



**Enforcement Staff of the Alberta Utilities
Commission**

Settlement Agreement with the Consumers' Coalition of Alberta

December 18, 2023

Alberta Utilities Commission

Decision 28648-D01-2023

Enforcement Staff of the Alberta Utilities Commission

Settlement Agreement with the Consumers' Coalition of Alberta

Proceeding 28648

December 18, 2023

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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

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.

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1 Decision summary

1. In this decision, the Alberta Utilities Commission approves a Settlement Agreement between AUC Enforcement staff and the Consumers' Coalition of Alberta (CCA) related to a disclosure by the CCA in breach of a confidentiality order of the Commission and confidentiality undertakings in Proceeding 27714¹ (the contravention). In accordance with the Settlement Agreement, the Commission imposes a one-time penalty on the CCA of two-thousand and five-hundred dollars (\$2,500) for the contravention.

2 Background and AUC Enforcement staff's application

2. Enforcement staff started an investigation following a referral from the Commission panel that presided over Proceeding 27714 (the 27714 panel). In that proceeding, the 27714 panel issued a confidentiality order with respect to certain evidence (confidential information) filed by ENMAX Energy Corporation. The CCA subsequently filed evidence on the public record of the proceeding that disclosed confidential information.

3. Enforcement staff and the CCA engaged in discussions to resolve issues of fact, alleged contraventions and penalty arising from Enforcement staff's investigation. The result of those discussions was Enforcement staff's current enforcement application to the Commission, and the associated Settlement Agreement between Enforcement staff and the CCA.

4. In the Settlement Agreement, the CCA admitted to the contravention and agreed to the imposition of an administrative penalty of two-thousand and five-hundred dollars (\$2,500) under sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*. The parties submitted that the Settlement Agreement is in the public interest because it advances the objectives of the Commission's sanctioning authority, it reflects the seriousness of the contraventions, and it gives due regard to mitigating circumstances.

3 Should the Commission approve the application and associated Settlement Agreement?

5. The Commission's jurisdiction to consider and approve the settlement agreement is grounded in the Commission's general powers in sections 8 and 23(1)(b) of the *Alberta Utilities Commission Act* and the administrative penalty section, Section 63.

¹ Proceeding 27714, ENMAX Energy Corporation, 2022-2024 Regulated Rate Option Non-Energy Tariff Application, Exhibit 27714-X0026, AUC letter - Ruling on EEC motion for confidentiality, December 12, 2022; exhibits 27714-X0034 to X0037, 27714-X0043, 27714-X0052 to X0054 and 27714-X0065.

6. The Commission applies a two-stage test to assess whether a settlement agreement should be approved. First, the Commission must be satisfied that the alleged contraventions occurred. Second, the Commission applies the “public interest test.”² The public interest test requires that the Commission should not depart from a negotiated settlement unless the proposed settlement would bring the administration of justice into disrepute or is otherwise contrary to the public interest. This is a high threshold to meet. In considering the public interest, the Commission is guided by the factors set out in Rule 013: *Criteria Relating to the Imposition of Administrative Penalties*.

7. Based on information provided by the parties in the enforcement application and in the Settlement Agreement, the Commission accepts that the contravention occurred. Further, having considered the circumstances surrounding the breach of the confidentiality order, the terms of the Settlement Agreement, and Enforcement staff’s submissions (as concurred with by the CCA), the Commission is satisfied that the “public interest test” is met by approving the Settlement Agreement and imposing the agreed-upon administrative penalty of two-thousand and five-hundred dollars (\$2,500).

4 Order

8. It is hereby ordered that:

- (1) The Settlement Agreement between AUC Enforcement staff and the Consumers’ Coalition of Alberta, attached as [Appendix 2](#) to this decision, is approved as filed.
- (2) The Consumers’ Coalition of Alberta must pay an administrative penalty in the amount of two-thousand and five-hundred dollars (\$2,500) pursuant to sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*. The payment may be made via cheque or bank draft made out to the General Revenue Fund of Alberta and delivered to the Commission within 30 business days of the date of this order.

² The public interest test was adopted from criminal law and is discussed in significant detail in, among others: See, among others: 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 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; Decision 27391-D01-2023: Enforcement Staff of the Alberta Utilities Commission, Settlement Agreement with the City of Grande Prairie, Proceeding 27391, January 20, 2023, paragraphs 16-19.

Dated on December 18, 2023.

Alberta Utilities Commission

(original signed by)

Michael Arthur
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Enforcement Staff of the Alberta Utilities Commission

Alberta Utilities Commission
Commission panel M. Arthur, Commission Member
Commission staff A. Marshall (Commission counsel) J. Schimke K. O'Neill

Appendix 2 – Settlement Agreement

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



Appendix 2 -
Settlement Agreemen
(consists of 5 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-

Consumers' Coalition of Alberta

Respondent

Settlement Agreement

I Introduction and executive summary

1. In March 2023, the Alberta Utilities Commission Enforcement staff (Enforcement staff) commenced an investigation in response to a referral from the AUC panel presiding over Proceeding 27714 (27714 Panel) concerning the 27714 Panel's referral of this matter to Enforcement staff and reporting that the Consumers' Coalition of Alberta (CCA) breached the 27714 Panel's confidential order in that proceeding.
2. The investigation confirmed and, for the purposes of this settlement agreement, the CCA admits that it improperly disclosed information on the public record of Proceeding 27714 contrary to Section 30.11 of Rule 001: *Rules of Practice*, and the requirements set out in Form RP5 (confidentiality undertakings) concerning the use and protection of information that had been granted confidential protection pursuant to an AUC order.
3. Enforcement staff and the CCA have entered into a settlement agreement to address the admitted contravention (Settlement Agreement). The CCA was cooperative, forthright and responsive concerning all aspects of Enforcement staff's investigation. For the reasons set out in further detail below, the Settlement Agreement includes an administrative penalty of \$2,500 which is similar to other settlements of a similar nature.
4. Enforcement staff consider that the Settlement Agreement fosters public protection, encourages compliance, serves as a deterrent and is therefore in the public interest. Enforcement staff and the CCA therefore jointly request that the AUC approve the Settlement Agreement without variation.

II Agreed facts

5. The AUC and outside parties use an electronic filing tool, known as an eFiling system, to assist with managing and sharing information in its proceedings. This system is used to file or upload documents and access, manage and search those documents. Documents filed on the public record of a proceeding in eFiling are accessible to any person who has an eFiling system user account. Documents filed on the confidential record of a proceeding in eFiling are only accessible pursuant to the terms of the AUC's confidentiality rulings.
6. On November 18, 2022, ENMAX Energy Corporation (EEC), filed an application on the Commission's eFiling system requesting approval of its 2022-2024 RRO Non-Energy Tariff (Exhibit 27714-X0001)
7. Concurrent with its application, EEC filed a motion on the proceeding record requesting confidential treatment for certain portions of Appendix B-4 Encompass Cost Schedules and Appendix D-3 Competitive Retailer Direction Response. (exhibits 27714-X0021 and 27714-X0022)
8. On December 12, 2022, the 27714 Panel issued its ruling granting EEC's request for confidential treatment of the materials identified by EEC. In the ruling, the 27714 Panel directed EEC to provide interveners access to the confidential information on the confidential record in eFiling provided such parties filed confidentiality undertakings. The confidentiality ruling was filed as Exhibit 27714-X0002 on the public record in Proceeding 27714.
9. The CCA was an intervener in Proceeding 27714. On January 3, 2023, confidentiality undertakings were filed by James Wachowich, counsel for the CCA (Exhibit 27714-X0039) and Jan Thygesen, a consultant for the CCA (Exhibit 27714-X0040) and they were granted access to EEC's confidential information filed on the confidential record in Proceeding 27714. Concurrent with the filing of the undertakings, the CCA also filed its confidentiality protocol. (Exhibit 27714-X0041).
10. On February 27, 2023, at 3:55 p.m. the CCA filed a public, redacted version of an Excel document titled "Attachment MSA -June 30 2022," which was filed in support of the CCA's evidence of Jan Thygesen on the proceeding record. (Exhibit 27714-X0116) The Excel document contained a cell with a value taken from Exhibit 27714-X0031-C. The cell was marked in red text in Exhibit 27714-X0031-C and was also marked in red text with the label "Confidential". The CCA acknowledges the data in this cell was confidential.
11. On February 28, 2023 at 11:30 a.m., at EEC's request and following a telephone exchange between Commission staff for Proceeding 27714 and EEC, the AUC voided Exhibit 27714-X0116 from the proceeding record. Shortly thereafter, at 11:33 a.m., AUC staff left a voicemail with the CCA's counsel about the voided document and the CCA's counsel confirmed receipt of the voicemail and acknowledged the disclosure of confidential information at 2:30 p.m.
12. The unified logging service (ULS) logs in the eFiling system show that the voided Exhibit 27714-X0116 was accessed nine times by seven separate individuals. Of those seven individuals, four were employees of EEC, one of which was a confidential administrator who had been granted access to confidential information on behalf of EEC. One individual had been granted confidential access by EEC as a representative of EEC. One individual had filed an

undertaking and one individual had not filed an undertaking and does not appear as a registered participant or an observer in the proceeding.

13. On March 3, 2023, the CCA responded to the concerns raised by EEC and the AUC and filed a revised public, redacted version of its Excel document on the proceeding record. (Exhibit 27714-X0125)

14. On March 10, 2023, the 27714 Panel issued a letter on the public proceeding record advising parties that it was referring the disclosure breach to the Enforcement division. (Exhibit 27714-X0134)

15. There were no filed submissions on the record of Proceeding 27714 or complaints received from EEC or any other interested party arising from the CCA's breach.

III Regulatory framework and governing legislation

16. Section 76(1)(e) of Rule 001, authorizes the AUC to make rules of practice regarding its procedure and hearings. The AUC enacted Section 30 of Rule 001 pursuant to this authority.

17. Section 30.7 of Rule 001 enables the AUC to grant a motion for confidential treatment on any terms it considers reasonable or necessary.

18. Section 30.9 of Rule 001 further enables the AUC to establish or adopt any process or procedure considered necessary or reasonable in the public interest to consider the confidential information.

19. In Proceeding 27714, the 27714 Panel directed EEC to provide access to its confidential information provided the requesting parties executed and filed a confidentiality undertaking as provided for in Section 30.11 of Rule 001 and Form RP5.

20. Form RP5 requires each recipient of confidential information to, *inter alia*, "use all reasonable and necessary efforts to safeguard the confidential information and related materials from any unauthorized disclosure or use" and to "not disclose the confidential information or related materials to any person except to the Commission or to a person who is authorized by the Commission to receive access to the confidential information and who has executed and filed with the Commission an undertaking, unless otherwise required by law".

IV Admitted contravention:

21. For the purposes of the Settlement Agreement, the CCA admits and agrees to the following contravention:

On February 27, 2023, the CCA disclosed information on the public record of Proceeding 27714 contrary to Section 30.11 of Rule 001: *Rules of Practice* and Form RP5 (confidentiality undertakings) concerning the use and protection of information that had been granted confidential protection pursuant to an AUC order.

V Agreed terms and conditions of settlement

22. 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.¹ 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.

23. The Commission conducts enforcement proceedings and makes enforcement decisions based on the relevant factors of the case before it and has enacted 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.

24. Substantively, the contravention admitted to by the CCA concerns the disclosure, on a single occasion of confidential information on the public record of Proceeding 27714 contrary to the 27714 Panel’s confidentiality order. In assessing the seriousness of the contravention, of the 23 factors listed in Section 4 of Rule 13, the following matters are of note:

- (a) The harm caused from the failure to comply with the 27714 Panel’s confidentiality order resulted in the public release of information that the 27714 Panel had determined warranted confidential protection. It is known that seven individuals accessed the CCA’s voided evidence however only one of those had not filed an undertaking or was otherwise not an employee or authorized representative of EEC.
- (b) The harm was of limited duration (Section 4(17)) and was limited in scope and impact (Section 4(5)). The voided document was available for 19 hours and 38 minutes however, most of that time was in the evening, when it would be expected that there would be less activity accessing the eFiling system.
- (c) The incident came to light through the actions of EEC who contacted Proceeding 27717 counsel (Section 4(20)).
- (d) It was not a repeat offence (Section 4 (14)) and was an isolated incident in this proceeding (Section 4(15)).

25. 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 CCA, there was no fraudulent conduct or misrepresentation of material facts, the CCA was not reckless or deliberately indifferent nor did it engage in a cover up, and the CCA did not resist or ignore Enforcement staff’s inquiry into the contravention.

¹ See for example Decision 23013-D01-2018 (Errata): Market Surveillance administrator, Application for approval of a settlement agreement between the Market Surveillance Administrator, TransAlta Corporation and Capital Power Generation Services Inc., Proceeding 23013, Application 23013-A001, August 24, 2018, paragraph 20.

26. As noted above, 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. Section 30.11(a) of Rule 001 requires a party who accesses confidential information to provide a copy of its protocol for the treatment of the confidential documents it receives. The CCA's protocol was submitted as Exhibit 27714-X0041. This protocol concerns the labelling, storage and later destruction of confidential information. Consequently, in this situation, the protocol would not have addressed the breach and would not serve to mitigate the seriousness of the contravention. However, mitigation factors such as the response and cooperation of the CCA when made aware of the contravention, do apply (sections 6(19) and 6(20)). In particular, Enforcement staff note that the CCA acknowledged the breach on being advised of it by Proceeding 27714 staff.

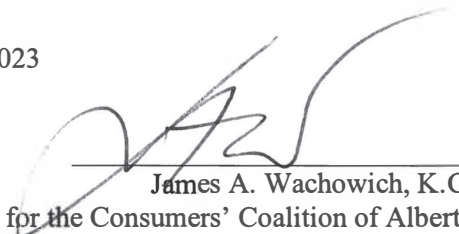
27. In the circumstances of this enforcement proceeding and its similarity to other settlements of a similar nature, the public interest requires the imposition of an administrative penalty to achieve the objectives of encouraging compliance with AUC's orders as well as general and specific deterrence. Pursuant to sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*, the parties jointly request that the AUC issue an order requiring the CCA to pay an administrative penalty in the amount of \$2,500 payable to the General Revenue Fund of Alberta and delivered to the AUC within 30 business days of the date of the order.

VI General

28. This Settlement Agreement includes facts admitted for the purpose of dispensing with formal proof thereof. The CCA'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.

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

AGREED TO THIS 15TH DAY OF NOVEMBER, 2023


James A. Wachowich, K.C.
Counsel for the Consumers' Coalition of Alberta

AGREED TO THIS 22ND DAY OF NOVEMBER, 2023

Laura-Marie Berg
Digitally signed by Laura-Marie Berg
Date: 2023.11.22 13:54:21 -0700

Laura-Marie Berg
Counsel, Enforcement Staff
Alberta Utilities Commission