REGULATORY LAW CHAMBERS

ISSUE: SEPTEMBER 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 and implements successful legal and business strategies with clients and industry experts, consistent with the legislative scheme and public interest requirements. RLC follows a team approach when working with our clients, industry experts, and other aligned stakeholders. Visit our website to learn more about RLC.

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ALBERTA UTILITIES COMMISSION

***ATCO Gas and Pipelines Ltd. 2024 Unaccounted-For Gas Rider D and Rider P*, AUC Decision 29250-D01-2024**

Gas – Rates

Application

ATCO Gas and Pipelines Ltd. ("AG") requested approval of its 2024 Unaccounted-For Gas ("UFG") Rider D and Rider P, effective November 1, 2024. AG calculated Rider D to increase from the approved value of 1.346 per cent to 1.486 per cent, and Rider P to increase from 1.328 per cent to 1.463 per cent.

Decision

The Alberta Utilities Commission ("AUC") approved AG's UFG Rider D of 1.486 per cent and Rider P of 1.463 per cent, effective November 1, 2024.

Pertinent Issues

Background

UFG represents the portion of natural gas that is lost or otherwise unmeasured between the point where gas enters the AG distribution system and the point where it is delivered to customers. UFG can result from various causes, including pipeline leaks, damages or errors in measurement and billing systems. AG's Rider D applies to retailers and default supply providers, while Rider P applies to gas producers.

AUC Decision

The AUC noted that AG's reported UFG percentages continue to trend upward. In 2023, UFG levels reached 1.918 per cent for Rider D and 1.882 per cent for Rider P, exceeding previous years' levels.

In past UFG decisions, the AUC directed AG to continue to file Rider D and Rider P applications jointly, calculate Rider D and Rider P using five-year averages, provide the reasons for UFG increases or decreases, inform on practices that AG has employed to reduce UFG, provide details with respect to all measurement adjustments, provide the net results of the adjustments to UFG, and provide an update on AG's progress regarding the implementation of a solution to the recent upward trend in UFG percentages.

In the application, ATCO Gas did not propose any changes to the approved methodology for calculating Rider D or Rider P. The riders were calculated as an arithmetic average of the last five years of UFG percentages. The proposed Rider D and Rider P are higher than the recent historical range of UFG percentages.

One of the reasons for the increase in UFG percentages in recent years can largely be attributed to AG's implementation of a new Geographical Information System and the way it assigns heat areas to customers. AG submitted that in late April 2024, it introduced a solution to address the challenges posed by mixed heat areas. AG implemented closed virtual valves to enhance heat area accuracy by creating discrete heat areas and thereby reducing the size of the mixed heat areas. AG stated that it was in the process of collecting the data necessary to fully assess the success of the implemented solution and committed to providing a further update in the next Rider D and Rider P application.

The AUC directed AG to provide the following information in the next UFG application:

• relative ranking of UFG causes, including quantifying the causes of UFG, where possible;

• explanations of seasonal UFG differences, measurement corrections and reasons for increases or decreases;

• information on practices and procedures it has employed to reduce UFG;

• details with respect to all measurement adjustments showing the reconciliation of prior years' data; and

• net results of the adjustments to UFG, both in terms of energy and as a percentage of receipts.

For the purposes of this decision, the AUC was satisfied that the reported variances in AG's UFG were not a cause of concern at this time approving

AG's rate Rider D of 1.486 per cent and Rider P of 1.463 per cent, both effective November 1, 2024.

***Dolcy Solar + Energy Storage Project*, AUC Decision 28723-D01-2024**
Solar - Facilities

Application

Dolcy Solar Inc. ("Dolcy") applied to construct and operate the Dolcy Solar + Energy Storage Project ("Project"), which consisted of a 300-megawatt ("MW") solar power plant, the Dolcy 1148S Substation, and a 100-MW, 200-megawatt-hour ("MWh") energy storage facility ("ESF").

Decision

The Alberta Utilities Commission ("AUC") approved the application, subject to conditions.

Pertinent Issues

Background

The Project will be located on approximately 404 hectares (998 acres) of agricultural land in the Municipal District ("MD") of Wainwright, Alberta, approximately 20 kilometres ("km") north of Metiskow and 20 km southwest of Edgerton.

The power plant will consist of approximately 625,000 Longhi 600-watt bifacial solar panels/modules on a fixed-tilt racking system and 76 SMA SC4000 inverter/transformer units. The substation will be enclosed by a chain-link fence and will include two 240/34.5-kilovolt (kV), 167-megavolt ampere (MVA) transformers, one 240/34.5-kV, 111-MVA transformer, and a control building. The ESF will consist of 62 Tesla Megapack 2XL battery modules and integrated inverters, and 16 associated transformer stations. In addition, the Project will include access roads, fences, temporary workspaces and a 34.5-kV underground collection system to connect the power plant to the substation and ESF.

AUC Decision

AUC Findings

The AUC determines whether a proposed project is in the public interest, having regard to its social, economic, environmental and other effects. The applicant bears the onus of demonstrating that approval of its project is in the public interest.

The AUC made the following findings in relation to the Project:

- The agricultural impacts were adequately mitigated;
- The environmental impacts of the Project were reasonable;
- Dolcy's approach to reclamation was reasonable;
- Fire risks associated with the Project were limited and would be mitigated to an acceptable level by Dolcy's monitoring systems and emergency response plan ("ERP");
- Dolcy's participant involvement program ("PIP") with stakeholders generally achieved the objectives of consultation and notification set out in Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines ("Rule 007");
- The Project was expected to have minimal visual impacts and was not likely to create hazardous glare conditions for drivers and unacceptable glare effect on residents;
- The Project was predicted to comply with the permissible sound levels as defined in Rule 012: Noise Control ("Rule 012"); and
- The Project would generate emissions-free electricity and create municipal tax revenue and job opportunities.

Conditions of Approval

The AUC imposed the following conditions of approval:

- Dolcy must file with the AUC a final project update, at least 90 days prior to the start of construction, to confirm that the Project remained within the final project update allowances for solar power plants and energy storage facilities specified under Rule 007;
- In the final project update, Dolcy must file an updated agrivoltaics plan that reflects the final

project layout, and incorporates the best available knowledge and best practices for initiating the agrivoltaics program;

- Dolcy must file an annual agricultural report that documents the production realized from the agrivoltaics program no later than January 31 for the first three years of the agrivoltaics program;

- Dolcy must submit an annual post-construction monitoring survey report ("Report") to Alberta Environment and Protected Areas ("AEPA") no later than January 31 of the year following the mortality monitoring period, and submit to the AUC the Report and the AEPA's response letter within one month of the AEPA's letter issuance to Dolcy;

- Dolcy must install bird strike diverters on the Project fencing, including any additional mitigation measures recommended by AEPA, to prevent collision of birds with the fencing;

- Dolcy must install a remote monitoring and detection system that is programmable to automatically notify emergency response providers, including the local fire station, immediately upon activation;

- Dolcy must install a thermal imaging camera at the ESF site for continuous monitoring, and integrate the camera into its system alarms, shutdowns, and emergency response planning, where appropriate;

- Dolcy must continually, during construction and operation, and at a minimum annually, review and update the site-specific ERP, and incorporate any reasonable changes necessary to address any concerns received, including providing the plan to the municipal district and the local fire departments;

- Dolcy must develop and implement a reliable communication plan based on input from local residents and landowners that adequately accounts for any limitations or deficiencies of the local telecommunications network;

- Dolcy must provide on-site training to the local first responders following the commissioning of the Project and the completion of the ERP;

- Dolcy and any subsequent operator must maintain sufficient insurance coverage for the ESF against any reasonably foreseeable liabilities;

- Dolcy and any subsequent operator must implement ongoing upgrades to improve the safety of the ESF, including implementing firmware and software enhancements, monitoring capability enhancement, process changes and safety standards;

- Dolcy must notify impacted stakeholders about the AUC approval, permit and licence, including the construction completion date specified in the AUC decisions, and the most up-to-date construction schedule for the Project;

- Dolcy must file with the AUC a visual screening plan that details the discussion with impacted stakeholders, including the final details of the visual impact mitigation, at least 90 days prior to the start of construction. Dolcy must pay for the purchase and installation of any vegetation required by the visual screening plan;

- Dolcy must submit to the AUC an updated solar glare assessment as part of the final project update;

- Dolcy must promptly address any complaints or concerns regarding solar glare from the Project and file with the AUC an annual report detailing any complaints or concerns received regarding solar glare during the first three years of operation, with the first report due no later than 13 months after the Project becomes operational;

- Dolcy must use solar panels with anti-reflective coating for the Project;

- Dolcy must conduct a post-construction comprehensive sound level ("CSL") survey and report the results of the CSL survey to the AUC within one year after the Project commences operation;

- Dolcy must describe the pile foundation used in the final project update, including the reasons for selecting screw piles or driven piles; and

- If the pile design is altered after the final project update, Dolcy must provide to the AUC, no later than the start of construction, a summary of, and the reasons for, those changes.

***Treatment of Unbilled Deferral Recovery Amounts*, AUC Decision 29271-D02-2024**
Regulated Rate Option - Billing Error

Application

In its September 2024 regulated rate option ("RRO") filing with the Alberta Utilities Commission ("AUC"), ENMAX Energy Corporation ("EEC") filed a letter seeking acknowledgment of its September 2024 RRO rates, including approval of recovery of previously unbilled installment amounts under the *Regulated Rate Option Stability Act*, for September, October and November 2024.

In addition, EEC proposed to rectify a system error that affected its bills issued between May 1, 2024, and August 12, 2024, and that resulted in a failure to bill customers the amount of $2.9 million. EEC proposed to correct this error by recovering the unbilled amounts over the next three months, namely from September to November 2024 ("Unbilled Amounts").

Decision

The AUC denied EEC's request for an increase to the RRO electric energy charge intended to recover the Unbilled Amounts as being contrary to the prohibition on retroactive ratemaking. However, the AUC determined that the applicable legislation and EEC's terms and conditions ("T&C") of service still allowed EEC to recover these amounts through corrections to its previously issued bills, approving this approach.

Pertinent Issues

Background

EEC is a regulated rate provider in the service area of ENMAX Power Corporation ("EPC"), which is an owner of an electric distribution system. EEC is required to set RRO rates for each calendar month in accordance with an AUC-approved energy price setting plan ("EPSP"). EEC calculates the RRO rates to be applied in a month and files them with the AUC for acknowledgment not less than five days before the commencement of each month.

The AUC acknowledged EEC's calculated RRO rates for September 2024 in accordance with the EPSP and approved a recovery installment for September 2024. The AUC considered EEC's request to recover the Unbilled Amounts and declined to make any findings on the recovery of the unbilled $2.9 million, directing EEC to provide a written submission to better explain its proposed treatment of the Unbilled Amounts.

In its submission, EEC explained that on August 12, 2024, it identified a human error in its billing system that caused its approved deferral recovery installment amounts to not be billed to customers between May 1, 2024, and August 12, 2024, which resulted in EEC billing its customers the EPSP energy charge without any increase for the deferral recovery installment amount. As a result, EEC failed to bill RRO customers for a total of $2.9 million.

EEC proposed to include the $2.9 million in its rates for September, October, and November 2024 by obtaining approval of a new deferral recovery installment amount that would include a portion of the balance of the remaining deferral amounts and a portion of the previously approved but unbilled amounts.

AUC Ruling

The AUC acknowledged EEC's calculated RRO rates for September 2024 in accordance with the EPSP and approved a recovery installment for September 2024. However, the AUC was of the view that approving the proposed treatment for the Unbilled Amounts would be inconsistent with the purpose of the deferral account and contrary to the fundamental principles of rate regulation.

The AUC noted that EEC proposed to correct its billing error by including previously approved but unbilled amounts in future months' RRO rates. According to the AUC, EEC asked for the AUC's approval to set future rates designed to recoup past under-recovery, which essentially meant that EEC requested that previously approved recovery installments be retroactively revised to $0 so that these amounts can be recovered in future months.

The AUC stated that it approves rates on a prospective basis and that it already acknowledged EEC's May, June, July and August 2024 RRO rates. The AUC determined that the treatment proposed by EEC would violate the well-established prohibition on retroactive ratemaking. The AUC also disagreed that this treatment is consistent with the intent of the legislative scheme or the purpose for which the deferral account was created.

The AUC found that the purpose of the deferral account is to administer the recovery of deferral amounts, in accordance with a calculation methodology set out in the *Regulated Rate Option Stability Regulation* ("*RROSR*"). The AUC did not consider it reasonable to use this deferral account to redress a billing error within EEC's sole control, particularly when the effect would be to increase future RRO rates.

Nevertheless, the AUC recognized that billing errors occur and concluded that there are mechanisms in place for retailers to correct billing errors, without requiring adjustments to future rates. More specifically, EEC's approved T&C for service and s 17 in the *RROSR* allow EEC to issue corrected bills to customers for billing errors identified within 12 months.

The AUC concluded that these provisions read together contemplated that EEC may issue corrected bills to RRO customers for the months affected by the billing error, approving this approach.

***Enforcement Staff of the Alberta Utilities Commission Settlement Agreement with ATCO Electric Ltd.*, AUC Decision 29109-D01-2024**
Settlement Agreement – Public Trust

Application

The Alberta Utilities Commission ("AUC") enforcement staff ("Enforcement Staff") applied, under sections 8, 23 and 63 of the *Alberta Utilities Commission Act* ("*AUC Act*"), for approval of the terms of a settlement agreement dated June 24, 2024 ("Settlement") between the Enforcement Staff and ATCO Electric Ltd. ("ATCO").

Under the Settlement, ATCO admitted to certain contraventions and failures to file accurate information, agreeing to refund customers $4.0 million. ATCO also agreed to pay an administrative penalty of $1.0 million for failing to clearly identify and explain accrual amounts regarding applied-for capital additions in deferral account applications (the Valard Accrual Disclosure issue) and an administrative penalty of $2.0 million for failing to present all material facts fully and accurately regarding the Beaver River Camp.

In addition, the Settlement rectified an error made by ATCO regarding improper capitalization of costs for certain professional fees by removing the original cost of $377,033.76, including associated depreciation, and refunding ratepayers monies they should not have paid, all adjusted as of January 1, 2026.

Decision

The AUC was satisfied that the contraventions occurred and that the public interest test was met, approving the Settlement and imposing the agreed-upon remedy.

Pertinent Issues

Background

ATCO is an owner and operator of an electric utility subject to regulation by the AUC. As a regulated utility, ATCO is subject to a number of duties and obligations, which require that the information ATCO provides in its applications, filings and other representations before the AUC be honest, true, accurate, and not misleading, either expressly or by omission ("Duty of Candour"). The AUC held that the Duty of Candour is a fundamental premise underlying the *Electric Utilities Act*, which duty is necessary for a properly functioning regulatory system and whose importance cannot be overstated.

The Enforcement Staff and ATCO jointly proposed an administrative penalty of $3 million for the contraventions, including a number of terms and conditions requiring ATCO to refund customers, remove improper costs from rate base, and pay the Enforcement Staff's costs. Furthermore, ATCO already implemented or committed to implementing additional internal processes and controls to prevent the reoccurrence of these issues.

Analysis

The AUC stated that its jurisdiction to consider and approve a settlement agreement is grounded in sections 8, 23(1)(b) and 63 of the *AUC Act* and that it applies a two-stage test to assess whether a settlement agreement should be approved. First, the AUC must be satisfied that the alleged contraventions occurred, and if yes, it applies the public interest test to assess whether a settlement agreement should be approved. The public interest test requires the AUC not to depart from a negotiated settlement unless the proposed settlement would disrepute the administration of justice or is otherwise contrary to the public interest.

The AUC was satisfied that the contraventions occurred because ATCO admitted to the

contraventions. The AUC was also satisfied that the Settlement was in the public interest because it was fit and reasonable, falling within a range of reasonable outcomes, given the circumstances. More specifically, the AUC considered that the Settlement reasonably addressed the two facets of the harm to ratepayers as a result of the contraventions and the failure to fulfill the Duty of Candour: (1) actual financial harm; and (2) erosion of the public's trust and confidence in the AUC's regulatory process and the AUC's trust in ATCO.

Regarding the financial harm, the AUC found that the Settlement fully addressed the potential for actual financial harm to ratepayers by requiring ATCO to refund its customers and remove improper costs from rate base. With regard to the erosion of public trust, the AUC considered that the proposed monetary penalty and the terms and conditions detailed in the Settlement, including ATCO's commitments and acknowledgments, were reasonable in addressing that harm.

In reaching its conclusions, the AUC emphasized that this proceeding was commenced because ATCO self-reported the contraventions to the Enforcement Staff. The AUC agreed with the parties that ATCO's cooperation during the Enforcement Staff's investigation was evidence that the changes made to ATCO's internal governance and protocols following prior non-compliances improved its compliance program. Finally, the AUC emphasized that ATCO's commitments and acknowledgments to improve were a bare minimum requirement for all regulated utilities necessary to fulfill their Duty of Candour and that utilities must actively review their practices and policies to ensure that the AUC receives thorough and accurate information.