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

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

A. EPCOR’s General Comments on Negotiated Settlements

1. EPCOR Distribution & Transmission Inc. (“EDTI”) and EPCOR Energy Alberta (“EEA”) (collectively “EPCOR”) submit the following feedback to the Alberta Utilities Commission (“AUC”) on the draft amendments, settlement issues and interim change related to Rule 018.

2. In general, EPCOR is supportive of the Commission’s negotiated settlement process. The process offers numerous benefits including the potential for cost savings by avoiding hearings, quicker resolutions of disputed matters and co-operative and creative problem solving. Both EDTI and EEA have previously participated in settlement processes which have resulted in reasonably efficient and cost effective resolutions. EPCOR has noted of late that the Commission has approved very short timelines for negotiation of major tariff applications. In EPCOR’s view, Alberta has also seen a greater number of partial negotiated settlements and non-unanimous settlements than previously, which may be the result, in part, of the more compressed negotiation timelines. While compressed timelines certainly drive those involved to focus their efforts, EPCOR considers that slightly longer timeframes (e.g., three weeks rather than two) would allow parties to more carefully and fully consider their positions, and could, for example, increase the likelihood of comprehensive and unanimous negotiated settlements being reached in the future.

B. Rescind Rule 018 and Incorporate Proposed Amendments as Provisions into Rule 001: Rules of Practice

3. EPCOR is supportive of the AUC’s removal of section 4 of the current version of Rule 018 requiring formal Commission approval to commence settlement negotiations.

4. With respect to provisions in proposed section 35 of Rule 001, EPCOR provides the following specific comments:

- a. 35(1): This section has the potential to expand the current availability of settlements to applications beyond rate or tariff applications. The proposed change adds some helpful flexibility to the existing rules and may make the negotiated settlement process available to other suitable application types. EPCOR agrees that a determination on whether a particular non-rate application is suitable for a negotiated settlement should be left to the Commission panel assigned to the application and addressed on a case-by-case basis based on the specific attributes and circumstances of the application in question.

For settlements in relation to “other proceedings that the Commission may direct”, it is not clear how s.35 will apply. The proposed changes to the rules for negotiated settlements 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.

- b. 35(4): Subsection (4) gives the Commission discretionary authority to either request further information about an issue identified for resolution or to exclude an issue from settlement negotiations but there is no specified timeframe within which the Commission can exercise this authority. To provide all parties with greater certainty, EPCOR proposes that subsection 35(4) be amended to include the italicized text below.

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 *and within 7 days of either the receipt of the outline of issues or the request of a party*:

- i. request further information about any issue; and
 - ii. exclude any issue from settlement negotiations.
- c. 35(5): EPCOR considers that parties to a proceeding, having reviewed the application and initial positions, are well situated to determine whether or not a settlement negotiation should be undertaken in a proceeding. EPCOR considers that where parties enter into settlement negotiations at the Commission’s direction, rather than voluntarily, this may suggest that parties view settlement as unlikely. EPCOR submits that there is a higher risk of not reaching a settlement where parties are directed to enter into settlement negotiations and therefore this process may result in delay. In light of this risk, EPCOR submits that subsection (5) be amended as follows:

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

- d. 35(8): In subsection (8), the Commission requires that a settlement agreement filing include a settlement brief explaining the basis of the settlement and how it meets the interests of the parties and the public interest, along with additional information described in subsections (8a) through (8h). EPCOR requires further clarification with respect to subsection (8g) which states:

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

It is not clear if this provision intends to modify current practices related to the amount of detail in settlement briefs or if this provision merely confirms current practice. If this provision intends to modify the approach to settlement briefs that parties currently file, further clarification of the Commission's requirements are needed.

C. Additional Commission Questions on Negotiated Settlements

5. The Commission is also 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

6. EPCOR submits that to maintain the clear perception of an independent and objective regulator, neither AUC members or senior staff should take on the role of mediator in contested applications for the purpose of providing their non-binding views on relevant issues and potential settlements. Unlike other types of forums where this approach may have been successful, the Commission has a relatively small number of Commissioners and senior staff. EPCOR considers that it will be difficult to maintain, over time, in confidence information gained through such a role, including parties' positions on key issues of dispute, particularly given that many issues that arise in, for example, tariff applications are faced by some or all regulated utilities and arise in their respective applications before the Commission. Although EPCOR understands that Commission members or staff would endeavor not disclose any information obtained in a mediation, taking on this role in the mediation process will create impressions and, potentially, biases may be formed.

AUC Staff Participation as Observers or Participants in a Negotiated Settlement Process

7. EPCOR does not believe that having staff observe or participate as parties to the settlement negotiation process would be beneficial. In tariff applications, Alberta's utilities and typical interveners are experienced and well-versed in the issues that the utilities face in their applications, and including

Commission staff, who would otherwise play a role in adjudicating applications and settlement agreements, as participants in negotiations is unlikely to serve any beneficial purpose, and may instead hinder the ability of applicants and interveners to reach a settlement on mutually agreeable terms. In EPCOR's view, it is more important and beneficial to the regulatory process that Commission staff continue to play its role as highly qualified advisors to the Commission when applications and settlement agreements are brought to the Commission for approval.

Sincerely,

[Electronically Submitted]

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