

October 25, 2024

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

Attention: Nicole Fitz-Simon

Re: AUC Bulletin 2024-19 – Rule 018 Amendments, Settlement Issues and Interim Change

In accordance with the Commission's Bulletin 2024-19 dated September 13, 2024, please find enclosed ATCO's (ATCO Electric Transmission, ATCO Electric Distribution, ATCO Gas, and ATCO Pipelines) written feedback regarding the draft amendments to Rule 018.

Should you have any questions, please do not hesitate to contact the undersigned.

Yours truly,

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ATCO FEEDBACK ON PROPOSED AMENDMENTS TO RULE 018

PROPOSED AMENDMENTS

The proposed amendments are designed to make negotiations less burdensome and better reflect current settlement practices and processes.

One material change proposed is to rescind Rule 018 and incorporate the proposed amendments as provisions into [Rule 001](#): Rules of Practice. Those provisions will outline the simple steps necessary to commence a negotiated settlement process and specify the information that must be included in a settlement agreement to be filed with the Commission for approval. The AUC is proposing to remove a number of existing provisions from Rule 018 because they are duplicative of processes already described in the following:

- The statutory framework (the requirements that approval of a settlement must result in rates that are just and reasonable and that a settlement must not be contrary to law or patently against the public interest).*
- Rule 001 (descriptions of various hearing requirements for partial or complete settlements).*
- Rule 022: Rules on Costs in Utility Rate Proceedings (costs related to settlements).*

If implemented, the proposed amendments would replace Section 35.1 of Rule 001 which currently states:

35.1 Where the parties engage in a settlement process as set out in Rule 018: Rules on Negotiated Settlements, the provisions of that rule govern the settlement process.

ATCO RESPONSE

Please see the table below for ATCO's comments on the proposed Amendments to Rule 001: Rules of Practice.

AUC Draft Amendments	ATCO Response
35(1) This section applies to settlements in rates proceedings and any other proceeding that the Commission may direct.	No comment.
35(2) A party may initiate settlement negotiations at any time during the course of a proceeding or before an application is filed.	ATCO supports the flexibility to initiate settlement negotiations at any time in a proceeding, or before an application is filed.
35(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.	ATCO requests clarity on who can submit a notification and whether this notification is required to be a joint submission between the utility and interveners. ATCO also requests 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.
35(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:	<p>ATCO is concerned that directions to exclude items from the scope of negotiations adversely affects the effectiveness of negotiations. With excluded items, the utilities may still be required to go through a hearing process in relation to those items, which adds administrative burden to the process and may reduce the incentive to pursue a negotiated settlement. Removing the ability to exclude items from negotiations does not diminish the Commission's ability to review or approve the Negotiated Settlement and ensure it results in just and reasonable rates and is in the public interest.</p> <p>Should excluded issues be permissible within the Rule 001 Amendments, ATCO submits that the excluded items be identified by the Commission as early as possible in the proceeding, such as was done within AET's 2023-2025 GTA where the Commission identified these exceptions concurrently with the filing of the issues list¹. This ensures all parties have the necessary information to prepare and proceed with negotiation discussions.</p>
(a) request further information about any issue; and	
(b) exclude any issue from settlement negotiations.	

¹ Exhibit 27062-X0273

AUC Draft Amendments	ATCO Response
<p>35(5) The Commission may direct the parties to a proceeding to participate in settlement negotiations.</p>	<p>ATCO supports encouragement from the Commission for parties to participate in settlement negotiations; however, ATCO suggests that if parties are directed to negotiate, it may result in parties approaching the negotiation as a procedural obligation as opposed to a voluntarily entered process, whereby participants are already motivated by the prospect of reaching a negotiated resolution on their own accord. In ATCO's view, compelling negotiations could possibly result in longer negotiation times, a reduced prospect of success, and ultimately less efficiency. As such, ATCO does not agree the Commission should be able to direct parties in this regard.</p> <p>ATCO also requests clarity that if this revision is enacted in the amended Rule 001, the Commission would not have authority to direct the parties to reach an agreement.</p>
<p>35(6) 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.</p>	<p>ATCO has provided comments on AUC staff involvement in settlement negotiations as part of "Additional Issues" below.</p>
<p>35(7) 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.</p>	<p>ATCO suggests 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.</p>
<p>35(8) 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:</p>	<p>With respect to Section 35.8(a), ATCO suggests that further guidance is required from the Commission regarding who it considers are parties that may be directly and adversely affected. Where negotiations commence after the filing of an application and the Commission has ruled on standing, ATCO submits that the rule could specify that notice be provided to parties who were granted participatory rights in the</p>

AUC Draft Amendments	ATCO Response
(a) Evidence of adequate notice to parties that may be directly and adversely affected by the settlement;	<p>proceeding. If negotiations commence prior to the filing of an application, ATCO submits that the Commission is best suited to determine the parties that may be directly and adversely affected by the settlement negotiations. In that situation, it is suggested that a process be established for the Commission to identify parties who may be directly and adversely affected and to whom notice must be provided.</p> <p>The proposed language included in Section 35.8(e) and (g) assumes that negotiations take place after an application has been submitted. This is contradictory to Section 35.2, which states that negotiations can take place prior to an application being filed. ATCO suggests that if these amendments are enacted, more flexible wording for Section 35.8(e) could read “<i>An explanation of how the agreed-upon revenue requirement has been determined</i>” to allow for the possibility of a pre-application settlement.</p> <p>Regarding 35.8(g), ATCO submits that linking each settled issue to evidence may not be possible and may not reflect the negotiated settlement process. The negotiation process often includes a number of gives and takes to arrive at a resolution, which are intended, when taken together, to result in just and reasonable rates. For example, ATCO disagrees that the reasoning for a utility agreeing to a reduction in forecast expenses should form part of the requirements for a successful negotiated settlement.</p> <p>Should the Commission require more information regarding a settled issue, it retains the ability to ask for additional information under 35.8(h). In a scenario where a settlement is reached prior to submission of a rates application, there may not be “evidence” <i>per se</i>.</p> <p>ATCO suggests the current language used within Rule 018 Section 6 in this regard is sufficient.</p>
(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) Demonstration of a clear link between each settled issue and the evidence; and	
(h) Any other information that the Commission may direct.	

AUC Draft Amendments	ATCO Response
35(9) The Commission shall issue notice of its receipt of a settlement agreement in accordance with Section 9.	No comment.
35(10) The Commission shall consider a settlement agreement in accordance with Part 6.	ATCO submits that 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, <u>Unanimous or Unopposed Settlement</u> . ATCO suggests if the entirety of Rule 018 is to be rescinded, that 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”.

ADDITIONAL ISSUES

The Commission is additionally seeking stakeholder feedback on two related issues: the potential for Commission-led mediations, and enhanced AUC staff participation in negotiated settlement processes.

Commission-led mediated settlements

In many jurisdictions, non-binding, mediated settlement services are provided by the regulators themselves. For example, in California, some administrative law judges provide mediation guidance as “alternate dispute resolution neutrals.” This guidance is non-binding, and many resultant settlements require approval from a separate administrative law judge; however, the program has been successful in resolving or focusing disputes in front of the California Public Utilities Commission.

The Commission is interested in feedback from stakeholders about the potential for Commission members or senior AUC staff to mediate settlements or provide neutral settlement evaluations. In both instances, the participating Commission member or AUC staff would provide their non-binding views on relevant issues and potential settlements proposed by the parties. The participating Commission member or staff member would keep confidential their discussions with the parties to the settlement and play no role in the review of any resulting settlement.

AUC staff participation as observers or participants in negotiated settlement processes

Regulatory staff in some jurisdictions directly participate in negotiated settlement processes on rate-related matters (ex., Ontario Energy Board, Federal Energy Regulatory Commission). The Commission is interested in stakeholder feedback on the role of AUC staff in negotiated settlement processes, including a potentially expanded role of staff in settlements either as observers or as participants.

The current Rule 018 and the proposed amendments allow AUC staff to attend settlement meetings. Absent parties’ consent, AUC staff that attend negotiations are then limited to advising the Commission on the fairness of the process and may not participate in Commission proceedings arising from or related to the issues in the negotiated settlement. AUC staff have been involved as Commission observers in negotiations in the past, but this is no longer the current practice. The Commission is interested in stakeholders’ views on whether AUC staff attending negotiations should be resumed and, if so, the role AUC staff should play in the settlement process.

Alternatively, AUC staff could participate in settlement negotiations as a party to the settlement, with a view to filing a staff submission. Using this model, staff would participate in settlement discussions and in any subsequent approval process in front of the Commission. Much like AUC Enforcement staff in an enforcement proceeding, AUC staff participating in the settlement process would be prohibited from communicating with the Commission panel and AUC staff assigned to the proceeding. The Commission is interested in stakeholders’ views on this approach.

ATCO RESPONSE

ATCO has reservations related to Commission-led mediated settlements, as well as the involvement of Commission staff as observers to or participants in the negotiation process. In ATCO's experience, negotiated settlements have not resulted in contentious disputes requiring mediation, and ATCO believes adding an additional party to negotiations could negatively impact a proceeding due to the following:

- Adding additional complexity by increasing parties' reliance on the Commission, which could extend the timeline of discussions and result in a slower resolution;
- A mediator's role could have limited impact on advancing the negotiations due to the non-binding nature of the services; and
- Without a mediator, parties may be more motivated to engage in more creative problem-solving. The involvement of the Commission and a more structured approach to negotiations could restrict this flexibility.

Also, ATCO suggests that the UCA's participation in settlement negotiations provides the involvement the Commission is proposing. As a part of the Ministry of Affordability and Utilities, the UCA's involvement brings in a government body to negotiations to ensure fair, transparent utilities markets for Albertans.

ATCO proposes that if the Commission moves forward with one of the options above, an amenable solution could be to have Commission-led mediation services only if requested and required, and only on unresolved matters. For example, Commission personnel would not be present for the entirety of negotiations and would be called upon only if requested by the parties to address a specific issue. This would ease the workload for the Commission as any involvement would require Commission personnel to be briefed on a specific issue, rather than the entirety of the Application.