REGULATORY LAW CHAMBERS

ENERGY REGULATORY REPORT

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

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

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ALBERTA ENERGY REGULATOR

Requests for Regulatory Appeal by Individuals Regarding Section 106(1) Declaration, AER Decision 1925604 & 1925605

Regulatory Appeal - Section 106(1) Declaration

In this decision, the AER considered requests from two individuals (the "Requesters") under section 38 of the *Responsible Energy Development Act* ("*REDA*") for regulatory appeals. The Requestors sought to appeal the decision of AER Compliance and Liability Management ("CLM") to issue declarations under section 106(1) of the *Oil and Gas Conservation Act* ("OGCA") naming the Requesters (the "Decision"). The AER granted the requests for regulatory appeal.

Legislative Framework

Section 38(1) of *REDA* sets out the test for eligibility for a regulatory appeal. It provides that:

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

The AER noted that there are three parts to the test. First, the requester must be an "eligible person" as defined in section 36(b) of *REDA*. Second, the decision from which the requester seeks a regulatory appeal must be an "appealable decision" as defined in section 36(a) of *REDA*. Third, the request must have been filed in accordance with the *AER Rules of Practice* (the "*Rules*").

AER Findings

The AER noted that the requests were filed in accordance with the *Rules*, so the key questions to be answered were whether the Decision was an appealable decision and whether the Requesters were eligible persons.

Appealable Decision

The term "appealable decision" is defined in section 36(a)(iv) of *REDA* to include:

> a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing…

The AER noted that the Decision was made without a hearing under section 106(1) of the *OGCA*, an energy resource enactment. It was, therefore, an appealable decision.

Eligible Person

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

> a person who is directly and adversely affected by a decision [made under an energy resource enactment without a hearing]…

The AER noted that to be eligible persons, the Requesters must be directly and adversely affected by the Decision.

The AER explained that the section 106(1) declarations require the Requesters, or any regulated party directly or indirectly controlled by them, to, upon application to the AER, inform the AER that the

declarations are in effect and that the Requesters have control of the licensee or approval holder. In accordance with subsections 106(3)(b) and (c), the AER may refuse to consider any application from the Requesters, or any other regulated party directly or indirectly controlled by them, or require the submission of abandonment and reclamation deposits prior to granting any licence, approval, or transfer of a licence or approval to the Requesters or any regulated party controlled by them. Further, the Requesters are included in a list of individuals named under section 106(1) of the *OGCA* that the AER maintains on its website.

The AER found that the declarations clearly limit the Requesters' ability to participate in the energy industry in Alberta. Thus, it is reasonable to conclude that the declarations may result in reputational harm to the Requesters. Therefore, the AER determined that the Requesters were directly and adversely affected by the Decision, and there was some merit to the requested appeals.

Request for Regulatory Appeal by Fort McKay First Nation, **AER Decision 1924230**

Request for Regulatory Appeal - Oil Sands Project

In this decision, the AER considered a request from Fort McKay First Nation ("Fort McKay") under section 38 of the *Responsible Energy Development Act* ("*REDA*") for a regulatory appeal of the AER's decision to approve *Oils Sands Conservation Act* ("*OSCA*") Approval No. 9725H and *Environmental Protection and Enhancement Act* ("*EPEA*") Approval No. 014-00149968 (collectively the "Approvals"). The Approvals related to the construction and operation of a High Temperature Paraffinic Froth Treatment Project ("Project") within Canadian Natural Resources Limited ("Canadian Natural")'s Horizon oil sands mine and processing plant. The AER decided that Fort McKay was not eligible to request a regulatory appeal in this matter.

Legislative Framework

The applicable provision of *REDA* in regard to regulatory appeals, section 38, states:

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

Reasons for Decision

The AER explained that for energy resource enactment decisions, an eligible person is a person who is directly and adversely affected by a decision made under an energy resource enactment without a hearing (section 36(b)(ii) *REDA*). For the decision to issue an *EPEA* approval amendment, an eligible person is a person who previously submitted a statement of concern in response to public notice and who is directly affected by the AER's decision (section 36(b)(i) *REDA*).

The AER noted that in ***Dene Tha' First Nation v Alberta (Energy and Utilities Board)***, the Court of Appeal of Alberta provided guidance on what an Aboriginal group must demonstrate in order to meet the factual part of the directly and adversely affected test. Although the decision concerns the test under subsection 26(2) of the former *Energy Resources Conservation Act*, the AER considers it to be reliable guidance in the question of what information is needed to show that a person may be directly and adversely affected/directly affected, i.e., on the factual question that arises under section 36(b) of the *REDA*:

> [14] It was argued before us that more recent case law on prima facie infringement of aboriginal or treaty rights changed things. But the Board still needed some facts to go on. It is not compelled by this legislation to order intervention and a hearing whenever anyone anywhere in Alberta merely asserts a possible aboriginal or treaty right. Some degree of location or connection

> between the work proposed and the right asserted is reasonable. What degree is a question of fact for the Board. [Emphasis added.]

The *Dene Tha'* approach has been confirmed in a subsequent decision of the Alberta Court of Appeal with respect to the assessment of whether a person is directly and adversely affected as contemplated under the *REDA*. The court outlined in *O'Chiese First Nation v. Alberta Energy Regulator* the following:

> [43] A decision of the AER can, as a matter of fact, 'directly and adversely' affect a party such as the O'Chiese First Nation. Whether it does so or not is to be considered by the AER in light of the evidence properly adduced before it.
>
> [44] What is equally clear however is that the phrase "directly and adversely" is not automatically engaged as a matter of law on the facts of this case. In other words, the mere fact that the developments in question are located within the OCFNCA does not mean that the Approvals "directly and adversely" affect the O'Chiese First Nation.

Fort McKay submitted that the Project would be in an area that Fort McKay uses to exercise its Treaty and Aboriginal rights.

The AER found that Fort McKay's submissions did not demonstrate that Fort McKay's traditional land use at a specific site or in proximity to the Project lands could be directly and adversely affected by the approvals. The AER also found that Fort McKay's submissions did not demonstrate that a member's use of natural resources may be impacted by the Project in a way that results in a direct and adverse effect on that member.

The AER noted that, while Fort McKay's submissions were extensive, they did not contain the detail needed to demonstrate a degree of location or connection between the Approvals and the asserted impacts on Fort McKay members that demonstrated a potential for the Approvals to directly and adversely affect a Fort McKay member. As a result, the AER could not conclude that the issuance of the *OSCA* approval may or will directly and adversely affect Fort McKay and/or its members, or that the issuance of the *EPEA* amendment could or would directly affect Fort McKay and/or its members.

Conclusion

The AER found that Fort McKay had not met the requirements for a regulatory appeal and decided to dismiss the request for regulatory appeal.

***Request for Regulatory Appeal by Tobinsnet Oil & Gas Ltd.*, AER Decision 1925077**

Request for Regulatory Appeal - Well Licence Transfer

In this decision, the AER considered a request for a regulatory appeal filed by Tobinsnet, under section 38 of the *Responsible Energy Development Act* ("*REDA*"), of the closure by the AER of Application No. 1923203 (the "Application") for the transfer of two well licences. The AER dismissed the regulatory appeal request.

Legislative Framework

The applicable provision of *REDA* with regard to regulatory appeals, section 38, states:

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

Section 36(a) of *REDA* defines an "appealable decision." For the present purposes, the relevant definition is contained in section 36(a)(iv), which states that an appealable decision includes:

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

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

> (ii) a person who is directly and adversely affected by a decision referred to in clause (a)(iv).

The applicable deadline in the circumstances for filing a request for regulatory appeal is provided in section 30(3) the *Alberta Energy Regulator Rules of Practice* ("*Rules*"):

> (m) in the case of a regulatory appeal in respect of any other appealable decision, no later than 30 calendar days after notice of the decision is issued.

Section 1(1)(f) of *REDA* states that a decision of the AER includes an approval, order, direction, declaration or notice of administrative penalty made or issued by the AER. *REDA* section 1(1)(b) specifies that an approval means "a permit, licence, registration, authorization, disposition, certificate, allocation, declaration or other instrument or form of approval, consent or relief under an energy resource enactment or a specified enactment."

Section 3(4) of the *Rules* states the following:

> (4) If an application is not complete in the opinion of the Regulator, the Regulator may (a) notify the applicant in writing and request the information necessary to make the application complete, or (b) return the application to the applicant as incomplete.

Section 27 of *REDA* provides the following:

> 27 No action or proceeding may be brought against the Regulator, a director, a hearing commissioner, an officer or an employee of the Regulator, or a person engaged by the Regulator, in respect of any act or thing done or omitted to be done in good faith under this Act or any other enactment.

AER Findings

The AER found that Tobinsnet failed to provide any analysis to demonstrate why it was eligible to request a regulatory appeal of the Application closure.

The AER explained that it closed the Application without prejudice as incomplete by a letter dated September 30, 2019, because the agent proposed by Tobinsnet did not meet regulatory requirements. The licences requested to be transferred in Tobinsnet's subject Application, which was initially closed without prejudice on September 30, 2019, were approved and transferred to Tobinsnet in a subsequent application process on January 22, 2020. The AER found that this made this regulatory appeal request moot and gave the AER sufficient grounds to dismiss the regulatory appeal request.

The AER also found that a closure of an application under the *Rules* is not an "appealable decision" as required by section 38(1) of the *REDA* because the *Rules* are not an energy resource or specified enactment. Consequently, the Application closure could not be appealed.

The AER rejected Tobinsnet's attempt to use the regulatory appeal process to expand its relief to request compensation for alleged damages that resulted from a prior AER regulatory action or to request a regulatory appeal of a prior AER decision. The AER noted that that decision should have been challenged at the time it was issued in accordance with the regulatory appeal deadlines applicable to that decision. The AER found that Tobinsnet cannot use this process for a collateral attack of a different decision for which the challenge appeal deadline has long passed. Further, the AER noted that it has no authority to provide the compensatory financial relief sought through the regulatory appeal process.

Conclusion

The AER dismissed the request for regulatory appeal pursuant to section 39(4)(c) of the *REDA.*

***Requirements Aimed at Reducing Methane Emissions Amended,* AER Bulletin 2020-12**
Bulletin - Methane Emission Reduction

On May 12, 2020, the AER announced that it released new editions of *Directive 017: Measurement Requirements for Oil and Gas Operations* and *Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting*, which are effective immediately. The following changes related to managing methane emissions were made:

- *Directive 017*:
    - section 12.2.2.1 lengthened the duration required to test gas production at heavy oil and crude bitumen batteries (not including thermal in situ facilities) from 24 hours to 72 hours starting in 2023.
- *Directive 060*:
    - section 2.9. included reduced carbon levies in economic evaluations of gas conservation projects;
    - section 5.5 revised measurement and reporting requirements to ensure consistency with the definitions in appendix 2 of the directive for fuel, flare, and vent gas; and
    - section 8 amended vent gas limits for crude bitumen batteries, pneumatic devices, compressor seals, and glycol dehydrators beginning in 2022. Section 8 also amended the exemptions for the overall vent gas limit and defined vent gas limit.

ALBERTA UTILITIES COMMISSION

Alberta Health Services Foothills Medical Centre Power Plant, AUC Decision 23958-D01-2020

Facilities - Medical Centre Power Plant Expansion

In this decision, the AUC considered whether to approve an application (the Application") from Alberta Infrastructure ("AI"), on behalf of Alberta Health Services ("Alberta Health"), to construct and operate the Foothills Medical Centre ("FMC") Power Plant expansion (the "Project") and to connect the power plant to the Alberta Interconnected Electric System (the "Project"). The AUC found that approval of the Power Plant Expansion was in the public interest. However, the AUC placed the Application for interconnection to the Alberta Interconnected Electric System ("AIES") in abeyance until further notice.

Background

The applied-for expansion would involve the construction and operation of one 8-MW gas turbine generator, which would be integrated with a new heat recovery steam generator ("HRSG") unit. The proposed Power Plant Expansion and new HRSG would use natural gas to co-generate electricity and steam for use by the FMC and the proposed expansion.

Alberta Health applied to connect the proposed Power Plant Expansion to AIES to increase operational stability of the existing power plant and the proposed Power Plant Expansion.

AUC Findings

Noise

AI retained Stantec Consulting Ltd. ("Stantec") to provide evidence on the Project's noise impact and prepare a noise impact assessment ("NIA") for the Project.

The AUC noted that the 2019 and 2020 versions of Rule 012 make clear that deferred facility status was eliminated on October 17, 2018, and that after this date, pre-1988 facilities must demonstrate compliance with the PSL established in the current Rule 012. The AUC, therefore, found that the PSLs previously established for the FMC Power Plant are no longer valid. Pursuant to Table 1 of Rule 012, the AUC indicated that applicable PSLs at the five noise receptors are 61 dBA for the daytime period and 51 dBA for the nighttime period.

AI conducted an exhaustive mitigation study at the noise prediction stage. However, despite the implementation of those measures, predicted cumulative sound levels at receptors R1, R2, R3, and R4 nonetheless exceed the nighttime PSL of 51 dBA by up to 1.1 dB. Notwithstanding the predicted exceedances, the AUC considered that the noise-related aspects of the Application weighed in favour of Project approval because:

(a) the FMC Power Plant generates electricity for use by a medical facility;

(b) prior to October 2018, the FMC Power Plant was compliant with the elevated nighttime PSL consistent with its status as a deferred facility;

(c) the Project noise impacts may be overestimated because of the model utilized to predict noise levels; and

(d) AI conducted an exhaustive study to identify potential noise mitigation measures and committed to implementing further mitigation measures if non-compliance is identified in the post-construction comprehensive sound level (CSL) survey.

The AUC agreed that AI should complete a post-construction CSL survey to verify compliance with Rule 012 once the Project commences operation.

Other Power Plant Considerations

From an air quality perspective, the AUC accepted that the predicted 9.1 µgrams/m^3 for fine particular matter was below the Alberta Ambient Air Quality Objectives maximum of 10 µgrams/m^3. The AUC was also satisfied that the electromagnetic field levels were expected to be much lower than the maximum dosage recommended by the International Commission on Non-Ionizing Radiation Protection.

Purpose of the Expansion

The AUC noted that when it considers and makes decisions about the siting of power plants it considers concerns such as potential property impacts, environmental impacts, and noise, among other issues, however it does not determine if and where in the province power generation should be sited as electric generation is deregulated. Because electric generation is deregulated, the AUC cannot assess the need for a power plant. While the AUC acknowledges a concern about other power plants being constructed in or near residential areas, the AUC is required to separately consider the individual impacts of each power plant for which an application is filed.

Connection Order

In Decision 23418-D01-2019, the AUC considered whether the statutory scheme allows a market participant to generate electricity for the purposes of self-supply and export to the AIES. For the reasons set out in paragraphs 75 to 102 of that decision, the AUC found that the statutory scheme does not allow for such conduct except in specific circumstances:

> …the Commission is satisfied that the statutory scheme expressly authorizes the owners of industrial systems and micro-generators to self-supply and transact any electric energy that is in excess of their own use through the interconnected electric system. Absent from the statutory scheme, however, is any express authorization for a party that relies upon the exemption in subsection 2(1)(b) to export electric energy that is in excess of the person's own use on the property. Given that such express authorization exists for the other two self-supply mechanisms, the Commission considers its omission for subsection 2(1)(b) operations to be intentional and reflective of the drafter's intent to require that all the electricity produced on site be consumed on site.

The AUC found that while it recognizes that there are several benefits to allowing Alberta Health to export electricity from the FMC Power Plant and its expansion Project, it does not have the authority to approve a connection order that would allow for the self-supply and export of electricity as requested by Alberta Health.

The AUC acknowledged that although this is not consistent with its past practice prior to the issuance of Decision 23418-D01-2019, there is a current and ongoing consultation on the issue of self-supply and export. As noted on its external website, "[t]he AUC received 33 thoughtful submissions in response to Bulletin 2019-16, the majority of which favoured Option 3: Unlimited self-supply and export. While the AUC does not have the authority to amend the relevant legislation, it has shared these submissions with the Department of Energy. In response, the Department of Energy requested that the AUC

proceed with a second round of consultation focused on the market and tariff implications of unlimited self-supply and export."

The AUC found that given the Department of Energy's request to continue consultation and the potential for amendments to the applicable legislation, rather than deny the connection order, the AUC placed the connection portion of the Application in abeyance and indicated it would provide direction to Alberta Health and AI once consultation is finalized.

Conclusion

The AUC found that approval of the Power Plant Expansion was in the public interest having regard to the social, economic, and other effects of the Project, including its effect on the environment. The AUC, therefore, approved the Project.

However, the AUC also found that the interconnection did not meet the statutory scheme and placed the Application for interconnection to the AIES in abeyance until further notice.

***Amendments to AUC Rule 027: Penalties for Contravention of Reliability Standards*, AUC Bulletin 2020-21**

Bulletin - Amendment to AUC Rule 027

The AUC advised that on May 20, 2020, it approved amendments to *Rule 027: Specified Penalties for Contravention of Reliability Standards*, with an effective date of June 1, 2020.

Background

Beginning in January 2020, the AUC initiated a rule-review process in which it sought feedback from stakeholders on changes to Rule 027. The proposed changes involved the addition of new and amended reliability standards to the penalty table as well as the removal of reliability standards that have been replaced or retired.

Future Updates

The AUC announced that a new initiative for 2020 would be to pursue opportunities to reduce the lag time between the approval of new or revised reliability standards or the removal of obsolete reliability standards and the inclusion of the new or revised reliability standards in Rule 027.

***ATCO Electric Ltd. Decision on Application for Review and Variance of Decision 22742-D02-2019 2018-2019 Transmission General Tariff Application*, AUC Decision 25139-D01-2020**

Rates - Electricity - Review and Variance

In this decision, the AUC considered whether to grant an application (the "R&V Application" filed by ATCO Electric Ltd. ("ATCO Electric") requesting a review and variance ("R&V") of specific findings in AUC Decision 22742-D02-2019 (the "Decision"). The Decision provided the AUC's determinations on utility asset disposition ("UAD") and other matters pertaining specifically to the Fort McMurray wildfire, filed as part of ATCO Electric's 2018-2019 general tariff application in Proceeding 22742. The AUC approved the R&V Application and varied paragraphs 63 to 65 of the Decision.

AUC's Review Process

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

Section 4(d) of Rule 016 requires an applicant to set out in its application the grounds upon which it is relying, which may include the following:

> (i) The Commission made an error of fact, law or jurisdiction;
>
> (ii) Previously unavailable facts material to the decision, which existed prior to the issuance of the decision in the original proceeding but were not previously placed in evidence or identified in the proceeding and could not have been discovered at the time by the review applicant by exercising reasonable diligence;
>
> (iii) Changed circumstances material to the decision, which occurred since its issuance.

Section 6(3) of Rule 016 describes the circumstances in which the AUC may grant a review as follows:

> 6(3) The Commission may grant an application for review of a decision, in whole or in part, where it determines, for an application for review pursuant to subsections 4(d)(i), (ii) or (iii), that the review applicant has demonstrated:
>
> > (a) In the case of an application under subsection 4(d)(i), the existence of an error of fact, law or jurisdiction is either apparent on the face of the decision or otherwise exists on a balance of probabilities that could lead the Commission to materially vary or rescind the decision.
> >
> > (b) In the case of an application under subsections 4(d)(ii) or 4(d)(iii), respectively, the existence of: (i) Previously unavailable facts material to the decision..; or (ii) Changed circumstances material to the decision...
>
> that could lead the Commission to materially vary or rescind the decision,

The AUC noted that the Supreme Court of Canada in *Housen v Nikolaisen*, as recently reaffirmed in Canada *(Minister of Citizenship and Immigration) v Vavilov*, determined that the applicable appellate review standard concerning an alleged error of fact, or mixed fact and law, is a "palpable and overriding error." This guidance was incorporated by the AUC in Decision 2012-124 as follows:

> 30. … [F]indings of fact or inferences of fact made by the hearing panel are entitled to considerable deference, absent an obvious or palpable error. In the Commission's view, this approach is consistent with that prescribed by the Supreme Court in *Housen v. Nikolaisen* [2002 SCC 33] and by the Court of Appeal in *Ball v. Imperial Oil* [2010 ABCA 111]. It is also consistent with the general principle that the trier of fact is better situated than a subsequent review authority to make factual findings or draw inferences of fact given the trier of fact's exposure to the evidence and familiarity with the case as a whole.

In light of this guidance, the AUC concluded that it should apply the following principles to its consideration of the R&V Application before it:

(a) decisions of the AUC are intended to be final; the AUC's Rules recognize that a review should only be granted in those limited circumstances described in Rule 016;

(b) the review process is not intended to provide a second opportunity for parties with notice of the application to express concerns about the application that they chose not to raise in the original proceeding; and

(c) the review panel's task is not to retry the application based upon its own interpretation of the evidence nor is it to second guess the weight assigned by the hearing panel to various pieces of evidence. Findings of fact and inferences of fact made by the hearing panel are entitled to considerable deference, absent an obvious or palpable error.

R&V Panel Findings

Review Grounds

ATCO Electric argued that the hearing panel made an error of fact, law and/or jurisdiction pursuant to section 4(d)(i) of Rule 016 when it directed that ATCO Electric treat the remaining net book value ("NBV") of the destroyed assets of $0.664 million, and the costs associated with the repair or replacement of damaged or destroyed assets of $7.6 million, in a manner contrary to AUC and judicial precedent, and inconsistent with the AUC's prior decisions and ATCO Electric's normal depreciation and accounting treatment. The R&V panel majority rejected ATCO Electric's argument for grounds for review on the basis of such an error.

The R&V panel majority found that the arguments presented by ATCO Electric were more akin to section 4(d)(ii) of Rule 016; that is, the arguments suppled "facts material to the decision, which existed prior to the issuance of the decision in the original proceeding but were not previously placed in evidence or identified in the proceeding and could not have been discovered at the time by the review applicant by exercising reasonable diligence." The R&V panel majority therefore found that a review on the basis of this ground, while not asserted, had been demonstrated.

The R&V panel majority noted it was apparent that the hearing panel was of the view that ATCO Electric was applying to account for the destroyed assets at issue through its reserve for injuries and damages ("RID") account, and that ATCO Electric intended to update its accounting policy for the RID account on a go-forward basis. In this proceeding, ATCO Electric cited a number of documents and exhibits as "clear references to the update of the accounting policy on disposals and retirements and its impact on the RID." In the R&V panel majority's view, had ATCO Electric understood the hearing panel's interpretation of the applied-for accounting treatment, it would have provided the information filed in this R&V Application on the record of the original proceeding to clarify its requested accounting treatment.

The R&V panel majority found that the new information disclosed in this R&V proceeding could, on a balance of probabilities, lead the hearing panel to materially vary its findings in the Decision. This is because, for example, at paragraph 65 of the Decision, the hearing panel expressed concern with ATCO Electric's approach to using the RID account as "…a mechanism for the recovery of capital costs, in circumstances such as those associated with events like the Fort McMurray wildfire," and directed ATCO Electric to re-examine the reasonableness of this approach as part of ATCO Electric's next general tariff application.

Variance

As clarified in the R&V Application, ATCO Electric was applying to retire the costs of the destroyed assets ($1.9 million) and capitalize the costs of the replacement assets ($7.6 million) in the year 2017. The R&V panel accepted that this proposed accounting treatment was consistent with ATCO Electric's established RID treatment and accounting policies and prior AUC approvals. Accordingly, the R&V panel majority approved this accounting treatment.

Concurring Opinion of Commissioner Phillips

Commissioner Phillips concurred with the conclusion of the R&V panel majority but would have granted the first stage of the review test on the grounds that ATCO Electric satisfied the requirements of section 4(d)(i) of Rule 016, as applied for.

***ATCO Electric Ltd. Light-Emitting Diode Lighting Conversion - Maintenance Multiplier Filing for Six Municipalities*, AUC Decision 25522-D01-2020**

LED Conversion Multiplier

In this decision, the AUC considered an application from ATCO Electric Ltd. ("ATCO Electric") for a light-emitting diode ("LED") lighting conversion maintenance multiplier ("LED conversion multiplier") of 1.073 for the Village of Delia, the Village of Dewberry, the Village of Elnora, the Village of Heisler, the Village of Hines Creek and the Village of Innisfree (collectively, the "municipalities"). The AUC approved the LED conversion multiplier of 1.073.

Background

In Decision 22667-D01-2017, the AUC accepted ATCO Electric's proposal to use a maintenance multiplier for a special request from its exterior lighting customers, that is higher than the standard service level, or a request for lighting fixtures that results in higher than average lighting costs. The AUC directed ATCO Electric to do the following in relation to reaching an agreement with a customer requesting a special service:

> 18. … upon preliminary agreement with a customer requesting any special service, to prepare an analysis and multiplier calculation that considers the specific and direct costs of providing that service. The analysis should demonstrate that (i) other customers will not subsidize the customer with the special request, and (ii) the customer with the special service request will not be double charged by way of the multiplier as they are already entitled to the standard level of service through their current rates.
>
> 19. … confer with a customer requesting any special service upon completion of the above-directed analysis and multiplier calculation, and to provide this analysis to that customer along with the estimated bill impact and information regarding the cost of the special service, and confirm customer acceptance. If the customer agrees with the multiplier proposal, the information (the multiplier calculation and analysis and the estimated bill impact and confirmation of customer acceptance) should be filed with the Commission as part of the maintenance multiplier application for that customer.

AUC Findings

The AUC found that ATCO Electric complied, or confirmed its future intent to comply, with each of the directions issued in past LED maintenance multiplier decisions. Specifically:

(a) ATCO Electric provided an analysis and LED conversion multiplier calculations that examine the specific and direct costs of providing the LED conversion service to the specific customers requesting the service. The analysis and calculations of the LED conversion multiplier showed that other customers would not be subsidizing those making the LED conversion multiplier request, nor would any customer making the special service request be double charged for the standard level of service to which they are entitled under existing rates.

(b) ATCO Electric provided information demonstrating that the higher cost of service, the LED conversion multiplier, and its effects were brought to, acknowledged and accepted by officials of all of the affected municipalities, and that information was filed with the Commission as part of the LED conversion multiplier filing for those customers.

(c) ATCO Electric has reported on the level of administrative burden and on the effectiveness of the maintenance multiplier process within its Phase II application.

(d) ATCO Electric confirmed that it will file any changes to the LED conversion multiplier with the Commission.

(e) ATCO Electric forwarded the notice of application to customers affected by the current application and will forward the notice of application to affected customers in future applications.

(f) ATCO Electric used the most recently approved return on equity and capital structure values. ATCO Electric also used its most recent cost of debt and preferred shares reported in its Rule 005: Annual Reporting Requirements of Financial and Operational Results. filing.

(g) ATCO Electric provided fixture counts for each of the municipalities in this application.

The AUC acknowledged and accepted ATCO Electric's LED conversion multiplier of 1.073 under its distribution tariff.

The AUC noted that Decision 24747-D01-2020, regarding ATCO Electric's 2019 Distribution Tariff Application – Phase II, was issued on April 30, 2020. The AER stated that ATCO Electric must follow the directions set out therein in its future maintenance multiplier applications.

ATCO Electric Ltd. and the Village of Hythe - Franchise Agreement and Rate Rider A, AUC Disposition 25545-D01-2020

Rates

On May 4, 2020, ATCO Electric Ltd. ("ATCO") applied to the AUC for approval of an electric franchise agreement with the Village of Hythe.

The proposed franchise agreement is based on the standard electric franchise agreement template approved in Decision 2012-294, has a term of 20 years or less, and will be effective the later of March 22, 2020, or the first day after it has both received AUC approval and Hythe has passed third reading of Bylaw No. 549 approving the franchise agreement.

The proposed franchise fee of 10 percent maintains the current franchise fee. The proposed franchise fee will remain as a $10.47 charge in the average monthly charge for an average residential customer.

The AUC considered that the right granted to ATCO by Hythe to construct, operate, and maintain the electric distribution system is necessary and proper for the public convenience and properly serves the public interest.

Pursuant to Section 45 of the *Municipal Government Act*, and Section 139 of the *Electric Utilities Act*, the AUC approved the franchise agreement as filed.

***ATCO Electric Ltd. - Decision on Preliminary Question - Application for Review of Decision 21609-D01-2019 Z Factor Adjustment for the 2016 Regional Municipality of Wood Buffalo Wildfire*, AUC Decision 25130-D01-2020**

Review and Variance - Z Factor

In this decision, the AUC considered a review application filed by ATCO Electric Ltd. ("ATCO") requesting a review and variance of specific findings in AUC Decision 21609-D01-2019: *ATCO Electric Ltd., Z Factor Adjustment for the 2016 Regional Municipality of Wood Buffalo Wildfire* ("Decision"). The Decision addressed an application from ATCO for approval of the recovery of $15 million through a Z factor rate adjustment to compensate it for the costs it incurred as a result of the 2016 Regional Municipality of Wood Buffalo ("RMWB") wildfire and other northern Alberta wildfires in the ATCO Electric Z Factor Adjustment for the 2016 Wood Buffalo Fire proceeding. The review application sought a review and variance of those parts of the Decision denying (1) ATCO's request to restate its 2016 Rule 005 filing and (2) Z factor treatment for lost revenue for sites that remained inactive after May 2, 2017. The AUC denied the review application.

The members of the AUC panel who authored the Decision will be referred to as the "Hearing Panel" and the members of the AUC panel considering the review application will be referred to as the "Review Panel."

Background

In the Decision, the Hearing Panel made two findings that were the subject of the review application.

First, the Hearing Panel held that there was insufficient evidence to support ATCO's contention that all normal business activities of supervisory and management employees were backfilled using overtime and contractors when supervisory and management employees were seconded to deal with the RMWB wildfire. For this reason, Z factor treatment was denied for the supervisory and management labour costs for the RMWB wildfire. Since the regular base labour costs of these employees seconded to deal with the RMWB wildfire were already covered in base rates, the restatement of the 2016 Rule 005 filing was not required.

Second, the Hearing Panel held that revenue lost as a result of the RMWB wildfire was eligible for inclusion in the Z factor adjustment. However, the AUC denied Z factor treatment for the lost revenue for sites that remained inactive after May 2, 2017, 12 months after the start of the mandatory evacuation period, on the basis that ATCO could disconnect service after 12 months where it was not receiving revenue for that service.

AUC's Review Process

The AUC's authority to review its own decisions is discretionary and is found in section 10 of the *Alberta Utilities Commission Act*. The review process has two stages. In the first stage, a review panel must decide whether there are grounds to review the original decision. This is sometimes referred to as the "preliminary question." If the review panel decides that there are grounds to review the decision, it moves to the second stage of the review process where the AUC holds a hearing or other proceeding to decide whether to confirm, vary, or rescind the original decision.

Grounds for Review and Hearing Panel Findings

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

- Operations and Maintenance ("O&M") Costs issue: The Hearing Panel erred in finding that it was unnecessary for ATCO Electric to restate its 2016 Rule 005 filing to include the O&M Costs in 2018 going-in rates for the second Performance Based Regulation ("PBR") term. ATCO presented two arguments:
    - The Hearing Panel's failure to specify in which "base rates" the O&M Costs had already been covered; and
    - The Hearing Panel's failure to recognize that because ATCO's 2016 Rule 005 filing booked the O&M Costs to a deferral account, these O&M Costs were excluded from ATCO's 2018 going-in rates and base rates.
- Lost revenue issue: The Hearing Panel erred in denying Z factor treatment for lost revenue for sites that remained inactive after May 2, 2017. ATCO submitted that this constituted a reviewable error on the following three grounds:
    - The Hearing Panel's "incorrect, unreasonable, and impractical interpretation and application" of ATCO's customer Terms & Conditions ("T&Cs");
    - The Hearing Panel did not adequately consider, or attribute appropriate weight to, the evidence on the record of the proceeding in respect of the lost revenue, in particular, the timelines within and the frequency at which customer sites that were destroyed by the RMWB wildfire were reconstructed and reactivated; and
    - ATCO operates under a PBR price-cap framework where it does not have the ability to recover lost revenue from the RMWB wildfire other than by a Z factor until rates are re-based for the next PBR term, such that the utility experiences continued losses until the end of the current PBR term.

Review Panel Findings

O&M Costs Issue

ATCO stated that the Hearing Panel failed to specify in which base rates the O&M Costs had already been covered. ATCO claimed that the Hearing Panel failed to recognize that its 2016 Rule 005 filing excluded these O&M Costs from its total O&M because they were booked to a deferral account. These costs were therefore excluded from ATCO's 2018 going-in and base rates. Considering the denial of Z factor treatment of the O&M Costs, ATCO submitted that it should be permitted to restate its 2016 Rule 005 filing to include these costs in going-in rates for the 2018-2022 PBR term.

The Review Panel rejected ATCO's arguments. It agreed with the Hearing Panel's finding in the Decision that the onus was on ATCO to demonstrate its "contention that all normal business activities of such supervisors and managers in their home locations were backfilled using overtime and contractors." The Review Panel found that ATCO did not meet its onus and, accordingly, the Hearing Panel's determination that the 2016 Rule 005 restatement was not required was a reasonable outcome.

Lost Revenue Issue - Interpretation of the Terms and Conditions

ATCO submitted that the Hearing Panel's interpretation of and expectations as to how ATCO should enforce Section 14.1 of the T&Cs (regarding the ability to permanently disconnect customers after 12 months) was neither reasonable nor appropriate. This is because Section 14.1 was intended to operate in the context of normal course business, with a case-by-case assessment being required before permanently disconnecting a service based on the likelihood that a customer will never come back online.

In the Review Panel's judgement, it would be unreasonable for a utility to claim lost revenue for the entire remaining duration of a PBR term, which could be up to five years in a five-year PBR plan. The Review Panel found that the recovery of lost revenue related to the RMWB wildfire ought to be subject to a reasonable time limitation in the circumstances. After due consideration of the applicable T&Cs, and their underlying intent and manner of operation during periods of normal business activity, the Review Panel found that the 12-month limit imposed by the Hearing Panel was neither (1) inconsistent with the spirit and intent of the T&Cs, notwithstanding the lack of evidence of any disconnection request being made by a retailer, nor (2) unreasonable or inappropriate in the circumstances.

Lost Revenue Issue – Lack of Regard to Evidence on Reconnection Rates

ATCO submitted that the Hearing Panel committed an error in law by ignoring evidence related to reactivation rates. ATCO submitted that the record clearly showed that site reconnection rates accelerated over time up to the end of 2017. ATCO explained this was due to most reconstruction beginning six to 12 months after the fire, and the time it takes (six to 12 months) to reconstruct a site. ATCO noted that the reconnection rate increased from 13 sites per month between May and December 2016 to 88 sites per month between May and December 2017. On the basis of the accelerated reconnection rates, ATCO concluded that it was reasonable and accurate for it to expect continued site reactivations until the end of 2017 and beyond. ATCO submitted that to enforce rights under Section 14.1 to permanently disconnect services would have been inappropriate, unreasonable, and punitive to its customers attempting to recover from the fire.

The Review Panel disagreed with ATCO's contention that the Hearing Panel ignored evidence concerning the reactivation rates. ATCO's review application cited an information request by the AUC seeking information related to the number of sites that were not receiving electricity services on a monthly basis for the years 2016 and 2017, information that was ultimately included in a table in the Decision. The Review Panel considered that including the table showing reconnection rates in the Decision indicated that the Hearing Panel considered the information relevant to its determination relating to lost revenue.

Lost Revenue Issue: PBR Price-cap Framework

ATCO argued that under PBR, it did not have the ability to recover lost revenue other than by a Z factor until rates were re-based in 2018. ATCO asserted that under a PBR price-cap framework, it suffers continued losses until rebasing. ATCO explained that with a natural disaster, revenue is lost until the earlier of (1) the end of the PBR term (20 months for ATCO, up to 4 years in other circumstances) or (2) the time until destroyed sites are reactivated; and that if a utility is not permitted to recover these losses as a Z factor, then they could be at grave financial risk until the end of the PBR term.

The Review Panel noted that in a PBR framework, with the exception of specifically approved adjustments outside of the I-X mechanism, a utility's revenues are not linked to its costs during the PBR term. Under the price-cap plan, ATCO is expected to bear the risk of a change in the number of

customers or in energy volumes transported through its system. Therefore, the Review Panel considered that any losses or gains experienced by ATCO during a PBR term related to the volume of energy transported through its system, or number of customers, is expected under a PBR price-cap framework.

The Review Panel found that the Hearing Panel's decision to limit the lost revenue to a period of 12 months following the RMWB wildfire was a determination that was not unreasonable, either on its face or on a balance of probabilities. Accordingly, ATCO's request for a review on this ground was denied.

The application for review was dismissed.

ATCO Gas and Pipelines Ltd. and the Town of Provost - Franchise Agreement and Rate Rider A, AUC Disposition 25558-D01-2020

Rates - Franchise Agreement

On May 12, 2020, ATCO Gas and Pipelines Ltd. ("ATCO Gas") applied to the AUC for approval of a natural gas franchise agreement with the Town of Provost.

The proposed franchise agreement is based on the standard natural gas franchise agreement template approved in Decision 20069-D01-2015, has a term of 20 years or less, and will be effective August 1, 2020. Provost has commenced reading of Bylaw No. 01/2020, approving the franchise agreement.

The proposed franchise fee of 22 percent maintains the current franchise fee. The proposed franchise fee will remain as a $9.61 charge in the average monthly charge for an average residential customer.

The AUC considered that the right granted to ATCO Gas by the Town of Provost to construct, operate and maintain the natural gas distribution system is necessary and proper for the public convenience and properly serves the public interest.

Pursuant to Section 45 of the *Municipal Government Act* and Section 49 of the *Gas Utilities Act*, the AUC approved the franchise agreement as filed.

ATCO Gas and Pipelines Ltd. and the Summer Village of Seba Beach - Franchise Agreement and Rate Rider A, AUC Disposition 25557-D01-2020

Rates

On May 12, 2020, ATCO Gas and Pipelines Ltd. ("ATCO Gas") applied to the AUC for approval of a natural gas franchise agreement with the Summer Village of Seba Beach.

The proposed franchise agreement was based on the standard natural gas franchise agreement template approved in Decision 20069-D01-2015, has a term of 20 years or less, and will be effective August 1, 2020. Seba Beach commenced reading of Bylaw No. 2-2020, approving the franchise agreement.

The proposed franchise fee of 20 percent maintained the current franchise fee. The proposed franchise fee will remain as an $8.74 charge in the average monthly charge for an average residential customer.

The AUC considered that the right granted to ATCO Gas by Seba Beach to construct, operate, and maintain the natural gas distribution system is necessary and proper for the public convenience and properly serves the public interest.

Pursuant to Section 45 of the *Municipal Government Act* and Section 49 of the *Gas Utilities Act*, the AUC approved the franchise agreement as filed.

***AUC Creates Independent, Expert Committee to Assist in Improving Efficiency of Rates Proceedings,* AUC Bulletin 2020-17**

Bulletin - Rates - Expert Committee

In this Bulletin, the AUC summarized its plans to continue discussions with stakeholders about reducing regulatory burden and lag and provided an update on initiatives underway or planned to pursue further improvements.

The AUC noted that these efforts were the subject of three stakeholder roundtables last fall and two related bulletins issued by the AUC, Bulletin 2019-18 and Bulletin 2020-02.

Following the first roundtable on October 4, 2019, the AUC immediately initiated a number of measures intended to bring more efficiency into its adjudicative process, primarily in connection with rate and facility applications. The AUC acknowledged that not all of the initiatives had yet met their goals, but that the AUC is genuinely committed to introducing more innovation to improve the timelines in its decision-making process.

The AUC noted that in November 2019, it published its strategic plan in which it committed to publishing an annual report card setting out, among other things, what has been done and plans to further remove unnecessary regulatory burden. As part of that report card, the AUC intended to ask the companies the AUC regulates and other stakeholders for their views on whether the AUC's burden reduction efforts are succeeding. The AUC proposed to solicit those views through an industry impact assessment.

The AUC stated that, towards this goal, the AUC published Bulletin 2020-02 on January 17, 2020. For reasons explained in that Bulletin, the industry impact assessment was to focus on the AUC's non-adjudicative regulatory functions. However, the overwhelming response from participants centred on the AUC's adjudicative process related to rate applications.

Because of the COVID-19 pandemic, the AUC indicated it would be delaying the formal industry impact assessment for one year. However, given the views expressed in response to Bulletin 2020-02, the AUC stated it has decided to focus its attention on improving the effectiveness and timeliness of the processes and procedures used in rates proceedings in its ongoing discussions.

The AUC indicated it would establish a technical advisory working group ("Working Group") of five or six people comprised of representatives from the regulated utilities and intervener groups. The Working Group and the AUC will identify issues and propose solutions and report back to a wider audience and senior representatives of stakeholders.

The AUC also indicated it had established an independent AUC Procedures and Processes Review Committee (the "Committee"). The Committee members have deep regulatory experience and include C. Kemm Yates, QC, noted regulatory counsel; David J. Mullan, Queen's University professor emeritus in administrative law; and Rowland J. Harrison, QC, a former long-serving member of the National Energy Board (now the Canada Energy Regulator).

The AUC advised that the Committee will review the AUC's rate application adjudicative processes and procedures and make recommendations to AUC Chair Mark Kolesar on how process and procedure steps can be made more efficient or eliminated altogether. The AUC noted that stakeholders could use

the AUC's Engage consultation tool to provide written submissions directly to the Committee by May 22, 2020

The AUC indicated that the Committee's recommendations would inform discussion with Working Group referenced above in identifying improvements that can be implemented to reduce regulatory burden and streamline the process for rates proceedings.

The AUC indicated that the Committee has full discretion to determine its processes, and would use its best efforts to provide a written report to the chairman by June 15, 2020.

***Commission-Initiated Proceeding to Focus on Specific Depreciation-Related Matters*, AUC Bulletin 2020-20**

Bulletin - Commission-Initiated Proceeding - Depreciation

The AUC initiated Proceeding 25560 (the "Proceeding") for the purpose of examining specific depreciation-related matters. The Proceeding is being initiated, in part, as a result of the conclusions of the majority panel in Decision 23848-D01-2020: AltaLink Management Ltd., 2019-2021 General Tariff Application. In particular, that decision noted that AltaLink had brought complex intertemporal choice and intergenerational equity issues to the forefront that have far-reaching and substantial implications for all stakeholders in Alberta. As a result, the hearing panel declined to approve AltaLink's proposed methodology, indicating that considerations related to the review of the methodology should be part of a "bigger-picture examination" by the AUC.

The AUC indicated that its goal in initiating this Proceeding is to establish the framework, methodologies and informational requirements to be used by the AUC when reviewing complex intertemporal choice problems in the context of considering alternative proposals for the recovery of capital investment through depreciation expense or the recovery of net salvage costs.

The AUC indicated it would be seeking comments by June 4, 2020, from parties registered to Proceeding 25560 on the following issues:

(a) the development of a reasonable, working definition or guideline for what constitutes intergenerational equity; and

(b) an examination of the relative merits of alternative methods used to solve complex intertemporal choice problems that also contain issues of intergenerational equity.

In addition to any comments on this narrow set of issues identified above, the AUC requested that parties indicate whether there are other issues that should be considered by the AUC in light of the goal of the proceeding.

The AUC noted that written submissions indicating an intent to participate are due by May 25, 2020. Parties to Proceeding 23848 have been pre-registered.

***EPCOR Distribution & Transmission Inc. 2020 System Access Service Rate Update,* AUC Decision 25490-D01-2020**

Rates - System Access Service - Update

In this decision, the AUC considered an application (the "Application") by EPCOR Distribution & Transmission Inc. ("EPCOR") requesting approval for an update to its 2020 system access service ("SAS") rates. The AUC approved EPCOR's 2020 SAS rate update as filed, effective July 1, 2020.

Background

EPCOR's SAS rates are designed to recover charges paid by EPCOR to the Alberta Electric System Operator ("AESO") for transmission services provided to customers in its service territory.

On December 17, 2019, the AUC issued Decision 24882-D01-2019, approving EPCOR's 2020 SAS rates. On February 28, 2020, the AUC issued Decision 25175-D01-2020, which reflected the AESO's 2020 Independent System Operator ("ISO") tariff update and approved changes to all of the AESO demand transmission service ("DTS") rates components (i.e., energy, demand and customer charges). In this Application, EPCOR requested approval to update its 2020 SAS rates effective July 1, 2020, to update its SAS cost of service model to align with the changes to DTS rate components.

EPCOR explained that it calculated its proposed updated 2020 SAS rates using the same methodology that was approved for its most recent 2020 SAS rates in Decision 24882-D01-2019. In this Application, EPCOR only updated its SAS rates to reflect the 2020 AESO DTS costs.

EPCOR provided a table showing the bill comparison to indicate the impact of updated SAS rates from June 2020 to July 2020 for a typical customer in each of its rate classes, and noted the impact to each rate class is less than 10 percent:

Bill comparison summary for a typical customer (June 2020 to July 2020)

Rate class	Change %
Residential	(0.4)
Small Commercial	0.2
Medium Commercial	0.0
Time of Use	0.9
Time of Use Primary	0.4
Customer Specific	0.5
Customer Specific totalized	5.7
Street Lights	(1.3)
Traffic Lights	0.4
Lane Lights	(0.8)
Security Lights	(4.2)

AUC Findings

The AUC approved EPCOR's proposal to update its 2020 SAS rates to reflect the changes to the DTS rates approved in the AESO's 2020 ISO tariff update. The AUC agreed with EPCOR that the update provides more precise rates and better reflects cost causation. The AUC found EPCOR's calculations of its proposed 2020 SAS rates to be consistent with past SAS rate applications. The AUC also found the proposed bill impacts provided by EPCOR in the table above to be reasonable.

External Engagement on Draft AUC Indigenous Consultation Framework, AUC Bulletin 2020-22

Bulletin - Indigenous Consultation Framework

The AUC explained that it regulates the construction and operation of utility projects. The AUC has the authority to consider and address potential adverse impacts to Aboriginal and Treaty rights as provided in section 35 of the *Constitution Act*, 1982, when deciding whether approval of a utility project is in the public interest. In doing so, the Government of Alberta also confirmed that AUC decisions might, in some cases, trigger a duty to consult Indigenous communities, and where consultation is triggered, the Alberta government relies on the AUC's process to address potential adverse impacts to Aboriginal and Treaty rights.

The AUC indicated that it announced in Bulletin 2019-10: AUC Rule 007 - Initiation of a review and stakeholder consultation process, that it would review its processes and procedures to ensure that the application requirements for consultation with First Nations and Métis are clear.

In December 2019, the AUC released interim direction on Indigenous consultation (Bulletin 2019-20). Initial feedback received from Indigenous groups and industry indicated strong support for clear application requirements, alignment with the Alberta government's consultation process and more opportunities for external participation in processes involving updates to Rule 007 and Rule 020.

The AUC's goal was to complete additional, in-person consultation and implement updated processes and procedures with clear Indigenous consultation application requirements by the fall of 2020.

Due to the COVID-19 pandemic and the need for physical distancing, the AUC is adjusting its engagement plan to gather input and advice while working remotely. In the meantime, the AUC indicated it is seeking input and advice on its draft Indigenous consultation framework, which can be found on the AUC website and on the Indigenous consultation page of the AUC's Engage platform.

The AUC noted that input and advice on the draft framework should be submitted to the AUC by July 10, 2020, on the AUC's Engage platform. The draft framework and feedback received will form the foundation for updating AUC processes and procedures.

North Parkland Power REA Ltd. and Rocky REA Ltd. - Decision on Preliminary Question - Application for Review of Decisions 25038-D01-2019 and 25039-D01-2019, AUC Decision 25309-D01-2020

Rural Electrification Associations

In this decision, the AUC considered review applications filed by North Parkland Power REA Ltd. ("North Parkland") and by Rocky REA Ltd. ("Rocky REA"), and collectively the "REAs") requesting a review and variance of specific findings in AUC Decisions 25038-D01-2019 and 25039-D01-2019 (the "Decisions"). The Decisions addressed requests by the REAs for approval of boundary alterations. The REAs' review applications concerned findings in the Decisions regarding the denial of the requested boundary changes in original Proceedings 25038 and 25039. The AUC denied the review applications.

The AUC panel who authored the Decisions will be referred to as the "Hearing Panel" and the member of the AUC panel considering the review applications will be referred to as the "Review Panel."

Background

In the Decisions, the Hearing Panel held that approval of the boundary changes was not in the public interest.

The Hearing Panel's findings of the North Parkland Decision are reproduced below. The Review Panel noted that findings in the Rocky REA Decision were mostly duplicative, so were not reproduced:

> 32. When considering the current application and the effects of any boundary change, it is important to understand the history behind the current service area boundaries for electric utility service providers.
>
> 33. The purpose of REAs is to provide electricity service to rural customers who would otherwise find the service to be cost-prohibitive, due to their distance from established electricity transmission or distribution lines. REAs therefore operate within the service territories of other regulated public utilities, such as Fortis. An important distinction between REAs and public distribution utilities is that the public distribution utilities are obligated to provide service to all customers within their statutory service areas, while the REA provides service only to its members within its statutory service area.
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> …
>
> 35. The Commission considers that service area boundaries for electric utility service providers were established purposefully in accordance with the legislation. Constantly changing service area boundaries creates uncertainty for both utilities and customers, which interferes with the orderly, economic and efficient operation of the Alberta Interconnected Electric System ("AIES"). Therefore, in the absence of extraordinary circumstances, the boundaries as they currently exist should be respected.
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> …
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> 39. In the absence of evidence to the contrary, the Commission accepts that Tri "M" Farms believes that receiving service from North Parkland would be economically beneficial. The Commission also finds, based on the testimony of Mr. Mulligan, that customer cost is the sole reason that this application was brought forward.
>
> 40. The Commission notes that the nearest facilities capable of connecting the customer's expansion to the AIES are Fortis facilities. It is unclear how North Parkland could connect the expansion using its own facilities at lesser cost; it is assumed that North Parkland, if its application was approved, intended to use Fortis's facilities.
>
> …
>
> 41. The Commission agrees with North Parkland's assertion that use of another party's facilities is contemplated in the wire owners agreement for those areas where service areas overlap and are not subject to direction of the Commission. However, the Commission is of the opinion that, in the absence of direct compensation from North Parkland to Fortis, customers of Fortis would be subsidizing service to Tri "M" Farms if the REA service boundary was expanded.
>
> 46. In weighing the evidence before it, the Commission finds that the personal economic benefit of becoming a member of the REA, as alleged by the consumer, would be the only material benefit of granting the application. This must be considered against the fact that Tri "M" Farms is located within Fortis's statutory service area, there are no safety and reliability concerns, Fortis stated that it is willing and able to provide service and has the facilities close and available to connect to, with just and reasonable rates as approved by the Commission, and Fortis customers would be subsidizing this proposed service if North Parkland did not compensate Fortis for use of Fortis's facilities. In addition, Mr. Mulligan, as a sophisticated business owner, has the option and resources necessary to provide alternative service in the form of generators in the event he finds Fortis's rates to be too high for his high-demand, short-term seasonal needs.
>
> 47. Based on the foregoing, the Commission does not consider the boundary change to be in the public interest.

AUC's Review Process

The AUC's authority to review its own decisions is discretionary and is found in section 10 of the *Alberta Utilities Commission Act*. The review process has two stages. In the first stage, a review panel must decide whether there are grounds to review the original decision. This is sometimes referred to as the "preliminary question." If the review panel decides that there are grounds to review the decision, it moves to the second stage of the review process where the AUC holds a hearing or other proceeding to decide whether to confirm, vary, or rescind the original decision.

Grounds for Review and Hearing Panel Findings

In its review applications, the REAs submitted that the AUC made numerous findings that were errors of law, fact, or jurisdiction as well as errors that were both procedural and substantive.

The REAs alleged that the Hearing Panel created several new tests in the Decisions, none of which were included on the issues list that was attached to the Notice of Hearing, which prejudiced the REAs because they could not know the case they had to meet in the hearing.

The alleged new tests created were:

(a) constantly changing boundaries: errors of law, fact, and jurisdiction;

(b) extraordinary circumstances: error of law, procedural unfairness;

(c) consumer wishes vs Fortis concerns: error of law; and

(d) subsidization by Fortis customers: errors of law and jurisdiction.

In addition, the REAs alleged that the Hearing Panel erred in its consideration of construction costs and the REAs' rights under the wire owners agreement ("WOA"), which constituted an error of law.

Review Panel Findings

The Review Panel found no error that could lead it to materially vary or rescind the Decisions. The Review Panel found that the paragraphs of the Decisions formed part of the historical summary of service area boundaries for electric utility service providers in Alberta. The Hearing Panel did not appear to make factual findings regarding service area boundary confusion or uncertainty, nor did the reference to "extraordinary circumstances" articulate a test to be met but was an explanation that the types of circumstances to meet the test have to be unusual, uncommon or relatively rare.

The Review Panel did not consider the Hearing Panel's weighing of consumers' interests with Fortis's interests to be unfair or prejudicial to the REAs because it was not contained on the issues list. The Review Panel reviewed the issues list and Notice of Hearing to which it was attached and found that neither indicated that the issues list was to be prescriptive or exhaustive. Rather, the Notice of Hearing indicated that the AUC must "consider each application for a service area boundary change on a case-by-case basis." The weighing of consumers' interests with Fortis's interests was also consistent with the Commission's broad discretion set out in section 25(2) of the *Hydro and Electric Energy Act* to consider "any other circumstances" in determining whether approval of the service boundary alteration is in the public interest and consistent with having regard for the unique circumstances of each case.

North Parkland asserted that the Hearing Panel erred in concluding that it was unclear how North Parkland could construct at a lower cost than Fortis given that the record confirmed that North Parkland could do so by connecting to and using Fortis's distribution system. While the record contained a drawing and budgetary estimate for Tri "M" Farms that specified a lower construction cost than that provided by Fortis, North Parkland's drawing and estimate contemplated a different technical configuration than that which Fortis had quoted to Tri "M" Farms, a difference which Fortis's witness suggested would affect the price difference. Moreover, the Hearing Panel considered that the closest facilities capable of connecting the customer's expansion to the AIES were Fortis facilities. Based on the foregoing, the Review Panel found the Hearing Panel's conclusion that it was unclear how North Parkland could construct at a lower cost than Fortis to be reasonable based on the record before it and that it did not amount to an error of fact or law.

The Review Panel did not consider the Hearing Panel to have erred by wrongly ascribing weight and relevance to the proximity of the respective pre-existing lines of Fortis and Rocky REA and ignoring Rocky REA's rights under the WOA as suggested by Rocky REA. The record established that Fortis's facilities were 1.2 kilometres away compared to Rocky REA's facilities at nearly four kilometres away. The Review Panel considered an assessment of proximity to be reasonable in evaluating costs and a relevant consideration in the Rocky REA application. Moreover, the Hearing Panel's findings in this regard did not address, and were unrelated to, rights under the WOA as suggested by Rocky REA.

The Review Panel found that the Hearing Panel's assessment of the subsidization related evidence to be a determination that, on its face or on a balance of probabilities, was not unreasonable. On review of the record of the original proceedings, there was evidence that the REAs proposed to connect to or tap off of Fortis's facilities, and there would be costs associated with the maintenance of the Fortis lines. Moreover, the Fortis witnesses testified that if the REAs provide service to these consumers then customers of Fortis would subsidize the service.

The Review Panel did not find an error that could lead it to materially vary or rescind the Decisions.

***Peavine Metis Settlement - 4.97-Megawatt Community Solar Power Plant*, AUC Decision 25236-D01-2020**

Facilities - Solar Plant - Community Generation

In this decision, the AUC considered applications from Peavine Metis Settlement ("Peavine MS") to construct and operate a solar power plant designated as the 4.97-Megawatt Community Solar Power Plant, to qualify the power plant as a community generating unit, and to connect the power plant to the ATCO Electric Ltd. distribution system. The AUC found approval of the power plant in the public interest, and also qualified the power plant as a community generating unit and approved the connection of the power plant to the ATCO Electric distribution system.

Discussion

Peavine MS stated that the project would consist of approximately 14,144 photovoltaic modules with a nominal output of 400 watts per module, two inverter/transformer stations, a collector system, operations offices, and a temporary construction workspace. The project is a community initiative in alignment with the Peavine Community Energy Plan and is supported by the Peavine Metis Settlement Council ("Council"), the elders, and membership. The Council approved two resolutions supporting the project.

Application for Designation As a Community Generating Unit

In support of its application to be qualified as a community generating unit in accordance with the *Small Scale Generation Regulation* ("*SSGR"*), Peavine MS provided a community benefit agreement that outlined the economic, social, and environmental benefits of the project.

ATCO Electric confirmed that it had approved the project as a small-scale generator under the *SSGR.* Should the AUC approve the community generating unit application from Peavine MS, ATCO Electric would cover the cost of a meter and would be responsible for the cost of system reliability upgrades required to supply electric energy from the community generating unit to the distribution system. ATCO Electric estimated the cost for the meter to be $63,000.

Findings

The AUC determined that the technical, siting, environmental and noise aspects of the power plant were met. Peavine MS conducted a satisfactory participant involvement program, and there were no outstanding public or industry objections or concerns.

Because the final project equipment has not been selected, the AUC requires additional information once the design of the project is finalized. The AUC therefore approved the project with a condition requiring additional information from Peavine MS once it has made its final equipment selection, confirming that the finalized project design will not increase its land, noise or environmental impacts beyond those reflected in the materials submitted in its application.

The AUC further noted that Rule 033: *Post-approval Monitoring Requirements for Wind and Solar Power Plants* applies to all solar projects approved after September 1, 2019. Accordingly, Peavine MS must comply with the requirements of Rule 033, including the requirement that approval holders submit to Alberta Environment and Parks ("AEP") and the AUC annual post-construction monitoring survey reports for the period recommended by AEP in the project's referral report.

The AUC found that Peavine MS's application for the project's designation as a community generating unit satisfied the requirements of the *SSGR.* It further found that ATCO Electric, as the distribution facility owner, is entitled to recover the costs incurred to purchase the meter for the project (estimated to be $63,000), pursuant to Subsection 5(3)(a)(i) of the *SSGR.* Accordingly, the AUC imposed a further condition, requiring that once the distribution facility owner has purchased the meter for the community generating unit, Peavine MS must provide confirmation of the actual cost to purchase the meter to the AUC.

Based on the foregoing, the AUC considered the project to be in the public interest in accordance with section 17 of the *Alberta Utilities Commission Act*.

Requirements for Costs Claim Applications and Confidentiality Undertakings, **AUC Bulletin 2020-16**

Bulletin - COVID 19 - Costs Claim - Confidentiality Undertakings

The AUC announced that, as part of its response to COVID-19, it had suspended the following requirements until further notice:

(a) filing a sworn affidavit of fees and disbursement with cost claim applications under Rule 009: Rules on Local Intervener Costs and Rule 022: Rules on Costs in Utility Rates Proceedings; and

(b) filing a witnessed confidentiality undertaking under Section 28.11(a) of Rule 001: Rules of Practice.

***Schuler Wind Energy GP Ltd. Schuler Wind Energy Centre Power Plant and 1017S Substation,* AUC Decision 25439-D01-2020**

Facilities - Wind Power Project

In this decision, the AUC considered whether to approve applications (the "Applications") from Schuler Wind Energy GP Ltd. ("Schuler") to construct and operate the Schuler Wind Energy Centre (the "Project") which would consist of a 104.4-megawatt ("MW") wind power plant and the associated 1017S Substation (the "Project"). The AUC found that approval of the Project was in the public interest having regard to the social, economic and other effects, including its effect on the environment.

Background

The Project area is located approximately seven kilometres northwest of the hamlet of Schuler and would be sited on 47 quarter sections of privately owned agricultural land.

Schuler stated that the Project would connect to AltaLink Management Ltd.'s existing 138-kV Transmission Line 658L, which crosses some of the Project lands. It stated that interconnection of the Project to the Alberta Interconnected Electric System would be the subject of a separate and future proceeding.

Schuler stated that construction activities are planned to begin as soon as an AUC approval is issued and the Project would be commissioned by December 31, 2024.

Noise Impacts

A noise impact assessment ("NIA") was prepared for the Project by SLR Consulting (Canada) Ltd. ("SLR") to assess Project compliance in accordance with *Rule 012: Noise Control*. The NIA assessed noise compliance by comparing predicted cumulative sound levels to applicable permissible sound levels ("PSLs").

Environmental Impacts

Schuler retained Maskwa Environmental Consulting Ltd. to prepare an environmental evaluation report for the Project that described the environmental components present in the Project area, the Project's potential adverse effects on these components, mitigation measures to reduce these environmental effects and proposed monitoring methods to evaluate the efficacy of those measures.

The environmental evaluation concluded that the potential adverse effects of the Project could be avoided, reduced or controlled with implementation of the standard and Project-specific mitigation measures outlined in the environmental evaluation. Provided that these mitigation measures are implemented, the environmental evaluation concluded that the potential effects of the Project on the environment would not be significant.

AUC Findings

In accordance with Section 17 of the *Alberta Utilities Commission Act*, the AUC was required to assess whether the Project would be in the public interest, having regard to its social, economic and environmental effects. The AUC indicated it considers that the public interest will be largely met if an

application complies with existing regulatory standards, and the Project's public benefits outweigh its negative impacts.

The AUC considered it material that the environmental evaluation concluded that the potential effects of the Project on the environment would not be significant provided that mitigation measures are implemented. The AUC was satisfied that with diligent application of Schuler's mitigation measures, construction and post-construction monitoring, and implementation of any additional mitigation measures, the potential adverse environmental effects, including those on wildlife and wildlife habitat, from the siting, construction and operation of the Project's facilities could be adequately mitigated.

Decision

Pursuant to section 11 of the *Hydro and Electric Energy Act*, the AUC approved the Applications.

***Tracking and Reporting the Impact of the COVID-19 Pandemic on Utility Operations, Costs and Revenues,* AUC Bulletin 2020-18**

Bulletin - COVID 19 Impact - Tracking and Reporting

In a letter to the AUC, the Consumers' Coalition of Alberta ("CCA") requested that the AUC direct regulated utilities to record and eventually report on current and ongoing decisions, positions and actions due to the impact of COVID-19 relating to the following:

(a) any unique or material changes to staffing plans;

(b) what unit or other costs, if any, are expected to or will uniquely or materially change, as a result of continuing operations, and what costs related to operations or capital can or are being suspended, deferred or cancelled;

(c) plans for acceleration, continuation, deferral or cancellation of capital construction;

(d) reports on impacts to overall returns;

(e) reporting on efforts undertaken to engage with the other utilities and entities such as customers, the government or the Alberta Electric System Operator, where necessary, to obtain input on the suspension, deferral or cancellation of projects; and

(f) a list of mandatory and more discretionary or optional projects and work activities.

The AUC asked that any stakeholder wishing to comment, do so through the AUC's Engage platform by Wednesday, May 20, 2020.

***Utility Payment Deferral Program: Various Applications for Funding Approval*, AUC Decisions 25592-D01-2020, 25576-D01-2020, 25594-D01-2020, 25586-D01-2020, 25573-D01-2020, 25585-D01-2020, 25600-D01-2020, 25590-D01-2020, 25595-D01-2020 and 25575-D01-2020**

Rates - Deferral Program

Background

On March 18, 2020, the Government of Alberta announced that "Albertans who are experiencing financial hardship directly related to the COVID-19 pandemic can work with their utility company to defer electricity and natural gas bills until June 19, 2020, without any late fees or added interest payments." This payment deferral option applies to residential, farm and small commercial electricity

consumers with sites that consume less than 250,000 kilowatt-hours of electricity per year (eligible electricity customer) and to residential, farm and small commercial natural gas consumers with sites that consume less than 2,500 gigajoules per year (eligible gas customer). The program is known as the Utility Payment Deferral Program.

On May 12, 2020, the *Utility Payment Deferral Program Act* ("*UPDP Act"*) was enacted to enable electricity service providers, gas service providers, and gas transmission providers to fulfill their obligations pursuant to the Utility Payment Deferral Program.

Applications

In May 2020, the following electricity service providers that were not regulated rate providers as defined in the *Electric Utilities Act*, filed applications pursuant to the *UPDP Act*:

(a) 1772387 Alberta Limited Partnership (Encor);

(b) ATCO Energy Ltd.;

(c) Campus Energy Partners LP;

(d) Just Energy Alberta L.P. and Hudson Energy Canada Corp.;

(e) Link Energy Supply;

(f) PowerBill Utility Billing Solutions Inc.;

(g) Sponsor Energy Inc.; and

(h) Utility Network & Partners Inc.,

(the "Electricity Service Providers").

The Electricity Service Providers requested the following:

> Approval for funding from the Balancing Pool for bill payment amounts deferred by eligible electricity customers during the period from March 18, 2020 to various dates in May 2020 (deferral period).

In May 2020, the following entities that are gas service providers as defined in Subsection 12(1)(c) of the *UPDP Act*, filed applications pursuant to the *UPDP Act:*

(a) 1772387 Alberta Limited Partnership (Encor);

(b) Access Gas Services Inc.;

(c) ATCO Energy Ltd.;

(d) Campus Energy Partners LP;

(e) Gas Alberta Energy;

(f) Just Energy Alberta L.P. and Hudson Energy Canada Corp.;

(g) Link Energy Supply;

(h) PowerBill Utility Billing Solutions Inc.;

(i) Sponsor Energy Inc.; and

(j) Utility Network & Partners Inc.,

(the "Gas Service Providers").

The Gas Service Providers requested the following:

> Approval for a loan from the Associate Minister of Natural Gas and Electricity (Minister) for bill payment amounts deferred by eligible gas customers during the deferral period.

AUC Findings

Pursuant to Section 4 of the *UPDP Act*, an eligible electricity customer may enroll in a bill payment deferral program with their electricity service provider. The AUC reviewed the materials filed in support of the applications and found that the entities applying are electricity service providers with eligible electricity customers enrolled in the Utility Payment Deferral Program.

Pursuant to Subsection 8(1) of the *UPDP Act*, an electricity service provider with eligible enrolled electricity customers may apply to the AUC for funding from the Balancing Pool for the deferred bill payment amounts, other than for the portion of the electricity bill payment amounts that relate to transmission charges. The funding applications and requested funding amounts were approved as applied for.

Pursuant to Section 14 of the *UPDP Act*, an eligible gas customer may enroll in a bill payment deferral program with their gas service provider. The AUC reviewed the materials filed in support of the applications and found that the entities applying are gas service providers with eligible gas customers enrolled in the Utility Payment Deferral Program.

Pursuant to Section 18 of the *UPDP Act*, a gas service provider with eligible enrolled gas customers may apply to the AUC for a loan from the Minister for the gas bill payment amounts deferred by enrolled eligible gas customers, other than the portion of the gas bill payment amounts that relate to transmission charges. The loan applications and requested loan amounts were approved as applied for.

***Utility Payment Deferral Program: Application for Deferral Account Approval - AltaGas Utilities Inc.,* AUC Decision 25574-D01-2020**

Rates - Deferral Program

Please see the summary Utility Payment Deferral Program: Various Applications for Funding Approval for the background of this application.

Application

On May 20, 2020, AltaGas Utilities Inc., a gas service provider as defined in Subsection 12(1)(c) of the *UPDP Act*, filed an application pursuant to the *UPDP Act*, requesting the following:

> Approval to establish a default supply provider deferral account for the purposes of administration of deferred bill payments normally due during the period from March 18, 2020 to June 18, 2020 (deferral period).

On May 20, 2020, AltaGas Utilities Inc., a gas distributor as defined in Subsection12(2)(d) of the *UPDP Act*, filed an application pursuant to the *UPDP Act,* requesting the following:

> Approval to establish a gas distributor deferral account pursuant to Subsection 17(3) to administer the deferral of payments for gas services or transmission charges normally due during the deferral period.

AUC Findings

Pursuant to Section 14 of the *UPDP Act*, an eligible gas customer may enroll in a bill payment deferral program with their gas service provider. The AUC found that AltaGas Utilities Inc. is a gas service provider with eligible gas customers enrolled in the Utility Payment Deferral Program.

Pursuant to Subsection 17(1) of the *UPDP Act*, a default supply provider may request approval from the AUC to establish a deferral account for the administration of the deferred payments of billing amounts charged in respect of gas on an enrolled gas customer's bill that are not in respect of deferred payment of gas transmission charges. The AUC found that AltaGas Utilities Inc. is a default supply provider under the *Gas Utilities Act* and approved the establishment of a deferral account for the administration of the deferred payments under the *UPDP Act*.

Pursuant to Subsection 17(3) of the *UPDP Act*, a gas distributor may request approval from the AUC to establish a deferral account for the administration of the deferral of payments for gas services or transmission charges normally due in the deferral period. The AUC found that AltaGas Utilities Inc. is a gas distributor under the *Gas Utilities Act* and approved the establishment of a deferral account for the administration of the deferred payments for gas services or transmission charges normally due during the deferral period.

***Utility Payment Deferral Program: Application for Deferral Account Approval - ATCO Gas Ltd.,* AUC Decision 25568-D01-2020**

Rates - Deferral Program

Please see the summary Utility Payment Deferral Program: Various Applications for Funding Approval for the background of this application.

Application

On May 14, 2020, ATCO Gas Ltd., a gas distributor as defined in Subsection 12(2)(d) of the *UPDP Act,* filed an application pursuant to the *UPDP Act*, requesting the following:

> Approval to establish a deferral account pursuant to Subsection 17 (3) to administer the deferral of payments for gas services or transmission charges normally due during the period from March 18, 2020 to June 18, 2020 (deferral period).

AUC Findings

Pursuant to Subsection 17(3) of the *UPDP Act*, a gas distributor may request approval from the AUC to establish a deferral account for the administration of the deferral of payments for gas services or transmission charges normally due in the deferral period. The AUC found that ATCO Gas Ltd. is a gas

distributor under the *Gas Utilities Act* and approved the establishment of a deferral account for the administration of the deferred payments for gas services or transmission charges normally due during the deferral period.

Utility Payment Deferral Program: Application for Funding Approval - Direct Energy Marketing Limited, **AUC Decision 25591-D01-2020**

Rates - Deferral Program

Please see the summary Utility Payment Deferral Program: Various Applications for Funding Approval for the background of this application.

Application

On May 22, 2020, Direct Energy Marketing Limited, under Direct Energy Regulated Services, a regulated rate provider as defined in the *Electric Utilities Act*, filed an application pursuant to the *UPDP Act*, requesting the following:

> Approval for funding from the Balancing Pool for bill payment amounts deferred by its eligible electricity customers during the period from March 18, 2020 to May 8, 2020 (deferral period).

On May 22, 2020, Direct Energy Marketing Limited, under Direct Energy Partnership, an electricity service provider that is not a regulated rate provider as defined in the *Electric Utilities Act*, filed an application pursuant to the *UPDP Act*, requesting the following:

> Approval for funding from the Balancing Pool for bill payment amounts deferred by its eligible electricity customers during the deferral period.

On May 22, 2020, Direct Energy Marketing Limited, under Direct Energy Regulated Services, a default supply provider as defined in Subsection 12(2)(b) of the *UPDP Act*, filed an application pursuant to the *UPDP Act*, requesting the following:

> Approval for a loan from the Associate Minister of Natural Gas and Electricity (Minister) for bill payment amounts deferred by its eligible gas customers during the deferral period.

On May 22, 2020, Direct Energy Marketing Limited, under Direct Energy Partnership, a gas service provider as defined in Subsection 12(1)(c) of the *UPDP Act*, filed an application pursuant to the *UPDP* Act, requesting the following:

> Approval for a loan from the Associate Minister of Natural Gas and Electricity (Minister) for bill payment amounts deferred by its eligible gas customers during the deferral period.

AUC Findings

Pursuant to Section 4 of the *UPDP Act*, an eligible electricity customer may enroll in a bill payment deferral program with their electricity service provider. The AUC found that Direct Energy Partnership and Direct Energy Regulated Services are electricity service providers with eligible electricity customers enrolled in the Utility Payment Deferral Program.

Pursuant to Subsection 8(1) of the *UPDP Act*, an electricity service provider with eligible enrolled electricity customers may apply to the AUC for funding from the Balancing Pool for the deferred bill payment amounts, other than for the portion of the electricity bill payment amounts that relate to transmission charges. The funding applications and requested funding amounts for Direct Energy

Marketing Limited, under Direct Energy Partnership and Direct Energy Regulated Services, were approved as applied for.

Pursuant to Section 14 of the *UPDP Act*, an eligible gas customer may enroll in a bill payment deferral program with their gas service provider. The AUC found that Direct Energy Partnership and Direct Energy Regulated Services are gas service providers with eligible gas customers enrolled in the Utility Payment Deferral Program.

Pursuant to Section 18 of the *UPDP Act*, a gas service provider with eligible enrolled gas customers may apply to the AUC for a loan from the Minister for the gas bill payment amounts deferred by enrolled eligible gas customers, other than the portion of the gas bill payment amounts that relate to transmission charges. The loan application and requested loan amount for Direct Energy Marketing Limited, under Direct Energy Partnership and Direct Energy Regulated Services, was approved as applied for.

***Utility Payment Deferral Program: Application for Deferral Account Approval - EPCOR Energy Alberta GP Inc.,* AUC Decision 25593-D01-2020**
Rates - Deferral Program

Please see the summary Utility Payment Deferral Program: Various Applications for Funding Approval for the background of this application.

Application

On May 22, 2020, EPCOR Energy Alberta GP Inc., a regulated rate provider as defined in the *Electric Utilities Act*, filed an application pursuant to the *UPDP Act*, requesting the following:

> Approval to establish a deferral account for the purposes of administration of deferred bill payments normally due during the period from March 18, 2020 to June 18, 2020 (deferral period).

AUC Findings

Pursuant to Section 4 of the *UPDP Act*, an eligible electricity customer may enroll in a bill payment deferral program with their electricity service provider. The AUC found that EPCOR Energy Alberta GP Inc. is an electricity service provider with eligible electricity customers enrolled in the Utility Payment Deferral Program.

Pursuant to Subsection 7(1) of the *UPDP Act,* a regulated rate provider, who is otherwise precluded from establishing a deferral account under sections 3(2) and 6(2) of the *Regulated Rate Option Regulation*, may request approval from the AUC to establish a deferral account for the administration of the deferred payments of billing amounts charged in respect of electricity on an enrolled electricity customer's bill. The AUC found that EPCOR Energy Alberta GP Inc. is a regulated rate provider under the *Regulated Rate Option Regulation* and approved the establishment of a deferral account for the administration of the deferred payments under the *UPDP Act*.

***Utility Payment Deferral Program: Application for Funding Approval - ENMAX Energy Corporation*, AUC Decision 25599-D01-2020 (Corrigendum June 2, 2020)**
Rates - Deferral Program

Please see the summary Utility Payment Deferral Program: Various Applications for Funding Approval for the background of this application.

Application

On May 22, 2020, ENMAX Energy Corporation ("ENMAX"), an electricity service provider that is not a regulated rate provider as defined in the *Electric Utilities Act*, filed an application pursuant to the *UPDP Act*, requesting the following:

> Approval for funding from the Balancing Pool for bill payment amounts deferred by its eligible electricity customers during the period from March 18, 2020 to May 8, 2020 (deferral period).

On May 22, 2020, ENMAX, an electricity service provider that is not a regulated rate provider as defined in the *Electric Utilities Act*, filed an application pursuant to the *UPDP Act*, requesting the following:

> Approval for funding from the Balancing Pool for bill payment amounts deferred by its eligible electricity customers during the deferral period.

On May 22, 2020, ENMAX, a gas service provider as defined in Subsection 12(1)(c) of the *UPDP Act*, filed an application pursuant to the *UPDP Act*, requesting the following:

> Approval for a loan from the Associate Minister of Natural Gas and Electricity (Minister) for bill payment amounts deferred by its eligible gas customers during the deferral period.

AUC Findings

Pursuant to Section 4 of the *UPDP Act*, an eligible electricity customer may enroll in a bill payment deferral program with their electricity service provider. The AUC found that ENMAX is an electricity service provider with eligible electricity customers enrolled in the Utility Payment Deferral Program.

Pursuant to Subsection 8(1) of the *UPDP Act*, an electricity service provider with eligible enrolled electricity customers may apply to the AUC for funding from the Balancing Pool for the deferred bill payment amounts, other than for the portion of the electricity bill payment amounts that relate to transmission charges. The AUC found that the funding application of ENMAX was adequately supported. The funding application and requested funding amount for ENMAX was approved as applied for.

Pursuant to Section 14 of the *UPDP Act*, an eligible gas customer may enroll in a bill payment deferral program with their gas service provider. The AUC found that ENMAX is a gas service provider with eligible gas customers enrolled in the Utility Payment Deferral Program.

Pursuant to Section 18 of the *UPDP Act*, a gas service provider with eligible enrolled gas customers may apply to the AUC for a loan from the Minister for the gas bill payment amounts deferred by eligible enrolled gas customers, other than the portion of the gas bill payment amounts that relate to transmission charges. The AUC found that the loan application of ENMAX was adequately supported. The loan application and requested loan amount for ENMAX was approved as applied for.

***Utility Payment Deferral Program Funding Request Details for Electricity and Natural Gas Service Providers*, AUC Bulletin 2020-19**
Bulletin - COVID 19 - Utility Payment Deferral

The AUC explained that the Utility Payment Deferral Program, announced by the Government of Alberta on March 18, 2020, was put in place to support Albertans who are experiencing financial

hardship directly related to the COVID-19 pandemic. Regulated service providers and non-regulated service providers implemented the program immediately.

On May 12, 2020, the *Utility Payment Deferral Act* came into effect. The AUC noted that the Act formally sets out government policy, establishes criteria for eligible customers, and provides definitions for various time periods in the program, parties involved in utility provision and the terms of financial backstops provided by the government, provincial agencies and companies.

The AUC indicated it is responsible for overseeing the program, including reviewing and approving applications from electricity and natural gas service providers that request funding as a result of customers deferring the payment of utility bills. The AUC was accepting applications from service providers under the Utility Payment Deferral Program for the first round of funding up until May 22, 2020.

CANADA ENERGY REGULATOR

NOVA Gas Transmission Ltd. Application to Abandon the Etzikom Pipelines, CER Decision MHW-006-2019

Gas - Pipeline Abandonment

In this decision, the CER considered whether to approve an application (the "Application") from NOVA Gas Transmission Ltd. ("NGTL") to abandon part of the NGTL System. The CER denied NGTL's Application.

Background

NGTL operates the NGTL System, an extensive natural gas pipeline system consisting of approximately 24,300 kilometres ("km") of pipeline and other facilities in Alberta and British Columbia.

On October 31, 2018, NGTL applied under section 74 of the *National Energy Board Act* ("*NEB Act*") for leave to abandon 84.4 km of pipeline, seven meter stations, and associated facilities including valves and sales taps (the "Project"). The facilities proposed for abandonment ("Project Facilities") included the Etzikom Lateral and were all part of the NGTL System.

Regulatory Framework

Under section 74 of the *NEB Act*, there is no legislated test that the CER must apply when considering whether to grant leave to abandon. In considering the Application, the CER indicated it was guided by the established regulatory framework, including relevant past decisions of its predecessor, the National Energy Board ("NEB"). On that basis, the CER found that the default test was the public interest test.

The CER noted that neither the CER nor the NEB appeared to have considered a similar case in which a pipeline requested that the Regulator step in to allow the termination of contracts associated with facilities that are no longer economic. Nevertheless, the CER indicated it was of the view that contracts between commercial parties on a CER-regulated pipeline cannot restrain the CER's ability to decide on applications in the public interest.

CER Findings

The CER noted that producers and other parties made significant investments tied to specific facilities on the NGTL System, and shipper contracts have ongoing renewal rights. Given these renewal rights, the fact that NGTL does not have an explicit right to terminate contracts and the apparent lack of established history of such rights being terminated by NGTL, the CER found it reasonable that shippers would not generally expect that their contracts may be terminated by NGTL. The CER indicated that while it did not view NGTL's contractual obligations as absolute, it viewed the proposed Project-related termination of contracts as a significant matter. The significance of this matter must be overcome by evidence demonstrating that the Project, as proposed, would be in the public interest.

NGTL's primary rationale in applying to abandon the Project Facilities was that they were no longer economic and were not expected to become economic in the future based on their expected costs and revenues. The CER agreed that consideration of the economic viability of the Project Facilities on their own is required and must then be balanced with any public interest considerations (consistent with the NEB's finding in MH-3-2000).

However, the CER found that NGTL's assessment of whether the Project Facilities should be abandoned was flawed. NGTL's comparison of future costs and revenues failed to account for the disconnect between the toll revenues associated with the Project Facilities and the value of the services they provide. Consequently, NGTL's calculations failed to capture important public interest considerations, raising doubt about NGTL's overall assessment of and decision to abandon the Project Facilities.

NGTL also submitted that it and its rate payers would be subjected to an undue burden if the CER denied the Project. The CER found that while the expected future revenue-to-cost deficiency appears significant relative to the size of the Project Facilities, NGTL provided no evidence of how or when it determined the point at which a deficiency is no longer acceptable and no evidence of how the deficiency in question compared with those of other facilities on the NGTL System. Further, there was no evidence of NGTL having explored alternative tolling arrangements for the Project Facilities which might have reduced the burden on NGTL and its rate payers (and improved the aforementioned economics of the Project Facilities), while at the same time providing shippers on the Project Facilities with an outcome preferable to their proposed abandonment. Accordingly, the CER was not persuaded that denial of the Application would lead to an undue burden on NGTL or its rate payers.

Overall, the CER was not persuaded that the Project was in the public interest. The CER therefore decided to deny NGTL's Application.

CER Guidance for Future Consideration

The CER stated that when NGTL submits future abandonment applications involving matters such as contract terminations and potentially negative impacts on users of the facilities, the CER expects NGTL to demonstrate that a more effective process was carried out to identify and assess the facilities for abandonment.

In cases where there are matters such as contract terminations and potentially negative impacts on users of the facilities, the CER instructed that NGTL's process for assessing and identifying facilities for abandonment should include characteristics such as the process:

- being conducted in a predictable, transparent, and fair manner;
- ensuring equitable treatment of shippers across the NGTL System;
- being responsive to the needs, inputs, and concerns of all impacted parties;
- factoring in the relative impacts of abandonment versus continuation of service on all impacted parties;
- considering all options for reducing future revenue-to-cost shortfalls prior to filing an application for leave to abandon with the CER;
- providing shippers with the ability to meaningfully plan for and mitigate the impacts of the potential termination of service;
- allowing impacted parties to make more informed decisions, by including criteria for identifying instances where the abandonment construction schedule should be established so as to avoid creating uncertainty that may require parties to make costly, irreversible choices to continue their business operations prior to a CER decision on the abandonment application; and

- having been informed by meaningful Tolls, Tariff, Facilities & Procedures Committee consultations.

As part of such a process, the CER indicated it would expect that the criteria for identifying facilities and how NGTL considers alternatives to abandonment would be documented and available to, at a minimum, NGTL's shippers.

***Trans Mountain Pipeline ULC MH-048-2018 - Application for the Westridge Delivery Line Relocation*, CER Letter Decision MH-048-2018**

Facilities - Pipelines - Indigenous Consultation

The Westridge Delivery Line Relocation Application

On 21 December 2017, Trans Mountain Pipeline ULC ("Trans Mountain") filed an application with the National Energy Board ("NEB") for an exemption pursuant to section 58 of the *National Energy Board Act* ("*NEB Act*") to proceed with the Westridge Delivery Line Relocation ("WDLR").

The CER noted that the WDLR involves relocating an existing operating delivery line that currently transports oil from the Burnaby Terminal to the Westridge Marine Terminal ("WMT"), via a route through the City of Burnaby. Trans Mountain sought to relocate this delivery line by constructing a new 3.6 kilometre-long, 30 inch outside diameter delivery line between the Burnaby Terminal and the WMT within a tunnel through Lhekw'lhúkw'aytn (Burnaby Mountain). The WDLR delivery line within the tunnel would be adjacent to the two other delivery lines authorized by Certificate of Public Convenience and Necessity ("Certificate") OC-065 issued for the Trans Mountain Expansion Project ("TMEP"). The tunnel itself was also approved by OC-065. Temporary physical disturbance caused by the WDLR is anticipated only at the proposed entry and exit points for the tunnel, both of which are within the fence lines of Trans Mountain-owned, industrial-zoned land at the Burnaby Terminal and WMT, respectively.

Subject to any approval of the WDLR, and meeting applicable conditions, Trans Mountain committed to decommissioning its existing delivery line once the WDLR is in service.

The Decision of the CER and Summary of Reasons for Approving the WDLR Application

The CER approved the WDLR. In approving the WDLR, the CER took into consideration the overall importance of Burnaby Mountain and the surrounding area for the traditional use of Indigenous peoples. The CER determined that, in the circumstances of the WDLR, the surface disturbance will occur entirely on fenced industrial land. The current use of this land is incompatible with traditional use by Indigenous peoples.

The CER was satisfied with Trans Mountain's system-wide risk assessment and found that the WDLR work will not cause environmental degradation in the traditional territories of Indigenous peoples.

The WDLR will not result in an increase in the approved volume of transported oil as it is a relocation of an existing delivery line. Its location through Burnaby Mountain is responsive to previous feedback from residents requesting that the delivery line be moved from Burnaby streets.

The CER noted that Trans Mountain committed to apply with the CER to decommission the existing delivery line through the City of Burnaby once the WDLR is operational.

The CER found that the overall benefits of the WDLR outweigh the burdens and that approval of the WDLR is in the public interest.

The MH-048-2018 Hearing Process

Notice of this application was provided to those Indigenous peoples whose traditional territory is potentially affected. Having received comments on the application from the Squamish Nation ("Squamish"), the NEB established a written hearing process on 18 May 2018.

On 31 August 2018, following the Federal Court of Appeal's ("FCA") 30 August 2018 decision in *Tsleil-Waututh Nation v. Canada (Attorney General)* to set aside the TMEP's approval, the NEB stated that ongoing processes directly related to the TMEP would cease. While the WDLR is a separate application from the TMEP, the same tunnel would be used for both the WDLR delivery line and the two TMEP delivery lines. Some of the conditions imposed on the TMEP have practical application to the WDLR, given that the same tunnel is being used.

On 22 February 2019, the NEB issued its MH-052-2018 Reconsideration Report concerning the TMEP. Subsequently, on 18 June 2019, the Governor in Council approved the TMEP. Upon the Governor in Council's order, the NEB issued Certificate OC-065 for the TMEP on 21 June 2019.

On 21 August 2019, Trans Mountain filed a letter requesting that the WDLR hearing be reinstated at the stage it was at on 10 October 2018, without the addition of any new process steps. On 2 January 2020, the CER issued Procedural Update No. 2, outlining the remaining hearing steps to be followed.

Out-of-scope Issues

Parties raised several issues that were addressed through the TMEP Certificate hearing and were not in the scope of the WDLR application. These matters included overall concerns about the TMEP, emergency response for spills of diluted bitumen in a marine environment, and booming of vessels.

Trans Mountain's Consultation With Indigenous Peoples

Concerns were raised regarding the TMEP, lack of opportunity for the application of Traditional Ecological Knowledge ("TEK"), and a lack of necessary information provided by Trans Mountain.

The CER found that Trans Mountain's consultation with Indigenous peoples about the WDLR has been sufficient given the scale and scope of the project, and its location within a tunnel and on private, industrial property on both ends. The CER noted that consultation on the tunnel was considered in detail in the TMEP Certificate hearing.

With respect to the concern raised by Squamish about not receiving adequate information, the CER was of the view that Trans Mountain made sufficient information available to Squamish regarding the WDLR. Squamish also had the opportunity to ask questions and receive responses about the WDLR and to file evidence during the hearing process. The NEB also directed a number of information requests ("IRs") to Trans Mountain regarding issues of concern to Indigenous communities.

Concerning TEK information, the CER accepted that the S'ólh Téméxw Stewardship Alliance ("STSA") has historic and current traditional uses on lands in this region. However, the areas of temporary disturbance associated with WDLR construction are privately owned, fenced, industrial lands that cannot be reasonably used for traditional activities presently or in the foreseeable future.

Impacts on Traditional Use, Cultural Practices, and Rights of Indigenous Peoples

The CER accepted Trans Mountain's evidence that the physical disturbance of the WDLR would be within the area of disturbance caused by construction of the tunnel and two other delivery lines for the TMEP. Squamish and the STSA provided no credible evidence that impacts from the WDLR would extend to areas of traditional use.

Crown Consultation

Trans Mountain's Consultation With Indigenous Peoples for the WDLR

The CER found that Trans Mountain's consultation was adequate, given the limited scale and impacts of the WDLR.

Notice and Sufficiency of Information About the WDLR Being Provided to Indigenous Peoples

The CER noted that Trans Mountain gave information and notice about the WDLR to both Squamish and the STSA, as well as other potentially impacted Indigenous peoples. The NEB provided additional notice by sending out a separate notification letter and information. A Hearing Order was issued, and both Squamish and the STSA fully participated in the NEB's process. The NEB provided participant funding to assist individuals and groups with their participation in the hearing. Indigenous peoples accounted for 100 percent of the funding awarded.

With respect to the issue raised by Squamish about the Crown's engagement in the WDLR hearing process, the CER noted that it was sufficiently clear that the Crown was not directly participating as government departments were not parties in the hearing process. In response to a Squamish IR, Trans Mountain also stated that, in 2015, the Crown said it relies on NEB review processes to the extent possible to fulfill the duty to consult.

Overall, the CER found there was adequate notice and information provided to Squamish, and that it was sufficiently clear that the NEB's hearing process was intended to constitute Crown consultation and accommodation.

The CER's Assessment Process and Participation Opportunities for Indigenous Peoples

The WDLR hearing process was an integral part of Crown consultation and could be relied on fully to satisfy the duty to consult. The hearing process itself was put in place in response to concerns raised by Squamish.

Given the size and scope of the WDLR (construction and operation of a delivery line within a tunnel and on private industrial property at each end), the CER found that Trans Mountain's consultation and the completed hearing process fully discharged the Crown's duty to consult.

Consideration of Indigenous Rights and Interests and the Degree of Impact on Those Rights and Interests

With respect to the seriousness of the potential adverse impacts on the rights and interests of Squamish and the STSA, the CER found the impacts to be at the lower end of the spectrum. The CER noted that there was no evidence of traditional use within the fenced land owned by Trans Mountain within which WDLR construction would occur.

Mitigation, Commitments, and Conditions

The CER noted that while the WDLR application is separate from the TMEP, given past Trans Mountain commitments and the applicability of relevant TMEP Certificate conditions to the WDLR, those conditions were relevant to this proceeding. In addition, the CER noted that mitigation measures with respect to leak detection and mitigation within the tunnel related to the two new delivery lines would also apply to the third (WDLR) delivery line in the tunnel.

Oil Release from the WDLR Delivery Line

The CER accepted Trans Mountain's evidence that, in the unlikely event of a leak from the WDLR delivery line, the fibre optic leak detection systems would provide the detection, location, and confirmation capability to allow for a shutdown of the line in a timely manner to minimize the potential consequences of a leak. The CER also accepted Trans Mountain's evidence that monitoring and inspecting the delivery lines in accordance with Trans Mountain's Integrity Management Program for all threats, and taking action before they present a risk of failure, will reduce the likelihood of a leak.

Risk

In comparing the updated risk results, including the WDLR to the risk results provided for the two TMEP delivery lines, the CER found that there is no material increase in risk as a result of adding the WDLR delivery line within the tunnel. The CER also found that there is no increased level of risk or impact arising from the proposed relocation of the existing delivery line relative to its current location beneath residential streets.

Pipeline Capacity

Given the combination of the amount contracted and the requirement for segregation of product, the CER found that the size of the WDLR delivery line is appropriate.

Discontinuance of the Delivery Line Being Replaced

In deciding on the appropriate method of decommissioning, the CER noted that it expects Trans Mountain to consult with the parties to this proceeding and all those potentially affected. The results of Trans Mountain's consultation should form part of the future decommissioning application.

The CER imposed a condition requiring Trans Mountain to file a letter to confirm it has filed a decommissioning application, within seven days of submitting it. Trans Mountain must file this confirmation letter within 24 months of being granted the final Leave to Open of the WDLR.

Overall Weighing of Positive and Negative Impacts of the WDLR

The CER was satisfied that the additional line within the tunnel results in no material increase in risk. Construction impacts would be temporary and will occur solely on Trans Mountain-owned and fenced industrial land, which is not compatible with Indigenous traditional use.

The WDLR is a relocation of an existing operating delivery line and will not result in increased volume. This is a needed line that will provide benefit to the operational requirements of Trans Mountain and its shippers. The relocation of the delivery line is also responsive to the input of the residents of the City of Burnaby.

For all of these reasons, the potential benefits of the WDLR outweigh the minimal potential negative impacts and, therefore, the CER approved the WDLR.