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

***AlphaBow Energy Ltd. v Alberta Energy Regulator,* 2023 ABCA 239**
Reasonable Care and Measures Order - Appeal

Application

AlphaBow Energy Ltd. ("AlphaBow") applied to the Alberta Court of Appeal ("ABCA") for permission to appeal a suspension order issued by the Alberta Energy Regulator ("AER") on June 5, 2023 ("Suspension Order"). The Suspension Order was issued in response to AlphaBow's non-compliance with a reasonable care and measures order (the "RCAM Order") issued by the AER in March 2023.

Decision

The ABCA adjourned the application *sine die.*

Pertinent Issues

The AER granted AlphaBow's request for a regulatory appeal of the RCAM Order and the Suspension Order on June 28, 2023. The regulatory appeals have not been heard or decided.

As there was an outstanding regulatory appeal of the Suspension Order to the AER, the ABCA determined that the application for permission to appeal was premature. As a general rule, parties should exhaust the administrative process and the available remedies before bringing an appeal or judicial review to the court. None of the exceptions to this rule were applicable in this case.

***Shell Canada Limited v Alberta (Energy)*, 2023 ABCA 230**
Oil – Judicial Review/Appeal

Appeal

This was an appeal by the Alberta Minister of Energy ("Minister" or "Appellant") from an Alberta Court of King's Bench order on judicial review. The judicial review judge quashed the Minister's screening decision refusing to convene a dispute review committee ("DRC") under the *Mines and Minerals Dispute Resolution Regulation* ("*DRR*") to review a royalty dispute between the Minister and Shell Canada ("Shell" or "Respondent"). The main issue in the dispute was the disallowance by the Minister of certain costs claimed by Shell.

The judicial review judge found that the Minister's screening decision was unreasonable and quashed the decision. The judicial review judge also declared that the Minister must convene a DRC in accordance with the provisions of the *DRR*. The judicial review judge also identified the question to be put to the DRC.

On appeal, the Minister submitted that the judicial review judge: (i) failed to apply a reasonableness standard when reviewing the Minister's screening decision; and (ii) erred in the selection of remedy by granting *mandamus* without grounds usurping, on the grounds of expediency, the Minister's discretion to screen out new issues.

Decision

The appeal was dismissed, subject to modifications to the declarations granted by the judicial review judge.

Pertinent Issues

Standard of Review

The ABCA noted that its task on an appeal from a judicial review decision is to determine whether the judicial review judge correctly identified and applied the appropriate standard of review, which accords no deference to the judicial review judge's application of the standard of review. The ABCA agreed with the parties that the standard of review when reviewing the Minister's decision was reasonableness.

The ABCA held that the Minister misinterpreted the issue that was before the judicial review judge. According to the court, the question was not whether the Minister's interpretation of the regulations was reasonable but whether it was reasonable for the Minister to conclude that Shell's position was "frivolous, vexatious or without merit." If Shell's position was not without merit, then the *DRR* mandates the question be referred to a DRC to consider both positions and make recommendations to the Minister.

The Minister provided very brief reasons for her conclusion that Shell's position was without merit. The ABCA held that the Minister's reasons did not disclose the reasoning process that led to that

conclusion, failed to address the context and purpose of the regulations and, as a result, the decision did not bear the "the hallmarks of reasonableness — justification, transparency and intelligibility" in accordance with *Canada (Minister of Citizenship and Immigration) v. Vavilov.* The ABCA, therefore, dismissed the appeal from the order quashing the Minister's screening decision that Shell's position was without merit.

Error in the Choice of Remedy

The judicial review judge quashed the Minister's screening decision but declined to remit the matter back to the Minister for reconsideration. In doing so, the judicial review judge noted that the Minister took almost three years to respond to Shell's request that a DRC be convened, and expressed concerns about the additional time that would pass, if the matter were returned to the Minister. He made the following declarations: (i) the Minister must convene a DRC in accordance with the provisions of the *DRR*; and, (ii) the question to be put to the DRC was whether the costs disallowed by the Energy Department's auditor on the basis that they were not 'solely dedicated,' were allowed costs according to the *Oil Sands Allowed Costs (Ministerial) Regulation*, interpreted as a whole.

The ABCA saw no error in the judicial review judge's determination that remitting the matter back to the Minister to consider whether to convene a DRC would serve no purpose. The ABCA also agreed with the judicial review judge that it was appropriate for him to set out the question to be referred to the DRC rather than remitting that issue back to the Minister because of the Minister's delay in responding to Shell's request.

In considering this delay, the ABCA noted that, while there is no express deadline for the Minister to provide notice that the request for a DRC meets all requirements or to specify the matters in dispute, the process deadlines set out in the *DRR* are designed to ensure an expeditious process. That design was inconsistent with a 3-year delay for the Minister to confirm the request satisfied the necessary requirements and to specify the matters in dispute. The judicial review judge was entitled to grant this declaratory relief. The ABCA, however, reworded the first declaration to better reflect its declaratory nature to read: "Shell is entitled to the establishment of a Dispute Review Committee in accordance with the provisions of the *Dispute Resolution Regulation*."

The Minister also objected that the judicial review judge's question for the DRC broadened the scope of the dispute beyond that initially raised by Shell. Having regard to the correspondence between the parties, the ABCA found that the judicial review judge erred in principle in his formulation of the issue referred to the DRC by expanding the scope of the dispute beyond what was reasonably within the contemplation of the parties. The ABCA, therefore, revised the question to be put to the DRC to read: "Whether the subject costs disallowed by the Energy Department's auditor on the basis that they were not 'Solely Dedicated' are allowed costs the *Oil Sands Allowed Costs (Ministerial) Regulation*, interpreted as a whole."

ALBERTA ENERGY REGULATOR

***Industry-Wide Closure Spend Requirement for 2024,* AER Bulletin 2023-31**
Oil and Gas - Facilities

The AER implemented an inventory reduction program described in *Directive 088: Licensee Life-Cycle Management* under the Government of Alberta's *Liability Management Framework*, which involves setting an industry-wide closure spend requirement annually.

The AER uses inactive liability to determine the industry-wide closure spend requirement, which liability is estimated pursuant to *Directive 011: Licensee Liability Rating (LLR) Program: Updated Industry Parameters and Liability Costs* and *Directive 001: Requirements for Site-Specific Liability Assessments*. The AER set an industry-wide closure spend requirement for 2024 in the amount of $700 million.

The AER announced that each oil and gas licensee with inactive wells and facilities was required to meet an individual annual mandatory closure spend quota. In setting licensee-specific mandatory closure spend, the AER considers the licensee's proportion of the total industry inactive liability and the licensee's financial health, determined under *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals* ("Directive 067"). The AER reminded licensees that financial submissions under *Directive 067* (Schedule 3) must be submitted within 180 days after fiscal year end.

***Increasing Number of Incidents of Pipeline Contact Damage During Ground Disturbance,* AER Bulletin 2023-30**
Oil and Gas - Facilities

The AER noted a 69% increase in the number of pipeline incidents related to contact damage during ground disturbance (26 incidents in 2020 to 44 incidents in 2022) over the past three years. The AER was particularly concerned with a 243% year-over-year increase in licensees contacting their own pipelines in 2022.

The AER emphasized that all persons conducting ground disturbance, including those not regulated by the AER, must follow Part 5 of the *Pipeline Rules*. Further, the AER noted that all pipeline contact damage in Alberta must first be reported to the pipeline licensee and then to the AER, even if no product was released. Incidents must be investigated to determine the cause, including what measures must be implemented to prevent future occurrences.

The AER listed some of the measures that persons conducting a ground disturbance must implement:

- Become familiar with Part 5 of the *Pipeline Rules* and sections 32, 33, and 35 of the *Pipeline Act*;
- Thoroughly search for pipelines within 30 metres of the disturbance area perimeter;
- Communicate with the licensees of the identified pipelines;
- Ensure the competency and training of their personnel;
- Keep all pipeline warning signs or markers visible and legible for the duration of the ground disturbance;
- Sufficiently hand expose the pipe for positive identification before using any mechanical equipment; and
- Ensure that the pipeline drill path is known at all times and that the pipelines that are being crossed are sufficiently exposed.

The AER additionally reminded licensees that the *Pipeline Act* and the *Pipeline Rules* require that the risks related to ground disturbance and contact damage be managed through safety and loss management systems and integrity management programs that meet the latest edition of *Canadian Standards Association (CSA) Z662: Oil and Gas Pipeline Systems.*

ALBERTA UTILITIES COMMISSION

***Emergency Billing Relief Program for Wildfire Evacuation Orders,* AUC Bulletin 2023-04**
Electricity and Gas - Billing

The AUC implemented an emergency billing relief program ("EBRP"), which temporarily paused the electric and gas utility billing for individuals affected by 2023 wildfire evacuations in Alberta. The EBRP provides billing credits to eligible utility customers, which is retroactively applied to the timeframe they were impacted by mandatory evacuations from wildfires in 2023. During a billing pause, outstanding utility bills will be temporarily paused, no late fees or penalties will be applied and no disconnections will occur.

The EBRP was developed in collaboration with various entities overseen by the AUC, including stakeholders for electric and natural gas distribution utilities, competitive retailers, the Alberta Electric System Operator ("AESO") and regulated service providers.

All stakeholders have distinct responsibilities in accordance with the program manual, which is available on the AUC's website. The EBRP manual: (i) outlines the steps for utilities to follow during a mandatory evacuation order and (ii) expectations and responsibilities across the industry when a mandatory evacuation order is in place.

On October 31, 2023, following the conclusion of the 2023 wildfire season, the AUC will consult with stakeholders to create a billing relief system for future evacuation orders that may result from emergencies such as floods, wildfires or other natural disasters.

***Alberta Electric System Operator Approval of New and Amended CIP Alberta Reliability Standards,* AUC Decision 28354-D01-2023**
Transmission Regulation - Section 19

Application

On July 25, 2023, the Alberta Electric System Operator ("AESO") forwarded a recommendation to the AUC, pursuant to s 19(4)(b) of the *Transmission Regulation* ("*T-Reg*"), to approve the new proposed Critical Infrastructure Protection ("CIP") reliability standards, integrating security baselines and modern technologies that would allow the AESO to respond to and mitigate cyber threats.

Decision

The AUC approved the proposed new CIP reliability standards, effective October 1, 2024, with the exception of one requirement, which will have a staggered implementation, as detailed in the application.

Pertinent Issues

The AESO submitted that the proposed new CIP reliability standards could be applied in the Alberta framework with only minor revisions from the original North American Electric Reliability Corporation ("NERC") revisions. Such changes would be made in response to stakeholder feedback, the most significant of which would be a phased implementation plan for one of the requirements. To align with these proposed changes, the AESO proposed the adoption of the new NERC definitions for "transient cyber asset" and "removable media," as well as "CIP Senior Manager."

Pursuant to s 19(4) of the *T-Reg*, before adopting or making reliability standards, the AESO must consult with those market participants likely to be affected. Pursuant to ss 19(5) and 19(6) of the *T-Reg*, the AUC must approve or refuse to approve each reliability standard in accordance with the recommendation of the AESO, unless an interested person satisfies the AUC that the AESO's recommendation is technically deficient or not in the public interest. The AUC was satisfied that the AESO fulfilled the consultation requirements and, since no objections were filed alleging that the proposed standards are technically deficient or not in the public interest, the AUC approved the proposed reliability standards based on the AESO recommendation.

***Alberta Electric System Operator 2022 Deferral Account Reconciliation,* AUC Decision 28293-D01-2023**

Electricity - Rates

Application

The Alberta Electric System Operator ("AESO") applied for approval to settle its 2022 net deferral account surplus ("DAR") of $18.9 million with market participants on a final basis. In addition, the AESO requested approval of a DAR methodology revision to restrict retrospective adjustments to a maximum of five years for future DAR applications.

Decision

To expedite the settlement of the deferral account balance with market participants, this decision dealt only with the AESO's proposed 2022 DAR. The AUC stated that it will issue a decision on the AESO's proposed DAR methodology revision on or before September, 29, 2023.

Pertinent Issues

One of the AESO's roles is to provide system access service ("SAS") on the transmission system through its tariff. The AESO may over- or under-collect its forecast revenue requirement as a result of AUC decisions that impact the transmission facilities owners' tariffs. The AESO has a deferral account for the over- or under-collected revenue requirement to ensure that no profit or loss results from its operation on an annual basis. This application sought approval to reconcile the AESO's revenue and costs through the deferral account.

The AESO provided a list of the reconciliations performed in past DAR applications, and outlined the relevant AUC decisions that affected prior years by a significant amount. The AUC accepted the calculation of the net deferral account surplus of $18.9 million, as submitted by the AESO. This included the one-time collection or refund as required for each settlement point and/or market participant, on a final basis.

***AltaLink Management Ltd. Application for 2023 Debt Issuance,* AUC Decision 28322-D01-2023**

Public Utilities Act – Debt Issuance

Application

AltaLink Management Ltd. ("AML"), in its capacity as general partner of AltaLink, L.P. ("ALP"), filed an application requesting approval to cause ALP to make one or more issues of senior secured notes or other debt securities in the aggregate principal amount of up to C$500 million on or before December 31, 2023, and pledge assets as security to such issuances.

Decision

The AUC approved AML's 2023 debt issuance application, as filed.

Pertinent Issues

AML submitted that continuing to fund long-lived assets with long-term debt securities that diversify the maturity profile of such securities over the expected life of such assets is in the best interests of the ratepayers.

AML is a designated owner of a public utility under the *Public Utilities Designation Regulation* and is subject to s 101 of the *Public Utilities Act* ("*PUA*"), which section requires AUC approval for debt issuance and encumbering property.

S 101(2)(a)(ii) of the *PUA* requires that the AUC determine whether: (i) the proposed issuance is to be made in accordance with law; and (ii) the AUC is satisfied regarding the purposes of the proposed debt issuance described in the application.

Based on the opinion provided by AML's legal counsel, the AUC was satisfied that due diligence was being exercised and steps had been taken to ensure that the issuance will be made in accordance with law. The AUC was also satisfied with the level of detail provided in the application to support the purposes of the issuance and accepted AML's submitted purposes of the debt securities issuance. The AUC found the credit rating-related information provided by AML satisfactory, which provided reasonable assurance that the proposed issuance of the debt securities should not have a material adverse effect on the cost of other debt recovered through AML's revenue requirement.

***AltaLink Management Ltd. ENGIE Buffalo Trial North Wind Connection Project,* AUC Decision 27290-D01-2023**
Electricity - Facility

Application

ENGIE Development Canada GP Inc. ("ENGIE") applied to construct and operate a 400-megawatt wind power plant, designated as the Buffalo Trail Wind Power Project and the Buffalo Trail North 453S Substation in Cypress County ("Power Plant"). The AUC approved the Power Plant on February 8, 2023, in *Decision 27240-D01-2023*. The AUC also approved the AESO's need identification document application for the Power Plant consisting of a new 240-kilovolt transmission line connecting the substation to AltaLink Management Ltd.'s ("AML") existing Transmission Line 983L.

In this proceeding, AML requested approval to construct and operate a 240-kV transmission line, designated as 983BL, to connect the Power Plant. The transmission line would originate at the ENGIE's substation and connect to AML's existing Transmission Line 983L in a T-tap configuration. AML would also install approximately 395 meters of underground fibre optic cable from Transmission Line 983L to the substation. The initial in-service date of August 1, 2024, for the Power Plant was changed to January 15, 2028, to avoid congestion and align with the time additional transmission capacity will become available.

Decision

The AUC approved the application from AML. The AUC noted that it is not common to approve a small transmission development with an in-service date so far in the future. However, the AUC found that given there is limited transmission capacity in the area, and that the AESO has approved an in-service date of January 15, 2028, the approval was in the public interest.

The AUC found that the applications comply with the information requirements set out in *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* ("*Rule 007*") and that the proposed transmission project was consistent with meeting the approved need and the requirements of the AESO's functional specification. The AUC was also satisfied that AML's participant involvement program met the requirements of *Rule 007*.

The AUC accepted the conclusion of AML's environmental evaluation, which predicted that environmental effects will not be significant, and expressed an expectation that AML will ensure that construction occurs outside the nesting season.

***Anita Jenkins, Decision on Preliminary Question Application for Review of Decision 27561-D01-2023 Forty Mile Wind Power Project Amendments*, AUC Decision 28311-D01-2023**
Facilities – Review and Variance

Application

Anita Jenkins ("A. Jenkins"), applied for review and variance of *Decision 27561-D01-2023* (the "Decision"). The Decision partially approved, with conditions, applications from RES Forty Mile Wind GP Corp. ("RES") to amend, construct and operate the Forty Mile Wind Power Project and the Forty Mile 516S Substation, located in the Bow Island area (the "Project"). A. Jenkins was an intervener in Proceeding 27561.

Decision

The AUC denied A. Jenkins's application to review and vary the Decision.

Pertinent Issues

Review Grounds

A. Jenkins asserted that new information emerged and became available that changed the circumstances material to the Decision, which information was contained in: (i) *AUC Decision 27486-D01-2023*, issued on April 20, 2023, and (ii) Impacts to bats report from the Committee on the Status of Endangered Wildlife in Canada, dated May 10, 2023, (the "COSEWIC Report"). A. Jenkins further alleged that the Project did not comply with regulatory requirements as RES did not provide an updated Alberta Environment and Protected Areas ("AEPA") renewable energy referral report.

Review Process

The AUC review process has two stages: a review panel decides if there are grounds to review the original decision (the "Preliminary Question"); and, if yes, it moves to the second stage to decide whether to confirm, vary, or rescind the original decision (the "Variance Question"). In this decision, the review panel decided the Preliminary Question.

AUC Findings

The AUC review panel determined that A. Jenkins did not prove that any of the grounds for review set out in s 5(1) *Rule 16: Review of Commission Decisions* were met. The AUC determined that *Decision 27486-D01-2023* did not change circumstances material to the Decision. The AUC is not bound by its decisions and considers each application on its own unique facts. A decision in prior proceeding does not create an entitlement to the same result in subsequent proceedings. The issuance of *Decision 27486-D01-2023* did not set a precedent, was not material to the Decision, and did not provide a ground for review of the Decision. Further, the AUC noted that the circumstances in *Decision 27486-D01-2023* were very different from those in the Decision.

The AUC also explained that AEPA confirmed that the original renewable energy referral report remained valid for the purposes of the Decision and that there was no need for RES to submit an updated AEPA report. The hearing panel considered A. Jenkins' argument regarding the updated report a disagreement with the hearing panel's finding, which did not constitute a ground for review.

The AUC held that neither the COSEWIC Report nor any other document discussed by A. Jenkins in relation to the Project's potential impacts to bats was published after the issuance of the Decision. A. Jenkins could have, with reasonable diligence, discovered all relevant information at the time of the proceeding. The AUC also found that none of the information contained in these documents was material to the Decision.

***Enforcement Staff of the Alberta Utilities Commission, Phase 1 Enforcement Proceeding with Salt Box Coulee Water Supply Company Ltd.,* AUC Decision 28021-D01-2023**

Markets - Enforcement

Application

AUC enforcement staff ("Enforcement Staff") filed an application with the AUC alleging that Salt Box Coulee Water Supply Company Ltd. ("Salt Box"), a public utility pursuant to the *Public Utilities Act* ("*PUA*"), committed two contraventions of *Decision 24295-D02-2020* (the "Decision").

Decision

The AUC found that Salt Box committed the two alleged contraventions of the Decision by:

(a) Failing to file audited financial statements contrary to the AUC's direction in the Decision despite having collected funds from its customers for this purpose ("Contravention 1"); and

(b) Charging monthly fees and rate riders to unconnected lot owners contrary to the rates and Terms and Conditions ("T&Cs") of service approved in the Decision ("Contravention 2").

The AUC held that it will consider penalties for these contraventions during a second phase of this proceeding, in which it will receive further submissions to determine the appropriate relief.

Pertinent Issues

Salt Box owns and operates a water utility that serves customers in four subdivisions west of Calgary. The water utility is a "public utility" as defined in the *PUA,* making Salt Box an "owner of a public utility" as defined in the *PUA*. As a result, the AUC has authority to fix Salt Box's just and reasonable rates, and T&Cs.

The Enforcement Staff filed this application after investigating Salt Box. This investigation was promoted by a series of complaints from residents in communities served by Salt Box about the fees they were being charged and a referral from the AUC advising that Salt Box had failed to file audited financial statements for 2020, as directed by the AUC in the Decision.

Contravention 1: Did Salt Box fail to file audited financial statements contrary to the Commission's direction in Decision 24295-D02-2020?

In the Decision, the AUC directed Salt Box to provide the AUC and interveners with audited financial statements for its most recent fiscal year (which was 2020) by November 1, 2021, as a post-disposition document. The AUC also approved the establishment of an audit rate rider allowing Salt Box to collect the audit cost from its customers in the amount of $15,000. Salt Box requested, and the AUC approved, a deadline extension for completing

the audit to December 7, 2021, which deadline Salt Box failed to meet.

In this Phase 1 proceeding Salt Box did not deny that it failed to file audited financial statements with the AUC and, instead, described the challenges it encountered in trying to comply with this direction. As a result, the AUC found that Salt Box failed to file audited financial statements contrary to the AUC's direction in *Decision 24295-D02-2020* and concluded that Contravention 1 was proved on a balance of probabilities.

Contravention 2: Did Salt Box charge monthly fees and rate riders to unconnected lot owners contrary to the rates and terms and conditions of service approved in Decision 24295-D02-2020?

The AUC was of the view that Contravention 2 contained two components: (i) did Salt Box charge monthly fees to unconnected lot owners; and, (ii) if yes, whether charging monthly fees and rate riders to unconnected lot owners was contrary to the T&Cs of service approved in *Decision 24295-D02-2020*. The AUC clarified that, for the purposes of this decision, it used the term "unconnected lot" to refer to a parcel of land without an established service connection to Salt Box's water distribution system, resulting in the unconnected lot being unable to take delivery of water on demand.

Charging Fees to Unconnected Lot Owners

Enforcement Staff alleged that Salt Box charged certain customers fees for the time period prior to connecting to the Salt Box water system or charged lots that were never connected, providing invoices issued by Salt Box in support of these allegations.

Salt Box did not dispute that it issued the invoices in question, including the fact that it charged some lots for the period prior to connecting and that it also charged fees to unconnected lots. Based on this, the AUC found that Salt Box charged monthly fees and rate riders to the unconnected lot owners.

Is Charging Fees to Unconnected Lot Owners Contrary to Decision 24295-D02-2020?

Enforcement Staff submitted that it was unlawful for Salt Box to charge any fees or riders to an owner of an unconnected lot because an owner of an unconnected lot did not receive "water service" and was, therefore, not "a customer" as defined in *Decision 24295-D02-2020*.

In response, Salt Box did not argue that an owner of an unconnected lot meets the definition of "customer" but asserted that it was reasonable for unconnected lot owners to pay fees because these fees secure prospective "water availability" access for lot owners.

The AUC reviewed the relevant T&Cs, examined whether the owner of an unconnected lot is a customer within the meaning of *Decision 24295-D02-2020* and the T&Cs, and assessed whether there were other reasons that would allow Salt Box to charge fees to owners of unconnected lots within its service area.

After considering the T&Cs in their entirety, and in light of the larger regulatory context, the AUC was satisfied that owners of unconnected lots are not "customers" of Salt Box, and that Salt Box was not authorized to charge any rates or fees to those persons. In addition, a review of the T&Cs as a whole did not reveal any indication that a "water availability" charge (or other charge to unconnected customers for the right to access the system in the future) was contemplated by the panel in Proceeding 24295.

In the AUC's view, *Decision 24295-D02-2020* strongly suggested an intent to calculate and apply rates to reflect the number of individuals actually receiving a supply of potable water, which was consistent with an interpretation of the T&Cs that excludes unconnected lots from the definition of "customer."

The AUC concluded that, since the T&Cs did not authorize Salt Box to charge any fees to unconnected owners, there were no other reasons that would allow Salt Box to charge fees to owners of unconnected lots within its service area. The AUC dismissed Salt Box's arguments that its water licence is a commodity that could be sold at a market value by observing that, Salt Box, as a public utility, is subject to the *PUA*. Public utilities are subject to regulation because they are monopoly providers of an essential public service and some of the purposes of regulation are to ensure that a public utility cannot refuse to serve customers, and cannot charge unjust or unreasonable rates for the service it does provide. As the owner of a regulated public utility, Salt Box cannot conduct its operations as though it sells water in a purely competitive environment.

The AUC concluded that charging monthly fees or rate riders to unconnected lot owners is contrary to *Decision 24295-D02-2020* and the T&Cs.

Remedy for the Contraventions Found in this Decision

A second phase of this proceeding will follow to determine what sanctions Salt Box shall face for contravening the Decision. The AUC requested that Enforcement Staff file its Phase 2 application on the record of this proceeding within 60 days of the release of this decision. Further, as set out in *Decision 28021-D01-2023*, Salt Box was prohibited from charging monthly fees or rate riders to owners of unconnected lots. Accordingly, the AUC will consider whether Salt Box's rates require adjustment in a future proceeding, subject to Salt Box first providing its 2020 audited financial statements.

***ENMAX Energy Corporation 2022-2023 Regulated Rate Option Non-Energy Tariff True-Up*, AUC Decision 28303-D01-2023**

Electricity - Rates

Application

ENMAX Energy Corporation ("EEC") applied for approval of its 2022-2023 non-energy regulated rate option ("RRO") tariff true-up.

Decision

The AUC approved, in part, the application from EEC. The AUC denied EEC's request to collect carrying charges on the true-up amounts. The AUC approved a rate rider of $0.1231 per day for residential customers and $0.1113 per day for commercial customers to recover the outstanding balance from EEC's RRO customers. The rate rider is effective from September 1, 2023, to February 29, 2024.

Pertinent Issues

The AUC prefers to approve rates on a final, prospective basis, which allows customers to know the final rates they will pay for any billing period before the start of the billing period. Once final rates are approved, they are not subject to any future revision or true-up because of a general prohibition against retroactive ratemaking. When the AUC approves interim rates, those interim rates stay in place until final rates are approved. After the interim rate period ends, an application is made to true-up the interim rates to the final rates for the interim period. In the true-up of interim rates, the applicant calculates the difference between (i) the revenues that it would have collected if final rates had been in place for the interim rate period; and (ii) the actual revenues collected for the same period using the approved interim rates that were in place.

The interim rate period for this application from January 1, 2022, to May 30, 2023, comprised of two time periods during which the interim rates were different. The first period was January 1, 2022, to December 31, 2022 (the "2022 Period"). The second period was January 1, 2023, to May 30, 2023 (the "2023 Period"). According to the AUC, under Rule 023: *Rules Respecting Payment of Interest* ("*Rule 023*"), an award of carrying costs is discretionary. While the AUC considered that carrying costs on adjustments from interim to final approved rates are normally excluded from recovery, *Rule 023* sets out requirements that must be met to be eligible for the payment of interest.

The AUC viewed the requirements set out in *Rule 023* to be minimum requirements and held that it may consider other relevant factors in deciding whether to exercise its discretion to award carrying charges under *Rule 023*. When assessing the period for which a balance is outstanding, the AUC considered the time between approval of interim and final rates to be relevant. According to the AUC, this interpretation is consistent with previous AUC decisions considering this issue, albeit under the previous version of *Rule 023*. For unknown reasons, the AUC decided the carrying charges issue pursuant to the previous version of *Rule 023*, which is not in force any longer, instead of relying on the relevant provisions of *Rule 023* currently in force.

For the 2022 Period, the AUC determined that the lag in obtaining final rates was largely related to EEC's choice to delay its application for final administration charges until almost a year had passed since interim rates took effect. The AUC was of the view that any carrying cost awards should take into consideration the effort of the utility to file its request reasonably promptly in order to mitigate these costs. The AUC held that there was no explanation provided by EEC concerning the lag in time in applying for final 2022 administrative charges even though the AUC did not raise this issue with EEC and did not request justification from EEC for the lag in time. Accordingly, the AUC was not persuaded that carrying charges were prudently incurred and, therefore, the AUC denied recovery of carrying charges for 2022.

Regarding the 2023 Period, the AUC considered that there was a six-month lag between the approval of interim and final rates. Therefore, the balance was outstanding for less than 12 months and the AUC did not find that EEC has met the eligibility criteria under s 3(2)(a) of *Rule 023*. Accordingly, the AUC also denied recovery of carrying charges for 2023.

CANADA ENERGY REGULATOR

***Inuvialuit Energy Security Project – Application for Authorization for Early Site Works,* CER Reasons for Decision Approval OA-1414-001**
Oil and Gas - Facilities

Application

By a letter decision issued on June 28, 2023, the CER approved an application from Inuvialuit Energy Security Project Ltd. ("IESPL") for authorization for early site works (the "ESW Application") for the Inuvialuit Energy Security Project ("IESP"). The CER approved the ESW Application subject to certain conditions and with reasons to follow. This decision contains the reasons for the ESW Application approval.

The ESW Application included the following activities:

• construction of a 4 kilometer all-weather gravel access road;

• placement of a 33.5 metre (110 feet) long bridge to cross a creek;

• construction of the Energy Centre pad; and

• installation of adfreeze piles for some of the Energy Centre structures or modules.

Decision

The CER provided the reasons for its prior decision to approve the ESW Application.

Pertinent Issues

Assessment of the Application

1. IESPL Engagement Activities

The CER found that IESPL appropriately identified and engaged those potentially impacted by the early site works, including Indigenous Peoples, landowners, communities, organizations, co-management boards, and other stakeholders. The CER was satisfied with IESPL's approach to engagement and engagement activities, including the sufficiency of the notice provided of the ESW Application.

The CER imposed Condition 11 (Commitment Tracking Table), requiring IESPL to track and fulfill all the commitments it made in the ESW Application and related submissions, including an update on the status of each commitment. This condition also required IESPL to file with the CER a list of its commitments and post the list on its IESP website, at least 45 days prior to commencing early site works activities, and continue to update it on a quarterly basis.

The CER was also satisfied that the engagement and consultation was adequate for the purpose of the CER's decision on the ESW Application, which consultation was consistent with s 35 of the *Constitution Act, 1982*.

The CER found that the early site works were unlikely to adversely affect the rights of Indigenous Peoples because of the small size and scope of the infrastructure to be constructed, and the low potential for negative impacts on the environment and socio-economic factors during and after construction.

2. Environment Matters

IESPL submitted an Environmental Protection Plan ("EPP") comprised of the following six environmental management plans: Archaeological Site Management Plan, Wildlife Management and Monitoring Plan, Permafrost Protection and Management Plan, Fish and Fish Habitat Protection Plan, Waste Management Plan, and Erosion and Sediment Control Management Plan.

The CER was satisfied that IESPL identified and committed to implementing appropriate mitigation and avoidance measures to protect the environment during the early site works. IESPL stated that several environmental procedures were not available when the application was filed but would be available when the application was evaluated in June 2023. Based on IESPL's confirmation that it would complete all outstanding procedures by June 2023, the CER imposed Condition 9 (Environmental Procedures) requiring IESPL to file the outstanding procedures at least 45 days before commencing early site works activities.

Further, to be satisfied that post-construction environmental monitoring is thorough and effective, the CER imposed Condition 18 (Post-Construction Environmental Monitoring Report), which set out the requirements for IESPL's post-construction environmental monitoring program for the IESP.

3. Socio-Economic Matters

The CER found that the early site works for the IESP will have no or negligible negative effects on socio-economic matters and that it will likely result in overall positive social and economic impacts. In reaching this conclusion, the CER considered the small size and scope of the early site works and their location on Inuvialuit private lands, the low potential for impacts on socio-economic valued components, as well as IESPL's proposed mitigation measures to address any potential negative residual effects of the early site works.

The CER was also satisfied that IESPL addressed all concerns raised to date to the satisfaction of interested parties, including its commitment to continued engagement throughout the CER regulatory processes and the lifecycle of the IESP.

4. Financial Matters

The CER approved the use of a parental guarantee from the Inuvialuit Petroleum Corporation ("IPC") as proof of financial responsibility for the ESW Application. To ensure the continued and ongoing financial position of IPC, as the entity providing the parental guarantee to the IESPL, the CER imposed two conditions.

Condition 5 (Financial Statements) required IESPL to file, no later than 10 days after the authorization for early site works was issued, signed and audited 2022 financial statements and notes for IPC, as well as confirmation that no material changes have occurred from the end date of the financial statements.

Condition 7 (Financial Material Changes) required IESPL to update the CER if there were any material changes in the financial position of the guarantor or its proof of financial responsibility.

Further, the CER imposed Condition 6 (Parental Guarantee and Insurance), which required IESPL to submit a final, signed and executed copy of the parental guarantee for approval, at least 45 days before early site works construction.

5. Engineering Matters

The CER acknowledged that northern infrastructure is subject to the effects of unique land attributes, harsh environments and climate change. The CER was satisfied that IESPL appropriately considered the permafrost and other conditions in its engineering design matters. The CER imposed Condition 19 (Permafrost Monitoring and Protection Report) to obtain updates on how IESPL monitors, documents, reports and mitigates the permafrost conditions within the IESP area on an annual basis and throughout the life of the project.

IESPL stated that the Energy Centre site plan, including the detailed foundation layout plans, were almost complete but not yet submitted to the CER. Therefore, the CER imposed Condition 14 (Energy Centre Pad and Foundation Design Drawings), requiring IESPL to file the site plan and the detailed foundation layout plans for the Energy Centre at least 60 days before commencing construction of the Energy Centre pad and the installation of civil foundation and adfreeze piles for the Energy Centre structures and modules.

To understand how IESPL will ensure that the early site works are constructed as planned and that any changes required are properly designed and implemented, the CER imposed Condition 10 (Quality Assurance/Quality Control Plan), requiring IESPL to file a Quality Assurance/Quality Control Plan at least 45 days before commencing early site works construction.

To make sure that any changes that are required to the design and construction of the early site works were properly implemented, the CER imposed Condition 15 (Post-Construction Report), requiring IESPL to file a post-construction report within 270 days after completing early site works construction.

6. Safety and Emergency Response Matters

The CER found that IESPL will sufficiently manage the safety of the early site works and that the identified hazards, the evaluation of risks and proposed mitigation measures were logical and appropriate for the proposed work activities.

To provide transparency and confidence that IESPL will complete the necessary processes and procedures to protect the health and safety of workers before early site works construction begun, the CER imposed Condition 8 (Safety and Emergency Management Documents), requiring IESPL to file updated copies of its Contractor Management Procedure, and its Incident Accident Reporting and Management Procedure, at least 45 days prior to commencing early site works construction, specifically reflecting the early site works.

***Inuvialuit Energy Security Project Ltd. – Application for Authorization for Well Workover,* CER Approval OA-1414-002 Reasons for Decision**

Oil and Gas - Facilities

Application

By a letter decision issued on June 28, 2023, the CER approved Inuvialuit Energy Security Project Ltd. ("IESPL") well workover application (the "WW Application") for the Inuvialuit Energy Security Project ("IESP"). The CER approved the WW Application subject to certain conditions and with reasons to follow. This decision contains the reasons for the WW Application approval.

In the WW Application, IESPL requested an authorization for the following activities:

- extending the wellhead and cellar to adjust for additional fill around the pad;
- constructing the well pad as a work area and to protect the permafrost;
- installing blowout prevention equipment;
- drilling out existing cement and plugs;
- circulating the well to remove debris;
- installing production tubing and a subsurface safety valve;
- insulating gas production from the permafrost;
- installing connections for the subsurface safety valve control line;
- re-installing the wellhead; and
- securing the well for a future tie-in with the compressed natural gas, propane, and synthetic diesel-producing prefabricated modular gas processing facility (the "Energy Centre").

Decision

The CER provided the reasons for its prior decision to approve the WW Application.

Pertinent Issues

Assessment of the Application

1. IESPL Engagement Activities

The CER found that IESPL appropriately identified and engaged those potentially impacted by the well workover, including Indigenous Peoples, landowners, communities, organizations, co-management boards, and other stakeholders. The CER was satisfied with IESPL's approach to engagement and engagement activities, including the sufficiency of the notice provided of the WW Application.

Throughout its engagement activities, IESPL made several commitments. The CER imposed Condition 9 (Commitment Tracking Table), requiring IESPL to track and fulfill all the commitments it made in the WW Application and related submissions, including an update on the status of each commitment. This condition also requires IESPL to file with the CER a list of its commitments and post the list on the IESP website, at least 45 days prior to commencing early site works activities and continue to update it on a quarterly basis.

The CER was satisfied that the engagement and consultation was adequate for the purpose of the CER's decision on the WW Application, which consultation was consistent with s 35 of the *Constitution Act, 1982*.

The CER found that the well workover was unlikely to adversely affect the rights of Indigenous Peoples because of the location of the well on Inuvialuit private lands, the small scope of the activities involved in the proposed well workover, and the low potential for negative impacts on the environment and socio-economic factors during and after construction.

2. Environment Matters

IESPL submitted an Environmental Protection Plan ("EPP") comprised of the following six environmental management plans: Archaeological Site Management Plan, Wildlife Management and Monitoring Plan, Permafrost Protection and Management Plan, Fish and Fish Habitat Protection Plan, Waste Management Plan, and Erosion and Sediment Control Management Plan.

The CER was satisfied that IESPL identified and committed to implementing appropriate mitigation

and avoidance measures to protect the environment during the well workover activities. IESPL stated that several environmental procedures were not available when the WW Application was filed but would be available when the application was evaluated in June 2023. Based on IESPL's confirmation that it would complete all outstanding procedures by June 2023, the CER imposed Condition 6 (Environmental Procedures) requiring IESPL to file the noted procedures, including the procedures for air, noise and light monitoring, at least 90 days prior to commencing well workover activities.

Further, to be satisfied that post-construction environmental monitoring was thorough and effective, the CER imposed Condition 13 (Post-Construction Environmental Monitoring Report), which set out the requirements for IESPL's post-construction environmental monitoring program for the IESP.

3. Socio-Economic Matters

The CER found that the well workover for the IESP will have no or negligible negative effects on socio-economic matters and that it will likely result in overall positive social and economic impacts, considering the small scope of the well workover activities and their location on Inuvialuit private lands, and the low potential for impacts on socio-economic valued components, as well as IESPL's proposed mitigation measures to address any potential negative residual effects of the well workover.

The CER was also satisfied that IESPL addressed all concerns raised to date to the satisfaction of interested parties, including its commitment to continued engagement throughout the CER regulatory processes and the lifecycle of the IESP.

4. Financial Matters

IESPL is a wholly owned subsidiary of IPC and the Inuvialuit Regional Corporation. The Inuvialuit Regional Corporation is a government entity established in 1984 to manage the settlement outlined in the Inuvialuit Final Agreement. IESPL stated that the largest financial risk it identified for the WW Application was a transport-related spill into a flowing water course. IESPL submitted evidence of insurance that it holds, including a certificate of insurance that details the liability limits for three separate policies held.

The CER approved the use of a parental guarantee from IPC as proof of financial responsibility for the WW Application. The CER also accepted IESPL's financial risk analysis. To ensure the continued financial position of IPC the CER imposed conditions 7 and 8.

Condition 7 (Parental Guarantee and Insurance) required IESPL to submit a final signed, executed copy of the parental guarantee or approval, at least 45 days before well workover construction.

Condition 8 (Financial Material Changes) required IESPL to update the CER if there were any material changes in the financial position of the guarantor or its proof of financial responsibility.

5. Engineering Matters

IESPL submitted that the purpose of the well workover phase of the IESP is to develop the TUK M-18 well to put it into production as a gas well to support the IESP. The well workover includes provisions for protection from permafrost and corrosion.

The CER found that the activities proposed for the well workover phase of the IESP are typical for putting a suspended well into production and that IESPL has provided sufficient details regarding well control measures to be employed during this work. The CER also found that IESPL demonstrated an appropriate commitment to following applicable legislation related to the equipment to be used in the well workover for the TUK M-18 gas well.

6. Safety and Emergency Response Matters

The CER was satisfied that IESPL would sufficiently manage safety hazards and, the health and safety of the well workover. The CER was also satisfied that IESPL's commitment to adhere to applicable safety standards corresponded to the CER's emergency management expectations, when combined with the emergency management framework described in the WW Application, the planned engagement with local agencies, and commitments to providing a completed emergency response plan.

To provide transparency and confidence that IESPL would complete the necessary processes and procedures to protect the health and safety of workers before the well workover begins, the CER imposed Condition 5 (Safety and Emergency Management Documents), requiring IESPL to file updated copies of its Contractor Management Procedure and, Incident Accident Reporting and Management Procedure.

The CER noted that the well workover emergency response plan submitted by IESPL lacked information related to company contact numbers, emergency response equipment, and emergency response training for the well workover activities. As a result, the CER imposed Condition 5 (Safety and Emergency Management Documents), requiring IESPL to file a revised well workover emergency response plan and related field operating guides for emergency purposes 90 days before commencing well workover activities.

***MGM Energy Corp. Application for an Operations Authorization - Shut In Well Inspections, MGM Wells, Mackenzie Delta Area,* CER Authorization Approval: OA-1202-001 Letter Decision**
Oil and Gas - Facilities

Application

MGM Energy Corp. ("MGM") applied for an authorization to inspect ten wells and four associated drilling sumps (the "Application") in the Mackenzie Delta, within the Inuvialuit Settlement Region, Northwest Territories.

Decision

The CER approved MGM's Application and issued the authorization OA-1202-001 for a seven-year term ending on 31 August 2030, subject to conditions.

Pertinent Issues

The scope of the inspections included the following:

- Verifying accessibility to the wellhead and operability of the valves and related equipment;
- Recording pressures on the tubing and annuli of the well;
- Conducting a Surface Casing Vent Flow ("SCVF") check (i.e. a bubble test); and
- Depending on the results of the above steps, additional tests may be required.

The Application did not include decommissioning and abandonment activities, and no further right of entry was required since no operation would occur on private lands. The Government of Northwest Territories confirmed that MGM has satisfied the benefit plan requirements of s 17(2) of the *Oil and Gas Operation Act* ("*OGOA*").

Assessment of the Application

Environmental Matters

The CER found that MGM has identified and committed to implementing appropriate mitigation and avoidance measures to protect the environment during the inspection activities.

Engineering Matters

The CER found that MGM provided adequate details for the inspection of the ten suspended wells in the Mackenzie Delta. The CER noted MGM's statements that sump inspections were covered by MGM's current and past water licences and land use permits, and that the activity is reported to the Inuvialuit Water Board and the Government of Northwest Territories' Department of Lands.

The CER imposed two conditions regarding engineering matters. Condition 4 (Licences and Permits) required MGM to file with the CER the most recent Water Licences and Land Use Permits issued to MGM by the appropriate regulator related to all drilling sumps associated with the suspended wells. Condition 8 (Inspection Reports) required MGM to file with the CER an inspection report within 30 days of any inspection activity related to the suspended wells and associated sumps.

The CER was satisfied that the suspended wells and sumps will be monitored and inspected to maintain their continued integrity and to prevent pollution.

Financial and Economic Matters

MGM stated it is a wholly owned subsidiary of Paramount Resources Ltd. ("Paramount"), and that Paramount is a financially strong company, capable of and committed to meeting its obligations under current regulations, including any unforeseen events arising from its operations.

MGM submitted that the most conceivable "worst case" event associated with inspection activities would be a small spill of a liquid hydrocarbon (typically diesel fuel) during bleed off operations, the clean-up and disposal costs of which was estimated at $15,270.

The CER accepted MGM's submission that the appropriate financial responsibility for this specific application was $15,270, which was related to a spill of a liquid hydrocarbon. The CER imposed Condition 5 (Financial Responsibility) requiring MGM to file for approval an executed letter of credit 30 days before the inspection activities commence.

Safety and Emergency Management Matters

The CER was satisfied that MGM's Emergency Response Plan ("ERP") was adequate for the proposed inspection activities, noting that, in the event of an accident or malfunction, the CER will hold MGM accountable for an appropriate response under the ERP. However, the CER determined that, while the information required for the ERP is complete, the information is found in various documents, which may not be readily accessible by field staff on site during the applied-for activities. The CER imposed Condition 6 (Safety Plan), requiring MGM to submit a single consolidated safety plan.