

Bulletin 2024-19

September 13, 2024

Rule 018 amendments, settlement issues and interim change

The Alberta Utilities Commission has prepared draft amendments to [Rule 018: Rules on Negotiated Settlements](#) and established a written consultation process for public comment on these draft amendments.

The draft amendments to Rule 018 are intended to make settlements more accessible and efficient.

The AUC is further inviting stakeholder comment on broader issues related to settlements as identified below.

Additionally, the AUC is immediately suspending Sections 4(1) and 4(3) of Rule 018, which requires AUC approval before starting to negotiate. Rather, an applicant shall only be required to notify the Commission of its intent to pursue a negotiated settlement process and provide an outline of relevant issues for negotiation as set out in Section 4(2).

The written consultation will be hosted on [AUC Engage](#), found through the AUC website. Your feedback may be submitted by emailing engage@auc.ab.ca. The deadline for submissions is October 25, 2024.

Proposed amendments to settlement rules

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.

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.

Interim suspension of Section 4(1) and 4(3) of Rule 018 and continuing notification requirement: Parties may commence negotiated settlements without AUC approval but must provide written notification as set out in Section 4(2) of Rule 018.

Several transmission tariff applications are scheduled to be filed in the near term. Applicants and parties may wish to pursue settlement negotiations in relation to the issues in those applications. To facilitate settlements, the Commission has suspended the application of Section 4(1) and 4(3) of Rule 018,

effective immediately, until further notice and will permit parties to initiate settlement discussions without the Commission's approval before or after the filing of an application.

Instead, the Commission will only require a party intending to initiate settlement discussions to notify the Commission of its intent and provide an outline of relevant issues for negotiation as set out in Section 4(2) of Rule 018. Parties may commence negotiations at any time after providing this notice. As always, the Commission retains discretion to seek more information about identified issues or exclude issues from negotiation.

Any questions related to this bulletin may be directed to Nicole Fitz-Simon at nicole.fitz-simon@auc.ab.ca.

Alberta Utilities Commission