ISSUE:
JUNE 2014
DECISIONS

REGULATORY
LAW CHAMBERS

ENERGY REGULATORY REPORT

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

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ALBERTA COURT OF APPEAL

TransAlta Corporation v Market Surveillance Administrator (2014 ABCA 196)
Appeal – Solicitor-client privilege

The respondent, Market Surveillance Administrator ("MSA"), had originally sought production of over 250,000 records from the appellant, TransAlta Corporation ("TransAlta"), relating to the MSA's investigation of whether TransAlta had "artificially influenced the price of electricity by keeping some of its electrical power plants off-line during periods of high demand." As TransAlta submitted that several of the records were protected under solicitor-client privilege (including litigation privilege), the records in question were sealed and brought before a judge of the Court of Queen's Bench for review.

This decision is an appeal of a ruling from the Alberta Court of Queen's Bench ("Q.B.") holding that the term "solicitor-client privilege" as used in section 50 of the *Alberta Utilities Commission Act* ("*AUCA*") refers "only to the class of solicitor-client privilege dealing with the obtaining of legal advice". Consequently, the ruling being appealed excluded other classes of solicitor-client privilege, including litigation privilege (the term "litigation privilege" refers to documents prepared for the dominant purpose of defending an action). Three distinct issues were heard:

(a) Whether litigation privilege forms a part of solicitor-client privilege as set out in section 50 of the *AUCA*;

(b) Whether there was a reasonable expectation of privacy for the records of a former employee; and

(c) Whether specific sealed documents were properly determined as falling outside the continuum of communication of legal advice.

What was not contested on appeal was the finding from the Q.B. decision that communications on the continuum of legal advice were privileged. In other words, communications between people (for example, employees in a corporate setting) as intermediaries between the person seeking legal advice and the lawyer providing the advice are protected under solicitor-client privilege.

On the first issue, the Alberta Court of Appeal ("ABCA") held that while solicitor-client privilege and litigation privilege are distinct in some respects, section 50 of the *AUCA* – which provides a process for determining whether claims of privilege are appropriate – is procedural in nature, and thus should not limit the right to claim litigation privilege. In order to interpret section 50 of the *AUCA* as limiting what rights of privilege can be claimed, would, in the opinion of the ABCA, require clear and explicit legislative language to that effect.

In finding that litigation privilege can arise out of a regulatory investigation, (citing Laycraft CJA in *Ed Miller Sales and Rentals Ltd v Caterpillar Tractor Co.,* (1988) 61 AltaLR (2d) 319) the ABCA also found that litigation privilege is a part of solicitor-client privilege. Since section 50 of the *AUCA* had not expressly extinguished a right to claim litigation privilege, the ABCA allowed the appeal on the first issue, and remitted the matter to the Court of Queen's Bench.

On the second issue, the trial judge held that the former employee had no reasonable expectation of privacy with respect to documents left on a TransAlta computer, and accordingly ordered production of the documents by TransAlta. However, the ABCA reversed this decision on the grounds that the trial judge's decision precluded both a review of the documents in question for relevance to the matter at hand, and a review of whether the documents were in fact the personal documents of a TransAlta employee. As a result, the ABCA remitted consideration of these documents for claims of privilege back to the Court of Queen's Bench, and directed that the employee in question be joined as a party to the matter.

Lastly, with respect to the third issue, the ABCA considered a number of specific documents that TransAlta submitted were erroneously characterized as producible documents. TransAlta submitted that:

(a) Duplicates of records already found to be privileged are also privileged;

(b) Documents which are attachments to e-mails that are marked as privileged must also be marked as privileged; and

(c) Other various documents were erroneously characterized as producible.

The ABCA held that the duplicates should be marked as privileged. The ABCA also found that attachments to e-mails can be extraneous to the content of the e-mail itself, and thus must be reviewed independently to determine how the attachment relates to the email. As an example from the decision, the ABCA found that while one e-mail was privileged, its attachment was a Federal Energy Regulatory Commission decision, which is a publicly available document, and therefore was not privileged.

Accordingly, the appeal was allowed in part, and the remaining matters were remitted to the Q.B. to determine whether the records of TransAlta and the intervener in the matter were properly subject to litigation privilege or were personal records.

ALBERTA ENERGY REGULATOR

Inter Pipeline Ltd. Application for a Pipeline Licence Edmonton/Fort Saskatchewan Area (2014 ABAER 007)
Pipeline Licence Application

Inter Pipeline Ltd. ("Inter Pipeline") applied to construct and operate a pipeline with the following characteristics:

(a) 51.5 kilometers in length, running from 16-06-53-23W4M to 9-11-56-21W4M;

(b) An outside diameter of 609.6 mm;

(c) A hydrogen sulfide content of 2.70 moles per kilomole; and

(d) Carries low vapour pressure condensate (diluents).

Three parties objected to the project, as the pipeline was set to run through urban centres such as Edmonton and Sherwood Park. However, before the hearing began, the AER received notice from one participant that it intended to withdraw its objection. Another participant did not respond to the AER's letters requesting submissions, and therefore the AER deemed this participant to have been withdrawn as well. The last participant, NPS Farms Ltd. ("NPS"), stated that it intended to rely on its previously filed statement of concern and would not be filing other evidence. NPS further indicated that it had no further interest in an oral hearing, would not attend an oral hearing, and requested that the AER proceed with making a decision.

Accordingly, as no further evidence would be submitted, the AER closed the record and did not hold a public hearing.

The AER considered the following issues:

(a) Whether the project met the AER's requirements;

(b) The environmental, social and economic effects of the proposed energy resource activity; and

(c) The impacts on landowners from use of their land for that activity.

NPS submitted that the application was premature, as alternative pipeline routes had not been considered by Inter Pipeline, and that Inter Pipeline should revise its route to contain the pipeline within the North East Penetrator Corridor ("NEPC"). NPS also submitted that since there were three pipeline projects in close proximity to, or on, NPS' land, that the AER should order each of the operators to coordinate pipeline routing so as to minimize the environmental effects.

The AER held that the majority of the pipeline right-of-way on NPS' lands would be contained within the NEPC and that the remaining impact would be 0.55 acres. Therefore, the AER approved Inter Pipeline's routing, as it followed an established pipeline corridor through the existing NEPC.

With respect to the remaining issues, the AER placed little weight on the submissions of NPS, as they were minimal (having not filed additional evidence), untested, and provided little assistance to the panel in making its findings. As a result, the AER held that Inter Pipeline's evidence supported a finding that it had adequately addressed NPS' concerns.

Accordingly, the AER determined that the application met all the AER requirements and was therefore approved.

Revised Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting Now In Effect
AER Directive – Flaring – Venting

On June 16, 2014, the AER's revised *Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting* (*"Directive 060"*) came into effect replacing the previous edition issued on November 3, 2011. *Directive 060* contains the requirements for flaring, incinerating, and venting activities conducted in Alberta by all upstream petroleum industry wells and facilities. The revised directive is intended to bring hydrocarbon odour requirements in alignment with the *Environmental Protection and Enhancement Act* and existing odour requirements for processing plants in the *Oil and Gas Conservation Rules*.

For a description of the changes made to *Directive 060*, see AER Bulletin 2014-13. The revised *Directive 060* can be viewed here: http://www.aer.ca/documents/directives/Directive060_April2014.pdf.

To support the new and stronger solution gas conservation requirements in *Directive 060*, the AER developed the "*Solution Gas Conservation Escalation Process*" (June 2014).

In addition, the AER also developed the "*Hydrocarbon Odour Management Protocol for Upstream Oil and Gas Point Source Venting and Fugitive Emissions*" (June 2014) in response to new provisions in *Directive 060*.

ALBERTA UTILITIES COMMISSION

Shell Canada Energy 1.9-MW Cecilia Power Plant (Decision 2014-154)
Power Plant

Shell Canada Energy ("Shell") applied to the AUC for approval of a previously constructed 1.9-megawatt (MW) power plant at 15-04-58-23W5M near Edson, Alberta which had been in operation without approval since 2005. The power plant consists of four 400-kilowatt (kW) gas fired generators and one 300-kW gas fired generator at its Cecilia gas plant. The power plant would solely be for Shell's own consumption.

Shell applied to the AUC to ensure its assets were in compliance with their regulatory regime.

No objections or concerns were received from stakeholders or the public.

The AUC held that the application met all the requirements of *AUC Rule 007*, and did not have any adverse effects on the environment since its installation in 2005. The AUC granted approval to Shell to operate the Cecilia power plant.

ATCO Gas, a division of ATCO Gas and Pipelines Ltd. Rural Pool Customer Connection Charge (Decision 2014-155)
Connection Charge

As part of AUC Decision 2013-035, the AUC held that ATCO Gas, a division of ATCO Gas and Pipelines Ltd. ("ATCO") had failed to provide sufficient evidence to the AUC to justify deviating from the five year historical average of construction costs for connection charges to rural customers. ATCO, as part of its 2011-2012 Phase II General Rate Application, applied to set its rural connection charge based on the forecast construction costs for rural customer natural gas facilities connections and services to new customers. That proposal would increase the rural connection charge from $6,120 to $8,010 for 2012.

The AUC, in Decision 2013-035, ordered ATCO to update its connection charge based on the five year historical average of construction costs, as the use of an average maintained intergenerational equity and smoothed out pricing anomalies.

As a result of implementing the AUC's order, ATCO's rural connection charge increased from $6,120 to $10,700 effective April 1, 2013, and $10,870 effective January 1, 2014. Two customers that had applied for a rural connection with ATCO complained to the AUC in respect of the rate increase, arguing it was unreasonable. The AUC noted it had received 28 more email or telephone complaints in respect of the rate increase, and therefore decided to hold a written hearing on the matter.

In reviewing the calculations used by ATCO, the AUC held that the calculations used by ATCO to update the rural connection charge were not the same as those submitted in Decision 2013-035, and accordingly held that the updated calculation should have resulted in a rural connection charge of $7,383 for 2012.

The AUC directed ATCO to update its rural connection charge to reflect the AUC's findings, and to refund any customers that had paid the increased rural connection charge starting March 1, 2013. The AUC further directed ATCO to notify the AUC by July 31, 2014 if such refunds had been processed and that all customers affected by the change have been refunded. The AUC also noted the potential for the refunds to impact capital tracker costs in calculating revenue requirement. The AUC directed ATCO to calculate the potential impacts and include them as an amendment to its 2014 to 2015 capital tracker application, along with the number of customers that were refunded and the total dollar amount.

Partitioning of Heartland Transmission Ltd. (Decision 2014-160)
Ownership Structure

AltaLink Management Ltd. ("AltaLink") and EPCOR Distribution & Transmission Inc. ("EDTI") applied to change the ownership structure of the Heartland Transmission Line 1206L/1212L (the "Line") approved in Decision 2011-436. The application proposed that AltaLink and EDTI would each own portions of the Line that are within their respective transmission service areas.

The partition would see AltaLink transfer its 50 percent undivided interest in EDTI's transmission service area to EDTI, and EDTI would transfer its 50 percent undivided interest in AltaLink's transmission service area to AltaLink.

The Line was developed as a joint venture, however, AltaLink and EDTI submitted that a partition consistent with the transmission service area ownership structure would reduce costs for ratepayers over the long term. EDTI noted that the proposed partition would ensure that EDTI remained tax exempt under section 149 of the *Income Tax Act*. In order to remain tax exempt, EDTI must generate no more than 10 percent of revenue outside the geographical bounds of the City of Edmonton. Therefore, if the joint venture structure were to remain in place, EDTI's status as tax exempt could be jeopardized.

AltaLink and EDTI applied under section 101(2)(d)(i) of the *Public Utilities Act* to make the necessary dispositions of

each other's interests in the Line, and under sections 14, 15, and 19 of the *Hydro and Electric Energy Act* to amend the permit and licences to reflect the change in ownership.

The AUC found that the partitioning of ownership would likely result in lower transmission costs for ratepayers by avoiding establishing the joint venture as a new transmission facility owner, and preserving EDTI's tax-exempt status.

Under the transfer, AltaLink and EDTI would contribute amounts equal to the cost of the other parties' facilities being transferred. This is achieved through the party making the contribution, adding its contribution to rate base and earning a return on the facilities being transferred to it, while treating any contribution received as no-cost capital, thereby reducing its rate base by the cost of the facilities being transferred from it. This transfer mechanism ensures that the rate base of both EDTI and AltaLink are reflective of the assets that each party holds, and does not cross-subsidize the costs of the other.

In order to give effect to its decision, the AUC issued the following approvals to both AltaLink and EDTI:

(a) Transmission Line Permit and Licence No. UI2014-209 and U2014-211 to construct and operate transmission line 1206L/1212L;

(b) Connection Order No. U2014-212 to connect EDTI transmission line 1206L/1212L to Ellerslie 89S substation; and

(c) Connection Order No. U2014-213, U2014-214 and U2014-216 to connect EDTI transmission line 1206L/1212L to AltaLink transmission line 1206L/1212L.

ATCO Pipelines – 2013-2014 Revenue Requirements Compliance Filing to Decision 2013-430 (Decision 2014-162)

Revenue Requirement – General Rate Application – Compliance Filing

On December 4, 2013 the AUC issued Decision 2013-430 regarding ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd. ("ATCO"), 2013-2014 General Rate Application ("GRA") and directed ATCO to submit a compliance filing. On January 22, 2014 ATCO filed an application requesting approval of its compliance filing and approval of its 2013-2014 final revenue requirements ("RR"). The Office of the Utilities Consumer Advocate ("UCA") and the Consumers' Coalition of Alberta ("CCA") participated in the proceeding.

The AUC provided 34 directions to ATCO in Decision 2013-430. In Decision 2014-162, the AUC:

(a) Determined ATCO has complied with directions 1, 2, 4, 6, 7, 9, 11, 12, 14 to 30, 32 and 33;

(b) Based on the information ATCO provided with respect to directions 3, 8 and 13, approved:

  (i) The inclusion of costs related to pipeline integrity inspections and other pipeline inspections in ATCO's RR (direction 3);

  (ii) A revised Shepard Energy Centre project net capital forecast amount of $64.362 million and a corresponding $911,000 increase to ATCO's 2014 RR (direction 8); and

  (iii) ATCO's forecast corporate costs of $2.805 million in 2013 and $2.540 million in 2014;

(c) Determined, in ATCO's next GRA, ATCO will address directions 5 and 10 of Decision 2013-430;

(d) Indicated, with respect to direction 9, that it expects settlement of the deferral account to be addressed in ATCO's next GRA;

(e) Determined, with respect to direction 29, that ATCO will provide in the next depreciation study, adequate evidentiary support to address the depreciation parameters and rates for all of its asset accounts including those cited in direction 29;

(f) Determined, with respect to direction 30, in future GRA applications it would be beneficial for ATCO's depreciation expense to be calculated using proposed rates and parameters and provided as the forecast test year amounts. Similar calculations of depreciation expense using currently-approved rates and parameters should also be made available as supplementary information;

(g) Determined, with respect to direction 31, in the next depreciation study, ATCO is required to provide assurance to the AUC that its accounting records relating to property, plant, and equipment, accurately represent what is in service for the purpose of providing utility service; and

(h) Determined, with respect to direction 34, after a ruling from the NEB on NOVA Gas Transmission Ltd.'s asset swap application, ATCO must file an application with any required changes to its 2013-2014 revenue requirement.

With respect to deferral accounts, the AUC approved:

(a) ATCO's adjustment to its deferral account balances arising from the AUC's denial of the

recovery of depreciation expense differences in 2011 and 2012 related to major overhauls and pipeline inspection costs; and

(b) Inclusion of the refund/settlement of the over-recovered deferral account balance of $5.306 million.

With respect to placeholders, the AUC:

(a) Maintained placeholder treatment with respect to forecast Urban Pipeline Replacement ("UPR") projects for 2013 and 2014, pending ATCO's filing of supporting business cases with more detailed costing, which will be subject to a prudence review in ATCO's next GRA;

(b) Approved the inclusion of ATCO's revised UPR capital expenditures in RR; and

(c) Directed ATCO to explain any variance between the forecast and actual UPR capital costs in the next GRA, and to identify all UPR costs in construction work in progress (CWIP) and allowance for funds used during construction (AFUDC).

The AUC found that ATCO had complied with the relevant directions from Decision 2013-430 and therefore approved ATCO's forecast RR for 2013 and 2014 of $182.941 million and $192.642 million respectively.

ATCO Electric Ltd. 2013-2014 Transmission General Tariff Application Compliance Filing (Decision 2014-167)
General Tariff Application – Compliance Filing

ATCO Electric Ltd. ("ATCO") submitted a compliance filing for its 2013-2014 General Tariff Application ("GTA") pursuant to the 92 directions given by the AUC in Decision 2013-358.

The AUC noted the directions which ATCO had complied with in Appendix 2 of this decision, and listed the outstanding directions for future GTAs in Appendix 3. We herein only discuss those directions which various intervenors submitted were contentious or were not properly addressed.

ATCO had requested the flow through of impacts from changes between actual and forecast defined benefit pension payment plans and was directed to submit updated actuarial reports setting out the impacts on valuation of defined benefit amounts in the original GTA. The AUC denied this request, citing its original rationale for approving the deferral account for special payment costs, in noting that the deferral account "is not intended to capture changes which arise as a result of differences between forecasted and actual employee information." Accordingly, no changes were made to the deferral account.

The AUC held that ATCO complied with direction 12, to update its information schedules for I-Tek rates for transmission only. However, the AUC directed that ATCO submit a further compliance filing to include any other consequential directions from this decision by updating its information schedules for I-Tek rates.

Pursuant to direction 15, ATCO re-submitted its corporate costs and included 2012 actual costs in its calculations. The AUC held that ATCO had not complied with this direction, as it was directed to use 2009, 2010 and 2011 actual results, but instead used 2010, 2011 and 2012 actual results. The AUC held that a compliance filing was not the appropriate forum to re-argue issues with respect to source data. The AUC therefore directed ATCO to file a revised response using actual results from 2009, 2010 and 2011 as directed in Decision 2013-358.

Pursuant to direction 20, the AUC requested that ATCO provide information in respect of interim standards for the implementation of International Financial Reporting Standards ("IFRS"). The AUC also stated that it would make a finding as to whether a deferral account, as requested by the Consumers' Coalition of Alberta, was appropriate in the circumstances. As the AUC held that entities which have already applied IFRS were not eligible to apply the interim standards developed for IFRS, a deferral account for the application of interim standards was not appropriate.

Pursuant to direction 37, the AUC directed ATCO to update its 2012 closing rate base balances. ATCO submitted the updated information using 2012 actual capital project closing balances, resulting in a $106.9 million reduction in the 2013 opening rate base for transmission. The AUC held that ATCO had complied with this direction.

Pursuant to direction 58, the AUC accepted that ATCO would address the direction to audit the entirety of its Hanna Regional Transmission Development program in its subsequent GTA, and that capital additions for that project would continue as placeholders until such time as the audit is complete.

Pursuant to direction 61, the AUC directed ATCO to list the projects for which contributions in aid of construction would be required, how the contribution would be calculated, whether the contribution was received, and on what date. The AUC accepted the updated information from ATCO and directed that the information contained in this direction be included in future GTAs.

The AUC held that ATCO did not comply with direction 17, as a consequence of not complying with directions 66, 67 and 68. Pursuant to directions 66, 67 and 68, the AUC directed ATCO to make the following changes to its allocation methodology for the transmission function:

(a) Remove gross revenue from the methodology, and replace it with revenue net of commodity charges, flow through items, and items eliminated on consolidation;

(b) Remove net plant, property and equipment ("PP&E") from the methodology, and replace it with total assets; and

(c) To use the actual results from 2011.

In its compliance filing, ATCO continued to use net PP&E, arguing that total assets were not easily verifiable from financial statements, as ATCO's financial statements are based on the combined transmission and distribution functions, and would be difficult to separate. The AUC accepted this explanation and would amend its prior directions to reflect the allowable use of net PP&E.

However, the AUC held that there was no ambiguity in its remaining directions, and ATCO did not make submissions that it could not comply. The AUC held again that a compliance filing is not an appropriate forum to re-argue issues in respect of source data. Therefore the AUC directed ATCO to comply with directions 66, 67, and 68 subject to the change allowing the use of net PP&E.

Pursuant to direction 76, 77, and 78, the AUC directed that ATCO use the following methodologies with respect to calculating credit facility costs:

(a) Use 2011 actual results as an input to the calculation;

(b) Remove capital expenditure from the allocation methodology;

(c) Incorporate labour expense into the allocation methodology;

(d) Remove gross revenue from the methodology, and replace it with revenue net of commodity charges, flow through items, and items eliminated on consolidation; and

(e) Give resulting revenue figures applied in the methodology an equal weighting.

ATCO complied with the above directions, although it again submitted that it be allowed to use 2012 actual results. The AUC again held that its direction was specific in that ATCO must apply the 2011 actual results, and that a compliance filing is not a proper forum to re-argue issues in respect of source data. Therefore the AUC directed ATCO file a further compliance filing incorporating 2011 actual results.

Pursuant to direction 81, the AUC directed ATCO to file updated schedules in respect of certain affiliate transaction types. ATCO provided this information to the AUC, who held that the updated schedules were compliant with the direction.

Pursuant to direction 85, the AUC directed ATCO to revise its net income component of the variable pay program ("VPP") to reflect a maximum VPP of 10 percent for senior individuals. The total VPP amounts for 2013 and 2014 were noted by the AUC as being $546,000 and $583,000 respectively, and that the VPP net income component in the compliance application was $88,000 and $94,000 respectively. The AUC held that this was not compliant with the direction given, as the amounts exceeded 10 percent. The AUC ordered ATCO to submit a further compliance filing with a VPP of not more than $54,000 for 2013 and $58,300 for 2014.

Pursuant to direction 86, the AUC directed ATCO to reduce its total VPP amounts by 10 percent overall for 2013 and 2014. The AUC held that the updated information from ATCO was compliant with this direction.

Accordingly, the AUC directed ATCO to submit a further compliance filing to reflect the findings in this decision no later than July 15, 2014.

Capital Power Generation Services Inc. Compliance Filing Pursuant to Decision 2013-353 (Decision 2014-170)

Compliance Filing – Temporary Permit and Licence

Capital Power Generation Services Inc. ("Capital Power") is the holder of Temporary Permit and Licence U2013-657 to operate the Halkirk 615S substation connecting the Halkirk I wind power plant to the Alberta Interconnected Electric System. The temporary permit and licence was issued pursuant to Decision 2012-281.

In Decision 2012-281, the AUC noted that some construction and alteration activities related to the Halkirk 615S substation had taken place prior to Capital Power obtaining approval from the AUC to do so under section 11 of the *Hydro and Electric Energy Act ("HEEA")*. The AUC held that it would consider what further process to address those compliance issues was warranted, and would not grant a permanent permit and licence for the substation until it was satisfied with Capital Power's submissions.

The AUC released Decision 2013-353, which directed Capital Power to file:

(a) Copies of its compliance program and training materials related to approval requirements;

(b) Confirmation that its project management personnel have completed training related to the compliance program; and

(c) Copies of all proposed reporting templates for use by Capital Power personnel related to construction or alteration of facilities associated with approvals issued under the *HEEA*.

The AUC reviewed the documents filed by Capital Power, and held that it was satisfied with the submissions, noting that "[t]he submitted information is consistent with the Commission's expectations of a demonstrated commitment to compliance [...]".

Accordingly, the AUC rescinded Temporary Permit and Licence No. U2013-657, and replaced it with Permit and Licence No. U2014-243.

AltaLink Management Ltd. Ipiatik Lake 167S Substation Amendment (Decision 2014-171)
Substation Amendment

AltaLink Management Ltd. ("AltaLink") received approval to construct and operate the Ipiatik Lake 167S substation pursuant to Decision 2013-285 and under Permit and Licence No. U2013-559.

AltaLink applied for an amendment to the location of the Ipiatik Lake 167S substation approximately 120 metres northeast of its approved location, which would still place the facility at NE-30-73-07W4M (the "New Location").

AltaLink submitted that the reason for the amendment application was due to the results of a geotechnical survey which revealed deep muskeg ground conditions which would present long-term soil settlement issues requiring extensive soil removal and backfill. AltaLink identified the New Location as having more suitable ground conditions. All other aspects of the Ipiatik Lake 167S substation would proceed as under the original application.

No objections or concerns were received from stakeholders or the public.

The AUC held that the application would not have significant impacts on landowners or the environment, and complied with the Lower Athabasca Regional Plan. Accordingly, the AUC approved the application and did not require any amendments to the permits and licences.

Western Sustainable Power Inc. Transfer of TransAlta Corporation's Wind Power Plant Approvals (Decision 2014-173)
Transfer of Approvals

TransAlta Corporation ("TransAlta") applied to the Alberta Utilities Commission ("AUC") to transfer four approvals for several wind power plants to Western Sustainable Power Inc. ("Western"). The assets related to the power plants, that were the subject of the application, were transferred to Western on July 1, 2013.

The AUC held that, pursuant to the requirement under section 23 of the *Hydro and Electric Energy Act*, Western was eligible to hold the approvals in its name and transferred the approvals to Western by issuing the following:

(a) Power Plant Approval No. U2014-255 to operate the Belly River wind power plant;

(b) Power Plant Approval No. U2014-260 to operate the Blue Ridge, Waterton and Belly River Ben wind turbines;

(c) Power Plant Approval No. U2014-262 to operate the Blue Ridge West wind power plant;

(d) Power Plant Approval No. U2014-263 to operate the Waterton South wind power plant;

(e) Power Plant Approval No. U2014-264 to operate the Summerview Exploratory wind power plant;

(f) Power Plant Approval No. U2014-265 to operate the McBride Lake East Exploratory wind power plant; and

(g) Power Plant Approval No. U2014-266 to operate the McBride Lake wind power plant.

ATCO Electric Ltd. Decommissioning of Chinchaga Power Plant (Decision 2014-175)
Decommission – Power Plant

ATCO Electric Ltd. ("ATCO") owns the Chinchaga Power Plant pursuant to Approval No. U2003-447 as isolated generating units under the Isolated Generating Units and Customer Choice Regulation ("IGUCCR"). ATCO applied pursuant to section 21 of the *Hydro and Electric Energy Act* to decommission the Chinchaga Power Plant, and pursuant to section 27 of the IGUCCR to have the Chinchaga Power Plant generating units struck from Schedule B of the regulation.

ATCO stated that the power plant was no longer required, as it was terminating its agreements related to the isolated generators. ATCO, as part of the decommissioning, proposed to remove all the equipment, and leave the concrete pads that were the property of Keyera Energy Partnership, who would carry out the site remediation.

No objections or concerns were received from stakeholders or the public.

The AUC held that all technical and environmental requirements of the decommissioning had been met.

Accordingly, the AUC granted the following approvals:

(a) Approval No. U2014-267 to ATCO to decommission the Chinchaga Power Plant; and

(b) Approval to remove units CUL255, CUL432 and CUL404 from Part B of the Schedule of the IGUCCR.

AltaGas Utilities Inc. Gas Utilities Act Code of Conduct Regulation, AR 183/2003 Audit Exemption for 2013 and 2014 (Decision 2014-176)

Audit Exemption

AltaGas Utilities Inc. ("AltaGas") applied pursuant to section 41(1)(a) of the *Gas Utilities Act Code of Conduct Regulation ("GUA CCR")* requesting an exemption for the requirement to provide the AUC with audit reports for 2013 and 2014 under section 40(3).

AltaGas submitted that it had demonstrated material compliance in previous years, and that an exemption would support principles of regulatory efficiency.

The AUC considered that AltaGas had the onus of proving that the application would be in the public interest, citing section 37 of the *GUA CCR* for the proposition that compliance audits are mandatory for gas distributors and default suppliers.

The AUC denied AltaGas' application, noting that past compliance is no guarantee of future compliance, and referred to AltaGas' recurrent non-compliances in 2010 and 2012 with respect to sections 3 and 9 of the *GUA CCR*. The AUC also noted that the recent implementation of the natural gas settlements system, approved in Decision 2013-465, may create operational changes and would not weigh in favour of granting an exemption from the auditing requirement.

However, the AUC would consider waiving the requirement to have an independent auditor for each affiliated entity (i.e. allow a joint audit) if AltaGas could demonstrate that a joint audit would satisfy the purposes of the *GUA CCR* and principles of cost efficiency.

AltaGas Utilities Inc. 2013 Net Deficiency and Rider F (Decision 2014-180)

Rider F – Net Deficiency

AltaGas Utilities Inc. ("AltaGas") applied to the AUC for approval to collect its 2013 capital tracker deficiency rate rider ("Rider F") in April and May of 2014.

AltaGas calculated its total shortfall at approximately $977,647. The components of these deficiencies applied for were summarized by AltaGas as follows:

(a) $434,932 for the difference between the interim 2013 capital tracker placeholder (K Factor) set in Decision 2013-072 and the 2013 K Factor approved in Decision 2013-435;

(b) $188,605 for the outstanding balance of AltaGas' 2010 to 2012 net deficiency amounts approved in Decision 2013-160;

(c) $159,573 for the difference between AltaGas' January 1, 2013 interim rates and the rates determined in Decision 2013-270;

(d) $192,236 for the full-year return, depreciation and interest for the phase one natural gas settlement system code approved in Decision 2014-042; and

(e) $2,291 for the carrying costs associated with the above amounts pursuant to *AUC Rule 023: Rules Respecting Payment of Interest* ("*AUC Rule 023*").

No objections or concerns were received from stakeholders or the public in respect of the amounts requested.

The AUC held that the amounts, after minor corrections were made, were calculated correctly and approved the amounts.

However, the AUC held that the proposed carrying costs did not satisfy the requirements of section 3 of *AUC Rule 023*, which provides that the aggregate change in revenue must be the greater of $1,000,000 or three percent of revenue from the rates being revised in order for carrying costs to apply. In order to maintain regulatory efficiency, the AUC allowed AltaGas to collect the carrying costs as part of this decision, but directed AltaGas to refund the amounts in its upcoming 2015 performance based regulation adjustment filing.

The AUC ordered AltaGas to collect the amounts in a rider for the period of July 1, 2014 to August 31, 2014.

EPCOR Distribution & Transmission Inc. 2014 Final System Access Service Rates (Decision 2014-187)

System Access Service Rates

EPCOR Distribution & Transmission Inc. ("EDTI") applied to the AUC for approval of its 2014 final system access service rates ("SAS Rates"), to be effective October 1, 2014. SAS Rates recover charges paid to the Alberta Electric System Operator ("AESO") under its tariff for transmission service within a distribution company's service area.

EDTI forecasted its SAS Rates using a pool price of $97.58 per megawatt-hour (MWh). However, the Consumers' Coalition of Alberta advocated a lower pool price forecast between $48.68/MWh and $59.15/MWh to maintain consistency with the forecasts of other distribution providers in Alberta. In noting the inherently volatile nature of the hourly pool price, the AUC held that the 2013 average pool price of $79.95/MWh would strike an appropriate balance between the difficulties of accurately forecasting the pool price, while reducing the potential for over-collecting costs from ratepayers. The AUC therefore approved the 2013

average pool price for use as the 2014 forecast pool price in EDTI's SAS Rates.

EDTI continued to rely on its previous distribution loss factors study undertaken with data from 2002 and earlier to inform its losses costs in the SAS Rates application. The Utilities Consumer Advocate submitted that the underlying data was no longer applicable due to differences between metered data and data for actual losses. The AUC held that EDTI had adequately explained its methodology, and accepted the distribution loss study for inclusion in its point of delivery billing determinants. However, due to the age of the data, the AUC directed EDTI to update and compare its data for actual distribution loss factors with its loss factors derived from its study used to forecast loss factors for 2009 through 2013.

EDTI also applied for a Rider G to apply on its final 2014 SAS Rates that would effectively pass through the $5.50/MWh refund provided in the AESO transmission tariff pursuant to Decision 2013-425. The AUC held that EDTI's methodology of allocating the refund amount at the customer meter, including distribution losses, was reasonable and consistent with EDTI's prior applications.

The AUC accordingly approved both EDTI's 2014 final SAS Rates and EDTI's Rider G effective October 1, 2014.

AltaGas Utilities Inc. 2013-2017 PBR Phase II Negotiated Settlement Compliance Filing to Decision 2014-139 (Decision 2014-193)
Compliance Filing – Negotiated Settlement

As part of Decision 2014-139, the AUC approved AltaGas Utilities Inc.'s ("AltaGas") changes to its terms and conditions related to its 2013-2017 Performance Based Regulation – Phase II Negotiated Settlement. The AUC directed AltaGas to file a consolidated set of updated terms and conditions before June 30, 2014. AltaGas, accordingly, filed its updated terms and conditions on June 4, 2014.

No stakeholder or public objections were raised in the course of the proceeding.

The AUC held that the filing complied with its prior directions, and accordingly approved AltaGas' updated terms and conditions as filed.

Aquatera Utilities Inc. 2.85-MW Power Plant (Decision 2014-194)
Power Plant Application

Aquatera Utilities Inc. ("Aquatera") applied to the AUC to construct two 1.425-megawatt (MW) landfill gas/natural gas generators with a total capacity of 2.85-MW. The primary fuel source of the plants would be landfill gas. The proposed power plant would be located on a landfill located at SE-11-71-06W6M, and partly within the city of Grande Prairie. The City of Grande Prairie, the County of Grande Prairie No. 1 and the Town of Sexsmith wholly own Aquatera, with the City of Grande Prairie owning an absolute majority of shares. As a municipal subsidiary, Aquatera must comply with section 95 of the *Electric Utilities Act ("EUA")*, which forbids municipalities from holding interests in generating units unless the energy produced is, among other requirements, incidental to the main purpose of its facilities, and that the majority of the electricity produced will be consumed within the municipality.

No objections or concerns were received from stakeholders or the public.

Aquatera submitted that it complied with section 95 of the *EUA*, as the generating facilities would be wholly on Aquatera's property, and the generation of electricity would be incidental to the main purpose of the landfill.

The *Municipal Own-Use Generation Regulation* requires that a compliance plan be in place in addition to the requirements of section 95 of the *EUA*. Aquatera provided a copy of the Market Surveillance Administrator's acceptance of Aquatera's compliance plan.

Aquatera submitted that, due to the primary source nature of landfill gas, the *Alberta Air Emission Standards for Electric Generation* were not applicable to its proposed power plant as a result of its consultations with Alberta Environment and Sustainable Resource Development.

The AUC accepted the submissions of Aquatera, finding that the environmental impacts of the proposed site would be minimal, that Aquatera is in compliance with section 95 of the *EUA*, and that the application met all of the requirements of AUC *Rule 007: Applications for Power Plant, Substations, Transmission Lines, Industrial System Designations and Hydro Developments*.

The AUC issued the following approvals to Aquatera:

(a) Power Plant Approval No. U2014-277; and

(b) Connection Order No. U2014-278.

Alberta Electric System Operator Approval of Alberta Reliability Standard BAL-002-WECC-AB-2 and Removal of Alberta Reliability Standard BAL-STD-002-AB-0 (Decision 2014-195)
Reliability Standards

The Alberta Electric System Operator ("AESO") filed two reliability standards pursuant to section 19(4)(b) of the *Transmission Regulation*. The AESO proposed the following actions:

(a) Remove reliability standard BAL-STD-002-AB-0: Contingency Reserves; and

(b) Approve reliability standard BAL-002-WECC-AB-2: Contingency Reserve.

No objections or concerns were received from stakeholders or the public.

The AESO submitted that the purpose of the filings were to reflect updates by the Western Electricity Coordinating Council ("WECC") and the North American Electric Reliability Corporation ("NERC") of reliability standard BAL-STD-002-0 to BAL-002-WECC-2.

The new BAL-002-WECC-AB-2 reliability standard specifies the quantity and types of contingency reserves needed for normal and abnormal system conditions.

The AUC approved the changes as filed, to be effective on October 1, 2014.

Various AUC NID and Facility Applications
Needs Identification Document - Facility Applications

The AUC approved the following need applications and related facility applications upon finding that:

- The public consultation complied with *AUC Rule 007*;
- The noise impact assessment summary complied with *AUC Rule 012*;
- There was no evidence that the AESO need assessment was technically deficient;
- The facility proposed satisfied the need identified;
- Technical, siting and environmental aspects of the facilities complied with *AUC Rule 007*;
- Considering the social, economic and environmental impacts, the project is in the public interest; and
- The project is in accordance with any applicable regional plan.

Decision	Party	Application
Decision 2014-153	AESO	La Corey 721S Substation Capacity Upgrade Project Needs Identification Document
	ATCO Electric Ltd.	La Corey 721S Substation Capacity Upgrade Project Facility Application
Decision 2014-156	AESO	Redwater 171S Substation Upgrade Needs Identification Document
	AltaLink Management Ltd.	Redwater 171S Substation Upgrade Facility Application
Decision 2014-163	AESO	Meadow Creek 2081S Substation Needs Identification Document
	ATCO Electric Ltd.	Meadow Creek 2081S Substation Facility Application
Decision 2014-181	AESO	Transmission Line 7L180 and Blumenort 832S Substation Needs Identification Document
	ATCO Electric Ltd.	Transmission Line 7L180 and Blumenort 832S Substation Facility Application
Decision 2014-183	AESO	Broadmoor 420S Substation Needs Identification Document
	AltaLink Management Ltd.	Broadmoor 420S Substation Facility Application
Decision 2014-191	AESO	Benbow 397S Substation Upgrade Needs Identification Document
	Alta Link Management Ltd.	Benbow 397S Substation Upgrade Needs Identification Document

Various AUC Franchise Agreements
Franchise Agreement

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

	Franchise Fee as % of Delivery Revenue	**Linear Property Tax Rate**
Town of Tofield – FortisAlberta Inc. (Decision 2014-158)	5%	2.4%
Village of Veteran – ATCO Electric Ltd. (Decision 2014-159)	4.0%	3.38%
Town of Stavely – FortisAlberta Inc. (Decision 2014-177)	3%	2.19%
Town of Killam – FortisAlberta Inc. (Decision 2014-178)	6%	2.31%
Village of Chauvin – FortisAlberta Inc. (Decision 2014-184)	9%	3.52%
Village of Irma – FortisAlberta Inc. (Decision 2014-185)	10%	2%
Town of Raymond - FortisAlberta Inc. (Decision 2014-186)	10%	3.38%
Village of Thorsby - FortisAlberta Inc. (Decision 2014-189)	20%	3.38%
Village of Edgerton - FortisAlberta Inc. (Decision 2014-190)	16%	2.75%

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NATIONAL ENERGY BOARD

Northern Gateway Pipeline Project
GOC Approval

The Government of Canada approved the Northern Gateway Project, subject to the 209 conditions identified by the National Energy Board in proceeding OH-4-2011, by releasing Order-in-Council 2014-0809 on June 17, 2014.

Subsequent to this announcement, on June 18, 2014 the NEB issued Certificate OC-060 for the oil pipeline and Certificate OC-061 for the condensate pipeline pursuant to section 54 of the *National Energy Board Act* approving the construction and operation of the Northern Gateway Project.

Nova Gas Transmission – Administrative Monetary Penalty
Monetary Penalty

On May 23, 2014, the NEB levied an administrative monetary penalty against NOVA Gas Transmission in the amount of $16,000 arising from a violation of s. 31(a) of the *National Energy Board Act* by constructing a pipeline without a certificate or order. NOVA Gas Transmission had constructed its Musreau Lake West Receipt Meter Station at variance from the design approved by the NEB. After issuing the administrative monetary penalty, and several information requests, the NEB issued AO-001-XG-N081-021-2013 amending its previous order to match the as-built design of the Musreau Lake West Receipt Meter Station.