



# AUC

Alberta Utilities Commission

## **Compliance and Enforcement**

### **Enforcement Report July to December 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 from July to December 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 imposed<sup>1</sup> 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.

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<sup>1</sup> 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 conducted investigations and filed two settlement agreements in response to referrals from the AUC panel in Proceeding 26615. In that proceeding, the AUC panel had found that both the Office of the Utility Consumer Advocate and the City of Calgary had breached confidential orders. An administrative penalty of \$2,500 per contravention was agreed to in those settlements totaling \$7,500.

Contested Proceeding 26379 (Green Block) and settlement agreement Proceeding 27391 (City of Grande Prairie) remained active from the previous period.

Enforcement staff issued 12 notices of specified penalty totaling \$3,525, that resulted in \$750 being returned to customers.

**Enforcement Process and Results – July to December 2022**

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

**\$10,275** to General Revenue

**\$750** 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](mailto:info@auc.ab.ca) or [enforcement@auc.ab.ca](mailto: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 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 July and December of 2022:

- Proceeding 27391 to consider the settlement agreement between Enforcement staff and the City of Grande Prairie remained open from the previous period.
- Enforcement staff filed an application for approval of a settlement agreement reached with the Office of the Utility Consumer Advocate in Proceeding 27705.
- An application was filed by Enforcement staff in Proceeding 27854 for approval of a settlement agreement between it and the City of Calgary.

A summary of those settlements and key activities that occurred during this period, are provided below.

### 3.1 Proceeding 27391 – City of Grande Prairie

On May 24, 2022, Enforcement staff and the City of Grande Prairie filed a joint submission and settlement agreement with the AUC concerning the operation of two combined heat and power microturbines owned and operated by the City of Grande Prairie at its Eastlink recreational facility. Between July and December of 2022, Proceeding 27391 remained open from the previous period and on November 29, 2022, Enforcement staff filed a submission titled “Joint response to an AUC Notice.”

### 3.2 Proceeding 27705 – Utilities Consumer Advocate

On November 12, 2022, Enforcement filed an application under sections 8 and 63 of the *Alberta Utilities Commission Act* for the commencement of a proceeding and approval of a settlement agreement reached between Enforcement staff and the Office of the Utilities Consumer Advocate (UCA). Enforcement staff had commenced an investigation in response to a referral from the AUC panel presiding over Proceeding 26615 concerning its findings that the UCA had breached confidential orders in that proceeding.

At the conclusion of the investigation, Enforcement staff advised the UCA that it was satisfied that:<sup>2</sup>

On February 25, 2022, the UCA disclosed information on the public record of Proceeding 26615 contrary to Section 30.11 of Rule 001: Rules of Practice and Form RP5 (confidentiality undertakings) concerning the use and protection of information that had been granted confidential protection pursuant to an AUC order.

Enforcement staff and the UCA engaged in discussions to resolve issues of fact, the alleged contravention and penalty arising from the investigation. The settlement agreement filed with the AUC reflected the product of those discussions.

As set out in the settlement agreement, the UCA admitted to the contravention and agreed to the imposition of an administrative penalty of \$2,500 under sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*. In the submission of Enforcement staff, this reasonably achieved the objectives of the AUC’s sanctioning authority, corresponded to the seriousness of the contravention and appropriately considered the mitigating factors.

On December 13, 2022, the Commission issued Decision 27705-D01-2022 approving the settlement agreement.

### 3.3 Proceeding 27854 – City of Calgary

On December 6, 2022, Enforcement filed an application under sections 8 and 63 of the *Alberta Utilities Commission Act* for the commencement of a proceeding and approval of a settlement agreement reached between Enforcement staff and the City of Calgary.

Enforcement staff had commenced an investigation in response to a referral from the AUC panel presiding over Proceeding 26615 concerning its findings that the City of Calgary had breached confidential orders in that proceeding.

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At the conclusion of the Investigation, Enforcement staff advised the UCA that it was satisfied that:<sup>3</sup>

On February 9, 2022 and on March 4, 2022, the City of Calgary disclosed information on the public record of Proceeding 26615 contrary to Section 30.11 of Rule 001: Rules of Practice and Form RP5 (confidentiality undertakings) concerning the use and protection of information that had been granted confidential protection pursuant to an AUC order.

As set out in the settlement agreement, the City of Calgary admitted to the contravention and agreed to the imposition of an administrative penalty of \$5000.00 under sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*. In the submission of Enforcement staff, this reasonably achieved the objectives of the AUC's sanctioning authority, corresponded to the seriousness of the contravention and appropriately considered the mitigating factors.

#### 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 July and December 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 July and December 2022 are listed below.

**Table 1. Submissions by Enforcement staff**

| Exhibit     | Title  | Date           |
|-------------|--|----------------|
| 26379-X0133 | Enforcement staff response to Green Block request for filing extension | July 18, 2022  |
| 26379-X0137 | Enforcement staff response to extension request                        | August 3, 2022 |

This proceeding remains ongoing.

<sup>3</sup>

## 5 Notices of specified penalty issued

The Commission issued 12 notices of specified penalty between July and December of 2022.

**Table 2. Notices of specified penalty issued**

| Notices of specified penalty    | Rule 003, Section 3.4.1(2)<br>Billing errors | Rule 003, Section 3.4.1(3)<br>Disconnections | Rule 003, Section 3.4.1(4)<br>Credit referrals | Rules 021 and 028, Section 2.5(2)<br>Incorrect drop codes | Rules 021 and 028, Section 7<br>Erroneous enrollments | Total penalty amounts | Amounts paid to customers |
|---------------------------------|--|--|--|---|---|-----------------------|---------------------------|
| Direct Energy Marketing Limited | 1  |  |  |   |   | \$175                 |                           |
| Direct Energy Partnership       |  |  |  |   | 1   | \$500                 |                           |
| ENMAX Energy Corporation        |  |  |  | 2   | 6   | \$1,850               | \$600                     |
| EPCOR Energy Alberta GP Inc.    |  | 1  |  |   |   | \$500                 | \$150                     |
| Utility Net                     |  |  |  |   | 1   | \$500                 |                           |
| <b>Total</b>                    | <b>1</b>                                     | <b>1</b>                                     |  | <b>2</b>  | <b>8</b>  | <b>\$3,525</b>        | <b>\$750</b>              |

### 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 July and December 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 July and December of 2022, 45 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 billing errors that resulted in no more than two incorrect bills.
- Self-reported referrals to a credit agency in error that were later withdrawn with no material harm to the customer.
- Self-reported enrollment errors and de-select reason code errors that resulted in no material harm to the customer.
- Complaints that were withdrawn by the customer.
- An entity voluntarily returned to compliance warranting no further action.

**Table 3. Investigations closed by reason**

