



EPCOR Energy Alberta GP Inc.

2021-2022 Non-Energy Regulated Rate Tariff Application

February 17, 2022

Alberta Utilities Commission

Decision 26694-D01-2022

EPCOR Energy Alberta GP Inc.

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Proceeding 26694

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1 Decision summary

1. In this decision, the Alberta Utilities Commission approves a negotiated settlement agreement (NSA) that was reached through a mediated process. EPCOR Energy Alberta GP Inc. (EEA), the Consumers' Coalition of Alberta (CCA) and the Office of the Utilities Consumer Advocate (UCA) are signatories to the NSA for EEA's 2021-2022 non-energy regulated rate tariff (RRT), and EEA noted that there were two unresolved matters that are not subject to the NSA. The two unresolved matters excluded from the NSA were:

- Amounts from March 18, 2020, to June 18, 2020, included in EEA's COVID-19 deferral account. For the reasons provided in Section 5.4.1 in this decision, the Commission directs EEA to revise its COVID-19 deferral account to exclude the COVID-19 amounts from March 18, 2020, to June 18, 2020, and to reflect a credit of \$130,000 to EEA's customers.
- The forecast credit costs included as part of EEA's non-energy revenue requirement. For the reasons provided in Section 5.4.2 of this decision, the Commission directs EEA to exclude credit costs of \$0.69 million for 2021 and \$0.70 million for 2022 from its revenue requirements.

2. The approved NSA for EEA's 2021-2022 non-energy RRT, without taking into account the Commission's decision on the two excluded issues, results in reductions to EEA's applied-for revenue requirement of approximately \$3.75 million in 2021 and \$1.83 million in 2022, or 8.0 per cent and 4.4 per cent, respectively.¹ A compliance filing is required to set EEA's final RRT. EEA is directed to file its compliance filing to this decision by March 15, 2022.

2 Introduction

3. On August 26, 2021, EEA filed an application with the Commission requesting approval of its 2021-2022 non-energy RRT applicable to its regulated rate option (RRO) service to eligible customers in the EPCOR Distribution & Transmission Inc. (EDTI) and FortisAlberta Inc. service areas.

4. The Commission issued a notice of the application on August 27, 2021, with statements of intent to participate (SIPs) due September 10, 2021. In response to the notice, SIPs were filed by the CCA and the UCA.

5. Consistent with the Commission's initiative to encourage regulatory efficiency and effectiveness,² on September 17, 2021, the chair of the Commission determined that this

¹ Exhibit 26694-X0099, EEA application for approval of 2021-2022 RRT NSA, paragraph 46.

² AUC letter to stakeholders, December 4, 2020: <https://www.auc.ab.ca/News/2020/2020-12-04-Letter.pdf>.

application might benefit from a mediated settlement approach. The Commission directed EEA, the CCA and the UCA to proceed to mediation in an effort to reach a negotiated settlement of the application.

6. On September 17, 2021, the Commission established a process schedule for the mediation process and any required further process on any unresolved issues for EEA's 2021-2022 non-energy RRT application.³

7. On November 26, 2021, EEA advised the Commission that the mediation process for Proceeding 26694 resulted in a partial NSA, except for the two issues (excluded matters) that the parties (EEA, the CCA, the UCA) agreed would be submitted to the Commission for adjudication:

- (1) EEA's entitlement to recover its applied-for non-energy credit costs;⁴ and
- (2) EEA's entitlement to include \$1.02 million from March 18 to June 18, 2020, in its COVID-19 deferral account, which parties have otherwise agreed will be approved under the settlement.⁵

8. After reviewing the information filed in EEA's application on the two unresolved issues, the Commission was satisfied that it did not require any further information through an interrogatory process. The CCA and the UCA advised the Commission that they were prepared to proceed directly to argument and reply argument, without evidence.

9. The Commission set a process schedule for the filing of argument and reply argument. The Commission considers the record of this proceeding to have closed on January 14, 2022, the deadline date for reply argument submissions.

10. In reaching the determinations throughout this decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the evidence and arguments provided by each party. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to a particular matter.

3 Summary of NSA

11. On December 13, 2021, EEA requested approval for the NSA reached among EEA, the CCA and the UCA in respect of EEA's 2021-2022 non-energy RRT. In the application, EEA forecast RRT allocated costs of \$46.65 million in 2021 and \$41.85 million in 2022.⁶ The NSA's adjustments to the applied-for revenue requirement are included in the following table:

³ Exhibit 26694-X0069.

⁴ Exhibit 26694-X0008, application, Section 3.2.2.

⁵ Exhibit 26694-X0095.

⁶ Exhibit 26694-X0008, application, paragraph 14, Table 1.2.1-1, Total Costs 2018-2022.

Table 1. Summary of negotiated adjustments to RRT revenue requirement⁷

NSA article #	Description	A	B
		RRT revenue requirement impact	
		2021	2022
		(\$ million)	
3.1	Heart and Soul Fund	(0.06)	0.00
3.2	Mid-Term Incentive Program	(0.03)	(0.04)
3.3	Wellness Benefit Utilization Rate	(0.01)	(0.01)
3.4	2022 Wage and Salary Increase	0.00	(0.11)
3.5	CRM Costs	(0.40)	(0.55)
3.6	Bad Debts	(2.32)	(1.12)
3.6	Retail Connection Fee and Late Payment Fee	(0.93)	0.00
	TOTAL	(3.75)	(1.83)

12. The NSA results in reductions to EEA's applied-for revenue requirement of approximately \$3.75 million in 2021 and \$1.83 million in 2022, or 8.0 per cent and 4.4 per cent, respectively.⁸ A summary of the agreed adjustments in the NSA is provided below:

- The removal of EEA's Public & Government Affairs Heart and Soul Fund⁹ amount of \$0.06 million in forecast contributions from the 2021 RRT revenue requirement.¹⁰
- The removal of EEA's Mid-Term Incentive Program amount of \$0.03 million and \$0.04 million from the 2021 and 2022 RRT revenue requirements, respectively.¹¹
- An adjustment of the 2021 and 2022 RRT revenue requirements to reflect an assumed wellness benefit based on the actual three-year average utilization rate of 75.893 per cent.¹²
- A limit of the wage and salary increase to one per cent in 2022, which is a reduction from the applied-for 1.5 per cent.¹³
- A reduction from the applied-for \$0.60 million amount for 2021 to \$0.20 million, and a reduction of the \$0.55 million amount for 2022 to \$0.00 million related to EEA's allocated share of the capital costs of undepreciated investment in the Customer Relationship Management (CRM) System.¹⁴ The NSA specified that EEA will not apply

⁷ Exhibit 26694-X0101, Attachment 2 - Summary of Negotiated Adjustments to RRT Revenue Requirement.

⁸ Exhibit 26694-X0099, EEA application for approval of 2021-2022 RRT NSA, paragraph 46.

⁹ Exhibit 26694-X0008, application, PDF pages 248-249, paragraph 720: "P&GA Heart and Soul Fund - this program was created to support not for profit organizations providing vital services to people who need help adjusting to the changing landscape brought on by the COVID-19 pandemic. The fund was created in 2020 and continued in 2021 as the need for funding continued. The fund costs were not included in the 2020 Decision amounts. The amounts are directly funded by each business unit. The 2021 Heart and Soul funding by EEA is included in EEA's 2021 Forecast revenue requirement."

¹⁰ Exhibit 26694-X0100, Attachment 1, EEA 2021-2022 Non-Energy RRT NSA Executed, Article 3.1.

¹¹ Exhibit 26694-X0100, Attachment 1, EEA 2021-2022 Non-Energy RRT NSA Executed, Article 3.2.

¹² Exhibit 26694-X0100, Attachment 1, EEA 2021-2022 Non-Energy RRT NSA Executed, Article 3.3.

¹³ Exhibit 26694-X0100, Attachment 1, EEA 2021-2022 Non-Energy RRT NSA Executed, Article 3.4.

¹⁴ Exhibit 26694-X0100, Attachment 1, EEA 2021-2022 Non-Energy RRT NSA Executed, Article 3.5.

to recover any capital costs associated with its CRM assets that remain undepreciated as of January 1, 2023, in any future regulatory proceeding.

- Parties agreed that EEA should recover, on a final basis, its 2021 updated forecasts for bad debt, late payment charge revenues and retail connection fees, as reflected in the following table:¹⁵

Table 2. 2021 Forecast and updated forecasts

	2021 Forecast	2021 Updated forecasts	2021 Forecast vs. 2021 Updated forecast
	(\$ million)		
Bad Debt	9.61	7.29	(2.32)
Late Payment Charges	(3.27)	(3.75)	(0.48)
Retail Connection Fees	(1.06)	(1.51)	(0.45)

- For 2022, the parties agreed that the Commission should approve three deferral accounts: one for late payment charges; one for retail connection fees; and one for bad debt.
 - EEA's late payment charges and retail connection fees deferral accounts for 2022 will be conventional deferral accounts, capturing 100 per cent of the difference between EEA's actuals and applied-for 2022 forecasts.
 - EEA's bad debt 2022 deferral account will be subject to a risk-sharing mechanism:
 - If EEA's bad debt expense in 2022 is less than \$5,460,000, EEA will refund 75 per cent of the difference between the actual bad debt expense and \$5,460,000 to customers under EEA's next non-energy RRT.
 - If EEA's bad debt expense is greater than \$5,460,000, but less than \$6,500,000, EEA will recover 75 per cent of the difference between the actual bad debt expense and \$5,460,000 from customers.
 - If EEA's bad debt expense exceeds \$6,500,000, EEA will recover 75 per cent of \$1,040,000, and EEA will also recover 50 per cent of the difference between actual bad debt expense and \$6,500,000 from customers in EEA's next non-energy RRT. The deferral account structure allows customers to share the benefits from low bad debt, reduces EEA's exposure to high bad debt, and provides an additional incentive for EEA to avoid particularly high bad debt.
13. Other mechanics of the NSA were summarized by EEA:
- EEA will sum the balances in the Bad Debt Deferral Account, the Late Payment Charge Revenue Deferral Account and the Retail Connection Fee Revenue Deferral Account for the purposes of calculating interest under Rule 023: *Rules Respecting Payment of Interest*. No interest will accrue prior to January 1, 2023.
 - Any party may apply to the Commission to reopen Article 3.6 of the NSA regarding bad debt, late payment charge revenue, and retail connection fee revenue and EEA's resultant revenue requirements, if in that party's view a change in law or in government policies or

¹⁵ Exhibit 26694-X0100, Attachment 1, EEA 2021-2022 Non-Energy RRT NSA Executed, Article 3.6.

rules materially undermines the risk/reward allocation in the Bad Debt Deferral Account, Late Payment Deferral Account or Retail Connection Fee Revenue Deferral Account.¹⁶

- The CCA and the UCA agreed to EEA’s recovery of Corporate Services asset usage fees calculation based on the \$67.67 million actual capital addition related to EPCOR Utilities Inc.’s (EUI) Customer Information System (CIS).¹⁷

14. EEA explained that rates resulting from the NSA and the Commission’s determination on the excluded matters will be filed in a compliance filing to this decision.¹⁸

4 What are the statutory and rule requirements for approval of an NSA?

15. The Commission evaluates negotiated settlements under the provisions of the *Electric Utilities Act*, the Commission’s rules and established case law. Section 135 of the act prescribes that the Commission must either approve or refuse the settlement, if the parties to the NSA agree that the settlement is contingent on the Commission’s accepting the entire settlement.

16. Section 132(1)(a) of the *Electric Utilities Act* requires the Commission to establish rules, practices and procedures that facilitate negotiated settlements. Rule 018: *Rules on Negotiated Settlements* outlines several requirements associated with negotiated settlements, including filing sufficient material in any settlement agreement to allow the Commission to assess its effect on rates and services. The applicant bears the onus of demonstrating that there is sufficient evidence to support its application for approval of the settlement.¹⁹

17. Section 8 of Rule 018 requires that the Commission assess whether an unopposed or unanimous settlement results in rates as well as terms and conditions that are just and reasonable, and to intervene if the settlement is determined by the Commission to be patently against the public interest or contrary to law. The Commission must also find that the process leading to a negotiated settlement is fair.

18. The Court of Appeal of Alberta in *ATCO Electric Limited v Alberta (Energy and Utilities Board)* provided guidance on the Alberta Energy and Utilities Board’s (board), the Commission’s predecessor, obligations in considering settlement agreements. The court noted that the purpose behind the adoption of a negotiated settlement process (NSP) was that it would serve as an alternative – a less costly, complex or lengthy one – to traditional regulation.²⁰ The court stated:

- the board retains the jurisdiction to conduct an independent review of the negotiated settlement to determine if it is in the “public interest”
- that the ultimate responsibility for approving negotiated settlements and ensuring that the process is fair and reasonable rests with the board

¹⁶ Exhibit 26694-X0100, Attachment 1, EEA 2021-2022 Non-Energy RRT NSA Executed, Article 4.0.

¹⁷ Exhibit 26694-X0100, Attachment 1, EEA 2021-2022 Non-Energy RRT NSA Executed, Article 6.0..

¹⁸ Exhibit 26694-X0099, EEA application for approval of 2021-2022 RRT NSA, paragraph 9.

¹⁹ Rule 018, sections 4 and 6.

²⁰ *ATCO Electric Limited v Alberta (Energy and Utilities Board)*, 2004 ABCA 215, paragraph 135.

- the NSP does not replace an appropriate and informed review by the board as to what is in the overall public interest
- the board's discretion in controlling rates as mandated by statute cannot be fettered by a negotiated settlement²¹

19. The court recognized that all consumers cannot be parties to the negotiations, and one or more of the interested parties to the settlement may represent some consumers but not all consumers. The regulator is entitled to assume that what the utility has negotiated and agreed to is in fact in the utility's best interests. Therefore, the consideration of the public interest is restricted to ratepayers only, and not the utility's interests, in deciding whether to approve the NSA.²²

5 Commission evaluation of the NSA

20. In exercising its power to approve or deny negotiated settlements, the Commission must ensure that the process that led to the NSA was fair, and that any approved settlement serves the public interest.

5.1 Was the process that resulted in the NSA fair?

21. In order to demonstrate that an NSP is fair, the Commission must be satisfied that proper notice was given, that relevant information has been disclosed, and that parties were able to have meaningful participation.

22. EEA confirmed that the NSA was negotiated on the basis that it is contingent on the Commission accepting the entire settlement (except for matters excluded from the NSA), and the NSA achieves a result that is in accordance with Section 135 of the *Electric Utilities Act*. EEA submitted that the NSP was fair because:²³

- Notice was provided to interested parties on the 2021-2022 RRT application and the Commission-directed mediation in accordance with the notice requirements in Rule 018.
- The NSA was unanimous and signatories included the CCA and the UCA, who are experienced interveners in AUC proceedings.
- All parties were reasonably informed and fully participated in the mediation process.
- The mediation process was fair for all parties and facilitated by two experienced mediators.

23. The Commission is satisfied that the negotiations, which were facilitated by two mediators appointed by the Commission, were fair for the reasons that follow.

24. Section 3 of Rule 018 requires a statement in the NSA confirming that proper notice was provided by the applicant to all interested parties. In accordance with Section 3(1) of Rule 018,

²¹ *ATCO Electric Limited v Alberta (Energy and Utilities Board)*, 2004 ABCA 215, paragraphs 137-139.

²² *ATCO Electric Limited v Alberta (Energy and Utilities Board)*, 2004 ABCA 215, paragraph 160.

²³ Exhibit 26694-X0099, EEA application for approval of 2021-2022 RRT NSA, paragraphs 40-43.

the NSA contains Article 8.0.7, which confirms that proper notice was provided by EEA to all interested parties.²⁴ Upon review of the NSA, the Commission accepts that sufficient notice was provided.

25. Section 6(1) of Rule 018 requires a settlement agreement to include a representation that “no party has withheld relevant information.” Article 8.0.1 of the NSA²⁵ includes the statement that each party represents that it has not withheld information relevant to the application, and the Commission accepts that the parties agreed that relevant information was not withheld during the NSP.

26. In addition, EEA summarized the NSP, and the process included:²⁶

- (a) A number of video-conferencing all-party mediated negotiation sessions were held;
- (b) EEA provided additional information to the Interveners about its revenue requirements, as requested;
- (c) A number of confidential and without-prejudice proposed term sheets for settlements were exchanged between EEA and the Interveners;
- (d) The Parties agreed to a term sheet for settlement on November 25, 2021; and
- (e) The Parties negotiated the NSA based on that term sheet.

15. All parties unanimously agreed on the text of the NSA and executed it on December 10, 2021.

27. The Commission finds that parties had sufficient notice, the process was meaningful and fair, with the opportunity for EEA and interveners to participate meaningfully in the negotiations, and all parties representing that they did not withhold information. In addition, the Commission is satisfied that the record was well-developed, particularly since EEA’s information responses to interveners participating in the negotiations were posted on the eFiling System. The CCA and the UCA had the necessary information to participate fully in negotiations. Further, the mediation process provided a reasonable amount of time of two months for parties to fully negotiate EEA’s 2021-2022 non-energy RRT application.

5.2 Is the NSA in the public interest, including whether or not it will result in rates that are just and reasonable?

28. The second question is whether the NSA is in the public interest, including whether or not it will result in rates that are just and reasonable. Section 8(2) of Rule 018 requires that the Commission is to intervene if it determines that a unanimous settlement is patently against the public interest or contrary to law. In doing so, the Commission considers whether the effect of the NSA, taken as a whole, would lead to rates that are just and reasonable.

29. The NSA represents a unanimous agreement reached through a negotiation process involving both the CCA and the UCA that collectively represent the interests of a majority of EEA’s RRT customers.

²⁴ Exhibit 26694-X0099, EEA application for approval of 2021-2022 RRT NSA, paragraph 40.

²⁵ Exhibit 26694-X0100, Attachment 1 – EEA 2021-2022 Non-Energy RRT NSA Executed.

²⁶ Exhibit 26694-X0099, EEA application for approval of 2021-2022 RRT NSA, paragraphs 14-15.

30. The Commission also reviewed each of the provisions of the NSA and has determined that none of the provisions appear to be contrary to accepted regulatory practices, or could result in unintended rate effects for 2021 or 2022. The Commission notes that the NSA does not contemplate any changes to EEA's terms and conditions of service,²⁷ and there are no apparent concerns that the NSA results in any adverse impact to customers. The Commission also notes that the NSA results in reductions to EEA's applied-for revenue requirement of \$46.65 million in 2021 and \$41.85 million in 2022 by approximately \$3.75 million in 2021 and \$1.83 million in 2022, or 8.0 per cent and 4.4 per cent, respectively. The Commission is persuaded that the NSA will lead to rates that are just and reasonable, and it is not contrary to the public interest. Upon reviewing the entire NSA and the agreed-to reductions, the Commission concludes that the NSA results in just and reasonable rates for 2021 and 2022, and it is approved as filed.

5.3 Future filing to comply with the NSA

31. EEA indicated that it must recalculate its revenue-requirement and rate models with the updated inputs reflected in the NSA and to account for the Commission's determination on excluded matters. EEA stated that it would provide the updated revenue requirement in a compliance filing to this decision.²⁸

32. Accordingly, the Commission directs EEA, by March 15, 2022, to file a compliance filing to this decision, reflecting the Commission's approval of the NSA and the findings and directions below on the matters excluded from the NSA.

5.4 Excluded matters that are outside of the NSA

33. The Commission considers the NSA to be a comprehensive settlement of the 2021-2022 non-energy RRT application, except for the following two issues:

- (1) EEA's entitlement to include the amounts from March 18, 2020, to June 18, 2020, totalling \$1.02 million in its COVID-19 deferral account; and
- (2) EEA's entitlement to recover its applied-for non-energy credit costs.

5.4.1 Should the Commission approve EEA's applied-for COVID-19 deferral account, including deferral amounts between March 18, 2020, and June 18, 2020?

34. For the reasons set out in this section, the Commission denies EEA's request to include amounts from March 18, 2020, to June 18, 2020, in its COVID-19 deferral account. The Commission approves EEA's COVID-19 deferral account for recovery of amounts between June 19, 2020, and December 31, 2020. As a result of this decision, the total COVID-19 deferral account amount approved will reflect a balance of \$130,000 to the credit of customers related to the period from June 19, 2020, to December 31, 2020.

35. Because the parties have agreed that the deferral account and amounts from June 19, 2020, to December 31, 2020, will be included in revenue requirement and the Commission has approved the NSA in this decision, the only outstanding issue with regard to the COVID-19 deferral account is whether to include amounts from March 18, 2020, to June 18, 2020. EEA argued that the March 18 to June 18 amounts were driven by COVID-19 and the start of the

²⁷ Exhibit 26694-X0099, EEA application for approval of 2021-2022 RRT NSA, paragraph 9(f).

²⁸ Exhibit 26694-X0099, EEA application for approval of 2021-2022 RRT NSA, paragraph 9.

Utility Payment Deferral Program (UPDP) deferral period, and as a result should be included in the COVID-19 deferral account.

36. EEA sought to recover \$1.02 million from customers for certain fees and unpaid amounts to be included in the COVID-19 deferral account:²⁹

Table 3. COVID-19 deferral account

Description		March 18 to June 18, 2020	June 19 to December 31, 2020	Total
		(\$ million)		
1	Customer reconnection fees	0.13	0.08	0.21
2	Late payment charges	1.02	0.76	1.78
3	Net bad debt	(0.23)	(0.95)	(1.18)
4	Carrying charges	0.10	(0.02)	0.08
5	Total COVID-19 deferral account	1.02	(0.13)	0.89

37. EEA stated in an information request response³⁰ that its bad debt write-offs and recoveries were less than forecast amounts for the time period. EEA also submitted that it was precluded from collecting retail connection fees and experienced a drop in late payment fee revenues during March 18, 2020, to June 18, 2020. EEA argued that this supports inclusion of costs from March to June in the COVID-19 deferral account since these costs were materially affected during this time period.

38. There are two types of deferral accounts that are related to COVID-19 costs. The first type of deferral account is related to the deferral of the amounts by enrolled electricity customers from March 18, 2020, to June 18, 2020, under the UPDP. This deferral account included deferred payments of customers' bills and interest charges. That is not the deferral account that is at issue in this decision. In this proceeding, EEA's proposed deferral account treatment for COVID-19 amounts was made pursuant to the *Regulated Rate Option Regulation*, i.e., the COVID-19 deferral account requested by EEA. The table above shows the items in EEA's proposed COVID-19 deferral account.

39. In an October 8, 2020, ruling,³¹ the Commission established the COVID-19 deferral account start date as July 16, 2020. In a July 28, 2021 ruling,³² the Commission amended that COVID-19 deferral account start date to June 19, 2020 (collectively, the earlier rulings).

40. EEA's forecast non-energy costs for 2020 were approved on a final basis prior to the commencement of the COVID-19 pandemic³³ and these forecast costs did not take account of costs that would be incurred because of the pandemic. EEA argued that notwithstanding the presumption against retroactive ratemaking, its final forecast costs should be increased because of the knowledge exception to the rule against retroactive ratemaking.

41. EEA submitted that the knowledge exception supports a start date of March 18, 2020, for the COVID-19 deferral account because of the government announcement of the UPDP on

²⁹ Exhibit 26694-X0008, application, Table 5.2.3.1-1, COVID-19 Deferral Account, PDF page 463.

³⁰ Exhibit 26694-X0103, EEA final argument, paragraphs 32-33.

³¹ Proceeding 25767, Exhibit 25767-X0011.

³² Proceeding 26684, Exhibit 26684-X0069.

³³ In Decision 24034-D01-2019: EPCOR Energy Alberta GP Inc., 2018-2020 Regulated Rate Tariff Compliance Filing, Proceeding 24034, July 9, 2019.

March 17, 2020, and the Commission Bulletin 2020-08³⁴ and accompanying announcement on March 18 gave parties notice that EEA's rates would change.

42. The knowledge exception refers to circumstances where parties to the rate proceeding know (or ought to know) that a regulatory process has been initiated that may change approved rates, or alternatively, whether parties know rates are ultimately subject to change.³⁵

43. In a recent decision, the Commission considered a similar request from ENMAX Energy Corporation that the knowledge exception apply and that the start of ENMAX's COVID-19 deferral account should be March 18, 2020.³⁶ In that decision, the Commission rejected the request to apply the knowledge exception to recover costs between March 18, 2020, and June 18, 2020, in ENMAX's COVID-19 deferral account. One of the reasons was that because, as argued by the interveners, 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.³⁷ EEA has made the same request to amend the start date for its COVID-19 deferral account.

44. The Commission's reasons for applying the knowledge exception to COVID-19 pandemic costs are found in its October 8, 2020, ruling. The Commission referenced that after the Government of Alberta announcement and the issuance of Bulletin 2020-18, it had issued a July 16, 2020, letter to regulated entities stating that it expected them to produce the evidence necessary to support any application in which the impact of the COVID-19 pandemic may be relevant. The Commission then found that the knowledge exception to the rule against retroactive ratemaking applied and it was prepared to consider claims for costs incurred as of July 16, 2020. Any expenses or revenues incurred prior to this date were not eligible. Then in its July 28, 2021, ruling, the Commission amended the start of the COVID-19 deferral account period to June 19, 2020, to address a gap in rate recovery between the UPDP applications and the COVID-19 deferral account applications.

45. The Commission finds that there is not sufficient justification to disturb its findings in the earlier rulings. The government announcement was referenced in both rulings and the Commission was aware of that announcement in making its findings. The Commission did not find recovery to the earlier date of the Government of Alberta announcement or Bulletin 2020-08 to be the start date for recovery of additional COVID-19 related costs. The Commission's earlier rulings regarding the COVID-19 deferral accounts were not challenged through a review and variance application nor by way of a permission to appeal application. The Commission notes that its findings here are also consistent with those made for ENMAX in Decision 26505-D01-2021.

³⁴ Bulletin 2020-08, AUC supports government-directed optional utility bill payment deferral, March 18, 2020.

³⁵ Exceptions to the rule against retroactive ratemaking were commented on in detail in 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. Also, see the Court of Appeal of Alberta's decision in *Atco Gas and Pipelines Ltd v Alberta (Utilities Commission)*, 2014 ABCA 28 (CanLII), paragraph 56.

³⁶ Decision 26505-D01-2021: ENMAX Energy Corporation, 2020 Non-Energy COVID-19 Deferral Account, Proceeding 26505, November 10, 2021.

³⁷ Decision 26505-D01-2021, paragraph 47.

46. EEA's request to include costs from March 18 to June 18, 2020, in its COVID-19 deferral account is denied, and the period covered by the COVID-19 deferral account remains June 19, 2020, to December 31, 2020. In the Commission's view, using a June 19, 2020, start date achieves sound utility regulation in these circumstances, and achieves the setting of just and reasonable rates. For the reasons stated above, EEA is directed to exclude \$1.02 million from its COVID-19 deferral related to costs from March 18, 2020, to June 18, 2020.

5.4.2 Should the Commission approve EEA's applied-for non-energy credit costs?

47. EEA has applied to recover \$0.69 million for 2021 and \$0.70 million for 2022 in non-energy credit costs associated with providing financial security to the distribution system operators. For the reasons set out in this section, the Commission denies EEA's request to include its forecast non-energy credit costs as part of its revenue requirement. The Commission directs EEA to exclude the requested amounts from its revenue requirement for 2021-2022.

48. EEA confirmed that the methodology for these costs has not changed from previous applications and the costs related to maintaining the forecast net financial security amounts to EDTI and Fortis. EUI provides the necessary financial security, on behalf of EEA, under a service level agreement. EEA filed certain service level agreements on the record showing the costs of prudential support, i.e., financial security for credit.³⁸

49. The UCA raised concerns regarding EEA's recovery of credit costs from RRO customers. The UCA noted that the request to recover costs associated with the provision of financial security to the distribution utilities is not new, and EEA has been recovering costs associated with the provision of financial security to the distribution utilities through its revenue requirements since as early as 2005-2006. This issue was adjudicated by the Commission in a 2018 decision for Direct Energy Regulated Services (DERS),³⁹ in which the Commission denied recovery of financial security for DERS as an RRO provider. The UCA requested that the Commission deny the recovery of EEA's credit costs paid to the distribution utilities because: (i) the requirement under Section 8(1) of the *Distribution Tariff Regulation* for the provision of security applies to retailers; and (ii) RRO providers, such as EEA, are not retailers as that term is used in the *Distribution Tariff Regulation*. The UCA submitted that EEA's credit costs are not necessary to provide RRO service, and ought to be removed from EEA's revenue requirement.⁴⁰

50. Under EDTI's and Fortis's distribution terms and conditions of service, EEA argued that it is required to calculate a gross financial security amount, based on the requirements of Section 8 of the *Distribution Tariff Regulation*. In order to provide RRO service, under its arrangements with EDTI and Fortis, EEA submitted that it incurs credit costs related to posting and maintaining financial security.

51. In both EDTI's and Fortis's terms and conditions, there are provisions that relate to security requirements of retailers. In the current circumstance, the Commission must determine what security, if any, is required of a regulated rate provider under the *Electric Utilities Act* or its regulations. In doing so, the Commission has also reviewed EDTI's and Fortis's last approved distribution terms and conditions of service.

³⁸ For example, exhibits 26694-X0025 and 26694-X0026, as found in schedules A and B of each exhibit.

³⁹ Decision 22004-D01-2018: Direct Energy Regulated Services, 2017-2018 Default Rate Tariff and Regulated Rate Tariff, Proceeding 22004, June 12, 2018, paragraph 241.

⁴⁰ Exhibit 26694-X0104, UCA argument, paragraphs 8-12 and 16.

52. With respect to EDTI, Article 1 of its terms and conditions state that the terms and conditions apply to EDTI and its relationship with retailers.⁴¹ In its terms and conditions, EDTI has defined a “Retailer” to include the person with whom EDTI has made arrangements to provide the RRT to eligible customers. Further, Article 2 includes the following definitions:⁴²

“Electricity Services” means the services associated with the provision of electricity to a person, including the exchange of electric energy, making financial arrangements to manage financial risk associated with the pool price, Distribution Access Service, system access service, ancillary services, billing, metering, performing load settlement and any other services specified in regulations made under the [Electric Utilities] Act;

...

“Regulated Rate Tariff” means a regulated rate tariff for the provision of Electricity Services to eligible customers prepared by EDTI, or a person with whom EDTI makes arrangements to do so, pursuant to section 102 of the Act.

53. Article 8 – Security Requirements, of EDTI’s terms and conditions for distribution access service,⁴³ states that:

The Retailer shall provide the security deposit required under the Distribution Tariff Regulation to ensure that the Retailer is and remains of sufficient financial standing to meet its ongoing financial obligations.

54. Fortis’s terms and conditions⁴⁴ include the following definitions:⁴⁵

“Regulated Rate Tariff” means a regulated rate tariff for the provision of Electricity Services to eligible Customers pursuant to the [Electric Utilities] Act;

“Regulated Rate Option Provider” means the party authorized by FortisAlberta to provide electricity services to eligible customers in the FortisAlberta service area under a regulated rate tariff;

“Retailer” means a person, selected by the Customer, or otherwise to whom the Customer is defaulted in accordance with the Act and Regulations, who carries out the duties of a retailer prescribed in the Act, including also self-retailers who procure Electricity Services for their own use as a Customer;

55. Article 6 – Prudential Requirements, from Fortis’s⁴⁶ terms and conditions of service, specifically relates to retailers, but it does not contain an express provision for RRO providers to post security.

⁴¹ Decision 26852-D01-2021: EPCOR Distribution & Transmission Inc., 2022 Annual Performance-Based Regulation Rate Adjustment, Proceeding 26852, December 14, 2021, Appendix 7 – 2022 DAS terms and conditions, PDF page 144.

⁴² Decision 26852-D01-2021, Appendix 7 – 2022 DAS terms and conditions, PDF pages 145 and 147.

⁴³ Decision 26852-D01-2021, Appendix 7 – 2022 DAS terms and conditions, PDF page 158.

⁴⁴ Decision 26817-D01-2021: FortisAlberta Inc., 2022 Annual Performance-Based Regulation Rate Adjustment, Proceeding 26817, December 15, 2021, PDF page 159.

⁴⁵ Decision 26817-D01-2021, Appendix 5 – Retailer terms and conditions, PDF pages 163-164.

⁴⁶ Decision 26817-D01-2021, Appendix 5 – Retailer terms and conditions, PDF page 173.

56. However, in Decision 24839-D01-2019,⁴⁷ the Commission approved the arrangement between EEA and Fortis for EEA to provide RRO service in the Fortis distribution service area, including the following provision on the posting of security in Section 8.3(f):⁴⁸

- (f) WSP Prudential Requirements: EPCOR will, as the Regulated Rate Provider, post normal course security with FortisAlberta during the Term under the then current FortisAlberta Terms and Conditions.

57. Owners of electric distribution systems, such as EDTI and Fortis, retailers and regulated rate providers are governed subject to the provisions of the *Electric Utilities Act*. “Retail electricity services” and “retailer” are defined in the *Electric Utilities Act* in Section 1(1), as follows:

(qq) “regulated rate provider” means the owner of an electric distribution system, or a person authorized by the owner that provides electricity services to eligible customers in the owner’s service area under a regulated rate tariff;

...

(tt) “retail electricity services” means electricity services provided directly to a customer but does not include electricity services provided to eligible customers under a regulated rate tariff;

(uu) “retailer” means a person who sells or provides retail electricity services and includes an affiliated retailer;”

...

(zz) “tariff” means a document that sets out

(i) rates, and

(ii) terms and conditions;

(aaa) “terms and conditions”, in respect of a tariff, means the standards, classifications, regulations, practices, measures and terms and conditions that apply to services provided under the tariff;

58. Retailers, who are often referred to as competitive retailers, are governed under Part 8 of the *Electric Utilities Act*. Owners of distribution systems are subject to Part 7 of the *Electric Utilities Act*. Part 7, Section 102, relates to the approval of distribution tariffs, which includes provisions addressing RRTs. Section 103(1) requires an owner of a distribution system to prepare an RRT for the purpose of recovering the prudent costs of providing electricity services to eligible customers. Section 104 allows for the owner of the distribution system to make arrangements, specifically:

104(1) An owner of an electric distribution system may make arrangements under which other persons perform any or all of the duties or functions of the owner under this Act and the regulations.

⁴⁷ Decision 24839-D01-2019: EPCOR Energy Alberta GP Inc., Arrangement to Provide Regulated Rate Option Service in the Distribution Service Area of FortisAlberta Inc., Proceeding 24839, December 9, 2019.

⁴⁸ Proceeding 24839, Exhibit 24839-X0002, Attachment 1 – Regulated Rate Option Arrangement Agreement, PDF page 16.

(2) No arrangement under subsection (1) affects or reduces the responsibility or liability of the owner to carry out those duties or functions.

59. EEA is the RRO provider for EDTI and Fortis under Section 104(1) arrangements.

60. In determining whether RRO providers must also follow the requirements to provide financial security, Section 8 of the *Distribution Tariff Regulation* is instructive. Section 8(1) states:

8(1) An owner must require a retailer to provide a security deposit before the owner provides service to the retailer under the owner's distribution tariff.

61. "Security deposit" is not defined in the *Electric Utilities Act* or its regulations, nor in EDTI's and Fortis's terms and conditions.

62. Given the legislative framework applicable to this issue, the Commission interprets the *Electric Utilities Act* and *Distribution Tariff Regulation* as only requiring the security deposits from retailers and not regulated rate providers.

63. Further, there is no specific legislative provision requiring regulated rate providers to provide financial security requirements for distribution companies providing service to their customers in either the *Distribution Tariff Regulation* or the *Regulated Rate Option Regulation*. The only requirement for the RRT is found in Section 6(1)(a) of the *Regulated Rate Option Regulation* that requires the Commission to provide the owner⁴⁹ with a reasonable opportunity to recover the prudent costs and expenses.

64. While EEA argued that the terms and conditions of EDTI and Fortis require regulated rate providers to provide financial security, the Commission is of the view the reference to EDTI's and Fortis's terms and conditions of service impose a requirement on EEA as an RRO provider to pay a security requirement that is inconsistent with legislative requirements in the *Electric Utilities Act* and the *Distribution Tariff Regulation*. As a result of this finding, the Commission encourages EEA, in discussions with distribution utilities, to amend the agreement and/or apply to the Commission for approval of an amendment of the arrangements of RRO service from Decision 24839-D01-2019.

65. Regardless, the *Distribution Tariff Regulation* requires security deposits, also referred to as financial security, for retailers and not regulated rate providers. Retailers and regulated rate providers are subject to different parts of the *Electric Utilities Act* (Part 8 for retailers, and Part 7 for regulated rate providers), which would support the legislative intent to treat retailers differently from regulated rate providers.

66. In summary, Section 8 of the *Distribution Tariff Regulation* does not apply to RRO providers, and the Commission does not consider that such a security deposit conforms with the plain meaning of a retailer in the *Electric Utilities Act* and the financial security provisions that apply to retailers in Section 8 of the *Distribution Tariff Regulation*. The Commission denies EEA's request to include its forecast non-energy credit costs of \$0.69 million in 2021 and

⁴⁹ Under Section 1(g) of the *Regulated Rate Option Regulation*: " 'owner' means (i) the owner of an electric distribution system, or (ii) if the owner makes arrangements under which one or more other persons perform any or all of the duties or functions of the owner, the owner and those one or more other persons."

\$0.70 million in 2022 as part of its revenue requirement. The credit costs are not reasonable costs or expenses for EEA to provide RRO service. EEA is directed to exclude \$0.69 million for 2021 and \$0.70 million for 2022 related to credit costs from its revenue requirement for 2021-2022 in its compliance filing to this decision.

67. This direction does not affect EEA's approval of cost recovery for credit costs and charges to the Alberta Electric System Operator or other credit costs related to its energy price setting plan.

6 Compliance with previous directions

6.1 Recurring directions from former decisions

68. The Commission has reviewed EEA's application and is satisfied that it adequately addresses and complies with the following directions.

- Decision 2012-272: Direction 21 (Headcount analysis).⁵⁰
- Decision 2014-303: Direction 9 (Impact of acquisitions and new business on the allocation percentage to EEA); Direction 13 (Forward interest rate curve analysis); and Direction 16 (Encor operating costs).⁵¹
- Decision 22853-D01-2018: Direction 1 (Bill delivery cost methodology).⁵²

6.1.1 Recurring direction that is no longer applicable

69. The direction at paragraph 44 of Decision 2014-303 pertained to applied-for revenue requirements related to EUI's investment in Capital Power Corporation (CPC). The Commission directed EEA to provide in future non-energy RRT applications, details of any further changes to the calculation of disallowed costs related to EUI's investment in CPC and any other relevant investments held by EUI.

70. EEA indicated that in January 2017, EUI sold its remaining investment in CPC, and because of this, there are no revenues or assets for CPC for 2021 and 2022. EEA submitted that the amounts to be excluded from EEA's applied-for revenue requirement related to the CPC investment are zero for 2020-2021 and will continue to be zero for future applications.⁵³

71. The Commission is satisfied that EEA has complied with the direction and, because EUI sold its remaining investment in CPC, EEA is no longer required to comply with this direction in future RRT applications.

⁵⁰ Decision 2012-272: EPCOR Distribution & Transmission Inc., 2012 Phase I and II Distribution Tariff, 2012 Transmission Facility Owner Tariff, Proceeding 1596, Application 1607944-1, October 5, 2012.

⁵¹ Decision 2014-303: EPCOR Energy Alberta GP Inc., 2014-2015 Non-energy Regulated Rate Tariffs, Proceeding 2986, Application 1610188-1, November 4, 2014.

⁵² Decision 22853-D01-2018: EPCOR Energy Alberta GP Inc., 2018-2020 Non-Energy Regulated Rate Tariff Application, Proceeding 22853, October 4, 2018.

⁵³ Exhibit 26994-X0012, Appendix D, paragraph 55.

6.2 Non-recurring directions

72. The Commission has reviewed EEA's application and is satisfied that it adequately addresses and complies with the following directions:

- Decision 22853-D01-2018: Direction 8 (CIS cost true-up and CIS asset usage fee using all-sites); Direction 10 (Asset retirement and depreciation).
- Decision 24034-D01-2019: Direction 1 (Remove burden rate differences portion of net residual operating costs); Direction 2 (EEA services provided to EUI for the CIS project charged to EUI); Direction 3 (Methodology ensuring that non-EEA users of CIS pay their commensurate share of operating costs); and Direction 4 (Removal of stakeholder manager and accounting manager overlap training periods).

73. Regarding CIS asset usage fees, the Commission notes that Article 6.0.4 of the NSA states that "... neither the UCA nor the CCA will challenge in any form or forum EEA's recovery of Corporate Service asset usage fees calculated based on the \$67.67 million actual capital addition related to EPCOR's Customer Information System ...". The CIS actual capital addition expenditure for 2021 is \$5.64 million.⁵⁴ The Commission recognizes that the capital addition is reflected in the first test year of this application and is factored into final rates, and it is acceptable for the purposes of the application.

7 Order

74. It is hereby ordered that:

- (1) EPCOR Energy Alberta GP Inc.'s negotiated settlement agreement for its 2021-2022 non-energy regulated rate tariff (Exhibit 26694-X0100), dated December 10, 2021, is approved as filed.
- (2) EPCOR Energy Alberta GP Inc.'s requests to include in its revenue requirement COVID-19 costs between March 18, 2020, and June 18, 2020, and non-energy credit costs are denied.
- (3) EPCOR Energy Alberta GP Inc. is directed to file its compliance filing to this decision by March 15, 2022.

⁵⁴ Exhibit 26694-X0035, Section 3.0, Table H-CORP-PIR-01-1.

Dated on February 17, 2022.

Alberta Utilities Commission

(original signed by)

Carolyn Dahl Rees
Chair

(original signed by)

Douglas A. Larder, QC
Vice-Chair

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
EPCOR Energy Alberta GP Inc. (EEA) Borden, Ladner Gervais LLP
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 C. Dahl Rees, Chair D.A. Larder, QC, Vice-Chair</p> <p>Commission staff A. Sabo (Commission counsel) M. McJannet E. Chu L. Bondad F. Alonso C. Arnot</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. Accordingly, the Commission directs EEA, by March 15, 2022, to file a compliance filing to this decision, reflecting the Commission’s approval of the NSA and the findings and directions below on the matters excluded from the NSA. paragraph 32
2. EEA’s request to include costs from March 18 to June 18, 2020, in its COVID-19 deferral account is denied, and the period covered by the COVID-19 deferral account remains June 19, 2020, to December 31, 2020. In the Commission’s view, using a June 19, 2020, start date achieves sound utility regulation in these circumstances, and achieves the setting of just and reasonable rates. For the reasons stated above, EEA is directed to exclude \$1.02 million from its COVID-19 deferral related to costs from March 18, 2020, to June 18, 2020..... paragraph 46
3. In summary, Section 8 of the Distribution Tariff Regulation does not apply to RRO providers, and the Commission does not consider that such a security deposit conforms with the plain meaning of a retailer in the Electric Utilities Act and the financial security provisions that apply to retailers in Section 8 of the Distribution Tariff Regulation. The Commission denies EEA’s request to include its forecast non-energy credit costs of \$0.69 million in 2021 and \$0.70 million in 2022 as part of its revenue requirement. The credit costs are not reasonable costs or expenses for EEA to provide RRO service. EEA is directed to exclude \$0.69 million for 2021 and \$0.70 million for 2022 related to credit costs from its revenue requirement for 2021-2022 in its compliance filing to this decision. paragraph 66