



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***Geothermal Resource Development Rules and Directive 089: Geothermal Resource Development, AER Bulletin 2022-25****Geothermal Resources*

The *Geothermal Resource Development Act* provides the AER with the authority to regulate the safe, efficient, and responsible development of Alberta's geothermal resources. The *Geothermal Resource Development Rules* (the "Rules") and *Directive 089: Geothermal Resource Development* ("*Directive 089*") were issued to complete the regulatory framework for geothermal resource development. The *Rules* and *Directive 089*, effective August 15, 2022, set out the requirements for the entire life cycle of a geothermal development when developing geothermal resources below the base of groundwater protection. The *Rules* and *Directive 089* introduce requirements and processes unique to geothermal energy and include references to applicable oil and gas regulatory instruments.

The AER also updated *Manual 012: Energy Development Applications Procedures and Schedules* with guidance for geothermal applications (wells, facilities, pipelines), including how the AER will apply liability management to geothermal resource developments.

Finally, the AER updated the *Oil and Gas Conservation Rules* ("*OGCR*") to align with the geothermal regulatory framework. The definition of oilfield waste in the *OGCR* has been updated to include waste from a geothermal resource development. A new provision has been added to the *OGCR* that requires an application for amendment where a licensee intends to change a well licensed under the *Oil and Gas Conservation Act* to a geothermal well.

New Edition of Manual 001: Facility and Well Site Inspections, AER Bulletin 2022-26*Facility and Well Site Inspections*

On August 16, 2022, the AER released a new edition of *Manual 001: Facility and Well Site Inspections* ("*Manual 001*"), replacing the 2010 edition. *Manual 001* is a reference document for AER staff conducting facility and well-site compliance activities. Although the manual is not an exhaustive inventory of all requirements, the industry may use it as a reference for facility and well-site inspections and as a guide to inform compliance management systems. The manual is divided into four sections: Gas Facility, Oil Facility, Waste Facility, and Well Site. Each section provides non-compliance statements, along with the relevant regulatory references. *Manual 001* has been updated as follows:

- (a) non-compliance statements for specified enactments (e.g., *Public Lands Act*, *Water Act*) were added;
- (b) non-compliance statements to reflect current AER requirements and energy resource enactments (e.g., *Directive 058: Oilfield Waste Management Requirements for the Upstream Petroleum Industry*, *Oil and Gas Conservation Act*) were added or removed as needed;
- (c) the low- and high-risk ratings were removed to align *Manual 001* with the AER's Integrated Compliance Assurance Framework and *Manual 013: Compliance and Enforcement Program*; and
- (d) *Manual 001* was formatted to meet the AER's current publication standards.

ALBERTA UTILITIES COMMISSION***Alberta Electric System Operator 2021 Deferral Account Reconciliation, AUC Decision 27547-D01-2022***
*AESO Deferral Account Reconciliation*Application

The Alberta Electric System Operator (“AESO”) applied for approval of its request to settle its 2021 net deferral account surplus with market participants in the amount of \$9.5 million on a final basis.

Decision

The AUC accepted the calculation of the net deferral account surplus of \$9.5 million. This calculation included the one-time collection or refund required for each settlement point and/or market participant as described in the application and its appendices. The AUC approved the AESO’s request to settle its 2021 net deferral account surplus with market participants in the amount of \$9.5 million on a final basis.

Alberta Electric System Operator Approval of New Alberta Reliability Standards and Retirement of Existing Alberta Reliability Standards, AUC Decision 27516-D01-2022
*ISO Rules - Reliability Standards*Application

The Alberta Electric System Operator (“AESO”) forwarded a recommendation to the AUC to approve two new Alberta Reliability Standards. The first proposed new standard, EOP-005-AB-3, ensures plans, facilities, and personnel are prepared to enable restoration of the Alberta Interconnected Electricity Systems (“AIES”) starting from blackstart resources. Moreover, it ensures reliability is maintained during restoration and it prioritizes restoring the AIES and the interconnection per the restoration plan. The second proposed new standard, EOP-006-AB-3, ensures that plans are established, and personnel is prepared to enable effective coordination of the system restoration process, guaranteeing that reliability is maintained during the restoration of the AIES in the event of a complete or partial blackout.

Decision

The AUC approved the proposed new standards: EOP-005-AB-3 and EOP-006-AB-3, and the retirement of standards EOP-005-AB-2 and EOP-006-AB-2, effective as of September 1, 2023.

Applicable Legislation

[Transmission Regulation](#), Alta Reg 86/2007, ss 19(4)-(6).

Pertinent Issues

Prior to the AESO’s submission for approval, the AESO followed a stakeholder consultation process. The AESO recommended approval of the new reliability standards. No objections to approval were filed with the AUC.

Alberta Pacific Forest Industries Inc. Al-Pac Pulp Mill Industrial System Designation, AUC Decision 27522-D01-2022
*Industrial System Designation*Application

Alberta Pacific Forest Industries Inc. (“Al-Pac”) operates a pulp mill facility in the Athabasca area. Al-Pac has approval to own and operate electric facilities at the pulp mill facility, including a 106-megawatt (“MW”) power plant and the Grassland 282S Substation, and to connect those facilities to the Alberta Interconnected Electric

System (“AIES”). The power plant, which initially consisted of only three steam-fuelled generators, was added in 2001 to supply electric energy to the pulp mill facility and to export excess energy to the AIES. The fourth generator, a gas turbine generator, and the Grassland 282S Substation were added in 2011. Al-Pac filed an application requesting an industrial system designation (ISD”) encompassing all electric facilities at its pulp mill.

Decision

The AUC found that Al-Pac’s application substantially met all the requirements for an ISD and demonstrated significant and sustained increased efficiency. The AUC approved the request for an ISD.

Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - s 9.

[Electric Utilities Act](#), SA 2003, c E-5.1 - ss 2(1)(d), and 117.

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - ss 4(3)(a) to 4(3)(g), and 4(5).

ATCO Gas, a Division of ATCO Gas and Pipelines Ltd. 2022 Load Balancing Deferral Account Rider L, AUC Decision 27451-D01-2022

Gas - Rates

Application

In Decision 2014-268, the AUC approved ATCO Gas, a division of ATCO Gas and Pipelines Ltd.’s load balancing methodology for a single province-wide load balancing deferral account (“LBDA”). Load balancing is part of the physical operation of a gas pipeline system, whereby gas supplies are adjusted to maintain optimum operating pressure in the system. The LBDA balance reflects the throughput of the adjusted gas supply. Rider L recovers the LBDA, whenever the balance of the LBDA exceeds the threshold of \$10 million in any single month. This application is the first triggering of Rider L. ATCO Gas requested approval of a Rider L to recover the LBDA balance as of April 30, 2022. ATCO Gas proposed recovery of Rider L throughout September 1, 2022, to April 30, 2023, from the Low-, Mid-, High-, Ultra-High Use, Alternative Technology, and Appliance and Irrigation customers.

Decision

The AUC approved the application and found that ATCO Gas’s calculation of its Rider L was consistent with the methodology approved in Decision 2014-268.

Applicable Legislation

AUC Rule 001: [Rules of Practice](#)

AUC Rule 023: [Rules Respecting Payment of Interest](#)

Pertinent Issues

The AUC found that the impact of Rider L on rates, from September 2022 to April 2023, is 0.5 percent or less for all north and south rate groups. The AUC, therefore, found that the Rider L balance will not result in rate shock for customers.

While the AUC approved Rate Rider L for ATCO Gas North and South, the AUC considered that the amendments to *Rule 023* apply to the LBDA as of March 1, 2022, which was the effective date of the rule amendments. Accordingly, the AUC directed ATCO Gas to recalculate the LBDA balance to be recovered through Rider L to reflect the application of the rate prescribed in the rule, as opposed to a weighted average cost of capital, in calculating the carrying costs. ATCO Gas was also directed to file amended calculations and schedules reflecting

the rate application prescribed in *Rule 023* as a post-disposition filing to this decision. The AUC permitted ATCO Gas to recover the revised amount from September 1, 2022, to April 30, 2023. In the event of any discrepancies, the AUC will reconcile the revised calculations as part of ATCO Gas's next LBDA application.

ATCO Gas and Pipelines Ltd. Lethbridge East Lateral Pipeline, AUC Decision 27102-D01-2022
Gas - Facilities

Application

ATCO Gas and Pipelines Ltd. ("AGP") applied for permission to install approximately 9.4 km of new 219.1-millimeter natural gas pipeline in Lethbridge County, to replace a section of the existing Lethbridge East Lateral Pipeline that will be transferred to ATCO Gas for conversion to low-pressure distribution service. The need for the project was established as part of AGP's AUC-approved Lethbridge Urban Pipeline Upgrade ("LUPU") program.

Decision

The AUC approved the application to install the pipeline and an associated research control and gate station.

Applicable Legislation

AUC Rule 007: [*Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines*](#)

AUC Rule 012: [*Noise Control*](#)

[*Alberta Utilities Commission Act*](#), SA 2007, c A-37.2 - s. 17.

[*Gas Utilities Act*](#), RSA 2000, c G-5 - s 4.1.

[*Guide for Pipelines Pursuant to the Environmental Protection and Enhancement Act and Regulations*](#)

[*Historical Resources Act*](#), RSA 2000, c H-9.

[*Pipeline Act*](#), RSA 2000, c P-15 - s 11.

[*Water Act Code of Practice*](#)

Pertinent Issues

The AUC granted standing to R. Bigham because she owned or occupied land on which the proposed pipeline and associated right-of-way would be located. Ms. Bigham opposed the project because the pipeline would negatively impact property value and limit potential future development of the land, as well as various environmental concerns. R. Bigham also referenced email communication with AGP, which she viewed as a veiled threat in the instance that project approval is not granted.

The AUC determined that the climate change and greenhouse gas emission concerns raised by R. Bigham were primarily associated with government policies and global social behaviour rather than any impact the proposed pipeline might have on the environment. The AUC noted that R. Bigham's concern regarding diminished property value was not supported by expert opinion evidence that is specific to her property. Without such evidence specific to the particular property, the AUC cannot make a finding on the complex issue of property value impacts. The AUC could not find misconduct by AGP concerning the email message. What emerged from this situation is a reminder for parties that they need to be clear and forthright in their negotiations and communications so that unfortunate misunderstandings like this are avoided.

ATCO Pipelines Salt Cavern Working Gas Deferral Account Disposition, and True-Up and Finalization of 2021-2023 Revenue Requirement Amounts for the Acquisition of the Pioneer Pipeline in Compliance with Decision 27053-D01-2022, AUC Decision 27450-D01-2022
Gas Facilities- Deferral Account Disposition

Applications

This decision considers two applications by ATCO Pipelines (“AP”), a division of ATCO Gas and Pipelines Ltd.

In the first application, AP proposed to settle its Salt Cavern working gas deferral account balance of \$2,557,000 as a one-time adjustment to AP’s monthly revenue requirement to NOVA Gas Transmission Ltd.

In the second application, AP proposed to true up and finalize the AUC-approved placeholders for the acquisition of the Pioneer Pipeline. The applied-for finalized revenue requirements for the Pioneer Pipeline acquisition were \$9,992,000 for 2021, \$16,047,000 for 2022 and \$15,121,000 for 2023.

Decisions

First Application: Salt Cavern Working Gas Deferral Account Balance Decision

The AUC was satisfied with AP’s calculations supporting the gains on the sale of gas for the relevant period and explanations related to inventory management and differences between traded versus actual injection and withdrawal volumes. The AUC was also satisfied with AP’s explanation for injections during winter when inventory drops below a critical level to meet peak demand. This explanation was consistent with the explanations AP provided in the past. The AUC found AP’s proposal to settle the deferral account reasonable and consistent with past treatment for deferral accounts dispositions. The AUC approved the one-time adjustment requested by AP.

Second Application: AP’s True-up and Finalized 2021-2023 Pioneer Pipeline Revenue Requirement

The AUC considered the application as routine because the AUC had previously approved the Pioneer Pipeline placeholder amounts. The AUC found that AP complied with Direction 1 from Decision 27053-D01-2022 by correctly trueing up the Pioneer Pipeline 2021-2023 revenue requirement placeholder amounts. Accordingly, AP’s requested one-time adjustment of \$410,000 (refund) was approved.

Applicable Legislation

AUC Rule 023: [Rules Respecting Payment of Interest](#)

Capital Power Generation Services Inc. Enchant Solar Project Amphibian Mitigation Measures, AUC Decision 27505-D01-2022

Power Plant Approval - Enchant Solar Project

Application

Capital Power Generation Services Inc. (“Capital Power”) filed two letters of enquiry relating to facilities under construction under Approval 27025-D02-2021 (a solar power plant designated as the Enchant Solar Project). One letter explained that work had occurred in contravention of one of Capital Power’s approval commitments. The incident resulted from work taking place within a 100-meter wetland setback and was reported to Alberta Environment and Parks (“AEP”) Fish and Wildlife Stewardship. AEP recommended that Capital Power file a report with the AUC. The second letter outlined proposed additional mitigation measures.

Decision

The AUC found that appropriate steps were taken once Capital Power became aware of the contravention, including reporting the incident to AEP. The AUC approved the additional mitigation measures proposed and

acknowledged Capital Power's intent to implement all the mitigation measures prior to recommencing work within the 100-meter setbacks of any wetland where amphibians have been identified.

Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - s 17.

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - s 11.

Commission-Initiated Review and Variance of Decision 27415-D01-2022, AUC Decision 27576-D01-2022 *Gas - Rates*

Application

In Decision 27415-D01-2022 (the "Original Decision"), the AUC approved an application by ATCO Gas for approval of a Rider W to collect a balance of approximately \$10.677 million accumulated in the weather deferral account ("WDA") for ATCO Gas South. In the Original Decision, the AUC accepted that ATCO Gas's WDA calculations, including using the weighted average cost of capital for carrying costs, were consistent with the methodology and threshold requirements approved by the AUC in past WDA rate rider applications. The Original Decision did not consider the application of the interest rate prescribed by the amended *Rule 023: Rules Respecting Payment of Interest* ("Rule 023"). Rule 023 amendments came into effect on March 1, 2022. The AUC, therefore, initiated a proceeding to review the Original Decision.

Decision

The AUC varied the Original Decision to reflect that *Rule 023* applies to the WDA effective March 1, 2022. The AUC determined that ATCO Gas did not need to recalculate and refile its Rider W application. The AUC directed ATCO Gas to reflect the impact of this variance on the balance approved for collection in the Original Decision as part of its next Rider W application. The AUC expressed its expectation that ATCO Gas use the rate prescribed in *Rule 023* as part of future Rider W applications unless otherwise directed by the AUC.

Applicable Legislation

AUC Rule 023: [Rules Respecting Payment of Interest](#)

Enfinite Corporation Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the eReserve3 Battery Energy Storage Power Plant, AUC Decision 27475-D01-2022 *FEOC Regulation - Markets*

Application

Enfinite Corporation ("Enfinite") filed an application seeking permission to share records not available to the public related to the 22-megawatt ("MW") eReserve3 Battery Energy Storage Power Plant between Enfinite, Enfinite LP, URICA Energy Real Time Ltd. and URICA Asset Optimization Ltd.

Decision

The AUC was satisfied that Enfinite had demonstrated that (i) the sharing of records was reasonably necessary for Enfinite 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. The AUC was also satisfied that the total offer control of the parties would not exceed the offer control limit of 30 percent under s. 5(5) of the *Fair, Efficient and Open Competition Regulation*.

Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - s. 39(2)(a)(vi).

[Electric Utilities Act](#), SA 2003, c E-5.1 - s. 6.

[Fair, Efficient and Open Competition Regulation](#), Alta Reg 159/2009 - ss. 2, 3, and 5(5).

Enfinite Corporation eReserve9 Battery Energy Storage Power Plant Project, AUC Decision 27330-D01-2022

Electricity - Facilities

Application

Enfinite Corporation (“Enfinite”) applied for approval to construct and operate the 20-megawatt (“MW”) eReserve9 Battery Energy Storage Power Plant Project (the “Power Plant”).

Decision

The AUC approved the application to construct and operate the Power Plant under s. 11 of the *Hydro and Electric Energy Act* (“HEEA”). The AUC also approved the application to interconnect the Power Plant to the distribution system of ATCO Electric under s. 18 of the *HEEA*.

Applicable Legislation

[Alberta Ambient Air Quality Objectives](#)

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - s 17.

AUC Rule 001: [Rules of Practice](#)

AUC Rule 007: [Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines](#)

AUC Rule 012: [Noise Control](#)

[Historical Resources Act](#), RSA 2000, c H-9.

[Hydro and Electric Energy Act](#), RSA 2000, c H-16, ss 11 and 18.

Pertinent Issues

The project comprises 11 2.4-megavolt ampere lithium-ion battery modules from Tesla, Inc., with a total nameplate storage energy capacity of 40 MW-hours. The Power Plant will be located on privately-owned and previously disturbed land approximately six kilometers southwest of the community of Hythe, in the county of Grande Prairie.

The AUC determined that the Power Plant complies with *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines*, and *Rule 012: Noise Control*.

The AUC accepted that, in the event of a fire, all emission concentrations would comply with applicable *Alberta Ambient Air Quality Objectives* guidelines at or beyond 100 meters of the Power Plant. The AUC found that the risk to health due to gases released in a fire is mitigated because the closest residence is approximately 830

meters away. The AUC noted that Enfinite has an emergency response program (“ERP”) and imposed the following as conditions of approval:

- (a) Enfinite, and any subsequent operator, shall implement ongoing upgrades to improve the project’s safety, including but not limited to firmware and software enhancements, monitoring capability enhancement, process changes, and safety standards as they are developed; and
- (b) Enfinite, and any subsequent operator, shall continually update and improve the site-specific ERP, the corporate ERP, and associated ERPs. They will also advise the local fire departments, including but not limited to incorporating all mitigation measures required from discussions with the local fire departments and input from interested stakeholders and residents.

The AUC also required that Enfinite and any subsequent operator maintain insurance coverage sufficient to protect against any reasonably foreseeable liabilities.

***ENMAX Power Corporation Southeast Substation Safety Enhancement Project, AUC Decision 27193-D01-2022
Flood Mitigation – Electricity Substation Construction Work – The City of Calgary Land Use Bylaws New Buildings in
Floodway***

Application

ENMAX Power Corporation (“EPC”) identified an arc-flash hazard from existing outdoor switchgear at its No. 32 Substation that presents a safety concern to employees working at the substation. EPC filed an application with the AUC proposing two options to address the hazard and to mitigate flood risks at the substation.

Decision

The AUC found that EPC’s preferred option, to replace the existing outdoor medium voltage switchgear with indoor arc-resistant switchgear inside a new building at the No. 32 Substation site, is in the public interest. The alternative option, to relocate equipment away from the substation, would result in inefficiencies and additional costs.

The AUC approved EPC’s proposed flood mitigation measures by [INSERT - see comment below, I do not know which option the AUC approved]

Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - s 17.

AUC Rule 007: [Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines](#)

[The City of Calgary Land Use Bylaw](#)

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - ss 14, 15, 19, and 21.

[Municipal Government Act](#), RSA 2000, c M-26 - Part 17.

[Planning Exemption Regulation](#), Alta Reg 223/2000.

Pertinent Issues

EPC presented two flood mitigation options for both 100- and 350-year levels of flood mitigation. ENMAX’s preferred flood mitigation option was to construct a steel sheet pile wall. The alternate flood mitigation option was to install bank armoring with a self-launching apron design.

The AUC accepted that flood risks exist at the substation. The AUC was satisfied that the *Planning Exemption Regulation* exempts the facilities proposed as EPC's preferred option from the city's bylaw that restricts new buildings in a floodway.

In support of its preferred option, EPC stated that the steel sheet pile wall can be constructed from the riverbank, while the bank armouring option must be constructed in the Bow River. The steel sheet pile wall could thus be permitted and constructed faster than the alternate option. The preferred option also has the least impact on fish habitat.

The AUC approved the alternate option. The AUC determined that the lower cost of the bank armouring and self-launching apron option was a deciding factor, as other factors of the measures were not significantly different. EPC submitted that construction of the sheet pile wall would cost \$8.8 million. Costs of the bank armouring and self-launching apron were estimated to be \$4.8 million including potential, but not yet identified, fish habitat offsetting requirements.

EPCOR Distribution & Transmission Inc. 2022 Customer Specific Distribution Access Service and System Access Service Rate Update for Customer CS21, AUC Decision 27493-D01-2022
Electricity Facilities - Rates

Application

Customer CS21, an existing customer of EPCOR Distribution & Transmission Inc. ("EPCOR") in the customer specific ("CS") rate class for customers with energy demands over 5,000 kVA, requested a service upgrade. The service upgrade was required because the customer elected to totalize its transmission demand supplied from two feeders connected to EPCOR's POD12. Consequently, EPCOR applied to update the CS distribution access service ("DAS") and system access service rates for Customer CS21.

Decision

The AUC approved EPCOR's DAS rate CS21 of \$573.90 per day, effective August 1, 2022. EPCOR was directed to true up any differences between the rate effective date and the 2022 actual cost of debt.

EPCOR Distribution & Transmission Inc. Fibre Optic Cable FO-132, AUC Decision 27472-D01-2022
Fibre Optic Telecommunications Cable

Application

EPCOR Distribution & Transmission Inc. ("EDTI") applied for approval to construct and operate an approximately 4.4-kilometer fibre optic cable, designated as FO-132, between the Rosedale and Garneau substations to address capacity and availability risk.

Decision

The AUC found that the fibre optic cable was necessary to satisfy Independent System Operator *Rules Interconnected Electric System Protection Requirements*. All relevant prerequisites have been met. The AUC, therefore, approved the construction of a fibre optic telecommunications cable.

Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - s 17.

AUC Rule 007: [Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines](#)

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - ss 14 and 15.

ISO Rules: [Interconnected Electric System Protection Requirements](#), s 502.3(23).

Kiwetinohk Energy Corp. Opal Power Plant Project, AUC Decision 27293-D01-2022
Gas - Facilities

Application

Kiwetinohk Energy Corp. (“KEC”) applied for approval to construct and operate the 101.133-megawatt (“MW”) flexible gas-fired Opal Power Plant and associated Gemini 1008S Substation (the “Project”). The Project will be located on Crown land south of the town of Fox Creek. The Project will consist of nine 11.237-MW gas engines supplied by a dedicated pipeline to the site and include a control building and a 138-kilovolt high-voltage substation on the site’s east side.

Decision

The AUC approved the application for permission to construct and operate the Opal Power Plant and the Gemini 1008S Substation.

Applicable Legislation

AUC Rule 007: [Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines](#)

AUC Rule 012: [Noise Control](#)

[AEP Wildlife Sweep Protocols](#)

[Historical Resources Act](#), RSA 2000, c H-9.

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - ss 11, 14, and 15.

[Migratory Birds Convention Act](#), 1994, SC 1994, c 22.

Pertinent Issues

KEC submitted that no provincially mapped wetlands are present within the Project site. A historical review of aerial photos between 2006 and 2017 did not reveal the presence of wetlands within the Project site and a field assessment by a professional agrologist confirmed there are no wetlands within or adjacent to the Project site. The closest wetland to the Project is approximately 75 meters east. KEC decided to proceed on the basis that there are no wetlands within the Project area based on a field assessment by a professional agrologist. The AUC accepted KEC’s rationalization for proceeding as if there are no wetlands within the Project area but expressed its expectation that KEC address and mitigate any environmental effects according to the environmental regulations in place at that time. The Environment and Climate Change Canada (“ECCC”) regional nesting calendar indicated that there should be a restricted activity period for the Project area. KEC implemented a restricted activity period that ends sooner than ECCC’s recommended period. The AUC did not consider KEC’s justification to only conduct nest sweeps from April 1 to August 1 adequate to reduce the risk that the Project contravenes the *Migratory Birds Conventions Act*.

The AUC, therefore, imposed as a condition of approval that if vegetation clearing is to occur from April 1 to August 25, a qualified wildlife biologist must conduct nest sweeps and provide clearance before construction can begin or continue.

Oldman 2 Wind Farm Limited Application for an Order Permitting the Sharing of Records not Available to the Public Regarding the Oldman 2 Wind Farm and Wintering Hills Wind Power Plant, AUC Decision 27537-D01-2022

Fair, Efficient and Open Competition Regulation – Sharing of Records

Application

Oldman 2 Wind Farm Limited (“Oldman 2”) applied for the preferential sharing of records that are not available to the public between Oldman 2, Exus North American Canada Inc. (“Exus”) and URICA Energy Real Time Ltd. (“URICA”).

Decision

The AUC was satisfied that Oldman 2 has demonstrated that: (i) the sharing of records with URICA is reasonably necessary for Oldman 2 to carry out its business; and (ii) the subject records will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the Alberta electricity market. The AUC was also satisfied that the total offer control of the parties would not exceed the offer control limit of 30 percent under s. 5(5) of the *Fair, Efficient and Open Competition Regulation*.

Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - s 39(2)(a)(vi).

[Electric Utilities Act](#), SA 2003, c E-5.1 - s 6.

[Fair, Efficient and Open Competition Regulation](#), Alta Reg 159/2009 - ss 2, 3, and 5(5).

Swan Hills Geothermal Power Corporation Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Co-produced Geothermal Power Plant, AUC Decision 27508-D01-2022

FEOC Regulation - Markets

Application

Swan Hills Power filed an application seeking permission to share records not available to the public relating to the 21-megawatt Co-produced Geothermal Power Plant between Swan Hills Power and URICA Energy Real Time Ltd. (“URICA”).

Decision

The AUC was satisfied that Swan Hills Power had demonstrated that (i) the sharing of records with URICA was reasonably necessary for Swan Hills Power 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. The AUC was also satisfied that the total offer control of the parties would not exceed the offer control limit of 30 percent under s. 5(5) of the *Fair, Efficient and Open Competition Regulation*.

Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - s. 39(2)(a)(vi).

[Electric Utilities Act](#), SA 2003, c E-5.1 - s. 6.

[Fair, Efficient and Open Competition Regulation](#), Alta Reg 159/2009 - ss. 2, 3, and 5(5).

TriSummit Utilities Inc. Application for Approval Under Section 26 of the Gas Utilities Act, AUC Decision 27481-D01-2022***Section 26 Gas Utilities Act – No-harm Test***Application

A newly formed, indirect, wholly-owned American organized subsidiary of TriSummit Utilities Inc. (“TSU”), Alaska Utility Holdings Inc., entered into an agreement to purchase utility assets and utility interests in Alaska, USA (the “Alaskan Assets”). TSU indirectly and wholly owns, through a series of subsidiaries, Apex Utilities Inc. (“Apex”), which is itself a designated owner of a gas utility under s. 2 of the *Gas Utilities Designation Regulation*. The operations of Apex are confined to Alberta and are regulated by the AUC pursuant to the *Alberta Utilities Commission Act*, the *Gas Utilities Act* and the *Public Utilities Act*.

TSU applied to the AUC for an order under Part 3 of the *Alberta Utilities Commission Act* and Part 2 of the *Gas Utilities Act* authorizing TSU to enter into certain cross guarantees obligations (“Obligations”) related to the purchase of the Alaskan Assets.

Decision

The AUC found that if TSU were to enter into the Obligations, it would not harm utility services or result in financial harm to customers in Alberta. The AUC, therefore, found that the no-harm test was satisfied and granted TSU’s requested relief.

Applicable Legislation

[*Alberta Utilities Commission Act*](#), SA 2007, c A-37.2 - Part 3.

[*Gas Utilities Act*](#), RSA 2000, c G-5 - s 26 and Part 2.

[*Gas Utilities Designation Regulation*](#), Alta Reg 257/2007 - s 2.

[*Public Utilities Act*](#), RSA 2000, c P-45 - s 101(2).

Pertinent Issues

The AUC was satisfied with TSU’s explanation that the guarantees provided for the issued debt are borne by TSU, the parent of Apex, and there would be no AUC-regulated distribution utilities pledged or encumbered as security. The AUC further accepted that the debt issuances are not anticipated to affect Apex’s ability to attract future capital and that TSU would have the ability to pay creditors in the event of a default on the Obligations without affecting Apex or Alberta ratepayers as the debt is issued by the parent corporation. The AUC was also persuaded that the acquisition of the Alaskan assets will not materially change the debt-to-capitalization ratio of TSU, standing at approximately 53.9 per cent.

The AUC found that due to the nature of the transaction and because it is occurring outside Alberta, there will be no change to the regulatory oversight facing Apex or its customers as a result of the Obligations. The AUC consequently found if TSU were to enter into the Obligations, it will not harm utility services or result in financial harm to customers.

Wilson Creek Energy Corp. Wilson Creek Power Plant and Connection Order, AUC Decision 27249-D01-2022*Facilities - Noise Impact – Noise Mitigation*Applications

Wilson Creek Energy Corp. (“WCEC”) filed applications for approval to construct and operate an 8.8 megawatt (“MW”) natural-gas-fired power plant and connect it to the FortisAlberta Inc. electric distribution system (collectively, the “Project”). The power plant would be located adjacent to the existing Tamarack Wilson Creek sweet gas processing plant on 0.25 hectares of private land, already cleared for industrial purposes.

Decision

The AUC approved the application to construct and operate the Wilson Creek Power Plant and to connect it to the FortisAlberta Inc. electric distribution system, subject to the implementation of noise mitigation measures before construction commencement and a post-construction comprehensive sound level survey to be conducted.

Applicable Legislation

AER Directive 038: [Noise Control](#)

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - s 17.

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - ss 11 and 18.

AUC Rule 007: [Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines](#)

AUC Rule 012: [Noise Control](#)

CANADA ENERGY REGULATOR***ITC Lake Erie Connector LLC ITC Lake Erie Connector International Power Line 2021 Variance Request to Conditions 2 and 5 of Certificate of Public Convenience and Necessity EC-056, Letter Decision A8G1D0 Condition Variation - Engagement and Consultation with Indigenous Peoples -Reassessing Prior Decisions***Application

On June 26, 2017, the NEB issued Certificate EC-056 (the "Certificate") in respect of an approximately 117-kilometer, 1,000 megawatts \pm 320 kilovolt high-voltage direct current bi-directional electric transmission interconnection, and associated facilities. The facilities are intended to transfer electricity between Nanticoke, Haldimand County, Ontario (Canada) and Erie County, Pennsylvania (USA), crossing Lake Erie (the "Project"). The Certificate was issued subject to 42 conditions. Conditions two, five, and six of the Certificate are relevant to this variance application ("2021 Variance Application"). The relevant conditions provide:

2. Certificate Expiration Clause: Unless the [NEB] otherwise directs prior to [three years from the date of the grant of the Certificate], this Certificate shall expire on [same date as noted before in this condition] unless construction in respect of the Project has commenced by that date ("Condition 2").

5. Ownership and Operator: The international power line and its associated facilities to be constructed and operated pursuant to this Certificate (the Power Line) shall be owned and operated by ITC Lake Erie LLC ("Condition 5").

6. Change of Ownership or Operator: ITC Lake Erie shall not sell, convey, lease or otherwise transfer the Power Line to any person, in whole or in part, without leave of the Board.

In the 2021 Variance Application, ITC Lake Erie Connector LLC ("ITC") applied to:

- extend the expiration clause in Condition 2 of the Certificate by two years to June 26, 2024.
- replace "ITC Lake Erie LLC" with "LEC GP Inc." in Condition 5.

Decision

The CER varied Conditions 2 and 5 of the Certificate as requested.

Pertinent Issues*Notice and Opportunity to Provide Comments and Engagement and Consultation with Indigenous Peoples*

The Commission found that all potentially impacted parties, including Indigenous peoples, have been notified of the 2021 Variance Application, that they had a fair and meaningful opportunity to provide any comments, and that the Crown's duty to consult Indigenous peoples, including Mississaugas of the Credit First Nation ("MCFN") and Haudenosaunee Development Institute, was met. Having determined the consultation was adequate, the Commission found that the requested variances were in the public interest and approved the 2021 Variance Application, pursuant to subsection 280(1) of the *Canadian Energy Regulator Act*.

Variation to Condition 2:

Condition 2 of the Certificate was varied previously by the CER on March 5, 2021, extending the expiry date to June 26, 2022.

In the 2021 Variance Application, the ITC stated that it would not be able to commence construction by June 26, 2022, identifying June 15, 2023, as its revised start date for construction. While ITC confirmed its intention to commence construction as per the revised Project schedule, ITC requested a two-year extension to provide

flexibility if the necessary arrangements are not in place by the 2023 construction season. ITC highlighted significant developments related to its commercial arrangements for financing and transmission service agreements, including an agreement in principle with the Canada Infrastructure Bank; a request from the Ontario Minister of Energy, Northern Development and Mines asking the Independent Electricity System Operator to enter into negotiations with ITC for a transmission procurement agreement; and an executed term sheet between ITC and MCFN. The CER noted that no party challenged that additional time is needed by ITC to conclude the necessary pre-construction agreements. The CER also accepted that while ITC currently suspended work on the Project, ITC still required the requested variances in the event the work recommences in the future. The CER, therefore, granted the requested variance to Condition 2.

Variation to Condition 5:

ITC stated that a corporate reorganization of the owner and operator of the Project was desirable to facilitate project financing, to allow for participation by MCFN and potentially other Indigenous communities, and to optimize tax efficiency. The CER, therefore, granted the requested variance to Condition 5.

Applicable Legislation

[Canadian Energy Regulator Act](#), SC 2019, c. 28, s. 10, s 280(1).

[UN Declaration on the Rights of Indigenous Peoples](#)

Trans Mountain Pipeline ULC (Trans Mountain) Application for Approval of 2021 Depreciation Study Technical Update, Letter Decision A8G2J1

Facilities – Oil Pipeline - Depreciation Calculation – Future Capital Expenditure

Application

On 27 April 2020, the CER issued a Letter Decision and Toll Order approving Trans Mountain Pipeline ULC (“Trans Mountain”)’s application for approval of the depreciation rates set out in the 2019 Depreciation Study. The CER also directed Trans Mountain to file a new depreciation study by August 1, 2021, based on account balances as of December 31, 2020. In this application, Trans Mountain sought approval of its 2021 Depreciation Study Technical Update.

Decision

The CER approved Trans Mountain’s application for approval of updated depreciation rates, effective January 1, 2023.

Pertinent Issues

Depreciation Study

The CER accepted Trans Mountain’s use of a technical update rather than a full depreciation study. The technical update extended the truncation date in the study from 2048 to 2050. Although the extension of the truncation date is not standard practice, the CER accepted the 2050 truncation date. The CER agreed that the use of a 30-year Economic Planning Horizon was appropriate.

Future Capital Expenditures

The CER agreed with Trans Mountain that excluding future capital additions to calculate depreciation rates is consistent with Trans Mountain’s historical methodology, policies, practices, and management discretion. The CER was however of the view Trans Mountain did not explore all options for matching revenue and expenses (whether through capitalization or otherwise). The CER, therefore, remained concerned about the potential increased burden on future end-users of the system.

The CER noted that while it approved the Technical Update despite no specific treatment of future capital expenditures, the CER may not endorse such an approach in the future. The CER expressed its view that there can be more than one way of deriving just and reasonable tolls. Accounting for future capital expenditures in the calculation of depreciation rates could have also led to just and reasonable tolls in the Technical Update.