

October 25, 2024

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

Attention: Nicole Fitz-Simon

**Re: Bulletin 2024-19: Rule 018 amendments, settlement issues and interim change
Feedback from Apex Utilities Inc. (Apex)**

On September 13, 2024, the Alberta Utilities Commission (AUC or Commission) issued Bulletin 2024-19 and invited feedback on its proposed amendments to Rule 018. The Commission also sought feedback on the potential for Commission-led mediations, and enhanced AUC staff participation in negotiated settlement processes. Apex appreciates the opportunity to provide stakeholder feedback on these proposed amendments.

In general, Apex is supportive of the Commission's intention to make settlements more accessible and efficient. Apex also has no concerns with the Commission's proposal to rescind Rule 018 and incorporate the proposed amendments into Rule 001: *Rules of Practice*. However, Apex does have comments with respect to specific amendments proposed by the Commission, as follows.

Commission proposed amendments to settlement rules

Commission amendment:

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:

(a) request further information about any issue; and

(b) exclude any issue from settlement negotiations.

Apex comments:

Apex recommends that the Commission consider implementing a timeline for potential exclusion of issues, to ensure that parties receive adequate notice of exclusions prior to investing in a

negotiated process. In order for the negotiated settlement process to be worthwhile and efficient, participants will benefit from certainty around which issues are approved for negotiation. For instance, the Commission might consider the following amendment:

(b) exclude any issue from settlement negotiations, within 10 days of receipt of the outline of issues.

Commission amendment:

35(5) The Commission may direct the parties to a proceeding to participate in settlement negotiations.

Apex comments:

Apex is not in favour of this amendment, and recommends it be excluded from the revision.

A fundamental characteristic of negotiation is voluntary participation. Participants must have a common interest in resolving a matter, and be willing to accept a compromise on certain issues in order to preserve their interests on a related issue. It is unlikely that an efficient outcome can be achieved with a forced negotiation where one or more participants are coming to the table involuntarily and/or in bad faith.

Commission amendment:

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:

(a) Evidence of adequate notice to parties that may be directly and adversely affected by the settlement;

Apex comments:

Apex is not in favour of this amendment, and recommends it be excluded from the revision.

Although participants in a negotiation can control the sufficiency of notice given, the determination of which parties may be directly and adversely affected by a settlement lies within the purview of the Commission-administered standing test. Given that the Commission is an independent body charged with upholding the public interest in the regulatory process, it is best positioned to make these determinations.

Commission amendment:

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:

(g) Demonstration of a clear link between each settled issue and the evidence;

Apex comments:

Apex is not in favour of this amendment, and recommends it be excluded from the revision.

Negotiations inherently involve a process of give and take, where parties make concessions to achieve a mutually beneficial outcome. This dynamic ensures that each side's priorities are balanced, incentivising a collaborative environment. Given that successful negotiations require compromise, it is expected that there will not always be a clear link between a settled issue and the evidence. This is the nature of negotiated settlements.

If the Commission is to require a clear link between each settled issue and the evidence, then the efficiencies of a negotiated settlement are lost, and the parties ought to proceed to a Commission hearing in order to obtain such clear links.

“Commission-led mediated settlements” and “AUC staff participation as observers or participants in negotiated settlement processes”

While Apex appreciates the Commission’s intention to make settlements more accessible and efficient, it is not clear how Commission-led mediated settlements or AUC staff participation will facilitate this goal.

Apex is cognizant that as the negotiated settlement process takes on more rules and Commission direction, the process more closely begins to approximate a Commission hearing. Accessibility and efficiency in the negotiated settlement process require a reduction in red tape. Increasing the Commission’s role in these steps suggests an increase in complexity of the process, and therefore an increase in red tape.