REGULATORY LAW CHAMBERS

ISSUE: FEBRUARY 2024 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

***New Edition of Directive 023,* AER Bulletin 2024-01**

Oil - Facilities

On February 8, 2024, the Alberta Energy Regulator ("AER") released a new edition of *Directive 023: Oil Sands Project Applications* ("*Directive 023*"), effective immediately. *Directive 023* replaced the May 2013 draft edition.

The AER also rescinded *Directive 086: Reservoir Containment Application Requirements for Steam-Assisted Gravity Drainage Projects in the Shallow Athabasca Oil Sands Area*, whose requirements were moved into section 6 of *Directive 023*. References to *Directive 023* in *Directive 008: Surface Casing Depth Requirements, Directive 056: Energy Development Applications and Schedules*, and *Manual 020: Coal Development* were also updated.

The AER made the following additional changes to *Directive 023*:

- removed requirements that exist in other directives or provincial legislation, including removing environmental requirements that were also found in the specified enactments;
- aligned the socioeconomic requirements with the *Environmental Protection and Enhancement Act;*
- restructured the environmental and socioeconomic requirements based on the scale of the projects they apply to (e.g., small-scale in situ projects); and
- added a section on in situ life-cycle applications.

***Directive 026 Rescinded,* AER Bulletin 2024-02**

Oil – Facilities

To eliminate duplicative or obsolete requirements, the AER rescinded *Directive 026: Setback Requirements for Oil Effluent Pipelines* ("*Directive 026*"), effective immediately. The AER also rescinded the *Directive 026* related documents, namely the *Interim Directive 81-03: Minimum Distance Requirements Separating New Sour Gas Facilities from Residential and Other Developments* and *Directive 056 Process Clarification for Oil Effluent Pipelines Containing Greater than 10 Moles of H_2S Gas per kilomole of Natural Gas.*

The AER noted that all requirements regarding H_2S release volume calculations and facility categories, levels and setbacks were already contained in *Directive 056: Energy Development Applications and Schedules* and *Directive 071: Emergency Preparedness and Response.* Accordingly, these rescissions do not impact the existing requirements in place to ensure public safety, environmental protection or resource conservation.

***Release of the Rock-Hosted Mineral Resource Development Rules and Directive 091: Rock-Hosted Mineral Resource Development,* AER Bulletin 2024-03**

Oil and Gas – Development Rules

The AER released *Directive 091: Rock-Hosted Mineral Resource Development* as part of the regulatory framework for rock-hosted mineral resource development. *Directive 091* will come into effect once the *Rock-Hosted Mineral Resource Development Rules* ("*RMR*") are in effect. The *RMR* and *Directive 091* set out the requirements that the industry must follow for rock-hosted mineral resource development throughout a development's life cycle.

The AER is developing liability management for rock-hosted mineral resource development as part of its regulatory framework that will have a separate public comment period for feedback.

In 2024, the AER will prepare guidance regarding rock-hosted mineral resource development and make consequential amendments to existing directives to incorporate rock-hosted mineral resource development.

***Regulatory Appeals of AER Orders (Regulatory Appeals 1943516 and 1943521),* Decision 2024 ABAER 001 (Redacted)**

Oil and Gas – Regulatory Appeal

Application

This decision dealt with the regulatory appeal by AlphaBow Energy Ltd. ("AlphaBow") of two orders issued by the AER's Closure and Liability Management branch ("CLM"). CLM issued the first order on March 30, 2023, directing AlphaBow to demonstrate that reasonable care and measures

("RCAM") were being provided at its sites. ("March Order"). CLM issued the second order on June 5, 2023, suspending AlphaBow's licences ("June Order") for failure to comply with the March Order.

A portion of the hearing in this proceeding was conducted in private to prevent disclosure of sensitive financial information and this decision was the redacted version available to the public. A separate confidential decision without the redactions was issued to the parties in the proceeding who signed confidentiality undertakings.

Decision

The panel of hearing commissioners assigned to this proceeding ("AER") confirmed the decision of CLM to issue the March Order and the June Order.

Pertinent Issues

The March Order

The March Order compelled AlphaBow to do the following: submit for approval an RCAM plan within 30 days and implement the approved plan; submit for approval a plan to abandon all mineral-lease expired wells within 30 days and implement the plan within six months; submit proof of insurance; update the working interest participant information within 30 days; submit a third-party audited financial statements once finalized or within 180 days of fiscal year end; and, post a security deposit that represents 10% of AlphaBow's inactive liability within 30 days.

The AER established the following issues in relation to the March Order: did CLM breach procedural fairness in issuing the order; and, was CLM's discretion to issue the order unreasonable.

AlphaBow alleged that CLM breached procedural fairness by:

- failing to provide notice of the proposed March Order;
- denying AlphaBow the opportunity to defend against the March Order;
- denying AlphaBow knowledge of the case against it;
- making a decision tainted by a reasonable apprehension of bias;
- not providing adequate or intelligible reasons that sufficiently justified the decision; and
- making a decision that did not align with AER norms, guidelines and precedents.

The AER found that CLM did not breach procedural fairness in issuing the March Order. The AER was not satisfied that AlphaBow was deprived of notice, information or the ability to defend against the March Order. The AER held the AlphaBow did not meet the test to establish reasonable apprehension of bias and was not satisfied that AlphaBow provided adequate evidence to show that a reasonable person would think that CLM acted unfairly in issuing the March Order.

The AER found that AlphaBow did not establish that it suffered any breach of procedural fairness in relation to adequate and intelligible reasons, and justification for the March Order, including imposing the requirements for an RCAM plan, security deposit and third-party audited annual financial statements.

AlphaBow failed to convince the AER that the March Order did not align with AER norms, guidelines and precedents. The AER found that CLM's discretion to issue the March Order was reasonable and confirmed the March Order.

The June Order

This order was issued as a result of AlphaBow's failure to comply with the March Order. In the June Order, CLM directed AlphaBow to suspend and discontinue all licences in a safe manner.

The AER established the following issues for the June Order: did CLM breach procedural fairness in issuing the order; was CLM's discretion to issue the order unreasonable; and did CLM fail to satisfy the requisite requirements of the *Oil and Gas Conservation Act* ("*OGCA*") in issuing the order.

AlphaBow alleged that CLM breached procedural fairness by:

- the lack of an impartial decision-maker;
- failing to provide AlphaBow with the opportunity to know the case against it in relation to the June Order;

• failing to provide AlphaBow with the opportunity to adequately respond and make fulsome submissions

about the June Order;

• being unresponsive to AlphaBow's submissions;

• providing inadequate reasons in the June Order;

• providing incoherent reasoning in the June Order; and

• being patently unreasonable.

The AER found that CLM did not breach procedural fairness in issuing the June Order. The AER held that AlphaBow did not meet the test to establish reasonable apprehension of bias. The AER was not satisfied that AlphaBow provided adequate evidence in the context to show a reasonable person would think that CLM had decided unfairly in issuing the June Order.

The AER was not satisfied that CLM was procedurally unfair regarding AlphaBow's ability to know the case against it, the opportunity to respond and make fulsome submissions or CLM's consideration of and response to AlphaBow's submissions. The AER found that AlphaBow did not establish that it suffered any breach of procedural fairness regarding the sufficiency or coherency of the reasons in the June Order, including CLM's authority for issuing the order.

The AER found that AlphaBow did not establish its allegation that the June Order was patently unreasonable. The AER also found that CLM exercised its discretion in a reasonable manner in issuing the June Order. In the AER's view, CLM was justified in issuing the June Order as a reasonable and necessary response to protect the public and the environment. The AER was not satisfied that there was evidence to support that CLM intended to force AlphaBow into insolvency or prevent it from meeting its obligations by issuing the June Order or that requiring suspension and discontinuation of AlphaBow's sites was unreasonable or harms the public and the environment.

The AER was not convinced that CLM failed to satisfy the requisite elements of section 27 of the *OGCA* in issuing the June Order. Consequently, the AER confirmed the June Order.

Conclusion

The AER concluded that CLM's actions from March to June 2023 cannot be viewed in isolation and that they were a continuum of events that began potentially as early as the inception of AlphaBow as a company that gathered momentum in 2022, with declining regulatory compliance, resulting in restrictions being placed on AlphaBow's licence eligibility. The March Order was issued because of AlphaBow's inability to address compliance and its unresponsiveness to CLM's requests, many of which were documented in the July 2022 licence eligibility decision.

The AER considered social, economic, and environmental effects, and impacts on landowners from AlphaBow's operations in confirming these orders, which confirmation was in the public interest.

ALBERTA UTILITIES COMMISSION

AUC Consultation on Proposed Rule Development for Emergency Billing Relief, **AUC Bulletin 2024-01**

Utility Billing - Rules

The Alberta Utilities Commission ("AUC") initiated a consultation process to incorporate requirements for emergency billing relief into a new rule to provide predictability and transparency for stakeholders. The AUC announced that it was seeking feedback on the 2023 Emergency Billing Relief Program ("EBRP") to inform a potential development of a new rule regarding the EBRP. The rule would formalize a billing relief process for evacuation orders resulting from emergency events such as wildfires, floods or other natural disasters.

In previous wildfire-related and government-issued mandatory evacuations, the AUC coordinated procedures to suspend utility billing for residents under evacuation. In 2023, the AUC created the EBRP for the 2023 wildfire season, which provided billing relief for residents evacuated from their homes. The program was set out in the 2023 Emergency Billing Relief Program Manual (the "2023 Manual").

The consultation will consist of a written process to gather input and feedback related to the EBRP.

Amendments to AUC Rule 022: Rules on Costs in Utility Rates Proceedings and Rule 009: Rules on Local Intervener Costs, **AUC Bulletin 2024-02**

Rates – Proceeding Costs

The AUC amended *Rule 022: Rules on Costs in Utility Rates Proceedings* ("*Rule 022*"), including the scale of costs, which governs the recovery of the costs of participation in rates proceedings before the AUC.

The AUC also amended *Rule 009: Rules on Local Intervener Costs* ("*Rule 009*") to include an updated scale of costs and new application forms.

The amendments to both rules, effective March 1, 2024, apply to all rates and facilities proceedings commenced on or after that date.

Changes to *Rule 022*

Major changes to *Rule 022* include:

- expanded eligibility for cost recovery;
- new, streamlined application forms; and
- an updated scale of costs.

Expanded Eligibility

Under the amended *Rule 022,* two categories of participants are eligible for full cost recovery, namely applicants and eligible interveners. The AUC did not implement uniform incentive-based cost recovery for utilities, regulated rate and default service providers.

Rural electrification associations, municipalities and other previously ineligible participants may also qualify for partial cost recovery in circumstances where they intend to file expert or other evidence or argument that will assist the AUC in understanding the issues material to the proceeding subject matter that would not otherwise be presented to the AUC.

Further, cost recovery will be available for certain pre-application or pre-inquiry processes connected to rates proceedings, including settlements.

Streamlined Forms

The AUC created new streamlined application forms for *Rule 009* and *Rule 022* cost claims. The forms aim to ensure that all cost applications are consistent, eliminating previous requirements, such as the need to file an affidavit in support of the claim.

Updated Scale of Costs

The scale of costs for *Rule 009* and *Rule 022* was updated to reflect increased hourly rates for lawyers, consultants and experts. Other changes include an updated and simplified approach to travel expenses, as well as the elimination of the requirement to file receipts for some expenses, including transcripts, meals, taxis and parking. The amendments also contemplate awarding costs greater than the scale of costs in limited circumstances.

Changes to AUC *Rule 009*

The AUC updated the scale of costs for *Rule 009* to align with the scale of costs for *Rule 022* and extended the availability of travel expenses for site visits in addition to hearing attendance. *Rule 009* was also modified to refer to a new cost application form.

***Updates to AUC Application Review Process Following Generation Approvals Pause,* AUC Bulletin 2024-03**
Rules – Applications

Updates to AUC Application Review Process Following Generation Approvals Pause

On February 29, 2024, the *Generation Approvals Pause Regulation* expired. This regulation prohibited the AUC from issuing approvals for new power plants and hydro developments that produce renewable electricity over one megawatt. As of March 1, 2024, the AUC may issue decisions on power plant applications affected by the pause.

During the pause, the AUC continued to process applications for new power plants that produce renewable electricity up to the decision stage.

At the direction of the Alberta government, the AUC continued its work on the inquiry, separated into Module A and Module B, into the ongoing economic, orderly and efficient development of electricity generation in Alberta. The Alberta government indicated an intent to bring specific policy, legislative and regulatory changes. A summary of the changes can be found on the AUC's website.

Interim Information Requirements

The interim information requirements related to agricultural land, viewscapes, reclamation security and land use planning, implemented by the AUC in September 2023, for new power plant applications, including wind, solar, thermal, hydroelectric and other power plants, remained in effect for all current and prospective applications.

Power Plant Applications Affected by the Pause Will be Assessed on Individual Merits

Because the AUC continued to process applications up to the decision stage during the pause, further process may be required for those applications, depending on the circumstances of the application and the sufficiency of the existing evidentiary record. The AUC will issue correspondence on the record of each existing application confirming the next steps in the proceeding. Should no further process be required, the AUC will issue its decision following the standards for decision writing set out in AUC *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* ("*Rule 007*").

Rule 007 Consultation

The AUC will initiate a stakeholder consultation on specific topics of *Rule 007*, including topics considered during Module A of the inquiry, which are the subject of the Alberta government's intended policy, legislative and regulatory changes. As part of this consultation, the AUC will consider whether some or all interim information requirements will be permanently incorporated into the application requirements for new wind, solar, thermal, hydroelectric and other power plants.

***London Economics International LLC Module B Study: Overview of Modeling Results and Key Findings Prepared for the Alberta Utilities Commission,* AUC Proceeding 28542: AUC Inquiry Into the Ongoing Economic, Orderly and Efficient Development of Electricity Generation in Alberta**
Market Development– Reliability

Scope of Study

The Government of Alberta directed the AUC to conduct an inquiry regarding the impact of the rising level of renewable energy on the Alberta electricity system, more specifically, the changes in the generation supply mix, system reliability and customer affordability.

London Economics International LLC ("LEI") conducted a forward-looking analysis in the context of the province's current wholesale market design and policy environment, leveraging data and analysis from the Alberta Electric System Operator ("AESO").

LEI examined two Base Case outlooks for the Alberta electricity sector in the coming 20 years. The first Base Case reflects the federal draft of the *Clean Electricity Regulations* ("2035 Base Case"). The second Base Case is consistent with Alberta's Alberta Emissions Reduction and Energy Development Plan ("2050 Base Case"). These Base Cases represent two different decarbonization policy pathways for the Alberta electricity sector, namely decarbonization by 2035, versus decarbonization by 2050.

Key Findings

LEI's analysis resulted in the following six key findings:

1. the electric grid will become less reliable: by the late 2030s, there is potential for unprecedented load shed in Alberta under the current electricity market design, regardless of the specific decarbonization policy pathway, because of insufficient supply;
2. the current energy-only market design does not provide sufficient economic incentives to ensure electric system reliability in Alberta under the modeled conditions;
3. growing levels of renewable generation result in lower pool prices, dampening the investment signal under the current market design and causing system reliability to decline;
4. average pool prices will increase sharply in the late 2030s, as pool price trends are driven by carbon policies and the costs of reliability events;
5. residential customer electric bills are expected to outpace inflation in the later years of the forecast period, at a similar trajectory to forecasted pool prices; and
6. despite higher electric bills, there will be worsening service reliability as compared to today.

***Alberta Electric System Operator Application for Approval of Amended Section 306.7 of the ISO Rules,* AUC Decision 28081-D01-2024**

Electricity - ISO Rules

Application

In this application, the AESO requested approval of; amendments to s 306.7 of the independent system operator ("ISO") rules ("ISO Rules"), *Mothball Outage Reporting*; consequential amendments to s 2.4 of the ISO Tariff; and, amendments to the definitions of "mothball outage" and "supply transmission service" in the *Consolidated Authoritative Document Glossary* ("*Glossary*"). The AESO proposed a number of substantive amendments to the existing s 306.7, including matters related to maximum mothball outage duration, mothball outage notification, transmission access, subsequent mothball outages, mothball outage cancellation, and reporting of mothball outages.

Decision

The AUC denied the application because it was not satisfied that the AESO's proposed amendments met the criteria specified in s 20.21(2) of the *Electric Utilities Act* ("*EUA*"). The AUC was not satisfied that the proposed amended rule: (a) is not technically deficient, (b) supports the fair, efficient and openly competitive operation of the electricity market ("FEOC"), and; (c) is in the public interest.

Pertinent Issues

Mothball Outage Rule and Rationale for Proposed Amendments

The current s 306.7 of the ISO Rules enables pool participants to place source assets on mothball outages, which permits the temporary reduction of the available capability of a source asset when forecasted economic conditions indicate a low likelihood of the source asset's ability to recover its forecast avoidable costs.

Mothball outages, under both the existing and proposed s 306.7, do not affect the supply transmission service ("STS") contract capacity of the units and mothballed units may be returned to service on short notice (i.e., three months). As a result, the AESO includes these units in its connection studies, which may result in the identification of transmission congestion that would not otherwise have occurred but for the potential return to service of a mothballed unit.

New entrants wishing to gain access to the transmission system must participate in the AESO's new connection process, which involves an eight-month application window followed by a nine-month assessment period. If sufficient transmission capacity is available, applicants are granted access without the need for further measures. If transmission congestion is identified, access for the new entrant may be made subject to a remedial action scheme ("RAS") or curtailment under the ISO's *Real Time Transmission Constraint Management* protocol until transmission enhancements are completed.

According to the AESO, the presence of mothballed units in certain areas may act as a barrier to market entry and could potentially result in unnecessary transmission additions. The AESO submitted that the potential for an extended mothball outage, combined with the mothballed unit's retention of STS contract capacity under the existing rule, is problematic as it may result in: (i) inefficient utilization of the transmission system and unnecessary costs to new entrants and ratepayers; (ii) lower-quality connection alternatives for new

connection projects; or (iii) additional time and cost to rework the needs identification documents.

Transmission Access Treatment Proposal as Assessed Against the EUA Criteria

According to the AUC, the proposed transmission access treatment provisions in s 5 of s 306.7 of the ISO Rules were a pivotal part of the broader amendments proposed in the application. The AESO explained that, pursuant to the proposed s 5, a pool participant has the option to extend the mothball outage if the mothballed unit continues to be uneconomic. However, after the 24-month maximum duration elapses, the pool participant must decide whether to: (i) return the mothballed unit to service; or (ii) reduce its STS contract capacity if a new connection project is seeking to connect in the area and the AESO identified transmission limitations.

Under the proposed s 5(4), the pool participant would be required to reduce its STS contract capacity by the amount of capability that is mothballed, meaning that, if the entire source asset was mothballed, the asset's STS contract capacity would be reduced to zero megawatts ("MW"). This reduction would only occur if: (a) a new project sought connection in the area of the mothballed generator; (b) the AESO anticipated that the new project, in conjunction with the mothballed unit returning to service, would cause congestion on the system; and (c) the mothballed unit elected not to return to service at that time.

The AESO explained that the proposed changes to s 5 address the "waste" in transmission capacity, the possible overbuilding of additional transmission capacity, and the creation of needless barriers to market entry by "reserving" system capacity for mothballed units that are not actually using the system's capacity after being shut down for the initial two-year mothball period.

(i) The FEOC and Public Interest Criteria

Given the intertwined nature of the FEOC and public interest criteria in this case, the AUC considered them together. The AUC held that the proposed amendments do not, on balance, support the fair, efficient, and openly competitive operation of the market and are not in the public interest.

The AUC held that a significant problem with the proposed s 5 was the lack of proportionality. The AUC concluded that, based on effectiveness factors, the mothballed unit may be required to reduce its STS contract capacity by a greater amount than the capability required to serve a new unit in the area. Further, the mothballed unit's effectiveness factor may vary over time as a result of system changes, such as other generators or loads connecting, or changes to system configuration.

The AUC was also concerned that, should a mothballed unit that has lost its STS contract capacity apply to regain transmission access, the pool participant could expect to wait under the AESO's new cluster assessment process up to eight months for the current application window to close and then a further nine months for the assessment to take place before being advised if sufficient transmission capacity was available. This may significantly extend the timeline of previously mothballed units to reconnect and impose additional costs on them.

The AUC recognized that maintaining the status quo has the potential to act as a barrier to new entrants, which may lead to overbuilding the transmission system. However, the proposed amendments create other concerns. The consideration of these trade-offs forms part of the overall assessment of the application, particularly respecting the FEOC component of the criteria. The AUC was also concerned that the costs associated with the proposed s 5 are unnecessarily high, which may result not only in potential unfairness to pool participants with mothballed units and inefficient use of resources, but also in a possible harm to the market under circumstances where the current mothball rule appears to offer the AESO flexibility to determine appropriate solutions on a case-by-case basis.

For those reasons, the AUC found that the proposed amendments do not support the fair, efficient, and openly competitive operation of the market and that they are not in the public interest.

(ii) The "Not Technically Deficient" Criterion

The determination of whether a proposed rule is technically deficient includes considerations such as whether the rule incorporates and defines fundamental concepts, articulates process steps and what is the rule's scope. The AESO considers a technically non-deficient rule to be clear, concise and cohesive to facilitate stakeholder understanding, including being consistent with the statutory scheme.

The AUC found that the initiating condition for the reduction of STS contract capacity to zero MW contemplated in the proposed amendments was not well defined and that it failed to incorporate fundamental concepts. The proposed rule did not describe the "impacts" on the transmission system that would trigger the ISO's notice to the pool participant under s 5(1) of the proposed rule.

In addition, absent a decision by the pool participant to discontinue the operation of the source asset after receiving notice from the AESO, it is not clear how or if the duration of the mothball outage would be affected, and how the available capability of the source asset might be affected by the ending of the mothball outage.

The AUC noted that the AESO did not address compensation for mothballed units that receive a directive to return to service. Considering that payment of generating units that provide generation in response to an AESO directive has been consistently addressed in other AESO authoritative documents, this raised concerns about inconsistency in compensation treatment.

As a result, the AUC was not persuaded that the proposed amendments are not technically deficient. First, the AUC held that the initiating condition is insufficiently defined. Further, there was a lack of specificity in the proposed provisions because the steps for a pool participant who receives notice that the ISO has identified a transmission constraint caused by a new entrant in the area were not clearly described, especially regarding the potential reduction of the mothballed unit's STS contract capacity to zero MW. Lastly, the AUC found the lack of reference to compensation for mothballed units that are directed back to service inconsistent with other AESO authoritative documents.

In summary, the AUC refused to approve the proposed amendments to s 306.7 of the ISO Rules, *Mothball Outage Reporting*, the consequential amendments to s 2.4 of the ISO tariff and the definitions of "mothball outage" and "supply transmission service" in the *Glossary*.

***AltaLink Management Ltd. 2024-2025 General Tariff Application Negotiated Settlement Agreement,* AUC Decision 28174-D01-2024**

Power - Rates

Application

AltaLink Management Ltd. ("AML") applied for approval of a negotiated settlement agreement ("NSA") with respect to its 2024 - 2025 general tariff application ("GTA").

Decision

The AUC approved the NSA, as filed, with reasons to follow.

Pertinent Issues

As part of the GRA, AML requested, and the AUC granted, permission to pursue a negotiated settlement process ("NSP"). The AUC excluded two issues from the NSP and set a process schedule that included rebuttal evidence and an oral hearing.

The NSP process occurred between AML, the Alberta Direct Connect Customers ("DCA"), the Consumers' Coalition of Alberta ("CCA"), the Alberta Federation of Rural Electrification Associations Ltd. (AFREA"), the Industrial Power Consumers Association of Alberta ("IPCAA") and the Office of the Utilities Consumer Advocate ("UCA").

All parties agreed to and signed the NSA, and filed letters with the AUC confirming that negotiations were conducted in a fair and open manner with adequate notice.

Given the upcoming process schedule deadlines to deal with the two excluded issues, and to provide the parties with certainty regarding the NSA, the AUC decided to issue a decision approving the NSA, with reasons to follow.

***ATCO Electric Ltd. Kiwetinohk Opal Transmission Project,* AUC Decision 28658-D01-2024**

Electricity – Facilities

Application

ATCO Electric Ltd. ("AE") applied for approval to construct and operate a new transmission line, a transmission line alteration and a connection to the approved Kiwetinohk Opal Gas Project.

Decision

The AUC approved the facility application, issuing the necessary permits and licences.

Pertinent Issues

Kiwetinohk Energy Corp. ("KEC") received approval from the AUC to construct and operate a 101.133-megawatt power plant designated as the Opal Power Plant, including an associated substation, located approximately 1.3 kilometres ("km") south of the town of Fox Creek.

The AESO issued a letter of approval for the need for transmission development to respond to the system access service request from KEC and directed AE to file a facility application with the AUC. This application was filed in response to the AESO direction.

The AUC found that AE's application complied with the information requirements prescribed in *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* ("*Rule 007*") and that the proposed development was consistent with meeting the approved need and the requirements of the AESO's functional specification.

The AUC found that the participant involvement program for the proposed project met the requirements of *Rule 007* and was satisfied that there were no outstanding concerns. The AUC accepted that project-related residual effects on the environment were anticipated to be minimal and with no significant adverse effects, provided that AE implemented the applicable standards and project-specific mitigation, including industry best practices.

Consequently, the AUC found the approval of the proposed development in the public interest having regard to the social, economic, and other effects of the proposed facilities, including their effect on the environment.

***Enforcement Staff of the Alberta Utilities Commission Settlement Agreement with Avex Energy Inc.,* AUC Decision 28765-D01-2024**
Enforcement - Facilities

Application

Enforcement staff of the AUC Enforcement Division ("Enforcement Staff") applied for approval of a negotiated settlement agreement ("NSA") between Enforcement Staff and Avex Energy Inc. ("Avex") in relation to the operation of the Red Willow Power Plant (the "Power Plant") without the required approval.

Decision

The AUC approved the NSA reached between Enforcement Staff and Avex and imposed on Avex a total penalty of $241,477.

Pertinent Issues

In response to noise complaints received from residents near the Power Plant, Enforcement Staff investigated the operation of the Power Plant from December 2021 to September 2022. The investigation confirmed and Avex admitted that it operated the Power Plant without an approval, contrary to s 11 of the *Hydro and Electric Energy Act* ("*HEEA*") and *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* ("*Rule 007*").

The penalty for the contravention was comprised of an administrative penalty of $10,496 and disgorgement in the amount of $230,981 to nullify, in part, the value of gains acquired from the sale of the electric energy produced from the unlawful operation of the Power Plant between April 2021, and December 2021.

The AUC noted that Avex was cooperative, engaging in discussions to resolve issues of fact and the penalty arising from the investigation. The imposed administrative penalty reflected a 30 percent reduction in recognition of Avex's cooperation and admission of the contravention, which avoided a hearing and facilitated a timely resolution of the matter.

When assessing whether a negotiated settlement agreement should be approved, the AUC must first be satisfied that the alleged contravention occurred. Second, the AUC applies the public interest test, which requires the AUC not to depart from a negotiated settlement unless the proposed settlement would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

Based on information provided by the parties in the application and the NSA, the AUC accepted that the

contravention occurred and was satisfied that approval of the proposed settlement agreement was in the public interest.

***TransAlta Corporation Pinnacle 1 & 2 Peaking Thermal Electric Power Project,* AUC Decision 28464-D01-2024**

Thermal Peaking - Facilities

Application

TransAlta Corporation ("TransAlta") applied for approval to construct and operate a natural gas-fired thermal power plant (the "Power Plant"), including an associated substation, located within the fenceline of TransAlta's existing Keephills Generating Station (the "KGS") in Parkland County.

Decision

The AUC approved TransAlta's application, finding the approval in the public interest.

Pertinent Issues

The Power Plant consisted of two generating units, Pinnacle 1 and 2, each having an 11-MW capacity. TransAlta described these as "peaker" units, which would operate on an as-needed basis during peak electricity demand periods. The units were expected to operate approximately 20 percent of the time on an annual average basis.

The AUC was satisfied that the application, including TransAlta's participant involvement program, complied with the requirements set out in *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* ("*Rule 007*"). The AUC was also satisfied that the requirements of *Rule 012: Noise Control* ("*Rule 012*") were met.

Given that the Power Plant was situated within an existing gas plant on pre-disturbed land, the AUC was satisfied that there would be no incremental adverse effects on the environment. The AUC accepted that there was limited potential for adverse environmental effects, as the project will be constructed and operated on existing brownfield disturbance, and was satisfied that TransAlta's existing environmental compliance requirements were appropriate to address the project's limited potential for adverse environmental effects.

The AUC was satisfied with TransAlta's submission that the project effects on agricultural land would be minimal, as it will be located within the fenceline of an existing power plant. The AUC was satisfied that TransAlta's approach of reclaiming the project area as part of the overall decommissioning and reclamation of the KGS was sufficient to address its reclamation responsibilities at the project's end of life.

The AUC found the project in the public interest in accordance with s 17 of the *Alberta Utilities Commission Act* and imposed the following condition of approval:

> TransAlta shall submit confirmation of the substation name and electric facility ID once those have been assigned by the independent system operator. The permit and licence for the substation will be issued once written confirmation of the substation name and electric facility ID has been filed with the Commission.

CANADA ENERGY REGULATOR

***Inuvialuit Energy Security Project Ltd. Application for a Well Approval in Relation to the TUK M-18 Well Pursuant to Subsection 10(1) of the Northwest Territories' Oil and Gas Drilling and Productions Regulations,* CER Letter Decision A8W4J5 (C28481-1)**

Oil and Gas - Facilities

Application

Inuvialuit Energy Security Project Ltd. ("IESPL") filed with the Canadian Energy Regulator ("CER") a well approval application in relation to the TUK M-18 well (the "Well Application"). The Well Application is associated with the Inuvialuit Energy Security Project ("IESP"). The Commission of the CER, as the final decision maker for the Well Application, delegated the decision to the CER's Chief Conservation Officer ("CCO") pursuant to section 8 of the Northwest Territories' *Oil and Gas Operations Act* ("*OGOA*").

Decision

The CCO approved the Well Application and issued this letter decision for a three-year term ending on February 28, 2027, subject to two conditions.

Pertinent Issues

In the Well Application, IESPL provided a summary of the workover program for the TUK M-18 well (the "Well Activities"), as follows:

- extend the wellhead to the new ground level;
- displace diesel with kill weight NaCl (sodium chloride) brine;
- drill out the existing upper bridge plug and cement cap;
- confirm the condition of the existing casing;
- drill out the lower bridge plug and cement cap;
- extend the wellhead to the new ground level;
- displace diesel with kill weight NaCl (sodium chloride) brine;
- drill out the existing upper bridge plug and cement cap;
- confirm the condition of the existing casing;
- drill out the lower bridge plug and cement cap;
- set a permanent packer above the existing perforations;
- run production tubing with Subsurface Safety Valve and Vacuum Insulated Tubing;
- flow the well to clean up any kill fluid lost to the formation;
- perform flow test; and
- shut-in and secure the well.

Environmental Matters

The CCO found that the mitigation measures provided in the environmental protection plan ("EPP"), filed with the application, and the procedures identified in the spill contingency plan, filed with the CER previously, were appropriate for the Well Activities. The CCO found that with the implementation of the mitigation measures identified in the Well Application, the EPP and the spill contingency plan the Well Activities can be undertaken without waste or pollution, in a manner that protects the environment, and in compliance with the *OGOA* and the *Oil and Gas Drilling and Production Regulations* ("*OGDPR*").

Engineering Matters

The CCO was of the view that the Well Activities can be undertaken in a manner that prevents waste given IESPL's inclusion of a 'dual barrier' to provide redundant well control. Considering the predicted total ground level radiant heat intensity of the proposed 18 m flare stack, the CCO was also satisfied that that the proposed mitigation measures, including those regarding permafrost degradation, were sufficient to protect the safety of workers.

The CCO was satisfied that IESPL's approach in designing the Well Activities was consistent with good engineering practices, including IESPL's

commitments to meet the requirements of applicable acts, regulations, codes, and standards.

The CCO imposed the following conditions:

7. IESPL must file with the CER, at least two days before commencing Well Activities, a letter notifying the CER that the Well Activities are set to commence; and
8. IESPL must file with the CER, within two days after completing Well Activities, a letter notifying the CER that the Well Activities are complete.

Safety and Emergency Management Matters

The CCO found the workover program for the well to be detailed, logically describing each step in chronological order. The CCO held that IESPL appropriately identified hazards and proposed safety mitigation measures to protect the safety of workers while milling out the upper bridge plug, including the confined space entry procedures for entering the well cellar. The CCO was satisfied with IESPL's contingency plans in the event IESPL discovers damage to the production casing, noting that implementation of contingency plans that involve abandonment of the TUK M-18 well will require an application for a new or amended well approval.

In summary, the CCO concluded that IESPL demonstrated that the Well Activities will be conducted safely, without waste and pollution, and in compliance with the *OGOA* and the *OGDPR*.