



Direct Energy Regulated Services

**Application to Recover Undercharged Distribution Line Loss
Factor Amounts**

October 4, 2021

Alberta Utilities Commission

Decision 26654-D01-2021

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Proceeding 26654

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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) to recover \$318,968 from its regulated rate option (RRO) customers for amounts DERS deemed were undercharged between August 2020 and April 2021 for distribution line loss factors (DLLFs) that are included as part of the calculation of the monthly energy charges in accordance with DERS' approved energy price setting plan (EPSP).
2. For the reasons set out in this decision, the Commission denies DERS' application to recover the \$318,968 from its customers.

2 Background

3. DERS is an RRO provider that is regulated by the Commission and performs the electricity regulated rate tariff function in the distribution service territory of ATCO Electric Ltd. As an RRO provider, DERS is required to file monthly energy charges with the Commission. These monthly energy charges are determined pursuant to the *Electric Utilities Act*, in accordance with the *Regulated Rate Option Regulation* and the EPSP approved by the Commission. There were two EPSPs that were in effect during the period that DERS deemed the undercharge occurred.¹ The monthly energy charges charged to DERS' RRO customers are calculated in accordance with the EPSP and the resulting charges include a component for DLLFs.
4. On July 6, 2021, DERS filed an application with the Commission requesting approval to recover \$318,968 from its RRO customers for amounts DERS deemed were undercharged between August 2020 and April 2021 for DLLFs.
5. On July 7, 2021, the Commission issued a notice of application. Any party who wished to intervene in the proceeding was required to file a statement of intent to participate (SIP) by July 15, 2021. The Consumers' Coalition of Alberta (CCA) filed a SIP and stated that it objected to the application. It added that if a process was established, it wished to participate.
6. The Commission determined that the steps to process the application would consist of written argument and written reply argument. The Commission requested DERS and the CCA to

¹ The first EPSP was in effect for energy charges determined for August 2020, which 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. The second EPSP was in effect for energy charges determined for September 2020 to April 2021. That was approved in Decision 24296-D02-2020: Direct Energy Regulated Services, Revised 2018-2020 Energy Price Setting Plan, Proceeding 24296, August 24, 2020.

include in their written argument, responses to a number of questions regarding the nature of the amount to be recovered and whether it was recoverable under certain provisions of the *Regulated Rate Option Regulation*.²

7. The Commission considers that the close of record for this proceeding was August 11, 2021, the date that reply argument was filed by DERS and the CCA.

8. In reaching the determinations set out within this decision, the Commission has considered all relevant materials on the public record of this proceeding and the EPSPs approved in Decision 24296-D01-2019 and Decision 24296-D02-2020. 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 Application details

9. DERS filed the application, citing Section 17 of the *Regulated Rate Option Regulation* as the authority to recover the undercharged DLLFs. That section sets out a limit on the period for which RRO providers can recover undercharges to customers, and provides:

An owner is not entitled to collect from a regulated rate customer any amount undercharged as a result of an incorrect meter reading, incorrect rate calculation, clerical error or other error of any kind that is made more than 12 months before the date of the bill.

10. DERS noted that the Commission considered Section 17 of the *Regulated Rate Option Regulation* in Decision 2013-285,³ a decision in which EPCOR Energy Alberta Inc. received approval to collect undercharged RRO amounts.⁴

11. DERS explained that the undercharges resulted from an error. It submitted that "This error occurred because of an unforeseen forecasting error ('Forecast Error') caused by an approved change to ATCO's [ATCO Electric Ltd.] distribution tariff without corresponding updates to ATCO's distribution line loss factors."⁵

12. As part of the calculation of its monthly energy charges for each customer rate class, DERS uses separate DLLFs for each rate class. The DLLFs are percentages.⁶ The DLLFs for each rate class comprise the sum of two elements: (i) the unaccounted for energy percentage; and (ii) the line loss factor (LLF) percentage. The LLF percentages used for August 2020 to April

² The questions are included in Exhibit 26654-X0007, paragraph 5.

³ Decision 2013-285: EPCOR Energy Alberta Inc., Regulated Rate Tariff Electric Energy Charges – August 2013, August and September 2013 Non-energy Charges, Proceeding 19405, Application 1609794-1, July 31, 2013.

⁴ Exhibit 26654-X0001, application, PDF page 5. In this decision, the Commission allowed recovery of the Independent System Operator guarantee fee (IGF) cost included in the RRO energy charge calculation. The IGF cost includes a credit rate component and trading limit component, which are based on a Dominion Bond Rating Service (DBRS) credit rating. EPCOR Energy Alberta Inc. made an error in calculating the credit rate component of the IGF cost.

⁵ Exhibit 26654-X0001, application, PDF page 1.

⁶ The DLLFs are used to gross up the base energy charge, commodity risk compensation and the Alberta Electric System Operator trading charge components of the monthly energy charges.

2021 were derived by expressing the most recently approved distribution line losses by rate class for the ATCO Electric distribution service area as a percentage of customers' usage for each rate class.⁷

13. DERS described the underlying reason for the application as being the Commission's approval, in Decision 24747-D01-2020,⁸ of the elimination of Option H(b) from ATCO Electric's distribution's price schedules. DERS explained that this elimination affected how ATCO Electric calculates and allocates its distribution line losses to retailers. DERS indicated that even though, since August 2020, the actual distribution line losses that have been allocated to it by ATCO Electric have resulted in the LLF percentages increasing from five per cent to six per cent, the approved distribution line losses by rate class for the ATCO Electric distribution service area have not changed. DERS added that the approved, unchanged distribution line losses were used in determining the LLF percentages and resulting DLLFs that were included as part of the calculation of the monthly energy charges for August 2020 to April 2021, and submitted that this persistent forecast error has resulted in an undercharge to its RRO customers.⁹

14. To calculate the undercharged amounts, DERS first calculated the LLF percentages for each month from August 2020 to January 2021, for each rate class using the actual distribution line losses for these months and the associated metered usage. DERS then calculated the resulting average for this period for each rate class to derive the revised DLLFs. DERS used the revised DLLFs to recalculate the monthly energy charges for each month from August 2020 to April 2021. The resulting revenues from using the recalculated energy charges were compared to the originally determined revenues, and the resulting total undercharges for all rate classes combined were \$318,968.¹⁰ DERS proposed to recover the undercharges through five equal monthly instalments.¹¹

4 Issues

15. The Commission considers that the subject area of DERS' application centres on one question to be decided by the Commission:

Does the amount described by DERS in its application as an undercharge to its customers, due to an unforeseen forecasting error, qualify as an undercharge that may be collected from RRO customers as set out in Section 17 of the *Regulated Rate Option Regulation*?¹²

16. The Commission finds that the answer to the question is no, and it therefore denies DERS' application, as explained in the remainder of this decision. The key findings supporting the Commission's decision are that DERS did not make any errors on its customers' bills, as

⁷ Decision 24296-D01-2019, Appendix 2 – Redacted 2018-2020 Energy Price Setting Plan, PDF pages 20 and 26. Decision 24296-D02-2020, Appendix 1 – DERS 2018-2020 EPSP – Redacted, PDF pages 10 and 16.

⁸ Decision 24747-D01-2020: ATCO Electric Ltd., 2019 Distribution Phase II Application, Proceeding 24747, April 30, 2020.

⁹ Exhibit 26654-X0001, application, PDF pages 2-3.

¹⁰ Exhibit 26654-X0001, application, PDF pages 4-5. The underlying calculations and inputs are included in Exhibit 26654-X0002.

¹¹ Exhibit 26654-X0001, application, PDF page 6.

¹² Exhibit 26654-X0007, paragraph 4.

explained in Section 4.1, and that DERS is compensated for any forecast errors related to DLLFs through the risk margin it receives, as explained in Section 4.2.

17. The Commission requested DERS and the CCA to include submissions on a number of questions.¹³ The following four questions informed the Commission on whether DERS' request to recover the 318,968 should be granted:

- Does the use of forecast line losses in accordance with the approved energy price setting plan result in an undercharge, i.e., an “incorrect rate calculation” or “other error of any kind” if the actual line losses are subsequently higher than the forecast line losses that were approved under the EPSP? If there are other components of the monthly energy charge where the actual amount is subsequently higher than the forecast amount, would that also result in an undercharge, or are there limitations to what should be considered as an “incorrect rate calculation” or “other error of any kind” (e.g., undercharges as a result of a change in law, Commission decision, etc., affecting the inputs into the energy price setting plan)?
- Is Section 5(3)(d) of the *Regulated Rate Option Regulation* relevant to the application? This subsection states that “Risks covered by the risk margin must include the following: (d) all unaccounted for energy and losses.”
- Is Section 3(2) of the *Regulated Rate Option Regulation* relevant to the application? This subsection states that “A proposed regulated rate tariff must not use, provide for or contemplate any deferral accounts, true-ups, rate riders or other similar accounts or devices for energy related costs.”
- To what extent should a regulated rate option provider bear the responsibility for monitoring items included in its energy price setting plan, such as line losses, to make sure the forecast methodology is still applicable (e.g., when the items are beyond its control and, specifically in the case of line losses, the regulated rate option provider does not have the authority to direct the distribution utility to update its approved line loss factors)?

18. A summary of the comments received on each of the questions and the Commission's findings with respect to these questions are included in the following sections.

4.1 Does the use of forecast line losses in accordance with the approved EPSP result in an undercharge?

19. The Commission asked the following:

- Does the use of forecast line losses in accordance with the approved energy price setting plan result in an undercharge, i.e., an “incorrect rate calculation” or “other error of any kind” if the actual line losses are subsequently higher than the forecast line losses that were approved under the EPSP? If there are other components of the monthly energy charge where the actual amount is subsequently higher than the forecast amount, would that also result in an undercharge, or are there limitations to what should be considered as an “incorrect rate calculation” or “other error of any kind” (e.g., undercharges as a result of a change in law, Commission decision, etc., affecting the inputs into the energy price setting plan)?¹⁴

¹³ Exhibit 26654-X0007, paragraph 5.

¹⁴ Exhibit 26654-X0007, paragraph 5.

20. DERS submitted that the first three bulleted questions set out by the Commission require an exercise in statutory interpretation.¹⁵ It submitted that the purpose of the *Regulated Rate Option Regulation* within the broader context of the *Electric Utilities Act* must be construed as requiring the provision of retail electricity services at a variable market rate on fair terms that include the costs relating to the provision of services. DERS added that generally, fairness requires a consideration of the interests of both the service providers and the consumers as well as a consideration of the intended purpose of all aspects of the EPSP.¹⁶

21. DERS stated that when the words “any amount undercharged” and “error of any kind” of Section 17 of the *Regulated Rate Option Regulation* are read in their grammatical and ordinary sense and considered in the context of a regulatory scheme that allows for an efficient and fair market, and given an interpretation that would achieve its purpose, it is apparent that Section 17 of the regulation must be read broadly. DERS noted that Section 17 of the regulation expressly provides that undercharges may be recovered for (i) incorrect meter readings; (ii) incorrect rate calculations; (iii) clerical errors; or (iv) other errors of any kind.¹⁷

22. DERS submitted that each of the enumerated examples of error in Section 17 of the *Regulated Rate Option Regulation* are distinguishable from the risks identified under Section 5 of the regulation in that they relate to systematic errors rather than risks that can be mitigated through the use of a robust forecasting methodology. DERS claimed that no forecasting methodology could account for the effect of the elimination of Option H(b) from ATCO Electric’s rate schedules, nor should any forecasting methodology reasonably be required to do so. DERS added that moreover, if the legislature intended for Section 5 of the regulation to preclude recovery of undercharged amounts relating to “all unaccounted for energy and losses,” for example, the legislature would have included limiting language in Section 17 of the regulation.¹⁸

23. DERS stated that Section 17 of the *Regulated Rate Option Regulation* is conspicuous by the lack of such limiting or exclusionary language that would subordinate it to the applicability of other provisions of the regulation. It submitted that in this case, the statutory scheme requires that certain costs, which were always intended to flow through to RRO customers but were not due to the introduction of an error into DERS’ Commission-approved methodology, through no fault of DERS, be recovered as an undercharge pursuant to Section 17 of the regulation.¹⁹

24. DERS submitted that forecasting distribution line losses in accordance with its approved EPSP may result in an “other error of any kind” if intervening circumstances ensure the forecasting methodology is no longer capable of producing proximate values to ATCO Electric’s actual distribution line losses. In this case, the purpose of DERS’ methodology was to yield proximate values to ATCO Electric’s actual distribution line losses. The methodology did so by incorporating ATCO Electric’s “most recently approved” distribution line losses by reference. DERS submitted that it is certain that the Commission would not have knowingly approved a methodology that was not “reasonably capable” of achieving this intended purpose or was otherwise inconsistent with legislative and regulatory requirements and, instead, was only

¹⁵ Exhibit 26654-X0009, PDF page 3.

¹⁶ Exhibit 26654-X0009, PDF page 4.

¹⁷ Exhibit 26654-X0009, PDF page 4.

¹⁸ Exhibit 26654-X0009, PDF page 4.

¹⁹ Exhibit 26654-X0009, PDF page 4.

capable of yielding results consistently higher, or lower, than ATCO Electric's actual distribution line losses. DERS also submitted that once Option H(b) was eliminated from ATCO Electric's price schedule, DERS' forecasting methodology was no longer capable of achieving its intended purpose, and its continued application became an "other error of any kind."²⁰

25. DERS stated that the inevitable differences in actuals from forecast amounts arising from a forecasting methodology that remains capable of achieving its intended purpose do not constitute errors within the meaning of Section 17 or Section 18 of the *Regulated Rate Option Regulation*. It explained that this latter situation describes forecast results that remain within the margin of error of the methodology.²¹

26. The CCA stated that the undercharge is not the result of an incorrect rate calculation or other error of any kind that would be eligible for recovery pursuant to Section 17 of the *Regulated Rate Option Regulation*. It described the situation as a forecast error, which resulted from the failure on DERS' part to take account of Commission decisions that had implications for distribution line loss calculations, and the failure of DERS to incorporate any resulting implications in its monthly energy charges in a proactive manner.²²

27. DERS countered that it only determined that the application was warranted after learning that the effect of the forecast error would be permanent, and that ATCO Electric would not update its approved distribution line losses until mid to late 2022. DERS submitted that these activities all occurred within the 12-month statutory time limit provided in Section 17 of the regulation.²³ DERS submitted that once its forecast LLF percentage methodology failed to change in lockstep with ATCO Electric's rate structure, which the CCA acknowledges should have occurred, the forecasting methodology could no longer operate as intended, and the resultant variance became an "error of any kind" as prescribed in Section 17 of the regulation.²⁴

28. The CCA submitted that DERS' application is not comparable to the EPCOR proceeding that DERS referred to. It stated that in the EPCOR proceeding, the issue was with respect to undercharges relating to the Independent System Operator (ISO) guarantee fees during a portion of the term of EPCOR's 2011-2014 EPSP. EPCOR's 2011-2014 EPSP was a negotiated settlement agreement and was approved by the Commission in Decision 2011-123.²⁵ The CCA noted that in the decision on the EPCOR proceeding, the Commission found that the ISO guarantee fees and adjustments to those fees were contemplated by parties to the negotiated settlement agreement.²⁶ The CCA submitted that adjustments for errors in LLF calculations were not contemplated in DERS' 2018-2020 EPSP.²⁷

29. DERS countered that the inclusion of the forecast load methodology improvement provision in Schedule C of its 2018-2020 EPSP, which contemplated adjustments to improve the forecast methodology, demonstrates that adjustments for errors were expressly contemplated in that EPSP. It added that therefore, both its application and the EPCOR application contemplated

²⁰ Exhibit 26654-X0009, PDF page 5.

²¹ Exhibit 26654-X0009, PDF page 5.

²² Exhibit 26654-X0008, paragraphs 9-10.

²³ Exhibit 26654-X0011, PDF page 2.

²⁴ Exhibit 26654-X0011, PDF page 3.

²⁵ Decision 2011-123: EPCOR Energy Alberta Inc., Application for Approval of a Settlement Agreement in respect of the 2011-2014 Energy Price Setting Plan, Proceeding 1032, Application 1606913-1, March 31, 2011.

²⁶ Exhibit 26654-X0008, paragraph 13, referring to Decision 2013-285, paragraph 7.

²⁷ Exhibit 26654-X0008, paragraphs 13-14.

recovering undercharged amounts resulting from various errors pursuant to Section 17 of the *Regulated Rate Option Regulation*. DERS submitted that accordingly, the Commission should be guided by its prior decision in the EPCOR proceeding.²⁸

30. The Commission finds that the use of forecast LLF percentages in accordance with the approved EPSP do not result in an undercharge, i.e., an “incorrect rate calculation” or “other error of any kind” if the actual LLF percentages are subsequently higher than the forecast LLF percentages that were calculated using the methodology approved under the EPSP.

31. When DERS calculated its monthly RRO energy charges for August 2020 to April 2021, the forecast LLF percentages for each rate class included as inputs to those calculated energy charges were derived in accordance with the provisions of its EPSP. DERS chose the methodology for forecasting the LLF percentages and that methodology is included in the EPSP. Its forecast LLF percentages with respect to each rate class were the same for every month from August 2020 to April 2021 and were calculated using the most recently approved distribution line losses by rate class for ATCO Electric’s distribution service area, expressed as a percentage of customers’ usage for each rate class, as set out in the EPSP. Consequently, the Commission finds that there was no error in the energy charges for August 2020 to April 2021 with respect to the forecast LLF percentages calculated by DERS, because these percentages were calculated in accordance with the approved EPSP.

32. DERS submitted that if the forecasting methodology for the LLFs could no longer operate as intended because of a change to how ATCO Electric calculates and allocates distribution line losses to retailers, the resultant variance became an “error of any kind” as prescribed in Section 17 of the *Regulated Rate Option Regulation*.

33. There is no definition of “error” in the *Electric Utilities Act* or the *Regulated Rate Option Regulation*. The Oxford Canadian Dictionary assists with the meaning of error:

error n. 1. a mistake. 2. the condition of being wrong in conduct or judgment (*led into error*). 3. a wrong opinion or judgment. 4. The amount by which something is incorrect or inaccurate in a calculation or measurement.... [emphasis in original]²⁹

34. The Commission agrees with DERS that the wording of Section 17 of the *Regulated Rate Option Regulation* accounts for a broad range of errors, including rate calculation errors or “errors of any kind.” The plain meaning of “error” as shown in the definition above includes mistakes, errors in judgment, and incorrect calculation or measurements. However, the Commission disagrees with DERS that Section 17 of the regulation operates as a limited exception to Section 5 of the regulation. The language in Section 17 applies to errors that are reflected on customers’ bills, but there is nothing express in the legislation that Section 17 is intended to operate notwithstanding Section 5. The legislature avoids superfluous or meaningless words and does not repeat itself or speak in vain.³⁰ Section 5 of the regulation has clear intent on how DERS will be compensated for the forecast risk associated with distribution line losses, which is through a risk margin. The Commission is not persuaded by DERS’ argument that if Section 5 of the regulation was intended to preclude recovery of undercharged amounts relating

²⁸ Exhibit 26654-X0011, PDF page 5.

²⁹ Canadian Oxford Dictionary (paperback version), 2nd ed.

³⁰ For example, see *1597130 Alberta Ltd v Condominium Corporation No. 1023241*, 2016 ABQB 195, paragraph 16.

to “all unaccounted for energy and losses,” for example, the legislature would have included limiting language in Section 17 of the regulation such as “Notwithstanding Section 5 of the regulation, ...” Absent express language to state that Section 5 of the regulation was not applicable, the words of the regulation are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the act and regulation.

35. Further, an incorrect meter reading, an incorrect rate calculation and a clerical error all constitute errors that would result in an incorrect bill amount. The Commission considers that the phrase “other error of any kind” included in Section 17 of the *Regulated Rate Option Regulation* is a catch-all phrase that relates to any types of non-enumerated errors that result in the actual billed amount not being correct. The Commission considers that Section 17 of the regulation should be interpreted to relate to errors that are associated with customers’ bills and not differences between forecast and actual distribution line losses, because risk associated with forecast distribution line losses would be included in the risk margin in Section 5 of the regulation.

36. DERS noted that the Commission considered Section 17 of the *Regulated Rate Option Regulation* in Decision 2013-285, in which EPCOR Energy Alberta Inc. received approval to collect undercharged RRO amounts. The Commission finds that the circumstances in Decision 2013-285 are different from the circumstances in this application and that decision is distinguishable. The EPCOR proceeding did not stem from a forecast methodology that was no longer producing accurate results but rather an inadvertent input error related to calculating the forecast ISO guarantee fee costs component of EPCOR’s monthly energy charges, which resulted in the overall monthly energy charges not being calculated in accordance with EPCOR’s approved EPSP. Accordingly, the EPCOR proceeding resulted from an inaccurate energy charge calculation, which resulted in customers being undercharged. Section 17 of the regulation was directly applicable in correcting the error in the calculation of EPCOR’s monthly energy charges, whereas the situation in this DERS case is not because DERS’ energy charges for August 2020 to April 2021 were calculated in accordance with the approved EPSP.

4.2 Is Section 5(3)(d) of the Regulated Rate Option Regulation relevant?

37. The Commission asked the following:

- Is Section 5(3)(d) of the *Regulated Rate Option Regulation* relevant to the application? This subsection states that “Risks covered by the risk margin must include the following: (d) all unaccounted for energy and losses.”³¹

38. DERS submitted that Section 5 of the *Regulated Rate Option Regulation* is not relevant to its application because the risks covered by the risk margin do not include the type of risk that actually materialized.³² DERS stated that the risk that actually materialized was a regulatory decision that ensured that DERS’ forecast methodology would be incapable of achieving its intended purpose. It submitted that the risk that materialized does not relate to distribution line losses being greater or less than anticipated and is not a financial risk associated with the supply of energy services. DERS stated that it is clear that the risk margin is only intended to

³¹ Exhibit 26654-X0007, paragraph 5.

³² Exhibit 26654-X0009, PDF page 7.

compensate for financial risks that remain with the owner and are associated with the supply of electricity.³³

39. DERS indicated that the risk that materialized does not remain with the owner. It claimed that had the elimination of Option H(b) from ATCO Electric's rate schedules resulted in less distribution line losses being allocated to DERS, DERS would have overcharged its customers and would have been required to make an application pursuant to Section 18 of the *Regulated Rate Option Regulation* to refund any overcharged amounts rather than retain excess compensation. DERS submitted that accordingly, the risk is not one that remains with the RRO provider and is not compensated for by the risk margin.³⁴

40. DERS submitted that if the risk margin was meant to compensate DERS for the type of risk that materialized, there would have been no need for the Commission to approve DERS' proposed forecast LLF methodology improvements in Disposition 26463-D01-2021³⁵ or Decision 26545-D01-2021³⁶ as the forecast results should have been considered to be within the margin of error. DERS further submitted that even if the risk margin was meant to compensate for the type of risk that materialized, then Section 17 of the *Regulated Rate Option Regulation* operates as a limited exception to Section 5 of the regulation.³⁷

41. The CCA submitted that because the situation in this case resulted from a forecast error and is part of DERS' forecast risk, it follows that it is covered by the risk margin DERS receives. It stated that approval of DERS' application would be inconsistent with Section 5(3)(d) of the *Regulated Rate Option Regulation* and could result in creating an unlevel playing field between regulated and unregulated retail energy providers, which could potentially damage retail competition in Alberta.³⁸

42. DERS replied that the existence of Section 17 of the *Regulated Rate Option Regulation* confirms the legislature's intent that RRO providers should be permitted to recover undercharged amounts occurring as a result of any error. It submitted that to the extent that this statutory provision creates an "unlevel playing field" between regulated and competitive providers, the "unlevel playing field" is a consequence of the legislature's express intention.³⁹

43. In reviewing the legislative framework as a whole, as part of the statutory interpretation exercise, the Commission notes that sections 5(3)(d) and 5(5) of the *Regulated Rate Option Regulation* expressly deal with "losses," which include distribution line losses. "Losses" referred to in Section 5(3)(d) are defined in Section 1(3) as, "energy that is lost through the process of transmitting and distributing electric energy." The distribution line loss amounts allocated to DERS by ATCO Electric are amounts that result from the distribution of electric energy and, therefore, the regulation contemplates that the risk with respect to these allocated distribution line losses would be addressed through the RRO providers' risk margin. On plain read and in

³³ Exhibit 26654-X0009, PDF pages 8-9.

³⁴ Exhibit 26654-X0009, PDF page 9.

³⁵ Disposition 26463-D01-2021: Direct Energy Regulated Services, 2018-2020 Energy Price Setting Plan, Proceeding 26463, April 21, 2021.

³⁶ Decision 26545-D01-2021: Direct Energy Regulated Services, Acknowledgment of the Filing of Changes in the Forecast Load Methodology and Approval of Revisions to the 2020-2022 Energy Price Setting Plan, Proceeding 26545, June 14, 2021.

³⁷ Exhibit 26654-X0009, PDF page 9.

³⁸ Exhibit 26654-X0008, paragraphs 16-17.

³⁹ Exhibit 26654-X0011, PDF page 4.

light of the provisions of the regulation, the Commission finds that the risk for distribution line losses was contemplated to be included in the risk margin of DERS as part of its regulated rate tariff. DERS bears the resulting risk associated with any differences between the forecast and actual distribution line losses allocated to it by ATCO Electric and, consequently, DERS receives compensation for this risk through its risk margin.

44. Broadly speaking, RRO providers are required to make decisions under uncertainty and, as a result, they face a variety of risks, including financial risk. The RRO monthly energy charges are calculated on a forecast basis, using among other items, forecast customer usage or load, and forecast DLLFs. There will be differences between the forecast amounts used to derive the monthly energy charges and the actual amounts, which will result in either a financial gain or loss for the RRO providers. The RRO providers bear the risk for these differences, described as forecast risk, and receive risk compensation for bearing this forecast risk. The risk for differences between forecast and actual DLLFs was not a risk of ATCO Electric; it is a risk for which DERS is exposed to in providing RRO service and DERS' exposure to that risk was contemplated by the legislature in Section 5(3)(d) of the *Regulated Rate Option Regulation*.

45. While the EPSP contemplates a potential adjustment to the forecast methodology for LLF percentages as part of improvements to the forecast load methodology, there is nothing in the EPSP that specifies that any potential adjustments can be applied retroactively. In addition, Section 5(5) of the *Regulated Rate Option Regulation* specifies that any past costs or expenses related to the risks in Section 5(3) are only recoverable through the risk margin, and it is through the risk margin that DERS receives compensation for the risks associated with distribution line losses. Section 5(5) of the regulation is specific, in that it precludes past losses for risks except through the risk margin approved by the Commission. This section leads to the reasonable interpretation that the difference between forecast and actual distribution line losses for which compensation is included through the risk margin are not recoverable as an error in Section 17 of the regulation.

46. The actual LLF percentages for August 2020 to April 2021 for DERS were higher than the forecast amounts projected by DERS, and by DERS' calculation, the resulting financial loss was \$318,968. The Commission acknowledges that the primary reason for the difference between the actual and forecast LLF percentages was because ATCO Electric changed the way it calculated and allocated distribution line losses to retailers. However, based on the above analysis, the Commission finds that the \$318,968 loss for DERS is part of forecast risk, and it is not reasonable for customers to pay a risk margin to compensate DERS for this forecast risk and then allow DERS to recover further amounts from customers under Section 17 of the *Regulated Rate Option Regulation* as an "error."

47. The Commission disagrees with DERS' submission that the risks covered by the risk margin do not include the type of risk that actually materialized. The risk margin specifically includes compensation for all unaccounted-for energy and losses. The Commission finds that the risk margin received by DERS encompasses the risk that actual LLF percentages may be higher than the forecast amounts, and in this case that risk materialized. The reason for the financial loss DERS applied to recover as part of this application is because the actual LLF percentages for August 2020 to April 2021 for DERS were higher than the forecast amounts. DERS received risk margin to help compensate it for the risks associated with the use of forecast LLF percentages.

48. The Commission considers that the RRO providers bear the responsibility to manage their forecast risk. If DERS discovered that its forecasting methodology was no longer capable of producing reasonable forecasts of LLF percentages, DERS was free to file an application to amend the EPSP and change the methodology for forecasting the LLF percentages, which is what DERS did in Proceeding 26463 and Proceeding 26545. In those proceedings, the new methodology for deriving the forecast LLF percentages was approved on a prospective basis, in keeping with the prospective nature of the RRO energy charge-setting process.

49. In conclusion, the forecast risk can be considered as part of DERS' risk compensation under Section 5 of the *Regulated Rate Option Regulation*, i.e., DERS' risks covered by the risk margin include all unaccounted-for energy and losses rather than an error of rate calculation or error of any other kind that would be considered an undercharge under Section 17 of the regulation.

50. For the reasons above, the Commission agrees with the CCA that approval of DERS' application would be inconsistent with Section 5(3)(d) and Section 5(5) of the *Regulated Rate Option Regulation*.

4.3 Is Section 3(2) of the Regulated Rate Option Regulation relevant?

51. The Commission asked the following:

- Is Section 3(2) of the *Regulated Rate Option Regulation* relevant to the application? This subsection states that "A proposed regulated rate tariff must not use, provide for or contemplate any deferral accounts, true-ups, rate riders or other similar accounts or devices for energy related costs."⁴⁰

52. DERS submitted that neither Section 3(2) nor Section 6(2) of the *Regulated Rate Option Regulation* are relevant to this application because DERS' proposed recovery does not rely on a deferral account, true-up, rate rider or other similar account or device.⁴¹ It noted that its proposed recovery mechanism does not involve using a placeholder value for future costs that are difficult to control or forecast with any degree of accuracy, it does not contemplate collecting or refunding the difference between interim and final rates, and it is not being proposed to collect costs that were not included in the 2018-2020 EPSP (as amended) at the time the EPSP was approved. DERS stated that instead, its proposed recovery mechanism relates to costs that are known, have already been incurred, and were approved in accordance with DERS' 2018-2020 EPSP. It concluded that accordingly, neither Section 3(2) nor Section 6(2) of the regulation are engaged. DERS added that even if its proposed mechanism fits within the "other similar account or devices" language of Section 3(2) and Section 6(2) of the regulation, Section 17 of the regulation operates as a limited exception to the prohibitions contained in sections 3(2) and 6(2).⁴²

53. The CCA submitted that approval of DERS' application would amount to a true-up of forecast numbers to actual numbers for energy-related costs and would therefore be in violation of Section 3(2) of the *Regulated Rate Option Regulation*.⁴³

⁴⁰ Exhibit 26654-X0007, paragraph 5.

⁴¹ Exhibit 26654-X0009, PDF page 5.

⁴² Exhibit 26654-X0009, PDF pages 6-7.

⁴³ Exhibit 26654-X0008, paragraph 19.

54. The Commission considers that if DERS' application does not qualify under Section 17 of the *Regulated Rate Option Regulation*, then Section 3(2) of the regulation is relevant, and the Commission finds that the application would be in violation of Section 3(2) of the regulation, because it amounts to a true-up. The true-up was requested by DERS to account for the fact that there were differences between the actual and forecast DLLFs for August 2020 to April 2021. These differences resulted in losses for DERS and DERS wishes to recover these losses from its RRO customers. As the Commission found in Section 4.2 above, the risk for distribution line losses was contemplated to be included in the risk margin of DERS as part of its regulated rate tariff, and therefore these losses are prohibited from true-up in sections 3(2) and 6(2) of the regulation. Further, the nature of the RRO energy charges is that they are set in advance and are considered to be final when they are acknowledged by the Commission each month. Consequently, the RRO providers are not permitted to adjust these charges after the fact. This is the purpose of sections 3(2) and 6(2) of the regulation. The RRO providers bear the risk associated with the monthly energy charges and receive risk compensation for bearing this risk.

4.4 To what extent should an RRO provider bear the responsibility for monitoring items included in the EPSP?

55. The Commission asked the following:

- To what extent should a regulated rate option provider bear the responsibility for monitoring items included in its energy price setting plan, such as line losses, to make sure the forecast methodology is still applicable (e.g., when the items are beyond its control and, specifically in the case of line losses, the regulated rate option provider does not have the authority to direct the distribution utility to update its approved line loss factors)?⁴⁴

56. DERS stated that an RRO provider does bear the responsibility for monitoring the items in the EPSP to ensure that the forecast methodology is still applicable, even where the methodology may no longer be applicable for reasons outside its control. It noted that through its efforts in this case, the systematic error in the LLF forecast methodology was discovered. DERS submitted that it was required to wait for final settlement data to confirm that an error in the methodology existed and that it was indeed systematic. It indicated that it held several meetings with ATCO Electric through which DERS discovered that the increased distribution line losses allocated to DERS as a result of the elimination of Option H(b) from ATCO Electric's rate schedules would be permanent. DERS noted that after inquiring with ATCO Electric, it learned that the earliest possibility of ATCO Electric conducting an updated distribution line loss study would be mid to late 2022.⁴⁵

57. The CCA stated that DERS had ample notice that ATCO Electric's Option H(b) was changing and would have consequential impacts for DERS' LLFs. It submitted that accordingly, the onus was on DERS to initiate any necessary action to anticipate and proactively reflect the LLF changes in its monthly energy charges. The CCA further submitted that DERS is and should be responsible for monitoring the operation of the EPSP for relevance and applicability.⁴⁶

58. The CCA submitted that to the extent the direction of change in LLFs arising from a Commission decision remained unknown to DERS, then that risk remained in the realm of

⁴⁴ Exhibit 26654-X0007, paragraph 5.

⁴⁵ Exhibit 26654-X0009, PDF page 2, referencing Proceeding 26545, Exhibit 26545-X0001.

⁴⁶ Exhibit 26654-X0008, paragraph 21.

forecast risk. The CCA noted that once DERS confirmed the directional impact of the risk, DERS took the necessary action to correct the change in LLFs, on a go-forward basis. The CCA added that for the period the direction and quantum of change in the LLFs was not known to DERS, the realized losses during that period should be considered part of the forecast risk, and DERS was compensated for this forecast risk through the risk margin.⁴⁷

59. The Commission finds that the RRO provider is responsible for monitoring items included in the EPSP, such as distribution line losses, to make sure the forecast methodology is still relevant. While DERS submitted it was required to wait for final settlement data to confirm that an error in the methodology existed and that it was indeed systematic, the Commission finds DERS' choice to include forecast LLF percentages that were dependent on "approved" ATCO Electric distribution line losses amounts exposed DERS to a forecast risk, and that forecast risk is included in the risk margin set out in Section 5(3)(d) of the *Regulated Rate Option Regulation*. It was DERS' decision to wait and see if the effect of the forecast error was permanent, and the Commission considers that this is part of DERS' management of the forecast risk. There was no requirement that the forecast error be determined to be permanent before DERS could make an application to change the LLF percentage forecast methodology.

60. Further, there is no legislative requirement that the forecast error be determined to be systematic or permanent before an application be made to amend an EPSP. At any time, DERS could have made an application to change the LLF percentage forecast methodology whether it knew the change would be permanent or not. DERS could have applied to the Commission to change the LLF percentage forecast methodology at any time to mitigate its forecast risk on a go-forward basis. Its decision to wait to see if there was a permanent forecast error supports that changes to the LLF percentages was an overall component of DERS' forecast risk that remained with DERS as an owner under the *Regulated Rate Option Regulation*.

⁴⁷ Exhibit 26654-X0010, paragraph 3.

5 Order

61. It is hereby ordered that:

- (1) For the reasons set out in this decision, the application from Direct Energy Regulated Services to recover \$318,968 from its regulated rate option customers for amounts deemed to be undercharged between August 2020 and April 2021 for distribution line loss factors is denied.

Dated on October 4, 2021.

Alberta Utilities Commission

(original signed by)

Carolyn Dahl Rees
Chair

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)

Alberta Utilities Commission
Commission panel C. Dahl Rees, Chair
Commission staff A. Sabo (Commission counsel) D. Mitchell E. Chu N. Sawkiw