



ENERGY REGULATORY REPORT

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

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ALBERTA ENERGY REGULATOR

Request for Regulatory Appeal by Harold Wynne, Point Loma Resources Ltd., (AER Request for Regulatory Appeal No. 1916880)
Eligible Person - Regulatory Appeal Denied

In this decision, the AER considered Mr. Harold Wynne's request under section 38 of the *Responsible Energy Development Act* ("REDA") for a regulatory appeal of the AER's decision to approve the well licences applied for by Point Loma Resources Ltd. ("Point Loma").

The AER found that Mr. Wynne did not establish that he was or may be directly and adversely affected by the decision. Therefore, the AER held that Mr. Wynne was not an 'eligible person' under REDA section 36(b) and, as a result, denied the request for regulatory appeal.

Appealable Decision

The decision subject of this appeal request was a well licence issued pursuant to section 2.020 of the *Oil and Gas Conservation Rules*, an energy resource enactment under REDA section 1(1)(j). Since the well licence was made without holding a hearing, it was an 'appealable' decision under section 36(a) of the REDA.

Eligible Person

The AER explained that Mr. Wynne must demonstrate he was or may be directly affected by the well licences issued to Point Loma to be an eligible person to request a regulatory appeal.

Mr. Wynne's primary grounds for requesting a regulatory appeal were that the public consultation was not adequate, the drilling may adversely affect the water aquifer (including potential impacts on his water wells), health problems from flaring and, that the existence of a well-site would diminish his future agri-tourism recreation plan and decrease the property value.

In relation to the water aquifer and water well concerns, the AER noted that the potential effects of the wells on the landowners' water wells were addressed by the AER requirements that surface casing be set and cemented to a depth that is intended to protect the deepest aquifer. Additionally, Point Loma tested Mr. Wynne's water wells and committed to working with Mr. Wynne to address

any potential issues. The AER found it difficult to see any direct and adverse effects on the potential tourism business since it was not clear whether and when the business would materialize.

AER Bulletin 2019-05: AER Version of the Record of Site Condition Form
Site Condition Form - Remediation - Contamination

In this bulletin, the AER announced that it released a version of the Record of Site Condition form for submission of contamination management information to the AER. The AER Record of Site form will be used to track major environmental parameters for an assessed site.

The AER Record of Site Condition form and its declarations must now accompany all contamination management submissions to the AER that were previously accompanied by the Alberta Environment and Parks version of the form.

The AER said that the updated content and format of the new form allows the AER to efficiently and consistently determine the level of review for remediation and contamination management files while continuing to protect public safety and the environment.

AER Bulletin 2019-06: Amended Requirements in Directive 036 for the Certification and Storage of Blowout Preventers

Drilling Blowout Prevention

In this bulletin, the AER announced the release of a new edition of *Directive 036: Drilling Blowout Prevention Requirements and Procedures*.

Section 1.7 defines blowout preventers, drill-through spools, drill-through adapter flanges, flexible bleed-off and kill-line hoses, ram blocks, and carriers as drill-through equipment.

Appendix 5 contains amended and new requirements for this equipment. The allowable duration for storage was increased, and minimum storage and document requirements were set out.

Appendix 5 also applies to blowout preventers for well servicing operations covered under *Directive 037: Service Rig Inspection Manual*.

Directive 036 is available on the AER website.

AER Bulletin 2019-07: Recommendations around Hydraulic Fracturing in the Red Deer Area

Earthquake - Hydraulic Fracturing

In this bulletin, the AER reported that on March 4, 2019, an earthquake measuring 4.1 local magnitude was detected approximately 12 kilometres south of Sylvan Lake, Alberta. No injuries were reported, nor were there any reported impacts to the environment or public health.

The AER indicated this event was a reminder of the need for oil and gas operators to manage sites in a way that prevents and minimizes induced seismicity. The AER recommended that oil and gas operators working within the Duvernay Formation in the Red Deer Region take the following steps to reduce the possibility of triggered seismicity associated with hydraulic fracturing:

- (a) Before conducting hydraulic fracturing operations in this area, operators should assess the potential for induced seismicity, develop a seismic response plan to respond to any induced seismicity that may occur, and monitor local seismic activity around their operations.
- (b) If a seismic event of 1.0 ML or greater occurs within five kilometres of an active well, the licensee should implement its seismic response plan to eliminate or reduce the magnitude of subsequent seismic events. The licensee should immediately report the event to the AER's Energy/Environmental Emergency and Operational Complaint Line (1-800-222-6514).
- (c) If the event is 3.0 ML or greater, the licensee should immediately suspend hydraulic fracturing operations at the affected well, return it to a safe state and get in contact with the AER immediately.

Pending the result of the investigation into the recent seismic event, the AER may introduce new enforceable requirements for hydraulic fracturing operations in the Red Deer Region.

ALBERTA UTILITIES COMMISSION

ENMAX Power Corporation 2017 Capital Tracker True-Up Application (AUC Decision 23694-D01-2019)*Performance-Based Regulation - K Factor*

In this decision, the AUC considered a request by ENMAX Power Corporation (distribution) (“ENMAX”) for approval of a negotiated settlement agreement (“NSA”) with respect to its 2017 capital tracker true-up application.

The AUC approved the NSA as filed. Accordingly, the resultant 2017 K factors (including placeholder amounts for two projects excluded from the NSA) were approved for inclusion in ENMAX’s performance-based regulation (“PBR”) rates for the 2018-2022 PBR plan period.

The AUC found that the settlement was fair and reasonable and that it formed the basis for developing K factor amounts for 2017, which were fair and reasonable and in the public interest.

The AUC found that the negotiated settlement process was fair and found that the NSA, taken as a whole, was in the public interest. None of the provisions, individually or collectively, were contrary to accepted regulatory practices or could result in unintended rate or service effects to customers.

Commission-Initiated Proceeding METSCO’s Risk-Based Asset Management Framework for ENMAX and EPCOR (AUC Decision 23102-D01-2019)*Capital Tracker Treatment*

In this decision, the AUC provided its assessment of METSCO Energy Solutions Inc. (“METSCO”)’s risk-based asset management framework and determined what weight it should be given in considering ENMAX Power Corporation (“ENMAX”)’s 2015 and 2016 capital tracker application and EPCOR Distribution & Transmission Inc. (“EPCOR”)’s 2016 capital tracker true-up application. ENMAX and EPCOR referenced analyses and modelling undertaken by METSCO in relation to their respective asset management programs and capital planning activities.

ENMAX provided METSCO’s analysis in support of its 2015 and 2016 capital tracker application for two projects: PG4-A-4 Proactive Cable Replacement

Project (“PG4-A-4”) and PG4-A-8 Overhead Conductor Replacement Project (“PG4-A-8”).

The AUC found that ENMAX failed to meet its burden of proof in establishing the prudence of the scope, level, and timing, and the actual costs, for the Proactive Cable Replacement Project and the Overhead Conductor Replacement Project in 2015 and 2016, as required under the project assessment test under Criterion 1. Accordingly, the AUC did not extend capital tracker treatment to ENMAX’s actual 2015 and 2016 costs associated with the PG4-A-4 Proactive Cable Replacement Project and the PG4-A-8 Overhead Conductor Replacement Project. EPCOR did not rely on METSCO’s analysis to support costs associated with any applied for 2016 capital tracker true-up amounts but indicated it would use METSCO’s analysis in its 2017 asset management and capital planning processes.

The AUC provided its assessment of METSCO’s analyses, as proposed for use in EPCOR’s 2017 asset management and capital planning processes. EPCOR did not request the AUC evaluate any of its capital expenditures for capital tracker treatment in this proceeding.

Background

The AUC is generally supportive of utilities developing a risk-based asset management framework for asset management and capital planning purposes. Such a framework can enhance the basis on which capital investments and retirement decisions are made, and can increase the efficiency with which capital is managed. However, the AUC found that a fundamental requirement of such a framework was that it should be based on sound data, the methodology be reproducible and transparent, and parties should be given an opportunity to test it.

Overview of METSCO’s Risk-Based Asset Management Framework

ENMAX and EPCOR each independently contracted METSCO to conduct studies to provide recommendations on the timing of asset replacements for certain asset classes.

For ENMAX, METSCO re-evaluated a previous asset management model, producing a report intended to determine the levels of investment

required to maintain asset risk at optimal levels and provide criteria for prioritizing:

- (a) underground cable rehabilitation and replacement for six different categories of that asset class; and
- (b) overhead conductor replacement; also for six different categories of that asset class.

For EPCOR, METSCO developed what it referred to as an “asset risk-based framework” for six asset classes. METSCO summarized this risk-based asset management framework (METSCO’s analyses) as balancing the risks of asset failures and consequence costs against the costs of asset intervention strategies to produce long-term capital investment programs.

ENMAX

The AUC found that METSCO’s analysis had a number of shortcomings. The AUC found that the METSCO report did not support ENMAX’s application for capital tracker treatment of its 2015 and 2016 PG4-A-4 and PG4-A-8 project expenditures.

The AUC found that the PG4-A-4 and PG4-A-8 project costs incurred in 2015 and 2016 were not eligible for capital tracker treatment, these expenditures will not be funded through the K factor provision of the PBR formula and are to be accounted for under I-X. Consistent with these findings, in the compliance filing to this decision, ENMAX was directed to refile the accounting test for the PG4 Program reflecting the removal of the 2015 and 2016 capital additions for the PG4-A-4 and PG4-A-8 projects.

The AUC found there to be inadequate support for the values of economic life calculated in the METSCO analysis for ENMAX. As a result, the AUC found that the METSCO recommendations for asset replacement were unreliable for making any asset management or capital planning decisions. Consequently, the AUC found that any determinations based exclusively on the METSCO economic life values were also unreliable. This included the volume of assets that reached their economic age in any year and therefore needed to be replaced or rejuvenated, as well as the volume of assets whose ages already exceed their economic life, and which, thereby, created a backlog of assets that need replacement or rejuvenation.

The AUC directed ENMAX to file a compliance filing application on or before May 27, 2019. As part of its compliance filing, the AUC directed ENMAX to apply for approval of capital tracker treatment of its 2017 actual capital expenditures for the PG4-A-4 and PG4-A-8 projects.

EPCOR

With respect to EPCOR, the AUC provided its assessment of METSCO’s analyses, as proposed for use in EPCOR’s 2017 asset management and capital planning processes. EPCOR did not request the AUC evaluate any of its specific capital expenditures for capital tracker treatment in this proceeding.

The scope of this proceeding for EPCOR was confined to a technical consideration of METSCO’s studies, analyses, and methodologies.

The AUC divided EPCOR’s 2017 capital tracker true-up application (Proceeding 23571) to process the non-METSCO-related matters (Module One), while the METSCO-related matters (Module Two) were suspended until the release of this decision. The AUC will issue a process schedule for Module Two on the record of Proceeding 23571 in due course.

The City of Red Deer 2018-2020 Transmission Facility Owner General Tariff Application (AUC Decision 23872-D01-2019) Revenue Requirement

In this decision, the AUC denied the City of Red Deer (“Red Deer”)’s requested revenue requirement for the years 2018-2020 with respect to property taxes and the full-time equivalent (“FTE”) vacancy rate.

The AUC found that Red Deer failed to justify its 2018 property tax forecast. Notwithstanding Red Deer’s submission that no form of vacancy rate was attributed to its FTEs over the test periods, the AUC determined that Red Deer did have a history of periods where vacant positions existed.

The AUC directed Red Deer to respond to all directions in this decision by way of a compliance filing and reconcile the following deferral accounts:

- (a) return on equity;
- (b) direct-assign capital;

- (c) hearing cost reserve; and
- (d) self-insurance reserve.

In its application, Red Deer requested approval of its forecast revenue requirements in the amounts of \$4.866 million for 2018, \$5.118 million for 2019 and \$5.288 million for 2020; and to recover the approved revenue requirements in a transmission tariff from the Alberta Electric System Operator (“AESO”).

Inflation

The AUC found the inflation rate of two percent for union and non-union employees, materials, contractor, and general-other was reasonable. The AUC approved Red Deer’s inflation rate of two percent.

Property Taxes

The AUC found that Red Deer failed to justify its 2018 property tax forecast. The AUC directed Red Deer to revise its 2018 forecast property tax to reflect its actual 2018 property tax paid.

With respect to 2019 and 2020, the AUC found that Red Deer’s forecast property tax increases of six percent each year was reasonable. The AUC directed Red Deer to revise its forecast property taxes in its compliance filing to reflect an increase of six percent applied to the 2018 actual property tax paid, and an additional increase of six percent applied to the revised 2019 forecast property tax, for each of 2019 and 2020, respectively.

The AUC found that the increase in actual property tax was the result of actual rate base additions in the amounts of \$17 million and \$2 million for the years 2016 and 2017, respectively. This influenced the assessed value of the assets subject to property taxes.

Full-Time Equivalent and Vacancy Rates

The AUC found that an application of vacancy rate was warranted and directed Red Deer to revise its vacancy rate to 1.0 percent for the years 2018-2020 in its compliance filing.

AUC Bulletin 2019-03: Generic Proceeding to Review Rate Treatment of Distribution System Acquisition Costs Under Performance-Based Regulation

In this bulletin, the AUC announced an AUC initiated a generic proceeding (Proceeding 24405), to consider and clarify the rate treatment of amounts paid by a regulated distribution utility for the acquisition of other distribution systems or assets under the 2013-2017 and 2018-2022 performance-based regulation (“PBR”) plan frameworks.

The AUC determined that all interested parties (e.g., including municipalities owning distribution systems, rural electrification associations (“REAs”), and gas co-ops) would benefit from clarity regarding the rate treatment of these types of purchases by a distribution utility. The generic proceeding did not re-examine how the acquisition costs should be evaluated for prudence nor will it reconsider the parameters, rate adjustment mechanisms, and capital funding mechanisms established or continued by the AUC for the 2018-2022 PBR plans.

Generic Proceeding Process and Participation

The AUC requested parties’ comments with respect to the process, specifically, if the filing of evidence and a round of information requests and responses is required, or if this matter can proceed directly to argument and reply argument. Following its consideration of any submissions received, the AUC will release a confirmed issues list and a further process schedule. It is the AUC’s expectation that this approach will result in a considered and comprehensive issues list that will serve to focus the proceeding, enhance the quality of the record, and promote regulatory efficiency.

The AUC pre-registered the six distribution utilities under the 2018-2022 PBR plans, ATCO Electric, Fortis, AltaGas, ATCO Gas, ENMAX, and EPCOR, as participants in this proceeding. The AUC also pre-registered intervening parties that actively participated in proceedings 23702 and 23972; namely, the Consumers’ Coalition of Alberta and the Office of the Utilities Consumer Advocate. The AUC requested that all parties confirm their contact information for Proceeding 24405 in the AUC’s eFiling System and update it if required.

Concurrently with this bulletin, the AUC issued a notice of application inviting any other interested

parties to participate. The statements of intent to participate were due March 19, 2019.

The AUC also issued as Appendix A to this bulletin a Preliminary List of Issues, summarized as follows:

- (a) Under the previous PBR framework, amounts paid by a regulated distribution utility for the acquisition of an REA may be treated by way of a Y factor when the acquisition was directed by the AUC. For the purposes of funding under the previous PBR framework, should the purchase of a municipally owned electric or gas distribution system be treated differently than the purchase of an REA?
- (b) For the purposes of funding under the 2018-2022 PBR plans, should the purchase of a distribution system (such as an REA or municipally owned electric or gas distribution system) be treated differently than the purchase of an REA under the previous PBR framework and should different types of distribution systems require different rate treatment?
- (c) In light of the established 2018-2022 PBR plan framework and the five PBR principles,⁸ how should the amounts paid by a regulated distribution utility for the acquisition of an electric or gas distribution system from an REA, municipality or gas co-op be treated under that framework? In particular:
 - (i) Should these costs be considered for funding through a supplemental funding mechanism such as a Z factor or a Y factor?
 - (ii) Alternatively, should the supplemental funding mechanisms such as a Z factor or a Y factor be unavailable to a distribution utility, given the presence of the capital funding mechanism under the 2018-2022 PBR plan?
 - (iii) What are the rate treatment options referenced in parts (i) and (ii) above?
- (d) With respect to the purchase of an REA, a specific AUC direction to the utility to acquire the subject assets is required to allow for Y factor treatment of the

acquisition costs. What should the treatment be for the acquisition costs absent a Commission direction?

- (e) Parties may make submissions in this proceeding with respect to “the rate treatment of the acquisition costs of the Crowsnest Pass electric distribution system in light of the service area and transfer approvals received to date.”