

assumed facts not in evidence, by applying these assumed or erroneous facts to the legal test, and by substituting the business decisions for the utility with its own. Specifically, Corix sought to recover \$1,255,000 from ratepayers for a project carried out in 2022 (the “Project”).

In assessing the original application, the Hearing Panel was required to determine if the costs were prudently incurred, and if the associated increase to rates was just and reasonable. The Hearing Panel ultimately disallowed one-third of the Project costs based on its prudence review. This determination was premised on the Hearing Panel’s understanding that at least some portion of the costs were driven by the need to repair damages caused by deficient repair work conducted in the aftermath of the 2013 floods (the “2013 Work”). The Hearing Panel found that it was not just and reasonable to recover the entirety of the \$1,255,000 in Project costs from ratepayers.

Corix argued that the Hearing Panel erred in fact by finding that the 2013 Work was deficient and by finding a direct causal connection between the 2013 Work and the Project. Corix also argued that the Hearing Panel made an erroneous inference that it acted imprudently in not pursuing legal or regulatory recourse. Further, Corix submitted that these errors of fact formed the basis for errors of mixed fact and law, insofar as the AUC applied these facts to a legal test. Lastly, Corix stated that the Hearing Panel’s substitution of its own business decision for Corix amounts to an error of mixed fact and law.

Corix’s initial application was not seeking approval of the costs of the 2013 Work as these costs were largely funded by a government grant. Rather, Corix’s application was seeking approval of the Project costs. Corix, in response to an AUC information request, clarified that, as part of the 2013 Work, parts were installed that did not meet needed specifications resulting in the 2013 Work being deficient. The Review Panel was not persuaded that the Hearing Panel erred in fact by inferring that the 2013 Work was deficient.

The AUC was also not convinced that the Hearing Panel erred in fact by finding a causal connection between the original repair work and the Project.

The AUC did not find that the Hearing Panel erred in fact or mixed fact and law by inferring that Corix had not exhausted all other cost recovery avenues.

The Hearing Panel did not substitute its own business decisions for that of Corix since it did not issue any directions to Corix in relation to its business activities. Rather, in the course of considering a rates application, the Hearing Panel exercised its discretion, based on the evidence before it, to disallow certain capital costs from rates on the basis that it would not be reasonable to place these costs on ratepayers. Accordingly, the AUC did not find an error of mixed fact and law and an unreasonable substitution of business decisions for Corix by the Hearing Panel.

While it did not find any error, the AUC considered Corix’s arguments on the economic impacts associated with the magnitude of the disallowance to determine whether to re-open this matter on its own motion. The AUC was not persuaded to do so since the disallowance did not jeopardize Corix’s ability to provide safe and reliable service and did not deprive Corix of a reasonable opportunity to recover its prudent costs and earn a fair return, to warrant an AUC intervention.

Ground 3

The AUC found no evidence to suggest that the Hearing Panel disregarded Corix’s evidence on its projected 2023-2025 allocated costs. Rather, Corix disagreed with the weight the Hearing Panel assigned to this evidence and its choice of methodology for determining Corix’s allocated costs. The Hearing Panel concluded that Corix provided insufficient information to substantiate its forecast amounts or demonstrate that its projected allocated costs would result in just and reasonable rates.

The Hearing Panel provided substantial reasons for why it could not approve or rely on Corix’s projected 2023-2025 allocations. Accordingly, the Review Panel found that Corix failed to demonstrate any error of fact or mixed fact and law in the Hearing Panel’s decision to fix a total allocated costs amount for corporate services, regional services and common administrative services based on the average of Corix’s actual 2017-2021 costs, adjusted for inflation.

The AUC, however, found that the Hearing Panel made an error of fact by not including any amount for billing and customer services costs in the amount approved for Corix’s total allocated costs amount. The average of Corix’s actual 2017-2021 amount for billing and customer service costs, adjusted for inflation, should have been included as a common administrative cost in determining the total allocated

costs amount. Accordingly, the AUC decided to hear this issue as an error of fact in a Stage 2 proceeding.

Ground 4

The Hearing Panel considered French Creek, a water utility owned by a subsidiary of EPCOR Distribution and Transmission Inc. to be the best comparator on the record for Corix with regard to the level of allocated costs. The Hearing Panel clarified that it did not conduct a strict line-by-line comparison between Corix and French Creek but considered French Creek as a comparator for Corix's allocated costs, in conjunction with the AUC's expertise and Corix's historical costs. The AUC found no error of fact in this comparison.

Ground 5

The statutory framework provides a hearing panel with broad discretion to determine what factors it considers relevant in setting a fair return. Corix asserted that the Hearing Panel erred by failing to consider all factors that influence the determination of a ROE. However, the Review Panel determined that the issuance of Decision 28585-D01-2023 in November 2023, which set a return on equity ("ROE") of 9.28 percent for 2024, constituted a changed circumstance material to the Decision. As a result, under s 2(1) of *Rule 016*, the AUC decided to consider Corix's ROE for 2024 and 2025, in a Stage 2 proceeding.

The Hearing Panel approved an ROE for 2023 of 8.5 percent, rather than the applied for 8.75 percent. It determined that this would provide the utilities with a fair return for 2023, when combined with the existing deemed equity ratios. The Hearing Panel found that Corix's business risk had not changed. It determined that it would continue to apply its existing deemed equity ratio, and the most recently approved generic cost of capital ("GCOC") rate, consistent with how Corix has been treated in the past.

Corix did not demonstrate any error of fact or mixed fact and law in the Hearing Panel's finding that using the most recently approved GCOC rate of 8.5 percent would provide Corix with a fair return for 2023. However, as the AUC determined that the release of Decision 28585-D01-2023 constituted a changed circumstance material to the Decision, it decided to evaluate Corix's ROE on its own motion in light of Decision 27084-D01-2022 and Decision 28585-D01-2023 in a Stage 2 proceeding.

Solar Krafte Utilities Inc. and Beargrass Solar Inc. Brooks Solar Farm Project Amendment, Time Extension and Approval and Permit and Licence Transfer, AUC Decision 27916-D01-2023 Solar Power - Facilities

Application

Solar Krafte Utilities Inc. ("Solar Krafte") applied for approval to amend, construct and operate the 360-megawatt ("MW") Brooks Solar Farm power plant (the "Project"). Solar Krafte also applied for approval to transfer the Project and the Zachary 997S Substation (the "Substation") permit and licence to Beargrass Solar Inc. ("Beargrass"). Solar Krafte requested an extension of the deadline to construct the Project and the Substation.

Decision

The AUC approved in part the application to amend, construct and operate the Project. It further imposed conditions of approval, determining that it is not in the public interest to approve the construction and operation of the Project within the project layout on the north half of Section 18, Township 18, Range 15, west of the Fourth Meridian ("North Half of Section 18").

The AUC approved the application to transfer the licenses and the application for an extension of the deadline to construct the Project and Substation.

Pertinent Issues

Background

The AUC initially approved the Project and Substation in Decision 26435-D01-2022. In that decision, the AUC found that it was not in the public interest to approve the construction and operation of the Project in Section 24, Township 18, Range 16, west of the Fourth Meridian ("Section 24"). It determined that the Project posed unacceptable negative environmental impact to the large area of native grassland in that section. Therefore, the AUC excluded from the approval the construction and operation of the Project in Section 24. The AUC also found that the North Half of Section 18 did not qualify as native grassland and approved the construction and operation of the Project on that section.

On December 22, 2022, Solar Krafte applied for approval to amend, construct and operate the

Brooks Solar Farm. Among other changes, the 2022 amendment application revised the layout of the original Project area to include approximately 165 acres of additional land immediately west of and abutting the original Project area.

On March 10, 2023, Beargrass Solar and Solar Krafte applied for approval to transfer the Project approval and the Substation permit and licence from Solar Krafte to Beargrass, should the AUC approve the amendment application. Two weeks before the scheduled oral hearing to determine the amendment application, Solar Krafte updated the design of the 2022 amendment (the "2023 Amendment"). In the 2023 Amendment, Solar Krafte no longer included 165 acres of additional Project land proposed in the 2022 amendment and changed the Project layout. The AUC determined that the 2023 Amendment did not fall within the allowances for a final project update defined in *Rule 007: Applications for Power Plants, Substation, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* ("Rule 007") and established a written hearing process to consider the 2023 Amendment.

In addition to the AUC's consideration of the 2023 Amendment, on July 5, 2023, the AUC initiated a narrowly scoped review of its original Decision 26435-D01-2022 on the question of whether the North Half of Section 18 within the Project footprint qualifies as native grassland, and if so, whether it is in the public interest to approve the construction and operation of the Brooks Solar Farm on these lands. The AUC suspended Approval 26435-D03-2022 in the North Half of Section 18 only, pending the determination of the AUC-initiated review.

Consideration of the Applications

The applicant has the onus to demonstrate that approval of its application is in the public interest. Parties who may be directly and adversely affected by the approval of the application may attempt to show how the applicant has not met its onus. These parties may do so by bringing evidence of the effects of the Project on their own private interests and explaining how the public interest may be better served by accommodating their private interests. They may use the evidence filed by all parties to the proceeding to argue what a better balancing of the public interest might be. It is the AUC's role to test the application and the concerns raised about the Project to determine whether approval is in the public interest.

The evaluation of the public interest requires the AUC to assess and balance the competing elements of the public interest in the context of each specific application. The assessment includes the positive and adverse impacts of the Project on those nearby, such as landowners. The AUC has previously affirmed that the public interest will be largely met if an application complies with existing regulatory standards and the project's public benefits outweigh its negative impacts. A power plant application before the AUC must comply with *Rule 007* and *Rule 012: Noise Control* ("Rule 012") and a transfer application must comply with *Rule 007* and s 23 of the *HEEA*.

In an application where the applicant seeks to amend its previously approved project, the AUC's public interest consideration focuses on the incremental effects associated the proposed amendment.

Rule 016: Review of Commission Decisions ("Rule 016") authorizes the AUC to review any of its decisions on its own motion at any time and for any reason. In this proceeding, the AUC determined that exceptional circumstances existed and that there were compelling reasons to review Decision 26435-D01-2022 on the narrow question of whether the North Half of Section 18 qualified as native grassland, and if so, whether it was in the public interest to approve the construction and operation of the Project in the North Half of Section 18.

Amendment to Brooks Solar Farm

The AUC reviewed the 2023 Amendment in Application 27916-A001 and determined that the information requirements specified in *Rule 007* were met. The AUC found that construction and operation of the Project in the North Half of Section 18 was not in the public interest. However, it also considered the remainder of the Project, as amended, to be in the public interest in accordance with s 17 of the *Alberta Utilities Commission Act* ("AUC Act"), subject to the conditions imposed in this decision, and the conditions that remain in effect from the previous approval. The AUC's approval of the 2023 Amendment was premised on its understanding that commitments made by Solar Kraft were binding.

The AUC found that the North Half of Section 18 presents functional native grassland, that the potential impacts to that native grassland create a high risk to wildlife and wildlife habitat, and that there are inadequate mitigation measures proposed to reduce these environmental impacts to an

acceptable level. After weighing the negative environmental impacts with the social, economic and other effects related to the portion of the Project proposed to be sited on this section, the AUC determined that it was not in the public interest to approve construction and operation of the Project in the North Half of Section 18.

Overall, and subject to the imposed conditions, the AUC found that Solar Kraft satisfied the requirements of *Rule 007* and *Rule 012*. Further, for the portions of the Project that are not located on the North Half of Section 18, the negative impacts of the Project could be mitigated to an acceptable degree and the benefits outweighed the negative impacts.

Approval of Transfer Application

The AUC granted the approvals for the transfer application. The AUC's approval of the transfer application was also premised on its understanding that commitments made by Solar Krafte were binding on Beargrass.

Deadline Extension

Pursuant to s 8(5)(d) of the *AUC Act*, the AUC granted an extension of the construction deadline in Permit and Licence 26435-D02-2022 until October 31, 2024, which was the same construction deadline imposed in Power Plant Approval 27916-D02-2023.