately 63 percent based on transmission, and 37 percent on substation costs, and substation costs are not affected by distance, the DUC stated that its proposal would still collect approximately 75 percent of the charges based on demand and capacity.

The AESO opposed the DUC's proposal, as the AESO maintained that the regional system costs are for system access service itself, not for the facilities used to enable such access. In any case, the AESO argued that the DUC proposal would also send a price signal that no market participant could respond to, and would therefore contravene section 30(3) of the *Electric Utilities Act* ("*EUA*"). The AESO therefore submitted that the charge was a network charge for the same service as between customers. The CCA and UCA both supported the AESO's position in this regard.

The AUC rejected the DUC's proposal, as it found that section 30(3) of the *EUA* intended for those rates to be akin to a postage stamp rate, and therefore to include distance in the rate would contravene the *EUA*.

POD Cost Functions

With respect the POD cost functions, the AUC had previously rejected a similar application from the AESO in Decision 2012-362, citing concerns with the inflation indices proposed to predict project costs and directed the AESO to re-apply in this proceeding. The AESO therefore updated its application to include comparable indexes approved by the AUC in Decision 2012-237.

The DUC opposed the AESO's POD cost functions on account of the fact that the AESO's database did not include greenfield projects owned by customers, and proposed to include only the POD costs of these customer-owned facilities in the database of projects used to calculate costs. The AESO in turn argued that some of the costs of customer built facilities are held confidential, and thus would distort the data, as not all of the projects were built to provide comparable services.

The DUC also opposed the POD cost functions, as the AESO included the full cost of POD projects, but only included the contracted capacity of customers. The DUC proposed including the full capacity of customers.

The AUC agreed with the AESO's argument with respect to greenfield projects, citing that it was unreasonable to include such projects in the database, but not include their full cost, and therefore denied the DUC's proposal in this respect. However, the AUC accepted the DUC's arguments in respect of including the full capacity of customers as opposed to simply the contracted capacity. The AUC held that the objective of the POD project cost database is to determine the correlation between cost with capacity to design an appropriate cost allocation mechanism. The AUC therefore directed the AESO to include the full increased capacity when including projects in the database.

Lastly, the DUC opposed the calculation of the customer fixed charge in the POD charge with a starting point of 0.1 MW, arguing that such a calculation would lead to a dramatic drop in POD charges, when total POD costs are rising. The AESO argued that POD costs as a percentage of total transmission costs were declining, and that many of the customers that the DUC claimed would be charged lower amounts were atypical customer profiles, such as load serving generation, or remote communities, which were typically quite small.

The AUC agreed with the DUC, finding that declining POD costs, when substation construction costs were increasing, would be unreasonable if the AESO's 0.1 MW starting point were applied. The AUC therefore directed the AESO to use 1.5 MW as a low end.

Supply Transmission Service and Impact Opportunity Service

ATCO Power Ltd. ("ATCO") opposed the proposed treatment of supply transmission service ("STS") and import opportunity service ("IOS") in the AESO's tariff. ATCO submitted that the AESO's treatment was unjustly discriminatory on the basis that, although STS and IOS ratepayers enjoy effectively the same rates and service, STS customers must make the entire physical capability of their assets available to the power pool, whereas IOS customers do not. ATCO therefore proposed an increase to IOS to reflect the absence of a capacity obligation to the power pool.

The AESO opposed the ATCO proposal out of concerns related to physical withholding by removing must-offer/must-comply provisions for STS ratepayers in *ISO Rule 203.1*, and on the basis that IOS and STS are different services. The AESO also pointed out that IOS customers are also curtailed prior to STS customers.

The AUC rejected ATCO's proposal, finding that STS and IOS rates do not receive the same level of service, and thus there was no basis to the assertion of unjust and discriminatory rates. The AUC also held that a tariff application was not the appropriate forum to address concerns arising from operational requirements of ISO rules.

LSSi Costs

The AESO sought to include LSSi costs as an ancillary service charged to load. ATCO submitted that LSSi was an optional service, and therefore did not qualify as an ancillary service, since ancillary services must be "required". The AUC rejected ATCO's arguments, as it held that LSSi increases the capability over interties, supporting the legislated goals of providing satisfactory service.

Bill Effects

With respect to bill effects, the AUC deferred consideration of bill effects (including rate shock) to the AESO's compliance filing, to account for any subsequent changes.

Fortis Application

FortisAlberta Inc. ("Fortis") applied to have the installation cost of a variable frequency drive serving the Cochin 986S substation refunded as a negative contribution, or through a refund. Fortis maintained that the costs create a benefit to the transmission as a whole, and therefore the AESO tariff was the appropriate venue to address these costs.

The AUC held that the variable frequency drive equipment, as a result of a change for the Cochin 986S substation to 25-

kV, could not be considered a transmission facility, and thus only "behind the fence" methods to recover these costs were available to Fortis. Therefore, the Fortis application was denied.

Terms and Conditions

The AESO proposed changes to its terms and conditions to distinguish more clearly between participant-related and system-related costs. This proposed change included explicit statements to the effect that when a connection project involves an upgrade or expansion to existing transmission facilities that are classified as system-related, the costs will also be treated as system-related, including advancement costs. The UCA opposed this change, as it noted that such a change may result in customers being required to pay for additional costs incurred in advancing construction of facilities to provide service to a new customer.

The AUC accepted the UCA's argument, noting that new customers requesting service should provide reasonable notice to the AESO and that existing customers should not bear the burden of paying for costs related to the advancement of construction of system facilities to provide service to new customers. The AUC held that while the advancement of some projects may ultimately benefit the system for purposes of reliability, the incremental benefit only exists for the time period by which the project was advanced, therefore providing little in the way of benefits to the system as an incremental cost. On this basis, the AUC denied the AESO's proposal to change the terms and conditions, and ordered the AESO to redraft the relevant provisions in accordance with its finding.

Contribution Policy

Both Devon Energy Corporation ("Devon") and AltaLink Management Ltd. ("AltaLink") made submissions on the effect of Decision 2012-362, suggesting that either the contribution policy of the AESO be changed, or that the contribution policy itself was a violation of the postage stamp principle mandated by section 30(3) of the *EUA*. The AUC rejected both approaches on the basis that it had already disposed of the issue of the reasonableness of the contribution policy elsewhere in the decision, and that the contribution policy did not violate the postage stamp principle, but instead sent an appropriate price signal as a key policy objective.

Devon also submitted a proposal to use a shorter term data set than that currently applied under the AESO's contribution policy, arguing that the long-term nature of the data may skew costs and create intergenerational inequity. Devon also submitted that the contribution policy should be updated on an annual basis using the prior five years' data for project costs. The AUC rejected these arguments, holding that where there is a conflict between efficient pricing signals and intergenerational equity concerns, efficient price signal will prevail. The AUC rejected the data set proposal on the basis that real connection costs were higher, although the intergenerational equity arguments were premised on the escalation of costs being higher due to inflation. The AUC also rejected the update mechanism, holding that the administrative burden of an annual update and the potential for significant changes in investment levels inherent in an annual change may create significant contention in future tariff update proceedings.

The AUC also approved the AESO's proposed contribution policy and investment coverage principles on a final basis, effective October 1, 2013, following previous AUC directions in Decision 2013-325.

Payment in lieu of Notice Provision

ADC proposed a reduction to the payment in lieu of notice provisions from five years to six months for customers who have been served for more than 20 years, when a customer proposes to reduce or terminate services under rate DTS. Similarly, for customers who have been served for less than 20 years, ADC proposed that the AESO only recover those unrecovered costs from the investment in the facilities serving the customer in question. The AUC rejected ADC's proposal, and instead accepted the argument of the AESO, who contended that ADC mischaracterized the payment in lieu of notice provision as a penalty or proxy payment for stranded assets. The AESO therefore argued that the payment in lieu of notice provisions are required in order to ensure proper planning of the transmission system, and to avoid over-building facilities. The AUC accepted that since the AESO has the obligation to satisfy future demand, the payment in lieu of notice provision is necessary to mitigate the risk of building excess or unused facilities.

Effect of Ongoing Matters

The AUC also considered the effect of ongoing matters, such as the current complaints respecting the ISO rules for transmission line losses. Various parties submitted that previous findings of the AUC respecting the line loss methodology would render the inclusion of the current line loss rule unjust and unreasonable under the tariff, while others submitted that the ISO rule was outside the scope of the proceeding, and should be considered as part of other proceedings.

The AUC held that the current line loss methodology would be incorporated into the 2013 tariff update and 2014 tariff, but only on an interim basis, as a subsequent finding of the AUC on the line loss methodology may render the current tariff unjust and unreasonable under section 121 of the *EUA*. Therefore, the AUC made rates for line loss charges collectible under the rates for demand opportunity service, export opportunity service, STS, and IOS interim rates.

New Rate Class Proposal

TransCanada Energy ("TCE") submitted a proposal for a new rate class entitled Supply Opportunity Service ("SOS") which would be curtailed prior to rate STS customers. Several market participants supported the inclusion of rate SOS in the 2014 GTA. Rate SOS, according to TCE, would be contingent on a finding by the AESO that further transmission reinforcement is necessary to provide unconstrained transmission service in a given area for a new entrant. Customers under rate SOS would continue under rate SOS until adequate transmission reinforcement exists, and the customer is then eligible for rate STS. The AESO objected to the proposal on the basis that it was not fully developed as a rate, and that it infringes on the AESO's obligation to provide a reasonable opportunity to customers wishing to exchange electric energy under section 29 of the *EUA*. Other market participants opposed rate SOS, as they contended it created *de facto* transmission rights to be enjoyed by incumbents over new market entrants by creating access priorities.

The AUC rejected the proposed rate SOS, as it held that a reasonable opportunity to exchange electric energy on non-discriminatory terms "requires equal treatment of market participants except in instances when the safety and/or reliability of the [Alberta Interconnected Electric System] is at risk." The AUC also rejected the proposed rate SOS, as it results in implicit transmission rights, a concept the AUC had previously rejected in Decision 2009-042.

Filing of 2013 Tariff Update and 2014 GTA

In accounting for all of the above directions and findings, the AUC ordered the AESO to refile its 2013 tariff update and 2014 GTA on or before October 20, 2014.

Balancing Pool and Capital Power L.P Preferential Sharing of Records between the Balancing Pool, Capital Power L.P., and Capital Power Generation Services Inc. (Decision 2014-243)
Preferential Sharing of Records

The Balancing Pool applied for an order permitting sharing of records not available to the public between Capital Power Generation Services Inc., and Capital Power L.P. (collectively, the "Parties") in respect of Genesee #1 and Genesee #2 units ("Genesee 1 & 2") for the period of March 1, 2014 to December 31, 2020. The application was supported by the Market Surveillance Administrator.

This application is similar in nature to the preferential sharing of records approved in Decision 2014-141 and Decision 2014-231.

In the applications approved in Decision 2014-141 and 2014-231, the Balancing Pool proposed to offer non-unit specific derivatives of power purchase arrangements in the form of energy strip contracts and ancillary services strip contracts that relate to the committed capacity of Genesee 1 & 2. This application would account for any period wherein the strip contracts from Genesee 1 & 2 remain unsold or where no such contracts are in force.

The AUC found that the Parties' offer control did not exceed 30 percent of the total maximum capability of generating units in Alberta. The AUC also held that the application would prohibit the use of records in a manner that would not support the fair, efficient and openly competitive market and that the sharing of such records was reasonably necessary for the Parties to carry out business.

Accordingly, the AUC granted the request for preferential sharing of records between the Parties, specific to the price, quantity and availability of information for Genesee 1 & 2, and only for periods during which no strip contracts are in force.

EPCOR Distribution & Transmission Inc. 2013 Final TCDA and AESO Deferral Account Reconciliation True-up Rider J (Decision 2014-245)
TCDA – Deferral Account – Rider J

EPCOR Distribution & Transmission Inc. ("EDTI") applied to the AUC for approval of the following, effective from October 1, 2014 to December 31, 2014:

(a) True-up amounts for the collection/refund of:
    (i) The 2013 final transmission charge deferral account ("TCDA") balance; and
    (ii) The 2013 Alberta Electric System Operator ("AESO") Balancing Pool rebate;
(b) Amounts relating to the 2012 AESO deferral account reconciliation ("DAR");
(c) Amounts relating to adjustments for errors in the final true-up for 2013 Q2 and Q3 TCDA applications; and
(d) Updates to existing quarterly deferral account standardized schedules template.

The aggregate amount for items (a) through (c) above resulted in a $3.38 million refund to ratepayers. The AUC found the calculation of the amounts related to the TCDA balance, Balancing Pool rebate, the AESO DAR and true-up amounts for 2013 Q2 and Q3 TCDAs to be reasonable.

EDTI proposed to allocate the collected and refunded amounts of the TCDA balance through a per-kilowatt hour basis from each of its rate classes. EDTI proposed to allocate the Balancing Pool rebate and AESO DAR amounts (for non-direct connect customers) according to forecast energy for the proposed collection period. AESO DAR

amounts for direct connect customers were to be allocated for each individual point of delivery. EDTI proposed to allocate the final true-up for 2013 Q2 and Q3 TCDA amounts based on actual energy consumed between rate classes. EDTI submitted that the above allocations were representative of cost causation for each rate class.

EDTI proposed scheduling and forecasting changes to the quarterly AESO demand transmission service rider. The AUC opted to defer consideration of these issues to another proceeding, citing efficiencies in consultation processes as the reason for the deferral.

The AUC held that the proposed allocation was reflective of previous directions and cost causation principles. The AUC also found that the rate impacts would amount to less than 10 percent of the monthly billing cost, and therefore there was no evidence that the collection of these amounts would constitute rate shock. Therefore, with the exception of the changes to the quarterly AESO demand transmission service rider, the AUC accepted EDTI's rider J application as filed, to be effective from October 1, 2014 to December 31, 2014.

Preliminary matters in Market Surveillance Administrator allegations against TransAlta Corporation et al., Mr. Nathan Kaiser and Mr. Scott Connelly (Decision 2014-246)

Document Disclosure

This decision arises out of previous directions from the AUC to the Market Surveillance Administrator ("MSA") in Decision 2014-204, requiring the MSA to disclose documents related to the MSA's investigation into the allegations against TransAlta Corporation, TransAlta Energy Marketing Corporation and TransAlta Generation Partnership ("TransAlta") and Mr. Nathan Kaiser and Mr. Scott Connelly (collectively, the "Respondents"). In that decision, the AUC also directed the MSA to provide a list of documents that it would not disclose, and to provide a rationale for the non-disclosure.

In total, the MSA submitted 589 records which it asserted to be consistent with section 6(12) of the *Market Surveillance Regulation* (the "*MSR*"), and 45 records which were delivered as sealed records which may relate to the conduct of the MSA (it was unclear in the decision whether there was any overlap between the two categories).

The Respondents expressed concern with the rationale and descriptions provided by the MSA with respect to the documents submitted, alleging that the information was either insufficient, or too generic to evaluate the MSA's claim to privilege or non-disclosure over them.

In response, the MSA argued that the description of privileged documents should not compromise the privilege asserted by describing its contents, citing *Dorachak v Krupka*, 1997 ABCA 89.

Accordingly, the AUC held a pre-hearing meeting to determine the issues of disclosure, privilege, and the applicability of section 6(12) of the *MSR* to the documents not disclosed by the MSA.

The Respondents and the MSA were in agreement that in order for a document to be prohibited from disclosure under section 6(12) of the *MSR*, the AUC must consider the following four factors:

(a) Was the record previously made public?

(b) Was the record created by the MSA for its internal use in carrying out its mandate?

(c) Does the document relate to the conduct of the MSA or the consideration by the MSA of the basis upon which charges should be advanced?

(d) Is disclosure of the record necessary for the AUC to determine whether the MSA did not comply with a provision of the *Alberta Utilities Commission Act* (the "*AUCA*") or the *MSR*?

The AUC held that the application of section 6(12) of the *MSR* essentially presented two categories of documents for which disclosure was prohibited:

(a) Undisclosed internal MSA documents that do not go to an element of the MSA's conduct that is relevant and material to the matters raised; and

(b) Undisclosed internal MSA documents that do go to an element of the MSA's conduct that is relevant and material to the matters raised in a proceeding.

The AUC found that documents in the former category were prohibited from disclosure and that documents in the latter category were producible only if the AUC decides that the document describing the conduct in question is necessary to determine whether or not the MSA did not comply with a provision of the *AUCA* or the *MSR*.

Upon reviewing each of the documents submitted, the AUC found that it was not evident whether all of the documents met all four criteria of section 6(12) of the *MSR*, noting that some documents may have been prepared by TransAlta or other market participants. Accordingly, the AUC ordered the MSA to revise its list to include the following information to the description of the documents over which it asserts privilege:

(a) Whether it has been previously made public;

(b) Whether it was created by the MSA for its internal use in carrying out its mandate; and

(c) Whether it relates to conduct of the MSA that is material or relevant to the proceeding, including any defences raised by the Respondents.

The AUC ordered these revisions to be filed by August 29, 2014, at which time it would, without further process, determine the applicability of section 6(12) of the *MSR* for the documents submitted, including the sealed documents.

In this decision, the AUC also denied a motion from the Respondents requesting further particulars arising from the MSA's alleged failure to provide adequate information relating to the allegations against them. The AUC found the Respondents had sufficient information to identify the transaction(s) that are the focus of the allegations in order to prepare a defence.

Genalta Power Inc. Amendment of the West Cadotte Power Plant Approval (Decision 2014-247)
Power Plant - Amendment

Genalta Power Inc. ("Genalta") had previously applied to the AUC to construct and operate an 18.6-megawatt (MW) power plant northwest of Peace River. Genalta applied to amend its application, which includes a capability upgrade to 20.0 MW due to major equipment changes. The amended application from Genalta requested approval of five 4.0-MW gas-fired generators, compared to the previously applied for six 3.8-MW gas-fired generators.

No objections or concerns were raised in the course of Genalta's participant involvement program. The AUC held that the amended power plant application met the requirements of AUC *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments*, and the noise requirements of AUC *Rule 012: Noise Control*.

Accordingly, the AUC approved the amendment application.

Various AUC Franchise Agreements
Franchise Agreement

Pursuant to section 139 of the *Electric Utilities Act* the AUC approved the following franchise agreements upon having found that they were necessary and proper for the public convenience and properly serve the public interest. In each case the term of the agreement is 10 years with two five year options. The approved franchise fees are indicated below as are any applicable linear tax rates.

	Franchise Fee as % of Delivery Revenue	**Linear Property Tax Rate**
Town of Picture Butte - FortisAlberta Inc.(Decision 2014 - 227)	8%	1.55%
Town of Hanna - East Central Gas Co-op Ltd. (Decision 2014-232)	9.85%	N/A
Village of Caroline - FortisAlberta Inc. (Decision 2014-233)	5%	2.01%
Summer Village of Norglenwold - FortisAlberta Inc. (Decision 2014-234)	5%	0.03%
Town of Stony Plain - FortisAlberta Inc. (Decision 2014-236)	20%	1.37%
Rocky View County - Harmony Advanced Water Systems Corporation (Decision 2014-239)	0.0% (variable up to 10%, based on gross utility accounts)	N/A
City of Brooks – FortisAlberta Inc. (Decision 2014-251)	12.63%	1.86%
Town of Three Hills – Harvest Hills Gas Co-op Ltd. (Decision 2014-252)	N/A (Expands Franchise Area)	N/A
City of Brooks – FortisAlberta Inc. (Decision 2014-251)	12.63%	1.86%

ALBERTA COURT OF APPEAL

FortisAlberta Inc v Alberta (Utilities Commission), 2014 ABCA 264
Leave to Appeal Granted

The Alberta Court of Appeal considered 13 applications from gas and electric utility owners and operators for leave to appeal AUC Decision 2011-474: Generic Cost of Capital Decision ("GCOC Decision") and AUC Decision 2013-417L Utility Asset Disposition Decision ("UAD Decision"). The GCOC Decision and the UAD Decision both contemplated directions from the Supreme Court of Canada in *ATCO Gas & Pipelines Ltd v Alberta (Energy and Utilities Board)*, 2006 SCC 4 (the "*Stores Block Decision*") and the Alberta Court of Appeal in *ATCO Gas & Pipelines Ltd v Alberta (Energy and Utilities Board)*, 2008 ABCA 200.

In the GCOC Decision, the AUC had determined that stranded assets, irrespective of how they became stranded, should not remain in rate base and that the utility must bear that risk. In the UAD Decision, the AUC expressly considered the effect of the *Stores Block Decision* and subsequent appellate decisions on costs associated with utility assets that are determined to be no longer used or required to be used.

The various applicants sought leave to appeal on a number of questions, including:

(a) Whether the AUC erred in law or jurisdiction in determining that the *Stores Block Decision* compels it to deny a utility a reasonable opportunity to recover its costs on its prudently incurred investments;

(b) Whether the AUC erred in law or jurisdiction by determining that the costs of assets that are determined to be no longer used or required to be used must be borne by the utility's shareholders; and

(c) Whether the AUC erred in law or jurisdiction by denying the applicants an opportunity to provide submissions on the impact of prudent cost recovery risks in the GCOC Decision and the UAD Decision.

McDonald JA applied the test for leave to appeal as set out in *ATCO Electric Limited v Energy and Utilities Board (Alberta)*, 2003 ABCA 44 at para. 17, requiring the applicant to demonstrate that the questions raise a "serious, arguable point". However, in his analysis, McDonald JA declined to consider the appropriate standard of review on appeal, leaving such a determination to the panel hearing the appeal.

McDonald JA granted leave to appeal on two questions for each of the gas utility and electric utility owners, with the last question being common to both the gas utility owners and electric utility owners:

(a) Did the AUC err in law or jurisdiction by concluding that it must deny gas utilities the opportunity to recover their prudently incurred costs in the provision of mandated utility services when those assets are removed from utility service in the circumstances described in paragraph 327 of the UAD Decision?

(b) Did the AUC err in law or jurisdiction in its interpretation of the *Electric Utilities Act* to hold that the shareholders of electrical utilities bear the risks that the electrical utilities will not be able to recover the prudently incurred costs of assets no longer used or required to be used by the electrical utility? and

(c) Did the AUC err in law or jurisdiction in the GCOC Decision and/or in the UAD Decision by denying the applicants the opportunity to provide evidence and submissions on the impact of the AUC's imposition of a new prudent cost recovery risk on their fair return for the years 2011 and 2012, in light of the enhanced risks?

NATIONAL ENERGY BOARD

Draft National Energy Board Event Reporting Guidelines
Reporting Guidelines

On August 8, 2014, the NEB released a draft of an update to its Reporting Guidelines for reporting "events" and "incidents" under *the National Energy Board Act*, the *Canada Oil and Gas Operations Act*, the *Northwest Territories' Oil and Gas Operations Act,* and their respective regulations.

The NEB provided a period for comments that extended to August 29, 2014 for companies to provide input.

The draft of the Reporting Guidelines provides a summary of reportable events under the legislation noted above, and sets out a new process for reporting through an online reporting system, in lieu of the previous method of reporting events to the Transportation Safety Board reporting hotline. The NEB notes in the draft that the following events will be reportable under the new online reporting tool:

(a) Incidents as set out under the *National Energy Board Onshore Pipelines Regulations*, the *National Energy Board Processing Plant Regulations* ("*PPR*"), and the *Canada Oil and Gas Drilling and Production Regulations*;

(b) Unauthorized activities as set out under the *National Energy Board Pipeline Crossing Regulations* Part II;

(c) Emergency burning or flaring, hazard identification, suspension of operations, and near-misses as set out under the *PPR*;

(d) Serious accidents or incidents as set out under the *Canada Oil and Gas Geophysical Operations Regulations*;

(e) Emergencies or accidents as set out under the *Canada Oil and Gas Installation Regulations*; and

(f) Accidents, illnesses, and incidents as set out under the *Canada Oil and Gas Diving Regulations*.

Further details are available on the NEB's website at http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/rrggnmgpnb/rprtnggdlns/rprtnggdlns-eng.html.

Administrative Monetary Penalty to Trans Mountain Pipeline ULC (Kinder Morgan Canada) for Failure to Comply with a Condition of an Order
Monetary Penalty

The NEB fined Trans Mountain Pipeline ULC (Kinder Morgan Canada) ("Trans Mountain") $16,000 under section 2(3) of the *Administrative Monetary Penalties Regulations*. In previous correspondence to Trans Mountain, the NEB held that the final design and construction of piping at Trans Mountain's Nipisi Facility was different from the design approved by the NEB in Order XO-T260-009-2013, therefore violating condition 2 of the same order.

However, the NEB found that the facilities could be safely opened for transmission, and would not otherwise pose a risk to the environment. On this basis, the NEB, of its own motion, issued Amending Order AO-001-XO-T260-009-2013 approving the modifications made. The Board therefore also issued OPSO-T260-013-2014 granting Trans Mountain leave to open the Nipisi Facility Piping as requested on April 14, 2014.

Order AO-003-SG-N081-001-2014 In Response to NGTL Request for Review and Variance
NEB Issues

The NEB, by letter decision released on August 15, 2014, responded to Nova Gas Transmission Ltd.'s ("NGTL") review and variance request with respect to Order AO-002-SG-N-081-001-2014 (the "Order").

Specifically, NGTL sought to permit the direct assessment of 100 meters of the Unity Lateral by means of excavation, and to transfer the Donalda Lateral from Schedule A to Schedule B (which places pressure restrictions of between five and ten percent of maximum operating pressure).

The NEB approved the direct assessment method, being satisfied that excavation was an equivalent safety assessment method for relevant hazards, and therefore exempted the portion of the Unity Lateral from conditions 4(a) and 4(b) of the Order. The NEB also approved the transfer of the Donalda Lateral to Schedule B, subsequent to an in-line inspection performed by TransCanada PipeLine Ltd. ("TransCanada").

In addition, the NEB determined that TransCanada had previously complied with Conditions 2, 4(d) and 4(e) of the Order, and amended conditions 1 and 3 of the Order so that they operate on a forward going basis.

Therefore, the NEB issued Order AO-003-SG-NO81-001-2014, reflecting the above amendments.