



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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IN THIS ISSUE:

Alberta Court of Appeal	2	ATCO Electric Ltd. Application for Orders Relating to the City of Lloydminster Annexation, Decision 28016-D01-2023.....	12
AltaLink Management Ltd. v. Alberta Utilities Commission, 2023 ABCA 325	2	NuVista Energy Ltd. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Wembley Thermal Power Plant, AUC Decision 28571-D01-2023.....	13
Alberta Energy Regulator	5	BA4 Wind Gp Corp. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Buffalo Atlee Wind Farm 4, AUC Decision 28594-D01-2023	13
Release of New Pipeline Rules and Associated Instruments, AER Bulletin 2023-40	5	Apex Utilities Inc. Drumheller High Pressure Pipeline Project, AUC Decision 28498-D01-2023.....	13
Alberta Utilities Commission	7	Corix Utilities (Foothills Water) Inc. Decision on Preliminary Question of Application for Review of Decision 27844-D02-2023 2023-2025 Revenue Requirements and Rates Application, AUC Decision 28417-D01-2023.....	14
Alberta Electric System Operator Application for Revised Adjusted Metering Practice Implementation Plan and Related Amendments to Independent System Operator Tariff and Rules, AUC Decision 28441-D01-2023.....	7	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	16
ATCO Electric Ltd. Brintnell Area Fibre Optic Project, AUC Decision 28472-D01-2023	7		
Alberta Electric System Operator 2024 Balancing Pool Consumer Allocation Rider F, AUC Decision 28628-D01-2023.....	8		
AECG Forty Mile Wind GP Corp. Forty Mile Wind Power Project Amendments, AUC Decision 27561-D05-2023	8		

ALBERTA COURT OF APPEAL

AltaLink Management Ltd. v. Alberta Utilities Commission, 2023 ABCA 325
Appeal - Procedural Fairness

Appeal

This was an appeal by AltaLink Management Ltd. (“AML”), ATCO Electric Ltd. (“AE”), ENMAX Power Corp. (“ENMAX”) and EPCOR Distribution and Transmission Inc. (“EDTI”) from the AUC’s decision to eliminate the ability of any electric utility to earn a return on contributions in aid of construction (“CIAC”), which are included in the Alberta Electric System Operator’s (“AESO”) tariff (“Decision”).

The ABCA granted permission to appeal on the following three questions:

- (i) Procedural fairness: was the AUC’s failure to provide adequate notice of its intent to eliminate earning a return on CIAC procedurally unfair?
- (ii) Allocation: was the CIAC policy lawful?
- (iii) Return: did the AUC err in law by treating CIAC as expenditures rather than as capital amounts?

Decision

The Alberta Court of Appeal (“ABCA”) allowed the appeal. The court determined that, by failing to provide adequate notice that it was considering disallowing electric utilities to earn a fair return on the costs in question, the AUC breached its duty of procedural fairness owed to the appellants.

The ABCA remitted the second and third issue back to the AUC to provide the appellants with the opportunity to present their case fully and fairly.

In response to the parties’ request, the ABCA also provided an *obiter* statutory interpretation to assist the parties and the AUC in the future consideration of the issues.

Pertinent Issues*Alberta Regulatory Framework*

Alberta’s electricity industry is comprised of three main segments: generation, transmission and distribution. In Alberta, substations, transformers and switchgear are classified as transmission facilities.

This appeal involved two types of electric utilities, which own the transmission facilities and electric distribution systems. AML is a transmission facility owner (“TFO”). FortisAlberta Inc. (“Fortis”) is an electric distribution system owner, also known as a distribution facility owner (“DFO”). ATCO Electric Ltd. (“AE”), ENMAX, and EPCOR are both TFOs and DFOs.

Part 7 of the *EUA* sets out responsibilities imposed on the DFOs if a transmission facility serves only one service area. The DFO must arrange for the provision of system access service (“SAS”) to customers in that service area (other than direct connect customers) and undertake a financial settlement with the AESO for SAS.

Part 9 of the *EUA* contains general tariff provisions, which require the AESO, as well as the electric utilities owners, to prepare a tariff and apply to the AUC for approval. The AESO, the TFOs, and the DFOs must prepare their respective tariffs in accordance with the *EUA* and the regulations, which contain specific responsibilities and tariff provisions pertaining to each entity.

Part 2 of the *EUA* sets out the transmission responsibilities of both the AESO and the TFOs. The AESO is the sole provider of SAS on the transmission system. The DFOs who obtain SAS must pay the AESO the rates set out in the AESO’s tariff and comply with the terms and conditions of the tariff. The AUC approves the tariff setting out the rates the TFO will charge the AESO for the use of the TFO’s transmission facility. The AESO must pay the TFO the rates set out in the TFO’s approved tariff.

The AUC must ensure that the tariff is just and reasonable, not unduly preferential, arbitrary, unjustly discriminatory or inconsistent with the *EUA*. The AUC-approved tariff must provide the electric utility with a reasonable opportunity to recover certain costs and expenses, including those

associated with capital related to the owner's investment in the utility (such as depreciation), interest on the debt-funded portion of the investment, a fair return on the equity-funded portion of the investment and any taxes associated with the investment.

Contributions in Aid of Construction

This appeal dealt with construction contributions paid to the AESO by the DFOs on behalf of their customers. Until the issuance of the Decision, DFOs earned a return on the construction contributions by including these amounts in their rate base.

Subject to certain exceptions, the DFOs recover the construction contribution costs through the rates charged to all customers under their respective distribution tariffs. Construction contributions paid by the DFOs have historically been considered an investment in the transmission facilities, providing the DFOs with a reasonable opportunity to recover the costs and expenses associated with the capital related to that investment, including a fair return on the equity-funded portion of the investment. This practice had been in place for more than 20 years.

Procedural History

In the Decision, the AUC determined that:

- the legislative framework applicable to electric utilities supports the payment of customer contributions to the AESO as part of its tariff;
- no changes to the customer contribution policy in the approved AESO tariff were necessary;
- the legislative framework applicable to electric utilities permits the current DFO tariff recovery mechanism of AESO customer contribution payments made by a DFO; and
- since the current DFO tariff recovery mechanism applicable to customer contributions failed to provide effective price signals to incent the end-use customers to choose the most economical connection solution, the DFOs were no longer permitted to earn a return on any AESO customer contributions, flowing the customer contributions to the DFO customer requesting the new connection.

Procedural Fairness

In a statutory administrative appeal, whether or not procedural fairness has been breached raises a question of law, reviewable for correctness. The duty to be fair is relevant at all stages of administrative proceedings and is not restricted to the evaluation of any ultimate decision that is targeted for review. The concept of procedural fairness does not involve deference by the reviewing court.

The ABCA noted that the duty of procedural fairness is eminently variable, inherently flexible and specific to the context. The specific procedural requirements imposed by the duty of procedural fairness are determined with reference to all circumstances. The duty of procedural fairness is underlined by the principle that those affected by a decision should have the opportunity to present their case fully and fairly.

The non-exhaustive list of factors to consider when determining the content of the duty of procedural fairness owed by an administrative decision-maker in a particular case include: the nature of the decision being made, the process followed in making it and the nature of the statutory scheme; the importance of the decision to the individual or individuals affected; the legitimate expectations of the person challenging the decision; and the choices of procedure made by the administrative decision maker itself.

The legislature has vested the AUC with many of the powers, rights, privileges and immunities of a judge of the Court of King's Bench. The nature and structure of the statutory scheme was important in this case since it affords the AUC powers and wide discretion in fulfilling its duties and functions.

The quasi-judicial nature of the AUC, which is reinforced by s 9(2) of the *Alberta Utilities Commission Act* ("AUCA"), requires the AUC to provide notice of an application, afford a reasonable opportunity of learning the facts bearing on the application, and hold a hearing if it appears that its decision or order on an application may directly and adversely affect the rights of a person.

Any decision of the AUC, which has the effect of reducing an electric utility's ability to earn a return on a class of assets, is clearly of importance to the appellants, to their shareholders and arguably to Albertans.

According to the ABCA, one of the most significant findings in the Decision was that a DFO or a TFO earning a return on AESO customer contributions is not in the public interest. It cannot be reasonably said that the new policy adopted by the AUC was predictable in the context of such a long-established practice. Thus, the AUC was required to provide clear and transparent notice that an issue to be considered was whether the DFOs and TFOs should be precluded from earning a return on such costs.

The ABCA found that the circumstances did not require the AUC to provide notice of every possible outcome for every party. However, the outcome that the TFOs and DFOs would be disallowed from earning a return on customer contributions was a departure from the allocation issue that had been the primary focus of those proceedings.

The question of whether both entities should be precluded from earning a return on those costs was distinct. There was no notice of the key change, which was that expenditures previously considered to be investments upon which a rate of return could be earned were now to be treated as costs to be recovered in annual rates.

Accordingly, the ABCA found that the AUC did not provide adequate notice that it will consider whether the DFOs and the TFOs should be precluded from earning a return on AESO customer contributions. This resulted in the appellants being denied the opportunity to present their case fully and fairly, breaching the procedural fairness owed to the appellants.

Allocation and Return

The ABCA held that, in deciding the Allocation Issue, the AUC should consider who qualifies as an “owner” for the purposes of s 122(1) of the *EUA*. In addressing who is characterized as the “owner” of a particular asset, the AUC should also consider whether the asset is capital related to the owner’s investment in the electric utility under s 122(1)(a) of

the *EUA*. In deciding these questions, the AUC should consider the distinction in the *EUA* between transmission facilities and distribution facilities and their respective duties and responsibilities. The AUC should further have regard to the role of SAS and whether this falls within the ambit of “ownership” under the *EUA*.

Regarding the Return Issue, the ABCA encouraged the parties to offer, and the AUC to consider again, the meaning of the legislative language, particularly for the purposes of determining what is properly considered the type of asset that should be included as an investment asset from which recovery of return is appropriate. In that regard, the concept of an “owner” has an inclusive meaning and the law of property recognizes various proprietary interests.

Fair Return Issue

The ABCA noted that the goal behind the customer contribution policy was to exert economic discipline on siting decisions for the construction of connection facilities by sending price signals to the connecting customers. These goals are laudable and essential in a monopolistic capital-intensive industry. Electric utilities are incentivized to aggressively invest in capital because this is the conduit by which a return is earned and profits are increased. However, the statutory scheme instructs the AUC to:

- (a) ensure that a tariff approved by it is just and reasonable, and that it is not unduly preferential, arbitrary or unjustly discriminatory, or inconsistent with the *EUA*; and
- (b) have regard for the principle that a tariff approved by it must provide the owner of an electric utility with a reasonable opportunity to recover the costs and expenses associated with capital related to the owner’s investment in the electric utility, including a fair return on the equity-funded portion of the investment.

ALBERTA ENERGY REGULATOR

Release of New Pipeline Rules and Associated Instruments, AER Bulletin 2023-40*Oil and Gas - Law*

On November 15, 2023, the AER released a new edition of the *Pipeline Rules*, which came in force on the same day.

The amended *Pipeline Rules*:

- allow the use of temporary surface pipelines for water conveyance in support of the *Water Conservation Policy for Upstream Oil and Gas Operations*;
- align with standard *CSA Z662: Oil and Gas Pipeline Systems* concerning the safety and loss management system, and integrity management program;
- clarify requirements for minimum cover for existing or abandoned pipelines;
- remove duplicate requirements for pressure control and overpressure protection at pipeline tie-ins in cases where pressure control is managed elsewhere;
- reorganize requirements for ground disturbance, including trenchless excavation techniques;
- provide a limited exemption for release reporting of specific on-installation releases (that are low volume, low risk and not an indicator of pipeline integrity concerns);
- reorganize requirements and update the pipeline removal process to ensure consistency with current discontinuation and abandonment processes;
- allow licensees up to 24 months (rather than 12) to discontinue, abandon or resume an operation of a pipeline managed under an integrity management program; and
- allow for some system-wide abandonments without disconnecting tie-ins.

In conjunction with the release of the *Pipeline Rules*, the AER released new editions of:

- *Directive 077: Pipelines – Requirements and Reference Tools* (“*Directive 077*”);
- *Directive 056: Energy Development Applications and Schedules* (“*Directive 056*”);
- *Manual 005: Pipeline Inspections* (“*Manual 005*”); and
- *Manual 012: Energy Development Applications; Procedures and Schedules* (“*Manual 012*”).

Directive 077

The main changes to *Directive 077* include:

- expansion of the use of temporary surface pipelines for water conveyance (improving operational efficiency) and addition of five associated forms (authorization requests and information submissions);
- increased alignment with CSA standards and revision of references to *CSA Z662: Oil and Gas Pipeline Systems*;
- revision of the sections on the use of gaseous and non-fresh water as test mediums for pressure testing, including the addition of two new forms;
- deletion of redundant or no longer relevant content;
- revision of certain figures and interpretation of jurisdictional boundaries for pipelines and piping; and
- addition of a new section on commingling oil effluent and gas production streams.

Directive 056

The main changes to *Directive 056* include:

- reordering of pipeline-related sections to improve clarity;

- minor changes to pipeline abandonment, discontinuance, removal and line split provisions;
- change in the pipeline technical audit documentation requirements for new construction and amendment applications; and
- change in application requirements in accordance with the revised *Pipeline Rules* and *Directive 077* to align with *CSA Z662*.

Manual 005

The main changes to *Manual 005* include:

- addition of new sections to align with the *Pipeline Rules*;
- reorganization of sections by technical subject groups;

- addition of specified enactments requirements; and
- update of references to the *CSA Z662* standard.

Manual 012

The main changes to *Manual 012* include:

- addition of and changes to sections in response to the changes in the *Pipeline Rules*, *Directive 056*, *Directive 077* and *OneStop*;
- renumbering sections to improve clarity; and
- consolidation of information from frequently asked questions.

ALBERTA UTILITIES COMMISSION

Alberta Electric System Operator Application for Revised Adjusted Metering Practice Implementation Plan and Related Amendments to Independent System Operator Tariff and Rules, AUC Decision 28441-D01-2023

Electricity - Tariffs

Application

The Alberta Electric System Operator (“AESO”) applied for approval of a revised implementation plan for its adjusted metering practice (“AMP”) and related amendments to the Independent System Operator (“ISO”) tariff and rules. The revisions to certain sections of the ISO tariff related to totalized billing of multiple points of delivery or points of supply at the same substation.

Decision

This decision dealt only with the AESO’s requested totalized billing revisions, which the AUC approved.

Pertinent Issues

The requested amendments included revisions to: s 8(1) of demand transmission service rate (“Rate DTS”); s 3(1) of primary service credit rate (“Rate PSC”) and supply transmission service rate (“Rate STS”); s 10.3(2) of the terms and conditions of the ISO tariff; and new ss 10.4(1) and 10.4(2) of the terms and conditions of the ISO tariff, to permit totalized billing of multiple points of delivery or points of supply at the same substation.

The AESO proposed the totalized billing revisions to permit the totalization of feeder flows under the same service, at the same substation because:

- multiple points of delivery or supply can exist within the same substation;
- the current totalized billing provisions lack clarity regarding whether and how totalized billing within the same substation is permitted;
- it would be administratively inefficient if the AESO was required to separately contract and bill for DTS or STS at each point of delivery or point of supply within a substation; and

- not allowing the totalization of several points of supply in one substation would create a barrier that limits the ability of a market participant to aggregate its transmission connected generating units.

The AUC found that the proposed revisions, which are largely administrative in nature, will improve the clarity of the ISO tariff, provide more flexible and efficient contracting options, and streamline AESO billing procedures.

ATCO Electric Ltd. Brintnell Area Fibre Optic Project, AUC Decision 28472-D01-2023

Electricity - Communication

Application

ATCO Electric Ltd. (“AE”) applied for approval to construct and operate a 13-kilometer (km) overhead fibre optic cable between AE’s existing Brintnell 876S Substation and Alberta PowerLine General Partner Ltd.’s existing Transmission Line 12L41, approximately 30 km northeast of Wabasca-Desmarais.

The Project was part of the SOC2 Strategic Fibre Project, which aims to extend the network and establish a high-capacity communication backbone connecting the Fort McMurray region with AE system operations centres.

Decision

The AUC approved the application as filed.

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. The AUC found the participant involvement program for the proposed project met the requirements of *Rule 007*.

The AUC held that, because the fibre optic cable will be located close to existing transmission lines and will be positioned within and adjacent to existing rights-of-way, there will be a minimal impact on adjacent stakeholders. The AUC accepted AE’s submission that the environmental effects of the

proposed fibre optic cable can be minimized and that there should be no significant adverse environmental effects from the project.

As a result, the AUC found that approval of the proposed project was in the public interest having regard to the social, economic, and other effects of the project, including its effect on the environment.

Alberta Electric System Operator 2024 Balancing Pool Consumer Allocation Rider F, AUC Decision 28628-D01-2023

Rates - ISO Tariff

Application

The Alberta Electric System Operator (“AESO”) applied for approval of its 2024 Balancing Pool consumer allocation Rider F of \$1.30 per megawatt hour (“MWh”).

Decision

The AUC approved the applied-for Rider F.

Pertinent Issues

The Balancing Pool is a corporation established under the *Electric Utilities Act* (“EUA”) to carry out the powers and duties set out in the EUA. The Balancing Pool must prepare a budget for each fiscal year setting out its estimated revenues and expenses. Based on the forecast revenues and expenses in its budget, the Balancing Pool must determine an annualized amount that will be refunded to or collected from electricity market participants over the year. Following receipt of the Balancing Pool’s annualized amount, the AESO is required to include this amount in its tariff.

The AESO’s proposed Rider F of \$1.30/MWh will be charged to all Rate Demand Transmission Service and Rate Demand Opportunity Service market participants, except for the City of Medicine Hat and BC Hydro at Fort Nelson, British Columbia, in the 2024 calendar year. The AUC approved the AESO’s proposed Rider F as filed.

AECG Forty Mile Wind GP Corp. Forty Mile Wind Power Project Amendments, AUC Decision 27561-D05-2023

Wind Power - Safety

Application

RES Forty Mile Wind GP Corp (“RES”) applied to amend, construct and operate the previously approved Forty Mile Wind Power Project (the “Project”) and the Forty Mile 516S Substation. RES also applied to split the Project into two phases (the “Amended Project”). The amendments included a change of the turbine model, resulting in fewer larger turbines.

RES further applied for permission to transfer the ownership of the Project, located near Bow Island, Alberta, to AECG Forty Mile Wind GP Corp. (“AECG”).

Decision

The AUC approved the applications from RES Forty Mile Wind GP Corp. and AECG, subject to conditions.

Pertinent Issues

The AUC had concerns regarding the safety risk to aerial application flight operations posed by wind turbines proposed to be located within five nautical miles of the Bow Island Airport (the “Affected Turbine(s)”). The AUC conducted additional process regarding the Affected Turbines and bifurcated the decision on the Amended Project. In Decision 27651-D01-2023, the AUC partially approved the Amended Project and the construction and operation of the 27 unaffected turbines for Forty Mile Wind Power Project Phase 1 (“Unaffected Turbines”). These turbines will be located more than five nautical miles away from the Bow Island Airport (the “Airport”). The AUC further approved the construction and operation of the Forty Mile 516S Substation and the Forty Mile Wind Power Project Phase 2, consisting of 21 turbines.

In this decision, the AUC considered issues associated with aviation safety at the Airport, which specifically refers to the safety of aircraft operations near the Airport. The AUC also considered issues of regulatory compliance.

In Decision 27561-D01-2023, the AUC concluded that the Amended Project was in the public interest,

as its negative impacts could be mitigated to an acceptable degree or that the negative impacts were otherwise outweighed by its benefits. In Decision 27561-D01-2023, the AUC also held that any approval of the Unaffected Turbines, and any steps taken in reliance on those approvals, would not be considered in making the decision pertaining to the Affected Turbines.

This decision considered issues associated with aviation safety at the Bow Island Airport, issues of regulatory compliance and whether the approval of the Affected Turbines was in the public interest.

Did the Project Comply with the Requirements of the Federal Aviation Regulatory Regime?

In evaluating compliance with the aviation regulatory regime, the AUC considered two Transport Canada publications, namely the TP312 *Aerodrome Standards and Recommended Practices* ("TP312"), which is a standards document, and TP1247 *Aviation Land Use in the Vicinity of Aerodromes* ("TP1247"), which is a guidance document. The AUC determined that TP312 did not apply to the Airport.

TP1247 references a concept called an obstacle limitation surface, which is a protective area for take-off, approach and transition areas that surround the runways of certified aerodromes or registered aerodromes with published instrument approach procedures. It is defined as an outer area at an elevation of 45 meters extending at least 4000 meters horizontally from the Airport. The AUC determined that TP1247 does not bind the AUC and that it does not impose restrictions on the erection of structures or other obstacles near a registered aerodrome.

The AUC further considered the Canada Flight Supplement, a manual published by NAV CANADA, which is a federal not-for-profit corporation that owns and operates Canada's civil air navigation system and provides air navigation services. This manual contains aviation information that is required for visual flight rules ("VFR") flight but that is not included on visual aviation charts or maps. It contains graphical depictions of all certified and registered aerodromes along with information concerning navigation aids and facilities. This manual defines an obstacle clearance circle close to aerodromes. The AUC found that an obstacle clearance circle does not impose restrictions on the erection of structures or other obstacles near a

registered aerodrome that does not have a published instrument flight rules procedure.

Based on the evidence in this proceeding, the AUC did not believe that compliance with existing regulatory standards is sufficient to determine whether the Amended Project poses risks to aviation safety and proceeded to assess the Amended Project's impacts on aviation safety at the Bow Island Airport during takeoff and landing of aerial applicator aircraft.

Will the Affected Turbine Structures Impact the Safety of the Aviation Operations at the Bow Island Airport

The AUC considered if specific impacts to the use of the grass cross strips at the Airport should be considered as part of the assessment of aviation safety impacts. While the AUC determined the TP312 did not apply to the Airport, the AUC then determined if the Amended Project complies with the obstacle limitation surfaces as described in TP312. The AUC also examined whether any of the affected turbine structures constitute a physical obstacle that will create an unacceptable hazard within the circuits flown at the Airport.

The AUC acknowledged that, while the grass cross strips at the Airport are not published within the Canada Flight Supplement, they may provide additional options for pilots flying and landing during emergencies. However, since the grass cross strips are not published, they would not commonly be used by pilots unfamiliar with the Airport and its surroundings.

In response to intervenor submissions, the AUC noted that 'wake turbulence' is not contemplated by the term "obstacle" used in TP312 and held that it would not consider wake turbulence as a relevant obstacle but may consider wake turbulence as a hazard to aircrafts for the assessment of aviation safety. The AUC then determined that none of the affected turbines would penetrate an obstacle identification surface.

An intervenor, who was a commercial aerial application pilot operating from the Airport, submitted that clearing wind turbines near the Airport would not be possible for his aerial spraying company's aircraft, when normally loaded for application, without some form of circling or diversion of the flight path. The AUC did not see sufficient support in the federal aviation regulatory regime for a turbine-free outer surface. The AUC accepted that the circuit

flown by an aircraft depends on many circumstances, including weather and the type, weight and speed of the aircraft. The AUC acknowledged that pilots have to consider the Affected Turbine structures and other obstacles when completing circuits and that the aerial spraying pilots may have to change their current flight routes to fly around the Amended Project. However, the AUC also noted that these pilots typically fly only a portion of the circuit, mainly on takeoff and landing.

As a result, the AUC found that the Affected Turbines structures were unlikely to create an unacceptable hazard within the circuits flown at the Airport. The AUC determined that impacts to aviation safety at the Airport from the Affected Turbine structures will likely be minimal.

Will Wake Turbulence from the Affected Turbines Impact the Safety of Aviation Operations at the Bow Island Airport?

The wake characteristics of a wind turbine are created by the interaction between the blade and the air. In particular, the thrust produced by the spinning rotor disrupts the airflow, causing it to slow down (called the velocity deficit) and produce increases in turbulence intensity.

The parties disagreed on the distances and intensities at which an aircraft would experience wake turbulence from the Amended Project's wind turbines. The AUC found that there is some difficulty in drawing inferences from the evidence to determine whether any of the wind turbines associated with the Amended Project are sited too close to the Airport. Based on the evidence provided, the AUC could not determine the distance at which the relevant turbines should be sited from the Airport.

Dr. Rogers, an expert for an intervener, provided a review of historical data and stated that the setback distances between the Amended Project's turbines and the Airport would be consistent with setbacks used from turbines to airports at hundreds of existing wind farms in North America. The AUC determined that this evidence has limited relevance to the extent it supports the conclusions of the same intervener's simulation study and literature review. The AUC placed little weight on this evidence considering the inherent limitations of anecdotal evidence of this nature.

Dr. Rogers further submitted an aircraft wake encounter simulation study (the "Simulation Study")

to simulate the wake encounters by an aerial applicator aircraft along different flight paths. The Simulation Study showed that turbine-added turbulence affects the aircraft by causing flight perturbations, which would be similar to those caused by routine atmospheric turbulence. Dr. Rogers argued that the simulated wake encounters did not yield flight disturbances large enough to pose a safety risk. Dr. Rogers filed a wake simulation he performed for all 22 turbines within five nautical miles of the Airport. The Simulation Study considered what was described as a notational worst-case scenario. While the AUC accepted the accuracy of the simulation, it did not accept that it was sufficient to establish that turbine wakes would not impact operations at the airport.

Based on all evidence in the proceeding, the AUC found that the amplified wake effect is not likely to result in a wake turbulence effect that is categorically different from what would typically emanate from a single turbine but that there will likely be an amplification effect with an unknown extent. While the AUC recognized the distance is somewhat arbitrary, it determined that a four-kilometer zone is a reasonable benchmark, within which to apply a heightened level of precaution concerning aviation safety risks, including wake turbulence.

The AUC acknowledged that under certain conditions, turbines T4 and T5 may produce a wake effect that could extend into the four-kilometer radius when aerial applicators are conducting operations at the airport. At specific wind directions, the wakes of Turbines T4 and T5 were likely to interact and cause amplified wake turbulence. The AUC found that this additive effect was likely to cause the most extensive penetration of wake turbulence into the four-kilometer radius. The exact nature and degree of penetration in different weather conditions were somewhat uncertain. As a result, the AUC found that it was necessary to consider the wake turbulence from turbines T4 and T5 from a risk analysis perspective. Regarding all other turbines, the AUC was satisfied that their distance from the four-kilometer radius is sufficient to ensure that any wake turbulence they produce will not create physical forces within the four-kilometer radius.

Will the Aviation Safety Impacts of the Affected Turbines Increase Risk at the Bow Island Airport to an Unacceptable Degree?

The AUC considered if the Amended Project compounds the practical and operational risks faced by pilots, such that the project results in

unacceptable aviation safety impacts. The AUC evaluated the risk and hazard assessments submitted by interveners.

Risk Assessment Evidence

Interveners submitted varying risk analysis with differing definitions of safety and the severity of risks posed by the Amended Project. One intervener's risk analysis concluded that aerial applicators would be more exposed to reduced airspace due to the frequency of airport usage and the number of arrivals and departures required to conduct missions. He evaluated factors including turbine wake turbulence, disorientation, distraction and frequency of airport use, from the perspective of an aerial application pilot operating from the Airport. He submitted that the project poses a high risk. The biggest problem was the number of risks appearing before a pilot at the same time. This intervener argued that, while expert assessments of risk and safety are useful, the assessments submitted in this proceeding did not consider the practical operational challenges faced by pilots.

The AUC acknowledged the differing views on the amount of risk from the Amended Project. The AUC noted that there was not one correct safety assessment and that the role of the AUC was to consider the assessments as guidance in respect of its own evaluation of safety impacts.

The AUC accepted the evidence that the operation of aircraft involves the simultaneous assessment of many different factors, and that in a particular set of circumstances the addition of one further factor may impair a pilot's ability to safely operate. The AUC considered impacts to safety from this perspective, having regard to how the Amended Project compounds operational challenges.

The AUC accepted the evidence that concluded that any wake turbulence created as a result of the wind turbines would not cause imminent danger to aircraft operating out of the Airport but also concluded that wake turbulence impacts will generally only impact the safety of operations at the Airport, if the wake turbulence is perceptible within four kilometers of the Airport. The AUC concluded that wake turbulence from turbines T4 and T5 could impact a pilot's ability to safely operate an aircraft when conducting operations at the Airport.

The AUC determined that approval of all Affected Turbines, other than turbines T4 and T5, was in the public interest. The AUC was satisfied that, with the

exception of turbines T4 and T5 that can cast perceptible wake turbulence within four kilometers of the Airport, the increase to aviation safety risk posed by the Amended Project to the Airport was reasonable.

The AUC determined that turbines T4 and T5 have the potential to increase aviation safety risk to an unacceptable degree. To mitigate the risk, the AUC imposed the following conditions of approval for Phase 1 of the project:

AECG shall include a provision in the turbine shut-off protocol, in relation to arrivals and departures at the Bow Island Airport (the Aerodrome Provision). The Aerodrome Provision shall provide that requests may be made by an aerial spray applicator, to halt or curtail turbines T4 and T5, if all of the following conditions are satisfied:

- The requested period to halt or curtail the turbines will occur on or between April 15 to October 1.
- The requested period to halt or curtail the turbines will occur between 30 minutes before sunrise, and 30 minutes after sunset on the relevant day(s).
- The wind speed is expected to be below 45 km/h during the requested period to halt or curtail the turbines.
- The wind direction during the requested period to halt or curtail the turbines is expected to be at a heading between 100 degrees and 120 degrees.

Name Change Application

Following a share purchase agreement, AECG acquired all outstanding shares of the applicant, and the applicant was no longer a wholly owned subsidiary of Renewable Energy Systems Canada Inc. The applicant stated that it had undergone a corporate name change from RES to AECG. The applicant requested that the AUC transfer the

Amended Project's existing approvals to AECG and that any future approvals be granted to AECG.

The AUC approved the request to transfer the Amended Project's approvals from RES to AECG.

ATCO Electric Ltd. Application for Orders Relating to the City of Lloydminster Annexation, Decision 28016-D01-2023

Electricity - Service Area

Application

ATCO Electric Ltd. ("AE") applied to the Alberta Utilities Commission ("AUC") for: confirmation of exclusive service area boundaries as determined by applicable Electric Distribution System Municipal Franchise Agreements ("MFAs"); alteration of the Devonia Rural Electrification Association Ltd. ("REA") service area boundaries to align with AE's exclusive service area; an order granting transfer of the Devonia REA members located within the municipal boundaries of the City of Lloydminster and the facilities serving them to AE, effective March 31, 2023; and, an order confirming that the compensation payable to Devonia REA was \$73,975.89.

Decision

The AUC approved the application and issued the orders requested by AE.

Pertinent Issues

AE submitted that it failed to reach an agreement with Devonia REA that would give effect to the required customer and asset transfers requested in its application.

Alteration of REA Service Area

On November 3, 2022, the City of Lloydminster passed Bylaw No. 22-2022, requiring all individuals located within the municipal service area to take electric distribution services from AE.

Under these circumstances, whereby municipal boundaries have expanded through annexation resulting in the overlap of an exclusive distribution service area granted under an MFA and an existing REA, the authority lies with the municipality in relation to exclusivity in the MFA. However, the AUC holds authority in relation to MFA approvals under the *Electric Utilities Act* ("EUA") and in relation to

service area designations under the *Hydro and Electric Energy Act* ("HEEA"). Ultimately, the key question facing the AUC was whether the alteration of the REA service area was in the public interest. The AUC adopted its findings from AUC Decision 22164-D01-2018 and determined that the alteration was in the public interest because altering the boundaries would:

- (c) harmonize the service areas to reflect the boundaries governed by the MFAs;
- (d) best support the public policy objective of avoiding unnecessary duplication of electrical facilities;
- (e) be most consistent with the legislated purpose of municipalities and REAs; and
- (f) best support the broad public policy goals of the *Municipal Government Act* ("MGA") as a whole, and the intent of the legislature in empowering municipalities.

Transfer of Land Rights

The primary issue in this proceeding concerned the transfer of land rights from Devonia REA to AE. Land access rights for utilities are typically contained within easements that can be registered against title. In this case, Devonia REA ensured land access through a contractual arrangement with each member. In relation to Devonia REA's concerns regarding its ability to transfer rights-of-way to AE, the AUC found that s 32(2)(b)(iv) of the *HEEA* provides the AUC with the authority to address matters that may be necessary to effect the transfer of the distribution system from an REA to another person. This included land access rights to allow the gaining utility to operate and maintain the distribution facilities and service customers, which were a key part of the overall transfer order.

Proposed Purchase Price

In support of its application, AE submitted a copy of the proposal it had provided to Devonia REA, which included the new construction cost and Reproduction Cost New Less Depreciation ("RCN-D") for each asset in the annexation area. Given that Devonia REA did not object to the resulting price, the AUC confirmed that the compensation payable to Devonia REA, in accordance with s 29(4) of the *HEEA*, was \$73,975.89.

NuVista Energy Ltd. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Wembley Thermal Power Plant, AUC Decision 28571-D01-2023

Electricity - Markets

Application

NuVista Energy Ltd. (“NuVista”) 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 Wembley Thermal Power Plant consisting of a natural gas fired turbine with a generating capability of 16.5 megawatts (“MW”). NuVista applied to share records between NuVista and URICA Energy Real Time Ltd. (“URICA”).

Decision

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

BA4 Wind Gp Corp. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Buffalo Atlee Wind Farm 4, AUC Decision 28594-D01-2023

Wind Power - Markets

Application

BA4 Wind GP Corp. (“BA4 Wind”), 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 Buffalo Atlee Wind Farm 4 consisting of two wind turbines with a total generating capability of 10.4 megawatts (“MW”) and related equipment. BA4 Wind applied to share records between BA4 Wind, BA4 Wind LP and URICA Energy Real Time Ltd.

Decision

The AUC was satisfied that BA4 Wind demonstrated that: (i) the sharing of records was reasonably necessary for BA4 Wind 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.

Apex Utilities Inc. Drumheller High Pressure Pipeline Project, AUC Decision 28498-D01-2023

Gas - Facilities

Application

Apex Utilities Inc. (“AUI”) applied for approval to install the Drumheller High Pressure Pipeline Project, consisting of approximately 1,040 meters (“m”) of new 114.3-millimeter (“mm”) natural gas pipeline as line 37 (the “Project”), in the town of Drumheller, Alberta.

Decision

The AUC approved the application from AUI.

Pertinent Issues

The Project would replace 210 m of existing 114.3-m pipeline and 140 metres of 88.9-mm pipeline. AUI requested approval of the Project because the existing section of the pipeline crossing the Red Deer River posed potential safety and operational concerns resulting from insufficient depth-of-coverage. AUI indicated that the existing sections of pipeline crossing the Red Deer River to supply the northern part of the town of Drumheller would be abandoned in place.

AUI filed a business case outlining the need for the Project, the three alternatives it considered, and how it reached the conclusion that the Project was the best alternative. AUI submitted that the Project was the most viable option due to its shortest route distance and the most cost-effective option that does not involve significant disruption to surrounding residents. Project costs would be allocated to AUI’s recurring capital program, which was approved in Decision 26616-D01-2022.

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 accepted AUI's statement that it will comply with the requirements for all watercourse crossings in accordance with the *Water Act*.

The AUC found that the environmental requirements for the Project were sufficiently addressed in the environmental protection plan. The AUC accepted AUI's commitment to follow the recommendations contained in the Environmental Evaluation and Protection Report for reducing the risk of adverse environmental impacts associated with construction and operation of the Project.

The AUC concluded that there was a need for the Project and that it was in the public interest to approve the construction and operation of the Project in accordance with s 17 of the *Alberta Utilities Commission Act*.

Corix Utilities (Foothills Water) Inc. Decision on Preliminary Question of Application for Review of Decision 27844-D02-2023 2023-2025 Revenue Requirements and Rates Application, AUC Decision 28417-D01-2023

Review and Variance - Changed Circumstance

Application

Corix Utilities (Foothills Water) Inc. ("Corix") applied to the AUC for a review of the AUC's Decision 27844-D02-2023 (the "Decision"). In the Decision, the AUC decided on the approval of Corix's 2023-2025 revenue requirement and rates.

Decision

The AUC granted the review application in part.

Pertinent Issues

Corix is a public utility that provides potable water service to 955 customers in Heritage Pointe, Alberta. The application was processed under *Rule 011: Rate Application Process for Water Utilities* ("*Rule 011*").

Rule 011 contemplates that some water rates applications of investor-owned water utilities may need to be developed in two phases: an application development phase, and an application review phase. In the application development phase, AUC staff may assist the applicant in preparing the application so that it meets the requirements set out in the AUC's *Information Required for Water Applications*. This is a departure from the AUC's

ordinary practice as a quasi-judicial tribunal wherein the role of staff is to support the AUC, and not assist or advise any individual party. *Rule 011* reduces the need for investor-owned water utilities and customer groups to rely on outside consultants and legal counsel during this phase.

Corix filed its application to review the Decision pursuant to s 10 of the *Alberta Utilities Commission Act* ("*AUC Act*") and *Rule 016: Review of Commission Decisions* ("*Rule 016*").

In this decision, the AUC panel who issued the Decision is referred to as the "Hearing Panel" and the AUC panel that considered the review application is referred to as the "Review Panel."

Corix advanced the review on the following grounds:

1. The Hearing Panel erred by failing to adhere to and apply *Rule 011* correctly, resulting in a significant breach of the AUC's duty of procedural fairness;
2. The Hearing Panel erred by disallowing capital costs based on assumed facts not in evidence and by substituting the utility's business decisions for its own;
3. The Hearing Panel erred in its interpretation of Corix's evidence on allocated costs;
4. The Hearing Panel erred by relying on financials of incomparable water utilities; and
5. The Hearing Panel erred by not providing Corix an opportunity to address the AUC's concerns regarding the proposed return on equity ("ROE").

Ground 1

Questions of procedural fairness are questions of law. The *AUC Act* provides for a statutory right of appeal on questions of law. Under *Rule 016*, the AUC does not review its own decisions for errors of law. Corix has not identified any specific alleged errors of fact or mixed fact and law in this ground. Accordingly, the AUC dismissed this ground of review as an error of law as being beyond the scope of *Rule 016*.

Ground 2

Corix alleged that the Hearing Panel erred by disallowing capital costs based on erroneous or

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.