



# 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*****Invitation for Feedback on Revisions to Directive 001, AER Bulletin 2023-01******Oil and Gas - Facilities***

The AER sought feedback on updates to *Directive 001: Requirements for Site-Specific Liability Assessment* (the “*Directive*”). In the updates, the AER:

- Removed irrelevant or duplicative information, updated the references and formatting (this included moving forms out of the *Directive* for future posting on the *Directive*'s landing page);
- Revised the definition of “Liability Assessment” to emphasize the obligations of licensees to provide care and custody from the shutdown of operations up to site reclamation;
- Modified the scope of the *Directive* to include sites regulated under the *Geothermal Resource Development Rules*;
- Integrated the requirements under the large facility liability management program into the main body of the *Directive*, making the requirements applicable to all sites; and
- Removed the requirement to submit the On-Site Reclamation and Remediation Details and Facility Summary forms.

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**ALBERTA UTILITIES COMMISSION****ARC Resources Ltd. Kakwa Super Pad Thermal Power Plant, AUC Decision 27780-D01-2023**  
*Thermal Power - Facilities*Application

ARC Resources Ltd. (“ARC”) operates a Gas Multi-well Effluent Measurement Battery (the “Kakwa Super Pad”) 89 kilometres south of Grande Prairie. ARC applied for approval to construct and operate a 12.614-megawatt (“MW”) power plant at the Kakwa Super Pad (the “Power Plant”). The Power Plant would consist of two new Solar Taurus 60 turbine generators with a rated capability of 5.182 MW each and three existing CAT G3512 generator sets with a rated capability of 750 kW each, for a total capability of 12.614 MW.

Decision

The AUC approved the application from ARC to construct and operate the Power Plant.

Applicable Legislation

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

[Alberta Ambient Air Quality Objectives and Guidelines](#).

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

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

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

**ATCO Electric Ltd. Big Sky Transmission Project, AUC Decision 27852-D01-2022**  
*Electricity - Facilities*Application

Big Sky Solar GP Inc. (“Big Sky Solar”), a wholly-owned subsidiary of Renewable Energy Systems Canada Inc., has approval to construct and operate the 140-megawatt (“MW”) Big Sky Solar Power Plant and associated Bullseye 1004S Substation near the hamlet of Acadia Valley.

ATCO Electric Ltd. (“AE”) applied for approval to construct and operate a 65-metre 144-kV transmission line (“Line 7LC760”) from the existing Transmission Line 7L760 to Big Sky Solar’s approved Bullseye 1004S Substation. AE also requested approval to alter the existing transmission line to accommodate the connection.

Decision

The AUC approved the applications from AE to construct and operate the transmission facilities related to the Big Sky Solar Connection Project.

Applicable Legislation

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

ISO Rules Section 501.3 - [Abbreviated Needs Approval Process](#).

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

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

**Balancing Pool Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Stavely Solar Project, AUC Decision 27934-D01-2023**  
*FEOC Regulation – Sharing of Records*

Application

The Balancing Pool filed an application on behalf of Concord Stavely GP2 Ltd. under the *Fair, Efficient and Open Competition Regulation* (“*FEOCR*”), seeking permission to share records not available to the public related to the 16.5-megawatt Concord Stavely Solar Project.

Decision

The AUC was satisfied that the Balancing Pool had demonstrated that: (i) the sharing of records was reasonably necessary for the Balancing Pool to carry out its business; and (ii) the subject records would not be used for any purpose that did not support the fair, efficient and openly competitive operation of the Alberta electricity market. The AUC was also satisfied that the total offer control of the parties would not exceed the offer control limit of 30 percent under s 5(5) of the *FEOCR*. The AUC considered the Market Surveillance Administrator’s support of the application to contribute to its determination to permit the sharing of records.

Applicable Legislation

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

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

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

[Small Scale Generation Regulation](#), Alta Reg 194/2018 - s 7.

**Balancing Pool Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Drumheller Solar and Battery Storage Project, AUC Decision 27937-D01-2023**  
*FEOC Regulation – Sharing of Records*

Application

The Balancing Pool filed an application on behalf of Concord Drumheller GP under the *Fair, Efficient and Open Competition Regulation* (“*FEOCR*”) seeking permission to share records not available to the public. These records relate to the 13.5-megawatt Drumheller Solar and Battery Storage Project between the Balancing Pool, Concord Drumheller GP2 Ltd., Concord Drumheller Partnership, and URICA Energy Real Time Ltd.

Decision

The AUC was satisfied that the Balancing Pool had demonstrated that (i) the sharing of records was reasonably necessary for the Balancing Pool to carry out its business; and (ii) the subject records would not be used for any purpose that did not support the fair, efficient and openly competitive operation of the Alberta electricity market. The AUC was also satisfied that the total offer control of the parties would not exceed the offer control limit of 30 percent under s 5(5) of the *FEOCR*.

Applicable Legislation

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

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

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

[Small Scale Generation Regulation](#), Alta Reg 194/2018 - s 7.

**City of Grand Prairie Decision on Application for Review and Variance of Decision 27276-D02-2022 City of Grande Prairie Eastlink Centre Power Plant, AUC Decision 27841-D01-2023**  
*Review and Variance - Facilities*

Application

The City of Grand Prairie (“Grand Prairie”) applied for review and variance of Decision 27276-D02-2022 (the “Decision”). In the Decision, the AUC approved a power plant designated as the Eastlink Centre Power Plant. The approval was conditional upon Grand Prairie implementing additional noise mitigation.

Decision

The AUC approved the application from Grand Prairie to review and vary the Decision.

Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - s 1.

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

Pertinent Issues

The AUC heard the preliminary and variance questions in a single proceeding instead of the usual two-stage process under s 6(2) of Rule 016: *Review of Commission Decisions*.

Grand Prairie argued that the AUC made a material error in imposing the condition that Grand Prairie must eliminate the high-pitched noise from the power plant. Grand Prairie also submitted that it required more time to fulfill the conditions to implement further noise mitigation due to procurement obligations applicable to it as a procuring entity under international trade agreements. It submitted that information related to its procurement obligations was previously unavailable facts, material to the Decision, which existed before the Decision was issued. However, it was not placed in evidence in the original proceeding because Grand Prairie did not know it would be relevant.

*Preliminary Question*

The AUC allowed the request for review. It found that Grand Prairie had demonstrated that the AUC erred in imposing the condition that high-pitched noise be eliminated. The AUC also accepted that information related to the procurement obligations existed before the Decision was issued but was not placed into evidence because Grand Prairie’s position at the time of the hearing was that no additional mitigation was required and, therefore, it did not know this information would be relevant.

*Variance Question*

The AUC varied the requirement to eliminate the high-pitched noise from the power plant to a requirement to implement mitigation measures that will alleviate or attenuate the high-pitched noise. This change was consistent with the evidence provided in the original proceeding.

The AUC also granted the request to vary the timelines for completing the noise mitigation.

**City of Lloydminster Water Supply Agreement with Alberta Central East Water Corporation, AUC Decision 27755-D01-2023***Water - Rates*Application

The City of Lloydminster (“Lloydminster”) filed an application requesting approval of a water service agreement it entered into with Alberta Central East Water Corporation (“ACE”). Lloydminster and ACE intended for the water supply agreement to be extended from five to 20 years following approval by the AUC.

Decision

The AUC approved the potable water supply agreement because it determined that the agreement was necessary and proper for public convenience and adequately serves the public interest.

Applicable Legislation

[Municipal Government Act](#), RSA 2000, c M-26 - s 30(1).

**Enforcement Staff of the AUC Settlement Agreement with the City of Grand Prairie, AUC Decision 27391-D01-2023***Markets - Enforcement*Application

The AUC Enforcement Staff requested approval of a settlement agreement with the City of Grand Prairie (“Grand Prairie”) related to the operation of a power plant without the required approval. The power plant also exceeded the noise levels permitted under Rule 012: *Noise Control*.

Decision

The AUC approved the settlement agreement. Grand Prairie admitted to having constructed and operated a power plant without approval and that the power plant exceeded the nighttime permissible sound level at nearby residences between April 2021 and February 2022. The settlement agreement did not impose an administrative penalty under s 63(1)(a) or s 63(2) of the *Alberta Utilities Commission Act*. The settlement agreement included terms and conditions to remedy Grand Prairie’s non-compliance issues.

Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - ss 8 and 23(1)(b), 63(1)(a), 63(2), 66.

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

[Hydro and Electric Energy Regulation](#), Alta Reg 409/1983 - s 18.1(2).

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

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

Pertinent Issues

The AUC considered the public interest test developed in *R v Anthony-Cook*, 2016 SCC 43 to determine if it should approve the settlement agreement and the provisions of Rule 013: *Criteria Relating to the Imposition of Administrative Penalties*.

The AUC accepted that, in this case, the objective of enforcement could be reached without an administrative penalty, namely through the conditions and requirements agreed to in the settlement agreement.

The AUC also noted the submissions from Enforcement staff indicating that a monetary administrative penalty that could have been imposed upon the city could have negatively affected municipal taxpayers, including those adversely affected by the power plant.

***ENMAX Power Corporation Northwest Calgary Transmission Line Relocation Project, AUC Decision 27474-D01-2023***

***Electricity - Facilities***

Application

ENMAX Power Corporation (“EPC”) applied for permission to rebuild, relocate and realign the existing 69-kilovolt Transmission Line 69-16.61L (the “Transmission Line”) from No. 16 Substation to No. 27 Substation in the northwest Calgary area.

Decision

The AUC approved the application to rebuild, relocate and realign the Transmission Line. The AUC determined that approval of the application, specifically the preferred route, is in the public interest regarding the proposed facilities’ social, economic, and other effects, including its effect on the environment.

Applicable Legislation

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

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

Pertinent Issues

EPC stated that 75 percent of the existing structures and components of the Transmission Line were deteriorated or damaged, resulting in an increased risk of failure. In addition, maintenance access had become increasingly difficult because of the development within the Brentwood and Dalhousie communities. The Transmission Line further did not meet the required clearance from infrastructure owned by the City of Calgary.

EPC proposed a preferred and alternate route for the Transmission Line. Both routes would replace the deteriorated or damaged assets and relocate structures currently located within residential fenced properties in the Brentwood community.

The AUC determined that the preferred route would have a lower potential residential impact because it would not cross new residential parcels, and the structure’s location in the rebuilt portion would remain in the existing right-of-way. The AUC found that, although the alternate route would impact fewer residences, the fact that new transmission infrastructure would be introduced in an area where a transmission line does not currently exist would result in more significant impacts for those residents. The AUC found that the overall incremental impacts on a larger number of residents associated with the preferred route would still be less than the overall new impacts on fewer residents on the alternate route.

The AUC found that approval of the application and the preferred route was in the public interest.

***Pathfinder Energy Ltd. Rocky 5 Bitcoin Mining Power Plant, AUC Decision 27673-D01-2023***  
*Electricity - Facilities*

Application

Pathfinder Energy Ltd. (“Pathfinder”), previously named Nexus Energy Associates Ltd., applied to the AUC for permission to construct and operate the 60-megawatt (“MW”) natural gas-fired Rocky 5 Bitcoin Mining Power Plant (the “Power Plant”). The Power Plant will be constructed on 10 acres of Crown land 30 kilometres northwest of Rocky Mountain House and consists of forty 1.5-MW generators, forty 1.5-megavolt ampere transformers, and ten 6-MW cooling pods.

Decision

The AUC approved the application from Pathfinder and approved the requested in-service date of June 2023. The Power Plant will be owned and operated by Pathfinder and produce power exclusively for use by an on-site bitcoin mining operation.

Applicable Legislation

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

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

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

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

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

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

[\*Public Lands Act\*](#), RSA 2000, c P-40.

Pertinent Issues

Pathfinder submitted that the Power Plant would not be connected to the Alberta Interconnected Electric System. As Pathfinder will consume the energy produced on the property of Pathfinder, the AUC determined that the *Electric Utilities Act* (“EUA”) does not apply and that Pathfinder qualified for the exemption from the permit requirement under s 2(1) of the *EUA*.

The AUC found that approval of the Power Plant would be in the public interest and approved the application.



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**CANADA ENERGY REGULATOR*****CNOOC Access to Connection Facilities at the Trans Mountain Edmonton Terminal on Reasonable Terms, CER Letter Decision RH-001-2022****Oil - Law*Application

On April 14, 2022, CNOOC Marketing Canada (“CNOOC”) applied for an order requiring PKM Canada North 40 Limited Partnership (“Pembina”) to allow CNOOC and its sublessees to access pipeline facilities for receiving, transporting, and delivering oil from interconnecting pipelines (the “Connection Facilities”) at the Trans Mountain Edmonton Terminal on reasonable terms (the “Application”).

CNOOC requested an order:

- Declaring that Pembina contravened ss 235 and 239 of the *Canadian Energy Regulator Act* (“CER Act”) by refusing to provide the access requested by CNOOC;
- Directing Pembina to consent to the receipt, transportation, and delivery of oil offered by CNOOC or its sublessees for transmission on the Connection Facilities from the point where the Connection Facilities interconnect with the feeder and downstream pipelines that CNOOC or its sublessee elect to use to deliver and receive oil from the Edmonton Terminal, as may change from time to time, to the point where the Connection Facilities connect with the terminal tanks leased by CNOOC; and
- Directing Pembina and CNOOC to negotiate in good faith to determine reasonable commercial terms for CNOOC and its sublessee’s use of the Connection Facilities, failing which either party may apply to the CER for determination of the reasonable commercial terms for that use.

During the proceeding, CNOOC clarified it was also seeking relief against Trans Mountain Pipeline ULC (“Trans Mountain”) as the operator of the Edmonton Terminal.

Decision

The CER granted partial relief against Pembina by directing it to consent to receipt, transportation, and delivery of oil offered by CNOOC for transmission on the Connection Facilities from the Woodland Pipeline if operationally feasible and if CNOOC requests this connectivity for itself or as part of a request to sublease otherwise permitted by a terminal services agreement. The CER directed Pembina and CNOOC to negotiate in good faith to determine reasonable commercial terms for such connectivity, failing which, either party could apply to the CER for determination of the reasonable commercial terms for that use.

The CER issued the following directions to Trans Mountain:

- The Commission directs Trans Mountain to amend its Rules and Regulations Tariff (currently Tariff No. 105) to clarify its nomination verification processes (section 6.2 of the Tariff) at the Edmonton Terminal. This includes which portions of the Terminal Services Agreement (TSA) (e.g., the Dedicated Facilities or the operational description of inbound connecting pipeline facilities) or other method Trans Mountain will use to verify a shipper’s ability to deliver Petroleum into Merchant Tanks.
- Trans Mountain must consult with all interested parties in developing the amendments. Within 90 days from the issuance of this Decision, Trans Mountain must file with the CER draft tariff amendments, a summary of any outstanding concerns, and an indication of how Trans Mountain will address any outstanding concerns. Trans Mountain must copy all interested parties.

### Applicable Legislation

[Canadian Energy Regulator Act](#), SC 2019, c. 28, s10 - ss 32, 34, 68(1), 225, 226, 239.

### Pertinent Issues

The CER identified the central issues to be whether Pembina or Trans Mountain or both had contravened ss 235 or 239(1) of the *CER Act* by failing to allow CNOOC to transport product into Tank 35 from the Woodland Pipeline through the Connection Facilities.

### *Regulatory Framework*

The CER held that it has full and exclusive jurisdiction to determine matters within its mandate, pursuant to sections 32 and 34 of the *CER Act* and broad authority to make orders with respect to all matters relating to traffic, tolls or tariffs pursuant to section 226 of the *CER Act*.

In case of a complaint, the complainant must establish a *prima facie* or arguable case for the CER to establish a process. Once that *prima facie* case is established, the burden of proof shifts to the other party, in this case, both Trans Mountain and Pembina, to establish compliance with the *CER Act*. Each party must adduce evidence supporting its position, known as the persuasive burden, and the complainant still has the burden to prove entitlement to its requested relief. The standard of proof for all parties is on a balance of probabilities.

The CER found that, in these circumstances, complaint-based economic regulation is appropriate. Trans Mountain, as a Group 1 company, is subject to full economic regulation, including detailed reporting requirements and tolls and tariffs, subject to the CER's approval. However, this type of oversight over the Merchant Tanks is unnecessary, given the merchant tank arrangements that the NEB initially approved. The economic regulation of the Merchant Tanks, which respects the merchant tankage arrangements in place at the Edmonton Terminal, does not, however, frustrate the key purposes of Part 3 of the *CER Act* and the CER's role as an economic regulator of pipeline facilities within its jurisdiction.

### *The Connection Facilities*

The CER found that Pembina does not have exclusive rights to the Connection Facilities, which are owned and operated by Trans Mountain and provide service not only to the Merchant Tanks but also to other parts of the Edmonton Terminal. Trans Mountain is obligated to fully comply with all applicable regulatory requirements in the *CER Act* in respect of the Connection Facilities and cannot grant exclusive use of these facilities or effectively contract out of its common carriage and other regulatory obligations via the Tankage Agreement or otherwise.

The CER acknowledged that Pembina has the right to use the Connection Facilities to access the Merchant Tanks. However, the scope of this right would not allow Pembina to exclude shippers from the Connection Facilities or direct Trans Mountain to do so. The CER also confirmed that Trans Mountain cannot contract out of its statutory obligations, such as subsection 239(1), in respect of the Connection Facilities.

### *Unjust Discrimination by Pembina*

The CER found that section 235 of the *CER Act* applies to Trans Mountain, as operator of the Trans Mountain Pipeline System, and to Pembina, as a provider of services on CER-regulated pipeline facilities at the Edmonton Terminal. The CER also concluded that no implicit exemption from this provision was granted to Pembina.

The CER believed that Pembina's commercial practices do not determine the applicability of section 235 and, since this section prohibits only unjust discrimination, facts and circumstances of commercial practices would only be relevant to the consideration of whether discrimination is not unjust.

The CER found that Pembina discriminated against CNOOC when, for a period of time in 2021, it declined to allow inbound connectivity from the Woodland Pipeline and refused to participate in negotiation regarding

CNOOC's request for this connectivity. The CER determined that Pembina did not discharge its burden to demonstrate that the discrimination was not unjust by failing to offer a robust justification for the resulting discrimination.

*Unjust Discrimination by Trans Mountain*

The CER found that Trans Mountain's verification practices were consistent with its tariff obligations and that, as a result, Trans Mountain did not discriminate. However, since CNOOC was unaware of how Trans Mountain conducts verification with respect to shipments involving the Merchant Tanks at the Edmonton Terminal, the CER directed Trans Mountain to amend its Rules and Regulations Tariff to clarify its nomination verification processes at the Edmonton Terminal.

*Common Carriage*

Because Pembina is not the operator of the facilities in question, the CER determined that the common carrier obligation does not apply to Pembina. Conversely, the common carrier obligation applies to Trans Mountain, which has met its obligation.