



**Enforcement staff of the  
Alberta Utilities Commission**

**Settlement Agreement with Avex Energy Inc.**

**February 9, 2024**

**Alberta Utilities Commission**

Decision 28765-D01-2024

Enforcement staff of the

Alberta Utilities Commission

Settlement Agreement with Avex Energy Inc.

Proceeding 28765

February 9, 2024

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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](mailto:info@auc.ab.ca)

Website: [www.auc.ab.ca](http://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.

## **1 Decision summary**

1. In this decision, the Alberta Utilities Commission approves the settlement agreement reached between Enforcement staff of the AUC Enforcement Division (Enforcement) and Avex Energy Inc. related to the operation of a power plant without the required approval. The Commission imposes on Avex Energy Inc. a total penalty in the amount of \$241,477, consisting of an administrative penalty in the amount of \$10,496 and disgorgement based on the gross economic benefits earned during the operating period in the amount of \$230,981.

### **1.1 Investigation and contraventions**

2. In response to noise complaints received from residents nearby a 3.55-megawatt power plant (Red Willow Power Plant) in the County of Stettler, Enforcement conducted an investigation from December 2021 to September 8, 2022, concerning the operation of the Red Willow Power Plant, owned and operated by 611890 Alberta Inc. doing business as Avila Energy. Avila Energy was amalgamated with Avila Exploration & Development Canada Ltd. and both corporations were continued as Avex Energy Inc. on September 1, 2022.

3. The investigation confirmed, and Avex Energy Inc. (Avex Energy) admitted, that from April 23, 2021 until December 22, 2021, it operated the Red Willow Power Plant without an approval contrary to Section 11 of the *Hydro and Electric Energy Act* and Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* (Contravention).

4. Enforcement and Avex Energy engaged in discussion to resolve issues of fact, the Contravention, and the penalty arising from the investigation. Avex Energy was cooperative, forthright and responsive concerning all aspects of the investigation, and, at Enforcement's request, voluntarily shut down the Red Willow Power Plant on December 22, 2021. The Red Willow Power Plant has not been in operation since that time.

### **1.2 The proposed settlement**

5. On January 5, 2024, Enforcement applied to the AUC under sections 8, 23 and 63 of the *Alberta Utilities Commission Act* for approval of the terms of the settlement agreement dated January 2, 2024, between Enforcement and Avex Energy.

6. Enforcement requested that the Commission find that Avex Energy committed the Contravention, and order Avex Energy to pay a total penalty in the amount of \$241,477, comprised of an administrative penalty in the amount of \$10,496 and disgorgement in the amount of \$230,981 to nullify, in part, the value of gains acquired from the sale of the electric energy produced from the unlawful operation of the Red Willow Power Plant during the period of April 23, 2021 until December 22, 2021.

7. In its application, Enforcement discussed the factors set out in sections 4 and 6 of AUC Rule 013: *Criteria Relating to the Imposition of Administrative Penalties* to assist in determining the seriousness of a contravention, and mitigating factors for consideration, respectively, and the circumstances of the Contravention and investigation.

8. The administrative penalty agreed reflects a reduction of 30 per cent in recognition of Avex Energy's admission of the Contravention, which avoided a hearing and facilitated a timely resolution of the matter, and Avex Energy's cooperation and response when made aware of the Contravention, including steps it is taking to implement the recommended measures set out in a noise impact assessment to ensure compliance with AUC Rule 012: *Noise Control*, should the Red Willow Power Plant be approved to operate in future. Enforcement submitted that taking these mitigating circumstances into account in assessing an appropriate proposed sanction will incentivize respondents in future enforcement proceedings to consider taking similar steps and cooperate with Enforcement staff.

9. Additionally, a reduction was applied to the gross economic benefits earned by Avex Energy through its unlawful operation of the Red Willow Power Plant in recognition of the admissions, disclosure and level of cooperation provided by Avex Energy.

## 2 The regulatory framework

10. The Commission's jurisdiction to consider and approve the settlement agreement is grounded in the Commission's general powers in sections 8 and 23 of the *Alberta Utilities Commission Act* and the administrative penalty section, Section 63. The purpose of the Commission's sanctioning authority is to achieve general and specific deterrence, encourage compliance and protect the public. While sanctions are intended to be protective and preventative, they are not to be punitive.<sup>1</sup>

11. When assessing whether a negotiated settlement agreement should be approved, the Commission must first be satisfied that the alleged contravention occurred. Second, the Commission applies the public interest test.<sup>2</sup> 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.

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<sup>1</sup> Decision 27948-D01-2023, Enforcement Staff of the Alberta Utilities Commission, Settlement Agreement with ATCO Gas and Pipelines Ltd., Proceeding 27948, March 7, 2023.

<sup>2</sup> The public interest test was adopted from criminal law and is discussed in significant detail in, 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, 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, January 20, 2023, paragraphs 16-19. See also: Bulletin 2016-10, Practices regarding enforcement proceedings and amendments to AUC Rule 001: *Rules of Practice*, March 29, 2016, paragraph 13, which 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.

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

12. Based on information provided by the parties in the application and in the settlement agreement, the Commission accepts that the Contravention occurred.

13. Turning to the public interest test, having considered the circumstances surrounding the contraventions and the agreement reached between the parties, the Commission is satisfied that the total proposed penalty of \$241,477 is reasonable considering the seriousness of the contraventions and the mitigating actions identified by the parties, including Avex Energy's cooperation, disclosure and responsiveness. In the Commission's view, the above penalty, together with the corrective actions taken by Avex Energy, achieve the goals of specific and general deterrence.

14. For the above reasons, the Commission is satisfied that approval of the proposed settlement agreement is in the public interest. Enforcement's application is approved.

### 4 Order

15. The Commission orders as follows:

- (1) The settlement agreement between AUC Enforcement staff and Avex Energy Inc., attached as Appendix 2 to this decision, is approved, as filed.
- (2) Avex Energy Inc. shall pay a total penalty of \$241,477, payable to the General Revenue Fund, comprised of:
  - (a) An administrative penalty in the amount of \$10,496, pursuant to subsections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*.
  - (b) Disgorgement in the amount of \$230,981, pursuant to subsection 63(2)(b) of the *Alberta Utilities Commission Act*.
- (3) Payment shall be made by electronic transfer in equal monthly instalments of \$6,707.69, with the first instalment payment due within 30 days of the issuance of this decision.
- (4) Avex Energy Inc. shall confirm payment of each instalment payment to by notice to [enforcement@auc.ab.ca](mailto:enforcement@auc.ab.ca) at the time of any electronic transfer.

Dated on February 9, 2024.

**Alberta Utilities Commission**

*(original signed by)*

Matthew Oliver, CD  
Commission Member

**Appendix 1 – Proceeding participants**

<b>Name of organization (abbreviation)</b> <b>Company name of counsel or representative</b>
Enforcement Staff of the Alberta Utilities Commission
Avex Energy Inc.

Alberta Utilities Commission
Commission panel M. Oliver, CD Commission Member
Commission staff L. Mosher (Commission counsel) S. Ramdin (Commission counsel) K. Benoche

## Appendix 2 – Settlement agreement between AUC Enforcement staff and Avex Energy Inc.



Settlement  
Agreement.pdf

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-

Avex Energy Inc.

Respondents

**Settlement Agreement**

**I Introduction and executive summary**

1. In December 2021, Alberta Utilities Commission Enforcement staff commenced an investigation in response to complaints received concerning noise emitted from the operation of three generators with a total name plate capacity of 3.55 megawatts (MW) (Red Willow Power Plant) owned and operated by 611890 Alberta Inc. doing business as Avila Energy in the County of Stettler. Avila Energy was notified of the investigation by letter dated December 9, 2021. The investigation concluded on September 8, 2022.
2. Avila Energy was amalgamated with Avila Exploration & Development Canada Ltd. (Avila ED) and both corporations were continued as Avex Energy Inc. on September 1, 2022. For the purposes of this settlement agreement and as set out in sections 186(c) and (e) of the *Business Corporations Act*, Avex Energy assumes responsibility for the actions of Avila Energy concerning the operation of the Red Willow Power Plant.
3. The investigation confirmed and, for the purposes of this settlement agreement, Avex Energy admits that from April 23, 2021 until December 22, 2021 (operating period), it operated the Red Willow Power Plant:
  - (a) Without an approval contrary to Section 11 of the *Hydro and Electric Energy Act*, and Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines*.

(Contravention)



4. On December 22, 2021, at Enforcement staff's request, Avila Energy voluntarily shut down the Red Willow Power Plant. The Red Willow Power Plant has not been in operation since that time.

5. Enforcement staff have entered into a settlement agreement with Avex Energy to address the admitted Contravention (Settlement Agreement). Avex Energy was cooperative, forthright and responsive concerning all aspects of Enforcement staff's investigation. For the reasons set out in further detail below, the settlement includes an administrative penalty of \$10,496 and disgorgement based on the gross economic benefits earned during the operating period in the amount of \$230,981. The amount of the administrative penalty and the disgorgement of benefits reflect the settlement reached and the cooperation provided by Avex.

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

## **II Agreed Facts**

7. At all material times, the Red Willow Power Plant was owned and operated by Avila Energy and located at a gas compressor site in the County of Stettler. The owner of the land where the Red Willow Power Plant is situated was Avila ED. Avila ED was also the supplier of the gas used to fuel the Red Willow Power Plant.

8. On September 1, 2022, Avila Energy and Avila ED were amalgamated and are continued as Avex Energy Inc. A copy of the certificate of amalgamation is provided as Appendix A.<sup>1</sup>

9. In mid-May 2019, Avila ED met with the owner of the nearest dwelling to Avila ED's land to explain Avila ED's proposed Red Willow Power Plant project. This owner verbally advised them that he was supportive of the project and that his dwelling was used as a hobby farm and not habitable as a residence.

10. On May 31, 2019, a Power Information Sheet (a copy is provided at Appendix B)<sup>2</sup> with an "Avila" letterhead was sent to other potentially affected landowners that stated, in part:

The proposed project involves setting up to 10 MW generators on the Avila site and producing electricity utilizing its processed natural gas to generate the electricity. The Data Centers will be placed on site and connected to the generators. All equipment on site will be mounted and stored in enclosures to ensure noise levels and environmental impacts remain within the tolerance the Company is authorized to operate within.

[...]

Once approved by the Alberta Utilities Commission (AUC), site setup with [sic] take approximately 2-4 weeks.

[...]

The generators and servers will comply with AUC Rule 12 for noise control. All of the equipment will have state of the art technology and we will dampen the containers to

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<sup>1</sup> Appendix A – Certificate of Amalgamation.

<sup>2</sup> Appendix B – Power Information Sheet dated May 31, 2019.

minimize noise. We've calculated resulting noise to be less than 40 dB at the nearest resident [sic]...

11. Avila has advised that it did not receive notice of any concerns from affected landowners to the Power Information Sheet.

12. Based on its own internal review, Avila's management thought that it satisfied the requirements for an exemption for power generation under 10 MW under Section 1.4.3 and Section 4.1 of Rule 007, as it then was (addressing small power plant applications less than 10 MW), including with respect to noise and environmental impacts.<sup>3</sup> At that time, there was no judicial or tribunal interpretation of that provision. In addition, Avila's principal has indicated that he understood that, as the site was an existing Alberta Energy Regulator registered facility, there was existing regulatory approval with respect to noise. Avila thought that its operations were deferred with respect to noise requirements under Rule 012 in relation to the natural-gas gathering, processing and compressor facility located on the Avila ED Land. The previous natural-gas gathering, processing and compression facility on the site had a combined output of 1500 horsepower, along with an operating condenser and natural gas cooler, associated fans and pumps and dehydration equipment. Avila ED also believed that its operations would not exceed allowable noise levels based on its understanding of the anticipated comparable noise emissions between the natural-gas equipment and the generators based on modelling.

13. A principal of Avila met with AUC technical staff in the summer of 2019, to discuss the potential installation of a 2.5 to 10-MW power generation plant at the site. On the basis of those discussions, Avila believed that no additional approval was required, and proceeded on that basis.

14. Operations at the site began on April 23, 2021, with temporary equipment reaching output of one MW by June 30, 2021. The temporary equipment was later replaced with three purchased generators owned and operated by Avila Energy. The first purchased generator became operational in September 2021 (Caterpillar-Natural Gas fired reciprocal Engine - 480 kilowatts (kW), "Generator #1"), the second was received and installed in October 2021 (Caterpillar-Natural Gas fired reciprocal Engine - 570 kW, "Generator #2"), and the last generator was not operational until approximately November 3, 2021 (501k Rolls Royce-Natural Gas fired Turbine - 2500 kW, "Generator #3"). As of December 22, 2021, when the Red Willow Power Plant ceased operations, it consisted of three generators with a total rated capacity of 3.55 MW.

15. The electricity produced from the Red Willow Power Plant was sold to Cryptostar Corp. for the purpose of mining crypto-currency on the site. Avila ED and Cryptostar entered into a Power Supply Agreement, which included provisions for the license of land to CryptoStar and sale of the electricity, dated April 17, 2020. The April 17, 2020 Power Supply Agreement, was later assigned to Avila Energy pursuant to an Amended and Restated Power Supply Agreement dated April 12, 2021. At all material times, Cryptostar was the owner of the crypto-currency mining equipment on the operational site during the operating period.

16. On or about August 19, 2021, the AUC issued Decision 26379-D02-2021 which provided an interpretation of the exemption upon which Avila had relied (the "Link Global Decision"). Subsequently, in April 2022, the AUC amended Rule 007 which reworded and reorganized

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<sup>3</sup> Rule 007, approved by the Commission on April 16, 2019, and effective on August 1, 2019.

Section 4.1 and instituted a new checklist application for power plants between one MW and 10 MW in size.

17. Prior to commencing operations in April 2021, Avex Energy did not:

- (a) Submit an application to the AUC for an approval to operate the Red Willow Power Plant,
- (b) Conduct a noise impact assessment (NIA) as required by Rule 012, or
- (c) Receive an approval under the *Environmental Protection and Enhancement Act*.

18. In early November 2021, prior to commissioning of all the equipment but after operations had commenced for all three generators, Avila ED retained FDI Acoustics Inc. to complete an NIA for the Red Willow Power Plant. FDI Acoustics was requested to “examine the environmental noise impact of cryptocurrency mining equipment additions to their existing ... facility site.” The NIA was issued on December 3, 2021, and a copy of the NIA is provided as Appendix C.<sup>4</sup>

19. In the November NIA, FDI Acoustics measured sound levels at the three nearest residences within 1.5 kilometres (km) from the Red Willow Power Plant and, applying a model to calculate the sound level contribution from the power plant, compared these measures against the permissible sound levels (PSLs) of 50 A-weighted decibels (dBA) for daytime and 40 dBA for nighttime. The NIA concluded that “the cumulative sound levels ... as proposed, are predicted to exceed the daytime and nighttime PSLs of ... AUC Rule 012 at Residence 1 and Residence 2 and exceed the nighttime PSL at Residence 3 ... the facility equipment requires the institution of noise mitigation measures to comply with the PSLs of the regulations.” At the time that the NIA was conducted, not all of the proposed equipment was operational.

20. In December 2021, Enforcement staff received complaints from three nearby residents about the noise from the Red Willow Power Plant. None of these three complainants are the landowner Avila ED spoke with in May 2019. Two of the complainants reside within 1.5 km of the Red Willow Power Plant. The third complainant resides 2.83 km away. In their submissions, the complainants stated that they first noticed the noise in May 2021, and that the noise became increasingly problematic in October 2021, when the additional generating capacity was added. A consolidation of the complainants’ submissions is provided as Appendix D.<sup>5</sup>

21. At Enforcement staff’s request, Avex Energy voluntarily shut down the Red Willow Power Plant on December 22, 2021.

22. An updated NIA was completed by FDI Acoustics in February 2022. In its updated NIA, FDI Acoustics considered both the existing equipment at the site,<sup>6</sup> equipment that Avex Energy proposed to add to the facility<sup>7</sup> and the installation of a silencer on the exhaust outlet of the 2.5-MW generator that had been added in October 2021. The NIA predicted that cumulative

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<sup>4</sup> Appendix C - FDI Acoustics NIA, Avila Red Willow dated December 3, 2021.

<sup>5</sup> Appendix D - Consolidation of the complainants’ submissions.

<sup>6</sup> The existing equipment included the three generators and six crypto-currency mining containers.

<sup>7</sup> The additional equipment proposed was a solar turbine (Solar Turbine Taurus T60 unit with a capacity of 5.2 MW) and two additional crypto-currency mining containers.

sound levels at Residence 2<sup>8</sup> would be compliant with the daytime PSL of 50 dBA but would exceed the nighttime PSL of 40 dBA by 2.6 dBA. Consequently, FDI Acoustics developed a noise control plan that included five mitigation measures which FDI Acoustics concluded were necessary to ensure compliance with Rule 012 at the nearest occupied residence, Residence 2. A copy of the updated NIA dated February 11, 2022, is provided as Appendix E.<sup>9</sup>

23. Avex Energy has taken, and continues to take, steps to implement the recommended measures set out in the updated NIA including the installation of an exterior baffle to help absorb the sound associated with the air inlet and oil cooler for the 2.5-MW turbine and the installation of, and extension to, the 2.5-MW turbine exhaust to baffle and direct the noise away from receptors.

24. Avila obtained confirmation from Alberta Environment and Parks that further assessment activity is not required for the Red Willow Power Plant site, on April 4, 2022. A copy of this confirmation is provided as Appendix F.<sup>10</sup>

25. As of the date of this Settlement Agreement, the Red Willow Power Plant remains shut down.

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

26. Section 11 of the *Hydro and Electric Energy Act* states, that no person shall construct or operate a power plant unless the Commission, by order, has approved its construction and operation. Section 13 of that act states that Section 11 does not apply to a person generating or proposing to generate electricity solely for the person's own use, unless the Commission otherwise directs.

27. Under sections 11 and 13 of the *Hydro and Electric Energy Act*, and Section 1.4.3<sup>11</sup> of the version of Rule 007 that was in effect during the operating period, a person may construct and operate a power plant without prior approval from the Commission provided that:

- (a) The person is generating electric energy solely for that person's own use.
- (b) The person is able to demonstrate that three conditions are satisfied before constructing or operating that power plant. Namely, that (1) the power plant complies with Rule 012, (2) there is no adverse effect on the environment and (3) no person is directly and adversely affected.
- (c) The power plant has a capacity of less than 10 MW.

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<sup>8</sup> Residence 2 was the nearest residence because Residence 1 was not permanently occupied and therefore did not meet the definition for a dwelling unit in Rule 012.

<sup>9</sup> Appendix E - Updated NIA dated February 11, 2022.

<sup>10</sup> Appendix F - Confirmation from Alberta Environment and Parks that further assessment activity is not required for the Red Willow Power Plant site, on April 4, 2022.

<sup>11</sup> Rule 007 was amended on September 1, 2021, and April 25, 2022. Section 4.2 in the April 25, 2022 version of Rule 007, sets out a checklist application that requires an applicant to confirm the same requirements as those in the former Section 1.4.3.

#### **IV Admitted Contravention**

28. For the purposes of the Settlement Agreement, Avex Energy admits and agrees to the following Contravention:

- (a) Avex Energy constructed and operated the Red Willow Power Plant from April 23, 2021 to December 22, 2021, without an approval contrary to the requirements of Section 11 of the *Hydro and Electric Energy Act* and Rule 007.

29. Avex Energy admits that prior to commissioning the Red Willow Power Plant, it did not:

- (a) Conduct an NIA as required by Section 3 of Rule 012.
- (b) Ensure that there was no adverse affect on the environment by applying for or receiving approval under the *Environmental Protection and Enhancement Act* or determine whether the power plant meets the *Alberta Air Emission Standards for Electricity Generation* and the *Alberta Air Emission Guidelines for Electricity Generation*.

30. Avex Energy further admits that the results of the NIAs conducted in November 2021 and February 2022, revealed that the Red Willow Power Plant was predicted to emit cumulative sound levels in excess of the PSLs established under Rule 012.

31. Section 13 of the *Hydro and Electric Energy Act* and Section 1.4.3 of the former Rule 007 also require that the person is generating electric energy solely for their own use, in order to operate without prior approval from the Commission. In the agreed facts, Avex Energy acknowledges that the energy it generated was sold to a third party. Consequently, and based on its understanding of the findings and interpretation of the Commission in the Link Global Decision, Avex Energy admits that it was not consuming this energy solely for its own use.

#### **V Agreed terms and conditions of settlement**

32. 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>12</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.

33. Sections 186(c) and (e) of the *Business Corporations Act* states, *inter alia*, that on the date shown in a certificate of amalgamation “the amalgamated corporation continues to be liable for the obligations of each amalgamating corporation,” and an “... administrative action or

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<sup>12</sup> See for example, Decision 27948-D01-2023: Enforcement Staff of the Alberta Utilities Commission Settlement Agreement with ATCO Gas and Pipelines Ltd., Proceeding 27948, Application 27948-A001, March 7, 2023, Appendix 2 - Settlement agreement, paragraph 31.

proceeding pending ...against an amalgamating corporation may be continued to be prosecuted...against the amalgamated corporation.”

34. The Commission 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 *Alberta Utilities Commission 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.

35. Substantively, the Contravention admitted to by Avex Energy is its failure to obtain Commission approval for the Red Willow Power Plant or meet the legislative requirements to commence operation of the Red Willow Power Plant without prior approval.

36. 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 by the Contravention was the failure to comply with the legislation and associated regulatory requirements as well as the impact that the failure to comply had on nearby residents (s. 4(1)).
- (b) Avex Energy materially benefitted from operating the Red Willow Power Plant for 8 months without approval (s. 4(8)).
- (c) The harm occurred for approximately eight months (April 23, 2021 to December 22, 2021) (s. 4(17)), however, Avex Energy has worked to assess and resolve the noise problem from the time it became aware of the noise complaints (s. 4(23)). In late December 2021, it voluntarily shut down its operations and has been working on completing the recommendations from the February 2022 NIA.
- (d) 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, there was no fraudulent conduct or misrepresentation of material facts, the respondents did not engage in a cover up, resist or ignore Enforcement Staff's inquiry into the Contravention.

37. 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 the Contravention, are not applicable. However, mitigation factors such as the response and cooperation of Avex Energy when made aware of the Contravention do apply.

38. In view of Avex Energy having:

- (a) Ceased operations in December 2021, after becoming aware of the complaints and investigation;
- (b) Taken steps to put in place sound attenuating measures to address the noise exceedance;

(c) Obtained confirmation in April 2022 from Alberta Environment and Parks, that no further assessment is required; and

(d) Cooperated fully with Enforcement staff in the investigation,

the parties jointly request that the Commission issue an order requiring Avex Energy to pay a total penalty of \$241,477, comprised of:

(a) An administrative penalty in the amount of \$10,496 pursuant to sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*; and

(b) Disgorgement in the amount of \$230,981 to nullify, in part, the value of gains acquired from the sale of the electric energy produced from the unlawful operation of the Red Willow Power Plant during the operating period pursuant to Section 63(2)(b) of the *Alberta Utilities Commission Act*, and Section 7 of Rule 013.

39. The penalty amount includes a reduction of 30 per cent in recognition of Avex Energy's admissions of the Contravention which avoids a protracted hearing and facilitate a timely resolution of this matter. The parties agree that the proposed penalty reflects the seriousness of the Contravention and achieves the public interest objectives of public protection, encouraging compliance as well as providing general and specific deterrence.

40. In addition, Enforcement staff have reviewed the financial documents provided by Avex Energy concerning the gross economic benefits earned by Avex Energy through its unlawful operation of the Red Willow Power Plant. After applying a reduction to these gross economic benefits in recognition of the admissions, disclosure and level of cooperation provided by Avex Energy, the parties agree that \$230,981 should be disgorged by Avex Energy to nullify, in part, the economic benefits it received.

41. Sections 63(1)(b) and 63(3) of the *Alberta Utilities Commission Act*, authorize the Commission to direct any action specified in the order. Pursuant to this authority, the parties jointly request that the Commission issue an order:

(a) Requiring Avex Energy to pay the \$241,477 penalty, payable to the General Revenue Fund, in equal monthly instalments of \$6,707.69 with the first instalment payment due within 30 business days of the date of the order. An Electronic Fund Transfer form will be provided to facilitate such payments.

(b) Instructing that a confirmation of all instalment payments are to be delivered to the Commission at the time of any electronic transfer. Please send such confirmation to [enforcement@auc.ab.ca](mailto:enforcement@auc.ab.ca).

**VI General**

42. This Settlement Agreement includes facts admitted to for the purpose of dispensing with formal proof thereof. Avex Energy’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.

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

AGREED TO THIS 2<sup>ND</sup> DAY OF JANUARY 2024.

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Aimee Louie  
Counsel for Avex Energy Inc.

**Laura-Marie Berg** Digitally signed by Laura-Marie Berg  
Date: 2024.01.03 13:38:21 -07'00'

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Laura-Marie Berg  
Counsel, Enforcement Staff  
Alberta Utilities Commission



**VI General**

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AGREED TO THIS 2<sup>ND</sup> DAY OF JANUARY 2024.



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Aimee Louie  
Counsel for Avex Energy Inc.

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Laura-Marie Berg  
Counsel, Enforcement Staff  
Alberta Utilities Commission