



EPCOR Distribution & Transmission Inc.

**Determination of the Compensation Amount
to be Paid by EPCOR to Battle River Cooperative REA Ltd.**

July 19, 2021

Alberta Utilities Commission

Decision 26318-D01-2021

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Proceeding 26318

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1 Decision summary

1. In this decision, the Alberta Utilities Commission determines the amount of compensation to be paid by EPCOR Distribution & Transmission Inc. (EPCOR or EDTI) to Battle River Cooperative REA Ltd. (Battle River or BR REA) in relation to the transfer of electric distribution system assets to EPCOR as directed by the Commission in Decision 25300-D01-2020.¹

2. For the reasons outlined in this decision, the Commission finds the \$783,940, calculated by EPCOR using the replacement cost new less depreciation (RCN-D) valuation methodology, to be reasonable in the circumstances. The Commission also finds it reasonable to compensate Battle River in the amount of \$67,179 for the construction of distribution system facilities that were required to maintain electric services to Battle River members located outside of the annexed area that were affected by the annexation and transfer of assets ordered in Decision 25300-D01-2020.

2 Background and procedural summary

3. In January 2019, the City of Edmonton expanded its municipal boundaries to include land that was previously located within the county of Leduc and the town of Beaumont, providing EPCOR with the exclusive rights to provide electric distribution service to the annexed land. Parts of the annexed land were within the service area of Battle River. Subsequently, the Commission ordered changes to service area boundaries and the transfer of Battle River distribution system facilities and its members within the annexed areas to EPCOR in Decision 25300-D01-2020. The Commission ordered the transfer of assets to occur as soon as reasonably practicable. The Commission deferred approving the compensation amount in order to give EPCOR an opportunity to make an agreement with Battle River as to the compensation to be paid.²

4. EPCOR and Battle River were not able to reach an agreement regarding compensation. As a result, EPCOR filed an application on February 11, 2021, for the purpose of obtaining a decision from the Commission to determine the compensation to be paid to Battle River. In its application, EPCOR proposed a purchase price of \$0.758 million (later revised to \$0.784 million) based on the RCN-D valuation methodology.

¹ Decision 25300-D01-2020: EPCOR Distribution & Transmission Inc., Alterations to Distribution Service Areas and Related Matters, Proceeding 25300, September 24, 2020.

² Decision 25300-D01-2020, paragraphs 121-122.

5. The provisions in Section 29 of the *Hydro and Electric Energy Act* regarding the basis for any compensation payable for facilities transferred refers to reproduction cost new, rather than replacement cost new. Section 29(4) (c) of the act states:

29(4) ...

(c) the matters in respect of which any compensation is payable, which matters may include

(i) any facilities transferred, based on reproduction cost new, less depreciation,

...

6. In similar proceedings, parties have advocated for the use of replacement cost new or reproduction cost new and have also used the terms interchangeably, resulting in a lack of clarity regarding the intended meaning of the “R” in references to RCN-D. Reproduction cost is distinguishable from replacement cost. Reproduction refers to the present-day cost of building an asset with identical materials and quality of workmanship as the subject asset. Replacement represents the present-day cost of replacing the subject assets with ones having exactly the same utility but built to present-day standards, which may include the use of new technology and materials.

7. In recent decisions,³ the Commission found replacement costs to be a reasonable methodology based on the particular facts of the case. For example, one reason to accept replacement costs is that it may be impractical to estimate costs based on obsolete specifications required to estimate reproduction costs. However, the Commission emphasized that this does not preclude it from accepting a compensation valuation based on reproduction costs if the specific case merits such a finding.

8. In this decision, the RCN-D acronym will mean replacement cost new less depreciation.

9. In accordance with the process set by the Commission, Battle River filed evidence, in which it provided two possible valuations for the Commission to consider. This was followed by a round of information requests (IRs) to the parties, responses to IRs from the parties, argument and reply argument. The Commission determined that the record of this proceeding closed on May 19, 2021, with the receipt of reply argument from both parties.

10. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission’s reasoning relating to a particular matter and should not be taken

³ Decision 20552-D01-2015: Kingman Rural Electrification Association Ltd., Application for Permission to Cease and Discontinue Operations, FortisAlberta Inc., Sale and Transfer of the Kingman Rural Electrification Association, Proceeding 20552, September 1, 2015; Decision 20733-D01-2015: V N M Rural Electrification Association Limited Permission to Cease and Discontinue Operations, FortisAlberta Inc. Sale and Transfer of the V N M Rural Electrification Association Limited Distribution System, Proceeding 20733, October 6, 2015; Decision 21785-D01-2018: FortisAlberta Inc. Sale and Transfer of the Municipality of Crowsnest Pass Electric Distribution System Assets, Municipality of Crowsnest Pass Permission to Cease and Discontinue Operations, Proceeding 21785, June 5, 2018.

as an indication that the Commission did not consider all relevant portions of the record with respect to a particular matter.

3 Issues

11. The Commission addresses the issue of compensation to be paid by EPCOR to Battle River in four parts:

- The Commission’s discretion to determine a compensation methodology.
- The compensation methodology.
- The calculation to value Battle River’s assets.
- Compensation for facilities alterations outside of the annexed area.

3.1 The Commission’s discretion to determine a compensation methodology

12. The Commission must determine if it is limited by legislation in determining compensation based on the types identified under Section 29(4)(c) of the *Hydro and Electric Energy Act*, or if it has broader discretion in determining compensation under Section 32(2)(b) of the act.

13. EPCOR advised that the types of compensation identified in sections 29(4)(c) and (e) are relevant to the Commission’s determinations. EPCOR submitted that in the absence of an agreement between an acquiring public distribution facility owner and a transferring Rural Electrification Association (REA) respecting compensation, Section 29(4)(c)(i) of the *Hydro and Electric Energy Act* mandates the use of reproduction cost new less depreciation in respect of compensation for transferred assets.⁴ EPCOR referred to a prior Commission finding in Decision 21768-D01-2017⁵ as support for this interpretation:

38. Section 29(4) of the *Hydro and Electric Energy Act* states that in the case where parties (i.e., an REA and a distribution utility) are unable to agree on a price, the Commission will make the determination and that determination must be based on evaluating the facilities that comprise the REA’s distribution system using the reproduction methodology.

14. EPCOR’s application valued compensation based on replacement cost new less depreciation, not reproduction cost new less depreciation. However, in EPCOR’s view, many of the cost estimates in its replacement cost new less depreciation effectively reflect reproduction cost new because the specific assets on which EPCOR cost estimates are based are essentially “like-for-like” assets;⁶ however, it acknowledged that there are instances where it was not able to determine a reproduction cost new estimate.⁷

⁴ Exhibit 26318-X0040, EPCOR argument, paragraph 13.

⁵ Decision 21768-D01-2017: Office of the Utilities Consumer Advocate, Commission-Initiated Review and Variance of Decision 20552-D01-2015 and Decision 20733-D01-2015, Proceeding 21768, October 3, 2017.

⁶ Exhibit 26318-X0043, EPCOR reply argument, paragraph 35.

⁷ Exhibit 26318-X0043, EPCOR reply argument, paragraph 36.

15. In EPCOR’s view, none of the other types of compensation identified in Section 29(4) applied based on the facts it was aware of at the time it filed its application.⁸

16. Battle River submitted that Section 32(2) of the *Hydro and Electric Energy Act* expressly allows the Commission, after making an order under Section 29, to broadly determine compensation matters in setting a compensation amount. It argued that Section 32(2) does not impose a particular method for determining compensation, which indicates legislative intent for the Commission to consider compensation issues in the context of the particular facts and matters of that issue.⁹ Battle River noted that Section 32(2)(b) of the act did not apply in Decision 21768-D01-2017 because an agreement as to compensation was reached in those circumstances.¹⁰

17. Further, in Battle River’s view, the *Hydro and Electric Energy Act*’s interpretation must include the context of REAs under the *Rural Utilities Act*, and the legislature’s intent to carve out a unique place for REAs in Alberta’s landscape. It advised that this includes cooperative ownership, and the equitable benefits, rights and responsibilities inherent with being both a consumer of electricity and an owner of the system that distributes that electricity.¹¹

18. The starting point for interpreting the provisions of the *Hydro and Electric Energy Act* is Driedger’s modern principle of statutory interpretation. As explained by the Supreme Court of Canada in *ATCO Gas & Pipelines Ltd v Alberta (Energy and Utilities Board)*, that principle requires that “the words of an act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.” The court explained that its approach was to look first at the grammatical and ordinary meaning of a provision and then examine the entire statutory context and legislative intent. The court emphasized that “the ultimate goal is to discover the clear intent of the legislature and the true purpose of the statute while preserving the harmony, coherence and consistency of the legislative scheme.”¹²

19. Section 29 of the *Hydro and Electric Energy Act* concerns changes to the boundaries of a service area, and includes provisions regrading compensation. Sections 29(1) and (4) of the act state:

Boundaries

29(1) The Commission, on the application of an interested person or on its own motion,

(a) when in its opinion it is in the public interest to do so, and

(b) on any notice and proceedings that the Commission considers suitable,

may alter the boundaries of the service area of an electric distribution system, or may order that the electric distribution system shall cease to operate in a service area or part of it at a time fixed in the order.

...

⁸ Exhibit 26318-X0043, EPCOR reply argument, paragraph 24.

⁹ Exhibit 26318-X0039, Battle River argument, paragraph 33.

¹⁰ Exhibit 26318-X0042, Battle River reply argument, paragraph 14.

¹¹ Exhibit 26318-X0039, Battle River argument, paragraph 56.

¹² 2006 SCC 4 at paragraph 37.

29(4) When an order made under subsection (1) or (3) reduces the service area of an electric distribution system, the Commission, if it considers such a provision suitable, may make provision in the order for

- (a) payment of compensation to the owner of the electric distribution system whose service area is reduced,
- (b) the circumstances and conditions under which, and the time at which, that owner is entitled to receive compensation,
- (c) the matters in respect of which any compensation is payable, which matters may include
 - (i) any facilities transferred, based on reproduction cost new, less depreciation,
 - (ii) severance damages based on
 - (A) any period of time the Commission considers reasonable, not exceeding the period that would be remaining had the owner been a party to an agreement under section 45 of the Municipal Government Act, and
 - (B) the actual load at the time the service area is reduced,

and

- (iii) the economic effect on the overall operation of the owner of the electric distribution system,
- (d) the persons by whom the compensation is payable and the apportionment of liability among those persons, and
- (e) compensation for any obligations or commitments arising from financial arrangements to manage financial risk associated with the pool price or from other arrangements made by the electric distribution system,

and provide that if agreement on the amount of any compensation provided for cannot be reached between the parties, the amount is to be determined by the Alberta Utilities Commission on the application of either party.

20. The Commission must also consider Section 32 of the *Hydro and Electric Energy Act*. Under Section 32(1), the Commission may transfer the service area of an REA that has been directed to cease operations under Section 29 to another person. The Commission may, under Section 32(2)(a), provide for the transfer of the facilities of an REA, for the operation of an REA's electric distribution system, and for the payment of compensation. Sections 32(1) and (2) of the act state:

Rural electrification association

32(1) If a rural electrification association

- (a) under an order made under section 29,
 - (i) has the size of its service area reduced, or
 - (ii) ceases to operate in a service area or part of it,

...

the Commission may, when in the Commission's opinion it is in the public interest to do so and on any notice and proceedings that the Commission considers suitable, by order

transfer to another person the service area or part of it served by the rural electrification association.

- (2) When the Commission makes an order under subsection (1), it may
- (a) for the purpose of ensuring the continued distribution of electric energy in the service area or part of it that was served by the rural electrification association, provide for
 - (i) the transfer of any facilities associated with the electric distribution system from the rural electrification association to another party, and
 - (ii) the operation of the electric distribution system or part of it by any party that the Commission directs,
 - and
 - (b) provide for any or all of the following:
 - (i) the payment of compensation, if any, and the matters in respect of which compensation is payable;
 - (ii) the persons by whom compensation is payable and the apportionment of liability for the compensation among those persons;
 - (iii) the determination by the Alberta Utilities Commission of the amount of compensation if that amount cannot be agreed on between the parties;
 - (iv) any other matters that may be necessary with respect to the transfer of the service area or part of it or with respect to the transfer of any facility associated with the electric distribution system from the rural electrification association to another person.

21. Section 32 is a more specific provision compared to Section 29, as Section 32 only applies if: (i) an REA is subject to a Section 29 order; and (ii) the Commission by order transfers to another person the service area or part of it served by the REA. According to the drafting convention *generalia specialibus non derogant*, when general and specific provisions conflict, the general must give way to the specific.¹³

22. Under Section 32(2), when the Commission makes an order under Section 32(1), it may (indicating discretion) provide for matters enumerated in (a)-(b). Notably, under Section 32(2)(a)(i), the Commission may provide for the transfer of any facilities associated with the electric distribution system from the REA to another party and, under Section 32(2)(b)(i), the Commission may provide for the payment of compensation, if any, and the matters in respect of which compensation is payable. There is no mention of a specific methodology, such as reproduction costs less depreciation, that the Commission must use to make its determination. Also under Section 32(2)(b)(iii), the Commission may provide for the amount of compensation if that amount cannot be agreed on between the parties. The Commission considers that the legislature intended for the compensation identified under Section 32(2)(b)(i) to be the same compensation referenced under Section 32(2)(b)(iii) due to the locational proximity of the provisions and the use of the same term.

¹³ *Arthur v Nelson (City)* (1898), 2898 CarswellBC 72, 6 BCR 323 (BCSC), paragraph 4.

23. Considering the above, the Commission finds that, to the extent there is a conflict in the Commission's discretion to determine compensation under Section 29 as compared to Section 32, the more specific Section 32 overrides the more general Section 29 in the circumstances.

24. Accordingly, the Commission finds that it has the authority to determine if, and what amount of, compensation is payable to Battle River under Section 32(2)(b) in the circumstances and is not bound by a particular methodology regarding valuing the facilities that were ordered transferred. Rather, the legislature has afforded the Commission broad discretion to make that determination based on the specific evidence before it.

3.2 Compensation methodology to be used to determine the purchase price

25. Having found that the Commission has broad discretion to make a determination regarding the amount of compensation payable to Battle River based on the specific evidence before it and is not bound by a particular methodology, the Commission must next consider the compensation methodologies advanced by both parties to this proceeding.

26. In its application, EPCOR proposed a compensation amount of \$0.758 million by applying the RCN-D valuation methodology to the transferred assets. When asked by Battle River to confirm that it did not calculate the compensation amount based on reproduction costs, EPCOR stated that its purchase price calculation was based on obtaining a replacement value rather than a reproduction cost.¹⁴

27. EPCOR discovered an error in its calculation of the engineering rate used in its RCN-D model and revised its engineering rate from 5.2 per cent to 8.8 per cent, resulting in a revised RCN-D value of \$0.784 million.¹⁵ EPCOR submitted that its proposed compensation amount is reasonable, as the calculation of the amount is based on reasonable assumptions and a methodology that is well-established and contemplated in Section 29(4) of the *Hydro and Electric Energy Act*. Further, in EPCOR's view, the circumstances of this case do not merit consideration of the other matters in respect of which compensation can be payable, as contemplated in Section 29(4) of the act.¹⁶

28. In argument, EPCOR stated that it arrived at the \$0.758 million amount, originally calculated in its application, by applying the reproduction cost new less depreciation approach.¹⁷ In reply argument, EPCOR acknowledged that "reproduction" cost is distinguishable from "replacement" cost. EPCOR explained that for certain assets that could be procured on a like-for-like basis (e.g., wooden poles, transformers), the estimated costs reflected reproduction costs, while for other assets (e.g., obsolete assets, and assets where age, condition, material specification were unknown), replacement costs were used in its valuation calculation.¹⁸ The estimated cost data provided by EPCOR¹⁹ reflects replacement costs, which was confirmed by

¹⁴ Exhibit 26318-X0037, EDTI-BR REA-2021APR06-005(f), PDF page 13.

¹⁵ Exhibit 26318-X0040, EPCOR argument, paragraph 3.

¹⁶ Exhibit 26318-X0001, application, paragraphs 31 and 44.

¹⁷ Exhibit 26318-X0040, EPCOR argument, paragraph 2.

¹⁸ Exhibit 26318-X0043, EPCOR reply argument, paragraphs 34-36.

¹⁹ Exhibit 26318-X0008, Appendix 6 - RCN-D Calculations, Item Pricing tab, Column M Estimating Methodology and Assumptions.

EPCOR in an IR response²⁰ and reply argument.²¹ Accordingly, the Commission will be evaluating the RCN-D compensation methodology proposed by EPCOR based on the use of replacement cost new to estimate the cost of the transferred facilities.

29. In his evidence, Mr. Dustin Madsen, an independent witness for Battle River, provided two options for the Commission's consideration, saying either one would be acceptable. His first option used a fair market value (FMV) calculation resulting in a payment of \$1.544 million, representing the foregone revenues related to the transferred assets.

30. His second option, valued at \$2.157 million, was obtained by revising the engineering and contingency rates in EPCOR's RCN-D calculation schedules and then separately adding compensation amounts (severance costs, hedge costs related to the pre-purchase of power, and external legal and consulting fees) referenced under Section 29(4) of the *Hydro and Electric Energy Act*, that in his view reflect reasonable compensation.²² Given that Mr. Madsen calculated his proposed RCN amount using EPCOR's schedules, which the Commission has determined reflect replacement costs, the Commission will consider Mr. Madsen's RCN-D valuation to be based on replacement cost new. Mr. Madsen capped the RCN-D plus additional payments at \$1.544 million, stating that this amount would fairly compensate Battle River for the transferred assets.²³ The Commission does not consider it necessary to assess the valuation of \$2.157 million, given Mr. Madsen's stated limit to what he considered fair compensation.

31. The FMV calculation conducted by Mr. Madsen was similar to a discounted cash flow calculation using the following inputs:

- 64 years of revenue generating ability;
- Annual revenue generation of \$49,695.24;
- Annual revenue escalation of 2.75 per cent; and
- A discount rate of 5.295 per cent.

32. The Commission finds that the RCN-D compensation methodology proposed by EPCOR should apply in the circumstances, as opposed to the FMV calculation or the RCN-D plus additional payments methodology, as suggested by Battle River, for the following reasons.

33. The Commission finds that EPCOR has provided sufficient evidence to demonstrate that the RCN-D methodology, as utilized by EPCOR, is a reasonable approach in valuing the electric distribution system assets in the context of the transfer of assets between EPCOR and Battle River. The Commission considers that EPCOR's approach, which included a comprehensive on-site assessment of Battle River's assets to be transferred, and the application of EPCOR's estimating method that has been previously approved by the Commission, to be reasonable for the purpose of calculating the purchase price of Battle River's electric distribution system related to the transferred assets in the circumstances. Further, the RCN-D calculation has historically been used²⁴ in the valuation of assets acquired by distribution utilities from REAs and municipalities. As stated above, the Commission acknowledges that RCN-D is not the only

²⁰ Exhibit 26318-X0037, EDTI-BR REA-2021APR06-005(f), PDF page 13.

²¹ Exhibit 26318-X0043, EPCOR reply argument, paragraph 36.

²² Exhibit 26318-X0021, Evidence of Dustin Madsen for Battle River, paragraph 61.

²³ Exhibit 26318-X0021, Evidence of Dustin Madsen for Battle River, paragraph 18.

²⁴ For example, Proceeding 20552, Cease and Discontinue Operations of Kingman REA and Sale and Transfer of REA to FortisAlberta Inc., and Proceeding 23961, FortisAlberta - Crowsnest Pass Revised RCN-D Valuation.

methodology that can be used to determine a purchase price for acquired assets. However, as explained below, in the current situation, the Commission finds that the RCN-D calculation proposed by EPCOR more reasonably reflects the value of the assets at issue.

34. Regarding Battle River's FMV calculation, based on the remaining useful lives and function of the assets to be transferred, the Commission finds that the calculations performed by Battle River are overly simplistic and do not reflect the economic reality of the assets that are to be acquired by EPCOR. The Commission finds that 64 years of economic value of the assets, as postulated by Battle River is too long, given the age of the current assets and their respectful useful lives. For example, the current average age of the Battle River distribution poles is 28 years, with over 10 per cent of the pole population being 67 years of age or older. EPCOR noted that the industry average service life for wooden poles in North America is 45 years.²⁵

35. Further, the Commission finds that neither the discount rate nor the annual revenue escalation rate reflects the economic reality of Battle River assets to be acquired by EPCOR. The Commission also finds, in conjunction with EPCOR's argument, that there is not enough evidence on the record to conclude that the \$49,695.24 in annual costs associated with providing service to Battle River members would remain constant over the 64 years as the model assumes.²⁶

36. Regarding the escalation rate used in Mr. Madsen's model, the Commission finds that although the rate may reflect the current revenue growth, there is not enough evidence on the record to demonstrate that the escalation rate of 2.75 per cent would remain constant for 64 years. EPCOR noted, in response to an IR,²⁷ that the escalation rate of 2.75 per cent is significantly higher than the annual rate escalations provided to Alberta distribution utilities²⁸ calculated as the net of inflation and expected annual productivity gains; also known as I-X.²⁹ On this point, the Commission observed in Decision 26356-D01-2021³⁰ that bill increases for Alberta distribution utilities have substantially exceeded the I-X index by which customer rates are commonly expected to change under the PBR price cap plans.³¹ Nevertheless, given the time horizon of 64 years and the historic escalation rates applicable to distribution tariff revenues in Alberta, the Commission finds that Battle River's proposed escalation rate is arbitrary.

37. Finally, the discount rate of 5.295 per cent proposed by Mr. Madsen, by Mr. Madsen's own account, is not reflective of Battle River's actual cost of debt of between two and three per cent. As the calculation is based on recently issued debt rates for EPCOR (e.g., 3.75 per cent) and EPCOR's currently approved rate of return of 8.5 per cent,³² the Commission is not convinced that this discount rate should be used to calculate the present value of 64 years of

²⁵ Exhibit 26318-X0036, EDTI-AUC-2021APR005.

²⁶ Exhibit 26318-X0040, EPCOR argument, paragraph 22.

²⁷ Exhibit 26318-X0036, Table EDTI-AUC-2021APR005-1, PDF page 17, where EPCOR provided I-X values from 2013 to 2020, showing an average of annual increase of 0.81 per cent.

²⁸ See Exhibit 26318-X0036, EDTI-AUC-2021APR005.

²⁹ The regulatory framework approved for Alberta distribution utilities provides a rate-setting mechanism based on a formula that adjusts rates annually by means of an indexing mechanism that tracks the rate of inflation (I) less a productivity offset (X).

³⁰ Decision 26356-D01-2021: Evaluation of Performance-Based Regulation in Alberta, Proceeding 26356, June 30, 2021.

³¹ Decision 26356-D01-2021, paragraph 76.

³² Exhibit 26318-X0021, Evidence of Dustin Madsen for Battle River, paragraphs 50-52.

Battle River's foregone revenue. Therefore, the Commission does not consider the proposed discount rate to adequately support fair market value for the acquired assets.

38. In view of the above, the Commission will apply the RCN-D compensation methodology.

3.3 Calculation of RCN-D

39. Having determined that EPCOR's approach to estimating the value of the transferred Battle River assets based on the RCN-D methodology is reasonable in the circumstances, the next issue the Commission considers is whether the specific calculation and assumptions used to determine the RCN-D amount are reasonable. First, the Commission considers the reasonableness of the assumptions used to calculate the RCN component, and second, it considers the reasonableness of the depreciation parameters and methodology used to calculate the D component.

40. EPCOR calculated an RCN amount of \$1.757 million based on asset information and operations and maintenance practices provided by Battle River, and on the results of visual inspections, physical surveys and assessments of Battle River's distribution facilities to be transferred. To calculate the cost of replacing the transferred facilities, EPCOR used its bottom-up budgeting approach and estimated the material, labour, equipment, subcontractor and engineering costs premised on its current design, engineering and construction standards. EPCOR noted that this approach is consistent with the methodology previously approved by the Commission in dealing with EPCOR's tariff applications.³³ The Commission finds this approach reasonable, given the Commission has approved EPCOR rates that are based on cost estimates that use this specific estimating technique.³⁴

41. EPCOR used an engineering rate of 8.8 per cent (corrected, as explained above) and a contingency rate of zero per cent to estimate the cost of replacing the transferred facilities. EPCOR explained that the engineering rate is based on historic actual engineering costs for similar types of work activities. It supported its contingency rate by confirming that contingency is built into its costs estimates; for example, its unit rates include hydrovac³⁵ costs to account for unknown soil conditions.³⁶

42. Mr. Madsen recommended engineering and contingency rates of 10 per cent. He suggested that an engineering rate between 7.5 per cent and 15.0 per cent to be more reasonable, based on the rates disclosed by other Alberta distribution utilities in certain proceedings, particularly in the case for a rural Alberta utility, which would face different challenges than an urban utility. Mr. Madsen stated that a 10 per cent contingency rate has been generally accepted by the Commission; for example, in ATCO Electric Ltd. transmission general tariff and AltaLink Management Ltd. deferral account reconciliation decisions.³⁷

³³ Exhibit 26318-X0001, application, paragraphs 32-35.

³⁴ For example, in Proceeding 22394, Rebasement and setting the going-in rates for the 2018-2022 PBR plans, EPCOR used a bottom up approach to forecast costs that were used to set 2018 rates.

³⁵ Hydrovac refers to a contingency excavation method to reduce hidden risks to auguring. It consists of a non-mechanical, non-destructive excavation process that simultaneously excavates and evacuates soil and is generally more costly than standard excavation methods.

³⁶ Exhibit 26318-X0036, EDTI-AUC-2021APR06-004.

³⁷ Exhibit 26318-X0021, Evidence of Dustin Madsen for Battle River, paragraphs 79-85; Exhibit 26318-X0030, BR REA-AUC-2021APR06-005(a)-(c).

43. The Commission observes that Battle River, in proposing its alternative RCN-D plus additional payments of various components outlined under Section 29(4) of the *Hydro and Electric Energy Act* did not challenge EPCOR's RCN calculation but for the engineering and contingency rates.³⁸ Given that EPCOR's engineering rate of 8.8 per cent is based on historic actual engineering costs, and is within range of Mr. Madsen's recommended 7.5 per cent to 15.0 per cent, the Commission accepts EPCOR's engineering rate as used to estimate the cost of replacing the transferred facilities. The Commission also accepts EPCOR's assertion that contingency is built into its cost estimates, and therefore is satisfied that a contingency rate of zero is reasonable. The Commission finds that Mr. Madsen's comparison of contingency rates that have been accepted by the Commission in transmission-related applications is of little assistance because in the Commission's view, distribution facility construction risks are different from transmission facility construction risks. For example, the latter could include increased risks related to landowner consultation, project schedule, cost estimate accuracy, equipment procurement and environmental approvals.

44. Given that Battle River was unable to provide depreciation rates and accumulated depreciation amounts for any of its assets, EPCOR applied its Commission-approved Direct Life Method (DLM) to determine the depreciation rates and accumulated depreciation amounts to calculate the D component of the RCN-D formula in the amount of \$0.973 million. EPCOR noted that the depreciation rates used for the applicable asset type were those approved by the Commission in Decision 2012-272,³⁹ and Battle River's asset vintage information, if provided, was used in determining the accumulated depreciation.⁴⁰

45. Mr. Madsen opposed the use of EPCOR's DLM and recommended a 35-R2 Iowa curve for determining the depreciation component of the RCN-D calculation.⁴¹ Mr. Madsen considered the 35-R2 curve to be generally reflective of the actual lives of Battle River's assets, as compared to depreciation rates that are more reflective of urban distribution system assets. He further noted that the 35-R2 curve rate is consistent with the rate assumed in the wire owner agreement between Battle River and FortisAlberta Inc.⁴² EPCOR refuted Mr. Madsen's broad use of the 35-R2 curve. EPCOR explained that different asset categories have significantly different characteristics, utilize different materials and technologies, and therefore have significantly different average asset service lives. Further, EPCOR noted that the use of the 35-R2 curve is not supported by a depreciation study or any service life studies, asset retirement information or remaining life estimates, nor is it used by Battle River to calculate depreciation amounts for its distribution assets for purposes of its audited financial statements.⁴³

46. In light of the fact that Battle River has not conducted a depreciation study to determine the reasonableness of a 35-R2 curve,⁴⁴ and that the use of the curve is limited to a rate assumed in a private contractual wire owner agreement, the Commission has no reasonable basis to consider the use of the 35-R2 curve to calculate the D component in the RCN-D calculation in lieu of

³⁸ Exhibit 26318-X0021, Evidence of Dustin Madsen for Battle River, paragraph 17.

³⁹ Decision 2012-272: EPCOR Distribution & Transmission Inc., 2012 Phase I and II Distribution Tariff 2012 Transmission Facility Owner Tariff, Proceeding 1596, Application 1607944-01, October 5, 2012.

⁴⁰ Exhibit 26318-X0001, application, paragraphs 38-40.

⁴¹ Exhibit 26318-X0042, Battle River reply argument, paragraph 23, PDF pages 15-16.

⁴² Exhibit 26318-X0021, Evidence of Dustin Madsen for Battle River, paragraph 89; Exhibit 26318-X0030, BR REA-AUC-2021APR06-005(d).

⁴³ Exhibit 26318-X0040, EPCOR argument, paragraph 47.

⁴⁴ Confirmed in response to BR REA-EDTI-2021APR06-006(f), Exhibit 26318-X0035.

using EPCOR's depreciation rates and methodology that are based on a detailed depreciation study that has been thoroughly tested and approved by the Commission. Contrary to Mr. Madsen's implied suggestion that EPCOR's depreciation rates are more reflective of urban distribution system assets, EPCOR confirmed that its depreciation study included assets in rural areas, which make up 28 per cent of its service area and includes 3,200 wooden poles.⁴⁵ For these reasons, the Commission finds EPCOR's evidence in this matter to be compelling, and the reasons provided by Battle River in support of a 35-R2 curve not persuasive.

47. In consideration of the above conclusions, the Commission finds no reasonable basis to apply any adjustments to EPCOR's proposed RCN-D amount of \$0.784 million, or more precisely, \$783,940.⁴⁶

3.4 Compensation for facilities alterations outside of the annexed area

48. The last issue the Commission must consider is the compensation amount estimated for the distribution system alterations made by Battle River to ensure its members outside of the annexed area continue to receive electric service.

49. Battle River requested that the Commission approve an additional payment from EPCOR of \$69,389.25 to compensate it for the construction of distribution system facilities that were required to maintain electric services to Battle River members located outside of the annexed area that were affected by the annexation and transfer of assets ordered in Decision 25300-D01-2020.⁴⁷ Battle River provided a table showing a breakdown of the total cost by location and materials, labour, equipment, other and GST. The table identified costs incurred in the amount of \$2,210.51 for location SE29, which was described as "salvage of service located in NE20-50-25-4 including HWY 19 underground crossing."⁴⁸

50. EPCOR accepted the costs claimed by Battle River, except for \$2,210.51 that, in its view, did not arise as a result of the annexation and transfer of assets, but rather as a result of a salvage of Battle River assets in relation to a Battle River member that no longer required electric service.⁴⁹ Battle River disagreed, claiming that the salvage costs would not have been incurred but for the annexation ordered in Decision 25300-D01-2020. In response to a Commission IR, Battle River confirmed that the salvage of the service was not as a result of the transfer of assets. However, in support of its position, Battle River explained that the service in question required a distribution system alteration to ensure electric services were maintained after the transfer of assets. Observing that the service was idle, Battle River decided to salvage the facilities that were no longer required, rather than making alterations, because this was the most cost-effective solution.⁵⁰

51. The Commission understands from this response that Battle River would not have known that its member did not require electric service if not for its investigation following the annexation ordered by the Commission. The Commission finds that the timing of the discovery

⁴⁵ Exhibit 26318-X0037, EDTI-BR REA-2021APR06-007(b)-(d).

⁴⁶ The Commission applied the corrected engineering rate of 8.8 per cent to Exhibit 26318-X0008, Appendix 6 - RCN-D Calculations, RCN tab, Column I Unit Estimate (Engineering) to arrive at the amount of \$783,939.78 in BR RCN-D tab, Row 282, Column J, rounded to \$783,940.

⁴⁷ Exhibit 26318-X0018, Evidence of Battle River, paragraph 6.

⁴⁸ Exhibit 26318-X0030, BR REA-AUC-2021APR06-007(b).

⁴⁹ Exhibit 26318-X0040, EPCOR argument, paragraph 66.

⁵⁰ Exhibit 26318-X0030, BR REA-AUC-2021APR06-007(c).

of the idle service should have no bearing on the decision to salvage the service. Given that it would have been prudent for Battle River to salvage the site regardless of the order for the transfer of assets, the Commission does not accept Battle River's analysis. Accordingly, the Commission approves an additional payment from EPCOR to Battle River of \$67,179.⁵¹

4 Order

52. It is hereby ordered that:

- (1) EPCOR Distribution & Transmission Inc. pay Battle River Cooperative REA Ltd. a compensation amount of \$783,940 in respect of the transfer of the electric distribution system assets ordered in Decision 25300-D01-2020 from Battle River Cooperative REA Ltd. to EPCOR Distribution & Transmission Inc.
- (2) EPCOR Distribution & Transmission Inc. pay Battle River Cooperative REA Ltd. a compensation amount of \$67,179 in respect of the electric distribution system facilities constructed by Battle River Cooperative REA Ltd. that were required to maintain electric services to Battle River Cooperative REA Ltd. members located outside of the annexed area that were affected by the annexation and transfer of assets ordered in Decision 25300-D01-2020.

Dated on July 19, 2021.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Commission Member

⁵¹ $(\$69,389.25 - \$2,210.51) = \$67,178.74$, rounded to \$67,179.

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
EPCOR Distribution & Transmission Inc. (EPCOR or EDTI) Borden, Ladner Gervais LLP
Battle River Cooperative REA Ltd. (Battle River or BR REA) Swainson Miki Peskett LLP

Alberta Utilities Commission
Commission panel N. Jamieson, Commission Member
Commission staff J. Graham (Commission counsel) A. Corsi B. Edwards