



AUC

Alberta Utilities Commission

Compliance and Enforcement

Enforcement Report January to June 2022

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1 Summary

Enforcement staff within the Alberta Utilities Commission's Compliance and Enforcement Division issue a report on enforcement activities twice per year. This report covers the period between January and June of 2022.

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. The Executive Director of the Compliance and Enforcement Division 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 imposed¹ or, (3) a resolution of an investigation through an informal resolution or a negotiated settlement is adequate. Investigations of complaints and enforcement issues are addressed through a process which promotes efficiency and consistency. Further, the work of the Enforcement staff facilitates timely Commission member determinations on a 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 and settlement agreements.

¹ The Executive Director of the Compliance and Enforcement Division also has the delegated authority to issue specified penalties.

1.2 Summary observations from this period

Enforcement staff's efforts during this reporting period were dominated by the negotiations, drafting and completion of a settlement with ATCO Electric Ltd. in Proceeding 27013. Most notably, the agreed statement of facts, contraventions and penalty set out in the settlement agreement reached between Enforcement staff and ATCO Electric which was approved by the Commission on June 29, 2022, in Decision 27013-D01-2022:

- Substantiated a stand-alone contravention of the *Electric Utilities Act* by failing to fulfil the duties and obligations imposed upon it as an electric utility owner and operator in Alberta, which among other things, require that the information ATCO Electric provides in its applications, filings and other representations before the AUC be honest, true, accurate and not misleading, either expressly or by omission; and
- Required ATCO Electric to pay an administrative penalty in the amount of thirty-one million dollars (\$31,000,000).

While the overall number of enforcement matters resolved during this period was statistically lower than previous periods, the settlement reached with ATCO Electric resulted in one of the most significant decisions concerning a regulated utility in Canada.

Enforcement staff also reached a settlement with the City of Grande Prairie regarding the operation of a power plant without an approval, and issued five notices of specified penalty concerning contraventions of service standards.

Enforcement Process and Results – January to June 2022

As a result of settlement agreements and specified penalties filed this period:

\$31,001,050 to General Revenue

\$17,350 to customers

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 Alberta Electric System Operator.
- (d) The Market Surveillance Administrator.
- (e) Whistleblowers.
- (f) Consumers, as complaints through info@auc.ab.ca or enforcement@auc.ab.ca.
- (g) Market participants, as self-reports.

On receipt of a matter, Enforcement staff conduct an investigation to assess whether further enforcement action is warranted. That assessment is based on two tests: (1) whether a suspected contravention is likely to be proven on a balance of probabilities and (2) whether it is in the public interest to pursue further action. Both of these tests must be satisfied. Potential outcomes from an investigation include:

- (a) A settlement agreement that is filed with the Commission for approval when Enforcement staff and the entity in question reach an agreement on the facts, contravention(s) and resulting sanctions.
- (b) An application for resolution of a contested enforcement proceeding when a settlement agreement cannot be reached.
- (c) 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.
- (d) Closure of an investigation when no contravention is likely to be proven on a balance of probabilities and/or it is not in the public interest to pursue.

If Enforcement staff close an investigated matter 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 "Complaint resolutions and AUC Enforcement decisions" page of the AUC website.

Notices of specified penalty and letters advising of no penalty are redacted to remove the customer's personal information, and are also posted. These are found on the "Issued specified penalties" page of the AUC website.

Administrative penalties must be paid into the General Revenue Fund as set out in Section 63(5) of the *Alberta Utilities Commission Act*. Unless otherwise directed, specified penalties are also paid into the General Revenue Fund. Enforcement staff track the payment of specified penalties and reconcile payments with the provincial government 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:

- Settlement agreements filed for approval
- Applications for contested enforcement proceedings
- Notices of specified penalty
- Closed investigations

Enforcement staff, Commission staff and all Commission Members adhere to the Commission's protocols regarding the segregation of Enforcement staff and adjudicative personnel including those outlined in Bulletin 2016-10: *Practices regarding enforcement proceedings and amendments to AUC Rule 001: Rules of Practice*.

3 Settlement agreements

Settlements allow parties to resolve matters without prolonged expense and time. Settlements can also be effectively and efficiently used to advance public interest objectives, including promoting compliance with Alberta utility laws and to prevent harm to any person, public or private property or to the integrity of the AUC's regulatory processes.

Typically, following an investigation, if Enforcement staff consider that a contravention can be demonstrated and it is in the public interest to pursue, Enforcement staff will first seek to resolve the contravention through settlement. All settlement agreements are filed with the AUC for approval and posted publicly.

During the period between January and June of 2022, Enforcement staff reached two settlement agreements which were subsequently filed with the Commission for approval. Proceeding 27013 concerned a settlement agreement reached between Enforcement staff and ATCO Electric, and Proceeding 27391 concerned a settlement agreement reached between Enforcement staff and the City of Grande Prairie. A summary of those settlements, and key activities that occurred during this period, is provided below.

3.1 Proceeding 27013 – ATCO Electric

On November 29, 2021, Enforcement filed an application under sections 8 and 63 of the *Alberta Utilities Commission Act* for the commencement of a proceeding against ATCO Electric, following completion of Enforcement staff's investigation of information received from a whistleblower.

On December 6, 2021, the AUC commenced Proceeding 27013 to consider Enforcement staff's application. Subsequently, Enforcement staff and ATCO Electric engaged in settlement discussions to resolve issues of fact, contraventions and penalty.

The settlement agreement filed by Enforcement staff and ATCO Electric on April 14, 2022, reflects the product of those negotiations. As recorded in both the agreed statement of facts and the settlement agreement, ATCO Electric admitted to the following contraventions:

- (i) Contravention of sections 9.1.5.2 and 9.1.5.6 of the ISO Rules *Part Two – Market Participation*;
- (ii) Contravention of the purpose, intent, spirit and letter of sections 1.1(a), 1.1(d) and 3.1.1 of ATCO Electric's *Inter-affiliate Code of Conduct*;
- (iii) Contravention of sections 7.6(e), (f) and (g) of ATCO Electric's *Inter-affiliate Code of Conduct*, and the quarterly exception report requirement set out in Bulletin 2010-24: *Inter-Affiliate Code of Conduct process changes and clarification of requirements*; and
- (iv) Contravention of the *Electric Utilities Act*, by failing to fulfil the duties and obligations imposed upon it as an electric utility owner and operator in Alberta, which among other things, require that the information ATCO Electric provides in its applications, filings and other representations before the AUC be honest, true, accurate and not misleading, either expressly or by omission.

The joint submission on penalty and costs file by Enforcement staff and ATCO Electric asked the AUC to issue an order:

- Requiring ATCO Electric to pay an administrative penalty in the amount of thirty-one million dollars (\$31,000,000) pursuant to sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act* - with such amount not to be recovered from Alberta ratepayers.
- Imposing on ATCO Electric specific terms and conditions pursuant to Section 63(1)(b) of the *Alberta Utilities Commission Act*, designed to remedy the Contraventions, encourage future compliance, restore confidence and protect the public.
- Requiring ATCO Electric to pay, on a full indemnity basis, the invoiced costs of Enforcement staff's external legal counsel for the investigation and hearing of Proceeding 27013 pursuant to Section 66 of the *Alberta Utilities Commission Act*.

On June 29, 2022, the Commission issued Decision 27013-D01-2022, accepting the settlement reached between Enforcement staff and ATCO Electric.

3.2 Proceeding 27391 – City of Grande Prairie

In 2021, Enforcement staff initiated an investigation in response to two noise complaints received from neighbouring property owners concerning the operation of two combined heat and power microturbines owned and operated by the City of Grande Prairie at its Eastlink recreational facility (Eastlink Centre). Following the conclusion of the investigation, Enforcement staff advised the City that it was satisfied that the City of Grande Prairie operated the power plant:

- (i) Without an approval contrary to sections 11 and 18 of the *Hydro and Electric Energy Act*, Section 18.1(2) of the *Hydro and Electric Energy Regulation*, and Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines*; and
- (ii) In contravention of Rule 012: *Noise Control*.

Enforcement staff and the City of Grande Prairie then engaged in settlement discussions to resolve issues of fact, contraventions and penalty. On May 24, 2022, having successfully reached a settlement, Enforcement staff and the City of Grande Prairie filed a joint submission and settlement agreement with the AUC. Recognizing that residents of the city, some of which would be the very residents harmed by the City of Grande Prairie's contravention, would be further harmed if an administrative penalty were pursued, the settlement did not include the imposition of one. Instead, as set out in the settlement agreement, the City of Grande Prairie admitted to the contraventions and agreed to terms and conditions requiring it to:

- (i) Take steps to put in place sound attenuating measures to address noise exceedance from the power plant,
- (ii) Bring an application for approval to operate and connect the power plant,
- (iii) Bring a motion for interim approval to operate and connect the power plant, and
- (iv) Offer a one-year family membership to Eastlink Centre to the eighteen dwellings adjacent to, and therefore most directly affected by, the power plant as compensation for the harm arising from the failure to bring an application for approval to operate and connect the power plant. The total estimated value of the family memberships is \$17,200.

4 Contested enforcement proceedings

Although Enforcement staff typically first seek to resolve a matter through a settlement, reaching a mutually acceptable settlement is not always possible. When this occurs, Enforcement staff file an application for resolution by the AUC.

During the period between January and June of 2022, Enforcement staff were engaged in one active contested enforcement proceeding.

4.1 Proceeding 26379 – Link Global / Green Block

Proceeding 26379 commenced on March 11, 2021, to consider an application filed by Enforcement staff regarding conduct of Link Global Technologies Inc. which later changed its name to Green Block Mining Corp. The submissions made by Enforcement staff between January and June 2022 are listed below.

Table 1. Submissions by Enforcement staff

Exhibit	Title	Date
26379-X0117	Enforcement staff submission on outstanding matters	February 17, 2022
26379-X0120	Enforcement staff request for extension	March 30, 2022
26379-X0122 to X0124	Enforcement staff submission Westlock Contravention 2	April 19, 2022
26379-X0127	Enforcement staff reply Westlock Contravention 2	May 3, 2022
26379-X0130	Joint submission re Phase 2 process	June 21, 2022

The Commission issued Decision 26379-D03-2022 on May 25, 2022. This proceeding remains ongoing.

5 Notices of specified penalty issued

The Commission issued five notices of specified penalty between January and June of 2022.

Table 2. Notices of specified penalty issued

Notices of specified penalty	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 penalty amounts	Amounts paid to customers
Direct Energy Marketing Limited		2			1	\$775	
ENMAX Energy Corporation		1				\$250	\$150
EPCOR Energy Alberta GP Inc.					1	\$175	
Total		3			2	\$1,200	\$150

5.1 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 January and June of 2022, no notices of specified penalty were disputed.

6 Closed matters

When considering whether to commence an enforcement action, Bulletin 2016-10 states that the Commission will have regard for the following: (1) if, based on the information obtained in the investigation, the occurrence of an alleged contravention appears reasonably likely to be proven on a balance of probabilities, and (2) if the enforcement action is in the public interest. Between January and June of 2022, 47 investigations were closed because they did not meet both of these tests.

In assessing whether the pursuit of an enforcement action, including issuance of a notice of specified penalty, is in the public interest, Enforcement staff consider the harm arising from the contravention and the actions taken by the contravening party. In this regard, the factors set out in Section 4 of Rule 032 are of assistance as is Bulletin 2016-10 which states an investigation may be closed if the entity voluntarily returned to compliance. Investigations closed during this period included:

- Self-reported disconnections in error that were remedied with 24 hours.
- Self-reported referrals to a credit agency in error that were later withdrawn with no harm to the customer.
- Self-reported billing errors that resulted in no more than two incorrect bills.

Table 3. Investigations closed by reason

