



ENMAX Independent Energy Solutions Inc.

ENMAX District Energy Edmonton Exemption Application

August 1, 2019

Alberta Utilities Commission

Decision 24056-D01-2019

ENMAX Independent Energy Solutions Inc.

ENMAX District Energy Edmonton Exemption Application

Proceeding 24056

Application 24056-A001

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1 Decision summary

1. In this decision, the Alberta Utilities Commission considers an application from ENMAX Independent Energy Solutions Inc. requesting a declaration pursuant to Section 79 of the *Public Utilities Act* exempting its proposed District Energy Edmonton System (DE Edmonton) from Part 2 of the *Public Utilities Act* or alternatively, a declaration that DE Edmonton is not a public utility or that ENMAX is not an owner of a public utility with respect to DE Edmonton.

2. For the reasons that follow, the Commission denies ENMAX's application.

2 Introduction and process

3. In its application, ENMAX explained that it reached a preliminary Design Basis Memorandum¹ with the City of Edmonton for the construction and operation of a district energy plant, DE Edmonton. DE Edmonton will utilize a combined heat and power system to provide a centralized thermal heat source through a thermal distribution system (TDS) to interconnected buildings.² The TDS will be routed through Edmonton's pedway system and parking garages. The plant will be owned and operated by ENMAX and will use high-efficiency natural gas boilers and combined heat and power "to provide a centralized thermal heat source to buildings that are interconnected through a thermal distribution system."³ The physical components of DE Edmonton will include a standalone central plant, a bidirectional TDS and energy transfer stations at each interconnected building.⁴ The combined heat and power units will produce electricity and thermal energy, with the electricity to be used on-site and any excess exported to the grid.⁵ The City of Edmonton is providing the land for DE Edmonton at the Francis Winspear Centre for Music expansion site in downtown Edmonton, as well as access to its pedway system and parking garages to route the TDS to customer interconnection points.⁶

4. DE Edmonton will initially provide service to 10 buildings consisting of commercial, institutional and government customers with a total demand of 27 megawatts of thermal heat.⁷ Charges for these services are proposed to be recovered from customers by ENMAX through a thermal energy services agreement (TESA). ENMAX is requesting that customers enter into

¹ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, paragraph 6.

² Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, paragraph 5.

³ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, paragraph 5.

⁴ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, paragraph 7.

⁵ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, PDF page 4, footnote 3.

⁶ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, paragraph 9.

⁷ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, PDF pages 6-7, paragraphs 14, 17.

20-year TESAs for the services. Pricing will be established through negotiation between parties and will consist of a fixed capacity charge for the TDS and a variable charge for hot water heat.⁸

5. Additionally, ENMAX has proposed to enter into an exclusive franchise agreement with the City of Edmonton for the district energy system and district energy service in a defined area in the downtown district (the franchise area).⁹ ENMAX added that it expected that the ultimate owner and operator of the TDS will be EPCOR Utilities Inc.¹⁰

6. DE Edmonton is expected to be operational by 2022.¹¹

7. ENMAX has acknowledged that DE Edmonton is a public utility under the *Public Utilities Act* and that it is an owner of a public utility under the act.¹² However, because it does not consider that the economics of the project warrant the burden and cost of regulation under Part 2 of the *Public Utilities Act* and in its view, there is “no public interest benefit to be gained by subjecting DE Edmonton to the type of regulatory oversight contemplated in Part 2 of the PUA,”¹³ ENMAX applied to the Commission for a declaration under Section 79 of the *Public Utilities Act*:¹⁴

- (a) that DE Edmonton is not a public utility;
- (b) in the alternative, that ENMAX is not an owner of a public utility relative to DE Edmonton; or
- (c) in the further alternative, that Part 2 of the PUA does not apply to DE Edmonton as a public utility, ENMAX as the owner of a public utility or the thermal energy provided by DE Edmonton.

8. ENMAX requested that the Commission consider its application on an expedited basis, and issue a decision no later than March 15, 2019. ENMAX said this would allow it to make a fully informed decision about whether to proceed with the work and incur the associated costs required to co-ordinate DE Edmonton construction with the related expansion of the Francis Winspear Centre for Music.

9. ENMAX included a motion for confidential treatment of Appendix C: ProForma Thermal Energy Services Agreement, in its entirety, as part of its application.¹⁵ The Commission denied ENMAX’s motion¹⁶ and, in response, ENMAX advised that, “the Application includes sufficient detail about the terms and scope of the TESA to appropriately support the relief sought therein

⁸ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, PDF page 7, paragraph 18.

⁹ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, PDF page 5, paragraph 8.

¹⁰ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, PDF page 4, footnote 5.

¹¹ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, PDF page 5, paragraph 12.

¹² Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, paragraph 26.

¹³ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, paragraph 35.

¹⁴ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, paragraph 2.

¹⁵ Exhibit 24056-X0005, DE Edmonton - Rule 001 S. 28 - Appendix C Confidentiality Request, November 14, 2018.

¹⁶ Exhibit 24056-X0008, AUC Ruling on ENMAX Independent Energy Solutions Inc. confidentiality motion, January 11, 2019.

and that a copy of the TESA is not necessary for the Commission to make its decision on the Application.”¹⁷

10. The Commission issued notice of the application on November 23, 2018, requesting submissions by December 7, 2018.¹⁸ No submissions were received by the deadline.

11. The Commission issued information requests (IRs) to ENMAX. ENMAX filed its responses on February 1, 2019. Following receipt of these responses, the Commission received requests from each of the Consumers’ Coalition of Alberta (CCA), ATCO Gas North (ATCO) and the Office of the Utilities Consumer Advocate (UCA) on February 13, 25 and 26, 2019 respectively, seeking permission from the Commission to intervene or, in the case of the UCA, to monitor the proceeding.

12. On March 5, 2019, the Commission issued a ruling granting ATCO, the CCA and the UCA permission to intervene.¹⁹ The Commission also determined that it would not be in a position to issue its decision by March 15, 2019, because it anticipated that it would be necessary to ask a further series of IRs to ENMAX. Consequently, the Commission requested that ENMAX advise the Commission whether it wished to proceed with its application. ENMAX indicated that it did and the Commission established a schedule for the remainder of the proceeding.

13. On April 12, 2019, the Commission provided direction to the parties regarding the scope of this proceeding.²⁰ In its direction, the Commission stated that the fundamental issue to be determined was whether it would be in the public interest to exempt DE Edmonton from Part 2 of the *Public Utilities Act*.

14. The Commission further advised that the public interest test, as it relates to the *Public Utilities Act*, encompasses and requires consideration of the Commission’s dual mandate to establish just and reasonable rates and to ensure the safety, reliability and integrity of the utility system in Alberta, as determined by the Supreme Court of Canada in *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4.²¹

15. The record for this proceeding closed on May 7, 2019, the date on which parties’ reply argument submissions were received.

16. In reaching the determinations contained within this decision, the Commission has considered all relevant materials comprising the record of this proceeding. 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.

¹⁷ Exhibit 24056-X0009, EIES Response Letter to the AUC Regarding Confidentiality Ruling, January 17, 2019.

¹⁸ Exhibit 24056-X0007, AUC notice of application - written submissions due December 7, 2018, November 23, 2018.

¹⁹ Exhibit 24056-X0019, AUC letter to ENMAX re requests to intervene and further process, March 5, 2019.

²⁰ Exhibit 24056-X0024, AUC letter – Scope and further process, April 12, 2019.

²¹ Exhibit 24056-X0024, AUC letter – Scope and further process, April 12, 2019.

3 Submissions on the exemption request

17. ENMAX's request for an exemption was opposed by ATCO and the CCA. A brief outline of the submissions offered by each of the parties is set out in the subsections that follow.

3.1 Views of ATCO

18. ATCO submitted that the record of this proceeding does not provide sufficient evidence to find ENMAX's requested exemption to be in the broader articulation of the public interest as described by the Supreme Court of Canada in *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*.²² In ATCO's view, regulation of public utilities includes, but is not limited to, pure rate setting. It added that the state of the regulated market and the interaction of regulated and non-regulated entities within it are central to the Commission's oversight role. ATCO stated that a review of ENMAX's application should consider a critical assessment of the asserted benefits and their significance, which has not been done in the current proceeding. In particular, the costs (current and ongoing) and environmental impact have not been established nor compared to any viable alternatives, nor have the policy implications for Alberta's utility system and other utility customers been fully explored.²³

19. ATCO also submitted that DE Edmonton would be in competition with its distribution system because both provide a service that allows end-use customers to heat their buildings. In ATCO's view, potential DE Edmonton customers will view service from DE Edmonton as a substitute for gas distribution service.²⁴ ATCO stated that its obligation to serve all customers upon request, regardless of size, contrasts with ENMAX's proposal to "cherry-pick" only the most economically attractive loads while protecting itself with exclusive franchise rights against competition to serve the balance of those customers.²⁵ In ATCO's view, "ENMAX is requesting the benefit of an exclusive monopoly franchise agreement as well as the benefits of a competitive market."²⁶

3.2 Views of the CCA

20. The CCA stated that the intended operation of DE Edmonton has numerous consequences for existing utilities under the jurisdiction of the AUC and it is not in the public interest to exempt DE Edmonton from application of Part 2 of the *Public Utilities Act*.²⁷ The CCA expressed concern that the Commission's decision will create a precedent for future applications and that there is a lack of evidence on the record to fully explore all the necessary issues.²⁸

21. The CCA indicated it was unclear whether the exemption application is for the physical TDS infrastructure or the thermal energy services. It also questioned why the TDS would require an exemption if Commission approval was not required for its construction, as asserted by ENMAX.²⁹

²² 2006 SCC 4.

²³ Exhibit 24056-X0030, 2019-04-30 ATCO Gas Argument, April 30, 2019, paragraphs 3, 4 and 25.

²⁴ Exhibit 24056-X0030, 2019-04-30 ATCO Gas Argument, April 30, 2019, paragraph 5.

²⁵ Exhibit 24056-X0030, 2019-04-30 ATCO Gas Argument, April 30, 2019, paragraph 21.

²⁶ Exhibit 24056-X0035, ATCO Gas Reply Argument, PDF page 8, paragraph 24.

²⁷ Exhibit 24056-X0029, CCA Argument – 24056, April 30, 2019, PDF page 3, paragraph 3.

²⁸ Exhibit 24056-X0032, CCA Reply Argument, May 7, 2019, PDF page 4, paragraph 5.

²⁹ Exhibit 24056-X0029, CCA Argument – 24056, April 30, 2019, PDF pages 6-7, paragraphs 15-18.

22. However, the CCA did not consider that the services themselves should be regulated because these services, distinct from the franchise itself, are provided at negotiated prices, are contractually agreed to and are not monopoly services because heat can be generated via other means.³⁰ The CCA submitted that the similarities of DE Edmonton's underlying service to facility charge agreements suggests that ENMAX's services do not need to be fully rate-regulated.³¹

23. In response to ATCO's position that ENMAX does not plan to provide equal access to "smaller" customers or customers in lower density areas (as is typically required of public utilities)³² the CCA considered that there is a limited market for DE Edmonton service. This is because the potential services are limited to: a) customers with hot water systems and b) customers with existing boilers due for replacement.³³ Consequently, in the CCA's view, the potential impact on ATCO should be considered by the Commission as an externality and not a deciding factor.³⁴

24. The CCA suggested that the Commission could consider ENMAX a utility while at the same time excluding the proposed services from the imposition of a regulated tariff. In the event that the heating system is modular, expandable and can apply to a broader scope and mix of customers beyond that proposed in the current application, the CCA suggested that such services could be brought under a regulated fee schedule.³⁵

3.3 Views of ENMAX

25. ENMAX submitted that DE Edmonton comes with meaningful economic, social and environmental benefits, and therefore the relief sought under Section 79 of the *Public Utilities Act* is in the public interest.³⁶ In its view, "any level of regulatory cost associated with compliance with Part 2 would erode the value proposition for DE Edmonton [emphasis in original]."³⁷

26. In ENMAX's view, public utility regulation, including the *Public Utilities Act*, is intended to operate when competition is absent. ENMAX argued that it is not in the public interest to impose regulation where the market functions competitively on its own.³⁸ ENMAX stated that it has no market power to warrant application of Part 2 of the *Public Utilities Act*, as all of its customers are sophisticated parties with readily available heating alternatives and the ability, through TESAs, to freely negotiate the terms and conditions of the district energy service.³⁹ ENMAX further submitted that its customers retain the right to terminate DE Edmonton service at any time, for any reason, in accordance with the terms of the TESAs.

³⁰ Exhibit 24056-X0029, CCA Argument – 24056, PDF page 8, paragraph 21.

³¹ Exhibit 24056-X0029, CCA Argument – 24056, April 30, 2019, PDF page 8, paragraph 22.

³² Exhibit 24056-X0030, 2019-04-30 ATCO Gas Argument, PDF page 8, paragraph 19.

³³ Exhibit 24056-X0032, CCA Reply Argument, PDF page 8, paragraph 22.

³⁴ Exhibit 24056-X0032, CCA Reply Argument, May 7, 2019, PDF pages 10-11, paragraphs 29, 30, 34.

³⁵ Exhibit 24056-X0032, CCA Reply Argument, PDF page 5, paragraph 9.

³⁶ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, PDF page 13, paragraph 34.

³⁷ Exhibit 24056-X0012, EIES Responses to Round 2 AUC IRs, PDF pages 14-15, a) to c).

³⁸ Exhibit 24056-X0023, DE Edmonton - Response to Scope Submissions, March 18, 2019, PDF page 4; Exhibit 24056-X0031, ENMAX Argument, PDF page 10, paragraph 28.

³⁹ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, November 14, 2018, PDF pages 12-13, paragraph 33.

Following TESA expiry, customers can renew their contracts, but would also be able to revert to traditional boilers.⁴⁰

27. In response to ATCO's position that approval of the application has the potential to harm gas distribution customers, ENMAX submitted there is no risk of such harm and nothing on the record to suggest otherwise. In ENMAX's view, DE Edmonton will be a customer rather than a competitor of ATCO, as the competitor to district energy is not gas service but heat service through traditional unregulated boiler systems.⁴¹ ENMAX argued that active regulatory oversight would put DE Edmonton at an unfair and unnecessary competitive disadvantage relative to its actual competitors (i.e., boiler systems) which are not subject to rate regulation or evaluation by the AUC or any other regulator on criteria such as need, alternatives or economic efficiencies.⁴²

28. With respect to its intended franchise agreement, ENMAX emphasized that it will relate only to the provision of thermal heat and will not prevent competition by providers of other forms of heat, including traditional unregulated boiler systems.⁴³ ENMAX stated that the franchise agreement will not preclude or impact ATCO's gas franchise rights, which do not relate to thermal heat.⁴⁴

29. ENMAX responded to the CCA's request for clarity by explaining that TDS does not require a facilities approval from the Commission. Moreover, ENMAX stated that the potential future transfer of the TDS to EPCOR and EPCOR's role relative to the TDS is not germane to the Commission's decision on the current application and nothing about the eventual transfer of the TDS to EPCOR changes or nullifies the relief requested.⁴⁵

30. ENMAX submitted that an exemption under the *Public Utilities Act* does not mean it would go unchecked in providing DE Edmonton service. ENMAX reasoned that existing safeguards, including a competitive market and applicable safety and operational standards, will ensure safe and reliable service at just and reasonable rates. ENMAX also suggested that the Commission will retain the ability to revisit an approval of the application and that customers will have meaningful redress under Section 79(4) of the *Public Utilities Act*.⁴⁶

4 Commission findings

31. The fundamental issue to be determined in this proceeding is whether it would be in the public interest to exempt DE Edmonton and ENMAX (as its owner and operator) from Part 2 of the *Public Utilities Act*.

32. The public interest test, as it relates to the *Public Utilities Act*, encompasses and requires consideration of the Commission's dual mandate to establish just and reasonable rates and to

⁴⁰ Exhibit 24056-X0012, EIES Responses to Round 2 AUC IRs, PDF page 13, b) and c).

⁴¹ Exhibit 24056-X0023, DE Edmonton - Response to Scope Submissions, PDF pages 3-4.

⁴² Exhibit 24056-X0023, DE Edmonton - Response to Scope Submissions, PDF page 4.

⁴³ Exhibit 24056-X0023, DE Edmonton - Response to Scope Submissions, PDF page 4.

⁴⁴ Exhibit 24056-X0031, 2019-04-30-ENMAX-Argument, April 30, 2019, PDF page 12, paragraph 36.

⁴⁵ Exhibit 24056-X0034, 2019-05-07-ENMAX-Reply Argument, PDF page 5, paragraph 16.

⁴⁶ Exhibit 24056-X0012, EIES Responses to Round 2 AUC IRs, PDF pages 16-17.

ensure the safety, reliability and integrity of the utility system in Alberta, as determined by the Supreme Court of Canada in *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*:⁴⁷

28 Third, the present case is governed by three pieces of legislation: the PUBA, the GUA and the AEUBA. These statutes give the Board a mandate to safeguard the public interest in the nature and quality of the service provided to the community by public utilities: *Atco Ltd. v. Calgary Power Ltd.*, 1982 CanLII 208 (SCC), [1982] 2 S.C.R. 557, at p. 576; *Dome Petroleum Ltd. v. Public Utilities Board (Alberta)* (1976), 2 A.R. 453 (C.A.), at paras. 20-22, aff'd 1977 CanLII 235 (SCC), [1977] 2 S.C.R. 822. The legislative framework at hand has as its main purpose the proper regulation of a gas utility in the public interest, more specifically the regulation of a monopoly in the public interest with its primary tool being rate setting[...]

33. ENMAX acknowledges that absent the requested exemption, DE Edmonton and ENMAX would be subject to Part 2 of the *Public Utilities Act* because DE Edmonton meets the definition of a public utility under the *Public Utilities Act* as it is “a system that will produce and deliver thermal energy to its customers in the form of hot water” and because ENMAX is the owner of a public utility in this instance.⁴⁸

34. Under Part 2 of the *Public Utilities Act*, the Commission has regulatory oversight over matters including the rates charged by a monopoly service provider, compliance with contractual terms, municipal franchise agreements and compliance with operational standards for a utility.

35. The Commission agrees with ENMAX that public utility regulation is intended to operate as a surrogate for competition where competition is absent and is unnecessary where the market will otherwise function on its own.⁴⁹ However, ENMAX has not demonstrated that sufficient competition will exist such that regulation of ENMAX in its provision of thermal energy within the exclusive franchise area is unnecessary; or, stated in another way, that it would be in the public interest to exempt DE Edmonton and ENMAX (as its owner and operator) from Part 2 of the *Public Utilities Act*. Rather, the evidence suggests the contrary.

36. Most significantly, as identified by ENMAX, “the Franchise Agreement would grant to ENMAX the exclusive right to provide district energy service and to construct, operate, and maintain, a district energy system within the limited boundaries of the franchise area with the exclusive right to use and occupy areas designated by the City of Edmonton within the franchise area with respect to the delivery of thermal energy.”⁵⁰

37. While the Commission acknowledges ENMAX’s argument that the heat produced by traditional boiler systems is a form of competition for the thermal energy produced by DE Edmonton, the exclusivity provided by the franchise agreement would nevertheless give ENMAX a monopoly as it relates to the thermal energy distribution network and the provision of thermal energy services on that network within the franchise area.⁵¹

38. Moreover, the Commission is not persuaded by ENMAX’s assertion that the traditional boiler alternative is sufficiently competitive to warrant the requested exemption. As stated by

⁴⁷ Exhibit 24056-X0024, AUC letter – Scope and further process, April 12, 2019.

⁴⁸ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, PDF page 10, paragraph 26.

⁴⁹ Exhibit 24056-X0031, 2019-04-30-ENMAX-Argument, April 30, 2019, paragraph 20, 28.

⁵⁰ Exhibit 24056-X0012, EIES Responses to Round 2 AUC IRs, February 1, 2019, PDF page 9.

⁵¹ Exhibit 24056-X0028, 2014-04-24-EIES Responses to AUC Round 2 IRs, April 24, 2019, PDF pages 3-4, 6-7.

ENMAX in its application, the benefit to customers in choosing to forgo their own boiler systems is the purported savings that could arise from these customers no longer needing to service and maintain those systems.⁵² It added that in some cases, additional facility space might be utilized for revenue by those customers. ENMAX indicated that “the approximate ages of boiler systems currently used in the subject buildings range from seven to 51 years and boiler replacement can cost more than \$1 million.”⁵³ Once a customer agrees to take its heating services from DE Edmonton, the customer is effectively captive. If they no longer have their own boiler system, they could not opt to receive district energy service from another competitor because ENMAX will have an exclusive service franchise. The only option for a customer wishing to discontinue service from DE Edmonton would be to reinstall a new boiler. In response to Commission IRs, ENMAX asserted that this would be a practical and economically viable option because the secondary internal mechanical equipment in the building must remain regardless of how the heat is provided.⁵⁴ However, ENMAX did not provide any analysis to support this statement despite the fact that it has indicated the costs of a replacement could be more than \$1 million, excluding the costs of operating or maintaining the boiler unit. Further, if a customer had utilized that facility space for additional revenue, impediments would exist should the customer again require that space for its own boiler system. Again, ENMAX failed to provide any analysis of this proposed benefit. As such, the Commission has assigned little weight to this assertion.

39. The Commission also acknowledges, but is not persuaded by ENMAX’s assertion that regulatory oversight is unnecessary to ensure just and reasonable rates or the availability and reliability of service because the intended customers of DE Edmonton are sophisticated, the terms of the TESAs will be freely negotiated and meaningful redress will be available under Section 79(4) of the *Public Utilities Act*.

40. The TESAs are effectively a standard form agreement. ENMAX has chosen to not disclose the TESAs on the record of this proceeding however, as described in ENMAX’s application, this pro forma agreement will establish, among other matters, “(i) the amount and term of financial assurances required by ENMAX; (ii) invoicing terms and conditions, including the payment of interest for overdue amounts; (iii) the allocation of various commercial risks between ENMAX and the customer, including service standards and events of force majeure; and (iv) the pricing structure for the thermal energy and its delivery to the customers.”⁵⁵ Absent regulatory oversight regarding the terms and conditions of service, including renewal pricing and continued service following the expiration of the TESA term, customers would be left with the choice of agreeing to the terms ENMAX put forward or incurring the costs of re-installing or running their own boilers. Consequently, there is insufficient evidence for the Commission to conclude that customers would receive similar protection from changes in price or conditions of service that would otherwise be available through regulatory oversight under the *Public Utilities Act*.

41. As ENMAX has failed to persuade the Commission that exempting DE Edmonton from regulatory oversight is in the public interest, an ensuing matter is the requisite level of regulation. Section 79(1)(c) of the *Public Utilities Act* enables the Commission to declare that specific

⁵² Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, at paragraph 16.

⁵³ Exhibit 24056-X0001, ENMAX DE Edmonton Exemption Application, PDF Page 6, at footnote 13.

⁵⁴ Exhibit 24056-X0028, 2014-04-24-EIES Responses to AUC Round 2 IRs, at PDF 16.

⁵⁵ Exhibit 24056-X0005, DE Edmonton - Rule 001 S. 28 - Appendix C Confidentiality Request, November 14, 2018, at paragraph 7.

provisions of the *Public Utilities Act* do not apply. Through the IR process, the Commission asked ENMAX to identify whether the project could proceed in any other form if the requested exemption was not granted and more particularly, whether options are available to mitigate the costs of regulation under Part 2 of the *Public Utilities Act*. ENMAX responded:

Given the DE Edmonton competitive value proposition, DE Edmonton's small customer base and the terms of the TESAs (which establish a fixed price for service and do not contemplate the recovery of variable regulatory costs), DE Edmonton would not be able to recover regulatory compliance costs through customers.

In this regard, DE Edmonton is unlikely to proceed as currently envisioned or in any other form if the relief sought by the Application is not granted, nor does it believe that there are other options available that could mitigate the cost of regulation under Part 2 of the PUA.

...

It is ENMAX's understanding that relief in accordance with (a) or (b) would, by definition, exempt ENMAX from the whole of Part 2, subject to ongoing oversight of DE Edmonton under section 79(3), which allows the AUC to prescribe conditions to a section 79(1) declaration, and section 79(4), which gives the AUC the ability to vary or rescind a section 79 order on its own initiative or on application of an interested party. ENMAX is of the view that these are meaningful provisions that give the AUC the ability to ensure that DE Edmonton complies with fundamental regulatory standards on a continuing basis (e.g., just and reasonable tolls, public interest, etc.)⁵⁶

42. ENMAX asserted that any form of regulation would render the project uneconomic. It also represented throughout the proceeding that its decision to proceed with the project is contingent on approval of this application as well as a number of outstanding matters including: negotiation and approval of the franchise agreement; satisfactory negotiation of the TESA with Edmonton and approval of the facilities application for the construction and operation of the combined heat and power units. In light of all of the foregoing, the Commission considers that it is premature to consider the extent of regulatory oversight required for DE Edmonton.

43. Having determined that it is not in the public interest to grant ENMAX's request for a declaration to exempt the application of Part 2 of the *Public Utilities Act* under Section 79 of the *Public Utilities Act*, the Commission has not provided any findings regarding ATCO's position that DE Edmonton's franchise would inappropriately infringe upon ATCO's natural gas franchise.

44. The Commission has also declined to provide findings regarding the broader implications of different technologies on utility business models as those issues are beyond the scope of this proceeding.

45. Finally, the Commission provides the following comment on ENMAX's stated intention to export excess electricity generated by the DE Edmonton facility to the grid. ENMAX has indicated that:

- b) The CHP [combined heat and power] will provide electricity to service the load of the Winspear Centre for Music as well as the load of DE Edmonton itself.

⁵⁶ Exhibit 24056-X0012, EIES Responses to Round 2 AUC IRs, PDF page 15-16.

The expected average operational demand load of each premise is as follows:

- Winspear Music Centre: 930kW (.93MW)
- DE Edmonton Facility: 200kW (.2MW)

The anticipated maximum load of each premise is as follows:

- Winspear Music Centre: 2850kW (2.8MW)
- DE Edmonton Facility: 600kW (.6MW)

Further detail will be finalized through project planning and included with ENMAX's facilities application for the CHP.

- c) The maximum amount of electricity exported to the grid on any given day will be the difference, if any, between the combined premise loads at the Winspear Music Center and the DE Edmonton facility and the capacity of the CHP. Winspear Centre for Music is a performance-based facility and as such its load will change based on facility use.⁵⁷

46. The Commission issued information requests to ENMAX to better understand its position referencing Decision 23418-D01-2019,⁵⁸ in which the Commission found that EPCOR Water Services Inc.'s proposal to connect a new solar power plant that would provide a portion of its energy to an adjacent water treatment plant and export the excess energy to the Alberta Integrated Electric System did not comply with the statutory scheme. In response to information requests, ENMAX explained that the DE Edmonton power plant facility (i.e., the combined heat and power unit(s)) is expected to generate two megawatts of electric energy and not exceed five megawatts of generation capacity and therefore is expected to qualify as a micro-generator under the *Micro-Generation Regulation*.⁵⁹

47. The Commission acknowledges ENMAX's indication that it will provide further information in its facilities application and the Commission will examine this further in that proceeding.

⁵⁷ Exhibit 24056-X0012, EIES Responses to Round 2 AUC IRs, PDF page 18-19.

⁵⁸ Decision 23418-D01-2019: EPCOR Water Services Inc. – E.L. Smith Solar Power Plant, Proceeding 23418, Application 23418-A001, February 20, 2019.

⁵⁹ Exhibit 24056-X0028, 2014-04-24-EIES Responses to AUC Round 2 IRs, PDF page 9.

5 Order

48. ENMAX Independent Energy Solutions Inc.'s application for a declaration from the Commission under Section 79 of the *Public Utilities Act* is denied.

Dated on August 1, 2019.

Alberta Utilities Commission

(original signed by)

Mark Kolesar
Chair

(original signed by)

Carolyn Hutniak
Commission Member

(original signed by)

Kristi Sebalj
Commission Member