

October 25, 2024

**Filed on AUC Engage**

Alberta Utilities Commission  
Eau Claire Tower  
1400, 600 Third Avenue S.W.  
Calgary, AB T2P 0G5

**Attention: Nicole Fitz-Simon**

Dear Nicole Fitz-Simon:

**RE: Bulletin 2024-19 Consultation on AUC Rule 018 amendments, settlement issues and interim change**

AltaLink appreciates the ongoing efforts of the Alberta Utilities Commission (the AUC or Commission) to streamline processes for regulatory proceedings. AltaLink has received Bulletin 2024-19 and is supportive of the proposed amendment to AUC Rule 001 and the rescindment of AUC Rule 018. AltaLink provides the below comments on both the proposed draft amendments to AUC Rule 018 and the two related issues of the potential for Commission-led mediations and enhanced AUC staff participation in negotiated settlement processes.

Draft Amendments to AUC Rule 018

AltaLink appreciates and supports the consolidation of AUC Rule 018 within AUC Rule 001.

AltaLink provides the following specific comments on the draft amendments to AUC Rule 018:

- In the proposed section 35(4), there is reference to section 35.3; however, AltaLink is unable to find section 35.3 in the existing or proposed revised AUC Rule 001. AltaLink seeks clarification on which section the Commission is referencing in this regard.
- AltaLink would appreciate clarification as to what the Commission requires in a settlement brief and specifically what is required to establish “clear link between each settled issue and the evidence” in section 35(8)(g). In AltaLink’s experience, the nature of settlements often requires compromises between issues: requiring detailed linkages and evidence may be unnecessary and could stand to inadvertently inhibit the negotiation process and the overall effectiveness of same. Accordingly, and given the necessarily confidential and commercial nature of settlement negotiations, AltaLink suggests revising section 35(8)(g) to more broadly require parties to “demonstrate that each settled issue relates to the application before the Commission”.
- Finally, AltaLink recommends that the Commission consider inclusion in AUC 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 creating efficiencies and streamlining effective process by, among other things, scoping the issues to be negotiated and avoiding re-litigation of settled issues. AltaLink suggests that this brief include, among other things, identification of intervener issues and positions and the parties’ settlement proposals. AltaLink has previously raised this suggestion during the consultation on the transmission

tariff proceedings and recommends that if the Commission believes this step to be a benefit to process that it is included in proposed section 35 of AUC Rule 001.

#### Commission-led mediated settlement

AltaLink appreciates that mediations can be a successful and effective tool in tariff proceedings. In AltaLink's experience, however, it is essential that mediations have clear guidelines and parameters in order to be as effective and efficient a process as possible. The Commission should take steps to ensure that the mediation process is not used by parties to expand the scope of the proceeding as defined by the Commission, to treat issues as though the Commission has never addressed them in the past, or more generally to re-litigate settled issues. To this end, AltaLink provides the following recommendations:

- A mediation or negotiation brief, as discussed above, be required as it will be a benefit to all parties to improve specificity in issue scoping and provide the parties with advance notice of parties' positions and proposals.
- The Commission provide greater clarification and guidelines as to the purpose, process, and parameters (for e.g., issues to mediated) of the purpose of the Commission-led mediation. As mentioned, clarity regarding this expected process is critical so that parties can effectively participate in mediation and specifically that settled issues are not revisited.
- AltaLink recommends that the parties be provided the opportunity to first reach a negotiated settlement of issues not excluded by the Commission. Thereafter, the parties may request Commission-led mediation of certain remaining issues. Such a process would allow for a more focused mediation of targeted issues, rather than a global mediation of all issues that may ultimately prove unnecessary or become an unwieldy, inefficient, and ineffective process in practice.
- Commissioners or senior AUC staff receive formal mediation training.
- Further clarity on how the Commission will ensure that the mediation process does not become a "mini-hearing" in which the Commission plays an outsized role.

#### AUC participation as observer or participant in negotiated settlement process

AltaLink appreciates that the current AUC Rule 018 already provides for the participation of the Commission in the negotiated settlement process and that in other jurisdictions regulators and their staff may participate in negotiated settlement process. As with the above mediation topic, AltaLink sees value in the Commission's involvement in the negotiated settlement process; however, it requires further clarity on how the Commission views the process working. AltaLink provides the following recommendations or comments:

- AltaLink seeks to better understand whether the Commission has existing concerns to be addressed about the fairness of the process. In AltaLink's experience, the negotiations it has participated in have been fair and all parties have submitted letters to the Commission stating such.
- AltaLink recommends that the Commission establishes clear protocols for participation in the negotiations. AltaLink is concerned that there may be a "cooling effect" on negotiations with the Commission participating in the negotiations. Additionally, AltaLink wants to ensure that all parties continue to negotiate with each other rather than with the Commission. The AUC could consider requiring, similar to Rule 4.18(1)(b)(v) of the Alberta Rules of Court

(Rules of Court), that the parties to a negotiated settlement proceeding agree beforehand as to the role of AUC staff or Commissioner, and any outcome expected of that role.

- AltaLink recommends that the AUC consider allowing parties to the negotiations to request a certain AUC staff member or Commissioner named by the parties to participate in the process, similar to 4.18(3) of the Rules of Court.
- AltaLink recommends the Commission clarify how they plan to approve a settlement agreement if Commission staff or another Commissioner is a signatory of the negotiated settlement agreement. AltaLink recommends that if there is participation of Commission staff or Commissioners that it is constrained to participating in the discussion of issues or technical portions, and that Commission staff or Commissioners are excluded from discussions specifically related to settlement terms. Further, 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.

AltaLink appreciates the opportunity to provide comments on the AUC Bulletin 2024-19 and the Commissions' ongoing efforts to continue to streamline regulatory proceedings.

Should you have any questions or concerns please contact the below at [emily.denstedt@altalink.ca](mailto:emily.denstedt@altalink.ca) or 403-365-7619.

Sincerely,

  
Emily Denstedt (Oct 25, 2024 15:45 MDT)

Emily Denstedt  
Director, Law & Compliance