



Direct Energy Regulated Services

2020-2022 Energy Price Setting Plan – Negotiated Settlement Agreement

February 25, 2021

Alberta Utilities Commission

Decision 25818-D01-2021

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Proceeding 25818

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Published by the:

Alberta Utilities Commission
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1 Decision summary

1. In this decision, the Alberta Utilities Commission considers whether to approve a request from Direct Energy Regulated Services (DERS) for approval of a negotiated settlement agreement (NSA) with respect to its 2020-2022 energy price setting plan (EPSP).
2. For the reasons set out in this decision, the Commission approves the NSA as filed, in its entirety. In Section 6 of the decision, the Commission has issued two directions to DERS with respect to the monthly filing of attestation letters and forecast variance reports during the term of the 2020-2022 EPSP.

2 Background

3. DERS is a business unit of Direct Energy Marketing Limited (DEML). DERS is a regulated rate option (RRO) provider and performs the electricity regulated rate tariff (RRT) functions in the service territory of ATCO Electric Ltd. DERS was appointed by ATCO Electric as the RRO provider under Section 104 of the *Electric Utilities Act*.
4. As an RRO provider, DERS is required to file monthly energy rates with the Commission. These monthly energy rates are determined pursuant to the *Electric Utilities Act*, in accordance with the *Regulated Rate Option Regulation* and with the EPSP approved by the Commission. DERS' approved EPSP establishes the pricing of electricity for RRO customers in the distribution service territory of ATCO Electric Ltd.
5. On August 21, 2020, DERS filed an application with the Commission requesting approval of its 2020-2022 EPSP.¹ DERS filed a motion for confidentiality in which it requested the Commission's approval for confidential treatment of certain information redacted from the public application. The Commission granted DERS' confidentiality request, in part.²
6. On August 24, 2020, the Commission issued a notice of application requiring any party that wished to intervene in the proceeding to file a statement of intent to participate (SIP) by September 8, 2020. EPCOR Energy Alberta GP Inc. (EPCOR) and the Consumers' Coalition of Alberta (CCA) each filed a SIP before the deadline, and the Office of the Utilities Consumer

¹ The redacted EPSP filed on August 21, 2020, was subsequently voided and replaced with an updated EPSP (Exhibit 25818-X0014) that was filed on September 3, 2020. The updated confidential EPSP (confidential Exhibit 25818-X0014-C) was also filed on September 3, 2020. As part of its responses to the information requests, DERS filed another updated redacted EPSP (Exhibit 25818-X0052) and another updated confidential EPSP (confidential Exhibit 25818-X0079-C). The illustrative rate workbook that accompanies the EPSP was initially filed on August 21, 2020 (Exhibit 25818-X0005) and was subsequently updated and refiled (Exhibit 25818-X0053).

² Exhibit 25818-X0012.

Advocate (UCA) filed a SIP subsequent to the deadline. The CCA and the UCA actively participated in the proceeding.

7. While there were time extension requests and motions, the process steps in the proceeding ultimately consisted of parties filing information requests (IRs) to DERS, and DERS filing its responses to IRs.

8. Subsequent to filing its responses to the IRs, DERS requested approval, under Section 4(1) of Rule 018: *Rules on Negotiated Settlements*, to initiate a negotiated settlement process (NSP) with the CCA and the UCA, to address all aspects of its 2020-2022 EPSP application. On November 6, 2020, the Commission granted DERS' request to initiate an NSP.³

9. On November 30, 2020, DERS filed an NSA reached between DERS, the CCA and the UCA. Certain revisions were subsequently made as footnoted below.⁴ The final NSA consists of a signed agreement between the parties⁵ and eight appendixes.⁶ On December 3, 2020, the Commission issued IRs to DERS related to the NSA, and DERS filed its responses on December 8, 2020. The CCA and the UCA filed comments on DERS' IR responses on December 11, 2020, and December 10, 2020, respectively.

10. The Commission considers that the close of record for this proceeding was December 11, 2020.

11. In reaching the determinations set out within this decision, the Commission has considered all relevant materials on the public record of this proceeding as well as the confidential filings. A separate confidential decision will be issued for those parties who have signed confidentiality undertakings in this proceeding.

12. 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.

³ Exhibit 25818-X0093.

⁴ The initial signed agreement, in Exhibit 25818-X0112, was revised and the revised document is in Exhibit 25818-X0112.01. The initial signed agreement (Exhibit 25818-X0112) that was filed on November 30, 2020, did not contain an executed signature on behalf of the CCA because of logistical issues. The signed agreement that was refiled on December 2, 2020 (Exhibit 25818-X0112.01) includes the executed signature page on behalf of the CCA. Confidential Appendix A of the NSA (confidential Exhibit 25818-X0120-C) was revised twice (confidential exhibits 25818-X0120.01-C and 25818-X0120.02-C) as a result of IR responses. Appendix B of the NSA (Exhibit 25818-X0113) was revised (Exhibit 25818-X0113.01) as a result of IR responses. Confidential Appendix C of the NSA (confidential Exhibit 25818-X0119-C) was revised (confidential Exhibit 25818-X0119.01-C) as a result of IR responses. Appendix D of the NSA (Exhibit 25818-X0114) was revised (Exhibit 25818-X0114.01) as a result of IR responses. Appendix F of the NSA (Exhibit 25818-X0116) was revised (Exhibit 25818-X0116.01) as a result of IR responses.

⁵ Exhibit 25818-X0112.01.

⁶ Confidential Appendix A (confidential Exhibit 25818-X0120.02-C). Appendix B (Exhibit 25818-X0113.01). Confidential Appendix C (confidential Exhibit 25818-X0119.01-C). Appendix D (Exhibit 25818-X0114.01). Appendix E (Exhibit 25818-X0115). Appendix F (Exhibit 25818-X0116.01). Appendix G (Exhibit 25818-X0117). Appendix H (Exhibit 25818-X0118).

3 Application for approval of the negotiated settlement agreement

3.1 The application and settlement brief

13. On December 2, 2020, DERS filed the NSA and settlement brief,⁷ which it said were drafted with input from, and were supported by, the CCA and the UCA.⁸

14. DERS summarized the negotiation process as follows:

Following approximately two weeks of negotiations, that involved further exchanges of information and compromises from all parties, a negotiated settlement agreement was reached (the **NSA or Agreement**) that proposes a new EPSP for DERS that implements the Index Methodology (the **2020-2022 EPSP (Index)**). All parties agree that the 2020-2022 EPSP (Index) will result in just, reasonable, and market-based electricity rates for DERS' regulated customers, and that it is preferable to the 2020-2022 EPSP (Auction).⁹

15. DERS described the EPSP included as part of the NSA as the “2020-2022 EPSP (Index)” to differentiate it from the EPSP in its original application, which it described as the “2020-2022 EPSP (Auction).”

16. DERS applied under sections 134(1) and 135 of the *Electric Utilities Act* and Section 6 of Rule 018 for approval of the NSA in its entirety. It added that there were no issues left unresolved and that all parties to the NSA accepted the settlement of all issues unanimously.¹⁰ DERS, the CCA and the UCA submitted that the NSA is in the public interest and requested that it be approved by the Commission.¹¹

3.2 The negotiated settlement agreement

17. The NSA consists of the following documents, which were either filed publicly or confidentially:

- The executed NSA with signatures¹²
- Confidential Appendix A: 2020-2022 EPSP (Index) – clean confidential¹³
- Appendix B: 2020-2022 EPSP (Index) – clean public (with redactions)¹⁴
- Confidential Appendix C: 2020-2022 EPSP (Index) – blackline confidential with explanatory notes¹⁵
- Appendix D: 2020-2022 EPSP (Index) – blackline public with explanatory notes (with redactions)¹⁶
- Appendix E: evidence regarding index methodology currently on the record¹⁷
- Appendix F: illustrative rate book¹⁸

⁷ Exhibit 25818-X0122.

⁸ Exhibit 25818-X0123.

⁹ Exhibit 25818-X0122, paragraph 6.

¹⁰ Exhibit 25818-X0122, paragraphs 8-9.

¹¹ Exhibit 25818-X0122, paragraph 7.

¹² Exhibit 25818-X0112.01.

¹³ Confidential Exhibit 25818-X0120.02-C.

¹⁴ Exhibit 25818-X0113.01.

¹⁵ Confidential Exhibit 25818-X0119.01-C.

¹⁶ Exhibit 25818-X0114.01.

¹⁷ Exhibit 25818-X0115.

¹⁸ Exhibit 25818-X0116.01

- Appendix G: opinion of Dr. Matt Ayres¹⁹
- Appendix H: additional evidence regarding index methodology²⁰

18. Dr. Matt Ayres was retained by the CCA to participate in the negotiations and provide an opinion on the NSA.

19. As set out in Section 2.2 of the NSA, the parties agreed that the current 2018-2020 EPSP will continue until the implementation date of the 2020-2022 EPSP (Index), which is July 1, 2021. Section 2.2 also includes wording confirming that the 2020-2022 EPSP (Index) uses the same procurement methodology as the 2018-2020 EPSP, and was modified only to the extent necessary to incorporate the index methodology.²¹

20. Section 2.3 of the NSA is titled “Summary of Key Terms of the 2020-2022 EPSP (Index)”²² and consists of the following:

The Parties agree that:

- (a) The implementation date (**Implementation Date**) of the 2020-2022 EPSP (Index) shall be July 1, 2021. For greater certainty, the first Rate Book DERS will file pursuant to the 2020-2022 EPSP (Index) and to section 12 of the RRO Regulation would be five business days prior to July 1, 2021;
- (b) The term of the 2020-2022 EPSP (Index) shall be until December 31, 2022, (see pdf page 3 of the 2020-2022 EPSP (Index), Appendix A);
- (c) DERS will continue with the 2018-2020 EPSP site count and load forecasting methodology, as amended in the post-disposition to Proceeding 24296 and accepted by the AUC in Decision 25751-D01-2020²³ (pdf pages 12-14 of the 2020-2022 EPSP (Index), Appendix A);
- (d) DERS shall procure the total forecasted volume in accordance with the description provided on pdf pages 16-21 of the 2020-2022 EPSP (Index), Appendix A;
- (e) The BEC [base energy charge] shall be calculated, and the CRC [commodity risk compensation] derived, in accordance with the methodology described on pdf pages 23-29 of the 2020-2022 EPSP (Index), Appendix A; and
- (f) In the event that there is a month without a single successful EPCOR auction necessary to use the Index Methodology, DERS will derive the CRC using the methodology described on pdf pages 25-26 of the 2020-2022 EPSP (Index), Appendix A.²⁴

¹⁹ Exhibit 25818-X0117.

²⁰ Exhibit 25818-X0118.

²¹ Exhibit 25818-X0112.01, sections 2.2(b) and (c), PDF pages 5-6.

²² Exhibit 25818-X0112.01.

²³ Disposition 25751-D01-2020: Direct Energy Regulated Services, Regulated Rate Tariff Electric Energy Charges – August 2020, Proceeding 25751, July 29, 2020.

²⁴ Exhibit 25818-X0112.01, PDF page 6.

21. DERS explained that the December 31, 2022, end date of the 2020-2022 EPSP (Index) means that December 2022 will be the last month for which DERS' RRT electric energy charges will be determined in accordance with the 2020-2022 EPSP (Index).²⁵

22. In Section 2.4 of the NSA, the parties agreed that DERS will make a compliance filing within one year of the implementation date that includes an update to the EPCOR load data used to derive the regression coefficients included in the index methodology. DERS confirmed that "If there is a material change to the regression coefficients then DERS will apply to amend the 2020-2022 EPSP (Index) concurrently with the Compliance Filing."²⁶ DERS provided additional information about the process of determining a material change to the regression coefficients as part of its responses to Commission IRs.²⁷

23. Section 2.5 of the NSA sets out that six months after the implementation date, the parties to the agreement will commence negotiations to determine an incentive mechanism. The implementation of an incentive mechanism would require amendments to the 2020-2022 EPSP (Index), and DERS would apply to the Commission for approval of any such amendments.

24. Section 5.1 of the NSA states that the NSA is of no force and effect unless approved by the Commission in its entirety in accordance with Section 135 of the *Electric Utilities Act*.²⁸

3.3 The 2020-2022 EPSP (Index)

25. DERS indicated that most components of its 2018-2020 EPSP remain substantively unchanged in the new 2020-2022 EPSP (Index),²⁹ but that the latter "... implements the Index Methodology through precise and limited modifications to DERS' 2018-2020 EPSP."³⁰

26. DERS noted that Appendix E of the NSA includes all the evidence regarding the index methodology that was on the record of Proceeding 25818 prior to filing the NSA. Appendix H of the executed NSA includes additional evidence regarding the index methodology as well as a detailed description of the differences in the EPSP processes between the 2020-2022 EPSP (Index) and the 2018-2020 EPSP.³¹ DERS provided additional information about the index methodology in its settlement brief³² and in responses to Commission IRs.³³

²⁵ Exhibit 25818-X0126.01, DERS-AUC-2020DEC03-004, PDF page 14.

²⁶ Exhibit 25818-X0112.01, Section 2.4, PDF page 7.

²⁷ Exhibit 25818-X0126.01, DERS-AUC-2020DEC03-005, PDF pages 15-16.

²⁸ Exhibit 25818-X0112.01, Section 5.1, PDF page 10.

²⁹ Exhibit 25818-X0122, paragraph 34. The 2020-2022 EPSP (Index) is included as Appendix A (confidential version) and Appendix B (public redacted version) of the executed NSA.

³⁰ Exhibit 25818-X0122, paragraph 33.

³¹ On page 1 of the executed NSA, it is noted that the 2018-2020 EPSP that DERS currently operates under was approved in Decision 24296-D01-2019: Direct Energy Regulated Services, 2018-2020 Energy Price Setting Plan Compliance Filing to Decision 22635-D01-2018, Proceeding 24296, May 22, 2019. However, in response to a Commission IR, DERS corrected the decision number to Decision 24296-D02-2020. The IR response is found at Exhibit 25818-X0126.01, DERS-AUC-2020DEC03-002(a).

³² Exhibit 25818-X0122.

³³ Exhibit 25818-X0126.01, DERS-AUC-2020DEC03-001 and DERS-AUC-2020DEC03-003.

4 Statutory and rule requirements for approval of a negotiated settlement agreement

4.1 Legislation and relevant decisions

27. Section 132(1)(a) of the *Electric Utilities Act* authorizes the Commission to establish rules, practices and procedures that facilitate negotiated settlements. Pursuant to this authority, the Commission has established Rule 018.

28. Rule 018 outlines several requirements associated with negotiated settlements, including the need for Commission approval to commence negotiations; that a utility must provide sufficient material in any settlement agreement to allow the Commission to assess its effect on rates and services; specifying that the onus is on the applicant to ensure that there is sufficient evidence to support its application for approval of the settlement; and that the quality and detail of the evidence and the rationale for the settlement of issues must be sufficient to enable the Commission to understand and assess the agreement.³⁴

29. Section 8 of Rule 018 deals with unanimous or unopposed settlement agreements and requires that the Commission assess whether the settlement results in rates as well as terms and conditions that are just and reasonable, and intervene if it determines that a unanimous settlement is patently against the public interest or contrary to law.

30. DERS applied for approval of the NSA in its entirety.³⁵ Sections 134 and 135 of the *Electric Utilities Act* give the Commission the authority to approve or refuse negotiated settlements. Specifically, Section 134(1) states that the Commission may approve a settlement of an issue that is within the jurisdiction of the Commission; however, Section 135 limits the Commission's jurisdiction where the parties have negotiated a settlement on the basis that the settlement agreement must be accepted in its entirety. In such a case, the Commission must either approve the entire settlement agreement or refuse it.

31. In Decision 2008-133,³⁶ the Commission reviewed previous decisions on Rule 018 and the guidelines with respect to NSAs set out by its predecessor, the Alberta Energy and Utilities Board (board). The Commission quoted Decision 2000-85,³⁷ in which the board considered the 1998 version of the guidelines and indicated that there are two steps in reviewing a unanimous settlement. First, the board examines the settlement process to ensure it was fair and in accordance with the criteria set out in the guidelines, taking into account such things as proper notice and due process to the participants, and that all interested parties have signed off on the settlement. Second, the board determines whether there are elements in the settlement that could result in rates that are not just and reasonable. In this respect, the board cautioned that if a settlement is changed in a significant way, it could be detrimental to the settlement agreement and any future settlements. The board stated that:

³⁴ Rule 018, sections 4 and 6.

³⁵ Exhibit 25818-X0122, paragraph 8.

³⁶ Decision 2008-133: NOVA Gas Transmission Ltd., 2008-2009 Revenue Requirement Settlement Application, Proceeding 23, Application 1566927-1, December 17, 2008.

³⁷ Decision 2000-85: Northwestern Utilities Limited, Approval of Rates, Tolls, Charges, and Terms and Conditions of Service for Core Customers and Approval of Amendments to the North Core Agreement, Application 2000297, File 1505-3, December 22, 2000, pages 3-8.

... in a package settlement compromises are struck that underpin the acceptability of the agreement among the parties, the importance of which may not be readily apparent to the Board. However, if a review of the settlement, including the possible empanelling of witnesses, reveals provisions that are patently against the public interest, the Board must act to change the agreement.³⁸

32. The board added, however, that “... it should restrain any inclination to alter the consensus settlement solely on the basis that it may have done things differently.”³⁹

33. The Court of Appeal of Alberta in *ATCO Electric Limited v Alberta (Energy and Utilities Board)* provided guidance with respect to the board’s obligations in considering settlement agreements. The court stated that the ultimate responsibility for approving negotiated settlements and ensuring that the process is fair and reasonable rests with the independent body. The court further stated that the NSP does not replace an appropriate and informed review by the board as to what is in the overall public interest. The court confirmed that the board’s discretion in controlling rates as mandated by statute cannot be fettered by a negotiated settlement.⁴⁰

34. In paragraphs 141 and 142 of its decision, the court also defined the public interest to be considered in the context of assessing whether to approve a negotiated settlement and whether the resulting proposed tariff is just and reasonable, as follows:

I have concluded that, when the Board is reviewing a utility’s application to approve a negotiated settlement agreed to by that utility and determining whether the rates and tariffs contained therein are just and reasonable, the public interest then remaining to be considered by the Board in both instances is the same. In these circumstances, that public interest – redefined to comport with the context in which the interest arises – means the interest of the rate-paying public only, and not the interests of the utility. Thus, for purposes of determining whether to approve the settlement and rates, the Board need not evaluate whether the settlement adequately protects the utility’s economic interests.⁴¹

35. Given the above guidance and Section 8 of Rule 018, the Commission considers that, in the current proceeding, it must accept or reject the NSA in its entirety and, in so doing, must consider the fairness and public interest factors with the objectives of determining:

- (i) if the process resulting in the settlement was fair, and
- (ii) if approval of the settlement will lead to rates that are just and reasonable. In making this determination, the Commission will consider if the settlement is patently contrary to the public interest or contrary to law.

4.2 Fairness of the negotiated settlement process

36. The first question is whether the NSP that resulted in the NSA was fair.

³⁸ Decision 2008-133, page 5, quoting Decision 2000-85, page 6.

³⁹ Decision 2008-133, page 5, quoting Decision 2000-85, page 7.

⁴⁰ *ATCO Electric Limited v Alberta (Energy and Utilities Board)*, 2004 ABCA 215, paragraphs 138-139.

⁴¹ *ATCO Electric Limited v Alberta (Energy and Utilities Board)*, 2004 ABCA 215, paragraphs 141-142.

4.2.1 The negotiated settlement process

37. Section 3 of Rule 018 requires a statement in the settlement agreement confirming that proper notice was provided by the applicant to all interested parties. Notice must be provided under the Commission's *Rules of Practice* (Rule 001).

38. Section 6(1) of Rule 018 requires a settlement agreement to include a representation that "no party has withheld relevant information." As required by Section 6(3) of Rule 018, DERS included details of the NSP and other details in its settlement brief.⁴²

Commission findings on the fairness of the negotiated settlement process

39. The Commission reviewed the material filed by DERS regarding the details of the NSP and, for the reasons provided below, is satisfied that the NSP was fair.

40. In accordance with Section 3(1) of Rule 018, the NSA includes a statement⁴³ confirming that proper notice was provided by DERS to all interested parties. The Commission accepts DERS' representation that sufficient notice was provided.

41. Further, the Commission is satisfied that DERS' request to enter into an NSP, which was filed on the record of this proceeding,⁴⁴ and the Commission's subsequent approval for DERS to initiate an NSP,⁴⁵ was distributed to all registered parties for Proceeding 25818 through notification by the Commission's eFiling System. The Commission considers that the registered parties are the parties who would be interested in DERS' 2020-2022 EPSP application and the NSP.

42. In consideration of the requirements of Rule 018, parties had sufficient notice, adequate materials and the opportunity to participate meaningfully in the negotiations. In the Commission's view, the record was well developed due to the substantial number of IRs to DERS and its responses, which were available prior to the parties entering into the NSP. The Commission is satisfied that the CCA and the UCA had the necessary information to participate fully in negotiations. The Commission gave parties a sufficient period of approximately three weeks for negotiations to take place.

43. The Commission considers that the CCA and the UCA are sophisticated parties with significant experience in negotiated settlements of EPSPs. The CCA and the UCA represent the majority of DERS' RRT customers, with the CCA representing primarily residential customers, and the UCA mandated by the Alberta Government to represent the interests of residential, farm and small business customers.

44. DERS informed the Commission that negotiations among the parties took place either over the phone, through email correspondence or using secure video-conferencing platforms. The CCA retained two consultants during the negotiations.⁴⁶ No concerns regarding the negotiation process were filed by any of the parties. In accordance with Section 6(1) of Rule 018,

⁴² Exhibit 25818-X0122, pages 8-9, paragraphs 21-25.

⁴³ Exhibit 25818-X0112.01, Section 4.1, page 9.

⁴⁴ Exhibit 25818-X0091.

⁴⁵ Exhibit 25818-X0093.

⁴⁶ Exhibit 25818-X0122, pages 8-9, paragraphs 22-24.

Section 4.2 of the NSA includes a statement that “Each Party represents that it has not withheld information relevant to the EPSP Application or the 2020-2022 EPSP (Index).”⁴⁷

4.3 Public interest

4.3.1 Basis for analysis

45. The second question is whether the settlement is in the public interest, including whether or not it will result in rates that are just and reasonable. In conducting its review of the NSA, the Commission has considered Section 8(2) of Rule 018, which requires that the Commission intervene if it determines that a unanimous settlement is patently against the public interest or contrary to law.

46. Given that the Commission must consider the settlement taken as a whole, the Commission considered the public interest from the ratepayers’ perspective, in accordance with the guidance of the Alberta Court of Appeal as discussed in Section 4.1 above. The Commission considered whether the effect of the settlement, taken as a whole, would lead to rates that are just and reasonable.

47. In conducting its public interest analysis, the Commission has taken into account all information on the record, including material in DERS’ original application filed prior to the commencement of negotiations, which was tested by the Commission and interveners through IRs.

4.3.2 Just and reasonable rates, general public interest factors and the NSA

48. DERS submitted that the NSA was reached following two weeks of negotiations, which involved further exchanges of information and compromises from all parties. It submitted that all parties agree that the use of an index methodology in the 2020-2022 EPSP (Index) will result in just, reasonable and market-based electricity rates for DERS’ customers, and is preferable to the 2020-2022 EPSP (Auction) that was included as part of DERS’ original application.⁴⁸

4.3.3 Index methodology, compliance filing and incentive mechanism

49. In this section, three of the primary areas of the NSA are discussed as part of the Commission’s consideration of whether the NSA results in just and reasonable rates and is in the public interest.

4.3.3.1 Index methodology

50. In Section 2.2(c) of the NSA, it is stated that the agreed-upon 2020-2022 EPSP uses the same procurement methodology as the 2018-2020 EPSP, and is modified only insofar as necessary to incorporate the index methodology.⁴⁹

51. In its initial application, DERS proposed a 2020-2022 EPSP that involved procurement of three energy products, namely a full-load product, a peak product and a flat product, through descending clock auctions held during the allowable price implementation period. This was a departure from the 2018-2020 EPSP in which DERS does not use descending clock auctions and procures only peak product and flat product. The reason given in support of the move to

⁴⁷ Exhibit 25818-X0112.01, Section 4.2, page 9.

⁴⁸ Exhibit 25818-X0122, page 4, paragraph 6.

⁴⁹ Exhibit 25818-X0112.01, Section 2.2(c), page 6.

procuring three energy products was that the resulting prices of the full-load product could be used to determine the BEC and CRC for DERS using a market-based approach.

52. The index methodology uses what DERS determined to be a strong, stable and statistically significant linear relationship between its realized load-following costs and those of EPCOR. From this relationship, seasonal multipliers were developed⁵⁰ and these seasonal multipliers are used in the agreed-upon 2020-2022 EPSP (Index).⁵¹ DERS provided the following description of how the monthly full-load price and CRC will be determined under the agreed-upon NSA.

DERS' Full-Load Price is determined by applying the Seasonal Multiplier to the difference between the EPCOR Full-Load Price and EPCOR Flat Price realized from the EPCOR auctions, and then adding the Flat Price realized through DERS' procurement activities. From that point, the rate-setting process is the same as it would be under the Auction Methodology: the Full-Load Price sets the BEC, and DERS can derive the CRC embedded in this BEC by subtracting from it the weighted average price of the portfolio of Flat and Peak Products that it would continue to procure to hedge its forecast RRO load. DERS will report the derived CRC in its monthly RRO filing.⁵²

53. DERS submitted that the index methodology eliminates the need for it to hold descending clock auctions that would be required under its originally proposed EPSP and it provides a more efficient pathway to the same market-based CRC. It added that by not having to incur the costs of conducting auctions, this translates into lower overall rates for customers.⁵³

4.3.3.2 Compliance filing

54. Section 2.4 of the NSA requires DERS to make a compliance filing within one year of the July 1, 2021, implementation date of the agreed-upon 2020-2022 EPSP (Index). DERS described the compliance filing requirements as follows:

The compliance filing called for by the NSA would require that DERS, within one year of the 2020-2022 EPSP (Index) being implemented, make a filing with the Commission with updated indexing coefficients underlying the Index Methodology. This update is to be based on EPCOR's and DERS' load data compiled from September 1, 2020 to the time of the compliance filing. The parties have agreed to this compliance filing in recognition of the fact that the indexing coefficients used in the 2020-2022 EPSP (Index) are based upon EPCOR's and DERS' load data between January 1, 2008 and August 31, 2020. The parties have agreed that, to the extent the updated load data results in a material change to the indexing coefficients, DERS will apply to the Commission to amend the 2020-2022 EPSP (Index) to incorporate the updated coefficients.⁵⁴

55. In IRs, the Commission requested that DERS describe the process to be employed to determine if there has been a material change to the indexing coefficients. DERS provided a description of the process and also submitted that the approach to determining "material change" was not negotiated or included in the NSA, and it confirmed that it is not applying for approval

⁵⁰ There are two seasonal multipliers: 94.04 per cent for October to March, and 83.53 per cent for April to September.

⁵¹ Exhibit 25818-X0122, page 7, paragraph 17.

⁵² Exhibit 25818-X0122, page 8, paragraph 19.

⁵³ Exhibit 25818-X0122, pages 6-8, paragraphs 13-20.

⁵⁴ Exhibit 25818-X0122, pages 9-10, paragraph 29.

of that approach in this proceeding. It added, “When it makes the Compliance Filing it will explain the approach, and apply it, and then it will be open for other parties or the Commission to either disagree or agree with it.”⁵⁵

4.3.3.3 Incentive mechanism

56. Section 2.5 of the NSA requires the parties to commence negotiations to determine an incentive mechanism regarding any amendments to the procurement protocol set out in Confidential Schedule E of the agreed-upon 2020-2022 EPSP (Index). The negotiations will commence six months after the July 1, 2021, implementation date of the agreed-upon 2020-2022 EPSP (Index). DERS stated that “The timing of the incentive mechanism negotiations are structured such that DERS could apply to the AUC to implement any incentive mechanism that might be agreed to between the parties concurrently with the compliance filing described above.”⁵⁶

4.3.4 Commission findings on public interest

57. For the reasons provided below, the Commission finds that the settlement is in the public interest and will result in rates that are just and reasonable.

58. The settlement represents a unanimous agreement reached through a negotiation process involving both the CCA and the UCA. This fact, and the fact that the CCA and the UCA collectively represent the interests of a majority of DERS’ RRO customers, support the Commission’s finding that the settlement is in the public interest. In addition, the Commission reviewed each of the provisions of the settlement in order to determine whether any of these provisions appear to be contrary to accepted regulatory practices, are unusual, or could result in unintended rate effects, service concerns, or other difficulties in future rate applications.

59. The Commission has reviewed the material submitted by DERS⁵⁷ in support of its submission that the use of the index methodology and the resulting 2020-2022 EPSP (Index) meet the requirements under the *Regulated Rate Option Regulation*, including sections 3, 10 and 11 of the regulation.

60. Dr. Ayres, who all parties agreed was qualified to offer an expert opinion on the merits of the index methodology,⁵⁸ stated that the agreed-upon 2020-2022 EPSP (Index) and index methodology would result in outcomes similar to the 2020-2022 EPSP (Auction) initially proposed by DERS. Relying on Dr. Ayres’s expert opinion about the index methodology, in addition to the fact that the remainder of the agreed-upon 2020-2022 EPSP (Index) is the same or similar to DERS’ currently approved 2018-2020 EPSP, the Commission finds that the agreed-upon 2020-2022 EPSP (Index) will result in rates that are just, reasonable and electricity market based.

61. Further, the compliance filing and incentive mechanism provisions of the NSA will have no effect on the rates that will be calculated under the agreed-upon 2020-2022 EPSP (Index) unless and until DERS applies to amend the agreed-upon 2020-2022 EPSP (Index) that forms part of the NSA. The Commission does not need to make a determination in this decision on

⁵⁵ Exhibit 25818-X0126.01, DERS-AUC-2020DEC03-005.

⁵⁶ Exhibit 25818-X0122, page 10, paragraph 30.

⁵⁷ Exhibit 25818-X0122, pages 15-24, paragraphs 55-77. Exhibit 25818-X0126.01, DERS-AUC-2020DEC03-001.

⁵⁸ Exhibit 25818-X0122, page 14, paragraph 50.

what constitutes a material change to the indexing coefficients and whether an amendment would be required to the 2020-2022 EPSP (Index).

62. Even though the parties to the NSA have described the future filing related to the 2020-2022 EPSP (Index) as a “compliance filing,” it is in substance an application to facilitate a review of updated data, to provide a forum to address any incentive mechanism and to allow for DERS or negotiating parties to request amendments to the 2020-2022 EPSP (Index), if required. Historically, the purpose of the compliance filing has been limited to matters that are necessary to ensure compliance with previous Commission directions, which is not the intended purpose of the compliance filing contemplated in the NSA. The Commission accepts the term “compliance” for the purposes of the future filing because it is part of the NSA, which the Commission must accept or reject in its entirety. The Commission will assess any incentive mechanism or other amendments DERS proposes to the agreed-upon 2020-2022 EPSP (Index) subsequent to DERS applying for any such changes in the future “compliance filing” application, and any Commission approvals will be based on an assessment of the merits of the proposed changes at that time.

5 Commission conclusion on the settlement

63. Based upon the NSA and the record of this proceeding and as a result of the above findings, the Commission approves the NSA and its appendixes in their entirety, as filed in the following exhibits:

- The executed NSA with signatures (Exhibit 25818-X0112.01, clean version)
- Confidential Appendix A: 2020-2022 EPSP (Index) – clean confidential (Confidential Exhibit 25818-X0120.02-C, clean version)
- Appendix B: 2020-2022 EPSP (Index) – clean public (with redactions) (Exhibit 25818-X0113.01, clean version)
- Confidential Appendix C: 2020-2022 EPSP (Index) – blackline confidential with explanatory notes (Confidential Exhibit 25818-X0119.01-C)
- Appendix D: 2020-2022 EPSP (Index) – blackline public with explanatory notes (with redactions) (Exhibit 25818-X0114.01)
- Appendix E: evidence regarding index methodology currently on the record (Exhibit 25818-X0115)
- Appendix F: illustrative rate book (Exhibit 25818-X0116.01, clean version)
- Appendix G: opinion of Dr. Matt Ayres (Exhibit 25818-X0117)
- Appendix H: additional evidence regarding index methodology (Exhibit 25818-X0118)

64. For ease of reference, the Commission has attached, in [Appendix 3](#) of this decision, the executed NSA with signatures, as well as [Appendix 4](#), which is Appendix B of the NSA and is the public, redacted version of the 2020-2022 EPSP (Index). Readers of this decision are advised that the NSA is comprised of all the appendixes listed in the previous paragraph, but due to the volume of material, not all of those appendixes are reproduced in this decision.

6 Monthly filings under the 2020-2022 EPSP (Index)

65. Section 12 of the *Regulated Rate Option Regulation* requires that “An owner must submit to its regulatory authority, not less than 5 business days prior to the commencement of each calendar month, the regulated rate for that calendar month and the calculations of the regulated rate.” DERS submits the following documents as part of its monthly electric energy charge filings under its current EPSP: (i) a cover letter; (ii) a rate calculation Excel workbook; (iii) a director attestation letter; (iv) a trader attestation letter; (v) Rate Rider P schedules; (vi) Rate Rider P (rural electrification association) schedules; (vii) a forecast variance report; and (viii) a confidential procurement review document. DERS confirmed that it intends to continue to file each of these documents as part of its monthly filings under the 2020-2022 EPSP (Index).⁵⁹

66. During the proceeding, DERS filed a sample of a revised director attestation letter it intended to file during the term of the 2020-2022 EPSP (Auction). The Commission notes that the sample director attestation letter filed by DERS references the purchase of full-load, peak and flat energy products through the use of descending clock auctions that were included in the originally proposed EPSP. The 2020-2022 EPSP (Index) approved as part of the NSA does not involve the purchase of three energy products through descending clock auctions, but instead procurement is the same as the currently approved 2018-2020 EPSP. Therefore, the Commission directs DERS to use for the term of the 2020-2022 EPSP (Index), a monthly attestation letter in the same form and content that was approved for the 2018-2020 EPSP in paragraph 190 of Decision 22635-D01-2018.⁶⁰ Note that in paragraph 190 of Decision 22635-D01-2018, DERS was directed to include a monthly attestation letter in the form set out in a previous decision (at paragraph 30 of Decision 21295-D01-2017⁶¹).

67. As part of the initial application, DERS filed a sample of the forecast variance report it intended to file during the term of the 2020-2022 EPSP (Auction).⁶² The Commission notes that the sample forecast variance report DERS intended to file is different from the sample forecast variance report DERS files under the 2018-2020 EPSP, and the differences relate to the deletion of certain back cast information. DERS explained that as of September 2020, its load forecasting methodology had changed and the revised load forecasting methodology no longer supports a back cast methodology.⁶³

68. The Commission notes that DERS’ revised load forecasting methodology was acknowledged by the Commission in Disposition 25751-D01-2020 and that the forecast variance reports filed subsequent to that acknowledgement⁶⁴ do not include any back cast information for September 2020 and subsequent months. Given this change in reporting practice, the Commission accepts DERS’ submission that its revised load forecasting methodology, which is the same methodology used in the agreed-upon 2020-2022 EPSP (Index), does not support a back cast methodology and it is not required in the monthly filings for acknowledgment. For this

⁵⁹ Exhibit 25818-X0126.01, DERS-AUC-2020DEC03-007.

⁶⁰ Decision 22635-D01-2018: Direct Energy Regulated Services, 2018-2020 Energy Price Setting Plan, Proceeding 22635, December 21, 2018.

⁶¹ Decision 21295-D01-2017: Direct Energy Regulated Services, 2016-2018 Energy Price Setting Plan Second Compliance Filing, Proceeding 21295, August 30, 2017.

⁶² Exhibit 25818-X0006.

⁶³ Exhibit 25518-X0043, DERS-AUC-2020SEP24-029.

⁶⁴ Forecast variance reports filed in conjunction with the monthly rates for November 2020 (Proceeding 26008), December 2020 (Proceeding 26112), January 2021 (Proceeding 26198) and February 2021 (Proceeding 26267).

reason, the Commission approves the sample forecast variance report filed by DERS in Exhibit 25818-X0006 and directs DERS to include the report in this form as part of its monthly energy rate filings during the term of the 2020-2022 EPSP (Index).

7 Order

69. It is hereby ordered that:

- (1) In accordance with the findings in this decision, the negotiated settlement agreement, as described in paragraph 63 of this decision, is approved as filed.

Dated on February 25, 2021.

Alberta Utilities Commission

(original signed by)

Kristi Sebalj
Panel Chair

(original signed by)

Vera Slawinski
Commission Member

(original signed by)

Douglas A. Larder, QC
Acting Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Direct Energy Regulated Services (DERS) Lawson Lundell Barristers & Solicitors
Consumers' Coalition of Alberta (CCA)
EPCOR Energy Alberta GP Inc. (EPCOR)
Office of the Utilities Consumer Advocate (UCA) Reynolds, Mirth, Richards & Farmer LLP

Alberta Utilities Commission
Commission panel
K. Sebalj, Panel Chair
V. Slawinski, Commission Member
D.A. Larder, QC, Acting Commission Member
Commission staff
A. Sabo (Commission counsel)
D. Mitchell
C. Arnot
O. Saenz

Appendix 2 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. During the proceeding, DERS filed a sample of a revised director attestation letter it intended to file during the term of the 2020-2022 EPSP (Auction). The Commission notes that the sample director attestation letter filed by DERS references the purchase of full-load, peak and flat energy products through the use of descending clock auctions that were included in the originally proposed EPSP. The 2020-2022 EPSP (Index) approved as part of the NSA does not involve the purchase of three energy products through descending clock auctions, but instead procurement is the same as the currently approved 2018-2020 EPSP. Therefore, the Commission directs DERS to use for the term of the 2020-2022 EPSP (Index), a monthly attestation letter in the same form and content that was approved for the 2018-2020 EPSP in paragraph 190 of Decision 22635-D01-2018. Note that in paragraph 190 of Decision 22635-D01-2018, DERS was directed to include a monthly attestation letter in the form set out in a previous decision (at paragraph 30 of Decision 21295-D01-2017). paragraph 66
2. The Commission notes that DERS' revised load forecasting methodology was acknowledged by the Commission in Disposition 25751-D01-2020 and that the forecast variance reports filed subsequent to that acknowledgement do not include any back cast information for September 2020 and subsequent months. Given this change in reporting practice, the Commission accepts DERS' submission that its revised load forecasting methodology, which is the same methodology used in the agreed-upon 2020-2022 EPSP (Index), does not support a back cast methodology and it is not required in the monthly filings for acknowledgment. For this reason, the Commission approves the sample forecast variance report filed by DERS in Exhibit 25818-X0006 and directs DERS to include the report in this form as part of its monthly energy rate filings during the term of the 2020-2022 EPSP (Index). paragraph 68

Appendix 3 – Executed NSA

[\(return to text\)](#)



Appendix 3 -
Executed NSA

(consists of 13 pages)

Appendix 4 – Appendix B of the agreement, the public, redacted version of the 2020-2022 EPSP (Index)

[\(return to text\)](#)



Appendix 4 -
Appendix B of the a
(consists of 32 pages)

Negotiated Settlement Agreement

Direct Energy Regulated Services
2020-2022 Energy Price Setting Plan Application

Proceeding 25818

THIS AGREEMENT for the negotiated settlement of the 2020-2022 Energy Price Setting Plan Application is made and entered into as of November 30, 2020

Among:

DIRECT ENERGY REGULATED SERVICES, a
business unit of Direct Energy Marketing Limited

-and-

CONSUMERS' COALITION OF ALBERTA, a
coalition of the Alberta Consumers' Association and the
Alberta Council on Aging, each incorporated under the
Societies Act, RSA 2000, c. S-14

-and-

**OFFICE OF THE UTILITIES CONSUMER
ADVOCATE**, established by Schedule 13.1 of the
Government Organization Act, RSA 2000, Chapter G-10

WHEREAS:

- (a) Direct Energy Regulated Services (**DERs**) performs the Regulated Rate Tariff functions in the service territory of ATCO Electric Ltd.;
- (b) The Alberta Utilities Commission (**AUC**) regulates DERs' operations including the determination of rates within the ATCO Electric Ltd. service territory;
- (c) DERs is currently operating in accordance with its 2018-2020 Energy Price Setting Plan which was approved in Decision 24296-D01-2019 (**2018-2020 EPSP**);

- (d) On August 21, 2020 DERS filed an application (the **EPSP Application**) with the AUC requesting approval of its 2020-2022 Energy Price Setting Plan (**2020-2022 EPSP (Auction)**) which is based on a descending clock auction methodology that is substantially the same as those in the Energy Price Setting Plans approved by the AUC in regard to EPCOR Energy Alberta GP Inc. (**EPCOR**) and ENMAX Energy Corporation in AUC Decisions 24284-D01-2019 and 25537-D02-2020, respectively;
- (e) The purpose of the 2020-2022 EPSP (Auction) is the determination of the Energy Price Setting Plan component of DERS' Regulated Rate Tariff;
- (f) On August 24, 2020, the AUC issued a notice of application informing potentially interested parties that it would be considering the 2020-2022 EPSP (Auction);
- (g) The Consumers' Coalition of Alberta (**CCA**) and the Office of the Utilities Consumer Advocate (**UCA**) registered to intervene in the proceeding on August 31, 2020 and September 15, 2020, respectively;
- (h) EPCOR also registered to intervene in the proceeding on August 26, 2020;
- (i) On September 9, 2020, the AUC issued a process schedule indicating the EPSP Application would be considered by way of a written process;
- (j) On September 24, 2020, the AUC, the CCA and the UCA issued information requests (**IRs**) relating to the EPSP Application;
- (k) EPCOR did not ask IRs and has not otherwise been an active participant in this proceeding;
- (l) On October 20, 2020, DERS responded to the IRs issued by the AUC, the CCA and the UCA;
- (m) On November 5, 2020, DERS requested AUC approval to begin a negotiated settlement process with the UCA and the CCA in respect of all aspects of an Energy Price Setting Plan including potentially an Energy Price Setting Plan that would incorporate the RRT price-setting methodology for determining DERS' CRC as described in the EPSP Application at paragraphs 118-119 and in IR responses DERS-AUC-2020SEP24-010 and DERS-UCA-2020SEP24-008 (**Index Methodology**);
- (n) On November 6, 2020, the AUC granted approval for DERS, the CCA and the UCA (collectively, the **Parties**) to enter into a negotiated settlement process for all matters relating to an Energy Price Setting Plan including potentially an incorporation of the Index Methodology in accordance with AUC Rule 018 (*Rules on Negotiated Settlements*);

- (o) The Parties met a number of times through an on-line platform over the course of approximately two weeks starting on November 17, 2020 to attempt to negotiate a settlement of an Energy Price Setting Plan; and
- (p) On November 30, 2020 the Parties reached a negotiated settlement with respect to an Energy Price Setting Plan that incorporates the Index Methodology (**2020-2022 EPSP (Index)**), reflecting an informed and considered compromise of the issues and positions advanced by the Parties during the negotiations.

IN CONSIDERATION of the mutual promises made in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by each of the Parties, and subject to the conditions set out below, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Defined Terms

As used in this Agreement, the following capitalized terms have the meaning set out below:

- (a) **“Agreement”** means this Negotiated Settlement Agreement;
- (b) **“BEC”** refers to “base energy charge”, which is the majority of the monthly energy charge comprising the “RRO rate” in section 11 of the RRO Regulation and described in paragraph 896 of AUC Decision 2941-D01-2015;
- (c) **“CRC”** refers to “commodity risk compensation”, and is the component of “risk margin” in section 5 of the RRO Regulation associated with volume and price risk (sections 5(3)(a) and (b), respectively);
- (d) **“Energy Price Setting Plan”** means, generically, an energy price setting plan as referred to in section 3(1)(a) of the RRO Regulation;
- (e) **“EUA”** means the *Electric Utilities Act*, S.A. 2003, c. E-5.1;
- (f) **“NGX”** means the online trading systems for electrical energy in Alberta operated by the Natural Gas Exchange, NGX Canada Inc. or any successor thereto;
- (g) **“Regulated Rate Tariff” or “RRT”** means the “regulated rate tariff” referred to in the RRO Regulation; and
- (h) **“RRO Regulation”** means the *Regulated Rate Option Regulation*, AR 262/2005, as amended.

1.2 Other Defined Terms

Capitalized terms not defined in this Agreement have the meaning given to them in the EPSP Application.

1.3 Gender and Number

Any reference in this Agreement to gender includes all genders and words denoting the singular shall include the plural and *vice versa*.

1.4 Headings

The division of the Agreement into separate articles and sections and the insertion of headings are for convenience only and shall not affect the interpretation of this Agreement.

1.5 Including

In the Agreement, the words “includes,” “including” and similar expressions mean “includes” (or “including”) without limitation.

1.6 Legal Representation

Each Party acknowledges that it has been represented by counsel in connection with the negotiation and execution of the Agreement.

1.7 References to Statutes and Regulations

Any reference to a statute, regulation or AUC rule is a reference to it as re-enacted, varied, amended, modified, supplemented or replaced from time to time.

1.8 Entire Agreement

The Agreement sets out the entire understanding and agreement of the Parties and there are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, among the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement.

1.9 Successor and Assigns

This Agreement becomes effective only when executed by all of the Parties and then approved by the AUC. This Agreement will then be binding on and enure to the benefit of the Parties and their respective successors. No Party may assign this Agreement without the prior written consent of the other Parties, provided that such consent will not unreasonably be withheld.

1.10 Amendments

The Agreement may be modified, altered or amended only by an agreement in writing, signed by the Parties and approved by the AUC.

1.11 No Waiver

No waiver of any provision of the Agreement will be valid or enforceable unless in writing and signed by the Party against whom enforcement of the waiver is sought. The waiver of any provision of the Agreement, at any time, by any Party, will not constitute a waiver of future compliance with that provision or a waiver of compliance with any other provision of the Agreement.

1.12 Governing Law

The Agreement and all disputes arising in connection with it will be subject to, governed by, and construed in accordance with the laws of the Province of Alberta including the laws of Canada that are applicable within the Province of Alberta.

1.13 Severability

In the event that any of the provisions of the Agreement are held by a court of competent jurisdiction to be invalid, all other provisions of the Agreement will remain enforceable to the fullest extent permitted by law, unless such finding materially impairs the economic benefit or protections to be derived by a Party under the Agreement.

1.14 Execution

The Agreement may be executed by facsimile transmission or by providing a scanned copy of the executed execution page, and may be executed by different Parties in different counterparts, each of which will be an original and all of which will constitute one and the same instrument.

1.15 Time of the Essence

Time shall be of the essence in the Agreement.

ARTICLE 2 TERMS OF SETTLEMENT

2.1 2020-2022 EPSP (Index)

The purpose of the 2020-2022 EPSP (Index) is the determination of the Regulated Rate Tariff of DERS. The Parties agree that the 2020-2022 EPSP (Index) attached to the Agreement as Appendix A, including the incorporated Index Methodology, should be approved by the AUC, as filed, pursuant to section 103 of the EUA and section 3(1)(a)(ii) of the RRO Regulation. For greater certainty, the Parties all agree to support the approval by the AUC of the Agreement and of the 2020-2022 EPSP (Index).

2.2 Key Principles

The Parties agree that:

- (a) There are clear benefits to customers and DERS under the 2020-2022 EPSP (Index) relative to the 2020-2022 EPSP (Auction) and the Parties are therefore seeking AUC approval of the 2020-2022 EPSP (Index). In seeking this approval, the Parties recognize, for the purposes of the Agreement only, that the AUC may potentially approve a descending clock auction methodology substantially the same as the 2020-2022 EPSP (Auction). For greater certainty, if the AUC does not approve the Agreement then (i) this clause of the Agreement will not limit in any way the right of the UCA and the CCA to argue against any DERS EPSP based on a descending clock auction methodology; and (ii) DERS will not, in any proceeding, make reference to this clause for any purpose. Alternatively, if the AUC does approve the Agreement then the Parties agree that this clause is spent.
- (b) The 2018-2020 EPSP will continue until the implementation date of the 2020-2022 EPSP (Index);

- (c) The 2020-2022 EPSP (Index) uses the same procurement methodology as the 2018-2020 EPSP, and is modified only insofar as necessary to incorporate the Index Methodology; and
- (d) The form of the monthly filing by DERS of its regulated rates and the calculations thereof (the **Rate Book**), that are required by section 12 of the RRO Regulation, will be modified to reflect the Index Methodology. An illustrative example of the Rate Book that would be filed upon approval of the Agreement by the AUC and implementation of the 2020-2022 EPSP (Index) is provided in Appendix F.

2.3 Summary of Key Terms of the 2020-2022 EPSP (Index)

The Parties agree that:

- (a) The implementation date (**Implementation Date**) of the 2020-2022 EPSP (Index) shall be July 1, 2021. For greater certainty, the first Rate Book DERS will file pursuant to the 2020-2022 EPSP (Index) and to section 12 of the RRO Regulation would be five business days prior to July 1, 2021;
- (b) The term of the 2020-2022 EPSP (Index) shall be until December 31, 2022, (see pdf page 3 of the 2020-2022 EPSP (Index), Appendix A);
- (c) DERS will continue with the 2018-2020 EPSP site count and load forecasting methodology, as amended in the post-disposition to Proceeding 24296 and accepted by the AUC in Decision 25751-D01-2020 (pdf pages 12-14 of the 2020-2022 EPSP (Index), Appendix A);
- (d) DERS shall procure the total forecasted volume in accordance with the description provided on pdf pages 16-21 of the 2020-2022 EPSP (Index), Appendix A);
- (e) The BEC shall be calculated, and the CRC derived, in accordance with the methodology described on pdf pages 23-29 of the 2020-2022 EPSP (Index), Appendix A; and
- (f) In the event that there is a month without a single successful EPCOR auction necessary to use the Index Methodology, DERS will derive the CRC using the methodology described on pdf pages 25-26 of the 2020-2022 EPSP (Index), Appendix A.

2.4 Compliance Filing

Within one year of the Implementation Date, DERS shall make a compliance filing (**Compliance Filing**) with the AUC that sets out the following information:

1. Hourly settlement volumes for DERS and EPCOR, and hourly Alberta Pool prices from the AESO, with a calculation of the monthly load following costs for each of EPCOR and DERS.
2. EPCOR's "Average Full-Load Price", "Average Flat Price" and "Average Price" (which is how EPCOR refers to the volume-weighted block price) from the EPCOR monthly RRT Energy Charge Calculation.
3. DERS' flat, peak and procurement-volume-weighted block procurement prices from DERS' Final RRT Monthly Rates.
4. DERS' derived CRC from DERS' Final RRT Monthly Rates.
5. A history of DERS' block product RRO transactions including transaction date, volume, and price from DERS' Final RRT Monthly Rates.
6. Monthly time series of the NGX settlement prices for the "NGX Fin FF, FP for AESO Ext Peak" and "NGX Fin FF, FP for AESO Flat" products starting 120 days prior to the delivery month, subject to the permission of the NGX to provide it externally.
7. The NGX's settlement price history for the EPCOR full-load product ("NGX Fin EPCOR RRO (%), FP for AESO Flat"), subject to the permission of the NGX to provide it externally.

The EPCOR load data used to derive the regression coefficients used in the Index Methodology and shown at Appendix "F.1" of the 2020-2022 EPSP (Index) at pdf page 29, Appendix A, covered the time period January 1, 2008 to August 31, 2020. The Compliance Filing will include an update to those regression coefficients to account for the additional data compiled from September 1, 2020 and which is available to use for the Compliance Filing. If there is a material change to the regression coefficients then DERS will apply to amend the 2020-2022 EPSP (Index) concurrently with the Compliance Filing.

The Compliance Filing will address generally the performance of the Index Methodology, any other issues identified by the AUC, and include any other information required by the AUC.

2.5 Incentive Mechanism

Six months after the Implementation Date the Parties will commence, in good faith and using best efforts, negotiations to determine an incentive mechanism that would result in a splitting between DERS and its regulated rate customers of the results of any amendments in the energy procurement plan described on pdf pages 16-21 of the 2020-2022 EPSP (Index), Appendix A. If the Parties reach an agreement on an incentive mechanism and related amendments to the procurement plan (**Procurement and Incentive Agreement**) then DERS will apply to the AUC for an amendment of the 2020-2022 EPSP (Index) that reflects the Procurement and Incentive Agreement. The application for such an amendment would be made concurrently with, and could potentially be informed by, the Compliance Filing. The Parties agree that negotiations to achieve a Procurement and Incentive Agreement would conclude, whether successful or not, within four months of commencing negotiations to ensure that the application to amend the 2020-2022 EPSP (Index) to reflect a Procurement and Incentive Agreement could be made concurrently with the Compliance Filing.

The Parties are aware of the AUC's Decision 2941-D01-2015 in which it did not approve an incentive mechanism, in these words:

974. The Commission considers that it is not necessary to provide a procurement incentive for DERS because it is in the interests of both DERS and the customers for DERS to procure in a manner that is consistent with obtaining the best available price. DERS is aware that it should procure its forecast load at the market based price, and its procurement details become transparent after the fact. The Commission, therefore, rejects the incentive sharing mechanism component of DERS' proposed EPSP.

If the Parties agree to a Procurement and Incentive Agreement they will expressly address the AUC's concerns in any application for approval of an amendment to the 2020-2022 EPSP (Index) that would reflect a Procurement and Incentive Agreement.

Recognizing the novelty of the Index Methodology, the Parties may also negotiate additional changes to the 2020-2022 EPSP (Index) that reflect its performance to that time, and if an agreement is reached in regard to such further amendments, DERS will apply to the AUC for approval.

For the purposes of the negotiations described in this section, DERS will provide a preliminary draft Compliance Filing to the UCA and the CCA reflecting information to be provided in that filing to the date the negotiations commence as reasonably practicable.

2.6 Opinion of Dr. Ayres

The CCA retained Dr. Ayres to provide his opinion on the merits of the 2020-2022 EPSP (Index) generally and relative to the 2020-2022 EPSP (Auction). His qualifications are described in Exhibit 25818-X0096, and his opinion is attached as Appendix G to the Agreement. The Parties agree that Dr. Ayres is qualified to provide the expert opinion set out in Appendix G.

2.7 Confidentiality of Sections of the 2020-2022 EPSP (Index)

Certain sections of the 2018-2020 EPSP have, with the AUC's approval, been filed in confidence and are not on the public record. Minor changes to those confidential sections are necessary to accommodate the Index Methodology and those changes are reflected in the 2020-2022 EPSP (Index). The UCA and the CCA have had the opportunity to review and consider those changes to the 2018-2020 EPSP and agree that confidential treatment of those sections continues to be warranted under the AUC's confidentiality rules.

2.8 Costs of the CCA

(a) Within 60 days following the receipt of invoices from the CCA, DERS will pay the CCA, on a refundable basis, the reasonable costs and expenses incurred by it in connection with retaining consultants and counsel in relation to the EPSP Application and the related negotiated settlement process to and including the point of approval of the Agreement. In the event of any difference between the costs paid to the CCA by DERS and the portion of DERS' cost claim (for recovery of costs related to this EPSP proceeding and negotiated settlement process including the CCA costs) associated with the CCA and approved by the AUC, the CCA will refund to DERS any amount by which DERS' approved cost claims differ from the amounts paid to the CCA by DERS within 60 days of the date of the AUC's decision approving DERS' cost claim.

(b) DERS will, in any event, pay to the CCA the amount of costs and expenses incurred by the CCA and approved by the AUC in connection with the Agreement and the related negotiated settlement process within 60 days of the date of the AUC's decision approving a CCA cost claim.

(c) The CCA will provide an estimate of the costs and expenses it expects to claim pursuant to (a) or (b) before the end of calendar year 2020.

ARTICLE 3

CONFIDENTIALITY AND PRIVILEGE

3.1 Without Prejudice

The negotiated settlement reflected in this Agreement is a compromise and was reached as a result of the desire of the Parties to avoid the significant resources and uncertainty associated with a litigated process. This Agreement is without prejudice to the positions that the Parties may take in other negotiations or regulatory proceedings.

3.2 Confidentiality

All discussions among the Parties during the negotiated settlement process are privileged and confidential and, except as set out in the Agreement, no matter discussed or information provided during the negotiated settlement may be disclosed to any person or to the AUC without the express written consent of all the Parties.

ARTICLE 4

Rule 018 Requirements

4.1 Notice

DERS confirms that proper notice of the negotiated settlement was provided to all interested parties in accordance with the AUC's directions and practice, including the notice provisions of the AUC Rule 001: *Rules of Practice*. Proper notice was effected through filing the application for approval of the Agreement on the AUC's e-Filing system (AUC Rule 018, section 3 and section 6(3)(a)).

4.2 Relevant Information

Each Party represents that it has not withheld information relevant to the EPSP Application or the 2020-2022 EPSP (Index) (AUC Rule 018, section 6(1)). Further, DERS represents that all information provided to the CCA and the UCA during the negotiated settlement process was true and accurate, to the best of DERS' knowledge.

4.3 All Issues Resolved

Subject to future negotiations on an incentive mechanism as described in section 2.5, the Parties confirm that all issues were resolved as reflected in the Agreement (AUC Rule 018, section 6(3)(c)); all issues were resolved unanimously (AUC Rule 018, section 6(3)(d)); and that there are no outstanding issues as between the Parties (AUC Rule 018, section 6(3)(g)).

4.4 Rates

The rates that will result from the Agreement are described in pdf pages 23-28 of the 2020-2022 EPSP (Index), Appendix A (AUC Rule 018, section 6(3)(e)).


ARTICLE 5
APPROVAL BY THE AUC

5.1 Approval Contingent Upon

This Agreement will be of no force and effect unless the AUC approves the Agreement in its entirety in accordance with Section 135 of the EUA.

IN WITNESS WHEREOF, the Parties have duly executed the Agreement as of the date set out above.

DIRECT ENERGY REGULATED SERVICES

By: _____

Name: Tanis Kozak

Title: Vice President & GM

CONSUMERS' COALITION OF ALBERTA

By: _____

Name:

Title:

**OFFICE OF THE UTILITIES CONSUMER
ADVOCATE**

By: _____

Name:

Title:

The rates that will result from the Agreement are described in pdf pages 23-28 of the 2020-2022 EPSP (Index), Appendix A (AUC Rule 018, section 6(3)(e)).

ARTICLE 5 APPROVAL BY THE AUC

5.1 Approval Contingent Upon

This Agreement will be of no force and effect unless the AUC approves the Agreement in its entirety in accordance with Section 135 of the EUA.

IN WITNESS WHEREOF, the Parties have duly executed the Agreement as of the date set out above.

DIRECT ENERGY REGULATED SERVICES

By: _____

Name:

Title:

CONSUMERS' COALITION OF ALBERTA

By: _____

Name:

Title:

OFFICE OF THE UTILITIES CONSUMER ADVOCATE

By: Chris.Hunt Digitally signed by Chris.Hunt
Date: 2020.11.30 14:50:37 -07'00'

Name: Chris Hunt

Title: Executive Director

The rates that will result from the Agreement are described in pdf pages 23-28 of the 2020-2022 EPSP (Index), Appendix A (AUC Rule 018, section 6(3)(e)).

ARTICLE 5
APPROVAL BY THE AUC

5.1 Approval Contingent Upon

This Agreement will be of no force and effect unless the AUC approves the Agreement in its entirety in accordance with Section 135 of the EUA.

IN WITNESS WHEREOF, the Parties have duly executed the Agreement as of the date set out above.

DIRECT ENERGY REGULATED SERVICES

By: _____

Name:

Title:

CONSUMERS' COALITION OF ALBERTA

By: _____

Name: J.A. Wachowicz (Dec 1/2020)

Title: legal counsel to CCA
Instructed to sign DERS EPSP NSA

**OFFICE OF THE UTILITIES CONSUMER
ADVOCATE**

By: **Chris.Hunt**

Digitally signed by Chris.Hunt
Date: 2020.11.30 14:50:37 -07'00'

Name: Chris Hunt

Title: Executive Director

APPENDICES

NSA Appendix A: 2020-2022 EPSP (Index) – Clean Confidential

NSA Appendix B: 2020-2022 EPSP (Index) – Clean Public (with Redactions)

NSA Appendix C: 2020-2022 EPSP (Index) – Blackline Confidential with Explanatory Notes

NSA Appendix D: 2020-2022 EPSP (Index) – Blackline Public with Explanatory Notes (with Redactions)

NSA Appendix E: Evidence Regarding Index Methodology Currently on the Record

- a. EPSP Application at paragraphs 118-119 (Exhibit 25818-X0021); and
- b. IR responses DERS-AUC-2020SEP24-010 (Exhibit 25818-X0043) and DERS-UCA-2020SEP24-008 (Exhibit 25818-X0054 with Attachments Exhibit 25818-X0074 and Exhibit 25818-X0075).

NSA Appendix F: Illustrative Rate Book (Monthly Filing of RRO Rates Required by *RRO Regulation* section 12)

NSA Appendix G: Opinion of Dr. Matt Ayres

NSA Appendix H: Additional Evidence Regarding Index Methodology

- a. DERS' EPSP Process: Current versus Index

NSA Appendix B: 2020-2022 EPSP (Index) – Clean Public (with Redactions) – **Amended** DERS-AUC-2020DEC03-006 and 008
Direct Energy Regulated Services
2020-2022 Energy Price Setting Plan Application
Proceeding 25818

DIRECT ENERGY REGULATED SERVICES

2020-2022 ENERGY PRICE SETTING PLAN (Index)

1. Definitions

Capitalized terms used in this Energy Price Setting Plan that are not otherwise defined herein, have the respective meanings ascribed to them in Schedule “A”.

2. RRO Energy Charge

The RRO Energy Charge applicable to each Rate Class for the term of the EPSP to be included in the Company’s RRT Price Schedules will be determined in accordance with Schedule “F”. The various components making up the RRO Energy Charge will be determined as follows:

(a) Base Energy Charge

Prior to the first day of the Allowable Price Implementation Period for each Month, the Company will complete an initial Forecast Load for the RRO Customers for the Month. The Forecast Load will be prepared for each Month, and then updated for that Month during the Allowable Price Implementation Period, as described in Schedule “C”.

The Energy Portfolio to be acquired by the Company for each Month will be determined in accordance with Schedule “D”. The Company will acquire the Energy Portfolio using the Energy Acquisition Process set out in Schedule “B” and Confidential Schedule “E” to the EPSP.

Any load not procured through the Energy Acquisition Process under the EPSP will be supplied in accordance with the Backstop Methodology as provided for in Confidential Schedule “E” to the EPSP.

The Base Energy Charge component of the RRO Energy Charge by Rate Class for the Company’s RRO Tariff for each Month over the term of the EPSP will be determined as described in Schedule “B” and Schedule “F” to the EPSP.

(b) Energy Return Margin

The Energy Return Margin will be set at an after tax rate of \$2.83/MWh, which shall be grossed up for taxes by applying the Effective Tax Rate.

(c) Cost Recovery Items

The Company will include in the RRO Energy Charge the additional items listed in Section C of Schedule “F”. These items include NGX Collateral Costs and Counterparties Collateral Costs, NGX Trading Charges and Transaction Fees, AESO Trading Charges, AESO Collateral Costs, External EPSP Development and Regulatory Costs, RAM charges, and Uplift Charges calculated as shown in Section C of Schedule “F”.

3. Filing of Energy Charge with AUC

In accordance with Section 12 of the RRO Regulation, DERS will file with the AUC for acknowledgement before the beginning of each Month, the RRO Energy Charge for each Rate Class for the Month, and the supporting calculations, determined in accordance with the formulas set out in the Energy Charge schedule (Schedule “F”).

4. Code of Conduct

Access to commercially sensitive information in connection with the EPSP will be governed by the EPSP Code of Conduct set out in Schedule “G” and the Procurement Conduct Agreement set out in Appendix “G.1” to the EPSP.

5. Adjustment to the Protocol for Procurement Process

DERS will monitor market developments or trends that might have a material impact on the competitiveness of the Energy Acquisition Process. In the event that an adjustment is required to ensure the Energy Acquisition Process is competitive, DERS will file an adjustment with the AUC for acknowledgement prior to implementation.

6. Expiry Date

The expiry date of this EPSP is December 31, 2022.

7. Change in Law

In the event of any material change in applicable law or in policies or rules having the effect of law (including regulations, ministerial orders, AUC decisions, orders, guidelines, directives, or AUC or ISO [Independent System Operator] Rules) as a result of which additional material costs or benefits not provided for in the EPSP are incurred by DERS in its performance of the EPSP, a person directly and materially harmed or prejudiced by the change in the context of the operation of the EPSP may apply to the Commission for an order re-opening and modifying the EPSP to the extent required to address the change. An application made under this section must include, at a minimum, a detailed description of the change giving rise to the re-opening request, the direct and material harm or prejudice that the person believes will be suffered if the EPSP is not re-opened, and the specific modifications to the EPSP that the person requests that the Commission approve to address the change. For greater certainty, an application to re-open under this section will not be considered to be an application for review and variance and will not be subject to the requirements of AUC Rule 016 (*Review of Commission Decisions*) or any successor or replacement rule.

**Schedule “A”
to DERS’ EPSP**

DEFINITIONS

1. Definitions

In the EPSP,

7x16 Peak Volume or **Peak Volume** or **7x16 Peak Product** or **Peak Product** means the volumes in MW for an electrical energy product for the hours HE08 to HE23, Monday through Sunday inclusive;

7x16 Peak Volume Block means 5MW of 7x16 Peak Product;

7x24 Base Volume or **Base Volume** or **7x24 Base Product** or **Base Product** means the volumes in MW for an electrical energy product for all hours in a day, Monday through Sunday inclusive;

7x24 Base Volume Block means 5 MW of 7x24 Base Product;

AESO means the Alberta Electric System Operator;

AESO Collateral Costs or **AES OCC** means the costs incurred for posting financial security with the AESO for a Month determined in accordance with Section C.2 of Schedule “F”;

AESO Metered Volumes Report reports the hourly settlement volumes of pool participants according to asset id;

AESO Trading Charges or **AESOTC** means the current charges set by the AESO from time to time for transacting energy through the power pool;

Allowable Price Implementation Period or **APIP** means the period beginning up to 120 calendar days prior to the 1st day of the Month and ending 6 Business Days prior to the 1st day of the Month;

AUC or **Commission** means the Alberta Utilities Commission;

Backstop Methodology is detailed in Confidential Schedule “E”;

Base Energy Charge by Rate Class or **BECRC** is the Energy Price in \$/MWh of the Energy Portfolio for a Rate Class for a Month;

Base Product means an agreement to supply power during a Base Period at a specified price;

Base Period means the period from 00:00 hours to 24:00 hours Monday through Sunday inclusive;

Business Day means a day, which is not a Saturday, Sunday or a statutory holiday in the Province of Alberta, and “day” means any calendar day;

Commodity Risk Compensation or **CRC** is the amount as set out in Section D of Schedule “F”;

Company means DIRECT ENERGY REGULATED SERVICES;

Counterparties Collateral Costs or **CCC** means credit costs that are in addition to any NGX Collateral Costs and AESO Collateral Costs, and include: (1) placement costs for having a sufficient credit facility in place to meet the total financial security requirements of the AESO and the NGX; and (2) standby (undrawn) credit costs associated with differences between the estimated credit facility and the estimated posted (drawn) financial security requirements;

Daily Target Price is the daily price calculated by DERS in accordance with Confidential Schedule “E”;

DLL means the Distribution Line Loss factor and the forecast Unaccounted for Energy for the Rate Class as determined in Schedule “C” and is expressed as a percentage of customers’ usage;

DEML means DIRECT ENERGY MARKETING LIMITED;

Derived Off Peak Procurement Price is the price DERS paid for energy in the Off-Peak Period that is derived from the Peak and Flat Block Procurement Prices;

DERS means DIRECT ENERGY REGULATED SERVICES a business unit of DEML;

EEA means EPCOR Energy Alberta GP Inc;

EEA Flat Price is the “Average Flat Price” from the EEA Monthly RRO Filing;

EEA Full-Load Price is the “Average Full-Load Price” from the EEA Monthly RRO Filing;

EEA Monthly RRO Filing is the EPCOR Energy Alberta GP Inc. Regulated Rate Option Acknowledgment Filing for Energy Charges that is submitted by EEA on the fifth last Business Day of each month;

ECRC means the Energy Charge applicable to a Rate Class;

Effective Tax Rate means the combined Federal and Provincial tax rates expected to be in effect for a month to be applied to the Energy Return Margin by dividing the after-tax Energy Return Margin by one minus the combined Federal and Provincial Tax Rates;

Energy Acquisition Process means the process to procure Energy Product, as described in Schedule “B” to the EPSP;

Energy Charge or **RRO Energy Charge** or **RRO Energy Price** means the \$/MWh amount applicable under the Company’s RRO Tariff to a Rate Class for a Month as determined under Schedule “F”;

Energy Portfolio means the Hedge Volumes acquired for a Month by way of the Energy Price Setting Process;

Energy Price means the price for electrical energy in \$/MWh;

Energy Price Setting Plan or **EPSP** means the document entitled “2020-2022 Energy Price Setting Plan (Index)” and all attachments, schedules and appendices thereto including Schedule “A” – Definitions; Schedule “B” – Energy Price Setting Process; Schedule “C” – Forecast Load Methodology; Schedule “D” – Energy Portfolio Hedge Volume Determination Methodology; Confidential Schedule “E” – Protocol for Procurement; Schedule “F” – Energy Charge Applicable for Each Month During the Plan Term; Schedule “G” – Code of Conduct for the Energy Price Setting Plan;

Energy Price Setting Process is as set out in Schedule “B”;

Energy Product means an agreement to supply power during a Base Period or Peak Period at a specified price;

Energy Return Margin or **ERM** is as set out in Section 2(b) of the Energy Price Setting Plan;

EPSP Code of Conduct means the rules and practices to which DERS and its affiliates will adhere while administering the EPSP as set out in Schedule “G” to the EPSP;

EU Act means the Electric Utilities Act, S.A. 2003, c.E-5.1 as amended;

Exchanges means i) Natural Gas Exchange Inc., and (ii) any other online internet trading system that may be established for trading electrical energy in Alberta;

Expiry Date of this EPSP is December 31, 2022;

External EPSP Development and Regulatory Costs or **EDR** has the meaning ascribed to it in Schedule “F” to the EPSP;

Final Settlement means the final calculation of settlement for a settlement month as described in AUC Rule 021: Settlement System Code Rules;

Forecast Load or **FL** means the forecast RRO usage in MW by hour determined in accordance with Schedule “C”;

FPH or **Flat Product Hours** means the number of 7x24 hours in a month;

FPP or **Flat Product Price** or **Flat Block Procurement Price** means the weighted average price in \$/MWh of the 7x24 Flat Products acquired for a Month;

FPV or **Flat Product Volume** means the Hedge Volume of the 7x24 Flat Products acquired for a Month;

FTL or the Forecast Total Load is the sum of the Forecast Load for a Month for each Rate Class including the distribution Line Loss Factor and the forecast Unaccounted for Energy for each Rate Class as determined in accordance with Schedule “C”;

Full-Load Price means the price of a product that covers a percentage of load and settles as a financial swap against the Alberta hourly pool price with respect to consumer volume for each applicable hour;

Gains and Losses Without Commodity Risk Compensation, Energy Return Margin and Adders means Revenue Without Commodity Risk Compensation and Energy Return Margin minus Total Energy Portfolio Costs plus Spot Trades;

HE means “hour ending” and reflects the convention of measuring time by referencing the end of an hour during a day. For example, HE01 is the first hour of a day starting at midnight and ending at 00:59:59;

Hedge Volume means 7x24 Base Volume or 7x16 Peak Volume;

Independent System Operator or **ISO** means the corporation established by section 7 of the EUA;

Letter of Credit or **LOC** is a guarantee of payment issued by a bank on behalf of a client that is used as “payment of last resort” should the client fail to fulfill a contractual commitment with a third party;

Line Loss Factor or **LLF_{RC}** means the distribution line losses by Rate Class that are most recently approved by the AUC for the ATCO Electric distribution service area by rate class, expressed as a percentage of customers' usage within the Rate Class;

Load Profile has the meaning ascribed to that term in AUC Rule 021: Settlement System Code Rules;

Market Surveillance Administrator or **MSA** means the entity established under section 42 of the Electric Utilities Act S.A. 2003 c. E-5.1;

Metered Forecast Load or **MFL** means the Forecast Load excluding distribution line losses and UFE;

Month means the calendar month with respect to which RRO Energy Charges are being established under this EPSP;

Monthly Settlement means the settlement data received for a settlement month approximately 3 weeks after the last day of the settlement month as described in AUC Rule 21: Settlement System Code Rules;

NGX means the online trading systems for electrical energy in Alberta operated by the Natural Gas Exchange, NGX Canada Inc. or any successor thereof;

NGX Collateral Costs or **NGXCC** means the costs incurred for posting financial security with the NGX in \$/MWh determined in accordance with Section C.6 of Schedule "F" to the EPSP;

NGX Trading Charges and Transaction Fees or **NGXTC** means the \$/MWh amount set by the NGX from time to time for load acquired or transacted on the NGX, determined in accordance with Section C.5 of Schedule "F";

OFFPFL means the Off Peak Forecast Load for the month;

OFFPFL_{RC} means the Off Peak Forecast Load for a Rate Class for a Month;

OFFPFTL is the Off Peak Forecast Total Load for the Month and is calculated as $OFFPFTL = \sum OFFPFL_{RC} \times (1 + DLL_{RC})$ for all Rate Classes;

OFFPP means the Off Peak Price for the Month;

ONPFL is the On Peak Forecast Load for the Month;

ONPFL_{RC} means the On Peak Forecast Load for a Rate Class for a Month and is equal to the total of the Forecast Load for the on peak hours for the Rate Class for the Month;

ONPFTL is the On Peak Forecast Total Load for the Month and is determined in accordance with section B.10 of Schedule “F”;

OTC means over-the-counter;

Parental Corporate Guarantee or **PCG** is a guarantee of payment from a parent company for a subsidiary when the subsidiary enters into a contract with a counterparty;

Peak Block Procurement Price is the weighted average price paid by DERS for all the peak products procured for the Month;

Peak Period means the period from hours HE08 to HE23 Monday through Sunday inclusive;

Procurement Conduct Agreement means Appendix “G.1” to the EPSP;

Procurement Volume means the amount of Base Product and Peak Product that DERS requires in a Month;

Product means a Base Product or a Peak Product;

Protocol means the method for procuring product;

Quarter means a calendar quarter;

RAM means the Retail Adjustment to Market charges forecast for the Month;

Rate Class means the classes of customers eligible for RRO service under the RRO Regulation as designated by DERS and currently classified as follows: E1-Residential Service, E2-Small General Service, E3-Large General Service, E4-Oilfield Service, E5-Farm Service, E6-Lighting Service, and E7-Irrigation Pumping Service;

Revenue Without Commodity Risk Compensation and Energy Return Margin means the RRO revenue collected by the Company based on the weighted average BEC_{RC} grossed up for forecast Distribution Line Losses and Unaccounted for Energy;

RRO means the Regulated Rate Option;

RRO Customer means a “regulated rate customer” as defined in the RRO Regulation who accepts, uses or receives service from DERS at a Site located in the distribution service area of ATCO Electric;

RRO Regulation means the Regulated Rate Option Regulation, AR 262/2005, as amended, being the regulation that governs RRO service in the Province of Alberta;

RRO Site means a Site with respect to which an RRO Customer is the customer of record (as defined in DERS' RRO Tariff) for the Site;

RRO Tariff means the Tariff approved from time to time by the Commission pursuant to the EU Act and RRO Regulation respecting the provision of RRO Service by the Company in the distribution service areas in which the Company provides RRO service;

RRT Price Schedule means the Company's Price Schedule applicable to Regulated Rate Customers as approved from time to time by the Commission as part of the Company's RRO Tariff;

Seasonal Multiplier means the estimated regression coefficient (see Appendix F.1) used to quantify the relationship between DERS' and EEA's Full-Load Prices;

Site means a site as defined in AUC Rule 021: Settlement System Code Rules;

Spot Trades means the costs and revenues of clearing short and long positions at Alberta pool prices;

TEPC or Total Energy Portfolio Cost has the meaning ascribed to it in Schedule F;

Total Target Volume means, as the context requires, the 7x24 Base Volume or 7x16 Peak Volumes required for a Month;

Total Target Volume Blocks means, as the context requires, the 7x24 Base Volume Blocks or the 7x16 Peak Volume Blocks required for a Month;

UC is the Uplift Charge calculated in accordance with Section C.8 of Schedule "F";

Unaccounted for Energy or UFE means an amount of energy that is charged to DERS and represents energy that cannot be specifically allocated to a retailer or customer in accordance with Rule 021: Settlement System Code Rules, and is expressed as a percentage of customer usage;

Wholesale Class Information or WCI is the historical total consumption information that is provided by ATCO Electric for all sites by loss group and profile class for each settlement run;

and

Wholesale Settlement Detail or WSD is the historical consumption information that is provided by ATCO Electric at a site level.

**Schedule “B”
to DERS’ EPSP**

ENERGY PRICE SETTING PROCESS

Capitalized terms used in this Schedule that are not otherwise defined herein have the meanings ascribed to them in Schedule “A” to the EPSP.

A. ENERGY ACQUISITION PROCESS

The Energy Price Setting Process begins with the Energy Acquisition Process under which the Company will procure energy supply for the Energy Portfolio.

The Company will procure over the Allowable Price Implementation Period energy supply for the Energy Portfolio in accordance with the methods and procedures for acquiring Energy Product set out below and in Schedule “D” and Confidential Schedule “E”.

The Energy Portfolio will consist of Energy Products.

- (a) DERS will procure as necessary the required Energy Portfolio in accordance with Confidential Schedule “E”.
- (b) The total volumes for the 7x24 Base Volume and 7x16 Peak Volume as determined in Schedule “D” to this EPSP will constitute the Hedge Volumes for the Month.

B. ENERGY PRICE SETTING PROCESS TIMELINES

The Energy Price Setting Process will begin no earlier than the first Business Day of the Allowable Price Implementation Period for each Month.

- (a) The Energy Price Setting Process will end on the last Business Day prior to the end of the Allowable Price Implementation Period for each Month.

C. RRO ENERGY CHARGE

- (a) Based on the procurement of the Energy Acquisition Process for the Month, five Business Days prior to the first day of the Month:
 - (i) DERS will calculate the Base Energy Charge for each Rate Class for the Month using the method described in Schedule “F”.
 - (ii) DERS will calculate the RRO Energy Charge by Rate Class for the Month using the method described in Schedule “F”.

**Schedule “C”
to DERS’ EPSP**

FORECAST LOAD METHODOLOGY

Capitalized terms used in this Schedule that are not otherwise defined herein have the meanings ascribed to them in Schedule “A” to the EPSP.

A. RRO FORECAST LOAD METHODOLOGY

DERS will continue to utilize the forecasting system deployed across Direct Energy in order to complete its monthly and quarterly forecast. Forecasts will be developed at the rate class level.

- 1) **Forecast Total Load (“FTL”)** for each Month will be determined as follows:

$$\text{FTL} = \sum \text{FL}_{\text{RC}} \times (1 + \text{DLL}_{\text{RC}})$$

where:

“**FL_{RC}**” is the Forecast Load for the Month for each rate class

“**DLL_{RC}**” is the Distribution Line Loss factor and the forecast Unaccounted for Energy for the Rate Class as determined in Section A.4 of this Schedule “C”.

- 2) $\text{FL}_{\text{RC}} = (\sum (\text{DSC}_{\text{RC}} \times \text{PRC} \times \text{UFRC})) \times \text{SFRC}$

where:

“**DSC_{RC}**” is the current active site count by rate class

“**PRC**” is the hourly profile by rate class for each week based on historical WCI data

“**UFRC**” is the average weekly usage by rate class derived from the previous 3 years Final WSD settlement data

“**SFRC**” is the site count factor applied to adjust the FTL for a net growth and attrition factor

- 3) **SFRC** = average monthly net growth and attrition factor based on previous 2 year actual site count net growth/attrition calculated at the rate class level.
- 4) The Distribution Line Loss Factor and the forecast Unaccounted for Energy for the Rate

Class will be determined as follows:

$$DLL_{RC} = UFERC + LLF_{RC}$$

where:

“ $UFERC$ ” is the forecast Unaccounted for Energy for the Rate Class.

“ LLF_{RC} ” means the Line Loss Factor for the Rate Class.

a) The forecast Unaccounted for Energy ($UFERC$) for the Rate Class will be determined by calculating the average monthly Unaccounted for Energy over the most recent six calendar months for which Final Settlement is available for the Rate Class, as charged to the Company by the AESO.

b) The Line Loss Factor (LLF_{RC}) means the Distribution Line Losses by Rate Class that are most recently approved by the AUC for the ATCO Electric distribution service area for each rate class, expressed as a percentage of customers’ usage for each Rate Class.

B. FORECAST LOAD UPDATES

1. The Forecast Load for each Month will initially be updated prior to the first day of the Allowable Price Implementation Period. It will be updated monthly, 90, 60 and 30 days prior to the Month using the latest available settlement data (excluding initial-daily settlement data) to update the UF_{RC} , SF_{RC} , and $UFERC$ and utilizing the current active site count. The updated Forecast Load will be used to recalculate the Total Target Volumes and Total Target Volume Blocks for the Month in accordance with the methodology set out in Schedule “D” to this EPSP.

C. ADJUSTMENTS TO INPUT DATA

1. Notwithstanding anything in this schedule to the contrary, the “Actual” load, site count and profile data used for purposes of the calculations described in this Schedule will be adjusted as necessary to reflect changes in the eligibility of sites for RRO service resulting from modifications to the RRO eligibility criteria set out in section 1(d) of the RRO Regulation. The timing of the adjustments to the data made by the Company will reflect the timing of the implementation of the modifications to the RRO eligibility criteria in the RRO Regulation as announced by the Alberta Department of Energy. In the event that the Alberta Department of Energy announces its intention to implement such a modification to the RRO eligibility criteria, the Company will advise the Commission of its plan to reflect those changes in its RRO Forecast Load methodology prior to implementing them.

D. METHODOLOGY CHANGES

1. Any Forecast Load methodology improvements identified during the term of the EPSP will be filed for acknowledgement with the Commission prior to implementation. In the acknowledgement filing, DERS will include:
 - i. An explanation of the change to the methodology or adjustment to the inputs to the forecast;
 - ii. Supporting analysis for the change to the methodology or adjustment to the inputs to the forecast; and
 - iii. A schedule that shows the history of all the changes to the methodology and changes to the inputs to the forecast.

**Schedule “D”
to DERS’ EPSP**

ENERGY PORTFOLIO HEDGE VOLUME DETERMINATION METHODOLOGY

Capitalized terms used in this Schedule that are not otherwise defined herein have the respective meanings ascribed to them in Schedule “A” to the EPSP.

A. HEDGE VOLUME DETERMINATION

1. The Average Hourly Total Target Volume respecting the 7x24 Base Volumes and 7x16 Peak Volumes required for a Month will be based on the Forecast Total Load prepared in accordance with Schedule “C”, as follows:
 - (a) The Average Hourly Total Target Volume respecting the 7x24 Base Volume required for the Month will be equal to the Off Peak Forecast Total Load (OFFPFTL) for the month divided by the number of days in the month divided by 8, rounded to the nearest 5 MW.
 - (b) The Average Hourly Total Target Volume respecting the 7x16 Peak Volumes required for the Month will be equal to the On Peak Forecast Total Load (ONPFTL) for the month divided by the number of days in the month divided by 16, minus the 7x24 Base Volumes calculated in (a) above, rounded to the nearest 5 MW.
2. The Total Target Volume Blocks respecting the 7x24 Base Volume Blocks and 7x16 Peak Volume Blocks required for the Month will be determined as follows:
 - (a) The 7x24 Base Volume Blocks will be equal to the 7x24 Base Volume determined in 1(a) divided by 5 MW.
 - (b) The 7x16 Peak Volume Blocks will be equal to the 7x16 Peak Volume determined in 1(b) above divided by 5 MW.

**Confidential Schedule “E”
to DERS’ EPSP**

PROTOCOL FOR PROCUREMENT

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

**Confidential Appendix “E.1”
to DERS’ 2020-2022 EPSP
REDACTED**

**Schedule “F”
to DERS’ EPSP**

**ENERGY CHARGE APPLICABLE FOR EACH MONTH
DURING THE PLAN TERM**

Capitalized terms used in this Schedule that are not otherwise defined herein have the meanings ascribed to them in Schedule “A” to the EPSP.

A. RRO ENERGY CHARGE

The Energy Charge (“EC_{RC}”) applicable to each RRO Rate Class for each Month will be determined as follows:

$$(1) \quad EC_{RC} = (BEC_{RC} + AESOTC) \times (1 + DLL_{RC}) + ERM + RAM + UC + NGXTC + NGXCC + AESOCC + CCC + EDR$$

where:

“**BEC_{RC}**” is the Base Energy Charge in \$/MWh of the Energy Portfolio for the Rate Class for the Month determined in accordance with Section B of this Schedule “F” to the EPSP.

“**AESOTC**” are the AESO Trading Charges in \$/MWh determined in accordance with Section C.1 of this Schedule “F” to the EPSP.

“**DLL_{RC}**” is the Distribution Line Loss factor and the forecast Unaccounted for Energy for the Rate Class as determined in accordance with Section A.4 of Schedule “C” to the EPSP.

“**ERM**” is the Energy Return Margin as set out in Section 2(b) of the document entitled “2020-2022 Energy Price Setting Plan (Index)” and will be \$2.83/MWh grossed up by applying the Effective Tax Rate.

“**RAM**” is the Retail Adjustment to Market charge forecast for the Month in \$/MWh determined in accordance with Section C.7 of this Schedule “F” to the EPSP.

“**UC**” are the Uplift Charges in \$/MWh determined in accordance with Section C.8 of this Schedule “F” to the EPSP.

“**NGXTC**” are the NGX Trading Charges and Transaction Fees in \$/MWh determined in accordance with Section C.5 of this Schedule “F” to the EPSP.

“**NGXCC**” are the NGX Collateral Costs in \$/MWh determined in accordance with Section C.6 of this Schedule “F” to the EPSP.

“**AESOC**” are the AESO Collateral Costs in \$/MWh determined in accordance with Section C.2 of this Schedule “F” to the EPSP.

“**CCC**” are the Counterparties Collateral Costs in \$/MWh determined in accordance with Section C.4 of this Schedule “F” to the EPSP.

“**EDR**” are the External EPSP Development and Regulatory costs in \$/MWh determined in accordance with Section C.3 of this Schedule “F” to the EPSP.

B. RATE CLASS ENERGY PRICE DETERMINATION

The Base Energy Charge (“**BEC_{RC}**”) for the Month for each Rate Class will be determined as follows:

$$(2) \quad \mathbf{BEC_{RC}} = \mathbf{P_{FL_ON}} \times \mathbf{FTL\%_{RC_ON}} + \mathbf{P_{FL_OFF}} \times \mathbf{FTL\%_{RC_OFF}}$$

FTL %_{RC_ON} is the total peak load forecast as a percentage of **FTL** by rate class.

FTL %_{RC_OFF} is the total off-peak load forecast as a percentage of **FTL** by rate class.

P_{FL} is the Full-Load Price for DERS, based on the EEA Monthly RRO Filing.

$$(3) \quad \mathbf{P_{FL}} = \mathbf{M} \times (\mathbf{P_{FL_{EEA}}} - \mathbf{P_{F_{EEA}}}) + \mathbf{P_{B_F}}$$

M is the Seasonal Multiplier estimated according to the methodology outlined in Appendix F.1.

P_{FL_{EEA}} is the EEA Full-Load Price from the EEA Monthly RRO Filing.

P_{F_{EEA}} is the EEA Flat Price from the EEA Monthly RRO Filing.

P_{B_F} is DERS’ Flat Block Procurement Price.

P_{FL_OFF} is the estimated Full-Load Price for the Off-Peak period.

$$(4) \quad \mathbf{P_{FL_OFF}} = \mathbf{P_{B_OFF}} \times \mathbf{FLP_{RATIO}}$$

P_{B_OFF} is the Derived Off-Peak Block Procurement Price.

$$(5) \quad P_{B_OFF} = (H_F \times P_{B_F} - H_{ON} \times P_{B_ON}) / (H_F - H_{ON})$$

H_F = the total hours in the Month

H_{ON} = the total hours in the Peak Period for the Month.

P_{B_F} = DERS' Flat Block Procurement Price

P_{B_ON} = DERS' Peak Block Procurement Price

P_{B_OFF} = DERS' Derived Off-Peak Block Procurement Price

P_{FL_ON} is the estimated Full-Load Price for the Peak Period.

$$(6) \quad P_{FL_ON} = P_{B_ON} \times FLPRATIO$$

$FLPRatio$ is the Full-Load Price divided by the total-load-weighted block procurement price.

$$(7) \quad FLPRatio = P_{FL} / P_{B_W}$$

$$(8) \quad P_{B_W} = FTL \%_{ON} \times P_{B_ON} + FTL \%_{OFF} \times P_{B_OFF}$$

$FTL \%_{ON}$ is the total peak load forecast as a percentage of FTL across all rate classes.

$FTL \%_{OFF}$ is the total off-peak load forecast as a percentage of FTL across all rate classes.

Backstop CRC Calculation

If there is not an EEA Full-Load Price in the EEA Monthly RRO Filing provided for the Month, the Backstop CRC will be applied to the procurement-volume-weighted block procurement price (Peak and Flat Block Procurement Prices weighted by Peak and Flat Block procurement volumes) to determine the Full-Load Price instead of Formula (3). This is detailed in Formula (9) below.

$$(9) \quad P_{FL} = P_{B_PW} \times (1 + CRC_{12MA\%})$$

P_{B_PW} is the procurement-volume-weighted block procurement price.

$CRC_{12MA\%}$ is the percentage of total CRC to Revenue Without Commodity Risk Compensation and Energy Return Margin over the past twelve months. For any month in that twelve-month period where there was not an EEA Full-Load Price in the EEA Monthly RRO Filing, the CRC amount is replaced with that month's Gains and Losses Without Commodity Risk Compensation, Energy Return Margin and Adders.

$$(10) \quad CRC_{12MA\%} = \frac{\sum_{m=1}^{12} \text{if}(n_m = 1, CRC_m \times U_m, L_m)}{\sum_{m=1}^{12} BECWOCRC_m \times U_m}$$

m is the previous-month index from 1 to 12

n equals 1 in months where there is a Full-Load Price in the EEA Monthly RRO Filing.

CRC_m is the monthly CRC on a \$/MWh basis.

U_m is monthly customer usage.

$BECWOCRC_m$ is the BEC without CRC in month m .

L_m is the monthly Gains and Losses Without Commodity Risk Compensation, Energy Return Margin and Adders for month m for which Monthly Settlement data is available. Calculation of L_m will use the most recent settlement data, excluding daily settlement.

C. COST ADDER CALCULATIONS

- 1) The AESO Trading Charges (“**AESOTC**”) for the Month will be the current AESO Trading Charges set by the ISO from time to time expressed in \$/MWh.
- 2) The AESO Collateral Costs (“**AESOCC**”) for the Month will be the AESO credit limit multiplied by the sum of the most recent AUC approved annual rate for Parental Corporate Guarantees (“**PCG**”) costs divided by 12 plus the Letter of Credit (“**LOC**”) cost divided by 12. These costs shall be divided by the MFL for the Month to derive the monthly cost adder.

3) The External EPSP Development and Regulatory Costs (“**EDR**”) for the Month will be determined as follows:

- a) With respect to costs incurred by the Company prior to the first Month of the EPSP, the EPSP Implementation Costs will include:
 - i.) all of the Company’s external costs (including legal and consulting fees, and disbursements) associated with:
 - a) The development and preparation of the EPSP.
 - b) The preparation and filing with the AUC of the Application for approval of the EPSP and all aspects of the AUC’s regulatory approval process for the EPSP.
 - ii.) intervener hearing costs approved for recovery by the AUC in respect of the AUC’s regulatory approval process referred to in (i) above.

One-twelfth of the total of the costs identified in this subsection (a) will be included in the calculation of the RRO Energy Charge for each of the first 12 Months of the EPSP.

- b) With respect to costs incurred by the Company after the beginning of the first Month of the EPSP, EDR costs will include:
 - i.) all of the Company’s external costs (including legal and consulting fees, and disbursements) associated with:
 - a) The development and preparation of any amendments to the EPSP.
 - b) The preparation and filing with the AUC of any Applications for approval of such amendments and all aspects of the AUC’s regulatory approval process for the amendments.
 - ii.) intervener hearing costs approved for recovery by the AUC in respect of the AUC’s regulatory approval process referred to in (i) above.

One-twelfth of the total of the costs identified in this subsection (b) will be included in the calculation of the RRO Energy Charge a Month following the implementation of the amendment.

- c) The implementation costs associated with ongoing implementation of the EPSP will be applied to the Month in which the costs occur;
- d) Any EPSP EDR costs that occurred under previous EPSPs that were not fully recovered while they were in force will constitute EDR costs under this EPSP and

will be recovered by DERS under this EPSP over a time period determined by DERS, acting reasonably;

- e) The total costs for each Month calculated in a), b), c) and d) above will be divided by the MFL for the Month and expressed as a \$/MWh amount.
- 4) The Counterparties Collateral Costs (“**CCC**”) adder in \$/MWh will be determined on a monthly basis as the sum of the estimated dollar amount of Parental Corporate Guarantees (PCG) issued on behalf of RRO Customers multiplied by the most recent AUC approved annual rate for PCG divided by 12. These costs shall be divided by the MFL for the Month to derive the monthly cost adder.
- 5) The NGX Trading Charges and Transaction Fees (“**NGXTC**”) will be all broker and NGX fees divided by the MFL to arrive at the applicable \$/MWh amount.
- 6) NGX Collateral Costs (“**NGXCC**”) in \$/MWh to be included in the RRO Energy Charge will be determined on a monthly basis as the estimated dollar amount of Parental Corporate Guarantees (PCG) issued on behalf of Regulated Rate Customers for NGX multiplied by the most recent AUC approved annual rate for PCG divided by 12 plus the dollar amount of Letters of Credit (LOC) issued multiplied by the actual LOC costs divided by 12. These costs shall be divided by the MFL for the Month to derive the monthly cost adder.
- 7) Retail Adjustment to Market (“**RAM**”) charges will be the average of the last 12 months of RAM charges incurred divided by the MFL for the Month and expressed as a \$/MWh amount.
- 8) The Uplift Charges (“**UC**”) will be the average of the last 6 months of AESO uplift charges incurred divided by the MFL for the Month and expressed as a \$/MWh amount. In the event that the AESO ceases charging the Company uplift charges, the UC will be set to zero once the six month average calculates to zero.

D. COMMODITY RISK COMPENSATION

The Commodity Risk Compensation (“**CRC**”) is embedded in the Full-Load Price but can be derived as follows:

$$CRC = P_{FL} - P_{B_PW}$$

Appendix “F.1” Seasonal Multiplier Estimation Methodology

The estimate of the Seasonal Multipliers was obtained through a linear regression analysis that quantified the relationship between DERS’ and EEA’s monthly load-following costs (LFC). The sample period of the data begins January 1, 2008 and ends August 31, 2020. The regression equation estimated was:

$$LFC_m^{DERS} = M_0 \times LFC_m^{EEA} + D \times M_1 \times LFC_m^{EEA}$$

Where,

m indicates the Month

$D = 0$ when the Month is Oct-Mar, and $D = 1$ when the month is Apr-Sep.

The Seasonal Multiplier $M = M_0$ during Oct-Mar, and $M = M_0 + M_1$ during Apr-Sep.

$$LFC_m^{DERS} = \frac{\sum_{h=1}^H V_h^{DERS} \times P_h}{\sum_{h=1}^H V_h^{DERS}} - \frac{\sum_{h=1}^H P_h}{H}$$

$$LFC_m^{EEA} = \frac{\sum_{h=1}^H V_h^{EEA} \times P_h}{\sum_{h=1}^H V_h^{EEA}} - \frac{\sum_{h=1}^H P_h}{H}$$

Where,

V_h^{DERS} is the final settlement volume from the AESO Metered Volumes report for DERS for the hour h .

V_h^{EEA} is the final settlement volume from the AESO Metered Volumes report for EEA for the hour h .

P_h is the posted Alberta pool price in hour h .

H is the last hour of month m .

The regression coefficient estimates were $M_0 = 0.941$, and for $M_1 = -0.106$. Hence, the Seasonal Multiplier used in Formula (3) of Section F will be 0.941 during October through March and 0.835 April through September.

In the compliance filing DERS shall make one year after the implementation of this EPSP, the regression coefficients will be re-estimated to account for additional available data. If there is a material change to the regression coefficients, then DERS will apply to amend the 2020-2022 EPSP concurrently with the compliance filing.

**Schedule “G”
to DERS’ EPSP**

CODE OF CONDUCT FOR THE ENERGY PRICE SETTING PLAN

1. All personnel of Direct Energy Marketing Limited (“DEML”) who are privy to the Confidential Schedule “E” relied on by the Energy Price Setting Plan, developed for the purposes of setting energy prices are required to sign a Procurement Conduct Agreement requiring them to keep all Confidential Schedule “E” information strictly confidential and to not disclose to any other person or use, except for the purposes of the Energy Price Setting Plan. A copy of the Procurement Conduct Agreement is attached as Appendix “G.1” to the EPSP.
2. Any consultants (“Consultants”) retained by DEML in respect of the Energy Price Setting Plan will be required to sign confidentiality agreements requiring them to keep Confidential Schedule “E” information strictly confidential and to not disclose to any other person or use, except for the purposes of the Energy Price Setting Plan.
3. If DEML or any Consultants retained by DEML in respect of the EPSP become aware of an unauthorized disclosure or unauthorized use, or a possible unauthorized disclosure or unauthorized use, of Confidential Schedule “E” information (“Possible Unauthorized Use or Disclosure”) that party will immediately report that concern to the Company who will work with the Market Surveillance Administrator (“MSA”) to resolve the concern.
4. If, after discussing the concern with the MSA, if the concern remains unresolved, DEML will apply to the Alberta Utilities Commission (“AUC” or “Commission”) to have the issue addressed, and will request that the Commission and its process respect the confidential nature of the Confidential Schedule “E” information and other matters to be addressed to the extent permitted under the Commission’s Rules of Practice.

**Appendix “G.1”
to DERS’ EPSP**

PROCUREMENT CONDUCT AGREEMENT

TO: DIRECT ENERGY MARKETING LIMITED

WHEREAS:

- (a) Direct Energy Marketing Limited (“DEML”) has adopted the energy price setting method set out in its Energy Price Setting Plan (“EPSP”) for the purposes of acquiring an energy supply and setting the energy price for RRO Customers. Implementation of the EPSP will involve product procurement to acquire an energy supply including the use of alternative mechanisms such as forward contracts.
- (b) The EPSP, as amended and adjusted from time to time, relies on specific pricing parameters developed for the purposes of setting energy price. The disclosure of the “Confidential Schedule “E” could adversely affect the Company’s ability to acquire energy supplies and/or the costs incurred by the Company to acquire those supplies.
- (c) DEML has made efforts to identify, and to organize and manage the involvement of directors, officers, employees and agents that have been involved or may become involved with the matters addressed in this Procurement Conduct Agreement.

NOW THEREFORE, in consideration of being permitted to become involved with the matters addressed in this Procurement Conduct Agreement, the undersigned agrees, acknowledges and confirms as follows:

- 1. The undersigned has read and understands the attached confidentiality provisions of the Procurement Conduct Agreement and agrees to abide by these provisions and their spirit and intent. In particular, until the date the EPSP is no longer used or intended to be used for the purposes of energy price setting for RRO Energy Charges, subject to section 2 below, the undersigned agrees to keep the Confidential Schedule “E” strictly confidential and to not disclose to any other person, except for the purposes of the EPSP.
- 2. The provisions of this Procurement Conduct Agreement relating to Confidential Schedule “E” will not apply to any part that is now or subsequently becomes part of the public domain through no violation of the Procurement Conduct Agreement.

3. If the undersigned becomes aware of a breach, or of any information the undersigned believes may indicate a breach, by any other person who is a party to an agreement corresponding to this Procurement Conduct Agreement, the undersigned will immediately report that breach or possible breach to a member of the compliance team and to the Market Surveillance Administrator and conduct himself or herself in accordance with their direction.
4. The undersigned acknowledges that the mishandling or unauthorized use or disclosure by the undersigned of Confidential Schedule “E” could cause irreparable harm and significant injury to DEML and/or its subsidiaries.
5. The undersigned understands that a breach of this Procurement Conduct Agreement could result in disciplinary action, if intentional, including possible termination of his or her employment or possible civil or criminal proceedings against the undersigned.

AGREED TO this ____ day of_____, 20__.

Name and Title