REGULATORY LAW CHAMBERS

ENERGY REGULATORY REPORT

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

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

IN THIS ISSUE:

ALBERTA ENERGY REGULATOR

New Manual on the Decommissioning, Closure, and Abandonment of Dams at Energy Projects (AER Bulletin 2020-01)

Decommissioning - Closure - Abandonment - Dams

On January 16, 2020, the AER released *Manual 019: Decommissioning, Closure, and Abandonment of Dams at Energy Projects*. The manual explains how the AER assesses and processes dam decommissioning, closure, and abandonment submissions that are required under section 34 of the *Water (Ministerial) Regulation* and part 9 of *Alberta Environment and Parks' Alberta Dam and Canal Safety Directive*.

Request for Regulatory Appeal by TransAlta Corporation Alberta Energy Regulator Subsurface Order No. 6 Panel Subsurface Order No. 6 (Request for Regulatory Appeal No. 1922192)

Regulatory Appeal, Eligible Person, Appealable Decision

In this decision, the AER considered the TransAlta Corporation ("TransAlta") request under section 38 of the *Responsible Energy Development Act* ("*REDA*") for a regulatory appeal of the AER's issuance of Subsurface Order No. 6 ("SSO6") on May 27, 2019. The AER found that TransAlta was not an "eligible person", and dismissed the request.

Statutory framework

The applicable provision of *REDA* regarding regulatory appeals states:

> 38(1) An eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules. [emphasis added]

The term "eligible person" is defined in section 36(b)(ii) of *REDA* to include:

> a person who is directly and adversely affected by a decision [made under an energy resource enactment]…[emphasis added].

The applicable definition for "appealable decision" is set out in section 36(a)(iv) of *REDA*:

> (a) "appealable decision" means
>
> (iv) a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing.

Background

TransAlta is the owner and operator of the Brazeau Hydroelectric Dam, and the related infrastructure, which includes earthen power canal dykes, a main dam, a spillway, and a powerhouse (the "Brazeau Infrastructure").

The Brazeau Infrastructure is located within approximately 0 km to 7 km of the surface and/or bottom hole locations of proposed wells that form the subject of applications for horizontal wells filed in 2013 and updated in 2019 (the "Applications").

TransAlta submitted Statements of Concern about each of the Applications. On January 4, 2014, it was recommended that the Applications proceed to a hearing (Proceeding ID 379) (the "Hearing"). After a lengthy hearing-commissioner-led alternative dispute resolution, a hearing panel was assigned in January 2016 to conduct the Hearing into the Applications.

On May 27, 2019, SSO6 was issued by the AER, which established new monitoring, reporting and setback requirements in an effort to manage the potential hazard of induced seismicity from hydraulic fracturing near the Brazeau Reservoir. SSO6 allows hydraulic fracturing in formations above the Duvernay Formation to within 3 km of the Brazeau Infrastructure.

TransAlta filed a Request for Regulatory Appeal (the "Request") on June 25, 2019, regarding SSO6.

Reasons for Decision

The AER found that TransAlta was not an "eligible person" under section 38 of *REDA*. As there was no direct connection between the issuance of SS06 and the potential impacts alleged, TransAlta was not directly affected by SS06. The AER also held that SS06 did not "adversely" affect TransAlta. SS06 was not specific to TransAlta, nor was TransAlta required to do anything concerning SS06. While SS06 used geographic boundaries in relation to the Brazeau Infrastructure, the order applied to anyone drilling and operating a well within the geographic areas outlined in Appendices A, B and C.

The AER noted that it issued SS06 in response to concerns raised by TransAlta. The AER further noted that placing minimum requirements regarding hydraulic fracturing operations near the Brazeau Infrastructure appeared to be a positive measure imposed by the AER in response to TransAlta's concerns.

The AER noted that TransAlta filed Statements of Concern ("SOCs") regarding the Applications. A hearing was granted regarding those SOCs. Rule 31(3) of the *AER Rules of Practice* states that a "regulatory appeal shall not include any matters already adequately dealt with through another hearing, regulatory appeal or review under any enactment." As a Notice of Hearing had been issued in Proceeding ID 379, allowing a regulatory appeal to proceed on the issues outlined in TransAlta's request would result in a breach of this rule.

The AER dismissed the request for a regulatory appeal.

ALBERTA UTILITIES COMMISSION

ATCO Electric Limited Decision on Preliminary Question Application for Review of Decision 22742-D01-2019 2018-2019 Transmission General Tariff Application (AUC Decision 24824-D01-2020)

General Tariff Application - Review and Variance

In this decision, the AUC considered whether to grant an application (the "Review Application") filed by ATCO Electric Ltd. ("ATCO Electric") requesting a review and variance of specific determinations made in Decision 22742-D01-2019 (the "Decision"), issued regarding ATCO Electric's 2018-2019 transmission general tariff application. The AUC granted the review application, in part.

AUC's review process

The AUC's authority to review its own decisions is discretionary and is found in section 10 of the *Alberta Utilities Commission Act*. That section authorizes the AUC to make rules governing its review process, and the AUC established *Rule 016* under that authority. *Rule 016* sets out the process for considering an application for review. A person who is directly and adversely affected by a decision may file an application for review within 60 days of the issuance of a decision, pursuant to section 3(3) of *Rule 016*. The review application was filed within the required period, on August 19, 2019.

The review process typically has two stages. In the first stage, a review panel must decide whether there are grounds to review the original decision (sometimes referred to as the "preliminary question"). If the review panel determines that there are grounds to review the decision, the AUC moves to the second stage of the review process with a hearing or other proceeding to decide whether to confirm, vary, or rescind the original decision. This decision addressed the preliminary question.

Allocation of the Kearl Line relocation costs

In the original proceeding, ATCO Electric requested confirmation that the forecast costs associated with relocating a portion of line 9L101, a 240-kV looped line in the Fort McMurray area ("the Kearl Line"), be allocated as ATCO Electric system costs rather than as direct customer costs payable by the mine owner. The hearing panel determined that the proposed Kearl Line relocation costs were the responsibility of the mine owner.

The review panel noted that the AUC has a duty to provide reasons in support of its decisions to enable parties to a proceeding to understand how the AUC considered the evidence and arrived at its decision. The reasons provided by the hearing panel with respect to the Kearl Line relocation costs were insufficiently cogent to satisfy this requirement.

The review panel found that ATCO Electric demonstrated there was an error of law which was either apparent on the face of the decision or existed on a balance of probabilities that could lead the AUC to materially vary this aspect of the Decision. The requirements of section 6(3)(a) of *Rule 016* were therefore met, and the application for review of the hearing panel's determination concerning the allocation of Kearl Line relocation costs was allowed.

Allocation of head office costs

Consistent with its statutory obligation to set just and reasonable rates, the hearing panel found that a lease rate of $20 per square foot, for both test years, was a just and reasonable amount to include in customer rates in the circumstances.

The review panel found that the hearing panel's assessment of a reasonable price per square foot was a determination that, on its face or on a balance of probabilities, was not unreasonable. ATCO Electric did not show, either on a balance of probabilities or apparent on the face of the Decision, that an error in fact, law or jurisdiction existed with respect to this finding that could lead the AUC to materially vary or rescind the Decision. Accordingly, ATCO Electric's request for a review of the hearing panel's allowance of $20 price per square foot for head office rent at ATCO Electric Park for inclusion in rates for 2018 and 2019, was denied.

Square footage

In its review application, ATCO Electric clarified that the square footage of the entire ATCO Park (a new corporate head office complex) was approximately 246,000 square feet. ATCO Electric stated that the 155,000 square foot figure related only to space for ATCO Electric corporate and head office employees.

The review panel found that it was apparent that the hearing panel proceeded on the basis that 155,000 square feet represented the entire capacity of ATCO Electric Park and included, not only, head office and

corporate employees and their related costs, but also employees of the other ATCO Electric entities, up to 600 employees in total. This influenced the hearing panel's finding that 155,000 square feet included all ATCO Electric tenants of ATCO Park as well as its conclusion that only a portion of that space should be attributable to the corporate and head office employees and allocated to ATCO Electric.

The review panel found that ATCO Electric demonstrated, that an error of fact existed on a balance of probabilities that could lead the AUC to materially vary or rescind its determination of the space attributable to the corporate and head office employees. ATCO Electric's request for a review of the allocation of corporate and head office space was allowed.

Severance

ATCO Electric sought review of the hearing panel's disallowance of the recovery of a portion of the applied-for severance costs through rates. However, the review panel found it was evident that the hearing panel had made no final decision regarding recovery of ATCO Electric's applied-for severance costs through rates. Those determinations would be made in the compliance filing to the Decision, being assessed in Proceeding 24805. Accordingly, the review panel found the request for a review of this issue to be premature.

ATCO Electric did not show, either on a balance of probabilities or apparent on the face of the Decision, that an error in fact, law or jurisdiction, existed concerning the hearing panel's disposition of the issue concerning the treatment of applied-for severance costs, that could lead the AUC to materially vary or rescind the Decision. Accordingly, ATCO Electric's request for a review of this issue was denied.

AFUDC income tax treatment

ATCO Electric applied to review the hearing panel's direction to provide a proposal to correct any prior allowance for funds used during construction ("AFUDC")-related errors in the calculation of income taxes, which were subsequently collected through revenue requirement in prior years in its compliance filing.

The review panel found that because a determination of the error in ATCO Electric's treatment of AFUDC to calculate its income tax expense had not yet been made, the request for a review on the grounds alleged is premature. The review panel found that determination of whether an error existed and the appropriate remedy would be made in the compliance filing to the Decision, being assessed in Proceeding 24805.

ATCO Electric did not show, either on a balance of probabilities or apparent on the face of the Decision, that an error in fact, law or jurisdiction existed that could lead the AUC to materially vary or rescind the Decision. Accordingly, ATCO Electric's request for a review of the hearing panel's direction to ATCO Electric to provide a proposal to correct any prior AFUDC-related errors was denied.

Review panel conclusions

In answering the preliminary question, the review panel found that ATCO Electric demonstrated that reviewable errors existed either on a balance of probabilities or the face of the Decision, which could lead the AUC to materially vary portions of Decision 22742-D01-2019. Accordingly, ATCO Electric satisfied the requirements for a review of those specific sections of the Decision.

Having met the first stage of the review and variance application, the AUC indicated it would issue process and scope directions for the second stage of the review process in due course.

ATCO Pipelines Variance of Decision 22986-D01-2018 and Decision 23537-D01-2018 (Errata) (AUC Decision 24176-D01-2020)

Review and Variance, Prudence

In this decision, an AUC review panel (the "Review Panel") considered ATCO Pipelines' claim for a variance of Decision 22986-D01-20181 and Decision 23537-D01-2018. The Review Panel allowed the claim for variance. It approved ATCO Pipelines' Weld Assessment and Repair Program costs to be included in its opening rate base for 2017 and its forecast capital costs for 2017 and 2018. ATCO Pipelines was directed to reflect the findings of this decision in its next general rate application.

Procedural summary

In Decision 22986-D01-2018 (the "First Compliance Decision"), the AUC denied ATCO Pipelines 100 percent of its reinspection costs associated with its Weld Assessment and Repair Program ("WARP").

The AUC directed ATCO Pipelines to remove the 2016 reinspection costs from its 2017 opening rate base and the forecast 2017 and 2018 reinspection capital expenditures from its 2017-2018 revenue requirements.

In Decision 23537-D01-2018 (the "Second Compliance Decision"), the AUC denied ATCO Pipelines 100 percent of the incremental repair costs arising from the deficient inspections (the "incremental WARP repair costs").

The AUC granted reviews of both decisions and held a written hearing regarding ATCO Pipeline's applications for review and variance.

Background

ATCO Pipelines commenced the digitization of its radiographic films in late 2014. In September 2015, a deficient radiographic film was discovered, and ATCO Pipelines initiated an investigation. On May 3, 2016, ATCO Pipelines filed a voluntary self-disclosure letter with the AUC and the AER, which disclosed that certain of its contracted radiographic inspectors had failed to identify or flag for remedial action, the presence of rejectable defects within pre-fabrication welds from 2008 to 2015. To remedy the radiographic inspectors' deficient work, ATCO Pipelines indicated that it would assess affected pre-fabricated welds that were made between 2008 and 2015. An independent third party was retained to review a significant sample (approximately 13,000 radiographic inspections) of the radiographic work performed for ATCO Pipelines.

In a later proceeding, ATCO Pipelines advised that it was initiating a program to conduct an assessment of all in-service pre-fabrication welds identified that had the potential to contain deficiencies as a result of an insufficient radiographic inspection. Any weld deemed unacceptable, following an engineering critical assessment, would be remediated or replaced. It also was pursuing legal action against the radiographic inspection companies and their radiographers for the deficient inspections. ATCO Pipelines proposed that any litigation proceeds that may be received would be used to reduce ATCO Pipelines' rate base and revenue requirement.

At that time, ATCO Pipelines estimated the total cost of the program to be $18.874 million. The AUC denied those costs, leading to the applications for review and variance.

The AUC's approach at Stage 2 of the review process

The Review Panel noted that in a Stage 2 proceeding, the Stage 2 panel must consider the record of the original proceeding in light of the error determined to exist in the findings of the hearing panel in the Stage 1 proceeding (or in light of the previously unavailable facts or changed circumstances accepted by the review panel) to determine if the original decision should be confirmed, varied or rescinded because of the demonstrated error. In making that determination, the Stage 2 panel considers the relevant portions of the record in the original proceeding as well as any supplemental evidence and additional submissions made in the Stage 2 proceeding, which the Stage 2 panel determines to be necessary in the circumstances. This approach is consistent with other Stage 2 decisions issued by the AUC.

The test to be applied by the AUC when considering the application

The Review Panel noted that relative to this proceeding, its primary mandate required it to determine just and reasonable rates. The Review Panel also noted section 44(3) of the *Gas Utilities Act* places the onus on the applicant to show that its actions were prudent. If the applicant fails to discharge its onus, the AUC has the discretion to disallow costs in revenue requirement. The AUC's exercise of that discretion is also based on the evidence before it.

AUC findings

The Review Panel found that ATCO Pipelines demonstrated the prudence of its decisions and actions prior to and following its discovery of the deficient radiographs in September 2015. Based on these findings, the Review Panel considered that a variance of the compliance decisions was warranted.

2008 to September 2015

The Review Panel noted that ATCO Pipelines had an obligation to ensure the safe and efficient delivery of service and manage the risks associated with the provision of service, including the risks inherent to contracting work to third parties.

The Review Panel accepted ATCO Pipelines' view that hiring accredited, certified third-party radiographers offered reasonable assurance that

those engaged had the requisite qualifications and skill to perform the work properly. The Review Panel also agreed that the internal quality control programs of the third party radiographic contractors, and the fact that the radiographers were regulated, offered a measure of oversight of the radiographers' activities.

The Review Panel further accepted as reasonable the rationale offered by ATCO Pipelines for its assessment that further measures, including periodic, third-party monitoring of the radiographic inspections, were not warranted from 2008 to September 2015.

The Review Panel held that it could not determine, given the evidence in this proceeding, that earlier standards were suboptimal given the circumstances facing the industry in the past, including the state of knowledge of risk and the magnitude of potential harms, based on practices following the discovery of the deficient welds.

The Review Panel also agreed with ATCO Pipelines that reliance on the evolution of practices, or the dynamics of industry practices and procedures, as evidence of the imprudence of past practices may have a chilling effect on the evolution of such practices, and on the willingness of companies to self-disclose events such as those giving rise to this proceeding. Such consequences, while unintended, would be undesirable and ultimately contrary to public safety and the public interest in general.

Post-September 2015

With respect to the period post-September 2015, the Review Panel found that, following the discovery of the deficient radiographic inspections up to and including the 2017-2018 test years, ATCO Pipelines exercised good judgment, made reasonable decisions and took prudent actions. The Review Panel also found that ATCO Pipelines took into account the best interests of its customers, based on the information that it knew or ought to have known at that time.

Hearing panel's error

In reaching the above determinations concerning the whole of the relevant time period, the Review Panel acknowledged the reversal of earlier AUC findings concerning the recoverability of the WARP reinspection and repair costs in the compliance decisions and considered it important to highlight the following. As was identified in the decisions granting Stage 1 review in respect of each of the compliance decisions, the error of the hearing panel in the First Compliance Decision was its principal reliance on the argument put forth by interveners based on the actions taken by ATCO Pipelines subsequent to the discovery of the deficient weld inspections, as the basis for what actions ATCO Pipelines should have taken prior to discovering the deficiencies. That determination informed the hearing panel's assessment of the prudence of ATCO Pipelines' actions during the period from 2008 to September 2015 and of the resulting reinspection and repair costs.

Variance of the compliance decisions

The Review Panel found that a variance of the compliance decisions was warranted. It approved ATCO Pipelines' WARP capital project and related costs. ATCO Pipelines was directed to adjust its opening rate base and revenue requirements in its next GRA to reflect the AUC's approval of ATCO Pipelines' capitalized 2016 actual and forecast 2017-2018 reinspection and incremental repair costs to be included in its 2017-2018 revenue requirement.

***Commission-Initiated Review of Decision 20414-D01-2016 (Errata) and Decision 22394-D01-2018 Limited to the Method of Accounting for New Depreciation Parameters and Expense in Rates Under the 2018-2022 Performance-Based Regulation Plan* (AUC Decision 24609-D01-2020)**

Depreciation Parameters - Review and Variance

In this decision, the AUC considered the mechanics for incorporating approved changes to a distribution utility's depreciation parameters into the calculation of going-in rates for the 2018-2022 performance-based regulation ("PBR") term. The AUC decided, on its own motion, to initiate a review of Decision 20414-D01-2016 and Decision 22394-D01-2018 (collectively the "decisions") limited to this issue. The AUC found that adjusting only the second component of the K-bar calculation best advanced or was most consistent with the AUC's identified objectives for rebasing and the K-bar incremental capital funding mechanism. The AUC also found a variance of Decision 22394-D01-2018 was warranted.

Background

In Decision 20414-D01-2016, the AUC determined that cost-of-service studies, including depreciation

studies, would not form part of rebasing applications from ATCO Electric Ltd., ENMAX Power Corporation, EPCOR Distribution & Transmission Inc., FortisAlberta Inc., AltaGas Utilities Inc., and ATCO Gas and Pipelines Ltd. ("ATCO Gas") (collectively the "Utilities"), and subsequently provided the Utilities with an opportunity to file separate depreciation-related applications in 2018.

ATCO Gas, ATCO Electric and AltaGas each filed depreciation applications (the "Applications") in December 2018, according to the directions set out in Decision 20414-D01-2016. The Applications consisted of depreciation studies based on plant account data as of December 31, 2017, and were considered by the AUC in Decision 22394-D01-2018.

In Decision 22394-D01-2018, the AUC found the notional 2017 revenue requirement for a utility is developed using certain actual costs of the utility during the preceding PBR term, with any necessary adjustments. The 2018 base K-bar calculation had two components: the first component calculated the revenue provided to a distribution utility under the I-X mechanism for Type 2 capital projects or programs for 2018, and the second component calculated the projected revenue requirement for Type 2 projects or programs for 2018. Type 2 capital projects are those funded by revenue from I-X or from the AUC-approved K-bar mechanism that provides an amount of capital funding for each year of the next generation PBR plans based, in part, on capital additions made during the previous PBR term.

The AUC initiated this proceeding for the limited purposes of considering how the Decision 20414-D01-2016 and Decision 22394-D01-2018 prescribe the mechanics for incorporating approved changes to a distribution utility's depreciation parameters into the calculation of rates during the 2018-2022 PBR term and if a variance to the decisions was required.

AUC findings on the method of accounting for new depreciation parameters and depreciation expense in rates

The AUC found that there were two possible approaches to the incorporation of approved changes to a distribution utility's depreciation parameters into the calculation of going-in rates:

(a) adjust only the second component of the K-bar calculation to account for the approved changes in depreciation parameters in determining the base K-bar portion of 2018 going-in rates; and

(b) adjust the notional 2017 revenue requirement and both the first and second components of the base K-bar calculation for the approved depreciation parameters in the calculation of the 2018 going-in rates.

The AUC found that adjusting both components of the base K-bar calculation would diminish the AUC's stated intention in Decision 20414-D01-2016 to rebase using actual data and to set going-in rates that reflect productivity gains achieved during the 2013-2017 PBR term. Adjusting both components of the K-bar calculation, would also result in effects inconsistent with the AUC's intention, regarding PBR plan components, to encourage utilities to continue to make cost-saving investments near the end of the PBR term.

The AUC noted that adjusting only the second component of the K-bar calculation to account for proposed changes to approved depreciation parameters would result in none of the above-described effects associated with adjusting both components of the K-bar calculation. On that basis, the AUC found that adjusting only the second component of the K-bar calculation to account for proposed changes to approved depreciation parameters was more consistent with the AUC's identified objectives for rebasing the K-bar incremental capital funding mechanism and would provide a distribution utility with a reasonable opportunity to earn a fair return. Based on this finding, the AUC found that a variance of Decision 22394-D01-2018 was warranted.

The variance

The AUC noted that while finality is an important principle in administrative decision making because it provides certainty to those parties who participated in or are affected by the proceeding, the range of interpretations of the implementation mechanics set out in the decisions indicates that finality does not, in these circumstances, beget certainty. The AUC stated that uncertainty and ambiguity are not congruent with either regulatory efficiency or setting an effective regime and incentives for PBR, particularly considering the principal public interest objective of the decisions was to provide for the establishment of just and reasonable going-in rates and a base K-bar for the 2018-2022 PBR term.

For these reasons, and to clarify the base K-bar adjustment mechanism and associated effects on PBR rates during the 2018-2022 PBR term, the AUC considered that it is necessary to vary Decision 22394-D01-2018 to clarify the mechanics for incorporating approved changes to a distribution utility's depreciation parameters into the calculation of going-in rates for the 2018-2022 PBR term.

The AUC indicated an amended version of Decision 22394-D01-2018 would be issued following the release of this decision.

Order

The AUC ordered that approved changes to a distribution utility's depreciation parameters be incorporated into the calculation of going-in rates for the 2018-2022 PBR term by adjusting only the second component of the K-bar calculation.

***Direct Energy Regulated Services 2019 Default Rate Tariff and Regulated Rate Tariff Compliance Filing* (AUC Decision 25255-D01-2020)**

Compliance Filing - Default Rate Tariff - Regulated Rate Tariff

In this decision, the AUC approved the Direct Energy Regulated Services ("DERS") compliance filing to Decision 24237-D01-2019, regarding its 2019 default rate tariff ("DRT") and regulated rate tariff ("RRT") revenue requirements for 2019, as filed. The AUC also approved the corresponding rates for 2019 on a final basis. The AUC directed DERS to file a subsequent application to true-up each of the rates approved in this decision after it completed billing on interim rates up to December 31, 2019.

AUC findings regarding Decision 24237-D01-2019 directions

Decision 24237-D01-2019 contained directions in 18 different paragraphs. The AUC noted that responses to four directions would be required as part of DERS' next DRT and RRT application and, consequently, were not addressed in this decision.

The AUC found that DERS complied with the directions in paragraphs 83, 94, 95, 97, 98, 105, 106, 125, 132, 173, 181, 182, 238 and 258 of Decision 24237-D01-2019.

Paragraph 83 Directions: Threshold adjustment payments

The AUC directed DERS to include an updated 2019 forecast for threshold adjustment payments. The AUC also directed DERS to include details of how the total payment was calculated, as well as how DERS' 70 percent share was calculated. The AUC found that DERS complied with these directions.

Paragraph 94 and 95 Directions: Merchant fees

The AUC directed DERS to forecast the 2019 rates charged by the credit card companies by using the average of the rates for 2017 and 2018 and include details of how the 2019 forecast merchant fees were calculated. The AUC found that DERS complied with this direction.

Paragraph 97 and 98 Directions: Working capital

The AUC directed DERS to use negative $97,000 for the 2019 forecast mid-year hearing cost reserve account balance on: (1) line 24 of the DRT working capital schedule; and (2) line 22 of the RRT working capital schedule. The AUC directed DERS to update the working capital schedules, lead lag schedules, budget payment plan figures and income tax schedules as required, to account for AUC-directed changes to other cost areas. The AUC found that DERS complied with these directions.

Paragraph 105 and 106 Directions: Hearing cost reserve account

The AUC directed DERS to remove $0.425 million from: (1) the 2019 DRT forecast hearing cost reserve account; and (2) the 2019 RRT forecast hearing cost reserve account. The AUC directed DERS to include the following amounts in the 2019 revenue requirements for the hearing cost reserve: minus $0.164 million for the DRT and minus $0.1945 million for the RRT. The AUC found that DERS complied with these directions.

Paragraph 125 Direction: Bad debt expense and collection agency costs

The AUC directed DERS to forecast the 2019 bad debt expense and collection agency costs using the percentages set out in Table 4 of Decision 24237-D01-2019. The AUC found that DERS complied with this direction.

Paragraph 132 Direction: Other administration costs

The AUC directed DERS to reduce the 2019 forecast other administration costs by $415,000 and to allocate the reduction between the DRT and the RRT in accordance with how the costs were included in the DRT and RRT revenue requirements. The AUC found that DERS complied with this direction.

Paragraph 173 Direction: Corporate services costs

The AUC directed DERS to include total forecast corporate services costs of $5.679 million for 2019, allocating 80 percent to the DRT and 20 percent to the RRT. The AUC found that DERS complied with this direction.

Paragraph 181 and 182 directions: DRT return margin

The AUC directed DERS to update the DRT reasonable return schedule for 2019. The AUC directed DERS to include working formulas on the DRT reasonable return schedule for the 2019 after-tax return mark-up percentage and the 2019 pre-tax return margin dollars and to use the approved overall effective income tax rate of 26.50 percent in these formulas. The AUC found that DERS complied with the directions.

Paragraph 238 direction: Terms and conditions of service ("T&Cs")

The AUC directed DERS to include updated T&Cs for the DRT and RRT, on DERS' website. The AUC found that DERS complied with this direction.

Direction in paragraph 258: Compliance filing

The AUC directed DERS to submit a compliance filing on or before January 8, 2020, responding to the AUC's directions. The AUC found that DERS complied with this direction.

AUC approved revenue requirements and final rates for 2019

The AUC approved the DRT revenue requirement for 2019 and the RRT revenue requirement for 2019. The AUC also approved the final DRT and RRT non-energy rates for 2019 and the final DRT return margin charge for 2019 of $0.052 per gigajoule ("GJ").

The AUC approved the DRT energy-related "other" charges for 2019. The resulting approved rate (on a $ per GJ basis) for 2019 could be calculated by dividing these approved costs by the approved forecast volume of natural gas sales for 2019. The AUC also approved the labour (gas procurement) costs for the DRT for 2019 of $433,400 on a final basis.

Order

The AUC ordered that DERS file an application that includes the true-up figures for its RRT, DRT, DRT return margin, DRT energy-related other costs, and DRT energy-related labour charges for the period of January 1, 2019, to December 31, 2019, after DERS has completed billing on interim rates for 2019.

EPCOR Distribution & Transmission Inc. 2017 Capital Tracker True-Up Compliance Filing to Decisions 23571-D01-2019 and 23571-D02-2019 **(AUC Decision 24980-D01-2020)**

Capital Tracker Compliance Filing

This decision provides the AUC's determination of the EPCOR Distribution & Transmission Inc. ("EPCOR" or "EDTI") compliance with the AUC's directions issued in Decisions 23571-D01-20191 and 23571-D02-2019. The AUC found that EPCOR complied with the AUC's directions and approved EPCOR's 2017 K factor adjustment, as filed. Further, the AUC approved EPCOR's request to implement Rate Rider DJ effective April 1, 2020, to June 30, 2020, to collect from customers the 2017 K factor true-up adjustment of $2.23 million, and associated carrying charges of $0.21 million.

Compliance with AUC directions

In Decision 23571-D01-2019, the AUC issued eight directions, and in Decision 23571-D02-2019, the AUC issued three directions.

Three of the directions in Decisions 23571-D01-2019 (directions 1 and 2) and 23571-D02-2019 (Direction 1) required EPCOR to make adjustments to its 2017 capital additions for individual programs or projects that were denied capital tracker treatment. These three directions are summarized below.

In paragraph 292 of Decision 23571-D01-2019, Direction 1, EPCOR was directed to remove $1.93 million in capital additions related to the purchase of previously rented vehicles and recalculate the K

factor associated with the Vehicles – Growth and Life Cycle Replacement Program.

In paragraph 317 of Decision 23571-D01-2019, Direction 2, EPCOR was directed to remove $1.22 million in capital additions associated with the Replacement of Aerial Ground Rods and Underground Distribution Equipment Ground Grids Project.

Direction 1 in Decision 23571-D02-2019, directed EPCOR to remove $550,000 in capital additions associated with developing the METSCO Framework and Models and to recalculate the K factor for the five capital tracker project categories, with respect to which EPCOR had used the METSCO Framework and Models as a key component of its asset management and capital planning process.

The AUC also directed EPCOR to revise its accounting test for 2017 based on directions as set out in the previous sections of both decisions and reassess whether the capital tracker programs or projects included in the 2017 true-up satisfy the accounting test requirement of Criterion 1. Further, the AUC directed EPCOR to reassess whether its programs or projects included in the 2017 true-up satisfy the two-tiered materiality test requirement of Criterion 3.

EPCOR confirmed that it had complied with the directions, and recalculated its actual K factor for 2017. EPCOR subsequently confirmed that all capital tracker projects and programs applied for in this proceeding, except for the Replacement of Aerial Ground Rods and Underground Distribution Equipment Ground Grids Project, satisfied the accounting test requirement of Criterion 1 and satisfied the two-tiered materiality test requirement of Criterion 3.

The AUC found that EPCOR complied with these Commission directions.

In Direction 3 of Decision 23571-D01-2019, the AUC issued the following direction with respect to EPCOR's embedded cost-of-debt:

> For all of these reasons, the Commission concludes that FortisAlberta, FortisBC, Nova Scotia Power and EUI are relevant comparators for EPCOR's 2017 embedded cost-of-debt calculations. As such, the Commission directs EPCOR to recalculate its 2017 embedded cost of debt using the average of these companies' credit risk premiums. As part of its compliance filing to this decision, the Commission also directs EPCOR to refile its recalculated 2017 WACC [weighted average cost of capital] based on these revisions.

The AUC reviewed EPCOR's revised 2017 embedded cost-of-debt and WACC calculations and found that EPCOR had complied with the AUC direction. Further, the AUC accepted that the revised 2017 WACC was not materially different from the 2017 WACC applied for in Proceeding 23571, and no adjustments were necessary to account for the revised 2017 WACC rate.

In Direction 7 of Decision 23571-D01-2019, the AUC issued the following direction with respect to EPCOR's 2017 K factor true-up and collection:

> The Commission directs EPCOR to file its proposal to true up the difference between its applied-for 2017 capital tracker true-up costs, approved to be collected in Decision 23896-D01-2018 (Errata), and the 2017 actual K factor as part of the compliance filing to this decision. The effective date and the duration of the proposed collection period for EPCOR's proposal should be commensurate with the Commission's process timelines set out in Bulletin 2015-09 and take into account the effect on customer bills.

The AUC reviewed EPCOR's calculations and found them reasonable and in accordance with *Rule 023* requirements. The 2017 K factor true-up amount of $2.23 million, and the carrying charges of $0.21 million were approved for collection under Rider DJ effective April 1, 2020, to June 30, 2020.

Evergreen Gas Co-op Ltd. Franchise Agreement with the Town of Drayton Valley (AUC Decision 25219-D01-2020)

Franchise Agreement

In this decision, the AUC considered an application filed by Evergreen Gas Co-op Ltd. ("Evergreen") requesting approval of a natural gas franchise agreement (the "Agreement") with the Town of Drayton Valley ("Drayton Valley"). The AUC approved the proposed Agreement as filed.

Background

On December 19, 2019, Evergreen filed an application with the AUC requesting approval of the Agreement with Drayton Valley, pursuant to section 45 of the *Municipal Government Act* ("*MGA*") and per the requirements of *Rule 029*. Evergreen explained that the proposed Agreement was an amended version of a similar franchise agreement between Evergreen and Drayton Valley, approval for which was denied in Decision 24257-D01-2019 on the basis that it would allow for the imposition of discriminatory rates, and that the proposed Agreement was amended to remove the franchise fee determined to be discriminatory.

Proposed franchise agreement

Under the proposed Agreement, Drayton Valley would grant Evergreen the exclusive right within a defined municipal service area to construct, operate and maintain the natural gas distribution system and to provide natural gas distribution service in that area to any customer who agrees to execute a contract with Evergreen and pay for the service.

The proposed franchise Agreement included changes to the agreement submitted to the AUC in Proceeding 24257.

The proposed Agreement stated that there was no franchise fee payable during the initial term of ten years. Accordingly, there was no monthly charge to residential customers in relation to the franchise fee.

In addition, the proposed franchise Agreement included changes to the standard natural gas franchise agreement template approved by the AUC in Decision 20069-D01-2015.

AUC findings

The AUC noted that it's authority to approve franchise agreements derives from section 45 of the *MGA*. The AUC and its predecessor (the Alberta Energy and Utilities Board) have stated that the purpose of reviewing franchise agreements is to determine whether "the privilege or franchise is necessary and proper for the public convenience and properly conserves the public interests."

The AUC and its predecessor have also consistently acknowledged that franchise agreements are typically the result of negotiations between a municipality and a utility or co-operative, and will likely reflect several compromises concerning the interests and positions of both parties. Such agreements are therefore accorded a high degree of deference. However, this deference must be tempered by the AUC's obligation to ensure that franchise agreements are in the public interest.

The AUC indicated that its review of a proposed franchise agreement was accordingly kept at a relatively high level, and was focused primarily on those provisions that may cause a serious concern with respect to the public interest.

One of the AUC's key concerns in any franchise agreement is regarding the franchise fee. In this case, the proposed franchise fee of 0.00 percent was below the 35 percent fee cap previously approved by the Commission. As a result, the AUC found the proposed franchise fee was reasonable.

The AUC also considered that each of the proposed changes to the standard natural gas franchise agreement template provided clarity and were reasonable in the circumstances.

The AUC considered that the right granted to Evergreen by Drayton Valley outlined in the proposed Agreement was necessary and proper for the public convenience and properly conserved the public interest. Accordingly, under section 45 of the *MGA*, the AUC approved the proposed Agreement as filed.

Exploring Market Concerns and Tariff Issues Related to Self-Supply and Export Reform **(AUC Bulletin 2020-01)**

Self-Supply - Export Reform

In several recent decisions, the AUC found that, subject to limited exceptions, the owner of a generating unit was prohibited from using that generating unit to self-supply its own load and export excess electricity produced by that generating unit to the power pool. In AUC Bulletin 2019-16: *Consultation on the issue of power plant self-supply and export*, the AUC sought feedback from stakeholders on whether changes to the statutory scheme may be necessary to resolve the issues arising from those decisions. The AUC, on behalf of the Department of Energy, asked stakeholders to comment on three options to address the self-supply and export issue.

(a) option 1: Status quo;

(b) option 2: Limited self-supply and export; or

(c) option 3: Unlimited self-supply and export.

Stakeholder responses

The majority of stakeholders preferred Option 3. While not all stakeholders agreed with the AUC's interpretation of the legislation, there was widespread support for statutory amendments to clarify whether self-supply and export are available to all generators. Stakeholders emphasized the need for regulatory certainty and recognized that a clear statutory direction could achieve this.

Next steps

The Department of Energy requested that the AUC follow up with a second round of consultation focused on the market and tariff implications of unlimited self-supply and export. Accordingly, the AUC sought additional stakeholder feedback by February 14, 2020.

FortisAlberta Inc. Compliance Filing to Decision 24281-D01-2019 (AUC Decision 25143-D01-2020)

Industrial System Designation - Connection Order

In this decision, the AUC considered whether to approve the FortisAlberta Inc. ("Fortis") compliance application regarding the AUC's directions issued in Decision 24281-D01-2019. The AUC found that Fortis complied with all of the AUC's directions except for Direction 1 that will be addressed in Fortis' next Phase II application, which is being considered in Proceeding 25201.

Background

On October 18, 2019, the AUC issued Decision 24281-D01-2019 pertaining to Fortis' capital tracker true-up for its 2016 and 2017 Alberta Electric System Operator ("AESO") Contributions Program. Decision 24281-D01-2019 included a direction, Direction 10, requiring Fortis to file a compliance filing to the decision on or before December 2, 2019. On December 2, 2019, Fortis submitted its compliance filing with the AUC.

Compliance with AUC directions

Direction 1: Commitments required from end-use customers

In Decision 24281-D01-2019, the AUC found that commitments required from end-use customers by Fortis were not sufficiently strong. A consequence of this was that the correlation between end-user commitments, or contracts, and actual loads were far too weak to provide Fortis with a reasonable capacity planning signal. Accordingly, the AUC directed Fortis to review its pro forma Electric Service Agreement as part of its next Phase II application. Because Fortis' next Phase II application was filed on January 17, 2020, in Proceeding 25201, the AUC could not yet make a finding that Fortis complied with this direction.

Directions 2 through 6 and 8: Adjustments to 2017 capital additions. Accounting test requirements of Criterion 1

Decision 24281-D01-2019 included four directions requiring Fortis to make adjustments to its 2016 and 2017 capital additions for its AESO Contributions Program:

(a) Fortis was directed to apply an adjustment in the amount of negative $80,000 to the AESO contribution assigned to the South Mayerthorpe 443S Upgrade Project for the year 2016;

(b) Fortis was directed to apply an adjustment in the amount of negative $1,754,585 to the AESO contribution additions for the Cochrane 291S Upgrade Project for the year 2016;

(c) Fortis was directed to reverse the AESO contribution amounts relating to cancelled projects of $3,200,000 in 2014 and $2,394,361 in 2015 through an adjustment applied in 2016 in the amount of negative $5,594,361; and

(d) Fortis was directed to apply risk-reward reductions totalling negative $1,222,085 as an adjustment to its 2016 AESO contribution amount.

In response to directions 2 through 6, Fortis confirmed that it made adjustments to the AESO contribution additions of negative $80,000 relating to

the South Mayerthorpe 443S Upgrade Project for the year 2016, negative $1,754,585 relating to the Cochrane 291S Upgrade Project for the year 2016, and negative $5,594,361 for the year 2016 in respect of the Edwards Lake 189S New Substation Project. Further, Fortis applied an adjustment to transfer the amount of negative $1,222,085 relating to risk-reward reductions from AESO contribution additions in the year 2017 to 2016 and submitted updated K factor calculations.

The AUC found that Fortis complied with the directions set out in paragraphs 81, 90, 95, 99, 105 and 106 of Decision 24281-D01-2019.

Direction 7: Identification of cumulative AESO contribution additions based on estimated amounts

The AUC directed Fortis to identify all projects listed in Proceeding 24281, Exhibit 24281-X0053,18 in which the cumulative AESO contribution addition amounts for 2016 or 2017 were based on estimated amounts in its compliance filing. Fortis indicated it had identified all such projects in Table 2 of its application. The AUC was satisfied with the information provided and found that Fortis complied with Direction 7.

Direction 9: Finalization of 2016 and 2017 capital tracker true-ups and adjustment of going-in rates and K-bar amounts for the 2018-2022 PBR plan

The AUC directed Fortis to use the approved amounts to finalize its 2016 and 2017 capital tracker true-ups and adjust its going-in rates and K-bar amounts for the 2018-2022 PBR plan. In its compliance filing, Fortis was directed to inform the AUC on how and when it planned to make these adjustments. Fortis explained that it intended to finalize its 2016 and 2017 capital tracker true-up amounts applied for in this compliance filing and to adjust its going-in rates, K-bar and AESO contributions hybrid deferral amounts, for each of the years 2018, 2019 and 2020 in its 2021 annual rate adjustment filing.

The AUC accepted Fortis' proposal to finalize its 2016 and 2017 capital tracker true-ups and adjust its going-in rates and K-bar amounts for the 2018-2022 PBR plan, including adjustment to the AESO contributions hybrid deferral amounts in its 2021 annual rate adjustment filing. Therefore, the AUC found that Fortis complied with Direction 9.

Order

The AUC ordered that:

(a) the 2016 actual K factor revenue of $12.8 million for the AESO Contributions Program was approved; and

(b) the 2017 actual K factor revenue of $14.6 million for the AESO Contributions Program was approved.

***International Paper Canada Pulp Holdings ULC Industrial System Designation and Permanent Connection Order for the Grande Prairie Pulp Mill Complex* (AUC Decision 24979-D01-2020)**

Industrial System Designation - Connection Order

In this decision, the AUC considered an application (the "Application") from International Paper Canada Pulp Holdings ULC ("IPC") for an industrial system designation encompassing certain facilities at the Grande Prairie Pulp Mill Complex and for a permanent connection order to connect its power plant to the Alberta Interconnected Electric System ("AIES"). The AUC found that approval of the application was in the public interest.

Background

IPC owns and operates a kraft pulp mill and a 48-megawatt ("MW") cogeneration power plant at the Grande Prairie Mill Complex ("Mill Complex"). Pursuant to Temporary Connection Order 24935-D02-2019,1 IPC obtained approval to temporarily connect its power plant to the AIES until January 31, 2020.

On October 19, 2019, IPC filed Application 24979-A001 with the AUC requesting (i) an industrial system designation encompassing facilities at the Mill Complex under section 4 of the *Hydro and Electric Energy Act* ("*HEEA*"); and (ii) a permanent connection order to connect its power plant to the AIES pursuant to section 18 of the *HEEA*.

Legislative scheme

HEEA Subsection 4(3) sets out specific criteria for determining whether a project should be designated as an industrial system. Subsection 4(3) provides that before making an industrial system designation under (1) the AUC must be satisfied that:

> (a) the electric system includes a generating unit located on the property of the one or more industrial operations it is intended to serve, there is a high degree of integration of the electric system with one or more industrial operations the electric system forms part of and serves, and there is a high degree of integration of the components of the industrial operations;
>
> (b) the industrial operations process a feedstock, produce a primary product or manufacture a product;
>
> (c) there is a common ownership of all of the components of the industrial operations;
>
> (d) the whole of the output of each component within the industrial operation is used by that operation and is necessary to constitute its final products;
>
> (e) there is a high degree of integration of the management of the components and processes of the industrial operations;
>
> (f) the application to the Commission for a designation under subsection (1) demonstrates significant investment in both the expansion or extension of the industrial operations processes and the development of the electricity supply;
>
> (g) where an industrial operation extends beyond contiguous property, the owner of the industrial operation satisfies the Commission that the overall cost of providing the owner's own distribution or transmission facilities to interconnect the integral parts of the industrial operation is equal to or less than the tariffs applicable for distribution or transmission in the service area where the industrial operation is located.

AUC findings

The AUC considered IPC's industrial system designation application per the principles and criteria set out in section 4 of the *HEEA*. In doing so, the AUC described its assessment of each of the criteria found in subsection 4(3).

The AUC was satisfied that subsection 4(3)(a) of the *HEEA* was met. The Mill Complex includes a cogeneration facility that consists of boilers that create steam used both in the industrial operations of the mill and to drive the 48-MW steam turbine generator. The steam generator, in turn, is used to provide power to the mill's industrial operations forming a high degree of integration of the electric system with the industrial operations of the Mill Complex.

The AUC found that subsection 4(3)(b) had been met because the industrial operations utilize raw materials to produce a primary product in the form of pulp.

The AUC accepted IPC's submission that TC Energy's facilities, although located on-site, were part of a separate industrial operation that utilizes excess steam that would otherwise be wasted. Because TC Energy's facilities were not included in the proposed industrial system designation, nor required for IPC's industrial operations, the AUC found that subsection 4(3)(c) had been met.

The AUC considered that the cogeneration plant is reasonably scaled to meet the needs of the mill and accepts that the excess steam produced would otherwise be a waste product were it not being utilized by TC Energy's facilities. For this reason, the AUC was satisfied that subsection 4(3)(d) had been substantially met.

Subsection 4(3)(e) had been met because IPC owns and operates both the mill and the steam turbine generator. Hence, the AUC found there to be a high degree of integration of management of both the components and the processes of the industrial operations.

The AUC found that significant investment to the extension of the industrial operation and the development of the electricity supply had been met previously when the power plant was initially approved and constructed, thereby satisfying subsection 4(3)(f).

The AUC found that subsection 4(3)(g) was not applicable because the industrial operations do not extend beyond the contiguous property.

Subsection 4(5) gives the AUC the discretion to approve an industrial system designation application if subsections 4(3) and 4(4) have been substantially met and there is a significant and sustained increase in efficiency in a process of the industrial operation by the industrial operation as a result of the integration of the electric system with the industrial

operations the electric system forms part of and serves. The AUC found that subsection 4(3) had been met with the exception of subsection 4(3)(d), which it found had been substantially met.

Having considered all of the principles and criteria set out in section 4 of the *HEEA*, the AUC found that IPC's proposal substantially met all the principles and criteria for an industrial system designation and also demonstrated significant and sustained increased efficiency.

AUC findings

Pursuant to section 4 of the *HEEA* and sections 2(1)(d) and 17 of the *Electric Utilities Act*, the AUC approved the application and an industrial system designation to IPC.

Pursuant to Section 18 of the *HEEA*, the AUC also approved the permanent connection to connect IPC's 48-MW power plant to the AIES.

***Market Surveillance Administrator Application for Approval of a Revised Settlement Agreement Between the Market Surveillance Administrator and the Balancing Pool* (AUC Decision 23828-D02-2020)**

Balancing Pool - Revised Settlement Agreement

In this decision, the AUC considered an application by the Market Surveillance Administrator ("MSA") for approval of a revised settlement agreement between the MSA and the Balancing Pool ("BP"), under sections 44 and 51(1)(b) of the *AUC Act*, and for an order requiring the BP to comply with particular monitoring requirements set out in the revised settlement agreement. The AUC approved the revised settlement agreement as submitted.

Background

On August 15, 2018, the MSA filed an application with the AUC under sections 44 and 51(1)(b) of the *AUC Act*, requesting that the AUC consider and approve the terms of a settlement agreement between the MSA and the BP.

The MSA filed a revised settlement agreement, between the MSA and the BP ("revised 2019 agreement") on October 8, 2019, pursuant to subsection 44(2) of the *AUC Act*. Per subsection 51(1)(b) and section 52 of the *AUC Act*, the MSA advised that the terms of the revised 2019 agreement consisted of the parties' agreement that (i) the BP contravened section 85 of the *Electric Utilities Act* ("*EUA*"), (ii) an administrative penalty is not in the public interest, (iii) section 2 of the *BP Regulation* had not been breached and (iv), that the BP would adhere to a new proposed monitoring procedure set out in the settlement agreement.

The MSA requested that the AUC approve the revised 2019 agreement, confirm the above findings, and issue an order that the BP comply with the monitoring requirements set out in the revised 2019 agreement.

Relevant statutory and regulatory provisions

Pursuant to Part 5 of the *AUC Act*, the MSA has the mandate to investigate matters and undertake activities, including enforcement, to address contraventions of the *EUA* and the regulations under that act, and to address conduct that does not support the fair, efficient and openly competitive operation of the electricity market.

Following the completion of its investigation, the MSA has the mandate to choose the enforcement tool that best fits the events under consideration. It may choose to enter into a settlement agreement (sections 44 and 51(1)(b) of the *AUC Act*). If the MSA reaches a settlement, it must file that settlement agreement with the AUC for approval.

Subsection 56(1) of the *AUC Act* requires the AUC to make an order regarding a matter that the MSA has submitted before it under subsection 51(1)(b) within 90 days after the conclusion of a hearing or other proceeding. Under subsection 56(4), the Commission may provide direction, or make any order it considers appropriate, in respect of such matters. The reference to "other proceeding" in section 56 of the *AUC Act* includes a settlement process pursuant to section 44.

AUC findings

The central issue in this proceeding was whether approval of the revised 2019 agreement was in the public interest.

A two-stage process was established and confirmed in Decision 23535-D01-2018 and in prior decisions to assess whether a negotiated settlement and any associated administrative penalties should be approved. First, the AUC must be satisfied that a contravention occurred. If this criterion is met, the

second step requires it to determine whether the settlement falls within a range of acceptable outcomes.

Did the BP contravene Subsection 85(1)(b) of the EUA?

Once the BP became the deemed owner of power purchase agreements ("PPAs"), it was required by subsection 85(1)(b) of the *EUA* to manage these PPAs in a commercial manner during the period in which it held them. The evidence before the AUC is that the BP failed to take timely action to mitigate losses by continuing to hold the Sundance and Battle River PPAs rather than terminating them as soon as possible. Its failure to do so constituted a failure to manage these PPAs in a commercial manner, contrary to subsection 85(1)(b) of the *EUA*. The parties to the revised 2019 agreement agreed that this contravention occurred. After conducting its own independent assessment of the facts presented in this proceeding, the AUC confirmed the contravention.

The public interest and reasonableness of the proposed settlement

The AUC noted it must decide whether the proposed settlement falls within a range of acceptable outcomes appropriate to the facts and the applicable sanctioning principles; it is not determining whether it might have chosen to impose the same sanctions itself.

The AUC found it helpful (as it did in Decision 23535-D01-2018) to consider the factors listed in Rule 013 in assessing the reasonableness of the revised 2019 agreement, bearing in mind that sanctions are intended to be protective and preventative, but not punitive. The AUC noted that the following factors are particularly relevant in this case.

Harm - the BP's misconduct under consideration resulted in the BP incurring significant losses by failing to terminate, as soon as possible, the Sundance and Battle River PPAs, which, by definition, were unprofitable. It is clear to the AUC that consumers were harmed as a result of this contravention.

Isolated or recurring problem - the AUC accepted that the BP neither agreed nor did the MSA claim, that the BP remained in contravention of subsection 85(1)(b). Nevertheless, for as long as the BP holds PPAs, it could again, at some point in the future, be in breach of that section of the act.

Unprecedented and unexpected event - the AUC agreed that these circumstances were unprecedented and unusual and that they affected both the timing and the ability of the BP to respond to the termination notices it had received, and left it unexpectedly as the PPA buyer for the Sundance and Battle River PPAs

Economic benefit - the BP is a corporation established in section 75 of the *EUA* to carry out the powers and duties set out therein. Because it is a market participant, as that term is defined in the *EUA*, it is also required by section 6 of that act to conduct itself in a manner that supports the fair, efficient and openly competitive operation of the market. The revised 2019 agreement states specifically that there is no evidence that "the BP acted out of self-interest, bad faith or personal gain" nor was there evidence that "the BP was involved in trading violations or misuse of information for commercial advantage." The AUC accepted the MSA's findings in this regard.

The AUC found that the proposed terms of the revised 2019 agreement were fair, reasonable and fell within a range of acceptable outcomes. Because the resulting settlement adequately addressed the contraventions of subsection 85(1)(b) of the *EUA*, the approval of the revised 2019 agreement was in the public interest.

Order

The AUC:

(a) approved the revised 2019 agreement between the MSA and the BP; and

(b) directed the BP to comply with the reporting and monitoring requirements set out in the settlement agreement.

Pattern Development Lanfine Wind ULC Lanfine Wind Power Project **(AUC Decision 22736-D01-2020)**

Facilities - Wind Power Project

In this decision, the AUC considered whether to approve applications from Pattern Development Lanfine Wind ULC ("Pattern") requesting approval to construct and operate the power plant and substations, collectively designated as the Lanfine

Wind Power Project (the "Project"). The AUC found that approval of the Project was in the public interest having regard to the social, economic, and other effects of the project, including its effect on the environment.

Background

On January 11, 2019, Pattern submitted applications for the Project. The applications were subsequently amended to reflect a revised anticipated in-service date and to remove one turbine (T19). The Project would consist of 78 Vestas turbines, each rated at 3.6 megawatts ("MW"). Pattern proposed to construct the project in two phases; Lanfine North would consist of 41 turbines for a total generating capability of 147.6 MW while Lanfine South would consist of 37 turbines for a total generating capability of 133.2 MW. The total project size would be 280.8 MW. Pattern also proposed two substations; Buffalo Bird 601S Substation, located on the southwest quarter of Section 19, Township 27, Range 4, west of the Fourth Meridian, for Lanfine North, and Nighthawk Substation, located on the northeast quarter of Section 8, Township 26, Range 3, west of the Fourth Meridian, for Lanfine South.

Section 17 of the *AUC Act* required the AUC to assess whether the project was in the public interest, having regard to its social, economic, environmental and other effects. In doing so, the AUC considered various factors set out under each of the headings that follow.

Noise

The primary noise-related issue was whether it was reasonable for Pattern to use an assumed nighttime ambient sound level ("ASL") of 35 dBA (as provided in Table 1 of *Rule 012: Noise Control*) when calculating the nighttime permissible sound level ("PSL") at various receptors in the project area.

The AUC found that, based on the presence of agricultural and oil and gas activities in the project area, it was reasonable for Pattern to rely on the assumed values of Table 1 of *Rule 012* when preparing its noise impact assessment ("NIA"). This assumption was validated by the evidence of all parties confirming the existence of agricultural and oil and gas activities throughout the Project area. Further, the ambient monitoring results filed by the Oyen Landowners Group did not demonstrate that the Project area contained features or characteristics that materially distinguished it from other parts of rural Alberta, where agricultural and oil and gas activities take place. The AUC, therefore, found that a departure from the assumed values of Table 1 of *Rule 012* was not warranted and that it was reasonable for Pattern to conclude the assumed ASLs based on Table 1 of *Rule 012* were representative of the project area.

The AUC also found that the Project NIA met the technical requirements of Rule 012.

Although the project NIA predicted compliance with *Rule 012* PSLs at all receptors, given the concerns raised by the Oyen Landowners Group and the fact that the predicted sound levels were close to the nighttime PSL at a number of receptors, the AUC required Pattern to complete a post-construction comprehensive sound level survey to verify compliance with *Rule 012* once the project commenced operation.

Environmental matters

The AUC considered the evidence on the record of this proceeding in assessing the environmental effects of the Project, including the evidence of the environmental consultants, various commitments made by Pattern, the mitigation and monitoring plans established in consultation with Alberta Environment and Parks ("AEP"), and the Project's adherence to applicable regulatory standards, directives and guidelines.

Overall, the AUC was satisfied that Pattern's approach to siting, specifically, the siting of a large portion of project infrastructure on cultivated lands and tame pasture, would significantly mitigate the Project's potential effects on environmentally significant areas ("ESAs"), native grasslands and wetlands. With the diligent application of Pattern's proposed mitigations, the potential residual adverse effects on ESAs, native grasslands and wetlands from construction and operation of the project could be reasonably mitigated.

Issues were raised in this proceeding concerning the high risk of bat mortality, the sufficiency of the bat surveys undertaken by Pattern and the proposed mitigation measures. The AUC found that Pattern's proposed mitigation measures relative to bats were generally consistent with industry practice and the requirements of the Wildlife Directive for Alberta Wind Energy Projects and Bat Mitigation Framework for Wind Power Development, and the recommendations of AEP. However, given the very high level of bat activity in the Project area and the corresponding high risk of bat mortality from

operation of the Project, the AUC imposed various conditions of approval to address the risk of bat mortality.

The AUC also imposed as a condition of approval that Pattern abide by all of the commitments and recommendations included in its final Construction and Operation Mitigation Plan (the "Plan"), implement all mitigation measures identified in the Plan and monitor the effectiveness of its mitigation measures. If mitigation measures are unsuccessful, Pattern, in consultation with AEP, must develop and implement additional mitigation to minimize adverse effects on the environment. With the diligent application of Pattern's proposed mitigations and adherence to the conditions of approval imposed by this decision, the AUC was satisfied that the potential adverse effects of the Project on wildlife and bats, in particular, could be reasonably mitigated.

Other identified concerns

The Oyen Landowners Group identified other concerns with the Project. It raised concerns about improper consultation, the disruption of the rural environment, damage to underground springs, visual effects, decreased property value and health effects.

The AUC found that the Participant Involvement Program (the "PIP") for the project was developed and conducted per the regulatory requirements of *Rule 007*. The AUC was also satisfied that through the PIP, stakeholders were provided with the opportunity to understand the Project, voice their concerns and have those concerns addressed where feasible, thereby satisfying the purpose of consultation and *Rule 007* requirements.

The AUC was also satisfied that Pattern was aware of and acknowledged the potential effect of the Project on water wells and groundwater in the area and has taken appropriate actions to evaluate and address these concerns.

The AUC found that specialized expertise and evidence is required for the AUC to conclude that a given project will have an adverse effect on land and property values. No property value evidence specific to this project was submitted, nor was any expert available for cross-examination on the topic.

While the AUC was not satisfied that the visual effect of the Project was prohibitive in and of itself, it is one of the factors the AUC considered in making its overall public interest determination for the Project.

The AUC found that specialized expertise and evidence is required for the AUC to conclude that a project will have an adverse effect on human health. No such evidence was presented, and accordingly, the AUC was unable to make any findings related to this potential impact.

Conclusion

Subject to the conditions set out by the AUC in this decision, the AUC found that Pattern satisfied the requirements of *Rule 007* and *Rule 012*. The AUC found that the negative effects of the Project, which included social impacts, visual impacts, noise impacts and impacts on the environment, can be mitigated to an acceptable degree. In accordance with section 17 of the *AUC Act*, the AUC approved the Project as in the public interest having regard to its social, economic, and other effects, including its effect on the environment.

Release date for Enhancement to the eFiling System to Support Confidential Proceedings **(AUC Announcement January 13, 2020)**

Confidential Proceedings

The AUC confirmed the release date of the enhancement to the eFiling System to support the exchange of confidential documents between proceeding participants. The AUC announced the system would be upgraded on February 8, 2020, and ready to fully support confidential proceedings registered after the release.

Second Stage Review Proceeding to Consider the Concepts and Principles of an Anomaly Adjustment - Review of Decision 22394-D01-2018: Rebasing for the 2018-2022 PBR Plans for Alberta Electric and Gas Distribution Utilities First Compliance Proceeding **(AUC Decision 24325-D01-2020)**

PBR Anomaly Adjustments

In this decision, an AUC review panel (the "Review Panel") determined whether to confirm, rescind or vary Decision 22394-D01-20181 as it related to the concept of anomalies in the context of rebasing for the 2018-2022 performance-based regulation ("PBR") plans for several distribution utilities (the "Distribution Utilities"). The Review Panel decided to vary Decision 22394-D01-2018 by:

(a) rescinding the five criteria that the AUC indicated must all be met to qualify as an anomaly for rebasing purposes; and

(b) providing additional clarification regarding the concept of an anomaly adjustment for the purposes of rebasing and the principles that will apply.

The Review Panel confirmed Decision 22394-D01-2018 as it related to the placeholder treatment for certain costs of the ATCO Utilities identified in that decision.

Background

This decision was concerned with rebasing and the method established by the AUC to calculate going-in rates for the 2018-2022 PBR term.

While the AUC hearing panel (the "Hearing Panel") accepted the general rebasing approach undertaken by the majority of the Distribution Utilities in Decision 22394-D01-2018, it denied all of the anomaly adjustments proposed. In doing so, the Hearing Panel stressed that it was necessary to read all of the criteria articulated by the AUC with respect to anomalies in Decision 20414-D01-2016 together, rather than favouring or disregarding certain components. The Hearing Panel further explained that to qualify as an anomaly for rebasing purposes, a proposed cost adjustment must have exhibited all of the following characteristics:

(i) be specific and identifiable;

(ii) be required to account for unique existing or anticipated costs;

(iii) be material;

(iv) not reflect actual or forecast 2017 costs; and

(v) not be costs that each Distribution Utility, operating under the incentives of the PBR mechanism, unencumbered by incentives inconsistent with the PBR incentives, would have incurred in 2017.

Three Distribution Utilities applied for a review and variance of Decision 22394-D01-2018. The AUC granted a review and commenced this proceeding to consider the concept of an anomaly adjustment and the type(s) of anomaly adjustment(s) to be permitted.

Anomaly adjustments

The concept of an anomaly

The Review Panel considered that an anomaly is something that should be accounted for in a distribution utility's going-in rates, to enable that utility to provide safe and reliable service to its customers and give the utility a reasonable opportunity to earn a fair rate of return.

In the context of rebasing, the need for an anomaly adjustment may arise in the event that distorting influences on the incentives of PBR, those that promote long-term and permanent productivity improvements, were present during the utility's lowest cost year.

AUC discretion

The Review Panel accepted that the exhaustive list articulated by the Hearing Panel in Decision 22394-D01-2018 could risk excluding an adjustment that is reasonable and necessary because it fails to meet all of the criteria or, conversely, requires the AUC to include an adjustment that is not necessary because it meets all of the criteria. This could circumscribe the discretion that the AUC indicated in Decision 20414-D01-2016 it retained to determine what it considers to be reasonable going-in rates for each distribution utility. The Review Panel, therefore, rescinded the five mandatory criteria articulated in Decision 22394-D01-2018.

Not accounted for elsewhere in the PBR plans

The Review Panel agreed with parties that maintained that double counting must be avoided, and adjustments for anomalies should not apply when the costs to be adjusted are already accounted for in some other fashion. Any application for an anomaly adjustment must clearly demonstrate how the applied-for anomaly adjustment is not already captured in the mechanisms used to set the distribution utility's rates.

Consistent with PBR principles

In Decision 20414-D01-2016, the AUC outlined the five PBR principles that the AUC adopted in the 2013-2017 PBR plans and confirmed that it continues to support these principles for the 2018-2022 PBR plans for all electric and gas distribution utilities under its jurisdiction. Those principles are:

(a) Principle 1. A PBR plan should, to the greatest extent possible, create the same efficiency incentives as those experienced in a competitive market while maintaining service quality;

(b) Principle 2. A PBR plan must provide the company with a reasonable opportunity to recover its prudently incurred costs including a fair rate of return;

(c) Principle 3. A PBR plan should be easy to understand, implement and administer, and should reduce the regulatory burden over time;

(d) Principle 4. A PBR plan should recognize the unique circumstances of each regulated company that are relevant to a PBR design; and

(e) Principle 5. Customers and the regulated companies should share the benefits of a PBR plan.

The Review Panel maintained that any permitted anomaly adjustments must be consistent with the AUC's five PBR principles.

Accounted for in going-in rates

The Review Panel found a positive adjustment may be required to a utility's going-in rates if it can be demonstrated that the anomaly adjustment accounts for a cost that repeats throughout the 2018-2022 PBR term. Alternatively, a negative adjustment may be warranted in circumstances where it can be demonstrated, in addition to addressing the other considerations in this decision, that a cost in going-in rates should not reasonably be included in a utility's revenues over the 2018-2022 PBR term.

Exogenous versus endogenous

While the Review Panel noted that it generally expects an anomaly to be exogenous (outside the control of management), the AUC will not make this a necessary criterion for an anomaly to qualify for an adjustment. Any party applying for an endogenous anomaly will be required to satisfy the AUC that the adjustment is reasonable and necessary in the circumstances. Suboptimal behaviour or decision making on the part of a utility will not qualify for an anomaly adjustment. Given that each distribution utility may encounter unique circumstances in its business cycle, the AUC does not consider the applicability of an anomaly to all utilities, to be a necessary criterion for an anomaly adjustment.

Specific, identifiable and unique

In Decision 22394-D01-2018, the Hearing Panel articulated the following two characteristics of an anomaly: (i) that it must be specific and identifiable; and (ii) that it must be required to account for unique existing or anticipated costs.

The Review Panel noted that anomalies should be rare and that related adjustments will be required only in unique cases.

Relevance of the return on equity

Although there may be circumstances in which evidence of a utility's actual earnings may be relevant to the assessment of a particular anomaly, the Review Panel was not persuaded that it can conclude from a utility's earned return on equity ("ROE"), as stated in its *Rule 005* filings, whether or not an applied-for anomaly adjustment is required. Nor is the examining or averaging the utilities' ROEs as a group over prior PBR terms of assistance in considering anomaly adjustments.

Materiality threshold

The Review Panel was not persuaded that specifying a materiality threshold was reasonable or necessary in the circumstances. For an applied-for anomaly adjustment to be approved, it must be material. However, what constitutes a material adjustment may not be consistent across all anomalies and all distribution utilities.

Retirement anomalies

The Review Panel maintained the view expressed by the Hearing Panel that cost changes associated with retirements are not different than other cost changes in the utility's operating environment and in particular, that such costs can be managed collectively with all other costs in accordance with the incentives inherent in the PBR plans.

Conclusion

The Review Panel indicated that interested parties would be given an opportunity to apply for anomaly adjustments in accordance with Decision 20414-

D01-2016 and the clarification provided in this decision.

Stakeholder Comments Sought on Defining and Measuring Regulatory Burden for Industry Impact Assessment (AUC Bulletin 2020-02)

Regulatory Burden of Impact Assessment

This bulletin set out how the AUC intends to define and measure the impact of the AUC's regulatory activities in its future evaluations and reporting.

Defining regulatory burden

The AUC noted that, at its heart, the AUC's work must be in the public interest. The public interest should include an assessment of the impacts, normally expressed in costs, imposed as a result of the AUC's regulatory actions.

The industry impact assessment tool is an effort to quantify the effects and impacts of the AUC's regulatory actions on the companies the AUC regulates.

The AUC indicated it intends to define regulatory burden by assessing what activities should be included in the industry impact assessment.

Assessing regulatory impact

The AUC stated that the impact of the activities included in the industry impact assessment would be evaluated based on the following factors:

(a) what are the impacts of the regulatory activity on the business? (E.g., additional investments required.)

(b) are the costs direct or indirect? (E.g., familiarization costs.)

(c) are there impacts that cannot be quantified?

Where costs of implementing or responding to a regulatory initiative can be identified, they may be presented as a range, to illustrate the plausible margin of error if activity-based costing has not been utilized.

Comments

The AUC asked for comments or questions on the proposal by February 7, 2020.

Stakeholder Comments Sought on Suggested Changes to AUC Rule 027 (AUC Bulletin 2020-03)

Stakeholder Consultation - Rule 027 Changes

The AUC indicated it intends to conduct a rule review and stakeholder consultation on *AUC Rule 027: Specified Penalties for Contravention of Reliability Standards*, to update the content of the penalty tables to reflect the current version of the Alberta reliability standards, and to consider proposed changes from market participants.

The AUC stated its stakeholder engagement process would initially use the AUC Engage forum on its website to post and gather information related to this consultation. The AUC noted that, in order to participate in the consultation, participants are required to register on Engage and log in to submit a comment.