



ATCO Electric Ltd.

Notice of Dispute for Micro-generation

October 27, 2023

Alberta Utilities Commission

Decision 28319-D01-2023

ATCO Electric Ltd.

Notice of Dispute for Micro-generation

Proceeding 28319

Application 28319-A001

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The Commission may, no later than 60 days from 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 finds that Dale Sunderland’s proposed generating unit qualifies as a “micro-generation generating unit” under Section 1(1)(h) of the *Micro-generation Regulation*.

2 Introduction and background

2. On June 23, 2023, EVOLVRenewables Inc. (also known as EVOLVSolar), on behalf of Dale Sunderland of Sunderland Hog Farm Ltd. (the “customer”¹ under the *Micro-generation Regulation*), submitted a micro-generation application to ATCO Electric Ltd.² In the micro-generation application, D. Sunderland proposed to build a 148.5-kilowatt (kW) solar photovoltaic system at Sunderland Hog Farm in Paradise Valley, which would be capable of producing approximately 296,667 kilowatt hours (kWh) of electric energy annually. ATCO Electric (the “owner”³ under the *Micro-generation Regulation*) disputed the application on the basis that “the micro-generator is oversized based on annual consumption history at the site,”⁴ given that the site’s energy consumption in 2022 was 208,560 kWh.

3. On July 7, 2023, ATCO Electric filed a notice of dispute with the Commission under Section 2(2) of the *Micro-generation Regulation*, which allows an owner to file a notice of dispute with the Commission “if the owner is of the opinion that the customer’s generating unit will not qualify as a micro-generation generating unit.”⁵ In the notice of dispute, ATCO Electric stated as follows:⁶

The customer applied for a 148.4 kW AC [*sic*] (249.3 kW DC) micro-generation system which will produce 296,667 kWh per year as calculated by the customer's modelling. This is significantly higher than the customer's 2022 annual consumption at the site which was 208,560 kWh. As Micro-Generation Regulation Sec 1(1)(h) [*sic*] defines a micro-generation generating unit of a customer that "is intended to meet all or a portion of the customer's total annual energy consumption at the customer's site or aggregated

¹ Under Section 1(1)(h) of the *Electric Utilities Act*, “‘customer’ means a person purchasing electricity for the person’s own use.”

² Exhibit 28319-X0004, AUC MG Application Form A MG2021.029A.

³ Under Section 1(1)(k) of the *Micro-generation Regulation*, “‘owner’ means the owner of an electric distribution system.”

⁴ Exhibit 28319-X0004, AUC MG Application Form A MG2021.029A, PDF page 5.

⁵ Section 2(2) of the *Micro-generation Regulation* provides that “If an owner, on receipt of a notice under subsection (1), is of the opinion that the customer’s generating unit will not qualify as a micro-generation generating unit, the owner may, within 14 days of receipt of the notice from the customer and on notice to the customer, file with the Commission a notice of dispute in a form established by the Commission and including all information required by the Commission.”

⁶ Exhibit 28319-X0003, AUC MG Notice of Dispute Form B MG2021.029A.

sites", per Section 2(2) ATCO Electric as the wires owner is of the opinion that the customer's generating unit does not qualify as a micro-generation generating unit.

4. The Commission issued a notice of dispute application and received statements of intent to participate from D. Sunderland and EPCOR Distribution & Transmission Inc. (EDTI), a distribution facility owner that processes micro-generation applications within its service area. The Commission granted EDTI the right to participate in this proceeding by filing written argument and reply argument on the interpretation of the eligibility criteria in the *Micro-generation Regulation*. The Commission established a written process for this proceeding, which included one round of Commission information requests to ATCO Electric and D. Sunderland, and written argument and reply argument from the parties.

5. The Commission considers the record for this proceeding to have closed on September 28, 2023. The Commission has reviewed the entire record in coming to this decision; lack of reference to a matter addressed in evidence or argument does not mean that it was not considered.

3 Jurisdiction and definition of “micro-generation generating unit”

6. Section 2(3) of the *Micro-generation Regulation* requires the Commission, on receipt of a notice of dispute, to “determine whether the customer’s generating unit is or will be a micro-generation generating unit.” Accordingly, in this decision, the Commission must determine whether D. Sunderland’s generating unit meets the definition of a “micro-generation generating unit” under Section 1(1)(h) of the *Micro-generation Regulation*.

7. Section 1(1)(h) of the *Micro-generation Regulation* defines a micro-generation generating unit as follows:

Interpretation

1(1) In this Regulation,

...

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

8. The parties dispute whether D. Sunderland’s generating unit meets the condition in Section 1(1)(h)(ii) of the *Micro-generation Regulation*. However, for D. Sunderland’s generating unit to qualify as a “micro-generation generating unit,” the Commission must find that all five conditions listed in Section 1(1)(h) are satisfied.

9. The Commission will therefore begin by determining whether D. Sunderland’s generating unit satisfies Section 1(1)(h)(ii). If the Commission finds that this condition is satisfied, it will then determine whether D. Sunderland’s generating unit satisfies the remaining four conditions in Section 1(1)(h).

10. Section 2(3) of the *Micro-generation Regulation* limits the Commission’s jurisdiction in this notice of dispute application to determining whether D. Sunderland’s generating unit is or will be a micro-generation generating unit under Section 1(1)(h).

4 Does the generating unit satisfy Section 1(1)(h)(ii)?

11. Section 1(1)(h)(ii) of the *Micro-generation Regulation* requires the generating unit to be one that “is intended to meet all or a portion of the customer’s total annual energy consumption at the customer’s site or aggregated sites.”

12. The parties dispute whether D. Sunderland’s generating unit satisfies this condition. ATCO Electric takes the position that because the generating unit will have capability to produce 296,667 kWh of energy, which is in excess of the site’s 2022 annual consumption of 208,560 kWh, it is oversized and does not satisfy this condition. D. Sunderland takes the position that this condition is satisfied because the generating unit is intended to meet the customer’s annual electricity needs based on the site’s average energy consumption in the five-year period of 2018-2022, which was 309,360 kWh.

13. Both ATCO Electric and D. Sunderland agreed that there has been significant fluctuation in annual energy consumption at the site, as shown in the table below.

Year	Consumption (kWh)
2022	208,560
2021	200,640
2020	404,880
2019	379,080
2018	353,640

4.1 Party positions

14. ATCO Electric stated that in assessing the criteria outlined in Section 1(1)(h)(ii) of the *Micro-generation Regulation*, it reviews the most recent full year of annual consumption at the customer’s site, and allows an approximate 10 per cent variance in recognition of potential fluctuations in energy consumption. ATCO Electric took the position that this approach is consistent with a reasonable interpretation of Section 1(1)(h)(ii). ATCO Electric argued that because the generation capability of D. Sunderland’s generating unit would exceed energy consumption at the site in 2022, even with a 10 per cent variance, it would not be reasonable to conclude that D. Sunderland’s generating unit “is intended to meet all or a portion of the customer’s total annual energy consumption at the customer’s site” as required by Section 1(1)(h)(ii).

15. ATCO Electric also argued that because the generating unit would be oversized, D. Sunderland would consistently export electricity to the grid at a preferred electricity rate (the retail rate) and receive significant credits, which would ultimately be reconciled through additional charges to ratepayers. ATCO Electric's position is that Section 1(1)(h)(ii) of the *Micro-generation Regulation* is in place to manage these risks by requiring micro-generation generating units to "meet all or a portion of the customer's total annual energy consumption."⁷ ATCO Electric submitted that the Commission should consider the *Micro-generation Regulation* in combination with Section 5 of the *Electric Utilities Act*, which generally states that there should be a fair and open competitive power pool where there are no unfair advantages to other participants. ATCO Electric expressed concern that approving D. Sunderland's generating unit may entice others to purposely oversize micro-generation generating units for credits, and ultimately profits, as micro-generating units have access to preferred electricity rates with subsidized access to the Alberta Interconnected Electric System.

16. EDTI stated that the language of Section 1(1)(h)(ii) of the *Micro-generation Regulation* is broadly framed, and contains no explicit criteria in determining whether the condition in Section 1(1)(h)(ii) is met. EDTI submitted that this broadly framed statutory language reflects the intention of the legislature that distribution facility owners consider the facts and circumstances applicable to a given customer site, such as the type of site, a range of historical consumption data for the site, and reasonably demonstrable future energy demand at the site.

17. D. Sunderland agreed with EDTI's submissions on the interpretation of Section 1(1)(h)(ii), adding that the provision is broadly framed to handle unique circumstances. D. Sunderland stated that because the site is an agricultural operation whose primary energy consumption relates to drying grain, annual energy consumption fluctuates year over year based on the amount of grain and how wet or dry it is. These items are affected by weather and crop conditions that are outside of D. Sunderland's control. D. Sunderland stated that the site's annual energy consumption in 2021 and 2022 was much lower than in 2018, 2019 and 2020 due to unusually dry weather in fall 2022 and drought conditions in 2021, which resulted in less, and dryer, grain. D. Sunderland submitted that given the nature of the farming industry and the atypical conditions affecting the site's energy consumption in 2021 and 2022, it is appropriate to use the five-year historical average energy consumption at the site in determining whether the generating unit satisfies Section 1(1)(h)(ii) of the *Micro-generation Regulation*.

18. D. Sunderland also argued that an interpretation of Section 1(1)(h)(ii) of the *Micro-generation Regulation* that precludes consideration of a historical range of energy consumption would result in an illogical outcome, in that D. Sunderland's generating unit would qualify as a micro-generation generating unit in some years but not others.

4.2 Commission findings

19. In *Vavilov*,⁸ the Supreme Court of Canada emphasized that the "modern principle" of statutory interpretation governs the statutory interpretation process taken by administrative decision makers tasked with interpreting legislation.⁹ Under the modern principle of statutory

⁷ Exhibit 28319-X0021, 2023-08-18 ATCO Electric responses to AUC requests, ATCO-AUC-2023AUG11-002.

⁸ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

⁹ In *Vavilov*, the Supreme Court of Canada stated at paragraph 120: "... whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. ..."

interpretation, the words of a statute must be read “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”¹⁰

20. The Commission notes that on a plain reading, Section 1(1)(h)(ii) of the *Micro-generation Regulation* simply requires that the generating unit be “intended to meet all or a portion of the customer’s total annual energy consumption at the customer’s site...”. The provision contains no methodology or prescriptive formula for calculating a customer’s intended total annual energy consumption.

21. The Commission has previously determined that in order to determine compliance with (what was then) Section 1(1)(h)(ii) of the *Micro-generation Regulation*,¹¹ it was necessary to compare the expected annual energy production of the generating unit and the customer’s annual electricity consumption, both measured in kWh.¹² In a subsequent decision, the Commission clarified that the term “annual” as used in Section 1(1)(h)(ii) meant a unit of measure, a 365- or 366-day period, and did not preclude consideration of future time periods.¹³

22. Similarly, the Commission considers that in the context of Section 1(1)(h)(ii), the term “annual” does not preclude consideration of past time periods and does not restrict consideration of annual energy consumption to just the previous year.

23. The Commission further considers that an interpretation of Section 1(1)(h)(ii) that allows for flexibility in considering whether the condition is met is more consistent with the purpose of the *Micro-generation Regulation*, which is, in part, to promote self-supply by renewable energy resources and to simplify the regulatory process for micro-generators. The Commission endorses the following statement in Decision 23412-D01-2018:¹⁴

Given the purpose of the *Micro-generation Regulation* [...] the Commission does not consider it reasonable to find that because the definition of micro-generation generating unit contains conditions, that those conditions must be read as narrowly as possible. The Commission considers that a more restrictive interpretation of Section 1(1)(h)(ii) would dissuade self-supply by renewable energy sources.

24. ATCO Electric argues that Section 1(1)(h)(ii) must be read narrowly in light of the overall intent of the *Electric Utilities Act*, because oversized generation could result in incremental benefits to customers, who receive compensation for the sale of excess energy, and corresponding cost subsidization by other ratepayers. The Commission does not find this argument compelling. The *Micro-generation Regulation* explicitly contemplates that micro-generation generating units will produce excess electricity at times, and includes provisions to enable micro-generators to sell that energy to the grid and receive compensation. In

¹⁰ *Vavilov*, paragraph 117.

¹¹ Section 1(1)(h)(ii) of the *Micro-generation Regulation*, Alta Reg 27/2008, in force between November 3, 2009 and January 7, 2014 provided that “‘micro-generation generating unit’ means a generating unit of a customer that... is intended to meet all or a portion of the customer’s electricity needs.”

¹² Decision 2012-103: ATCO Electric Ltd., Micro-Generation Determination, Proceeding 1477, April 17, 2012, paragraph 23.

¹³ Decision 23412-D01-2018, ATCO Electric Ltd. Micro-generation Determination, Proceeding 23412, September 19, 2018, paragraph 34.

¹⁴ Decision 23412-D01-2018, ATCO Electric Ltd. Micro-generation Determination, Proceeding 23412, September 19, 2018, paragraph 35.

the case of small micro-generation generating units (which would include D. Sunderland's generating unit), the legislature specified that micro-generators would be compensated for the sale of excess energy at retail rates, and not the pool price.¹⁵ In the Commission's view, the overall scheme of the *Micro-generation Regulation* does not require a narrow reading of Section 1(1)(h)(ii), that would exclude consideration of historical consumption data to determine whether a generating unit is appropriately sized.

25. In light of the above, the Commission finds it reasonable to interpret Section 1(1)(h)(ii) of the *Micro-generation Regulation* to permit consideration of a range of historical energy consumption data at the site, when appropriate in the circumstances. The Commission does not consider this interpretation to be contrary to the intent of the *Electric Utilities Act*.

26. The Commission will now consider whether D. Sunderland's generating unit satisfies Section 1(1)(h)(ii) of the *Micro-generation Regulation*.

27. The Commission appreciates that ATCO Electric typically uses energy consumption at the site in the year immediately preceding submission of a micro-generation application, with a 10 per cent variance allowance to reflect fluctuations in energy consumption. The Commission considers that in many circumstances, ATCO Electric's approach would be appropriate and provide a reasonably accurate picture of intended total annual energy consumption for the purposes of determining compliance.

28. However, given the significant fluctuations in D. Sunderland's energy consumption over the past five years, which are attributable to the unpredictable nature of a crop season, and D. Sunderland's evidence that the 2022 and 2021 crop seasons were not typical, the Commission considers that, in these circumstances, using a historical five-year average energy consumption provides a more accurate forecast of future energy consumption at D. Sunderland's site. The Commission does not consider that use of a five-year historical average in this case will result in an 'oversized' generating unit.

29. The Commission finds that using the historical five-year average annual energy consumption at D. Sunderland's site is reasonable in determining whether Section 1(1)(h)(ii) of the *Micro-generation Regulation* is satisfied. Based on a comparison of the generating unit's expected annual energy production of 296,667 kWh and the site's five-year historical average annual energy consumption of 309,360 kWh, the Commission concludes that the generating unit is intended to meet all or a portion of D. Sunderland's total annual energy consumption at the site.

30. Accordingly, the Commission finds that D. Sunderland's generating unit satisfies Section 1(1)(h)(ii) of the *Micro-generation Regulation*.

5 Does the generating unit satisfy the other conditions of Section 1(1)(h)?

31. The Commission must now consider whether D. Sunderland's generating unit satisfies the remaining conditions in Section 1(1)(h) of the *Micro-generation Regulation*, which are not in dispute in this proceeding.

¹⁵ *Micro-generation Regulation*, Section 7(5).

5.1 Renewable or alternative energy (Section 1(1)(h)(i))

32. Section 1(1)(h)(i) of the *Micro-generation Regulation* requires the generating unit to be one that “exclusively uses sources of renewable or alternative energy.”

33. Section 1(1)(l) of the *Micro-generation Regulation* defines “renewable or alternative energy” as follows:

- (l) “renewable or alternative energy” means electric energy generated from
 - (i) products having current EcoLogo certification, or
 - (ii) solar, wind, hydro, fuel cell, geothermal, biomass or other generation sources, if the greenhouse gas intensity of
 - (A) the electric energy produced, or
 - (B) the total energy produced from the simultaneous generation of electric energy and production of thermal energy from the same fuel sourceis less than or equal to 418 kg per MWh;

34. ATCO Electric and D. Sunderland agreed that the generating unit will generate electric energy by way of solar photovoltaic technology. The Commission is satisfied that Section 1(1)(h)(i) is met.

5.2 Nameplate capability (Section 1(1)(h)(iii))

35. Section 1(1)(h)(iii) of the *Micro-generation Regulation* requires the generating unit to be one that “has a total nameplate capacity that does not exceed the lesser of 5 megawatts (MW) or the rating of the customer’s service.” Given that both ATCO Electric and D. Sunderland provided evidence that the generating unit will have a total capability of 148.5 kW (or 0.1485 MW) and that the system is designed to not exceed the rating of the customer’s service,¹⁶ the Commission is satisfied that the generating unit complies with Section 1(1)(h)(iii).

5.3 Supply of electric energy (Section 1(1)(h)(iv)) and location of generating unit (Section 1(1)(h)(v))

36. Section 1(1)(h)(iv) of the *Micro-generation Regulation* requires the generating unit to be one that “supplies electric energy only to a site that is located on property that the customer owns or leases,” and Section 1(1)(h)(v) requires the generating unit to be located either on the same property as the customer’s site, or on adjacent property that is owned or leased by the customer.

37. D. Sunderland stated that the generating unit will supply energy to Sunderland Hog Farm, located in Paradise Valley, and the micro-generation application contains supporting information including the legal land description for the generating unit, the site ID, and photos and diagrams showing the project location. ATCO Electric did not dispute the supply of electric energy and the location of the generating unit. The Commission is satisfied that the generating unit complies with sections 1(1)(h)(iv) and 1(1)(h)(v) of the *Micro-generation Regulation*.

¹⁶ Exhibit 28319-X0004, AUC MG Application Form A MG2021.029A, PDF page 7.

6 Decision

For the foregoing reasons, the Commission finds that Dale Sunderland's proposed generating unit meets the definition of a "micro-generation generating unit" as provided for in the *Micro-generation Regulation*.

Dated on October 27, 2023.

Alberta Utilities Commission

(original signed by)

Cairns Price
Commission Member

Appendix 1 – Proceeding participants

<p>Name of organization (abbreviation) Company name of counsel or representative</p>
<p>ATCO Electric Ltd.</p>
<p>Dale Sunderland EVOLVRenewables Inc.</p>

<p>Alberta Utilities Commission</p> <p>Commission panel C. Price, Commission Member</p> <p>Commission staff N. Fitz-Simon (Commission counsel) K. Surgenor</p>
