



ENERGY REGULATORY REPORT

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

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ALBERTA ENERGY REGULATOR

New Edition of Directive 020, AER Bulletin 2023-32*Oil and Gas - Well Abandonment*

On September 5, 2023, the Alberta Energy Regulator (“AER”) released a new edition of *Directive 020: Well Abandonment* (“*Directive 020*”), which sets out the requirements for routine abandonment of wells penetrating an oil sands zone. Amendments to s 5.4 of *Directive 020* changed the requirements for abandoning cased-hole wells penetrating an oil sands zone. S 5.3 allows for routine abandonment, if the subject well meets the following criteria for low thermal potential:

- The well must be within the boundary of an oil sands area that the AER has assessed as having a low potential for thermal development;
- A qualified geoscientist has determined the well has a low potential for thermal development; and
- The AER has approved a variance for nonthermal well abandonment within an oil sands area.

Reminder of Increased Risk During Migratory Bird Season, AER Bulletin 2023-33*Oil and Gas - Environment*

On September 7, 2023, the AER reminded licensees of the beginning of the migratory bird season in Alberta and their responsibility to follow waterfowl protection plans to protect migratory bird populations. Licensees must adhere to their plans and ensure that all liquid impoundments within their facilities that could potentially have an adverse impact on migratory bird populations are covered. The timing for migratory bird season can change annually depending on the weather, which may require licensees to extend their bird-deterrent programs past the previous or typical dates.

Validating Facility Operational Life-Cycle Statuses, AER Bulletin 2023-34*Oil and Gas - Facilities*

The AER announced that it would contact applicable licensees by email to validate the operational life-cycle status of their facilities, as a one-time supplemental data request. Additional information is required due to discrepancies between the AER’s

facility licensing information and the Government of Alberta’s Petrinex reporting system. Starting in January 2024, the AER will include into the licensee’s assessed inactive liability those facilities for which the operational life-cycle status cannot be verified.

The AER reminded licensees that they are expected to maintain accurate records for their facilities and all other energy-related assets, which may involve: licensees reviewing their licensed facility data in OneStop; requesting a cancellation of a licence for a facility that was not constructed; requesting the AER update the link between a Petrinex reporting facility ID and an AER facility licence; or adding or changing a link from a compressor or satellite licence to another facility licence in the Digital Data Submission system.

Mandatory Closure Spend Quotas for 2024, AER Bulletin 2023-35*Oil and Gas - Supplemental Closure Spending*

Licensees must spend a minimum amount annually on abandoning, remediating and reclaiming their inactive oil and gas sites. In *Bulletin 2023-31: Industry-Wide Closure Spend Requirement for 2024*, the AER set the 2024 industry-wide closure spend requirement at \$700 million.

Licensee-Specific Quotas

In setting the licensee-specific quotas, the AER considers each licensee’s proportion of the total industry inactive liability and the licensee’s financial health, determined using the financial information provided under *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals*. Licensees can view their 2024 mandatory closure spend quote on the AER’s OneStop website.

Supplemental Closure Spend

As of 2024, licensees are no longer able to commit to a supplemental closure spend quota. The AER will continue to explore opportunities to improve the Inventory Reduction Program. In 2022 and 2023, in exchange for committing to spend above the mandatory closure spend quota, the AER offered extensions to deadlines for surface equipment removal and expired Crown mineral lease rights. Any licences that received these extensions will keep them, provided the licensees holding them

committed to and are compliant with the 2023 supplemental closure spend and the alternative

requirements. As of January 2024, no new licences will receive alternative requirements.

ALBERTA UTILITIES COMMISSION

Interim Rule 007 Information Requirements, AUC Bulletin 2023-05*Electricity - Facilities*

On September 6, the AUC announced the introduction of new and interim information requirements relating to agricultural land, municipal land use, views, reclamation security, and land use planning as part of the regulatory review process of new power plant applications, including wind, solar, thermal, hydroelectric and other power plants.

Applications filed on or after August 3, 2023, are required to satisfy the existing information requirements in *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines*, along with the new additional interim requirements.

Power plant applications that were filed before August 3, 2023, may be required to respond to these interim information requirements, which the AUC will decide on a case-by-case basis.

Applicants who prefer not to continue developing the record of any existing applications while the pause period is ongoing may request that the AUC place their application in abeyance until the pause period expires on February 29, 2024.

AUC Inquiry Into the Ongoing Economic, Orderly and Efficient Development of Electricity Generation in Alberta, AUC Bulletin 2023-06*Electricity - Markets*

On August 3, 2023, the Alberta government issued Order in Council O.C. 171/2023, directing the AUC to inquire and report to the Minister of Affordability and Utilities on the following considerations:

1. the development of power plants on specific types or classes of agricultural or environmental land;
2. the impact of power plant development on Alberta's pristine views;
3. the implementation of mandatory reclamation security requirements for power plants;
4. the development of power plants on lands held by the Crown in Right of Alberta; and

5. the impact the increasing growth of renewables has on both generation supply mix and electricity system reliability.

On September 11, 2023, the AUC announced the inquiry into the economic, orderly and efficient development of electricity generation in Alberta.

The AUC inquiry will be separated into two modules (Module A and Module B) to explore the key issues identified in the order-in-council. The Module A process will include options for interested parties to participate by completing an online survey, providing submissions in writing, and providing submissions orally at an in-person session. The AUC established a preliminary schedule for the Module A process, with more details to be issued in due course. The AUC also advised that details related to the process steps for Module B will be announced.

Consultation on Proposed Amendments to AUC Rule 016, AUC Bulletin 2023-07*Rules - Applications for Review*

The AUC proposed amendments to Rule 016: *Review of Commission Decisions* as part of the ongoing review of its case management procedures and its objective of improving the transparency, clarity and simplicity of its rules. The proposed amendments:

- Introduce minimum information requirements expecting review applicants to identify:
 - (i) the alleged error of fact, if alleging an error of fact under s 5(1)(a); and
 - (ii) the legal standard and facts that are at issue, and explain how the AUC erred in applying the legal standard to those facts, if alleging an error of mixed fact and law under s 5(1)(a).
- Change the standard of proof for errors of fact and, mixed fact and law from 'a balance of probabilities' to 'a palpable and overriding error';
- Codify the AUC's discretion to dismiss a review application, if it does not comply with minimum information requirements or if it is out of scope of the permissible grounds for review; and

- Introduce page limits for response submissions.

2079816 Alberta Ltd. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Joffre Solar Project, AUC Decision 28399-D01-2023

Solar - Records

Application

2079816 Alberta Ltd., as general partner of PACE LP (the “Applicant”), applied under s 3 of the *Fair, Efficient and Open Competition Regulation* (“FEOCR”), seeking permission to share records not available to the public between the Applicant, PACE Canada LP (“PACE LP”) and URICA Energy Real Time Ltd, regarding the Joffre Solar Project.

Decision

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

Alberta Electric System Operator Deferral Account Reconciliation Methodology Revision, AUC Decision 28293-D02-2023

Electricity - Rates

Application

The Alberta Electric System Operator (“AESO”) applied to the AUC for approval of (i) its 2022 deferral account reconciliation (“DAR”) and (ii) changes to the deferral account balances from 2018 to 2022. The AESO also requested approval to revise its DAR methodology. On August 1, 2023, the AUC issued Decision 28293-D01-2023, approving the AESO’s 2022 DAR, deferring its decision on the DAR methodology revision.

Decision

This decision relates to the AESO’s request to revise its DAR methodology, which the AUC approved.

Pertinent Issues

The AESO may undercollect or overcollect its forecast revenue requirement through the Independent System Operator (“ISO”) tariff for three of its rate classes. To ensure that, on an annual basis, no profit or loss results from its operation, the AESO has a deferral account that is subject to AUC approval.

The AESO applied for approval of revisions to the DAR methodology to restrict retrospective DAR adjustments to a maximum of five years for future DAR applications. The AESO explained that adjustments that occur in year six and beyond would be consolidated and included in the year five deferral calculation.

The amounts that are collected through a DAR are generally relatively small when compared to the amounts collected through annual rates and Rider C. In particular, the AUC noted that the year six and beyond DAR amounts have, in recent years, made up a negligible portion of the AESO’s annual transmission revenue. Therefore, the AUC accepted that the proposed revisions are unlikely to create material and deleterious changes in individual adjustment amounts for market participants.

Further, the AUC accepted the AESO’s submission that the current DAR methodology is not efficient, because it requires the AESO to expend a disproportionate amount of resources to reconcile small adjustments for a potentially infinite number of years that provide little or no benefit to market participants. The AUC agreed that the proposed revision will provide benefits, including cost savings and efficiencies for the AESO in preparing the DAR applications, and simplicity for market participants in understanding their bills.

Alberta Electric System Operator Needs Identification Document Application and Section 15(2) Application AltaLink Management Ltd. Facility Applications Vauxhall Area Transmission Development, AUC Decision 27776-D01-2023

Electricity - Facilities

Application

The Alberta Electric System Operator (“AESO”) filed a needs identification document (“NID”) application, for approval of the need for the Vauxhall Area Transmission Development (the “NID Application”). The AESO also requested an exception under s 15(2) of the *Transmission Regulation* (“T-Reg”) from

its duties to make arrangements for the expansion or enhancement of the transmission system so that, under normal operating conditions, all anticipated in-merit electricity can be dispatched without constraint (the “S 15(2) Application”).

AltaLink Management Ltd. (“AML”) filed two applications to meet the need identified by the AESO (the “Facility Applications”). AML applied for approval to restore the capacity of Transmission Line 879L by replacing 21 structures, modifying 38 structures, and removing 1.6 kilometers of underbuilt distribution line. AML also applied for permission to rebuild Transmission Line 610L.

Decision

The AUC approved the applications from the AESO and AML for the Vauxhall Area Transmission Development.

Pertinent Issues

NID Application

The AESO stated that real-time congestion was occurring in the AESO's Vauxhall and Medicine Hat planning areas and that generation curtailment is necessary to address thermal violations on transmission lines 610L and 879L. To address congestion and generation curtailment, to remove thermal criteria violations, and to enable additional generation integration capability in the Vauxhall area, the AESO evaluated several transmission development options, including upgrading old and constructing new transmission lines.

As a preferred option, the AESO selected constructing a new 138-kilovolt (“kV”), 173-megavolt-ampere (“MVA”) circuit between the existing Fincastle 336S and Taber 83S substations, discontinuing Transmission Line 610L between Fincastle 336S and Taber 83S substations after the new 138-kV circuit is in service, and upgrading Transmission Line 879L to 118 MVA (the “Preferred Option”).

The AESO submitted that the proposed transmission development would reduce the frequency and magnitude of congestion to zero percent.

The AUC approved the AESO's Preferred Option as the most cost-effective method. The alternatives proposed by interveners would be more costly and would require reconductoring, in addition to a more

extensive replacement of the current 60-year-old transmission line in 10 to 15 years.

The AUC determined that the AESO, in evaluating the need and preparing its NID application, reasonably discharged its public interest mandate by different balancing factors, including cost, reliability and market access.

Facility Applications

Restoration of Transmission Line 879L

To meet the AESO's identified need to increase the capacity of Transmission Line 879L, AML proposed to increase line clearances along the transmission line by completing several technical steps.

In considering the application for Transmission Line 879L, the AUC made the following findings: it dismissed the argument from AML that it could not have considered a reroute based on the AESO's direction; compensation to landowners was outside its jurisdiction; the incremental impacts from the alterations to restore the transmission line were not significant; AML's participant involvement program was adequate; the transmission line's continued presence in its current alignment will result in significant agricultural impacts; the impacts of restoring the transmission line outweigh the impacts of relocating it; and the agricultural and other impacts of the current alignment are outweighed by the additional costs and delays, including those associated with prolonging congestion in the area, that would result from rerouting the transmission line. The AUC found this application to be in the public interest and approved the proposed facilities.

Rebuild of Transmission Line 610L

The AUC found that AML's preferred route had lower overall impacts because it follows existing linear infrastructure reducing impacts to land, agriculture and environmental features. In addition, its siting represents an incremental change given that it largely followed the same alignment as the existing transmission line. The preferred route was also shorter and had lower cost with fewer agricultural impacts as it avoided cultivated fields and irrigation pivots.

The preferred route was expected to have fewer environmental impacts, primarily because it was sited in a road allowance and it was anticipated to have a lesser impact on soils and terrain, surface

water, groundwater, vegetation and wildlife. The residences on the preferred route already had existing transmission infrastructure in close proximity to their properties resulting in incremental impacts to residences from the preferred route. The AUC found the preferred route to be in the public interest in accordance with s 17 of the *Alberta Utilities Commission Act*.

Exception Filing Under Section 15(2) of the Transmission Regulation

The AUC found that a s 15(2) application was required in the circumstances and approved the AESO's exception application. As the Alberta Interconnected Electric System ("AIES") was experiencing real-time congestion under normal system conditions on 138-kV transmission lines 610L and 879L in the AESO planning areas of Vauxhall and Medicine Hat, the AESO was curtailing generation in the area to address thermal criteria violations on those transmission lines.

Legislative framework

The AUC held that under ss 15(1)(e)(i) and (ii) of the *T-Reg*, the AESO must plan a transmission system so that, 100 percent of the time, transmission of all anticipated in-merit electric energy can occur when all transmission facilities are in service, and 95 percent of the time, transmission of all anticipated in-merit electric energy can occur when operating under abnormal operating conditions. This is known as the "100-95 requirement." Congestion above the 100-95 requirement is known as "excess congestion." Under s 15(1)(f) of the *T-Reg*, the AESO must make arrangements for the expansion or enhancement of the transmission system so that the 100-95 requirement is met.

When is a Section 15(2) application required?

According to the AUC, the AESO has the statutory duty to fairly and economically manage the timing for the construction of an uncongested system. The AESO also has statutory discretion in terms of the timing to achieve this objective. The AESO's statutory discretion is limited by two key provisions: first, the AESO must exercise its powers and carry out its duties, responsibilities, and functions in a timely manner that is fair and responsible; and, second, s 15(1)(f) of the *T-Reg* establishes a duty for the AESO to make arrangements for enhancements

or upgrades to the transmission system to avoid excess congestion.

The AUC was not persuaded by the AESO's submissions that "making arrangements" should be interpreted generously to include steps such as the AESO initiating a project. The AUC understood "arrangements" to refer to putting things into order and following a plan. The AESO necessarily requires a degree of flexibility and discretion to carry out its statutory duties and the AESO's interpretation would make s 15(2) applications even more exceptional, thereby reducing the regulatory burden. However, the interpretation proposed by the AESO would result in the AUC having effectively no oversight role concerning the AESO's s 15(1)(f) duty.

When Should a Section 15(2) Application Be Filed?

The AUC found that s 15(2) does not require the AESO to make a s 15(2) application before excess congestion occurs on the system. The finding was based on the following reasons: first, s 15(2) of the *T-Reg* does not explicitly dictate when the AESO must make an exception filing to the AUC; second, the AUC was persuaded by the AESO's submissions that congestion can arise quickly and unexpectedly; and third, transmission costs are paid by load customers and the AUC did not find it to be in the public interest to move forward with transmission projects until the AESO is sufficiently certain that they will be needed.

As a result, the AUC expressed an expectation that the AESO would file a s 15(2) of the *T-Reg* application before excess congestion occurs, when it is reasonable and practical to do so, and that the AESO will need to determine when to make a s 15(2) application on a case-by-case basis, balancing several key factors.

What Information Should be Included in a Section 15(2) Application?

The AUC found that the information that the AESO must include, at minimum, was based on the statutory scheme. Considering that the AESO has flexibility in terms of the timing to achieve its duties under s 15(1)(f), the AUC's oversight role under s 15(2) in granting temporary, specific and limited exceptions, and the wording in s 15(2), the AUC found that a s 15(2) application should, at minimum, contain sufficient information for the AUC to assess the following:

- The excess congestion forecasted or currently occurring;
- The AESO's plan to remedy the excess congestion; and
- The period that the exception will apply.

The AUC found that the AESO has provided adequate information to demonstrate that a s 15(2) exception was needed in the circumstances and approved the application.

Compliance Filing

The AUC directed the AESO to file a compliance filing and provide an update on the record of this proceeding by September 30, 2024, advising if the excess congestion was remedied and, if not, when the AESO reasonably expects the excess congestion to be remedied.

Apex Utilities Inc. 2023-2024 Unaccounted-For Gas Rider E and Rider H, AUC Decision 28368-D01-2023

Gas - Rates

Application

Apex Utilities Inc. ("AUI") applied for approval of its 2023-2024 unaccounted-for gas ("UFG") Rate Rider E of 1.07 percent and Rate Rider H of 1.09 percent, which represented an increase of 0.05 percent and 0.06 percent for Rider E and Rider H, respectively, from the previously approved amounts.

Decision

The AUC approved AUI's UFG Rate Rider E of 1.07 percent and Rate Rider H of 1.09 percent, as filed, effective November 1, 2023.

Pertinent Issues

Unaccounted-for gas refers to the variance between the amount of natural gas that goes into the distribution system and the deliveries actually received by customers. There are several reasons why gas may be lost throughout the distribution system. The causes can generally be categorized into (i) physical losses and (ii) measurement and accounting errors.

In accordance with the current regulatory framework, the cost of UFG is ultimately passed on to customers

through retailers; gas producers using the distribution system to deliver their product also pay for their share of UFG. In AUI's case, this is done through Rider E and Rider H.

Rider H recovers UFG in kind from all retailers and default supply providers that use the AUI distribution system. Rider E recovers UFG associated with producer transportation service to ensure the quantity of gas AUI delivers on behalf of gas producers is kept in balance with the quantity of gas AUI receives from its producers.

UFG Calculations and Rider E and Rider H Amounts

AUI indicated that the most significant causes of UFG, in the order of estimated contribution to overall UFG on its system, were the following:

- Third-party pipeline damages;
- Pipeline leaks;
- Safe purging of natural gas into the atmosphere due to construction activities;
- Measurement issues, including meter failures and billing errors;
- Gas theft; and
- Natural gas releases due to normal system operations, such as purging and maintenance.

The AUC was satisfied that AUI calculated UFG Rider E and Rider H accurately and consistently with the approved method. The AUC was also satisfied that the variances in UFG levels, such as those submitted by AUI, can be expected from normal operations of the gas distribution system.

Compliance with Previous AUC Directions

AUI further provided information in compliance with the AUC's directions in Decision 27552-D01-2022 regarding AUI's 2022-2023 Rider E and Rider H. The information included monthly data for the period of June 2013 to May 2023, UFG by region, and a description of actions taken to reduce UFG and UFG fluctuations.

The AUC reviewed the data and information provided by AUI in response to its directions and

determined that AUI complied with all directions contained in Decision 25772-D01-2022.

ATCO Electric Ltd. Decision on Preliminary Question Application for Review and Variance of Decision 27062-D01-2023 2023-2025 General Tariff Application and Negotiated Settlement Agreement, AUC Decision 28241-D01-2023 Electricity – Application for Review

Application

ATCO Electric Ltd. (“AE”) applied for a review of Decision 27062-D01-2023, (the “Decision”) concerning AE’s 2023-2025 general tariff application (“GTA”).

Decision

The AUC dismissed the application from AE for review and variance of the Decision.

Pertinent Issues

The Decision concerns AE’s GTA for the 2023-2025 period. In 2018, the AUC approved an application filed by AE and AltaLink Management Ltd. to construct and operate a transmission line to connect the Municipality of Jasper, Jasper National Park, and the surrounding area (“Jasper”) to the provincial power grid. In 2019, the AUC authorized AE to discontinue operation of the Jasper Palisades Power Plant, which previously provided Jasper with electricity, and to decommission and salvage it. At the time of AE’s last depreciation study, AE anticipated that 2020 would be the year of final retirement for all the assets comprising the Jasper Palisades Power Plant. Accordingly, commencing in 2021, AE set a depreciation rate for all Jasper Palisades Power Plant asset accounts to zero percent, notwithstanding that AE intended to continue to record an annual amortization of reserve differences true-up amount over the 2023-2025 test period.

AE then prepared a sales offering for the Jasper Palisades Power Plant, as required under the *Isolated Generating Unit and Customer Choice Regulation* (“ISGUCCR”). While doing so, AE discovered it had recorded switchgear assets that were part of the Jasper Palisades Power Plant in incorrect depreciable transmission asset accounts, instead of the correct power plant asset accounts. This meant that, from 2009 onwards, the switchgear assets were depreciated at incorrect depreciation rates reflecting longer-lived transmission assets. AE

requested, in its GTA, that the hearing panel approve a one-time \$7.5 million adjustment to its depreciation expense to correct the accounting error and to allow the recovery of the amount in 2023. The AUC denied the request.

AE asserted that the hearing panel made five errors of fact, or mixed fact and law where the legal principle is not readily extricable, in relation to its findings in the Decision, which are discussed below.

Did the AUC Err in Mixed Fact and Law by Concluding it is Not Just and Reasonable to Allow Recovery of the \$7.5 Million Adjustment

AE argued that the AUC erred in applying the just and reasonable standard to facts and policy considerations arising from honest mistakes generally and the accounting error specifically. During the original proceeding, AE stated that the AUC did not consider the impacts or fairness to the utility.

AE further submitted that the AUC’s determination that AE had foregone its reasonable opportunity was factually incorrect. Because AE tariffs from 2009 to 2020 were based on the mistake of capitalizing the switchgear assets to the incorrect accounts, AE submitted that its tariffs did not and could not provide a reasonable opportunity to recover the entirety of the switchgear asset costs over this time frame. Therefore, it did not forgo this opportunity. AE further argued that the hearing panel erred in mixed fact and law by applying the “reasonable opportunity” only to the 2009-2020 timeframe, rather than the 2023-2025 timeframe.

The AUC determined that AE’s grounds were outside the scope of AUC Rule 016: *Review of Commission Decisions* (“Rule 016”). The AUC emphasized that a review panel’s task is not to retry an application based on its interpretation of the evidence nor to second guess the weight assigned to any evidence by a hearing panel. The AUC saw no compelling reason to depart from this approach. The review panel was not persuaded that there is an error of fact, or mixed fact and law, which was material to the decision and existed on a balance of probabilities, and dismissed ATCO’s first ground of review on this basis.

Did the AUC Err in Fact, or Mixed Fact and Law, by Concluding that AE had “Forgone” the Reasonable Opportunity to Recover the

\$7.5 Million Adjustment in the 2023-2025 Tariff

AE argued that the AUC conflated its honest mistake with foregoing a reasonable opportunity to recover its costs under s 122 (1)(a) of the *Electric Utilities Act* (“EUA”). The AUC determined that the hearing panel was live to the reasonable opportunity requirement, whether AE had a reasonable opportunity to recover its investments from 2009 to 2020 and whether it was reasonable to include the costs at issue in AE’s 2023-2025 tariff. The AUC dismissed this ground for review raised by AE as it was not persuaded that there is an error of fact, or mixed fact and law, which was material to the decision and existed on a balance of probabilities.

Did the AUC Err in Fact by Concluding that AE Did Not Apply Sufficient Diligence in Identifying the Accounting Error Sooner

AE submitted that its accounting error arose from an honest mistake. It argued that the AUC erred in fact when it found that AE made a second error in 2016 when AE did not discover the accounting error in response to a specific AUC direction in Decision 20272-D01-2016. AE argued that the 2016 direction did not specifically direct AE to undertake a physical fixed asset verification check, which is how AE ultimately identified the error at the time of sale. Therefore, the AUC erred in concluding that AE, having failed to conduct such a check, did not apply sufficient or reasonable diligence, or otherwise failed to comply with the 2016 direction.

The AUC observed that the 2016 direction was regarded as a targeted additional opportunity for AE to identify and correct the error that existed during a 12-year continuous period, as the 2016 direction was focused on the Jasper Palisade Power Plant assets. Since the hearing panel found that reasonable opportunities existed for AE to discover the error over a 12 year continuous period, the review panel’s task is not to retry AE’s 2023-2025 GTA based upon its own interpretation of the evidence nor is it to second guess the weight assigned by the hearing panel to various pieces of evidence. The AUC was not persuaded that these grounds represent an error as required under *Rule 016* and dismissed this ground.

Did the AUC Err in Fact by Finding that the Proposed \$7.5 Million Adjustment was Inconsistent with the Purpose of the Amortization of Reserve Differences Account

In Proceeding 27062, AE argued that its proposed depreciation adjustment would be consistent with the amortization reserve for differences (“ARD”) mechanism. The hearing panel disagreed, finding that AE’s request was inconsistent with the purpose of the ARD mechanism in the specific circumstances of the case.

AE argued that the AUC erred in finding that ARD is restricted to true-up past “mis-estimates.” AE submitted that ARD refunds or collects any surpluses or shortfalls of accumulated depreciation over the average remaining life of an asset account.

The review panel was not convinced that the findings in the Decision referred to by AE extend to a finding that a transfer of assets more generally is not permitted under the ARD mechanism. The review panel further noted that in the Decision the hearing panel qualified its findings, specifying that they apply in the specific circumstances for reasons noted in that decision.

The AUC determined that AE was requesting that the review panel retry the 2023-2025 GTA based on its own interpretation of the evidence and to second guess the weight assigned by the hearing panel to various pieces of evidence. The AUC declined to do so.

Further, AE stated that, contrary to the finding in the Decision that “in particular, the [AUC] rejects [AE’s] suggestion that this mechanism, in effect, confers a specific entitlement that provides it with an indemnity for its errors related to mass property accounting and depreciation practices,” it did not argue or state that the ARD “conferred a specific entitlement that provides it with an indemnity for its errors.” Rather, AE argued, its position in Proceeding 27062 was that in the absence of its forthcoming application under the *ISGUCCR*, where the undepreciated capital cost for the assets could be recovered from the Balancing Pool, the recalculation of ARD at the time of the next depreciation study would be another “opportunity” to true up the deficiency in accumulated depreciation because of the misclassification. AE submitted that the AUC’s characterization of the requested relief in the Decision is an error of fact.

The review panel determined that the hearing panel understood that AE, as a general practice, updates the ARD true-up at the time of a new depreciation study. The AUC considered this general ARD true-up practice to be a separate issue from AE’s argument in Proceeding 27062 that the \$7.5 million

depreciation adjustment to the ARD was appropriate in the circumstances. Therefore, the AUC dismissed this ground for review.

Did the AUC Err in Fact, or Mixed Fact and Law, in Concluding that the "Correct Undepreciated Balance" of the Switchgear Assets Should be \$0

AE argued that the hearing panel erred in stating that an issue not covered in the negotiated settlement agreement and denied by the AUC was AE's request to collect \$7.5 million in depreciation related to the Jasper Palisades amounts that were incorrectly accounted for, and determined that the correct undepreciated balance concerning the switchgear assets should be \$0. AE submitted that there was no factual basis for the hearing panel to conclude that the accurate undepreciated balance should be \$0 for purposes of s 20 of the *ISGUCCR*.

The review panel held that, in the Decision, the hearing panel found that the \$7.5 million of undepreciated capital cost connected with the switchgear assets was a permanent capital disallowance and was not recoverable from current ratepayers. The AUC agreed with intervenor submissions that the finding that undepreciated cost should be \$0 reflects the hearing panel's finding that no further undepreciated costs connected with the switchgear assets would be recoverable from ratepayers from 2023 onwards. The AUC was not convinced that an error of fact, or mixed fact and law, which was material to the Decision and existed on a balance of probabilities. The application for review was dismissed.

ATCO Electric Ltd. Loyalist Fibre Optic Connection Project, AUC Decision 28408-D01-2023

Communication - Facilities

Application

ATCO Electric Ltd. ("AE") applied for permission to construct and operate 640 meters of underground fibre optic cable from AE's existing Loyalist 903S Substation to its existing optical protection ground wire on Transmission Line 9L46. The project was located approximately five kilometers southwest of Monitor, Alberta.

Decision

The AUC approved the application as filed.

Pertinent Issues

The AUC determined that the participant involvement program met the requirements of *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines*. The project site was close to an existing roadway, no vegetation clearance was required and the facilities were located underground. As a result, the AUC agreed with AE that the effects on wildlife and the environment would be minimal.

City of Calgary Decision on Preliminary Question Application for Review of Decision 26616-D01-2022 2023 Cost-of-Service Review, AUC Decision 28244-D01-2023

Gas - Application for Review

Application

The City of Calgary ("Calgary") applied for a review and variance of Decision 26616-D01-2023 regarding the ATCO Gas ("AG") and Apex Utilities Inc. ("Apex") 2023 cost-of-service applications (the "Decision").

Decision

The AUC denied the application from Calgary. Calgary failed to demonstrate that there were changed circumstances material to the Decision, which occurred since its issuance, as required under s 5(1)(c) of *Rule 016: Review of Commission Decisions* ("Rule 016").

Pertinent Issues

In its application, Calgary relied solely on s 5 (1)(c) of *Rule 016*, which requires the applicant to demonstrate that there are changed circumstances material to a decision that occurred since its issuance. In the Decision, the hearing panel assessed AG's forecast 2023 revenue requirement, approving certain forecast costs and denying or directing adjustments to the calculation of others, without the benefit of data showing AG's 2022 actual financial performance. According to Calgary, AG exceeded the achieved return on equity ("ROE") thresholds for a reopener proceeding as set out in Decision 20414-D01-2016 (Errata).

Calgary submitted that the following are changed circumstances that were material to the Decision and occurred since the Decision was issued:

- (a) AG's 2022 ROE;
- (b) AG's exceedance of the +/-500 basis point reopener threshold for 2022;
- (c) AG's exceedance of the +/-300 basis point reopener threshold for 2021 and 2022; and
- (d) the events described in (b) and (c) are the second time that AG has exceeded those reopener thresholds in the final two years of a performance-based regulation ("PBR") term, having also done so in the last two years of the first generation PBR term.

Although Calgary exceeded the 30-day deadline for filing a review application, the AUC exercised its discretion to consider the application.

The review panel determined that the circumstances set out above in paragraphs (b) through (d) are the regulatory consequences of the circumstance set out above in paragraph (a), which is AG's achieved 2022 ROE. AG's exceedance of its performance based regulation ("PBR2") plan reopener thresholds triggers its own regulatory mechanism. As a result, the only item the AUC could consider a changed circumstance for a reason for review was AG' 2022 achieved ROE.

The review panel was satisfied that AG' 2022 achieved ROE is a changed circumstance that has occurred since the Decision was issued. The review panel agreed with the finding of the hearing panel that AG' 2022 actual results may differ from what was forecast. It acknowledged that AG had earned more than its approved ROE in each of the years of the PBR2 term up to the time the Decision was issued and recognized that AG was entitled to do so under PBR incentives. The hearing panel concluded that what AG earned or did not earn in the past has no bearing on its statutory right to a reasonable opportunity to earn the approved rate of return in the future. As a result, the review panel determined that AG' 2022 ROE was not a circumstance material to the Decision.

Concord Coaldale GP2 Ltd. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Coaldale Solar Project, Decision 28413-D01-2023
Solar – Records

Application

Concord Coaldale GP2 Ltd. ("Coaldale GP2") applied under s 3 of the *Fair, Efficient and Open Competition Regulation* ("FEOCR"), seeking permission to share records not available to the public between Coaldale, Concord Coaldale Partnership, URICA Energy Real Time Ltd. and URICA Asset Optimization Ltd. The requested order related to the Coaldale Solar Project (asset ID COL1), which was located near the town of Coaldale and consisted of a 22-megawatt (MW) solar plant and a 15-MW battery energy storage system.

Decision

The AUC was satisfied that Coaldale GP2 had demonstrated that: (i) the sharing of records was reasonably necessary for Coaldale GP2 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.

Concord Monarch GP2 Ltd. Application for an Order Permitting the Sharing of Records not Available to the Public Regarding the Monarch Solar Project, AUC Decision 28412-D01-2023
Electricity - Records

Application

Concord Monarch GP2 Ltd. ("Concord") applied, under s 3 of the *Fair, Efficient and Open Competition Regulation* ("FEOCR"), seeking permission to share non-public records related to the Monarch Solar Project ("MON1") between Concord Monarch, Concord Monarch Partnership, URICA Energy Real Time Ltd. and URICA Asset Optimization Ltd.

Decision

The AUC was satisfied that Concord had demonstrated that: (i) the sharing of records was reasonably necessary for it 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.

Concord Vulcan GP2 Ltd. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Vulcan Solar Project, AUC Decision 28433-D01-2023

Solar - Markets

Application

Concord Vulcan GP2 Ltd. ("Vulcan GP2") applied pursuant to s 3 of the *Fair, Efficient and Open Competition Regulation* ("*FEOCR*"), seeking permission to share records not available to the public regarding the Vulcan Solar Project consisting of a 22-megawatt ("MW") solar plant and a 16-MW battery energy storage system. Vulcan GP2 applied to share the records between Vulcan GP2, Concord Vulcan Partnership ("Vulcan Partnership"), URICA Energy Real Time Ltd. ("URICA Real Time") and URICA Asset Optimization Ltd. ("URICA Optimization").

Decision

The AUC was satisfied that Vulcan GP2 had demonstrated that: (i) the sharing of records was reasonably necessary for Vulcan GP2 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.

Direct Energy Regulated Services Default Rate Tariff and Regulated Rate Tariff 2023 Interim Rates True-Up, AUC Decision 28362-D01-2023

Electricity/Gas – Rates

Application

Direct Energy Regulated Services ("DERS") applied for approval of the 2023 interim rates true-up balances for its default rate tariff ("DRT") and regulated rate tariff ("RRT"). The interim rates were in place from January 1, 2023 to June 30, 2023. To collect the true-up balances, DERS requested approval of a DRT and RRT Rider C2, monthly DRT

collections through the gas cost flow-through rate ("GCFR"), and a single-month addition to its labour procurement line item in the GCFR.

Decision

The AUC approved DERS' recovery of its interim true-up balances through the following mechanisms:

- collections through the GCFR from October 2023 to March 2024;
- DRT and RRT Rider C2 dollar per day per site charges, effective from October 1, 2023, to March 31, 2024; and
- adding the DRT energy-related labour costs to its procurement line item in its monthly GCFR filing for October 2023.

In addition, the AUC directed DERS to submit a post-disposition filing on the record of this proceeding, if DERS determines that the over- or under-collections through the 2023 and 2024 Rider C2 are not significant enough to warrant a further true-up. The AUC also directed DERS to file an application on or before June 30, 2024, if DERS determines that the over- or under-collections are significant enough to warrant a further true-up. That application must include the actual RRT and DRT Rider C2 revenues by rate class, the corresponding approved balances, the resulting differences, and DERS' comments on whether any of the resulting differences should be trueed up, and if so, how the true-up should occur.

Pertinent Issues

DERS must apply to the AUC for approval of its DRT and RRT non-energy and energy-related revenue requirements. The energy-related revenue requirement consists of the business expenses directly related to the procurement of energy, while the non-energy revenue requirement represents the business expenses related to the administration of the DRT and RRT. The AUC determined three issues.

Issue 1: Interim rates true-up amounts

The AUC was satisfied that DERS calculated the true-up amounts correctly and approved the true-up amounts for the period between January 1, 2023, and June 30, 2023.

Issue 2: Proposal to collect the interim rates true-up amounts through Rider C2 and the GCFR

The AUC approved the interim true-up balances recovery through the mechanisms described above. The AUC found that the six-month time period appropriately distributes the true-up balance in a way that minimizes the impact on customers' monthly bills.

Issue 3: Proposal to file an application providing actual and forecast Rider C2 revenue

The AUC found DERS' proposal to file an application providing actual Rider C2 revenue to test any over- or under-collections on forecasted amounts to be beneficial for assessing future rate rider requirements. The AUC directed DERS to take specific steps, depending on whether or not any over- or under-collections of forecasted amounts were significant.

Enterprise Solar GP Inc. Enterprise Solar Project Amendments, AUC Decision 28315-D01-2023
Electricity - Facilities

Application

Enterprise Solar GP Inc., on behalf of Enterprise Solar LP ("Enterprise Solar"), filed a letter of inquiry with the AUC for amendments to the approved but not yet constructed Enterprise Solar power plant and substation. The amendments included the final equipment selection for the power plant and substation.

Decision

The AUC approved the power plant and substation amendments, finding them to be in the public interest having regard to the social, economic, and other effects, including effects on the environment.

Pertinent Issues

Enterprise Solar had approval to construct and operate the 65-megawatt Enterprise Solar Power Plant Project, and the Enterprise 1070S Substation, near the town of Vulcan. Enterprise Solar applied for amendments to the final equipment selections. Wheatlands Industries Ltd, an operator of the nearby Vulcan/Kircaldy aerodrome, filed a statement of intent to participate, which was subsequently withdrawn.

The AUC determined that the information requirements specified in *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* were met.

The AUC found the participant involvement program compliant and, given that the sole prospective intervenor indicated that its concerns had been addressed, accepted that there are no known outstanding concerns. The amended project remained on private, cultivated lands that were assessed in the original environmental evaluation, and all identified environmental setbacks were maintained.

Enterprise Solar submitted an updated noise impact assessment, indicating that predicted cumulative noise levels are slightly higher compared to the originally approved project. Nevertheless, the amended project was expected to comply with permissible sound levels.

The revised solar glare assessment predicted a reduction in the expected glare meaning that the amended project would not generate any glare that would be received by nearby receptors. Enterprise Solar stated that no adverse environmental impact will be caused by the proposed work.

The AUC was satisfied that the proposed amendments are of a minor nature, that no person was directly and adversely affected by the proposal and that no significant adverse environmental impact will be caused by the proposed alterations.

IPC Canada Ltd. Blackrod Cogeneration Power Plant, AUC Decision 28187-D01-2023
Electricity - Facilities

Application

IPC Canada Ltd. ("IPC") applied to construct and operate a 33.06-megawatt ("MW") natural gas-fired cogeneration power plant and a 2.5-MW dual fuel diesel/natural gas-fired emergency backup power plant (the "Project"). The Project was a part of the Blackrod Commercial steam-assisted gravity drainage facility construction for which IPC applied to the AER for *Environmental Protection and Enhancement Act* ("EPEA") amendments of its original approval issued by the AER in 2016.

Decision

The AUC found that approval of the Project is in the public interest having regard to the social, economic, and other effects of the power plants, including its effect on the environment.

Pertinent Issues

The AUC determined that the information requirements specified in *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* ("Rule 007") were met, and that the participant involvement program complied with the requirements of *Rule 007*.

The AUC found that the noise impact assessment, which predicted that cumulative sound levels would comply with the daytime and nighttime permissible sound levels, demonstrated that the Project met the requirements of *Rule 012: Noise Control*.

The AUC accepted the air quality assessment report, which concluded that air emissions would comply with *Alberta Ambient Air Quality Objectives*.

The AUC was satisfied that the potential environmental effects of the project were not significant and could be mitigated, as detailed in the environmental review.

As an environmental protection plan ("EPP") was not submitted with the application, the AUC imposed a condition of approval requiring IPC to file a stand-alone, project-specific EPP no later than two months after the *EPEA* amendment approvals were received and no later than one month before construction was scheduled to begin.

Market Surveillance Administrator Application for Approval of a Settlement Agreement Between the Market Surveillance Administrator, Canadian Hydro Developers Inc. and TransAlta Corporation, AUC Decision 28217-D01-2023

Electricity – Markets

Application

The Market Surveillance Administrator ("MSA") applied for approval of a settlement agreement (the "Settlement") between the MSA, Canadian Hydro Developers Inc. ("Canadian Hydro"), and TransAlta Corporation, ("TransAlta") under s 44(2) and s

51(1)(b) of the *Alberta Utilities Commission Act* ("AUC Act").

Decision

The AUC approved the Settlement between the MSA, Canadian Hydro and TransAlta, as filed.

Pertinent Issues

After a referral by the AESO, the MSA began an investigation regarding conduct that occurred between October 26, 2020, and June 1, 2021, that related to the Summerview 1 battery storage asset ("SUM1"). The investigation found that TransAlta and Canadian Hydro had failed to ensure that SUM1 was equipped with a governor that had control settings providing an immediate, automatic and sustained response to frequency deviations on the Alberta Interconnected Electric System ("AIES") (the "Governor Requirement"). This resulted in failure to meet the response requirement set out in ISO Rule 205.5. from the date of commissioning to June 1, 2021, and failure to comply with ss 6 and 20.8 of the *Electric Utilities Act* and s 2(d) of the *Fair, Efficient and Open Competition Regulation* (the "Contravention").

In accordance with the Settlement, the MSA requested approval of an administrative penalty for Canadian Hydro and TransAlta in the amount of \$2,470,204.68, and MSA's costs of the investigation and this application in the amount of \$65,000.00. TransAlta also undertook and agreed to undertake additional corrective actions, including meeting with the MSA to share and discuss the progress of implementing the corrective actions.

The AUC held that it has jurisdiction under s 56(4)(b) of the *AUC Act* to provide direction or make any order it considers appropriate in respect of a matter brought before it by the MSA under s 51(1)(b) of the *AUC Act*. Furthermore, the AUC held that it has jurisdiction under s 63 of the *AUC Act* to impose an administrative monetary penalty, including any terms or conditions it considers appropriate.

In approving the Settlement, the AUC noted that the parties to the settlement considered factors listed in s 4 of *Rule 013: Criteria Relating to the Imposition of Administrative Penalties* ("Rule 013"). Furthermore, based on s 3 of *Rule 013*, the AUC placed significant weight on the fact that TransAlta and Canadian Hydro fully and completely cooperated with the MSA in the course of its investigation, including

TransAlta's efforts to implement a program of corrective actions to prevent the recurrence of the same or similar contraventions.

As a result, the AUC found that the proposed settlement agreement was fair, reasonable and within a range of acceptable outcomes, and that, because the resulting settlement adequately addressed the contraventions, approval of the Settlement was in the public interest.

***Office of the Utilities Consumer Advocate
Decision on Preliminary Question Application for
Review of Decision 26615-D01-2022 2023 Cost-
of-Service Review, AUC Decision 28334-D01-
2023***

Electricity - Application for Review

Application

The Office of the Utilities Consumer Advocate ("UCA") applied to review Decision 26615-D01-2022 (the "Decision"), regarding ATCO Electric Ltd. ("AE") and FortisAlberta Inc.'s ("Fortis") 2023 cost-of-service applications review.

Decision

The AUC denied the UCA's application for review.

Pertinent issues

The UCA submitted that, in its application, it relied on the issues that were essentially identical to those identified by the City of Calgary in its review application in Proceeding 28244.

The AUC considered that, for all relevant purposes, the applications in this proceeding and Proceeding 28244 were substantially identical, except that the application in this proceeding dealt with AE and Fortis, and the application in Proceeding 28244 dealt with ATCO Gas and Apex Utilities Inc.

For the reasons expressed in Decision 28244-D01-2023, the AUC determined that the UCA's submissions failed to demonstrate that there were changed circumstances material to the decision, which occurred since its issuance, as required by s 5(1)(c) of *Rule 016: Review of Commission Decisions*.

***Strathcona County Water Supply Agreement with
Capital Region Northeast Water Services
Commission, AUC Decision 28422-D01-2023
Water - Rates***

Application

Strathcona County applied to the AUC for approval of a water supply agreement entered into with the Capital Region Northeast Water Services Commission ("CRNWSC"), which agreement will have a 20-year term, beginning April 26, 2023 (the "Agreement").

Decision

The AUC approved the Agreement holding that it was necessary and proper for public convenience and that it properly served the public interest. The AUC also noted that the asset transfer of a waterline referred to in the Agreement did not require AUC approval under s 30(1) of the *Municipal Government Act*.