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*Emailed to [engage@auc.ab.ca](mailto:engage@auc.ab.ca)*

Alberta Utilities Commission  
Eau Claire Tower  
#1400, 600 Third Avenue SW  
Calgary AB T2P 0G5

**Attention: Nicole Fitz-Simon**

Dear Ms. Fitz-Simon:

**Re: Alberta Utilities Commission (“AUC” or “Commission”) Bulletin 2024-19  
Rule 018: Rules on Negotiated Settlements Amendments and Interim Changes**

On September 13, 2024, the AUC issued Bulletin 2024-19 (the “Bulletin”) announcing its intention to make settlements more accessible and efficient. In the Bulletin, the AUC indicated that it would rescind Rule 018 and incorporate the proposed amendments into Rule 001: *Rules of Practice*. These provisions will set out the steps required to commence a negotiated settlement and what information is required for an application for AUC approval of a settlement agreement. The AUC has also requested stakeholder feedback on two related issues: the potential for Commission-led mediations, and enhanced AUC staff participation in negotiated settlement processes.

ENMAX Energy Corporation and ENMAX Power Corporation (collectively, “ENMAX”) appreciates the opportunity to provide its feedback and supports many of the changes being proposed, including but not limited to, the incorporation of Rule 018 into Rule 001. However as discussed below, ENMAX has some concern regarding Sections 35(5) and 35(8)(g). ENMAX has also provided a blackline of the AUC’s Rule 018 Draft outlining ENMAX’s recommended amendments set out as Appendix A.

### **Proposed Amendments to Settlement Agreements**

The principles and processes for reaching agreements are crucial. It is important for parties to understand the expectations set by the Commission and to ensure that any settlements are transparent, equitable, and supported by relevant data whenever possible. With respect to the proposed rule changes set out in Section 35 (2) to (4),<sup>1</sup> ENMAX regards this as a positive development, assuming the Commission provides timely notice of any excluded matters.

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<sup>1</sup> This involves guidelines on how parties can negotiate and resolve disputes related to rates, possibly under the oversight of a regulatory commission.

[https://media.auc.ab.ca/prd-wp-uploads/regulatory\\_documents/Consultations/2024-09-13-Rule%20018-Draft.pdf](https://media.auc.ab.ca/prd-wp-uploads/regulatory_documents/Consultations/2024-09-13-Rule%20018-Draft.pdf)

Encouraging early negotiation not only saves time and resources but also enhances the likelihood of reaching agreements that are satisfactory to all involved parties. ENMAX is in support of the flexibility being offered to parties to initiate settlement negotiations any time during the course of a proceeding or before an application is filed.<sup>2</sup> The Commission's promotion of settlement negotiations reflects a commitment to finding efficient and effective resolutions to disputes, while encouraging cooperation among the parties involved.

ENMAX recommends that Section 35(5)<sup>3</sup> be removed. Successful negotiations rely on the willingness of all parties to participate and compromise. ENMAX is therefore concerned that if the Commission directs the parties to negotiate where there is a lack of willingness to negotiate, the process may not lead to a settlement and could result in wasted time and resources and ultimately impose unnecessary costs on electricity consumers.

ENMAX recommends that Section 35(8)(g)<sup>4</sup> be removed. A settlement brief may help the Commission assess the appropriateness of the agreement and ensures that all relevant factors are considered in relation to all parties involved. ENMAX is generally supportive of the information that may be requested of the parties to the negotiations. However, Section 35(8)(g) requires that parties provide a clear link between each settled issue and the evidence. This additional clause appears overly restrictive and may be challenging to navigate without inadvertently disclosing positions or information without prejudice.

For example, parties may agree on a price or an input for a model based on strategic considerations, market conditions, or mutual concessions rather than specific data or established evidence. This flexibility is essential for fostering collaborative dialogue and reaching agreements that may not be easily substantiated through formal evidence but are nonetheless practical and beneficial for all involved.

Imposing a requirement for evidentiary support for every term could stifle the negotiation process, making it more rigid and less responsive to the dynamic nature of discussions. This could lead to less effective outcomes and increased regulatory burden, undermining the overall goal of achieving reasonable agreements.

### **AUC Staff Participation**

ENMAX is not in support of AUC participation in negotiations except at the request of the parties to the applicable negotiated settlement process.

While the presence of an AUC observer can enhance the integrity of the process, it may also create an environment that stifles open dialogue, which is crucial for effective settlement

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<sup>2</sup> Draft AUC Rule 018, Section 35(2).

[https://media.auc.ab.ca/prd-wp-uploads/regulatory\\_documents/Consultations/2024-09-13-Rule%20018-Draft.pdf](https://media.auc.ab.ca/prd-wp-uploads/regulatory_documents/Consultations/2024-09-13-Rule%20018-Draft.pdf)

<sup>3</sup> Draft AUC Rule 018, Section 35(5).

[https://media.auc.ab.ca/prd-wp-uploads/regulatory\\_documents/Consultations/2024-09-13-Rule%20018-Draft.pdf](https://media.auc.ab.ca/prd-wp-uploads/regulatory_documents/Consultations/2024-09-13-Rule%20018-Draft.pdf)

<sup>4</sup> Draft AUC Rule 018 Section 35(8)(g).

[https://media.auc.ab.ca/prd-wp-uploads/regulatory\\_documents/Consultations/2024-09-13-Rule%20018-Draft.pdf](https://media.auc.ab.ca/prd-wp-uploads/regulatory_documents/Consultations/2024-09-13-Rule%20018-Draft.pdf)

discussions. The risk that parties may cling to their initial positions due to the observer's presence can indeed shift the tone from collaborative to adversarial, potentially hindering constructive outcomes.

Furthermore, if AUC staff observers are not permitted to disclose any information shared or positions taken during negotiations unless expressly authorized by the negotiating parties<sup>5</sup> the inclusion of AUC staff as an observer appears to be of limited value as parties are already required to submit letters affirming the fairness of the negotiations. This holds especially true as most parties involved in negotiated settlements are experienced sophisticated parties and capable of conducting fair negotiations.

Unless agreed upon by all parties to a negotiation, ENMAX's preference is for a system where the parties can engage directly without oversight. Under the existing framework, ENMAX has been able to reach multiple negotiated settlements with consumer groups.<sup>6</sup> The current framework fosters open and candid discussions among parties, as there is no external oversight. By safeguarding the privacy of negotiations, it fosters an environment where genuine compromise can occur.

Lastly, it should be noted that other jurisdictions such as the Ontario Energy Board ("OEB") and Federal Energy Regulatory Commission ("FERC")<sup>7</sup> that regularly include staff participation have a different framework; in that the regulator's staff represent a distinct party to the negotiations and any recommendations they have, are placed on the public record in hearings allowing parties to respond as applicable. In contrast, Alberta's regulatory construct is set up such that AUC-staff act in an advisory capacity to the Commission and AUC-staff views are not shared with the parties to the proceeding.

### **Commission Led Mediated Settlements**

ENMAX is not supportive of mandatory mediated settlements. As stated earlier, the parties to the negotiations are sophisticated market participants and are generally well-versed in the materials being discussed. However, allowing parties to request a mediator at their discretion can indeed be beneficial as it provides a structured way to address impasses while keeping the process flexible and voluntary.

The characteristics of a mediator can play a pivotal role in shaping the negotiation process. To have an effective mediator they must be viewed as independent and impartial; this perception is essential for building trust among all parties. A mediator must also be well-versed in the relevant issues so that they can lend credibility to the process, as uninformed insights act to disrupt

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<sup>5</sup> Draft AUC Rule 018, Section 35(6).

[https://media.auc.ab.ca/prd-wp-uploads/regulatory\\_documents/Consultations/2024-09-13-Rule%20018-Draft.pdf](https://media.auc.ab.ca/prd-wp-uploads/regulatory_documents/Consultations/2024-09-13-Rule%20018-Draft.pdf)

<sup>6</sup> EPC 2018-2020 GTA (Proceeding 23977), EPC 2021-2022 TCOS (Proceeding 25726), EPC 2023-2025 TCOS (Proceeding 27581), EPC 2023 DCOS (Proceeding 26617), and EEC 2022-2024 RRO Non-Energy Application (Proceeding 27714).

<sup>7</sup> AUC Bulletin 2024-19, "Additional Issues", pdf page 2.

<https://media.auc.ab.ca/prd-wp-uploads/News/2024/Bulletin%202024-19.pdf>

negotiations as one or more of the parties will be required to waste effort and resources educating the mediator. If an appropriate mediator cannot be found, it could potentially stall negotiations and/or reduce the likelihood of a successful outcome. Given the challenges of selecting a competent mediator, ENMAX supports the option of mediated settlements, provided that all parties involved in the negotiation agree to the mediation process. Mandatory mediation of settlements should not be required.

### **Conclusion**

ENMAX's preference is to maintain a clear boundary between AUC's adjudicative function and the negotiation process. The decision to involve AUC staff or an independent mediator in a negotiated settlement process should be made by the parties to a negotiated settlement process rather than being mandated. Allowing parties to decide whether to involve AUC staff or mediators, will foster a more collaborative environment, ensuring that all parties feel comfortable and engaged. Parties should also not be required to demonstrate a clear link between each settled issue and the supporting evidence. Allowing parties the flexibility to negotiate on their terms will lead to more effective communication, greater trust, and ultimately, more beneficial outcomes for customers.

Sincerely,

A handwritten signature in cursive script that reads "Wesley Manfro".

**Wesley Manfro**  
**Regulatory Manager**  
**ENMAX Corporation**

### 35 Settlements

- (1) This section applies to settlements in rates proceedings and any other proceeding that the Commission may direct.
- (2) A party may initiate settlement negotiations at any time during the course of a proceeding or before an application is filed.
- (3) If a party wishes to start settlement negotiations, either during the course of a proceeding or before an application is filed, it must notify the Commission in writing of its intention to do so and provide the Commission with an outline of relevant issues to be resolved.
- (4) Upon receipt of an outline of issues under Section 35.3, the Commission may, on its own initiative or at the request of a party to the settlement negotiations:
  - (a) request further information about any issue; and
  - (b) exclude any issue from settlement negotiations.
- ~~(5) The Commission may direct the parties to a proceeding to participate in settlement negotiations.~~
- ~~(6)~~(5) AUC staff involved in settlement negotiations may advise the Commission as to the fairness of the process but must not otherwise assist the Commission in any proceedings to consider any issue in a settlement agreement, without the express written consent of all parties to the settlement agreement.
- ~~(7)~~(6) If some or all of the parties reach an agreement, the parties shall make and file a settlement agreement with the Commission for its approval.
- ~~(8)~~(7) Unless otherwise directed, a settlement agreement filed with the Commission must include a settlement brief explaining the basis of the settlement and how it meets the interests of the parties and the public interest, including the following information:
  - (a) Evidence of adequate notice to parties that may be directly and adversely affected by the settlement;
  - (b) Confirmation that no party to the settlement agreement withheld relevant information;
  - (c) A list of all the issues addressed in the settlement and a description of all unresolved issues ;

- (d) The rates that result or will result from the settlement, supported by schedules, to assist the Commission in understanding how the rates were derived;
  - (e) A breakdown of any proposed changes to the applied-for revenue requirement at a level of detail sufficient for the Commission to understand the changes;
  - ~~(f)~~—The text of any changes to the terms and conditions of service with supporting information;
  - ~~(g)~~~~(f)~~ ~~Demonstration of a clear link between each settled issue and the evidence;~~ and
  - ~~(h)~~~~(g)~~ Any other information that the Commission may direct.
- ~~(9)~~~~(8)~~ The Commission shall issue notice of its receipt of a settlement agreement in accordance with Section 9.
- ~~(10)~~~~(9)~~ The Commission shall consider a settlement agreement in accordance with Part 6.