



# AUC

Alberta Utilities Commission

## **Enforcement Report July to December 2021**



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## **1 Summary**

Enforcement staff within the Alberta Utilities Commission's Market Oversight and Enforcement Division issue a report on compliance and enforcement activities twice per year. This report covers the period between July and December of 2021.

### **1.1 Role of Enforcement staff**

Enforcement staff are responsible for investigating and ensuring compliance with AUC decisions, orders, rules and legislation under its jurisdiction. As a specialized unit within the Commission, Enforcement staff reduce regulatory burden by investigating complaints and resolving many enforcement matters that would otherwise require formal proceedings. A designated Commission member reviews the results of investigations and the recommendations of Enforcement staff and determines whether: (1) a further investigation or an enforcement proceeding is required with respect to a complaint, (2) a specified penalty pursuant to Section 63.1 of the *Alberta Utilities Commission Act* should be imposed<sup>1</sup> or, (3) a resolution of an enforcement matter through an informal resolution or negotiated settlement is adequate. Complaints and enforcement issues are addressed through a process which promotes efficiency as well as consistency and facilitates timely Commission member determinations on a steady and significant volume of matters. The specified penalty program has further enhanced the Commission's effective consideration of service quality matters.

Enforcement staff apply a flexible dispute resolution process in the following areas:

- a) Landowner and customer complaints related to electric facilities, rates and terms and conditions of service.
- b) Contraventions of service standards, such as disconnections in error, incorrect billing and other AUC rules for which the Commission may issue notices of specified penalty.
- c) Enforcement proceedings.

### **1.2 Summary observations from this period**

*Two additional enforcement proceedings were initiated and Enforcement staff focused on high-risk priority matters*

Between July and December of 2021, Enforcement staff filed submissions in Proceeding 26379 concerning the investigation into whether Link Global Technologies Inc. had been operating two power plants without an approval from the Commission contrary to the *Hydro and Electric Energy Act* and Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines*; and whether one of those power plants had exceeded the permissible noise levels specified in Rule 012: *Noise Control*.

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<sup>1</sup> The Executive Director of the Market Oversight and Enforcement Division also has the delegated authority to issue specified penalties.

On November 10, 2021, Enforcement staff filed an enforcement application in Proceeding 26972 concerning a third power plant operated by Link Global. The enforcement application alleges that Link Global operated the third power plant without an approval from the Commission, contrary to the *Hydro and Electric Energy Act* and Rule 007 and that Link Global concealed its actions and impeded the Commission's ability to effectively and efficiently regulate in the public interest. On December 17, 2021, the Commission combined Proceeding 26972 into Proceeding 26379. This combined proceeding is ongoing.

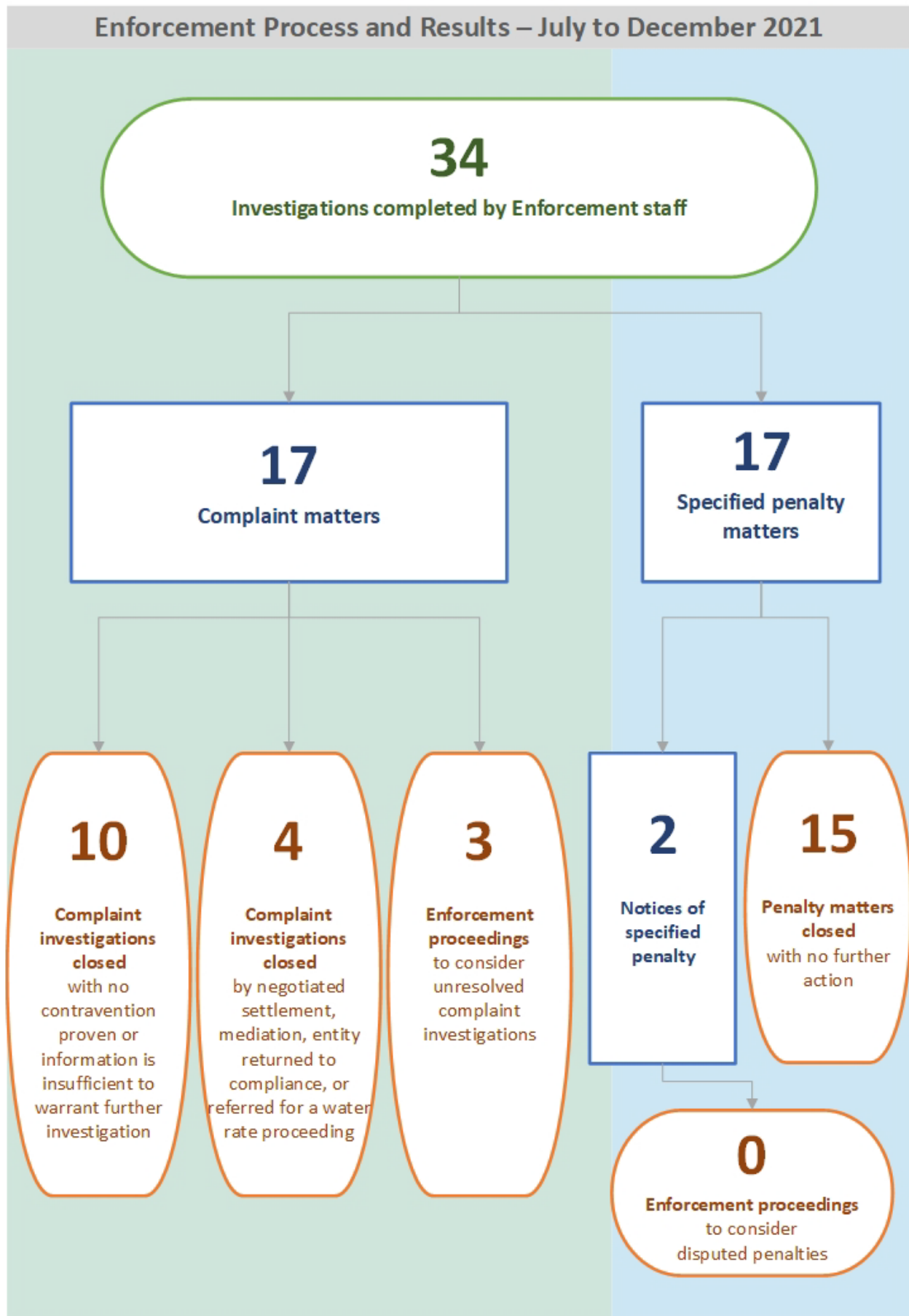
On November 29, 2021, Enforcement staff filed an enforcement application in Proceeding 27013 alleging that ATCO Electric Ltd. contravened the independent system operator (ISO) Rules, the ATCO Inter-affiliate Code of Conduct as well as the *Electric Utilities Act*, and had violated the duty of honesty and candour to its regulator. This proceeding is ongoing.

*Investigations of complaints concerning vegetation management accounted for the largest number of other compliance investigations during this period.*

Between July and December of 2021, Enforcement staff investigated four complaints related to vegetation management. These complaints included either allegations that facility operators had removed too much vegetation, or had neglected their obligations for vegetation management, which could cause an operational hazard.

An innovative resolution to one of Enforcement staff's investigations concerning vegetation management was Elemental Energy Renewables Inc's use of 260 sheep at its Brooks Solar Power Plant as a vegetation control measure. Some of those sheep can be seen in the photo below.





## 2 Enforcement process

Enforcement staff primarily receive referrals from the following sources:

- a) The Commission's Assistance and Information Services group.
- b) The Utilities Consumer Advocate.
- c) The AESO.
- d) The MSA.
- e) Whistleblowers.
- f) Consumers, as complaints through [info@auc.ab.ca](mailto:info@auc.ab.ca) or [enforcement@auc.ab.ca](mailto:enforcement@auc.ab.ca).
- g) Market participants, as self-reports.

Once a determination is made by the designated Commission member, Enforcement staff record the determination and prepare all documents necessary to execute the directed outcome. Potential outcomes include:

- a) Closure of complaints and allegations when the assessment of the matter reveals that no contravention can be proven on a balance of probabilities, or when insufficient information is available to warrant further investigation.
- b) Resolution of complaints and allegations by negotiated settlement, or mediation through the contravening party voluntarily returning to a state of compliance.
- c) Initiating an enforcement proceeding if assessment of the matter reveals that the contravention is likely be proven on a balance of probabilities and enforcement of the contravention is in the public interest. In an enforcement proceeding, the contravening party may be subject to the imposition of an administrative penalty and conditions.
- d) Issuance of notices of specified penalty for contraventions of service standards under Rule 003: *Service Standards for Energy Service Providers*, Rule 021: *Settlement System Code Rules* and Rule 028: *Natural Gas Settlement System Code Rules*. These matters may further result in an enforcement proceeding if a notice of specified penalty is disputed.
- e) Letters advising that no notice of specified penalty will be issued for contraventions of service standards under rules 003, 021 and 028, or where alleged contraventions are not proven.

If Enforcement staff resolve a complaint without formally engaging a market participant, the matter is closed without the issuance of a letter. In more serious or complex instances where Enforcement staff have engaged a market participant in an investigation, a letter is issued to both the complainant and the market participant advising parties of the results of the investigation and any conclusions or findings. Notices summarizing the investigations are posted on the [recent enforcement resolutions](#) page of the AUC website.



Investigations regarding water rates under Section 43 of the *Municipal Government Act* may also be referred for a proceeding.

Notices of specified penalty and letters advising of no penalty are redacted to remove the customer's personal information, and are posted on the [issued specified penalties](#) page of the AUC website.

Administrative penalties are paid into the General Revenue Fund as directed by the *Alberta Utilities Commission Act*. Unless otherwise directed, specified penalties are also paid into the General Revenue Fund. All or a portion of a specified penalty may be directed to be paid to a person. Enforcement staff track the payment of specified penalties and reconcile payments with the Department of Energy to ensure compliance with the Commission's orders.

The sections below provide further details regarding each of the following activities carried out by Enforcement staff during this reporting period:

- Investigating complaints.
- Investigating matters related to specified penalties.
- Filing enforcement proceedings related to complaints or specified penalties.

Enforcement staff, Commission staff, the designated enforcement Commission member and all other Commissioners adhere to the Commission protocols regarding the segregation of enforcement staff and adjudicative personnel including those outlined in Bulletin 2014-05: *Alberta Utilities Commission enforcement policy* and Bulletin 2016-10: *Practices regarding enforcement proceedings and amendments to AUC Rule 001: Rules of Practice*.

### **3 Complaint investigations**

The AUC regulates certain electric and gas utility service providers to ensure that customers receive safe and reliable service at just and reasonable rates. The AUC has oversight regarding the conduct of competitive retailers through the administration of retail market rules. It also ensures that electric facilities are built, operated and decommissioned in an efficient and environmentally responsible way. There are generally two categories of complaints:

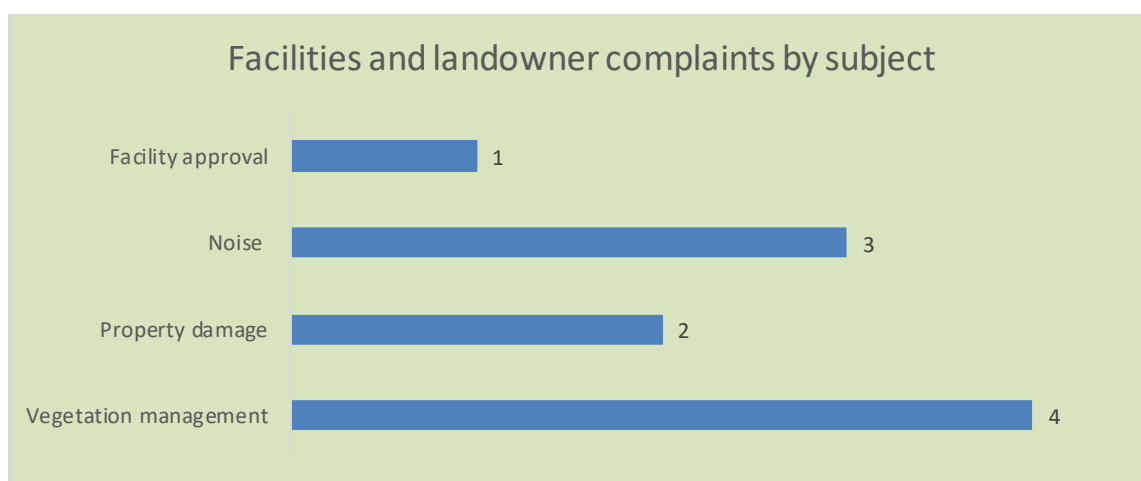
- a) Facility and landowner complaints.
- b) Terms and conditions of service and rate complaints.

**Table 1. Total complaint matters**

Complaint matters July - December 2021	Facilities and landowners	Rates, and terms and conditions	Total
ATCO Electric	1	1	2
Big Lakes County		1	1
Direct Energy Marketing		1	1
Elemental Energy	2		2
EPCOR		1	1
EQUUS	1		1
FortisAlberta	4	1	5
Link Global Technologies Inc.	2		2
Northern Bear		1	1
Village of Delia		1	1
<b>Total complaint matters</b>	<b>10</b>	<b>7</b>	<b>17</b>

### 3.1 Complaint investigations by subject - facilities and landowners

Between July and December of 2021, Enforcement staff completed the investigation of 10 complaints related to facility and landowner matters. This is an increase from nine investigations concluded in the first half of 2021.



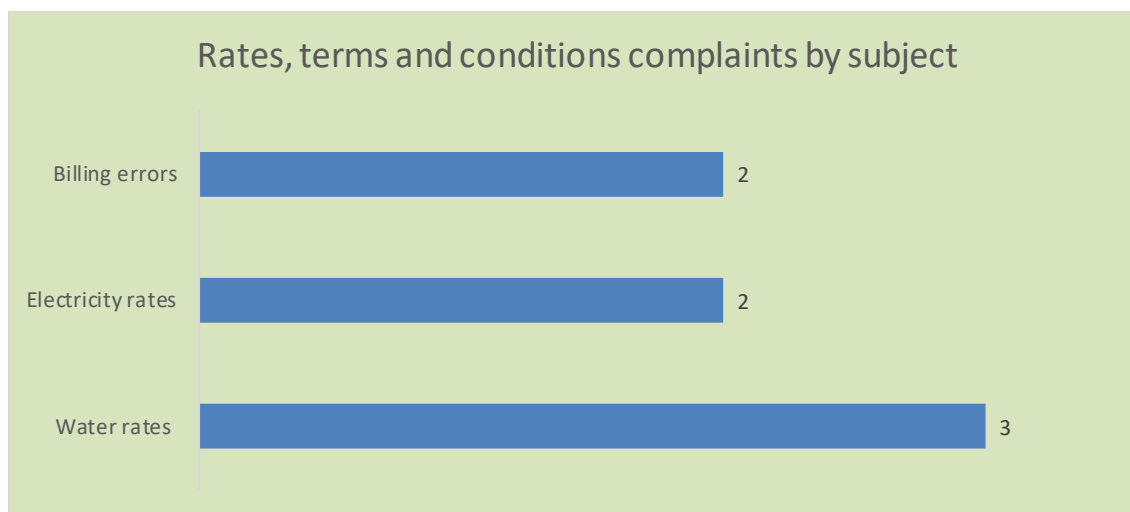
Of the 10 matters investigated, four were closed with the issuance of a letter. Of those four matters, two were resolved through the involvement of Enforcement staff and the other two were closed as the evidence did not demonstrate a contravention could be proven on a balance of probabilities. The details of each of the four matters where a letter was issued are summarized below.

**Table 2. Matters where a letter was issued – facility and landowner complaints**

<b>Date and subject</b>	<b>Complaint</b>	<b>Result</b>
October 7, 2021 Vegetation management	A landowner complained that Elemental Energy Renewables Inc. was not controlling vegetation at the Brooks Solar Power Plant.	Elemental Energy provided reports throughout the growing season which demonstrated that it had implemented vegetation control measures consistent with those directed in Decision 2013-027. As part of those measures, Elemental Energy used 260 sheep to control new growth at the site. (See photo at the beginning of this report.) Enforcement staff concluded that the corrective measures were sufficient to resolve this matter.
October 21, 2021 Vegetation management	A landowner complained that FortisAlberta Inc. had cleared an excessive amount of vegetation from a distribution line right-of-way located on their property.	Of the 18 measured points along the right-of-way provided by the complainant, there appeared to be only one point at which the cleared area measured greater than the prescribed minimum right-of-way clearance distance. Relative to that measured point, there was no persuasive evidence presented that FortisAlberta had acted negligently or willfully to cause damage to the customer's property. Enforcement staff concluded that a contravention was unlikely to be proven on a balance of probabilities.
October 21, 2021 Property damage	A landowner complained that a contractor hired by FortisAlberta Inc. had entered their property without notice and caused damage to their roadway while accessing a distribution pole.	FortisAlberta and the customer reached an agreement with respect to compensation for damages that occurred to the customer's property as a result of this event. FortisAlberta also assured the customer that, in future, it will provide notice prior to entering their property and Enforcement staff expect that FortisAlberta will adhere to the notice obligations stipulated in its terms and conditions in all instances. Enforcement staff concluded that the agreement reached between the parties was sufficient to resolve this matter.
December 13, 2021 Property damage	A landowner complained that between 2011 and 2020, repeated repairs and replacement of appliances and equipment resulted from power surges on the electric distribution system operated by ATCO Electric Ltd.	ATCO Electric provided a power quality report completed by a professional engineer which stated that the power quality issues, which likely caused damage to the complainant's property, originated from an unbalanced electrical panel owned by the customer. Enforcement staff concluded that a contravention of ATCO Electric's terms and conditions of service was unlikely to be proven on a balance of probabilities.

### 3.2 Complaint investigations by subject - rates, and terms and conditions

Between July and December of 2021, Enforcement staff concluded seven investigations related to matters concerning rates, and terms and conditions of service. This is a decrease from 14 investigations concluded between January and June of 2021.



Of the seven investigations, five matters were closed through the issuance of a letter and notices were posted to the Commission's website. Those five matters where a letter was issued are summarized below.

**Table 3. Matters where letters were issued – rates, and terms and conditions**

Date and subject	Complaint	Result
July 15, 2021 Water rates	A customer complained that water rates charged by Properties of Northern Bear Inc. were significantly higher than rates charged by similar water operators.	<p>The Commission had previously found that Northern Bear was the owner of a public utility as defined in the <i>Public Utilities Act</i>, and it approved a long-term water supply agreement between Strathcona County and Northern Bear. In its decision, the Commission denied an application for a franchise agreement, stating that it "is prepared to consider a franchise agreement between Strathcona and Northern Bear in the future, once Northern Bear has submitted and received approval for its rates and terms and conditions of service."</p> <p>Northern Bear stated that it is intending to file an application with the Commission in the near future for approval of its water rates and terms and conditions of service. Enforcement staff concluded that an examination of Northern Bear's water rates will occur as a result of that application, and concerns raised by the Northern Bear Golf Course may be raised in the proceeding related to approval of water rates.</p>
August 12, 2021 Electricity rates	A customer complained that FortisAlberta Inc. had incorrectly charged them a farm rate since their service was installed in	FortisAlberta stated that the customer's site had been built as a farm service at the request of the site's previous owner. FortisAlberta's terms and conditions of service allow for the application of a different rate if

	2006. The customer requested that their rate class be retroactively switched to a residential rate and that they be refunded any difference.	requested by the customer. The information provided in the investigation stated that the customer first complained about their service rate in November of 2020, and that the rate was changed to the residential rate effective November 16, 2020. Enforcement staff concluded that a contravention of FortisAlberta's terms and conditions was unlikely to be proven on a balance of probabilities.
August 17, 2021 Water rates	A customer requested that the AUC intervene and vary the quantity of water billed to them on the basis that their water meter had malfunctioned and had resulted in charges that were improperly imposed.	The AUC had previously determined that it does not have the jurisdiction to consider an appeal concerning whether water rates have been improperly imposed where the substance of that appeal relates to the accuracy of measurement of the customer's consumption.  As the customer's complaint in this matter substantively related to the accuracy of her measured consumption, Enforcement staff concluded that this complaint concerned a matter outside the Commission's jurisdiction and the matter was closed.
October 21, 2021 Billing errors	A customer complained that Encor by EPCOR had incorrectly charged them for gas service.	Encor is required to notify the load settlement agent (LSA) of an erroneous enrolment within one business day of the discovery of the error. Encor admitted that it had sufficient information to conclude that an erroneous enrollment had occurred, and that it had not notified the LSA on time. Further, Encor accepted that it should be responsible for the site charges attributed to the customer for several days, and it advised Enforcement staff that it had begun the process of adjusting the customer's account to reflect this. Enforcement staff concluded that the reimbursement by Encor was sufficient to resolve the billing dispute.  With respect to the failure to notify the LSA of an erroneous enrolment within one day, Enforcement staff issued a Notice of Specified Penalty to Encor for a contravention of subsection 7.3(7) of Rule 028.
November 18, 2021 Water rates	A customer complained that since March of 2020, the Village of Delia had incorrectly charged them a fixed operating fee and sewer fee for a vacant commercial building.	In response to Enforcement staff's investigation, the Village of Delia advised that the customer's account had been reactivated in error, and that it had reversed all related charges. The Village of Delia also stated that it had made a note on the customer's account to prevent any future charges of this nature. Enforcement staff concluded that the corrective measures were sufficient to resolve this matter.

### 3.3 Enforcement proceedings arising from complaint investigations

Between July and December of 2021, Enforcement staff were active in three enforcement proceedings. Below is a list of each proceeding.

Proceeding	Parties	Alleged contraventions	Status
26379	Link Global Technologies Inc.	Rule 007, Rule 012, <i>Hydro and Electric Energy Act</i>	Initiated on March 12, 2021, and is ongoing.
26972	Link Global Technologies Inc.	Rule 007, <i>Hydro and Electric Energy Act</i>	Initiated on November 10, 2021; was combined with Proceeding 26379 on December 17, 2021, and is ongoing.
27013	ATCO Electric Ltd.	Section 9 of the ISO Rules, ATCO Inter-affiliate Code of Conduct <i>Electric Utilities Act</i>	Initiated on November 29, 2021, and is ongoing.

## 4 Specified penalties

Through a series of bulletins, the Commission announced that until June 18, 2021, it would limit its consideration of specified penalties to contraventions that are not self-reported, or that resulted in disconnections of a customer's site in error for a period in excess of 24 hours.<sup>2, 3</sup> During this reporting period, the number of specified penalties issued remained low as Enforcement staff continue to process self-reported contraventions that occurred before June 18, 2021.

### 4.1 Penalty matters resolved by entity and contravention

The Commission issued two notices of specified penalty between July and December of 2021. In total, enforcement staff analyzed 17 events and letters advising of no penalty were issued for 15 of those events. In comparison, between January and June of 2021, there were 42 investigations into penalty matters, resulting in nine notices of specified penalty.

<sup>2</sup> Bulletin 2020-20: *Suspension of specified penalties program for self-reported contraventions*; Bulletin 2020-26: *AUC extends suspension of specified penalties program for self-reported contraventions to September 30, 2020.*

<sup>3</sup> Bulletin 2020-34: *AUC extends suspension of specified penalties program for certain self-reported contraventions to June 18, 2021.*

**Table 4. Penalty matters resolved**

Penalty matters resolved	Rule 003, Section 3.4.1(2) Billing errors	Rule 003, Section 3.4.1(3) Disconnections	Rule 003, Section 3.4.1(4) Credit referrals	Rules 021 and 028, Section 2.5(2) Incorrect drop codes	Rules 021 and 028, Section 7 Erroneous enrollments	Total matters resolved	Total penalty amounts
Penalties issued							
Direct Energy Marketing Limited		1				1	\$425
Encor by EPCOR					1	1	\$500
Total		1			1	2	\$925
Matters where no penalty was issued							
Direct Energy Marketing Limited	9		2			11	
Direct Energy Partnership	2					2	
Encor by EPCOR			1			1	
EPCOR			1			1	
Total	11		4			15	

#### 4.2 Enforcement proceedings to consider disputed notices of specified penalty

Any party who is issued a specified penalty may dispute that specified penalty under Section 63.1 of the *Alberta Utilities Commission Act*. In such cases, Enforcement staff serve as the applicant in the proceeding and request an order from the AUC to confirm the specified penalty in dispute. Between July and December of 2021, no notices of specified penalty were disputed.