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A Guide to the Alberta Utilities Commission

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Purpose of the Guide

Electricity, or power, touches everyone's life, everyday. Electrical facilities, like generating stations, transmission lines, and substations are necessary to ensure that Albertans have a reliable, consistent, and available source of electrical energy at their fingertips, and represent the most common types of facilities that the Alberta Utilities Commission regulates.

Regulatory decisions about electrical facilities, such as generating stations, transmission lines and sub-stations can have a direct impact on individual Albertans. When a generating station is built, it is large and visible, and can be a source of significant noise and emissions. Above-ground transmission lines are also visible, consist of large wood or metal structures that support insulators and conductor wires, and extend for thousands of kilometers. Substations are large industrial-looking facilities that are visible on the landscape or urban environment and consist of high voltage electrical equipment that ensures the reliable delivery of electricity to all Albertans.

The Alberta Utilities Commission (the “AUC” or the “Commission”) is the provincial regulator that is responsible for regulating the electricity industry and all related infrastructure. The AUC’s jurisdiction includes the responsibility to assess whether new electricity facility projects or modifications to existing electricity infrastructure are in the public interest. This Guide is intended to assist members of the public when they are preparing to participate in an AUC proceeding and do not have a lawyer to assist them.

In order to make informed decisions in the public interest, it is important that the AUC has the best available information. To achieve this, it is critical that Albertans have meaningful participation in the process. Through AUC's hearing process, members of the public can express any concerns they have regarding the individual, environmental, and/or societal impacts of proposed projects through direct participation in the AUC's decision-making process.

The purpose of this guide is to outline the opportunities available to you, the concerned members of the public, to voice concerns regarding the development or expansion of facilities within the AUC's jurisdiction. By referring to this Guide, you will be able to identify the opportunities in the regulatory process when you can make your concerns known to Applicant, before the hearing, and to the AUC at a written or oral hearing.¹

Remember: The AUC wants to hear your point of view about the proposed facility. It is not necessary to have a lawyer to express your concerns.

¹ The Applicant is the party making the application to the AUC.

How the Guide is Organized

This Guide is organized in distinct parts which you can read separately, depending on what you need to know:

Part One: provides an introduction to the Alberta Electricity System.

Part Two: sets out the basic principles of administrative law.

Part Three: addresses the time period prior to when an application is filed by the Applicant and how to participate in the Applicant's consultation process.

Part Four: focuses on the time period between the filing of the Application and the hearing and gives you an overview of the AUC's process.

Part Five: addresses the hearing, whether written or oral, virtual or in-person and provides you with key insight into how to present your case to the AUC.

Part Six: outlines common concerns that are raised in AUC facilities hearings and provides

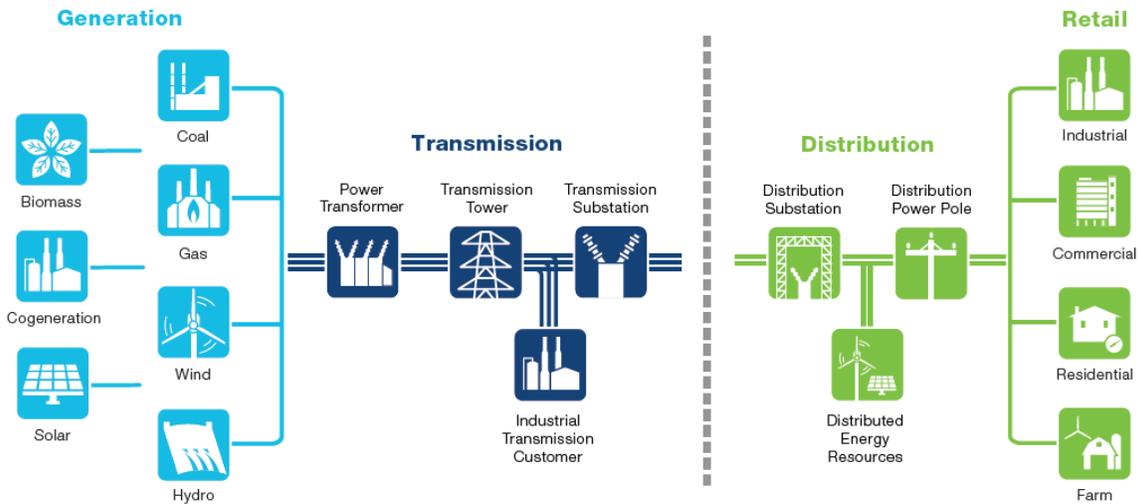
Part Seven: outlines the steps that occur after the hearing, including how to address your concerns about the outcome of a proceeding.

Part One – Introduction to the Alberta Electric System

1. Overview of the Electricity Industry in Alberta

In order to provide electricity to customers, it must be generated, transmitted, distributed, and sold to customers. Each of these steps has a component of being regulated, mostly by the Alberta Utilities Commission, but in some cases with the support of other regulatory agencies in Alberta.

This infographic shows the path that electricity takes from generation to retail.²



Electricity is created at power plants or generating stations. A power plant or generating station can generate electricity from a number of different sources, such as coal, natural gas, solar, wind and running or dammed water. There are several other sources of electricity generation that are not commonly used in Alberta but could be a source of electrical power in the future, such as hydrogen and nuclear generation.

After electricity is generated, it is transmitted around the province on large capacity power lines, called transmission lines. These transmission lines are the means by which bulk electricity is made available around Alberta. Typically, transmission lines run between power plants and high voltage substations or between high voltage substations located in different parts of the province. Electricity is reduced in voltage before it is distributed at a more local level on the distribution system. The distribution system is a scaled-down version of the transmission system with all of the same components, just smaller. Then, customer's homes or businesses are connected to the distribution system. Electricity retailers manage the distribution system and sell the electricity to customers, usually based on the customer's consumption plus administrative fees. The

² AESO, "Fact Sheets: Electricity in Alberta and the AESO" (last visited 25 April 2022), online (pdf): *AESO* <<https://aeso.ca/download/listedfiles/Electricity-in-Alberta-and-the-AESO.pdf>>.

administrative fees are set by the retailer, and approved by the AUC in separate proceedings, to recover its operating expenses, separate from customer usage.

2. The Public Interest Test

The most important requirement that the AUC must respect is its obligation to make all decisions on matters within its jurisdiction in the public interest.³ The public interest test is the foundation for ensuring that decisions made by the AUC consider the scope of the potential impact of the facility development on Albertans and includes consideration of the social and economic effects of the development, plant, line or pipeline and the effects of the facility on the environment.

This test is clearly set out in the *Alberta Utilities Commission Act* at section 17(1), which states:

17(1) Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment.

³ *Alberta Utilities Commission Act*, SA 2007, c A-37.2, s 17(1).

Part Two – Basic Administrative Law Principles

Administrative Tribunals and the Rules of Natural Justice

What is an Administrative Tribunal?

Administrative tribunals are entities that are created by legislation and to which the government (either provincially or federally) delegates certain decision-making roles pursuant to specific pieces of legislation. Some administrative tribunals are part of a larger government directed regulatory process and some, like the Alberta Utilities Commission, are independent of government.

Natural Justice / Principle of Due Process / Procedural Fairness

Administrative tribunals are required to make their decisions in a manner that can be described as procedurally fair, or in accordance with the rules of natural justice. The duty to act fairly applies to all quasi-judicial and administrative decision makers, including the AUC. The duty to act fairly is not more complicated than it sounds. It is the duty to ensure that all parties are treated fairly, respectfully, and are given the full opportunity to participate in decision-making processes that can affect their lives or their property.

One of the fundamental rules of natural justice is that the decision-maker must be objective and unbiased in reaching its decision. In the context of an AUC hearing with respect to facilities developments, the rule against bias ensures that the Commission is required to consider all of the relevant evidence objectively, whether it is the evidence provided by the Applicant or the evidence provided by you. In addition, the Commission cannot disregard your evidence simply because it might not be presented as formally as an applicant. Just because the Applicant is often a large company, the AUC is not allowed to favour their position over yours.

Another one of the fundamental rules of natural justice is the right to “know the case”. In a practical sense, this means every party is entitled to have notice of the proceeding and the process steps of the hearing, and to have reasonable accommodation to ensure that they can participate. You are entitled to have access to the information from the Applicant and the opportunity to challenge that information, with some reasonable exceptions regarding commercially sensitive information like financial arrangements. Finally, you are entitled to be able to ask questions and get answers about the process and the information that the Commission will use to make its decision. The purpose of this rule is to ensure that all parties, including you and the Applicant, have exactly the same opportunities to participate in the hearing process.

Part Three – Pre-application - Applicant’s Public Information Process

3. Consultation by the Applicant

The process of consultation is one of the more complex aspects of the regulatory process that the Applicant must follow.

Consultation, or public participation, is required by the AUC Rules and forms part of the pre-application process for the Applicant.⁴ Applicants are required to provide the public with a clear idea of the scope of the project and the potential locations for the facility.⁵ Public participation can take many forms – and the best processes usually incorporate multiple approaches. The Applicant will often include general information mail drops, information posted in public places like libraries in the community, specific information mailed to your home address, open houses, project specific websites with details of the projects and electronic comment cards, and “frequently asked questions” sheets, to name a few.

This process is to give you an opportunity to provide your opinion to the Applicant regarding the location of the facility and any other matters of concern, such as the impact that the facility might have on you. You can also suggest mitigation measures that the Applicant could use to solve your concern. An example would be if a transmission pole is situated in front of your living room window. Sometimes, if the Applicant is aware that this is a concern for you, the Applicant might be able to move the transmission pole a little farther along the line so that it does not obstruct your view. The Applicant is required to receive the information and, to the extent possible and reasonable, consider and incorporate the input from the public into its design and siting process.

Through a series of versions of the project design and location, the Applicant is required to narrow down the potential options that are most feasible to construct and operate, while resolving as many of the public’s concerns as possible. Most of the time, there will be more than one viable location option for a facility. In the case of transmission lines, that could mean the pathway between the beginning and the end of the transmission line could take different routes. In the case of a power plant or a substation, it could mean there are multiple locations where the facility could be sited. The input of people who live in the area ought to be considered by the Applicant before filing its application. The AUC will expect to see details of the process the Applicant followed to present information to the public, receive input, consider that input, and apply it to make changes to the project, before filing its application with the AUC. In some cases, there may not be viable actions the Applicant can take to reduce the impact of a concern or

⁴ Reference AUC Rule 007 section re PIP (Appendix A1 (<https://www.auc.ab.ca/rule-007/#hq=auc%20rule%20007>) , A1-B <https://www.auc.ab.ca/rule-007/#hq=auc%20rule%20007>)

⁵ As part of the development of the application, the Applicant is required to notify or consult with the people who live in the specified vicinity of the proposed facility. That distance varies based on the type of facility the Applicant is applying for. For example, with respect to a transmission line, the Applicant is required to consult with all landowners, occupants, and tenants on properties located within 800-metres of the edge of the proposed right-of-way. With a power generation facility, the Applicant is required to consult with all landowners, occupants, and tenants on properties located within 2,000-metres of the centre of the proposed facility site.

eliminate it. In that case, the AUC will expect the Applicant to provide a clear explanation why they came to that conclusion despite input from the public, and how the Applicant communicated this conclusion to the public.

This is a key issue that members of the public often raise at AUC during facilities hearings.

It will be important for you to acknowledge the facts about when you were consulted in order to have credibility when you say that you were not consulted enough. Not participating in the consultation process will not help your credibility if you intend to state that you did not have sufficient consultation. Applicants keep detailed records of the people and organizations they consult, so failing to acknowledge that the Applicant mailed a package of information, returned a phone call, or provided additional information may harm your credibility before the AUC.

It is important for you to keep your own record of when you were given material by the Applicant and when they held open houses or visits in your community, especially if you feel that you have not been provided with a fair opportunity to speak with the Applicant prior to the hearing.

The public participation or consultation period is the first opportunity you have to be heard. This period is also the best time to make submissions that influence the Applicant's project development. While it is always an option to appear at the hearing and make an argument, it will be less persuasive if you have not taken the opportunity during the consultation (pre-filing) period to make your opinion known to the Applicant when the Applicant can actually respond to your concerns and possibly put mitigation measures in place. Once the application is filed, the AUC is required to consider the options that are presented to it, unless the Applicant has failed to include an obvious option in its application. If the Applicant has failed to submit an obvious option, the AUC has the option to temporarily suspend the hearing and instruct the Applicant to consider a different option before returning to the hearing to provide additional information to the AUC. However, this is a very rare situation. After the application is filed and a hearing is scheduled, the options that will be considered by the AUC are limited to those put forward by the Applicant during the hearing. The best time for concerned parties to ask the Applicant to consider changes to address concerns is before the application is filed.

4. Open Houses

Alberta Utilities Commission Open Houses

Given the formality of AUC hearings, appearing at them can be an intimidating experience, despite the best efforts of the AUC staff to make the experience as comfortable as possible.

The AUC will often hold an open house in the community before a hearing occurs, particularly if the application is for a large facility. Sometimes this open house will be before the application is filed or shortly after it is filed. This open house is an opportunity for the public to ask questions of AUC staff about the process of the hearing. This is not an opportunity to argue your position about whether you agree or disagree with the Applicant's application. You are always welcome to express an opinion, but the purpose of the AUC open house is only to share information about the regulatory process and answer questions about the process. It is important to know that AUC

staff will not provide information about the project during the open house, nor are they able to communicate to the Applicant any concerns you present at the open house.

The AUC staff's mission at an open house is to make sure that you have the opportunity to ask them how the process works and to get answers to your process questions. If the AUC does not have an open house in your area, you can always contact the Application Officer whose name will be on the Notice of Application directly to ask your questions. General contact information for the AUC is located in Appendix 7.

Applicant Open Houses

The Applicant may be required, or may choose, to hold one or more open houses in the communities where the proposed facilities will be located. In this case, the AUC staff will not be present at an Applicant's open house. Open houses can take as many forms as you can imagine. Sometimes, they are small events where the Applicant will bring some maps and drawings that describe the facility that they want to build. An Applicant might have a video or slide presentation that runs periodically through the afternoon or evening of the open house. Some Applicants will set up "stations" that address particular topics, like impact on irrigated fields or impact on wetlands, where experts in those specific areas will answer your questions.

The purpose of Applicant open houses is to provide you with the opportunity to raise your concerns about the proposed project and to find out all the information that you want to know about the facility that is proposed. The Applicant may have comment cards, or computer terminals, for you to submit your concerns to the Applicant in writing. You can ask the Applicant to visit you again, privately, so that you can discuss your specific concerns if you are not comfortable discussing them in a public open house. As well, you can ask the Applicant to send you more information about any aspect of the proposed project so that you can understand it better.

The Applicant's open houses are an opportunity for you to speak directly to the Applicant's representatives and ask the questions that may or may not have been clear in any information that was provided to you in writing through mailouts or information bulletins.

Part Four – After the Application is Filed but Before the Hearing

5. Statement of Intent to Participate

The first step in participating in the hearing is to file a Statement of Intent to Participate (“SIP”). The SIP is a very short form where you identify where your land is, provide a short summary of your concerns, and indicate whether you want an in-person hearing, a virtual hearing, a written hearing, or no hearing. The SIPs will also be used by the AUC to determine what kind of hearing, if any, to hold with respect to the application, based on the number of SIPs filed, the nature of the concerns, and the preferences stated by the interested parties, like you. However, be aware that even if you file a SIP and request an oral hearing, the AUC has the discretion to decide that an oral hearing is not warranted and that a written hearing will be sufficient to address the concerns raised by interested parties, including you.

HOW TO ACCESS CURRENT APPLICATIONS AND PROCEEDINGS ON THE AUC WEBSITE AND RULES

The Alberta Utilities Commission uses an electronic filing system for all applications and materials related to applications. In order to access a particular proceeding, you must create an account on the AUC website. There is no cost associated with creating an account. The AUC has provided more information about how to create an account and access the electronic filing system on its website at <https://www.auc.ab.ca/pages/how-to-use-efiling.aspx>. If you are having difficulty with the electronic filing system, or have any questions about it, you can call the AUC directly and someone will happily assist you!

6. Standing to Participate

The AUC Rules state that only people who own, occupy, or rent land that is within certain specified distances of the facility have a right to participate in the process and provide evidence at a hearing. This right to participate is called standing. These rules ensure that the Commission is hearing concerns raised by people who are close enough to the proposed facility to be affected by the development.

The Statement of Intent to Participate form will be used to determine whether you have standing.⁶ Each type of facility has a different area where standing, or adverse impact, is assumed to be present. The AUC Rules explain what these distances are.

Any member of the public is welcome to attend an AUC hearing. If you are not granted standing, you may still attend the hearing as an observer.

7. Information Requests

The next step is for the review of the application. The AUC will review the application in detail and ask both the Applicant and the interveners questions (“Information Requests”) to ensure the

⁶ The Statement of Intent to Participate Form for Facilities Hearings can be found at this link: https://media.www.auc.ab.ca/prd-wp-uploads/regulatory_documents/Reference/RP2a-FacilitiesSIPForm.pdf

Commission has as much of the important and relevant information required to make a decision before the hearing. Each party with standing is entitled to ask questions of the other parties, in writing, in advance of the hearing. These questions and answers will form part of the formal record of the proceeding. This process can take some time but is important to ensure as much information as possible is brought forward before the hearing. The information in the responses to the Information Requests helps the Commission and the Applicant be prepared for the hearing.

Submitting information through these requests does not prevent you from presenting your case at the hearing or submitting additional arguments.

During the application review period, it is also possible to communicate with the Applicant and bring forward issues that may still be able to be resolved. In the case where issues are resolved prior to the hearing, the SIP can be withdrawn and the hearing will focus on the remaining issues.

Part Five – Preparing for and Participating at a Hearing

8. Oral Hearings

The Hearing Process

Often, the hearing room will be set up similar to a courtroom. The Applicant and the AUC generally have lawyers to assist them but members of the public often represent themselves. Even though you might feel like you are at a disadvantage by choosing to not have a lawyer represent you, the Commission members will try their best to make sure that you are comfortable.

Remember, the AUC has an obligation, and desire, to hear your position completely, regardless of whether you have a lawyer or you speak for yourself.

The hearing will be managed by the Chair of the hearing panel. Often, this is the Commissioner who is sitting in the middle of the table. The Chair will set out the rules for the hearing, such as when the days will begin, when breaks will be taken, who is present on behalf of the AUC, and the order of presentation for the interveners. It is also the role of the Chair to ensure that everyone conducts themselves in a respectful manner.

If there are any preliminary motions or matters, the panel Chair will bring those matters up first and hear everyone's position on the matter. The type of issue that could be dealt with as a preliminary matter would be adjournments or witness scheduling, legal matters pertaining to jurisdiction, or the admissibility of specific evidence.

The Applicant will present its case first. Generally, the Applicant will have filed all the information that it intends to rely on in its application and through the Information Request process. At the beginning of its presentation, the Applicant will introduce everyone who participated in preparing the application, including its experts and consultants. The Applicant may present the resumes of experts if there have been any concerns raised about the expert's qualifications. Generally, the Applicant will give an opening statement, confirm that there are no changes to the application, and state that the Applicant's panel is available for questions.

Usually, the lawyer for the AUC will have questions for the Applicant's panel of witnesses. The AUC's lawyers are not on anyone's "side". The questions that they will ask the Applicant's panel, or any other person, like you, are questions that are designed to complete the evidence so that the Commission has all the information necessary to make a thoughtful decision.

After the Applicant presents its case, the interveners will have their opportunity to present their positions to the hearing panel. You can present your case by giving an oral statement. You can supplement your statement with a presentation, photographs, or whatever type of evidence you feel is important for the hearing panel to hear, so they understand your perspective and the impacts that the proposed facility will have on your land and your enjoyment of that land. The Applicant, or its lawyers might ask questions about your position to clarify your evidence. The hearing Commissioners may also ask you questions. At this time, you can ask questions of the Applicant and its experts as well. You will also have an opportunity to make a final statement to summarize your position after the questions have been asked and answered.

Sometimes, after all of the other parties have finished their submissions, the Applicant might call additional witnesses if new issues were raised during the question-and-answer period. This process is typically very focused and is not an opportunity for the Applicant to bolster its case or to add new information. It is a limited opportunity for the Applicant to respond to issues that were not addressed in its original submission and that were raised at the hearing.

Finally, all the parties, including the Applicant, will have an opportunity to summarize their position in argument. Sometimes, this argument is provided in writing and sometimes it is done verbally. The panel Chair will determine whether the final arguments will be written or oral and if there will be time limits on oral arguments and page limits on written arguments.

At the end of this process, the panel Chair will state that the hearing is complete and that the panel will adjourn to reach a decision. The Commission will do its best to render a decision in a prompt manner but, depending on the complexity of the application and the amount of information provided by interveners, a decision can take several months to be made and the record of decision written and issued.

Establishing your Credibility / Providing your Personal Point of View / Be Prepared

It is always best if you can be prepared when appearing at an AUC hearing. The AUC will appreciate your point of view, and be more inclined to understand your position, if you are able to state it clearly and concisely. However, the most important thing for you to do is tell the hearing panel what your concerns are and why you believe your land will be adversely affected by the proposed development.

You should be prepared to make a statement of a few minutes in length summarizing your position and presenting any information that you want the AUC to consider. This should be done in an understandable and easily presented format. Passing your phone to the panel to show pictures is not helpful. If the Applicant's lawyer or the AUC lawyer or the hearing Commissioners ask you questions, you can take your time to think about your answer and answer as fully as possible. If you believe there is a mitigation or a solution that will fully or partly resolve your concern, the hearing panel will appreciate it if you describe what that alternative is so that they are not guessing. Making a submission that you will be impacted by the facility, but not providing an alternative or mitigation measure, will not provide the AUC with the assistance needed to consider your position as fully as required.

Sometimes concerned parties ("Interveners") show up at AUC hearings unprepared, simply using the forum to complain about the facility or the Applicant, assuming the AUC will simply accept their position because they are upset about the project application. Without providing information to support your position to the extent possible, and not giving the hearing panel some idea of solutions, you will not be as likely to succeed in obtaining your desired result, as the AUC hearings are not intended to be a forum for "grumbling."

Here are some examples of appropriate approaches to share your concerns and suggestions. If you have a concern about clubroot infestation and have a map showing your property and the location of nearby clubroot infestations, the Commission will be able to have a better understanding of your concern than if simply say clubroot infestation is a problem for you and

clubroot is terrible once it gets in your field. If you are concerned about the proximity of a generation facility to your primary residence, a map showing the distances would be helpful in supporting your position. If you have a reliable means of demonstrating the distances on the map, that will enhance your credibility. If you have irrigation systems that could be affected by transmission line placement, a drawing showing where your irrigation is located would be advantageous as well as suggestions as to how the transmission line can cross your land in a way that is less disruptive. If you are concerned about seeing the facility from your front window or your back yard, having photographs of the view from your home and an indication of where the facility is proposed to be located would help the Commission.

If you have questions for the Applicant or its experts, it helps to have thought through your questions and, if you can, write them out so you have notes to speak from or something to read out if you get nervous. You will have more credibility if you ask clear questions and do not simply make allegations or launching into a rant about how the Applicant failed to do what you wanted it to do. When preparing to ask questions of the Applicant or its experts, it helps to seek the advice of your own expert, or a regulatory consultant. These specialists can provide you with guidance in formulating your questions and focusing them on areas where the Applicant or its experts might have missed key information in forming their opinions, or where the information they relied on may have changed.

The most important asset that you bring to the hearing is your authenticity and credibility. You are the expert on how you feel about the proposed facility. It is important to be truthful and fair when presenting your position to the AUC. Putting together a long list of issues that you do not actually care about, with a view to “giving something up”, is typically a strategy that only serves to diminish the importance of the issue you really do care about. The hearing is not a negotiation between you and either the Applicant or the AUC. It is your opportunity to present your point of view to the Commission. The AUC would prefer to hear about the issues that are of actual importance to you rather than sort through a list of issues that you do not find to be truly meaningful.

If you get nervous speaking in public, there is no harm in writing out what you want to say and reading it to the panel at the hearing. If you feel you will be too nervous to present your position verbally, you can always submit it in writing before the hearing or ask a friend to read it for you at the hearing. Finally, if you do get emotional, it is ok. The Commissioners are people too and they understand that talking about impacts to your family and land, especially in front of strangers in an unfamiliar setting, is stressful and emotional. Just ask for a few minutes to compose yourself and then you will be welcome to come back in and share your point of view.

Evidence – Videos, Photographs, Maps

The AUC is generally accommodating with respect to the type of information it is willing to receive from individuals who would like to participate in a hearing. The AUC has received videos, photographs, maps, drone shots, letters, handwritten summaries, and other information from interveners during hearings, as well as traditional formal submissions.

The AUC evaluates information that is submitted by an intervener to see if it is credible and verifiable. This is called “authenticating” a piece of evidence. In order for the AUC to rely on a

piece of evidence, regardless of whether it is submitted by the Applicant or an intervener, it must be trustworthy. In many cases, that means it must be dated, created by the person who is submitting it, and presented in a form that is not subject to be tampered with or altered in any way. For example, if you are submitting a photograph, it is best if you took the photograph and it has a date stamp. If that is not possible, it would be reasonable to have the person who took the photograph present to say exactly where it was taken.

It is important to avoid providing information to the AUC that could have been created by anyone, at any time, and has little or no clear connection to the facility location. If this kind of information is presented to the AUC, it will likely be received, but given very little weight.

The standards of authentication for visual evidence are the same for Applicants and can even be more stringent. This is because most Applicants that file applications before the AUC are experienced utility owners or operators, or they have retained a regulatory consultant who has advised on filing their application. The AUC will likely give a little more leeway to an individual landowner than it would to a sophisticated applicant with respect to authenticating evidence.

Witnesses – Experts, Professionals, and Other People

Witnesses are an important part of every hearing process. Witnesses add details and perspective to the hearing process, regardless of whether they are witnesses for the Applicant, or interveners. The Applicant will likely put forward witnesses who can testify to the methodology of how they assessed the various components of the facility application, including the corporate policy of the Applicant. Applicants will often hire external experts in specific subject areas, like environmental assessment and impacts, to support their application by providing a written report as part of the application and defending that report at the hearing.

You are also allowed to bring witnesses to support your position, particularly if your position touches on an area where expert knowledge or opinions are being submitted.

For example, if you intend to argue the facility will have a negative impact on your property value, the Commission will only be able to accept your point of view as a concern. However, if you are a realtor or property appraiser, or you have a realtor, or other property value expert at the hearing to support your position, the Commission will be able to give that evidence greater weight

Another common example would be if you want to argue that a facility is going to disturb a sensitive environmental feature or area. Simply standing up and making the assertion, as a non-expert, will have little weight compared to an environmental expert who did extensive research on the area and the issue.

If you are alleging there are specific farming impacts or infrastructure concerns, such as impacts on wells, it helps if you can provide the AUC with photographs and maps of your farm. Make sure the photographs and maps can be authenticated by you and are dated, along with images that show areas where there could be impacts.

Answering Questions

When answering questions from the Applicant or its experts, the best advice is to answer each question honestly, objectively, and clearly. If you can refer to information that would demonstrate the Applicant's position is not based on a full understanding of the facts, then bringing that information forward in a polite way is valuable to the Commission.

Entering into tirades and accusations can negatively impact your credibility. When answering questions from the Applicant, it is best to ensure that you have a clear understanding of the question. Do not try to second guess the intent of a question. The Applicant is not trying to confuse you, but they will explore the position that you have put forward and ensuring that they have a clear understanding of your concern. In their argument, an Applicant may diminish the concern you have presented, but they are not trying to "get you" by asking the question.

Questions from the AUC lawyers are not intended to be adversarial. The purpose of these questions is to ensure the record is complete, so the hearing panel can make the best decision possible. The AUC lawyers' goal is to fill in gaps in the evidence so that the Commission can make a determination that is thorough and considered.

Asking Questions (Cross-examination) of the Applicant or its experts

The most important thing to remember when you are cross-examining the Applicant, or the Applicant panel, is to ask a clear question. Trying to trap the Applicant or its representatives into an "ah ha" moment, is unlikely to occur and is also unlikely to yield the result you desire.

If your concern is in an area of the Applicant's control, like the consultation strategy or technical design of the facility, the questions you would ask can be posed to the member of the Applicant's panel who is controlling the flow of questions. Asking the question in an objective and clear fashion and seeking information in order to highlight your concern or issue, is better than trying to confuse the Applicant into presenting some kind of potentially contradictory answer. Most Applicants will have legal counsel and, if the member of the panel has answered an unclear question in an unclear manner, that counsel will either re-ask the question in a clearer manner that positions it in the Applicant's favour or will address it in an oral or written final argument.

Asking questions of the Applicant's experts is best done with the assistance of a credible expert on your behalf. For example, unless you are an electrical engineer, attempting to cross-examine the Applicant's engineers on the design of the facility may be challenging. However, if you have a concern about safety, you can certainly ask that question in a clear and objective manner and request clarification of the Applicant's position.

There are as many questions and styles of asking questions as there are projects and individuals. The content of this section is meant to give you a perspective on how the oral hearing will proceed and how to put your position in the best light possible.

9. Virtual Hearings

How to Prepare for a Virtual Hearing

COVID-19 has created a new genre of hearing – the virtual hearing. Prior to the pandemic, hearings were occasionally held by telephone conference, but it was a rare occurrence and only applied to smaller, strictly technical or administrative hearings.

COVID-19 has shown us that virtual hearings have some real advantages, as well as some disadvantages. Some of the advantages of virtual hearings are:

- Participants who do not live close to a center where a hearing could be held can participate more easily.
- Participation can be focused on the time that a person is actually presenting and not on waiting in a hearing room to be called.
- Participants may be more able to participate if they do not have to take significant time off work to travel to a hearing and wait for their turn.
- Participants who may have accessibility issues can be accommodated more readily.
- Participants who may be nervous speaking in public may be more comfortable presenting their position virtually from a more comfortable location.
- The public can view hearings more easily on YouTube or some other format instead of taking time out of their day to travel to a hearing location and sit in the audience which leads to greater public access and transparency of the hearing process.

However, there are some disadvantages to the virtual hearing, such as:

- Participants need a reliable internet connection which may not be available in more rural areas.
- The two-dimensional aspect of virtual hearings is much more impersonal than being able to present your views face-to-face to the AUC.
- Participants require access to, and capacity to use, the technology that is required to attend a virtual hearing, such as computers, cameras, microphones etc.
- Interference by household members can be disruptive to the proceeding, i.e. dogs barking in the background or children crying or interrupting.

Preparing for a virtual hearing has many of the same aspects as preparing for an in-person hearing. It is important to have carefully reviewed and have a strong understanding of your material, as well as the material of the Applicant or expert to whom you intend to pose questions. Ideally, any supplementary evidence you would like to reference during the hearing should be submitted to the AUC, in order that the document manager can easily display it for you during the proceedings. However, if you have additional material that has not been pre-submitted, you will have the option to either submit it virtually or to share your screen.

Unique Considerations of the Virtual Hearing

There are many new issues to consider in the world of virtual hearings that are not relevant to in-person hearings. First, if you are not familiar with the remote platforms, it is a good idea to

practice before the hearing and test your connection and equipment. It can be a very stressful experience to try to connect to a virtual hearing and suddenly discover a problem with your computer setup, your video, or your microphone.

Next, it is important to be more aware of your surroundings since you control them in a virtual hearing situation. For example, doing your presentation in a tidy environment will make you feel more confident and credible. Putting up a professional or neutral screen background, if your computer has the capability to do so, also reduces distraction and is part of the new standard for virtual presentations.

Another new matter to be managed is the “distraction factor. Having a quiet, uninterrupted place and time to make your presentation will allow you to stay fully focused when it is your turn to do your presentation. Dogs barking in the background, people interrupting you, doorbells ringing, or televisions on, can appear to demonstrate a lack of your commitment and respect for the process.” It is important you are as focused during a virtual hearing as you would be if you were presenting your position to the Commission in person.

Dressing for virtual hearings has become something of an art. The internet has many unfortunate examples where people have been embarrassed by not dressing properly, or completely, for virtual hearings. Wearing a professional top and pajama bottoms might feel comfortable, but if you stand in front of your camera, to be sworn in for example, and are wearing pajama bottoms or less, it will be recorded, transmitted, and on the internet for everyone to see. Your credibility will be instantly affected. Preparing for a virtual hearing in the same manner as you would for an in-person hearing, is a good rule of thumb. Try different approaches before the actual hearing. For example, some people find they speak more naturally and clearly if they raise their video camera or place their computer on a stack of books so they can stand when they present, creating more of the feeling that occurs in an in-person setting.

Live cameras and microphones have caught even the most seasoned technology users during virtual hearings. Remember, depending on the main platform administrator, you may remain on live camera before and after your presentation. Rather than depending on the hearing administrator for this function, test in advance so that you know when your camera and microphone are on, and also know how to turn them off. It is not uncommon in virtual environments for presenters to forget to turn their microphone off after they conclude their presentation. An easy way to prevent this from happening is to add a reminder at the end of your notes. This will protect your privacy as well as ensuring background noise from your location does not interrupt the next speaker.

Many people find an advantage to virtual hearings in that they are not confronted with the AUC panel directly, the Applicant’s panel of experts, the AUC lawyers, or the spectators’ gallery. If you are shy, being in a quiet room and presenting your position in a virtual setting, is often less anxiety-provoking than presenting in a strange hall, at a podium with a microphone, and in front of potentially a large gallery of people. This aspect of virtual hearings has resulted in a higher quality of presentation for many people who are not experienced public speakers and, therefore, more people are participating in these important decision-making processes!

10. Written Hearings

When an application is not likely to generate significant participation from the community or when the issues are quite well-defined and can be addressed clearly in writing, the AUC may choose to hold a hearing in writing.

The process for a written hearing is essentially the same as for an oral hearing, except the oral part of the hearing is accomplished through the submission of written arguments and replies to the written arguments of the other parties.

When preparing a written argument, it is essential to be organized. If you do not have a lawyer, it can be helpful to review the table of contents of the Applicant's submission, or the submissions of other parties, and use a similar format to organize your submission. Any reasonable submission format is acceptable. However, it is more helpful to the Commission to provide a clearly organized submission with headings, rather than a long, narrative letter. Organizing information and presenting it in a way that helps the Commission find information more quickly, increases the impact of what you want to communicate.

You do not have to try to write like a lawyer. Write in your own style and manner, making clear reference to additional reference documents and other materials that you may include as part of your submission. For example, if there is a map that you want the Commission to refer to, say "Please see the Map titled schedule 1" and then label that map you are referring to as "schedule 1". The "heretos" and "19herefore" are not necessary in your submission. An authentic submission written in your own voice and tone is far more powerful than a submission that gets tangled and confusing because you are trying to mimic a writing style that is not your own.

Part Six – Typical Issues that Arise in Facility Hearings

Facility hearings are held with respect to applications for power plants, substations, and transmission lines.

When a facility hearing is set by the AUC, and the procedural steps for participation have been met, it is helpful to understand some of the common issues that arise for each general type of facility. This section will address, in general terms, some of the common issues raised at facility hearings and provide you with a sense of the information that the Commission will want to have at the hearing to support your point of view.

11. Health Impacts

Health impacts are an area of concern often raised by individuals at facilities hearings. The two most common concerns are a concern about electromagnetic forces from transmission lines and air emissions from natural gas-fueled power generation stations.

Electromagnetic Forces

Electromagnetic fields (“EMFs”) are present in the environment around us, including around appliances that we use every day, like our microwave ovens. Oftentimes, individuals are concerned that the EMFs emitted by transmission lines can cause health concerns.

While there is a significant amount of information available on the internet about the potential negative impacts of EMFs on humans, there is also a significant report prepared by the World Health Organization that addresses this question specifically in the context of electricity facilities. This information has been accepted by the AUC as authoritative on the issue of whether there are any negative health consequences of living and working in proximity to transmission lines.⁷ In short, there are no noted health effects that have been documented as being caused by living or working near electricity facilities, particularly transmission lines.

However, that is not to say that if you are concerned about the impact of electromagnetic forces on your health, or the health of your family, you cannot raise it as a concern in your intervention. In order to present an effective position on this topic, you will have to provide the Commission with expert evidence from specialists with expertise in the assessment of the potential health impacts of electromagnetic forces on human health. You can express your concern as an individual, but a personal opinion is unlikely to carry more weight than the World Health Organization’s report without expert evidence.

⁷ <https://www.who.int/news-room/questions-and-answers/item/radiation-electromagnetic-fields>. This link will take you to the Frequently Asked Questions of the World Health Organization website which addressed a number of questions around Electromagnetic Forces and which states, with respect to the health consequences of exposure to EMFs: “Based on a recent in-depth review of the scientific literature, the WHO concluded that current evidence does not confirm the existence of any health consequences from exposure to low level electromagnetic fields.”

Air emissions

Another common health concern is the impact of emissions from electricity generation facilities. In the case of natural gas-fueled power stations, the power plant will have a tall stack called a flare stack.⁸ A flare stack is a column that is capable of burning the natural gas that is not being consumed to turn the turbines that create electricity. The flare stack is an important part of the safety design of the power plant because the flare will be lit when there is an excess natural gas flow, or back pressure, or any other upset condition at the power plant that results in a situation where the natural gas is not fully consumed. The concern that is often raised with respect to flare stacks is that the burning of natural gas releases carbon and other compounds into the air, has the potential to impact air quality.

All natural gas-fueled generation stations are required to have an assessment of their emissions by Alberta Environment and Parks.⁹ The Applicant is required to submit its design and modelled emissions to Alberta Environment and Parks in order to obtain an authorization pursuant to the *Environmental Enhancement and Protection Act*.¹⁰ Often, individuals who may have a history of allergies or respiratory conditions are particularly concerned about the type and amount of emissions that can result from flare stacks.

In order for an intervener to be successful in opposing an application on this basis, or successfully requiring the Applicant to put emissions mitigation solutions in place, it is very important to have an expert witness who can provide scientific information to the Commission to comment on the technical information contained in the Applicant's submissions. Simply raising the concern, without any evidence or expertise, will be unlikely to persuade the Commission to impose conditions or require emissions modelling beyond that required by Alberta Environment and Parks.

12. Agricultural and Other Land Impacts

Irrigated Farmland

Transmission lines commonly cross agricultural land with various impacts to agricultural operations. In certain locations in Alberta, artificial irrigation is required, and the placement of transmission towers can result in the need to relocate or change how the irrigation systems, whether pivot or row irrigation, are oriented.

If you have irrigation systems that are impacted by the placement of transmission towers, you are likely already in communication with the Applicant. However, if the communications with the Applicant have not resulted in a satisfactory re-location of transmission towers, then it is not unexpected that you will make a submission to the Commission to state that your concern has not been addressed successfully by the Applicant and that you want the Commission to consider re-locating the transmission towers to reduce or eliminate the impact to your irrigation system. It is

⁸ As coal-fired generation facilities are being phased out of the Alberta energy profile quickly, this Guide focuses on natural-gas-fueled generation facilities.

⁹ This department used to be called Alberta Environment.

¹⁰ *Environmental Protection and Enhancement Act*, RSA 2000, c E-12.

helpful to the Commission to provide maps showing the location of your farmed lands, the area where your irrigation systems are located and how the irrigated farming operation will be affected.

Unlike some of the other impacts, individual farm operators are generally well-positioned to submit this type of information to the Commission without an irrigation expert. In this type of submission, the Commission will appreciate if you can provide a solution for how the impact to irrigated farmland can be mitigated, rather than simply submitting that the placement of the transmission towers will cause an impact.

Pastured Cattle Impacts

The most common impact relating to farm animals is more often expressed by the Applicant but can affect both the Applicant and landowner. When transmission towers are placed in pastures or grazing lands, Applicants must account for the potential for cattle, bison or other livestock to use the transmission towers as scratching posts. The risk to the individual with respect to pastured livestock damaging transmission towers is that a tower can be knocked down and create a safety hazard. Typically, livestock guards are installed around the bases of transmission towers to discourage animals from pushing on transmission towers and damaging them, but this practice requires the use of additional producer land.

Loss of Arable Acres

When transmission towers or electricity generation plants are located on agricultural lands, there is a certain amount of land that is removed from the inventory of farmable land. Generally, the Applicant will have already communicated with the affected landowner to quantify the amount of land that is going to be unfarmable as a result of the placement of the facilities. Landowners are entitled to be compensated for this loss of arable land. If you are unsatisfied with communication from the Applicant and believe there are mitigations that could reduce the amount of land required for the facility, you can raise this issue at the transmission facility hearing. It is helpful to submit maps showing where the Applicant proposes to place the transmission towers and suggestions for where the towers can be placed to reduce the impact on your farming operation.

The Applicant will be held accountable for offering a reasonable amount of money to purchase land rights, such as leases or rights-of-way, to put transmission towers on your land. If you accept the placement of the transmission towers but feel that you have not been offered enough money to compensate for your loss, this matter is outside of the AUC's jurisdiction. However, you can make an application to the Surface Rights Board for an assessment of what compensation is reasonable.

Land Value

You may feel that the placement of a facility on or near your property will negatively affect the financial value of your land, regardless of the classification of your property. If you want to present this position to the Commission, you will need to provide a basis for the submission. Your personal concern is not sufficient for the Commission to rely on. It is best if you can present the evidence of a real estate professional regarding the value of property in the vicinity of

your land, as well as the projected impact of the proposed nearby transmission facility. The real estate professional should have experience in valuing land of the same type as your property and should be prepared to provide information with respect to other sales where a reduction in the property value was experienced as a result of a transmission facility being installed. Your real estate professional should be prepared to answer questions from the Applicant's land experts as well as from the Commission about how he reached his conclusions and the properties that he used as comparable properties.

13. Environmental Impacts

Soil Disturbance and Vegetation Clearing

When a transmission facility is installed, soil disturbance is inevitable, whether as a result of the footings of a transmission tower or clearing a site for a power plant. The Applicant will be required to provide information to the Commission about the amount of land that it is clearing and how that soil will be disturbed, replaced, and, at the end of the life of the facility, reclaimed. This is an area where there is typically expert evidence provided to the Commission in the form of soil analysis and environmental assessment of both the surface soils and the subsurface soil structures, also known as the geotechnical assessment.

Vegetation clearing is unavoidable when installing transmission facilities. With respect to linear transmission lines, the right-of-way will also require a certain amount of clearing in order for safe construction and future maintenance to occur. In some cases, revegetation can be allowed to occur in between transmission towers, if the natural vegetation does not create a safety hazard. In treed areas, trees will have to be removed and will not be allowed to grow in an uncontrolled fashion near the transmission lines to ensure that there is no risk of fire hazard from trees falling on the transmission lines. If you are dissatisfied with the Applicant's proposal for soil removal, vegetation or tree clearing, or right-of-way clearing, the first avenue of redress is to speak with the Applicant during the consultation process. However, if you are not satisfied, you can bring this issue forward to the Commission during the hearing. Helpful evidence to support your position would include pictures of your property in its preconstruction state, with indications of where the clearing will occur. Sometimes, if you are successful, the Commission will make replanting of shelter belts or visual screening trees a condition of the approval. However, the Commission will not accept a position from you that will result in the creation of a safety hazard.

With respect to substations and power plants, the entire site will need to be stripped, graded, and graveled. The area required to be cleared for a power plant is significantly larger, at least in the localized area, than the area required for the transmission towers. The area around a substation or power plant is required to be maintained to a reasonable aesthetic and, more importantly, to ensure safety. If you are not satisfied with the vegetation control plan submitted by the Applicant, you can raise this issue with the Commission. However, it is important to note that the area around the substation or power plant is likely within the leased or owned area and, accordingly, unless there is a safety hazard or significant risk to your property, there may not be mitigations available, as compared to vegetation control on the right-of-way where title remains in your name, but the Applicant has a right to use the land and an obligation to maintain it.

Weeds

The Applicant will be required to provide the Commission with a plan for how it will manage weeds on the right-of-way during and after construction, and in the areas around the installed facility. Applicants are required to ensure that safety standards are maintained and that there is a program of planned vegetation management.

In Alberta, clubroot is a serious soil-borne disease that is very contagious and can be spread from one infected farm to another by transfer of impacted soils on truck tires and boots. In areas where clubroot is known to exist, Applicants will generally present a clubroot management plan which includes, at a minimum, washing equipment in between each property so clubroot is not transferred on the treads of wheeled vehicles or the shoes of workers.

If you are concerned about clubroot transmission, you will need to provide the Commission with confirmation that there is clubroot in the vicinity of your farm and provide reasons why you feel the clubroot management plan submitted by the Applicant is insufficient. As well, it is helpful to provide the Commission with suggestions to improve the Applicant's plan. If the Applicant has not submitted a clubroot management plan as part of its application, this is an ideal issue to raise during the consultation phase and, if you are not satisfied, you can raise this issue during the hearing.

Water Impacts

Generally, impacts to water quality or water quantity are experienced with respect to hydro power plants. There are not many of these projects, given they require very specific water conditions to create sufficient generation to justify the cost of construction. The main concerns with respect to hydro generation project development include water flow, fish impacts, and flooding, depending on the design of the hydro-electric plant.

These impacts are all technical impacts and would be addressed by the Applicant's environmental experts. In order to contest the proposal put forward by the Applicant, it is advisable to get expert advice.

Animal Impacts – species at risk

Impacts on animals and birds are often significant and wide ranging. There are significant regulatory processes that address wildlife impacts and monitoring. Mitigating the impact on particular species may vary from temporary restrictions during construction, to seasonal accommodations, to completely relocating parts of the facility if there is an impact to a species at risk. As well, the Applicant can be required to engage in active monitoring and adaptive management of the facility during various impact seasons.

An example of species impacts common in Alberta are impacts on wetlands that affect migratory birds. Many species of birds migrate through Alberta. The *Migratory Birds Convention Act* requires that the migratory patterns of different species of birds are respected regarding

impacting their habitats and ensuring their nesting and migrations are not affected.¹¹ In southern Alberta, raptors and other predatory species are protected by ensuring that transmission facilities are not located within one kilometer of nesting sites. It has been argued that certain species of bats are susceptible to the blades of wind turbines, interfering with the bats' ability to echolocate.

If you believe that the proposed facility will have a negative impact on a species of wildlife, particularly if that species is protected by legislation, then it is important to bring it to the attention of the Commission. Typically, the Applicant will have presented an environmental impact review or assessment, depending on the size of the facility or the risks. If you feel that the Applicant has not fully addressed the risks to animal species, or provided sufficient mitigation, you should consider retaining an environmental expert to comment on the Applicant's work and provide the Commission with additional information and assessment of the impacts of the proposed facilities on wildlife.

14. Visual Impacts

Visual impacts are one of the most common concerns raised by landowners, regardless of whether the transmission facility is on their property. Visual impacts can occur if the facility is on your land, or you can see it from your land. Many people feel visual impacts touch on their personal enjoyment of their land, their land value and its usability so significantly that the visual impact ought to be sufficient to result in an application being denied. However, the Commission is generally more inclined to deal with mitigation of visual impacts rather than denying a permit to construct based on the fact that it can be seen from a landowner's home.

Some common mitigations for visual impacts arising from transmission facilities are to change the spacing between towers to camouflage them, changing tower types (lattice or monopole), and changing tower colouring (white, blue, steel.) The visual impact of substations and power plants can be mitigated by constructing a berm around the facility or planting tree barriers around individual landowners' properties. From time to time, visual impacts can play a part in whether the Commission selects the preferred option or one of the alternate options, especially with respect to transmission line locations.

If you intend to raise an issue with respect to the visual impact of the proposed facility, you can provide photographs and maps to support your position. Often the Applicant will provide a visual impact study that you can examine and challenge.

It is important to manage your expectations about visual impacts. You should be aware the Commission is not likely to deny an application simply because you can see the facility from your home. However, the Commission is generally quite receptive to hearing about mitigations that would reduce the visual impact of facilities on you.

¹¹ *Migratory Birds Convention Act*, SC 1994, c 22.

15. Light Impacts

Wind turbines can cause a visual impact called flicker. This occurs because of the circular motion of the turbine blades. The constant “flickering” can be disruptive to certain people. If you intend to raise this impact at the hearing, it is a good idea to have an expert provide an opinion about the potential mitigation measures that could assist with the impact of flicker on your home and enjoyment of your land.

This is another area where simply expressing you have a concern does not help if you do not have specific details on how the flicker from wind turbines will affect you. Given the technical nature of “flicker”, it would be best to have evidence that specifically describes how the flicker will impact you. For example, having an environmental expert who can speak to the flicker effect and demonstrate, through visual aids or modelling, how the shadows created by the wind turbine blades will fall on your home, would be more persuasive than simply telling the hearing panel that you are not happy about the wind turbines.

Solar panels can cause a light impact from the reflection of the sun off the shiny surface of the panels. This impact can be mitigated by reorienting certain panels or creating a screen that keeps the reflection of the sun off the panel to a minimum.

Similarly, if you believe that the reflection off a solar panel will impact your home, it is best to have an environmental expert who can demonstrate how the sun will reflect off the solar panel at all times of the day and in all seasons. An environmental expert can provide a clear and objective picture of how the light will reflect off the proposed solar farm and whether it will actually impact your home.

16. Noise Impacts

Noise is an impact that is often of concern to interveners. Noise can be created in a number of ways from different facilities. For example, substations can have breakers that may occasionally flip and cause a sound similar to a gunshot. Some transmission towers radiate a sound, particularly in the rain, that sounds like sizzling. This is called the corona effect, a noise that is dependent on environmental conditions. Natural gas-fueled power plants will have the noise of the flare stack from time to time and the sound of turbines. Wind turbines can create different ranges of sounds that can be quite disturbing to certain people. Noise impacts of transmission facilities are real and can be significant.

To recognize the significance of noise impacts, Rule 012: *Noise* addresses the allowable amount and type of noise that a facility is allowed to emit and ways to assess that noise level.¹² Noise impact studies are typically filed with the application and are the opinion of the Applicant’s experts as to the type and amount of noise that will be emitted by the facility and what mitigations are recommended to reduce the emitted noise to the allowable levels. In order to

¹² Alberta Utilities Commission, “Rule 012: Noise Control” (5 March 2022), online (pdf): <<https://media.www.auc.ab.ca/prd-wp-uploads/2022/01/Rule012.pdf>>.

challenge the noise impact study, it is important to bring your own noise expert to the hearing as the assessment and measurement of noise impacts are an area of technical expertise.

Part Seven – After the Hearing

17. What can I do if I disagree with the results of the hearing?

Once the Commission makes its decision, it will write reasons for that decision. The final decision will be sent to all parties, including you, and will be published on the AUC website.

If you disagree with the results of the hearing, the AUC Rules provide for an opportunity to have the matter reviewed. AUC Rule 016: *Review of Commission Decisions* (“Rule 016”) sets out the framework for reviewing a decision of the AUC.¹³

While the Commission has the authority to review its own decisions without the request of an Applicant or an intervener, for the purposes of this Guide, we will focus on the example where you would like to request a review of an AUC decision.

Section 3(1) of Rule 016 provides you with the opportunity to file an application for review. If you are a directly and adversely affected party, then you must file your request within 30 days of the issuance of the AUC decision, unless you make a separate application to the Commission for a longer time period to file your request for review and the Commission grants you the extra time.

Section 4 of Rule 016 provides a list of the topics/areas that you must cover in the application for review. The submission must be no longer than 15 pages double spaced. You need to set out the facts, describe how your rights will be directly and adversely affected by the decision, provide the grounds for the review (found in section 5 of Rule 016) and describe the nature of the damage that will occur, in your opinion. The application for review should also state what you would like the Commission to do to resolve your concerns.

The Applicant will have an opportunity to provide its response to the request for review. The Applicant has an opportunity to respond in a reply submission that can be no longer than seven double-spaced pages.

There are a number of reasons that the Commission might grant a review of its decision. These reasons, or grounds for review, are set out in section 5 of Rule 016. The first reason is that the Commission made an error of fact, or mixed fact and law, which affects the foundation of the decision. Another reason would be that there is new information or circumstances that were not available when the Commission made its decision and that the Applicant, being reasonably diligent, could not have discovered before the hearing. The final ground is more procedural and relates to whether the decision was made without a hearing or without notice being given to the person requesting the review.

In preparing your submission to request a review of the Commission’s decision, it is important to be focused on the specific issues you feel were not properly considered by the Commission. Ensure you provide additional facts that focus on the specific concern you have with respect to

¹³ Alberta Utilities Commission, “Rule 016: Review of Commission Decisions” (15 June 2021), online (pdf): <<https://media.www.auc.ab.ca/prd-wp-uploads/2021/12/Rule016.pdf>>.

the decision, as this approach will be more persuasive than repeating a submission that the Commission has already considered in their decision making.

After the application for a review is made, section 6 of Rule 016 sets out the procedure that the Commission will use to consider the request for a review and variance. The Commission will make its decision in two stages. It will determine whether a review should be granted, in whole or in part, before it considers the merits of your application. If the Commission decides that the application for review meets the requirements and has merit, it will issue a notice of hearing for the variance proceeding. At the variance proceeding, the Commission will decide whether to confirm, rescind, or vary its previous order. If the Commission determines it is more efficient to hear both parts of the review and variance proceeding in a single hearing, it has the authority to do so.

18. Can I get reimbursed for participating in an AUC hearing?

Rule 009: *Rules on Local Intervener Costs* (“Rule 009”) sets out the rules for when an intervener can recover some of the costs it incurs in participating in an AUC proceeding. The AUC has prepared a summary of the rules regarding your opportunity to recover some or all of your costs for participating in an AUC hearing.¹⁴

This guide has addressed a number of subject areas where expert advice can be helpful to an intervener’s submission. The basic principle of Rule 009 is that if an intervener is required to spend money to obtain expert advice to provide the Commission with an effective presentation, the intervener can request reimbursement.

Under section 2 of Rule 009, you can make a request for an advance of funds with respect to a specific expense in advance of the hearing, so that you do not have to bear the cost of carrying the expense until the end of the hearing. This is especially important to individuals who are intervening in lengthy hearings. In order to qualify for advance funding, you will need to submit a budget and a justification for the experts you are planning to hire.

Section 5 of Rule 009 sets out the process for filing a claim for reimbursement of costs incurred in presenting your position at the hearing. Specifically, section 5.2 states that a claim for costs must be filed within 30 days after the hearing has closed. Section 5.A states that costs can be claimed in a similar way for costs incurred to file an application for review under Rule 016.

The types of expenses that are eligible for reimbursement under Rule 009 are set out in Appendix A to Rule 009. The most common types of expenses that interveners submit for reimbursement are for legal fees, consultants, and experts. Appendix A of Rule 009 sets out the rates professionals can charge. For example, if you hire a lawyer to help you participate in the AUC hearing and that lawyer has been called to the bar for 10 years, you can claim \$320 per hour for their help. If your lawyer charges more than \$320 per hour (and has been called to the bar for 10 years) you are responsible for the difference in cost. In addition, the Commission will review the invoices from your lawyer to make sure the lawyer was efficient, and they were working on

¹⁴ Alberta Utilities Commission, “Rule 009: Rules on Local Intervener Costs” (2 May 2016), online (pdf): <<https://media.www.auc.ab.ca/prd-wp-uploads/2022/01/Rule009.pdf>>.

issues that were relevant to the hearing. The AUC is entitled to deny reimbursement of expense claims that it determines were not helpful to advancing your case at the hearing.¹⁵

Another reason the AUC might reduce a cost claim is if the experts (legal or otherwise) of multiple interveners cover the same ground. The Commission expects interveners who have issues in common to form a group and hire experts who can speak to their common issues. To encourage the formation of groups, Rule 009 also allows interveners who form a group to claim some of the costs of assembling and managing the group.

The Commission will assess the amount of each of the lawyers and consultants' accounts relative to how helpful the information was to the Commission in assisting it in reaching a thoughtful and complete decision.

19. Who can I ask for help?

AUC staff

AUC staff are always happy to assist you in understanding the process that will take place with respect to the Applicant's application, as well as the options available to a person who wants to raise concerns about the project. However, it is important to note AUC staff cannot provide you with advice as to what you should say to the Commission, whether you have a chance of "winning", or which Commission members will adjudicate the hearing. AUC staff cannot write your submission for you, but they can help you to navigate the electronic filing system, which can be tricky at times.

Applicant

The Applicant has an obligation to provide you with information regarding the project being proposed and listening to your point of view about the impacts that the facility could have on you and your family. The Applicant should provide you with information regarding all feasible options for the project and consider your point of view as the application to the AUC is being developed. It is always advisable to see if there is anything that the Applicant can do to accommodate your information requests prior to the hearing.

Other interveners

Sometimes, interveners have common interests that relate to the impact of a project. For example, if a transmission line is proposed to be sited very close to a body of water that is a

¹⁵ *Re Aura Power Renewables Ltd. Fox Coulee Solar Project Amendment* (11 February 2021), 25296-D01-2021, online: Alberta Utilities Commission <<https://efiling-webapi.auc.ab.ca/Document/Get/684585>>; An example of a recent AUC decision where the full amount of the claim was not awarded. In this decision, the Commission reduced the fees claimed by the law firm by 20 percent and the fees claimed by a consultant by 50%. In this decision, the Commission gives excellent guidance with respect to the basis for denying legal and consulting costs. For this reason, it is very important for you to discuss with your lawyer and consultants what will happen to the balance of their account if the Commission denies any portion of it. Are you responsible for the balance of the account if it is reduced by the Commission or will the lawyer or consultant accept whatever amount the Commission determines is fair and reasonable?

common stop for migratory birds, several people who live in the area may wish to bring the same concern forward. The AUC encourages groups of landowners with similar interests to form groups and put their position forward as a group to the AUC, in order to reduce duplication of the information being provided to the Commission and to demonstrate the breadth of the concern. Further, if a group of landowners all have a similar concern, it might be more cost-effective to hire an expert as a group rather than as individuals, to support that view at the hearing.

Conclusion

Appearing before the Alberta Utilities Commission does not have to be a difficult or intimidating process. The key interfaces are the Statement of Intent to Participate, the information requests and responses, and the hearing (whether that hearing is oral, written, or virtual). The Statement of Intent to Participate requires the simple confirmation of the basic information about you and where your land is located, as well as a summary of the issues that are of concern to you, in your own words. It is not a lengthy process, nor is it intended to be an intimidating one. Submitting questions to the Applicant or getting questions about your concerns from the Applicant or the AUC is a process that is focused on ensuring that as much of the information necessary to hold a thoughtful hearing is available in advance of the hearing itself and to ensure that the information considered by the Commission is as complete as possible early in the process. Presenting your position to the Commission, whether in a written hearing or an oral hearing (virtual or in person), is also intended to be a process that you can manage on your own, or with the assistance of expert help. In the event that you choose to retain an expert, some or all of the costs may be reimbursable based on the schedule set out in the AUC rules. However, the primary responsibility for paying for expert support remains with you, so having a clear conversation about the responsibility for fees with your expert and lawyer is important. Finally, if you are not satisfied with the decision of the Commission, there is a process for applying for a review and variance of that decision.

Appendix 1: Glossary of Common Terms

“AESO” means the Alberta Electric System Operator.

“AIES” means the Alberta Integrated Electric System.

“Applicant” means the party that makes the application to the Alberta Utilities Commission for the development of a transmission facility. The Applicant is also sometimes called the “Applicant”.

“AUC” means the Alberta Utilities Commission. In this document, the AUC will also be referred to as the “Commission”.

“DFO” means the owner of a distribution facility operator.

“EMF” means electromagnetic field. The World Health Organization provides information about EMFs on their website at: <https://www.who.int/news-room/questions-and-answers/item/radiation-electromagnetic-fields>.

“Isolated generation” means generation that is not connected to the Alberta Integrated Electric System.

“kV” means kilovolt and represents the capacity of a particular transmission line.

“MW” mean megawatt and represents the generation capacity of a power plant.

“NID” means the Needs Identification Document.

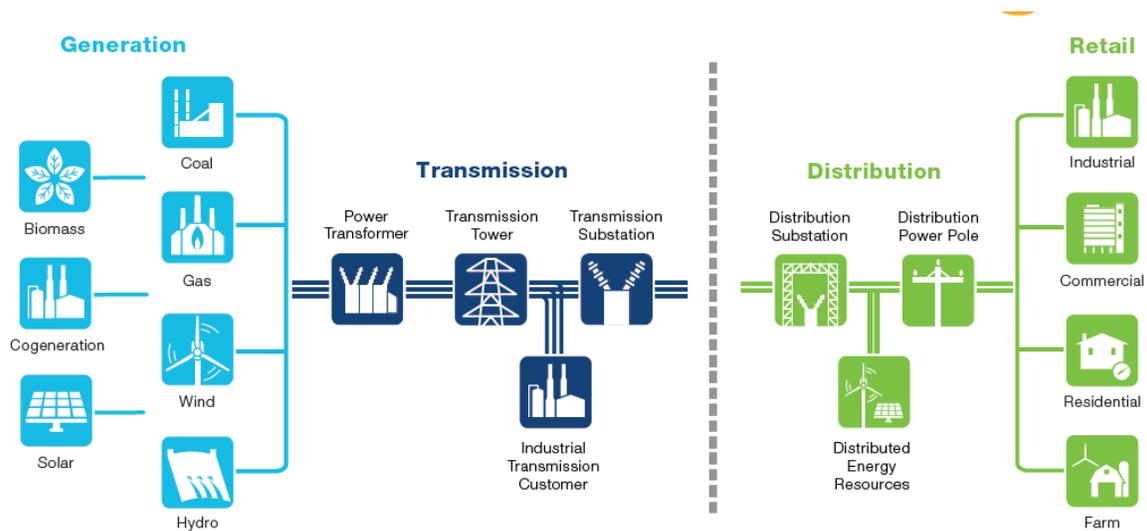
“Transmission line” means a system or arrangement of lines of wire or other conductors and transformation equipment, wholly in Alberta, whereby electric energy, however produced, is transmitted in bulk, and includes (i) transmission circuits composed of the conductors that form the minimum set required to so transmit electric energy, (ii) insulating and supporting structures, (iii) substations, (iv) operational and control devices, and AA(v) all property of any kind used for the purpose of, or in connection with, or incidental to, the operation of the transmission line, but does not include a power plant or an electric distribution system.

“TFO” means the owner of a transmission facility operator.

Appendix 2: Overview of the Alberta Electric System

20. Overview of the Electricity Industry in Alberta

In order to provide electricity to customers, it must be generated, transmitted, distributed, and retailed. Each of these steps has a component of being regulated, mostly by the AUC but in some cases through parallel regulatory processes of other regulatory agencies in Alberta, such as departments within the provincial government. This infographic shows the overview of the electricity industry from generation to retail.¹⁶



Electricity is created at facilities that are commonly known as power plants or generating stations. A power plant or generating station can generate electricity from a number of different sources, such as coal, natural gas, solar, wind and running or dammed water. There are several other sources of electricity generation that are not commonly used in Alberta but could be a source of electrical power in the future, such as hydrogen and nuclear generation.

After electricity is generated at a power plant, it is transmitted around the province on large capacity power lines, called transmission lines. These transmission lines are the means by which bulk electricity is made available around Alberta. Typically, transmission lines run between high voltage substations. Generally, transmission lines end at a substation, but that capacity is not used directly by an ordinary customer, like a household. It may be usable by a large industrial or high load customer, but that use is beyond the scope of this Guide. In order to make the electricity accessible to a household, the voltage must be reduced. This is called “stepping down”. At a substation, the power that enters from the transmission line can be moved through a step-down transformer and then connected to a distribution line at a lower voltage to be distributed at a more local level. If you are in a city, the power lines you see on residential streets

¹⁶ AESO, “Fact Sheets: Electricity in Alberta and the AESO” (last visited 25 April 2022), online (pdf): [AESO <https://aeso.ca/download/listedfiles/Electricity-in-Alberta-and-the-AESO.pdf>](https://aeso.ca/download/listedfiles/Electricity-in-Alberta-and-the-AESO.pdf).

are likely distribution lines. This means the voltage has been stepped down to a level where it is able to be used by households. When it is connected to a house, there are often further regulators to ensure the voltage entering the house is safe and the electrical system at the house can accept it without overloading.

Electricity retailers are responsible for selling electricity to customers; the charges are based on the customer's consumption and the kilowatt hour rate, plus a number of administrative fees that are charged regardless of the amount of electricity a customer uses.

21. The Alberta Electric System Operator

The Role of the AESO

The Alberta Electric System Operator ("AESO") is empowered to plan and manage AIES. It has the responsibility of planning for the electrical needs of Alberta and Albertans, determining where and when additional facilities are required in order to ensure the reliable supply of electricity for Alberta, and defining what the required facilities need to deliver by way of electrical performance.

The AESO is also responsible for the dispatching of electricity produced by generators throughout Alberta on an hourly basis in response to constant changes in load. The AESO dispatches power sold by generators based on a competitive market model. The price of electricity in Alberta is always changing because AESO dispatches the least expensive power first and then the next lowest until the need for power for the upcoming hour has been satisfied. If electricity is offered into the market at a very high price, it might not be utilized by the AESO and that generator may not sell electricity for that hour. This is often referred to as the merit order. This market-driven dispatch system ensures that generators offer their electricity into the market at the lowest price possible and generators compete to sell their electricity for a price that is best for consumers. A detailed discussion of how electricity is offered into the market and dispatched through the merit order is a topic that is outside the scope of this Guide.

The AESO also forecasts the electricity needs of Albertans and determines whether there is enough transmission line capacity to meet that need. The AESO plays an important role in the regulation of transmission facilities because transmission facility owners are required to make an application to build transmission facilities if the AESO is granted an order by the AUC confirming transmission facilities are needed. This application to the AUC is called a Needs Identification Document ("NID") approval. In this application, the AESO presents an application to the AUC that shows why new electricity facilities (new or upgraded transmission lines, new substations or modifications to existing substations, or alterations of any of the other equipment located in substations) are required. It requests the permission of the AUC to direct a transmission facility owner to determine the best solution to satisfy the need for transmission facilities and to seek a permit to construct and a licence to operate the transmission facility.

The AESO will typically make an application for approval of a NID, separate from the application of the transmission facility owner, if the facility is a large one or the length of the

transmission line is significant. However, section 15.4 of the HEEA allows the AESO and the TFO to make a joint application to approve the NID and for the permit to construct and licence to operate the facility, in order to conserve Commission resources.

As a party who is directly and adversely affected by the development, you can appear at the hearing and contest the approval of the NID on the basis that the new transmission facilities are not required, so the NID should not be approved. This is a difficult application to oppose because you will need to provide significant technical evidence to contradict the power flow studies of the AESO experts. It is possible to oppose a NID application successfully, but the opposition is very technical and you will need expert power engineers to assess the assumptions made by the AESO and its projections for the growth of electrical demand in the area.

The Electric Utilities Act

The *Electric Utilities Act* (“EUA”) is the foundation legislation that governs the electricity industry in Alberta.¹⁷ It establishes the framework for the regulation of electricity in Alberta. The EUA sets out the responsibilities of the Alberta Electric System Operator (“AESO”) and how the electricity market will operate.

The purposes of the EUA are set out in section 5, which states:

5 The purposes of this Act are:

(a) to provide an efficient Alberta electric industry structure including independent, separate corporations to carry out the responsibilities of the Independent System Operator and the Balancing Pool, and to set out the powers and duties of those corporations;

(b) to provide for a competitive power pool so that an efficient electricity market based on fair and open competition can develop, where all persons wishing to exchange electric energy through the power pool may do so on non-discriminatory terms and may make financial arrangements to manage financial risk associated with the pool price;

(c) to provide for rules so that an efficient electricity market based on fair and open competition can develop in which neither the market nor the structure of the Alberta electric industry is distorted by unfair advantages of government-owned participants or any other participant;

(c.1) repealed 2019 c11 s2(3);

(d) to continue a flexible framework so that decisions of the electric industry about the need for and investment in generation of electricity are guided by competitive market forces;

¹⁷ *Electric Utilities Act*, SA 2003, c E-5.1.

- (e) to enable customers to choose from a range of services in the Alberta electric industry developed by a competitive electricity market, and to receive satisfactory service;
- (f) to continue the sharing, among all customers of electricity in Alberta, of the benefits and costs associated with the Balancing Pool;
- (g) to continue the framework established for power purchase arrangements;
- (h) to provide for a framework so that the Alberta electric industry can, where necessary, be effectively regulated in a manner that minimizes the cost of regulation and provides incentives for efficiency.

The Hydro and Electric Energy Act

The *Hydro and Electric Energy Act* (“HEEA”) is one of the important statutes that establishes the jurisdiction for regulating hydro and electric energy facilities in Alberta.¹⁸

The purposes of the HEEA are set out in section 2, which states:

2 The purposes of this Act are:

- (a) to provide for the economic, orderly and efficient development and operation, in the public interest, of hydro energy and the generation and transmission of electric energy in Alberta,
- (b) to secure the observance of safe and efficient practices in the public interest in the development of hydro energy and in the generation, transmission and distribution of electric energy in Alberta,
- (c) to assist the Government in controlling pollution and ensuring environment conservation in the development of hydro energy and in the generation, transmission and distribution of electric energy in Alberta, and
- (d) to provide for the collection, appraisal and dissemination of information regarding the demand for and supply of electric energy that is relevant to the electric industry in Alberta.

22. The Alberta Utilities Commission

The Role of the AUC

The AUC regulates electricity transmission facilities, like transmission lines, substations, and interconnections to generating stations. It also regulates the tolls and tariffs associated with providing service on the AIES. The AIES is the system of facilities that provide electricity transmission service in Alberta. The AUC has responsibility for regulation of the connection of

¹⁸ *Hydro and Electric Energy Act*, RSA 2000, c H-16.

power plants to the AIES, all transmission lines over a legislated voltage, and associated facilities such as substations.

The AUC regulates the amount of money that the TFOs can earn for providing electricity service through the AIES and the basis upon which it is calculated. It also is responsible for regulating the rates that are charged by the transmission facility owners (“TFOs”) for the electricity that is carried on their transmission lines. The public is permitted to make submissions at general rates hearings and general tariff hearings, but often does not. The general guidance contained in Part 5 of this Guide with respect to appearing before the AUC at a facility hearing will apply to any type of hearing or proceeding before the AUC where you may want to appear and make your opinions and views known to the Commission.

The AUC also regulates some utilities – gas, water and certain municipally owned electric utilities.

Finally, and this area is often a source of confusion, the AUC regulates the interconnection of generation facilities in Alberta. The determination as to whether to build a generation facility (whether additional generation is needed) is not regulated. An owner can make its own business decision as to whether the economics of building a generation facility justify the cost and risk of building it. The AUC is involved in generation to the extent that it must allow the generation facility to access the AIES and provide electricity to the AIES. This interconnection is regulated by the AUC, in concert with the information from the AESO to ensure that the additional electricity can be carried on the transmission lines without risk to the safety and reliability of the AIES and people.

The AUC has a separate, right-sized, process for the regulation of very small facilities or micro-generation facilities. These are facilities that do not form an integral part of the AIES and are more in the nature of personal power generation facilities, such as solar panels on a residential rooftop to support the electricity demands of a home or small business operation. These facilities may, under certain conditions, provide some electricity back to the AIES but are not relied upon by the AESO to supply power to Alberta. A more detailed discussion of the process associated with micro-generation facilities is located in Appendix 6.

The AUC does not regulate municipally owned utilities, notably located in Calgary and Edmonton. In order to address questions regarding municipally owned utilities, please contact EPCOR for issues respecting Edmonton and ENMAX for issues in Calgary.

The AUC does not regulate most rural electrification districts. In order to obtain more information about rural electrification districts, please contact the Alberta Federation of Rural Electrification Associations.

The AUC does not regulate natural gas co-ops. For more information regarding natural gas co-ops, please contact the Federation of Alberta Gas Co-ops Ltd.

Finally, the AUC does not regulate competitive retailers. For more information in this regard, please contact the Utilities Consumer Advocate.

The Alberta Utilities Commission Act and Rules

The Alberta Utilities Commission Act

The *Alberta Utilities Commission Act* (“AUC Act”) is the legislation that establishes the Alberta Utilities Commission in section 2 and sets out how it is to operate its regulatory jurisdiction.¹⁹ It contains details with respect to the composition of the Commission and a number of provisions regarding its jurisdiction.

The powers of the Commission are set out in section 8, particularly subsection 8(5) of the AUC Act which states:

8(5) Without restricting subsections (1) to (4), the Commission may do all or any of the following:

- (a) hear and determine all questions of law or fact;
- (b) make an order granting the relief applied for;
- (c) make interim orders;
- (d) where it appears to the Commission to be just and proper, grant partial, further or other relief in addition to, or in substitution for, that applied for as fully and in all respects as if the application or matter had been for that partial, further or other relief.

The AUC Act also confirms that the Commission has the powers of a Queen’s Bench judge in section 11:

11 In addition to any other powers conferred or imposed by this Act or any other enactment, the Commission has, in regard to the attendance and examination of witnesses, the production and inspection of records or other documents, the enforcement of its orders, the payment of costs and all other matters necessary or proper for the due exercise of its jurisdiction or otherwise for carrying any of its powers into effect, all the powers, rights, privileges and immunities that are vested in a judge of the Court of Queen’s Bench.

The Public Interest Test

The most important provision of the AUC Act is section 17(1). This section sets out the obligation of the AUC to make all decisions on matters within its jurisdiction in the “public interest.” The “public interest” test is the foundation for ensuring the decisions made by the AUC considers the scope of the potential impact of the facility development on Albertans. Section 17(1) states:

¹⁹ *Alberta Utilities Commission Act*, SA 2007, c A-37.2.

17(1) Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the Gas Utilities Act, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, **having regard to the social and economic effects** of the development, plant, line or pipeline **and the effects** of the development, plant, line or pipeline **on the environment**. [emphasis added by author]

Many of the decisions issued by the AUC contain the following general commentary about the public interest test:

For the reasons outlined below, the Commission finds that approval of the project is in the public interest having regard to the social, economic, and other effects of the proposed facilities, including their effect on the environment.²⁰

Alternatively, the following summary of the public interest test is also found in many AUC decisions:

The determination of whether a project is in the public interest requires the Board to assess and balance the negative and beneficial impacts of the specific project before it. Benefits to the public as well as negative impacts on the public must be acknowledge in this analysis. The existence of regulatory standards and guidelines and an Applicant's adherence to these standards are important elements in deciding whether potential adverse impacts are acceptable. Where such thresholds do not exist, the Board must be satisfied that reasonable mitigative measures are in place to address the impacts. In many cases, the Board may also approve an application subject to specific conditions that are designed to enhance the effectiveness of mitigative plans. The conditions become an essential part of the approval and breach of them may result in suspension or rescission of the approval.²¹

This wording is commonly found in AUC decisions in combination with an analysis of the specific information provided to the Commission by the Applicant in its application and evidence, and by interveners and their experts.

²⁰ *Re Dunmore Solar Inc. Dunmore Solar Project* (9 September 2021), 26485-D01-2021, online: Alberta Utilities Commission <<https://efiling-webapi.auc.ab.ca/Document/Get/705327>> at para 1.

²¹ *Re: EPCOR Generation Inc. & EPCOR Power Development Corporation* (December 21, 2001), Decision 2001-111, page 4.

AUC Rules

The AUC also has the authority to create its own “rule book” in order to ensure that it is able to exercise its jurisdiction effectively. The AUC has issued 34 rules, which are updated from time to time, and can be accessed on its website.²²

Some of the more important rules that you will encounter are the following:

Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments

Rule 007 is the most important rule regarding facility applications before the AUC. Rule 007 sets out requirements that an Applicant has to meet in order to apply for a permit to construct and get a licence to operate a transmission facility in Alberta. This includes how and to what extent the Applicant needs to consult with or notify the public of its proposed project through the development process.

Rule 012: Noise

Rule 012 sets out the noise level thresholds that energy facilities cannot exceed. Rule 012 also establishes certain exemptions that an Applicant might qualify for if the facility is to be located in an area where there is already significant ambient noise. Rule 012 also sets out the daytime noise thresholds and the nighttime noise thresholds.

This is an important rule for interveners to understand, as one of the most significant impacts of certain types of energy facilities, like power plants and substations, is the noise that the facility makes on an ongoing basis.

Rule 009: Local Intervener Costs

Rule 009 provides a framework for you to use that allows you to seek compensation from the Applicant for certain types of costs you may incur in order to put their point of view forward to the AUC during a hearing.

Rule 016: Review of Commission Decisions

This Rule sets out the first level of review of a decision from the Commission. It is a simple rule that provides for an administrative review of a upon the request of an affected party, or at the Commission’s own initiative. The person not satisfied with the AUC’s decision can file a Request for Review within 30 days of the issuance of the decision (unless the Commission orders otherwise).

²² Alberta Utilities Commission, “AUC Rules” (last visited 25 April 2022), online: *Alberta Utilities Commission* <<https://www.auc.ab.ca/rules/rules-home>>.

Appendix 3: Basics of Administrative Law

23. Administrative Tribunals and the Rules of Natural Justice

What is an Administrative Tribunal?

Administrative tribunals are entities that are created by legislation and to which the government (either provincially or federally) delegates certain decision-making roles pursuant to specific pieces of legislation.

Administrative or regulatory tribunals are different from the court system. They are created by statute and exercise their authority, as a result of it being delegated by the government. Administrative tribunals can adjudicate or administer only the matters delegated to them by their specific empowering statute. An administrative tribunal has no jurisdiction outside of the four corners of the empowering statute. Most importantly, administrative tribunals are required to exercise their specific jurisdiction fairly and in accordance with the principles of natural justice, also known as procedural fairness.

Natural Justice / Principle of Due Process / Procedural Fairness

Administrative tribunals are required to make their decisions in a manner that can be described as procedurally fair, or in accordance with the rules of natural justice.²³ The duty to act fairly applies to all quasi-judicial and administrative decision makers.²⁴ The Supreme Court of Canada determined that any administrative tribunal that is making a determination that “affects the rights, privileges or interests” of a person is sufficient to trigger the duty of procedural fairness.²⁵ In the event that there is a breach of procedural fairness (or natural justice), a jurisdictional error will have occurred.²⁶ The Supreme Court of Canada said, in the *Cardinal* case:

... the right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have”.²⁷

The quintessential statement of the concept of due process is found in the *Dunsmuir* case, where the Court stated that procedural fairness is:

A cornerstone of modern Canadian administrative law [and that public] decision makers are required to act fairly in coming to decisions that affect the rights, privileges or interests of an individual.²⁸

²³ David Jones & Anne de Villars, *Principles of Administrative Law*, 5th Edition (Toronto: Carswell, 2009) at 208-210.

²⁴ *Cardinal v. Director of Kent Institution*, [1985] 2 SCR 643 at para 14, 24 DLR (4th) 44; *Knight v. Indian Head School Division No. 19*, [1990] 1 SCR 653 at para 24, [1990] SCJ No. 26.

²⁵ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, [1999] SCJ No. 39.

²⁶ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21-22, [1999] SCJ No. 39; *Université du Québec à Trois-Rivières v. Larocque*, [1993] 1 SCR 471 at para 43, [1993] SCJ No. 23.

²⁷ *Cardinal v. Director of Kent Institution*, [1985] 2 SCR 643 at para 23, 24 DLR (4th) 44.

²⁸ *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para 79.

Finally, Justice Binnie stated, in the *Dunsmuir* decision, in reference to the role and importance of due process and administrative fairness in the exercise of administrative jurisdiction:

... a fair procedure is said to be the handmaiden of justice. Accordingly, procedural limits are place on administrative bodies by statute and the common law. These include the requirements of “procedural fairness” ... The need for procedural safeguards is obvious. Nobody should have his or her rights, interests or privileges adversely dealt with by an unjust process ...²⁹

Rule against bias

One of the fundamental rules of natural justice is the rule that states the decision-maker must be objective and unbiased. This rule encompasses the concept the adjudicator must be free of actual bias, unconscious bias, unintentional bias, or capacity bias. In the context of an AUC facility hearing, the rule against bias ensures that Commissioners who might be involved in the decision-making process are not connected to the Applicant in any material manner and are not in a position where their decision-making could be influenced by previous relationships, or potential future relationships. These types of potential bias are generally addressed through the disclosure of conflicts of interests and the firewalling of parties within the Commission who might have a conflict of interest away from the matter that creates the conflict. In addition, the Commission is sensitive to the apparent differences between large utility companies and individual landowners. It is crucial for the Commission to take the steps necessary to level the playing field to the extent possible. In making this effort, the Commission may require a utility company to accommodate the needs of the individual landowner through scheduling, translation of materials, multiple personal visits to explain the project, and any number of other accommodations. Further, when considering the information presented at a hearing, the Commission will take into account the different capacity of the utility company and the individual to provide “fancy” evidence versus credible and authentic, but more informal, evidence. All of these considerations, as well as others, go into ensuring that a decision made by an administrative tribunal like the AUC is not biased.

Right to understand the case

One of the fundamental rules of natural justice is the right to know the case you must meet. This means that you are entitled to know the case that is being made by the Applicant and to have a real, not nominal, opportunity to respond. In a practical sense, this means every party is entitled to have notice of the proceeding and the process steps of the decision-maker, access to the information that will be before the adjudicator and for the adjudicator to make its decision on the basis solely of the information presented and not information that is not presented and tested in the hearing process. In addition, the concern with respect to understanding the case that must be met is often a function of technical information forming part of the application and the supporting documents. In order to level the playing field, the AUC’s rules provide for the Applicant to reimburse some or all of the intervener’s costs to hire experts to interpret the

²⁹ *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para 129.

technical materials supporting the application and experts to prepare technical materials in opposition to the application.

Appendix 4: How to Use the eFiling System

The Alberta Utilities Commission uses an electronic filing system for all applications and materials related to applications. In order to access a particular proceeding or submit materials about a hearing where you are affected, you must create an account on the AUC website. There is no cost associated with creating an account and the process is reasonably easy. You will need to select a username and a password, as it the case with many different websites.

The AUC has provided very good information about how to create an account and access the electronic filing system on its website at <https://www.auc.ab.ca/pages/how-to-use-efiling.aspx>. There is a link to the eFiling System User Guide on the AUC website as well.

If you are having difficulty with the electronic filing system, or have any questions about it, you can call the AUC directly and someone will happily assist you!

Appendix 5: Statement of Intent to Participate and Standing

The Statement of Intent to Participate will be used to determine whether you have standing to appear at a hearing. This means that the land you own, occupy, or rent is potentially adversely affected by the proposed facility development and is also within the specified distance from the facility in question. Each type of facility has a different area where standing, or adverse impact, is assumed to be present. For example, if you reside within a 2,000-metre radius of the center of a proposed power generating facility, you are presumed to have standing to participate in the hearing. Similarly, if your land is within 800-metres of the edge of a proposed right-of-way for a transmission line, you are also presumed to be adversely affected by the proposed development and will be given standing to participate. If your land is not within the stated distances for consultation, then you can ask the Commission for approval to appear at a hearing.

The SIP form is quite straight-forward and requires only basic information.³⁰

Section 9(2) of the *Alberta Utilities Commission Act*, sets out the test that the Commission must use when determining whether you have standing to participate in a hearing. It says:

9(2) If it appears to the Commission that its decision or order on an application **may directly and adversely affect the rights of a person**, the Commission shall

- (a) give notice of the application in accordance with the Commission rules,
- (b) give the person a reasonable opportunity of learning the facts bearing on the application as presented to the Commission by the applicant and other parties to the application, and
- (c) hold a hearing. [emphasis added].

The Court of Appeal addressed the interpretation of the phrase “directly and adversely affect the rights of a person” in a number of cases. The following statement made by the Alberta Court of Appeal in *Dene Tha’ First Nation v. Alberta (Energy and Utilities Board)*³¹ was confirmed in *Cheyne v. Alberta (Utilities Commission)*³² and has remained the definitive interpretation of how the AUC is to determine the whether the rights of a person are directly and adversely affected. The Court stated at paragraph 13:

The Board correctly stated here that the provision in ...as two branches. First is a legal test, and second is a factual one. The legal test asks whether the claim right or interest being asserted by the person is one known to the law. The second branch asks whether the Board has information which shows that the application before the

³⁰ The Statement of intent to participate form for facilities hearings is found at this link: https://media.www.auc.ab.ca/prd-wp-uploads/regulatory_documents/Reference/RP2a-FacilitiesSIPForm.pdf

³¹ *Dene Tha’ First Nation v. Alberta (Energy and Utilities Board)*, 2005 ABCA 68.

³² *Cheyne v. Alberta (Utilities Commission)*, 2009 ABCA 94 at para 13.

Board may directly and adversely affect those interest(s) or rights. The second test is factual.

The first test is legal: a person must demonstrate that the right being asserted is recognized by law. This could include property rights, constitutional rights or other legally recognized rights, claims or interests. The second test is factual: a person must provide enough information to show that the Commission's decision on the applications may "directly and adversely affect" the person's right, claim or interest.

To determine whether a right has been "directly and adversely affected", the Alberta Court of Appeal has stated that:

The application of the test necessarily requires a weighing of the evidence and a consideration of whether that evidence establishes a sufficient location or connection. (See *Dene Tha'*, para. 14). Surely, in considering the location or connection, the Board is entitled to look at factors such as residence, the presence or absence of other wells in the area, and the frequency and duration of the applicant's use of the area near the proposed site.³³

A separate internal process will be undertaken by the Commission to determine whether your request to appear reflects an adverse impact to your land, or your enjoyment of your land. If you represent an environmental interest group that might be impacted by a proposed development, and you do not have land that is within a proximate distance of the proposed development, you may have an uphill climb to persuade the Commission you should be given standing to appear at the hearing and argue a position on behalf of certain environmental interest groups.³⁴

However, if you feel passionately about the matters in issue, you are always able to file a Statement of Intent to Participate and put your request for standing forward. The Commission will likely communicate with you and ask for more information about your interest in the proceeding and why you believe your interest in land will potentially be adversely affected by the proposed development.³⁵

If you are not granted standing to appear as an Intervener in an AUC hearing, you can still attend the hearing and stay informed about the project by registering as an observer of the proceeding on the AUC's eFiling system. As an observer, you will have access to all of the documents that are filed in the proceeding and will be able to follow all of the process steps prior to the actual

³³ *Sawyer v. Alberta (Energy and Utilities Board)*, 2007 ABCA 297 at para 16, citing *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)*, 2005 ABCA 68 at para 14.

³⁴ In the Maxim Power Corp. – HR Milner Power Plant Expansion Decision, dated June 20, 2011, the AUC denied standing to a series of interveners who did not have interests in the area of the power plant expansion but who were interested in a more general sense in the environmental impacts of the facility. See Exhibit 79 of Proceeding 203 for the AUC's decisions on standing. Thickwood to Voyageur Transmission Project, Application 26035, standing denied to trapline holder because the direct and adverse impact could not be shown.

³⁵ Some AUC decisions where standing was granted: TransCanada Energy Ltd. Saddlebrook Solar and Storage Project Proceeding 26572; Enerfin Energy Company of Canada Inc. Winnifred Wind Power Project Proceeding 26504.

hearing. AUC hearings are public. If you are interested in a hearing, you can simply show up to an in-person hearing or register to watch it online, if it is a virtual hearing.

Appendix 6: Micro-generation (less than 10 MW) Facilities

AUC Rule 024: *Rules Respecting Micro-generation* were revised on July 16, 2019.³⁶ The purpose of establishing a separate set of rules and a process for permitting small generation facilities was to acknowledge that these facilities do not have a significant impact on the AIES and that, often, individuals are applying for these small power generation facilities for personal use only. The *Microgeneration Regulation* of the *Electric Utilities Act* sets out the general regulatory structure as it pertains to these small generation facilities.

In the regulation, a “micro-generation generating unit” means a generating unit of a customer that

- (i) exclusively uses sources of renewable or alternative energy,
- (ii) is intended to meet all or a portion of the customer’s total annual energy consumption at the customer’s site or aggregated sites,
- (iii) has a total nameplate capacity that does not exceed the lesser of 5 MW or the rating of the customer’s service,
- (iv) supplies electric energy only to a site that is located on property that the customer owns or leases, and
- (v) is located
 - (A) on the property referred to in subclause (iv), or
 - (B) on property that the customer owns or leases that is adjacent to the property referred to in subclause (iv).

The AUC has determined that micro-generation facilities do not require the rigour of a full power plant application and, accordingly, has provided a more administrative, form-based application process for the approval of these types of facilities. The *Microgeneration Regulation* defines a micro-generation generating unit as a power plant that generates less than 5 MW of electric energy.

In considering the impact of small generating facilities on the reliability of the AIES, the AUC considered the impact of generators up to the 10 MW output level as have a similarly low risk of impact to the grid and a high level of utility to individuals who may wish to generate electricity for their own use.

³⁶ Alberta Utilities Commission, “Rule 024: Rules Respecting Micro-Generation” (16 July 2019), online (pdf): <<https://media.www.auc.ab.ca/prd-wp-uploads/2022/01/Rule024.pdf>>.

To streamline the regulatory process with respect to these applications, the AUC created an exemption to Rule 007: *Application for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines*.

That exemption was first set out in Bulletin 2014-11: *Power plant exemptions – Elimination of application requirements for power plants with a capability of less than 10 megawatts that are generating electric energy solely for the use of the owner*. This exemption applied to power generating facilities that generated between one and 10 megawatts of electric power but were not connected to the grid. If these small generating facilities were connected to the grid (as was the case in many small generating facilities where excess power was put back on the grid and the customer credited for that power as against the customer's own consumption at times when consumption exceeded generation), then the exemption did not apply and the individual was required to file a fulsome application in accordance with Rule 007.

As of April 25, 2022, the AUC revoked the applicability of the exemption and replaced it with another, similar exemption from the requirement to file a full application for own-use small generating facilities. The AUC has created a new process and a checklist style application describing the generating facility and providing other relevant information for the applicant. This checklist style application will be available for generating facilities with a capacity of one to 10 MW, regardless of whether they are connected to the grid. The checklist touches on all of the important criteria, such as the location and capacity of the facility, the type of energy source, the technical description of the power plant, and confirmation that the power plant does not directly and adversely affect any person, is compliant with Rule 012: *Noise Control*, and that it has no adverse impact on the environment. The applicant must confirm that these facts are correct but supporting documentation is not required unless requested by the AUC to ensure compliance.³⁷

Bulletin 2022-04 has a very informative summary chart that sets out which application and exemption applies to each size of facility. This chart is a reproduction of the chart that is located in Bulletin 2022-04 and is current as at the date that this Guide was published. It may change, over time, as the AUC continues to seek to reduce the regulatory burden³⁸:

³⁷ The checklist application can be found on the AUC website or at this location: https://media.www.auc.ab.ca/prd-wp-uploads/regulatory_documents/Reference/Rule007_PowerPlantChecklistApplicationForm.pdf

³⁸ See page 3 of Bulletin 2022-04 or this link: https://media.www.auc.ab.ca/prd-wp-uploads/regulatory_documents/Reference/Rule007_PowerPlantChecklistApplicationForm.pdf

The following table summarizes the type of application that should be filed by power plant type or capability (megawatt or MW):

New power plant	Exempt under Rule 007	Checklist application	Full Rule 007 application
Micro-generation	X		
Isolated generation	X		
Under 1 MW	X		
Greater than 1 MW, less than 10 MW, meets checklist requirements		X	
Greater than 1 MW, less than 10 MW, does not meet checklist requirements			X
Above 10 MW			X

Appendix 7: Contact Information for Alberta Utilities Commission

Calgary Office:

Eau Claire Tower

1400, 600 Third Avenue S.W.

Calgary, Alberta T2P 0G5

Edmonton Office:

103 Street Centre

Suite 1300, 10130 – 103 Street

Edmonton, Alberta T5J 3N9

Telephone Contacts:

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