REGULATORY LAW CHAMBERS

ISSUE: DECEMBER 2023 DECISIONS

ENERGY REGULATORY REPORT

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

Regulatory Law Chambers ("RLC") is a Calgary based boutique law firm, specializing in energy and utility regulated matters. RLC works at understanding clients' business objectives and develops legal and business strategies with clients, consistent with the legislative scheme and public interest requirements. RLC follows a team approach, including when working with our clients and industry experts. Visit our website to learn more about RLC.

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ALBERTA ENERGY REGULATOR

Change to Survey Plan Requirements for Public Lands Act, AER Bulletin 2023-42

Rules – Survey Plan Requirements

The Alberta Forestry and Parks has revised the *Public Lands Administration Regulation Table A2: Alberta Energy Regulator ("PLAR")* replacing the requirement for a survey plan for many dispositions with a sketch plan or a surveyor sketch plan.

As a result, an Alberta land surveyor must prepare and certify a surveyor sketch plan to verify the location accuracy of the disposition. Placing survey pins in the ground is not required.

Furthermore, "Final Plan Requirements" have been replaced with "Plan Requirements" in the *PLAR* tables, allowing applicants to submit required survey or surveyor sketch plans at any time, including at the time of application or after construction.

Despite these changes, the AER retains authority to require a survey plan at any time under s 23 of the *Public Lands Act*. A survey may be necessary for higher-risk activities involving buried subsurface structures and power lines or activities involving hazardous materials.

Water Shortage Advisories in Alberta – Important Information for Water Licence Holders, AER Bulletin 2023-43

Water - Operational Preparedness

Alberta is experiencing extremely low water levels due to below-average snowpack and precipitation over the past several months, resulting in less runoff to rivers, lakes and reservoirs. This is contributing to widespread dry conditions and water shortages, especially in southern Alberta. With a high probability of a strong El Niño event this winter (resulting in lower precipitation and higher temperatures), there is a strong likelihood of low flows and low water levels persisting into the 2024 calendar year.

Whether this drought will become a multiyear event is uncertain and, as a result, industry operational preparedness is vital. Industry should be aware of active water shortage advisories and plan accordingly when applying for a temporary water licence under the *Water Act*. Existing industry licensees must be diligent about adhering to the conditions in their water licences to avoid exceeding their withdrawal limits.

The AER is working closely with the Government of Alberta in evaluating and monitoring the situation through a network of province-wide water level and snowpack measuring stations. Mitigation measures may vary depending on location and how much snow and rain the province receives. The AER will work with partners and industry water users to help manage the situation. The industry should be proactive and plan for water shortages during 2024, including conserving water in their operations now.

For the South Saskatchewan River Basin, where the situation is more severe, the AER will reach out to industry licence holders this winter to seek estimates of their 2024 future water demand. Licensees at risk of being unable to divert water in 2024 should prepare contingency plans.

New Edition of Manual 023, AER Bulletin 2023-44

Oil and Gas - Facilities

The AER released a new edition of *Manual 023 Licensee Life-Cycle Management* that includes clarifications based on feedback received as part of the ongoing implementation of the Government of Alberta's *Liability Management Framework*. The clarifications involve the following:

- general administrative and editing clarifications;
- addition of definitions for active, inactive and marginal liability;
- removal of references to closure spend forecasts and implementation of changes to support the end of the supplemental closure spend quota, announced in *Bulletin 2023-35: Mandatory Closure Spend Quotas for 2024;*
- clarification of the security refund request process for liability programs identified in *Directive 088: Licensee Life-Cycle Management*; and
- incorporation of the following changes to the licensee capability assessment introduced on November 28, 2023:
  - update to the closure spend parameter in the closure factor to use actual reported spend rather

than estimated spend for all licensees;

– update to the orphan fund levy compliance parameter in the administration factor to include late and payment plan data;

– update to the administration levy compliance parameter in the administration factor to include late and payment plan data; and

– various bug fixes regarding data anomalies.

ALBERTA UTILITIES COMMISSION

***AUC Reconsideration of ATCO Electric Ltd. Z Factor Adjustment for the 2016 Wood Buffalo Fire,* AUC Decision 28320-D01-2023**

Electricity - Rates

Application

Previously, the Alberta Court of Appeal (“ABCA”) allowed ATCO Electric Ltd.’s (“AE”) appeal of the Alberta Utilities Commission (“AUC”) Decision 21609-D01-2019 (the “Z Factor Decision”) and returned the decision to the AUC for reconsideration. This was an AUC-initiated proceeding to reconsider the Z Factor Decision.

Decision

The AUC allowed AE to include within its rate base the net book value of the electric distribution assets destroyed in the Wood Buffalo fire. The AUC directed AE to reverse the adjustment made to its accumulated depreciation account, as well as reverse the adjustments made to the revenue requirements over the 2018-2023 period and include the associated carrying charges.

Pertinent Issues

Background

In the Z Factor Decision, the AUC denied AE the ability to recover the net book value of assets destroyed in the Wood Buffalo fire and directed AE to retire the destroyed assets from its rate base. Following an appeal from AE, the ABCA held that the AUC had erred in law in thinking that its treatment of the destroyed assets was constrained by earlier decisions. The ABCA confirmed that the AUC has discretion to decide where a just and reasonable tariff would place the losses, having regard to the right of the utility to a reasonable opportunity to recover its prudent costs. The ABCA rejected the AUC’s conclusion that its determination of how to treat destroyed assets was constrained by the Supreme Court of Canada’s (“SCC”) decision in *ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities Board), 2006 SCC 4* (“*Stores Block*”). The ABCA held that the AUC had over-read *Stores Block,* incorrectly concluding that it was obliged to apply in the fire, the AUC relied on the UAD test and *Stores Block*. The ABCA rejected the AUC’s conclusion that its determination on how to treat destroyed assets was constrained by *Stores Block*. The ABCA held that the ultimate issue was whether the destroyed assets were prudently acquired, whether they were related to the provision of the utility service to customers, and whether the utility had been given a reasonable opportunity to recover those costs.

AUC Reconsideration Findings

The AUC held that the first two factors identified by the ABCA were not in dispute and focused its attention on the third factor, which was whether AE has been provided with a reasonable opportunity to recover its costs.

The AUC disagreed with the suggestion that, for determining how to treat the net book value of destroyed assets, it must limit its consideration to assessing the prudence of the capital costs when they were first incurred. The *Electric Utilities Act* (“*EUA*”) provides the AUC with discretion to deal with depreciation and assets destroyed by force of nature and the *EUA* does not impose the no-hindsight prudence test, as alleged by certain parties.

The AUC also disagreed with the suggestion that providing a reasonable opportunity to recover costs requires that costs be included in revenue requirement, and remain in revenue requirement until fully recovered, regardless of intervening events, which may be relevant to the question of where a just and reasonable tariff would place the losses.

In this case, the AUC was satisfied that it was just and reasonable to allow AE to recover the costs associated with the net book value of the assets destroyed by the Wood Buffalo fire. The AUC accepted that, in the circumstances of the Wood Buffalo fire, isolating and directing the removal of the entirety of the net book value of the destroyed assets had the effect of rescinding the reasonable opportunity previously afforded to AE to recover these costs.

The AUC was also satisfied that, in this case, allowing recovery of the costs results in a just and reasonable tariff. According to the AUC, a just and reasonable tariff is a tariff that is fair to the utility and its customers by enabling the customers to pay no more and no less than what it costs to provide service.

The AUC determined that reversing the original $ 3.177 million adjustment through a collection of annual revenue requirement adjustments for the 2018-2023 period through a Y factor incorporated into its 2024 rates, as proposed by AE, is efficient and accurate. The AUC determined that AE's proposed accounting treatment aligns with the approved amortization of a reserve differences ("ARD") mechanism, ensuring surplus or deficiency in accumulated depreciation is trued-up over the remaining life of the specific account when an asset is retired. The AUC was satisfied that AE's proposed treatment is consistent with existing depreciation practices and provided an adequate level of transparency to enable testing those amounts in a future AE depreciation study.

***Achernar GP Ltd. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Empress Solar Power Plant,* AUC Decision 28667-D01-2023**

Solar - Markets

Application

Achernar GP Ltd. ("Achernar") applied pursuant to s 3 of the *Fair, Efficient and Open Competition Regulation* ("*FEOCR*"), seeking permission to share records not available to the public. The information was related to the Empress Solar Power Plant, located in Cypress County, consisting of up to 89,000 photovoltaic panels and 12 inverter-transformer units, with a total generating capability of 39 megawatts. Achernar applied to share the records between Achernar, Achernar Limited Partnership and URICA Energy Real Time Ltd.

Decision

The AUC was satisfied that Achernar had demonstrated that: (i) the sharing of records was reasonably necessary for Achernar 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 2024 Independent System Operator Tariff Update,* AUC Decision 28627-D01-2023**

Electricity - Rates

Application

The Alberta Electric System Operator ("AESO") filed an application with the AUC, pursuant to ss 30 and 119 of the *Electric Utilities Act* ("*EUA*"), requesting approval of its 2024 update to the Independent System Operator ("ISO") tariff.

Decision

The AUC approved the application from the AESO for the 2024 update to the ISO Tariff.

Pertinent Issues

In Decision 2010-606, the AUC approved the AESO's proposal to file major tariff updates in multi-year intervals and much simpler updates on an annual basis. The simpler, annual updates permit the AESO to update the rates and local investment amounts of the ISO tariff, based on costs and billing determinants forecast by the AESO for the upcoming calendar year.

The AESO's annual ISO Tariff update consisted of the following components:

1. annual revenue requirement update using the wires cost forecast methodology approved in Decision 2010-606 and updated in Decision 22093-D02-2017, plus forecasts for ancillary services costs, losses costs, and administration costs approved by the AESO's board for the forecast year;
2. revised rate levels for each AESO rate calculated from the forecast revenue requirement and forecast billing determinants using rate calculations and the rate design approved in the most recent comprehensive tariff application; and
3. annual updates to investment amounts approved in the most recent comprehensive tariff, reflecting an escalation factor based on the most recent Conference Board of Canada's Alberta Consumer Price Index.

The AUC was satisfied that the AESO's revenue requirement forecast was prepared in accordance with the approved methodology. The AUC, however, did not approve the AESO's 2024 forecast ancillary services costs, the transmission line losses costs, and the AESO's administration costs on a final basis because the AESO's board had not approved those costs at the time of the application. The AUC directed the AESO to submit, as a post-disposition filing, a letter confirming the AESO's board approval for these costs by January 31, 2024. The AUC held that any difference between the forecast costs included in this application and the final AESO board-approved costs or the AESO's actual costs must be settled through Rider C.

The AUC was satisfied that the AESO calculated the 2024 rates in accordance with the approved methodology and approved the 2024 ISO tariff Rate DTS (demand transmission service), Rate FTS (Fort Nelson demand transmission service), Rate DOS (demand opportunity service), Rate XOS (export opportunity service), Rate XOM (export opportunity merchant service), Rate PSC (primary service credit), and Rate STS (supply transmission service), Rider J.

In Decision 27777-D01-2022, the AUC approved the AESO's proposed process to calculate the Generating Unit Owner's Contribution ("GUOC") rates and the GUOC rates that are currently in effect. The proposed GUOC rates for 2024 had no changes relative to the approved 2023 GUOC rates. The AUC approved the applied-for 2024 GUOC rates for the AESO's six planning regions (Northwest, Northeast, Edmonton, Calgary, Central and South), as filed.

***Apex Utilities Inc. 2024 Interim Performance-Based Regulation Rate Adjustment,* AUC Decision 28583-D01-2023**
Gas - Rates

Application

Apex Utilities Inc. ("AUI") applied for approval of, *inter alia*, its 2024 interim performance-based regulation ("PBR") rate adjustment in accordance with the parameters of the third generation PBR established by the AUC in Decision 27388-D01-2023.

Decision

The AUC approved AUI's 2024 distribution rate schedules and rate riders, and the terms and conditions of service, including the Special Charges Schedule, on an interim basis, effective January 1, 2024. AUI's rates will be trued up to reflect the final 2024 PBR rates once they are approved by the AUC.

Pertinent Issues

In Decision 27388-D01-2023, the AUC established the parameters of the third-generation performance-based regulation ("PBR3") plan for the four electric distribution and two natural gas utilities, including AUI. In that decision, AUI was directed to file a compliance filing to set PBR rates for 2024 in accordance with the parameters of the PBR3 plan.

Normally, a PBR rate adjustment application is filed by September 10 of each year to allow for a sufficient review process to set rates effective January 1 of the following year. However, given the need to set out PBR3 parameters in 2023 and the timing of the issuance of Decision 27388-D01-2023, the application from Apex was received well past the usual date for annual rate filings. The AUC decided to approve interim rates because final PBR rates will not be in place before January 1, 2024, and interim rates promote short-term rate stability. Apex's rates will be trued up to reflect the final 2024 PBR rates once they are approved by the AUC.

***Apex Utilities Inc. Fort Assiniboine Pipeline Installation,* AUC Decision 28660-D01-2023**
Gas - Facilities

Application

Apex Utilities Inc. ("AUI") applied for approval to install approximately 740 meters ("m") of new 60.3-millimeter ("mm") natural gas pipeline ("line 74") and to split line 18 into lines 18 and 73 (the "Project").

Decision

The AUC determined that the Project was in the public interest and approved the application, subject to a condition of approval.

Pertinent Issues

The proposed Project would replace 700 m of existing variable diameter pipeline due to failure that occurred under the Freeman River. The Project will be installed in the existing right-of-way and the sections of the existing pipeline between the two proposed tie-in points will be abandoned in place.

The AUC determined the application and the participant involvement program met the requirements set out in *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines*.

The AUC found that the mitigation measures specified in AUI's Environmental Evaluation and Protection Report sufficiently address the potential adverse environmental effects associated with the Project around the Freeman River. The AUC further determined that the alternative preferred by AUI is the most prudent of the available and evaluated alternatives. In reaching this conclusion, the AUC considered the overall cost of the alternatives and the need to maintain gas utility service to the customers in the affected area.

The AUC accepted AUI's statement that it will comply with the code of practice requirements in accordance with the *Water Act* for the watercourse crossing. The AUC expressed an expectation that AUI will provide Project updates to the Alexander First Nation and Swan River First Nation.

The AUC imposed the following condition of approval:

> Apex Utilities Inc. shall not commence construction until the site-specific hazard assessment plan is finalized and Apex Utilities Inc. shall file a copy of this plan with the Commission as soon as it is finalized.

The AUC determined that there is a need for the Project and that the Project is in the public interest pursuant to s 17 of the *Alberta Utilities Commission Act*. The AUC approved the Project pursuant to s 11 of the *Pipeline Act* and s 4.1 of the *Gas Utilities Act*.

***ATCO Electric Ltd. 2024 Interim Performance-Based Regulation Rate Adjustment,* AUC Decision 28570-D01-2023**
Electricity - Rates

Application

ATCO Electric Ltd. ("AE") submitted for approval its third-generation performance-based regulation ("PBR3") plan compliance filing and 2024 PBR annual rate adjustment application, as directed by the AUC in Decision 27388-D01-2023.

Decision

The AUC approved AE's 2024 distribution rates and updated terms and conditions for electric distribution service on an interim basis, effective January 1, 2024. The interim rates will be in effect until the AUC makes a final decision on these rates.

Pertinent Issues

In Decision 27388-D01-2023, the AUC established the parameters of the PBR3 plan for the four electric distribution and two natural gas utilities, including AE. In that decision, AE was directed to file a compliance filing for rates for 2024 in accordance with the parameters of the PBR3 plan.

Normally, a PBR rate adjustment application is filed by September 10 of each year to allow for a sufficient review process to set rates effective January 1 of the following year. However, given the need to set out PBR3 parameters in 2023 and the timing of the issuance of Decision 27388-D01-2023, the application from AE was received well past the usual date for annual rate filings. The AUC decided to approve interim rates because final PBR rates will not be in place before January 1, 2024, and interim rates promote short-term rate stability. AE's rates will be trued up to reflect the final 2024 PBR rates once they are approved by the AUC.

***ATCO Gas, a Division of ATCO Gas and Pipelines Ltd.2024 Transmission Service Charge (Rider T)*, Decision 28582-D01-2023**
Rates - Transmission Costs

Application

ATCO Gas, a division of ATCO Gas and Pipelines Ltd. ("ATCO Gas"), requested approval of Rider T, which collects forecast transmission costs based on flow-through rates charged by NOVA Gas Transmission Ltd. ("NGTL") and refunds or collects any differences between the prior year's forecast and actual costs. ATCO Gas forecasts its transmission expense based on NGTL's rates and charges applied to the contract demand quantity ("CDQ").

The Alberta Utilities Commission ("AUC") approved the current ATCO Gas Rider T rates on December 5, 2022, in Decision 27752-D01-2022. The Canada Energy Regulator ("CER") approved NGTL's final 2023 rates, tolls, and charges for the Alberta system on May 30, 2023, in Order TG-003-2023.

Decision

The AUC approved the 2024 transmission service charge (Rider T) rates for ATCO Gas, effective January 1, 2024. The Rider T rates are as follows:

- Alternative Technology and Appliance (“ATA”) delivery service customers: $1.258 per gigajoule (“GJ”);
- low-use customers: $1.258 per GJ;
- mid-use customers: $1.137 per GJ;
- high-use customers: $0.274 per day of GJ demand; and
- ultra-high-use customers: $0.303 per day of GJ demand.

Pertinent Issues

In its application, ATCO Gas used the previously AUC-approved methodology to calculate Rider T.

Cross-subsidization Between North and South Customers

In Decision 2014-062, the AUC approved the implementation of a province-wide Rider T, replacing the previous practice of maintaining separate Rider T rates for ATCO Gas’s North and South service territories. In subsequent decisions, the AUC considered cross-subsidization issues between ATCO Gas’s North and South service territories, requiring ATCO Gas to discuss what measures it took to minimize cross-subsidization between North and South customers.

In Decision 27752-D01-2022, the AUC directed ATCO Gas to provide a detailed analysis of factors that contributed to the level of cross-subsidization in the event a Rider T application showed the subsidy between residential customers exceeded the $4.16 annual amount approved in Decision 21248-D01-2016. In this application, ATCO Gas noted the subsidy between North and South residential customers does not exceed $4.16, explaining that under separate rates for North and South customers, a typical residential (low use) customer in the North using 105 GJ between January and December would see a $2.52 decrease in their annual bill, while a typical residential (low use) customer in the South would see a $2.63 increase in their annual bill.

The AUC agreed that the cross-subsidization amounts provided in the application were minimal and accepted the continued use of the province-wide Rider T rates.

Rider T Rates and Bill Impacts

ATCO Gas calculated the proposed Rider T rates by dividing the amounts allocated to each rate group by forecast billing determinants for January to December 2024, which matched those submitted for AUC approval in Proceeding 28569. ATCO Gas submitted that the applied-for 2024 Rider T rate changes were reasonable and would not result in undue rate shock compared to existing distribution rates. The AUC deemed it unlikely for the proposed Rider T rates to result in rate shock and was satisfied with the level of detail and accuracy of the calculations provided in the application.

ATCO Gas, a Division of ATCO Gas and Pipelines Ltd. 2024 Interim Performance-Based Regulation Rate Adjustment, **AUC Decision 28569-D01-2023**
Gas - Rates

Application

ATCO Gas, a division of ATCO Gas and Pipelines Ltd. (“ATCO Gas”) submitted for approval its third-generation performance-based regulation (“PBR3”) plan compliance filing and 2024 PBR annual rate adjustment application, as directed by the AUC in Decision 27388-D01-2023.

Decision

The AUC approved ATCO Gas’ 2024 distribution rates, the 2024 schedule of non-discretionary charges, and updated terms and conditions for gas distribution service on an interim basis, effective January 1, 2024. The interim rates will be in effect until the AUC makes a final decision on these rates.

Pertinent Issues

In Decision 27388-D01-2023, the AUC established the parameters of the PBR3 plan for the four electric and two natural gas distribution utilities, including ATCO Gas. In that decision, ATCO Gas was directed to file a compliance filing to set PBR rates for 2024 in accordance with the parameters of the PBR3 plan.

Normally, a PBR rate adjustment application is filed by September 10 of each year to allow for a sufficient review process to set rates effective January 1 of the following year. However, given the need to set out PBR3 parameters in 2023 and the timing of the issuance of Decision 27388-D01-2023, the application from ATCO Gas was received well past the usual date for annual rate filings. The AUC decided to approve interim rates because final PBR rates will not be in place before January 1, 2024, and interim rates promote short-term rate stability. ATCO Gas' rates will be trued up to reflect the final 2024 PBR rates once they are approved by the AUC.

***BA1 Wind GP Corp. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Buffalo Atlee Wind Farm 1,* AUC Decision 28601-D01-2023**

Electricity - Records

Application

BA1 Wind GP Corp., as general partner of BA1 Wind LP, ("BA1") applied under the *Fair, Efficient and Open Competition Regulation* ("*FEOCR*"), seeking permission to share records not available to the public related to the Buffalo Atlee Wind Farm 1.

Decision

The AUC was satisfied that BA1 had demonstrated that: (i) the sharing of records was reasonably necessary for BA1 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 considered the Market Surveillance Administrator's support of the application in its determination to permit the sharing of records.

***BA2 Wind GP Corp. Application for an Order Permitting the Sharing of Records not Available to the Public Regarding the Buffalo Atlee Wind Farm 2*, AUC Decision 28602-D01-2023**

Electricity - Records

Application

BA2 Wind GP Corp. ("BA2 Wind") applied to the AUC under s 3(3) of the *Fair, Efficient and Open Competition Regulation ("FEOCR"),* seeking permission to share records not available to the public between BA2 Wind, Buffalo Atlee 2 Wind LP ("BA2 Wind LP") and URICA Energy Real Time Ltd ("URICA"). The requested order relates to the Buffalo Atlee Wind Farm 2 and related equipment, located near the hamlet of Jenner and with a total generating capability of 15.6 megawatts.

Decision

The AUC was satisfied that BA2 Wind had demonstrated that (i) the sharing of such records was reasonably necessary for BA2 Wind to carry out its business; and (ii) the shared records would not be used for any purpose that would not support the fair, efficient and openly competitive operation of the Alberta electricity market. The AUC also found that offer control figures for all entities involved are less than the offer control limit of 30 percent set out in s 5(5) of the *FEOCR*. On this basis and noting the support of the Market Surveillance Administrator ("MSA"), the AUC granted the application.

***City of Lethbridge 2024 Interim Transmission Facility Owner Tariff,* AUC Decision 28671-D01-2024**

Electricity - Rules

Application

The City of Lethbridge ("Lethbridge") applied for approval of its 2024-2026 transmission facility owner ("TFO") tariff and the 2024 TFO tariff on an interim and refundable basis.

Decision

In this decision, the AUC approved Lethbridge's 2024 interim refundable TFO tariff of $790,451 per month.

Pertinent Issues

The AUC determined that Lethbridge's request to approve its 2024 TFO tariff on an interim refundable basis is reasonable because:

- a final 2024 TFO tariff would not be approved and in place before January 1, 2024; and

- the proposed 2024 TFO tariff is less than the currently approved 2023 TFO tariff, and approving interim rates that reflect the 2024 forecast will minimize the impact of any required true-up to reflect differences between interim and final rates.

***The City of Red Deer 2024 Interim Transmission Facility Owner Tariff,* AUC Decision 28600-D01-2023**
Electricity - Rates

Application

The City of Red Deer ("Red Deer") applied to continue its currently approved 2023 transmission facility owner ("TFO") tariff of $467,397 per month on an interim and refundable basis, effective January 1, 2024, until the AUC approves either a revised interim or a final tariff. Red Deer indicated that it is currently in the process of preparing a 2024 general tariff application but it did not anticipate that a final tariff would be in place before January 1, 2024.

Decision

The AUC approved the request for continuation of the currently approved tariff because: a final 2024 TFO tariff will not be approved and in place before January 1, 2024; and the interim rate promotes short-term rate stability and will allow for Red Deer's rates to be trued-up to reflect the final 2024 TFO tariff once approved by the AUC.

***Claresholm Solar GP Inc. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Claresholm Solar Power Plant,* AUC Decision 28668-D01-2023**
Solar - Markets

Application

Claresholm Solar GP Ltd. ("Claresholm Solar") applied pursuant to s 3 of the *Fair, Efficient and Open Competition Regulation* ("*FEOCR*"), seeking permission to share records not available to the public. The information was related to the Claresholm Solar Power Plant, located near the town of Claresholm and consisting of 477,198 solar panels, with a total generating capability of 132 megawatts. Claresholm Solar applied to share the records between Claresholm Solar, Claresholm Solar Limited Partnership and URICA Energy Real Time Ltd.

Decision

The AUC was satisfied that Claresholm Solar had demonstrated that: (i) the sharing of records was reasonably necessary for Claresholm Solar 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 2024 Regulated Rate Tariff and Default Rate Tariff Interim Rates,* AUC Decision 28661-D01-2023**
Electricity - Rates

Application

Direct Energy Regulated Services ("DERS") applied for approval of its 2024 regulated rate ("RRT") and default rate tariff ("DRT") interim rates. The proposed interim rates for 2024 were the same as the approved 2023 final rates.

Decision

The AUC approved the following applied-for 2024 RRT and DRT interim rates:

(a) RRT and DRT non-energy rates;

(b) DRT return margin rate of $0.065 per gigajoule ("/GJ");

(c) DRT energy-related rate of $0.057/GJ; and

(d) the monthly amount of $35,109 for DRT energy-related labour.

Pertinent Issues

DERS indicated that the 2024 interim rates were the same as the final 2023 rates approved in Decision 28204-D01-2023 and requested that the 2024 interim rates remain in effect until final rates are approved for its next test period. Because the applied-for amounts have been tested and approved by the AUC, the AUC considered the continuation of the rates on an interim basis reasonable and in the public interest.

***Enfinite Corporation Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the eReserve 7, 8 and 9 Battery Energy Storage Power Plants*, AUC Decision 28650-D01-2023**
Wind Power - Markets

Application

Enfinite Corporation ("Enfinite") applied pursuant to s 3 of the *Fair, Efficient and Open Competition Regulation* ("*FEOCR*"), seeking permission to share records not available to the public. The information was related to the eReserve 7, 8 and 9 Battery Energy Storage Power Plants ("ERV7", "ERV8" and "ERV9"). ERV7 and ERV8 are located near the Wapiti Formation and consist of 22 2.4-megavolt ampere lithium-ion batteries, for a total generating capability of 40 megawatts ("MW"). ERV9 is located near the hamlet of Hythe and consists of 11 2.4-megavolt ampere lithium-ion battery modules, for a total generating capability of 20 MW. Enfinite applied to share the records between Enfinite, Enfinite Limited Partnership, URICA Energy Real Time Ltd. and URICA Asset Optimization Ltd.

Decision

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

***Enforcement Staff of the AUC Allegations Against Energy Sustain Service Ltd. and Zong Tang, Phase 1,* AUC Decision 28170-D01-2023**
Facilities - Approval Requirement

Application

Enforcement staff of the AUC ("Enforcement Staff"), following an investigation prompted by a noise complaint, filed an application with the AUC alleging that Energy Sustain Service Ltd. ("ESS") and Zong Tang (the "Respondents"):

(a) operated a power plant from February 15, 2022, until May 31, 2022, without approval from the AUC contrary to the *Hydro and Electric Energy Act* ("*HEEA*") and *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments* ("*Rule 007*") ("Contravention 1"): and

(b) the power plant operations exceeded the permissible sound levels specified in *Rule 012: Noise Control* ("*Rule 12*") ("Contravention 2").

Decision

The AUC found that ESS contravened s 11 of the *HEEA* by operating a power plant without approval from the AUC. Conversely, the AUC did not find that Zong Tang contravened s 11 of the *HEEA*. The AUC also did not find that a contravention of s 1.3 of *Rule 012* occurred.

On receipt of an application from the Enforcement Staff the AUC will conduct a second phase of this proceeding to determine the sanctions against ESS.

Pertinent Issues

Process

The AUC established two phases for the proceeding. In this first phase of the enforcement proceeding, Enforcement Staff have the burden of proving the allegations on a balance of probabilities. In the second phase, which follows if the allegations made by Enforcement Staff are proven, the AUC will determine the appropriate remedy for the alleged misconduct established in the first phase.

Legislative and Evidentiary Framework

AUC's Role

The purpose of the enforcement proceeding was to determine whether Enforcement Staff have demonstrated that the Respondents committed the alleged contraventions. In determining whether the Respondents committed the alleged contraventions, like a court, the AUC acts as an impartial adjudicator of Enforcement Staff's application.

In an enforcement proceeding, Enforcement Staff has the burden of demonstrating, on a balance of probabilities, that the alleged contraventions occurred. The evidence relied upon by the parties must be clear, convincing, and cogent to satisfy the burden imposed. The AUC must scrutinize with care the evidence filed when making its decision.

Standard and Burden of Proof

In an enforcement proceeding, Enforcement Staff have the burden of demonstrating on a balance of probabilities that the alleged contraventions occurred. If Enforcement Staff does not meet its burden, the case will fail. If an alleged contravention is proven, for those contraventions to which the defence of due diligence applies, the alleged contraveners will have the opportunity to demonstrate, on a balance of probabilities, that they have met the defence of due diligence.

Assessment of Evidence

The AUC is not bound by the rules of evidence applicable to judicial proceedings. Accordingly, the AUC has discretion to determine the admissibility and weight of evidence but it cannot ignore the principles that underlie the formal rules of evidence.

The AUC noted that, while it was satisfied that the expert in this proceeding had sufficient expertise, it would have benefitted from a submission from Enforcement Staff on this point. Enforcement Staff did not file a *curriculum vitae* for its expert, nor did they make any submissions concerning his expertise. In addition, Enforcement Staff did not call its expert to give evidence, either by affidavit or orally in the hearing.

The AUC observed that Enforcement Staff relied on a significant amount of untested, unsworn, third-party documentary evidence. The AUC routinely admits hearsay and unsworn evidence and its weight will depend on the extent to which it was tested in the proceeding. In the absence of evidence to the contrary, the AUC does not generally discount hearsay or unsworn evidence.

In relation to available defences, the AUC proceeded in this decision on the basis that the alleged contraventions are strict liability matters, for which a defence of due diligence is available.

Summary of Facts

ESS is an Alberta business corporation. Zong Tang is the sole director and shareholder of ESS. Between February 15, 2022, and May 31, 2022, a 1.475-megawatt ("MW") gas-powered generator (the "Power Plant") was operated in Brazeau County (the "Site").

Response Energy Corporation ("Response Energy") operated a well-producing oil and natural gas that is located at the Site (the "Well"). The Well was suspended in June 2017, as the gas pipeline system that the Well was tied into discontinued operations. Response Energy could no longer access markets for the produced natural gas. As a result, the gas was considered a waste product.

In February 2022, Response Energy and ESS entered a contract according to which Response Energy sold ESS the gas produced by the Well to fuel the Power Plant. The agreement set out that ESS would supply Response Energy with some of the electricity generated by the Power Plant. The agreement also designated how various costs and responsibilities at the Site would be split between Response Energy and ESS.

Response Energy and ESS collaboratively took steps to ensure regulatory compliance for both the Well and the Power Plant. Both parties believed that there was no requirement to obtain AUC approval to construct and operate the Power Plant.

In addition to providing Response Energy with electricity at the Well, the Power Plant was used to power cryptocurrency mining machines located at the Site.

On March 8, 2022, Enforcement Staff received a noise complaint regarding loud noises from the Site starting on February 21, 2022. Based on the information in the complaint, Enforcement Staff believed that Response Energy ran the Power Plant and was responsible for the Site. Enforcement Staff first became aware of ESS' involvement with the Power Plant in July 2022. On March 19, 2022, Enforcement Staff informed Response Energy of the investigation and requested that Response Energy conduct a comprehensive sound level ("CSL") survey. On May 31, 2022, Response Energy shut-in the Well voluntarily at the request of Enforcement Staff.

Assessment of the Alleged Contraventions

The AUC noted that, in alleging that Zong Tang has also committed the same contraventions as ESS , Enforcement Staff were effectively asking the AUC to pierce the corporate veil and find that the responsibilities and acts of ESS were also responsibilities and acts of Zong Tang.

1. *Contravention 1: Did ESS Construct or Operate a Power Plant Without an Approval from the AUC Contrary to Section 11 of the HEEA?*

The AUC did not understand Enforcement Staff to have alleged that Zong Tang constructed, operated or was otherwise responsible for the Power Plant in his personal capacity. The AUC noted that, if Enforcement Staff made this allegation, it was not proven and, on that basis, Enforcement Staff did not prove Contravention 1 as against Zong Tang on a balance of probabilities.

The AUC considered that Contravention 1 contained two related components: construction and operation the Power Plant without prior approval from the AUC; and whether that was contrary to s 11 of the *HEEA*. The AUC determined that this contravention occurred. ESS did not obtain approval to operate the Power Plant pursuant to s 11 of the *HEEA*, and it did not demonstrate that the conditions for an exemption, set out in s 13 of the *HEEA* and Rule 007, were met. The AUC determined that, given the nameplate capacity of the 1.475 MW of the Power Plant, the small Power Plant exemption did not apply.

ESS operated the Power Plant and supplied some of the electricity generated to Response Energy. However, the AUC found that the own-use exemption cannot apply, as Response Energy and Zong Tang are two separate and distinct legal entities that used the electricity generated by the Power Plant. As a result, Response Energy did not commit any violations.

The AUC determined the ESS did not demonstrate on a balance of probabilities, that the defence of due diligence was met. Generally, mistakes of law cannot ground a due diligence defence. No exception from this principle was alleged by ESS. The AUC found ESS' erroneous belief that the Power Plant fell under the own-use exemption is a reasonable belief in a mistaken fact, which is not a ground for the defence of due diligence.

2. *Contravention 2: Did the Noise from the Power Plant Exceed the Permissible Sound Level Contrary to Section 1.3 Of Rule 012?*

The AUC found that Contravention 2 was not proven on a balance of probabilities because there was insufficient evidence to determine that noise from the Power Plant, measured cumulatively with noise from the Well and well-related infrastructure exceeded the permissible sound level ("PSL") set out in *Rule 012*.

The AUC found that the crypto-mining facility is neither a "facility" nor an "energy-related facility," as defined in *Rule 012*. As a result, to comply with the requirements for a CSL survey in *Rule 012* either the CSL measurements should have been taken when the crypto-mining facility was shut down or noise from the crypto-mining facility should have been removed from the measured CSL data. It appears that neither of these steps occurred. For the purposes of *Rule 012* in this proceeding, the crypto-mining facility was treated as a non-energy facility. Including noise from the crypto-mining facility may have contributed to a determination that the noise exceeded the PSL.

The AUC, nevertheless, commended Response Energy and ESS for treating the three operations at the site as one "facility" for the purposes of assessing and mitigating the noise impacts to the neighbours, particularly given the level of integration between the different operations.

Is it Appropriate for the AUC to Pierce the Corporate Veil?

Enforcement Staff made four main arguments why it was appropriate for the AUC to pierce the corporate veil and find Zong Tang liable for the alleged contraventions. First, ESS is a single-purpose corporation with Zong Tang as the sole director and shareholder. Second, Zong Tang is the alter ego of ESS as Zong Tang is ultimately responsible for ESS' costs and is the recipient of financial benefits from ESS. Third, ESS is not a *bona fide* corporation but was only established to shield Zong Tang from the consequences of wrongful conduct. Finally, if the AUC finds that only ESS has committed contraventions, it will be unable to fulfill its mandate because any penalty or disgorgement that might be ordered will never be paid by ESS because ESS has been deliberately structured to have no assets.

The AUC noted that it has the powers of a King's Bench judge and the legal authority to "pierce the corporate veil" at common law. The AUC, however, determined that it was not appropriate to lift the corporate veil in this case. The AUC stated that Enforcement Staff have not proven the alleged contraventions against Zong Tang. ESS and Zong Tang are separate legal persons. The *Business Corporations Act* provides for a corporation to establish a separate corporate personality from its shareholders. The concept of the separate corporate personality has been an essential part of corporate law for over a century. The AUC did not find that extraordinary circumstances (such as fraud or improper purpose) existed that would provide a basis for piercing the corporate veil, notwithstanding that a sole shareholder receives an economic benefit from or provides funding to a corporation. Enforcement Staff provided no evidence that ESS was incorporated to shield Zong Tang from the consequences of wrongful conduct or that that ESS was deliberately structured to have no assets. The AUC concluded that ESS was incorporated for legitimate business purposes and that it was not appropriate to lift the corporate veil.

***Enforcement Staff of the Alberta Utilities Commission Settlement Agreement with the Consumers' Coalition of Alberta*, AUC Decision 28648-D01-2023**

Markets - Rules

Application

AUC enforcement staff ("Enforcement Staff") and the Consumers' Coalition of Alberta ("CCA") applied for approval of a settlement agreement ("Settlement") related to a disclosure of confidential information by the CCA in AUC Proceeding 27714 (the "Contravention").

Decision

The AUC approved the Settlement, imposing a one-time penalty on the CCA of $2,500 for the Contravention.

Pertinent Issues

Enforcement Staff and the CCA engaged in discussions to resolve issues of fact, alleged contraventions and penalties arising from the Enforcement Staff's investigation. In the Settlement, the CCA admitted to the Contravention and agreed to the imposition of the administrative penalty.

Applying its two-stage test regarding settlement agreements, the AUC approved the Settlement. The AUC was satisfied that the Contravention occurred and that the proposed settlement agreement is in the public interest. The AUC was satisfied that the proposed settlement would uphold the administration of justice and support the public interest.

***ENMAX Power Corporation 2024 Interim Performance-Based Regulation Rate Adjustment,* AUC Decision 28575-D01-2023**

Electricity - Rates

Application

ENMAX Power Corporation ("ENMAX") submitted for approval its third-generation performance-based regulation ("PBR3") plan compliance filing and 2024 PBR annual rate adjustment application PBR, as directed by the AUC in Decision 27388-D01-2023.

Decision

The AUC approved ENMAX's 2024 distribution rates and 2024 distribution tariff terms and conditions on an interim basis, effective January 1, 2024. The interim rates will be in effect until the AUC makes a final decision on these rates.

Pertinent Issues

In Decision 27388-D01-2023, the AUC established the parameters of the third-generation performance-based regulation ("PBR3") plan for the four electric and two natural gas distribution utilities, including ENMAX. In that decision, ENMAX was directed to file a compliance filing to set PBR rates for 2024 in accordance with the parameters of the PBR3 plan.

Normally, a PBR rate adjustment application is filed by September 10 of each year to allow for a sufficient review process to set rates effective January 1 of the following year. However, given the need to set out PBR3 parameters in 2023 and the timing of the issuance of Decision 27388-D01-2023, the application from ENMAX was received well past the usual date for annual rate filings. The AUC decided to approve interim rates because final PBR rates will not be in place before January 1, 2024, and interim rates promote short-term rate stability. ENMAX's rates will be trued up to reflect the final 2024 PBR rates once they are approved by the AUC.

***EPCOR Distribution & Transmission Inc. 2024 Interim Performance-Based Regulation Rate Adjustment,* AUC Decision 28581-D01-2023**

Electricity - Rates

Application

EPCOR Distribution & Transmission Inc. ("EDTI") submitted for approval its third-generation performance-based regulation ("PBR3") plan compliance filing and 2024 PBR annual rate adjustment application, as directed by the AUC in Decision 27388-D01-2023.

Decision

The AUC approved EDTI's 2024 distribution rates and terms and conditions for electric distribution service, on an interim basis, effective January 1, 2024. The interim rates will be in effect until the AUC makes a final decision on these rates.

Pertinent Issues

In Decision 27388-D01-2023, the AUC established the parameters of the PBR3 plan for the four electric and two natural gas distribution utilities, including EDTI. In that decision, EDTI was directed to file a compliance filing to set PBR rates for 2024 in accordance with the parameters of the PBR3 plan.

Normally, a PBR rate adjustment application is filed by September 10 of each year to allow for a sufficient review process to set rates effective January 1 of the following year. However, given the need to set out PBR3 parameters in 2023 and the timing of the issuance of Decision 27388-D01-2023, the application from EDTI was received well past the usual date for annual rate filings. The AUC decided to approve interim rates because final PBR rates will not be in place before January 1, 2024, and interim rates promote short-term rate stability. EPCOR's rates will be trued up to reflect the final 2024 PBR rates once they are approved by the AUC.

***FortisAlberta Inc. 2024 Interim Performance-Based Regulation Rate Adjustment,* AUC Decision 28576-D01-2023**
Electricity - Rates

Application

FortisAlberta Inc. ("FortisAB") applied for approval its third-generation performance-based regulation ("PBR3") plan compliance filing and 2024 PBR annual rate adjustment application, as directed by the AUC in Decision 27388-D01-2023.

Decision

The AUC approved FortisAB's 2024 distribution rates, the 2024 schedule of non-discretionary charges, and updated terms and conditions for electric distribution service on an interim basis, effective January 1, 2024. The interim rates will be in effect until the AUC makes a final decision on these rates.

Pertinent Issues

In Decision 27388-D01-2023, the AUC established the parameters of the PBR3 plan for the four electric and two natural gas distribution utilities, including ForitsAB. In that decision, FortisAB was directed to file a compliance filing to set PBR rates for 2024 in accordance with the parameters of the PBR3 plan.

Normally, a PBR rate adjustment application is filed by September 10 of each year to allow for a sufficient review process to set rates effective January 1 of the following year. However, given the need to set out PBR3 parameters in 2023 and the timing of the issuance of Decision 27388-D01-2023, the application from FortisAB was received well past the usual date for annual rate filings. The AUC decided to approve interim rates because final PBR rates will not be in place before January 1, 2024, and interim rates promote short-term rate stability. Fortis' rates will be trued up to reflect the final 2024 PBR rates once they are approved by the AUC.

***Forty Mile Granlea Wind GP Inc. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Forty Mile Wind Power Project, Phase One*, AUC Decision 28666-D01-2023**
Wind Power - Markets

Application

Forty Mile Granlea Wind GP Inc. ("Forty Mile") 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 Forty Mile Wind Power Project, Phase One consisting of 30 5-megawatt ("MW") and 15 5.2-MW wind turbines, for a total generating capability of 202 MW. Forty Mile applied to share records between Forty Mile, Forty Mile Granlea Wind Limited Partnership and URICA Energy Real Time Ltd.

Decision

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

General Land & Power Corp. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Sollair Solar Energy Power Plant, **AUC Decision 28620-D01-2023**

Solar Power - Markets

Application

General Land & Power Corp. ("GLP") 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 Sollair Solar Energy Power Plant consisting of approximately 183,600 solar modules on approximately 2,616 solar panel tables, for a total capability of 75 megawatts ("MW"). GLP applied to share records between GLP and URICA Energy Real Time Ltd ("URICA").

Decision

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

Kneehill Solar GP Inc. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Kneehill Solar Generation Facility, **AUC Decision 28701-D01-2023**

Solar Power - Markets

Application

Kneehill Solar GP Ltd. ("Kneehill") applied pursuant to s 3 of the *Fair, Efficient and Open Competition Regulation* ("*FEOCR*"), seeking permission to share records not available to the public. The information was related to the Kneehill Solar Generation Facility, located near the town of Three Hills and consisting of 63,700 solar photovoltaic panels and a switchgear station, with a total generating capability of 25 megawatts. Kneehill applied to share records between Kneehill, Kneehill Solar Limited Partnership and URICA Energy Real Time Ltd.

Decision

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

Michichi Solar GP inc. Application for an Order Permitting the Sharing of Records Not Available to the Public Regarding the Michichi Solar Generation Facility, **AUC Decision 28702-D01-2023**

Solar Power - Markets

Application

Michichi Solar GP Inc. ("Michichi") applied pursuant to s 3 of the *Fair, Efficient and Open Competition Regulation* ("*FEOCR*"), seeking permission to share records not available to the public. The information was related to the Michichi Solar Generation Facility, located near the town of Drumheller and consisting of solar photovoltaic modules, inverter and transfer stations, a collector system, and a switching substation, with a total capability of 25 megawatts. Michichi applied to share records between Michichi, Michichi Solar Limited Partnership and URICA Energy Real Time Ltd.

Decision

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

***Properties of Northern Bear Inc. 2024 Interim Water Rates,* AUC Decision 28681-D01-2023**
Water – Rates

Application

Properties of Northern Bear Inc. ("Northern Bear") applied for approval of its current water rates on an interim basis, effective January 1, 2024, until the AUC approves the water rates on a final basis. Northern Bear also indicated that, effective January 1, 2024, it will add a monthly fee of $40 to every residential and commercial customer. This fee is mandated by Strathcona County and is associated with the capital recovery of costs incurred for a pipeline extension to the Northern Bear community that supplies the reservoir.

Decision

The AUC approved that application from Northern Bear and the following interim water rates:

- for residential customers $20 per month fixed fee; $10 per cubic meter usage fee; and
- for commercial customers $0 per month fixed fee; $12.50 per cubic meter usage fee.

The AUC approved the additional monthly $40 per customer fee, on an interim basis.

Pertinent Issues

A number of residential and commercial customers raised concerns with the AUC regarding the application. The concerns related to the significant increase in the water bills, the need for more detailed information, including a general rate application, the rate structure, the $40 capital recovery charge and the franchise agreement between Northern Bear and Strathcona County.

AUC Findings Regarding Customers Submissions

In this proceeding, Northern Bear applied for interim rates for 2024, but will subsequently file a general rate application ("GRA"). According to the AUC, in its upcoming GRA, Northern Bear will be required to provide financial information, including details about the historical costs to run the utility, estimated costs it expects to incur to run the business in subsequent years, and details about the costs of its property, plant and equipment in historic and future estimates. As part of its GRA, Northern Bear will be required to justify the proposed fixed monthly fees and the proposed variable water rates. In the assessment of the GRA, the AUC will consider issues and concerns raised following the notice of application for that proceeding.

Interim Rate Setting

The AUC noted that this was the first rate application from Northern Bear filed with the AUC. Without a full examination of the costs that backstop the current rates, the AUC is unable to determine whether the current rates are just and reasonable. That examination will be undertaken by the AUC when Northern Bear files its GRA for final rates. Until the final rates are approved, the AUC found that it was logical to approve, as interim rates, the current fixed monthly fee and variable water charges for residential and commercial customers, which have been in place since July 2018. The AUC also approved the additional monthly $40 per customer fee, on an interim basis. As Northern Bear is required to pay this fee to Strathcona County for the supply of water, the AUC determined that collecting this fee from customers was reasonable.

CANADA ENERGY REGULATOR

***Trans Mountain Pipeline ULC on Behalf of Trans Mountain Pipeline L.P. Application for Approval of Firm Service Recontracting*, CER Letter Decision A8V4K7**

Oil – Rates

<u>Application</u>

Trans Mountain Pipeline ULC ("Trans Mountain") applied for approval of firm service recontracting for 47,500 barrels per day ("bpd") of capacity to the Westridge Marine Terminal for a period ending after six months or when additional capacity is made available on the Trans Mountain's expanded system ("Expanded System"), whichever is earlier (the "Application").

<u>Decision</u>

The CER approved the recontracting of firm service tolls for volumes delivered before the date that the Expanded System commences service (the "Commencement Date"). For recontracted firm service petroleum tendered before that date but delivered after the commencement of service (the "Firm Carryover Volumes"), the CER approved the applied-for tolls on an interim basis.

<u>Pertinent Issues</u>

A pipeline company must request an approval for the contracting of existing oil pipeline capacity demonstrating that the *Energy Regulator Act* ("*CER Act*") requirements are met. The CER must be satisfied that: the company meets its common carrier obligations; the tolls charged are just and reasonable; and the company does not make any unjust discrimination in its tolls or service.

Common Carriage Obligation

When seeking to re-contract capacity on an oil pipeline, a company must establish that: (1) there was fair and equal opportunity to access the firm service offered by the company; and (2) sufficient access to capacity remains after firm service is implemented.

The CER was satisfied that the uncommitted capacity available to land and dock shippers, in combination with the open season process undertaken, was sufficient to enable Trans Mountain to continue to act in a manner consistent with its common carrier obligations.

Proposed Firm Service Fees

While Trans Mountain did not submit the firm service fees that specific shippers will pay under the transportation service agreements ("TSAs"), Trans Mountain submitted that the average value was $14.57 per barrel. The CER found that sufficient details of the firm service fee structure were disclosed to meet the requirements of s 229 of the *CER Act*. The CER was also satisfied that the firm service fees bid through the open season and the firm service toll methodology comply with the *CER Act* and that the firm service fees are just, reasonable, and not unjustly discriminatory.

Proposed Firm Service Tolls

The proposed firm service tolls are equal to the sum of the uncommitted toll from the applicable tariff and the firm service fee. The CER approved the proposed tolls in respect of the volumes delivered before the Commencement Date, as applied for.

Setting Interim Tolls for Firm Carryover Volumes

Suncor Energy Marketing Inc. ("Suncor") and Phillips 66 Canada Ltd. ("Phillips 66") were concerned that Trans Mountain sought approval of tolls for the Expanded System that are $7 to $10 per barrel higher than current tolls on the Trans Mountain pipeline. They were concerned that, under Trans Mountain's proposal, firm service tolls for Firm Carryover Volumes would be equal to the firm service fee plus the Expanded System uncommitted tolls. Suncor and Phillips 66 submitted that it would be unjust and unreasonable to apply Expanded System tolls to Firm Carryover Volumes and Uncommitted Carryover Volumes, as these volumes will not benefit from the Expanded System capacity nor cause the costs related to the expansion.

The CER found that tolls for the Firm Carryover Volumes should be interim, pending further consideration. The CER noted that Trans Mountain's applied-for approach, of setting tolls applicable to the Firm Carryover Volumes equal to the firm service fees plus the Expanded System tolls, aligned with the CER's most recent decisions.

Other Matters

The CER approved the proposed treatment of the firm service fees, as contributing towards the Trans Mountain expansion project, as well as the proposed reporting of the collections and investments of the firm service fees.

Concerns further arose regarding a clause in the TSAs regarding the term shippers' efforts and cooperation with the carrier to obtain regulatory approvals. The CER noted that shippers may interpret this clause as restricting their ability to raise concerns with the CER. The CER stated that no such restriction may be imposed in a transportation contract. Accordingly, the CER directed Trans Mountain to revisit this clause in future contracts.

Trans Mountain Pipeline ULC Trans Mountain Expansion Project Application Pursuant to Subsection 69(1) of the Canadian Energy Regulator Act Mountain 3 Horizontal Directional Drill Variance Application, **CER Reasons for Decision**

Oil and Gas - Facilities

Application

Trans Mountain Pipeline ULC ("Trans Mountain") filed an application requesting a variance of Certificate of Public Convenience and Necessity OC-065 (the "Certificate"). The variance involved a change to the diameter, wall thickness and coating of pipe in a segment of 2300 meters ("m") in the Black Pines to Burnaby Tank Terminal segment of the Trans Mountain Expansion Project ("TMEP") from kilometer post ("KP") 1064.4 to KP 1066.7 (the "Variance").

Decision

The CER denied the Variance application. The CER found that any benefits of the Variance were outweighed by drawbacks concerning material quality and in-line inspection ("ILI") capability, including an inadequate consideration of environmental protection.

Pertinent Issues

Trans Mountain submitted that the current horizontal directional drilling ("HDD") execution plan requires continuation of reaming to the 48-inch diameter to accommodate pullback of the nominal pipe size ("NPS") 36 pipeline. Trans Mountain stated that progress of the 48-inch reaming operation is unpredictable, with the risk of tool loss and additional delay, and that the Mountain 3 obstacle is currently on the TMEP's critical path. To reduce the risk of delays in the completion of the HDD and overall TMEP, Trans Mountain developed an NPS 30 contingency option that would, if implemented, involve the installation of NPS 30 pipe within the 42-inch ream. This would avoid the need to complete the 48-inch ream pass that is required to accommodate the pullback of the NPS 36 pipeline. Trans Mountain stated that implementing the contingency option can be completed in 55 to 60 fewer days than it will take to complete the 48-inch ream and install an NPS 36 pipeline.

Engineering

The CER had serious concerns regarding material quality and ILI capability that were not sufficiently addressed in Trans Mountain's evidence, which did not provide sufficient detail, definitive conclusions and supporting documentation.

Acknowledging that Mountain 3 is a challenging HDD because of the hardness of the rock encountered, the CER determined that the encountered technical challenges were identified in the feasibility study and geotechnical assessments carried out for this HDD. The CER found that, while Trans Mountain described a potential consequence scenario of a challenging 48-inch ream pass, it did not provide quantitative information regarding the likelihood of HDD abandonment. Accordingly, the CER could not precisely determine the risk level associated with the completion of the remaining 1225 m of the 48-inch ream pass.

Trans Mountain did not mention water ingress posing a risk to the HDD until the matter was raised in information request ("IR") responses and during oral questioning. Trans Mountain did not demonstrate that the present risk associated with the HDD completion is greater than when it initially planned the HDD.

The CER had concerns with the quality of materials that Trans Mountain procured to construct the Variance. Trans Mountain's evidence lacked the documentation required to demonstrate that the steps it took in procuring the materials for the Variance were equivalent to the measures required by its Quality Management Protocol ("QMP"). Trans Mountain failed to demonstrate that the quality of materials acquired for the proposed Mountain 3 Variance was equivalent to those procured for the balance of the TMEP. The CER did not accept Trans Mountain's argument that its QMP does not apply to the Variance. The CER noted that the quality of materials cannot be compromised due to Trans Mountain's urgency to remove the Mountain 3 HDD from the TMEP's critical path.

If the Variance was approved, Trans Mountain would not have the ability to inspect the 138.4 km section of pipeline between the Hope Station and Burnaby Terminal for all threats until pig traps were installed on either end of the NPS 30 segment or new dual-diameter inspection tools were developed, built, validated and made commercially viable. As a result, the CER found that Trans Mountain failed to demonstrate that it could ensure a level of safety and integrity for the 138.4 km section of the pipeline between the Hope Station and Burnaby Terminal that is equivalent to the rest of the TMEP. ILI is a necessary component of any robust integrity management plan. Therefore, the CER had serious concerns with the operation of the pipeline between the Hope Station and Burnaby Terminal without full ILI capability at the commencement of operations. The CER was not persuaded that safe operation of the Variance and protection of people, property, and the environment can be assured to the level of the remainder of the TMEP without access to the full suite of ILI tools relied on by Trans Mountain's integrity management plan.

Economics

The CER determined that each month of change to the TMEP in-service date will result in approximately $200 million in lost or gained revenues for Trans Mountain.

Environmental and Socio-Economic Effects

The CER found that the Variance's contemplated change in pipe diameter, with no impact on routing or method of construction, would not directly involve any change to the environmental or socio-economic effects already considered and approved for the TMEP.

Rights and Interests of Indigenous Peoples

The CER determined that Trans Mountain sufficiently engaged with Indigenous peoples, following a direction from the CER. The CER determined that after a sufficient notification, no concerns were raised by Indigenous communities regarding the Variance.

Engagement

The CER found that those potentially impacted by the Variance were provided with sufficient notice and had the opportunity to file comments with the CER.

Conclusion

Weighing the concerns about material quality and ILI capability against the Variance's potential benefits to the TMEP's mechanical completion and in-service dates, the CER found that approval of the Variance would not be in the public interest.

***Trans-Northern Pipelines Inc. Application for Approval of the Incentive Tolls Settlement Agreement,* CER Reasons for Decision RH-001-2023**

Gas - Tolls

<u>Application</u>

Trans-Northern Pipelines Inc. ("TNPI") filed an application requesting approval of the Incentive Tolls Settlement Agreement ("ITSA"), including:

(c) the framework for establishing TNPI's revenue requirement and tolls set out in the ITSA for each calendar year during the first and subsequent terms of the ITSA;

(d) the toll designs set out in the ITSA on the timelines contemplated therein;

(e) the agreed-upon revenue requirement and tolls for 2023 reflected in the ITSA; and

(f) TNPI's Conditions of Transport attached to the ITSA and the agreed-upon process for revising the Conditions of Transport, which will culminate in the TNPI filing revised Conditions of Transport for CER approval by no later than 31 December 2023.

<u>Decision</u>

The CER approved the ITSA, including the framework for establishing TNPI's revenue requirement and tolls, the toll designs set out in the ITSA, TNPI's Conditions of Transport, and the process for revising the Conditions of Transport.

Pertinent Issues

Background

The ITSA was the result of the negotiations for a new toll agreement between TNPI and its existing shippers, namely Imperial Oil Limited ("Imperial"), Shell Canada Products ("Shell"), Suncor Energy Products Partnership ("Suncor") and Valero Energy Inc. ("Valero"). Those negotiations resulted in Imperial and Shell signing the ITSA, while Suncor and Valero were not signatories to the ITSA.

Under the proposed ITSA, the TNPI System would be divided into two segments for toll calculation purposes. The Montreal-West segment would transport gasoline and diesel fuel westward from the refinery of Suncor near Montreal, and Shell's and Valero's Montreal terminals to Oakville, Ontario. The Nanticoke-East segment would transport gasoline, diesel and jet fuel eastward from Imperial's refinery at Nanticoke, Ontario to Toronto and points in between.

Competitive Tolls and Cross-Subsidization

Suncor opposed the application arguing that the ITSA would not adhere to the CER's economic efficiency tolling principle, since uncompetitive tolls would incent shippers to pursue marine and rail transportation alternatives. According to Suncor, this would lead to underutilization of a sub-segment of the Montreal-West segment comprised of facilities connecting Farran's Point to Oakville via North Toronto (the "West Line") of the TNPI Pipeline System ("TNPI System"), increasing tolls for remaining shippers and risking a toll spiral and cessation of service on the West Line.

The CER found that TNPI established that the ITSA will result in just and reasonable tolls. The proposed two-segment toll design will likely reduce existing cross-subsidization and better adhere to the fundamental tolling principle of cost-based/user-pay compared to a rolled-in methodology. The CER determined the ITSA tolls were generally expected to be competitive with marine and rail alternatives when all relevant and appropriate costs are considered. As such, a toll spiral, cessation of service on the West Line, and economically inefficient outcomes were not likely consequences of the ITSA.

The CER acknowledged that Suncor's capped toll proposal could reduce Montreal to the Greater Toronto Area ("GTA") tolls and that it has the potential to increase competitiveness with transportation alternatives. However, as the CER determined that ITSA tolls are likely to be competitive, it found that Suncor did not establish a need for a toll cap or a compelling basis for departing from the cost-based/user-pay principle.

The CER noted that issues and concerns raised in this proceeding were often supported by generalized information about transportation alternatives. However, it was clear to the CER that West Line tolls under the ITSA, while generally competitive, are still close to marine and rail alternatives. During the initial five-year term of the ITSA, specific revenue requirements, throughputs, tolls, and the actual costs of alternatives are subject to possibly significant variability, particularly related to movements from Montreal to GTA. The CER expressed an expectation that TNPI will manage these uncertainties and the associated competitive risk that may emerge on the TNPI System.

The CER noted that TNPI accepted meaningful capital cost recovery risk under the ITSA and that West Line shippers have a degree of control over the competitiveness of their tolls since shippers can achieve lower tolls by increasing their utilization of the segment. The short, five-year initial term of the ITSA provides an opportunity for TNPI and shippers to reassess the toll design, competitive context and the overall justness and reasonableness of tolls, including economic inefficiency that could result from future variability relative to the estimates that were part of the record in this proceeding.

The CER found that the ITSA provided greater clarity and transparency regarding TNPI's revenue requirement compared to the existing tolls agreement. The CER was satisfied that the revenue requirement under the ITSA better reflected TNPI's cost of providing service and that the ITSA will provide TNPI the ability to fund and recover costs associated with the integrity and safety of the TNPI System.