



ENERGY REGULATORY REPORT

This monthly report summarizes matters under the jurisdiction of the Alberta Energy Regulator (“AER”), the Alberta Utilities Commission (“AUC”) and the Canada Energy Regulator (“CER”) and proceedings resulting from these energy regulatory tribunals. For further information, please contact a member of the [RLC Team](#).

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ALBERTA ENERGY REGULATOR***Invitation for Feedback on Proposed New Requirements for Geothermal Resource Development, AER Bulletin 2021-31****Jurisdiction - Geothermal Resources*

Under *Bill 36: Geothermal Resource Development Act* which has not yet been proclaimed, the AER will have the authority to regulate the safe, efficient, and responsible development of Alberta's geothermal resources.

The AER is seeking feedback on a proposed new *Directive 0XX: Requirements for Geothermal Resource Development*. The proposed directive would set out the requirements that the industry must follow for geothermal resource development that is below the base of groundwater protection and covers the entire development life cycle, from initiation through to closure. *Directive 0XX* introduces processes and requirements that are unique to geothermal energy while incorporating applicable oil and gas regulatory instruments.

2021-2022 Orphan Fund Levy for Large Facilities, AER Bulletin 2021-32*Oil and Gas - Orphan Wells*

In accordance with Part 11 of the *Oil and Gas Conservation Act* and *Directive 024: Large Facility Liability Management Program (LFP)*, the AER is prescribing an LFP orphan fund levy of \$3.5 million for the 2021/22 fiscal year, to be issued in September of 2021. The levy will be allocated proportionately among licensees with facilities based on the facility-specific liability assessment. It will support the closure costs for large facilities in the LFP with licenses held by defunct licensees. Funds collected by the LFP orphan fund levy will go solely to cleaning up LFP facilities of defunct licensees.

LFP orphan fund levy invoices will be emailed by September 16, 2021, and must be paid in full by the licensee and received by the AER by October 15, 2021.

Revised Continuous Emission Monitoring System Code, AER Bulletin 2021-33*Emissions - Updates*

The *Continuous Emission Monitoring System ("CEMS") Code* was updated by Alberta Environment and Parks ("AEP") in 2021 and will take effect on January 1, 2022.

"Authorizations to deviate" granted under the predecessor, the 1998 *CMS Code*, will not apply under the updated 2021 code. Licensees seeking authorization to deviate from requirements in the 2021 *CEMS Code* should contact the appropriate AER *Environmental Protection and Enhancement Act ("EPEA")* approval coordinator to request an authorization to deviate before the 2021 code takes effect. The only exceptions are existing permissions to deviate under Section 4 of the code, "Installation Specifications and Test Procedures." These may remain in force until major structural modifications are made to the stack, duct, or flue.

ALBERTA UTILITIES COMMISSION***Alberta Electric System Operator 2020 Deferral Account Reconciliation, AUC Decision 26541-D01-2021***
Electricity - Rates

In this decision, the AUC approved the request from the Alberta Electric System Operator (“AESO”) to settle its 2020 net deferral account surplus of \$17.3 million with market participants.

Background

The AESO provides system access service to the transmission system through the Independent System Operator (“ISO”) tariff. The AESO may undercollect or overcollect its forecasted revenue requirement through the ISO tariff for three of its rate classes due to factors such as changing AUC directions or billing determinants. In the event of an overcollection or undercollection, the AESO ensures that no loss or profit result from its operation on an annual basis through the deferral account.

Application

The AUC accepted the AESO’s submission regarding significant variance thresholds. It noted that the 9.2 per cent increase to AESO staff and benefit costs in 2020 falls below the 10 per cent limit of the general and administrative expenses component of the AESO’s revenue requirement. As the AUC found this variance insignificant, and as the application indicated a net surplus, and because it was sufficiently detailed, the AUC found it unnecessary and inefficient to hear from further participants.

The AUC found the AESO’s costs to be prudent in the application. Accordingly, the AUC approved the accuracy of deferral account amounts and the calculation of the net deferral account surplus of \$17.3 million.

Alberta Electric System Operator - Needs Identification Document Application, AltaLink Management Ltd. - Facility Applications, ATCO Electric Ltd. - Facility Applications - Central East Transfer-out Transmission Development Project, AUC Decision 25469-D01-2021
Needs Identification Document and Facility Application

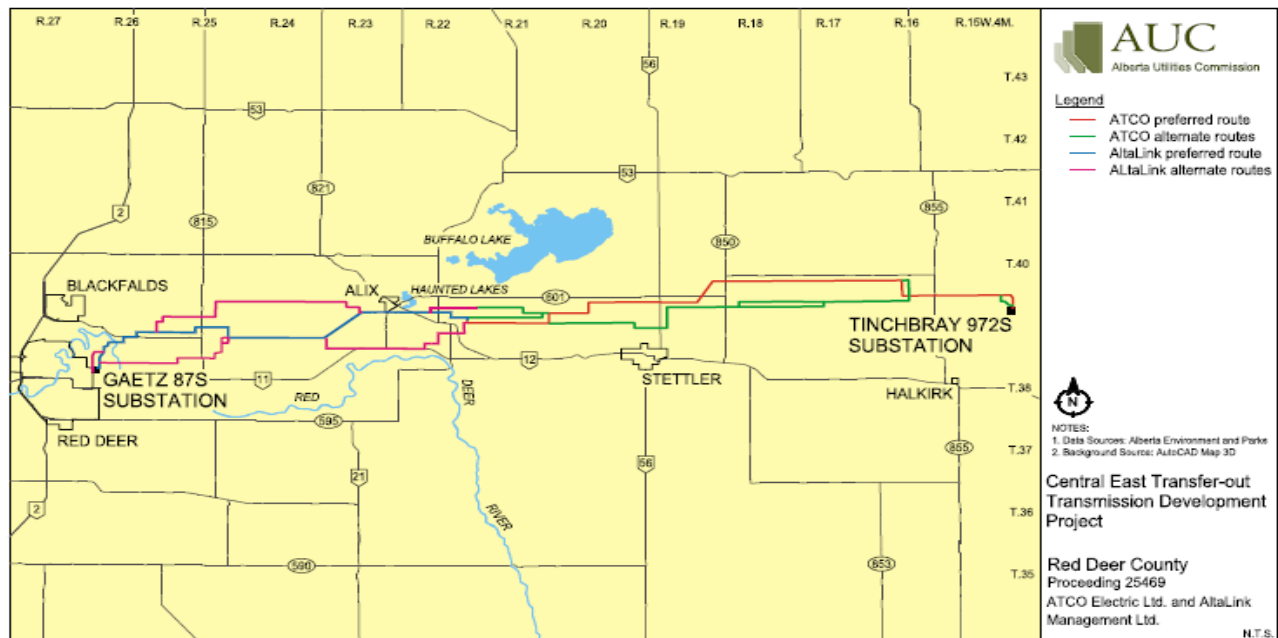
In this decision, the AUC approved a needs identification document (“NID”) application from the Alberta Electric System Operator (“AESO”), and facility applications from ATCO Electric Ltd. (“ATCO”) and AltaLink Management Ltd. (“AltaLink”), to construct and operate a double-circuit, 240-kilovolt transmission line between ATCO’s Tinchebray 972S Substation and AltaLink’s Gaetz 87S Substation, and to alter the two substations and associated Transmission Line 9L16 to accommodate the two circuits.

Applications and Interventions

The AESO applied to the AUC for approval of the need to construct transmission development to enable additional generation integration capability in Alberta’s central east and southeast sub-regions. Specifically, the AESO requested that the AUC approve two 240-kilovolt (kV) circuits between Tinchebray 972S and Gaetz 87S substations, and construction milestones based on 0.5 per cent annual congestion on the central east sub-regions west transfer-out path, with timing of construction to be determined in a future reaffirmation study. Collectively, this project is referred to as the Central East Transfer-out Transmission Development Project (the “Project”).

ATCO and AltaLink applied to construct the facilities to meet the AESO’s identified need in their respective service territories and for interconnections of their transmission facilities. The applied-for routes are set out below.

Figure 1. Applied-for routes



In response to its notice of hearing issued on October 13, 2020, the AUC received statements of intent to participate from stakeholders objecting to the need and the routing options, some of whom formed groups. Standing was granted to numerous individuals, the Consumers’ Coalition of Alberta (“CCA”), Capital Power Corporation, NOVA Chemicals and the Métis Nation of Alberta (“MNA”). With respect to the facility applications, the Commission considered that persons who own or reside on property located within 800 meters of the finalized right-of-way of any of the proposed routes have standing to participate in the process.

NID Application

Planning Methodology

The AESO performed deterministic system planning studies to assess the performance of the existing transmission system in the central east area in accommodating projected renewable generation development, identify the need for transmission reinforcements, evaluate short-listed transmission development options, and select the preferred transmission development option. The AESO also adopted a new approach in applying a congestion assessment based on probabilistic studies to estimate the levels of congestion in the study area, taking into account the projected increases in renewable generation.

The congestion assessment informed the establishment of construction milestones for the AESO’s transmission development and the associated timing of the need for the staged transmission development. The phased approach would include two stages of construction, with each stage triggered by a construction milestone. The AESO committed to conducting a reaffirmation study once the incremental generation reaches the upper limit of the milestone range at each stage. The reaffirmation study would take into account the most up-to-date information in the study area.

The AESO proposed to de-link the need decision (based on deterministic studies) from the construction timing decision (based on probabilistic congestion assessment) via a milestone monitoring process. As a result, it would mitigate the risk of unnecessary system enhancement and expenditure.

Need

According to the AESO, the driver of the need for the Project is the forecast renewable generation interest in the area, not the load growth. It asserted that in light of a forecast increase in renewable generation development in the central east and southeast sub-regions (study area), an expansion of the transfer-out capability of the transmission system is needed to enable surplus generation to be transferred from the study area to adjacent load centres. The AESO submitted that the study area has a high interest for renewable generation, with a forecast of 900 MW by 2023 and up to 4,600 MW by 2031.

Due to uncertainties associated with the timing, volume, and offer behaviour of the replacement or retirement of the existing thermal generation in the central east sub-region, generation dispatches using statistical and market simulation methods were developed for two thermal dispatch scenarios: a Peaking Scenario where thermal generation has a lower capacity and energy dispatch than the historical thermal fleet, with primarily coal to gas conversion.

The AESO also put forward a Baseload Scenario where thermal generation has similar capacity and energy dispatch as the historical thermal fleet, with new gas replacement. The AESO viewed these two scenarios as bookends to cover a reasonable range of possibilities. These two Scenarios were created by the AESO in late 2018 or early 2019. In its rebuttal evidence, the AESO indicated that in light of changes in the power industry, the Peaking Scenario is the more likely future outcome compared to the Baseload Scenario.

Findings

The AUC accepted that the renewable generation interest in the area was evidence and that the existing transmission system in the central east area is thermally constrained due to the limited transfer-out capability. Under both the Baseload and Peaking Scenarios, the existing transmission system would not be able to meet the forecasts up to 4,600 MW by 2031 because the available generation integration capability is 135 MW to 880 MW.

The AUC also accepted that the applied-for option to meet the need was the best option available in terms of generation integration capability and operational flexibility.

With regard to the AESO's congestion assessment, and the establishment of milestones, the AUC was satisfied that in conducting the reaffirmation study, the AESO will take into account the most up-to-date information in the study area including location, size and type of incremental generation that has met the certainty criteria, any changes to asset ratings enabled through optimization, any additional system optimization enabled within the study area and the most recent forecast for thermal generation production profiles in the study area.

Finally, the AUC was satisfied that the AESO met notification and consultation requirements and discharged its public interest mandate. The AESO's NID application was approved.

Facility Applications

The AUC approved the double-circuit steel monopole structures proposed by the Transmission Facility Operators ("TFOs") in their facility applications. These structures met the AESO's NID, the approved double-circuit configuration and were the least impact structures when considering the TFOs' line optimization studies and feedback from landowners during consultation.

Although the parties could not agree on the quantum of savings, all agreed that the use of guyed structures would result in cost savings. As such, in areas of the approved route (i.e., corner or dead-end locations) that can technically accommodate the use of guy wires, the TFOs were directed to consult with landowners on the potential use of a guyed structure on their land and inform them of any additional land payments resulting from their use. In those locations where the landowner agrees to have a guyed structure on their land, the AUC directed AltaLink and ATCO to use such a structure.

With regard to concerns raised regarding clubroot risk, the AUC found that the TFOs' proposed approach to clean prior to entering separately-owned parcels sufficiently mitigates clubroot risk and that cleaning between every quarter section is not required. The AUC accepted that soil disturbance has a high risk of the spread of clubroot, that ATCO's clubroot policy is sufficiently protective during these events, and that a condition requiring level 3 cleaning during winter conditions is consequently not required.

The AUC was satisfied that the environmental effects of the project can be mitigated to a reasonable degree if the TFOs adhere to commitments, including abiding with all pertinent provincial and federal environmental legislation and guidelines and diligent implementation of the mitigation measures proposed in their respective environmental evaluation reports and environmental protection plans.

On the issue of electromagnetic fields ("EMF"), the AUC found that the evidence before it did not support a conclusion that there will be health effects attributable to the EMF produced by the proposed transmission line at the nearest residences. The AUC expects AltaLink and ATCO to adhere to its commitment to conduct pre- and post-constructing monitoring at the request of stakeholders and explain to them the findings of those measurements. Likewise, the AUC found that conditioning approval of the transmission line on magnetic field levels is not required given that the predicted levels are far below the exposure guidelines for the general population.

The AUC found that the transmission line will not be a significant source of audible noise and was satisfied with both AltaLink's and ATCO's commitments to comply with the requirements of Rule 012 and applicable bylaws.

Based on the evidence before it, the AUC found that the proposed Project, including the Tinchebray 972S Substation, does not pose a higher fire risk than for a typical transmission development. The AUC agreed that limited access into the area may decrease reaction time for emergency responders. To mitigate this concern, it encourages ATCO to consult with landowners and first responders in the area to develop a fire access plan.

The AUC considered routes and route options proposed by ATCO. It found that ATCO's preferred route would have a lower overall impact compared to its alternate route. It also made findings regarding specific route options along the preferred route proposed by ATCO.

AltaLink proposed five different routes, together with route variants and line segments. The AUC found that AltaLink's South Alternate Route had the lowest overall impact. The AUC also considered and made findings on specific route variants and line segments proposed by AltaLink.

The AUC found that the alterations to Gaetz 87S Substation and Tinchebray 972S Substation proposed by the TFOs are appropriate and necessary to connect the transmission lines approved in this decision. Similarly, the alteration to Transmission Line 9L16 is minor in nature and required to connect the approved 240-kV transmission lines. The AUC was satisfied that the expansion of the fence boundary at the Tinchebray 972S Substation is necessary to accommodate the new substation equipment and that there is sufficient space for the expansion.

Duty to Consult

The MNA participated in this proceeding as the representative of more than 3,872 of its members, to whom it refers to as citizens. It stated that its members have harvesting and other rights affirmed in Section 35 of the *Constitution Act*, 1982 that may be affected by the project.

The AUC was satisfied that its decision on the applications before it in this proceeding amounts to conduct that may adversely affect the exercise of Métis harvesting or traditional cultural practices in the project area, and that the duty to consult was triggered as it relates to Métis, as represented by the MNA.

The AUC made note of consultation activities undertaken by AltaLink and ATCO regarding the applications. Based on the characteristics of the parcels identified by the MNA as areas of interest and the project area in general, the AUC considered that any impact of the approved project on Métis harvesting and traditional land use will be minimal, temporary in nature and can be reasonably mitigated.

Participant Involvement Program

The AUC found that the participant involvement programs undertaken by ATCO and AltaLink met the requirements of Rule 007. The AUC recognized that many stakeholders had concerns about the participant involvement program for the proposed transmission line. However, the AUC was of the view that the participant involvement programs were sufficient to communicate to potentially affected parties the nature, details, and potential impacts of the project. It was also satisfied that the participant involvement programs gave potentially affected parties an opportunity to ask questions and to express their concerns.

Erosion Around the Tinchebray 972S Substation Area

The AUC noted that a stakeholder's land is located immediately east and south of the Tinchebray 972S Substation. The stakeholder asserted that since its construction, the Tinchebray 972S Substation has significantly changed the drainage patterns on his lands, resulting in washout, erosion and flooding. He also stated that access to significant portions of his land has been lost.

The AUC considered that Alberta Environment and Parks ("AEP") is the appropriate regulator to address the alleged erosion caused by surface water runoff from the substation lands and the claim that ATCO is not operating in compliance with its *Water Act* licence because these issues relate directly to a license issued under AEP authority. In addition, it would be inappropriate to condition an approval on matters not directly related to the application before it.

Likewise, the AUC noted it was not in a position to review or approve future drainage plans for the Tinchebray 972S Substation site. It agreed with ATCO that AEP has both the legislative authority and the technical expertise to adjudicate this issue under the *Water Act*.

Conclusion

In conclusion, and subject to conditions outlined in the decision, the AUC approved the applications submitted by the Alberta Electric System Operator, ATCO Electric Ltd. and AltaLink Management Ltd.

Alberta Utilities Commission Utility Payment Deferral Program Rate Rider - Electricity, AUC Decision 26684-D01-2021

Electricity - Rate Rider

In this decision, the AUC approved an Alberta Electric System Operator ("AESO") rate rider, Rider L, no greater than \$8,776,854.70 to recover the uncollected electricity customer bill amounts that were deferred under the Utility Payment Deferral Program ("UPDP"). The AESO Rider L will commence on September 1, 2021.

Applications and Background

Under the *Utility Payment Deferral Program Act* ("UPDP Act"), among others, electricity service providers and gas service providers were enabled to work with Albertans to defer electricity and natural gas bills until June 18, 2020, without added late fees or interest payments. The deferred bills were required to be repaid by June 18, 2021. The AESO was responsible for funding the portion of the deferred electricity bill payments related to transmission charges for enrolled electricity customers.

The *UPDP Act* anticipated that not all deferred customer bills would be repaid. As a result, under Section 11 of the *UPDP Act*, the AESO and the Balancing Pool were directed to apply to the AUC for approval of Rider L, to recover uncollected amounts outstanding from each electricity service provider; the expenses incurred by the Balancing Pool to administer the funding agreements; and the outstanding electricity transmission charges.

Electricity Rate Rider Applications

The AESO and the Balancing Pool filed a joint application for approval of Rider L, pursuant to Section 11 of the *UPDP Act* and Section 4 of the *Utility Payment Deferral Program Regulation*. The AESO Rider L will recover transmission, energy, administration, and distribution-related charges deferred by enrolled electricity customers, carrying costs approved for recovery by the AUC, funding amounts that the Balancing Pool provided to electricity service providers, and expenses incurred by the Balancing Pool to enter into and administer the associated funding agreements. It will be applied to Rate Demand Transmission Service (“DTS”) and Rate Demand Opportunity Service, excluding the City of Medicine Hat and BC Hydro at Fort Nelson.

Electricity Rate Rider - Applied-for Amounts by the Applicants

The AUC approved amounts no greater than the \$853,013.58 submitted by the AESO and the \$4,574,785.05 submitted by the Balancing Pool to be included in the electricity rate rider AESO Rider L.

Just Energy, Hudson Energy, City of Lethbridge, and EQUUS REA filed applications, including a senior officer’s confirmation letter and UPDP self-funded service providers rate rider template, requesting inclusion of \$428,923.14, \$156,464.15, \$26,265.78, and \$9,025, respectively, in the electricity rate rider. The AUC found that the amounts claimed by these self-funded electric service providers accurately reflect the difference between the deferred electric bill amounts of enrolled electricity customers and the uncollected bill amounts. Further, the service providers had made reasonable efforts to collect the deferred amounts during the repayment period from June 18, 2020, to June 18, 2021. Accordingly, the AUC approved amounts no greater than those applied for by these self-funded electric service providers, to be included in the AESO Rider L.

1772387 Alberta Limited Partnership (“Encor”) applied for the recovery of \$ 133,086 for late payment revenue shortfall and \$17,999 for carrying costs and excluded these costs from recovery through the AESO Rider L. The AUC excluded these costs from recovery through AESO Rider L in a ruling issued July 30, 2021. Concerning the application for \$67,873.00 for deferred transmission charges to be included in the AESO Rider L the AUC was satisfied by the supporting documents filed by Encor. Accordingly, the AUC approved an amount no greater than the \$67,873.00 submitted by Encor to be included in the electricity rate rider, AESO Rider L.

In addition to the inclusion of the outstanding amount of \$2,080,278, EPCOR Energy submitted the following amounts for recovery in the electricity rate rider:

- (a) \$0.58 million for carrying costs associated with the deferred payment amounts;
- (b) \$2.38 million for bad debt expense for balances due prior to March 18, 2020, and for balances due after June 18, 2020;
- (c) \$1.70 million because of the inability to charge late payment fees;
- (d) \$0.22 million for a shortfall in revenues associated with connection fees; and
- (e) \$0.19 million for carrying costs associated with the \$2.38 million of bad debt, the \$1.70 million of late payment fees, and the \$0.22 million in connection fees.

The AUC found that any applications for recovery through the UPDP rate rider should only reflect unpaid amounts outstanding from enrolled electricity customers from March 18, 2020, to June 18, 2020, and associated carrying costs for those amounts eligible. The AUC denied EPCOR’s request to recover any costs other than the outstanding deferred amounts not repaid by enrolled electricity customers and the \$0.58 million for the associated carrying costs within the UPDP electricity rate rider.

EPCOR Energy filed an updated application that followed the AUC’s directions. Following a review of the updated application, the AUC approved amounts no greater than the \$2,080,278.00 uncollected outstanding amounts and the \$580,227.00 associated carrying costs submitted by EPCOR Energy to be included in the AESO Rider L.

Distribution Facility Owner Rate Rider

Following the AUC's direction for distribution facility owners ("DFOs") to file an application as part of the electricity rate rider process, the AUC received rate rider applications to establish an electricity rider known as the Utility Deferral Adjustment Rider on a per kilo watt hour basis from ENMAX Power Corporation, ATCO Electric Ltd., EPCOR Distribution & Transmission Inc. and FortisAlberta Inc. The AUC approved the DFO rate rider applications as filed, including their proposal to flow through AESO Rider L to the Utility Deferral Adjustment Rider using an equivalent collection period and an equivalent cents-per-kWh charge with no other adjustments, effective November 1, 2021.

AltaLink Management Ltd. Provost to Edgerton Transmission Development, AUC Decision 26171-D01-D01-2021

Facilities Application

In this decision, the AUC approved facility applications from AltaLink Management Ltd. ("AML") for the proposed Provost to Edgerton Transmission Development (the "Project").

Introduction

The needs identification application ("NID") for the Development, filed by the Alberta Electric System Operator ("AESO"), had been approved by the AUC in Approval 23429-D02-2019. In this second phase, a facility application was filed by a transmission facility owner and proposed the equipment that will meet the identified need and a location for the facility based on routing, siting, consultation and detailed design.

AML Facility Applications

AML's proposed Project includes the construction and operation of a 240-kilovolt ("kV") transmission line, designated as Transmission Line 459L, in two stages. AML provided two routes for consideration, the preferred route, and the alternate route, with potential route variants proposed for specific site-specific issues on the preferred route. To facilitate the construction of the transmission line, modifications at the Hansman Lake 650S Substation, at the south end of the preferred route, during the first stage and the Edgerton 899S Substation, at the north end of the preferred route, during the second stage will be required.

Stage 2 of the Project is based on construction milestones outlined in Appendix A of Needs Identification Document Approval 23429-D02-2019. AltaLink stated that once certain levels of load or generation are met, the AESO will provide formal notice that the construction milestone has been met and that AltaLink may commence construction of Stage 2 of the project. The AESO anticipates that Stage 2 will commence by September 2023.

Stakeholder Concerns

Stakeholders, in their SIPs, raised various concerns with both the preferred and the alternate route in both stages of the Development. No option was generally preferred by the stakeholders.

Routing Considerations

AML submitted that its preferred route had lower overall impacts as it was shorter, had lower estimated costs, was located within more road allowances, and intersected with fewer sensitive environmental areas. AML acknowledged that there were fewer residences within 150 meters on the alternate route. However, five residences within 150 meters on the preferred route were already within 150 meters of an existing transmission line.

Stakeholders took issue with AML's statement that the impacts to residences would not be new, only incremental. They argued the proposed transmission line towers would be double the height of the existing transmission line structures, creating an impact of such significance that it should be considered a new impact.

The AUC determined that the preferred route was better suited from an environmental perspective, as it used more developed road allowances, would parallel an existing disturbance, and have fewer impacts on native vegetation and wetlands. The focus of the remainder of the decision was on the consideration of a south variant on the preferred route, which the AUC approved in order to minimize the impacts that the preferred route on that particular section of the route would have on stakeholders.

In making the decision to approve the south variant, the AUC considered that construction of the preferred route would require the removal of mature trees and the shelterbelt, exposing their home quarter to traffic, noise, dust, wind, and would reduce privacy. Many of these impacts and concerns would be eliminated or minimized by the south variant route. To mitigate impacts, the stakeholders also requested that AML use the shortest structures possible. The AUC considered the request for the shortest structures reasonable. Accordingly, the AUC approved standard horizontal structures originally proposed by AML.

The same stakeholders also raised concerns regarding impacts on their farming operations because of the removal of the shelterbelt and the transmission line's proximity to several agricultural facilities. Expert reports regarding property value filed in this proceeding also persuaded the AUC that the south variant route would result in lower overall impacts on stakeholders.

The AUC was satisfied that impacts associated with the south variant route could be mitigated to a reasonable degree with the implementation of the mitigation measures proposed in the environmental evaluation and environmental protection plan.

Conclusion

The AUC approved the preferred route with the south variant applied for by AML.

Aura Power Renewables Ltd. Metiskow Solar Project Ltd., AUC Decision 26514-D01-2021 ***Solar Power – Facilities***

In this decision, the AUC approved applications from Aura Power Renewables Ltd. ("Aura Power") to construct and operate a 25-kilovolt ("kV") power plant, near the town of Provost, Alberta, designated as the Metiskow Solar Project (the "Project") and to connect the Project to FortisAlberta Inc.'s 25 kV electric distribution system.

Applications

In its applications, Aura Power included a participant involvement program, a renewable energy referral report from Alberta Environment and Parks ("AEP") Fish and Wildlife Stewardship, an environmental evaluation, an environmental protection plan ("EPP"), a *Historical Resources Act* approval, a noise impact assessment summary form, a solar glare assessment and a manufacturer datasheet.

Environmental Impacts

AEP ranked the Project as a high risk to wetlands and sensitive breeding amphibians, high risk to breeding birds, moderate risk to migratory birds, moderate risk to bird mortality, and a low risk to wildlife features. In addition, AEP ranked the project fence design as a high risk for wildlife.

Wetlands and Amphibians

Aura Power proposed a 30-meter setback on all Class III and higher wetlands and a 10-meter setback on all Class II wetlands as a best management practice. Aura Power also proposed further alternative mitigations to protect wetland habitats and sensitive amphibians. However, AEP determined that the mitigation measures proposed by Aura Power would not eliminate the risk to sensitive amphibian species and that multiple wetland setbacks would be impacted by the project. AEP considered the Project to pose a high risk to wetlands and sensitive breeding amphibians.

Aura Power submitted that it was considering further mitigation measures and was working with AEP to identify additional mitigations and setbacks. Once the scope of any setback requirements had been resolved, Aura Power confirmed that it would communicate changes with AEP and the AUC.

Breeding Birds

AEP stated that the project presents a high risk to breeding birds based on an abundance of grassland-dependent birds in the project area, including some species at risk, because of siting of the Project on tame grassland.

Aura Power proposed, as mitigation measures, to schedule vegetation removal and mowing outside the breeding bird restricted activity period and, if vegetation removal or mowing is required during this period, to identify any active nests through a nest sweep conducted by a qualified wildlife biologist. If nests or nesting behaviour are detected, a species-specific setback (minimum 100 meters) would be applied until the young fledge and the nest has been confirmed inactive by a qualified wildlife biologist. AEP concluded that nest sweeps would not fully eliminate the risk of nest disturbance or destruction during vegetation removal or mowing and assessed the risk to breeding birds would be high.

Project Fence Layout

Aura Power submitted that the fence layout was not finalized and explained the final fence design would be completed in consultation with AEP. Aura Power would incorporate the recommendations of AEP to align the fence layout with the *Wildlife Directive for Alberta Solar Energy Projects*.

Other Factors Considered

Aura Power did not submit an initial version of its renewable energy operations conservation and reclamation plan as set out in AEP's *Conservation and Reclamation Directive for Renewable Energy Operations* but was in the process of finalizing the plan and committed to providing the final version at least six months before the start of construction.

Aura Power confirmed that it would develop a site-specific emergency response plan before the start of construction. It further provided an overview of how the operator will ensure sufficient funds are available at the Project's end of life to cover the cost of decommissioning and reclamation. In the case that the salvage value is less than the reclamation costs, Aura Power would make necessary arrangements to deposit funds to provide for the difference.

In support of its decision not to consult with Indigenous groups, Aura Power submitted that the Project would be located on deeded free-hold land and not on Crown land. Further, the proposed interconnection is not across Crown land, and the closest Indigenous group, the Frog Lake First Nation, is located over 150 kilometers away. Also, the *Historical Resources Act* approval from Alberta Culture and Tourism revealed no concerns, and there are no large water bodies on the project site, and Aura Power does not expect any disruption from the Project to downstream water bodies or to fishing and hunting activities in the area.

AUC Findings

The AUC was satisfied that the submitted participant involvement program and noise impact assessment meet the requirements of Rule 007 and Rule 012, respectively. To provide for the premise of the solar glare report that anti-reflective coating would be applied to Project solar panels, the AUC directed Aura Power to use an anti-reflective coating on the panels.

To address the high risk to wildlife, the AUC was satisfied by Aura Power's commitment to incorporate AEP's recommendations into its final project fence design to align with the *Wildlife Directive for Alberta Solar Energy Projects*.

To account for the risk to wetlands and sensitive breeding amphibians and breeding birds, despite mitigation measures proposed and committed to by Aura Power, the AUC accepted that Aura Power would continue to consult with AEP and, respectively, as conditions of approval, imposed the following conditions:

- a) Aura Power shall file an update to its environmental protection plan to incorporate any additional mitigations and/or changes to setbacks for wetlands and sensitive breeding amphibians that are committed to because of its ongoing consultations with AEP. The update is to be filed with the AUC no later than six months before construction is scheduled to begin; and
- b) Aura Power shall not conduct any construction activities within tame grasslands habitat during the grassland breeding bird restricted activity period;

To ensure compliance with Rule 033: *Post-approval Monitoring Requirements for Wind and Solar Power Plants*, the AUC directed that:

- a) Once the project is commissioned, Aura Power shall submit an annual post-construction monitoring survey report to AEP and the AUC within 13 months of the Project becoming operational, and by the same date, every subsequent year for with AEP requires surveys pursuant to Subsection 3(3) of Rule 033: *Post-approval Monitoring Requirements for Wind and Solar Power Plants*.

As Aura Power had not yet submitted an initial renewable energy operations conservation and reclamation plan and had not finalized the selection of equipment for the project, the AUC imposed the following, respectively, as conditions of approval:

- a) Once Aura Power has made its final selection of equipment for the project, it must file a letter with the AUC that identifies the make, model, and quantity of the equipment and, if the equipment layout has changed, provide an updated site plan. This letter must also confirm that the finalized design of the project will not increase the land, noise, glare, or environmental impacts beyond the levels approved in this decision. This letter is to be filed no later than one month before construction is scheduled to begin; and
- b) Aura Power shall file a report with the AUC detailing any complaints or concerns it receives or is made aware of regarding solar glare from the project during its first year of operation, as well as Aura Power's response to the complaints or concerns. In the event of complaints or concerns, Aura Power shall file this report no later than 13 months after the project becomes operational.

The AUC found that Aura Power had met the requirements of Rule 007 and Rule 012 and that approval of the project was in the public interest in accordance with Section 17 of the *Alberta Utilities Commission Act*. The AUC, accordingly, approved the applications to construct and operate and to interconnect the Project.

Brooks Solar GP II Inc. Brooks Solar Project Amendments and Ownership Transfer, AUC Decision 26661-D01-2021

Solar Power – Facilities

In this decision, the AUC approved the application from Brooks Solar II GP Inc. ("Brooks Solar") for amendments to the Brooks Solar II Project (the "Project") and to transfer ownership of the Project to Brooks Solar II Corporation.

Amendments

Brooks Solar applied to vary the design of the project by using an alternative inverter model, which it anticipated would provide additional technical and commercial benefits. Due to confirmation from the manufacturer, the capability of the individual solar panels changed. As a result, instead of the originally approved 72,000 panels, the Project would now consist of approximately 73,450 solar panels.

Brooks Solar proposed a minor increase to the site plan of the Project. In alignment with the fence design policy of Alberta Environment and Parks (“AEP”), Brooks Solar planned to increase the fenced area on the northern side of the project by approximately 0.3 hectares to include Torxen Energy Ltd.’s gas lease area, as opposed to building the fence around the lease. Brooks Solar confirmed that the project’s environmental and community setbacks remain unchanged.

AEP confirmed that an amendment application was not required for this change. Brooks Solar further submitted confirmations that the project’s environmental impacts would not increase and that the project would remain compliant with Rule 012: *Noise Control*. The total generating capacity of the Project would remain the same.

Ownership Transfer

Brooks Solar applied for approval to transfer to Brooks Solar II Corporation ownership of the power plant and associated approvals. As part of the request, Brooks Solar provided a certificate confirming that Brooks Solar II Corporation is incorporated under the *Alberta Business Corporations Act*.

AUC Findings

The AUC was satisfied that the amendments to the Project would not change its compliance with applicable rules and requirements. The AUC further accepted Brooks Solar’s submission that the changes and finalized design would not increase the impacts of the Project on the environment or the surroundings beyond what had been approved originally.

Given the minor changes, the AUC was further satisfied that Brooks Solar had taken adequate steps to notify stakeholders.

As required by Section 23 of the *Hydro and Electric Energy Act*, Brooks Solar demonstrated that Brooks Solar II Corporation is eligible to hold the power plant approval and connection order. The AUC considered the requested amendments to be in the public interest in accordance with Section 17 of the *Alberta Utilities Commission Act* and granted approval of the power plant approval and connection order ownership change.

Direct Energy Marketing Limited Amendments to Code of Conduct Regulation Compliance Plan and Inter-Affiliate Code of Conduct and Compliance Plan, AUC Decision 26370-D01-2021

CCR Compliance Plan

In this decision, the AUC approved the application from Direct Energy Marketing Limited to amend the Direct Energy Regulated Services (“DERS”), Direct Energy Partnership (“DEP”) and XOOM Energy Canada, ULC (“XOOM”) *Code of Conduct Regulation* (“CCR”) Compliance Plan (the “CCR Compliance Plan”). The AUC also approved the DERS Inter-Affiliate Code of Conduct and Compliance Plan.

Background and Procedural Summary

On November 12, 2020, the CCR was amended necessitating changes to the CCR Compliance Plan. Direct Energy Marketing Limited filed an update to its amended compliance plans.

Amendments

Direct Energy Marketing Limited sought approval of changes to the CCR Compliance Plan to reflect the amendments to the CCR; to add XOOM Energy Canada, ULC as an affiliated provider; to incorporate other administrative changes to simplify the language of the CCR Compliance Plan and to update the information it provides. It also applied for approval of changes to the Inter-Affiliate Code of Conduct and Compliance Plan to reflect the change in ownership of Direct Energy from Centrica plc to NRG Energy Inc.

Direct Energy Marketing Limited proposed the following amendments to the CCR Compliance Plan:

- (a) Updates to mechanisms under Section 3.0 – Conduct, and Section 17.0 – Arrangements Creating Unfair Competitive Advantage Prohibited to align with the records retention period recommended by the AUC;
- (b) Amending the policy under Section 40.0 – Audit to align with the AUC’s requirement for the retention of compliance records listed under Appendix A to the CCR Compliance Plan for at least three years; and
- (c) Addition of Appendix A to the CCR Compliance Plan outlining the specific records to be retained.

Direct Energy Marketing Limited also proposed amendments to mechanisms under Section 34 of the CCR Compliance Plan - Information About Complaints, to delete the requirement to provide information describing how to report an alleged contravention of the CCR on an annual bill to DERS, DEP, and XOOM customers and to instead require that information be provided year-round on each of DERS, DEP, and XOOM’s external websites. It was submitted that this proposed change should reduce the number of misdirected customer-care calls to the AUC that are unrelated to the CCR.

In its proposed amended Inter-Affiliate Code of Conduct and Compliance Plan, DERS amended its organizational chart to include XOOM along with the NRG-owned retail entities that operate in various states in the United States. DERS explained that this amendment was proposed in the event a future relationship developed between DERS and one of these entities. Additional edits included language adding XOOM to the reference to the CCR Compliance Plan, updating the referenced email for questions or comments, and non-substantive grammatical edits.

The AUC approved the amended CCR Compliance Plan as submitted by Direct Energy Marketing Limited. The AUC was satisfied that the proposed substantive amendments to the Inter-Affiliate Code of Conduct and Compliance Plan appropriately reflect the change in ownership. The AUC further accepts the other non-substantive amendments proposed. The DERS Inter-Affiliate Code of Conduct and Compliance Plan was approved.

East Strathmore Solar Project Inc. East Strathmore Solar Power Plant Amendments and Community Generation Designation, AUC Decision 26657-D01-2021
Community Generating Unit – Solar Power

In this decision, the AUC approved the application from East Strathmore Solar Project Inc. (“ESSPI”) for amendments to the East Strathmore Solar Power Plant (the “Power Plant”). The AUC also designated the Power Plant as a community generating unit.

Amendments

ESSPI applied to vary the design of the Power Plant by using an alternative inverter model, which it anticipated would provide additional technical and commercial benefits. Further, instead of the originally approved 59,000 solar panels, the Power Plant would now consist of approximately 56,000 solar panels.

Alberta Environment and Parks (“AEP”) confirmed that an amendment application was not required in this case. The amendments would not increase the environmental effects of assessment, and, accordingly, an update to the environmental effects assessment was not required. The noise impact assessment (“NIA”) for the project was updated to provide for the minimal changes to sound levels resulting from the amendments. The changes would not affect the Power Plant’s compliance with Rule 012: *Noise Control*.

The finalized design of the power plant would not materially increase the land, noise, glare, or environmental impacts beyond those previously approved. ESSPI further confirmed that the generating capability of the Power Plant would remain the same.

Community Generating Unit Designation

ESSPI requested that the Power Plant be qualified as a community generating unit. In support of the request, ESSPI submitted a Memorandum of Understanding (“MOU”) executed with Wheatland County (the “County”), under which ESSPI committed to creating a community benefit fund that would be used to support community initiatives and events within the County.

The MOU stated that EESPI would make annual contributions of \$20,000 towards the community benefit fund for 10 years. Fifty per cent of the annual funding would be allocated towards environmental education initiatives and a community fee assistance program to improve access to recreation, arts, and cultural programs. The remaining funding would be distributed through an application process to other environmental enhancement, social welfare, and arts and culture programs.

FortisAlberta Inc. confirmed that it had qualified the project as a small-scale generating unit under the *Small Scale Generation Regulation*. FortisAlberta Inc. stated that it would be responsible for the metering costs of the project.

AUC Findings

The AUC found that approval of the amendments was in the public interest having regard to the social, economic, and other effects of the project, including its effect on the environment.

Regarding the application for a designation as a community generating unit, the AUC found that ESSPI filed its application in the form established by the AUC and included an MOU with Wheatland County as part of its application. The AUC was satisfied that the MOU is intended to be a binding contract, as required in situations where the small-scale generating unit is not wholly owned by an eligible community group.

The AUC determined that the application from ESSPI satisfied the requirements set out in the *Small Scale Generating Regulation*. The AUC noted that the estimated amount of \$30,000 provided by ESSPI as the cost incurred for the project meter includes installation fees, which are not eligible for compensation under Subsection 5(2)(a) of the *Small Scale Generation Regulation*. After subtracting the costs to install and commission the metering system, the AUC determined that the cost to purchase the meter would be \$20,000.

The AUC was satisfied that as the distribution owner, FortisAlberta Inc. is entitled to recover the costs incurred to purchase the meter for the project (\$20,000), according to Subsection 5(2)(a) of the *Small Scale Generation Regulation*.

The AUC approved the applications filed by ESSPI.

Enforcement Staff of the Alberta Utilities Commission Allegations Against Link Global Technologies Inc. Phase 1, AUC Decision 26379-D01-2021

Enforcement - Markets

In this decision, the AUC considered the application filed by AUC Enforcement staff alleging that Link Global Technologies Inc. (“Link Global”) has been operating a 5-megawatt (“MW”) in Sturgeon County (the “Sturgeon Plant”) and a 3.5-MW power plant near Kirkwall (the “Kirkwall Plant”) without obtaining approval from the AUC as required under Sections 11 and 13 of the *Hydro and Electric Energy Act (“HEEA”)* and Rule 007 *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments*. Both power plants supplied electric energy to digital currency processing facilities located on each of the sites. There was also an alleged contravention regarding non-compliance with nighttime permissible sound levels.

Enforcement staff argued that Link Global failed to meet and continues not to meet the applicable conditions for an exemption from the requirement to obtain permission to operate a power plant. As a result, Enforcement staff alleged that Link Global had contravened the regulatory scheme.

Further, as Link Global did not generate electric energy solely for its own-use, Enforcement staff alleged that Link Global acted in contravention of the *Fair, Efficient and Open Competition Regulation* (“*FEOC Regulation*”), given that it did not offer all electric energy into the power pool.

In this decision, the AUC accepted the partial settlement reached by Link Global and the Enforcement staff on some of the alleged contraventions and sanctions. The AUC further considered the outstanding issues and found that the partial settlement fell within a range of acceptable outcomes given the circumstances. The AUC accepted the partial settlement, including the following agreed upon contraventions and range of sanctions:

- (i) Contravention 1: Unaware of the statutory and regulatory requirements, the power plant owned and operated by Link Global at the Sturgeon site has been in operation since August 27, 2020, without approval from the AUC, contrary to the *HEEA* and Rule 007.
- (ii) Contravention 2: The power plant operations at the Sturgeon site have exceeded, prior to Link Global ceasing nighttime operations in response to AUC Order 26379-D01-2021, the permissible sound levels specified in Rule 012.
- (iii) Contravention 3: Unaware of the statutory and regulatory requirements, the power plant owned and operated by Link Global at the Kirkwall site has been in operation since June 26, 2020, without approval from the AUC, contrary to the *HEEA* and Rule 007.
- (iv) An administrative penalty for contraventions 1-3 collectively, in the range of \$50,000 to \$75,000 with a reduction of up to 50 per cent, with no additional administrative penalty regardless of the AUC’s determination on the own-use issue.

The outstanding issues were whether Link Global generated electricity for its own-use at all relevant times, whether Link Global violated the enforcement order, and how Link Global may achieve compliance going forward. On those issues the AUC found as follows:

- (i) Link Global failed to meet the definition of own-use for the purposes of obtaining exemption from approval under the *HEEA* until March 8, 2021, when it acquired ownership of the digital currency processing facilities.
- (ii) Link Global met the definition of own-use for the purposes of exemption from the *Electric Utilities Act* (“*EUA*”) and the *FEOC Regulation* from the commencement of operations at the Sturgeon and Kirkwall plants to present, regardless of its March 8, 2021 acquisition of the digital currency processing facilities, because Section 2(3) of the *EUA* specifically contemplates and allows the original arrangement between Link Global and Block One Technology Inc.
- (iii) Regardless of the timing of ceasing operations at the Sturgeon Plant, Link Global contravened the AUC’s enforcement order by failing to communicate the Sturgeon Plant’s status to the AUC in a reasonable timeframe.
- (iv) Link Global cannot operate the Sturgeon Plant going forward without applying to the AUC for approval, as it does not meet all the exemption criteria of Rule 007. As the plant is currently operating without approval, the AUC orders Link Global to shut down the Sturgeon Plant.
- (v) The Kirkwall plant does not currently meet the “no adverse effect on the environment” criterion in Rule 007. While the exceedance of the emissions limit appears to be negligible based on the operating parameters described by Link Global, Link Global has not provided the AUC with either approval under the *Environmental Protection and Enhancement Act* or confirmation from Alberta Environment and Parks that approval is not required for the plant. As the plant is currently operating without approval or without an environmental exemption, the AUC orders Link Global to shut down the Kirkwall plant.

Should the AUC Accept the Partial Settlement?

In determining whether to accept a settlement in the context of this enforcement proceeding, the AUC took guidance from the principles developed in the criminal law context with respect to sentencing and noted that the principles are described in Decision 3110-D03-2015. These principles and applicable jurisprudence clarify that the question is not whether the AUC would have issued the same decision. Rather, the question is whether the partial settlement is reasonable and falls within a range of acceptable outcomes.

The AUC considered that the nature of the harm suffered because of Link Global's contraventions was primarily in noise disturbances suffered by residents in the areas of the power plants and was transitory and limited in temporal scope.

Having considered the nature of the harm, the administrative penalties proposed in the settlement, and applicable guidance from Rule 013, criminal law jurisprudence, and previous decisions, the AUC considered that the partial settlement [contraventions (i) to (iii) above, together with the administrative penalty set out at (iv)] falls within a range of acceptable outcomes and accepts the partial settlement.

Issues Outstanding from the Partial Settlement

The AUC considered areas and issues not agreed upon by the parties in the partial settlement.

Do Link Global's Operations Fall Within the Definition of "Own-Use"?

Pursuant to Section 11 of the *HEEA*, no person may construct and operate a power plant without AUC approval. However, Section 13 provides that Section 11 does not apply if the generated energy is solely for the person's own-use. Rule 007 sets out that a person who generates electricity for their own-use must still meet exemption criteria to operate the plant without express permission from the AUC. Neither the Kirkwall nor the Sturgeon Plant is connected to the Alberta Interconnected Electrical System, and the energy is consumed on site. The issue is whether the consumption of the electric energy by the currency (bitcoin) mining equipment originally owned by Block One meets the "own-use" definition for the purposes of the *HEEA* and Rule 007.

Enforcement staff argued that the original arrangement between Link Global and Block One, which included a section specifying that the parties are independent contractors to each other, whereby Link Global produced and sold electric energy to Block One under the master service agreement did not fall within the meaning of Section 13 of the *HEEA*. Enforcement staff submitted that Link Global was a person generating power not solely for its own-use as is defined in the *HEEA*.

The AUC noted that "person" is defined in the *HEEA* and the *Interpretation Act*. Neither definition includes a partnership or joint venture. In Decision 2008-121, the AUC discussed and found that the legislature had chosen not to include partnerships in the definition of "person" in the *HEEA*. The AUC found no reason to depart from the finding here. Accordingly, until the relationship between Link Global and Block One changed under an arrangement agreed to on March 8, 2021 (the "March 8 agreement"), Link Global's operations did not fall within the own-use exemption in Section 13 of the *HEEA*.

The March 8 agreement provided for the transfer of ownership of the digital processing facilities at both sites from Block One to Link Global. The AUC reviewed the March 8 agreement and determined that it resulted only in the transfer of ownership of the facilities, the nature of the facilities did not change. As of the March 8 agreement, Link Global has been "a person generating or proposing to generate electric energy solely for the person's "own-use"" at both sites.

The AUC noted that the period during which Link Global acted in contravention to the *HEEA* is covered by the already agreed upon contraventions 1 and 3. While the AUC accepted the agreement regarding no additional administrative penalty, the AUC noted that this would not preclude its consideration of whether to require economic disgorgement from Link Global as a result of any of the contraventions, as the parties did not agree on that point.

Own-Use for the Purposes of the EUA

Section 2(1)(b) of the *EUA* creates an exemption from the application of the *EUA* itself, which establishes the duties and obligations of utilities and the Alberta Electric System Operator to provide service to customers in the context of a deregulated electricity market, and includes regulations governing the conduct of participants in that market.

The AUC found that sections 2(1)(b) and 2(3) of the *EUA* apply directly to the operations of Link Global before March 8, 2021, as Section 2(3) states that exemption of Subsection (1)(b) of the *EUA* applies whether the owner or tenant is the owner of the generating unit producing the electric energy. The AUC was satisfied that the requirements of the *EUA* Section 2(1) exemption are met by the operations prior to March 8. After March 8, the generating activity falls directly under Section 2(1)(b).

Because the AUC found that the Sturgeon and Kirkwall plants met the own-use criterion for both the purposes of *HEEA* and the *EUA* after March 8, 2021, the determining factor for whether Link Global may operate under an exemption on an ongoing basis is whether the Sturgeon and Kirkwall plants meet the remaining criteria in Section 1.4.3 of Rule 007.

Did Link Global Violate the Enforcement Order?

The AUC issued enforcement order 26379-D01-2021 on March 19, 2021. This Order required Link Global to immediately and in a safe manner cease operation of the [Sturgeon] power plant during the nighttime period defined by Rule 012 until the AUC orders otherwise; and to file with the AUC as soon as reasonably practicable a letter confirming that operations have been ceased during the nighttime period.

In dispute was whether the shutdown and communication of such by Link Global were enough to comply with the enforcement order. The AUC was satisfied that Link Global made efforts to shut down the Sturgeon Plant between March 19 and March 24, with a full shut down on March 25, 2021, during the required nighttime period. However, the AUC found that the efforts made by Link Global, in combination with the lack of correspondence with the AUC during that period, were not enough to comply with the enforcement order.

The AUC's order included some flexibility on the timing of the shut down, by noting that the shut down occur "immediately and in a safe manner." Link Global's gradual shutdown was due to fuel being supplied by MAGA's operations onsite. However, the AUC found that Link Global failed to take basic action to inform the AUC of its activities, despite multiple directions. Unnecessary time and resources were expended by the AUC while attempting to retrieve information on the status of the facility.

Link Global did not file a letter confirming that operations were shut down until April 8, 2021, which was 21 days after the AUC issued the enforcement order. While there was some delay in Link Global obtaining representation, Link Global had multiple opportunities to file a confirmation of the shut down with the AUC. The AUC did not consider 21 days to be within the meaning of "as soon as reasonably practicable" in the enforcement order. Accordingly, the AUC found that Link Global was in contravention of Order 26739-D01-2021 from March 23 to April 8, 2021.

Can Link Global Operate the Sturgeon and Kirkwall Plants Under an Exemption Going Forward?

The partial settlement agreement of the parties included provisions that the Sturgeon Plant should be allowed to recommence nighttime operation subject to conditions, and to do so, Link Global stated that it would submit a "compliance plan" to the AUC. However, Enforcement staff agreed to this requested relief "provided that the AUC issues an approval to operate." Based on clarifying submissions, the AUC considered that the parties did not agree to any requested relief in the partial settlement.

The AUC considered whether the Sturgeon and Kirkwall plants meet the remaining criteria in Section 1.4.3 of Rule 007 and therefore may operate under an exemption going forward, failing which, they must shut down pending an application to the AUC for approval to operate.

Sturgeon Plant

a) Is any person directly and adversely affected?

The noise complaint that initiated the Enforcement staff's investigation was made by members of the Greystone Manor Residents Association, none of which were consulted with respect to potential concerns before the Sturgeon Plant began operating.

The AUC noted the importance of participant involvement programs to address and resolve possible concerns raised by people whose rights may be directly and adversely affected. Link Global suggested that the Sturgeon Plant complies with Rule 012 as the plant no longer operates with noise levels exceeding the limits of Rule 012. Link Global relied on the record of this enforcement proceeding to argue that there was no evidence of any other "externality" associated with the Sturgeon Plant that could give rise to direct and adverse effects on stakeholders. The AUC found that it is not enough to substitute an enforcement proceeding for an approval process in which stakeholders would have an opportunity to be informed about a proposed development and voice their concerns to the proponent and, if those concerns remain unresolved, to the AUC. The Sturgeon Plant may have direct and adverse effects on a person and does not meet this exemption criterion.

b) Is there an adverse effect on the environment?

Regarding the potential for an adverse effect on the environment, the AUC considered two main concerns. First, the generators used at the Sturgeon Plant slightly exceed the limits established in the *Alberta Air Emission Standards for Electricity Generation* and the *Alberta Air Emission Guidelines for Electricity Generation*. Second, the Sturgeon Plant is operating without approval under the *Environmental Protection and Enhancement Act* ("EPEA").

Regarding the first issue, the AUC acknowledged Link Global's assertion that the rated NO_x emissions from the generators used are higher than the actual emissions. This is because the ratings assume the generators are used at 100 per cent capacity. However, Link Global indicated that the generators optimally run at 80 to 93 per cent capacity. The rated emissions are 0.675 kilograms/megawatt-hour, slightly above the applicable emission limit of 0.6 kilograms/megawatt-hour.

The AUC found that an analogy to decisions 2009-276 and Decision 2010-037, in which the AUC approved power plants that exceeded the air emission limit, was not persuasive. However, the AUC acknowledged that the generators used by Link Global only slightly exceed the NO_x emission limit when operated at full capacity and that the generators used by Link Global for the specific purpose at the Sturgeon site are expected to be operated at a reduced capacity during optimal operation. The AUC considered that the adverse effect on the environment associated with the emissions from the generators is likely to be negligible if Link Global operates in the low NO_x emission configuration and at reduced capacity.

Regarding the second issue, the *EPEA* prohibits any person from commencing or continuing an activity that requires approval under the *Activities Designation Regulation* ("ASD"). The ASD required approval for any "power plant," defined as a "plant that produces steam or thermal electrical power and has a rated production output of greater than one megawatt under peak load, subject to limited exceptions". The Sturgeon Plant falls within this definition.

Notwithstanding the AUC's finding regarding the generator emissions, the AUC refers to provincial standards and other approvals issued by the relevant regulators when assessing the environmental impacts of proposed facilities as part of its overall public interest mandate. The *EPEA*, in combination with the *ASD*, indicates that regardless of the generators' NO_x emissions, Link Global should have sought approval or confirmation that approval is not required from Alberta Environment and Parks ("AEP"). Without this confirmation, the AUC cannot find that the Sturgeon Plant meets this exemption criterion.

As a result, the AUC found that the Sturgeon Plant is not eligible for an exemption and was found to be operating without approval from the AUC at the time of this decision. Accordingly, Link Global was ordered to:

- immediately and in a safe manner cease operation of the Sturgeon Plant;
- file with the AUC a letter confirming the status of its efforts to cease operations at the Sturgeon Plant within three days of the release of this decision; and
- file with the AUC a letter confirming that operations have been ceased within seven days of the release of this decision.

Kirkwall Plant

As a result of the Kirkwall plant's isolated location and because no complaints have been made by landowners or other stakeholders, the AUC found that no person appears to be directly and adversely affected by the operation of the Kirkwall plant.

There was no evidence suggesting that the Kirkwall plant failed to operate in compliance with Rule 012. The AUC noted that Link Global had not commissioned a comprehensive sound level survey at the Kirkwall plant. Without this survey, the risk that the plant meets the exemption criteria lies with Link Global. In the case of a complaint arising or the AUC becoming concerned with the sound levels at the Kirkwall plant, Link Global may be asked to demonstrate that it meets applicable Rule 012 permissible sound levels.

The Kirkwall plant consists of several of the same gas-powered generators used at the Sturgeon Plant. The AUC had the same issues regarding adverse effects on the environment with regards to the Kirkwall plant as it did regarding the Sturgeon Plant. The AUC came to the same conclusions in both instances. Accordingly, while the adverse effects may be negligible, that AUC could not find that the Kirkwall plant meets this exemption criterion without a confirmation from AEP.

As a result, the Kirkwall plant is not eligible for an exemption and is currently operating without approval from the AUC. Link Global was ordered to:

- immediately and in a safe manner cease operation of the Kirkwall plant;
- file with the AUC a letter confirming the status of its efforts to cease operations at the Kirkwall plant within three days of the release of this decision; and
- file with the AUC a letter confirming that operations have been ceased within seven days of the release of this decision.

Remedy for the Contraventions Found in this Decision

In this decision, the AUC only made findings regarding whether the alleged contraventions have been proven. Only in the second phase will the AUC determine appropriate remedies for the alleged misconduct. However, the AUC accepted the partial settlement and the inclusion of:

- The agreed upon administrative penalty range for contraventions 1 to 3.
- The potential reduction of the penalty by up to 50 per cent in consideration of Link Global's admission of contraventions 1 to 3 and recognition that the partial settlement has reduced the need for a protracted hearing.
- The lack of an additional administrative penalty for the own-use violation under the *HEEA*.

The AUC will begin the second phase of this proceeding to consider specific sanctions to be imposed because of its contraventions of the *HEEA* and Rule 007, considering its acceptance of the partial settlement.

ENMAX Power Corporation 2021-2022 General Tariff Application Compliance Filing to Decision 25726-D01-2021, AUC Decision 26732-D01-2021
Compliance GTA

In Decision 25726-D01-2021, the AUC approved the negotiated settlement agreement (“NSA”) regarding the 2021-2022 general tariff application (“GTA”) from ENMAX Power Corporation (“EPC”). It provided three directions about two matters excluded from the NSA. The excluded matters included depreciation expense and the Enhanced Asset Management Strategy (“EAMS”) initiative. The NSA also identified two additional process items that were agreed upon between EPC, the Consumers’ Coalition of Alberta (“CCA”) and the Office of the Utilities Consumer Advocate (“UCA”). The two process items consisted of EPC’s commitment to establish and settle a deferral account for a capital project and to include actual cost savings related to shared services for the elimination of 158 employees in a future GTA.

In this decision, the AUC found that EPC had complied with the directions issued. The AUC also approved

- revenue requirements of \$102.00 million for 2021 and \$105.23 million for 2022 on a final basis;
- a revised monthly transmission tariff of \$8,500,113 for September 1, 2021, to December 31, 2021;
- a one-time refund of \$2,100,720 to the Alberta Electric System Operator on September 1, 2021; and
- a monthly transmission tariff of \$8,769,514 from January 1, 2022, to December 31, 2022.

2021-2022 GTA Compliance Filing

The following impacts to the transmission revenue requirement, including reductions, were agreed to in the NSA:

Test Year	2021-2022 GTA Forecast	NSA Adjustments	AUC Directions	Compliance Filing
	(\$ million)			
2021	110.86	(2.43)	(6.43)	102.00
2022	119.23	(5.67)	(8.33)	105.23
Total	230.29	(8.10)	(14.76)	207.23

In response to Direction 1, EPC adjusted its 2021 and 2022 depreciation expenses to its last approved 2020 depreciation expense amount of 24.1 million. As a result, EPC’s transmission revenue requirement decreased by \$4.74 million in 2021 and \$6.57 million in 2022. For Direction 2, EPC removed \$3.34 million of forecast operating and maintenance expenses related to the EAMS initiative, resulting in a decrease to EPC’s transmission revenue requirement of \$1.65 million in 2021 and \$1.69 million in 2022. For Direction 3, EPC committed to including a full business case for any funding requested for the EAMS initiative in a future GTA.

Regarding the first NSA process item, EPC established a deferral account for the Substation 32 arc flash hazard project and committed to disposing of any non-zero balances in the deferral account in a future GTA. Regarding the second NSA process item, EPC committed to including any net shared services cost savings in respect of actions taken by employees during the Employee Action Period, which resulted in the elimination of the 158 positions across EPC’s subsidiaries. EPC’s committed to including 2021 and 2022 actuals for shared services in the format requested by parties in a future GTA.

The AUC was satisfied that the additional NSA process items were adequately responded to by EPC, and that EPC had complied with its requirements in this compliance filing.

EQUUS REA Ltd. Code of Conduct Regulation Compliance Plan Amendment, AUC Decision 26459-D01-2021***Code of Conduct Compliance Plan***

In this decision, the AUC approved the application from EQUUS REA Ltd. (“EQUUS”) for approval of its amended *Code of Conduct Regulation* Compliance Plan (“Compliance Plan”).

EQUUS applied for approval of amendments it had made to update the Compliance Plan to align it with changes made to the *Code of Conduct Regulation* (“CCR”) amendment that came into effect on November 12, 2020. EQUUS also requested approval of minor administrative changes.

The AUC was satisfied that the proposed changes are consistent with continued compliance with and sufficiently address the requirements of the CCR. The AUC was further satisfied that all changes meet the AUC’s requirements and are required to better align with the language of and information described in the Compliance Plan and the operations of EQUUS. Accordingly, the amended Compliance Plan was approved.

Office of the Utilities Consumer Advocate Decision on Preliminary Question Application for Review of Decision 26212-D01-2021 2022 Generic Cost of Capital, AUC Decision 26508-D01-2021***Review and Variance***

In this decision, the AUC denied the application from the Office of the Utilities Consumer Advocate (“UCA”) to review and vary Decision 26212-D01-2021 (the “Original Decision”). The Original Decision approved the return on equity (“ROE”) and set the deemed equity ratios for specific Alberta utilities.

Background

The UCA was an intervener in proceeding 26212-D01-2021 in which a ROE of 8.5 per cent and a deemed equity ratio of 37 per cent (39 per cent for Apex Utilities Inc.) was approved for 2022 on a final basis.

In this decision, the members of the AUC panel who authored the original decision are referred to as the “Hearing Panel”. The members of the AUC panel considering the review application are referred to as the “Review Panel”. In this proceeding, the Review Panel considered the preliminary question of whether there are grounds to review the original decision.

In its application, the UCA argued that an error of fact, law or jurisdiction is either apparent on the face of the decision or otherwise present on a balance of probabilities that required that the AUC materially vary or rescind Decision 26212-D01-2021. The UCA also argued that circumstances material to the decision had changed and could require the AUC to alter its decision. The AUC did not find that there was an error of fact, law or jurisdiction and was further not convinced that circumstances material to the decision had changed, requiring a variance.

Procedural Fairness

The UCA alleged that the process followed by the Hearing Panel was procedurally unfair. The UCA argued that it had a legitimate expectation that (i) it would be allowed to put in proper evidence, and (ii) parties would be able to test and reply to the evidence filed by others.

The Review Panel noted that the responsibility for determining a fair ROE, as was the goal in Decision 26212-D01-2021, lies solely with the AUC. Accordingly, that AUC is required to give notice to, and hear from, interested parties. It is not required to follow the same process in arriving at its final determination in every proceeding. The AUC can adopt a process that it considers best suited to the circumstances of the proceeding.

The Review Panel noted that the Original Decision lists several different approaches that have been used over the years to determine a fair ROE. The Review Panel found there was an insufficient basis for the UCA to form a legitimate expectation regarding the process followed by the AUC.

In the Original Decision, the Hearing Panel adopted a menu-based approach. This differed from previous methods precisely because of the extensive dislocations to general economic activity, significant uncertainties of key economic indicators caused by the pandemic, and unprecedented government/initiated responses. Accordingly, the Review Panel did not see a reasonable basis for any party to claim that it had legitimate expectations that any one process would be followed in preference to another. This is especially the case as no single process had been followed in every proceeding before the pandemic arose and began disrupting many types of commercial and institutional activities worldwide.

The UCA argued that the Hearing Panel's process was unfair as it represented, through both its express words and by implication, that further process would be established prior to issuing a determination. The Review Panel disagreed; it found that any uncertainties that may have arisen from the early proceeding letters were later clarified and disposed of as the hearing panel issued its letter acknowledging submissions of parties.

The Review Panel also found that the UCA's claim that its legitimate expectations of being able to (i) submit "proper" evidence and (ii) test and reply to the evidence of other parties as part of a comprehensive generic cost of capital ("GCOC") proceeding were ignored (or otherwise unfairly denied) by the Hearing Panel was without basis. The Review Panel determined that the Hearing Panel was aware of the facts and issues affecting the fair return that is set in the ROE and the deemed equity ratio. The Review Panel determined that there was no basis to depart from the currently approved ROE and equity thickness.

The Review Panel found that the Hearing Panel allowed parties an opportunity to make adequate representations in writing when it invited both substantive and process comments. Further, there was no prohibition on providing evidence.

With regard to UCA arguments regarding no right of reply, the Review Panel noted that the Hearing Panel notified all parties of their opportunity to comment, but no party had a right to reply. The Review Panel determined that the Hearing Panel's procedural decision that it possessed all the information it required to determine whether to extend the currently approved parameters without further process was fair. Accordingly, the AUC did not find an error of law on the basis of procedural fairness.

Grounds Related to Fact

The UCA alleged that the Hearing Panel's conclusions in the original decision relied on a material error of fact. Specifically, that market data remains in a state of flux and that the Hearing Panel's finding that the evidence would be clouded by an "unusual degree of uncertainty" was premised on an incorrect and misleading interpretation of a disclaimer by the Bank of Canada.

The Review Panel found that the Hearing Panel's determination regarding evidence filed was not based on an incorrect interpretation of the Bank of Canada evidence. The Review Panel found that that the UCA did not demonstrate the existence of an error as required for a review and variance.

Changed Circumstances

The UCA submitted that there is now evidence that markets are stabilizing and that uncertainties that may have existed at the time of the original decision will not persist through 2022. In arguing this, the UCA relied on information from the Bank of Canada from March and April of 2021. The UCA argued that if conditions are stabilizing, the rationale for declining to hold an intensive GCOC process is no longer applicable.

The Review Panel found that publications cited by the UCA indicated that uncertainty remains elevated and that pandemic-related uncertainty persists. Further, the sections relied upon, and the included statement regarding a possible third wave of infections brought a new dimension of uncertainty. The Review Panel found that the UCA did not demonstrate the existence of changed circumstances material to the decision, which occurred since its issuance, that could lead the AUC to materially vary or rescind the original decision.

Grounds Related to Errors of Law or Jurisdiction

The UCA argued that while the AUC is required to consider capital attraction, financial integrity, and comparable investments when determining a fair ROE, the Hearing Panel in the original decision was guided by different factors: the unsettled nature of capital markets; the need for certainty and stability; and regulatory efficiency. The UCA argued that the factors relied upon are irrelevant to determining a fair ROE.

The Review Panel noted that the menu-based approach, which was adopted by the AUC after it determined that the pandemic rendered the prior, more intensive approach impractical, if not unfeasible, resulted in an extension of the approved 2020 return and equity ratios to the end of 2021. The Review Panel also noted that there is no prescribed approach or methodology to set a fair return, which the UCA does not dispute. The Review Panel found that the Hearing Panel did not apply an incorrect legal test, and there was no error of law or jurisdiction.

The UCA also submitted that the hearing panel failed to consider any supporting evidence in making the original decision. It argued that an error of law existed because, while a few parties commented on current and future economic conditions, there was no evidentiary support provided for these comments. In the alternative, if the comments are evidence, such evidence was neither questioned nor tested and was insufficient to support the decision.

The Review Panel found that there was relevant evidence on the record. The AUC can consider all evidence that is relevant. The AUC is not obliged to consider the same evidence in each proceeding. The AUC also noted that as an expert tribunal, it is not limited to considering only the evidence brought by parties.

The UCA argued that the Hearing Panel erred in extending the previously approved ROE and equity ratios to the end of 2022 without conducting a full proceeding. It argued that this amounted to a refusal to exercise the statutory mandate given to the AUC by the *Gas Utilities Act*, *Electric Utilities Act*, and *Public Utilities Act*.

The Review Panel noted that even in prior GCOC proceedings that followed an intensive process, the AUC had accepted the parameters of the prior term as a point of departure for the next term. In those previous proceedings, after finding that some indicators signaling upward pressure on parameters were offset by other indicators signaling downward pressure, they simply maintained the status quo. The Review Panel concluded that the Hearing Panel properly exercised its statutory obligation using an abbreviated process. The abbreviated process was justified in the circumstances.

The application for review was dismissed.

Pembina NGL Corporation Application for an Order Permitting the Sharing of Records Not Available to the Public Between Pembina NGL Corporation and TransCanada Energy Ltd., AUC Decision 26715-D01-2021

Fair, Efficient and Open Competition Regulation - Sharing of Records

In this decision, the AUC granted the application from Pembina NGL Corporation (“Pembina”) for an order to permit the sharing of records pertaining to the electricity and ancillary services markets under Section 3 of the *Fair, Efficient and Open Competition Regulation* (“*FEOC Regulation*”).

Introduction and Procedural Background

Pembina filed an application seeking permission to share records not available to the public between Pembina and TransCanada Energy Ltd. (“TCE”), relating to Pembina’s 45.8-megawatt (“MW”) natural gas-fired cogeneration unit and TCE’s 46-MW cogeneration facility.

AUC Findings

Subsection 3(3) of the *FEOC Regulation* allows the AUC to issue an order permitting the sharing of records on any terms and conditions that the AUC considered appropriate, provided that certain requirements are satisfied. The AUC found that those requirements were met.

The AUC was satisfied that Pembina had demonstrated that (i) the sharing of records with TCE was reasonably necessary for Pembina to carry out its business; and (ii) the subject records would not be used for any purpose that did not support the fair, efficient and openly competitive operation of the Alberta electricity market, including the conduct referred to in Section 2 of the *FEOC Regulation*. Relying on submissions from Pembina and written representations from Pembina and TCE, the AUC was satisfied that Pembina and TCE would conduct themselves in a manner that supports the fair, efficient and openly competitive operation of the market.

The AUC further found that Pembina's and TCE's total offer control were well below the maximum of 30 per cent, set out in Subsection 5(5) of the *FEOC Regulation*. The AUC also considered the Market Surveillance Administrator's support of this application to have been a contributing factor in the decision to permit the sharing of records.

The AUC issued an order extending the term of Pembina and TCE's existing order allowing them to share records not available to the public, subject to terms and conditions.

Renewable Energy Systems Canada Inc. - Hilda Wind Project, AUC Decision 26569-D01-2021 *Wind Power - Facilities*

In this decision, the AUC approved the applications from Renewable Energy Systems Canada Inc. ("RES") to construct and operate the Hilda Wind Power Project (the "Project"). The Project consists of a 100-megawatt ("MW") wind power plant and the Hilda 662S Substation. The Project will be located approximately 80 kilometers northeast of the city of Medicine Hat.

Discussion

Alberta Environment and Parks ("AEP") determined that the Project posed a medium risk to wildlife and wildlife habitat. This conclusion was based on consideration of Project-specific factors, including the commitments made by RES to mitigate and monitor wildlife impacts.

AEP determined that the Project posed a moderate risk to native grasslands and wetlands. It determined that the mitigation measures committed to by RES are adequate and align the Project with the intent of the *Wildlife Directive for Alberta Wind Projects*.

AEP determined that the Project posed a high risk to bat mortality but concluded that the proposed mitigation is expected to reduce mortality to acceptable levels. AEP further noted that the post-construction monitoring committed to by RES is consistent with AEP policy. AEP further found that the Project posed a low risk to breeding birds and that the mitigation measures proposed by RES address the risk adequately. A high risk to migrating birds was identified. To address this risk and if construction is scheduled during breeding season or the migratory bird nesting period, RES committed to specific mitigation measures that involved detailed surveys and searches of the construction area for nests and birds. In the case that a sensitive wildlife feature is suspected or identified, and adherence to the timing or setback restrictions is not possible, a site-specific mitigation and monitoring plan will be developed in consultation with AEP.

RES did not provide a *Historical Resources Act* approval for the Project. It submitted that Alberta Culture and Status of Women requires a historic resources impact assessment for one archeological site located in the northeast of the Project layout. RES indicated that aerial imagery shows the area of the archeological site is cultivated, and the associated stone features are likely destroyed. RES noted that it would conduct a field investigation to confirm the site conditions and that it would follow recommendations as agreed to with Alberta Culture and Status of Women.

Except for two receptors, cumulative sound levels of the Project would not exceed the permissible sound levels (“PSL”), where the PSL was exceeded by 0.1 and 0.2 decibels (“dBA”) beyond the 40 dBA nighttime PSL. When predicted cumulative sound levels were rounded to the nearest whole number and compared to the applicable PSL of the receptors, the Project was concluded to be compliant with PSLs at all receptors. In addition, an analysis of low frequency sound levels of the Project indicated that there would be no Project-related low frequency noise issues at any receptors.

RES explained that it did not consult with Indigenous peoples as the Project did not trigger any consultation requirements and because no Aboriginal rights would be impacted. The AUC provided the notice of the application to three Indigenous groups, and RES committed to addressing questions from these Indigenous groups.

Relocation of Turbines T4 and T8

In response to concerns raised by Alberta First Responders Radio Communications System, two turbines (T4 and T8) were relocated to prevent interference with a pre-existing communications radio link.

RES assessed potential changes to environmental, noise, and shadow flicker impacts from the relocation of the turbines. The assessment concluded that there would be minor changes to the shadow flicker impacts and noise impacts, but the Project would remain compliant with applicable rules. Following the relocation, RES consulted three landowners. No objections or concerns related to the relocation were raised.

AUC Findings

The AUC determined that the application complied with Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designation and Hydro Developments*. The AUC noted that if Alberta Culture and Status of Women requires mitigation for the historical resources site such that RES would be required to amend its Project, RES may be required to file a letter of inquiry or an amendment application with the AUC, depending on the scope of the proposed changes in relation to the original application.

The AUC accepted the environmental mitigation measures committed to by RES. To ensure compliance with Rule 033: *Post-approval Monitoring Requirements for Wind and Solar Power Plants*, the AUC required that RES submit a post-construction monitoring survey report to AEP and the AUC within 13 months of the Project becoming operational and on or before the same date every subsequent year for which AEP requires surveys.

As noise levels at two receptors of the Project exceeded the PSL slightly, the AUC, as a condition of approval, required that RES conduct a post-construction comprehensive sound level survey, including an evaluation of low frequency noise, at those receptors. The post-construction comprehensive sound level survey must be conducted under representative conditions and in accordance with Rule 012: *Noise Control*. Within one year after the Project commences operations, RES shall file a report with the AUC presenting measurements and summarizing results of the post-construction comprehensive sound level survey.

The AUC accepted the conclusion submitted by RES that no receptor would experience shadow flicker above 16.5 hours per year.

The AUC found that approval of the Project is in the public interest and approved the applications.

Syncrude Canada Ltd. Application for an Order Permitting the Sharing of Records Not Available to the Public Between Syncrude Canada Ltd. and Suncor Energy Operating Inc., AUC Decision 26584-D01-2021 ***FEOC - Sharing of Records***

In this decision, the AUC approved the application from Syncrude Canada Ltd. (“Syncrude”) for the preferential sharing of records that are not applicable to the public between Syncrude and Suncor Energy (Syncrude) Operating Inc. (“Suncor”), an affiliate company wholly owned by Suncor Energy Inc.

Introduction and Background

Syncrude filed its application pursuant to Section 3 of the *Fair, Efficient and Open Competition Regulation* (“*FEOC Regulation*”). Syncrude requested permission to share records related to the Syncrude Project, which consists of 10 oil sands facilities and two major production facilities located in the Municipality of Wood Buffalo.

Disposition 25054-D01-2020 previously determined that the operational information shared between Syncrude, Imperial Oil Resources Limited, CNOOC Oil Sands Canada, Sinopec Oil Sands Partnership, and Suncor Energy Inc. (collectively the “owners”) was not subject to the *FEOC Regulation*.

As of September 30, 2021, under a new Joint Venture Operating Agreement, Suncor is designated as the new operator of the Syncrude Project. Suncor will appoint Suncor Energy Marketing Inc. (“SEMI”), a wholly owned subsidiary of Suncor Energy Inc., to act as its agent in managing certain services for the Syncrude Project, including the use, sale, and settlement of power in the Alberta power pool. This will necessitate that Syncrude and Suncor share information that is not available to the public. Following the application and information provided to the Market Surveillance Administrator (“MSA”), the MSA advised the AUC that it supports Syncrude’s application.

Submissions of Syncrude

Is the Proposed Sharing of Records Reasonably Necessary?

In its application, Syncrude explained that SEMI would be appointed to act as Syncrude’s agent for dispatching and market requirements related to the Syncrude Project. SEMI will also conduct offer submissions on behalf of the Syncrude Project and will likely have discretion over offer behaviour. Accordingly, Syncrude asserted that the sharing of non-public records relating to the Syncrude Project is reasonably necessary for it to carry out its business.

Fair, Efficient and Openly Competitive Operation of the Electricity Market

Syncrude and Suncor each filed written representations confirming that the preferential information sharing would not be used in any manner that is contrary to Section 2 of the *FEOC Regulation*. Syncrude and Suncor further each indicated that they have respective codes of conduct in place to safeguard confidential and commercially sensitive information and access to such information.

AUC Findings

The AUC was satisfied that Syncrude had demonstrated that the sharing of records is necessary for Syncrude to carry out its business and that the subject records will not be used for any purpose that does not support the principles of the *FEOC Regulation*.

The total offer control of Syncrude will be zero percent, and Suncor Energy Inc’s total offer control will be 10.5 percent after the execution of the new Joint Venture Operating Agreement. Both figures are below the offer control limit of 30 per cent, as set out in Subsection 5(5) of the *FEOC Regulation*.

Accordingly, and in consideration of the MSA’s support of this application, the AUC approved the application and issued an order allowing Syncrude to share records not available to the public with Suncor, subject to conditions set out in the decision.

TransAlta Corporation, 2019-2021 General Tariff Application Compliance Filing and 2022 Interim Tariff Application, AUC Decision 26718-D01-2021 ***Compliance - GTA***

In this decision, the AUC determined that as a transmission facility owner (“TFO”), TransAlta Corporation (“TransAlta”), in its capacity as Manager of the TransAlta Generation Partnership, complied with directions issued by the AUC in Decision 26436-D01-2021 regarding TransAlta’s 2019-2021 general tariff application (“GTA”).

TransAlta further requested, and the AUC approved revenue requirements of approximately \$7.60 million for 2019, \$8.37 million for 2020, and \$8.16 million for 2021 on a final basis and an interim tariff of roughly \$8.16 million for 2022 on a refundable basis.

2019-2021 GTA Compliance Filing

In Decision 26436-D01-2021, the AUC approved the line 113L/150L rebuild project expenses as a placeholder because TransAlta indicated that these expenses might have been billed to its rate base by AltaLink Management Ltd. (“AML”) by mistake. The AUC in Direction 4 required TransAlta to resolve this issue with AML and advise the AUC of a resolution. TransAlta reported that costs related to the line rebuild were billed to TransAlta’s rate base in error. To correct the error, AML refunded TransAlta an amount of \$687,559, and the amount was subsequently reflected in AltaLink’s rate base. TransAlta also confirmed that it applied a corresponding reduction to the capital additions costs of the project.

The AUC was also satisfied that TransAlta complied with directions 1, 2, 3 and 5 and TransAlta’s revenue requirements of approximately \$7.60 million for 2019, \$8.37 million for 2020 \$8.16 million for 2021 were approved as filed.

2022 Interim Tariff

TransAlta requested that its 2021 applied-for tariff of \$8.16 million be approved as the 2022 tariff on an interim, refundable basis at a monthly rate of \$680,052, effective January 1, 2022. The AUC found this request reasonable and approved the requested interim tariff for 2022 until it is replaced by a revised interim or a final tariff.

Utility Payment Deferral Program: Rate Rider - Natural Gas, AUC Decision 26699-D01-2021

Utility Payment Deferral Program - Rates

In this decision, the AUC approved a Utility Payment Deferral Program (“UPDP”) - Natural Gas rate rider that will be collected from customers by ATCO Gas and Pipelines (“ATCO”) and Apex Utilities (“Apex”). The approved rate rider in the amount of \$0.037 per gigajoule (“GJ”) was calculated to recover a total amount of no greater than \$6,099,602.59. It is intended to recover the uncollected gas customer bill amounts that were deferred under the UPDP. The rate rider will result in a monthly charge of approximately \$0.78 on an average residential bill.

Applications and Background

Under the *Utility Payment Deferral Program Act* (“*UPDP Act*”), gas service providers and gas distributors were enabled to work with Albertans to defer electricity and natural gas bills until June 18, 2020, without added late fees or interest payments. The deferred bills were required to be repaid by June 18, 2021. The AESO was responsible for funding the portion of the deferred electricity bill payments related to transmission charges for enrolled electricity customers.

The *UPDP Act* anticipated that not all deferred customer bills would be repaid. Under Section 21 of the *UPDP Act*, an application was to be brought to the AUC for a natural gas rate rider. This rate rider would recover uncollected amounts outstanding from each gas service provider, expenses incurred by the Minister to administer the loans to the gas service providers, and outstanding natural gas transmission charges.

The Office of the Assistant Deputy Minister, Ministry Services of the Government of Alberta confirmed that it issued a total of \$37,147,794.64 in loans to gas service providers under Section 19 of the *UPDP Act*, it received \$32,508,571.45 in repayments, and there is an outstanding balance of \$4,639,223.19 to be included in the natural gas rate rider.

Gas Distributors' Rate Rider Applications

ATCO and Apex requested that unrecovered amounts from enrolled gas customers be included in a natural gas rate rider. ATCO funded amounts to administer the deferral of payments related to transmission charges and determined that \$407,785.73 was outstanding. ATCO requested approval for the inclusion of this amount when the AUC determined the natural gas rate rider. ATCO also applied for the recovery of carrying costs in the amount of \$112,798.91.

Apex, as a gas distributor, submitted that the outstanding balance of the deferred gas transmission charges is \$6011.58, excluding carrying cost. Apex requested that its deferral of payments for gas services of \$257,524.44 that were uncollected from enrolled gas customers under the UPDP be included in the natural gas rate rider. Apex also provided supporting calculations for its \$105,668.64 total for carrying costs related to deferred gas transmission charges and uncollected bill amounts from enrolled gas customers, using, like ATCO, its weighted average cost of capital ("WACC").

Self-Funded Gas Service Providers

Hudson Energy Canada Corp. and Just Energy Canada Corp. filed applications to recover unpaid deferred natural gas bill amounts that were self-funded. Specifically, they applied to recover uncollected bill amounts for gas services provided to enrolled gas customers (non-transmission-related charges). 1772387 Alberta Limited Partnership ("Encor") filed an application for uncollected bill amounts for gas services provided to enrolled gas customers (transmission-related charges).

Natural Gas Rate Rider - Applied-for Amounts by the Applicant

With respect to the outstanding amount owed to the Minister, the AUC approved amounts no greater than the applied-for \$4,639,223.19 to be included in the natural gas rate rider.

For the gas distributors ATCO and Apex, the AUC approved the inclusion of the carrying costs calculated using the WACC method. For ATCO Gas, the AUC approved the \$407,785.73 in uncollected bill amounts for gas transmission charges and the inclusion of \$112,798.91 for carrying costs as part of the natural gas rate rider. For Apex, the AUC approved the \$263,536.02 in uncollected bill amounts for gas services and gas transmission charges and the inclusion of \$105,668.64 for carrying costs as part of the natural gas rate rider.

Self-Funded Gas Service Providers

Encor applied for the recovery of \$142,041.00. Its application included a cover letter, senior officer's attestation letter, and the UPDP self-funded service provider rate rider template. In a ruling from July 30, 2021, the AUC denied an application from Encor for recovery of \$97,826.00 for late payment revenue shortfall and \$9,168.00 for carrying costs. These amounts were excluded from recovery through the natural gas rate rider. The remaining costs claimed for deferred transmission charges of \$35,047.00 were found to accurately reflect the difference between the deferred natural gas bill amounts of enrolled gas customers and the uncollected bill amounts and, accordingly, were approved for inclusion in the natural gas rate rider.

Just Energy applied for \$406,950.08, and Hudson Energy applied for \$128,593.01 in uncollected bill amounts. The AUC was satisfied that these amounts accurately reflected the difference between the deferred natural gas bill amounts of enrolled gas customers and the uncollected bill amounts. Further, the AUC found that reasonable efforts were made to collect the deferred natural gas bill amounts from enrolled gas customers during the repayment period. The AUC approved amounts no greater than those applied for by Just Energy and Hudson Energy to be included in the natural gas rate rider.

Accordingly, pursuant to Section 10 of the *UPDP Act*, the AUC approved the amount no greater than \$6,099,602.58 to be used in the calculation of the natural gas rate rider. Following the information provided by ATCO and Apex regarding their actual weather normalized throughput (by month in GJ), the AUC arrived at a rate rider of \$0.037/GJ. The effective date of the rate rider will be November 1, 2021.

Versorium Energy Ltd. - Kenilworth 1 Distributed Energy Resource, AUC Decision 26763-D01-2021
Power – Facilities

In this decision, the AUC approved applications from Versorium Energy Ltd. (“VEL”) to construct, operate and connect a 5.0-megawatt natural gas-fired power plant, designated as the Kenilworth 1 Distributed Energy Resource (“Kenilworth 1”).

Application

VEL applied to construct and operate Kenilworth 1 and to connect it to the ATCO Electric Ltd. Electric distribution system (the “Project”). The Project includes two gas-fired reciprocating engines, with a capability of 5.0 megawatts (“MW”), a switchgear building, a generator step-up transformer, a low-pressure natural gas pipeline to connect to the County of Vermillion River’s natural gas system, and a distribution line to connect to ATCO Electric Ltd.’s distribution system.

With its application, VEL filed a noise impact assessment (“NIA”) participant involvement program, as required by Rule 012: *Noise Control* which raised no issues or concerns. VEL also submitted an air quality assessment report that indicated that the Alberta Ambient Air Quality Objective would be met, and an environmental evaluation report that concluded that potential and residual effects would not be significant.

VEL submitted that it expects the project to be in service by June 15, 2022, but requested a construction completion date of December 31, 2023, to account for any unforeseeable delay and to mitigate the possibility that an extension request is required.

The AUC did not issue a notice of applications, and no hearing was held, as the AUC considered that the decision and order would not directly and adversely affect the rights of a person pursuant to Section 9 of the *Alberta Utilities Commission Act*.

AUC Findings

The AUC determined that the requirements of Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments* were met. VEL engaged with landowners, residents, occupants, businesses, and individuals who may have a registered interest in land within 1,500 meters of the Project boundary as well as with the broader community and the Frog Lake First Nation. No objections to the project were received.

The AUC determined that the NIA met the requirements of Rule 012 and was satisfied that all sound levels would comply with Rule 012.

The AUC noted that while the Project will operate intermittently, on a peaking basis, the air dispersion modelling assumed continuous operation. The Project will increase ground-level concentrations of NO₂, CO, and PM_{2.5}, however, the increased values remain below the limits set by the Alberta Ambient Air Quality Objectives. VEL further submitted that the project would be compliant with federal *Multi-Sector Air Pollutant Regulations* emission standards for applicable substances. The AUC was satisfied that the modelling results are conservative in comparison to the expected actual emissions levels, and the predicted emissions do not breach Alberta Ambient Air Quality Objectives.

The AUC accepted the submission from VEL that the Project would not result in significant adverse effects on the environment. Alberta Environment and Parks (“AEP”) confirmed that an environmental impact assessment would not be required for the project.

The AUC found that all requirements for a connection order had been met. ATCO Electric Ltd. confirmed that it would allow the interconnection of Kenilworth 1, and the AUC had no outstanding concerns regarding the interconnection. The AUC approved the application to construct and operate the Kenilworth 1 Distributed Energy Resource, and to connect Kenilworth 1 to the ATCO Electric Ltd. Electric distribution system.

CANADA ENERGY REGULATOR***Trans Mountain Pipeline ULC Variance Application to Construct and Operate the Coldwater West Alternative Route, CER Reasons for Decision MH-032-2021******TMEP Route Alternative***

On July 19, 2021, the CER approved the variance application from Trans Mountain Pipeline ULC (“Trans Mountain”) to construct and operate the Coldwater West Alternative Route (the “West Alternative”) in the Coldwater Valley of British Columbia, with reasons to follow. The West Alternative was proposed as an accommodation measure and was essentially unopposed. The CER also considered Trans Mountain’s submissions regarding the West Alternative being a critical path construction priority, as well as Coldwater Indian Band’s (“Coldwater”) request for a timely decision.

Expected Benefits and Burdens of the West Alternative Compared to the East Route

The CER considered the following benefits and burdens of the West Alternative compared with those associated with the previously approved East Route.

The CER expects the West Alternative to include the following benefits:

- relatively lower risk to the aquifer underlying the Reserve, and Coldwater’s groundwater supply;
- avoids known heritage sites of importance to Coldwater;
- avoids impacts on traditional land use values, including places of great spiritual importance, that Coldwater members use on a daily basis;
- less greenfield disturbance (4 km versus 10 km);
- longer length paralleling existing linear infrastructure (14.37 km versus 7.55 km); and
- avoids crossing two creeks (Kwinshatin and Skuagam) of spiritual and cultural value to Coldwater.

The CER expects the West Alternative to include the following burdens:

- 2.85 km longer in length (18.31 km versus 15.46 km), which results in a marginally higher overall risk of a spill;
- higher residual environmental effects for a number of valued environmental components as a result of a larger total area of right-of-way and workspace, including a larger riparian disturbance area, overlap with *Species at Risk Act* critical habitat, and wetlands; and
- requires two crossings of the Coldwater River.

The CER gave significant weight to the evidence that the West Alternative would pose less risk to Coldwater’s groundwater supply than the East Route. The CER also gave weight to Coldwater’s strong preference for the West Alternative, as well as the support for Coldwater’s preference from other potentially affected Indigenous peoples and the lack of opposition from affected landowners. Lastly, the CER considered the mitigation measures Trans Mountain is required to implement and concluded the West Alternative could be constructed safely and in a manner consistent with environmental protection.

Consultation with Indigenous Peoples

As part of the CER’s hearing process, 25 Indigenous peoples or organizations were served with a Notice of Hearing. Coldwater, the Métis Nation British Columbia, the Nooaitch Indian Band, and the Siska Indian Band were

granted intervenor status. The Cook's Ferry Indian Band, the Natural Resources Management Division of Nooaitch Indian Band and the Spuzzum First Nation were granted commenter status as requested.

The CER determined that Trans Mountain had sufficiently consulted with affected Indigenous peoples. Further, it determined that between the CER's hearing process and participation opportunities for Indigenous peoples and the Government of Canada's consultation with Indigenous people coordinated by the CER, there had been adequate consultation and accommodation for the purposes of this decision. In coming to this conclusion, the CER interpreted its responsibilities consistent with the *Constitution Act, 1982*, including Section 35, which recognizes and affirms the existing Indigenous and Treaty rights of Indigenous peoples.

Land Matters and Facility

The CER acknowledged that the West Alternative parallels more existing linear infrastructure than the East Route. The CER found that Trans Mountain's anticipated requirements for permanent and temporary land rights are appropriate to allow for the construction and operation of the West Alternative in a safe and efficient manner. Trans Mountain was also found to have anticipated requirements for land rights, and the process for the acquisition of these land rights is acceptable and will meet the requirements of the *Canadian Energy Regulator Act* (including sections 321 to 323) and provincial and local permitting authorities as applicable.

The CER determined that Trans Mountain's pipeline design complies with CSA Z662 requirements and is consistent with the design that was approved in the Reconsideration Report.

Risk Assessment

Regarding third-party damage threats, Trans Mountain identified 14 100-meter long segments exceeding the risk threshold due to third-party damage concerns. These segments are in areas where the West Alternative passes through areas with more third-party activity, including certain agricultural and low-density residential areas near the Coldwater River. The CER recognized deeper burial and buried marker tape, proposed by Trans Mountain as acceptable third-party damage risk reduction measures.

Regarding natural hazards, the CER determined that hazards will be mitigated to acceptable levels through its trenchless crossings of the Coldwater River. The CER found that Trans Mountain's risk assessment with respect to the Coldwater aquifer suggested a conservative approach in accounting for uncertainties.

In comparing the risk of the West Alternative to the East Route, the CER concluded that the slightly higher risk of the West Alternative is mostly attributable to the increased length (18.31 kilometers versus 15.46 km). The CER acknowledged that Coldwater and its consultant BC Groundwater Consulting Services Ltd. ("BC Groundwater") were satisfied that the West Alternative avoids all impacts to the Coldwater aquifer, its community's sole source of drinking water. On a balance of risk, the CER concluded that the West Alternative is favourable to the East Route in minimizing impacts to the Coldwater aquifer in particular while maintaining overall risk to levels similar to the East Route.

Environmental and Socio-Economic Issues

In considering environmental and socio-economic issues, the CER considered the impact of the West Alternative to Coldwater's drinking water source, groundwater concerns, fish and fish habitat, other wildlife and habitat disturbance, traditional land use, and occupancy and heritage resources.

The CER noted that no environmental and social effects are raised by the West Alternative that had not already been considered for other parts of the Trans Mountain Expansion Project ("TMEP"). The CER determined that mitigation measures described in the West Alternative variance application and under existing Certificate conditions are appropriate.

Compliance Oversight

Throughout the lifecycle of an approved project, the CER holds the pipeline company accountable for meeting its regulatory requirements in order to keep its pipelines and facilities safe and secure and protect people, property, and the environment.

The CER noted that there are 156 conditions applicable to the TMEP, of which 142 are applicable to Certificate OC-065. As set out in Order AO-008-OC-065, all conditions applicable to this Certificate, excluding Certificate Condition 39, apply to the West Alternative.

To increase transparency related to the West Variance, the CER required Trans Mountain to provide a commitments table setting out all of its commitments made during the MH-032-2021 proceeding and then incorporate these commitments into its Certificate Condition 6 recurring filings (Condition 2). Further, Trans Mountain is required to maintain at its construction office(s) a copy of this Order and any filings submitted to the CER under this Order (Condition 3).

The CER determined that certain existing Certificate conditions may require an update due to the West Variance. Accordingly, the CER imposed Condition 4, requiring that Trans Mountain update or justify why no update is required to conditions 50, 95 and 98.