

Final comment matrix for the revision of Rule 018: *Rules on Negotiated Settlements*

Feedback from interested parties	Commission response
<p>Section applies in rates proceedings and any other proceeding that the Commission may direct [35(1)]</p> <ul style="list-style-type: none"> • The proposed change adds some helpful flexibility to the existing rules. Agree that a determination on whether a particular non-rate application is suitable for a negotiated settlement should be left to the Commission panel assigned and addressed on a case-by-case basis [EPCOR] • The proposed changes... removes the requirement for Commission approval, but section 35(1) implies that for “other proceedings” a Commission direction may be required. If the Commission intends that parties use a different process for non-rates proceedings, it would be helpful if the AUC rules specified the process [EPCOR] 	<ul style="list-style-type: none"> • The Commission’s aim is flexibility, rather than prescriptiveness, particularly for non-rates proceedings. • If the Commission intends to apply this section to a non-rates proceeding, it will inform parties. • Parties can always contact the AUC and seek guidance. • The Commission has added a clarification that this section shall not apply to enforcement proceedings to remove any doubt.
<p>Initiating settlement discussions without the Commission’s approval, notify Commission and provide outline of relevant issues [35(2), 35(3)]</p> <ul style="list-style-type: none"> • General agreement [UCA, ATCO, EPCOR] • [Re 35(3)] Request clarity on who can submit a notification and whether this notification is required to be a joint submission between the utility and interveners. Request additional clarity regarding who is to be included in settlement discussions, e.g. all parties that may be directly and adversely affected by a utility's rates [ATCO] 	<ul style="list-style-type: none"> • The Commission has clarified that it is the applicant’s responsibility to notify the Commission. • The Commission has also added a requirement that the applicant should provide both an outline of issues to be negotiated and the names of parties that will participate in settlement negotiations. • As in the prior version of Rule 018, the applicant remains responsible to provide the Commission with evidence that adequate notice of the intention to enter into settlement negotiations was provided to interested parties (see Section 35.7(a)).
<p>Commission may request information about or exclude issues [35(4)]</p> <ul style="list-style-type: none"> • Changes set out in sections 35(2) to (4) a positive development, assuming the Commission provides timely notice of excluded matters [ENMAX] • Concern with proposal: inefficient, forcing certain matters to fully litigated process, distorts negotiation [Fortis, ATCO] <ul style="list-style-type: none"> ○ These provisions would delay and impede the negotiation process by introducing information requests before negotiations are launched [FortisAlberta] 	<ul style="list-style-type: none"> • The Commission has made no substantive changes to Section 35.4.

<ul style="list-style-type: none"> ○ The more efficient way to set out subsection 35(4) would be to: (a) allow the Commission to direct that certain other information pertaining to issues of specific interest be included in the negotiated settlement submissions, and (b) allow the Commission to exclude certain issues [FortisAlberta] • If issues are excluded, should be identified by Commission as early as possible or on a specified timeline (e.g. 10 days, 7 days) [ATCO, Apex] 	
<p>Commission may direct parties to participate in settlement negotiations [35(5)]</p> <ul style="list-style-type: none"> • Concern with this provision. Parties need to be willing to participate in negotiation process [ENMAX, FortisAlberta, ATCO, Apex, EPCOR] • If Section 35(5) is intended to direct interveners to negotiate once an applicant has indicated its intention to pursue negotiation, further clarification is warranted [FortisAlberta] • submit that subsection (5) be amended as follows: (5) The Commission may direct the parties to a proceeding to participate in settlement negotiations. <i>When parties are so directed, the Commission shall identify the issues to be considered for settlement and the timeline within which the parties must proceed</i> [EPCOR] 	<ul style="list-style-type: none"> • The Commission has removed this provision. It is unnecessary to include this provision as the Commission can issue this direction under Section 2 of Rule 001.
<p>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 [35(7)]</p> <ul style="list-style-type: none"> • Concern with how dissenting views will be handled by the Commission [FortisAlberta] • Suggest that the clarity provided within Rule 018 6(5), that it is the applicant who is required to file the settlement agreement and who bears the onus of ensuring sufficient evidence, is included within the Amendments [ATCO] 	<ul style="list-style-type: none"> • The Commission has revised this provision to clarify that the applicant is responsible for filing. • The Commission has added a provision clarifying that the onus to provide sufficient evidence remains on the applicant at Section 35.8. • Parties retain the ability to file a settlement agreement where one or more parties do not consent.
<p>Settlement briefs</p> <ul style="list-style-type: none"> • Generally supportive of the information that may be requested of parties to negotiations [ENMAX] <p>35(8)(a) - evidence of adequate notice to parties that may be directly and adversely affected by settlement agreement</p> <ul style="list-style-type: none"> • Concern that the addition of “parties that may be directly and adversely affected by the settlement” includes a standing test [FortisAlberta, ATCO, Apex] <p>35(8)(b) - confirmation no party to the settlement agreement withheld relevant information</p>	<p>35.7(a)</p> <ul style="list-style-type: none"> • The Commission has used the term “interested parties”. The applicant remains required to provide evidence that adequate notice was provided. <p>35.7(b)</p> <ul style="list-style-type: none"> • The Commission confirms that no different process is intended. <p>35.7(d)</p>

<ul style="list-style-type: none"> Typically, confirmation is included as a clause within the settlement agreement itself. If the Commission intends that this confirmation be satisfied through affidavits or another formalized process, this should be explicitly stated in the rule [FortisAlberta] <p>35(8)(e) - a breakdown of any proposed changed to the applied-for revenue requirement...</p> <ul style="list-style-type: none"> Section 35.8(e) and (g) assumes that negotiations take place after an application has been submitted. This is contradictory to Section 35.2. More flexible wording for 38(e) could read “<i>An explanation of how the agreed-upon revenue requirement has been determined</i>” to allow for a pre-application settlement” [ATCO] <p>35(8)(g) - demonstration of a clear link between each settled issue and the evidence</p> <ul style="list-style-type: none"> Proposed section 35(8) may be useful and it appears to go further in linking evidence in support of the issues than the requirement in section 6 in Rule 018 [see 35(8)(g)]. This is in alignment with intervener evidence being filed prior to negotiated settlement processes [UCA] Concern with restrictiveness of clear link between settled issue and evidence [ENMAX, Fortis, ATCO, AML, Apex] Require further clarification with respect to subsection (8g). It is not clear if this provision intends to modify current practices or if this provision merely reflects current practice. If intends to modify the approach to settlement briefs parties currently file, further clarification of the Commission’s requirements are needed [EPCOR] <p>35(8)(h) - any other information the Commission may direct</p> <ul style="list-style-type: none"> Concern that this is overly vague [ATCO, Fortis] 	<ul style="list-style-type: none"> The Commission has added language clarifying that billing impacts by rate class should also be included. <p>35.7(e)</p> <ul style="list-style-type: none"> The Commission has added language to clarify what information on revenue-requirement must be filed when the settlement arises pre-application. <p>35.7(g)</p> <ul style="list-style-type: none"> The Commission has removed this proposed requirement and replaced it with a provision on the applicant’s evidentiary onus (see Section 35.8). <p>35.7(h) [now 35.7(g)]</p> <ul style="list-style-type: none"> The Commission has kept this requirement, which was also present in the prior version of Rule 018.
<p>[NEW] Mediation or negotiation brief</p> <ul style="list-style-type: none"> Consider inclusion in Rule 001 of a requirement that a mediation or negotiation brief be filed by the intervener group ahead of the mediation or negotiation with a view to... among other things, scoping the issues to be negotiated and avoiding relitigation of settled issues [AML] Suggest this brief include, among other things, identification of intervener issues and positions and the parties’ settlement proposals.... previously raised during consultation on the transmission tariff proceedings [AML] 	<ul style="list-style-type: none"> The Commission will not be implementing this suggestion at this time. Further public consultation would be required to consider this suggestion.

<p>[NEW] Negotiation timelines</p> <ul style="list-style-type: none"> • Of late, the Commission has approved very short timelines for negotiation of major tariff applications... slightly longer timeframes (e.g., three weeks rather than two) would allow parties to more carefully and fully consider their positions, and could increase the likelihood of comprehensive and unanimous negotiated settlements being reached [EPCOR] 	<ul style="list-style-type: none"> • The Commission has not added any timeframe for negotiations to the Rule. Parties to a proceeding may request a timeframe for negotiations.
<p>Commission shall consider a settlement in accordance with Part 6 [Subsection 35(10)]</p> <ul style="list-style-type: none"> • As currently drafted, consideration of a settlement agreement pursuant to Part 6 suggests that a negotiated settlement may be subject to a full Commission proceeding including evidence, information requests and argument [FortisAlberta] • Suggest updating Part 6 of Rule 001 to reflect that upon receipt of a settlement agreement the Commission may proceed to making a decision, pursuant to section 49 of Rule 001, on a settlement agreement without further process [FortisAlberta] • If a settlement is unopposed, it be permissible for the Commission to approve it without a hearing, if appropriate. This is suggested under the current Rule 018, Section 8, Unanimous or Unopposed Settlement. Suggest this concept still be contemplated in the amended Rule 001, and that the Commission only intervene if a unanimous/unopposed settlement is “patently against the public interest or contrary to law” [ATCO] 	<ul style="list-style-type: none"> • The Commission has added the following wording at 35.10: “The Commission shall consider a settlement agreement in accordance with Part 6, and may approve without further process a unanimous or unopposed settlement agreement if it determines that the settlement agreement is in the public interest.”
<p>Commission-led mediations</p> <ul style="list-style-type: none"> • Generally unsupportive, inefficient, complicated, changes dynamics [UCA, ENMAX, Fortis, ATCO, Apex, EPCOR] • Allowing parties to request a mediator at their discretion can be beneficial [ENMAX]. • Question whether a Commission or staff-led mediated settlement framework is logistically feasible with the current number of Commission members, which is legislatively limited to nine members, and the current staffing levels at the Commission [FortisAlberta] • UCA’s participation provides the involvement the Commission is proposing [ATCO] • An amenable solution could be to have Commission-led mediation services only if requested and required, and only on unresolved matters [ATCO] • Mediations can be a successful and effective tool in tariff proceedings. It is essential that mediations have clear guidelines and parameters to be as effective and efficient as possible [AML] • Commission should take steps to ensure the mediation process is not used by parties to expand the scope of the proceeding, to treat issues as though the 	<ul style="list-style-type: none"> • The Commission considered this preliminary feedback and will consider developing a proposed framework for these processes and requesting further feedback in the future.

<p>Commission has never addressed them in the past, or more generally to relitigate issues [AML]</p> <ul style="list-style-type: none"> • [Recommend] A mediation or negotiation brief to improve specificity in issue scoping and provide parties with advance notice of positions and proposals [AML] • [Recommend] The Commission provide greater clarification and guidelines as to the purpose, process and parameters of the Commission-led mediation. Clarity is critical. [AML] • [Recommend] Commissioners or senior AUC staff receive formal mediation training [AML] • [Recommend] Further clarity on how the Commission will ensure the mediation process does not become a mini-hearing [AML] 	
<p>AUC staff participation as observers or participants in negotiated settlement processes (see also 35(6))</p> <ul style="list-style-type: none"> • Unsupportive. Presence of Commission staff may inhibit dialogue, put pressure on participants. Unclear what benefit staff would provide [UCA, ENMAX, ATCO, EPCOR] • Commission staff participation may be of benefit in specific situations at the request of parties [UCA, ENMAX] • Generally supportive of AUC staff participating as a fairness advisory or observer to negotiation. No issue with subsection 35(6) of the proposed rule [FortisAlberta] • Potential value in staff taking on an expanded role in future. Such participation could include a limited advisory role that provides participants with important insights into aspects of a settlement discussion that are likely to prove more or less critical when negotiated outcome is laid before the Commission for approval [FortisAlberta] • A clearly defined new role for AUC staff participating in negotiated settlements could be valuable as a means of helping participants maintain focus on positions and analysis that are grounded in Commission precedent. Ensure that negotiated outcomes more likely to respect AUC policy [FortisAlberta] • A staff arm that makes submissions to the Commission may contribute to reduced future Commission reliance on intervener groups who advance specific interests that do not necessarily reflect the public interest [FortisAlberta] • Sufficient safeguards must be implemented to ensure settlement discussions remain confidential and AUC staff involved in settlement process to not communicate directly with Commission members that will ultimately decide an application. This would require development of documents and processes similar to those in the AUC 	<ul style="list-style-type: none"> • The Commission considered this preliminary feedback and will consider developing a proposed framework for these processes and requesting further feedback in the future.

Investigations and Enforcement Proceedings Communication Protocol and Bulletin 2016-2010 [FortisAlberta]

- Value in the Commission's involvement in the negotiated settlement process; however, it requires further clarity on how the Commission views the process working [AML]
- Seeks to better understand whether the Commission has existing concerns about fairness of the process... negotiations have been fair and all parties have submitted letters to Commission stating such [AML]
- Recommend the Commission establishes clear protocol for participation in the negotiations. Concerned there may be a cooling effect with the Commission participating. Want to ensure that all parties continue to negotiate with each other rather than the Commission [AML]
- The AUC could consider requiring, similar to Rule 4.18(1)(b)(v) of the Alberta Rules of Court, that parties to a negotiated settlement proceeding agree beforehand as to the role of AUC staff or Commissioner, and any expected outcome of that role [AML]
- Recommend AUC consider allowing parties to negotiations to request a certain AUC staff member or commissioner named by the parties to participate, similar to 4.18 of the [AB] Rules of Court [AML]
- Recommend the Commission clarify how they plan to approve a settlement agreement if Commission staff or another Commissioner is a signatory [AML]
- Recommend [any] participation of Commission staff or Commissioners is constrained to participating in discussion of issues or technical portions... and excluded from discussions specifically related to settlement terms [AML]
- Like under Rule 4.21(1) of the Alberta Rules of Court, AUC Rule 001 should clarify that any Commissioner who participates in the negotiated settlement proceeding must not hear or decide any subsequent proceeding related to the application without the written agreement of every party and the agreement of the Commissioner [AML]