AUC
Alberta Utilities Commission

Enforcement staff of the Alberta Utilities Commission

Addendum to Decision 26379-D02-2021

Allegations against Link Global Technologies Inc.
Phase 1

May 26, 2022

Alberta Utilities Commission
Decision 26379-D02-2021 (Addendum)
Enforcement staff of the Alberta Utilities Commission
Allegations against Link Global Technologies Inc.
Phase 1
Proceeding 26379

May 26, 2022

Published by the:
Alberta Utilities Commission
Eau Claire Tower, 1400, 600 Third Avenue S.W.
Calgary, Alberta
T2P 0G5

Telephone: 310-4AUC (in Alberta)
1-833-511-4AUC (outside Alberta)
Fax: 403-592-4406
Website: www.auc.ab.ca

Alberta Utilities Commission

Calgary, Alberta

	Decision 26379-D02-2021
Enforcement staff of the Alberta Utilities Commission	**Proceeding 26379**
Allegations against Link Global Technologies Inc.	**Application 26379-A001**

1. On August 19, 2021, the Alberta Utilities Commission issued Decision 26379-D02-2021.[1]

2. Aspects of Decision 26379-D02-2021 were subsequently reopened for further consideration in Proceeding 26379. Readers are directed to Decision 26379-D03-2022, which addresses those matters which were reopened.

Dated on May 26, 2022.

Alberta Utilities Commission

(*original signed by*)

Kristi Sebalj
Panel Chair

(original signed by)

Cairns Price
Commission Member

(original signed by)

Vera Slawinski
Commission Member

[1] Decision 26379-D02-2021: Enforcement Staff of the Alberta Utilities Commission – Allegations against Link Global Technologies Inc., Proceeding 26379, Application 26379-A001, August 19, 2021.

AUC
Alberta Utilities Commission

Enforcement staff of the Alberta Utilities Commission

Allegations against Link Global Technologies Inc.
Phase 1

August 19, 2021

Alberta Utilities Commission
Decision 26379-D02-2021
Enforcement Staff of the Alberta Utilities Commission
Allegations against Link Global Technologies Inc.
Proceeding 26379
Application 26379-A001

August 19, 2021

Published by the:
Alberta Utilities Commission
Eau Claire Tower
1400, 600 Third Avenue S.W.
Calgary, Alberta T2P 0G5

Telephone: 310-4AUC (310-4282) in Alberta
1-833-511-4AUC (1-833-511-4282) outside Alberta
Email: info@auc.ab.ca
Website: www.auc.ab.ca

Contents

1 Introduction and decision summary

1. To operate a power plant in Alberta, a person must either apply to the Alberta Utilities Commission for approval under Section 11 of the *Hydro and Electric Energy Act,* or be able to demonstrate that they meet all of the conditions for an exemption from approval under Section 13 of the *Hydro and Electric Energy Act* and Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments*. Those conditions are:

- the power plant's capacity is less than 10 megawatts (MW)
- the person generates electric energy solely for their own-use
- no person is directly and adversely affected
- the power plant complies with Rule 012: *Noise Control*
- there is no adverse effect on the environment

2. Link Global Technologies Inc. began operating a five-MW power plant in Sturgeon County on August 27, 2020 (the Sturgeon plant) and a 3.5-MW power plant near Kirkwall on June 26, 2020 (the Kirkwall plant) without obtaining approval from the Commission. The plants supplied electric energy to digital currency processing facilities (bitcoin mines) located on each of the sites.

3. On March 12, 2021, Alberta Utilities Commission Enforcement staff filed an application with the Commission alleging two contraventions by Link Global in relation to the Sturgeon plant:

- Link Global has been operating, and continues to operate, a power plant since September of 2020[1] without an approval, contrary to Section 11 of the *Hydro and Electric Energy Act* and Section 1.4.3 of Rule 007.
- Link Global is operating a power plant that is not compliant with the nighttime permissible sound levels prescribed in Rule 012.[2]

[1] Link Global initially told Enforcement staff that the Sturgeon plant commenced operations in "September 2020", but later confirmed the precise date was August 27, 2020 (Exhibit 26379-X0001.02, 2021-03-11 Submission of the AUC Enforcement Staff, PDF pages 17 and 58; Exhibit 26379-X0029, Statement of Agreed Facts and Contraventions, PDF page 10).

[2] Exhibit 26379-X0001.02, 2021-03-11 Submission of the AUC Enforcement Staff.

4. Had Link Global filed an application to the Commission, or obtained a basic understanding of the applicable regulatory requirements to operate under an exemption before beginning to operate, Alberta Utilities Commission enforcement action may not have been necessary.

5. Enforcement staff dispute that Link Global met and continues to meet the applicable exemption conditions, and as a result allege that Link Global has contravened the regulatory scheme. Enforcement staff also allege that because Link Global did not generate electric energy solely for its own-use, it contravened Section 2(g) of the *Fair, Efficient and Open Competition Regulation.* Section 2(g)(i) provides that "[c]onduct by an electricity market participant that does not support the fair, efficient and openly competitive operation of the electricity market includes the following: (g) not offering to the power pool all electric energy from a generating unit that is capable of operating, except where (i) the electric energy is used on property for the electricity market participant's own use."

6. Enforcement staff and Link Global reached a partial settlement on some of the alleged contraventions and sanctions for those contraventions. In this decision, the Commission accepts the partial settlement, and considers the issues outstanding from the settlement: whether Link Global's operations fall within the definition of own-use, whether Link Global violated the Commission's enforcement order, and how Link Global may achieve compliance going forward. After considering the record of the proceeding, and for the reasons outlined in this decision, the Commission finds as follows:

- The partial settlement falls within a range of acceptable outcomes given the circumstances. The Commission accepts the partial settlement including the following agreed-upon contraventions and range of sanctions:

    i. Contravention 1: Unaware of the statutory and regulatory requirements, the power plant owned and operated by Link Global at the Sturgeon site has been in operation since August 27, 2020, without an approval from the Commission, contrary to the *Hydro and Electric Energy Act* and Rule 007.

    ii. Contravention 2: The power plant operations at the Sturgeon site have exceeded, prior to Link Global ceasing nighttime operations in response to AUC Order 26379-D01-2021,[3] the permissible sound levels specified in Rule 012.

    iii. Contravention 3: Unaware of the statutory and regulatory requirements, the power plant owned and operated by Link Global at the Kirkwall site has been in operation since June 26, 2020, without an approval from the Commission, contrary to the *Hydro and Electric Energy Act* and Rule 007.

    iv. An administrative penalty for contraventions 1-3 collectively, in the range of $50,000 to $75,000 with a reduction of up to 50 per cent, with no additional administrative penalty regardless of the Commission's determination on the own-use issue.

[3] Order 26379-D01-2021, Proceeding 26379, Application 26379-A001, March 19, 2021.

- As noted above, the outstanding issues are whether Link Global generated electricity for its own-use at all relevant times, whether Link Global violated the enforcement order, and how Link Global may achieve compliance going forward. On those issues the Commission finds as follows:

    v. Link Global failed to meet the definition of own-use for the purposes of obtaining exemption from approval under the *Hydro and Electric Energy Act* until March 8, 2021, when it acquired ownership of the digital currency processing facilities.

    vi. Link Global met the definition of own-use for the purposes of exemption from the *Electric Utilities Act* and the *Fair, Efficient and Open Competition Regulation* from the commencement of operations at the Sturgeon and Kirkwall plants to present, regardless of its March 8, 2021 acquisition of the digital currency processing facilities, because Section 2(3) of the *Electric Utilities Act* specifically contemplates and allows the original arrangement between Link Global and Block One Technology Inc.

    vii. Regardless of the timing of ceasing operations at the Sturgeon plant, Link Global contravened the Commission's enforcement order by failing to communicate the Sturgeon plant's status to the Commission in a reasonable timeframe.

    viii. Link Global cannot operate the Sturgeon plant going forward without applying to the Commission for approval, as it does not meet all of the exemption criteria in Section 1.4.3 of Rule 007. As the plant is currently operating without approval, the Commission orders Link Global to shut down the Sturgeon plant as specified in Section 4.3.1 below.

    ix. The Kirkwall plant does not currently meet the "no adverse effect on the environment" criterion in Rule 007. While the exceedance of the emissions limit appears to be negligible based on the operating parameters described by Link Global, Link Global has not provided the Commission with either an approval under the *Environmental Protection and Enhancement Act* or confirmation from Alberta Environment and Parks that approval is not required for the plant. As the plant is currently operating without approval or without an environmental exemption, the Commission orders Link Global to shut down the Kirkwall plant as specified in Section 4.3.2 below.

7. In reaching the determinations set out in this decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the evidence and submissions provided by each party, and has taken into account the agreed contraventions and sanctions in the parties' partial settlement. References in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record as it relates to that matter.

2 Procedural background

8. The Commission's enforcement policy and supporting principles followed in this proceeding are set out in Bulletin 2014-05: *Alberta Utilities Commission enforcement policy*, and Bulletin 2016-10: *Practices regarding enforcement proceedings and amendments to AUC Rule 001: Rules of Practice*. Among others, those practices provide that Enforcement staff will carry out investigations and enforcement actions, and will not have contact with staff assigned to assist the adjudication panel other than through correspondence copied to all interested parties or through the public proceeding process. The names of Enforcement staff were disclosed on the public record and that separation was maintained in this proceeding.

9. Enforcement staff concluded an investigation into the approval requirements and a noise complaint regarding the Sturgeon plant in early 2021 (the Kirkwall plant was not the subject of the original investigation; it was brought into the proceeding as part of the partial settlement). In the application, Enforcement staff alleged that Link Global has been operating the Sturgeon plant since September of 2020 and continues to operate that plant without an approval, and that the Sturgeon plant is not compliant with the nighttime permissible sound levels prescribed in Rule 012.

10. Enforcement staff requested, among other relief, that the Commission commence an enforcement proceeding to determine whether Link Global contravened the above rules and enactments, and to direct Link Global to immediately cease operation of the Sturgeon plant while this matter was being considered. Enforcement staff's application was accompanied by two comprehensive sound level surveys conducted by a third-party consultant hired by Link Global, which indicated exceedances of the nighttime permissible sound level as defined in Rule 012.

11. On March 19, 2021, concurrent with its notice of enforcement proceeding, the Commission issued Order 26379-D01-2021 which required Link Global to shut down the Sturgeon plant nightly from 10 p.m. to 7 a.m. and to file a letter confirming it had done so. The Commission subsequently sent a letter and required an inspection team[4] to attend the site to ensure its order was followed. Given the potential impacts of the enforcement proceeding and alleged contraventions on Link Global, the Commission set out an expedited process in its notice allowing the matter to be heard as soon as reasonably possible, which would have concluded after an oral hearing on April 14, 2021.

12. Link Global subsequently requested multiple extensions of process schedule deadlines, which the Commission granted,[5] including delays for Link Global to retain counsel, and for Link Global and Enforcement staff to engage in settlement discussions.[6]

---

[4] The inspection team members acted as an independent third party; they were not members of the Enforcement staff team, nor were they otherwise involved in assisting the Commission in the adjudication of the matters in this proceeding.

[5] Exhibit 26379-X0016, Letter to AUC regarding an extension, Exhibit 26379-X0018, AUC letter – compliance with Order 26379-D01-2021 to be considered in Proceeding 26379, Exhibit 26379-X0019, LINK GLOBAL Letter to the AUC re McLennan Ross LLP Representation of Link Global 9-April-2021, Exhibit 26379-X0020, AUC letter – Revised process schedule.

[6] Exhibit 26379-X0022, AUC letter – Revised process schedule for the purposes of settlement discussions; Exhibit 26379-X0023, AUC letter – Extension of deadline for settlement discussions and hearing; Exhibit 26379-X0024, AUC letter – Extension of deadline for settlement discussions.

13. Link Global and Enforcement staff reached agreement on a number of issues in the proceeding and filed a statement of agreed facts and contraventions (the partial settlement).[7] The partial settlement did not resolve all the outstanding issues in the proceeding, as the parties did not agree to all the allegations or potential sanctions before the Commission. In the following section, the Commission describes the issues addressed in the partial settlement and provides its reasons for accepting the partial settlement.

3 Should the Commission accept the partial settlement?

14. When determining whether to accept a settlement in the context of this enforcement proceeding, the Commission takes guidance from the principles developed in the criminal law context with respect to sentencing, which were described in Decision 3110-D03-2015.[8]

> 15. When deciding whether to approve the consent order proposed by the MSA and TransAlta, the Commission can take guidance from the principles developed by the Court with respect to joint submissions on sentencing in the criminal law context. The Alberta Court of Appeal set out its approach to joint submissions on sentencing in a decision called *R. v G.W.C.*:
>
> > [17] The obligation of a trial judge to give serious consideration to a joint sentencing submission stems from an attempt to maintain a proper balance between respect for the plea bargain and the sentencing court's role in the administration of justice. The certainty that is required to induce accused persons to waive their rights to a trial can only be achieved in an atmosphere where the courts do not lightly interfere with a negotiated disposition that falls within or is very close to the appropriate range for a given offence. "The bargaining process is undermined if the resulting compromise recommendation is too readily rejected by the sentencing judge."
> >
> > [18] **Joint submissions, however, should be accepted by the trial judge unless they are unfit**: In *R. v. Dorsey*, the Ontario Court of Appeal held at p. 345 that "**a joint submission should be departed from only where the trial judge considers the joint submission to be contrary to the public interest and, ... if accepted, would bring the administration of justice into disrepute**." That view accords with the position of the Manitoba Court of Appeal in *R. v. Pashe*, supra, at para. 12, that "while a sentencing judge has a overriding discretion to reject a joint recommendation, 'there must be good reason to do so, particularly ... where the joint recommendation is made by experienced counsel'." (citations omitted)
>
> 16. The Alberta Court of Appeal recently endorsed the principles set out in *R. v G.W.C* in *R. v Bullock* and emphasized that "[a] sentencing judge must not reject a joint submission that is fit and reasonable even if he or she would impose a harsher sentence which would also be fit and reasonable."
>
> 17. The Saskatchewan Court of Appeal endorsed the application of these principles to joint submissions on sentencing in professional disciplinary proceedings before the Law Society of Saskatchewan in a decision called *Rault v Law Society of Saskatchewan*

[7] Exhibit 26739-X0029, Statement of Agreed Facts and Contraventions.

[8] Decision 3110-D03-2015: Market Surveillance Administrator – Market Surveillance Administrator allegations against TransAlta Corporation et al. Phase 2 – request for consent order – Proceeding 3110, Application 1610350-1, October 29, 2015.

(*Rault*). In that case, the court found that the discipline process had many similarities to the criminal process and noted that law societies in other Canadian jurisdictions had formally adopted a policy to consider joint sentencing submissions in a manner consistent with that set out in *R. v G.W.C.* The court reviewed the policy reasons behind the approval of reasonable joint settlements and concluded that "joint submissions on sentence should be considered by the Discipline Committee in a principled way similar to the jurisprudence in criminal matters and as applied by discipline committees in the provinces noted above."

18. Many Canadian tribunals that administer disciplinary schemes have adopted the approach to joint sentencing submissions described in the *R. v G.W.C* and *Rault* decisions, including: the law societies of Alberta, Saskatchewan, British Columbia and New Brunswick, the Ontario Securities Commission and the Investment Industry Regulatory Organization of Canada.

19. The Commission took a similar approach in Proceeding 1553, when it approved a settlement between the MSA and TransAlta under Section 44 of the *Alberta Utilities Commission Act*. The Commission described its role when considering the proposed settlement under Section 44 as follows:

> 35. The fact that the Commission is determining in this proceeding whether to approve a settlement rather than itself deciding in the first instance what sanction to impose means that the Commission must decide **whether or not the proposed settlement is reasonable in the sense that it falls within a range of acceptable outcomes appropriate to the facts and applicable sanctioning principles rather than whether it is the sanction that the Commission might have chosen to impose**.

20. Taking guidance from the foregoing, the Commission must not ask itself if the proposed consent order is the order that it would have issued. Rather, the Commission must decide if the consent order is fit and reasonable and falls within a range of acceptable outcomes given the circumstances. When making this assessment, the Commission is guided by the factors set out in Rule 013: *Rules on Criteria Relating to the Imposition of Administrative Penalties* (Rule 13) and other applicable sanctioning principles.

21. Should the Commission decide that the sanctions proposed in the consent order fall outside the range of acceptable outcomes, the Commission must either refer the consent order back to the parties, so that each has an opportunity to understand and address the Commission's concerns, or reject the consent order. The Commission cannot unilaterally vary or amend the consent order because the parties had not agreed to be bound by the amended terms nor would they have had an opportunity to address the effects of the amendments.

[citations omitted, emphasis added]

15. As is clear from its previous decisions and applicable jurisprudence, the question is not whether the Commission would have issued the same decision; the question is whether the partial settlement is fit and reasonable, and falls within a range of acceptable outcomes given the circumstances.

16. The facts surrounding the operation of the Sturgeon and Kirkwall plants in this proceeding are largely beyond dispute, and the partial settlement included an agreed statement of

facts. The primary dispute is whether the characteristics of the Sturgeon and Kirkwall plants meet the criteria for exemption from approval.

17. The Sturgeon plant is a five-MW facility made up of four 1.25-MW gas generators at 54411 Range Road 253 in Sturgeon County owned and operated by Link Global. The generators obtain their gas supply from the Campbell 05-27-054-24 W4 Gas Multiwell Group Battery located onsite, which is owned and operated by MAGA Energy Ltd. The natural gas facilities include an insulated metal building which houses a motor-driven compressor with an external cooler. Wells supply the compressor with natural gas to exceed the combined consumption of the power plants slightly. The minor excess amount of gas flows into a Tidewater pipeline.[9] The natural gas transmission facilities process and supply natural gas to multiple small generators. Those generators in turn supply electricity to a digital currency processing facility comprised of four units located on the same site, which were originally owned by Block One. As described by Link Global in its submissions, those units are referred to in the bitcoin mining industry as "crypto mining rigs," consisting of computers with significant processing power and computer hardware (miners) specifically designed for bitcoin mining.[10]

18. The Sturgeon plant began operating on August 27, 2020, near the residential community of Greystone Manor. Residents of Greystone Manor complained about noise from the Sturgeon plant, which prompted Enforcement staff's investigation. Link Global hired a third party consultant, FDI Acoustics Inc., to conduct two comprehensive sound level surveys. The first survey yielded a limited amount of valid data due to unfavourable environmental conditions, but indicated that noise from the Sturgeon plant might have exceeded the applicable permissible sound level in Rule 012 at one dwelling during one nighttime period. The second survey concluded that noise from the Sturgeon plant exceeded the applicable permissible sound level at another dwelling during four nighttime periods, with a maximum exceedance of 1.7 dBA.

19. Link Global confirmed in the partial settlement that it was unaware of the requirements under sections 11 and 13 of the *Hydro and Electric Energy Act* before it began operating either power plant. As a result, before operating the Sturgeon plant Link Global did not file an application with the Commission, nor did it notify or consult with residents of Greystone Manor or Sturgeon County, conduct a noise impact assessment, or conduct a site specific analysis concerning potential environmental impacts from the power plant. The plant then exceeded the permissible sound levels in Rule 012 based on the results of an independent third party consultant's survey. Based on this factual background, Link Global and Enforcement staff agreed on the following contraventions in relation to the Sturgeon plant:

i. Contravention 1: Unaware of the statutory and regulatory requirements, the power plant owned and operated by Link Global at the Sturgeon site has been in operation since August 27, 2020, without an approval from the Commission, contrary to the *Hydro and Electric Energy Act* and Rule 007.

ii. Contravention 2: The power plant operations at the Sturgeon site have exceeded, prior to Link Global ceasing nighttime operations in response to AUC Order 26379-D01-2021, the permissible sound levels specified in Rule 012.

[9] Exhibit 26379-X0017, Inspection report for the Sturgeon Plant.
[10] Exhibit 26379-X0037, LINK GLOBAL Response to AUC's June 10, 2021 Letter re Link Global Process, paragraphs 21-26.

20. The Kirkwall plant is a 3.5-MW facility comprised of the same type of gas generators as the Sturgeon plant, located in Special Area 3, in a relatively unpopulated part of Alberta. The generators obtain their gas supply from the Atapco Kirkwall 07-29-27-05 W4 Gas Multiwell Group Battery located onsite, which is owned and operated by CONVEGA Energy. Similar to the Sturgeon plant, the generators are owned and operated by Link Global, and supply electricity to onsite crypto-mining rigs originally owned by Block One.

21. The nearest dwelling to the Kirkwall plant is approximately two kilometres away, and since it began operating on June 26, 2020, no noise complaints have been made, nor have comprehensive sound levels surveys been conducted, in respect of the Kirkwall plant. Link Global confirmed in the partial settlement that, similarly to the Sturgeon plant, it did not file an application with the Commission, consult potentially affected persons, conduct a noise impact assessment, or conduct a site-specific analysis on potential environmental impacts.

22. The Kirkwall plant was not included in the original application by Enforcement staff; however, Link Global and Enforcement staff agreed in their partial settlement to include the Kirkwall plant as part of this enforcement proceeding. Based on this factual background, Link Global and Enforcement staff agreed on the following contravention in relation to the Kirkwall plant:

i. Contravention 3: Unaware of the statutory and regulatory requirements, the power plant owned and operated by Link Global at the Kirkwall site has been in operation since June 26, 2020, without an approval from the Commission, contrary to the *Hydro and Electric Energy Act* and Rule 007.

23. The parties also reached partial agreement on sanctions for the agreed contraventions 1 to 3. Link Global and Enforcement staff agreed that an administrative penalty is warranted for contraventions 1 to 3, and an appropriate range for that penalty is $50,000 to $75,000 on a combined basis. The parties further agreed to a reduction to this penalty amount of up to 50 per cent in consideration of Link Global's admission of contraventions 1 to 3 and recognition that this agreement would reduce the need for a protracted hearing. The parties did not propose an additional administrative penalty if the Commission determines that the electric energy generated at the Sturgeon or Kirkwall plant was not for Link Global's own-use at all relevant times. Link Global and Enforcement staff did not agree whether a one-time amount to address economic benefit was warranted for contraventions 1 to 3, and if so, the amount of that disgorgement. The Commission did not receive submissions from the parties on this point, and this matter will be determined in the second phase of this proceeding.

24. In assessing whether to accept the partial settlement, the Commission has considered whether the agreed-upon contraventions and proposed sanctions for such fall within a range of acceptable outcomes, taking into account the circumstances and applicable sanctioning principles. Rule 013: *Rules on Criteria Relating to the Imposition of Administrative Penalties* is instructive in this analysis, requiring the Commission to take into account relevant factors including the seriousness of the contravention, the compliance system, and self-reporting or cooperation of the person named in the contravention.

25. As the Commission has noted repeatedly in prior decisions, the purpose of its sanctioning authority is to achieve general and specific deterrence, encourage compliance and protect the public. Its sanctions are intended to be protective and preventative, not punitive. Rule 013

supports and is consistent with this purpose, asking the Commission to consider the nature of the harm, including whether it was limited in scope, or whether it caused damage or injury to persons, property or the environment.

26. The Commission does not take lightly that Link Global began operating multiple power plants in a jurisdiction with which it had no familiarity, and failed to conduct a basic level of due diligence to understand the regulatory regime in which it was operating. However, the nature of the actual harm suffered (in the Commission's view, primarily being the disturbance caused to the residents of Greystone Manor) was transitory and limited in its temporal scope. The nuisance caused by the noise from the Sturgeon plant was remedied as of March 25, 2021 when the plant ceased operating at night. The Commission has also weighed heavily the parties' efforts to arrive at a settlement, and has considered the applicable guidance that "a joint submission should be departed from only where the trial judge considers the joint submission to be contrary to the public interest and, ... if accepted, would bring the administration of justice into disrepute."[11]

27. Having taken into account the nature of the harm, the administrative penalties proposed in the settlement and applicable guidance from Rule 013, criminal law jurisprudence, and previous Commission decisions, the Commission considers that the partial settlement falls within a range of acceptable outcomes and accepts the partial settlement. This includes the agreed-upon administrative penalty range of $50,000 to $75,000 on a combined basis for contraventions 1-3, with a reduction of up to 50 per cent. The Commission will consider submissions on the specific amount of the penalty in the second phase of this proceeding (as noted in Section 5 below), but will only consider amounts within the range agreed-upon in the partial settlement.

28. In the partial settlement, the parties did not agree on:

i. Whether Link Global's operations at either the Sturgeon or Kirkwall plants met the legislative requirement of generating electricity solely for the owner's own-use, particularly until March 8, 2021 when Link Global acquired ownership and began operating Block One's digital currency processing equipment. Because a party wishing to operate under an exemption must meet *all* of the criteria in Section 1.4.3 of Rule 007, and since Link Global has admitted in the partial settlement that it operated both the Sturgeon and Kirkwall plants without an approval from the commencement of their operations until March 8, 2021, the Commission does not need to make this determination in order to accept the agreed-upon contraventions in the partial settlement. This issue is only relevant to whether Link Global's operations qualify for an exemption going forward, and whether Link Global breached Section 2(g) of the *Fair, Efficient and Open Competition Regulation.*

ii. Whether Link Global operated the Sturgeon plant from March 19-24, 2021, contrary to the Commission's Order 26379-D01-2021.

iii. How Link Global may continue operations at the facilities and recommence nighttime operation at the Sturgeon plant. Enforcement staff's support of the relief requested in paragraph 71 of the partial settlement is premised on the Commission issuing an approval to operate, which Link Global does not agree is required, as

[11] *R. v G.W.C.*, 2000 ABCA 333, paragraphs 17 and 18.

> discussed in Section 4.3 below. As a result of the parties' express lack of agreement on this issue,[12] the Commission's approval of the partial settlement does not, and cannot in the context of this enforcement proceeding, include approval of the relief requested in paragraph 71.

29. The Commission's findings on each of these issues are set out in the sections that follow.

4 Issues outstanding from the partial settlement

4.1 Do Link Global's operations fall within the definition of "own-use"?

30. First, whether Link Global is generating electric energy for its own-use under the *Hydro and Electric Energy Act* is relevant to whether Link Global's operations qualify for an exemption going forward. Second, the parties did not agree whether Section 2(g) of the *Fair, Efficient and Open Competition Regulation* applies to the Sturgeon and Kirkwall plants. Determining whether the electric energy was generated for Link Global's own-use under the *Electric Utilities Act* is necessary to determine whether Link Global breached the *Fair, Efficient and Open Competition Regulation.* The Commission makes its determinations on each of those two issues in this section.

Own-use for the purposes of the Hydro and Electric Energy Act

31. Section 11 of the *Hydro and Electric Energy Act* provides that no person may construct and operate a power plant without Commission approval. The Commission is required, under Section 17 of the *Alberta Utilities Commission Act,* to assess whether approval of a proposed power plant is in the public interest, having regard to its social, economic and environmental effects. Section 13 provides a limited exception to that requirement for approval:

> **13(1)** Sections 9 and 11 do not apply to **a person generating or proposing to generate electric energy solely for the person's own use, unless the Commission otherwise directs**.
>
> **(2)** Notwithstanding subsection (1), a person generating or proposing to generate electric energy solely for the person's own use shall, if required by regulation to do so, immediately notify the Commission of the use or proposed use and provide any details of the generation and use that the Commission requires.
>
> [emphasis added]

32. The Commission "otherwise directed" in Rule 007, Section 1.4.3, that a person who generates electricity for their own-use must nonetheless meet the other exemption criteria described at the outset of this decision. As is evident from the nature of the criteria in Rule 007, the limitations on the exemption ensure that projects do not cause social or environmental impacts, which the Commission will not have considered in a public interest assessment under of Section 17 of the *Alberta Utilities Commission Act*. Collectively, the *Hydro and Electric Energy Act* and *Alberta Utilities Commission Act* therefore set up an approval scheme that takes into account the effects of a potential project, and allows a limited exemption, the terms of which can

[12] Exhibit 26379-X0034, Enforcement staff response to process proposed by Link Global, PDF page 4; Exhibit 26379-X0037, LINK GLOBAL Response to AUC's June 10, 2021 Letter re Link Global Process, paragraphs 81-83.

(and have) been set by the Commission through its rules. It is within this context that the Commission must first consider whether Link Global is "a person generating or proposing to generate electric energy solely for the person's own-use" for the purposes of the *Hydro and Electric Energy Act.*

33. As described above, the Sturgeon and Kirkwall plants consist of natural gas facilities, supplying fuel to thermal electrical generating units, which in turn provide electric energy to digital currency processing facilities located onsite at each location. Neither the Kirkwall or Sturgeon plants are connected to the Alberta Interconnected Electric System. It is not disputed that the electric energy is consumed on site; the issue is whether the consumption of electric energy by the bitcoin mining equipment originally owned by Block One meets the "own-use" definition for the purposes of both the *Hydro and Electric Energy Act* and the *Electric Utilities Act.*

34. As of the date each generator began operations, electric energy generated by the Sturgeon and Kirkwall plants was sold by Link Global to Block One under a master service agreement dated June 15, 2020, for the sole purpose of operating Block One's digital currency processing facilities located at those sites. The master service agreement specifically set out the terms of the relationship between Link Global and Block One. Section 21 of the master service agreement states that "[t]he Parties are independent contractors to each other, and this Agreement does not and shall not establish any relationship of partnership, joint venture, employment, franchise, or agency between the Parties." This changed on March 8, 2021, when ownership of Block One's digital currency processing facilities was transferred to Link Global (the March 8 Agreement).[13]

35. Enforcement staff argued that the original arrangement, whereby Link Global produced and sold electric energy to Block One under the master service agreement, did not fall within the meaning of Section 13 of the *Hydro and Electric Energy Act*. Enforcement staff submitted that Link Global was a "person" within the definition in the *Hydro and Electric Energy Act,* generating electric energy, which was not "solely for the person's own-use."

36. Section 1(j) of the *Hydro and Electric Energy Act* defines "person" as including a "municipal corporation or other corporation." The Commission agrees that Link Global falls within that definition. The Commission notes that Alberta's *Interpretation Act* also defines person, to include a "corporation and the heirs, executors, administrators or other legal representatives of a person."[14]

37. Link Global argued that notwithstanding the master service agreement, prior to March 8, 2021 Link Global and Block One operated as *de facto* partners. Essentially, that *both* Link Global and Block One were the same "person" for the purposes of Section 13 of the *Hydro and Electric Energy Act,* and therefore the electric energy was being generated for that single entity's own-use. In support of this position, Link Global indicated that the two co-founders of Block One invested in Link Global through a private placement financing representing an approximate 10 per cent ownership interest in Link Global, and joined Link Global's board of directors. Link Global referred to the definitions of "associate" and "insider" in the *Business Corporations Act* to emphasize the degree of connection between the two entities, as well as the nature of the crypto-mining rig setup, which deposited "rewards"

[13] See Exhibit 26379-X0028, Appendix A – March 8, 2021 Sales Agreement between Block One and Link Global.
[14] *Interpretation Act,* RSA 2000, c I-8, s 28(1)(nn).

from Block One's digital currency processing facilities into a Link Global-controlled bitcoin wallet.

38. Whether Link Global and Block One acted as *de facto* partners or not, and regardless of the degree of connection in practice versus the strict terms of the master service agreement, the Commission does not consider the definition of "person" in the *Hydro and Electric Energy Act* extends to a *de facto* partnership or joint venture arrangement. As noted above, "person" is defined in the *Hydro and Electric Energy Act* and the *Interpretation Act,* neither of which specifically include a partnership or joint venture. The Commission considered whether "person" in the *Hydro and Electric Energy Act* included a partnership in Decision 2008-121, which was an application to transfer ownership of a power plant approval to a limited partnership. In finding that the limited partnership vehicle could not hold an approval under the *Hydro and Electric Energy Act,* the Commission commented that "[n]otably, the legislature chose not to explicitly include partnerships, limited or otherwise, in the definition of 'person' in the [*Hydro and Electric Energy* Act]."[15] The Commission sees no reason to depart from that finding here; if the legislature had intended to include a partnership or joint venture within the definition of "person" for the purposes of exempting entities from its approval requirements, it would have.

39. For those reasons, the Commission finds that from the start of its operations at the Sturgeon and Kirkwall plants until March 8, 2021, Link Global's operations did not fall within the own-use exemption in Section 13 of the *Hydro and Electric Energy Act.* However, as of March 8, 2021, the relationship between Link Global and Block One changed.

40. The March 8 agreement purported to transfer ownership of the digital processing facilities at both the Sturgeon and Kirkwall sites from Block One to Link Global. The Commission has reviewed the March 8 agreement, which provided that all monies and shares must be paid, in full, within 24 hours of the signature date. Enforcement staff noted that as of the date of their June 18, 2021 submissions, no records had been produced that confirm those transactions had occurred. Link Global confirmed in its June 18, 2021, submissions that March 8, 2021 is the date on which the agreement became effective and applied to both the Sturgeon and Kirkwall plants, as the agreement provided that the facilities were deemed delivered upon the transaction of funds, which it confirmed occurred on March 8, 2021. The Commission accepts Link Global's confirmation that payment was in fact made and the agreement was effective as of March 8, 2021.[16] The Commission recognizes that the nature of the facilities did not change as a result of the March 8, 2021 agreement; only their ownership.

41. As a result of the transfer of ownership, a single entity owns the generating units and the digital currency processing facilities on each site: Link Global. After the March 8 agreement and to date, Link Global generates electric energy via units it owns and are located on the Sturgeon and Kirkwall sites, and uses that electric energy to power digital currency processing facilities it owns, on those same sites. The Commission finds that since March 8, 2021, Link Global has been "a person generating or proposing to generate electric energy solely for the person's own-use" at both sites.

42. The Commission notes that the period of time during which Link Global was not in compliance with the own-use requirement under the *Hydro and Electric Energy Act* is covered

[15] Decision 2008-121: Wind Power Inc. – Request to Transfer Power Plant Approval No. U2007-74, Application 1566723, PDF page 2.

[16] Exhibit 26379-X0037, LINK GLOBAL Response to AUC's June 10, 2021 Letter re Link Global Process.

by the already agreed-upon contraventions 1 and 3 (June 26, 2020 for the Kirkwall plant and August 27, 2020 for the Sturgeon plant until March 8, 2021). The Commission has accepted the partial settlement, including the parties' agreement therein that there should be no additional administrative penalty for violating the legislative requirement of own-use. The Commission notes that this does not preclude its consideration of whether to require economic disgorgement from Link Global as a result of any of the contraventions, as the parties did not agree on that point. The Commission will now consider whether Link Global breached Section 2(g) of the *Fair, Efficient and Open Competition Regulation.*

Own-use for the purposes of the Electric Utilities Act

43. As noted above, the exemption requirements in the *Electric Utilities Act* and the *Hydro and Electric Energy Act* serve different purposes. Section 13 of the *Hydro and Electric Energy Act* creates an exemption from the requirement to obtain approval to construct and operate a power plant. Section 2(1)(b) of the *Electric Utilities Act* creates an exemption from the application of the *Electric Utilities Act*, which establishes the duties and obligations of utilities and the Alberta Electric System Operator to provide service to customers in the context of a deregulated electricity market, and includes regulations governing the conduct of participants in that market, including Section 2(g) of the *Fair, Efficient and Open Competition Regulation*.

44. Section 2(1)(b) of the *Electric Utilities Act* provides that the act does not apply to "electric energy produced on property of which a person is the owner or a tenant, and consumed solely by that person and solely on that property." As noted above, it is undisputed that prior to March 8, 2021, the electric energy generated by Link Global was consumed solely by Block One on the same site; the Block One facilities are not grid-connected and Link Global was Block One's only source of electric energy. Similar to its findings in the section above, for the purposes of interpreting this exemption in the *Electric Utilities Act,* the Commission is not convinced that the "person" contemplated by Section 2(1)(b) can be read sufficiently broadly to include a partnership or joint venture agreement.

45. However, Section 2(3) of the *Electric Utilities Act* contains an important qualification on the exemption in Section 2(1)(b). Section 2(3) specifies that "[t]he exemption under subsection (1)(b) applies **whether or not the owner or tenant is the owner of the generating unit producing the electric energy**" [emphasis added]. Link Global's operations, before March 8, 2021, fall within the exact scenario contemplated by Section 2(3). The *Hydro and Electric Energy Act* contains no such qualification.

46. Before March 8, 2021, Link Global generated electric energy that was consumed solely by Block One, which owned the digital currency processing facilities located on the same property as Link Global's plant. As established above, prior to March 8, 2021, Block One did not own the generating units. Section 2(3) specifically contemplates a scenario, however, where the owner or tenant of a property (in this case, Block One) does not own the generating units producing the electric energy that it (solely) consumes. As long as the electric energy is produced and consumed on the same property and the electric energy is consumed solely by an owner or tenant located on that property, the requirements of the *Electric Utilities Act* Section 2(1) exemption are met.

47. After March 8, 2021, Section 2(3) became irrelevant because Link Global owned generating units on a property, produced electric energy from those units, and also owned the

digital currency processing facilities that consumed that energy. This activity fell within the definition of Section 2(1)(b) without need to refer to the qualifier in Section 2(3).

48. Based on this analysis, the Commission finds that Link Global has been exempt from the *Electric Utilities Act* since it began operating both the Sturgeon and Kirkwall plants and has therefore not been subject to the requirements thereunder, including Section 2(g) of the *Fair, Efficient and Open Competition Regulation.* Therefore, Link Global did not contravene Section 2(g) of the *Fair, Efficient and Open Competition Regulation* either before or after March 8, 2021.

49. Because the Commission has found that the Sturgeon and Kirkwall plants met the own-use criterion for both the purposes of *Hydro and Electric Energy Act* and the *Electric Utilities Act* after March 8, 2021, the determining factor for whether Link Global may operate under an exemption on an ongoing basis is whether the Sturgeon and Kirkwall plants meet the remaining criteria in Section 1.4.3 of Rule 007. The Commission considers those criteria in Section 4.3 below, following its findings on the other outstanding issue from the partial settlement: whether Link Global violated Order 26379-D01-2021.

4.2 Did Link Global violate the enforcement order?

50. The parties dispute whether Link Global contravened the Commission's Order 26379-D01-2021, issued on March 19, 2021, which required Link Global: (i) to immediately and in a safe manner cease operation of the [Sturgeon] power plant during the nighttime period defined by Rule 012, being the hours from 10 p.m. to 7 a.m., until such time as the Commission orders otherwise; and (ii) to file with the Commission as soon as reasonably practicable a letter confirming that operations have been ceased during the nighttime period.

51. The parties agree that nighttime operations at the Sturgeon plant were incrementally shut down between March 19 to 24, 2021; they dispute whether the shut down and communication of such by Link Global was sufficient to comply with the enforcement order. The timing[17] of salient events is as follows:

- March 19 – Commission issued Order 26379-D01-2021.
- March 19 – Upon being served with the enforcement order, Link Global consulted with MAGA who advised that to safeguard operations at the gas plant, operations would have to be shut down incrementally.
- March 19 – Link Global shut down one generator, which maintained gas flows and methane levels at the MAGA plant.
- March 20-24 – Link Global shut down additional generators, while trying to maintain gas flow to the sales line out of the MAGA plant. During this period it was determined that maintaining gas flows at the MAGA plant while cutting off supplies to the Link Global facility was not possible, resulting in the MAGA plant being shut down entirely during the nighttime period.

[17] All dates are in 2021.

- March 20 – Link Global sent an email[18] to staff assisting the Commission stating that "tonight at 10PM the units will be turned off in a safe and orderly fashion."

- March 22 – Enforcement staff sent a letter[19] to the Commission advising that a nearby resident had provided information that the Sturgeon plant had contravened the enforcement order by continuing to operate during the nighttime after March 19.

- March 23 – The Commission issued a letter acknowledging Link Global's March 20 email, stating that the email was not sufficient to comply with the enforcement order, and in the absence of a letter from Link Global confirming that it had ceased operations, the Commission concluded that "Link Global has not complied with the Commission's Order." The Commission again directed Link Global to file a letter confirming cessation of operations, this time within 12 hours of the issuance of the Commission's letter. The Commission also indicated that it would be taking immediate measures to ensure compliance, including an inspection of the facility by Commission staff.

- March 25 – Commission staff attended the site at 2 p.m. to inspect the Sturgeon plant while operational and at 9:45 p.m. to witness the scheduled shut-down.[20]

- March 25 – Link Global shut down all four generators during the nighttime period. Link Global indicated that the need to shut down the MAGA plant entirely during the nighttime period had resulted in the Sturgeon plant shutting down from 7 p.m. to 7 a.m. each day, instead of 10 p.m. to 7 a.m. as required by the enforcement order.

- March 29 – Ackroyd LLP filed a letter on behalf of Link Global requesting an extension to the process schedule to allow Link Global to obtain other legal representation due to a scheduling conflict. The letter did not mention the enforcement order or the status of the Sturgeon plant.

- April 8 – McLennan Ross LLP filed a letter on behalf of Link Global advising the Commission of their legal representation. This letter confirmed that Link Global had ceased operation of the Sturgeon plant between 10 p.m. and 7 a.m. daily.

- May 21 – Link Global informed the Commission for the first time of its efforts to shut down the facility during the nighttime period from March 19-25, in paragraphs 46-47 of the partial settlement.[21]

52. The Commission is satisfied that, as indicated in the parties' agreed statement of facts and based on Commission staff's inspection report, Link Global made efforts to shut down the Sturgeon plant between March 19 and March 24, culminating in complete shutdown of the facility on March 25, 2021 during the nighttime period as required by Order 26379-D01-2021.

[18] Exhibit 26379-X0013, Correspondence from Link Global Technologies Inc. to AUC Staff.
[19] Exhibit 26379-X0012, Enforcement staff letter re enforcement of Order 26379-D01-2021.
[20] Exhibit 26379-X0017, Proceeding 26379 inspection report.
[21] Exhibit 26379-X0029, Statement of Agreed Facts and Contraventions.

53. The issue is whether these efforts, coupled with the lack of correspondence with the Commission during that period, were sufficient to comply with the terms of the enforcement order. The Commission finds that they were not.

54. The Commission's order deliberately included some level of flexibility on the timing of cessation of the plant's operations, by requiring shut-down "immediately and in a safe manner." The evidence before the Commission indicates that Link Global required some level of delay in shutting down the Sturgeon plant to do so "in a safe manner," as a result of its fuel being supplied from MAGA's operations onsite. The Commission considers that this delay was contemplated by its order, and that Link Global did not violate the Commission's direction by conducting a gradual shut down of its nighttime operations over multiple days. However, regardless of the timing of its shut-down activities, the Commission finds that Link Global failed to take basic action to inform the Commission of its activities, despite multiple directions to file a letter on the public record.[22] Communicating the status of a power plant to the Commission, particularly in the context of an enforcement proceeding and in the face of an order to shut down operations "immediately and in a safe manner," is a serious matter.

55. Unnecessary time and resources were expended by the Commission while attempting to ascertain the status of the facility. Commission staff were obliged to attend onsite before the Commission had any visibility into whether Link Global had shut down operations.

56. While the Commission acknowledges that there was some delay in obtaining representation, Link Global did not file a letter confirming that operations were shut down until April 8, 2021, which was 21 days after the Commission issued the enforcement order. Link Global had multiple opportunities prior to that time to file with the Commission any sort of confirmation that it had shut down operations, and/or to inform the Commission of its efforts to coordinate with MAGA in shutting down the facility as required by the enforcement order. The Commission does not consider 21 days to be within the meaning of "as soon as reasonably practicable" in the enforcement order. Accordingly, the Commission finds that Link Global contravened Order 26739-D01-2021.

57. The Commission considers that this contravention occurred from March 23, 2021, when the Commission issued its letter confirming Link Global contravened its enforcement order and reiterated the direction to file a letter with the Commission, until April 8, 2021 when Link Global confirmed that operations at the Sturgeon plant had ceased during the nighttime period.

4.3 Can Link Global operate the Sturgeon and Kirkwall plants under an exemption going forward?

58. As noted above, in paragraph 71 of the partial settlement the parties appear to agree that the Sturgeon plant be allowed to recommence nighttime operation subject to certain conditions, and in order to do so, Link Global stated that it would submit a "compliance plan" to the Commission.[23] However, enforcement staff agreed to this requested relief with a critical caveat: "provided that the Commission issues an approval to operate."[24] In light of this ambiguity with respect to the scope of the parties' agreement on the requested relief, the Commission

[22] See e.g. Order 26379-D01-2021, Exhibit 26379-X0018, AUC letter – compliance with Order 26379-D01-2021 to be considered in Proceeding 26379, paragraph 7.
[23] Exhibit 26379-X0029, Statement of Agreed Facts and Contraventions, paragraph 70.
[24] Exhibit 26379-X0029, Statement of Agreed Facts and Contraventions, paragraph 71.

specifically asked both parties whether they were requesting that the Commission decide whether to issue approvals to both the Sturgeon and Kirkwall plants in the context of this enforcement proceeding, and what the role of Link Global's compliance plan would be in such a process.[25] While Link Global indicated that its "hope and intention" is to continue operating both plants and that its compliance plan should be considered as a factor supporting acceptance of the parties' agreement, Enforcement staff stated that they have "taken care to distinguish the enforcement issues from those issues associated with whether Link Global must additionally file an application for approval" and consider any approval process to be a separate issue from this enforcement proceeding.[26]

59. Based on these clarifying submissions, the Commission considers that the parties did not agree to the requested relief in the partial settlement. While the Commission is mindful of the comment in Decision 3110-D03-2015 that the Commission "cannot unilaterally vary or amend the consent order" because parties would not have agreed to the amended terms, in this instance, it is not a question of the Commission amending the original agreement. It is clear to the Commission that the parties did not reach agreement on the go-forward plan to ensure compliance of the Sturgeon and Kirkwall plants. The partial settlement did not, therefore, include settlement of the issue of go-forward compliance. In any event, the Commission's approval process is outside the scope of this enforcement proceeding.

60. However, the Commission considers that regulatory certainty is served by commenting on whether Link Global requires further process to obtain approval of its facilities. In this section, the Commission considers whether the Sturgeon and Kirkwall plants meet the remaining criteria in Section 1.4.3 of Rule 007 (other than the 10 MW and own-use criteria) and therefore may operate under an exemption going forward, failing which, they must shut down pending an application to the Commission for approval to operate. For the reasons below, the Commission finds that the Sturgeon plant cannot continue operating without obtaining approval from the Commission, and the Kirkwall plant cannot continue operating without demonstrating that it has either obtained approval under the *Environmental Protection and Enhancement Act* or confirmation from Alberta Environment and Parks that approval is not required.

4.3.1 Sturgeon plant

Is any person directly and adversely affected?

61. The Sturgeon plant is located at 54411 Range Road 253 in Sturgeon County. Based on the information in Enforcement staff's application, the Sturgeon plant is located approximately 510 metres from the nearest residence north of the facility, and approximately 685 metres from the first row of homes of Greystone Manor, a community located just east of the plant. The noise complaint which initiated Enforcement staff's investigation was made by the Greystone Manor Residents Association, ten members of which provided responses to an Enforcement staff questionnaire on the noise from the facility. Their responses described a variety of impacts from

[25] Exhibit 26379-X0032, AUC letter – Further process for consideration of joint submission, Questions 7(a-d) and 10(a-c).

[26] Exhibit 26379-X0037, LINK GLOBAL Response to AUC's June 10, 2021 Letter re Link Global Process, paragraphs 81-83; Exhibit 26379-X0034, Enforcement staff response to process proposed by Link Global, PDF page 4.

the noise from the facility, and indicated that none of them were consulted with respect to potential concerns before the Sturgeon plant began operating.[27]

62. Rule 007 explains the purpose of a participant involvement program, noting the importance of effective communication "so that concerns may be raised, properly addressed, and if possible, resolved." The Commission is bound by Section 9 of the *Alberta Utilities Commission Act* to give notice and hold a hearing if it appears that its decision or order on an application may directly and adversely affect the rights of a person. Rule 007 reiterates this in its participant involvement program guidelines, noting that "[a]ll persons whose rights may be directly and adversely affected by a proposed development must be informed of the application, have an opportunity to voice their concerns and an opportunity to be heard." When deciding whether a person may be directly and adversely affected by a proposed project (i.e., in its standing decisions), one of the factors the Commission regularly considers is the rights-holder's proximity to the proposed facility and the type of project.

63. Link Global suggests that because the Sturgeon plant now complies with Rule 012 requirements, noise from the plant is no longer a factor which could directly and adversely affect a stakeholder such as a resident of Greystone Manor, and there is no evidence of any other "externality" associated with the Sturgeon plant that could give rise to direct and adverse effects on stakeholders. However, without an opportunity for landowners in close proximity to a proposed electric generating facility to express their concerns in relation to a proposed project, the Commission cannot know what those concerns are. It would be improper for the Commission to conclude that because there is no evidence on the record of this enforcement proceeding of a direct and adverse effect on stakeholders, no direct and adverse effect exists. An enforcement proceeding is not the appropriate forum to consider the concerns of landowners whose rights may be directly and adversely affected by a proposed development. In fact, the Commission denied standing to a landowner in Greystone Manor to participate in this proceeding because it is an enforcement proceeding, and not an appropriate venue to consider the merits of the project.

64. It is not sufficient to substitute an enforcement proceeding for an approval process in which stakeholders would have an opportunity to be informed about a proposed development and voice their concerns to the proponent and, if those concerns remain unresolved, to the Commission. Accordingly, the Commission finds that the Sturgeon plant may have a direct and adverse effect on persons and does not fulfill this exemption criterion.

Does the Sturgeon plant comply with Rule 012?

65. It is clear to the Commission that the Sturgeon plant did not meet the permissible sound levels specified in Rule 012 when it began operating. This conclusion is based on the results of two comprehensive sound level surveys conducted by Link Global's third-party consultant that were initially included in Enforcement staff's application,[28] and the parties' agreement in the partial settlement that "[t]he power plant operations at the Sturgeon site have exceeded, prior to Link Global ceasing nighttime operations in response to AUC Order 26379-D01-2021, the permissible sound levels specified in Rule 012."[29]

[27] Exhibit 26379-X0001.02, 2021-03-11 Submission of the AUC Enforcement Staff, PDF pages 44-45, 68-77.
[28] Exhibit 26379-X0002, Appendix K – FDI Acoustics Survey 1 and Exhibit 26379-X0003, Appendix L – FDI Acoustics Survey 2.
[29] Exhibit 26379-X0029, Statement of Agreed Facts and Contraventions, paragraph 56.

66. Since that time, Link Global commissioned two additional comprehensive sound level surveys, the most recent of which demonstrated that after Link Global placed hay bales onsite as an acoustic barrier,[30] sound levels during the nighttime period were within the allowable permissible sound levels specified in Rule 012.[31] This information formed part of the agreed facts in the partial settlement, and the survey was included as an attachment to the partial settlement. Based on the results of that survey, the Commission concludes that the Sturgeon plant meets this criterion for exemption.

Is there an adverse effect on the environment?

67. The Sturgeon plant consists of a number of natural gas-powered generators on an existing industrial site, specifically, the Caterpillar XQ1250G "Continuous 1250 kW Power Module" generators. Link Global characterized the Caterpillar XQ1250G generators as being modern, environmentally friendly power generators.

68. There are two main concerns with the Sturgeon plant that the Commission considered in assessing the potential for an adverse effect on the environment. First, the generators used at the Sturgeon plant slightly exceed the limits established in the *Alberta Air Emission Standards for Electricity Generation* and the *Alberta Air Emission Guidelines for Electricity Generation.* Second, the Sturgeon plant is operating without an approval under the *Environmental Protection and Enhancement Act*.

69. With respect to the first issue, the Caterpillar XQ1250G generators permit a lower emission configuration, enabling operation with a rated nitrogen oxide (NO_x) air emission of 0.675 kilogram/megawatt-hour. This is slightly above the applicable emission limit of 0.6 kilogram/megawatt-hour. Link Global asserted, and the Commission acknowledges Link Global's assertion that the rated NO_x air emissions for the Caterpillar XQ1250G generators are higher than the generators' actual air emissions. This is because the rated NO_x air emission assumes that the generators are running at 100 per cent capacity, but Link Global has indicated that the generators optimally run at 80 to 93 per cent capacity which reduces the NO_x emissions below the rated 0.675 kilogram/megawatt-hour.

70. In support of its position that the Sturgeon plant meets the environmental exemption criterion, Link Global argued that the Commission has approved power plants exceeding the applicable NO_x air emissions of 0.675 kilogram/megawatt-hours by greater margins in decisions 2009-276[32] and 2010-037.[33] In Decision 2009-276, the diesel powered Caterpillar XQ2000 generator for a power plant was approved, which Link Global noted does not have a low NO_x emission configuration. In Decision 2010-037, the diesel powered Caterpillar 2516B generator was approved with an NO_x air emission between 4.24 and 12.89 kilogram/megawatt-hour, depending on the configuration.

[30] Link Global subsequently committed to replace those temporary noise mitigation measures with permanent ones, should it be permitted to recommence nighttime operations: Exhibit 26379-X0037, LINK GLOBAL Response to AUC's June 10, 2021 Letter re Link Global Process, paragraph 41.

[31] Exhibit 26379-X0029, Statement of Agreed Facts and Contraventions, paragraph 52.

[32] Decision 2009-279: Town of Stavely – Franchise Agreement with ATCO Gas and Pipelines Ltd., Application 1605314, December 22, 2009.

[33] Decision 2010-037: EnCana FCCL Ltd. – Amendment to Industrial System Designation Order U2009-313 Foster Creek Thermal Oil Sands, Proceeding 409, Application 1605649, January 26, 2010.

71. The plants approved in Decision 2009-276 and Decision 2010-037 are fuelled by diesel; the NO_x air emission limit of 0.675 kilogram/megawatt-hour prescribed in *Alberta Air Emission Standards for Electricity Generation* and the *Alberta Air Emission Guidelines for Electricity Generation* is specific to natural gas powered generators, not diesel. Further, the power plant approved in one decision was temporary, and in the other it was a black-start emergency generator for specific emergency conditions. Finally, in both decisions the operators applied to the Commission for confirmation that their proposed facilities would meet the applicable exemption criteria, which, had Link Global done, this enforcement proceeding may not have been required. Accordingly, the Commission does not find Link Global's analogy to decisions 2009-076 and 2010-037 persuasive.

72. That said, after consideration of the limited information provided on this enforcement record, the Commission acknowledges that the Caterpillar XQ1250G generators only slightly exceed the NO_x air emission limit when operated at full capacity, and that the generators used by Link Global for the specific purpose at the Sturgeon site are expected to be operated at a reduced capacity during optimal operation. Although as noted above, it is not sufficient to substitute an enforcement proceeding for an approval process, the Commission considers that the adverse effect on the environment associated with the emissions from Caterpillar XQ1250G generators is likely to be negligible provided that Link Global operates in the low NO_x emission configuration and at reduced capacity.[34]

73. With respect to the second issue, Section 60 of the *Environmental Protection and Enhancement Act* prohibits any person from commencing or continuing an activity that requires approval under the *Activities Designation Regulation*. The regulation in turn requires approval for any "power plant," defined as "a plant that produces steam or thermal electrical power and has a rated production output of greater than one megawatt under peak load" subject to limited exceptions.[35] The Sturgeon plant appears to fall directly within this definition.

74. While, as noted above, the Commission is satisfied that the generators' proposed emissions would, under the expected reduced operating conditions, fulfill the environmental exemption criterion, in assessing the environmental impacts of proposed facilities as part of its overall public interest mandate, the Commission can, and does, refer to provincial standards and other approvals issued by the relevant regulators such as Alberta Environment and Parks. Link Global stated in its most recent submissions that "in consideration of the exceedances of its NOx emissions, Link Global undertakes to contact Alberta Environment and Parks to either seek approval or obtain confirmation that one is not required."[36] The legislative scheme described above indicates that regardless of the generators' NO_x emissions, Link Global should have sought approval or confirmation that an approval is not required from Alberta Environment and Parks. Without this confirmation, the Commission cannot find that the Sturgeon plant meets this exemption criterion.

[34] Exhibit 26379-X0037, LINK GLOBAL Response to AUC's June 10, 2021 Letter re Link Global Process, paragraphs 46-47.

[35] *Activities Designation Regulation,* Alta Reg 276/2003, ss 5, 2(2)(vv)(i) and (ii) and Schedule 1.

[36] Exhibit 26379-X0037, LINK GLOBAL Response to AUC's June 10, 2021 Letter re Link Global Process, PDF page 11.

Conclusion on the Sturgeon plant's approval criteria:

75. Because all of the criteria must be met to qualify for the exemption in Section 1.4.3 of Rule 007, the Sturgeon plant is not eligible for an exemption and is currently operating without approval from the Commission. **The Commission accordingly orders Link Global**:

- To immediately and in a safe manner cease operation of the Sturgeon plant.
- To file with the Commission a letter confirming the status of its efforts to cease operations at the Sturgeon plant within three days of the release of this decision.
- To file with the Commission a letter confirming that operations have been ceased within seven days of the release of this decision.

76. Should Link Global wish to recommence operations at the Sturgeon plant, it may file an application with the Commission for its consideration in the normal course, in accordance with all applicable Rule 007 requirements.

4.3.2 Kirkwall plant

Is any person directly and adversely affected?

77. The Kirkwall plant is located in Special Area 3, in a relatively unpopulated part of Alberta. The evidence before the Commission is that the nearest residence to the Kirkwall plant is approximately two kilometres away, and that no complaints have been made by any landowners or other potential stakeholders about the Kirkwall plant. Given this, no person appears to be directly and adversely affected by the operation of the Kirkwall plant and the Commission is satisfied that the Kirkwall plant fulfills this exemption criterion.

Does the Kirkwall plant comply with Rule 012?

78. There is no evidence on the record of this proceeding to suggest that the Kirkwall plant has failed to operate in compliance with applicable Rule 012 permissible sound levels. Unlike the Sturgeon plant, the Kirkwall plant has not received any noise complaints.

79. The Commission notes that, to date, Link Global has not commissioned a comprehensive sound level survey at the Kirkwall plant to ensure its compliance with Rule 012. Without conducting a comprehensive sound level survey at the Kirkwall site, Link Global takes the risk that the plant meets the exemption criteria. Section 3.1(4) of Rule 012 contemplates that in some circumstances submitting a noise impact assessment is not a requirement; however, it remains the responsibility of the owner/operator of the plant to ensure that noise levels associated with the proposed facility or modifications to a facility are compliant with Rule 012. Should a complaint arise or the Commission become concerned with the sound levels at the Kirkwall plant, Link Global may be asked to demonstrate that it meets applicable Rule 012 permissible sound levels.

Is there an adverse effect on the environment?

80. The Kirkwall plant consists of a number of natural gas-powered generators on an existing industrial site,[37] which are the same Caterpillar XQ1250G generators used at the Sturgeon site and discussed above. The Commission has the same two main concerns with the Kirkwall plant considered above in the context of the Sturgeon plant: that the generators exceed applicable emissions limits and that the Kirkwall plant is also operating without approval from Alberta Environment and Parks. The Commission's analysis and conclusions on these two issues with respect to the Sturgeon plant hold true for the Kirkwall plant as well.

81. As noted above, the Commission considers that the adverse effect on the environment associated with the emissions from Caterpillar XQ1250G generators is likely to be negligible provided that Link Global operates in the low NO_x emission configuration, but without confirmation from Alberta Environment and Parks that the Kirkwall plant either has an approval or does not need one, the Commission cannot find that the Kirkwall plant meets this exemption criterion.

Conclusion on the Kirkwall plant's exemption criteria:

82. Because all of the criteria must be met to qualify for the exemption in Section 1.4.3 of Rule 007, the Kirkwall plant is not eligible for an exemption and is currently operating without approval from the Commission. **The Commission accordingly orders Link Global**:

- To immediately and in a safe manner cease operation of the Kirkwall plant.
- To file with the Commission a letter confirming the status of its efforts to cease operations at the Kirkwall plant within three days of the release of this decision.
- To file with the Commission a letter confirming that operations have been ceased within seven days of the release of this decision.

83. Should Link Global wish to recommence operations at the Kirkwall plant, it may file confirmation with the Commission that it has either obtained approval under the *Environmental Protection and Enhancement Act* or confirmation from Alberta Environment and Parks that approval is not required in the circumstances.[38]

5 Remedy for the contraventions found in this decision

84. As indicated in the Commission's notice,[39] its enforcement proceedings generally may require two phases. In the first phase, the Commission determines whether the alleged contraventions have been proven. In the second phase, if required, the Commission determines the appropriate remedy for the alleged misconduct.

[37] It is unclear from Link Global's submissions if there are three or four Caterpillar generators on site as Link Global's latest submission, Exhibit 26379-X0037, contradicts itself in paragraphs 22 and 43.
[38] Activities Designation Regulation, s 2(2)(vv)(i) and (ii).
[39] Exhibit 26379-X0010, Notice of enforcement proceeding - power plant owned and operated by Link Global.

85. The findings in this decision constitute the Commission's determinations on this first phase of this proceeding only, with the exception that in accepting the partial settlement, the Commission accepts:

i. the agreed-upon administrative penalty range for contraventions 1 to 3.

ii. the potential reduction of the penalty by up to 50 per cent in consideration of Link Global's admission of contraventions 1 to 3 and recognition that the partial settlement has reduced the need for a protracted hearing.

iii. the lack of an additional administrative penalty for the own-use violation under the *Hydro and Electric Energy Act*.

86. In the partial settlement, Link Global and Enforcement staff did not agree whether a one-time amount to address economic benefit was warranted for contraventions 1 to 3, and if so, the amount of that disgorgement.

87. Based on the findings above, the Commission will commence the second phase of this proceeding to consider the specific sanctions the Commission will impose against Link Global as a result of its contraventions of the *Hydro and Electric Energy Act* and Rule 007, taking into account its acceptance of the partial settlement. The Commission will issue a process letter in the near future setting out the scope and schedule of the next phase of this proceeding.

Dated on August 19, 2021.

Alberta Utilities Commission

(*original signed by*)

Kristi Sebalj
Commission Member