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## ALBERTA UTILITIES COMMISSION

### ***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* (“EUA”), 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.