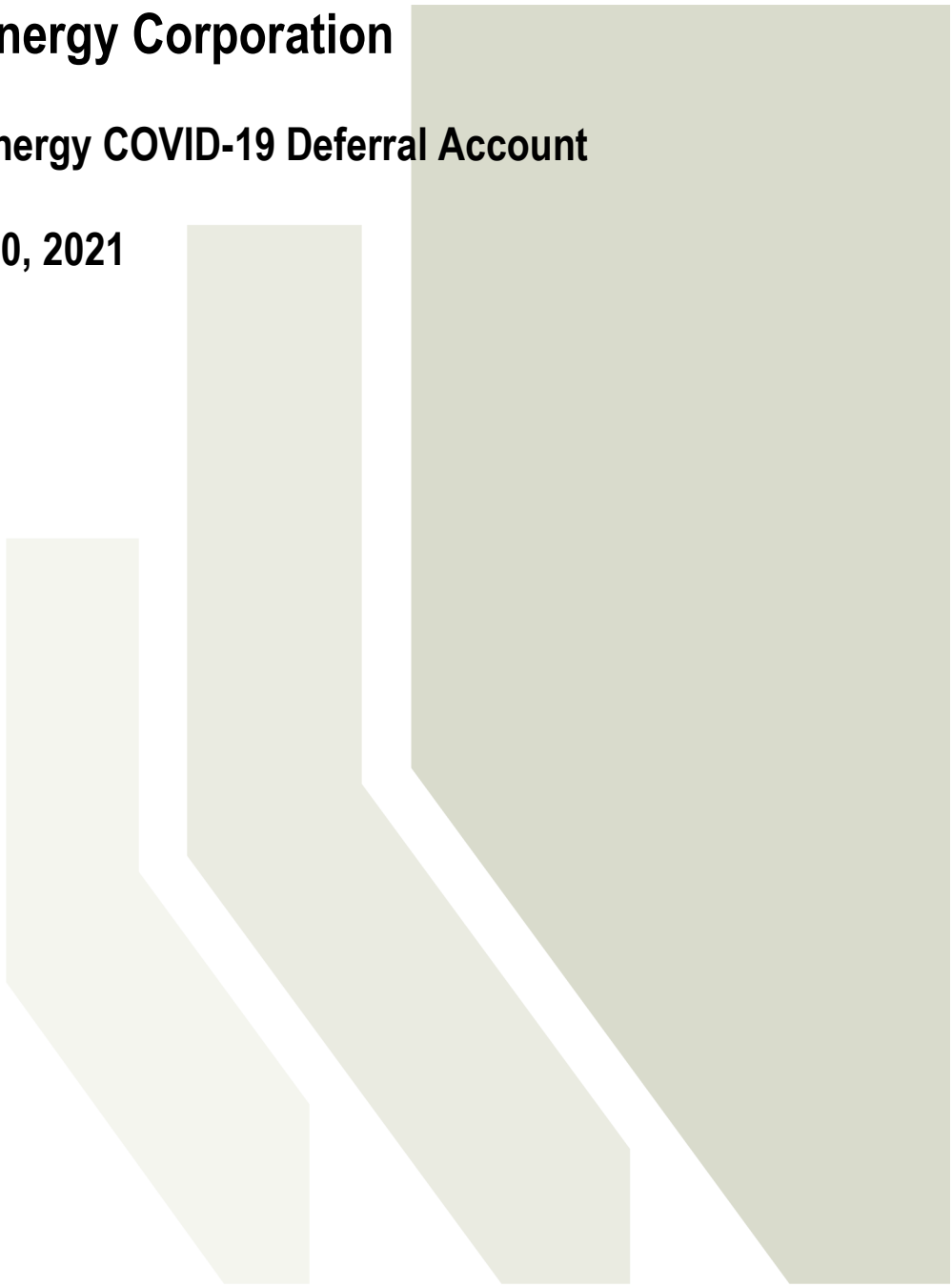




ENMAX Energy Corporation

2020 Non-Energy COVID-19 Deferral Account

November 10, 2021



Alberta Utilities Commission

Decision 26505-D01-2021

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Proceeding 26505

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1 Introduction

1. In this decision, the Alberta Utilities Commission considers whether to approve a request from ENMAX Energy Corporation (ENMAX or EEC), a regulated rate option (RRO) provider of electricity, for approval to establish a 2020 non-energy COVID-19 deferral account and to change the Commission's previously established time period of June 19, 2020, to December 31, 2020, that would apply to the deferral account, if the deferral account is approved by the Commission. If the Commission does not approve a requested change to the period covered by the deferral account, ENMAX has stated that the Commission should approve the \$1.240 million balance in the deferral account and also approve its collection through a three-month rate rider.

2. For the reasons set out in this decision, the Commission approves ENMAX's request for a COVID-19 deferral account, and denies ENMAX's request to change the time period. As a result of the Commission's findings in this decision, the Commission has adjusted the balance in the deferral account. The Commission approves a deferral account balance of \$1.268 million and the collection of this balance through a six-month rate rider period, effective December 1, 2021, to May 31, 2022. The approved rate rider for this six-month period is \$0.0468 per site per day for both the residential and commercial rate classes.

2 Background

3. ENMAX performs the electricity RRO function in the service territory of ENMAX Power Corporation. The Commission approves the rates that ENMAX bills its RRO customers in accordance with the *Regulated Rate Option Regulation*. There is an energy rate that is set according to a Commission-approved energy price setting plan and a non-energy rate, which is calculated using Commission-approved forecast costs and number of customers. The non-energy rate is used to help ENMAX recover the administration type costs it expects to incur in providing the RRO service. The Commission will approve rates as either final or interim. Interim rates are subject to future revisions. If the Commission approves rates as final, they are not subject to future revisions, except for very limited circumstances, such as an appeal of final rates.

4. The Commission approved ENMAX's 2020 final non-energy rates on July 16, 2020.¹ These rates did not include any forecast costs arising from the COVID-19 pandemic. ENMAX has applied to set up a non-energy deferral account in order to recover the incremental costs it incurred between June 19, 2020, and December 31, 2020, as a result of the COVID-19 pandemic, and to collect the balance in that deferral account. This decision will require a revision to the 2020 Commission-approved final non-energy rates.

¹ Decision 25551-D01-2020: ENMAX Energy Corporation, 2017-2020 Regulated Rate Option Non-Energy Tariff Compliance Application, Proceeding 25551, July 16, 2020.

5. RRO providers may apply for deferral accounts as part of a non-energy rate application, when there is difficulty in establishing a reasonable forecast for items such as expenses and revenue, which depends on the forecast number of customers the RRO provider will have. If the Commission approves the request for a deferral account, the forecast is a placeholder, and the resulting difference between the actual amount and the placeholder amount is either collected from customers or refunded to them. If a deferral account is approved, the non-energy rates are not approved as final rates because the balance in the deferral account will have to be settled at a later date. ENMAX did not request a non-energy COVID-19 deferral account for 2020 in its 2017-2020 non-energy application as the pandemic had not yet arrived.

6. The complexities and effects of an unprecedented pandemic has caused the Commission and RRO providers to make adjustments in the traditional regulatory process. There is a lot of history that preceded the current application. This includes the Commission's approval of ENMAX's 2020 final non-energy rates, ENMAX's first request to make those rates interim and apply for a non-energy COVID-19 deferral account, the Commission's approval of July 16, 2020, to December 31, 2020, as the first time period covered by the requested deferral account, the Utility Payment Deferral Program (UPDP), and the Commission's decision to change the time period covered by the deferral account to be June 19, 2020, to December 31, 2020. The Commission considers it is important for readers to be aware of this history in order to understand the basis for the current application, and has included a summary below.

7. On July 16, 2020, the Commission approved ENMAX's final 2017-2020 RRO non-energy revenue requirements and rates. On the same day, ENMAX filed a letter notifying the Commission of its intention to apply for an RRO non-energy COVID-19 deferral account for 2020 and it requested that the 2020 non-energy revenue requirement be approved on an interim basis.² The Commission did not amend its decision but stated that it was prepared to consider ENMAX's COVID-19 deferral account on its merits, when and if ENMAX filed a complete application.³

8. On July 30, 2020, ENMAX filed its initial application for a 2020 non-energy COVID-19 deferral account⁴ but the Commission dismissed the application because there was insufficient information for the Commission to consider.⁵ The Commission's ruling also provided guidance on the content of COVID-19 deferral account applications⁶ and included the following information about 2020 COVID-19 deferral account applications in situations where final revenue requirements and final rates were already approved for 2020:

On May 12, 2020, the AUC issued Bulletin 2020-18.[⁷] This bulletin was in response to an inquiry received from the Consumers' Coalition of Alberta requesting the Commission to direct regulated utilities to record and eventually report on current and ongoing decisions, positions and actions due to the impact of COVID-19. The Commission initiated a process to receive submissions from parties through its Engage platform, and on July 16, 2020, the AUC issued a letter on its website stating "the Commission expects

² Proceeding 25736, Exhibit 25736-X0001.

³ In Disposition 25736-D01-2020: ENMAX Energy Corporation, Regulated Rate Option Non-Energy COVID-19 Deferral Account, Proceeding 25736, July 23, 2020, the Commission did not amend Decision 25551-D01-2020.

⁴ The application was assigned to Proceeding 25767.

⁵ Proceeding 25767, Exhibit 25767-X0011, paragraph 11.

⁶ Proceeding 25767, Exhibit 25767-X0011, paragraphs 7-9 and 16-19.

⁷ Bulletin 2020-18, Tracking and reporting the impact of the COVID-19 pandemic on utility operations, costs and revenues, May 12, 2020.

regulated utilities to be able to produce the evidence necessary to support any application in which the impact of the COVID-19 pandemic may be relevant.”

For the purposes of bringing forward a claim for recovery of expenses related to the COVID-19 pandemic, the Commission finds that all interested parties would be aware as of the date of the Commission’s letter of July 16, 2020, of the possibility of such claims being made. Accordingly, the Commission finds that the knowledge exception to the prohibition against retroactive ratemaking applies in these circumstances and is prepared to consider claims for costs incurred as of July 16, 2020. Any expenses or revenues incurred prior to this date are not eligible.⁸

9. On April 30, 2021, ENMAX filed the within application requesting Commission approval to establish a 2020 non-energy COVID-19 deferral account and to collect the \$1.483 million balance in the deferral account through a three-month rate rider. The period covered by the requested deferral account was July 16, 2020, to December 31, 2020. The application was assigned Proceeding 26505.

10. On May 14, 2021, the Commission notified registered parties that the proceeding would be put in abeyance until the decision on ENMAX’s 2021 non-energy application, in which ENMAX had requested a non-energy COVID-19 deferral account for 2021, was issued.⁹ The Commission reopened the within proceeding on May 31, 2021, and asked ENMAX if it wished to amend its application given the Commission’s decision on the 2021 deferral account. An updated application for 2020 was filed still seeking \$1.483 million. ENMAX later increased this amount to \$1.530 million.¹⁰

11. On July 28, 2021, the Commission issued a ruling letter¹¹ in response to separate rate rider applications that had been received from ENMAX and EPCOR Energy Alberta GP Inc. (EPCOR) relating to the UPDP.¹² This ruling letter had implications for the within proceeding (ENMAX’s 2020 non-energy COVID-19 deferral account application) because the Commission found that any rate rider applications relating to the UPDP should reflect the unpaid amounts outstanding from enrolled customers from March 18, 2020, to June 18, 2020.¹³ The Commission amended the start date for ENMAX’s 2020 non-energy COVID-19 deferral account to June 19, 2020, instead of the previously approved start date of July 16, 2020.¹⁴ On August 4, 2021, ENMAX filed a revised application, reflecting an updated deferral account balance of \$1.240 million.¹⁵

12. In the revised application, ENMAX requested that the Commission further amend the start date from June 19, 2020, to March 18, 2020, ending on December 31, 2020. It also requested that administration costs and lost revenue offsets from March 18, 2020, to June 18, 2020, be included in the deferral account. ENMAX stated that in the alternative, the start date for

⁸ Proceeding 25767, Exhibit 25767-X0011, paragraphs 14-15.

⁹ Exhibit 26505-X0011.

¹⁰ Exhibit 26505-X0002.01, worksheet App C – Rate Rider, Excel cell F3.

¹¹ The letter is in Exhibit 26505-X0027.

¹² The ENMAX application is in Proceeding 26679. The EPCOR Energy Alberta GP Inc. application is in Proceeding 26700.

¹³ Exhibit 26505-X0027, paragraph 9.

¹⁴ Exhibit 26505-X0027, paragraph 11.

¹⁵ The revised application and revised supporting material are in exhibits 26505-X0001.02 and 26505-X0002.02. The revised deferral account balance is found in Exhibit 26505-X0002.02, worksheet App C – Rate Rider, Excel cell F3.

the deferral account period should be restored to July 16, 2020, which was the date the Commission originally found that the knowledge exception applied.¹⁶

13. The Commission considers that the close of record for this proceeding was August 18, 2021, the date that reply argument was filed. In reaching the determinations set out within this decision, the Commission has considered all relevant materials on the record of this proceeding. 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 Issues

14. There are a number of issues that the Commission has to decide, as brought forward by parties to the proceeding.

15. The first issue is whether the Commission should grant ENMAX's request to establish a 2020 non-energy COVID-19 deferral account. As explained in Section 3.1, the Commission has granted ENMAX's request for the deferral account.

16. Having decided to approve ENMAX's request to establish a 2020 non-energy COVID-19 deferral account, the next issue for the Commission to decide is whether the period covered by the deferral account should be March 18, 2020, to December 31, 2020, as requested by ENMAX. As described in Section 3.2, the Commission has denied ENMAX's request.

17. Having denied ENMAX's request to set March 18, 2020, to December 31, 2020, as the period covered by the 2020 non-energy COVID-19 deferral account, the issue of whether or not the administration costs and lost revenue offsets from March 18, 2020, to June 18, 2020, as a result of the UPDP should be included in the deferral account, is moot. These items are for a period not covered by the approved deferral account and, because of that, are not eligible for inclusion.

18. The next issue for the Commission to decide is whether the period covered by the deferral account should be July 16, 2020, to December 31, 2020. As described in Section 3.3, the Commission has denied ENMAX's request to set July 16, 2020, to December 31, 2020, as the period covered by the 2020 non-energy COVID-19 deferral account. The period covered by the deferral account is maintained as June 19, 2020, to December 31, 2020, in accordance with the Commission's July 28, 2021, ruling letter.

19. Consequently, the Commission must decide whether or not to approve the balance of \$1.240 million included in the deferral account for June 19, 2020, to December 31, 2020, and the period and associated rate rider over which the balance will be collected from ENMAX's RRO customers. The Commission has addressed these issues in sections 3.4.1 and 3.4.2, respectively. The Commission approves a deferral account balance of \$1.268 million to be collected over a six-month period from December 1, 2021, to May 31, 2022, resulting in a rate rider of \$0.0468 per site per day for the residential and commercial RRO customers for the six-month period.

¹⁶ Exhibit 26505-X0001.02, PDF page 3.

3.1 Should ENMAX be permitted to establish a 2020 non-energy COVID-19 deferral account?

20. RRO providers may apply for deferral accounts as part of a non-energy rate application, and they apply for them when there is difficulty in establishing a reasonable forecast for items such as expenses and revenue, which depends on the forecast number of customers the RRO provider will have. If the Commission approves the request for a deferral account, the forecast is a placeholder, and the resulting difference between the actual amount and the placeholder amount is either collected from customers or refunded to them. Deferral accounts are therefore prospective in nature. It is not known at the time the deferral account is approved whether the future balance in the deferral account will be a collection from customers or a refund to customers, and this uncertainty is called symmetry.

21. ENMAX stated that the evidence clearly shows that the pandemic had a material and unforecastable effect on a number of items that make up its 2020 non-energy revenue requirement, and in these circumstances, it would not be fair for ENMAX to bear the related forecast risk. It submitted that for these reasons, the application should be approved.¹⁷ The Consumers' Coalition of Alberta (CCA) submitted that the Commission deny the application because (1) ENMAX's requested deferral account is not prospective, because there is no forecast placeholder that will be approved,¹⁸ and (2) there is no symmetry because it is known that the balance in the deferral account will result in a collection from customers. The CCA claimed that these two deficiencies are contrary to the criteria used by the Commission when it decides whether or not to approve a deferral account. The CCA submitted that ENMAX's application should also be denied because if approved, it creates an uneven playing field between the RRO providers and non-regulated energy retailers who cannot turn to a regulator to recover unexpected costs.¹⁹

22. Earlier in this section, the Commission described the mechanics of how deferral accounts operate. Deferral accounts are regulatory mechanisms that can be used as part of the Commission's ratemaking authority in fixing just and reasonable rates. Whether or not the Commission approves cost recovery through a deferral account, any costs or expenses of an RRO provider must be prudent and reasonable, as required by Section 6(1)(a) of the *Regulated Rate Option Regulation*.

23. The Commission has used long-standing criteria to decide whether it will approve a deferral account. These are:

- (1) materiality of the forecast amounts;
- (2) uncertainty regarding the accuracy and ability to forecast the amounts;
- (3) whether or not the factors affecting the forecasts are beyond a utility's control;
- (4) whether or not the utility is typically at risk with respect to the forecast amounts;
and
- (5) symmetry must exist between costs and benefits for both the utility and its customers.

¹⁷ Exhibit 26505-X0028, paragraph 18.

¹⁸ Exhibit 26505-X0030, paragraph 20.

¹⁹ Exhibit 26505-X0030, paragraph 22.

24. A deferral account that meets these criteria lessens forecast risk because it allows the RRO provider to recover or refund differences between the forecasted amounts and the actual amounts for a given period when the Commission is unable to determine a just and reasonable forecast. Absent a deferral account, ENMAX is at risk with respect to the forecast amounts.

25. In this case, the Commission finds that some deviation from these traditional deferral account criteria is necessary because of the circumstances arising from the COVID-19 pandemic and the Commission's prior rulings, which recognized the unique circumstances and uncertainty in forecasting pandemic-related costs for the purposes of establishing a deferral account. In its October 8, 2020, ruling from Proceeding 25767, the Commission stated:

Given that it has been more than six months since the declaration of the Alberta public health emergency, the Commission expects that an application would include actual as well as forecast amounts. However, the Commission recognizes the uncertainty associated with COVID-19 that may persist for some time, and the difficulty in forecasting potential costs that may be included in a deferral account.²⁰

26. The Commission finds that the COVID-19 pandemic has created uncertainty in reasonably forecasting ENMAX's non-energy costs. The pandemic itself, the subsequent state of emergency declared by the Government of Alberta on March 17, 2020, and the severe economic downturn that resulted, are all factors that could not have been reasonably known or forecast by ENMAX when it initially submitted its 2017-2020 non-energy application almost two years earlier on July 19, 2018. The 2020 non-energy rates were approved on a final basis before the full economic impact of the COVID-19 pandemic was known, and the final rates did not incorporate or reflect any of the incremental costs, i.e., bad debts, associated with the pandemic.

27. The Commission has also considered the fairness of ENMAX's request for a COVID-19 deferral account. ENMAX, as an RRO provider, must provide service to customers who do not choose to contract with competitive electricity retailers or who cannot contract with competitive retailers because of their financial situation or for other reasons. Competitive retailers are not compelled to provide service to prospective customers; they may sign customers up or not. Competitive service providers are better situated to adapt to market forces and adjust their fees to recover costs because their rates are not approved by a regulatory authority. ENMAX incurred significant RRO costs, in excess of one million dollars, as a result of the pandemic in 2020 and its only mechanism to recover costs is through Commission-approved rates.

28. For these reasons, the Commission approves the 2020 COVID-19 deferral account for the period June 19, 2020, to December 31, 2020. The reasons for accepting this period are explained in sections 3.2 and 3.3 below. This decision is also consistent with the Commission's October 8, 2020, ruling²¹ from Proceeding 25767 because the Commission stated a placeholder application was not required and utilities (and RRO providers) could file an application once actual costs were known.

29. This decision should not be seen as a precedent, and absent extraordinary circumstances such as the pandemic, the usual criteria will apply to deferral account applications.

²⁰ Proceeding 25767, Exhibit 25767-X0011, paragraphs 17 and 19.

²¹ Proceeding 25757, Exhibit 25767-X0011, paragraph 19.

3.2 Should the period covered by the deferral account be March 18, 2020, to December 31, 2020?

30. ENMAX's costs related to the COVID-19 pandemic for 2020 were applied for in two proceedings, consisting of the current application in Proceeding 26505 and an application under the UPDP, in Proceeding 26679 (the UPDP proceeding).

31. In the UPDP proceeding, ENMAX applied to establish a deferral account pursuant to the *Utility Payment Deferral Program Act*²² and requested approval to recover the difference of \$0.47 million between its actual final notice fees and late payment penalty charges and the approved forecast amounts for these two sources of revenue, between March 18, 2020, and June 18, 2020. In its July 28, 2021, ruling, the Commission denied the \$0.47 million under the UPDP because unrecovered final notice fees and late payment charges that were statutorily suspended or foregone from March 18, 2020, to June 18, 2020, are not eligible for inclusion in the UPDP rate rider. In the July 28, 2021, ruling, the Commission also amended the start date for ENMAX's 2020 non-energy COVID-19 deferral account to June 19, 2020, instead of the previously approved start date of July 16, 2020.

32. ENMAX disagreed with the June 19, 2020, start date. It submitted that July 16, 2020, was the date that parties knew that previously approved rates might be amended (because of the knowledge exception to the rule against retroactive ratemaking), or in the alternative, the start of the deferral period should be March 18, 2020.²³

33. ENMAX argued that March 18, 2020, was the day after the Alberta government announced that Albertans who were experiencing financial hardship directly related to the COVID-19 pandemic could contact their service provider to defer electricity and natural gas bills until June 18, 2020, without any late fees, added interest charges or the threat of being disconnected or being subjected to collection activity. This moratorium also applied to any invoices that were due prior to the period covered by the UPDP. ENMAX stated that because late fees, interest charges, disconnection fees and collection activities are all part of ENMAX's 2020 RRO non-energy rates, all interested parties ought to have been aware that ENMAX's final non-energy rates for 2020 could change when these activities were suspended on March 18, 2020.²⁴

34. The CCA and the Office of the Utilities Consumer Advocate (UCA) objected to a start date of March 18, 2020, because the March 18, 2020, government announcement and the Commission's Bulletin 2020-08²⁵ of the same date, gave notice that rates may change only to the extent required to give effect to the costs recovered under the UPDP, not to costs excluded from recovery under the UPDP.

35. ENMAX did not submit evidence on what the impact to it or its customers would be if an earlier date of March 18, 2020, were to be accepted as the start date for the 2020 non-energy COVID-19 deferral account.

36. The Commission's October 8, 2020, ruling approved the start date for the COVID-19 deferral account period as July 16, 2020. The Commission found that all interested parties would

²² Section 7 of the *Utility Payment Deferral Program Act* and Exhibit 26679-X0001, paragraph 4.

²³ Exhibit 26505-X0001.02, PDF page 2.

²⁴ Exhibit 26505-X0002.01, PDF pages 2-3.

²⁵ Bulletin 2020-08, AUC supports government-directed optional utility bill payment deferral, March 18, 2020.

have been aware as of July 16, 2020, of the possibility that deferral account applications may be filed for recovery of costs related to the COVID-19 pandemic. The Commission found that the knowledge exception to the rule against retroactive ratemaking applied and that this relief was required for 2020 because some regulated entities, such as ENMAX, already had approved final rates for 2020, which did not include COVID-19 pandemic costs.

37. In the October 8, 2020, ruling, the Commission also stated that “Any COVID-19 deferral account established will be trued up on an annual basis and will be processed in coordination with any other COVID-19 costs being applied for, such as through the *Utility Payment Deferral Program Act*.”²⁶

38. The initial start date of the non-energy COVID-19 deferral account period of July 16, 2020, was established in 2020 before the Commission received applications from ENMAX²⁷ and EPCOR²⁸ on July 16, 2021, under the *Utility Payment Deferral Program Act*.

39. The *Utility Payment Deferral Program Act* was enacted on May 12, 2020, allowing the deferral of customers’ utility bill payments, as well as financial support to regulated rate providers and other regulated and competitive entities so these service providers would have money to pay, for example, distributors. Subsection 4(1)(a) of the act states that the UPDP was established to permit enrolled electricity customers to defer the payment of certain amounts on electricity bills that are due in the deferral period (March 18, 2020, to June 18, 2020) and to repay the deferred amounts over the repayment period (June 19, 2020, to June 18, 2021).

40. In assessing ENMAX’s and EPCOR’s applications for relief under the UPDP, the Commission found that the UPDP rate rider should reflect the unpaid amounts from March 18, 2020, to June 18, 2020.²⁹ However, this meant that a gap existed between the end of the UPDP on June 18, 2020, and the original start date for the COVID-19 deferral account on July 16, 2020. If left unchanged, any COVID-19 related costs between June 19, 2020, and July 15, 2020, would not be recoverable. Because of this inability to recover COVID-19 related costs for that period, the Commission revised the start date to June 19, 2020, stating: “Amending the date to June 19, 2020 for the COVID-19 deferral account will allow for the reasonable recovery of cost impacts that were not associated with the deferral period under the UPDP.”³⁰

41. The Commission’s July 28, 2021, ruling, setting June 19, 2020, as the commencement of the COVID-19 deferral account, was not challenged by ENMAX through a review and variance application nor by way of a permission to appeal application.

42. Exceptions to the rule against retroactive ratemaking were commented on in detail in Decision 790-D02-2015,³¹ including the exceptions of deferral accounts and the knowledge exception. The knowledge exception refers to circumstances where parties to the rate proceeding

²⁶ Proceeding 25767, Exhibit 25767-X0011, paragraph 20.

²⁷ Proceeding 26679.

²⁸ Proceeding 26700.

²⁹ Exhibit 26505-X0027, paragraph 9.

³⁰ Exhibit 26505-X0027, paragraph 11.

³¹ Section 4.3 of Decision 790-D02-2015: Milner Power Inc. Complaints regarding the ISO Transmission Loss Factor Rule and Loss Factor Methodology, ATCO Power Ltd. Complaint regarding the ISO Transmission Loss Factor Rule and Loss Factor Methodology, Proceeding 790, January 20, 2015.

know (or ought to know) that a regulatory process has been initiated that may change rates, or alternatively, whether parties know whether rates were ultimately subject to change.

43. The Court of Appeal of Alberta summarized the knowledge exception in *Atco Gas and Pipelines Ltd v Alberta (Utilities Commission)*, as follows:

Simply because a ratemaking decision has an impact on a past rate does not mean it is an impermissible retroactive decision. The critical factor for determining whether the regulator is engaging in retroactive ratemaking is the parties' knowledge. Hunt JA stated at para 57:

Both *Bell Canada 1989 [Bell Canada v Canada (Canadian Radio-Television and Telecommunications Commission)*, 1989 CanLII 67 (SCC), [1989] 1 SCR 1722] and *Bell Aliant [Bell Canada v Bell Aliant Regional Communications, 2009 SCC 40, [2009] 2 SCR 764]* (which concerned deferral accounts rather than interim rates) illustrate the same preoccupation: were the affected parties aware that the rates were subject to change? If so, the concerns about predictability and unfairness that underlie the prohibitions against retroactive and retrospective ratemaking become less significant.³²

...

Slavish adherence to the use of interim rates and deferral accounts should not prohibit adjustments in a case such as this. Regulators have a broad, discretionary authority when ratemaking. The relevant question here is whether the utility knew from the actions or words of the regulator that the rates were subject to change ...³³

44. Justice O'Ferrall in *Capital Power Corporation v Alberta Utilities Commission*, stated that the rule against retroactive ratemaking is applied when considerations of fairness, reliance, rate stability and certainty are engaged and given more weight than countervailing considerations. After noting some of the exceptions to the rule against retroactive ratemaking, he determined that the list of exceptions is not exhaustive: "There are other circumstances as well in which the rule is not applied. The list is not closed."³⁴ He stated that the question is whether or not a strict application of the rule in the circumstances of the case achieves sound utility regulation, and, that question is not a question of law.³⁵

45. The question for the Commission is whether parties had knowledge that the July 16, 2020, start date for the deferral account might change. The Commission finds that they knew or should have known that the July 16, 2020, date could change because parties had notice that the COVID-19 deferral account applications would be considered in light of the costs allowed for in the UPDP applications, as stated in the October 8, 2020, ruling.³⁶ Reading the Commission's October 8, 2020, and July 28, 2021, rulings together and given the interrelated nature of the proceedings to address pandemic-related costs, parties knew or should have known that the UPDP decisions would fix the period within which eligible UPDP costs were determined,

³² *Atco Gas and Pipelines Ltd v Alberta (Utilities Commission)*, 2014 ABCA 28 (CanLII), paragraph 56. This case is often referred to as "Salt Caverns II."

³³ *Atco Gas and Pipelines Ltd v Alberta (Utilities Commission)*, paragraph 62.

³⁴ *Capital Power Corporation v Alberta Utilities Commission*, 2018 ABCA 437 (CanLII), paragraph 65.

³⁵ *Capital Power Corporation v Alberta Utilities Commission*, paragraphs 65-66.

³⁶ Proceeding 25767, Exhibit 25767-X0011, at paragraph 20, where the Commission stated, "Any COVID-19 deferral account established will be trued up on an annual basis and will be processed in coordination with any other COVID-19 costs being applied for, such as through the *Utility Payment Deferral Program Act*."

leaving recovery of the COVID-19 deferral account costs for the remaining period not covered by the UPDP.

46. The Commission finds no error in applying the knowledge exception at first instance to July 16, 2020, and then to June 19, 2020, after the UPDP decision was issued. To direct otherwise would have resulted in either ENMAX or its customers having no means of adjusting for COVID-19 pandemic-related costs excluded from UPDP costs that occurred between June 19, 2020, and July 15, 2020. In the Commission's view, using a June 19, 2020, start date achieves sound utility regulation in these circumstances.

47. In finding that June 19, 2020, is the start date for the deferral account, the Commission rejects ENMAX's alternate start date of March 18, 2020, primarily, as argued by the interveners, because the March 18, 2020, government announcement and the Commission's Bulletin 2020-08 of the same date, gave notice that the legal and regulatory framework may change to give effect to the allowable costs recovered under the UPDP, and not to costs excluded from recovery under the UPDP. The Commission has considered two other circumstances in rejecting March 18, 2020. First, ENMAX had the opportunity to file a review and variance application or permission to appeal in response to the Commission's ruling that June 19, 2020, was the start date and did not do so. Second, as acknowledged by ENMAX in the current application, it did not file supporting evidence of its COVID-19 pandemic costs that were outstanding from March 18, 2020, to June 18, 2020.³⁷

48. ENMAX's request to change the start date for the operation of the COVID-19 deferral account to March 18, 2020, is denied, and the period covered by the deferral account is maintained as June 19, 2020, to December 31, 2020.

3.3 Should the period covered by the deferral account be July 16, 2020, to December 31, 2020?

49. ENMAX further submitted that if its request to make March 18, 2020, as the start date of the deferral account period is denied by the Commission, then the start date should be restored to July 16, 2020, which was the date that the Commission originally found the knowledge exception applied.³⁸

50. The CCA claimed that ENMAX's request to make July 16, 2020, as the start of the deferral account period is contradictory to the submission made by ENMAX to make March 18, 2020, as the start of the deferral account period, and is inconsistent. The CCA stated that if March 18, 2020, is supposed to be the date on which the knowledge exception applied as claimed by ENMAX, and if that date is denied by the Commission, then ENMAX should be consistent and claim that June 19, 2020, is the proper date because it is earlier than July 16, 2020. The CCA submitted that the reason ENMAX requested July 16, 2020, as the start date of the deferral account period instead of June 19, 2020, is because the balance in the deferral account is larger if July 16, 2020, is used as the start date, which results in more money for ENMAX.³⁹

51. The Commission denies ENMAX's request to re-establish July 16, 2020, as the start date of the deferral account period. As explained in Section 3.2, the Commission does not consider

³⁷ Exhibit 26505-X0001.02, PDF page 3.

³⁸ Exhibit 26505-X0001.02, PDF page 3.

³⁹ Exhibit 26505-X0030, paragraphs 53-55.

that ENMAX's request is reasonably supported, or that it is in the public interest, to reinstate the start date of the deferral account to July 16, 2020. The Commission-directed amendment for the start of the COVID-19 deferral account period to June 19, 2020, was required to address the gap in rate recovery between the UPDP applications and the COVID-19 deferral account applications. Consequently, ENMAX's request to use July 16, 2020, as the start date of the deferral account period is denied.

3.4 Should the Commission approve the balance in the deferral account and the associated rate rider?

52. In this section, the Commission will decide whether to approve the \$1.240 million balance in the deferral account for June 19, 2020, to December 31, 2020, and whether to approve the requested rate rider period and associated rate rider amount to collect the approved balance. The Commission's findings with respect to the balance in the deferral account are in Section 3.4.1 and its associated subsections, and its findings with regard to the rate rider period and associated rate rider amount are in Section 3.4.2.

3.4.1 Balance in the deferral account

53. ENMAX calculated and reported the balance in the deferral account as \$1.240 million. The elements comprising the balance are listed in Table 1 below:

Table 1. Elements comprising the balance in the deferral account

	2020 actuals: June 19, 2020, to December 31, 2020	2020 approved forecast: June 19, 2020, to December 31, 2020	Deferral account balance: collection from/(refund to) customers
	(\$ million)		
Bad debt	2.398	1.327	1.071
Administration costs	0.012	0.058	(0.046)
Billing and customer care (B&CC) costs	4.322	4.377	(0.056)
Revenue offsets	(0.597)	(0.923)	0.326
Site count			(0.055)
Total balance			1.240

Source: Exhibit 26505-X0002.02. Some of the figures in the last column may not equal the difference between the figures in the 2nd and 3rd columns, because the figures in the 2nd and 3rd columns are rounded.

54. ENMAX asked that the Commission assess the materiality of these costs on an aggregate basis and not individually. The Commission agrees because this avoids the situation of ENMAX having to decide whether or not an individual item is material enough to include in the deferral account, and then having to defend such a decision. Instead, adding the individual items together, and assessing the total amount from a materiality perspective is acceptable for the purposes of assessing ENMAX's COVID-19 costs that should be included in the deferral account.

55. Based on ENMAX's application that there are certain amounts to be recovered from customers and certain amounts to be refunded to customers, the Commission considers this aggregate approach to the deferral account is fair to ENMAX and its customers. The Commission notes that the total deferral account balance of \$1.240 million applied for by ENMAX represents approximately 10 per cent of ENMAX's total approved 2020 non-energy

revenue requirement of \$12.5 million,⁴⁰ and the Commission considers that this is a material percentage.

56. The Commission will proceed to address other issues relating to some of the constituent elements on their merits. In Section 3.4.1.1, the Commission decides whether or not it can approve the deferral account balance for the administration costs.

57. The UCA raised an issue with respect to ENMAX's calculation of the incremental bad debt expense amounts included in the deferral account. This issue is addressed in Section 3.4.1.2. The CCA and the UCA raised an issue regarding the exclusion of certain B&CC cost savings from the deferral account. This issue is addressed in Section 3.4.1.3.

58. The Commission has also addressed an issue relating to a discrepancy between the actual B&CC costs for 2018 included in the application and the actual B&CC costs for 2018 as approved in an earlier decision. This issue is addressed in Section 3.4.1.4. Section 3.4.1.5 explains the derivation of the Commission-approved deferral account balance.

3.4.1.1 Unverified forecast amounts for the administration costs

59. A deferral account balance is calculated as the difference between the actual amount and the approved forecast amount, and part of the Commission's review is to check the accuracy of the approved forecast amount used in the calculation of the deferral account balance. The Commission was not able to verify the approved forecast amounts for the three administration costs to the supporting references that ENMAX provided⁴¹ because the approved forecast was for the administration costs in total, and not for the individual component costs. The Commission cannot be satisfied that the administration costs deferral account balance has been properly calculated. The administration costs in question are RRO operations costs, shared services costs and ENMAX Power Corporation common costs.

60. The unverified accuracy of the calculation is also compounded by ENMAX's submission that the initial approved forecast amounts it used for the shared services costs and the ENMAX Power Corporation common costs were incorrect and required revisions.⁴² The Commission faced a similar situation in Decision 25949-D02-2021 and denied ENMAX's request to include administration costs in the 2021 COVID-19 deferral account.⁴³

61. In this case, the Commission finds that in the absence of a specific approved forecast for the three types of administration costs, it will not approve a deferral account for these costs. The balance of \$(0.046) million for administration costs as included in Table 1 will be removed from the total deferral account balance.

3.4.1.2 Incremental bad debt expense in the deferral account

62. The issue is about the nature of a bad debt: when is the bill sent to a customer written off as uncollectible? For the time period in question, the UCA argued that only those bad debt expense amounts related to bills issued, and therefore due, after June 19, 2020, should be

⁴⁰ Exhibit 26505-X0001.02, paragraph 28.

⁴¹ Exhibit 26505-X0023, EEC-AUC-2021JUN18-007(a)-(c), PDF pages 12-13.

⁴² Exhibit 26505-X0023, EEC-AUC-2021JUN18-007(b)-(c), PDF pages 12-13.

⁴³ Decision 25949-D02-2021: ENMAX Energy Corporation, 2021 Regulated Rate Option Non-Energy Tariff, Proceeding 25949, May 27, 2021, paragraph 41.

included in the deferral account. ENMAX submitted that the bad debt expense is not incurred when electricity is consumed; neither is it incurred when a bill is issued nor when payment is due.⁴⁴ This is because ENMAX does not know whether the bill will be paid at those times. It incurs the bad debt expense when a bill remains unpaid 60 days after payment is due, and this approach is consistent with how its 2020 approved bad debt expense forecast was determined.

63. This means that some of the actual bad debt expense recorded for the period June 19, 2020, to December 31, 2020, related to bills that were issued prior to June 19, 2020. It also means that there was no actual or forecast bad debt expense in 2020 for any bills that had due dates less than 60 days before December 31, 2020. To accept the UCA's position would mean that ENMAX would have to employ the accounting practice of recording an allowance for bad debt expense related to its bills. Under this practice, usually done on a monthly basis, ENMAX would record an expected bad debt expense associated with the bills issued in that month, rather than waiting until it is determined that a customer's bill will not be paid before a bad debt expense is recorded. ENMAX does not employ this accounting practice for regulatory purposes.

64. The Commission finds ENMAX's explanation for the calculation of its bad debt expense reasonable and appropriate. It is the difference between the actual bad debt expense and the forecast bad debt expense. This is a consistent approach because these amounts were determined using the same methodology (i.e., a bad debt expense is not recorded until the bill remains unpaid 60 days after the due date), and therefore is an "apples to apples" comparison. The Commission approves the balance of \$1.071 million for the bad debt expense deferral, as included in Table 1.

3.4.1.3 Billing and customer care cost savings excluded from the deferral account

65. This issue is about whether B&CC cost savings prior to June 19, 2020, should be included in the deferral account. The actual B&CC costs for 2020 were \$0.40 million less than the forecast, but only \$0.056 million of the \$0.40 million is attributable to the deferral account period.

66. The UCA submitted that, as acknowledged by ENMAX, the B&CC costs incurred after July 16, 2020, were not incremental to the approved amounts for 2020. The UCA stated that this was simply a matter of shifting costs from earlier in the year to later in the year. It argued that if ENMAX is allowed to rely on the cost amounts shifted to later in the year to offset the savings that would otherwise accrue to customers through the deferral account, this would result in double counting, because ENMAX has already been compensated for the approved level of spending in the rates charged to customers. The UCA submitted that B&CC costs were \$0.35 million lower than forecast as a direct result of the pandemic, and that this amount should be included in the calculation of the deferral account.⁴⁵ The CCA submitted that "a more equitable solution would be to allocate customers the \$0.40 million as it is obviously a forecast to actual difference to ENMAX's benefit and would go a long way to offsetting the applied for variance in bad debt."⁴⁶

67. ENMAX stated that neither the UCA nor ENMAX can change when the actual B&CC costs were incurred in 2020, and it submitted that when the costs were incurred determines

⁴⁴ ENMAX indicated that payment is due 25 days after the bill is issued.

⁴⁵ Exhibit 26505-X0029, paragraphs 27-28.

⁴⁶ Exhibit 26505-X0030, paragraph 38.

whether they are eligible for deferral account treatment. ENMAX indicated that the Commission has clearly ruled that costs incurred before June 19, 2020, are not eligible.⁴⁷

68. The Commission agrees with ENMAX that this is a timing issue, and that the timing of when the costs were saved determines whether they are eligible for deferral account treatment. The Commission finds that the B&CC costs that were saved between January 1, 2020, and June 18, 2020, are outside the approved deferral account period, and are therefore not eligible for deferral account treatment. The Commission denies the recommendation of the UCA and the CCA to add the B&CC savings related to the period before the start of the deferral account period to the deferral account balance.

69. The Commission finds that the UCA failed to demonstrate how there is double counting. ENMAX will benefit from the \$0.35 million in savings for the period January 1, 2020, to June 18, 2020, because there is no deferral account in place for that period. In accordance with regulatory principles, this is no different from any other period where there is no deferral account because ENMAX is at risk for actual cost amounts being higher than approved forecast amounts and it receives the benefit of actual costs that are lower than approved amounts. ENMAX has not applied to recover the \$0.35 million as part of the deferral account for June 19, 2020, to December 31, 2020, so no proof of double counting is evident in ENMAX's B&CC costs.

3.4.1.4 Discrepancy in the actual B&CC costs for 2018

70. This issue is about the actual 2018 B&CC costs ENMAX used as part of the calculation of the approved forecast for June 19, 2020, to December 31, 2020. The Commission could not trace the \$8,992,609 ENMAX used as the actual B&CC costs for 2018, to the \$8,883,000 approved in a previous decision. ENMAX's use of \$8,992,609 instead of \$8,883,000 resulted in a lower refund amount for the B&CC cost deferral account, and a corresponding higher amount in the overall deferral account to be collected from ENMAX's RRO customers.⁴⁸

71. ENMAX indicated that the source of the \$8,992,609 is the 2018 Rule 005⁴⁹ report which was submitted to the Commission on May 1, 2019. ENMAX noted that the 2018 Rule 005 filing was prepared prior to the issuance of Decision 23752-D01-2020⁵⁰ on ENMAX's 2017-2020 non-energy application. ENMAX added that in Decision 25949-D02-2021, the AUC approved ENMAX's equal treatment of the land title fees and land title revenues, which meant the land title fees were removed from the B&CC cost pool and directly assigned to the RRO.⁵¹

72. A deferral account balance is calculated as the difference between the actual amount and the approved forecast amount and part of the Commission's review is to check the accuracy of the calculation of the deferral account balance. The \$8,883,000 approved by the Commission in Decision 25551-D01-2020 did not reference any B&CC costs from the 2018 Rule 005 report. The Commission considers that any amounts approved in a decision are preferred over amounts included in a Rule 005 filing, because the amounts approved in a decision are arrived at after

⁴⁷ Exhibit 26505-X0032, paragraph 29.

⁴⁸ When the Commission used \$8,883,000 in Excel cell I20 of worksheet App A – Charges&Refund of Exhibit 26505-X0002.02, the resulting refund for the B&CC costs in Excel cell AB20 was \$(73,991). The refund as calculated by ENMAX using \$8,992,609 in Excel I20 is \$(55,572). The difference is \$(18,419).

⁴⁹ Rule 005: *Annual Reporting Requirements of Financial and Operational Results*.

⁵⁰ Decision 23752-D01-2020: ENMAX Energy Corporation, 2017-2020 Regulated Rate Option Non-Energy Tariff, Proceeding 23752, March 17, 2020.

⁵¹ Exhibit 26505-X0023, EEC-AUC-2021JUN18-008(a)-(b), PDF pages 14-15.

review and examination by the Commission and interveners, as opposed to the Rule 005 amounts, which are not approved by the Commission but rather are filed for information purposes.

73. In addition, the Commission finds that ENMAX's reference to Decision 25949-D02-2021, which was issued on May 27, 2021, and ENMAX's description of the Commission's approval in that decision of the land title fees and land title revenues, is not applicable to ENMAX's B&CC costs for 2018 as reported in either its 2018 Rule 005 report or in Decision 25551-D01-2020. Further, ENMAX has failed to provide a sufficient reason why the 2018 B&CC costs as reported in the 2018 Rule 005 report should be used instead of the actual amounts from Decision 25551-D01-2020. The Commission finds that the \$8,883,000 approved figure should be used in the calculation of the deferral account balance for the B&CC costs. When the \$8,883,000 figure is used, the resulting deferral account balance for the B&CC costs is \$(0.074) million, as opposed to the \$(0.056) million calculated by ENMAX. The Commission approves the recalculated deferral account balance of \$(0.074) million.

3.4.1.5 Commission-approved deferral account balance

74. The Commission has recalculated the deferral account balance to exclude the administration costs, as decided in Section 3.4.1.1, and to approve a deferral account balance of \$(0.074) million for the B&CC costs, as decided in Section 3.4.1.4. The resulting Commission-approved deferral account balance of \$1.268 million is set out in Table 2 below:

Table 2. Commission-approved deferral account balance

	Deferral account balance: collection from/(refund to) customers
	(\$ million)
Bad debt	1.071
B&CC costs	(0.074)
Revenue offsets	0.326
Site count	<u>(0.055)</u>
Total balance	<u>1.268</u>

3.4.2 Rate rider period and associated rate rider amount

75. A rate rider is an additional charge that is added to a customer's bill in order to collect or refund items such as an approved deferral account balance. Rate riders are charged for certain time periods. The time period is approved by the Commission and depends on the effect the rate rider charge will have on a customer's overall bill.

76. ENMAX proposed to collect the approved balance in the deferral account through a rate rider that will be in place for three months. It stated that the impact of such a rider on a typical customer's bill does not exceed the 10 per cent range generally considered by the Commission to constitute rate shock. ENMAX submitted that a three-month rider period strikes a reasonable balance between intergenerational equity and the need to avoid rate shock.⁵²

⁵² Exhibit 26505-X0001.02, paragraph 83.

77. The UCA recommended that a six-month period be used for the rate rider. ENMAX did not object to the UCA's recommendation.⁵³

78. The Commission finds that a six-month period for the rate rider is acceptable. The Commission agrees with the submission of the UCA, who stated that in considering the period of time over which to implement a rate rider, it is necessary to consider the appropriate balance between minimizing bill impacts and intergenerational inequity.⁵⁴ The Commission agrees with the UCA's submission that a six-month period for the rate rider should be preferred, because it minimizes the per day charge to customers without unduly contributing to intergenerational inequity.⁵⁵

79. In this decision, the Commission has approved a balance of \$1.268 million for ENMAX's 2020 non-energy COVID-19 deferral account. Using the approved balance of \$1.268 million and ENMAX's average six-month forecast site counts for the residential and commercial rate classes for July 2021 to December 2021,⁵⁶ the Commission has calculated the resulting approved rate rider of \$0.0468 per site per day for the residential rate class and the commercial rate class. This approved rate rider will commence on December 1, 2021, and end on May 31, 2022.

80. The approved rate rider was calculated using a six-month forecast for site counts, and is designed to collect the approved deferral account balance of \$1.268 million. The actual amount collected through the rate rider will likely be different than the \$1.268 million, because the actual site counts for the six-month rider period will likely be different than the forecast site counts. The Commission considers that the amount of the difference between the actual rate rider revenue and the \$1.268 million should be reported by ENMAX, and an assessment should be made about whether that difference should be subsequently collected by ENMAX or refunded to its customers. The Commission directs ENMAX to report the actual rider revenue from the residential and commercial rate classes during the rate rider period, and the resulting difference between the actual rider revenue and the approved deferral account balance of \$1.268 million. The Commission directs ENMAX to comment on whether the resulting difference should be trueed up, and if it should be, how that true-up should occur. ENMAX shall submit this information as a post-disposition filing in Proceeding 26505, no later than 4 p.m. on July 15, 2022, which is 45 days after the end of the rate rider period.

4 Order

81. It is hereby ordered that:

- (1) The Alberta Utilities Commission approves a 2020 non-energy COVID-19 deferral account balance of \$1.268 million for ENMAX Energy Corporation and the associated rate rider of \$0.0468 per site per day to be charged by ENMAX Energy Corporation to its regulated rate option customers from December 1, 2021, to May 31, 2022.

⁵³ Exhibit 26505-X0032, paragraphs 8 and 32.

⁵⁴ Exhibit 26505-X0029, paragraph 31.

⁵⁵ Exhibit 26505-X0029, paragraph 32.

⁵⁶ As included in Exhibit 26505-X0002.02, worksheet App C – Rate Rider.

Dated on November 10, 2021.

Alberta Utilities Commission

(original signed by)

Douglas A. Larder, QC
Vice-Chair

(original signed by)

Vincent Kostas
Acting Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
ENMAX Energy Corporation (ENMAX or EEC)
Consumers' Coalition of Alberta (CCA)
Office of the Utilities Consumer Advocate (UCA) Reynolds, Mirth, Richards & Farmer LLP

<p>Alberta Utilities Commission</p> <p>Commission panel D.A. Larder, QC, Vice-Chair V. Kostaskey, Acting Commission Member</p> <p>Commission staff A. Sabo (Commission counsel) D. Mitchell C. Arnot N. Sawkiw</p>
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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 approved rate rider was calculated using a six-month forecast for site counts, and is designed to collect the approved deferral account balance of \$1.268 million. The actual amount collected through the rate rider will likely be different than the \$1.268 million, because the actual site counts for the six-month rider period will likely be different than the forecast site counts. The Commission considers that the amount of the difference between the actual rate rider revenue and the \$1.268 million should be reported by ENMAX, and an assessment should be made about whether that difference should be subsequently collected by ENMAX or refunded to its customers. The Commission directs ENMAX to report the actual rider revenue from the residential and commercial rate classes during the rate rider period, and the resulting difference between the actual rider revenue and the approved deferral account balance of \$1.268 million. The Commission directs ENMAX to comment on whether the resulting difference should be trueed up, and if it should be, how that true-up should occur. ENMAX shall submit this information as a post-disposition filing in Proceeding 26505, no later than 4 p.m. on July 15, 2022, which is 45 days after the end of the rate rider period..... paragraph 80