



AUC

Alberta Utilities Commission

Compliance and Enforcement

**Enforcement Report
January to June 2023**

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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 January to June of 2023.

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 AUC, 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 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 filed three applications seeking approval of settlement agreements between January and June of 2023: one with ATCO Gas and Pipelines Ltd. and two with ENMAX Energy Corporation. Combined, those three settlement agreements arranged for the parties to pay \$40,500 in administrative penalties and to pay \$221,808 to customers.

Additionally, there were two instances this period where settlement agreements could not be reached. As a result, Enforcement staff filed applications for contested enforcement proceedings concerning the conduct of Salt Box Coulee Water Supply Company Ltd. and Energy Sustain Services Ltd.

Enforcement staff issued five notices of specified penalty this period, which resulted in \$1,475 being paid to general revenue and \$400 being paid to utility customers.

Enforcement staff were also able to assess and conclude 58 smaller investigations. This is the largest number of concluded investigations in a six-month period since July to December of 2020.

Enforcement Process and Results – January to June 2023

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

\$41,975 to General Revenue

\$222,208 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 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 Commission 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:

- (a) Settlement agreements filed for approval
- (b) Applications for contested enforcement proceedings
- (c) Notices of specified penalty
- (d) 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 2023, Enforcement staff filed three new settlement agreements and two settlement agreement proceedings remained open from the previous period:

- (a) In Proceeding 27948, Enforcement staff filed a settlement agreement reached with ATCO Gas and Pipelines Ltd. regarding unfair delays that had occurred when switching customers to the high-use delivery service rate.
- (b) In Proceeding 28201 Enforcement staff agreed to a settlement with ENMAX Energy Corporation whereby ENMAX agreed to compensate 1,426 customers that were issued late bills as result of a technical system error.
- (c) In Proceeding 28213 Enforcement staff filed a settlement agreement with ENMAX Energy Corporation regarding a breach of confidentiality.

- (d) Proceeding 27391 remained open from the previous period to consider a settlement agreement between Enforcement staff and the City of Grande Prairie regarding the operation of a power plant.
- (e) Proceeding 27854 also remained open to consider the settlement agreement between Enforcement staff and the City of Calgary concerning a breach of confidentiality.

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

3.1 Proceeding 27948 – ATCO Gas and Pipelines Ltd.

On January 11, 2023, Enforcement staff filed an application for approval of a settlement agreement reached with ATCO Gas and Pipelines Ltd. This followed an investigation by Enforcement staff into a complaint from TCB Manufacturing. In its complaint, TCB alleged that ATCO Gas had delayed switching it from the mid-use delivery service rate to the high-use delivery service rate, and that as a result of the delay, TCB was overcharged from December 2020 to November 2021.

At the conclusion of the investigation, Enforcement staff informed ATCO Gas that it was satisfied that, contrary to Decision 26283-D01-2021² and Section 4.10 of its Customer Terms and Conditions for Gas Distribution Service, ATCO Gas had failed to:

- (a) Make TCB aware of the various rate schedules under which ATCO Gas provides service to different customer rate classes;
- (b) Endeavour to apply the applicable rate schedule which is most favourable to TCB in a timely fashion; and
- (c) Refund the difference in charges under a different rate schedule for a past period when TCB had requested service under an alternative rate schedule that was available to it.

In response to Enforcement staff's investigation, ATCO Gas reviewed all of its other potential high-use rate switches from January 2021 to present and voluntarily disclosed to Enforcement staff that nine additional customers' (the Customers) switches to the high-use delivery service rate had been unfairly delayed. The Customers had been notified that they would be switched to the high-use delivery service rate in January 2022, but those adjustments had not yet been made in ATCO Gas's billing system.

As set out in the settlement agreement, ATCO Gas admitted to the contravention and agreed to terms and conditions requiring it to:

- (a) Pay directly to TCB, no later than 30 business days from the date of the order, \$93,712.00.
- (b) Pay directly to each of the customers, refunds representing the difference in delivery rate service charges for a total of \$56,796.11. The settlement agreement recognized that

² Decision 26283-D01-2021: ATCO Gas and Pipelines Ltd. 2020 General Rate Application – Phase II Compliance Filing, Proceeding 26283, March 19, 2021.

ATCO Gas had already agreed to provide, and had provided, these refund amounts to each of the customers.

- (c) Implement process improvements for the handling of its high-use delivery rate switch customer requests.

The settlement agreement also included the imposition of an administrative penalty under sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*, in the amount of \$14,500.

The settlement agreement was approved by the Commission on March 7, 2023, in Decision 27948-D01-2023.

3.2 Proceeding 28201 – ENMAX Energy Corporation

On May 15, 2023, Enforcement filed an application for the commencement of a proceeding and approval of a settlement agreement reached between Enforcement staff and ENMAX Energy Corporation. Enforcement staff undertook an investigation in response to the self-disclosure by ENMAX of an event in which 1,426 customers were issued late bills as result of a technical system error with an ENMAX automated billing check system. In its investigation, Enforcement staff requested additional information from ENMAX regarding related dollar amounts, time periods and payment arrangements relating to the incident.

At the conclusion of the investigation, Enforcement staff informed ENMAX that Enforcement staff were satisfied that ENMAX had issued 1,426 late customer bills contrary to Section 3.4.1(2) of Rule 003.

As set out in the settlement agreement, ENMAX admitted to the contravention and agreed to:

- (a) Pay an administrative penalty (AMP) in the amount of \$23,500 pursuant to sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*, payable to the General Revenue Fund and delivered to the Commission within 30 business days of the order.
- (b) Pay customer credits totaling \$71,300, pursuant to sections 63(1)(b) and 63(3) of the *Alberta Utilities Commission Act*, calculated as \$50 multiplied by the number of customers affected by the Incident ($1,426 \times \$50 = \$71,300$). This customer bill credit amount was to be distributed as follows:
 - (i) For current ENMAX customers, a credit of \$50 would be applied to the customer's bill (ENMAX had already commenced applying the \$50 credit to the 986 customers in this category);
 - (ii) For former ENMAX customers, ENMAX would use reasonable efforts to locate each former customer using contact information available to ENMAX, a minimum of two times, and deliver payment in the amount of \$50 to an address or account provided by the former customer. (ENMAX had already commenced efforts to contact these former customers); and
 - (iii) If former customers could not be located or did not respond to ENMAX's attempts within six months from the date of the settlement agreement, ENMAX would pay the remaining credit amount to the CUPS, Crisis Intervention Fund, a non-profit organization providing support for energy affordability in Calgary.

The Commission approved this settlement agreement in Decision 28213-D01-2023, issued on July 13, 2023.

3.3 Proceeding 28213 – ENMAX Energy Corporation

On May 23, 2023, Enforcement staff filed an application seeking approval of a settlement reached with ENMAX Energy Corporation following an investigation in response to a referral from the AUC panel presiding over Proceeding 27495. That panel had found that ENMAX had breached a confidentiality order in Proceeding 27495.

At the conclusion of the Investigation, Enforcement staff advised ENMAX that it was satisfied that:

On November 4, 2022, EEC disclosed information on the public record of Proceeding 27495 contrary to Section 30.11 of Rule 001: *Rules of Practice* 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, ENMAX admitted to the Contravention and agreed to the imposition of an administrative penalty (AMP) of \$2,500 under sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*.

3.4 Proceeding 27391 – The City of Grande Prairie

Proceeding 27391 remained open from the previous period to consider the joint submission and settlement agreement filed by Enforcement staff and The City of Grande Prairie regarding the operation of two combined heat and power microturbines owned and operated by The City of Grande Prairie at its Eastlink recreational facility. On January 20, 2023, the Commission approved the settlement agreement in Decision 27391-D01-2023. In that decision, the Commission also noted the conditions imposed on The City of Grande Prairie in decisions 27276-D02-2022 and 27841-D01-2023.

3.5 Proceeding 27854 – The City of Calgary

On December 6, 2022, Enforcement filed an application for approval of a settlement agreement reached with 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.

On March 14, 2023, the AUC issued Decision 27854-D01-2023 which approved the settlement agreement and directed The City of Calgary to pay a \$5,000 administrative penalty.

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 2023, Enforcement staff were engaged in three active contested enforcement proceedings.

4.1 Proceeding 28021 – Salt Box Water Supply Company Ltd.

On February 15, 2023, Enforcement staff filed an application requesting that the AUC initiate a phase 1 enforcement proceeding concerning the conduct of Salt Box Coulee Water Supply Company Ltd. Contested enforcement proceedings are generally conducted in two phases: phase 1 concerns the determination of facts and the contravention; phase two concerns the penalty to be imposed after a contravention has been determined. In that application, Enforcement staff alleged that Salt Box had contravened Decision 24295-D02-2020³ by:

- (a) Failing to file audited financial statements contrary to the Commission's direction in Decision 24295-D02-2020, despite having collected funds from its customers for this purpose; and
- (b) Charging monthly fees and rate riders to unconnected lot owners contrary to the rates and terms and conditions of service approved in Decision 24295-D02-2020.

Subsequent to its application, Enforcement staff made the following submissions during this period:

Table 1. Submissions by Enforcement staff

Exhibit	Title	Date
28021-X0037	AUC-Enforcement_IR-Response_ENFORCE-AUC-2023-MAR30-001-003	April 21, 2023
28021-X0038	AUC-Enforcement_IR-Response_ENFORCE-SALTBOX-2023-APR06-001-005	April 21, 2023
28021-X0040	Enforcement – Rebuttal letter	May 18, 2023

This proceeding remains ongoing.

4.2 Proceeding 28170 – Energy Sustain Services Ltd.

On April 26, 2023, Enforcement staff filed an application requesting that the AUC initiate a phase 1 enforcement proceeding to determine whether Energy Sustain Services Ltd. and Zong Tang (the Respondents) have contravened the *Hydro and Electric Energy Act*, Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments* and Rule 012: *Noise Control*. Enforcement staff alleged that:

- (a) The Respondents operated the power plant from February 15, 2022 until May 31, 2022, without an approval from the Commission contrary to the *Hydro and Electric Energy Act* and Rule 007; and

³ Decision 24295-D02-2020: Salt Box Coulee Water Supply Company Ltd. 2020 Final Rates, Proceeding 24295, June 29, 2020.

(b) The power plant operations exceeded the permissible sound levels specified in Rule 012.

Subsequent to its application, Enforcement staff made the following submission during this period.

Table 2. Submissions by Enforcement staff

Exhibit	Title	Date
28170-X0016	Enforcement - Response to AUC request for submissions	June 29, 2023

This proceeding remains ongoing.

4.3 Proceeding 26379 – Link Global Technologies Inc./Green Block Mining Corp.

Proceeding 26379 commenced on March 11, 2021, to consider an application filed by Enforcement staff regarding the conduct of Link Global Technologies Inc. Link Global later changed its name to Green Block Mining Corp. The submissions made by Enforcement staff between January 2023 and June 2023 are listed below.

Table 3. Submissions by Enforcement staff

Exhibit	Title	Date
26379-X0151	Enforcement staff – Limitation Period Response	March 2, 2023
26379-X0156	26379 Phase 2 - Case Management Meeting - Enforcement submissions	April 18, 2023
26379-X0161	Enforcement staff submission - Penalties for contraventions 1 to 5	May 26, 2023

This proceeding remains ongoing.

5 Notices of specified penalty issued

The Commission issued five notices of specified penalty between January and June of 2023.

Table 4. 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
ENMAX Energy Corporation	3				2	\$1,875	\$400
Total	3				2	\$1,875	\$400

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 Commission to confirm the specified penalty in dispute. Between January and June of 2023, 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 2023, 58 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: *Specified Penalties* 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:

- (a) Self-reported disconnections in error that were remedied with 24 hours.
- (b) Self-reported billing errors that resulted in no more than two incorrect bills.
- (c) An entity voluntarily returning to compliance warranting no further action.

Table 5. Investigations closed by reason

