



Calgary District Heating Inc.

Exemption from Provisions of the Public Utilities Act

March 2, 2022

Alberta Utilities Commission

Decision 26717-D01-2022

Calgary District Heating Inc.

Exemption from Provisions of the Public Utilities Act

Proceeding 26717

March 2, 2022

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1 Decision summary

1. In this decision, the Alberta Utilities Commission approves an application from Calgary District Heating Inc. (CDHI) and declares, pursuant to sections 8 and 9 of the *Alberta Utilities Commission Act* and Section 79 of the *Public Utilities Act*, that the Downtown District Energy Centre (DDEC) is exempt from certain provisions¹ of the *Public Utilities Act* and the reporting requirements under Rule 005.²

2. For the reasons that follow, and subject to the conditions outlined in this decision, the Commission has determined that approval of the application is in the public interest.

2 Background and procedural summary

3. The DDEC is a thermal district energy system that provides district energy (in the form of central heating and hot water services) to commercial, municipal and residential buildings in downtown Calgary. The DDEC heats water at a central plant and distributes the water to customers through a network of insulated underground pipes. The pipe network consists of approximately six kilometres of pipes currently serving 22 individual locations. The central plant produces heat using a combined heat and power (CHP) generating unit, and four high-efficiency condensing boilers.³ The CHP unit and condensing boilers are fuelled by natural gas.

4. The DDEC has operated since 2010, and was initially constructed and operated by ENMAX Corporation (ENMAX).⁴ On April 19, 2021, the Commission issued Decision 26163-D01-2021⁵ approving the sale of the DDEC from ENMAX to CDHI.

5. All parties to this proceeding agree that the DDEC is a public utility, and that CDHI is the owner of a public utility, as those terms are defined in the *Public Utilities Act*.⁶ For this reason, the DDEC (and CDHI as its owner) would ordinarily be subject to Part 2 of the *Public Utilities*

¹ The Commission grants an exemption from sections 88(a), (d) and (e), and 103 of the *Public Utilities Act* but denies an exemption from Section 92.

² Rule 005: *Annual Reporting Requirements of Financial and Operational Results*.

³ The CHP generating unit operates pursuant to Power Plant Approval 26163-D02-2021 and Connection Order 26163-D03-2021, issued on May 20, 2021.

⁴ While ENMAX Corporation owned and operated the DDEC, approval for the CHP generating unit was held by ENMAX Independent Energy Solutions Inc. pursuant to Power Plant Approval 23243-D04-2018 and Connection Order 26110-D02-2020.

⁵ Decision 26163-D01-2021: ENMAX Corporation and Calgary District Heating Inc., Applications for Disposition of the Downtown District Energy Centre and Transfer of the Combined Heat and Power Generating Unit, Proceeding 26163, Applications 26163-A001 and 26163-A002, April 19, 2021.

⁶ *Public Utilities Act*, RSA 2000, c P-45, sections 1(h) and 1(i)(iv).

Act in its entirety, including the provisions providing for prospective economic regulation by the Commission.

6. As mentioned earlier, before it was acquired by CDHI, the DDEC was owned and operated by ENMAX. Under ENMAX's ownership, the DDEC was exempted under Section 78(2) of the *Public Utilities Act*, which stipulates that Part 2 of the *Public Utilities Act* does not apply to a public utility owned or operated by a municipality, unless the public utility is brought under the act by a bylaw of the municipality. Because no such bylaw was enacted, the DDEC operated for a period of approximately 11 years under the oversight of the municipality (namely, The City of Calgary) rather than the Commission. As a result, the Commission did not have a direct role in regulating the day-to-day operation of the DDEC or setting the rates charged to its customers.

7. When CDHI acquired the DDEC, there were 16 different customers located within 22 buildings receiving thermal energy service from the system.⁷ This service was provided pursuant to Thermal Energy Services Agreements (TESAs or services agreements), which were executed between customers and ENMAX, and which were assigned by ENMAX to CDHI when the purchase transaction closed. Earlier in this proceeding, the Commission granted confidential treatment to a pro-forma services agreement that is substantially similar to the services agreements executed with customers of the DDEC.⁸ For that reason, the Commission has simultaneously released a public version of this decision, with references to specific terms of the pro-forma services agreement redacted, and a confidential version.

8. During the course of Proceeding 26163, CDHI confirmed that when it acquired the DDEC from ENMAX, the facility would no longer be municipally owned and subject to the exemption in Section 78(2) of the *Public Utilities Act*. As a result, the entirety of the *Public Utilities Act* would apply to the DDEC, and CDHI as its owner. CDHI also confirmed its intention to bring an application seeking exemptions from specific provisions of the *Public Utilities Act*. That exemption application is the subject of this decision.

9. CDHI requested an order pursuant to sections 8 and 9 of the *Alberta Utilities Commission Act* and Section 79 of the *Public Utilities Act*, declaring that:

- (a) sections 88(a), (d) and (e), 92 and 103 of the *Public Utilities Act* do not apply to any of the DDEC, CDHI and the goods and services produced by the DDEC and offered or provided by CDHI;
- (b) the reporting requirements under Rule 005 do not apply to the DDEC and CDHI;
and
- (c) the requirements of sections 88(a) and (d) of the *Public Utilities Act* and Rule 005 be replaced with certain specified annual reporting of key metrics to the Commission.

10. Sections 88(a), (d) and (e) relate to the requirement for a public utility to periodically file rate schedules and financial reports with the Commission, and the manner in which public utilities are required to maintain depreciation, amortization or depletion accounts. Section 92

⁷ Exhibit 26717-X0002, application, paragraph 16.

⁸ Exhibit 26717-X0018, AUC letter - Ruling on Calgary District Heating Inc motion for confidentiality.

prohibits rates from being fixed in a manner that automatically increases from year to year, or other period. Section 103 requires Commission approval of any change in rates, and imposes on a public utility the burden of showing that rate changes are just and reasonable. These provisions are reproduced in full in [Appendix 4](#) of this decision. Rule 005 requires utilities to annually submit a report detailing their financial and operational results for the year in a manner prescribed by the Commission.

11. CDHI filed an appendix to its application (Appendix B)⁹ detailing the key metrics it proposed to report annually, in lieu of other financial and operational reporting requirements.

12. CDHI argued that its requested exemptions were in the public interest, and represented a flexible and proportionate form of light-handed regulation that was responsive to the unique nature of district energy services. CDHI emphasized that the Commission would retain oversight of the services provided by the DDEC on a complaint basis.

13. ATCO Gas intervened in the proceeding and requested that the application be denied, or alternatively, should the Commission grant the exemptions, that CDHI be limited to serving its existing customers. ATCO Gas maintained that the applied-for exemptions would result in harm to customers and create an unlevel playing field between CDHI and other regulated utilities.

2.1 Jurisdiction

14. As a preliminary matter, the Commission must address its jurisdiction to grant the relief requested by CDHI. In argument, ATCO Gas submitted that it was not within the Commission's jurisdiction to approve the exemptions requested by CDHI, as doing so would fundamentally undermine the purpose of the legislative scheme established in the *Public Utilities Act*.

15. The *Public Utilities Act*, Section 1, defines "public utility" to mean:

(i) ...

(iv) a system, works, plant, equipment or service for the production, transmission, delivery or furnishing of water, heat, light or power supplied by means other than electricity, either directly or indirectly to or for the public,

16. Section 79(1) of the *Public Utilities Act* states:

Declaration re public utility

79(1) The Commission, on its own initiative or on the application of a person having an interest, may, or on the order of the Lieutenant Governor in Council shall, declare

(a) that any thing that is a public utility by virtue of section 1(i)(i), (iii) or (iv) is not a public utility,

(b) that a person is not for the purposes of this Act an owner of a public utility, or

(c) that a provision of this Act does not apply to

(i) a public utility,

(ii) an owner of a public utility, or

(iii) goods or services offered or provided by a public utility.

⁹ Exhibit 26717-X0004, Appendix B to Exemption Application.

17. ATCO Gas acknowledged that Section 79(1) of the *Public Utilities Act* grants the Commission discretion to make declarations concerning the application of the *Public Utilities Act* to a public utility or its owner. However, ATCO Gas submitted that, in determining whether to make a declaration pursuant to Section 79(1), the Commission must exercise its discretion consistently with the legislative scheme. ATCO Gas argued that granting CDHI's requested exemptions would frustrate the purpose of the *Public Utilities Act* and the broader legislative scheme, which is to protect customers from the exercise of monopoly power through prospective regulation.

18. In support of its argument, ATCO Gas referred to the Supreme Court of Canada's decision in *Halifax (Regional Municipality) v Canada (Public Works and Government Services)*.¹⁰ In that decision, the Supreme Court allowed an appeal from a decision of the Minister of Public Works and Government Services that land underlying a national historic site held only nominal value for the purpose of municipal taxation. The Supreme Court held that the Minister's decision was unreasonable for two reasons. The first reason related to the manner in which the Minister arrived at the valuation. The Supreme Court's second reason, which is relied on by ATCO Gas in this proceeding, is that the Minister's decision was fundamentally at odds with the purpose of the underlying legislative scheme. Specifically, the Minister erred by concluding that national historic sites have no value for tax assessment purposes when the *Payment In Lieu of Taxes Act* has a stated purpose "to provide for the fair and equitable administration of payments in lieu of taxes" and specifically includes national historic sites within that scheme.¹¹

19. In allowing the appeal in *Halifax*, the Supreme Court held that discretion conferred by statute must be exercised consistently with the purposes and policies underlying the grant of discretion. The Minister's decision was unreasonable because it had the effect of frustrating the very legislative scheme under which the power was conferred.¹²

20. ATCO Gas also referred to the Supreme Court of Canada's decision in *ATCO Gas & Pipelines Ltd v Alberta (Energy and Utilities Board)*.¹³ In that decision, the Supreme Court addressed the limits on the discretionary authority of the Commission's predecessor, the Alberta Energy and Utilities Board (board). The Supreme Court held that the board's seemingly broad powers to make any order and to impose any conditions that are necessary in the public interest must be interpreted within the entire context of the statutory scheme.¹⁴

21. In the current circumstances, ATCO Gas argued that granting the exemptions requested by CDHI would undermine the legislature's express intention to establish prospective rate regulation. ATCO Gas submitted that the form of regulation sought by CDHI would authorize CDHI to deal with its customers in a manner that is inconsistent with the *Public Utilities Act*'s purpose of protecting customers, and that removes the core mechanisms implemented by the legislature to achieve that purpose, namely prospective regulation of rates, terms and conditions.

¹⁰ *Halifax (Regional Municipality) v Canada (Public Works and Government Services)*, 2012 SCC 29 [*Halifax*].

¹¹ *Halifax*, paragraphs 51-52.

¹² *Halifax*, paragraphs 55-56.

¹³ *ATCO Gas & Pipelines Ltd v Alberta (Energy and Utilities Board)*, 2006 SCC 4 [*Stores Block*].

¹⁴ *Stores Block*, paragraph 7.

22. The Commission recognizes that it must exercise its discretion within the legal framework provided by the legislation, and in a manner that is consistent with the purposes and policies underlying its grant.¹⁵ In order to determine whether it has jurisdiction to grant the relief sought by CDHI, the Commission must interpret the legislative framework from which it derives its authority.

23. The government has enacted a legislative framework to provide for Commission regulation of investor-owned electric, gas and other public utilities in Alberta. In respect of the Commission's predecessor, the Supreme Court described this legislative framework as conferring "a mandate to safeguard the public interest in the nature and quality of the service provided to the community by public utilities."¹⁶ The Supreme Court described public utility regulation as existing to protect the public from monopolistic behaviour and the consequent inelasticity of demand, while ensuring the continued quality of an essential service. The main functions of the regulator, as described by the Supreme Court, are to fix just and reasonable rates, and protect the integrity and dependability of the supply system.¹⁷

24. ATCO Gas characterized prospective economic regulation as being fundamental to this legislative framework. In ATCO Gas's submission, the exemptions sought by CDHI would "eviscerate the scheme, leaving the Commission without the prospective rate-setting powers that are key to the entire framework."¹⁸ ATCO Gas stated that regulation under the *Public Utilities Act* is expressly intended to be prospective, as evidenced by the inclusion of provisions explicitly contemplating the filing and approval of rate schedules.¹⁹

25. The Commission disagrees that a departure from prospective economic regulation would necessarily frustrate the purpose of the *Public Utilities Act* or undermine the intent of legislature. The Commission finds that the overarching purpose of the legislative scheme is to safeguard the public interest in a service environment that is susceptible to abuses of monopoly power. The legislature has equipped the Commission with the tools required to fulfil this purpose, including the ability to fix rates and to exercise general oversight of the operation of public utilities. Given the nature of public utilities (which tend to be highly capital intensive, such that duplication of services by different providers is inefficient), they are often natural monopolies. In these circumstances, prospective economic regulation serves important functions, including the protection of customers. The Commission does not accept, however, that protecting the public interest, or upholding the legislative scheme, necessitates that any public utility must be subject to prospective economic regulation, regardless of its particular characteristics or the context in which it operates.

26. The Commission notes that "public utility" is defined broadly within the *Public Utilities Act* to encompass a variety of providers of water, heat, light or power. The *Public Utilities Act* also grants the Commission a broad authority to exempt any public utility, or its owner, from the application of the act, entirely or in part, without prescribing factors or criteria that the Commission must consider in granting such an exemption. It would not benefit the public interest to require prospective economic regulation of any entity meeting the definition of "public utility" even where the facts established – as they do in this case – that such regulation is

¹⁵ *Halifax*, paragraph 55.

¹⁶ *Stores Block*, paragraph 28.

¹⁷ *Stores Block*, paragraph 7.

¹⁸ Transcript, Volume 1, page 79, lines 14-17.

¹⁹ Transcript, Volume 1, page 82, lines 2-13.

not necessary to protect sophisticated customers in a competitive environment, and in light of other available regulatory mechanisms. The Commission does not find the exemption will harm the public interest to depart from prospective economic regulation when there remains in place a regulatory scheme that results in just and reasonable rates, and preserves the safety, reliability and integrity of the utility system.

27. In the current circumstances, for the reasons described below, the Commission is satisfied that the majority of the exemptions requested by CDHI can be granted without resulting in harm to customers or interfering with the integrity of utility service. Put differently, the Commission is satisfied that the purposes of the legislative scheme are met, notwithstanding the absence of prospective economic regulation. In these circumstances, the Commission considers that it is within its jurisdiction to exercise the broad discretion expressly conferred in Section 79(1) and grant the majority of the exemptions applied for by CDHI, subject to the conditions set out in this decision.

3 Discussion of issues

28. The Commission has previously confirmed that the fundamental issue to be determined in considering an application for an exemption under Section 79(1) of the *Public Utilities Act* is whether it would be in the public interest to grant the exemption. The public interest test, as it relates to the *Public Utilities Act*, encompasses and requires consideration of the Commission's dual mandate to establish just and reasonable rates and to ensure the safety, reliability and integrity of the utility system in Alberta.

29. The Commission will address these issues in turn. First, the Commission will consider whether CDHI's application will interfere with the establishment of just and reasonable rates for customers of the DDEC. Second, the Commission will consider the effects of the application on the safety, reliability and integrity of the utility system, which includes a discussion of the economic and other effects of the application on customers of ATCO Gas. Lastly, the Commission will provide its conclusion that approval of the application is in the public interest.

3.1 Will the regulation proposed by CDHI interfere with the establishment of just and reasonable rates?

30. The *Public Utilities Act*, as well as the *Electric Utilities Act* and *Gas Utilities Act*, require the Commission to ensure the establishment of just and reasonable rates. In Canadian law, "just and reasonable" rates are those that are fair to both customers and the utility.²⁰

31. Rate regulation is not generally exercised in competitive markets where customers have a choice of providers. In the context of district energy, the Commission has previously affirmed that regulation is intended to operate as a surrogate for competition where competition is absent and is unnecessary where the market will otherwise function on its own.²¹

32. ATCO Gas asserted that the DDEC has all the characteristics of a natural monopoly, and that its customers require protection from the abuse of monopoly power. CDHI disagreed, and

²⁰ *ATCO Gas and Pipelines Ltd v Alberta (Utilities Commission)*, 2015 SCC 45, paragraph 7, citing *Edmonton (City) v Northwestern Utilities Ltd*, [1929] SCR 186, pages 192-193.

²¹ Decision 24056-D01-2019: ENMAX Independent Energy Solutions Inc., ENMAX District Energy Edmonton Exemption Application, Proceeding 24056, August 1, 2019, paragraph 35.

argued that it competes alongside a variety of participants in what it characterized as the “thermal energy value chain.”²² CDHI described district energy service as an alternative to traditional boiler service, which is an unregulated industry involving a variety of natural gas and electric boiler manufacturers and vendors. In CDHI’s view, this range of options promotes competition and facilitates customer choice. Further, customers who take service from CDHI are sophisticated commercial parties who have made informed decisions about the relative risks and benefits.

33. ATCO Gas disputed that CDHI customers have a choice of options, with reference to the Commission’s findings in Decision 24056-D01-2019 (Edmonton District Energy (DE) decision). In that decision, the Commission considered an application by ENMAX Independent Energy Solutions Inc. (EIES) for a complete exemption from the *Public Utilities Act* for a proposed district energy facility in Edmonton. In denying EIES’s application, the Commission found that customers who agreed to take service from the district energy facility and removed their existing boilers would effectively be captive to the service provided by EIES.

34. The Commission finds that the facts of Decision 24056-D01-2019 are distinguishable from the current circumstances for several reasons. First, EIES proposed to enter into a municipal franchise agreement providing it the exclusive right to provide district energy service within a particular geographic area in downtown Edmonton. In the current proceeding, CDHI has confirmed that it does not have, and does not intend to enter into, a municipal franchise agreement with The City of Calgary.

35. Secondly, EIES declined to file its services agreement in Proceeding 24056, resulting in a lack of transparency as to the terms of service it offered. In the current proceeding, CDHI has filed a pro-forma services agreement for the Commission’s review and responded to information requests about its terms. [redacted]

36. Lastly, and most importantly, in Proceeding 24056, EIES was seeking a declaration that would, in effect, exempt it from the entirety of Part 2 of the *Public Utilities Act*. In fact, EIES asserted that any form of regulation would render its project uneconomic. In the current proceeding, CDHI has proposed a regulatory scheme under which it would remain subject to Commission oversight regarding the rates it charges in several important ways. The Commission would continue to exercise general supervision over the DDEC, and CDHI as its owner. The Commission would retain oversight to investigate and make orders regarding the nature and quality of service provided and the cost thereof.

37. Significantly, the Commission would also retain oversight and authority to consider and vary rates on a complaint basis. At the hearing, CDHI confirmed that, if the Commission were to determine in response to a customer complaint that the rates charged by CDHI were unjust or unreasonable, CDHI would accept the Commission’s authority to fix rates for the customer or class of customers affected. CDHI further confirmed that it would assist the Commission in this exercise by providing information to facilitate the determination of rates, both annually through its proposed reporting of key metrics and, in the event of a complaint, with supplemental information.

²² Exhibit 26717-X0047, CDHI rebuttal evidence, paragraph 15.

38. CDHI proposed a framework for the annual reporting of key metrics that includes an overview of the operations of the DDEC, any material operational and maintenance issues experienced in the previous year, and CDHI's response to any complaints it received. CDHI also committed to providing unaudited financial statements for the regulated portion of its business, thereby providing transparency into the financial operations of CDHI and the DDEC on an annual basis. The Commission has reviewed the reporting proposed by CDHI and finds that it contains sufficient information to facilitate the Commission's general supervision of CDHI, and can be used, along with further information to be provided at the direction of the Commission, to investigate rates if necessary. The reporting framework is therefore approved and, for ease of reference, is reproduced as [Appendix 5](#) of this decision.²³

39. The Commission finds that CDHI operates in an environment that is sufficiently competitive that its customers have a degree of choice about their service provider that is not present in a traditional monopolistic industry. Specifically, customers of CDHI can elect to take service from the DDEC or acquire a boiler (powered by either gas or electricity) from a variety of providers to meet their thermal energy needs. In the future, given that CDHI has no exclusive franchise, its customers may elect to take service from new entrants to the district energy market. The services agreements executed between CDHI and its customers for the provision of district energy are based on mutually acceptable terms negotiated between sophisticated commercial parties. Further, in the event that they are dissatisfied with the rates they pay, or service they receive, CDHI customers retain the ability to raise a complaint with the Commission. Taken together, the Commission considers that these factors are sufficient to ensure that the rates paid by CDHI customers will be just and reasonable, in the sense that they are fair to both customers and the utility, as intended by the legislative scheme.

40. Before considering the effects of the application on the safety, reliability and integrity of the utility system, the Commission will briefly address CDHI's request for an exemption from Section 92 of the *Public Utilities Act*. Section 92 constrains the Commission from fixing rates in a manner that increase automatically from year to year (or another time period). In response to questions from Commission counsel, CDHI acknowledged that this provision is only engaged upon the Commission exercising its power to fix rates. Section 92 does not directly impose any requirements on a utility, and instead stipulates the manner in which the Commission must carry out its rate-fixing duties.

41. CDHI explained that the inclusion of Section 92 in its exemption application was pre-emptive, and intended to preserve the rate structure of its services agreements (which include certain inflationary components) in the event that the Commission were charged with determining just and reasonable rates in response to a complaint.

42. As described above, the Commission will address complaints about rates charged by CDHI as they arise, and does not consider it necessary to pre-emptively contemplate how it will exercise its authority in such a circumstance. Accordingly, the Commission denies CDHI's request for a declaration that it is exempt from Section 92 of the *Public Utilities Act*.

²³ The reporting framework reproduced in Appendix 5 of this decision contains terms that are defined in Exhibit 26717-X0002, CDHI Exemption Application July 23 2021 Final, and is intended to be read in conjunction with that document.

3.2 What are the effects of the application on the safety, reliability and integrity of the utility system?

43. In this section, the Commission will first consider the effects of the application on the safety, reliability and integrity of service offered by CDHI to DDEC customers. The Commission will then address the concerns raised by ATCO Gas that an unlevel playing field between regulated utilities harms the broader utility system, including by imposing economic impacts on customers of ATCO Gas.

44. As noted above, the DDEC has operated since 2010, first by ENMAX and later by CDHI. Services agreements initially executed by ENMAX were assigned to CDHI, and CDHI has confirmed that the structure of the services agreements has not and will not change due to the change in ownership.²⁴ There is no evidence before the Commission to suggest that the exemptions proposed by CDHI will result in any change to the safety or reliability of service offered to customers of the DDEC. Further, as described above, as a result of the ownership change, the DDEC and CDHI are now subject to the legislative requirement to furnish safe, adequate and proper service, and the Commission's general oversight and investigatory powers.

45. Leaving aside customers of the DDEC, ATCO Gas submitted that approval of the application would result in an unlevel playing field between the DDEC and other utilities subject to more extensive regulation, which would result in an unfair shifting of costs to regulated customers, as further explained below.

46. ATCO Gas is the default supplier of natural gas in the city of Calgary and operates as a natural monopoly. ATCO Gas is subject to prospective economic regulation by the Commission and is required to provide natural gas distribution service to any and all customers in its franchise area, under rates approved by the Commission. ATCO Gas argued that, unlike it and other utilities, CDHI can choose which customers to serve, taking those with the highest throughputs and greatest possible profits, while ignoring less or non-profitable customers. ATCO Gas described the concept of "cream-skimming" which occurs when competitors capture customers that make significant contributions to an incumbent company's profit, leaving that company to serve less profitable customers.²⁵ This can contribute to higher prices for remaining customers, initiating a cycle of defecting customers and increasing costs. In ATCO Gas's submission, this phenomenon would be exacerbated by CDHI's ability to cross-subsidize as between its various customers or revenue sources.

47. CDHI disputed that its presence or expansion would pose a threat to ATCO Gas, noting its small size and the fact that it takes natural gas service from ATCO Gas to fuel its power plant. CDHI argued that any expansion to its system would increase ATCO Gas's demand; this claim was characterized as a "red herring" by ATCO Gas, which noted that revenue from new natural gas loads recovers costs required to serve those loads, and pointed out that CDHI had expressed an interest in pursuing alternative fuels to natural gas in the future.²⁶

48. The Commission is not persuaded that approval of the application will shift costs to regulated customers or otherwise cause harm to existing customers of ATCO Gas such that approval of the application is not in the public interest. In arriving at this determination, the

²⁴ Exhibit 26717-X0002, application, paragraph 19.

²⁵ Exhibit 26717-X0039, ATCO Gas evidence, paragraph 34.

²⁶ Exhibit 26717-X0044, AG-AUC-2021NOV03-005, PDF page 17.

Commission has taken note of the fact that ATCO Gas did not provide detailed quantitative evidence substantiating the harm that would be created by future defections from its system, or harm caused by the historical operation of the DDEC since 2010. Further, the Commission has also considered the fact that CDHI is itself a customer of ATCO Gas and that the DDEC uses natural gas as an input in the provision of heat to its customers. The Commission finds that the decline in ATCO Gas throughput caused by customers choosing to take service from the DDEC would, to some degree, be offset by the additional natural gas throughput needed to serve the DDEC. Lastly, although not determinative, the Commission notes that ATCO Gas and its affiliates are also involved in initiatives to develop alternatives to natural-gas fired heating systems within the ATCO Gas franchise area including the Drake Landing Solar Company and ATCO Gas operating centres that make use of geo-exchange heat pumps. The Commission finds this to suggest that there is room within ATCO Gas's franchise territory for the development of technologies that compete to replace traditional boiler systems.

49. Overall, while the Commission accepts that ATCO Gas may lose some customers to the DDEC, the Commission does not believe that the DDEC's continuing operation or expansion within its current capacity will alter the character of ATCO Gas's statutory obligation to serve customers within its franchise area, impair ATGO Gas's ability to charge just and reasonable rates to its customers, or limit its opportunity to recover its prudently incurred costs and earn a fair rate of return. Moreover, the impacts on ATCO Gas's revenue in this particular case will be immaterial due to the relatively small size of the DDEC's operation.

4 Conclusion

50. The Commission finds that it is in the public interest to grant a declaration that the DDEC, and CDHI as its owner, are exempt from certain provisions of the *Public Utilities Act*.

51. The Commission is satisfied that the degree of regulation that CDHI has proposed, in conjunction with the conditions imposed by the Commission, is sufficient to ensure protection of the current and future customers of the DDEC and the public at large. The Commission finds that a complaint-based approach to regulation, in conjunction with periodic reporting, allows the Commission to effectively oversee the operations of the DDEC, and respond to concerns as they arise, in a manner that is proportionate to the unique circumstances of a small public utility serving sophisticated customers with alternatives to CDHI's district energy service. Further, based on the evidence before it, the Commission does not find that the existence or expansion of the DDEC would compromise the ability of ATCO Gas or other utilities to provide safe and reliable service to customers at just and reasonable rates.

52. To give effect to the regulation discussed in this decision, the Commission imposes the following conditions of approval:

- [redacted]
- CDHI shall, within 30 days of this decision, provide written notice to its existing customers of their entitlement to raise complaints with the Commission in respect of the district energy service provided by CDHI or rates paid for that service.

- Upon executing any new thermal energy services agreements, CDHI shall notify customers of their entitlement to raise complaints with the Commission in respect of the district energy service provided by CDHI or rates paid for that service.
- CDHI shall file with the Commission an annual report of key metrics in the form set out in Appendix 5. The report is to be filed no later than 60 days following the completion of CDHI's corporate unaudited financial year-end for each calendar year.

53. As noted above, the Commission does not consider it necessary to grant the requested exemption from Section 92 of the *Public Utilities Act*. Therefore, pursuant to sections 8 and 9 of the *Alberta Utilities Commission Act* and Section 79 of the *Public Utilities Act*, and subject to the conditions listed in paragraph 52, the Commission hereby declares that:

- (1) sections 88(a), (d) and (e), and 103 of the *Public Utilities Act* do not apply to any of the DDEC, CDHI and the goods and services produced by the DDEC and offered or provided by CDHI; and
- (2) the reporting requirements under Rule 005 do not apply to the DDEC and CDHI.

Dated on March 2, 2022.

Alberta Utilities Commission

(original signed by)

Douglas A. Larder, QC
Vice-Chair

(original signed by)

Cairns Price
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Calgary District Heating Inc. (CDHI) Stikeman Elliott LLP
ATCO Gas and Pipelines Ltd. (ATCO Gas) Borden, Ladner Gervais LLP

Alberta Utilities Commission
Commission panel D.A. Larder, QC, Vice-Chair C. Price, Commission Member
Commission staff M. Anderson (Commission counsel) B. Edwards E. Deryabina

Appendix 2 – Virtual oral argument and reply argument – registered appearances

Name of organization (abbreviation) Name of counsel or representative
Calgary District Heating Inc. (CDHI) Dennis P. Langen Larissa D. Lees
ATCO Gas Jordan Hulecki

Appendix 3 – Summary of Commission conditions

This section is provided for the convenience of readers. In the event of any difference between the conditions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. [redacted]
2. CDHI shall, within 30 days of this decision, provide written notice to its existing customers of their entitlement to raise complaints with the Commission in respect of the district energy service provided by CDHI or rates paid for that service.
3. Upon executing any new thermal energy services agreements, CDHI shall notify customers of their entitlement to raise complaints with the Commission in respect of the district energy service provided by CDHI or rates paid for that service.
4. CDHI shall file with the Commission an annual report of key metrics in the form set out in Appendix 5. The report is to be filed no later than 60 days following the completion of CDHI's corporate unaudited financial year-end for each calendar year.

Appendix 4 – Provisions of the *Public Utilities Act*, RSA 2000 c P-45, from which Calgary District Heating Inc. requested an exemption

[\(return to text\)](#)

Filing of schedules and rates

88 An owner of a public utility shall, with respect to the public utility,

- (a) file with the Commission complete schedules of every classification employed and of every individual or joint rate, toll, fare or charge made, charged or enacted by the owner for any product supplied or service rendered within Alberta, as may be prescribed by the Commission,

...

- (d) furnish annually, and at any other periodic intervals that the Commission may require, a detailed report of finances and operations, in the form and containing the matters and verified in the manner the Commission requires, and

- (e) subject to any order of the Commission, maintain proper and adequate depreciation, amortization or depletion accounts on a straight line basis or unit of production method or some other basis or method that the Commission may direct on application to it.

...

No automatic increases

92 In fixing just and reasonable rates, tolls or charges, or schedules of them, to be imposed by the owner of a public utility, the Commission shall not fix any rate, toll or charge or schedule in such a manner that the rate to consumers or any class of consumers may be increased from year to year or other period without a further application to and order of the Commission on it.

...

Changes in rates

103(1) No change in existing individual rates, joint rates, tolls or charges, or schedules of them, or any commutation, travel allowances or other special rates shall be made by an owner of a public utility, nor shall a new schedule of those rates, tolls or charges be established, until the changed rates or new rates are approved by the Commission.

(2) On approval, the changed rates or new rates come into force on a day to be fixed by the Commission, and the Commission may, either on application or on its own initiative, hear and determine whether the proposed increases, changes or alterations are just and reasonable.

(3) The burden of proof to show that any such increases, changes or alterations are just and reasonable is on the owner of the public utility seeking to make them.

Appendix 5 – Information reporting framework

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Appendix 5 -
Information reportir
(consists of 2 pages)

(1) CDHI and DDEC Customer and Commercial Information¹

- (a) List of service addresses served during the previous three calendar years, commencing in 2021.
- (b) Any changes to the Pro-Forma TESA relative to the previous annual report, to be filed confidentially.
- (c) Summary of any customer service complaints received during the previous calendar year and how those were resolved.
- (d) Number of new TESAs entered into during the calendar year; list of new service addresses to first receive service in forthcoming calendar year.
- (e) Aggregated data for the previous three calendar years, commencing in 2021, including: number of existing TESAs under which service was provided; plant operating and delivered capacity; and charges - in the tabular form set forth below.

(2) DDEC Operational Information

- (a) Summary of any material operational and maintenance issues during the past calendar year and how they were resolved.
- (b) Summary of any instances when an ETS at a customer location was used over the past calendar year.
- (c) Summary of any expansions to the Plant, TDS and/or ETS over the past year.
- (d) Summary of any planned operational changes over the forthcoming year.
- (e) Summary of any planned material maintenance over the forthcoming year.
- (f) Summary of any planned expansions to the Plant, TDS and/or ETS over the forthcoming year.

(3) CDHI Financial Information

- (a) Unaudited financial statement for the regulated (i.e., district energy) portion of CDHI's business.
- (b) Summary of outstanding short-term (less than one year) and long-term (one year or more) debt associated with the CDHI.

¹ Defined terms herein are defined in the body of the Exemption Application.

2021 Month	Number of Customers Served	Number of TESAs	Weighted Average TESA Term Remaining	Thermal Energy Sales (MWh)	Plant Capacity (MWt)	Peak Demand (MWt)	Average Weighted TESA Fixed Capacity Charge (pre-paid capital) (\$ kWt/year)	Average Weighted TESA Fixed Capacity Charge (no pre-paid capital) (\$ kWt/year)	Average Weighted TESA Monthly Variable Charge (\$ kWt)
January									
February									
March									
April									
May									
June									
July									
August									
September									
October									
November									
December									