AltaLink Management Ltd.
Sale of Assets at Riverside 388S Substation

Provident Energy Ltd.
Amendment to Redwater Industrial System Designation

September 22, 2011

The Alberta Utilities Commission
Decision 2011-387:
AltaLink Management Ltd.
Sale of AltaLink Assets at Riverside 388S Substation
Application No. 1606975

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Application No. 1606873

Proceeding ID No. 1063

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1 Introduction

1. On December 17, 2010, Provident Energy Ltd. (Provident) filed an application (Application No. 1606873, Proceeding ID No. 1009) with the Alberta Utilities Commission (AUC or the Commission) for approval to amend the Industrial System Designation (ISD) of the Redwater Industrial Complex. On December 21, 2010, the Commission confirmed receipt of the Provident application.

2. On January 28, 2011, AltaLink Management Ltd. (AltaLink) filed an application (Application No. 1606975, Proceeding ID No. 1063) with the Commission for approval of matters respecting the sale of certain assets within AltaLink's Riverside 388S substation related to modification of the Provident ISD. In its application, AltaLink suggested that the Provident and AltaLink applications may be combined by the Commission, and suggested that a written process would be a reasonable way to do so.

3. On February 1, 2011, the Commission issued notice of application to participants respecting the proposed sale of the AltaLink assets (Application No. 1606975, Proceeding ID No. 1063). Statements of intent to participate (SIPs) were received from the Consumers' Coalition of Alberta (CCA), ATCO Electric Ltd. (AE), ENMAX Power Corporation (EPC) and the Office of the Utilities Consumer Advocate (UCA).

4. On March 7, 2011, the Commission determined that the Provident and the AltaLink applications were related and, in the interests of regulatory efficiency, should be combined into one proceeding. The Commission therefore combined the records of Application No. 1606873 and Application No. 1606975 into Proceeding ID No. 1063 and closed the record for Proceeding ID No. 1009.

5. The Commission established the following schedule and process steps for the proceeding:

Information requests (IR) to Provident and AltaLink	March 14, 2011 by 4 p.m.
IR responses from Provident and AltaLink	March 18, 2011 by 4 p.m.
Argument from interested parties	March 28, 2011 by 4 p.m.
Reply argument from interested parties	April 4, 2011 by 4 p.m.

6. On June 28, 2011, the Commission issued additional information requests to Provident and AltaLink. The responses to the additional information requests were due July 7, 2011.

7. All parties met the scheduling requirements set out in the process schedule established by the Commission. Accordingly, for the purposes of this decision, the Commission considers the record to have closed on July 7, 2011. The proceeding participants are set out in Appendix 1.

8. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the argument, and reply argument provided by each party. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

2 AltaLink proposed sale of assets at Riverside 388S substation

2.1 Application and relief requested

9. In its application, AltaLink requested approval of the sale of certain assets within its Riverside 388S substation to enable the modification of the Provident ISD. AltaLink indicated that Provident had earlier engaged AltaLink and the Alberta Electric System Operator (AESO) in discussions regarding the most economic means of receiving service to its existing ISD from the Alberta interconnected electric system. Specifically, these discussions referenced the service currently provided to Provident pursuant to the terms of the AESO's tariff through the use of AltaLink's Riverside 388S substation facilities.

10. AltaLink submitted that these discussions included consideration of a duplication avoidance tariff (DAT), based on Provident's representations that it could provide service directly to itself through new facilities Provident would build and own. Provident represented that these new facilities could provide service that was equivalent to the service which it currently received through AltaLink's Riverside 388S substation, and that it could do so in a manner more economic to Provident.

11. In its application, AltaLink indicated its understanding that the AESO had examined Provident's representations in this regard and found them to be plausible.[1] Given this result, two potential courses of action were considered by the parties; (1) provision by the AESO of a DAT to Provident or (2) selling the AltaLink assets used to serve Provident. In the latter circumstance, these AltaLink assets would be included within Provident's ISD.

12. AltaLink and Provident submitted that the asset sale represented the most efficient regulatory approach. Further, they argued that approval of this transaction was in the public interest, since it will avoid duplication of facilities and no other customers served through the Riverside 388S substation will be adversely affected and no harm will arise.

13. Accordingly, AltaLink and Provident entered into a contract in respect of the sale of all AltaLink's assets downstream from the 138-kilovolt (kV) breaker within the Riverside substation that currently serves Provident. The sale transaction between AltaLink and Provident would close as soon as reasonably possible after Commission approval was received. AltaLink also confirmed that the sale of the assets by AltaLink would result in amendments to the current easement arrangements in respect of the Riverside substation in order to align those arrangements with the results of the sale transaction. AltaLink also submitted that Provident would own, operate and bear the costs of the facilities it purchases.

[1] AltaLink application.

14. The agreed sale price for the assets is $2.4 million, which is a negotiated value based on Provident's cost estimate to build similar services independently. The net book value of these assets in AltaLink's rate base is $1.3 million. AltaLink proposed that at the time of its next general tariff application it would reduce the total net rate base amount to reflect the sale of these assets by recording as part of the sale proceeds ($1.3 million) to recover the net book value of the assets sold. AltaLink proposed that the balance of the sale proceeds ($1.1 million) be credited to AltaLink's accumulated depreciation reserve which would provide a corresponding benefit to customers.

15. AltaLink submitted that the reason for this accounting treatment would be to render the impact on customers of either the sale or the DAT alternative to be similar, thus avoiding potential harm to customers by the Commission's approval of the proposed sale. No parties objected to the proposed price and accounting treatment for the disposition.

16. The CCA requested[2] that the proceeds of the sale transaction be reflected in AltaLink's compliance filing respecting the current 2011-2013 general tariff application proceeding. AltaLink indicated[3] that assuming that the transaction is approved in terms satisfactory to allow it to proceed as proposed, that it would include and reflect the proceeds in the current general tariff application compliance filing.

17. AltaLink stated that this proposed credit of net proceeds to AltaLink's accumulated depreciation reserve is voluntary because its proposed disposition of assets is not in the ordinary course of business as noted in Section 101(2)(d) of the *Public Utilities Act*. Consequently, AltaLink argued that it could have requested the Commission to impose the treatment directed by the Supreme Court of Canada in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy and Utilities Board)* 2006 SCC 4 (Stores Block). In AltaLink's view, applying the direction of the court in Stores Block would result in the net gain of $1.1 million on an approved sale of assets going to the account of shareholders rather than customers.

18. Consequently, AltaLink explicitly requested that the Commission in granting its approval include: (a) express recognition that this proposed treatment is voluntary in the unique circumstances of this disposition; and (b) that this sale does not constitute a precedent in respect of other dispositions that may come before the Commission.[4] AltaLink also advised that it reserved the right to decline to complete the disposition transaction absent regulatory approval that satisfied these conditions.

3 Commission findings

3.1 Legislative framework

19. The Commission, in rendering its decision, has reviewed and considered the legislative scheme under which the electric utilities operate in the context of Section 101(2)(d) of the *Public Utilities Act* and in the context of the provision for industrial system designations.

20. The legislative framework in Alberta that governs the provision of electricity service is principally established through the provisions of the *Electric Utilities Act* and the provisions of

[2] CCA argument, paragraph 11.
[3] AltaLink reply argument paragraph 3.
[4] Application, page 3.

the *Hydro and Electric Energy Act*. These two pieces of legislation work as companion legislation, with the *Electric Utilities Act* establishing the duties and obligations of transmission facility owners, utilities and the AESO in the provision of electricity service to customers, while the *Hydro and Electric Energy Act* focuses principally on the construction and operation of the physical assets used to deliver electricity.

21. In 1977, through Bill 34, an amendment to the *Hydro and Electric Energy Act*, the legislature introduced the ISD. This amendment added the definition and provision for industrial system designations and appears to have been provided in response to large industrial customer concerns about the reliability of their power supply and a desire for these customers to take measures to secure their own supply of energy.

22. Over time, large industrial customers have sought ISD status because it has been more economic for them to generate their own electricity supply and serve their own operations on their property. Section 4 of the *Hydro and Electric Energy Act* confers on the Commission the jurisdiction to make a determination as to whether to grant ISD status to an applicant.

23. Section 4 of the *Hydro and Electric Energy Act* has an objective similar to the self generation exemption found under the *Electric Utilities Act*. These provisions appear to be intended to provide economic signals or incentives and enable integrated industrial processes to develop their own internal electricity supply where that is the most economic source of generation.

24. In 1998, shortly after the passage of Bill 27, the *Electric Utilities Amendment Act, 1998*, the Alberta Energy and Utilities Board (the board) released its decision approving the creation of a transmission bypass avoidance rate or a DAT.[5] The DAT is intended to avoid the uneconomic bypass of utility service. Industries have sought bypass rates because it would otherwise have been more economical for them to generate their own electricity supply and serve their own operations on their property, particularly in the case of industrial operations that can make use of cogeneration facilities.

25. The board applied the following criteria in its determination as to whether a duplication avoidance rate should be approved:

a) the bypass avoidance rate is required to respond to a credible bypass threat
b) the bypass avoidance rate must exceed the long run incremental cost of service
c) the bypass avoidance rate is no more attractive than is reasonably required to avoid duplicate facilities,
d) the cost of offering the bypass avoidance rate is appropriately shared between other utility customers and the utility shareholders.

26. These same criteria continue to apply.

[5] Decision U98125: Grid Company of Alberta Inc., Transmission Bypas Avoidance Rate, Down Transmission Bypass, File 5603-1, Application No. RU 97276, July 24, 1998. Decision U98125 directed the Transmission Administrator to implement, as Rider B, a Transmission Duplication Avoidance Rate. This rate is now called Rider A1 – Transmission Duplication Avoidance Adjustment Dow Transmission Bypass and forms part of the AESO's tariff.

27. It is within this legislative framework that the Commission has considered the application of Section 101(2)(d) of the *Public Utilities Act* in the proceeding before it.

28. Section 101(2)(d) prevents a designated owner of a public utility, in this case AltaLink, from selling its property without the approval of the Commission, if the sale is outside the ordinary course of business. Specifically, the section states:

> **(2)** No owner of a public utility designated under subsection (1) shall:
>
> …
>
> (d) without the approval of the Commission,
>
> (i) sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part of them, or
>
> (ii) merge or consolidate its property, franchises, privileges or rights, or any part of them,
>
> and a sale, lease, mortgage, disposition, encumbrance, merger or consolidation made in contravention of this clause is void, but nothing in this clause shall be construed to prevent in any way the sale, lease, mortgage, disposition, encumbrance, merger or consolidation of any of the property of an owner of a public utility designated under subsection (1) in the ordinary course of the owner's business. (emphasis added**)**

29. In the Stores Block decision, the Supreme Court discussed the nature of public utilities and the reasons for the kind of prohibition found in Section 101(2)(d) of the *Public Utilities Act*. Bastarache, J., speaking for the majority stated:

> **4** As in any business venture, public utilities make business decisions, their ultimate goal being to maximize the residual benefits to shareholders. However, the regulator limits the utility's managerial discretion over key decisions, including prices, service offerings and the prudency of plant and equipment investment decisions. And more relevant to this case, the utility, outside the ordinary course of business, is limited in its right to sell [page152] assets it owns: it must obtain authorization from its regulator before selling an asset previously used to produce regulated services (see MacAvoy and Sidak, at p. 234).
>
> …
>
> **42** Some of the above provisions are duplicated in the other two statutes (see, e.g., PUBA, ss. 85(1) and 101(2)(d)(i) ; GUA, s. 22(1) ; see Appendix).
>
> **43** There is no dispute that s. 26(2) of the GUA contains a prohibition against, among other things, the owner of a utility selling, leasing, mortgaging or otherwise disposing of its property outside of the ordinary course of business without the approval of the Board. As submitted by ATCO, the power conferred is to approve without more. There is no mention in s. 26 of the grounds for granting or denying approval or of the ability to grant conditional approval, let alone the power of the Board to allocate the net profit of an asset sale. I would note in passing that this power is sufficient to alleviate the fear expressed by the Board that the utility might be tempted to sell assets on which it might realize a large profit to the detriment of ratepayers if it could reap the benefits of the sale.

> **44** It is interesting to note that s. 26(2) does not apply to all types of sales (and leases, mortgages, dispositions, encumbrances, mergers or consolidations). It excludes sales in the ordinary course of the owner's business. If the statutory scheme was such that the Board had the power to allocate the proceeds of the sale of utility assets, as argued here, s. 26(2) would naturally apply to all sales of assets or, at a minimum, exempt only those sales below a certain value. It is apparent that allocation of sale proceeds to customers is not one of its purposes. In fact, s. 26(2) can only have limited, if any, application to non-utility assets not related to utility function (especially when the sale has passed the "no-harm" [page168] test). The provision can only be meant to ensure that the asset in question is indeed non-utility, so that its loss does not impair the utility function or quality. (Emphasis added)

30. The Supreme Court further examined the history of the *Public Utilities Act* and determined that as far back as 1915, this statute required public utilities to obtain the approval of the board before selling any property outside the ordinary course of their business (see paragraph 55). The court went on to note the express powers found in Section 101(2)(d) of the *Public Utilities Board Act* (see paragraph 57) but nevertheless concluded that despite these express powers, the principal function of the board is the determination of rates (see paragraph 60).

31. The court in Stores Block provided its rationale regarding when a sale would be approved by the Board. It stated:

> **76** MacAvoy and Sidak, in their article, at pp. 234-36, suggest three broad reasons for the requirement that a sale must be approved by the Board:
>
> 1. It prevents the utility from degrading the quality, or reducing the quantity, of the regulated service so as to harm consumers;
> 2. It ensures that the utility maximizes the aggregate economic benefits of its operations, and not merely the benefits flowing to some interest group or stakeholder; and
> 3. It specifically seeks to prevent favoritism toward investors.
>
> **77** Consequently, in order to impute jurisdiction to a regulatory body to allocate proceeds of a sale, there must be evidence that the exercise of that power is a practical necessity for the regulatory body to accomplish the objects prescribed by the legislature, something which is absent in this case (see *National Energy Board Act (Can.) (Re)*, [1986] 3 F.C. 275 (C.A.)). In order to meet these three goals, it is not necessary for the Board to have control over which party should benefit from the sale proceeds. The public interest component cannot be said to be sufficient to impute to the Board the power to allocate all the profits pursuant to the sale of assets. In fact, it is not necessary for the Board in [page182] carrying out its mandate to order the utility to surrender the bulk of the proceeds from a sale of its property in order for that utility to obtain approval for a sale. The Board has other options within its jurisdiction which do not involve the appropriation of the sale proceeds, the most obvious one being to refuse to approve a sale that will, in the Board's view, affect the quality and/or quantity of the service offered by the utility or create additional operating costs for the future. This is not to say that the Board can never attach a condition to the approval of sale. For example, the Board could approve the sale of the assets on the condition that the utility company gives undertakings regarding the replacement of the assets and their profitability. It could also require as a condition that the utility reinvest part of the sale proceeds back into the company in order to maintain a modern operating system that achieves the optimal growth of the system. (emphasis added)

> **78** In my view, allowing the Board to confiscate the net gain of the sale under the pretence of protecting rate-paying customers and acting in the "public interest" would be a serious misconception of the powers of the Board to approve a sale; to do so would completely disregard the economic rationale of rate setting, as I explained earlier in these reasons. Such an attempt by the Board to appropriate a utility's excess net revenues for ratepayers would be highly sophisticated opportunism and would, in the end, simply increase the utility's capital costs (MacAvoy and Sidak, at p. 246). At the risk of repeating myself, a public utility is first and foremost a private business venture which has as its goal the making of profits. This is not contrary to the legislative scheme, even though the regulatory compact modifies the normal principles of economics with various restrictions explicitly provided for in the various enabling statutes. None of the three statutes applicable here provides the Board with the power to allocate the proceeds of a sale and therefore affect the property interests of the public utility.

3.2 Application of Section 101(2)(d)

32. In this present application, two principal conditions must be met for the Commission to render a decision under Section 101(2)(d) of the *Public Utilities Act*:

1. The transaction must be determined to be a "sale,[or] … disposition" of property.

2. The transaction must be determined to be "outside the ordinary course of business."

Sale or disposition

33. While it is clear on the plain meaning of the language that the proposed sale of the assets to Provident is a sale, the Commission has also considered whether the transaction, as a whole, can be found to be a disposition.

34. The Merriam Webster Dictionary describes "disposition" in this context as "the transfer to the care of possession of another."[6] Black's Law Dictionary defines "disposition" as, "[t]he act of transferring something to another's care or possession...the relinquishing of property."[7]

35. The Supreme Court of Canada considered the use of the terms "sale", "transfer" and "disposition" broadly in the 1990 case, *Lester (W.W.) (1978) Ltd. v. U.A. Local 740*[8] and stated, "broadly the terms 'sale', 'transfer' and 'disposition' may be interpreted [as], 'something must be relinquished by the predecessor business on the one hand and obtained by the successor on the other;"[9] The Court went on further in this case to state:

> The appellant union urged on us the following definitions of "disposition":
>
> [T]o alienate or direct the ownership of property as disposition by will; to exercise finally, in any manner, ones power of control over; to pass into control of someone else; to alienate, relinquish, part with, or get rid of; to put out of the way; to finish with; to bargain away; to transfer into new hands or to the control of someone else (as by selling or bargaining away); relinquish the whole; (dispose of some property to a man all too anxious to buy).

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6 Merriam Webster Dictionary, online: < http://www.merriam-webster.com/dictionary/disposition>.
7 Bryan A. Garner (Editor in Chief), *Black's Law Dictionary* 8th ed. (St. Paul: West, 2004) at page 505.
8 *Lester (W.W.) (1978) Ltd. v. U.A. Local 740*, [1990] 3 S.CR. 644 (SCC).
9 Ibid. at page 675.

> By any of these definitions it is clear that disposition must mean that in some way the first company no longer has the business or part of the business, which has been conveyed to the second company.
>
> Case law from jurisdictions across Canada is to the same effect. While there are slight variations from province to province in terms of scope (i.e., some Acts speak only of disposition of a business whereas other Acts provide for disposition of a part of a business) a common theme throughout the jurisdictions is that something must be relinquished from the first business and obtained by the second.

36. In relation to AltaLink's application, AltaLink proposes to remove a portion of its assets from its rate base and subsequently sell these assets to Provident. By affecting this transaction, AltaLink will no longer retain care and control or usage of the assets. AltaLink intends to sell to Provident "all AltaLink's assets downstream from the 138 kV breaker within the Riverside Substation that are currently serving Provident."[10] Provident will acquire full care, control and usage of these assets for inclusion within Provident's ISD and AltaLink will relinquish the same. Given this scenario, the Commission considers this transaction to fall within the meaning of a sale or disposition as set out in Section 101(2)(d) of the *Public Utilities Act*.

Ordinary course of the owner's business

37. All registered parties in this proceeding, including the applicants, consider this proposed transaction to be outside the ordinary course of AltaLink's business. The factors enunciated by the parties to support this position were the frequency and materiality of this proposed transaction:

(a) This is the first time that AltaLink has sought approval of a sale of its assets (i.e. frequency).

(b) The magnitude of the sale price and the book value (i.e. materiality).

38. The Commission's predecessor, the Alberta Energy and Utilities Board (the board), developed this frequency and materiality test and has used this test as a means to determine this issue in past decisions. For example, in Order U2001-196,[11] the board stated:

> …The Board confirms that it must first determine whether the disposition of an asset is outside the ordinary course of business for a utility. The proceeds of disposition, NBV, frequency and type of sale would be among the factors considered by the Board in that determination. The quantum, and materiality (in relation to the total rate base) of the proceeds of disposition and the NBV would all be considered.

39. The Commission further notes that in all previous cases in which a determination as to whether a transaction has been "within the ordinary course of business," there have been no instances where the Commission or the board have determined that the transaction was inside the ordinary course of the owner's business.

[10] AltaLink Application No. 16606975 at page 2.
[11] Order U2001-196: NOVA Gas Transmission Ltd., In the matter of the Sale of the Athabasca Maintenance Facility, Application No. 2001112, File No. 6417-04, August 3, 2001, page 3 of 5.

40. In the present circumstances, the Commission considers that the determination of whether this disposition is to be considered inside or outside the ordinary course of AltaLink's business must be interpreted in the context of what transactions would be expected to fall within the normal business of AltaLink. In reaching its determination, the Commission has also been mindful of how this term has been defined at law in other areas.

41. The term "ordinary course of business" has existed in law for many years and as noted above, the Supreme Court in Stores Block determined that as far back as 1915, the *Public Utilities Act*, required public utilities to obtain the approval of the board before selling any property outside the ordinary course of their business.

42. In a decision of the Public Utilities Board, Decision Order E93023,[12] the Public Utilities Board provided its views on the types of transactions that would meet the definition of ordinary course transactions as follows:

> The Board considers that the sale of Assets which are in rate base requires Board approval to ensure that the assets being sold are no longer used or required to be used to provide utility service within the regulated utility's franchised service area. The Board notes that the sale of minor assets which are in rate base such as vehicles, computer equipment, meters and other assets where the frequency of disposition is high and the net proceeds of the transactions are generally not material, are reviewed at a General Rate Application. The Board considers that the sale of such minor assets should be regarded as in the ordinary course of business and generally would not require specific approval pursuant to Section 25.1 (2) (d) of the GU Act.

43. The frequency and materiality test developed and adopted by the board is similar to the considerations noted by the Public Utilities Board as to what constitutes a sale within the ordinary course of business.

44. AltaLink's business is to provide transmission services to the AESO through its transmission assets within its service territory. It would not, as part of this business, normally engage in the sale of its transmission assets to third parties. In fact, as noted by the CCA, this is the first time that AltaLink has made a specific application seeking approval of the disposition of an asset.[13] Further, as a monopoly service provider, it would not be in its interest to be in the business of facilitating the sale of its assets to third parties as this could effectively undermine its monopoly position and encourage further system by-pass of its facilities.

45. The Commission recognizes that it would not be practical for every disposition to come before the Commission for approval. However, the Commission considers that for AltaLink, the nature of this transaction is not compatible with the kind of minor disposition activities contemplated by the board, such as the sale of vehicles, computer equipment or meters that would fall within the ordinary course of business exemption provided for in the *Public Utilities Act*. As such, the Commission considers that this is a sale outside the ordinary course of business of AltaLink and requires Commission approval pursuant to Section 101(2)(d) of the *Public Utilities Act.*

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[12] Order E93023: Northwestern Utilities Limited, In the matter of an Application dated December 16, 1992, from Northwestern Utilities Limited for approval of the sale and the manner of disposition of the proceeds of the sale of certain assets in the Fairydell/Bon Accord field, File No. 920099 2240 0014 2, March 17, 1993.

[13] Exhibit 35, CCA argument at page 7.

Assessment of harm

46. In deciding whether to approve the sale, the Commission (and its predecessor, the board) have applied a no-harm test that considers the transaction in the context of both potential financial impacts and service level impacts to customers.

47. In this particular case, Provident is a customer[14] of the AESO and currently receives service from the Alberta interconnected electric system pursuant to the AESO's tariff. In the normal course of business as contemplated under the legislative scheme for the delivery of electrical service in Alberta, the AESO will manage the commercial service arrangements with its customers, including changes to contract demand, changes to system configuration and consideration of a duplication avoidance tariff where a bypass situation is credible. Where a customer has a credible bypass case, the AESO will typically apply to the Commission for a duplication avoidance tariff in order to avoid uneconomic bypass and duplication of facilities.

48. In this particular circumstance, the AESO examined Provident's representations in this regard and found them to be plausible. Two potential courses of action to address Provident's position were considered: (1) provision by the AESO of a DAT to Provident, or (2) selling AltaLink's assets within AltaLink's Riverside 388S substation to Provident for inclusion within Provident's ISD.

49. AltaLink and Provident concluded that the asset sale represented the most efficient regulatory approach and the AESO did not object to the asset sale, the proposed amendment to the Provident ISD or the necessary removal of assets from the Alberta interconnected electric system. As well, the AESO has effectively accepted the proposed sale and result as being a reasonable approach to deal with the bypass as opposed to a duplication avoidance tariff. Further, the AESO has implicitly confirmed that the subject assets at the AltaLink Riverside substation will not be required to provide service to other customers and could be disposed of as proposed by AltaLink and Provident.

50. If the asset sale did not proceed, Provident could make other arrangements to construct its own facilities, the Riverside facilities would become duplicative and AltaLink would salvage these facilities. AltaLink confirmed that the assets were no longer needed by the AESO to serve other customers, they initiated action to prevent the duplication of facilities and they took action to dispose of the assets in a manner that benefits customers.

51. The Commission considers that AltaLink has taken prudent action to avoid duplication of facilities.

52. In respect of service level impacts, the AESO has effectively confirmed that the transmission assets would not be required to serve other customers. Accordingly, the Commission finds that there would be no harm to other customers in terms of service quality if the subject assets are removed from the Alberta interconnected electric system.

53. Last, the Commission notes the request from AltaLink for the Commission to include in its decision express recognition that its proposed treatment of the net proceeds is voluntary in the unique circumstances of this disposition and that this sale would not constitute a precedent in

[14] Provident is connected to the transmission system (i.e. a direct connect customer) and received approval from Fortis under Section 101 of the *Electric Utilities Act* to be served by the ISO.

respect of other dispositions that may come before the Commission. AltaLink stated that it "recognizes this voluntary accounting treatment does not accord to that which the AltaLink could request and expect the Commission to impose under the relevant legislation, as interpreted by the Court of Appeal and the Supreme Court of Canada, whereby the net gain on an approved sale of assets is for the account of shareholders rather than customers."[15]

54. Each disposition or sale application before the Commission is a separate matter to be determined on the specific facts and in the particular circumstances of the application. The Commission considers that in this application, because this is a disposition outside the ordinary course of business, and because the Commission did not find there to be any harm such that conditions on the sale as contemplated by the Supreme Court in Stores Block have to be imposed, the net proceeds from the sale are for the account of the shareholders of AltaLink.

55. If AltaLink proceeds with the sale transaction and it is completed during 2011, the final sale transaction, the realized sale price and the accounting treatment for the disposition can be reviewed when final 2011 opening balances are provided by AltaLink at the time of its next general tariff application.

56. For all the above reasons, the Commission considers that it is in the public interest to approve the proposed disposition of the AltaLink assets.

3.3 Facility amendment - Provident amendment to Redwater ISD

57. Provident , on behalf of itself, Williams Energy Inc. (Williams), and TransCanada Energy Ltd. (TransCanada) requested that the current ISD Order No. U2003-166[16] be amended to include the following:

- all Riverside 388S substation assets downstream from the 138-kilovolt (kV) breaker, including the 138/4.16-kV, 15/20/25-megavolt-ampere (MVA) transformer (T1), proposed to be purchased by Provident from AltaLink Management Ltd. (AltaLink)
- an indication that the ISD is held jointly by the electric asset owners Provident, Williams and TransCanada
- Provident and TransCanada will be the licensed operators of the electric system for the ISD. Provident will operate the substation assets and TransCanada will operate the generation assets including the generator unit transformer.[17]

58. The ISD amendment application was made pursuant to Section 4 of the *Hydro and Electric Energy Act.*

59. The industrial system in this application encompasses all electric facilities within the Redwater Industrial Complex and is located in east half of Section 1 and southeast quarter of Section 12, Township 56, Range 22, west of the Fourth Meridian.

[15] Application, page 2.
[16] Order No. U2003-166: In the matter of an Industrial System Designation of Williams Energy (Canada) Inc. in the Redwater area, July 16, 2003.
[17] AUC-Provident-1.

60. The existing industrial system is comprised of the following major electric facilities:

- TransCanada cogeneration facility consisting of one General Electric LM6000 PD natural gas-fired combustion turbine generator set with a nominal power output of 40 megawatts (MW) (power plant)
- 13.8/138-kV 45/60/75-MVA transformer and associated electrical equipment, owned by TransCanada and operated by Provident
- the 138-kV Granite substation, including the 138/4.16-kV, 15/20/25-MVA transformer (TR2), owned by Provident and Williams and operated by Provident
- associated 4.16-kV electrical distribution system within the Redwater Industrial Complex, owned by Provident and Williams and operated by Provident

61. The Redwater Industrial Complex is currently connected to the Alberta interconnected electric system through the Riverside 388S substation. Electricity produced by the power plant is either consumed within the Redwater Industrial Complex or exported to the Alberta interconnected electric system.

62. Provident submitted that due to load growth within the Redwater Industrial Complex, the TR2 transformer in the Granite 342S substation now has insufficient capacity to serve the entire Redwater plant load.[18] In June 2010, Provident made modifications to its 4.16-kV buswork to allow the load of the Redwater Industrial Complex to be split, such that approximately one half of the load is served through the TR2 transformer in the Granite 342S substation and the other half is supplied through the T1 transformer in AltaLink's Riverside substation.

63. The electricity that is delivered through the T1 transformer in Riverside 388S substation is using regulated utility assets, therefore, Provident is currently paying full AESO tariff charges for about one half of the electricity produced and consumed within the Redwater Industrial Complex. Provident stated that the proposed ISD amendment and Commission approval of the sale of the Riverside 388S substation assets to Provident would allow electricity produced at the power plant to be delivered through non-regulated assets owned by Provident and Williams. The AESO did not object. Accordingly, electricity produced on the Provident ISD site would be utilized on-site without incurring AESO variable tariff charges.

64. Provident submitted that the existing Granite 342S substation will be expanded to include the Riverside 388S substation assets purchased from AltaLink. Provident stated that a new permit and licence would subsequently be applied for if requested by the Commission[19] to supercede the existing Order No. U2003-166. AltaLink submitted that a new permit and licence, which would supercede the existing Permit and Licence No. U2003-174,[20] will be requested from the Commission to operate the remaining assets of the Riverside 388S substation.[21]

65. Provident stated that a participant involvement program was not conducted for the proposed ISD amendment, because no new electrical assets would be installed and the existing facilities would not be modified.

[18] Provident application, page 4.
[19] AUC-Provident-3.
[20] Permit and Licence No. U2003-174: In the matter of a permit and licence to AltaLink Management Ltd. for a substation in the Redwater area, July 18, 2003.
[21] AUC-AML-5.

66. The Commission has applied the principles and criteria set out in subsections 4(3)(c) through (e) of the *Hydro and Electric Energy Act* in its consideration of the ISD amendment application. As there will be no material changes to the on-site generation of electricity within the Redwater Industrial Complex, the Commission finds that the subsections 4(2) and 4(3)(a) and (b) of *Hydro and Electric Energy Act*) are not applicable.

Section 4(3)(c) – Ownership

67. This subsection requires common ownership of all components of the industrial operations. In this case, all components within the Redwater Industrial Complex are jointly owned by Provident, Williams and TransCanada.

68. Provident purchased the paraffins fractionation plant from Williams on October 1, 2003, and became the operator for the associated fractionation plants and cogeneration facilities. In its application,[22] Provident indicates that it is the operator of the electric system designated as the Redwater ISD. In response to information request AUC-Provident-1, Provident confirmed that Provident is requesting AUC approval to amend its ISD approval to reflect that Provident will operate the substation assets and TransCanada will operate the generation assets including the generator unit transformer[23] for the electric system designated as Redwater ISD.

69. Accordingly, the Commission considers that the requirements under Section 4(3)(c) of the *Hydro and Electric Energy Act* with respect to common ownership have been met.

Section 4(3)(d) – Output

70. This subsection requires that the whole of the output of each component within the industrial operation is used by that operation and is necessary to constitute its final products. The original ISD application, Application No. 1305603 dated June 2003, includes a description of the Redwater plant facilities. Provident submitted that there have been minor equipment changes to the Redwater Industrial Complex since the issuance of ISD Order No. U2003-166, including "de-bottlenecking" projects to increase efficiency and throughput of the facilities. Provident indicated that the de-bottlenecking projects have increased the overall load of the Redwater Industrial Complex from about 19 MW in 2003 to the current load of about 22 MW and that additional projects are expected to increase the total load to about 35 MW over the next two to three years. These projects result in increases to load and improvements to the overall efficiency of the industrial complex but they do not fundamentally change the intended output of each component of the integrated industrial operation. Therefore, the output from the Redwater plant facilities is fully utilized and necessary to constitute the final products produced at the Redwater Industrial Complex.

71. Accordingly, the Commission considers that the requirements in Section 4(3)(d) of the *Hydro and Electric Energy Act* with respect to output have been met.

[22] See page 9 of application.
[23] AUC-Provident-1.

Section 4(3)(e) – Management

72. Subsection 4(3)(e) requires evidence of a high degree of integration of the management of the components and processes of the industrial operations. In this case, the components within the Redwater Industrial Complex are jointly managed by Provident and TransCanada[24] and, therefore, highly integrated. Accordingly, the Commission considers that this requirement has been met.

Other considerations

73. The Commission notes that a participant involvement program has not been conducted and that Provident submitted that a participant involvement program was not required as no new electrical assets are being installed and no existing facilities are being modified. The Commission agrees with Provident and finds that a participant involvement program is not required in this case.

74. The Commission notes that once the sale of assets application is approved, the transfer of ownership of all Riverside 388S substation assets downstream from the 138-kV breaker would require alterations to both the Granite 342S substation and to AltaLink's Riverside 388S substation. Therefore, new permits and licences are required. Concurrent with the issuance of new permits and licences, Permit and Licence No. U2003-174 (AltaLink) and Order No. U2003-166 (Williams Energy Inc.) would be rescinded. The Commission notes that both Provident and AltaLink intend to file their applications with the Commission to modify their respective permits and licences pursuant to sections 14, 15 and 19 of the *Hydro and Electric Energy Act*.

4 Conclusion

75. The Commission finds that the sale of assets is outside the ordinary course of business and approves the sale pursuant to Section 101(2)(d) of the *Public Utilities Act.*

76. If AltaLink chooses to proceed with the asset sale and it is completed during 2011, the final sale transaction, the realized sale price and the accounting treatment for the disposition can be considered when final 2011 opening balances are provided by AltaLink at the time of its next general tariff application.

77. If AltaLink chooses to proceed with the asset sale to Provident, the Commission then approves the ISD amendment application, pursuant to Section 4 of the *Hydro and Electric Energy Act*, and grants to Provident Energy Ltd. the amendment requested to its industrial system designation as set out in Appendix 2 – Industrial System Designation Order No. U2011-232 – September 22, 2011 (Appendix 2 will be distributed separately).

78. If AltaLink chooses to proceed with the asset sale to Provident, the Commission directs Provident Energy Ltd. to file an application pursuant to sections 14, 15 and 19 of the *Hydro and Electric Energy Act* with the Commission to modify the permit and licence for the Granite 342S substation.

[24] AUC-Provident-1.

79. If AltaLink chooses to proceed with the asset sale to Provident, the Commission directs AltaLink Management Ltd. to file an application pursuant to sections 14, 15 and 19 of the *Hydro and Electric Energy Act* with the Commission to modify the permit and licence for the Riverside 388S substation.

Dated on September 22, 2011.

The Alberta Utilities Commission

(original signed by)

Mark Kolesar
Panel Chair

(original signed by)

Moin A. Yahya
Commission Member

(original signed by)

Neil Jamieson
Commission Member

Appendix 1 – Proceeding participants

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Provident Energy Ltd. (Provident) W. D. Hildebrand A. Chulsky
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Commission Panel M. Kolesar, Panel Chair M. A. Yahya, Commission Member N. Jamieson, Commission Member
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Appendix 2 – Industrial System Designation Order No. U2011-232 – September 22, 2011

Appendix 2 will be distributed separately