



# ENERGY REGULATORY REPORT

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

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**ALBERTA COURT OF APPEAL*****Ranchland (Municipal District No. 66) v Alberta Energy Regulator, 2023 ABCA 127******Permission to Appeal - Jurisdiction***Application

Ranchland (Municipal District No. 66) applied for permission to appeal a decision made by the AER. The application for permission to appeal raised the question of whether the Alberta Court of Appeal (“ABCA”) has jurisdiction to decide an appeal. Due to the implications of the jurisdictional question, the Court directed that the matter ought to be considered by a panel of the ABCA under s 14.37(2)(f) of the *Alberta Rules of Court*.

Decision

The parties were directed to schedule the application for permission to appeal before a panel of the ABCA.

Applicable Legislation

[Alberta Rules of Court](#), AR 124/2010.

***ATCO Electric Ltd. v Alberta Utilities Commission, 2023 ABCA 129******Rates - Stranded Assets***Application

ATCO Electric Ltd. (“AE”) appealed AUC Decision 21609-D01-2019 regarding *ATCO Electric Ltd., Z Factor Adjustment for the 2016 Regional Municipality of Wood Buffalo Wildfire* (the “Decision”). In the Decision, the AUC denied AE the ability to recover some of the costs it incurred as a result of the Fort McMurray wildfire because the AUC would not permit AE to include those costs as part of its prudently incurred costs and expenses when setting its rates.

Decision

The Alberta Court of Appeal (“ABCA”) allowed the appeal and referred the matter back to the AUC for reconsideration and determination.

Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c. A - ss 29(11)(c), 37.2.

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

Pertinent Issues

An unprecedented wildfire in the Regional Municipality of Wood Buffalo destroyed AE’s property used to distribute electrical services in that municipal area. The AUC did not allow AE to continue to recover the remaining net book value of the assets destroyed in the wildfire from its customers. The reasonable opportunity previously given to recover those prudently incurred costs was effectively rescinded because the AUC removed the remaining net book value of the destroyed assets from the calculation of AE’s rates.

AE applied for a Z factor adjustment to its rates set under the relevant performance-based regulation plan as a result of the costs related to the wildfire. The AUC directed AE to also address the issue of the undepreciated capital cost or net book value of the assets destroyed by the fire. Those assets or costs were characterized as “stranded”. AE argued that the AUC unlawfully fettered its discretion when the AUC determined that the *ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities Board)*, [2006] 1 SCR 140 (“*Stores Block*”) and *FortisAlberta Inc*

*v Alberta (Utilities Commission)*, 2015 ABCA 295, 28 Alta LR (6<sup>th</sup>) 252 (“*FortisAlberta*”) decisions limited its flexibility in dealing with destroyed assets.

The ABCA, however, identified the issue to be whether or not the AUC correctly interpreted and applied the legal standards that governed in the circumstances. In other words, the underlying issue was whether losses arising from forces of nature during normal operations should be carried by the customers of the utility, or the utility’s shareholders.

#### *The AUC Decision*

In the Decision, the AUC determined that the wildfire gave rise to an extraordinary retirement of the destroyed assets, and that the principles established by *Stores Block* and *FortisAlberta*, dictated that the loss of the destroyed assets was for the account of AE’s shareholders.

#### *The ABCA Decision*

Z factor adjustments are permitted to allow variation of what was previously set as a just and reasonable tariff. They are designed to account for exogenous events outside the control of the utility and for which the utility has no other reasonable opportunity to recover the cost. Exceptional losses, by their very nature, are unlikely to have been factored in when the original tariff was set. The ABCA held that the damage caused by the wildfire falls within this definition and that it seems counterintuitive to disallow the recovery of prudent costs.

The ABCA found that the AUC considered itself bound by its interpretation of *Stores Block* and *FortisAlberta* and that the outcome of the appeal turned largely on the correctness of that interpretation. The ABCA held that the AUC has broad discretion under the *Electric Utilities Act* (“*EUA*”) in relation to depreciation, stranded assets and prudent expenditure and that there is nothing in *Stores Block* or *FortisAlberta* to the contrary.

The ABCA held that *Stores Block* was not about setting just and reasonable tariffs, and it was primarily concerned with the treatment of profits following from the sale of assets. *Stores Block* did not purport to limit the AUC’s discretion to deal with the depreciation of assets destroyed by forces of nature. The ABCA also noted that *FortisAlberta* was a generic, policy-based decision that had no particular facts before it. Consequently, the ABCA determined that the AUC erred in thinking that these earlier decisions dictated its treatment of assets stranded by unforeseen forces of nature. The ABCA held that there is no binding authority that compels the AUC to rely on the accounting details underlying the predicted survival curves of asset pools to decide how to deal with assets unexpectedly and permanently removed from active service by forces of nature.

The case under appeal differs from the previous cases. In the case of the wildfires, there were no proceeds from the destruction of the assets. Contrary to the facts in *Stores Block*, the assets in question were still in use, remained in the rate base, and only ceased to be used for the distribution of electricity because they were destroyed. Accordingly, the question at issue in the Decision was not decided by *Stores Block* or *FortisAlberta*, and could not limit the AUC to one approach in its decision.

The assets in question had been prudently incurred and were destroyed by the wildfire while they were being used to provide utility services. The issue was if it was fair to the customers and the utility that the customers bear that loss. The ABCA found that this question tied back to the wording of the *EUA*. The ABCA determined that allocating the loss was not dependent on the difference between ordinary and extraordinary retirements or any ownership interest in the assets held by the customers, as noted by the AUC.

The ABCA concluded that the decision under appeal resulted from errors of law, particularly the conclusion that the AUC’s options for treating destroyed assets were constrained by *Stores Block*. The ABCA, therefore, allowed the appeal and referred the matter back to the AUC.

***EQUUS REA Ltd v Alberta (Utilities Commission), 2023 ABCA 142***  
*Distribution Tariff - Jurisdiction*

Application

EQUUS REA Ltd. (“EQUUS”) and FortisAlberta Inc. (“FortisAB”) appealed the portion of AUC Decision 25916-D01-2021 regarding *FortisAlberta Inc. 2022 Phase II Distribution Tariff Application* (“Decision”), that addressed the costs FortisAB incurs as a result of its integrated operations with EQUUS and other rural electrification associations (“REAs”).

FortisAB argued that the AUC had deprived it of its right to recover its prudent, reasonable costs. FortisAB maintained that the AUC had the authority to, and should have, approved the recovery of the contested costs under FortisAB’s tariff. EQUUS agreed that the relevant portions of the Decision should be set aside but took the view that FortisAB should not include the REA-related costs in its tariff in the first place. It asserts that the tariff only covers the costs of providing “electric distribution service”, which means “the service required to transport electricity ... to customers” – REAs are not customers.

EQUUS, in its appeal, argued that the AUC exceeded its jurisdiction in quantifying the costs for its use of FortisAB’s system and allowing FortisAB to recover from FortisAB customers the costs that FortisAB incurs in using EQUUS’ system to service FortisAB’s customers. It asserts that those costs are all properly dealt with in the integrated operation agreements (“IOA(s)”). It submitted that the AUC exceeded its authority and infringed on the authority of the arbitrator to resolve disputes arising from the IOAs, including with respect to costs.

Decision

The Alberta Court of Appeal (“ABCA”) denied the appeals.

Applicable Legislation

[Electric Utilities Act](#), SA 2003, c E-5.1 - ss 1(1)(o), 1(1)(vv), 119, 120.

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

[Distribution Tariff Regulation](#), Alta. Reg. 162/2003.

[Roles, Relationships and Responsibilities Regulation, 2003](#), Alta. Reg. 169/2003.

Pertinent Issues

*Background*

In the Decision, the AUC made four key findings. First, some of FortisAB’s costs related to its distribution system should be allocated to the integrated operations with REAs. Second, those costs should be determined in the same way FortisAB allocates costs to all other users of its system. Third, FortisAB can recover the costs it incurs for the use of REAs’ systems from FortisAB’s customers. Fourth, FortisAB cannot recover the costs allocated to the use REAs make of FortisAlberta’s distribution system in serving their members from FortisAB’s customers. It can recover these costs from the REAs directly through their IOAs.

*Issues in the Appeal*

The ABCA identified the following issues as central to the appeal:

- Was the AUC wrong to conclude that FortisAB cannot recover the costs it incurs in allowing REAs to use FortisAB’s distribution system to serve their members from its customers?

- Was the AUC wrong to conclude that FortisAB can recover the costs that FortisAB incurs from its use of the REAs' distribution system when the REA's system serves its customers from FortisAB's customers?

*Decision*

REAs and FortisAB have a business relationship because the *Roles, Relationships and Responsibilities Regulation* compels FortisAB to make its electric distribution system available to REAs and REAs to make their electric distribution system available to FortisAB. This allows for the most cost-effective method of delivering electricity to customers of an electric utility and members of a REA.

The AUC has previously held that a REA is not a "customer" under the *EUA*. As a result, the AUC cannot approve a tariff for REAs. *EUA*, s 1(1)(h) defines "customer" as follows: "a person purchasing electricity for the person's own use". A REA does not purchase electricity for its own use. Its members are the end users.

The AUC has the statutory obligation to identify the costs FortisAB incurs in delivering electricity to its customers. This includes the net differential between the costs FortisAB and the REAs incurred when making their distribution service system available to the other. It is appropriate to take this net differential into account because FortisAB must, in the course of operating its electric distribution business, allow REAs to utilize its electric distribution system. After the AUC identifies these costs, it must determine what portion of these costs FortisAB may pass on to its customers through a commission-approved tariff.

The ABCA held that the AUC's decision to allow FortisAB to recover the costs FortisAB incurs to deliver electricity to FortisAB's customers through its use of REAs' distribution systems is eminently reasonable and just. The customers of FortisAB that benefit directly from the REAs making their distribution system available to FortisAB so that they can draw electricity from the system have no reasonable basis to support their argument that they should not pay the associated costs.

The ABCA further found that the AUC correctly determined that FortisAB cannot recover the costs FortisAB incurs when REAs use FortisAB's distribution system to provide electricity to its members from FortisAB's customers because there is no sound reason why FortisAB's customers should subsidize the members of REAs.

The ABCA, therefore, refused the appeals.

## ALBERTA ENERGY REGULATOR

**Invitation to Submit a Nomination to Close Inactive Wells & Facilities, AER Bulletin 2023-14**  
*Facilities - Closures*

On April 3, 2023, the AER started accepting nominations for eligible individuals and groups to close inactive or abandoned oil and gas wells and facilities as a follow-up to its *Bulletin 2023-4: New Editions of Directive 088 and Manual 023*.

Individuals and groups eligible under *Manual 023: Licensee Lifecycle Management* may nominate wells or facilities that have been inactive or abandoned for five years, or more, and meet certain criteria by submitting a closure nomination form to the AER. A separate form must be completed for each well or facility nominated.

The AER will notify licensees of nominated wells and facilities at the beginning of the month following the date the nomination is accepted.

**2023/24 AER Administration Fees (Industry Levy), AER Bulletin 2023-15**  
*Revenue Requirement*

For 2023/24, the Government of Alberta approved a revenue requirement of \$217.4 million to support the operations of the AER.

*2023/24 Administration Fees (Industry Levy)*

The 2023/24 Administration Fees payable to the AER depend on the AER's revenue requirement, 2022 production volumes, the number and types of wells and schemes, the length of pipelines in each class, facility inlet rates, and the number of operators in the sector. The 2023/24 Administration Fee is allocated as follows:

(\$000)		
Sector	2023	2022
Oil and gas	154,346	142,157
Oil sands	43,245	45,004
Coal	8,718	8,571
Pipelines	7,479	3,453
Facilities ( <i>Directive 056</i> )	3,218	1,385
Facilities ( <i>Directive 023</i> )	413	160
<b>Total</b>	<b>217,419</b>	<b>200,730</b>

*Oil and Gas Sector*

The administration fee in the conventional oil and gas sector is based on individual well production of oil and bitumen or gas and the number of inactive, service, and production wells for the year 2022.

All wells are classified into one of ten base fee classes set out in the *Alberta Energy Regulator Administration Fees Rules*. In addition, an adjustment factor is specified and applied to each base fee to ensure that the total administration fee collected for the sector satisfies the revenue requirement.

*Alberta Upstream Petroleum Research Fund*

The Canadian Association of Petroleum Producers and the Explorers and Producers Association of Canada requested that the AER's administration fee process be used to collect \$5.288 million to fund the Alberta Upstream Petroleum Research Fund ("AUPRF") in 2023. The AER has agreed to assist and has included an amount for this funding in the oil and gas well administration fee invoices. The AER noted that payment of the AUPRF is voluntary.

*Oil Sands Sector*

In the oil sands sector, fees are levied in five categories based on operating information for the 2022 calendar year, and each category is subject to an administration factor. Each category is subject to an adjustment factor.

*Coal Sector*

The administration fee for coal is based on each mine's share of total production volumes for the year 2022. It is set at \$0.665085 per tonne of coal.

*Pipeline Sector*

The administration fee for pipelines is based on the segments of a pipeline in each class as of Dec 31, 2022. Pipelines segments subject to an administration fee are classed into one of three classes according to the diameter. For the 2023/24 fiscal year, an adjustment factor of 1.339183 is applied to each base fee.

*Facilities (Directive 056) - Gas Plants*

The administration fees are levied to gas plant facilities with an inlet rate greater than or equal to ten million cubic meters per day as of Dec 31, 2022, and active, new, or unknown activity status. The rate is set at \$4.745277 for every thousand cubic meters per day and is applied based on the individual facility inlet rate.

*Facilities (Directive 023) - Processing Plants*

The administration fees are levied on processing plant facilities approved under the *Oil Sands Conservation Act* with an operating status as of Dec 31, 2022. The rate is set at \$7.894529 for each cubic meter per day and applied based on the individual facility inlet rate.

**2023/24 Orphan Levy Fund – Licensee Liability Rating and Oilfield Waste Liability Programs, AER Bulletin 2023-16***Oil and Gas - Rates*

With this bulletin, and in accordance with Part 11 of the *Oil and Gas Conservation Act* ("OGCA"), the AER prescribed an Orphan Fund Levy in the amount of \$135 million.

The Government of Alberta approved this levy to fund the Orphan Well Association's operating budget for the 2023/24 fiscal year. The AER will allocate the levy among licensees and approval holders included within the Licensee Liability Rating and Oilfield Waste Liability programs (collectively, the "levy payee(s)"). Allocation will be based on the levy payee's April 1, 2023, liability management rating assessment.

If no invoice is received by April 4, 2023, the levy payee must contact the AER to request a copy. Failure to pay the full invoiced amount by May 4, 2023, will result in a penalty of 20 percent of the original invoiced amount. Additional compliance measures may also be applied, such as the issuance of a corporate-wide closure order. The information regarding non-payment of debt may be used in a licensee capability assessment. An appeal may be filed pursuant to s. 76 of the OGCA. However, even if an appeal is filed, payment in full of the original invoiced amount is required, and the AER will refund any overpayment resulting from a successful appeal.



**New Functionality Moving to OneStop, AER Bulletin 2023-17***Facilities - Land Dispositions*

As of April 20, 2023, new cancellation and objection functionality is available in OneStop's public lands module.

If the AER initiates the process to cancel a public lands disposition, OneStop will notify the disposition holder of the pending cancellation. The holder can object to an AER-initiated cancellation by using the new Disposition Cancellation Objection submission type in OneStop.

Guidance on cancellations and objections will be added to *Manual 018: OneStop Public Lands Application*. Other updates include clarity on regulator temporary field authorizations and land use reservations.

Details regarding the enhancements and fixes, and training regarding the new functionality are available on the AER's website.

**Monitoring for Snowmelt and Overland Flooding, AER Bulletin 2023-18***Oil and Gas - Monitoring*

The AER cautioned against the hazards of seasonal snowmelt and resultant overland flooding. Specifically, licensees: (i) must physically inspect and assess any sites and equipment that have or may be affected by flooding; (ii) be cautious of potential rapid water level fluctuations; (iii) have procedures in place for issuing flood advisories and monitoring runoff and snowmelt; and (iv) be prepared to take protective action.

Forecasts indicate the current runoff conditions for northwest Alberta will be normal; central and northeast Alberta will see runoff well above normal; southern Alberta will be well below normal.

**New Edition of Directive 067, AER Bulletin 2023-19***Oil and Gas - Financial Submissions*

A new edition of *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals* has been published and is in force as of April 13, 2023.

This new edition complements the new functionality of OneStop, under which financial submissions will be accepted by OneStop as of May 2023. Licensees and their parent corporations are expected to submit financial statements and financial summaries through OneStop. Licensees should verify that the data has been received by checking OneStop before the deadlines specified in *Directive 067*.

In addition to notifying the AER if they are subject to insolvency proceedings, licensees must notify the AER immediately if they are ceasing their operations or initiating liquidation or dissolution proceedings.

*Directive 067* was also amended to incorporate references to the various acts and rules to support the AER's mandate to regulate geothermal resources and mineral resources.

**Reminder of Migratory Bird Season, AER Bulletin 2023-20***Oil and Gas - Monitoring*

The AER reminded license holders of the beginning of migratory bird season in Alberta. Licensees must: (i) adhere to their plans to protect migratory bird populations; (ii) ensure that all liquid impoundments that could potentially have an adverse impact on migratory bird populations are covered; and (iii) manage vegetation around industrial ponds and ditches as a mitigatory measure. Due to the weather-dependent changes of the bird season, licensees may be required to extend their bird-deterrent programs beyond previous implementation dates.

**Increased Monitoring on Pipeline and Gas Infrastructure, AER Bulletin 2023-21***Oil and Gas - Monitoring*

Due to the release of the movie “How to Blow Up a Pipeline” on April 21, 2023, and its promotion of violent action against oil and gas infrastructure, the AER reminded operators that they are required to have emergency response plans in place, as set out in *Directive 071: Emergency Preparedness and Response*. The AER recommended that operators and licensees: (i) increase their level of awareness; (ii) review their security and emergency response protocols; and (iii) enhance surveillance and monitoring of surface pipelines and verification of leak detection systems and emergency shutdown valves. Operators must promptly investigate leaks and report any suspicious activity to the RCMP for further investigation.

**New Requirements for Licensees with Unpaid Municipal Property Taxes, AER Bulletin 2023-22***Wells - Application*

As of May 1, 2023, under Ministerial Order 043/2023, the AER requires evidence that licensees have resolved unpaid property taxes exceeding a threshold amount before a new well or well licence transfer application will be approved. These requirements apply to new well licence applications (*Directive 056: Energy Development Applications and Schedules*, *Directive 089: Geothermal Resource Development*, *Directive 090: Brine-Hosted Mineral Development*) and well licence transfer applications (*Directive 088: Licensee Life-Cycle Management*).

The AER has set the initial threshold for the municipal tax arrears at \$20 000. The list of licensees that exceed this threshold will be provided by the Ministry of Municipal Affairs.

If the applicant or transferee is listed, the applicant, transferor, or transferee must provide satisfactory evidence to the AER that arrears exceeding the threshold have been paid or they have a repayment arrangement in good standing with the municipality or municipalities to which the arrears are owed. Additionally, for well transfer applications, if the transferor is listed, the applicant must provide evidence that payment of owed municipal taxes exceeding the threshold is a condition of the purchase and sale agreement with the transferee. If the required evidence is not provided, the AER will close the new application and return it to the applicant as incomplete in accordance with s 3(4)(b) of the *Alberta Energy Regulator Rules of Practice* and Ministerial Order 043/2023.

**New Edition of Directive 051, AER Bulletin 2023-23***Wells - Requirements*

On April 28, 2023, the AER released a new edition of *Directive 051: Injection and Disposal Wells - Well Classifications, Completions, Logging, and Testing Requirements*. Updates to the new edition reflect the AER’s change in 2013 from the Energy Resource Conservation Board to the Alberta Energy Regulator and the new mandate under the *Responsible Energy Development Act*. The Directive also incorporates requirements for geothermal resource development and references to the *Geothermal Resource Development Rules*.

**Water (Ministerial) Regulation Amendment, AER Bulletin 2023-24***Storm Water - Licenses*

On April 28, 2023, Alberta Environment and Protected Areas (“AEPA”) announced an amendment to the *Water (Ministerial) Regulation*.

Under specified conditions, stormwater diversions of less than 6250 cubic meters per year are now exempt from requiring a *Water Act* license. This simplifies the regulation of water diversions for small volumes associated with stormwater runoff and supports achieving the goals of the *Water Conservation Policy for Upstream Oil and Gas Operations*. The exemption only applies to the diversion of water. All other regulatory requirements for the management, handling, and release of water continue to apply.

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**ALBERTA UTILITIES COMMISSION****Stage 2 of Round 2 Consultation for Potential Changes to AUC Rule 012: Noise Control, AUC Bulletin 2023-01***Facilities - Rules*

The AUC sought further feedback from stakeholders on possible changes to provisions of Rule 012: *Noise Control* to improve regulatory and adjudicative processes.

The first round of consultation was initiated with Bulletin 2022-08. The second round, stage 1 consultation, was initiated with Bulletin 2022-12.

In Bulletin 2023-01, the AUC initiated stage 2 of round 2 consultations and determined that the following topics required further consultation:

- Determination of suburban and urban permissible sound levels (“PSLs”);
- Definition of suburban and urban receptors;
- Milestone for establishing PSLs at new dwellings; and
- Tonality evaluation.

The AUC issued a comment matrix that included specific questions to help guide the discussion and requested feedback on the included topics and questions.

**ATCO Electric Ltd. Barrhead Area Fibre Optic Project, AUC Decision 28116-D01-2023***Facilities - Fort McMurray Telecommunications*Application

ATCO Electric Ltd. (“AE”) applied for permission to construct and operate an underground fibre optic cable to connect AltaLink Management Ltd.’s Barrhead 9069 Telecommunication Tower and Alberta PowerLine General Partner Ltd’s Transmission Line 12L41 in the Barrhead Area (the “Project”).

Decision

The AUC approved the application from AE to construct and operate the underground fibre optic cable.

Applicable Legislation

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

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

Pertinent Issues

The objective of the Project is to enhance the telecommunications network and augment AE’s capacity to manage services during planned and unplanned outages and emergencies. The Project is part of the SOC2 Strategic Fibre Project, which aims to extend the fibre network and establish a high-capacity communication backbone connecting the Fort McMurray region with AE system operations centers. The cost estimate of the Project was provided in the ATCO Electric Transmission 2023-2025 General Tariff Application which was being considered by the AUC at the time of this decision.

In this proceeding, the AUC determined that the application from AE 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 accepted that there would be no impact on adjacent stakeholders, as the Project would be located underground and predominantly within or adjacent to an existing transmission line right-of-way or a highway road allowance. The AUC considered the environmental protection plan submitted by AE and determined that the Project would have a minimal environmental impact.

The AUC determined that approval of the application was in the public interest.

***ATCO Electric Ltd. Disposal of 2018-2021 Transmission Deferral Accounts and Annual Filing for Adjustment Balances, AUC Decision 26573-D01-2023***

***Electricity - Rates***

Application

ATCO Electric Ltd. (“AE”) applied for approval of its 2018-2021 transmission direct assigned capital deferral accounts (“DACDAs”) and annual filing for adjustment balances (the “DACDA Application”). AE requested approval of a one-time net refund to the Alberta Electric System Operator (“AESO”) of \$11.3 million.

Decision

The AUC disallowed the recovery of the following amounts from Alberta electricity customers, increasing the total amount of the refund to the AESO:

- (a) \$4.381 million of forgone return on rate base related to its treatment of customer contributions;
- (b) \$3.0 million related to AE’s imprudent management and execution of the Jasper Transmission interconnection Project (the “Jasper Project”);
- (c) A further 20 percent reduction for amounts imprudently incurred connected with AE’s engagement of Backwoods Contracting Ltd. (“Backwoods”) on the Jasper Project; and
- (d) \$0.250 million for work conducted in an effort to mislead and conceal information associated with AE’s decision to engage Backwoods on the Jasper Project.

Applicable Legislation

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

[Canadian Energy Regulator Pipeline Damage Prevention Regulations – Authorizations](#), SOR/2016-124, ss 2 and 6 - 14.

Pertinent Issues

*Background and Application Process*

AE initially filed its DACDA Application for the 2018-2020 period in June 2021. In October 2021, after oral argument, AE requested that the AUC stay its release of the decision regarding that application. AE advised that a matter that was under an ongoing internal and AUC enforcement staff investigation could impact the recoverable amount. The AUC approved the stay application.

On April 14, 2022, AUC enforcement staff and AE entered into a settlement agreement regarding the matter, which related to AE’s imprudent management and execution of the Jasper Project. The AUC approved the settlement on June 29, 2022. As part of the settlement, AE agreed to amend the initial DACDA Application, and

on July 13, 2022, the AUC reopened the proceeding admitting the amended 2021 DACDA Application on the record.

*Issue 1: Has AE Complied with Previous AUC Directions?*

There were three outstanding directions (5, 7 and 12) from Decision 24375-D01-2020. The AUC found that AE complied with directions 5 and 12 and held that no further action was required in relation to both of them.

In Direction 7 of AUC Decision 24375-D01-2020, the AUC required that AE charge air travel costs at no more than commercial airlines' economy fare. AE stated that an applicable adjustment had not been incorporated into its application on the basis that the amount at issue is immaterial. The AUC determined that AE did not comply with this direction. The AUC directed AE to reduce its applied-for costs by \$11,267 in its compliance filing to this decision.

The AUC further determined that AE had not sufficiently complied with Direction 3 of Decision 22393-D02-2019, which required that AE charge legal counsel travel time at 50 percent of the hourly rate rather than the 100 percent rate used by AE. AE submitted that it would apply the reduction in the compliance filing to this decision.

*Issue 2: Are AE's Canceled Project Costs Reasonable?*

In the 2021 DACDA Application, AE outlined its proposal to recover the net costs associated with the three categories of cancelled direct assigned projects: Cancelled System Projects; Cancelled Customer Projects; and Cancelled Other Projects. AE requested approval of the recovery of a net amount of \$2.585 million for cancelled direct assigned projects during 2018-2021.

The AUC determined that the costs incurred for projects classified as Cancelled System Projects and Cancelled Other Projects costs were reasonable.

Customer Projects are initiated by a market participant (or customer) to facilitate the construction of, and that customer's connection to, a transmission facility. The customer funds the project, which is built for the customer's benefit and use, by making a customer contribution to the transmission facility owner ("TFO"), which is responsible for Alberta's transmission system, where the customer project is located. The costs incurred by the TFO to construct the customer project are offset by the customer contribution.

AE, as the TFO, received and retained customer contributions to cover the project costs from the relevant market participants for 14 cancelled Customer Projects before their cancellation. AE requested permission to recover \$4.381 million through its DACDA Application for what it submitted was a benefit received by Alberta electricity customers. AE argued that the benefit represented a revenue shortfall for AE, connected with the 14 Cancelled Customer Projects. It indicated that this customer benefit/revenue shortfall arose because customer contributions associated with the Cancelled Customer Projects were not removed from the rate base and acted as an offset to AE's 2017-2021 rate base.

The AUC decided that the difference may not be trued up. The AUC determined that there were no Customer Project costs for AE to recover, as AE had retained the customer contributions associated with the cancelled projects. As a result, AE could not characterize the amounts as revenue shortfalls.

What AE described as a "benefit" to Alberta electricity customers can equally be characterized as AE's forgone return on rate base from 2017 to 2021. In either case, the amount is not a cost that has been booked into a deferral account. The AUC further noted that granting permission to AE to recover any forgone return for the 2018-2021 period would constitute impermissible retroactive ratemaking.

*Issue 3: Were AE's Capital Costs on the Jasper Project Prudently Incurred*

Following adjustments directed by the AUC, AE requested approval of capital additions for the Jasper Project of \$105.5 million to December 31, 2021. These costs exceed the \$84.0 million cost that AE expected to incur in its proposal to provide service.

The AUC disallowed the recovery of \$3.0 million for the imprudent management and execution of the consultation, regulatory and approval phases of the Jasper Project. The AUC determined that AE made unreasonable assumptions and did not adequately assess foreseeable risks, which contributed to project delays.

The AUC ordered AE to submit a compliance filing that reflects the findings, conclusions and directions in the decision on or before May 29, 2023.

***ATCO Gas, a Division of ATCO Gas and Pipelines Ltd. 2023 Load Balancing Deferral Account Rider L, AUC Decision 28061-D01-2023***

*Rates - Load Balancing Deferral Account*

Application

ATCO Gas, a division of ATCO Gas and Pipelines (“ATCO Gas”), requested approval of Rider L, which recovers the load balancing deferral account (“LBDA”) balance as of January 31, 2023, from all ATCO Gas customers. The LBDA balance, as of January 31, 2023, is in a recovery position of approximately \$14.3 million.

The current framework for ATCO Gas’s LBDA and related Rider L was approved in Decision 2014-268. This proceeding was limited to the applied-for approval of the 2023 Rider L rate and to confirm that the application complied with AUC directions and rules.

Decision

The AUC approved the load balancing Rate Rider L for ATCO Gas for the period from May 1, 2023, to December 31, 2023.

Applicable Legislation

AUC Rule 023: [Rules Respecting Payment of Interest](#)

***Canadian Utilities Limited Corporate Reorganization Under Section 101 of the Public Utilities Act and Section 26 of the Gas Utilities Act, AUC Decision 28137-D01-2023***

*Electricity - Markets*

Application

Canadian Utilities Limited (“CUL”) applied for approval of an internal reorganization involving CUL subsidiaries under s 101(2)(d) of the *Public Utilities Act* (“PUA”) and s 26(2)(d) of the *Gas Utilities Act* (“GUA”). The reorganization would include the following steps:

- (a) ATCO Power (Energy) Holdings Ltd. (“APEHL”), a direct and wholly owned subsidiary of CUL, will transfer all of the shares of ATCO Power Australia Finance Pty Ltd. (“APAF”) to ATCO Australia Pty Ltd. (“AAPL”), another direct and wholly owned subsidiary of CUL;
- (b) AAPL, in exchange for the APAF shares transferred from APEHL, will issue preferred shares of AAPL to APEHL; and
- (c) APEHL will transfer the preferred shares of AAPL to CUL as a return of capital on the shares of APEHL held by CUL.

### Decision

The AUC approved the application from CUL for permission to conduct the internal reorganization.

### Applicable Legislation

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

[Gas Utilities Act](#), RSA 2000, c G 5 - s 26.

### Pertinent Issues

CUL requested that the AUC approve the transaction on the basis that no harm to Alberta ratepayers would arise. The AUC accepted CUL's submission that a broad and expansive reading of s 101(2) of the *PUA* and s 26(2) of the *GUA* could suggest that the transaction requires approval from the AUC. The AUC considered whether or not to approve the transaction on an expedited basis as requested.

In applying the no-harm test, as detailed in Decision 20329-D01-2015, the AUC evaluated the transaction in the context of both potential financial and service level effects on customers and in terms of whether the quality of service will be affected. The AUC concluded that the transaction:

- (a) involves subsidiaries of CUL that do not provide utility service in Alberta and are not regulated by the AUC;
- (b) does not have any effect on CUL's direct or indirect ownership interests; and
- (c) will not harm customers of the regulated ATCO Utilities (ATCO Electric Ltd. and ATCO Gas and Pipelines Ltd.) in that it will not impact the rates Alberta utility customers are required to pay or the quality of service they receive.

The AUC approved the application as filed.

### ***EPCOR Distribution & Transmission Inc. 2023-2025 Transmission Facility Owner General Tariff Application Negotiated Settlement Agreement and Other Matters, AUC Decision 27675-D01-2023*** *Electricity - Rates*

### Application

As a transmission facility owner ("TFO"), EPCOR Distribution & Transmission Inc ("EPCOR") recovers the costs of providing regulated electric transmission service through a transmission tariff that must be approved by the AUC. EPCOR recovers its AUC-approved tariff amounts through the Alberta Electric System Operator ("AESO"), which collects the costs of transmission services provided to Alberta ratepayers' respective distribution facility owners and from customers directly connected to the transmission system.

EPCOR applied for approval of revenue requirements of \$129.73 million for 2023, \$130.31 million for 2024, and \$134.11 for 2025. After filing the application, EPCOR advised the AUC that it intends to explore the possibility of reaching a negotiated settlement agreement ("NSA"). EPCOR applied for approval of the NSA.

### Decision

The AUC was satisfied that the requirements of Rule 018: *Rules on Negotiated Settlements* were met and approved the NSA reached by EPCOR, the Utilities Consumer Advocate ("UCA") and the Consumer's Coalition of Alberta ("CCA"). The approved revenue requirement is as follows: \$126.73 million for 2023; 126.69 million for 2024; and \$130.05 million for 2025.

### Applicable Legislation

[Electric Utilities Act](#), SA 2003, c E-5.1 - ss 132 and 135.

AUC Rule 018: [Rules on Negotiated Settlements](#)

AUC Rule 026: [Rule regarding Regulatory Accounting Procedures Pertaining to the Implementation of the International Financial Reporting Standards](#)

### Pertinent Issues

After filing its 2023-2025 general tariff application (“GTA”), EPCOR reached an NSA with the UCA and the CCA. EPCOR requested that the AUC either approve the entire NSA or refuse it under s 135 of the *Electric Utilities Act*. The NSA proposed a total reduction to EPCOR’s 2023-2025 revenue requirements of \$10.81 million, compared to what EPCOR had initially requested in the GTA.

#### *Treatment of Cloud-Based Software as a Service Costs*

In accordance with the NSA, EPCOR withdrew its request for approval of a deferral account for its cloud-based Software as a Service Costs (“SaaS”) costs for the 2023-2025 test period and requested that forecast cloud-based SaaS costs be treated as capital costs with a 15-year amortization period. The AUC approved the request, noting that under Rule 026: *Rule Regarding Regulatory Account Procedures Pertaining to the Implementation of the IFRS*, it may approve regulatory accounting treatments that deviate from International Financial Reporting Standards (“IFRS”) as long as the deviation and its impact are in the public interest.

#### *Compliance with Commission Directions*

EPCOR’s compliance with AUC directions was excluded from the NSA. The AUC found that EPCOR has complied with prior AUC directions and directed EPCOR to address the directions related to the Heartland Damper Replacement costs and the Garneau Switchgear Replacement in its next GTA.

#### *Transmission Tariff True-up*

EPCOR was providing transmission service under its 2023 interim tariff of \$121.15 million, or \$10.10 million monthly, approved by the AUC in Decision 27696- D01-2022.

EPCOR calculated the required January 2023 through April 2023 true-up amount as a one-time true-up charge to the AESO of \$1.81 million. The 2023, 2024 and 2025 final revenue requirements of \$126.58 million, \$126.69 million and \$130.05 million, respectively, were approved. The AUC approved monthly tariffs to be charged to the AESO of \$10.55 million for May 1, 2023, to December 31, 2023; \$10.56 million for January 1, 2024, to December 31, 2024; and \$10.84 million for January 1, 2025, to December 31, 2025.

The AUC found that the annual tariff and monthly rates for the 2023-2025 test years, as proposed by EPCOR’s GTA NSA, correspond to the respective revenue requirements and approved them on a final basis. The AUC also approved a one-time true-up charge to the AESO of \$1.81 million for the revenue shortfall resulting from the difference between EPCOR’s interim and final monthly tariffs between January 1, 2023, and April 30, 2023.

### ***EQUUS REA Ltd. Amendments to the Code of Conduct Regulation Compliance Plan, AUC Decision 28002-D01-2023***

*Electricity - CCR*

### Application

EQUUS REA Ltd. (“EQUUS”) applied for approval of amendments to its Compliance Plan under s 32 of the *Code of Conduct Regulation*. The changes concerned: (1) a revision to EQUUS’ Compliance Officer appointment; (2)



revisions to mechanisms to account for annual reviews of compliance report submissions; and (3) other minor typographical changes.

#### Decision

The AUC was satisfied that the proposed amendments to EQUUS' Compliance Plan sufficiently addressed the requirements of the *Code of Conduct Regulation*. The AUC approved EQUUS' revised Compliance Plan, effective March 1, 2023.

#### Applicable Legislation

[\*Code of Conduct Regulation\*](#), Alta Reg 208/2020 - s 32.

#### ***Foothills Solar GP Inc. Foothills Solar Project, AUC Decision 27486-D01-2023*** *Solar Power - Facilities*

#### Application

Foothills Solar GP Inc. ("Foothills Solar"), a wholly owned subsidiary of Elemental Energy Renewable Inc., applied for permission to construct and operate the 150-megawatt ("MW") Foothills Solar Power Plant (the "Power Plant") and associated Prairie Sun 1037S Substation (collectively, the "Project") on approximately 1,500 acres of private land in Foothills County.

#### Decision

The AUC denied the application from Foothills Solar for permission to construct and operate the Project.

#### Applicable Legislation

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

[\*Hydro and Electric Energy Act\*](#), RSA 2000, c H-16 - s 2(b).

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

[\*Municipal Government Act\*](#), RSA 2000, c M-26 - ss 619 and 620.

Alberta Environment and Parks Fish and Wildlife Stewardship - [\*Wildlife Directive for Alberta Solar Energy Projects\*](#)

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 033: [\*Post-approval Monitoring Requirements for Wind and Solar Power Plants\*](#)

[\*Conservation and Reclamation Directive for Renewable Energy Operations\*](#)

#### Pertinent Issues

Statements of intent to participate, opposing the Project, were filed by the Frank Lake Concerned Citizen Group ("FLCC"), Foothills County, Greg Wagner, a volunteer caretaker of Frank Lake Important Bird Biodiversity Area ("Frank Lake IBA"), Calgary Field Naturalists' Society ("Nature Calgary"), and Canadian Wildlife Service, Environment and Climate Change Canada.

### *Benefits for Cold Lake First Nations*

Cold Lake First Nations had partnered with Elemental Energy for the Project and supported its approval. The Project would provide substantial environmental and economic benefits for Albertans and an opportunity for Cold Lake First Nations to participate in the renewable energy sector through an ownership stake in the Project that would result in long-term economic and capacity-building benefits. The AUC noted that Cold Lake First Nations did not participate in the hearing, and no party raised the honour of the Crown or reconciliation as a relevant issue. The AUC found that approval of the Project could result in positive socioeconomic benefits for Cold Lake First Nations.

### *Environment and Wildlife*

The FLCC raised concerns that the Project would be sited in an internationally recognized environmentally important area that is home to wildlife, including sensitive and threatened species. It questioned whether there is adequate protection for wildlife species and the environment. In assessing the renewable energy referral report for the Project, Alberta Environment and Parks Fish and Wildlife Stewardship (“AEP”) found that the Project poses an overall moderate risk to the environment. AEP did however determine that the Project posed high risk to birds as a result of Project infrastructure located within Frank Lake IBA.

One of the issues before the AUC was whether the siting of the Frank Lake IBA was compliant with the *Wildlife Directive for Alberta Solar Energy Projects* (the “*Directive*”) and how much weight should be attributed to Best Management Practices noted in the *Directive*. Approximately 50 percent of the Project would be directly sited within the Frank Lake IBA, and approximately 80 percent would be sited within the 1,000-meter setback from the IBA boundary recommended by Best Management Practice (“BMP”) 200.1.1 of the *Directive*. While parties did not agree on the determination of the distance from the Frank Lake IBA, AEP and the AUC considered initial site selection to be the foremost means of reducing the potential for environmental impacts of a project as indicated by the *Directive*. The AUC determined that BMPs are recommendations and that deviations from a BMP or standard proposed by an applicant need to be appropriately justified, mitigated, and minimized as much as reasonably practicable.

A key issue was the potential for direct bird mortalities from collisions with photovoltaic solar panels. The parties in the proceeding indicated that the unexpected discovery of stranded and dead birds near some solar facilities had been historically observed, and research has found a potential for higher mortalities of aquatic habitat birds.

A further concern was raised regarding a potential for high transmission line mortalities in birds and a resulting overall bird population reduction. The AUC acknowledged the concerns. It noted that the underlying analyses might be limited in accuracy as a result of limitations in data and standardized methodologies.

Given the proximity of the Project to the Frank Lake IBA, the significance of Frank Lake to migratory birds and breeding water birds, the abundance and high diversity of birds and waterbirds at risk in the area, the remaining concern about the Lake Effect Hypothesis, and existing direct and indirect negative impacts, the AUC found that there is a reasonable risk for the Project to cause significant adverse environmental impacts.

### *Conclusion*

The potential benefits of the Project included reduced greenhouse gas emissions and other local economic benefits, positive socioeconomic benefits for Cold Lake First Nations and a commensurate potential to facilitate reconciliation between the Crown and Cold Lake First Nations as Indigenous peoples. The AUC, however, also determined that the impacts of the Project on the Frank Lake IBA and the social and environmental values that it represents are unacceptable. The Project has the potential to create a high mortality risk to birds and the bird habitat provided in the Frank Lake IBA. The AUC found that the Project would pose an unacceptably high risk to the environment and is not in the public interest.

The AUC was not convinced that the potential benefits outweighed the risk of high bird mortalities and the impacts on the Frank Lake IBA. The AUC determined that the social and environmental values represented by the Project would be unacceptable.

**Greengate Power Corporation Luna Solar+ Project, AUC Decision 27843-D01-2023**  
*Solar Power - Facilities*

Application

Greengate Power Corporation (“Greengate”) applied for permission to construct and operate the Luna Solar+ Project (the “Project”) on approximately 5,624 acres of privately owned, cultivated land near the city of Brooks in Newell County. The Project will consist of a 930-megawatt (“MW”) solar power plant, a battery energy storage system (“BESS”) with a capacity of up to 160-MW/320-megawatt-hour (“MWh”), and the associated Apollo 1041S Substation and Artemis 1067S Substation.

Decision

The AUC approved the applications.

Applicable Legislation

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

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - ss 11, 14, 15 and 19.

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

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](#)

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

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

Alberta Environment and Protected Areas - Fish and Wildlife Stewardship: [Alberta Ambient Air Quality Objectives](#)

**Members of the Concerned Cypress County Owners Group Decision on Preliminary Question - Application for Review of Decision 27240-D01-2023 Buffalo Trail Wind Power Project, AUC Decision 28057-D01-2023**  
*Electricity - Review and Variance*

Application

Members of the Concerned Cypress County Owners Group (“CCCOG”) applied for review and variance of Decision 27240-D01-2023 (the “Decision”) regarding ENGIE Development Canada GP Inc. (“ENGIE”)’s 400-megawatt Buffalo Trail Wind Power Project (the “Project”).

## Decision

The AUC denied the application from the CCCOG for review and variance of the Decision as the requirements set out in Rule 016: *Review of Commission Decisions* ("Rule 016") were not met.

## Applicable Legislation

[Alberta Utilities Commission Act](#), SA 2007, c A-37.2 - ss 10 and 29.

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

## Pertinent Issues

### *Request to Reweigh Evidence*

CCCOG requested that the AUC revisit the improperly weighed evidence, including turbine locations, proposed mitigations, guarantees for potential significant water damages and imposition of different decommissioning conditions. The AUC held that the scope of a review application does not include rearguing outcomes unless the review applicants demonstrate an error occurred in the reasoning of the hearing panel. As a result, the AUC denied the CCCOG's request for the review panel to revisit these issues.

### *Errors of Law*

CCCOG also raised a concern that the construction of the Project would conflict with Alberta's *Environmental Protection and Enhancement Act*. The AUC found that the concern posed a question of law. However, since no review is available on errors of law under *Rule 016*, the AUC found this issue is outside the scope of the application.

### *Errors of Fact or Mixed Fact and Law*

The AUC determined that the concern that health issues were not given enough weight required that the AUC reweigh evidence from the original proceeding. The AUC noted that while this concern is related to reweighing evidence, CCCOG was also taking issue with the application of the legal principles of expert evidence to the evidence before the hearing panel. The AUC explained that expert evidence is opinion evidence on a scientific or technical matter provided by a person with specialized knowledge, experience, or training in that field. Where the nature of an issue is of a scientific or technical nature, the AUC cannot accept opinion evidence from witnesses who are not experts in that field. Expert witnesses are allowed to provide opinion evidence on issues or matters within their area of expertise.

In the Decision, the AUC accepted the expert evidence regarding health issues submitted by ENGIE over the concerns expressed by the CCCOG. Accordingly, while the panel of this review proceeding noted the health concerns raised by CCCOG, the panel of the Decision found there was insufficient evidence of health impacts based on the expert evidence before it. The review panel found CCCOG did not sufficiently demonstrate an error in this regard.

The AUC further determined that CCCOG did not demonstrate a reviewable error in its concerns that the AUC erred in its assessment of the impacts of the Project on birds. CCCOG did not consider the distinction between property value impacts to properties hosting turbines and those that were not hosting turbines. Further, the AUC was not convinced that the panel of the Decision erred in finding that while the Project would produce visual impacts on the viewscapes, the benefits of the Project outweighed that concern, and approval would be in the public interest.

### *Other Grounds*

The review applicants raised several issues that were not raised before the hearing panel, such as concerns that wind turbine construction would negatively impact insurance costs, that the specific model of turbines has a history of malfunctions, and that the AUC should consider impacts to the Central Alberta Flyway constituted new facts that warrant a review and variance.

The AUC found that CCCOG did not demonstrate these are facts that could not have been discovered prior to the hearing through the exercise of reasonable diligence, as required under s 5(1)(b) of *Rule 016*.

***Shell Canada Limited Scotford Industrial System Designation Amendment, AUC Decision 27826-D01-2023 Electricity - Facility***

Application

Shell Canada Ltd. (“Shell”) applied for permission to amend the industrial system designation (“ISD”) of the Scotford Industrial Complex to include the 58-megawatt Scotford Solar Power Project (the “Project”). Shell further applied for permission to add its owner and operator, SR Scotford Inc., a wholly owned subsidiary of Silicon Ranch Corporation, as a holder of the order.

Decision

The AUC approved the application.

Applicable Legislation

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - ss 4 and 23.

Pertinent Issues

Shell, Air Liquide Canada Inc., Heartland Generation Ltd. and ATCO Energy Solutions Ltd. (“ATCO”) hold Order 26894-D03-20211 that designates the electric facilities at the Scotford Industrial Complex as an industrial system. The Project will supply low-carbon intensity electricity to the Scotford refinery.

The AESO expressed a concern that carbon reduction objectives could be used to establish a precedent for the more lenient issuance of ISDs. Shell stated that renewable electricity, connected behind the meter, was assessed as being the only method currently available to lower the carbon intensity of the electrical power consumed at the Scotford refinery within reasonable timelines. The AUC held that environmental objectives are not included in the criteria identified in s 4 of the *HEEA* and have, therefore, not factored into the determination.

The AUC accepted that the criteria of s 4 of the *HEEA* were assessed in the initial ISD. The AUC focused its consideration on whether the ISD, with the inclusion of the solar power plant, continues to meet the principles and criteria of s 4.

The AUC recognized that the Project will not be highly integrated with the industrial operations that it serves. However, because the AUC continues to view the larger industrial system as a complex facility comprising a number of large integrated industrial operations that process feedstock and produces primary products, and relies on highly coordinated operation and management of its constituent components, approval of the application was in the public interest. The AUC also took into account that the only change to the ownership of the industrial system arising from the amendment application would be the addition of SR Scotford Inc. as an additional holder of the Scotford ISD order. Moreover, the AUC was satisfied that the inclusion of the Project within the industrial system would result in a significant and sustained increase in the production and consumption of electric energy by the industrial operation. The AUC therefore approved the application.

***TransAlta Coaldale Wind Inc. Tempest Wind Power Project, AUC Decision 27767-D01-2023***  
*Wind Power - Facilities*

Application

TransAlta Coaldale Wind Inc. (“TransAlta”) applied for approval to construct and operate the 99-megawatt (“MW”) Tempest Wind Power Plant and Tempest Substation (the “Project”). TransAlta also applied to connect the facilities to the Alberta Interconnected Electric System (“AIES”). The Project would be located on 7,200 acres of privately owned agricultural land 30 kilometres (“km”) southeast of Lethbridge and is adjacent to another, soon to be operational, project (the 113-MW Stirling Wind Project).

Decision

The AUC approved the applications to construct and operate the Project.

Applicable Legislation

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

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

[Hydro and Electric Energy Act](#), RSA 2000, c H-16 - ss 11, 14 and 15.

[Alberta Wildlife Sweep Protocols](#)

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 AUC was satisfied that TransAlta’s participant involvement program for the Project met the information requirements in Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* (“Rule 007”).

Alberta Environment and Protected Areas – Fish and Wildlife Stewardship (“AEPA”) ranked the Project’s risk to wetland wildlife and wetland habitat as high. The Project’s overall risk to birds was also classified as high. As a result, the AUC imposed the following condition of approval:

- (a) When working within wetland setbacks from April 1 to August 14, TransAlta shall ensure that a qualified wildlife biologist conducts nest sweeps in accordance with the *Alberta Wildlife Sweep Protocols* and provides clearance before construction can begin or continue.

To ensure compliance with Rule 033: *Post-approval Monitoring Requirements for Wind and Solar Power Plants* (“Rule 033”), the AUC imposed as a condition of approval that:

- (b) TransAlta submits an annual post-construction monitoring report to AEPA and the AUC by no later than January 31 of the year following the mortality monitoring period and on or before the same date every subsequent year for which AEPA requires a survey pursuant to *Rule 033*.

At the time of the application, TransAlta had not developed a project-specific emergency response plan. To ensure compliance with s WP13 of Rule 007, the AUC imposed the following condition of approval:

- (c) Prior to construction, once a site-specific emergency response plan is in place, TransAlta shall engage with local responders and authorities regarding the plan and address comments or concerns as necessary.

The application to connect the Project to the AIES through a 17 to 23-km transmission line at Hillridge 139S Substation would be submitted separately.

The AUC determined that approval of the applications is in the public interest.