



EPCOR Distribution & Transmission Inc.

Correction of 2020 and 2021 Maximum Investment Levels

July 29, 2021

Alberta Utilities Commission

Decision 26648-D01-2021

EPCOR Distribution & Transmission Inc.

Correction of 2020 and 2021 Maximum Investment Levels

Proceeding 26648

July 29, 2021

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Alberta Utilities Commission
Eau Claire Tower
1400, 600 Third Avenue S.W.
Calgary, Alberta T2P 0G5

Telephone: 310-4AUC (310-4282 in Alberta)
1-833-511-4AUC (1-833-511-4282 outside Alberta)

Email: info@auc.ab.ca

Website: www.auc.ab.ca

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1 Decision summary

1. In this decision the Alberta Utilities Commission partially approves the request made by EPCOR Distribution & Transmission Inc. to correct its 2020 and 2021 maximum investment levels (MILs). The Commission approves EPCOR's corrected MILs for qualifying projects beginning July 30, 2021 and onward. For qualifying projects undertaken before that date, EPCOR may choose to refund amounts accrued due to its inadvertent error in the calculation of its 2020 and 2021 MILs however the Commission does not approve the tariff changes that would result from addressing the error for 2020 and 2021 in the manner applied for by EPCOR.

2. The Commission, finds that if EPCOR wishes to refund the amounts described above it must expense any amounts refunded to developers or other customers for qualifying projects undertaken on or before July 29, 2021. Any investment in qualifying projects to be undertaken July 30, 2021, and onward is eligible for investment in accordance with its corrected MILs and standard capitalization policy.

2 Introduction and procedural summary

3. On June 30, 2021, EPCOR filed an application with the Commission to correct its MILs. EPCOR explained that an error initially discovered and addressed in its 2019 annual performance-based regulation (PBR) rate adjustment filing was inadvertently carried forward into the 2020 and 2021 annual PBR filings. This error, remedied by EPCOR in this filing, resulted in the corrected 2020 and 2021 MIL amounts as set out in [Appendix 3](#) of this decision.

4. On July 20, 2021, the Commission issued a process letter and information requests (IRs) with a response deadline of July 23, 2021. With the receipt of IR responses, the Commission considers the close of record of this proceeding to be July 23, 2021.

3 Analysis

3.1 Retroactively changing MILs

5. In Decision 24882-D01-2019¹ and Decision 25866-D01-2020,² the Commission finalized EPCOR's MIL amounts for 2020 and 2021, respectively. Due to the finalization of the MIL amounts, the Commission finds that ordering a refund and allowing EPCOR to earn a return on

¹ Decision 24882-D01-2019: EPCOR Distribution & Transmission Inc., 2020 Annual Performance-Based Regulation Rate Adjustment, Proceeding 24882, December 17, 2019.

² Decision 25866-D01-2020: EPCOR Distribution & Transmission Inc., 2021 Annual Performance-Based Regulation Rate Adjustment, Proceeding 25866, December 17, 2020.

the marginal investment for the period of January 1, 2020, to July 29, 2021, would constitute impermissible retroactive ratemaking.

6. In IRs, the Commission requested additional information regarding the possibility of retroactive ratemaking by adjusting finalized MIL amounts. In its responses, EPCOR stated that the requested refund does not constitute retroactive ratemaking, as it understands retroactive ratemaking to be the setting of future rates to recover past revenue deficiencies and that in this case it has no past revenue deficiencies related to the MILs that it is attempting to recover in future rates.³

7. The Commission does not agree with EPCOR's definition of retroactive ratemaking. The Commission finds as a fact,⁴ that replacing MILs for January 1, 2020, to July 29, 2021, retroactively would constitute retroactive ratemaking. Approving EPCOR's application would establish rates to replace or be substituted to those which were charged on or prior to July 29, 2021, and would create a lack of certainty for both the utility and consumers.⁵

8. In the Commission's view, EPCOR errs by focusing on its distribution access service rates and not its MILs. EPCOR's distribution access service rates are currently established under its 2018-2022 PBR plan. Under this plan, EPCOR's revenues are not linked to its costs (such as the amount it invests under its MILs) during the PBR term.

9. EPCOR ignores that there will be a change to MILs if EPCOR's application is approved as filed. Land developers that installed underground residential distribution infrastructure; new industrial and commercial customers that required access to EPCOR's distribution system; or customers that required upgrades to their existing service will all have a different MIL than what they expected under the Commission-approved final MILs, in Decision 24882-D01-2019 and Decision 25866-D01-2020.

10. The Commission recognizes that, as applied for, EPCOR's application would result in a refund of money to developers and others. In return, EPCOR would have an opportunity to invest incrementally in its distribution system.

11. However, the Commission considers that allowing EPCOR to true up and earn a return on a past error is counter to sound ratemaking practices. Blanket approval of this application may create an incentive for other distribution utilities to search through previously finalized rates with the objective of benefitting from an error to change rates or earn a higher return on its capital investment.

3.2 Conclusion

12. The Commission accepts that there was an error in EPCOR's MIL calculations, which were approved by the Commission in Decision 24882-D01-2019 and Decision 25866-D01-2020. Because of its concerns with retroactive ratemaking set out in the previous section, the Commission approves EPCOR's corrected MILs for qualifying projects beginning July 30, 2021,

³ Exhibit 26648-X0013, EDTI-AUC-2021JUL20-002(a).

⁴ *ATCO Gas and Pipelines Ltd v Alberta (Utilities Commission)*, 2014 ABCA 28, paragraph 51.

⁵ *Calgary (City) v. Alberta (Energy and Utilities Board)*, 2010 ABCA 132, paragraph 47 citing *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 S.C.R. 1722 at 1749.

and onward. For these projects, EPCOR may invest in accordance with its corrected MILs and standard capitalization policy.

13. For projects undertaken from January 1, 2020, to July 29, 2021, where EPCOR invested in accordance with the MILs approved in Decision 24882-D01-2019 or Decision 25866-D01-2020, the Commission cannot approve the tariff changes that would result in EPCOR adjusting its MILs retroactively. The Commission understands that for these projects EPCOR may wish to correct its error by voluntarily issuing refunds to affected customers. If EPCOR chooses to make this correction then it may only treat the marginal amounts paid out to affected customers as an expense; it is not permitted to capitalize any marginal investment for those projects.

14. The Commission acknowledges EPCOR's response to Commission IRs in which it stated that to expense the marginal investment, it would be harmed and lead to additional expenses in 2021 that were not considered in the establishment of its PBR rates.⁶ Therefore, as EPCOR has been making investments in accordance with its finalized terms and conditions of service in 2020 and 2021, it is under no obligation to provide refunds and expense the resulting marginal investment from projects undergone on or prior to July 29, 2021. The Commission, however, directs EPCOR to calculate its 2022 MILs in accordance with the corrected 2021 MIL amounts, as set out in the decision, and provide an account of any amounts refunded as a post-disposition document on this proceeding once the refund process is complete.

4 Order

15. It is hereby ordered that:

- (1) EPCOR Distribution and Transmission Inc.'s corrected 2021 maximum investment levels, as set out on Table 3.0-2 of Appendix 3, are hereby approved as final effective July 30, 2021; and
- (2) EPCOR Distribution and Transmission Inc. may refund the difference between the 2020 and 2021 maximum investment levels as set out on Table 3.0-2 of Appendix 3, and its investment made under the maximum investment levels approved in Decision 24882-D01-2019 or Decision 25866-D01-2020. Any amounts refunded must be accounted for consistent with this decision.

⁶ Exhibit 26648-X0013, EDTI-AUC-2021JUL20-001(b).

Dated on July 29, 2021.

Alberta Utilities Commission

(original signed by)

Vera Slawinski
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
EPCOR Distribution & Transmission Inc. (EPCOR or EDTI)

Alberta Utilities Commission
Commission panel V. Slawinski, Commission Member
Commission staff P. Khan (Commission counsel) B. Edwards C. Robertshaw

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. The Commission acknowledges EPCOR’s response to Commission IRs in which it stated that to expense the marginal investment, it would be harmed and lead to additional expenses in 2021 that were not considered in the establishment of its PBR rates. Therefore, as EPCOR has been making investments in accordance with its finalized terms and conditions of service in 2020 and 2021, it is under no obligation to provide refunds and expense the resulting marginal investment from projects undergone on or prior to July 29, 2021. The Commission, however, directs EPCOR to calculate its 2022 MILs in accordance with the corrected 2021 MIL amounts, as set out in the decision, and provide an account of any amounts refunded as a post-disposition document on this proceeding once the refund process is complete. paragraph 14

Appendix 3 – Table of MILs⁷

([return to text](#))

Table 3.0-1: 2020 and 2021 MILs as approved

		2019 Approved MIL ¹	2020 Approved MIL ² (2019 x (1+1.06%))	2021 Approved MIL ³ (2020 x (1+2.12%))
1	Residential Customers:			
2	For new (raw land) underground development areas	\$2,574 per each lot	\$2,601 per each lot	\$2,656 per each lot
3	For single family residential, rural acreage and farm in previously unserviced area to be serviced with overhead power	Up to \$796 for transformer installation and service connection	Up to \$804 for transformer installation and service connection	Up to \$821 for transformer installation and service connection
4	Multiple family residential in a previously serviced area	\$513 for each service connection	\$518 for each service connection	\$529 for each service connection
5	General Service and Industrial Customers:			
6	Contracted Minimum Demand for the service connection for the first 2,500 kVA	\$265/kVA	\$268/kVA	\$274/kVA
7	Contracted Minimum Demand for the service connection greater than 2,500 kVA	\$119/kVA	\$120/kVA	\$123/kVA

Note 1: Proceeding 23896, Exhibit 23896-X0020; Note 2: Proceeding 24882, Exhibit 24882-X0020 and Decision 24882-D01-2019;

Note 3: Proceeding 25866, Exhibit 25866-X0022 and Decision 25866-D01-2020.

Table 3.0-2: Corrected 2020 and 2021 MILs

		2019 ¹ Approved MIL	2020 Corrected MIL ² (2019 x (1+1.06%))	2021 Corrected MIL ³ (2020 x (1+2.12%))
1	Residential Customers:			
2	For new (raw land) underground development areas	\$2,622 per each lot	\$2,650 per each lot	\$2,706 per each lot
3	For single family residential, rural acreage and farm in previously unserviced area to be serviced with overhead power	Up to \$811 for transformer installation and service connection	Up to \$820 for transformer installation and service connection	Up to \$837 for transformer installation and service connection
4	Multiple family residential in a previously serviced area	\$522 for each service connection	\$528 for each service connection	\$539 for each service connection
5	General Service and Industrial Customers:			
6	Contracted Minimum Demand for the service connection for the first 2,500 kVA	\$269/kVA	\$272/kVA	\$278/kVA
7	Contracted Minimum Demand for the service connection greater than 2,500 kVA	\$121/kVA	\$122/kVA	\$125/kVA

Note 1: Decision 23896-D01-2018 (Errata); Note 2: Appendix A – 2020; Note 3: Appendix C – 2021.

⁷ Reproduced from Exhibit 26648-X0002, application, PDF pages 5-6.