

## Address to the Calgary Chamber of Commerce

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Good afternoon Ladies and Gentlemen. It is a great pleasure for me to have this opportunity to address the Calgary Chamber of Commerce and fill you in on who we are, how we see our role and some of the things we are focusing on early in our mandate.

Before I get to that though, I feel compelled to acknowledge the work of the AUC's Chief Executive Bob Heggie and his team, in getting the infrastructure of the AUC up and running so that when I arrived on February 1st this year, the foundation for the governance of the AUC had been established – everything from office space and IT services, an organizational structure and key senior staff – some from the EUB and others from outside the regulatory arena -- to the publication of rules under the new rule making powers. All this was done so the transition could be as seamless as possible and none of the senior staff knew whether they would actually be confirmed in those jobs when the new Chair arrived. These are all people with significant expertise and high standards and it is a credit to Bob that he has been able to recruit them for us. It was a significant leap of faith for them all -- and we should all be grateful for the dedication to public service in Alberta that inspired their decisions to take a chance on this new agency.

As many of you know, the AUC was formed as a result of the Alberta government deciding to separate the utility regulation functions of the EUB from the energy regulatory functions, thereby creating the new ERCB and the new Alberta Utilities Commission. The AUC is not just a recreation of the old PUB. In addition to traditional utility regulation functions, it has also been given the mandate to consider electric transmission, electric generation and natural gas facility transmission applications. The AUC also has new responsibilities to oversee the competitive market in electricity generation, through considering applications for changes to the Independent System Operator (ISO) rules that govern the competitive electricity generation sector and through considering cases where the Market Surveillance Administrator (MSA) brings cases for conduct of market participants that is inconsistent with the fair, efficient and openly competitive operation of the electricity generation market or cases of anti-competitive conduct in the natural gas market. The AUC also conducts proceedings to enforce decisions of the Market Surveillance Administrator to impose fines for breaches of regulatory rules in both the electricity and natural gas markets. In addition to these functions, the AUC is also responsible for regulating the rates charged by investor owned water utilities in the province and has been assigned a number of other duties under a variety of other Acts of the legislature. This is just a summary of our mandate. In all of these areas, utilities, facilities and markets, the AUC's mandate is considerably different than the mandate of the old Public Utilities Board (PUB). This is made necessary by the

significant changes that have occurred in electricity and natural gas markets since the mid 1990s.

This is a complex and diverse mandate not easily summed up in a sentence or two. But there is one theme that runs through virtually all of it. In order for us to understand and to carry out this mandate, we need to step back and remind ourselves that in a society such as ours the operation of competitive market forces is assumed to provide the public and the economy with the benefits of strong incentives for innovation and investment and the benefits of prices, services and quality that customers demand. Governments step in to regulate where the market cannot be competitive (such as the traditional public utilities business) or where the market, even operating competitively, produces outcomes that are not considered to be in the public interest. And Governments step in with independent regulatory authorities where independence is necessary to assure investors and consumers that the decisions made are free from short term political pressures and to insulate elected officials from the often tough decisions that regulators have to make. So when we approach a case, we must ask ourselves: What is it that competitive markets can't do or aren't doing that requires us to step in and what is the government policy that informs us on how we step in and what we are trying to accomplish? Or in the words of the old English judges: What is the mischief we are to remedy?

But we are not the only independent agency of the Alberta government with a policy mandate and role to play here. The ISO is responsible for the integrity of the provincial electric transmission grid and crafting the rules that govern the competitive electric generation market. The Market Surveillance Administrator is responsible for investigating and enforcing compliance with the ISO Rules and applying the stipulated penalties established by the Commission for non-compliance. The MSA also investigates cases of potential anti-competitive conduct. We are very aware that for all of this to work for the benefit of Alberta the system needs to be firing on all cylinders.

In order to effectively fulfill our mandate, we needed more Commissioners than the three that we started with and we needed Commissioners who could hit the ground running, especially in the critical new areas of responsibility. We have embarked on three principal regulatory reviews – one each in the utilities, facilities and markets areas, which I will describe in more detail in a moment. In order to effectively carry out these reviews we needed Commissioners with experience in the hearing room and the personal qualities and expertise required to address these issues.

When I arrived there were two commissioners who had come over from the EUB and who bring experience and expertise critical to our success. Carolyn Dahl Rees brings experience as an Acting EUB member and member of the Natural Resources Conservation Board. Carolyn has experience in the electric utility industry and was heavily involved in the restructuring of the Alberta electric industry in the 1990s. As an Acting EUB member she also gained considerable experience in the regulation of the natural gas industry. She was appointed interim Chair of the Alberta Utilities Commission (AUC) and worked closely with Bob Heggie and his team in establishing the foundation for our work. Carolyn will focus her efforts on utilities regulation.

Tom McGee brings ten years of experience as an EUB member and 10 years of experience in municipal politics. He is no stranger to the hearing room. He has also spent time in the oil and gas industry and brings us that kind of on the ground experience. His open and transparent approach to our work and his dedication to due process are well known and admired by many in the industry. Tom is working on the facilities review project with one of the three new Commissioners we have added -- Al Maydonik. Al is a former member of the Alberta Surface Rights Board and the Edmonton Assessment Review Board. Prior to that he was General Counsel for Luscar Ltd. and guided that company through many land use and facilities approval processes, so he too has spent considerable time in hearing rooms and in different chairs in those rooms dealing with many of the concerns we will be dealing with in carrying out our facilities mandate.

We have also added two more full time commissioners, each of whom bring hearing room experience and expertise in different areas of our mandate, but each of whom also has broad experience and training that will contribute to our success. Bill Lyttle has been a senior international currency and bond trader in the banking industry and later served as an investigator in a serious fraud case for the New Zealand government. He also served on the Market Surveillance Committee that oversaw the competitive electricity industry in New Zealand and in that role had responsibility for adjudicating cases of anti competitive conduct. Tudor Beattie is a former assistant chief crown prosecutor here in Calgary who has spent a good deal of time in hearing rooms and spent the later years as a prosecutor responsible for prosecuting major fraud cases. He has also served two terms as a bencher of the Law Society of Alberta. Bill and Tudor have already begun to focus their attention on the markets and compliance mandate of the Commission.

Of course, we do not expect the Commissioners to be devoted exclusively to the subject areas they have agreed to review. All of the Commissioners will be assigned to panels in all of the areas of our mandate so we can draw on their diverse backgrounds and so that we can all gain a full understanding of our mandate.

It is worth emphasizing here that the appointment process for the new commissioners has been carried out through the public service commission's executive search program. Carolyn Dahl Rees, Tom McGee and I had the privilege of participating in the interview process for the new commissioners and I had the privilege of recommending these appointments to Minister Mel Knight. He enthusiastically accepted the recommendations. Minister Knight deserves to be recognized for the leadership he has shown through his commitment to the appointment of Commissioners through this type of process thereby helping to ensure the success of the Commission and public trust in the independence of its members.

So now let me describe for you the three initiatives we have undertaken.

The first is the review of the utilities regulation functions which Carolyn Dahl Rees will be working on. This includes the rates as well as service quality and terms and conditions of service. We know that many of the processes and approaches used in the

regulation of utility rates have been around for many years. In some ways they remain unchanged from the days of the PUB yet today, the utilities we regulate look a lot different than the utilities of the past and the rates we regulate are different as well. The electricity and natural gas utilities are no longer end to end vertically integrated monopolies. There is now competition at the production and generation end, and at the retail end. What remains to be regulated are the rates for distribution and transmission or transportation. These rates are still required to be just and reasonable for both customers and the utilities and to be not unjustly discriminatory. The objective of this review is to determine how the regulatory processes can be streamlined, and to examine new approaches to cost of service regulation such as negotiated settlements, where that makes sense, or types of incentive or formula based regulation plans. We can learn from best practices adopted elsewhere and we can lead by example through our own innovations.

This utilities review will also include a review of a number of the inputs into cost of service regulation, some of which have already begun, including a review of the potentially disruptive new International Financial Reporting Standards (IFRS) rules being imposed on the industries we regulate.

When we have finished the utilities review, we expect to have a well articulated set of principles, some new approaches and some new processes. We are fully aware that great care must be taken in adopting new approaches. Experience elsewhere has shown that even one seemingly innocuous decision can cause long term problems. We will ensure that we consult widely and take great care and we expect good evidence to be filed by parties to support our efforts.

Turning now to the review of our facilities regulatory functions -- which is the focus of Tom McGee and Al Maydonik -- We all know that the effort it takes to have new facilities approved and built today is considerably greater than it was twenty and thirty years ago. Landowners and those who use the land, including First Nations groups, are demanding more consultation and accommodation, and other issues are commanding more attention than ever before. Whereas major facilities projects used to be primarily engineering and financing projects, today the public demands that much more attention be paid to the social and economic impacts and the effects of these projects on the environment. The engineering and financing projects of the past are the engineering, financing, social, economic and environmental projects of today. Indeed, the Government of Alberta, in the AUC Act, has specifically instructed the Commission to have regard to those issues when considering facilities applications.

The purpose of our facilities review is two fold, one deals with process issues and one with the substantive issues we must consider. First we must ensure that our processes are fair, open and transparent. We must listen to those affected by proposed projects, not just for the purpose of understanding what their positions are but, most importantly, to understand the concerns underlying those positions. We must publish materials that explain the processes in language that speaks to people who don't spend a lot of their time in hearing rooms and we must ensure that they understand what the roles of the different parties in the room are so they are comfortable with the proceedings. All parties

must be confident of the independence and impartiality of the people hearing the application so that they can have respect for and trust in the outcome of the process.

Of course the AUC is not the only participant in the facilities application processes that must be responsive to the new reality. The most successful facilities applications in North America are those that have benefited from extensive consultation and suitable accommodation before the application is even brought to the regulator. This is what people are demanding and facilities applicants everywhere are responding with extensive consultation processes and innovative ways to accommodate concerns that can be dealt with.

In some cases, these accommodations may raise the costs of projects and we know there is concern in some quarters that those increased costs, where they would affect regulated rates, might not be approved. On that point, let's recall that one of the principal reasons for moving facilities applications to the AUC was to avoid the potential for an ERCB approval of a project only to be met with cost disallowances at the rate setting stage over at the AUC. We know that the test for cost allowance is prudence. Prudence is not necessarily least cost in the new world where it has been necessary to accommodate interests and where economic, social and environmental impacts must be taken into account.

Indeed, these kinds of considerations will form part of the second part of the facilities review. We need to enumerate the considerations that we must take into account in each of the different types of facilities applications that will come before us. In each case, electricity transmission, electricity generation and natural gas pipelines, where our mandate kicks in and the factors we are to consider are different, but all have in common the need to consider social, economic and environment impacts. Therefore, we expect applicants for facilities approvals to file evidence addressing those factors and we will need to be ready with the expertise to consider that evidence.

Now I'd like to turn to our markets mandate review. In many ways this is not so much a review as it is a beginning and we are fortunate to have Bill Lyttle and Tudor Beattie focusing on these issues for us. We have already had our first applications for changes to the ISO Rules, from both the ISO itself and from parties challenging ISO rules and we are very shortly sending out proposed processes with timelines for the consideration and comments of market participants. We have also received our first requests to enforce specified monetary penalties imposed by the MSA and we will soon be sending out proposed processes for these types of applications as well. We have not received a case alleging conduct inconsistent with fair, efficient and openly competitive markets but we expect to publish proposed processes for those cases as well. Our objective is to deal with each of these types of cases as expeditiously as possible but we are fully aware that some cases will be far more complex than others. For example, when the MSA brings a case against a market participant for conduct that is inconsistent with fair, efficient and openly competitive markets, the factual and legal issues will be more complex and the potential consequences greater than in the case of stipulated penalties. The market participant against whom the case is brought deserves every opportunity to know all the

often complex facts upon which the MSA relied and to prepare a case in reply. Cases of rule breaches and anti-competitive conduct are different than other kinds of cases utility regulators have traditionally considered so we have to carefully consider our processes and the standard of proof we will adopt. This is not business as usual.

We will need to establish principles to follow in all of these situations. For example, the ISO Rules are a mixture of administrative rules to ensure the integrity and reliability of Alberta's transmission grid and to support the fair, efficient and openly competitive operation of the electricity generation market. We expect that in many cases in which ISO Rules are challenged, we will need to apply both economics and competition law principles, as well as sound engineering principles and practices of electricity system reliability. We will expect evidence from parties on those questions and we will seek to develop a consistent body of decisions on those issues.

In each case, we recognize that the ISO, the MSA and the AUC each have distinct roles and that in each case those roles are grounded in the need for intervention in the market to protect the public where competitive market forces alone are not sufficient.

So those are our three reviews. Our goal is to ensure that we always have in mind the potential mischief we are called upon to remedy and the policy we are to support, that our processes are fair, open and transparent and that we will make sound principled decisions. These may sound like lofty goals but I cannot imagine striving for anything less and in the past when I sat in different chairs in hearing rooms either as a cross examining lawyer, witness or Commission staff member, I expected nothing less from the regulators. We also realize that the quality of our decisions will be dependent to a significant extent on the quality of the evidence and submissions we receive and we have every confidence that the parties before us will do their part.

I'd like to close today on a bit of a personal note. I started my legal career working for the Saskatchewan Public Utilities Review Commission where we regulated electricity, natural gas, telecommunications rates and car insurance premiums. Other than brief forays into postal rate regulation and natural gas deregulation, I have spent practically my whole career in telecommunications regulation – or more accurately deregulation. Telecommunications, electricity and natural gas are all network industries. All of the issues and principles we confronted in telecom are here too but just applied to different facts. Despite this, when I came to this position, I only knew about five people in the electricity and natural gas industries. So Bob Heggie and I thought it would be a good idea to invite all of the parties that we expected to appear regularly before the Commission to come in for a type of get to know you visit. We invited many people to come in to tell me about their businesses and interests and give me an idea of the major issues they thought we should focus on and the kinds of issues that were important to them. The response was very positive. I have met with representatives from almost all of the regulated companies, with consumer groups, industry associations and representatives of land owners and environmental concerns. I'd like to thank you all for sharing your issues and concerns so openly with me while remaining respectful of the fact that we could not discuss any cases before the Commission. Many of you will have heard your

issues and concerns addressed in my remarks today because the things you said gave me a good sense of what is on peoples' minds. I want to thank you especially for the very warm welcome you have given me and your words of support and encouragement. It is a real honour for me to be given this opportunity to serve Albertans as Chair of the Alberta Utilities Commission, and I look forward to the very interesting, challenging and important work ahead.

Thank-you.