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, consistent with public interest requirements. RLC follows a team approach, including when working with our clients and industry experts. Visit our website to learn more about RLC.

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ALBERTA ENERGY REGULATOR

OneStop Enhancements and Fixes, AER Bulletin 2020-13

Bulletin - OneStop Platform

The AER announced on June 19, 2020, that on June 25, 2020, it would release enhancements and fixes to the OneStop platform.

The AER stated that industry would be able to request to withdraw any undecided applications currently in OneStop as well as provide reasons for the withdrawal. Two new Tableau reports will also become available within OneStop: "Disposition Expiry and Renewal Eligibility" and "Disposition Cancellation".

The AER noted that additional details would be available next month in the "What's New" document found on the OneStop landing page under "Enhancements and Fixes". New and amended quick reference guides will also be posted on the OneStop landing page next month. These support public lands applications, submissions, notifications, and import of spatial data.

Temporary Suspensions of Monitoring and Reporting Requirements End July 15, AER Bulletin 2020-14

Bulletin - End to Temporary Suspensions of Monitoring and Reporting Requirements

The AER announced on June 23, 2020, that on July 15, 2020, it would be lifting all temporary suspensions of reporting and monitoring requirements.

The AER noted that Alberta Environment and Parks and Alberta Energy have announced that Ministerial Order 17/2020 and Ministerial Order 219/2020 will be repealed on July 15, 2020. These ministerial orders temporarily suspended several reporting requirements that affected Alberta's energy industry. The suspended reporting requirements were also set out in AER Bulletin 2020-10: Relief for Industry During COVID-19 Pandemic Response.

The AER indicated that it also issued a number of decisions suspending specific monitoring and reporting requirements under the *Environmental Protection and Enhancement Act*, the *Water Act*, and the *Public Lands Act*. The AER has amended these decisions to state that all requirements that were suspended for monitoring and activities incidental to monitoring will be in effect as of July 15, 2020.

ALBERTA UTILITIES COMMISSION

***2113260 Alberta Ltd. Community Generation Designation for Oyen Community Solar Project*, AUC Decision 24845-D04-2020**

Qualification as Community Generating Unit - Solar Power Plant

In this decision, the AUC considered whether to approve an application from 2113260 Alberta Ltd., operating as Oyen Solar Partners ("OSP"), to qualify its 15-megawatt solar power plant, designated as the Oyen Community Solar Project ("Project"), as a community generating unit. The AUC approved the application and qualified the power plant as a community generating unit.

Background

The AUC approved the application to construct and operate the Project in Decision 24845-D01-2020. In this decision, the AUC considered OSP's request for the Project to be designated as a community generator under section 3 of the *Small Scale Generation Regulation* ("*SSG Reg*"). In support of its application to be qualified as a community generating unit, OSP provided a community benefits agreement signed by OSP and the Town of Oyen.

The distribution owner, ATCO Electric Ltd. ("ATCO"), confirmed that it had qualified the Project as a small-scale generator under the *SSG Reg*. ATCO stated that it would be responsible for the metering of the Project should the AUC approve the community generating unit application. ATCO stated that it was waiting for the AUC's confirmation that the Project would be designated as a community generator prior to finalizing the costs associated with the interconnection of the Project.

AUC Findings

The AUC noted that section 3 of the *SSG Reg* allows a small-scale power producer who owns a small-scale generating unit that is the subject of a community benefits agreement to apply to the AUC to have the small-scale generating unit qualified as a community generating unit. The AUC further noted that section 3 of the *SSG Reg* requires that the application include the community benefits agreement or community benefits statement that applies to the small-scale generating unit.

The AUC explained that, upon receipt of an application, the AUC determines whether the small-scale generating unit qualifies as a community generating unit. If it does qualify, the AUC determines the amount of costs for which the distribution owner should be compensated, as described in either Subsections 5(2)(a) or (3)(a)(i) of the *SSG Reg*.

The AUC noted that OSP filed its application in the form established by the AUC and included the community benefits agreement with its application. The AUC, therefore, qualified the Oyen Community Solar Project as a community generating unit under the *SSG Reg*.

The AUC further noted that section 5 of the *SSG Reg* specifies the costs for which a small-scale power producer is responsible. Specifically, in the case of a community generating unit that is not within an isolated community, as is the case with OSP's generating unit, Subsection 5(3)(a)(i) requires that the distribution owner purchase the meter that is installed for the community generating unit, to a maximum of one meter per facility. The AUC indicated that the distribution owner, ATCO, is therefore entitled to recover the costs incurred to purchase the meter for the project (estimated to be $60,000). Accordingly, the AUC imposed the following condition:

> a. Once the distribution owner has purchased the meter for the community generating unit, OSP must provide the Commission with written confirmation of the actual cost to purchase the meter.

Decision

The AUC qualified the Oyen Community Solar Project as a community generating unit.

***Alberta Power (2000) Ltd. and TransAlta Cogeneration Ltd. - Sheerness Power Plant Dual Fuel Conversion,* AUC Decision 25546-D01-2020**

Coal Plant Conversion - Dual Fuel

In this decision, the AUC considered an application from Heartland Generation Ltd. ("Heartland"), on behalf of Alberta Power (2000) Ltd. ("Alberta Power") and TransAlta Cogeneration Ltd. ("TransAlta") to alter the approval for the Sheerness Power Plant to allow for dual fuel operation (coal and natural gas) until January 31, 2023. The AUC approved the application.

Introduction and Discussion

Alberta Power, an affiliate of Heartland, and TransAlta are the owners of the Sheerness Power Plant, also designated as the Sheerness Generating Station, in the Hanna area. The power plant consists of units 1 and 2, both of which are 400-megawatt natural gas-fired generating units.

In Decision 24179-D01-2019, the AUC granted Alberta Power and TransAlta approval to alter the power plant by converting it from coal-fuelled to natural gas-fuelled. Approval 24179-D02-2019 stipulated January 31, 2023, as the construction completion date for the conversion of units 1 and 2 from coal-fuelled to natural gas-fuelled.

Heartland filed an application with the AUC for approval to alter the power plant approval to allow units 1 and 2 to operate as dual fuel coal and natural gas units until January 31, 2023.

Heartland indicated that it intends to convert units 1 and 2 from coal-fuelled to dual fuel (coal and natural gas) prior to obtaining a reliable natural gas supply. Heartland stated that units 1 and 2 cannot be classified as natural gas units until a reliable natural gas supply is obtained. Heartland submitted that the conversion would allow units 1 and 2 to operate on any combination of coal and natural gas so that the Sheerness Power Plant can provide reliable power and resiliency when planned or unplanned events cause natural gas supply to be disrupted.

Findings

The AUC determined that the application met the requirements of Section 11 of the *Hydro and Electric Energy Regulation*, and was in the public interest in accordance with Section 17 of the *Alberta Utilities Commission Act.* It approved the application, allowing units 1 and 2 to operate as dual fuel coal and natural gas units until January 31, 2023.

***Alberta Federation of Rural Electrification Associations - Decision on Preliminary Question -Application for Review of Decision 24762-D01-2019 - Consideration of ISO Rules to Implement and Operate the Capacity Market Costs Award,* AUC Decision 25375-D01-2020**

Cost Awards - Review and Variance

In this decision, the AUC considered an application filed by the Alberta Federation of Rural Electrification Associations ("AFREA") requesting a review and variance of specific findings made in Decision 24762-D01-2019 (the "Decision"). The Decision addressed applications from seven parties for approval and payment of their respective costs to participate in Proceeding 23757, which was convened by the AUC to consider an application from the Alberta Electric System Operator ("AESO") for approval of the first set of Independent System Operator rules to establish and operate a capacity market for electrical generation in Alberta. The AFREA review application concerned findings in the Decision disallowing costs claimed for the services provided by its legal counsel and consultants in Proceeding 23757. The AUC denied the review application.

In this decision, the member of the AUC panel who authored the Decision was referred to as the "Hearing Panel" and the member of the AUC panel considering the review application was referred to as the "Review Panel."

Background

The AUC commenced Proceeding 23757 by a Notice of Commission Initiated Proceeding dated July 23, 2018. In that notice, the AUC suspended the operation of the prohibition on costs recovery set out in AUC Bulletin 2008-17 with respect to Proceeding 23757. The notice further indicated that eligibility for costs recovery would be determined by the AUC and that the AUC would direct the AESO to pay approved costs.

On July 29, 2019, the AUC closed Proceeding 23757 following a request from the AESO to withdraw its application. On August 7, 2019, AFREA submitted its costs claim application for approval and payment of its costs of participating in Proceeding 23757, and the AUC assigned Proceeding 24762 to the costs proceeding.

The Hearing Panel issued the Decision on December 18, 2019. In the Decision, the Hearing Panel approved AFREA's claim for recovery of costs in the total amount of $252,797.83, representing a disallowance of approximately 55 percent of its total claimed costs of $557,839.97.

In the Decision, the Hearing Panel determined that while AFREA generally acted responsibly and contributed to the AUC's understanding of the relevant issues, it was unable to approve the full amount of the costs claimed in respect of the services performed by Main Street Law, Bema Enterprises Ltd. ("Bema"), and TENEO Consulting Inc. ("TENEO"), and for the disbursements claimed by AFREA.

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 act 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.

The review process has two stages. In the first stage, a review panel must decide whether there are grounds to review the original decision. This is sometimes referred to as the "preliminary question." If the review panel decides that there are grounds to review the decision, the AUC moves to the second stage of the review process where the AUC holds a hearing or other proceeding to decide whether to confirm, vary, or rescind the original decision. In this decision, the Review Panel decided the preliminary question.

AFREA's Review and Variance Application

In its review application, AFREA advanced several general arguments. AFREA discussed the unique circumstances surrounding Proceeding 23757, including the complexity of the proceeding and its materiality to AFREA, the number of changes to the process schedule, and the fact that the AESO's application was eventually withdrawn. The relief requested by AFREA was for the AUC to vary the Decision and approve 100 percent of the applied-for costs claimed by AFREA.

Review Panel Findings

Main Street Law

The Review Panel noted that in exercising its discretion to award costs, the AUC is guided by the factors set out in Section 11 of Rule 022. These factors include whether the costs claimed are reasonable and directly and necessarily related to the original proceeding, and whether the participant acted responsibly and contributed to a better understanding of the issues before the AUC.

The Hearing Panel reviewed Ms. Gibbons' timesheets and made a determination that the amount of time allocated towards summarization and reporting was excessive and did not directly contribute to a better understanding of the issues before the AUC. The Review Panel found that this was a discretionary decision that, on its face or on a balance of probabilities, was not unreasonable.

The Hearing Panel determined that the total hours claimed by Main Street Law for argument was excessive given that AFREA's argument and reply argument discussed a relatively limited number of technical issues, and AFREA's position on these issues did not vary drastically over the course of the proceeding. The Review Panel found that the Hearing Panel's assessment of Main Street Law's time spent on argument, relative to the number and complexity of issues it addressed, is a reasonable exercise of discretion and is entitled to deference.

Bema Enterprises Ltd.

The Review Panel considered that the Hearing Panel's assessment of Bema's hours was a finding entitled to considerable deference. The review application is not an opportunity for AFREA to provide additional justification in support of its costs claim, including further explanation of its activities, that was not provided in the first instance.

The Hearing Panel applied a general 45 percent reduction to Bema's remaining fees in respect of time allocated to several activities it identified as unreasonable, duplicative, or excessive.

The Hearing Panel observed that Bema consultants claimed a combined 70 hours of pre-hearing work to review materials from the AESO website, and an additional 75 hours to review the AESO's application, notwithstanding that much of the content between these sources overlapped. The Hearing Panel further noted that other parties in Proceeding 23757 who retained three or more consultants and submitted evidence on a similar number of issues as Bema, billed far fewer hours for the same review.

AFREA submitted that this finding represents an improper benchmarking exercise and results in an arbitrary comparison between parties. The Review Panel considered that improper benchmarking arises where a Hearing Panel relies on a direct comparison of parties' total hours as its primary tool for assessing costs, without exercising its discretion to consider relevant factors such as the nature of the interests represented by the claimant and the particular activities performed. The AUC has previously determined that where it is reviewing similar tasks on related issues, comparisons between parties can be made to assess the relative reasonableness of the costs claims.

In this case, the Hearing Panel arrived at a general reduction, in part, by determining that the time spent by Bema consultants reviewing the AESO application and website was unreasonable given the reproduction of content between these sources. In making this determination, the Hearing Panel referenced the time recorded on the same activities by other interveners whose scope and depth of intervention in Proceeding 23757 was similar to AFREA's. The Review Panel did not consider that this constitutes a benchmarking exercise.

The Review Panel also disagreed that the Hearing Panel erred in determining that Bema consultants performed duplicative work on evidence and rebuttal evidence, or that that the Hearing Panel erroneously overestimated the time spent by Bema consultants on cross-examination.

TENEO Consulting Inc.

AFREA submitted that the Hearing Panel erred in disallowing the entirety of the costs claimed for TENEO Consulting.

The Review Panel disagreed with AFREA's assertion that the AUC "indicated approval of cost recovery for TENEO Inc. as a general consultant to AFREA" or otherwise failed to convey the prospect that costs for TENEO might be disallowed. Rather, the Review Panel considered that the Hearing Panel properly followed the process established for eligible claimants in Proceeding 23757 and made an assessment of costs after the proceeding based on the criteria in Rule 022.

In the Decision, the Hearing Panel found that Ms. Monsma's primary role was to ensure AFREA's values were represented in Proceeding 23757 and that she was providing evidence from the perspective of her client, rather than serving as an independent expert. In arriving at its findings, the Hearing Panel referred to the evidence before it, including an information response in which AFREA confirmed that TENEO "does not have the expertise

in economics or the technical engineering aspects of the electricity industry." The Hearing Panel made a discretionary determination that AFREA had not demonstrated the need for the services provided by TENEO, or how those services contributed to a better understanding of the issues before the AUC.

The Review Panel noted that AFREA's review application contained submissions in support of TENEO's services, beyond what was provided in its costs application. It is not the role of a Review Panel to reassess discretionary findings of a Hearing Panel in light of new submissions that were not provided at the time of the original Decision.

Further Submissions in Support of the Review Application

AFREA advanced several general arguments in support of its review application, including that the Hearing Panel did not properly take into consideration the process changes approved by the AUC, the complexity of Proceeding 23757, the materiality of the issues to AFREA, and the eventual withdrawal of the AESO's application.

The Review Panel did not consider that any of the above arguments were indicative of an error of fact, law or jurisdiction with respect to the Decision. There was no evidence to suggest that the Hearing Panel failed to appreciate the factors identified by AFREA.

Decision

The Review Panel found that AFREA did not meet the requirements for a review of Decision 24762-D01-2019 and the application for review was dismissed.

Announcement - 2019-2020 Annual Report Card Reports on Accomplishments, Quantifies Benefits of Efficiency and Regulatory Burden Reduction Initiatives

Announcement

On June 19, 2020, the AUC issued its first annual report card, a detailed examination of its results designed and formatted for stakeholders to assess whether the AUC has met its objectives.

The AUC quantified the benefits of its initiatives it has taken and is taking to reduce regulatory burden and improve efficiency. The goal is to, where possible, identify or estimate the monetary benefits resulting from AUC actions.

The AUC's strategic and operational plans coalesce around four themes of efficiency and limiting regulatory burden, competition and markets, infrastructure, and people. The report card charts the progress of the AUC's latest efficiency initiatives, which are designed to deliver enduring change to the AUC's regulatory approach over a number of reporting cycles.

Some examples of the work underway in 2019-2020 include:

- **Regulatory Burden Reduction Roundtables**: On October 4, 2019, the AUC held a roundtable with stakeholders to gather feedback on regulatory burden. The AUC asked for comments in three areas: defining regulatory burden, suggested areas for improvement and next steps. It was clear that the major priority for AUC stakeholders was for the AUC to address its timeliness in determining major rate cases.

- **Independent, expert review of AUC rates proceedings approach**: To reflect the stakeholder priority on streamlining the process for major rates cases, the AUC created an independent three-member committee of outside experts with deep regulatory experience to review stakeholder submissions made to the AUC, to the Alberta government and to invite stakeholder submissions on its own. The committee is expected to deliver a report in July on how changes can be implemented.

- **Project Green Light**: Project Green Light is a grassroots program enabling staff to drive and pace innovation and change at the AUC. The first of the initiatives was a streamlined process to resolve boundary disputes between a distribution company and rural electrification associations. It reduced historical processing times by 75 percent.

- **Trusted-traveller approach to low-risk applications**: The AUC implemented a pilot approach to certain low-risk applications, replacing the lengthy formal application process with a simple one-page checklist. This has cut processing time dramatically.

Future annual report cards will also include an AUC Industry Impact Assessment, which will include a broader assessment of the AUC's regulatory impact. The first such assessment was scheduled for this year, however it was delayed due to the impact and uncertainty of the COVID-19 pandemic.

The COVID-19 pandemic continues to present the Alberta government and health authorities with unpredictable challenges. Within the regulatory framework, the AUC is taking a pragmatic approach to relieve regulatory burdens that may hinder the collective response to the pandemic. First and foremost is the AUC's support for Albertans as the Alberta government works with retailers to provide billing relief during the crisis. AUC staff have also taken a pragmatic view of enforcement and reporting, including the potential forbearance of certain regulatory requirements in the context of approaches market participants have taken in emergency conditions.

Announcement - Carolyn Dahl Rees Appointed as Interim AUC Chair
Announcement

On June 23, 2020, the Alberta government announced the appointment of Carolyn Dahl Rees as interim chair of the AUC, replacing departing chair and Commission member, Mark Kolesar. The appointment of Ms. Dahl Rees is effective June 24, 2020, and is for a period of up to one year.

***ATCO Gas and Pipelines Ltd. - Decision on Preliminary Question Application for Review of Decision 24333-D01-2019 2017 Capital Tracker True-Up Compliance Filing to Decision 23789-D01-2019,* AUC Decision 25380-D01-2020**
Rates - PBR - Review and Variance

In this decision, the AUC considered a review application filed by ATCO Gas, the distribution division of ATCO Gas and Pipelines Ltd., requesting a review and variance of specific findings in AUC Decision 24333-D01-2019 (the "Decision"). The AUC denied the review application.

In this decision, the members of the AUC panel who authored the Decision were referred to as the "Hearing Panel" and the members of the AUC panel considering the review application were referred to as the "Review Panel."

Background

The Hearing Panel issued the Decision on December 20, 2019. Direction, 2 of Decision 23789-D01-2019, required ATCO Gas, among other matters, to explain the increase in net book value ("NBV") for assets transferred from ATCO Pipelines to ATCO Gas. The Hearing Panel accepted ATCO Gas's explanation for the increase in NBV for contributions being transferred and recorded separately as opposed to being netted against capital expenditures (as they were in the forecast) and approved those amounts for inclusion in the K factor. However, the Hearing Panel was not persuaded that the evidence filed by ATCO Gas adequately established the prudence of costs associated with additional assets required as a result of the completion of the detailed design and additional capital work completed on the transmission line after the original estimate. The Hearing Panel required those amounts to be removed from ATCO Gas's 2017 K factor.

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 act 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.

The review process has two stages. In the first stage, a review panel must decide whether there are grounds to review the original decision. This is sometimes referred to as the "preliminary question." If the review panel

decides that there are grounds to review the decision, the AUC moves to the second stage of the review process where the AUC holds a hearing or other proceeding to decide whether to confirm, vary, or rescind the original decision. In this decision, the Review Panel decided the preliminary question.

Grounds for Review

ATCO Gas submitted that the Hearing Panel made findings that were errors of fact, law, or jurisdiction. The arguments presented in ATCO Gas's review application concerning each of these alleged errors were summarized as follows:

(a) The Hearing Panel erred by excluding prudently incurred acquisition costs of assets currently used and required to be used for distribution service.

(b) The Hearing Panel erred by failing to address the Inter-Affiliate Code of Conduct ("IACC") requiring acquisition cost to be at NBV.

(c) The Hearing Panel changed its prudence test for reviewing the NBV acquisition cost, which had been accepted by the AUC in every prior iteration of ATCO Gas's Capital Tracker filings, after-the-fact with no prior notice, resulting in a breach of procedural fairness.

Exclusion of Prudently Incurred Acquisition Costs: Errors of Fact and Law

ATCO Gas submitted that the Hearing Panel excluded from rate base the prudent cost of physical assets currently used and required to be used to maintain safe and reliable gas distribution service contrary to Section 37 of the *Gas Utilities Act* ("*GUA*"). It stated that the cost of the additional transferred assets should be included in rate base because gas distribution service cannot be maintained without the operation of those transferred facilities. In ATCO Gas's view, inherent in the AUC's approval to re-purpose gas transmission assets for gas distribution service rather than to construct new gas distribution facilities is an acknowledgement that the NBV of the former gas transmission assets necessarily would reflect costs initially incurred to provide high-pressure gas transmission service while the assets were used by ATCO Pipelines. ATCO Gas submitted that the Hearing Panel changed the test for inclusion of the full NBV of these assets after ATCO Gas purchased and re-purposed them, which it said is arbitrary, unfair, and prejudicial.

Failure to Address the IACC Requiring Acquisition Cost to be NBV: Errors of Fact and Law

ATCO Gas stated that in all capital tracker applications filed under the 2013-2017 PBR plan, it and ATCO Pipelines had consistently priced the transfer of former gas transmission assets remaining in regulated service in a manner consistent with the IACC and with prior AUC approvals. ATCO Gas submitted that the Hearing Panel did not respond to its argument that its prudence was demonstrated, in part, by complying with the AUC's directions outlined in the IACC. ATCO Gas added that disallowing part of the NBV while failing to provide reasons constitutes an error of law and/or fact.

Changing the Prudence Test Without Prior Notice: Errors of Law and Jurisdiction and Breach of Procedural Fairness

ATCO Gas submitted that the Hearing Panel's prudence assessment related to the acquisition of the transmission assets was inconsistent with that applied in prior capital tracker true-up applications. ATCO Gas submitted that the Decision set a new prudence test and submitted that the Hearing Panel, for the first time and without prior notice, disaggregated and disallowed components of ATCO Pipelines' historical costs reflected in the NBV calculation after the facilities were purchased. ATCO Gas stated that its acquisition cost of the transferred assets was at NBV at time of transfer, calculated in the same manner as in all prior ATCO Pipelines asset transfers, which is consistent with Section 37 of the *GUA*, and that the IACC has been consistently approved by the AUC as prudent in previous utility pipeline replacement asset transfers. ATCO Gas submitted that the arrival at a different conclusion by the Hearing Panel reflects the adoption of a different test, which is inconsistent with a no-hindsight prudence review. In ATCO Gas's view, it was arbitrary and unfair for the Hearing Panel to alter the prudence test,

without notice, in the final year of the capital tracker program which formed part of the 2013-2017 PBR plan, and that it was inconsistent with ATCO Gas's legitimate expectations and the principles underlying a supportive, predictable regulatory environment.

Review Panel Findings

The Review Panel found no error that could lead it to materially vary or rescind the Decision.

The Review Panel found that ATCO Gas's argument that the Hearing Panel changed the test for prudence was not supported by a reading of the Decision. The Hearing Panel had set out the test for prudence in the Decision where it adopted guidance from the Supreme Court of Canada involving appeals from decisions of the AUC and the Ontario Energy Board and in doing so, noted that "if there is insufficient information to determine that the decision was reasonable, the AUC has the discretion to direct disallowances." The Review Panel was of the view that a plain reading of the Decision showed that the Hearing Panel applied the appropriate test for prudence and that ultimately, it was not persuaded that the evidence filed by ATCO Gas adequately established that costs associated with the additional assets and capital work were prudent. The Review Panel considered the Hearing Panel's conclusions in this regard to be reasonable as they were grounded in the facts on the record, and were consistent with Section 37 of the *GUA*, contrary to ATCO Gas's suggestion.

The Review Panel did not accept ATCO Gas's argument that the Hearing Panel erred in assessing prudence in a manner inconsistent with that applied in prior capital tracker true-up applications, nor that in arriving at a different conclusion, it must have applied a different test. The Hearing Panel's arrival at a different conclusion than that in prior capital tracker true-up applications did not, on its face, amount to the application of a different test. Adopting ATCO Gas's submissions in this regard would render the AUC's prudence review under Section 37 of the *GUA* moot, and effectively strip the AUC of its ability to exercise discretion on the facts before it.

The Review Panel also disagreed with ATCO Gas that it was not afforded procedural fairness as a result of the Hearing Panel's findings and its assessment of prudence. ATCO Gas was given multiple opportunities to provide the AUC with sufficient evidence to demonstrate the prudence of the increase in NBV of the utility pipeline replacement portion of the transmission driven capital program.

ATCO Gas submitted that the Hearing Panel failed to address its argument on the IACC-prescribed NBV on the books of the seller. In the Review Panel's view, a plain reading of the Decision clearly demonstrated that the Hearing Panel considered the IACC, as evidenced by its acknowledgement of ATCO Gas's reply argument, and its findings on ATCO Gas's use of an accumulated depreciation factor and ATCO Pipelines Capitalization Policy. Furthermore, the Review Panel considered the IACC to be only one factor amongst many examined by the Hearing Panel in conducting its prudence assessment.

ATCO Gas argued that the Hearing Panel could not find the costs of the transferred assets to be imprudent because it paid the price prescribed under the IACC, and all NBV costs for each of the assets transferred were previously found to be prudent in ATCO Pipelines' rate applications. The AUC's role in a capital tracker application is to ensure that it is satisfied with differences between forecast costs of the transferred assets approved for capital tracker treatment and the actual costs of the transferred assets, particularly where there are significant differences, as is the case here. A requirement to accept the price set out in the IACC and prior rate applications would, without further inquiry, fetter the AUC's discretion when evaluating the several factors it must consider in assessing prudence. Therefore, the price set in the IACC and prior rate applications was not determinative, and it is incumbent upon the AUC to make further inquiries, when necessary, to satisfy itself that any price differences are prudent. It was clear on the face of the Decision that during Proceeding 24333, the Hearing Panel made further inquiries of ATCO Gas in respect of the difference between the forecast costs of the transferred utility pipeline replacement assets previously approved for capital tracker treatment and the actual costs of those assets when transferred. The Hearing Panel was not satisfied that the evidence provided supported the increase between forecast and actual costs and therefore found some aspects of those increased costs to be imprudent.

Decision

In answering the preliminary question, the Review Panel found that ATCO Gas did not meet the requirements for a review of the findings of the Hearing Panel in Decision 24333-D01-2019, and the application for review was dismissed.

***ATCO Electric Ltd. Hanna Region Transmission Development Deferral Account Second Compliance Filing*, AUC Decision 25521-D01-2020**

Rates - Transmission Deferral Account - Compliance Filing

In this decision, the AUC considered whether to approve an application (the "Application") by ATCO Electric Ltd. ("ATCO Electric" or "AET") for approval of its Hanna Region Transmission Development ("HRTD") deferral account second compliance filing with respect to specific AUC directions issued in the following decisions:

- Decision 22393-D02-2019, ATCO Electric's Hanna Region Transmission Development Deferral Account; and
- Decision 24753-D01-2020, ATCO Electric's Hanna Region Transmission Development Deferral Account Compliance Filing.

The AUC found that ATCO Electric complied with directions 3, 4 and 5 from Decision 22393-D02-2019 and directions 1, 2 and 3 from Decision 24753-D01-2020.

Background

On February 3, 2017, ATCO Electric filed an application with the AUC requesting approval of capital additions totalling $688.0 million for its HRTD program for the years 2012-2015. On June 6, 2019, the AUC issued Decision 22393-D02-2019. The AUC set out nine directions for ATCO Electric to address in a compliance application.

On July 22, 2019, ATCO Electric filed its compliance application. On March 19, 2020, the AUC issued Decision 24753-D01-2020. The AUC found that ATCO Electric had complied with directions 1, 2, 6, 7, 8 and 9 from Decision 22393-D02-2019, but that it had not complied with directions 3, 4 and 5. Directions 3, 4 and 5 state:

> 3. With respect to the invoices detailed above, and the legal costs for the work performed that have been attributed to the HRTD program, including any invoice submitted by Bennett Jones [LLP] to ATCO Electric in a pre-LEAF [Legal Expenditure Authorization Form] and LEAF format, ATCO Electric is directed in its compliance filing to this decision to identify, summarize and remove every expense of a similar nature to those noted in sections 7.3.1, 7.3.2 and 7.3.3 above. The Commission finds them to be unnecessary or beyond what could be considered a reasonable expenditure.
>
> 4. In light of ATCO Electric's acknowledgement that the hourly rates at the partner level exceed peer rates by approximately 10 per cent, ATCO Electric is further directed to apply a reduction of 10 per cent to the legal fees recorded at the partner level as charged by Bennett Jones to the HRTD program.
>
> 5 Finally, ATCO Electric is directed to apply a 10 per cent reduction to the remaining legal fees of Bennett Jones, in recognition of the long-standing relationship between the two parties and the volume of the work being conducted.

The AUC directed ATCO Electric to file a second compliance filing by April 20, 2020, to address the AUC's findings in Decision 22393-D02-2019. The AUC provided the following directions:

> 1. The Commission finds that ATCO Electric Ltd. has complied with directions 1, 2, 6, 7, 8 and 9 from Decision 22393-D02-2019 but that it has not complied with directions 3, 4 and 5. ATCO Electric Ltd. is directed to file a second compliance filing by April 20, 2020, to address the Commission's findings.
>
> 2. ATCO Electric is directed to include the impact of complying with Direction 3 in applying Direction 4 and, further, to take this amount into consideration in its application of Direction 5 in a further compliance filing.

> 3. The Commission directs ATCO Electric to provide an updated IR [information request] response to IR AET AUC-2019AUG29-001, which incorporates each of the directions set out in Decision 22393-D02-2019, and the current compliance filing decision, as part of the directed second compliance filing.

On April 20, 2020, ATCO Electric submitted an application to the AUC requesting approval of its HRTD deferral account second compliance filing that was prepared in accordance with the directions from Decision 24753-D01-2020 and outstanding directions from Decision 22393-D02-2019. In the application, ATCO Electric requested approval for a collection balance of $3.405 million from the Alberta Electric System Operator ("AESO") with a forecast settlement date of December 1, 2020.

Compliance with AUC Directions

In its Application, ATCO Electric responded to the three outstanding directions from Decision 24753-D01-2020 and the three outstanding directions from Decision 22393-D02-2019. The AUC accepted ATCO Electric's responses to directions 1, 2 and 3 from Decision 24753-D01-2020 and with directions 3, 4 and 5 from Decision 22393-D02-2019. The AUC did not provide additional reasons regarding its approval of ATCO Electric's response to those directions other than indicating it wished to provide guidance for future applications regarding Direction 2 on legal costs.

Direction 2 - Legal Costs

Direction 2 from Decision 24753-D01-2020, which is provided above, effectively encompassed directions 3, 4 and 5 from Decision 22393-D02-2020. In response to Direction 2 from Decision 24753-D01-2020, ATCO Electric stated that:

> AET used specific keywords taken from the 36 specific concerns identified under Section 7.3.1 (4); Section 7.3.2 (3); and Section 7.3.2 (29), to identify the quantum of disallowed costs. Where the description of a legal service included one of these keywords, the cost of this legal service was entirely removed.…

The AUC found that ATCO Electric had complied with Direction 2 from Decision 24753-D01-2020. However, the AUC directed that, in any future applications submitted by ATCO Electric to the AUC, third-party legal professionals' travel-related time will be charged, for regulatory purposes, at half the hourly rate. The AUC indicated that this finding is consistent with the scale of costs provided in Rule 022, which "allows professionals only half of their hourly rate for travel time."

Order

The AUC ordered that ATCO Electric's request to collect $3.405 million as of December 1, 2020, through a one-time charge to the AESO for the settlement of its HRTD deferral account balance was approved.

Bulletin 2020-23 - Additional Amendments to AUC Rule 027: Specified Penalties for Contravention of Reliability Standards, June 30, 2020

Bulletin - Rule 027

On May 20, 2020, the AUC approved the proposed changes to Rule 027: *Specified Penalties for Contravention of Reliability Standards*, with an effective date of June 1, 2020. These amendments were summarized in AUC Bulletin 2020-21: Amendments to AUC Rule 027: *Specified Penalties for Contravention of Reliability Standards*.

On June 1, 2020, AUC staff was contacted by the Alberta Electric System Operator regarding one reliability standard and one reliability standard requirement that were inadvertently missed in the Rule 027 penalty table.

Below is a summary of the placement of the two missed reliability standards in the penalty table of Rule 027:

Reliability standard	Proposed penalty table placement
PER-005-AB-2	Add R5 to Category 2
CIP-SUPP-002-AB	Add to Category 1

All materials related to Rule 027 can be found on the Rule-related consultations section of the AUC's website under the Rule 027 - Specified Penalties for Contravention of Reliability Standards tab.

The AUC continues to pursue opportunities to reduce the lag time between the approval of new or revised reliability standards or the removal of obsolete reliability standards and the inclusion of the new or revised reliability standards in Rule 027.

***City of Lethbridge Compliance Filing to Decision 24847-D01-2020 2018-2020 Transmission Facility Owner General Tariff Application*, AUC Decision 25570-D01-2020**

Rates - Compliance Filing - General Tariff Application

In this decision, the AUC considered an application from the City of Lethbridge's electric utility ("Lethbridge") requesting approval of its compliance filing to Decision 24847-D01-2020, which was Lethbridge's 2018-2020 transmission facility owner ("TFO") general tariff application ("GTA"). The AUC was satisfied that Lethbridge's compliance filing adequately addressed and responded to its directions in Decision 24847-D01-2020.

Compliance with the AUC's Directions from Decision 24847-D01-2020

On April 6, 2020, the AUC issued Decision 24847-D01-2020, which considered Lethbridge's 2018-2020 TFO GTA. In that decision, the AUC denied Lethbridge's requested revenue requirement regarding proposed 2020 escalation rates for "other" and "contractor" categories, a proposal to apply a direct assigned deferral account surplus to a hearing cost reserve account deficit, and certain depreciation expense related calculations.

In compliance with directions 1, 2, 3, 6 and 9, from Decision 24847-D01-2020, Lethbridge revised its 2018-2020 forecast revenue requirement and monthly tariff to the following amounts:

Table 1. Revenue requirement impact of Commission directions from Decision 24847-D01-2020

	Direction	2018	2019	2020
		($000)		
Applied for revenue requirement[4]		8,157.0	8,639.5	9,074.1
Adjust for change to escalation rates	2 & 3	n/a	n/a	(7.46)
Adjust for change to allocator factor	6	0.63	0.62	0.59
Adjust for change to deferral accounts	9	(53.4)	11.1	42.4
Total adjustment		(52.8)	11.7	35.5
Compliance filing revenue requirement		**8,104.2**	**8,651.2**	**9,109.6**
Monthly tariff ($)		**675,350**	**720,932**	**759,137**

Source: Exhibit 25570-X0002, application, Table 2, PDF page 7.

The AUC indicated it was satisfied that Lethbridge's compliance filing adequately addressed and responded to its directions from Decision 24847-D01-2020. The AUC noted, however, that there were remaining directions (Direction4 which required discussion and support of allocation methodology; Direction 5 which requires the use of AUC-approved depreciation parameters for determining forecast depreciation expense; and Direction 7 which requires the implementation of group depreciation practices for capital and depreciation related accounting transactions), intended for the next or all future GTAs. The AUC also noted Direction 8, which requires a technical workshop with intervening parties three-to-six months prior to the filing of the next GTA would also remain outstanding.

The AUC considered Lethbridge's response to Direction 10 in more detail, as set out below.

Direction 10 from Decision 24847-D01-2020

As per the AUC's instructions in Direction 10, Lethbridge calculated the required January 2018 through June 2020 true-up amount and the new monthly tariff effective July 2020, as shown in the table below:

Table 2. Proposed 2018-2020 tariff true-up calculation

	Interim monthly rate	Proposed monthly rate	Monthly difference	Accumulated difference
	($)			
Jan 2018 – Dec 2018 Decision 23009-D01-2017	593,460	675,350	81,890	982,672
Jan 2019 – Dec 2019 Decision 23009-D01-2017	593,460	720,932	127,472	1,529,667
Jan 2020 – June 2020 Decision 23009-D01-2017	593,460	759,137	165,677	994,060
Total true-up				**3,506,398**

Source: Exhibit 25570-X0002, application, Table 3, PDF page 8.

Lethbridge calculated its monthly tariff to be charged to the Alberta Electric System Operator for the use of the Lethbridge's transmission facilities for 2018-2020 based on Lethbridge's revenue requirement shown in Table 1. Lethbridge proposed to collect from the AESO it's January 2018 to June 2020 revenue shortfall between its interim monthly tariffs and approved tariffs by way of a one-time charge of $3,506,398. Effective July 1, 2020, Lethbridge would implement its 2020 monthly tariff in the amount of $759,137.

The AUC found that the annual tariff and monthly rates for the 2018-2020 test years corresponded to the respective revenue requirements and approved them on a final basis. The AUC also approved a one-time charge of $3,506,398 to be collected from the AESO for the revenue shortfall resulting from the difference between Lethbridge's interim and approved monthly tariffs between January 1, 2018, and June 30, 2020.

***Energy for Less Ltd. - Dispute of Specified Penalty,* AUC Decision 25294-D01-2020**
Notice of Specified Penalty

Energy for Less Ltd. is an authorized independent broker of Sponsor Energy Inc., a licensed retailer of electricity and natural gas in Alberta. In this decision, the AUC considered a notice of dispute filed by Energy for Less in respect of a notice of specified penalty issued to Energy for Less and confirmed the disputed specified penalty.

The background, legislation, submissions, and findings in this decision mirrored those in *Sponsor Energy Inc. - Dispute of Specified Penalty,* AUC Decision 25292-D01-2020, which is summarized in this issue of the RLC Energy Regulatory Report.

***ENMAX Power Corporation - 2018-2020 General Tariff Application Negotiated Settlement Agreement and Excluded Matters,* AUC Decision 23966-D01-2020**
Rates - General Tariff Application - Capitalization - Utility Asset Disposition Decision

In this decision, the AUC set out its determinations regarding ENMAX Power Corporation's ("EPC") application for approval of a negotiated settlement agreement ("NSA") regarding its 2018-2020 general tariff application ("GTA") and the six issues excluded from the NSA.

The AUC accepted EPC's NSA. Of the six issues excluded from the NSA, the AUC denied EPC's proposed new flow-through deferral account and Remington Project deferral account and changes to its existing major storms and natural disasters deferral account. The AUC affirmed its earlier ruling that all matters regarding Substation No. 1 are to be removed from the revenue requirement for this GTA. The AUC did not approve EPC's proposed treatment for capital leases but upheld its proposed treatment of intercompany interest revenue. Finally, the AUC

provided guidance with respect to the application of EPC's capitalization policy through its accounting practices and confirmed that only assets that are used and required to be used are to be capitalized into rate base.

Background

On December 12, 2018, EPC filed an application with the AUC for approval of its 2018-2020 GTA for the period of January 1, 2018, to December 31, 2020. It sought approval for, among other things, a 2018 revenue requirement of $85.68 million; a 2019 revenue requirement of $95.67 million; and a 2020 revenue requirement of $106.36 million.

It reached an NSA that encompassed all aspects of EPC's 2018-2020 GTA with the exception of Excluded Matters that are discussed further below.

Statutory and AUC Requirements for a Negotiated Settlement

The *Electric Utilities Act* authorizes the AUC to establish rules in respect of negotiated settlements, including settlements dealing with rate-related matters. The AUC has established rules for negotiated settlements in Rule 018: *Rules on Negotiated Settlements*.

The AUC noted that the NSA resulted in reductions to EPC's applied-for GTA revenue requirement totalling $7.80 million. The AUC also noted that the parties to the NSA agreed to the following additional process items:

(a) In future transmission business cases filed with the AUC, EPC will separate "arc flash" projects from "life cycle replacement" projects;

(b) EPC committed to examining possible distribution solutions to assess whether they are more cost-effective, including non-wires alternatives (such as storage and distributed generation), prior to proposing transmission projects that are primarily driven by distribution considerations;

(c) EPC will hold a technical meeting, with Parties and AUC staff invited to participate, on its proposed Substation No. 1, including a presentation on the Substation No. 1 Redevelopment Project with an examination of the alternatives considered and representation from both EPC distribution and EPC transmission. Minutes of the technical meeting would constitute part of the public record; and

(d) The Parties agreed to propose to the AUC that it allow an additional round of information requests for Proceeding 23966 on the Excluded Matters, to a maximum of 40 questions between the Utilities Consumer Advocate ("UCA") and Consumers' Coalition of Alberta ("CCA") to be completed in conjunction with any information requests from the AUC on the NSA. Parties would make their submissions to the AUC on any additional process steps for dealing with the Excluded Matters.

Based on the AUC's assessment of provisions of the NSA, along with the detailed analysis of the application and IR responses, the AUC found that the NSA, taken as a whole, was not patently against the public interest or contrary to law and should result in rates and terms and conditions that are just and reasonable, as required by Section 8 of Rule 018. Accordingly, the AUC approved the NSA as filed.

Excluded Matters

Major Storms and Natural Disasters Deferral Account

The AUC previously approved the major storms and natural disasters ("MSND") deferral account in Decision 2014-347. In this application, EPC proposed to modify the scope and language of the deferral account by including the phrase "and revenues lost" after "Costs caused," and replacing the word "significant" with the word "material." The applied-for changes to the description for the MSND deferral account result in the following description:

> Costs caused, and revenues lost, by major storms or natural disasters that occur in 2018 through 2020 for Transmission that cause material damage to EPC's infrastructure (net of amounts recovered through insurance or government relief).

The AUC denied EPC's requested changes to the scope and language of its MSND deferral account. The AUC noted that Section 4.1 of EPC's AUC-approved terms and conditions, which are generic to all Alberta transmission facility owners ("TFOs"), requires the ISO to pay to the TFO the amounts invoiced by the TFO "… notwithstanding any interruption or curtailment of the TFO's Transmission Services for any reason whatsoever, including an event of Force Majeure." The plain meaning of that section suggests that it is intended to ensure that a TFO is kept whole should events occur that could result in interruption or curtailment of service by the TFO to its customers.

The AUC also noted that EPC provided no explanation or rationale for the inclusion of lost revenues in the MSND deferral account in its application. The AUC found that EPC did not establish that it is at incremental risk for lost revenue due to an MSND event and provided insufficient support both in terms of the need for and the operation of the inclusion of lost revenues in the MSND deferral account.

Flow-through Deferral Account

EPC proposed a new flow-through deferral account, with the following description:

> Costs, or revenues lost, related to amendments to the Electric Utilities Act, or the regulations thereunder, or arising from AUC approved tariffs for the Test Period for EPC or other industry participants.

EPC explained that the flow-through deferral account was intended to cover two areas:

(a) costs, or lost revenues, relating to transmission resulting from amendments to the *Electric Utilities Act* and the regulations thereunder; and

(b) Transmission-related costs, or lost revenues, that arise as a consequence of AUC-approved tariffs for the Test Period for any other industry participant, including the AESO, that have a financial impact on EPC.

The AUC was not persuaded of the merits of establishing the flow-through deferral account. It noted that EPC has accepted this risk in the past; that EPC had not shown that such costs and revenues represent a significant portion of EPC's total revenue requirement or a materiality of risk; and that to the extent that a three-year Test Period increased the risk that legislative amendments will materially impact EPC, the AUC considered that the choice of a three-year Test Period for this application was under the control of EPC. It also noted that it had discontinued ATCO Electric's use of a deferral account for legislative change in Decision 2013-358.

Remington Project Deferral Account

EPC proposed a new deferral account, the Remington Project deferral account. As explained by EPC, transmission lines 2.82L and 2.83L cross Remington Development Corporation lands. These lines and:

> … associated assets were located on lands governed by a right of way ("ROW") agreement between the City and Canadian Pacific Railway. EPC acquired the transmission lines when it was created by the City. The ROW agreements were assigned to Remington when it purchased the land from Canadian Pacific Railway. Remington subsequently terminated the ROW agreement and requested that EPC's assets be removed from Remington's land.

EPC submitted that the purpose of the deferral account is to recover actual costs related to the Remington Project. These costs would include cancelled project costs, dispute resolution costs, and costs for applications before the court, the AUC, and the Surface Rights Board.

EPC added that in Decision 22089-D01-2018, the AUC determined that the prudence of expenditures related to the Remington Project should be considered after issues associated with the Remington Project have been resolved. EPC clarified that it was proposing a deferral account so that, consistent with the AUC's finding in Decision 22089-D01-2018, the prudency of the Remington Project costs could be tested at a later date.

The AUC again noted that the prudence of the Remington Project expenditures would be considered after the Remington relocation issue has been resolved. It further noted that a deferral account is not required for this prudency assessment to occur at a later date. EPC's request for a deferral account for Remington Project costs was denied.

Substation No. 1 Redevelopment Project

EPC is the owner of Substation No. 1, which is located in downtown Calgary. Substation No. 1 was built in 1912, is currently the oldest substation in EPC's system, and supplies the largest portion of the downtown secondary network in Calgary.

In the application, EPC stated that Substation No. 1 needs to be replaced as major equipment is ageing and nearing its end of life. EPC also identified that Substation No. 1 is becoming more difficult to maintain, proving it to be unreliable and is a safety risk to the public and EPC personnel. EPC explained that if Substation No. 1 is not redeveloped, then equipment failure will create the need for high-cost reactive replacement or repair, thereby disrupting power supply to downtown Calgary.

In its business case, EPC identified three alternatives for the redevelopment of Substation No. 1: (i) do nothing; (ii) rebuild the substation on the current site (the rebuild option); and (iii) build a replacement Substation No. 1 at an alternative site within the vicinity of the current site (the replacement option). EPC prefers the replacement option. A business case for the project was provided in EPC's application.

The AUC noted that on July 15, 2019, it directed EPC to establish a deferral account for the Substation No. 1 project. It noted that expenditures related to this project would eventually be reflected as actual costs in a future GTA, and that establishing a deferral account would allow testing of the prudency of actual costs in that proceeding. The AUC further noted that on December 18, 2019, EPC filed a facility application for permits and licences to construct and operate a new Substation No. 1 on an alternative site, to alter six transmission lines, and to decommission the existing Substation No. 1 on the current site. The facilities application is currently being considered in Proceeding 25206 ("Facilities Proceeding").

On January 31, 2020, in response to a request from the UCA to file evidence on the Substation No. 1 project on the record of the current rates proceeding, the AUC held that any concerns with the AUC approving EPC's forecast costs associated with the rebuild option or the proposed replacement option (collectively, the Substation No. 1 issue) could be addressed within the Facilities Proceeding, and that any rate implications related to the Substation No. 1 redevelopment project could be addressed in a future rate proceeding when actual costs for the project become available and when EPC requests that prudently incurred costs be included in rate base.

The AUC reiterated its finding that no forecast capital expenditures or capital additions related to the Substation No. 1 project are to be included in EPC's 2018-2020 application and attendant schedules. It directed EPC to revise its minimum filing requirement schedules and construction work in progress continuity schedules showing the exclusion of 2018-2020 forecast capital expenditures of $65.62 million and the exclusion of forecast capital additions of $40.0 million, with respect to land purchased for the Substation No. 1 replacement option, in its compliance filing to this decision.

The AUC directed EPC to seek approval for the costs associated with the Substation No. 1 project, and to file a business case in support of that project, in a future GTA, after a decision has been rendered in the Facilities Proceeding.

IFRS 16 Capitalized Leases

In its application, EPC explained that the international financial reporting standards ("IFRS") 16 standard for leases came into effect January 1, 2019, and that EPC is required to comply with IFRS. EPC requested the implementation of the IFRS 16 standard in this GTA which would result in office and vehicle lease costs, with terms longer than one year being treated and classified as a capital lease, rather than as an operating expense. EPC identified that it has eight vehicle leases and one office lease that are affected by IFRS. EPC included the IFRS standard changes in its application that result in lease expenses previously included in operations and maintenance, now being included in rate base and, as a result, are included in depreciation expense and return.

The AUC noted that under Section 101(2) of the *Public Utilities Act,* EPC had to seek the approval of the AUC to capitalize any of its leases. It further noted that under Rule 026: *Regulatory Accounting Procedures Pertaining to the Implementation of the IFRS,* utilities shall maintain the existing accounting practice regarding the treatment of deemed finance leases.

Pursuant to Rule 026, future regulatory accounting and regulatory reporting requirements established by the AUC will be aligned as much as possible with IFRS. However, the AUC noted that Rule 026 also establishes that IFRS requirements will not be the sole driver of regulatory requirements. The methodologies used by the AUC to establish just and reasonable rates have not always been the same as those used for external financial reporting purposes.

The AUC considered that the requirement for EPC to adopt IFRS 16, in and of itself, was insufficient in the circumstances to justify a change in accounting treatment of leases for regulatory reporting purposes. In addition, the AUC found that EPC did not adequately explain why the change to IFRS 16, which results in a higher annual revenue requirement, is in the public interest, particularly given that IFRS 16 does not affect the amount it pays to its lessor.

The AUC also disagreed with EPC's assertion that there is no reasonable justification for different treatment between utilities who purchase and lease assets.

Based on the foregoing, the AUC denied EPC's request to adopt IFRS 16 (leases) for regulatory purposes. In its compliance filing, EPC was directed to continue to use its previously approved methodology for reporting leases (as O&M costs) and to revise its lease forecast costs such that the amount of revenue requirement to be collected from customers by EPC does not vary from the annual payment amount EPC pays to its lessor.

Intercompany Interest Revenue

EPC applied to discontinue its prior practice of including intercompany interest revenue as part of its revenue offset. EPC stated that its previous inclusion of intercompany interest revenue, in its revenue offset, was in error. In prior applications, EPC treated the interest income earned under its cash concentration system as a revenue offset. In reaching the revenue offset amount, EPC did not include any of the related and offsetting intercompany interest expense.

The AUC noted that the intercompany interest revenue earned as a result of internal cash management policies and procedures (EPC's cash concentration system) was not in pursuit of performing transmission utility service. Therefore, the AUC agreed with EPC's view that ratepayers are not entitled to benefit from the proceeds of intercompany interest nor should they bear the correlating expense (if any). The AUC approved EPC's request to discontinue its prior practice of including intercompany interest revenue as part of its revenue offset.

Sections 4.2 and 4.3 of EPC's Capitalization Policy

EPC's Fixed and Intangible Asset Capitalization Standard ("Capitalization Policy") and attendant accounting treatment were examined during this proceeding, both before and after the establishment of a negotiated settlement process.

Prior to the NSP, the CCA questioned why EPC had proposed to capitalize an anticipated land purchase required for its Substation No. 1 capital project given that the project, as a whole, was not forecast to be completed or in service during the Test Period. EPC responded that because the land would be used to provide services for the redevelopment of the Substation No. 1 project, it was appropriate for the $40 million forecast land cost to be capitalized and included in rate base in 2020, the year of purchase.

The UCA questioned whether the criteria under which EPC adds assets to rate base was "when the asset is complete, connected to the system, and energized, or at some earlier time." EPC responded that the requirement for an asset to be added to rate base was when the asset becomes "presently used, reasonably used or likely to be used in the future." EPC indicated that the timing of capitalization was irrespective of whether energization or connection to the transmission system had occurred. Specifically, EPC noted the example of duct banks as being an instance where EPC "capitalizes civil assets that are considered complete and connected to the system that do not contain energized cable, as energization is not applicable at the time …"

The AUC rejected the claim of EPC's experts that under Rule 026, International Accounting Standards ("IAS") 16, Property, Plant and Equipment is recognized as an asset if there is a probability of future economic benefits as binding on the AUC's determination of rate base for regulatory purposes. As noted in Rule 026, Appendix 1, "The guiding principles … will be used when considering any proposed changes to the existing provisions of this rule or when developing and establishing any new provisions to this rule." The AUC considered that Rule 026 and IAS 16 could only provide guidance to the AUC in certain circumstances.

The AUC also rejected arguments regarding paragraph 327 of the Utility Asset Disposition Decision ("UAD Decision") as constituting evidence that the requirement for when assets should be removed from rate base, should apply equally to when an asset should be included in rate base. The AUC disagreed that the UAD Decision was intended to either replace or complement the capitalization policies and practices of Alberta utilities as a standard by which assets would be added to rate base for regulatory purposes.

In the UAD decision, the AUC discussed the requirement for all Alberta gas and electric utilities that assets be used or required to be used to provide service to the public in an operational sense. In that decision, the AUC held that "used or required to be used" means "presently used, reasonably used or likely to be used in the future." If and when a capital expenditure becomes "used or required to be used" is a factual determination, which the AUC makes based on the evidence before it.

The AUC was not satisfied by EPC's explanations that the land for Substation No. 1 Redevelopment Project, the land for Substation No. 45 – New Quarry Park Project, or the civil work related to duct banks required in EPC's direct assigned Downtown Calgary Transmission Reinforcement Project, are used or required to be used.

The AUC noted that there was no evidence in the current proceeding that points to a long-term or systemic issue with EPC's capitalization policy or practices that would otherwise lead the AUC to question EPC's 2018 opening rate base amounts. The AUC directed that commencing with 2018, EPC is to capitalize to rate base only assets that are "used or required to be used." The AUC noted that it expects EPC to interpret and apply this direction consistent with the findings provided in this decision with respect to the land and duct bank examples. EPC was further directed to effect and confirm its compliance with this direction in its compliance filing to this decision. Further, the AUC held that this direction applies to the projects at issue identified in this decision, and to any similar work or capital project of which EPC is aware in the current and any future proceedings.

***EPCOR Distribution & Transmission Inc. Disposition of Substation Property*, AUC Decision 25442-D01-2020**

Disposition of Substation Property

In this decision, the AUC considered an application from EPCOR Distribution & Transmission Inc.'s ("EPCOR" or "EDTI") to dispose of substation property No. 200 (the "substation property"), which included the land and substation building. The AUC approved EDTI's application to dispose of the substation property.

AUC Findings

Disposition of Assets and the Ordinary Course of the Business

The AUC noted that section 101(2)(d) of the *Public Utilities Act* ("*PUA*") prevents a designated owner of a public utility, such as EPCOR, from disposing of assets outside the ordinary course of business without first obtaining the approval of the AUC. Any disposition without such prior approval is void. The AUC referred to Order U2001-196 wherein the Alberta Energy and Utilities Board, a predecessor of the AUC, outlined the criteria to be used in determining whether a disposition should be treated as being outside the ordinary course of business:

> … The Board confirms that it must first determine whether the disposition of an asset is outside the ordinary course of business for a utility. The proceeds of disposition, NBV [net book value], frequency and type of sale would be among the factors considered by the Board in that determination. The quantum, and materiality (in relation to the total rate base) of the proceeds of disposition and the NBV would all be considered. For example in this case, the NBV of $2,163,801 would be at the bottom end of the range of dispositions the Board would consider as outside the ordinary course of business. With respect to the frequency and type of sale the Board does not agree with NGTL [NOVA Gas Transmission Ltd.] that acquiring and divesting regional service centres, maintenance facilities, and field offices are necessarily in the ordinary course of NGTL's business. The Board considers that NGTL's ordinary business is the owning and operating of a pipeline, not the acquiring and divesting of real estate.
>
> … The final determination whether a disposition is outside the ordinary course continues to rest with the Board.

The AUC found that EDTI's proposed sale of the substation property was outside the ordinary course of EDTI's business and the disposition required AUC approval pursuant to section 101(2)(d) of the *PUA*. The AUC noted that the sale price and the estimated net sale proceeds of the sale of $1.13 million (or 10 percent less using the revised valuation) were within the range of other similar EDTI disposition applications previously found by the AUC to be material. Given the amount of the proceeds here, the similarity of the nature of this disposition to prior disposition proceedings, and prior approvals regarding the quantum and materiality in relation to total rate base, the AUC was prepared to determine in this case that the proposed disposition was outside the ordinary course of EDTI's business.

The AUC noted that other criteria identified in Order U2001-196 include frequency of the disposition and the type of sale. EDTI stated that it engages in these types of transactions infrequently and only when a property is no longer required for its ordinary course of business, which is the provision of electric utility service. EDTI explained that eight applications for dispositions outside the ordinary course of business have been approved or applied for since 2006, yielding a ratio of one disposition every 1.8 years during that period. However, the AUC indicated it understands that as part of EDTI's program to update its distribution network and accommodate growth in its service territory; four more applications will be received in the next three years for substation dispositions. The ratio will therefore be approaching 1.0 disposition application per year. The AUC found that this level of frequency shows that these transactions are not rare. Therefore, the AUC indicated that in the future, similar disposition applications may be considered to be within the ordinary course of business, as a more common occurrence for EDTI.

Assessment of Harm

The AUC noted that, in deciding whether to approve a disposition application that is outside the ordinary course of business under section 101(2)(d) of the *PUA*, the AUC and its predecessor board have traditionally applied a "no-harm" test. The AUC stated that an application of the no-harm test requires the AUC to consider whether or not the transaction will adversely affect the quantity or quality of service or customer rates.

The AUC found that the disposition of the substation property would not result in adverse service or rate impacts. The AUC noted that the substation property is no longer required for the provision of electricity service, and therefore the proposed disposition would have no adverse effect on the quality and quantity of utility service, and the disposition would not create any adverse financial impact to ratepayers.

The AUC noted that EDTI intends to sell or dispose of the substation property at a fair market value and that EDTI has assured the AUC that ratepayers will bear no costs arising from the disposition. The AUC found that given that EDTI proposed to dispose of the substation property at its fair market value and that ratepayers would bear no costs arising from its disposal, the disposition of the substation property would not result in harm to customers.

The AUC also found that all net proceeds of sale and any net gains arising from the disposition were to be for the account of the utility shareholders, in accordance with the *Stores Block* decision.

The AUC directed EDTI to provide confirmation and details of the disposition, including the net proceeds of the disposition of substation property, in its next application dealing with actual rate base.

***Mr. Teik Tan Appeal on Village of Wabamun Water Rates for 2014-2019,* AUC Decision 24994-D01-2020**
Water Rates - Appeal

In this decision, the AUC considered whether the Village of Wabamun ("Wabamun")'s water rates were discriminatory because Mr. Tan's apartment was placed in a rate class with a higher rate as opposed to other rate classes that had similar characteristics and offered a lower rate. The AUC found that the rate charged to Mr. Teik Tan's apartment was not discriminatory.

Background

Pursuant to the *Municipal Government Act* ("*MGA*"), Wabamun has the power to pass bylaws to regulate and control water and wastewater services and usage within the village. From 2014 to 2019, Wabamun refined its water and wastewater bylaws to include new rate class definitions in addition to splitting the residential rate class into several subcategories.

Bylaw No. 11-2014, effective June 17, 2014, established a single rate class for residential customers where single family or multi-residential customers paid a rate of $40 (per residential unit) in addition to the water consumption fee of $2.30 per cubic metre. The bylaw defined a residential unit as:

> … separate dwelling units which are designed and used exclusively for living accommodations and have separate outside entrances. Without restricting the generality of the foregoing, this includes but is not limited to apartments, condominiums, each half of a duplex, basement suites. For reference a four-plex has four residential units, a duplex has two residential units and a building with 12 apartments has 12 residential units.

Bylaw No. 15-2014, effective August 19, 2014, split the residential rate class into single family and multi-residential categories. In addition to the water consumption fee, single family residential customers were charged a rate of $58, while the multi-residential customers were charged a rate of $40 per residential unit.

In Bylaw No. 03-2017, effective July 18, 2017, the multi-residential rate class was further divided into small multi-residential (1 to 4 units), medium multi-residential (5 to 10 units) and large multi-residential (11 to 30 units), with rates of $40 per unit, $30 per unit and $25 per unit, respectively. In addition to the water consumption fee of $4.30 per cubic metre, Bylaw No. 03-2017 also included definitions for apartment building, hotel and motel as follows:

> Apartment building: a group of rooms in one building, designed for use as a dwelling, furnished or unfurnished, for stays longer than one night, ie monthly or annually. For purposes of billing these are considered multi-residential units.
>
> …
>
> Hotel and motel: a temporary sleeping place for people traveling, usually furnished and has daily rates for unit rates.

Bylaw No. 06-2019, passed on March 19, 2019, increased all rates by $25 effective April 1, 2019, with the water consumption fee remaining unchanged at $4.30 per cubic metre, resulting in the following rates:

Table 1. Rates by rate class before and after Bylaw No. 06-2019[7]

Rate class	March 2019 rate	April 2019 rate
	$ per month	
Residential – single family	58.00	83.00
Multi-residential 1 to 4 units	40.00	65.00
5 to 10 units	30.00	55.00
11 to 30 units	25.00	50.00
Churches and seniors drop-in centre	65.00	90.00
Commercial & industrial	90.00	115.00
Multi-tenant commercial	145.00	170.00
Hotel, motel, laundromat/car wash	175.00	200.00
Institutional	187.00	212.00

Under the current rate structure, Wabamun considers Mr. Tan's 17-suite apartment as a residential customer and classifies it as part of the multi-residential (11 to 30 units) rate class.

Mr. Tan submitted a complaint to the AUC, arguing that the rate for his apartment was higher than the rate charged to customers in other rate classes, such as hotels and motels after Bylaw 06-2019 was passed. The AUC determined that this matter would proceed as a formal appeal.

AUC Jurisdiction Under Section 43 of the *MGA*

The AUC's jurisdiction over Wabamun's water rates arises from section 43 of the *MGA*, which states:

> **43(1)** A person who uses, receives or pays for a municipal utility service may appeal a service charge, rate or toll made in respect of it to the Alberta Utilities Commission, but may not challenge the public utility rate structure itself.
>
> **(2)** If the Alberta Utilities Commission is satisfied that the person's service charge, rate or toll
>
> (a) does not conform to the public utility rate structure established by the municipality,
> (b) has been improperly imposed, or
> (c) is discriminatory,
>
> the Commission may order the charge, rate or toll to be wholly or partly varied, adjusted or disallowed.

The AUC has authority pursuant to section 43 of the *MGA* to determine whether rates, tolls or charges themselves are discriminatory, as opposed to assessing a rate structure.

The AUC found in Decision 2010-462 that discrimination may exist where there is "… a failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored.".

In assessing whether any service charge, rate or toll is sufficiently discriminatory so as to cause the AUC to act pursuant to section 43 of the *MGA*, the AUC found it important to assess the presence or absence of any rationale or logic underlying the charges applied by a municipality to a customer and found it important to understand the whole context by which rates, tolls and charges are being imposed. Effectively, the AUC indicated it must determine whether the appellant has been placed in the correct rate class, and further determine whether reasonable distinctions may exist between customers in different rate classes to support any inconsistent treatment.

AUC Findings

The AUC noted that since the passing Bylaw No. 11-2014, Wabamun has considered residential units to include apartments. When the concept of residential units was further refined in Bylaw No. 15-2014 and then defined in Bylaw No. 03-2017, apartments continued to remain under the residential category.

The AUC noted that Bylaw No. 03-2017 defined an apartment to be a group of rooms in one building for stays longer than one night (i.e., monthly or annually). In contrast, a hotel or motel is a temporary sleeping place where daily unit rates are charged. The AUC, therefore, found that Wabamun took sufficient consideration in creating distinct and easily understandable rate classes.

The AUC found that, given that the rate classes are clearly defined and distinguishable, and pursuant to Mr. Tan's description of his apartment building, the apartment properly fell under the rate class for large multi-residential (11 to 30 units). Further, the AUC found that there was a reasonable distinction between hotels and motels and the multi-residential rate class, such that differences in rates are justified. On this basis, the AUC found that the rates charged by Wabamun to Mr. Tan were not discriminatory.

Order

The AUC found that the rate charged to Mr. Teik Tan's apartment was not discriminatory and dismissed Mr. Tan's appeal.

***Robert Tupper - Decision on Preliminary Question - Application for Review of Decision 24295-D01-2019 Salt Box Coulee Water Supply Company Ltd. Ultraviolet Light System Upgrade Rate Rider,* AUC Decision 25276-D01-2020**

Rates - Review and Variance

In this decision, the AUC determined whether to review and vary its calculation of the rate rider to recover the costs of the ultraviolet ("UV") light system upgrade approved in Decision 24295-D01-2019. The decision addressed Salt Box Coulee Water Supply Company Ltd.'s ("Salt Box") request for a rate rider to recover the costs associated with its UV system upgrade, which was filed as part of Salt Box's 2019 final rate application. Mr. Robert Tupper applied for a review of Decision 24295-D01-2019, claiming that the AUC erred in calculating the ultraviolet system rate rider by basing it on the incorrect number of lots in Calling Horse Estates. The AUC denied the review application.

Introduction and Background

Salt Box is an investor-owned water utility that provides water transmission service to Calling Horse Estates Co-Operative Limited ("Calling Horse"). Salt Box provides a single monthly bill to Calling Horse for water transmission service and Calling Horse, in turn, bills each of its members for water service.

On December 16, 2019, the AUC issued Decision 24295-D01-2019 (the "Rate Rider Decision"), finding that all Salt Box customers would benefit from a proposal by Salt Box to construct and install a UV light system upgrade and should share equally in the costs. The AUC approved the UV system rate rider amounts to be recovered from Salt Box's customers. In calculating the rate rider amount for the UV system upgrade, the AUC considered Salt Box's monthly mortgage payment associated with the construction, commissioning, and financing of the UV system upgrade. The AUC ordered that the rate rider amount for Calling Horse, one of Salt Box's customers, was to be set at $870.00/month based on 15 lots in Calling Horse Estates.

On January 15, 2020, the AUC received an application from Mr. Tupper requesting a review and variance of the Rate Rider Decision. The review application was filed under Section 10 of the *Alberta Utilities Commission Act* and Rule 016: *Review of Commission Decisions*. The AUC designated the review application as Proceeding 25276.

In this decision, the AUC member who authored the Rate Rider Decision was referred to as the "Hearing Panel" and the AUC member who considered the review application was referred to as the "Review Panel."

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 act 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.

The review process has two stages. In the first stage, a review panel must decide whether there are grounds to review the Rate Rider Decision. This is sometimes referred to as the "preliminary question." If the review panel decides that there are grounds to review the decision, it moves to the second stage of the review process where the AUC holds a hearing or other proceeding to decide whether to confirm, vary, or rescind the original decision. In this decision, the Review Panel decided the preliminary question.

Grounds for Review and Hearing Panel Findings

The Review Panel noted that the issue of the number of serviced lots for Calling Horse's customers is a question of fact. For the Review Panel to grant a review, Mr. Tupper had to demonstrate that the Hearing Panel's error is apparent on the face of the Rate Rider Decision, or otherwise exists on a balance of probabilities and that the error could lead the AUC to materially vary or rescind the Decision.

Section 4(d)(i) Grounds – Errors of Fact, Law or Jurisdiction

In the Rate Rider Decision and in Decision 21908-D01-2017 (which set interim rates for Salt Box, and approved the rate rider), the Hearing Panel and the AUC, respectively, based interim water rates for Salt Box on a total of 74 customers, which included 15 customers of Calling Horse.

In the application for review, Mr. Tupper noted that the Hearing Panel based the rate rider amount for Calling Horse on 15 customers. However, the evidence indicated there were a total of 17 lots in Calling Horse's service area. Mr. Tupper stated that six members do not receive their water from Calling Horse and, "one of these lots has been off the system for nearly 40 years, the others since July 2018. The calculation the AUC has used based the rate rider on 15 lots, it should be 11 lots."

Mr. Tupper's submissions in the proceeding leading to the Rate Rider Decision are found in an exhibit in that proceeding and are quoted below:

> Area 4 – Geographically, Calling Horse does have 17 lots but only 16 have been tied into the CHECAL [Calling Horse] distribution system for the last 35 years. Last summer we lost another 5 residents who drilled their own water wells due to uncertainties with AUC and Salt Box, in particular, AUC Proceeding 21908.

Another Calling Horse Estates resident stated that there are 17 households in Calling Horse Estates, but only 11 households are currently being serviced by Salt Box's water source. The resident argued that the AUC should use the 11 households and the 31 people living in those households. He added that Calling Horse is invoiced once per month by Salt Box, and therefore in all respects, Calling Horse is one customer to Salt Box. In addition, the piping from the pumphouse to each individual resident is owned, maintained, and operated by Calling Horse.

The Review Panel was not persuaded that the Hearing Panel's decision to base the UV system rate rider on 74 lots, including 15 lots for Calling Horse, results in, or constitutes, a reviewable error.

The evidence on the number of lots before the Hearing Panel and the response submissions of Salt Box were on the record that led to the Hearing Panel's Rate Rider Decision. The Review Panel considered that the Hearing Panel was alive to the issue of the number of customers or serviced lots at issue when the Hearing Panel stated that "In Decision 21908-D01-2017, the AUC based the interim rates on 74 customers. The AUC will continue to take a conservative approach and base the monthly amount on 74 customers that, to date, are **serviced** by Salt Box." (emphasis added) The Review Panel considered that the Hearing Panel's reference to a conservative approach to calculating the UV system rate rider acknowledged that the number of lots serviced was reasonable for calculating the rate rider, based on the evidence and submissions by parties to the proceeding. There was no

error in the absence of a specific reference to the submissions of parties in allocating the costs to customers in the Rate Rider Decision.

Another intervener (Mr. Magus) filed a February 10, 2020 statement of intent to participate and an attached letter disagreeing with charges under a previous contract and disputing amounts for Salt Box system upgrades between June 2015 and June 2017, including UV system upgrades. Mr. Magus alleged that these charges may result in potential duplication of UV system charges in the Rate Rider Decision. He submitted that Salt Box had not provided audited financial statements to support the UV system upgrade and that as a result, the Hearing Panel did not consider all of the relevant facts in setting the UV system rate rider. Neither the SIP nor the letter indicated disagreement with the number of customers that were used in the allocation of the UV system rate rider, which is the subject of this review application.

The AUC addressed the contractual agreement and the past system upgrade charges in Decision 23401-D01-2018. Given the findings in Decision 23401-D01-2018 and the Rate Rider Decision, the Review Panel found that the AUC has already substantively addressed the concerns raised by Mr. Magus in his submissions and there was an opportunity to present submissions on Salt Box's UV system rate rider and on the relevance of audited financial statements for setting final rates in Proceeding 24295. As such, the Review Panel considered that it was not necessary to provide findings in response to Mr. Magus's SIP and letter because he raised issues beyond the subject matter of the review and these were heard in earlier proceedings.

Decision

The Review Panel found that Mr. Tupper did not meet the requirements for a review of the findings of the Hearing Panel in Decision 24295-D01-2019 and the application for review was dismissed.

***Salt Box Coulee Water Supply Company Ltd. - 2020 Final Rates,* AUC Decision 24295-D02-2020**
Rates

This decision set the rates for Salt Box Coulee Water Supply Company Ltd. ("Salt Box") for water services to its customers. The AUC finalized the interim rates previously set in October 2017, with interim rates for customers remaining unchanged until July 31, 2020. Effective August 1, 2020, the AUC approved final rates for Salt Box's distribution and co-operative customers. The increase was required to provide sufficient operating funds to ensure safe and adequate service at just and reasonable rates. In considering future changes to rates by Salt Box, the AUC will require audited financial statements as directed in prior rulings and this decision.

Introduction and Background

In Decision 21908-D01-2017, the AUC approved interim rates for Salt Box and directed Salt Box to file an application for approval of final rates by July 31, 2018. After several deadline extensions, Salt Box filed its application for final rates on February 12, 2019. The AUC issued a notice of application on February 19, 2019. Submissions were received from multiple Salt Box customers.

Based on its preliminary review of the application, the AUC identified three deficiencies in the application and issued a ruling dated April 18, 2019. In the ruling, the AUC addressed the application deficiencies, including the need for audited financial statements for 2015, 2016, and 2017, confirmation of the final cost for an ultraviolet ("UV") light disinfection system upgrade and financing details for the UV system.

Following Salt Box's response to customer submissions, which included concerns regarding the cost of auditing three years of financial statements, the AUC issued a ruling on August 6, 2019, relieving Salt Box of the requirement to provide three years of audited financial statements. Instead, the AUC directed Salt Box to provide audited financial statements for 2018. The AUC ruled that the cost of the audit would be recovered from customers and directed Salt Box to proceed immediately with obtaining audited financial statements for 2018.

The AUC issued a ruling regarding the UV system upgrade and rate rider on November 1, 2019. On December 16, 2019, the AUC issued Decision 24295-D01-20197 approving rate rider amounts effective January 1, 2020, to recover the costs associated with financing, construction, and commissioning of the UV system upgrade.

In a process letter dated January 28, 2020, the AUC advised that it would provide AUC staff to perform certain accounting verification and reconciliation procedures with respect to the financial records and supporting documents of Salt Box for 2017, 2018, and 2019.

The AUC requested Salt Box to provide its consent to the accounting and verification procedures prior to commencing this process, allowing the AUC to review Salt Box's financial records for 2017, 2018, and 2019. Salt Box provided consent on February 11, 2020, however, its consent was conditional. It stated that the 2017-2019 financial statements had not been completed, and additional time would be required to prepare these statements. Data for 2019 would not be available for some time. Further, extending the accounting verification to years other than 2018 would be burdensome, and the delay would be unacceptable to Salt Box as its costs of running the utility were not being covered.

Given these constraints, the AUC considered it was untenable to delay a determination on final rates while awaiting Salt Box to complete its financial statements. The AUC determined that it would follow the process used to determine interim rates in Proceeding 21908 and proceed with setting final rates for the utility.

Compliance with Decision 21908-D01-2017

In Decision 21908-D01-2017, the AUC issued ten directions to Salt Box, seven of which were related to this application or future rate applications. The AUC found Salt Box complied with six of the directions involving support for electricity and natural gas expenses; the application of interim rates; UV system financing; filing of a final rate application; filing of proposed terms and conditions ("T&Cs") for service; and advising the AUC of regarding the status of customers. It required Salt Box to provide further information in its next rate application for four directions, including provisions of actual expense amounts for water treatment; maintenance plan information; support for administration expenses; and audited financial statements, upgrade plans, and affiliate services.

Position of the Parties Participating in the Proceeding

The AUC noted that the submissions raised by parties to the proceeding related to certain key issues and remedies. Given the statutory framework and the AUC's oversight of public utilities, the AUC noted that it would only determine the issues and remedies that come within its rate-setting jurisdiction, including the T&Cs of Salt Box, keeping in mind the safe and adequate supply of water to customers.

Revenue Requirement

In its application, Salt Box requested a revenue requirement of $248,969 for 2019. Salt Box also included in its application forecasts for 2017 and 2018. Due to the complexity of the proceeding and the number of filings on the record, Salt Box's rates were not set for 2019, and therefore, 2019 rates were subject to the interim order in Decision 21908-D01-2017.

The AUC approved forecast operator services expenses of $58,507 per year, allocated to operator services and repairs and maintenance; $26,002 in maintenance and repair expenses, consisting of $14,627 from the 25 percent allocation for operator services; $10,175 for inspections and $1,200 in miscellaneous repair expenses; forecast chemical expense of $2,500; $7,220 for water testing; $11,397 for utility expenses; $7,183 for insurance; $2,000 for accounting expenses; and $1300 for banking fees and office expenses. The AUC did not approve requested amounts for vehicles, rent, legal fees, or forecast amounts for return and depreciation. It also took steps to reduce amounts requested for other items and addressed some items requested under a section of the decision on affiliate transactions.

Affiliate Transactions

The AUC noted that affiliate transactions could be a single transaction or a series of transactions between related companies or parties. Without proper standards and parameters to guard against inappropriate affiliate conduct, preferences, or advantages, customers of a regulated business may be adversely impacted.

In considering affiliate transactions, the AUC noted that in its application, Salt Box identified that amounts to CWM Services were paid to Mr. Jeff Colvin. Regional GP Enterprises Inc. was identified as a related party in Proceeding 21908, with Mr. Jeff Colvin having signing authority for Regional GP Enterprises, and also being a director of Salt Box.

The AUC noted that Salt Box requested an amount of $70,080 be paid to affiliates for salaries and wages, vehicle, and rent. In circumstances where a utility does not have a sufficient rate base on which to earn a reasonable return, the AUC noted it may award a management fee in lieu of these amounts. In this case, the AUC considered that a management fee would be a reasonable substitute for the costs associated with affiliate transactions, and approved a management fee of $36,000 per year to be included in revenue requirement.

Approved Revenue Requirement

The AUC awarded $137,482 for the forecast and approved revenue requirement, a reduction of $111,487.08 of the amount requested by Salt Box in its application.

Capital Projects

Salt Box requested approval of at least $82,000 for forecast capital projects, consisting of approximately $20,000 for a master meter for Windmill; $45,144 for residential meters; and $17,824 for fencing. Salt Box also considered new river raw water pumps and a power generator were required.

Due to the lack of audited financial statements, the AUC noted that it did not have a clear understanding of Salt Box's rate base and the impact of these capital projects on rates. The AUC also noted uncertainty on how Salt Box would finance these capital projects, and a lack of information to support its proposed capital projects. The AUC denied these capital project requests at this time, but Salt Box is not precluded from applying for capital projects in a future general rate application.

Audited Financial Statements

The AUC outlined issues related to its directions to Salt Box to provide audited financial statements. A financial audit had not yet been undertaken, and the AUC had attempted to undertake an accounting verification and reconciliation process to confirm Salt Box's financial information for the years 2017, 2018 and 2019. While Salt Box consented to this, its consent was conditional, as it noted that 2017-2019 financial statements had not been completed and additional time would be needed and that 2019 information would not be available for some time.

The AUC noted that the provision of audited financial statements had been a source of contention between Salt Box and customers. The AUC maintained that an audit covering Salt Box's most recent financial year should be completed, and the cost of the audit should be borne by customers. Further, completing an audit will establish a financial baseline for future rate applications. On this basis, the AUC directed Salt Box to provide the AUC and interveners with audited financial statements for its most recent fiscal year, which will be 2020, by November 1, 2021, as a post-disposition document. It approved the amount of $15,000 for audited financial statements to be collected as part of Salt Box's final approved rates and established a rate rider to collect this amount over 12 months. The AUC emphasized that no further rate applications will be considered until audited financial statements are submitted.

UV Upgrade

Salt Box did not notify the AUC of any changes to the financing related to the UV system upgrade or any other changes that would impact the AUC's approval of the rate rider in Decision 24295-D01-2019.

Terms and Conditions

The AUC noted that Salt Box provided services to some customers directly, but that other residents are provided water through two cooperatives that purchase water from Salt Box and distribute it to their members using their distribution lines. The AUC considered that customers of these distribution systems should not be governed by the T&Cs of Salt Box but rather by each co-operative's respective terms and conditions.

The AUC approved certain additional T&Cs for water service to one of the cooperatives, which had a water services agreement ("WSA") with Salt Box. No evidence was provided of a WSA with the second co-operative, and the AUC directed Salt Box to (1) identify a valid WSA that may have provisions that could act as T&Cs for the second co-operative and file the valid WSA with the AUC, or (2) file a separate set of T&Cs that are proposed to apply to the second co-operative if a valid WSA is not available.

Review of the Proposed Terms and Conditions of Service Filed by Salt Box and the Water Task Force

Having established that there is a separate set of T&Cs for the two cooperatives, the AUC addressed the proposed T&Cs for other customers, as filed by Salt Box and a Water Task Force representing the cooperatives and two communities served by Salt Box. The AUC found that the proposed T&Cs filed by the Water Task Force were more comprehensive than the proposed T&Cs filed by Salt Box. Other than the changes to T&Cs filed by the Water Task Force that were specifically rejected by the AUC in the decision, the AUC approved the T&Cs filed by the Water Task Force as the T&Cs that shall govern the relationship between Salt Box and customers in the two communities not governed by cooperatives, effective August 1, 2020.

Allocation of Costs and Rate Design

In its application, Salt Box proposed the following rates:

Table 14. Proposed rates

	Customers	Fixed monthly rate	Usage charge
		($/month)	($/m³)
Residential (Ranch and Deer Springs)	29	120.00	5.50
CHECAL	17	2,040.00	5.22
Windmill	30	3,600.00	5.50

Source: Exhibit 24295-X0002, Section 3.1, PDF page 12.

Salt Box argued that its fixed fee was not high enough and a greater proportion of its rates should be fixed. Given that water is the main asset to a home, the availability of water supply should be a primary charge. Salt Box noted that it had numerous customers paying under $40 a month for water.

The AUC noted that it was not opposed to Salt Box's proposal to set the fixed monthly fee at $120 per month. Setting the fixed monthly fee at $120 per month will provide greater revenue stability to Salt Box and will also minimize monthly billing fluctuations for residential customers. Given Salt Box's need for revenue stability and customer certainty in their monthly bills, the AUC considered this to be a reasonable fixed fee amount. The AUC also approved a variable rate water charge of $1.62/m^3 on water consumption.

Approved Rates for 2020 and Reconciliation of Interim Rates

The AUC held that the interim rates approved in Decision 21908-D01-2017 were final rates from November 1, 2017, up to and including July 31, 2020, and approved the water rates noted above from August 1, 2020. With rate riders, the AUC noted that the average residential customer at a site consuming 21.59 m^3 per month would be $229.87.

***Sponsor Energy Inc. - Dispute of Specified Penalty,* AUC Decision 25292-D01-2020**
Notice of Specified Penalty

Sponsor Energy Inc. ("Sponsor") is a licensed retailer of electricity and natural gas in Alberta. In this decision, the AUC considered a notice of dispute filed by Sponsor in respect of a notice of specified penalty issued to Sponsor and confirmed the disputed specified penalty, as issued.

Background

On June 11, 2018, Bill 13: *An Act to Secure Alberta's Electricity Future*, which amended the *Alberta Utilities Commission Act*, came into force. Bill 13 added Section 63.1, empowering the AUC to issue a notice of specified penalty, in accordance with rules to be established by the AUC, to persons violating an AUC rule, order, or decision. Under Section 63.1, parties who receive a notice of specified penalty are entitled to register a dispute.

The AUC approved Rule 032: *Specified Penalties for Contravention of AUC Rules* and related amendments to certain rules pertaining to customer care and billing issues on December 11, 2018, with an effective date of January 1, 2019.

The AUC issued a notice of specified penalty to Sponsor pursuant to Section 63.1 of the *Alberta Utilities Commission Act* and Rule 032 on November 7, 2019. On January 21, 2020, Sponsor filed a notice of dispute with respect to the notice of specified penalty.

AUC staff charged by the AUC with the responsibility to investigate complaints and contraventions of AUC rules, orders, and decisions and to make recommendations to the AUC regarding the imposition of specified penalties in respect of the enforcement of AUC rules, orders and decisions was referred to as "Enforcement Staff."

The AUC assigned AUC staff (the "Review Staff") and an AUC panel (the "Review Panel") to consider Sponsor's notice of dispute. These individuals took no part in the investigation of, or the issuance of, the disputed notice of specified penalty and, as of the assignment date, measures were put in place to separate Enforcement Staff and the AUC panel that issued the notice (the "Enforcement Panel") from the Review Staff and Review Panel.

Legislation

Pursuant to Section 3(1) of Rule 032, the AUC may issue a notice of specified penalty "if the Commission is satisfied that a person has contravened one or more of the AUC rules listed in the penalty table" attached to the rule. The content of a notice of specified penalty is set out in Section 3(2) of Rule 032.

Section 4 of Rule 032, discussed in further detail below, contains a list of factors that the AUC may consider in deciding to issue a notice of specified penalty. The factors enumerated in Section 4 are as follows:

(a) the impact on any person adversely affected by the contravention;

(b) the number of persons affected by the contravention;

(c) the timeliness of the action taken by the person who committed the contravention to address the conduct, activity or omission that resulted in the contravention;

(d) the level of satisfaction of the persons affected by the contravention resulting from any action taken by the person who committed the contravention;

(e) if the conduct, action, or omission that resulted in the contravention was an isolated instance or a recurring problem; or

(f) any action taken by the person who committed the contravention to ensure compliance in the future.

Section 5 of Rule 032, along with the penalty table attached to the rule, describe a methodology for determining a specified penalty amount for contraventions of certain AUC rules. The AUC rule contraventions identified in the penalty table include contraventions of certain provisions of Rule 021: *Settlement System Code Rules* and Rule 028: *Natural Gas Settlement System Code Rules*, which are relevant in the circumstances of the notice that is in dispute.

Both Rule 021 and Rule 028 contain provisions related to a retailer's responsibility to use the correct de-select reason ("DSR") code when notifying a wire service provider or gas distributor that the retailer will no longer provide service to a customer at a site.

With respect to electricity service, Subsection 2.5(2) of Rule 021 states:

> (2) A retailer must use the correct de-select reason code when notifying a [Wire Service Provider] that it will no longer provide electricity services for the site.

With respect to gas, Subsection 2.5(2) of Rule 028 states:

> (2) A retailer must use the correct de-select reason code when notifying a distributor that it will no longer provide electricity services for the site.

In this case, the disputed notice of specified penalty related to contraventions of Subsection 2.5(2) of Rule 021 and 2.5(2) of Rule 028.

Submissions

In its notice of dispute, Sponsor did not deny that the contraventions occurred, but disputed the notice of specified penalty on the basis that Enforcement Staff did not follow the process outlined in Rule 032:

> While we are not disputing the errors that were made, and the unfortunate impact to the customer, we are disputing the Specified Penalty on the grounds that the AUC did not follow the process outlined in Rule 32.
>
> Sponsor Energy is concerned that the AUC did not consider the factors required under Section 4 (factors to be considered), specifically, section 4 subsection (f) was not considered prior to determining the fines outlined in the Specified Penalty AUC 2019-114.

Sponsor asserted that Enforcement Staff did not contact it to ascertain whether any actions were taken to prevent contraventions in the future, and that changes to its call centre processes resulted in a "complete turnaround in the improper use of drop codes."

Enforcement Staff disputed that it is required to consider each of the factors outlined in Section 4 of Rule 032 prior to issuing a notice of specified penalty. Enforcement Staff emphasized that this interpretation would effectively change the meaning of the word "may" within that section, contrary to modern principle of statutory interpretation.

In response, Sponsor argued that the only manner in which Enforcement Staff can properly exercise discretion is if it collects adequate information on each of the factors enumerated in Section 4 of Rule 032. Sponsor argued that the investigation conducted by Enforcement Staff did not properly gather information that would allow Enforcement Staff to exercise its discretion appropriately.

AUC Findings

The AUC previously determined that Enforcement Staff holds the onus of demonstrating the evidentiary basis for a disputed notice of specified penalty on a balance of probabilities. Enforcement Staff must also demonstrate that the process steps for issuing the notice outlined in Rule 032 were followed, that the penalty in the notice was calculated properly, and that the Enforcement Panel approved the issuance.

In Decision 24752-D01-2020, the AUC confirmed that once Enforcement Staff has satisfied the required onus to the applicable standard of proof, there is no further obligation to demonstrate how the Enforcement Panel considered the exercise of its statutory discretion to maintain the validity of a notice of specified penalty. Rather, the onus shifts to the party disputing the notice to demonstrate that it was unreasonable.

The Review Panel considered Sponsor's arguments and found no reason to revisit the AUC's previous findings on the allocation of the onus and standard of proof applicable to specified penalty proceedings, as described in Decision 24752-D01-2020. The Review Panel did not consider it reasonable to interpret Rule 032 as imposing on Enforcement Staff a positive obligation to demonstrate that it considered or investigated the factors in Section 4 prior to issuing a notice of specified penalty. Such an interpretation contradicts the plain language of the enabling legislation.

The Review Panel was of the view that the factors in Section 4 are a non-exhaustive and non-mandatory list. Although these factors may provide guidance to an Enforcement Panel, the inclusion of this list in Rule 032 does not constrain the AUC's authority to issue a notice of specified penalty where it is satisfied that a contravention has occurred.

In any specified penalty proceeding, the scope and extent of the investigation carried out by Enforcement Staff will necessarily respond to the circumstances of the particular contravention, including the available evidence and the particulars of the scrutinized conduct. Accordingly, the factors in Section 4 may or may not be relevant. The Review Panel did not accept Sponsor's suggestion that the operation of Rule 032, or the broader legislative scheme, requires Enforcement Staff to conduct an investigation into factors beyond what is necessary to satisfy its onus.

The Review Panel rejected Sponsor's arguments regarding the fettering of the Enforcement Panel's discretion, as well as arguments regarding the denial of procedural fairness. It also disagreed with Sponsor's argument that the Enforcement Panel failed to provide reasons, noting that the notice of specified penalty set out the circumstances of the contraventions and facts relied on by the Enforcement Panel.

The Review Panel dismissed the notice of dispute and confirmed the specified penalty set out in the notice of specified penalty.