



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 the legislative scheme and 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***New Submission Process for New Well Base Maximum Rate Limitations Applications, Bulletin 2023-02***
Gas - Facilities

The AER instituted a new submission process for new well base maximum rate limitations applications. As of February 6, 2023, applications must be submitted using the web form available on the AER's website because email submissions will no longer be accepted.

The new web form introduces the following changes:

- Consultants submitting the web form on behalf of a company can provide their contact information.
- Applicants are asked to confirm that gas production from the well is conserved in accordance with Directive 060 requirements.

The AER also updated *Directive 007-1: Allowables Handbook - Guidelines for the Calculation of Monthly Production Allowables in Alberta* to reflect the changes to the process.

New Edition of Directive 071 and New Manual, AER Bulletin 2023-03*Geothermal Development - Emergency Response Plans*

The AER released a new edition of *Directive 071: Emergency Preparedness and Response* ("Directive 071") and created accompanying *Manual 026: Emergency Preparedness and Response Guide* ("Manual 026").

The updates to *Directive 071* and the creation of *Manual 026* are intended to reflect the AER's ongoing commitment to public safety and the protection of the environment. The updates are steps towards modernizing and aligning *Directive 071* and *Manual 026* with the best practices for emergency management. The AER:

- removed duplicated requirements and deleted requirements that are no longer needed;
- made *Directive 071* applicable to operations regulated under the *Geothermal Resource Development Act*;
- restructured *Directive 071* to improve its organization; and
- moved the content relating to emergency preparedness and response guidance from *Directive 071* to *Manual 026*.

Manual 026 also includes information regarding relevant considerations when consulting with appropriate authorities that was previously contained in *Bulletin 2010-48*.

Directive 071 and *Manual 026* will undergo further revision as the AER continues modernizing and aligning with the best practices in emergency management.

New Edition of Directive 088 and Manual 023, AER Bulletin 2023-04*Oil and Gas - Licences*

The AER released a new edition of *Directive 088: Licensee Life-Cycle Management* ("Directive 088") and *Manual 023: Licensee Life-Cycle Management* ("Manual 023").

S 4.2 of *Directive 088* now includes requirements for the closure nomination component of the AER's Inventory Reduction Program. These new requirements support the Government of Alberta's new *Liability Management Framework*, and the rule changes announced in *Bulletin 2020-26*.

More specifically, the update:

- introduces the closure nomination component of the Inventory Reduction Program, which provides an opportunity for eligible requesters (e.g., private landowners, First Nations, Métis settlements, municipalities, disposition holders, and ministers) to request the closure of a site; and
- describes the closure plan approaches available to licensees when a site is nominated.

Additionally, the licensee capability assessment (“LCA”) tool is subject to routine updates corresponding with the changes in *Manual 023*. The AER expects these changes to be released in early March 2023, and the LCA release notes in OneStop will be updated simultaneously.

Closure nomination will be implemented in spring 2023. Additional communications about how to make a closure request and find additional information on existing nominations will be made available at that time. Licensees with sites associated with the Government of Alberta’s site rehabilitation program will receive further direction on how to implement these new requirements in spring 2023.

Updates to the Licensee Capability Assessment, AER Bulletin 2023-05

Oil and Gas - Licences

The AER updated its licensee capability assessment (“LCA”) and the underlying technology as announced in *Bulletin 2023-04: New Editions of Directive 088 and Manual 023*. The updates include:

- Parameters that use “three-year” history data have been changed from calendar years to a 36-month sliding window. As a result, parameter values will be updated monthly rather than annually.
- The peer group ranking methodology has been changed from “unique per cent” (grading on a curve) to “differential,” which compares absolute performance more directly.
- “Null” data points are now handled better:
 - To resolve the issue where licensees without data have been incorrectly given a score of zero for the affected parameter.
 - To “roll-up” parameter scores that include “null” data are now calculated using non-null parameter scores only and then scaled using the sum of the weightings of the non-null parameters.
- The user interface now shows “overdue” if the financial statements required under *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals* have not been received within 180 days of the licensee’s financial year-end.

These changes are supported by updates to *Manual 023: Licensee Life-Cycle Management*. A complete list of all changes can be found in the LCA tool release notes.

ALBERTA UTILITIES COMMISSION

ARC Resources Ltd. Cutbank Sour Multiwell Gas Battery Power Plant, AUC Decision 27908-D01-2023
*Natural Gas - Facilities*Application

ARC Resources Ltd. ("ARC") operates the 15-megawatt ("MW") Cutbank Sour Gas Multiwell Battery (the "Cutbank Battery"), located approximately 64 kilometres south of Grande Prairie.

ARC sought AUC approval to construct and operate a 22.6-MW natural gas thermal power plant (the "Project") at the Cutbank Sour Multiwell Gas Battery under s 11 of the *Hydro and Electric Energy Act* ("HEEA").

Decision

The AUC approved the application.

Applicable Legislation

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

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

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

AUC Rule 012: [Noise Control](#)

Pertinent Issues

At the time of the application, the Cutbank Battery was generating power for ARC's own use and was exempt from s 11 of the *HEEA*.

Following the addition of the Project, the Cutbank Battery would remain disconnected from the Alberta Interconnected Electric System.

The AUC was satisfied ARC's application met the requirements set out in Rule 007: *Applications for Power Plants Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines*. The AUC determined that the Project's technical, siting, emissions, environmental, and noise aspects have been met. ARC's participant involvement program has been conducted, and there are no outstanding public or industry objections or concerns.

Since the Project did not comply with the nighttime permissible sound level set out in Rule 012: *Noise Control*, the AUC required ARC to mitigate the noise impact. The AUC imposed a condition of approval mandating ARC to implement the noise mitigation measures recommended in the noise impact assessment for the Project.

The AUC approved the application from ARC to construct and operate the Cutbank Sour Multiwell Gas Battery Power Plant.

Corix Utilities Inc. Approvals Relating to Restructuring Transactions, AUC Decision 27802-D01-2023*Water - Law*Application

Corix Utilities (Foothills Water) Inc. (“Corix Foothills”) owns and operates a water utility located at Heritage Pointe, Alberta. Corix Foothills is a wholly owned subsidiary of Corix Utilities Inc. (“CUI”), which is a wholly owned subsidiary of Corix Infrastructure Inc. (“Corix Infrastructure”). Corix Infrastructure is indirectly controlled by the British Columbia Investment Management Corporation.

Corix Infrastructure and Corix Infrastructure (US) Inc. agreed to enter a transaction agreement with IIF Subway Investment LP, SW Merger Acquisition Corp., and SouthWest Water Company. The transaction agreement provides a framework for combining Corix Infrastructure’s water utility and wastewater and related businesses in Canada and the United States (“**US**”) with the wastewater businesses of SouthWest Water Company. CUI and Corix Foothills will become part of the organizational structure of the combined company, Corix Infrastructure (US) Inc., following the business combination.

To allow a restructuring of the subsidiaries before the completion of the business combination, CUI applied to the AUC for:

- (a) an order under s 101 of the *Public Utilities Act* (“*PUA*”) authorizing CUI to issue its shares and/or evidences of indebtedness to Corix Infrastructure and its affiliates that are subsidiaries of Corix Infrastructure as part of pre-closing restructuring transactions of Corix Infrastructure and its subsidiaries; and
- (b) an order under s 102 of the *PUA* authorizing CUI to record on its books a transfer of all of its shares to a corporation to be formed under the laws of Canadian jurisdiction, which will be owned by Corix Infrastructure at the time of the transfer.

Decision

The AUC approved the application subject to conditions.

Applicable Legislation

[Public Utilities Act](#), RSA 2000, c-P-45 - ss 101, 102, 109.

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

Pertinent Issues

To determine whether to approve the transactions under ss 101(2)(a) and 102(1) of the *PUA*, the AUC applies the no-harm test, which determines whether customers are harmed by the transactions.

CUI submitted that the proposed restructuring transaction would not affect the services of Corix Foothills nor the rates charged by Corix Foothills. CUI noted that neither Corix Foothill’s operation of the water utility nor the level of customer service would change.

The AUC’s approval of the restructuring transactions was contingent on CUI’s representation that the restructuring transactions would not affect the water rates charged by Corix Foothills. At the time of the application, Corix Foothills had an active application before the AUC for approval of its 2023-2025 revenue requirement and rates. CUI confirmed that the transaction costs incurred concerning the restructuring transactions will not be recovered from the customers of Corix Foothills.

CUI explained that it would be converted to an unlimited liability company because of the application of certain US tax rules. CUI noted that this conversion would not have any consequences for Corix Foothills or its customers and that Corix Foothills will remain a corporation with limited liability.

The AUC asked CUI whether there are any provisions in place to prevent Corix Foothills' assets from being pledged as security for any debts of CUI or any of its affiliates. CUI noted that while Corix Infrastructure's current credit agreement requires material subsidiaries to pledge assets as security, Corix Foothills is not a material subsidiary. Even if it were to become one, material subsidiaries are defined in the credit agreement as 'exempt regulated material subsidiaries.' They are prohibited from pledging assets as security without the consent of a government entity, such as the AUC. CUI anticipated that any credit agreement that might be implemented in connection with the proposed restructuring transactions would include a similar exemption.

The AUC concluded that customers would not be harmed by the proposed transactions. The proposed restructuring transactions and the business combination would not affect the AUC's regulatory oversight of Corix Foothills or CUI.

Corix Utilities (Foothills Water) Inc. 2023-2025 Revenue Requirements and Rates Application - Interim Rates, AUC Decision 27844-D01-2023

Water - Rates

Application

Corix Utilities (Foothills Water) Inc. ("CUI") applied to the AUC for approval of its 2023-2025 revenue requirement and rates related to its water utility, serving customers in Heritage Point, Alberta.

CUI requested a 2023 rate increase for its typical residential and commercial customers of 18.6 percent and smaller increases for 2024 and 2025.

CUI requested that the proposed residential and commercial customer rates be made effective on an interim basis as of January 1, 2023. CUI proposed that the increased interim rates would be reflected on February bills and that if the request to implement an interim rate increase were approved, the interim rates would be adjusted as required.

Decision

The AUC denied the application from CUI to charge customers interim rates that would reflect CUI's proposed 2023 customer rates.

The AUC directed a continuation of the existing rates charged by CUI, as approved in Decision 2013-082, on an interim basis, for the period starting on January 1, 2023, until the 2023-2025 revenue requirement and rates are approved.

Applicable Legislation

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

Pertinent Issues

The AUC denied the request for an interim rate increase as it found it would not be in the public interest.

The AUC stated that one of the purposes of interim rates is to provide a smooth rate transition for customers to new rates to minimize rate shock. Another purpose of interim rates is to provide additional cash flow to the utility to cover increased costs while its rate case is being tested. In approving interim rate increases, the AUC considers, *inter alia*, the impact of the proposed rates and the consequences of any shortfall in revenue to the utility.

CUI did not suggest that the interim rate increase is necessary to preserve the utility's financial integrity or avoid financial hardship. CUI also did not suggest that it will be unable to continue providing safe and reliable service without the interim rate increase. The AUC found that CUI did not sufficiently demonstrate the need for the interim rate increase.

The AUC also considered approving a portion of CUI's proposed interim rate increase. However, given that CUI last applied to increase rates in 2014 and that a final decision in this application is anticipated to occur in a matter of months, the AUC did not consider that an interim rate increase was necessary to avoid undue harm to CUI. If collecting increased rates as of February 2023 was imperative for CUI, its application could have been filed earlier in 2022 to provide adequate time to test the application and render a decision.

Because CUI's application was filed in December of 2022 and was preceded by consultation between CUI and stakeholders, the AUC determined that ratepayers were aware, or ought to have been aware, that a regulatory proceeding had been initiated that may result in rates changing effective January 1, 2023. As a result, collecting or refunding any rate difference at a later date would not violate the rule against retroactive and retrospective ratemaking.

Direct Energy Regulated Services 2023-2025 Energy Price Setting Plan Compliance Filing, AUC Decision 27950-D01-2023

Compliance Filing - Rates

Application

In its confidential Decision 27562-D01-2022, the AUC did not approve the 2023-2025 Energy Price Setting Plan ("EPSP") as applied for by Direct Energy Regulated Services ("DERS"). In that decision, the AUC directed DERS to make changes to the EPSP, to the accompanying illustrative energy charge workbook and to the calculation of the initial return margin, and submit a compliance filing to reflect the AUC's findings and directions. In this proceeding, DERS submitted its 2023-2025 EPSP compliance filing.

Decision

The AUC determined that DERS complied with the directions issued in Decision 27562-D01-2022.

Applicable Legislation

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

[Regulated Rate Option Regulation](#), AR 62/2005.

AUC Rule 005: [Annual Reporting Requirements of Financial and Operational Results](#).

Pertinent Issues

Changes directed to be made to the 2023-2025 EPSP

The AUC was satisfied, with one exception, that DERS had adequately incorporated the EPSP changes, as directed in Decision 27562-D01-2022. DERS did not adjust its EPSP to reflect the AUC's directive regarding the energy return margin calculation description. The AUC, therefore, amended the wording of the approved 2023-2025 EPSP to indicate that the net commodity risk compensation ("Net CRC") has to be excluded from the revenues used in calculating the energy return margin.

Changes directed to be made to the illustrative energy charge workbook

The illustrative energy charge workbook filed by DERS incorporated the updated formula for calculating the energy return margin. The AUC approved the illustrative energy charge workbook as filed in Exhibit 27950-X0004 and found that DERS has complied with the direction from paragraph 46 of Decision 27562-D01-2022.

Changes directed to be made to the initial energy return margin

In Decision 27562-D01-2022, the AUC directed DERS to recalculate and submit the initial return margin to be used in the 2023-2025 EPSP, excluding the Net CRC for 2021 and including details of the recalculation. In considering the compliance filing, the AUC determined that the energy return margin for July 2023 to June 2024 will be calculated using DERS' 2022 financial results, which will be submitted in its Rule 005 report that is to be filed by May 2023.

Given the timing, energy charges under the approved 2023-2025 EPSP will not use the initial energy return margin submitted as part of this compliance filing. Procurement will begin in March 2023, the month following the month this decision was issued. As a result, the first month that energy charges under the 2023-2025 EPSP will be used is July 2023. The AUC determined it did not have to review or approve the initial return margin and granted DERS relief from complying with that specific direction.

ENGIE Development Canada GP Inc. Buffalo Trail Wind Power Project, AUC Decision 27240-D01-2023
*Wind Power - Facilities*Application

ENGIE Development Canada GP Inc. ("ENGIE") applied to construct and operate Buffalo Trail South Wind Power Project with a capacity of up to 400 megawatts ("MW"), the Buffalo Trail North 453S Substation and the Buffalo Trail South Substation (collectively, the "Project").

Decision

The AUC approved the applications from ENGIE to construct and operate the Project on 59.02 hectares of privately owned land in Cypress County.

Applicable Legislation

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

Alberta Environment and Protected Areas - Fish and Wildlife Stewardship: [Conservation and Reclamation Directive for Renewable Energy Operations](#).

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

[Hydro and Electric Energy Act](#), RSA 2000.

[Water Act](#), RSA 2000, c W-3.

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

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

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

AUC Rule 033: [Post-approval Monitoring Requirements for Wind and Solar Power Plants](#).

Pertinent Issues

The Concerned Cypress County Owners Group (“CCCOG”), which consisted of individuals and families who own and occupy lands within 1,500 meters of the Project, submitted a statement of intent to participate (“SIP”) requesting the Project be denied. Alternatively, the CCCOG requested that the AUC impose several conditions if the Project is approved. The AUC granted standing to the members of the CCCOG, who raised several concerns with the Project.

Noise

ENGIE retained a noise expert to complete a noise impact assessment (“NIA”) for the Project. CCCOG also retained a noise expert to provide evidence about the NIA and potential noise impacts from the Project, who raised concerns regarding noise and compliance with Rule 012: *Noise Control* (“Rule 12”).

After examining the relevant provisions of Rule 012, the AUC made the following findings in relation to the noise concerns:

- Highway 41 was not a heavily travelled road. The applicable permissible sound level (“PSL”) is, therefore, 40 dBA at night and 50 dBA during the day at all receptors considered in the NIA, including those close to Highway 41.
- A ground attenuation factor of 0.7 was acceptable and appropriate for the Project study area.
- The Project noise was expected to comply with the PSL set out in Rule 012 and will likely not create low-frequency noise conditions at receptors.
- ENGIE’s commitments to reduce construction noise are reasonable and generally consistent with the mitigation measures recommended in Rule 012.
- ENGIE must complete a comprehensive sound level survey at identified receptors and submit the survey to the AUC within one year after the Project commences operations.

Project value impacts

CCCOG’s property value expert concluded that the project could negatively impact the market value of adjacent residential properties and that the value of farmland in the area would not be impacted unless the land is to be used as a future building site. In relation to the CCCOG’s members’ lands for the existing and future residential building sites of 13 properties assessed, five properties could suffer value loss impacts in the range of 0 to 10 percent, and seven properties farther away from the project could suffer value loss impacts in the 0 to 5 percent range.

ENGIE’s property expert concluded that there was insufficient empirical evidence to draw any conclusions about the potential for the Project to impact property values. ENGIE stated that the conclusions offered by CCCOG’s expert, to the extent that they indicated a negative impact on property values from the project, were not based on empirical evidence and should be given reduced or no evidentiary weight.

The AUC accepted the CCCOG expert’s opinion that for the existing and future residential building sites of 13 properties assessed, five properties could suffer value loss impacts in the range of 0 to 10 percent. Seven properties farther away from the project could suffer value loss impacts in the 0 to 5 percent range.

Shadow flicker

The AUC found that potential shadow flicker impacts from the Project have been properly assessed and that ENGIE has a reasonable management plan, including response procedure and potential mitigation measures, to address stakeholders’ concerns and complaints about potential shadow flicker impacts from the Project. As a

condition of approval, the AUC required that ENGIE file a report detailing any complaints or concerns it receives or is aware of regarding shadow flicker from the Project during the first year of operation, as well as ENGIE's responses to the complaints or concerns.

Health

CCCOG raised concerns regarding adverse health effects and impacts arising from the Project, such as impacts on pre-existing medical conditions and human health due to noise, shadow flicker, light pollution, stress and anxiety. The health concerns also extended to their livestock. In support of these concerns, CCCOG provided a summary of articles on the negative impact of noise and vibrations from wind turbines on animals prepared by an author who did not have specialized knowledge, training skills, experience or expertise in respect of the subject matter of the impact of noise and vibrations from windmills on animals, and who was not presented as an independent expert witness at the hearing.

The AUC found that, like human health, animal health is a subject matter that will generally require opinion evidence from an independent expert with sufficient specialized expertise, which also applies to literature reviews of animal health effects. Since the summary provided by the CCCOG was conducted by a person without any specialized training, knowledge or experience related to the impacts of wind turbine noise and vibrations on animal health, the AUC gave no weight to this evidence. The AUC found that noise and shadow flicker created by the operation of wind farms are not expected to produce adverse health effects.

Visual impacts and impacts on rural character of area

CCCOG emphasized the importance of their lands to their daily life, sense of well-being, and belonging to a well-established community as descendants of ancestors who had settled in the area generations ago. CCCOG believed that the construction of the Project would visually intrude on the area's rural character.

The AUC noted its understanding of the CCCOG's concerns that the construction of the Project would alter the area's rural character. It also recognized that visual impacts are a consequence of industrial development and must be balanced against the Project's public benefits. Having considered the Project's visual impacts on landowners and their concerns about changes to the aesthetic character of this land, the AUC noted that development in pursuit of the public interest often requires change. The AUC found that the positive effects of the Project as a whole outweigh the adverse effects resulting from the visual impacts of the Project.

Benefits sharing agreements

The AUC noted that ENGIE entered into a benefits sharing agreement with some landowners, who agreed not to report concerns over safety issues or non-compliance with regulatory requirements until they give ENGIE 60 days' notice. While the AUC considers such agreements a potentially effective way for applicants and non-participating landowners to enter into mutually beneficial arrangements and enforce private contracts outside of its jurisdiction, the AUC stated that the benefits sharing agreements do not affect the AUC's jurisdiction or authority. According to the AUC, no contractual arrangements between landowners and a project proponent may limit the AUC's jurisdiction to hear from landowners. If a concern or complaint from a landowner comes before the AUC regarding the Project, it will hear that complaint on its merits regardless of whether prior notice was provided to ENGIE by the landowner under the benefits sharing agreement.

Other concerns

ENGIE stated that the final equipment selection for the Project's turbines would be made at a later date. The AUC, accordingly, imposed as a condition of approval that ENGIE file a final project update to the AUC once it has finalized equipment selection to confirm that the Project would not exceed the allowance for wind power plants specified in the final Project update.

Alberta Environment and Protected Areas - Fish and Wildlife Stewardship ("AEP") determined that the Project poses an overall moderate environmental risk. The Project would intrude on environmental setbacks and the

habitat of various wildlife species. ENGIE committed to several mitigation measures. To ensure compliance with the commitments and compliance with applicable rules, the AUC imposed the environment-related conditions of approval requiring monitoring, construction of exclusion fencing, setback fencing, consultation with AEP and qualified biologists.

Taking into account the mitigation measures proposed by ENGIE, the AUC found that negative impacts on the environment and wildlife could be mitigated to an acceptable level. As a condition of approval, the AUC imposed that ENGIE submit a post-construction monitoring survey report to AEP.

The AUC concluded that its benefits outweigh the negative impacts of the Project. The Project would provide 400 MW of low emissions electricity, contribute to the diversification of Alberta's energy resources and reduce emissions compared to non-renewable energy projects. Further, the Project would provide local economic benefits for landowners and non-landowners in the form of lease agreements and benefits sharing agreements. The region would benefit from more than 200 jobs created during construction and additional long-term jobs necessary for the Project's operation and economic benefits of around \$700 to \$800 million in investments and \$1.8 million per year over 30 years in tax revenue.

The AUC, therefore, determined that the Project's approval was in the public interest and approved the application to construct and operate the Project.

EPCOR Distribution & Transmission Inc. Decision on Preliminary Question Application for Review of Decision 27653-D01-2022 2023 Cost-of-Service Compliance Filing and 2023 Distribution Rates, AUC Decision 27922-D01-2023

Review and Variance - Rates

Application

EPCOR Distribution and Transmission Inc. ("EDTI") applied to the AUC for review and variance of Decision 27653-D01-2022 regarding EDTI's 2023 Cost-of-Service Compliance Filing and 2023 Distribution Rates (the "Decision").

Decision

The AUC denied the application.

Applicable Legislation

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

AUC Rule 016: [Review of Commission Decisions](#).

Pertinent Issues

EDTI relied on s 5(1)(a) of Rule 016: *Review of Commission Decisions* ("Rule 016"), submitting that the AUC had made an error of fact or mixed fact and law. In the alternative, EDTI submitted that the AUC should review the Decision on its motion, as permitted under s 2(1) of Rule 016.

In the Decision, the AUC directed EDTI to include the years impacted by the COVID-19 pandemic in its 2023 residential consumption forecast. Specifically, EDTI was directed to include the actual residential consumption during the COVID-19 pandemic years of 2020 and 2021 in the calculation of its 2023 residential consumption forecast.

EDTI submitted that, on a balance of probabilities, this constitutes an error of fact. EDTI argued that there was a "clear intention" in the AUC's reasoning that EDTI's 2023 residential consumption forecast should be based on actual residential energy consumption for the years 2010-2019. EDTI submitted that the direction should have

been for EDTI to exclude the years impacted by the COVID-19 pandemic from its 2023 residential consumption forecast.

EDTI submitted that the alleged error is material. EDTI advised that including the 2020 and 2021 pandemic years in the 2023 residential consumption forecast results in a revenue shortfall of \$952,348 in 2023, which will be carried forward through the next five-year performance-based ratemaking term commencing on January 1, 2024.

The AUC was not persuaded that an error of fact exists on a balance of probabilities. The AUC noted that the hearing panel had actual data from 2010 to August 2022 on the record of Proceeding 27653, making the finding in question an outcome that was available based on the facts in that proceeding. In addition, the AUC considered that the relevant finding in the Decision was drafted precisely and deliberately. For example, the Decision repeats its finding that the forecast should include the COVID-19 pandemic years of 2020 and 2021, which is not, as suggested by EDTI, in contradiction with other sections of the Decision.

The AUC found no express statement in the Decision that it is not reasonable for EDTI to include, or that EDTI must not include, the 2020 and 2021 pandemic years in its 2023 residential consumption forecast. The AUC denied EDTI's request for a review under s 5(1)(a) of Rule 016.

Given the importance of the principle of finality in administrative decision-making, the AUC should only exercise its discretion under s 2 of Rule 016 in exceptional or extraordinary circumstances. The AUC found that the alleged error of fact, which was not proven on a balance of probabilities, does not constitute exceptional or extraordinary circumstances necessary to justify the exercise of its discretion under s 2 of Rule 016.

EDTI did not meet the requirements for a review of Decision 27653-D01-2022, and the application for review was dismissed.

FortisAlberta Inc. Compliance Filing Pursuant to Decision 27067-D01-2022, AUC Decision 27682-D01-2023 Compliance Filing - Rates

Application

The application was FortisAlberta Inc. ("Fortis")'s compliance filing in response to the AUC's directions in Decision 27067-D01-2022. In its filing, Fortis revised section 7.2.3 of its Customer Terms and Conditions of Electric Distribution Service ("T&Cs") so that its streetlight investment was always paid to the municipality where the new residential development is located. Fortis contended that removing all language regarding a potential agreement between the developer and municipality from section 7.2.3 of the T&Cs reduced future disputes' complexity and regulatory burden.

Decision

The AUC determined that Fortis did not comply with all directions in the decision since its compliance filing did not include clear directions on the form of agreement required for its streetlight investment to be assigned to a party other than the municipality, as directed by the AUC. In addition, Fortis' proposed T&Cs did not allow for the possibility that parties other than the municipality could receive its streetlight investment, contrary to directions 1 and 3 of Decision 27067-D01-2022. The AUC, however, did not require Fortis to submit another compliance filing since the AUC decided to hear issues concerning streetlight investment, on a province-wide basis, in Proceeding 27658.

Applicable Legislation

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

Pertinent Issues

On September 28, 2022, the AUC provided notice that it was initiating Proceeding 27658 on residential standards of service and maximum investment levels (“MILs”). On February 9, 2023, the AUC issued its final issues list in Proceeding 27658 and determined that it will consider entitlement to electric distributors’ streetlight investment. The final issues list in that proceeding includes whether MILs should be subject to the same principles as MILs for residential development and who should be entitled to streetlighting MILs.

Proceeding 27658 was incomplete at the time of this decision. It was unclear if it would result in province-wide standardization of streetlight investment for new residential development through electric distribution owners’ T&Cs. To avoid inefficient consideration of one issue in multiple proceedings, the AUC relieved Fortis of the requirement to submit a further compliance filing under s 8(5)(d) of the *Alberta Utilities Commission Act*.

The AUC found that Fortis has complied with Direction 2 of Decision 27067-D01-2022 and relieved Fortis from complying with directions 1 and 3 and paragraph 23(2) of Decision 27067-D01-2022.

CANADA ENERGY REGULATOR***New Process and Template for Public Participation for Section 214 Applications***
Oil and Gas - Exemption Applications

The CER established a new process and template for public participation in applications filed under s 214 of the *Canadian Energy Regulatory Act* (“*CER Act*”). The changes were based on the CER’s commitment to using transparent processes built on early engagement and inclusive participation.

The CER expects companies to use the new template “Notice of Application (pursuant to s. 214 of the *CER Act*)”, available on the CER’s website to inform all potentially affected persons and communities that an application under s 214 of the *CER Act* has been filed with the CER. This includes providing notice to all potentially affected Indigenous peoples.

As of 2 February 2023, companies that submit any new s 214 project notifications with the CER are expected to use the new template “Notice of Application (pursuant to s. 214 of the *CER Act*)” immediately after they file their project application. Companies that do not make use of the new template may experience delays in the application assessment process. The CER will no longer issue a subsequent CER Notice of Application.