



**Enforcement Staff of the  
Alberta Utilities Commission**

**Settlement Agreement with the City of Grande Prairie**

**January 20, 2023**

**Alberta Utilities Commission**

Decision 27391-D01-2023

Enforcement Staff of the Alberta Utilities Commission

Settlement Agreement with the City of Grande Prairie

Proceeding 27391

Application 27391-A001

January 20, 2023

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The Commission may, no later than 60 days of the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

## **1 Decision summary**

1. In this decision, the Alberta Utilities Commission approves the settlement agreement between AUC Enforcement staff and the City of Grande Prairie (City) related to the operation of a power plant without the required approval and in exceedance of the noise levels permitted by Rule 012: *Noise Control*.

## **2 Background and AUC Enforcement staff's application**

2. Between January and April 2021, the City constructed and began operating a 666-kilowatt power plant within the City of Grande Prairie, on the north side of a recreation complex called the Eastlink Centre. The power plant, which is owned and operated by the City, consists of two combined heat and power gas generators that reduce the centre's greenhouse gas emissions and provide the City savings on utility costs. The power plant is interconnected with the ATCO Electric Ltd. electric distribution system.

3. The City did not file an application with the Commission for approval to construct and operate the power plant and to connect the power plant to ATCO's distribution system because the capacity of the power plant is less than one megawatt. The City did not realize that Section 18.1(2) of the *Hydro and Electric Energy Regulation* and Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* imposes certain requirements on such power plants (i.e., "small power plants" having a total capability of less than one megawatt) in order to qualify for an exclusion to the general requirement to obtain approvals under sections 11 and 18 of the *Hydro and Electric Energy Act*. One of those requirements is compliance with the Commission's Rule 012.

4. Prior to construction, in October 2020, the City conducted a sound assessment using the existing backup generators at the Eastlink Centre as a proxy. In December 2020, the City also notified residents located adjacent to the proposed power plant that it planned to construct the power plant. In response to the notice, the City received concerns from some residents regarding the potential noise increase. The City responded that additional noise mitigation measures would be installed.

5. In April 2021, shortly after the power plant had started operating, the City received noise complaints from nearby residents. In response to these complaints, the City retained ACI Acoustical Consultants Inc. to conduct the first of three sound studies, which concluded that the noise from the power plant exceeded the permissible sound levels specified in Rule 012. Throughout the next 10 months the City implemented various noise mitigation measures at and around the power plant and conducted two additional sound studies (the second and third sound

studies) to confirm the effectiveness of these mitigation measures. The third sound study, completed in March 2022, concluded that the power plant was compliant with the permissible sound levels set out in Rule 012.

6. In December 2021, AUC Enforcement staff notified the City that it had begun an investigation into the noise produced by the power plant and to determine whether the City was in compliance with Rule 012. The investigation was prompted by the receipt of two noise complaints from property owners residing in close proximity to the power plant. At the conclusion of its investigation, Enforcement staff advised the City that it was satisfied the City had operated the power plant without a required approval and in contravention of Rule 012. Further, Enforcement staff determined that the initial sound assessment conducted by the City in October 2020 was inadequate and did not meet the requirements of Rule 012.

7. Enforcement staff and the City subsequently engaged in discussions to resolve issues of fact, alleged statutory and regulatory contraventions and potential penalties arising therefrom, which ultimately led to a negotiated settlement agreement, dated May 24, 2022. Enforcement staff filed an application (concurrent with by the City), with a copy of the settlement agreement, requesting the commencement of an enforcement proceeding and seeking approval of the settlement agreement between Enforcement staff and the City.

8. The City admitted to the following contraventions in the settlement agreement:

*Contravention 1: Unaware of all relevant statutory and regulatory requirements, the City constructed and has been operating the power plant at the City's Eastlink Recreational Facility without an approval contrary to the requirements of sections 11 and 18 of the Hydro and Electric Energy Act, Section 18.1(2) of the Hydro and Electric Energy Regulation and AUC Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines.*

*Contravention 2: The power plant has exceeded permissible sound levels specified in AUC Rule 012: Noise Control.*

9. The settlement agreement did not include the imposition of an administrative penalty under Section 63(1)(a) or Section 63(2) of the *Alberta Utilities Commission Act* nor a requirement to pay costs of the investigation under Section 66, but it did include the following terms and conditions, pursuant to which the City:

- Would take steps to put in place sound attenuating measures to address noise exceedance from the power plant.
- Bring an application for approval to operate and connect the power plant.
- Bring a motion for interim approval to operate and connect the power plant.
- Offer a one-year family membership to Eastlink Centre to residents of the 18 dwellings adjacent to and therefore most directly affected by the power plant as compensation for the harm arising from the failure to bring an application for approval to operate and connect the power plant.

10. By the time the settlement agreement was executed by the City and Enforcement staff (May 24, 2022), the City had complied with all of the above terms and conditions. The City, in fact, received interim approval to operate and connect the power plant on April 26, 2022, while the Commission considered the City's application for approval to operate and connect the power plant; and residents at 13 of the 18 dwellings had accepted the compensation offered by the City.

11. With respect to the City's power plant Application 27276-A001, filed on March 29, 2022, the Commission issued Decision 27276-D02-2022<sup>1</sup> in November 2022 and granted the City approval to operate the power plant, subject to the following conditions of approval:

- The City of Grande Prairie must submit a summary of proposed mitigations and an implementation timeline within 90 days of this decision that would reduce the current noise levels, as calculated in Table 4 of the noise impact assessment,<sup>2</sup> by at least five dBA at the most affected receptor, R14. For further clarity, the nighttime noise level at Receptor R14 must be reduced from 50.6 dBA to 45.6 dBA or less. The mitigation must also eliminate the high-pitched noise.
- The City of Grande Prairie must fully implement noise mitigation measures to reduce the current noise levels by at least five dBA at the most affected receptor, R14, by May 1, 2023.
- The City of Grande Prairie must complete a post-mitigation sound survey to confirm that the noise mitigation measures reduce the noise level by at least five dBA at the most affected receptor, R14. The results of the sound survey must be submitted to the Commission by June 1, 2023.

12. Recently, the City successfully sought review and variance of the above terms and conditions. In Decision 27841-D01-2023,<sup>3</sup> the Commission agreed that it erred by requiring the City to "eliminate" the high-pitched noise, and it agreed to vary the timelines associated with the two remaining conditions. In Decision 27841-D01-2023, the Commission revised the power plant's conditions of approval:

- The City of Grande Prairie must submit a summary of proposed mitigations and an implementation timeline by February 21, 2023, that would reduce the current noise levels, as calculated in Table 4 of the noise impact assessment,<sup>4</sup> by at least five dBA at the most affected receptor, R14. For further clarity, the nighttime noise level at Receptor R14 must be reduced from 50.6 dBA to 45.6 dBA or less. The mitigation must also alleviate the high-pitched noise.
- The City of Grande Prairie must fully implement noise mitigation measures to reduce the current noise levels by at least five dBA at the most affected receptor, R14, by June 30, 2023.

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<sup>1</sup> Decision 27276-D02-2022: City of Grande Prairie – Eastlink Centre Power Plant, Proceeding 27276, Application 27276-A001, November 7, 2022.

<sup>2</sup> Exhibit 27276-X0002, GP\_CHP\_ELC\_NIA, PDF page 17.

<sup>3</sup> Decision 27841-D01-2023: City of Grande Prairie – Decision on Application for Review and Variance of Decision 27276-D02-2022, Proceeding 27841, January 9, 2023.

<sup>4</sup> Exhibit 27276-X0002, GP\_CHP\_ELC\_NIA, PDF page 17.

- The City of Grande Prairie must complete a post-mitigation sound survey to confirm that the noise mitigation measures have reduced the noise level by at least five dBA at the most affected receptor, R14. The results of the sound survey, including the impact that mitigation efforts have on the high-pitched noise, must be submitted to the Commission by October 9, 2023.

### 3 Should the Commission approve the settlement agreement?

13. The Commission’s jurisdiction to consider and approve this settlement agreement is grounded in the Commission’s general powers in sections 8 and 23(1)(b) of the *Alberta Utilities Commission Act*.

14. The parties to the settlement agreement have agreed that:

- The City constructed and operated a power plant without an approval.
- The power plant exceeded the nighttime permissible sound level at several nearby residences between April 2021 and February 2022.

15. Based on the foregoing, the Commission accepts that the contraventions occurred.

16. The Commission will now consider whether to accept the settlement agreement as filed. The Commission has consistently indicated that in considering a settlement agreement, guidance may be taken from principles developed by courts for joint submissions on sentencing in the criminal law context.<sup>5</sup>

17. In *R v Anthony-Cook*, the Supreme Court of Canada specified that the test to be followed when considering whether to depart from joint submissions is the “public interest test,” where “a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.”<sup>6</sup> According to *Anthony-Cook*, this high threshold for departing from joint submissions is appropriate given that counsel for the parties to joint submissions are well placed to take into account both the interests of the public and the accused, they are highly knowledgeable about the circumstances of the offender and relative strengths and weaknesses of their respective positions, and they are professionally and ethically bound not to mislead a court or tribunal.<sup>7</sup>

18. The Commission, in Decision 27013-D01-2022, provided reasons why the high threshold for joint submissions in the criminal context should also apply to negotiated settlements in the regulatory enforcement context, indicating that there are benefits for all parties and participants involved and for the administration of justice in terms of overall efficiency and allowing for

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<sup>5</sup> See Decision 27013-D01-2022: Enforcement Staff of the Alberta Utilities Commission - Allegations against ATCO Electric Ltd., Proceeding 27013, June 29, 2022, paragraphs 64-68; Decision 3110-D03-2015: Market Surveillance Administrator - Market Surveillance Administrator allegations against TransAlta et al., Phase 2-request for consent order, Proceeding 3110, October 29, 2015, paragraphs 15- 21; and Decision 26379-D02-2021: Enforcement staff of the Alberta Utilities Commission - Allegations against Green Block Mining Corp. (formerly Link Global Technologies Inc.), Westlock Power Plant Phase 1, Proceeding 26379, August 19, 2021, paragraphs 14-15.

<sup>6</sup> *R v Anthony-Cook*, 2016 SCC 43, paragraph 32.

<sup>7</sup> *R v Anthony-Cook*, 2016 SCC 43, paragraph 44.

precious time, resources and expenses to be channeled into other matters, and that for settlements to be possible, “the parties must have a high degree of confidence that they will be accepted.”<sup>8</sup> The Commission also noted in that decision that Bulletin 2016-10<sup>9</sup> sets out the obligation for Enforcement staff to safeguard the public interest in pursuing the mandate to bring forward, and in appropriate cases to settle, enforcement proceedings.<sup>10</sup>

19. The Commission has therefore applied the public interest test as articulated in *Anthony-Cook* in assessing the settlement agreement in this case. In applying the test, the Commission has taken into consideration the criteria relating to administrative penalties in Rule 013: *Criteria Relating to the Imposition of Administrative Penalties*, as well as other applicable sanctioning principles.<sup>11</sup> The Commission further notes that in Bulletin 2016-10, the Commission stated that “the primary goal of enforcement is to promote compliance with Alberta utility laws and to prevent harm to any person, public or private property or to the integrity of the AUC’s regulatory processes and to ensure that the public and regulated entities understand that there are serious consequences for contraventions.”

20. The settlement agreement in this case did not include an administrative penalty. Enforcement staff submitted that deterrence, compliance, and public protection could reasonably be achieved through a number of terms and conditions imposed upon the City; namely, the City was required to implement sound measures to address noise exceedances, to bring an application for approval and connection of the power plant, to bring a motion for interim approval of the power plant, and to offer directly affected parties one-year family memberships to the Eastlink Centre. The City complied with all of these terms and conditions prior to the execution of the settlement agreement.

21. In its application, Enforcement staff identified the harm that had been caused by the City’s contraventions, including the failure of the City to comply with legislation and associated regulatory requirements, as well as the harm to nearby residents that were subject to elevated noise levels following the commissioning of the power plant. With that said, Enforcement staff submitted that the harm of the contraventions was relatively limited in that noise complaints were received from five residents and, of those five, noise from the power plant only exceeded the nighttime permissible sound levels at two residences. Further, Enforcement staff pointed out that although the harm occurred for approximately 10 months, the City started working to reduce the noise shortly after it received the first noise complaint.

22. Enforcement staff also submitted that there were mitigating factors to be considered in determining an appropriate penalty in this matter, including the extent of the City’s co-operation, both as reflected by the terms and conditions agreed to in the settlement agreement, and also relating to the steps taken by the City to address noise issues after receiving complaints from nearby residents.

23. In Enforcement staff’s view, the settlement agreement advances the objectives of the Commission’s sanctioning authority, reflects the seriousness of the contraventions, and gives due

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<sup>8</sup> Decision 27013-D01-2022, paragraph 67.

<sup>9</sup> Bulletin 2016-10: Practices regarding enforcement proceedings and amendments to AUC Rule 001: Rules of Practice, March 29, 2016.

<sup>10</sup> Decision 27013-D01-2022, paragraphs 67-69.

<sup>11</sup> For instance, general and specific deterrence, and proportionality: see *Cartaway Resources Corp, Re*, 2004 SCC 26; *Walton v Alberta (Securities Commission)*, 2014 ABCA 273, paragraphs 151 and 154.

regard to mitigating circumstances. As a result, Enforcement staff's submission is that acceptance of the settlement agreement would neither bring the administration of justice into disrepute nor be contrary to the public interest.

24. The Commission also notes Enforcement staff's submission that a monetary administrative penalty that might otherwise have been imposed upon the City, together with, or as an alternative to, the specified terms and conditions of the settlement agreement, could potentially have negatively affected municipal taxpayers, including those adversely affected by the power plant.

25. Having considered the circumstances as outlined above, the terms of the settlement agreement, and Enforcement staff's submissions (as concurred with by the City), the Commission is satisfied that the circumstances do not warrant a departure from the parties' settlement agreement.

26. It is clear from the evidence in this application, and Application 27276-A001, that the City made reasonable efforts to reduce the sound levels complained of by residents and conducted several noise studies to confirm the effectiveness of its noise mitigation measures. Likewise, there is also confirmation that the City offered a one-year family membership to Eastlink Centre to those most impacted by the noise of the power plant and, since many residents accepted, the Commission finds it to be a reasonable penalty. Further, the conditions imposed by the Commission in Decision 27276-D02-2022 and Decision 27841-D01-2023, adequately address the noise related to the operation of the power plant and its impact on nearby residents. Lastly, the Commission is satisfied that an administrative penalty is not required given the commitments made and complied with by the City and the stringent conditions of its power plant approval.

27. The Commission concludes that the settlement agreement is in the public interest and approves it as filed.

#### **4 Order**

28. It is hereby ordered that:

- (1) The settlement agreement between AUC Enforcement staff and the City of Grande Prairie, attached as [Appendix 1](#) to this decision, is approved, as filed.

Dated on January 20, 2023.

#### **Alberta Utilities Commission**

*(original signed by)*

Bohdan (Don) Romaniuk  
Acting Commission Member



## Appendix 1 – Settlement agreement between AUC Enforcement staff and the City of Grande Prairie

[\(return to text\)](#)



Appendix  
1\_Settlement Agreement

(consists of 10 pages)

ALBERTA UTILITIES COMMISSION

IN THE MATTER OF the *Alberta Utilities Commission Act*, SA 2007, c A-37.2 and the regulations made thereunder;

AND IN THE MATTER OF the Alberta Utilities Commission Rule 001: *Rules of Practice*;

BETWEEN:

Alberta Utilities Commission Enforcement Staff

Applicant

-and-

The City of Grande Prairie

Respondent

**Settlement Agreement**

**I Introduction and executive summary**

1. In September 2021, the Alberta Utilities Commission Enforcement staff (Enforcement staff) commenced an investigation in response to complaints received concerning noise emitted from two Combined Heat and Power (CHP) microturbines (power plant) owned and operated by the City of Grande Prairie (the City) at its Eastlink recreational facility (Eastlink Centre). The City was notified of the investigation by letter dated December 14, 2021.

2. The investigation confirmed and, for the purposes of this settlement agreement, the City admits that, being unaware of all relevant statutory and regulatory requirements, it operated the power plant:

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

3. Enforcement staff and the City have entered into a settlement agreement to address the admitted contraventions (Settlement Agreement). The City was cooperative, forthright and responsive concerning all aspects of Enforcement staff's investigation. For the reasons set out in

further detail below, the settlement does not include a financial administrative penalty or costs but does include agreed-to conditions. These are set out in Section VI.

4. Enforcement staff consider that the Settlement Agreement fosters public protection, encourages compliance with the legislation, serves as a deterrent and is therefore in the public interest. Enforcement staff and the City therefore jointly request that the Alberta Utilities Commission approve the Settlement Agreement without variation.

## II Agreed Facts

5. The City is located in northwest Alberta with a population of roughly 64,000. It wholly owns and operates the Eastlink Centre located at 10 Knowledge Way in the City of Grande Prairie. The Eastlink Centre is a public recreational complex with two pools, a fieldhouse, squash and racquetball courts, a running track, and a variety of meeting and fitness rooms. The Eastlink Centre began operations on December 11, 2011.

6. As part of the Municipal Climate Change Action Centre's<sup>1</sup> Recreational Energy Conservation Program, the City completed the installation and commissioning of the power plant on April 20, 2021.

7. The power plant consists of two 333 kilowatt (kW) natural gas CHP turbines with a total rated capacity of 665 kW. The electricity generated by the power plant replaces the Eastlink Centre's electricity requirements and heat is captured to displace natural gas consumption. The power plant reduces the Eastlink Centre's greenhouse gas emissions and provides the City savings on utility costs. The power plant is integrated into the existing electrical and hydronic heating (thermal) systems at the Eastlink Centre and interconnected with ATCO Electric Ltd.'s electric distribution system.

8. The City retained ATCO Gas to design, procure and install the power plant. The City did not file an application with the AUC for approval to construct and operate the power plant and to connect the power plant to ATCO Electric's<sup>2</sup> distribution system because the capacity of the power plant is less than one megawatt and is therefore a "small power plant." The City did not realize that Section 18.1(2) of the *Hydro and Electric Energy Regulation* and Rule 007 impose additional requirements that must be met in order to qualify for the small power plant exemption.

9. Prior to commissioning, the City:

- (a) Conducted a sound assessment in October 2020 (October 2020 sound assessment).
- (b) As a result of the October 2020 sound assessment, directed that additional sound attenuation equipment be incorporated into the design of the power plant.
- (c) Notified residents located adjacent to the power plant on December 17, 2020, of its intention to install the power plant.

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<sup>1</sup> The Municipal Climate Change Action Centre helps Alberta municipalities lower energy costs, reduce greenhouse gas emissions and improve community resilience. See: <https://mccac.ca/about/>

<sup>2</sup> Although the City entered into separate agreements with ATCO Gas and ATCO Electric, it dealt with the same representative and in its dealings with the City, ATCO presented itself as a single entity.

(d) Compared nitrogen oxides (NO<sub>x</sub>) emissions modeled by the equipment manufacturer against Alberta Emissions Guidelines and concluded that each CHP unit was operating within the NO<sub>x</sub> emissions limit set out by the Alberta Emissions Guidelines when the power plant was operating at above 50 per cent capacity.

(e) Entered into an operating agreement with ATCO Electric for the connection of the power plant to ATCO Electric's distribution system.

10. The October 2020 sound assessment did not meet the requirements of Rule 012 because, among other things:

(1) It was performed using the back-up generator co-located with the power plant; and

(2) It did not:

- identify dwellings within 1.5 kilometres of the power plant as receptors,
- establish permissible sound levels for the receptors based on dwelling density and proximity to transportation,
- predict cumulative sound levels, and
- demonstrate compliance through comparing predicted cumulative sound levels to the permissible sound levels.

11. Concerns were expressed by two of the notified residents about potential noise from the power plant. In response, the City advised the concerned residents on December 18, 2020, of the steps that had been taken, as referenced in paragraph 9(b) above, to ensure that there would be minimal impacts on the neighbourhood. These steps included the procurement of additional sound attenuation measures for the power plant and landscaping. Notwithstanding, subsequent sound monitoring confirmed that the power plant was not compliant with Rule 012.

12. Installation of the power plant by ATCO commenced January 5, 2021. The power plant was commissioned April 16-20, 2021. During the period April 16, 2021 to April 23, 2021, the City received noise complaints from five of the eighteen residents adjacent to the power plant. The City initially shut the power plant down on April 16, 2021, but restarted it on Monday April 19, 2021, to review its design. In consultation with ATCO and the vendor, the City made the decision to conduct a Comprehensive Sound Level (CSL) study to verify the noise levels (June 2021 pre-mitigation study).

13. The City contracted ACI Acoustical Consultants Inc. (ACI) to conduct the June 2021 pre-mitigation study. The study was conducted May 10 through 31, 2021, and the report was completed on June 28, 2021. Attached as Tab A is a copy of the June 2021 pre-mitigation report. During the June 2021 pre-mitigation study, ACI measured sound levels at the nearest receptor (R-14). ACI compared measured sound levels to the noise criteria set out in Rule 012 and determined:

The results of the CSL Survey indicated noise levels that were very steady and consistent throughout all of the assessed noise monitoring periods. **The night-time noise level of 52.4dBA exceeds the night-time Permissible Sound Level (PSL) of 51 dBA. The day-**

**time noise level of 51.8dBA is below the day-time PSL of 61 dBA.** Further the C-weighted (dBC) sound levels during the day-time and night-time are less than 20dB above the DBA sound levels, indicating a low likelihood of a low frequency tonal noise component, as defined in the AUC Rule 012.

14. ACI also conducted near-field sound measurements for the power plant and established sound power levels based on these measurements. ACI then built a noise model with the sound levels for the power plant and used this model to calculate sound levels at 16 nearby receptors, including R-14. ACI verified its noise model by comparing modelled nighttime sound levels at R-14 (52.5 A-weighted decibels (dBA) and 66.8 C-weighted decibels (dBC)) to the measured CSLs for the same receptor (52.4 dBA and 66.8 dBC). ACI submitted that the results of the noise modeling matched the June 2021 pre-mitigation study results within 0.1 dBA and 0.0 dBC. Based on the modelling results, ACI concluded that existing sound levels at the three nearest residential locations (R-12, R-13 and R-14) were above the nighttime PSL of 51 dBA.

15. The City noted that these three properties did not belong to any of the five residents who had complained to the City in April 2021. The City also noted that during the June 2021 pre-mitigation study, the Eastlink Centre was operating at 30 per cent capacity due to COVID restrictions.

16. Between July and August 2021, to respond to the complaints made by the five residents in April, the City ordered additional sound attenuation mats and additional skirting around the base of the power plant be installed. Due to delays in shipment, the additional sound attenuation mats were not installed until October 27, 2021.

17. In November 2021, the City retained ACI to conduct a post-mitigation sound study following the installation of the additional sound attenuation mats to the power plant (post-mitigation study). A copy of the post-mitigation study report is attached at Tab B.

18. During the post-mitigation study, ACI measured sound levels at the five nearest receptors (R-10 to R-14) and then compared the measured sound levels from the post-mitigation study to the modelled sound levels from the June 2021 pre-mitigation study to evaluate the effectiveness of the mitigation measures the City implemented on the power plant. The post-mitigation study report stated that, for the reasons discussed below, “the noise levels obtained for the post-mitigation measurements were actually higher than those obtained pre-mitigation.”<sup>3</sup> ACI also stated in its report that “the sound level measurements in the post-mitigation study were conducted over a relatively short duration and do not constitute a comprehensive sound level (CSL) survey as defined in the Alberta Utilities Commission (AUC) Rule 021[sic].”

19. In addition to measurements at residential receptors, ACI conducted near-field measurements for the power plant and gas pressure regulator valves. ACI clarified that during the June 2021 pre-mitigation study, the regulator valves were ignored (i.e., noise from these valves was not included in the study) because the noise levels from the gas valves were much lower than from the power plant. However, during the post-mitigation study ACI observed that noise from the gas valves was significant relative to the overall sound levels at nearby receptors. ACI compared the sound levels measured for sound sources in November 2021 (during the post-mitigation study) to those measured in May 2021 (during the June 2021 pre-mitigation study) and concluded that the sound levels near the power plant decreased by approximately

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<sup>3</sup> Tab B – pdf 4.

2 dBA as a result of noise mitigation; however, the sound levels near the gas valves increased by approximately 4 dBA. ACI explained that although noise from the power plant was reduced, overall sound levels at receptors increased because noise from the gas valves, which are located closer to receptors, increased by an amount greater than the decrease in power plant noise levels.

20. Based on the above analysis, ACI suggested that any further noise mitigation efforts address both the power plant and the gas pressure regulator valves that provide the fuel source for the power plant.

21. At the time the post-mitigation study was conducted, operational levels at the Eastlink Centre had returned to normal levels.

22. Prior to the City receiving Enforcement staff's December 14, 2021 notice of investigation, the City worked with ATCO to source additional sound attenuation to address the noise from the natural gas lines that supply fuel to the power plant. In particular, ATCO procured sound attenuation matting (noise barrier blankets) for the fences surrounding the natural gas lines. These were installed on February 10, 2022.

23. In conjunction with installing the sound attenuation matting for the gas lines, the City retained ACI to conduct a long-term CSL survey (Winter 2022 CSL survey) at one of the nearest impacted residential receptors under three different operational conditions, namely: (i) one CHP unit without gas regulator valve noise mitigation; (ii) full power plant (both CHP units) without gas regulator valve noise mitigation; and (iii) full power plant (both CHP units) with gas regulator valve noise mitigation. The noise monitoring was conducted in January and February 2022, at the nearest residence over a period of 35 days during these three separate operating conditions. Using the results of that monitoring, a computer noise model was generated under the three operational conditions and an environmental noise impact assessment (NIA) was generated. ACI noted that the modelling methods used exceeded the requirements of Rule 012. The noise levels were then compared to Rule 012.

24. The NIA concluded that:

[...] the noise levels for all three of the operational conditions were below the PSL-Night and PSL- Day of 51 dBA and 61 dBA respectively. Further, the C-weighted (dBA) sound levels during the night-time and day-time were less than 20dB above the dBA sound levels, indicating a low likelihood of a low frequency tonal noise component, as defines in the AUC Rule 012.

... As a result additional noise mitigation is not required in order to achieve noise levels in compliance with the PSLs.

25. A copy of the Winter 2022 CSL survey report/NIA is attached at Tab C.

26. On March 23, 2022 the City contacted the residents of the eighteen dwellings adjacent to, and therefore those most directly affected, by the power plant to update them on the noise mitigation put in place, the results of the Winter 2022 CSL survey, and to offer compensation for the harm arising from the failure to comply with Rule 012. Each of the eighteen adjacent dwellings have been offered a 1-year family membership to Eastlink Centre. As of the date of the Settlement Agreement, the residents at 13 of those dwellings have accepted the compensation offered.

27. The power plant has operated continually since being commissioned, except for periodic temporary shutdowns due to factors such as supply interruptions and equipment failure.

### **III Regulatory framework and governing legislation**

28. Section 11 of the *Hydro and Electric Energy Act* (HEEA) states that no person shall construct or operate a power plant unless the Commission, by order, has approved its construction and operation.

29. Section 18 of the HEEA states that the owner or operator of a power plant shall not connect that power plant to an electric distribution system unless the connection is in accordance with an order under that section.

30. The City's power plant is a small power plant as defined in Section 18.1(1) of the *Hydro and Electric Energy Regulation* (Regulation).

31. Unless the Commission otherwise directs, Section 18.1(2) of the Regulation permits small power plants which are connected to the distribution system to operate without obtaining Section 11 and 18 HEEA approvals provided that all of the following criteria are met:

- (a) the construction or operation of the small power plant does not directly or adversely affect any person
- (b) there is no adverse environmental impact
- (c) it is compliant with AUC Rule 012
- (d) the operator has entered into an operating agreement with the owner of the distribution system.

32. Section 4.1.2 of Rule 007 states that if a power plant is less than one megawatt, the owner may proceed without filing an application if the requirements of Section 18.1(2) of the Regulation are met.

### **IV Admitted Contraventions:**

33. For the purposes of the Settlement Agreement, the City admits and agrees to the following contraventions:

*Contravention 1:* Unaware of all relevant statutory and regulatory requirements, the City constructed and has been operating the power plant at the City's Eastlink Recreational Facility without an approval contrary to the requirements of sections 11 and 18 of the *Hydro and Electric Energy Act*, Section 18.1(2) of the *Hydro and Electric Energy Regulation* and AUC Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines*.

*Contravention 2:* The power plant has exceeded permissible sound levels specified in AUC Rule 012: *Noise Control*.

34. Pursuant to Sections 11 and 18 of the HEEA, Section 18.1 of the Regulation and Section 4.1.3 of Rule 007, a person must demonstrate that it meets all of the following criteria to construct or operate a small power plant and to connect the small power plant to the distribution system without prior approval from the Commission, namely:

- (1) the small power plant must comply with Rule 012,
- (2) there is no adverse effect on the environment,
- (3) no person is directly and adversely affected and
- (4) the operator has entered into an operating agreement with the owner of the distribution system.

35. The City admits that prior to commissioning the power plant it did not ensure that no person was directly or adversely affected or comply with Rule 012.

36. The City admits that the results of the June 2021 pre-mitigation study and the November 2021 post-mitigation study revealed that the power plant was emitting sound levels in excess of the permissible sound levels established under Rule 012. While the 2022 Winter CSL report concludes that, with the additional mitigation, the power plant is now compliant with Rule 012, that is a matter for the Commission's determination.

## **V Operating approvals**

### Facility approval

37. The City has been operating the power plant without an approval issued by the Commission and has not been compliant with the permissible sound levels specified in AUC Rule 012.

38. On March 29, 2022, the City filed an application pursuant to sections 11 and 18 of the *Hydro and Electric Energy Act*, and AUC Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* for Commission approval to operate and connect the power plant to ATCO Electric's distribution system (Facility Application). The Facility Application is being reviewed by the Commission in Proceeding 27276.

39. As of the date of this settlement agreement, the Facility Application has not been concluded.

### Motion to continue operating

40. On April 8, 2022, the City brought a motion in Proceeding 27276 for Commission approval to continue to operate the power plant on an interim basis until the Facility Application is determined by the Commission (Motion). On April 26, 2022, the Commission granted the Motion and issued Interim Order 27276-D01-2022 authorizing the City to continue operating the power plant until a final decision is made on the Facility Application.



## VI Agreed terms and conditions of settlement

41. Section 63 of the *Alberta Utilities Commission Act* states, *inter alia*, that if the Commission determines in a hearing or other proceeding that a person has contravened or failed to comply with any provision of that act or any other enactment under the jurisdiction of the Commission or any Commission rule, it can impose an administrative penalty and any terms or conditions considered appropriate. The Commission has found that the reference to “other proceeding” includes a settlement process.<sup>4</sup> The purpose of the Commission’s sanctioning authority is to achieve general and specific deterrence, encourage compliance and protect the public. As well, while sanctions are intended to be protective and preventative, they are not to be punitive.

42. The Commission makes enforcement decisions based on the relevant factors of the case before it and has enacted AUC Rule 013: *Criteria Relating to the Imposition of Administrative Penalties* to provide guidance when considering the imposition of an administrative penalty under the act. Section 4 of Rule 013 lists factors to be considered in determining the seriousness of the offence and Section 6 lists mitigation factors to be considered.

43. Substantively, the offences/contraventions admitted to by the City are:

- (1) Failure to obtain Commission approval for the power plant or meet the legislative requirements to commence operation of the power plant without prior approval;
- (2) Operating the power plant in contravention of Rule 012.

44. In assessing the seriousness of these contraventions, of the 23 factors listed in Section 4 of Rule 13, the following matters are of note:

- the harm caused by the contraventions was the failure to comply with the legislation and associated regulatory requirements as well as the impact that the noise has had on nearby residents (s.4(1)).
- the harm was limited in impact (s.4(5)). Complaints about noise were received from five residents and, of those five, noise from the power plant exceeded the nighttime PSL at only two residences.
- the harm occurred for approximately 10 months (April 2021 to February 2022) (s. 4(17)), however, the City has worked to assess and resolve the noise problem from the time it received the first complaints (s. 4(23)). In its April 29, 2022 ruling in Proceeding 27276, the Commission stated “Although the circumstances herein are unique in that there is currently an active enforcement matter relating to the facility, the Commission

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<sup>4</sup> See for example Decision 23013-D01-2018: Application for approval of a settlement agreement between the Market Surveillance Administrator, TransAlta Corporation and Capital Power Generation Services Inc., paragraph 20.

notes that the evidence currently before it indicates that the City has met the requirements of Rule 012.”

45. Many of the other factors enumerated in Section 4 of Rule 013 are not present. For example: there was no loss of life or endangerment of persons, there was no damage to property or the operation of the bulk electric system, it did not involve significant sums of money or material benefit to the City, there was no fraudulent conduct or misrepresentation of material facts, the City was not reckless or deliberately indifferent nor did it engage in a cover up, and the City did not resist or ignore Enforcement Staff’s inquiry into the contraventions.

46. Also of note, item 22 under Section 4 allows for consideration of the effect of potential penalties on the financial viability of the City. The City operates under a budget and on May 2, 2022, approved a 0.00 per cent municipal tax increase, which is well below the cost of inflation. The City has also indicated that it is likely to see a request to repay \$2.6 million in grants received from two different government programs. There will also be impacts to the cost to operate the facility as the units are realizing a savings of \$375,000 annually. In the circumstances, any penalty imposed would likely affect municipal taxpayers including those adversely affected by noise from the power plant.

47. As noted, Section 6 of Rule 013 details factors to be considered in determining if any mitigation is warranted in the amount of the administrative penalty to be imposed. Many of those factors relate to the presence, strength, integrity and success of an existing compliance system; which, in the circumstances of these contraventions, are not applicable. However, mitigation factors such as the response and cooperation of the City when made aware of the contraventions do apply.

48. In view of the City having:

- (1) taken steps to put in place sound attenuating measures to address the noise exceedance,
- (2) brought an application for approval to operate the power plant,
- (3) brought a motion for and received an interim order to operate and connect the power plant, and
- (4) offered compensation to the residents directly affected as set out in paragraph 26,


Enforcement staff submit that the public interest does not require the imposition of an administrative penalty or that investigative costs be included in the settlement. Rather, the objectives of public protection, encouraging compliance as well as general and specific deterrence are reasonably achieved through the City’s voluntary actions described above.

## **VII General**

49. This Settlement Agreement includes facts admitted for the purpose of dispensing with formal proof thereof. The City’s agreement to the terms of this Settlement Agreement does not constitute an admission as to the facts or findings in any other civil or criminal proceedings.

50. Subject to the Commission's approval of this Settlement Agreement, execution and fulfillment of the terms of this Settlement Agreement by the City resolves all issues involving the City relating to the conduct described above, and Enforcement staff will take no further steps against the City arising from these facts.

AGREED TO THIS 24<sup>th</sup> DAY OF MAY, 2022

A handwritten signature in blue ink, appearing to read 'Gavin Fitch', written over a horizontal line.

Gavin Fitch, Q.C.,  
Counsel for the City of Grande Prairie

*Catherine Wall*

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Catherine M. Wall  
Counsel, Enforcement Staff  
Alberta Utilities Commission