



# ENERGY REGULATORY REPORT

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

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**IN THIS ISSUE:**

<b>Alberta Court of Appeal .....</b>	<b>3</b>
ENMAX Energy Corporation v TransAlta Generation Partnership, 2022 ABCA 206.....	3
<b>Alberta Energy Regulator .....</b>	<b>5</b>
Directive 050 Correction, AER Bulletin 2022-19 .....	5
New Functionality Moving to OneStop, AER Bulletin 2022-20.....	5
Manual 005: Pipeline Inspections New Edition, AER Bulletin 2022-21 .....	6
Invitation for Feedback on Revisions to Draft Directive 023, AER Bulletin 2022-22.....	6
Mandatory Closure Spend Target Set for 2023, AER Bulletin 2022-23 .....	6
Whitecap Resources Inc. Regulatory Appeal of Reclamation Certificate 382273, 2022 ABAER 002 .....	7
<b>Alberta Utilities Commission.....</b>	<b>9</b>
Initiation of Stakeholder Consultation Process for AUC Rule 012: Noise Control, AUC Bulletin 2022-08.....	9
AltaLink Management Ltd. Brooks Solar Farm Connection, AUC Decision 27284-D01-2022.....	9
AltaLink Management Ltd. Decision on Application for Variance of Decision 26509-D01-2022 (Corrigenda)	
AltaLink Management Ltd. 2022-2023 General Tariff Application (Pipeline Electrical Interference Mitigation Program), AUC Decision 27238-D01-2022 .....	10
AltaLink Management Ltd. Hilda Wind G.P. Inc. Hilda Wind Power Project Connection Applications, AUC Decision 27320-D01-2022.....	11
Alberta Electric System Operator Approval of New Alberta Reliability Standard CIP-012-AB-1, AUC Decision 27372-D01-2022.....	12
Alberta Electric System Operator Request for Guidance on the Treatment of a Line Loss Refund Related to the Calgary Energy Centre, AUC Decision 27048-D01-2022 .....	12

Alberta Electric System Operator Utility Payment Deferral Program: Rate Rider - Electricity, AUC Decision 26684-D02-2022 .....	13
Buffalo Plains Wind Farm Inc. and AltaLink Management Ltd. Buffalo Plains Wind Farm Connection Project, AUC Decision 27167-D01-2022 .....	14
CNOOC Petroleum North America ULC Long Lake Industrial System Designation Amendment, AUC Decision 27279-D01-2022 .....	16
Concord Stavely GP2 Ltd. Stavely Solar Power Project Amendments and Time Extension, AUC Decision 27342-D01-2022 .....	17
Concord Vulcan GP2 Ltd. Vulcan Solar Project Battery Energy Storage System Addition, AUC Decision 27215-D01-2022 .....	17
Enforcement Staff of the AUC, Allegations Against ATCO Electric Ltd., AUC Decision 27013-D01-2022 .....	18
ENMAX Energy Corporation 2021 COVID-19 Deferral Account Application, AUC Decision 27355-D01-2022 .....	19
ENMAX Power Corporation and EPCOR Distribution & Transmission Inc. 2023 Cost of Service Review, AUC Decision 26617-D01-2022 .....	20
Equinix Canada Ltd. 25.75-Megawatt Emergency Standby Generators, AUC Decision 27343-D01-2022 .....	20
Jenner 1 GP Inc., Jenner 2 GP Inc., and Jenner 3 GP Inc., Applications for Orders Permitting the Sharing of Records Not Available to the Public, AUC Decisions 27429-D01-2022, 27430-D01-2022, and 27431-D01-2022 .....	21
NEXUS Energy Associates Ltd. Rocky Power Plants, AUC Decision 27198-D01-2022 .....	22
Solartility Inc. Micro-generation Dispute Regarding Bi-Directional Interval Meters for Solartility Customers, AUC Decision 27161-D01-2022 .....	23
TERIC Power Ltd. eReserve4 Battery Energy Storage Power Plant Project, AUC Decision 27234-D01-2022 .....	24
TERIC Power Ltd. eReserve5 Battery Energy Storage Power Plant Project, AUC Decision 27239-D01-2022 .....	25
TERIC Power Ltd. eReserve6 Battery Energy Storage Power Plant Project, AUC Decision 27236-D01-2022 .....	26
TransAlta Corporation Application for Debt Financing Approvals, AUC Decision 27452-D01-2022 .....	27
Wheatland Wind Project Ltd. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Wheatland Wind Power Project, AUC Decision 27379-D01-2022 .....	28
<b>Canada Energy Regulator .....</b>	<b>30</b>
AltaGas LPG General Partner Inc., on Behalf of AltaGas LPG Limited Partnership Application for a Licence to Export Butane, CER Letter Decision A8E7K4 .....	30

## ALBERTA COURT OF APPEAL

**ENMAX Energy Corporation v TransAlta Generation Partnership, 2022 ABCA 206**  
*Electricity - Appeal*Appeal

ENMAX Energy Corporation (“ENMAX”) and the Balancing Pool (together, the “Appellants”), appealed an arbitration award finding that Keephills Generating Unit #1 was offline for 216 days as result of *force majeure*. The Appellants claimed that, in the course of commercial arbitration, they were treated “manifestly unfairly and unequally” by the arbitration panel and not given the opportunity to present their case.

Decision

The appeal was dismissed.

Applicable Legislation

[Arbitration Act](#), RSA 2000, c A-43.

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

[International Commercial Arbitration Act](#), RSA 2000, c I-5.

*Power Purchase Arrangements Determination Regulation*, Alta Reg 175/2000.

Pertinent Issues

Permission to appeal was granted on one issue: whether the chambers judge erred in concluding the Appellants were not treated manifestly unfairly and unequally or prevented from presenting their case or responding to TransAlta Generation Partnership (“TransAlta”)’s case.

The Alberta Court of Appeal (“ABCA”) found that the appeal from the chambers judge’s decision to the ABCA is subject to the usual appellate standards of review. The ABCA found that the interpretation of s. 45(1)(f) of the *Arbitration Act* (the “*Act*”), which incorporates elements of natural justice and procedural fairness, is a question of law reviewable for correctness. The ABCA however also found that if there is a flaw in the arbitral process sufficient to contravene s. 45(1) of the *Act*, the decision of whether to set the arbitration award aside engages the chambers judge’s discretion and is entitled to deference on appeal.

The ABCA found that determining what constitutes manifest unfairness and unequal treatment or lack of opportunity to present a case under s. 45(1)(f) of the *Act* is a matter of statutory interpretation. It requires reading the section in its entire context and in its grammatical and ordinary sense, harmoniously with the statutory scheme, the object of the statute, and the legislature’s intention.

Regarding the specific phrase “treated manifestly unfairly and unequally” in s. 45(1)(f) of the *Act*, the ABCA agreed with the chambers judge that “manifestly” speaks to how apparent the unfairness is and whether it is obvious or clear.

On a review of s. 45(1)(f) as a whole, in the context of the entire *Act* and the purposes of the legislation, the ABCA made several observations: The *Act* imposes an obligation on arbitral panels to accord parties natural justice. While it is accepted as a foundational principle that the arbitration panel will treat parties fairly and give them an opportunity to present their case.

The ABCA reiterated that not every procedural breach during an arbitration will result in judicial intervention. Courts should intervene “only in cases of the most egregious procedural breaches”.

A party may be unable to present its case when: (a) the award is based on a theory of liability that either or both of the parties were not given an opportunity to address, or based on a theory of the case not argued for by either of the parties; (b) a party was not given an opportunity to respond to arguments made by an opposing party; or (c) the tribunal ignored or failed to take the evidence or submissions of the parties into account.

The ABCA reviewed the relevant jurisprudence and extracted the following principles: first, parties to an arbitration are entitled to a fair hearing, not a perfect hearing; second, the overall fairness of the proceedings must be considered, not individual rulings; third, parties must take advantage of and exercise diligence in pursuing issues and cannot later complain of some perceived unfairness resulting from their failure to do so; fourth, not every refusal to admit relevant evidence is a breach of natural justice; and, fifth, the threshold for setting aside an arbitration award on the grounds of unfairness has been described in various ways, but the cases make it clear that something of a significant nature is required, or that the excluded evidence was crucial to the case being presented.

The ABCA found that the chambers judge did not commit a palpable and overriding error in concluding that the failure to order production of the requested records earlier in the process did not render the entire arbitral process manifestly unfair or deprive the Appellants of the opportunity to present their case or respond to that of TransAlta.

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**ALBERTA ENERGY REGULATOR*****Directive 050 Correction, AER Bulletin 2022-19****Oil and Gas - Rules*

On June 1, 2022, the AER released a corrected edition of *Directive 050: Drilling Waste Management*. The correction restores requirements that the AER inadvertently removed from the edition released on March 28, 2022. The corrections reflect the requirements in the draft directive released for public feedback on November 19, 2021.

The AER corrected the following sections to reflect current regulatory and operational requirements:

- Section 2, “Overview of Drilling Waste Management Methods,” requirement 4;
- Section 6.4, “Remote Site Requirements,” requirement 73;
- Section 8.3, “Disposal onto Forested Public Lands Disposal Requirements,” requirements 86 through 89, 91(a)(c), and 92(a)(b); and
- Section 9.3, “Pump-off Disposal Requirements,” requirement 99.

The AER also made adjustments and clarifications to terminology.

***New Functionality Moving to OneStop, AER Bulletin 2022-20****Oil and Gas - Land*

The AER announced that as of June 16, 2022, the OneStop platform would include new functionality and enhancements.

*Public Lands Act Waivers*

Effective June 16, 2022, disposition holders must submit *Public Lands Act* (“PLA”) waivers as “Submissions” in OneStop. The AER will process waivers sent by e-mail until June 15, 2022. Following that date, the AER will no longer accept e-mailed waivers.

Three types of waivers are available for submission in OneStop as defined in *Public Lands Administration Regulation Table: A2: Waiver-Activity Timing Conditions; Waiver-Alternative Construction Technique; and Waiver-Other Conditions*.

*Public Lands Application Process*

The AER will enhance the land section in OneStop to reflect policy changes made to the Land Use Reservation Program (“LURP”) by Alberta Environment and Parks.

Changes include updates to regulatory processes:

- Considering reservations when land applications intersect a Crown Land Reservation (“CLR”); and
- Converting existing reservations and notations to the new CLR naming convention.

The AER will update *Manual 018: OneStop Public Lands Application* to reflect policy changes made to LURP and provide guidance on enhancements to the land section in OneStop.

### Record of Site Condition Module

The AER changed the Record of Site Condition module in OneStop. Changes include the removal of several assessment criteria. Fewer assessment criteria will result in more baseline low-risk activity, including the automatic acceptance of low-risk Remedial Action Plans. Other enhancements will improve the module's functionality.

### Well Logs

The AER added the option to add raster and Log ASCII Standard files for well logs to submissions with an event sequence greater than nine.

### Training and Support Materials

The AER posted a new quick reference guide on the OneStop Help page to support PLA waivers.

### **Manual 005: Pipeline Inspections New Edition, AER Bulletin 2022-21**

#### **Oil and Gas - Rules**

With this bulletin, the AER announced the release of a new edition of AER *Manual 005: Pipeline Inspections*.

In the new edition of *Manual 005*, the AER:

- (a) added non-compliance statements to reflect updates to *Directive 055: Storage Requirements for the Upstream Petroleum Industry* and *Directive 058: Oilfield Waste Management Requirements for the Upstream Petroleum Industry*; and
- (b) removed low- and high-risk ratings to align with the *Integrated Compliance Assurance Framework* and *Manual 013: Compliance and Enforcement Program*.

The AER noted that *Manual 005* is not an exhaustive inventory of all the pipeline non-compliance statements. It is further not a comprehensive restatement of the regulatory requirements and does not absolve companies of their responsibility for understanding and complying with all relevant requirements.

### **Invitation for Feedback on Revisions to Draft Directive 023, AER Bulletin 2022-22**

#### **Oil and Gas**

The AER announced that it is seeking feedback on the proposed updates to *Directive 023: Oil Sands Project Applications*. In the changes to the draft, the AER:

- removed duplicate requirements in other directives (e.g., *Directive 085: Fluid Tailings Management for Oil Sands Mining Projects*) or provincial legislation;
- aligned the socioeconomic requirements with the *Environmental Protection and Enhancement Act*, and clarified socioeconomic requirements for applications without an environmental impact assessment; and
- moved all reservoir containment requirements from *Directive 086: Reservoir Containment Application Requirements for Steam-Assisted Gravity Drainage Projects in the Shallow Athabasca Oil Sands Area* into s. 7 of *Directive 023*.

### **Mandatory Closure Spend Target Set for 2023, AER Bulletin 2022-23**

#### **Oil and Gas - Facilities**

Under the Government of Alberta's new *Liability Management Framework*, the AER has implemented an Inventory Reduction Program (described in *Directive 088: Licensee Life-Cycle Management*), which involves

setting industry-wide closure spend targets. Setting closure spend targets increases the amount of closure work occurring in the province as it requires licensees to spend a minimum amount annually on abandoning, remediating, and reclaiming their oil and gas sites.

To determine closure targets, the AER uses liability associated with inactive wells (as per *Directive 013: Suspension Requirements for Wells*) and inactive facilities (no activity for 12 months) (collectively, “Inactive Liability”).

Targets are reviewed annually and are subject to change. After reviewing the 2023 closure target, the AER opted to increase the target based on:

- (a) preliminary AER data indicating that in 2021 about \$628 million was spent on closure activity, funded by industry and grants from the Government of Alberta’s Site Rehabilitation Program. This amount represents a closure expenditure that is 48 percent higher than the industry-wide mandatory target set for 2022;
- (b) the consideration that higher commodity prices are creating the financial conditions where licensees can increase closure spending; and
- (c) growth in the oil and gas service sector for the first time since 2014, supported by the Site Rehabilitation Program. Increasing the closure target helps maintain that growth.

The AER set an industry-wide mandatory target of \$700 million for 2023, forecasting an increase to \$992 million in 2027.

#### Licensee-Specific Targets

Each oil and gas licensee with inactive wells and facilities is required to meet an individual annual mandatory target.

In setting licensee-specific targets, the AER considers the licensee’s proportion of the total industry Inactive Liability and the licensee’s financial health, determined using financial information provided under *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals*.

Licensee-specific targets for 2023 will be visible by July 31 within OneStop. Licensees may still commit to a voluntary closure spend target exceeding their mandatory target to qualify for incentives.

#### ***Whitecap Resources Inc. Regulatory Appeal of Reclamation Certificate 382273, 2022 ABAER 002*** *Oil and Gas - Facilities*

#### Application

On July 18, 2019, the AER approved a reclamation certificate application from Whitecap Resources Inc. (“Whitecap”). Reclamation Certificate 382273 (the “Reclamation Certificate”) was consequently issued. The affected landowners, Mr. Herman and Mrs. Shirley Dorin (the “Dorins”) filed a request for regulatory appeal. The AER granted the regulatory appeal request in part and specified the request was granted on the question of whether the Reclamation Certificate was properly issued.

#### Decision

The AER confirmed the previous decision to issue the Reclamation Certificate.

#### Applicable Legislation

[Alberta Energy Regulator Rules of Practice](#), Alta Reg 99/2013.

[\*Conservation and Reclamation Regulation\*](#), Alta Reg 115/1993.

[\*Contaminated Sites Policy Framework\*](#).

[\*Environmental Protection and Enhancement Act\*](#), RSA 2000, c E-12.

[\*Responsible Energy Development Act\*](#), SA 2012, c R-17.3.

[\*Salt Contamination Assessment and Remediation Guidelines\*](#).

#### Pertinent Issues

The Dorins raised issues regarding fencing, road status and soil conditions. The Dorins also alleged that the process resulting in the issuing of the Reclamation Process was procedurally unfair.

The AER determined that there was sufficient evidence on the record to conclude that the fencing that remains in place is useful to the landowners. The AER found that there was not enough evidence to allow the conclusion that the remaining fencing impedes the use of the lands or that it poses a hazard.

The AER further found that while it would have been preferable if Whitecap had sought confirmation from the Dorins regarding the reclamation of the east-west road, in the absence of such confirmation, the various indications of the landowners' intentions about the east-west access demonstrate an expectation on the part of the Dorins that Whitecap would not reclaim the east-west access road and that it would remain in place.

The AER determined that the Dorins have not provided enough evidence to support their contention that salt contamination resulted from sources other than manure. The evidence showed a clear link between manure salts off the well site and salts in samples on the well site. The AER found that manure is the most likely cause of the elevated salinity. The AER determined that it was unreasonable to expect mitigation of manure effects to be within Whitecap's control and that well site productivity and ecological function are equivalent to off site conditions, and that remediation is not required.

The AER found that the Dorins' participation in the application review process was extensive and that they had been given every needed opportunity to submit information, arguments, and communicate with the AER.

The AER however found that the process for issuing the Reclamation Certificate after the application was reviewed was so flawed, that it was unfair. The AER remedied any unfairness through this regulatory appeal process. The regulatory appeal process provided ample opportunity for the Dorins to have their submissions fully considered by the panel.



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**ALBERTA UTILITIES COMMISSION*****Initiation of Stakeholder Consultation Process for AUC Rule 012: Noise Control, AUC Bulletin 2022-08***  
*Facilities - Rules*

The AUC is reviewing its rules to eliminate requirements that may have become outdated or unnecessary and is exploring opportunities to streamline and improve regulation and adjudicative processes.

The AUC is initiating a written consultation process on potential changes to specific provisions of *Rule 012: Noise Control* (“*Rule 012*”). The first section of changes aims to clarify the requirements for noise terminology, assessment approaches, modelling methods, and measurement procedures. The second section of changes are edits that seek to remove redundant information, clarify the requirements and improve the rule format to be consistent with other updated rules.

An overview of the potential changes and a draft blacklined *Rule 012* are available on the AUC’s *Rule 012* consultation webpage.

***AltaLink Management Ltd. Brooks Solar Farm Connection, AUC Decision 27284-D01-2022***  
*Electricity - Facilities*Application

AltaLink Management Ltd. (“AML”) applied for a 240-kilovolt (“kV”) transmission line, designated as Transmission Line 1136L (“Line 1136L”). Line 1136L will be constructed from the Zachary 997S Substation at the Brooks Solar Farm to the Cassils 324S Substation.

Decision

The AUC decided that the project was in the public interest. Pursuant to ss. 14, 15, 18, and 19 of the *Hydro and Electric Energy Act*, the AUC approved the applications to construct and operate Line 1136L, alter and operate the Cassils 324S Substation, and connect Line 1136L to the Zachary 997S Substation.

Applicable Legislation

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

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

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - ss 14, 15, 18, and 19.

Pertinent Issues

Solar Krafte Utilities Inc. (“Solar Krafte”) has the approval to construct the Brooks Solar Farm (the “Solar Project”). To connect the Solar Project to the Alberta Interconnected Electric System, Solar Krafte requested system access from the Alberta Electric System Operator (“AESO”). In response to that request, the AESO filed a needs identification document (“NID”) application with the AUC proposing the construction of a transmission line to connect the Zachary 997S Substation to AML’s existing Cassils 324S Substation using a radial configuration.

Line 1136L and associated 35-meter-wide right-of-way would be located on privately-owned land, part of which is leased by AML. Construction of the approximately 200-meter-long line would require a temporary workspace on the east side of the right-of-way and include the installation of three H-frame single-circuit structures. AML also filed applications for approval to connect Line 1136L to Solar Krafte’s Zachary 997S Substation and add one 240-kV circuit breaker to the Cassils 324S Substation to accommodate the connection.

The AUC determined that the applications met the information requirements specified in *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* (“Rule 007”). The proposed development is consistent with the need approved in Approval 27255-D01-2022 and meets the requirements of the AESO’s functional specification.

The AUC accepted that AML can minimize the environmental effects of Line 1136L and that there will be no significant adverse environmental effects.

***AltaLink Management Ltd. Decision on Application for Variance of Decision 26509-D01-2022 (Corrigenda) AltaLink Management Ltd. 2022-2023 General Tariff Application (Pipeline Electrical Interference Mitigation Program), AUC Decision 27238-D01-2022***  
*Electricity - Rates*

Application

AltaLink Management Ltd. (“AML”) applied for review and variance of a section of the decision on AML’s general tariff application (“GTA”), Decision 26509-D01-2022 (Corrigenda) (the “GTA Decision”). S. 10.1.10 of the GTA Decision addresses AML’s proposed capital expenditures for its Pipeline Electrical Interference Mitigation Program (“PEIMP”).

Decision

The AUC varied the findings and directions in s. 10.1.10 of the GTA Decision. The AUC required AML to submit a compliance filing reflecting this decision’s conclusions.

Applicable Legislation

[Safety Codes Act](#), RSA 2000, c S-1.

Pertinent Issues

In its GTA, AML requested approval of its applied-for revenue requirement for the 2022-2023 test period. In the GTA Decision, the AUC did not approve forecast capital expenditures of \$4.510 million in 2022 and \$3.375 million in 2023, or any other amount, for AML’s PEIMP because AML had not provided sufficient evidence. AML also requested that the AUC review and vary the findings in Section 10.1.10 of the GTA Decision.

The AUC found that AML should reduce its forecast capital expenditures by \$255,000 in 2022 and \$425,000 in 2023. AML confirmed that it and the applicable pipeline owners would pay capital expenditures in these amounts.

The AUC found that AML’s forecast of 16 events to be studied in 2022 at the cost of \$1.36 million and 20 events to be studied in 2023 at the cost of \$1.7 million is reasonable and accepted the amounts as capital expenditures. The AUC directed AML to provide sufficient information in its next GTA and a supporting business case to test the prudence of these costs on an actual basis.

The AUC found that interference studies are required for the capital program at issue and agreed that AML, as a transmission facility owner, is obligated to perform these interference studies, which are funded by AML and capitalized in accordance with its capitalization criteria. The AUC found AML’s forecast of 25 interference studies per year, amounting to \$1.250 million per year, to be a reasonable estimate for this work.

The AUC consequently varied the findings and directions in s. 10.1.10 of the GTA Decision.

**AltaLink Management Ltd. Hilda Wind G.P. Inc. Hilda Wind Power Project Connection Applications, AUC Decision 27320-D01-2022**  
*Facilities - Electricity*

Application

Hilda Wind G.P. Inc. (“Hilda Wind”) and AltaLink Management Ltd. (“AML”) filed facility applications for the Hilda Wind Power Project Connection (the “Project”).

Decision

Under ss. 14, 15, and 19 of the *Hydro and Electric Energy Act*, (“HEEA”) the AUC granted Hilda Wind G.P. Inc. approval to construct and operate Transmission Line 658AL.

Under ss. 14, 15, 18, and 19 of the *HEEA*, the AUC granted AML approval to construct and operate the Hilda 662R Radio Site, alter Transmission Line 658L, and connect Transmission Line 658L to Transmission Line 658AL.

Applicable Legislation

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

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

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - ss 14, 15, 18, and 19.

[Transmission Regulation](#), Alta Reg 86/2007.

[Wildlife Directive for Alberta Wind Energy Projects.](#)

Pertinent Issues

The AUC had already granted Hilda Wind approval to construct and operate the 100-megawatt Hilda Wind Power Plant and the Hilda 662S Substation. The Alberta Electric System Operator issued a letter of approval for the need for transmission development to respond to the system access service request from the market participant Hilda Wind.

Hilda Wind applied to the AUC for approval to construct and operate a 138-kilovolt transmission line designated Transmission Line 658AL (“Line 658AL”). Line 658AL will connect the Hilda 662S Substation to AML’s existing Transmission Line 658L to connect the wind power plant to the Alberta Interconnected Electric System.

AML applied for permission to alter existing Transmission Line 658L to accommodate the connection and for permission to connect Transmission Line 658L to Transmission Line 658AL. AML also applied for permission to construct and operate a radio site within Hilda Wind’s Hilda 662S Substation and approximately 620 meters of underground fibre optic cable from its Chappice Lake 649S Substation to a splice box on Transmission Line 676L/879L.

**Alberta Electric System Operator Approval of New Alberta Reliability Standard CIP-012-AB-1, AUC Decision 27372-D01-2022**  
*Reliability Standard - Cyber Security*

Application

The Alberta Electric System Operator (“AESO”) filed a recommendation to approve the new Alberta Reliability Standard CIP-012-AB-1: *Cyber Security – Communications between Control Centres* (“CIP-012-AB-1”).

Decision

The AUC approved the new standard CIP-012-AB-1.

Applicable Legislation

[Transmission Regulation](#), Alta Reg 86/2007 - ss 19(4), 19(5), and 19(6).

Pertinent Issues

The AESO submitted that the purpose of the proposed new reliability standard, which applies to the AESO and market participants, is to protect the confidentiality and integrity of real-time assessment and real-time monitoring data transmitted between control centres.

No interested party filed an objection with the AUC that would indicate the new CIP-012-AB-1 is either technically deficient or not in the public interest. The AUC approved the new standard CIP-012-AB-1.

**Alberta Electric System Operator Request for Guidance on the Treatment of a Line Loss Refund Related to the Calgary Energy Centre, AUC Decision 27048-D01-2022**  
*Jurisdiction - Electricity*

Application

The Alberta Electric System Operator (“AESO”) requested guidance regarding the treatment of a refund associated with historical line losses as directed in AUC Decision 790-D06-2017 (the “Module C Decision”).

Decision

The AUC determined that the matter falls outside of its jurisdiction. The AUC consequently dismissed the AESO’s request for guidance on the refund treatment.

Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - s 8.

[Business Corporations Act](#), RSA 2000, c B-9 - s 229.

[Electric Utilities Act](#), SA 2003, c E-5.1 - ss 17(e), 20, 25, 26, 30(4), 119(4), and 122.

[Transmission Regulation](#), Alta Reg 86/2007 - ss 31, 34.

[Unclaimed Personal Property and Vested Property Act](#), SA 2007, c U-1.5 - s 15(a).

### Pertinent Issues

The Calgary Energy Centre (“CEC”) is a natural-gas-fuelled generation facility on the northern boundary of the city of Calgary. Calpine Power, LP (“Calpine”) was the holder of the supply transmission service contracts for the CEC for the period in question in 2006. The AESO requested guidance on the treatment of a line loss refund owed to the CEC of \$8,343,537.16 from February 1, 2006, to December 31, 2006.

The AESO requested AUC guidance on three questions (the “Reference Questions”) related to the refund to ENMAX Energy Corporation (“ENMAX”) as Calpine paid the original invoices:

- (a) confirmation that the AESO’s approach, as outlined in the Module C Settlement Procedure is consistent with the AUC’s intent in the Module C Decision and applicable laws such that the refund vests with the Crown pursuant to Section 229 of the *Business Corporations Act* and Subsection 15(a) of the *Unclaimed Personal Property and Vested Property Act* (“UPPVPA”); or
- (b) if the AESO’s approach, as described in the Module C Settlement Procedure, is not aligned with the AUC’s intent, should the refund be distributed through the Rider E process among all market participants paying charges or receiving refunds for the historical period through the Module C settlement process; or
- (c) how should the refund otherwise be dealt with in accordance with the Module C Decision and applicable laws?

The AUC found that the AESO would have been aware of the assignment from Calpine to ENMAX, as permitted under the AESO tariff, concerning CEC generation assets. The AESO would have been aware because it was a signatory to the assumption assignment and novation agreement.

The AUC agreed with the findings in the Module C Decision that market participants can “contractually shift liabilities for past unlawful rates they were charged.” It also found that such transactions are outside the AUC’s purview.

The AUC found that the AESO’s settlement procedure describes how to deal with unclaimed refunds, including relying on the provisions of the *UPPVPA*. The AESO sought guidance on a refund that ENMAX claimed through an ongoing legal process outside of the AESO’s settlement procedure, in an application to the Court of Queen’s Bench of Alberta.

The AUC found that the Module C Decision clarified that individual contracts or agreements fall outside the statutory scheme and the AUC’s purview. The AUC further found that providing a comprehensive response to the Reference Questions would effectively require the AUC to modify or vary the Module C Decision, potentially leading to unintended consequences.

### **Alberta Electric System Operator Utility Payment Deferral Program: Rate Rider - Electricity, AUC Decision 26684-D02-2022** *Electricity - Rates*

#### Application

In this application, the Alberta Electric System Operator (“AESO”) submitted an application to finalize Rider L and stated that the collected amount exceeded the approved amount by \$538,642.49. The AESO requested approval to pay all amounts (i) over-collected by the AESO under Rider L and (ii) over-collected and paid by distribution facility owners (“DFOs”) to the AESO as part of the Utility Payment Deferral Program (“UPDP”) (collectively, the “Over-Collected Amount”) to the Balancing Pool. The Balancing Pool proposed to apply the amounts as an offset to the Balancing Pool deferral account liability or to otherwise reduce the Balancing Pool’s revenue requirement.

Decision

The AUC found that the AESO's request to pay the Over-Collected Amount to the Balancing Pool is acceptable.

Applicable Legislation

[Utility Payment Deferral Program Act](#), SA 2020, c U-4 - ss 1(d), 7(1), 9(2), 24, and 25(2).

[Utility Payment Deferral Program Regulation](#), Alta Reg 287/2020 - s 3(6).

Pertinent Issues

In this decision, the AUC closed out the AESO UPDP rate rider, called Rider L. The AUC also closed out an EPCOR Energy Alberta GP Inc. ("EPCOR") deferral account established under the UPDP and approved a payment of \$2,458,581 from the AESO to PowerBill Utility Billing Solutions Inc. ("PowerBill") for unrecovered electricity customer bills in connection with the UPDP. The AUC further approved the proposal from the AESO to pay the over-collected rate rider funds amounting to \$536,183.91 to the Balancing Pool.

PowerBill submitted an application requesting funding relief from Rider L for unrecovered electricity customer bill amounts. PowerBill submitted that \$2,341.50 in customer bills deferred under the UPDP, remained unpaid for electricity charges, and \$915.94 remained unpaid for natural gas charges. Further, PowerBill submitted that \$9,909.76 remained unpaid and that it could not separate this into the amounts owing for electricity and natural gas charges.

The AUC accepted the \$2,341.50 in outstanding electricity charges. It determined that this amount, in addition to \$117.08 for GST, should be refunded to PowerBill by the AESO from the over-collected Rider L fund. Without knowing how much of the \$9,909.76 unrepaid combined natural gas and electricity charges are for natural gas and how much is for electricity, the AUC noted that it could not approve PowerBill's request to recover the \$9,909.76.

The AUC had approved EPCOR's application to establish a deferral account through the UPDP. EPCOR requested approval to close the deferral account and submitted information confirming the account balance was zero.

***Buffalo Plains Wind Farm Inc. and AltaLink Management Ltd. Buffalo Plains Wind Farm Connection Project, AUC Decision 27167-D01-2022***  
*Electricity - Facilities*

Application

Buffalo Plains Wind Farm Inc. ("BPW") and AltaLink Management Ltd. ("AML") filed facility applications for the Buffalo Plains Wind Farm Connection Project (the "Project").

BPW has the approval to construct and operate the 514.6-MW Buffalo Plains Wind Farm and the Amber 611S Substation in the Lomond area. BPW applied to the AUC for approval to construct and operate a 240-kilovolt ("kV") transmission line, designated Transmission Line 1097L, from its Amber 611S Substation to AML's Milo 356S Substation. BPW will jointly operate the proposed transmission line with AML for approximately six months following construction completion. Afterward, BPW would transfer the ownership and operation of the proposed line to AML.

Decision

Under ss. 14, 15, and 19 of the *Hydro and Electric Energy Act* ("HEEA"), the AUC approved the application from BPW to construct and operate Transmission Line 1097L.

Under ss. 14, 15, 18, 19, and 21 of the *HEEA*, the AUC approved the applications from AML to alter the Milo 356S Substation and Transmission Line 1036L, and connect the Milo 356S Substation to BPW's Transmission Line 1067L.

#### Applicable Legislation

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

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

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

[\*Hydro and Electric Energy Act\*](#), RSA 2000, c H-16 - ss 14, 15, 18, 19, and 21.

[\*Sensitive Species Inventory Guidelines\*](#).

[\*Transmission Regulation\*](#), Alta Reg 86/2007 - s 24.3.

[\*Wildlife Directive for Alberta Wind Energy Projects\*](#)

#### Pertinent Issues

In its application, BPW proposed two route options, one of which was preferred. The AUC noted that following existing linear disturbances such as transmission lines, roads, and highways is a practical approach to minimizing the impacts of a proposed transmission line. The AUC found that the preferred route would have a lower environmental impact.

AUC noted that BPW did not conduct the sharp-tailed grouse surveys as required by the *Sensitive Species Inventory Guidelines*, which specify a maximum plot distance of 1,000 meters. BPW used a maximum plot distance of 2,000 meters. The AUC also noted that BPW did not fully assess impacts on wetlands and amphibians before submitting the application.

To account for BPW's commitments to conduct the required evaluations, the AUC imposed, as a condition of approval, that:

- (a) BPW must complete sharp-tailed grouse surveys in 2023 to identify potentially undetected leks, assess disturbance to known leks, and assess areas where raptor perch deterrents may reduce predation pressure near leks.
- (b) BPW engage a Qualified Wetland Science Practitioner to conduct a wetland survey for the entire length of the preferred route and submit a wetland survey report to the AUC before September 30, 2022.

The AUC was satisfied that BPW would adequately mitigate the Project's potential effects on wildlife and wildlife habitats with the diligent implementation of the mitigation measures and the conditions above.

The AUC found that the facility application filed by BPW under s. 14 and 15 of the *HEEA* complies with the information requirements prescribed in *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* ("Rule 007") and is consistent with need and the requirements identified in the AESO's functional specification. The proposed transmission line is in the public interest, as required by s. 17 of the *Alberta Utilities Commission Act*.

AML applied for permission to modify the Milo 356S Substation by adding a 240-kV circuit breaker to accommodate Transmission Line 1097L. AML also applied for permission to salvage a single Transmission Line 1036L structure just outside the substation and replace it with a single structure located within the substation

fenceline to support Transmission Line 1036L and Transmission Line 1097L physically. Further, AML applied for a connection order to connect the Milo 356S Substation to BPW's Transmission Line 1097L.

The AUC found that the facility applications filed by AML under ss. 14, 15, 18, 19, and 21 of the *HEEA* comply with the information requirements prescribed in *Rule 007*, and the proposed development is consistent with NID Approval 27129-D01-2022 and the requirements of the AESO's functional specification.

**CNOOC Petroleum North America ULC Long Lake Industrial System Designation Amendment, AUC Decision 27279-D01-2022**

*Facilities - Industrial System Designation*

Application

China National Offshore Oil Corporation ("CNOOC") Petroleum North America ULC ("CPNA") and CNOOC Canada Energy Ltd. hold Order 25113-D02-2020,<sup>1</sup> designating the Long Lake Project Industrial Complex as an industrial system pursuant to s. 4 of the *Hydro and Electric Energy Act* ("*HEEA*"). CPNA requested permission to expand the area of its Long Lake industrial system designation ("ISD") area to include legal subdivisions 9, 14, 15, and 16 of Section 35, Township 85, Range 7, west of the Fourth Meridian, and add new electrical equipment, including a 1.2-kilometre 25-kilovolt distribution line to the industrial system.

Decision

Pursuant to s. 4 of the *HEEA* and s. 2(1)(d) and 117 of the *Electric Utilities Act*, the AUC approved the application for amendment of the ISD.

Applicable Legislation

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

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

[\*Hydro and Electric Energy Act\*](#), RSA 2000, c H-16 - s 4.

Pertinent Issues

The AUC found that the participant involvement program conducted by CPNA met the requirements of *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments, and Gas Utility Pipelines.*

The AUC noted that the AUC did not assess approval of the construction and operation of distribution facilities, such as those proposed by CPNA. The AUC's role in this application was to assess whether the expansion of the ISD area and the inclusion of the proposed distribution facilities in the ISD will continue to meet the principles and criteria set out in s. 4 of the *HEEA*.

In the case of ISD applications, the AUC noted that it is not necessary to make findings on the applicability of principles and criteria to aspects of the industrial system that it had already considered in the initial application and that are not materially altered by the proposed amendment.



**Concord Stavely GP2 Ltd. Stavely Solar Power Project Amendments and Time Extension, AUC Decision 27342-D01-2022**  
*Solar Power - Facilities*

Application

Concord Stavely GP2 Ltd. (“Concord”) applied for amendments and a time extension to the Stavely Solar Power Project (the “Power Plant”) located in Stavely, Alberta.

Decision

The AUC evaluated the Power Plant, the requested amendments, and compliance with s. 11 of the *Hydro and Electric Energy Act*. The AUC was satisfied that Concord's noise impact assessment met the requirements of *Rule 012: Noise Control*. The AUC was also satisfied that the solar glare analysis met the applicable requirements.

Applicable Legislation

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

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

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - ss 11 and 19.

[Hydro and Electric Energy Regulation](#), Alta Reg 409/1983 - ss 11 and 12.

Pertinent Issues

Concord requested an amendment to the approval for the Power Plant to reflect an increase in the total generating capability of the Power Plant from 8.5 megawatts (“MW”) to 16.5 MW and for a time extension to complete the construction of the Power Plant (the “Project”).

The AUC was satisfied that the Project amendments would not increase the environmental impacts beyond what the AUC previously assessed.

The AUC further noted that Concord had demonstrated that the requested time extension was minor.

**Concord Vulcan GP2 Ltd. Vulcan Solar Project Battery Energy Storage System Addition, AUC Decision 27215-D01-2022**  
*Solar Power - Facilities*

Application

Concord Vulcan GP2 Ltd. (“Concord”) applied to add a 21-megawatt (“MW”), 42-MW-hour battery energy storage system (“BESS”) to the Vulcan Solar Project.

Decision

The AUC approved the application to alter and operate the Vulcan Solar Project by adding the 21-MW, 42-MW-hour BESS.

Applicable Legislation

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

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

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

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - ss 11 and 19.

### Pertinent Issues

The BESS will be constructed within the existing fence line of the 22-MW Vulcan Solar Project (the “Project”) and will allow for two hours of storage and would charge primarily from on-site solar production and discharge to the 25-kilovolt FortisAlberta Inc. distribution network. The BESS will also be able to charge from the distribution network.

The applications submitted by Concord included correspondence from Alberta Environment and Parks indicating that the Project’s environmental impacts would not change due to the BESS. The application also included a participant involvement program, a noise impact assessment, and a site-specific emergency response plan.

The AUC was satisfied that the noise impact assessment of the Project met the requirements of *Rule 012: Noise Control* and that the Project would continue to comply with permissible sound levels.

As there are no residences within 800 meters of the Project, the AUC accepted Concord’s explanation for not completing a toxicity plume prediction modelling a thermal runaway event.

Given that no one raised concerns about the addition of the BESS, there are no residences within 800 meters of the Project, and that the BESS will locate the addition within the existing power plant fenceline, the AUC did not consider it necessary for Concord to conduct further consultation.

Concord made several commitments regarding its emergency response plan and the development and improvement of the safety of the Project. The AUC imposed conditions of approval based on Concord’s commitments.

### ***Enforcement Staff of the AUC, Allegations Against ATCO Electric Ltd., AUC Decision 27013-D01-2022*** *Electricity - Markets*

#### Application

In this decision, the AUC determined that the settlement agreement reached by the AUC enforcement staff (“Enforcement Staff”) and ATCO Electric Ltd. (“AE”), proposing an administrative penalty of \$31 million, is in the public interest. The settlement negotiations resulted from a complaint to the Enforcement Staff alleging a pattern of self-dealing and deception perpetrated by AE to benefit its shareholders and the shareholders of an AE affiliate at the cost of Alberta ratepayers.

#### Decision

The AUC approved the settlement agreement without variation. It was satisfied that accepting this settlement agreement is consistent with the public interest and will not bring the administration of justice into disrepute.

#### Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - ss 8, 23, 63, and 66.

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

AUC Rule 013: [Rules on Criteria Relating to the Imposition of Administrative Penalties.](#)

[Electric Utilities Act](#), SA 2003, c E-5.1 - ss 37, 119.

### Pertinent Issues

It was alleged that when building a regulated transmission line, AE took advantage of its position as a regulated utility to benefit its unregulated affiliate, ATCO Structures & Logistics Ltd. (“ASL”). AE knowingly sole-sourced a major contract for a directly assigned capital project, the Jasper Interconnection Project transmission line (the “Jasper Project”), at rates above fair market value to secure a contract and a financial benefit for ASL. AE then sought recovery of millions of dollars above fair market costs from ratepayers for that sole-source contract. Further, AE created a misleading paper trail justifying its decision and concealing critical information regarding the decision to sole-source the contract – namely, to benefit its unregulated affiliate ASL – to avoid the AUC’s detection of its actions and improperly recover those above fair market costs from Alberta ratepayers.

Generally, the AUC decides if a settlement agreement is fit and reasonable and falls within a range of acceptable outcomes given the circumstances. To evaluate if the agreement is in the public interest, the AUC assessed the seriousness of the contravention, the compliance system, and the self-reporting or cooperation of the contravener.

The AUC noted that the AE contravened the *Electric Utilities Act* by failing to fulfill its duties and obligations as an electric utility operator in Alberta. AE violated its obligation to be honest, true, accurate, and not misleading in providing information in its applications before the AUC. The AUC found that this contravention strikes at the core of a properly functioning regulatory system and its importance cannot be overstated.

The AUC found that the contraventions are very serious and noted that factors in *Rule 013* speak to the seriousness of the contraventions.

The AUC considered the harm caused by the contraventions and found that the magnitude of the proposed \$31 million penalty and the proposed terms and conditions are proportionate to that harm.

The AUC evaluated the settlement agreement in its entirety. It was satisfied that accepting this settlement agreement is consistent with the public interest and will not bring the administration of justice into disrepute.

### ***ENMAX Energy Corporation 2021 COVID-19 Deferral Account Application, AUC Decision 27355-D01-2022*** *Electricity - Rates*

#### Application

ENMAX Energy Corporation (“EEC”) applied to refund the net balance of \$0.465 million in its 2021 COVID-19 deferral account to its regulated rate tariff customers. EEC will refund the balance through a daily rate rider refund of \$0.1162 per site per day from August 1, 2022, to August 31, 2022.

#### Decision

The AUC approved the 2021 non-energy COVID-19 deferral account refund balance for \$0.465 million for EEC. EEC will distribute the balance to its regulated rate option customers through a rider refund of \$0.1162 per site per day from August 1, 2022, to August 31, 2022. The AUC determined that EEC complied with all outstanding directions from Decision 25949-D02-2022.

#### Applicable Legislation

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

### Pertinent Issues

In Decision 25949-D02-2021, the AUC approved a COVID-19 deferral account for EEC to capture changes to its costs arising from the COVID-19 pandemic for 2021. The deferral account applies to (1) bad debt expense, (2) revenue from final notice fees, (3) revenue from late payment charges, and (4) revenue from site counts.

For the first three categories, the difference between the actual amount for 2021 and the approved forecast amount for 2021 is included in the deferral account. For the site count category, the difference between the actual site count for 2021 and the approved site count forecast for 2021 is calculated. The difference is multiplied by the daily non-energy charge. The amount is included in the deferral account.

### ***ENMAX Power Corporation and EPCOR Distribution & Transmission Inc. 2023 Cost of Service Review, AUC Decision 26617-D01-2022***

#### *Electricity - Rates*

### Application

ENMAX Power Corporation (“ENMAX”) and the Office of the Utilities Consumer Advocate (“UCA”) requested approval of a settlement agreement. The AUC also approved the settlement agreement between EPCOR Distribution & Transmission Inc. (“EDTI”) and the UCA as filed.

### Decision

The AUC approved the settlement agreement between ENMAX and the UCA as filed, in its entirety, with reasons to follow. The AUC also approved the settlement agreement between EPCOR and the UCA as filed, in its entirety, with reasons to follow.

### Applicable Legislation

[Electric Utilities Act](#), SA 2003, c E-5.1 - s 135.

### Pertinent Issues

ENMAX and EDTI operate under a performance-based regulation (“PBR”) framework. The current PBR Term expires at the end of 2022. ENMAX and EDTI filed their 2023 cost of service (“COS”) review applications before the AUC. The COS review applications represent the rebasing of their respective revenue requirements through a COS framework.

The parties negotiated settlement agreements as packages, contingent on the AUC accepting the entire settlement. S. 135 of the *Electric Utilities Act* requires the AUC to approve or refuse the entirety of each settlement agreement.

### ***Equinix Canada Ltd. 25.75-Megawatt Emergency Standby Generators, AUC Decision 27343-D01-2022***

#### *Electricity - Facilities*

### Application

Equinix Canada Ltd. (“Equinix”) applied to construct, alter and operate emergency standby generators. Equinix applied for approval of an exemption under ss. 11 and 13 of the *Hydro and Electric Energy Act* (“HEEA”).

Equinix requested approval to add two 3.5-megawatt (“MW”) diesel generators to an existing data centre in the city of Calgary. Equinix stated that in both instances, the electricity generated from all the generators in the facility is exclusively for its own use at the data centre.

### Decision

The AUC approved the application from Equinix to construct, alter and operate the Equinix emergency generator facility and issued Power Plant Approval 27343-D02-2022.

### Applicable Legislation

#### [Alberta Ambient Air Quality Objectives](#)

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

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

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - ss 11 and 19.

### Pertinent Issues

The AUC determined that the noise impact assessment submitted by Equinix meets the requirements of *Rule 012: Noise Control*. The AUC also found that the generators will comply with the *Alberta Ambient Air Quality Objectives* and it was satisfied that there would be no adverse effect on the environment from routine generator testing at the facility.

The proposed generators will be installed adjacent to the existing building, will only be used as backup generators, and there are no residences within two kilometres of the facility. As a result, the AUC accepted Equinix's conclusion that it did not require a public consultation process.

Under s. 13 of the *HEEA*, the previous exemption for own-use power plants is no longer available as of April 25, 2022. Accordingly, the AUC will issue a power plant approval for the Equinix emergency generator facility.

### ***Jenner 1 GP Inc., Jenner 2 GP Inc., and Jenner 3 GP Inc., Applications for Orders Permitting the Sharing of Records Not Available to the Public, AUC Decisions 27429-D01-2022, 27430-D01-2022, and 27431-D01-2022***

#### ***Markets - FEOC***

### Application

In Decision 27429-D01-2022, the AUC granted Jenner Wind 1 GP Inc. ("Jenner Wind 1")'s application for the preferential sharing of records relating to the 122-megawatt ("MW") Jenner 1 Wind Power Plant. Jenner Wind 1 requested permission to share the records not available to the public under s. 3 of the *Fair, Efficient and Open Competition Regulation* ("*FEOC Regulation*") between Jenner Wind 1, Jenner 1 Limited Partnership ("Jenner 1 LP"), CWP Energy Inc., and URICA Energy Real Time Ltd. ("URICA").

In Decision 27430-D01-2022, the AUC granted Jenner 2 GP Inc. ("Jenner 2") the same permission concerning information relating to the 71.4 MW Jenner 2 Wind Power Plant. The AUC approved the application to share the records between Jenner 2, Jenner 2 Limited Partnership ("Jenner 2 LP"), CWP Energy Inc., and URICA.

In Decision 27431-D01-2022, the AUC granted Jenner 3 GP Inc. ("Jenner 3")'s application for permission to share records not available to the public between Jenner 3, Jenner 3 Limited Partnership, CWP Energy Inc. and URICA. The application filed by Jenner 3 according to s. 3 of the *FEOC Regulation* concerned records relating to the 109 MW Jenner 3 Wind Power Plant.

### Decision

The AUC granted the applications for sharing of records.

### Applicable Legislation

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

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

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

### Pertinent Issues

The AUC was satisfied that Jenner Wind 1, Jenner 2, and Jenner 3 had, in their respective applications, demonstrated that: (i) the sharing of records with the noted parties was reasonably necessary for each applicant to carry out its business; and (ii) the subject records would not be used for any purpose that did not support the fair, efficient and openly competitive operation of the Alberta electricity market, including the conduct referred to in s. 2 of the *FEOC Regulation*. Relying on submissions from Jenner Wind 1, Jenner 2, and Jenner 3 and written representations from the parties benefiting from the sharing in each respective application, the AUC was satisfied that the parties would conduct themselves in a manner that supports the fair, efficient, and openly competitive operation of the market.

### ***NEXUS Energy Associates Ltd. Rocky Power Plants, AUC Decision 27198-D01-2022***

Electricity - Facilities

### Application

NEXUS Energy Associates Ltd. (“NEXUS”) applied to construct and operate the 2.95-megawatt (“MW”) Rocky 2 Power Plant and to connect it to the Alberta Interconnected Electric System (“AIES”). The AUC also approved the applications to construct the six-MW Rocky 4 Power Plant and exempted it from an AUC power plant approval (the “Rocky 2 and Rocky 4 Power Plants”). The AUC also approved the request to interconnect the power plants to the AIES (collectively, the “Project”).

### Decision

The AUC approved the Rocky 4 Power Plant. As the Rocky Power Plant, Rocky 2 Power Plant, and Rocky 4 Power Plant will be located at the same site, the AUC considered the three power plants together and issued one approval for the entire site.

Pursuant to s. 11 of the *Hydro and Electric Energy Act* (“HEEA”), the AUC approved the applications to construct and operate the Rocky 2 and Rocky 4 Power Plants. Under s. 18 of the *HEEA*, the AUC approved the applications to connect the Rocky Power Plant and the Rocky 2 Power Plant to FortisAlberta Inc.’s 25-kV electric distribution system.

### Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - s 9 and 17.

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

[Business Corporations Act](#), RSA 2000, c B-9.

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

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - s 11, 13, 18, and 23.

### Pertinent Issues

The AUC reviewed the applications and determined that the Project's technical, siting, emissions, environmental, and noise aspects met the applicable requirements. The AUC was also satisfied that the participant involvement program conducted by NEXUS met the relevant requirements and that no outstanding stakeholder concerns remained.

The AUC imposed the following conditions of approval to ensure that NEXUS implements mitigating measures:

- (a) NEXUS must implement the noise mitigation measures recommended in the Project's noise impact assessment or alternative mitigation measures that meet or exceed the acoustic specifications described in the noise impact assessment. This will bring the existing Rocky Power Plant into compliance with *Rule 012: Noise Control* ("Rule 012") before commissioning operations of the Rocky 2 and Rocky 4 Power Plants. NEXUS must conduct near-field measurements to verify the effectiveness of the mitigation measures. NEXUS must demonstrate the compliance of its power plant site with *Rule 012* through noise modelling based on the near-field measurements; and
- (b) Within three months after the Rocky 2 and Rocky 4 Power Plants commence operations, NEXUS must file a report with the AUC detailing the mitigation measures that it has implemented, describing the near-field measurements it has conducted and demonstrating compliance of the entire NEXUS site with *Rule 012* through noise modelling based on the near-field measurements.

### ***Solartility Inc. Micro-generation Dispute Regarding Bi-Directional Interval Meters for Solartility Customers, AUC Decision 27161-D01-2022***

#### *Micro-Generation - Facilities*

### Application

Solartility Inc. ("Solartility") requested that ENMAX Power Corporation ("ENMAX") provide interval meters for two micro-generation ("MG") customers free of charge.

### Decision

The AUC denied Solartility's request for an order requiring ENMAX to install interval meters at ENMAX's cost. Should the two MG customers agree to pay the reasonable costs of supplying and installing an interval meter, ENMAX must proceed with the installation and change the designation of the customer(s) to large MG.

### Applicable Legislation

AUC Rule 024: [Rules Respecting Micro-Generation](#).

[Electric Utilities Act](#), SA 2003, c E-5.1 - s 105.

[Micro-generation Regulation](#), Alta Reg 27/2008 - s 3.

### Pertinent Issues

Solartility's customers provided MG notices to ENMAX and requested that bi-directional interval meters be supplied and installed without charge. ENMAX accepted the MG notices outside the required 14-day period under *AUC Rule 024: Rules Respecting Micro-Generation* ("Rule 024") but declined the request to supply and install interval meters.

Solartility, on behalf of Mr. Shayne Butcher and Mr. James Koch, applied to the AUC for an order that ENMAX:

- (a) install interval meters free of charge; and

- (b) maintain the customers' existing residential distribution tariff rate class of D100 following the installation of the requested interval meters.

The AUC acknowledged that an interval meter may provide economic efficiency, reduced carbon emissions, and other benefits. However, Solartility's customers will primarily realize the benefits at a cost to all of ENMAX's residential customers. The AUC determined that this result would not be just or in the public interest.

Under *Rule 024*, a utility has 14 days from receipt of an MG application to accept or decline it. ENMAX explained that it had been regularly missing this deadline due to significant increases in the volume of MG applications received and time spent providing assistance and education to customers regarding the MG requirements and notice process. The AUC accepted ENMAX's explanation.

***TERIC Power Ltd. eReserve4 Battery Energy Storage Power Plant Project, AUC Decision 27234-D01-2022***  
*Electricity - Facilities*

Application

TERIC Power Ltd. ("TERIC") applied for approval to construct and operate the 20-megawatt ("MW") eReserve4 Battery Energy Storage Power Plant Project (the "Power Plant").

Decision

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

Applicable Legislation

[\*Alberta Ambient Air Quality Objectives.\*](#)

[\*Alberta Environment and Parks: Conservation and Reclamation Directive for Renewable Energy Operations.\*](#)

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

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

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

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

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

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

Pertinent Issues

The project comprises 11 1.9-MW lithium-ion battery modules from Tesla, Inc., with a total nameplate storage energy capacity of 20 MW-hours. The Power Plant will be located on 2.5 acres of privately-owned and previously cultivated land southeast of the town of Hardisty.

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



The AUC determined that the participant involvement program was adequate and that no outstanding concerns remained. The AUC further accepted the environmental assessment report's conclusion that the project lands include minimal habitat suitable for wildlife species.

The AUC accepted that, in the event of a fire, all emission concentrations would comply with applicable *Alberta Ambient Air Quality Objectives* guidelines at or beyond 100 meters of the Power Plant site. The AUC found that the risk to health due to gases released in a fire is mitigated because the closest residence is approximately 750 meters away.

The AUC noted that TERIC has an emergency response program ("ERP") to support the development of its ERPs and imposed the following as conditions of approval:

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

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

***TERIC Power Ltd. eReserve5 Battery Energy Storage Power Plant Project, AUC Decision 27239-D01-2022  
Facilities - Electricity***

Application

TERIC Power Ltd. ("TERIC") applied for approval to construct and operate the 20-megawatt ("MW") eReserve5 Battery Energy Storage Power Plant Project (the "Power Plant").

Decision

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

Applicable Legislation

[\*Alberta Ambient Air Quality Objectives.\*](#)

[\*Alberta Environment and Parks: Conservation and Reclamation Directive for Renewable Energy Operations.\*](#)

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

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

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

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

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

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

### Pertinent Issues

In Decision 27234-D01-2022, the AUC approved the application to construct the eReserve5 Battery Energy Storage Project. The eReserve 5 Power Plant will be located directly adjacent to the eReserve5 Battery Energy Storage Project. The Power Plant consists of 11 1.9-MW lithium-ion battery modules from Tesla, Inc., with a total nameplate storage energy capacity of 20 MW-hours. The Power Plant will be located on 2.5 acres of privately-owned and previously cultivated land southeast of the town of Hardisty.

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

The AUC determined that the participant involvement program was adequate and that no outstanding concerns remained. The AUC accepted the environmental assessment report's conclusion that the project lands include minimal habitat suitable for wildlife species.

The AUC accepted that, in the event of a fire, all emission concentrations would comply with applicable *Alberta Ambient Air Quality Objectives* guidelines at or beyond 100 meters of the Power Plant. The AUC found that the risk to health due to gases released in a fire is mitigated because the closest residence is approximately 750 meters away. The AUC noted that TERIC has an emergency response program ("ERP") to support the development of its ERPs and imposed the following as conditions of approval:

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

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

### ***TERIC Power Ltd. eReserve6 Battery Energy Storage Power Plant Project, AUC Decision 27236-D01-2022 Facilities - Electricity***

#### Application

TERIC Power Ltd. ("TERIC") applied for approval to construct and operate the 20-megawatt ("MW") eReserve6 Battery Energy Storage Power Plant Project (the "Project"). Decision

#### Decision

The AUC approved the application to construct and operate the Project under s. 11 of the *Hydro and Electric Energy Act* ("HEEA"). The AUC approved the application to interconnect the Project to the distribution system of FortisAlberta Inc. under s. 18 of the *HEEA*.

#### Applicable Legislation

[Alberta Ambient Air Quality Objectives](#).

[Alberta Environment and Parks: Conservation and Reclamation Directive for Renewable Energy Operations](#).

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

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

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

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

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

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

### Pertinent Issues

The Project consists of 11 1.9-MW lithium-ion battery modules from Tesla, Inc., with a total nameplate storage energy capacity of 20 MW-hours. TERIC will construct the Project on privately-owned land southeast of Hughenden, Alberta.

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

The AUC determined that the participant involvement program was adequate and that no outstanding concerns remained. TERIC expected that impacts on wildlife and wildlife habitat due to the removal of 0.567 hectares of native prairie at this location to be negligible. TERIC supported this conclusion with submissions indicating that the section of land is small and primarily used as cultivated land.

The AUC accepted that, in the event of a fire, all emission concentrations would comply with applicable *Alberta Ambient Air Quality Objectives* (“AAAQO”) guidelines at or beyond 100 meters of the Project. The AUC noted that TERIC has an emergency response program (“ERP”) to support the development of its ERPs and imposed the following as conditions of approval:

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

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

### ***TransAlta Corporation Application for Debt Financing Approvals, AUC Decision 27452-D01-2022*** ***Electricity - Market***

#### Application

TransAlta Corporation (“TransAlta”) applied to the AUC to authorize the issuance of debt securities of up to US\$2 billion (the “Debt Securities”) in one or more offerings, pursuant to s. 101(2)(a)(ii) of the *Public Utilities Act* (“PUA”).

### Decision

The AUC approved the application from TransAlta Corporation to authorize the issuance of debt securities of up to US\$2 billion, as filed. The AUC approved the purposes of the offerings and steps taken to ensure that the issuances through the offering are made in accordance with the law.

### Applicable Legislation

AUC Rule 031: [Conditional Exemption from Specific Financing and Reporting Requirements](#).

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

[Public Utilities Designation Regulation](#), Alta Reg 194/2006.

### Pertinent Issues

TransAlta applied for an order authorizing the Debt Securities issuances by way of a public offering in Canada or the United States and through a private offering. This offering would provide TransAlta with the ability to redeem, purchase or refinance, in whole or in part, its existing debt and/or its affiliates or subsidiaries and for general corporate purposes not related to the ownership of transmission assets.

TransAlta stated that it would not issue more than US\$2 billion of Debt Securities, in total, under both shelf prospectuses in one or more issuances over the lives of the shelf prospectuses.

Section 101(2)(a)(ii) of the *PUA* requires that the AUC determine (a) whether the proposed issuance is to be made in accordance with the law and (b) whether the AUC is satisfied regarding the purposes of the proposed debt issuance described in the application.

Following a review of the June 14, 2022, opinion provided by TransAlta's legal counsel, Norton Rose Fulbright Canada LLP, the AUC was satisfied that TransAlta exercised due diligence and took steps to ensure that the Debt Securities issuances by way of the offering will be made following the law. As the AUC was satisfied that the proposed issuance would meet the corporate and securities law requirements applicable to such transactions, it determined that the requirements of s. 101(2)(a)(ii) of the *PUA* have been met. The AUC was also satisfied with the level of detail provided in the application to support the purposes of the issuances and accepted TransAlta's submitted purposes of the Debt Securities issuances.

The AUC accepted TransAlta's submitted purposes of the Debt Securities issuances by way of an offering. The AUC was satisfied that the offering would not impact TransAlta's transmission assets or revenue requirements and that no portion of the cost of the Debt Securities issuances will be billed to TransAlta's rate base.

### ***Wheatland Wind Project Ltd. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Wheatland Wind Power Project, AUC Decision 27379-D01-2022***

*Markets - FEOC*

### Application

Wheatland Wind Project Ltd. ("Wheatland") applied for the preferential sharing of records that are not available to the public pertaining to the electricity and ancillary services markets under s. 3 of the *Fair, Efficient and Open Competition Regulation* ("*FEOC Regulation*") between Wheatland, Wheatland Wind Project LP, CWP Energy Inc. and URICA Energy Real Time Ltd. ("URICA").

### Decision

The AUC approved the application.

Applicable Legislation

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

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

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

Pertinent Issues

The AUC was satisfied that Wheatland had demonstrated that (i) the sharing of records with URICA was reasonably necessary for Wheatland to comply with Independent System Operator rules; and (ii) the subject records would not be used for any purpose that did not support the fair, efficient and openly competitive operation of the Alberta electricity market, including the conduct referred to in s. 2 of the *FEOC Regulation*.

## CANADA ENERGY REGULATOR

***AltaGas LPG General Partner Inc., on Behalf of AltaGas LPG Limited Partnership Application for a Licence to Export Butane, CER Letter Decision A8E7K4***  
*Oil and Gas*Application

In this decision, the CER issued a 25-year licence to export butane to AltaGas LPG Limited Partnership (“AltaGas”) pursuant to s. 344 of the *Canadian Energy Regulator Act* (“*CER Act*”).

Decision

The CER recognized that not all of the filing requirements contained in s. 20 of the *Part VI Regulations* are relevant to its assessment of AltaGas’ application. The CER exempted AltaGas from filing requirements pertaining to details of supply contracts and resources, export contracts, transportation contracts, potential environmental effects, and specific governmental approvals, as these were not relevant.

Applicable Legislation

[Canadian Energy Regulator Act](#), SC 2019, c 28, s 10 - s 344.

[National Energy Board Act Part VI \(Oil and Gas\) Regulations](#), s 20.

Pertinent Issues

AltaGas LPG General Partner Inc., on behalf of AltaGas, applied to the CER under s. 244 of the *CER Act* for:

- a 25-year licence to export butane, starting on the date of first export;
- a maximum annual export quantity of 2,669,391 cubic meters (m<sup>3</sup>) or 16,790,000 barrels (“bbls”), including a 15% annual tolerance;
- a maximum quantity of 66,734,775 m<sup>3</sup> or 419,750,000 bbls of butane over the term of the licence;
- the points of export of butane from several locations in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick; and
- an "early expiration clause" where, unless otherwise directed by the CER, the term of the licence ends 10 years after the date of issuance of the licence if the export of butane has not commenced on or before that date.

AltaGas submitted that, as required under s. 345 of the *CER Act*, the quantity of butane it sought to export does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada (the “Surplus Criterion”).

AltaGas submitted two reports in support of its application. Both reports acknowledged some challenges in forecasting butane supply. The Goobie Tulk Inc. Report notes that recoverable resources of butane are not typically estimated because if natural gas is not processed for natural gas liquids (“NGL”) recovery.

Although the butane market is not as large, liquid, or transparent as the North American natural gas or propane markets, the CER determined that there is a market-oriented regulatory framework in both the U.S. and Canada that allows butane prices to be settled by market forces. Additionally, there is a surplus of butane in North America, with the majority of surplus butane in the U.S., exported to overseas markets, and the majority of surplus

Canadian butane exported to the U.S. with small volumes delivered to international markets via the U.S. or via AltaGas' Ridley Island Terminal in Prince Rupert, B.C.

The CER, therefore, found that the current and forecasted Canadian butane demand and Canadian butane requirements will be met over the term of the Licence. The Surplus Criterion was therefore satisfied.