**ISSUE: JUNE 2023 DECISIONS**

REGULATORY LAW CHAMBERS

# ENERGY REGULATORY REPORT

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

*Regulatory Law Chambers ("RLC") is a Calgary based boutique law firm, specializing in energy and utility regulated matters. RLC works at understanding clients' business objectives and develops legal and business strategies with clients, consistent with 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.

**IN THIS ISSUE:**

## ALBERTA COURT OF APPEAL

***TransAlta Corporation v Alberta Energy Regulator*, 2023 ABCA 172**
***Oil/Gas - Water – Permission to Appeal***

Application

TransAlta Corporation ("TransAlta") brought three applications for permission to appeal decisions of the Alberta Energy Regulator ("AER").

Decision

The two applications for permission to appeal with regard to the AER's approval of Bonterra Energy Corporation ("Bonterra") well licences were dismissed. The third application, against the AER's refusal of a regulatory appeal of Subsurface Order No. 6 issued by the AER in May 2019 ("SSO6") was allowed in part.

Pertinent Issues

Two of the applications were related to well licences issued to Bonterra. The first application was in relation to the AER's decision to deny TransAlta's request for a stay of the decision to approve the well licences. The second application was in relation to the AER's refusal of TransAlta's requests for a regulatory appeal of the AER's decision to approve the well licences. Both of these applications for permission to appeal were dismissed. The ABCA stated that the question TransAlta actually sought to have answered concerns not the granting of the well licences but rather whether SSO6 was appropriately issued.

The third application was in relation to the AER's refusal to allow a regulatory appeal of its decision to issue the SSO6. That order imposes certain fracking restrictions within 5 kilometers of the Brazeau dam and infrastructure, which are owned by TransAlta. The AER refused the request for a regulatory appeal, finding that TransAlta was not an "eligible person" for the purposes of s 38(1) of the *Responsible Energy Development Act* ("*REDA*") because TransAlta is not directly affected by SSO6 and because there was no direct connection between the issuance of SSO6 and the alleged potential impacts. The AER also held that TransAlta's statements of concern related to well applications for which a notice of hearing had been issued in Proceeding 379 and allowing the requested regulatory appeal of SSO6 to proceed would result in duplicative proceedings and a breach of rule 31(3) of the *Alberta Energy Regulator Rules of Practice*. Rule 31(3) relates to matters already adequately dealt with through another hearing, regulating appeal or review under any enactment.

The ABCA allowed, in part, the permission to appeal the AER's decision to refuse the request for a regulatory appeal of the decision to issue SSO6 on the following questions:

> (a) whether the AER erred in its interpretation of "eligible person" in s 38(1) of the *REDA*, and in particular, whether the AER applied an overly narrow interpretation of "directly and adversely affected" in considering TransAlta's standing; and
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> (b) whether the AER incorrectly interpreted Rule 31(3) of the *Alberta Energy Regulator Rules of Practice* in deciding that a regulatory appeal of SSO6 would be duplicative of Proceeding 379.

***Kalina Distributed Power Limited v Alberta Utilities Commission,* 2023 ABCA 173**
***Electricity - DCG-Credits***

Application

The distribution-connected generators ("DCG") Campus Energy Partners LP, Kalina Distributed Power Ltd., Lionstooth Energy Inc., and Signalta Resources Ltd., collectively ("KLSC") appealed the AUC's decision 26090-D01-2021 phasing out over five years DCG credits that are part of the tariffs of ATCO Electric Ltd., ENMAX Power Corporation and FortisAlberta Inc.

The ABCA granted permission to appeal on the following grounds:

> 1. The AUC erred in law in concluding that no party in this proceeding had to assume the onus of proof with respect to whether the Distribution Utilities' DCG Credit tariff provisions were just and reasonable. Although the AUC suggested in Decision 26090 that it determined the facts at large without a burden on anyone, its reasons revealed that it placed a practical / evidential burden on the KLSC parties to prove a quantifiable benefit to ratepayers when KLSC was not in the position of such as Fortis to meet such a burden.
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> 2. The AUC erred in law when it considered larger policy issues such as a level playing field involving features of alleged market distortion and negatives for "efficient market outcomes" in its application of s 121(2)(a) of the *EUA*. Relatedly, the AUC erred in law when it directed the parties to provide submissions and evidence with respect to such larger policy considerations and when it extended itself into consideration of imported evidential materials from prior AUC proceedings and deployed them adversely to the position of KLSC.
>
> 3. The AUC failed to give procedural and adjudicative fairness and comply with the principles of natural justice in various manners, including the foregoing. It will be open to KLSC to discuss the process from the Notice letter, dated November 17, 2020, up to and including the AUC decision as to remedy.

Decision

The ABCA dismissed the appeal.

Pertinent Issues

In this decision, the ABCA did not address the first two error of law grounds and only summarily addressed the third procedural fairness ground.

According to the ABCA, KLSC argued that the AUC's process in Proceeding 26090 was unfair. The appellants argued that the AUC shifted the burden of proof from the respondent utilities ATCO Electric Ltd., ENMAX Power Corporation and FortisAlberta Inc. to KLSC. As a result, KLSC argued that they did not have adequate notice or access to the required information - that rested with the utilities - to provide the required evidence to support the proposition that the distribution-connected generation credits are just and reasonable. The ABCA stated that KLSC, in essence, argued that they were denied the opportunity to, and did not realize that they had to make their best argument.

The ABCA determined that a reasonable person familiar with the practice of the AUC would be put on notice that the AUC would engage in examining whether the three utilities collecting DCG credits from ratepayers could continue to do so, that this will affect the owners and operators of the DCG that benefit from these credits, and that interested parties can have a say. The ABCA decided that the AUC had put interested parties on notice of its concerns and its intentions, and clearly invited submissions.

The ABCA was not convinced by the arguments of the appellants and determined that, regardless of where the burden of proof did or was supposed to lie, the appellants had every opportunity to put their best arguments and submissions forward.

## ALBERTA ENERGY REGULATOR

### *Invitation for Feedback on Revisions to Directive 020,* AER Bulletin 2023-26

***Oil - Well Abandonment***

The AER sought feedback on updates to *Directive 020: Well Abandonment*. Changes were proposed to section 5.4, which would amend the requirements for the abandonment of cased-hole wells penetrating an oil sands zone.

The proposed changes will allow for routine abandonment of wells that penetrate an oil sands zone using the *Directive 020* requirements in section 5.3, "Wells Not Penetrating the Oil Sands Zones," if the subject well meets the criteria and requirements for low thermal potential.

Wells penetrating an oil sands zone are eligible for routine abandonment if a professional geoscientist conducts a geological review or the subject well is within the boundary of an oil sands area that the AER has assessed as having a low potential for thermal development.

### *Xenotime Energy Inc. Application for Pooling Order,* 2023 ABAER 003

***Oil - Unit to Produce Oil***

Application

Xenotime Energy Inc. ("Xenotime") applied for a compulsory pooling order prescribing that all tracts within the drilling spacing unit in the northwest quarter of Section 15, Township 50, Range 4, West of the 4th Meridian ("NW15"), be operated as a unit to produce oil from all formations from the surface to the base of the Mannville Group through a well to be drilled in Legal Subdivision 13.

Xenotime requested standard AER pooling clauses, including specifying that costs and share of production under the pooling order be allocated on a tract-area basis. It further requested to be named as the operator of the proposed well, and to apply the maximum penalty allowed under the *Oil and Gas Conservation Act* ("*OGCA*") if a tract owner fails to pay their tract's share of costs by the time specified in the pooling order.

Decision

The AER approved the application for a pooling order, subject to conditions.

Pertinent Issues

PrairieSky Royalty Ltd. ("PrairieSky"), as the fee simple title owner of all mines and minerals, except coal, within, upon, or under the lands within a portion of the northwest quarter section of NW15, submitted a statement of concern regarding the application. PrairieSky's principal argument was that section 80 of the *OGCA* applies only to a working interest owner of a tract within a drilling spacing unit that is unable to come to an agreement with other working interest owners to negotiate a satisfactory pooling arrangement. PrairieSky argued that, because it was not engaged in oil and gas operations and did not hold an operator's licence, section 80 of the *OGCA* did not apply, and a compulsory pooling order cannot be issued against it. PrairieSky, however, decided not to participate in the hearing before the AER.

*AER Jurisdiction*

In light of PrairieSky's arguments, and despite lacking a formal motion, the AER first considered the jurisdiction to grant compulsory pooling orders pursuant to Part 12 of the *OGCA* (which includes sections 78–90) and whether it had the authority to issue a compulsory pooling order that includes fee simple mineral title owners, including PrairieSky. The AER concluded that, because a fee simple mineral title owner satisfies the definition of an "owner" of a "tract" for the purposes of sections 78–90 of the *OGCA*, it had the required authority.

*Need for a Compulsory Pooling Order*

In accordance with section 4.010(3)(a) of the *Oil and Gas Conservation Rules*, the surface area for a drilling spacing unit for an oil well is one quarter section, unless otherwise prescribed by the AER. Xenotime's Crown production rights will expire on December 21, 2023, and in the absence of a pooling order, it appears unlikely that oil production from the Mannville Group in the drilling spacing unit could be achieved prior to expiry of the Crown lease. As a result, the AER found that there is a need for a pooling order to allow drilling for and production of oil from the drilling spacing unit and that Xenotime should be afforded an opportunity of obtaining its share of the production of oil from its Crown production rights.

*Xenotime Efforts to Negotiate a Voluntary Pooling Arrangement*

Section 80(2) of the *OGCA* and sections 1.5.3(4) and 1.5.3(5) of *Directive 065* require an applicant to make substantial efforts to negotiate a voluntary pooling arrangement. A compulsory pooling application should be a last resort in case the mineral owners are unable to voluntarily negotiate a pooling agreement.

The AER found that Xenotime made several attempts to obtain production rights for the entire quarter section. Xenotime also unsuccessfully attempted to obtain a voluntary pooling agreement for the Manville Group in the drilling spacing unit. According to the AER, there was no evidence on the record of the proceeding that suggested a voluntary pooling arrangement was likely to occur.

Based on the evidence on the record, the AER found that Xenotime tried to enter into a voluntary pooling arrangement with PrairieSky. However, PrairieSky did not consider a pooling arrangement as an option as part of its business practice, as a result of which the efforts to achieve a voluntary pooling arrangement failed quickly. Therefore, the AER was satisfied with the efforts made by Xenotime.

*Appropriate Terms for the Pooling Order*

The AER approved the requested terms as part of the pooling order, which included standard provisions for a compulsory pooling order, based on the *OGCA* and previous pooling decisions. The AER did not include in the order the applied-for terms that relate to royalty payments and taxes since the AER does not have jurisdiction in relation to those issues.

## ALBERTA UTILITIES COMMISSION

***Technical Meeting for Potential Changes to Rule 012: Noise Control,* AUC Bulletin 2023-02**
***Facilities - Rules***

The AUC has been consulting on amending certain provisions of Rule 012: *Noise Control* ("Rule 012") to streamline and, improve regulatory and adjudicative processes. To date, the AUC conducted two rounds of written consultation. All information related to the Rule 012 revision project, including the written submissions provided during the consultation process to date, can be found on the Rule 012 Engage web page.

To continue the discussions, the AUC scheduled a technical meeting for July 21, 2023. The following were the topics and issues for the technical meeting:

(1) Ambient sound levels (ASLs) for populated areas.

(a) The relative benefits and drawbacks associated with assumed and measured ASLs.

(2) PSLs for populated areas.

(a) Need for suburban and urban PSLs.

(b) Definition of suburban and urban PSLs.

(c) Determination of suburban and urban PSLs.

(3) New dwelling PSLs.

(a) Appropriate development milestones for establishing PSLs at new dwellings constructed close to an approved but not yet constructed facility.

(4) Tonality evaluation.

(a) The need to evaluate tonality when assessing potential noise impacts.

The technical meeting was scheduled to take place in person at the AUC's Calgary office, with a Zoom participation available to stakeholders who are unable to attend in person.

***Alberta Electric System Operator Approval of Proposed Energy Storage Amendments to the ISO Rules,* AUC Decision 28176-D01-2023**
***Electricity – ISO Amendment***

Application

The Alberta Electric System Operator ("AESO") requested approval of proposed amendments to a number of its rules and definitions in relation to energy storage. The AESO submitted that, while the use of energy storage is not prohibited in the Alberta electricity industry, applicable statutes and regulations do not expressly recognize energy storage. The AESO applied for approval of energy storage amendments to remedy these gaps.

Decision

The AUC approved the proposed energy storage amendments as submitted by the AESO.

Pertinent Issues

The proposed energy storage amendments comprised changes that:

1. Clarified requirements for submitting bids in the energy market to allow energy storage to participate in the energy market;
2. Introduced Adjustment for Load on the Margin as a payment mechanism to ensure that pool participants do not pay more than the bid price for energy consumed;
3. Created technology-agnostic energy market ISO rules by removing technology-specific adjectives from market terminology;
4. Integrated energy storage into the existing ancillary services, system operations and loss factor ISO rules through new definitions;
5. Implemented the technical and operating requirements for energy storage by incorporating new definitions and introducing new requirements; and
6. Retired existing definitions that are no longer required.

The AUC was satisfied that the proposed amendments meet all requirements for approval as set out in s 20.21(2) of the *Electric Utilities Act* and Rule 017: *Procedures and Process for Development of ISO Rules and Filing of ISO Rules with the Alberta Utilities Commission*. Specifically, the AUC was satisfied that, based on the AESO's explanations and the AUC's technical review, the proposed energy storage amendments are not technically deficient, support the fair, efficient and openly competitive operation of the market to which they relate and are in the public interest.

***Aura Power Renewables Ltd. Provost Solar Project,* AUC Decision 27918-D01-2023**
***Solar Power - Facilities***

Application

Aura Power Renewables Ltd. ("Aura Power") applied for approval to construct and operate a 22.5-megawatt ("MW") project designated as the Provost Solar Power Plant and to connect the power plant to the FortisAlberta Inc. electric distribution system (the "Project"). The Project will be constructed on 130 acres of private cultivated land, approximately 5.5 kilometres northwest of the town of Provost.

Decision

The AUC approved the applications to construct, operate and connect the power plant to the FortisAlberta Inc. distribution system, subject to conditions.

Pertinent Issues

The AUC determined that the application and the applied-for Project complied with applicable directives, legislation and AUC rules. The AUC found that that approval of the project is in the public interest having regard to the social, economic, and other effects of the project, including its effect on the environment.

The AUC imposed conditions of approval in relation to solar glare, finalized equipment selection for the Project, wildlife surveys update and annual post-construction monitoring survey reports.

***City of Medicine Hat MHS-11 Substation,* AUC Decision 27417-D01-2023**
***Facilities - Site Selection***

Application

The City of Medicine Hat ("Medicine Hat") applied for approval to construct and operate the new MHS-11 substation, alter the existing Transmission Line MH-20L, and redesignate a portion of existing Transmission Line MH-20L as MH-21L (the "Project") in the southwest area of Medicine Hat. The application included preferred and alternate sites for the MHS-11 substation.

Decision

The AUC denied the applications, determining that the applications were not in the public interest as the site selection process was deficient.

Pertinent Issues

Cypress County, the City View Group, and the Hatview Dairy Desert Blume Group were granted standing and participation rights in the proceeding. Cypress County, an adjacent municipality, opposed both locations proposed for the substation. The City View Group, consisting of residents and landowners located near the preferred site, opposed the preferred site. The Hatview Dairy Desert Blume Group, consisting of residents, landowners, and a business located near the alternate site, opposed the alternate site.

The main objective of a siting methodology is to identify locations that have the lowest impacts. The AUC stated that the process should be designed to allow for ongoing location adjustments as new information becomes available through the siting process and the participant involvement program. Site selection principles include: agricultural, residential and visual impacts; electrical and technical considerations; special constraints; environmental impacts; and cost. All three intervener groups submitted that the city's site selection methodology was deficient and did not result in the lowest impact sites being selected.

The AUC determined that Medicine Hat's site selection method was disregarded and inconsistently applied to the two proposed sites. Based on the information provided by Medicine Hat concerning its siting criteria and methodology, the AUC also found it unclear whether the preferred site represented the location with the lowest overall impact.

The AUC was not satisfied that the site selection methodology was sufficiently robust or applied in a manner that provides the AUC with confidence that the preferred and alternate sites represent the lowest overall impact sites. Rather, the AUC determined that Medicine Hat proposed sites located close to residential areas that would require the taking of land from landowners unwilling to host the Project.

Further, the AUC determined that the preliminary site selection process did not meet the information requirements outlined in Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines*. Medicine Hat did not give sufficient consideration to residential or visual impacts, including proximity to residential communities, until after the preferred and alternate sites were selected and other sites were removed from consideration. The AUC also determined that Medicine Hat did not consistently apply siting criteria when evaluating each site.

Based on the information provided, the AUC determined that some of the sites removed from consideration appeared to have a lower overall impact.

The AUC further determined that, although there was a need for the substation, the need was not immediate. Accordingly, denying the applications would not jeopardize the service provided to residents by Medicine Hat.

***EMCOR Utility (2035570 Alberta Ltd.) Interim Rates for Supply and Distribution of Potable Water,* AUC Decision 28055-D01-2023**

***Water - Rates***

Application

EMCOR Utility (2035570 Alberta Ltd.) ("EMCOR") requested approval of certain items related to its potable water service. It requested approval of: the terms and conditions ("T&Cs") of service, including rate schedules; depreciation rates; interim refundable rates for supply and distribution of water, effective March 1, 2023; and final rates for the supply and distribution of water, effective March 1, 2023, to February 29, 2028 (the "Test Period"). This was EMCOR's first water rates application filed with the AUC since EMCOR did not have prior AUC approval for the water rates it charged its customers.

Decision

In this decision, the AUC decided two issues, specifically, its jurisdiction over EMCOR and the approval of interim potable water rates, including their effective date. The AUC found that it has jurisdiction over EMCOR as an owner of a public utility that provides potable water service to its customers. The AUC approved the existing water rates as interim, effective June 7, 2023 but denied the application from EMCOR for an increase of the existing rates on an interim basis.

Pertinent Issues

*AUC Jurisdiction*

The AUC examined the definitions of "owner of a public utility" and "public utility" in the *Public Utilities Act* and concluded that there is sufficient evidence that EMCOR operates, manages or controls "a system, works, plant, equipment or service" for the delivery or furnishing of potable water directly to customers. The AUC found that EMCOR's potable water facilities are a "public utility" and was satisfied that EMCOR is an "owner of a public utility" for purposes of the *Public Utilities Act,* making it subject to the AUC's regulation.

*Interim Rates*

In addition to requesting its current rates be approved on an interim basis, EMCOR also requested an increase of those rates. EMCOR stated that it has operated the water distribution system since 2018 and that it has had the same rates for that service since 2020. EMCOR proposed a five percent increase to account for higher inflation and an increase in its cost of operations since 2020.

The AUC stated that interim rate orders are generally used to mitigate against rate shock and to ensure the financial integrity of a utility while an application to establish final rates is before the AUC. An interim rates order essentially allows all parties to preserve rates at an approved level while the AUC hears from the applicant and all parties on what the final rates should be. An interim rates order allows for appropriate adjustments once the final rates are determined and protects both, the utility and its customers.

As this was EMCOR's first rate application with the AUC, none of the costs that underpin the current rates had been examined by the AUC. The AUC has not previously found that the current rates charged are just and reasonable. In its application, EMCOR did not indicate what these cost increases have been, and it did not submit that the interim rate increase was required to preserve the financial integrity of the water utility system or to avoid undue financial hardship. EMCOR also did not suggest that its ability to continue providing safe and reliable service would be compromised without the interim rates increase.

In relation to the effective date, the AUC found that the effective date for the interim rates was June 7, 2023, rather than March 1, 2023, the date proposed by EMCOR, to avoid retroactive rate making and to maintain certainty for both, the utility and its customers, regarding the rates paid for utility services. The AUC considered June 7, 2023, as the reasonable effective date for interim rates since the earliest date EMCOR's customers reasonably had knowledge that the rates may change was April 20, 2023, the date the AUC issued notice for this proceeding.

The AUC denied the requested increase and approved the current rates as interim rates on a refundable basis, with the process schedule for setting the final rates to follow.

***Greencells Indygen Alberta Ltd. Estuary Solar Power Project, AUC*** **Decision 27862-D01-2023**
***Electricity – Facilities***

Application

Greencells Indygen Alberta Ltd. ("Greencells") applied for approval to construct and operate the 200-megawatt Eustary Solar Power Plant and the Eustary Solar 1006S Substation (the "Project"). Greencells also applied to connect the Project to the Alberta Interconnect Electric System ("AIES").

Decision

The AUC approved Greencells' application to construct and operate the Project, subject to the requirement to alter the Project to maintain a 30-metre setback from Class III and higher wetlands. The AUC denied the interconnection application as premature because the transmission facility operator had not applied for approval of the required transmission line.

Pertinent Issues

The solar power plant will consist of solar photovoltaic panels with a height of 0.8 - 1.56 metres above ground supported with fixed-tilt racking. The substation will include one 138/34.5-kilovolt ("kV"), 240-megavolt ampere transformer, and one 138-kV circuit breaker.

The AUC determined that Greencells' application complied with applicable rules and that the Project will comply with applicable rules and legislation. The AUC found it appropriate to assess Greencells' interconnection application at a later time, as no application for the facilities to connect the Project to the AIES had been filed at the time of the proceeding.

Based on Greencells' environmental evaluation, the AUC determined that Greencells should apply a 30-metre setback to all Class III+ wetlands, to mitigate the high environmental risk identified by Alberta Environment and Protected Areas as a result of the Project and file an updated site plan showing the changes.

The AUC also imposed conditions of approval in relation to solar glare, specifying the finalized equipment selection for the Project and annual post-construction monitoring survey reports.

***RES Forty Mile Wind GP Corp. Forty Mile Wind Power Project Amendments,*** **AUC Decision 27561-D01-2023**
***Wind Power – Facilities***

Application

RES Forty Mile Wind GP Corp. ("RES") has prior approval to construct and operate a 398.5-megawatt ("MW") wind power plant designated as the Forty Mile Wind Power Project, including the associated Forty Mile 516S Substation (the "Project"). RES applied to amend the approved Project. The amendments include a change to the turbine model, a reduction in turbine quantity and revisions to access roads, collector lines, and the operations and maintenance building locations. The Forty Mile 516S Substation would also be modified by increasing the transformer rating and by removing one circuit breaker and one disconnect switch. Finally, the power plant will be split into two completion phases, with Phase 1 consisting of 49 proposed turbines and Phase 2 consisting of 21 proposed turbines, to be completed by December 31, 2024 and December 31, 2025, respectively.

Decision

The AUC bifurcated its decision on the Project and partially approved the application, excluding from the approval the turbines that raised issues with respect to aviation safety, which the AUC determined required further process. Specifically, approval was granted to construct and operate: (i) certain turbines for the Forty Mile Wind Power Project Phase 1; (ii) Forty Mile Wind Power Project Phase 2; and (iii) the Forty Mile 516S Substation.

Pertinent Issues

Pursuant to its typical practice for amendment applications, the AUC considered only incremental impacts of the amended project to determine if the amendment applications are in the public interest. The AUC, therefore, did not reconsider project approval in its entirety. The exception to this practice was the AUC's decision to consider the aeronautical safety impacts related to aerodrome use in respect of turbines within five nautical miles of the Bow Island Airport ("Affected Turbines"). The AUC concluded that it required additional evidence regarding certain aviation safety matters before making a final decision on the Affected Turbines. In the interest of regulatory efficiency and RES' business commitments, the AUC bifurcated the proceeding and considered approval for construction activities associated with turbines located outside five nautical miles of the Bow Island Airport ("Unaffected Turbines").

In respect to concerns raised by interveners, the AUC determined that many of the negative impacts associated with the amended project are minimal and that they have been adequately addressed through mitigation. Further, the AUC determined that many of the project amendments do not result in any negative incremental impacts and that they largely reduce the negative impacts associated with the approved project.

Specifically, the AUC was satisfied that: (i) the amendments will result in a decrease in sound levels at affected dwellings, as compared to the approved project; (ii) while there will be a small incremental increase in shadow flicker from the amended project, the shadow flicker impacts produced by the Project are likely to be low; and (iii) there may be some minor impacts associated with aerial spraying operations near the turbines part of the amended project but these impacts are low and will be adequately mitigated by the turbine shut-off protocol that RES will be required to implement. The benefits of the amended project include generation of more renewable energy from an approximate 40 percent reduction in wind turbines, thereby reducing the permanent project footprint by almost half.

The AUC found that approval of the Unaffected Turbines, the Forty Mile 516S Substation and the requested time extensions is in the public interest, reserving its final decision related to the remainder of the turbines until the resolution of the additional process.

***Stirling Wind Project Ltd. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Stirling Wind Project I,* AUC Decision 28228-D01-2023**
***Electricity – Records***

Application

Stirling Wind Project Ltd. ("Stirling") filed an application under the *Fair, Efficient and Open Competition Regulation* ("*FEOCR*"), seeking permission to share records not available to the public related to the 5-Megawatt ("MW") Stirling Wind Project I, located near Lethbridge, between Stirling, URICA Energy Real Time Ltd., Stirling Renewable Energy Limited Partnership, and CWP Energy Inc.

Decision

The AUC was satisfied that Stirling had demonstrated that: (i) the sharing of records was reasonably necessary for Stirling 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 approved the application.

***Subra GP Ltd. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Fox Coulee Solar Project, AUC Decision 28230-D01-2023***
***Electricity – Records***

Application

Subra GP Ltd. ("Subra") filed an application under the *Fair, Efficient and Open Competition Regulation* ("*FEOCR*"), seeking permission to share records not available to the public related to the 75-Megawatts Fox Coulee Solar Project, near Drumheller, between Subra, URICA Energy Real Time Ltd., Subra Limited Partnership ("Subra LP"), and Neoen Renewables Canada Inc. ("Neoen").

Decision

The AUC was satisfied that Subra had demonstrated that: (i) the sharing of records was reasonably necessary for Subra 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 approved the application.

***Sunnynook Solar Energy Inc. Sunnynook Solar+ Energy Storage Project,* AUC Decision 27971-D01-2023**
***Solar Power – Facilities***

Application

Sunnynook Solar Energy Inc. applied for approval to construct and operate the Sunnynook Solar+ Energy Storage Project (the "Project"), on approximately 828 acres of agricultural land in the Hanna area. The Project will consist of a 270-megawatt ("MW") solar power plant, a battery energy storage system with a storage capacity of up to 100 MW/200 megawatt-hour ("MWh"), and the associated Rose Lynn 1072S Substation.

Decision

The AUC approved the applications, with conditions. The approval conditions relate to the re-seeding of native grasslands, filing of post-construction monitoring report with the Alberta Environment and Protected Areas – Fish and Wildlife Stewardship, filing of reports regarding any concerns or complaints about solar glare, the energy storage systems to be selected and the implementation of mitigation measures during and post-construction.

***Tidewater Midstream and Infrastructure Brazeau Cogeneration Plant and Industrial System Designation,* AUC Decision 27616-D01-2023**
***Facilities - Industrial System Designation***

Application

Tidewater Midstream and Infrastructure Ltd. ("Tidewater") applied for approval to construct and operate the 16.5-megawatt ("MW") natural gas-fired Brazeau Cogeneration Plant (the "Power Plant"). Tidewater also applied for an industrial system designation ("ISD") that encompasses the electric facilities at the existing Brazeau River Complex. The Power Plant will be constructed within the existing fenceline of the Brazeau River Complex, near Drayton Valley.

Decision

The AUC approved the applications from Tidewater.

Pertinent Issues

*Power Plant Approval*

The Power Plant consists of one natural gas-fired turbine generator and a heat recovery steam generator. It will be supplied with natural gas from the gas plant and would generate approximately 128,000 MWh of electricity annually to supply the on-site load of 71,000 MWh and export approximately 57,000 MWh to the Alberta Interconnected Electric System.

The AUC reviewed the evidence submitted in support of the Power Plant application regarding the participant involvement program, noise impacts, air dispersion models for nitrogen dioxide, environmental assessment and Aboriginal consultation and concluded that the project is in the public interest in accordance with Section 17 of the *Alberta Utilities Commission Act*.

*ISD Determination*

The AUC considered the ISD application in accordance with the principles and criteria set out in section 4 of the *Hydro and Electric Energy Act* and found that Tidewater's proposal meets the principles and criteria for an ISD.

The AUC observed that it would be impractical to precisely scale on-site generation for a specific thermal or electrical output given the need for operational variability having regard for reasonable expansion or growth of the industrial operations. Further, the AUC understood that the electric energy generated exceeding the needs of Tidewater is necessary to produce enough heat and steam to meet the requirements of the Power Plant. As such, the AUC considered that the Power Plant was reasonably scaled to meet the electricity and thermal needs of the gas plant.

***TransAlta Corporation, as Manager of the TransAlta Generation Partnership 2022-2023 Transmission General Tariff Application,* AUC Decision 27964-D01-2023**
***Electricity - Rates***

Application

In this general tariff application ("GTA") TransAlta Corporation ("TransAlta"), in its capacity as manager of the TransAlta Generation Partnership, applied for approval of its 2022-2023 revenue requirement for its transmission services.

Decision

The AUC approved all requests in TransAlta's application.

Pertinent Issues

The following matters of the GTA were contentious during the proceeding:

(a) TransAlta's 2022 and 2023 escalation rates for non-union salary, contractor and general inflation;

(b) The placeholders for TransAlta's operations and maintenance ("O&M") agreement with AltaLink Management Ltd. ("AltaLink"); and

(c) TransAlta's costs for its First Nations Advisory Committee ("FNAC").

*2022 and 2023 Escalation Rates*

TransAlta requested approval of non-union salary, contractor and general inflation escalation rates of 2.5 per cent for 2022 and 3.5 per cent for 2023.

TransAlta explained that it arrived at its applied-for rates through a review of the most recent escalation forecasts for the consumer price index, general inflation and non-union escalation rates. TransAlta also reviewed the non-union escalation rates for other transmission facility owners ("TFOs") in Alberta during the 2022-2023 test period.

TransAlta explained that its non-union and contractor forecasts conform to the arithmetic average of the current applied-for TFO escalation rates and that the escalation rates have been conservatively applied to 2022, relative to the Alberta Weekly Earnings (AWE) dashboard, which shows an AWE of 3.2 per cent from October 2021 to October 2022. Despite the economic consensus forecasts showing a considerable spike in inflation in 2022, TransAlta applied a reduction of 400 basis points to bring its proposed escalation rate in line with the other TFOs' requested inflation.

The AUC noted that it considered previous approvals for escalation rates and forward-looking information concerning inflation. It acknowledged that previously approved escalation rates may not include new information that may impact the escalation rates and was persuaded by TransAlta's evidence that there has been an increase in inflation. The AUC noted that TransAlta's forecast was lower than the recently applied-for average for the other TFOs and determined that the rates applied-for by TransAlta were reasonable.

*O&M Placeholders Agreement with AltaLink*

TransAlta explained that AltaLink applied for forecast revenue requirement offsets, which anticipated a termination of the O&M agreement with TransAlta on April 29, 2022, as part of its 2022-2023 GTA. In Decision 27168-D01-2022, the AUC granted an interim order directing AltaLink to perform its obligations set out in the O&M agreement. TransAlta requested placeholder treatment of its forecast costs under the O&M agreement for the 2022-2023 test period in its current application. AltaLink and TransAlta had an upcoming arbitration to deal with the O&M issue.

TransAlta clarified that its 2022 and 2023 forecasts of the O&M fee related to the AltaLink O&M agreement were based on the 2021 actual fee of $0.57 million invoiced by AltaLink, which was escalated by 2.5 per cent for 2022, for a forecast of $0.58 million and escalated by 3.5 per cent for 2023, for a forecast of $0.6 million. TransAlta stated that it has undertaken a number of contingency measures to preserve the provision of safe and reliable services to its transmission customers in the event AltaLink ceases to provide O&M services.

The AUC was cognizant of the uncertainty regarding the O&M agreement between TransAlta and AML. The AUC noted its expectation that if a new O&M agreement is signed, there would be a period in which TransAlta could transition its O&M services either to a third party or perform the services internally. The AUC expected, however, that TransAlta made and will continue to make sufficient inquiries of potential third-party providers of O&M services, including developing the operational logistics to provide such services internally and seek approval of a new model promptly following the arbitral decision. On this basis, the AUC approved the requested 2022-2023 applied-for costs for services provided under the current AltaLink O&M agreement as a placeholder subject to a true-up in a future application.

*First Nations Advisory Committee Costs*

TransAlta forecast $40,000 to cover the cost of the venue, meals and accommodation for FNAC meetings. TransAlta noted that these meetings had been cancelled in 2020 and 2021 due to the COVID-19 pandemic restrictions and that meetings could not be arranged in 2022 due to scheduling restrictions. TransAlta indicated that in-person meetings were the best way to continue to build relationships, share work plans and activities on First Nations lands, and gather input, listen to and understand FNAC members' concerns.

The AUC accepted TransAlta's explanation for the costs and noted that it considers in-person meetings to be an important part of continued relationship building, an effective way to share work plans and activities on First Nations lands and to gather input, listen, and understand FNAC members' concerns, especially considering that meetings have not occurred in the past three years. Given the importance of these meetings and the reasonableness of the costs, the AUC approved the forecast as filed.

## CANADA ENERGY REGULATOR

***Inuvialuit Energy Security Project Ltd. Application to Amend a Development Plan for the Inuvialuit Energy Security Project Subject to Hearing Order MH-002-2022,* CER Filing A8R2U7**
***Oil/Gas – Amendment Application***

Application

On March 8, 2022, the CER approved the development plan for the proposed Inuvialuit Energy Security Project (the "IESP"). Subsequently, Inuvialuit Energy Security Project Ltd. ("IESPL") provided, by a letter, an engineering update on the development plan. The CER advised that it would treat the letter as a request to amend the development plan ("Amendment Application").

Decision

The CER approved the Amendment Application without imposing any conditions or other requirements. The CER, however, noted that the approval set out in its letter decision does not take effect unless and until IESPL obtains the necessary consent of the Northwest Territories' Commissioner in Executive Council in accordance with section 14(5)(a) of the *Oil and Gas Operations Act* ("*OGOA*").

Pertinent Issues

IESPL suggested that the proposed changes did not necessitate a formal amendment under the *OGOA* since the changes amounted to an engineering update to the IESP. The CER did not accept this position and found that the amendment application includes proposed changes to specific sections of the approved development plan, which trigger paragraph 14(5)(a) of the *OGOA*. Moreover, under this section, any amendment to Part 1 of the development plan must be made with the consent of the Northwest Territories' Commissioner in Executive Council. Subject to the requisite consent, the CER approved the amendments making the following findings:

1. The CER was satisfied with IESPL's engagement activities to date and its commitment to continue those activities throughout the project lifecycle;
2. The CER was of the view that, except for a potential for increased air emissions due to the addition of fired heaters, the proposed changes to the development plan do not result in any negative impacts or changes to the valued components assessed for the IESP. Based on IESPL's commitments to conduct further air quality modelling and to meet territorial and federal ambient air quality guidelines, the CER found that the proposed changes to the development plan are acceptable and are likely to result in a net reduction in overall environmental impacts;
3. IESPL provided sufficient information about project costs to enable the CER to understand the implications of the proposed changes on the project's economics. The CER remained of the view that the IESP is likely to be economically feasible with the changes proposed in the Amendment Application, despite significant cost increases due to inflation. The CER was also satisfied that the IESP, with the proposed changes, can still provide the corollary benefits recognized in the development plan approval, including local employment opportunities and improved energy security for the region; and
4. IESPL proposed appropriate design changes to safely accommodate the proposed increase to the maximum daily flow rate at the wellhead. The CER accepted IESPL's assertion that the resource and recoverable raw gas estimates remain unchanged by the proposed changes.