



**Melcor Developments Ltd.,
Highview Communities Inc. and
Sunset Properties Inc.**

**Complaint Regarding FortisAlberta Inc.
Changing Design Standards**

May 3, 2022

Alberta Utilities Commission

Decision 26649-D02-2022

Melcor Developments Ltd., Highview Communities Inc. and Sunset Properties Inc.
Complaint Regarding FortisAlberta Inc. Changing Design Standards
Proceeding 26649

May 3, 2022

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1 Decision summary

1. This decision reflects the Alberta Utilities Commission’s reasons for dismissing the Melcor Developments Ltd., Highview Communities Inc. and Sunset Properties Inc. (the Melcor Entities) complaint relating to changing design standards and associated costs imposed by FortisAlberta Inc. for the design and installation of underground electrical distribution systems for residential developments. The Commission dismissed the complaint in Decision 26649-D01-2022.¹

2. The Melcor Entities requested that the Commission make a decision on their complaint application on an expedited basis. The Commission released Decision 26649-D01-2022 on March 22, 2022, to accommodate this request. In this decision, the Commission provides its reasons for dismissing the complaint.

2 Introduction and procedural background

3. The design and installation of underground electrical distribution systems in new residential developments in Fortis’s franchise area are carried out by way of a turnkey process, where the developer is responsible for managing the design, construction and installation of electrical facilities within the boundaries of the subdivision to certain minimum design standards mandated by Fortis. Once the distribution system is completed and energized, Fortis takes over ownership of the system. Fortis completes all work outside the boundaries of the subdivision to provide electric service to the development.

4. As part of the process to initiate servicing for new developments, and before it will perform any services, Fortis requires residential developers to sign an Underground Electrical Distribution System (UEDS) Services Agreement (the Agreement) and a quotation letter, and pay any required customer contribution. The Agreement sets out the responsibilities of each party. The quotation letter describes the nature and scope of the distribution system and the total customer contribution payable by the developer. Fortis will not start construction on the project until it receives payment from the developer.

5. The investment levels for residential services are established in Fortis’s Customer Terms and Conditions of Electric Distribution Service (T&Cs), which are approved by the Commission. In the case of residential subdivisions, the investment per lot is paid to the developer after the individual customers occupying those lots are connected and receiving electric service from Fortis.

¹ Decision 26649-D01-2022: Melcor Developments Ltd., Highview Communities Inc. and Sunset Properties Inc., Complaint Regarding FortisAlberta Inc. Changing Design Standards, Proceeding 26649, March 22, 2022.

6. On June 30, 2021, the Melcor Entities filed a complaint application² with the Commission, requesting relief from the Commission pertaining to issues that have arisen concerning the construction of electrical distribution systems to service lands owned by the Melcor Entities in Fortis's service area.
7. In the application, the Melcor Entities brought forth a motion seeking an order from the Commission declaring that their payments to Fortis for the cost to install and construct electrical distribution facilities in three developments, namely, Lanark Landing, Phase 1C (Lanark); Sunset Ridge, Phase 22B (Sunset); and Cobblestone Creek, Phase 2, be interim and subject to adjustment based on the outcome of the complaint.
8. The Melcor Entities executed the agreements for Cobblestone Creek, Sunset and Lanark on February 12, 2021, July 7, 2021, and July 12, 2021, respectively.³
9. On August 3, 2021, the Commission granted the motion for interim relief in part, applying only to Sunset and Lanark. Cobblestone Creek was excluded since the complaint was filed after the Melcor Entities had executed the Agreement for that particular development.⁴
10. Anthem United Entities submitted a complaint to the Commission on August 2, 2021, which requested that any payments made to Fortis be interim similar to the relief requested in this proceeding. This complaint was registered as a separate proceeding (Proceeding 26807). On October 22, 2021, Anthem made a request to the Commission to participate in Proceeding 26649.⁵ On February 3, 2022, the Commission consolidated Proceeding 26807 with Proceeding 26649 and considered both complaints in this proceeding. Anthem subsequently requested that its participation in this proceeding be suspended.⁶
11. The Melcor Entities raised concerns about Fortis's maximum investment levels (MILs) in their submissions.⁷ In a letter dated February 3, 2022, the Commission determined that MILs are out of scope in this proceeding. As a broader issue requiring input from other stakeholders, the Commission stated in the letter that MILs are better addressed on a prospective basis in an upcoming generic terms and conditions consultation.⁸

3 Discussion of issues and Commission findings

12. The Melcor Entities' complaint alleged that the required design standards applicable to the subject developments (as identified in Fortis's agreements and quotation letters) breached Fortis's obligations under the *Electric Utilities Act*⁹ to provide electric distribution service that is

² The Melcor Entities' complaint was brought pursuant to sections 8 and 23 of the *Alberta Utilities Commission Act* (which engage the Commission's general powers, including hearing and determining all questions of law or fact, and granting relief) and sections 85 and 87 of the *Public Utilities Act* (which engage the Commission's general supervisory and investigative functions over public utilities).

³ Exhibit 26649-X0027, MEL-AUC-2021SEPT24-001(a)(i), PDF pages 5, 8 and 10.

⁴ Exhibit 26649-X0023, Ruling letter - ruling on preliminary motion - Melcor Entities, August 3, 2021.

⁵ Exhibit 26649-X0023, Ruling letter - ruling on preliminary motion - Melcor Entities, August 3, 2021.

⁶ Exhibit 26649-X0060, Anthem's AUC Response Letter, February 10, 2022.

⁷ For example, see Exhibit 26649-X0022, Melcor Entities Reply Submission.

⁸ Exhibit 26649-X0055, paragraph 14.

⁹ The Melcor Entities referenced sections 105(1)(a) and 127(c) of the *Electric Utilities Act*.

not unduly discriminatory, and that in applying the required design standards, Fortis was acting in a manner that is unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory, or inconsistent with or in contravention of law.¹⁰ In making a determination on the complaint, the Commission considered whether Fortis's design standards:

- (i) were imposed in a manner inconsistent with a proper application of the Commission-approved T&Cs;
- (ii) result in unduly discriminatory electric distribution service and cost; and/or
- (iii) were implemented in a manner that is unjust, unreasonable, unduly preferential, arbitrary or unjustly discriminatory, or inconsistent with or in contravention of law.

13. Given the Commission has dismissed the complaint, no consideration of further relief is required.

14. In reaching the determinations contained within this decision, the Commission has considered all relevant materials comprising the record of this proceeding. 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 that matter.

15. To provide context for the parties' positions in this proceeding, it is helpful to begin with a description of the two specific design standards that were the subject of the Melcor Entities' complaint. These are (i) the requirement to install 200 amp services for certain residential lots, instead of 100 amp service; and (ii) the requirement for cable to be installed in conduit under paved alleys instead of by direct burial.¹¹ The 200 amp requirement applied to 44 lots in Sunset and 23 lots in Lanark. The conduit requirement affected 48 lots in Sunset and 40 lots in Lanark.¹²

3.1 Were the design standards imposed in a manner inconsistent with a proper application of the Commission-approved T&Cs?

16. In Decision 26649-D01-2022, the Commission found that the Fortis design standards imposed in respect of both the 200 amp and conduit requirements were not inconsistent with the T&Cs. The reasons for that finding are set out below.

¹⁰ Exhibit 26649-X0008, Melcor Entities Complaint Particulars, paragraph 36.

¹¹ Exhibit 26649-X0008, Melcor Entities Complaint Particulars, paragraphs 23-24 and 27.

¹² Exhibit 26649-X0008, Melcor Entities Complaint Particulars, paragraphs 23-24 and 27; Transcript, Volume 1, page 23, lines 10-14 and lines 18-20. In the oral hearing, the Melcor Entities provided corrections to the number of lots affected by the minimum design standards.

17. Section 4.5.4 of the T&Cs states:

4.5.4 Subdivision Developers

Except where FortisAlberta will install Facilities to serve a subdivision, Subdivision Developers are required to sign an Underground Electrical Distribution System Services Agreement.¹³

Section 2.1 defines “Underground Electrical Distribution System Services Agreement” as:

... the agreement between FortisAlberta and the Subdivision Developer by which the underground Facilities are to be installed on Land to provide Service Connections to each proposed lot and the common area within the Land. FortisAlberta’s prior Terms and Conditions previously referred to Underground Electrical Distribution System Services Agreement as Underground Residential Development Agreement, and all references in prior agreements, documents and other instruments to Underground Residential Development Agreement shall mean Underground Electrical Distribution System Services Agreement as defined herein.¹⁴

18. The Melcor Entities acknowledged that the T&Cs do not deal with how Fortis may implement changes to the minimum design standards for new service connections; however, they submitted that the T&Cs do address the maximum investment that Fortis will make in new service connections.¹⁵ While the Melcor Entities acknowledged that changes to Fortis’s MILs are outside of the scope of the current proceeding, citing Bulletin 2022-03,¹⁶ the Melcor Entities argued that Fortis’s unilateral implementation of the standards for constructing new service connections upset the balance between what an individual customer pays upfront versus what all customers will pay through ongoing rates. This is because Fortis changed the standards, increasing the upfront costs to developers, before considering a change in investment policy.¹⁷ In the Melcor Entities’ view, the standards were therefore imposed in a manner inconsistent with a proper application of the T&Cs.

19. The Commission agrees with the Melcor Entities that the T&Cs do not address design standards, nor how changes to these standards may be implemented. However, the Commission is not persuaded by the Melcor Entities’ argument that a change in design standards without a corresponding change in MILs is inconsistent with a proper application of the Commission-approved T&Cs. The Melcor Entities have failed to demonstrate that the T&Cs restrict, or otherwise limit, Fortis’s discretion with respect to implementation of the design standards, nor have they demonstrated that Fortis is required to change its MILs concurrently with its design standards. The Commission finds that the design standards applicable to the subject developments have not been imposed in a manner inconsistent with the proper application of the T&Cs.

¹³ Decision 26817-D01-2021: FortisAlberta Inc., 2022 Annual Performance-Based Regulation Rate Adjustment, Proceeding 26817, December 15, 2021, Appendix 4 - 2022 Customer terms and conditions, PDF page 102.

¹⁴ Decision 26817-D01-2021, Appendix 4 - 2022 Customer terms and conditions, PDF page 93.

¹⁵ Transcript, Volume 2, page 131, lines 2-8.

¹⁶ Bulletin 2022-03, Stakeholder consultation to review the standards of service for new home connections and associated maximum investment levels for 2023-2028, March 9, 2022.

¹⁷ Transcript, Volume 2, page 131, line 13 to page 132, line 10.

20. For clarity, the Commission makes no finding in this proceeding as to the reasonableness of the amount an individual customer pays upfront versus what all customers will pay through ongoing rates. This issue is expected to be examined in the Commission's stakeholder consultation contemplated in Bulletin 2022-03.

3.2 Did the design standards result in unduly discriminatory electric distribution service and cost?

21. In Decision 26649-D01-2022, the Commission found that the Fortis design standards did not result in unduly discriminatory electric distribution service and cost.

22. In addressing this issue, the Commission will consider whether Fortis's treatment of the Lanark and Sunset developments differed from other developments in Fortis's service area, in regard to the design standards and costs imposed on developers. To provide context for the Commission's findings for this issue, it is helpful to begin with a definition of discrimination.

23. In Decision 2012-363,¹⁸ the Commission referenced a predecessor's decision¹⁹ that recognized that discrimination in utility regulation can arise in two circumstances:

- First, when a utility fails to treat all users of a public utility equally where no reasonable distinction can be found between those favoured and those not favoured.
- Second, when a utility treats all its users equally where differences between users would justify different treatment.

24. The fundamental issue is whether the differential charges between customers are supported by sufficient rationale or logic and fact-based evidence justifying the distinction.²⁰

25. The analysis of this issue was specific to the treatment of residential developers within Fortis's service area, and did not include comparisons to other utilities. Distribution utilities in other service areas were not participants in this proceeding, and the Commission has no evidence regarding potentially discriminatory treatment of customers by other distribution utilities on this record. Therefore, the Commission did not consider comparing across utilities in its determinations for this issue. Comparisons to other utilities were on the record and were considered in assessing the reasonableness of the standards in Section 3.3 of this decision. For the reasons that follow, the Commission finds that neither the 200 amp nor the conduit requirement result in unduly discriminatory electric distribution service and cost.

¹⁸ Decision 2012-363: East Prairie Métis Settlement and Prairie River Gas Co-op Natural Gas Billing Dispute, Proceeding 1389, Application 1607572-1, December 27, 2012, paragraph 35.

¹⁹ Public Utilities Board (PUB) Decision E94014: The Town of Bruderheim, Complaint by Mr. J. H. Lambert alleging discriminatory water and sewer billings by the Town of Bruderheim, File 8228-1, March 28, 1994.

²⁰ Decision 20744-D01-2016: New Sarepta Water and Sewer Complaint, Proceeding 20744, February 24, 2016, paragraphs 30, 32-33; Decision 2012-363, paragraphs 34-36; Decision E94014, page 16, where the PUB noted that the definition should be revised to fit the context of then Section 291 of the *Municipal Government Act* under which the complaint against the public utility was brought, so as to read: "... rates are discriminatory when they fail to treat all users of a public utility equally where no reasonable distinction can be found between those favoured and those not favoured."

3.2.1 200 amp design standard

26. Fortis updated its UEDS Manual on January 1, 2020, to reflect the criteria under which 200 amp service would be required and to specify additional options for ongoing approvals of 100 amp service. For residences with a square footage above 2,000, Fortis requires the installation of 200 amp service, unless a load calculation sheet for the planned home is provided to prove 100 amp service will be adequate.²¹ When the square footage of the residence is unknown, Fortis uses a bare lot size of 10 metres (m) wide and 35 m deep as a guideline to indicate house size between 1,500 and 2,000 square feet, and a bare lot size of 12 m wide and 35+ m deep as a guideline to indicate house size between 2,000 and 2,500 square feet.²²

27. The Melcor Entities confirmed that the number of lots that required 200 amp service in Sunset and Lanark was 44 and 23, respectively.²³

28. The Melcor Entities contended that the required design standards result in unduly discriminatory electric distribution service and cost. They first indicated that, based on their experience, the application of the 200 amp requirement appears to depend in large part on the Fortis representative responsible for the design review. Second, as a pure developer and not a developer/builder, the Melcor Entities stated that they do not have information available at the subdivision stage to provide load calculations and therefore cannot take advantage of Fortis's alternatives to its 200 amp requirement. They therefore alleged that these exceptions themselves are unduly preferential to builders/developers.²⁴

29. To support their position, the Melcor Entities highlighted other developments, namely Vista 2C in Sylvan Lake, and Tonewood 9, Copperhaven 5 and McLaughlin 6 in Spruce Grove, where 100 amp services were installed, even though the homes to be constructed were expected to be approximately 2,000 square feet. In these cases, the lot sizes were less than the lot size guideline applied by Fortis to indicate homes larger than 2,000 square feet and Fortis did not require installation of 200 amp services. In the case of the Lanark and Sunset developments, although the lot sizes were less than 12 m wide, Fortis specifically asked the Melcor Entities to confirm that no homes would be greater than 2,000 square feet. The Melcor Entities do not generally know the size of the home to be constructed on a lot, and therefore advised Fortis of the lots where a home greater than 2,000 square feet could be accommodated, which in the Melcor Entities' experience, is any lot wider than 32 feet (9.75 m).²⁵

30. Based on the evidentiary record, the Commission is not persuaded that electric distribution service provided to the Lanark and Sunset developments, or the costs imposed to provide that service, were discriminatory. In the subject developments, the Melcor Entities confirmed that the lots in question could accommodate homes of 2,000 square feet or larger, triggering Fortis's requirement for 200 amp service. The subject developments can be distinguished from the other developments noted in paragraph 29 based on lot size – the smaller lot size does not trigger Fortis's requirement for the installation of 200 amp service, whereas the lot size of the Melcor Entities' developments did. It is also clear from the Melcor Entities' own

²¹ Exhibit 26649-X0065, Fortis evidence, paragraph 10.

²² Exhibit 26649-X0088, UEDS-03, PDF pages 52-53.

²³ Transcript, Volume 1, page 23, lines 10-14.

²⁴ Transcript, Volume 2, page 27, line 17 to page 28, line 13.

²⁵ Exhibit 26649-X0078, Melcor reply evidence, PDF pages 21-22.

evidence that the Fortis guidelines based on bare lot size are comparable to the Melcor Entities' own guidelines. In response to an information request (IR), Fortis filed a list identifying 52 additional developments for which it imposed the 200 amp service design standard in 2020 and 2021, demonstrating that the 200 amp standard is being imposed on other developers in the Fortis service area.²⁶ For the above-noted reasons, the Melcor Entities have not demonstrated that the developments that are the subject of the current complaint have either been treated differently than other developments where no reasonable distinction exists, or treated similarly to other developments where differences would justify different treatment. The Melcor Entities have therefore not demonstrated that their treatment by Fortis resulted in unduly discriminatory electric distribution service and cost.

3.2.2 Conduit design standard

31. The Melcor Entities' complaint also related to the imposition by Fortis of a requirement to install cable in conduit (also referred to as "duct") under paved alleys instead of by direct burial. In their reply evidence, the Melcor Entities summarized their complaint and additionally referenced a Fortis requirement for all cables (primary, secondary and service cables) to be placed in separate conduits.²⁷

32. Section 3.5 of Fortis's 2004 Underground Residential Distribution standard version B stated:

... In rear lane construction, the centerline of the main trench will typically be located a minimum of 1.2 m from the property line on the lane. All distribution power cables crossing lanes are to be installed in duct, and all primary power cables are to be installed in duct if the entire lane is to be paved. Secondary power cables feeding from the padmount transformers to power pedestals, or from pedestal to pedestal must also be installed in duct if the lane is to be paved. To qualify as a lane, the roadway area must be permanently open to vehicle traffic.²⁸

33. It is therefore clear that the conduit requirement in Fortis's standards was instituted in or prior to 2004.

34. In 2018, Fortis updated its standard to include the requirement for each cable to be installed in a separate duct, as follows:

UEDS-03, Version 1.1 - March 27, 2018

Section 6.5.8

All primary and secondary cables in the lane are to be installed in duct when crossing lanes or where the lane is to be paved.

Section 7.3.2

Primary, secondary, service, and streetlighting cables or systems are each to be installed in separate ducts. For further clarity, there shall be one primary system (i.e. 3-phase or

²⁶ Exhibit 26649-X0043, FAI-AUC-2021SEP24-001(b), PDF page 5; Exhibit 26649-X0047, Attachment FAI-AUC-2021SEP24-001b.01.

²⁷ Exhibit 26649-X0078, Melcor reply evidence, PDF page 6.

²⁸ Exhibit 26649-X0043, FAI-AUC-2021SEP24-001(e), PDF page 7.

1-phase) per duct; one secondary cable per duct; one service cable per duct; or one streetlighting cable per duct.²⁹

35. During the oral hearing on March 16-17, 2022, Fortis brought forth a motion requesting that the Commission strike the Melcor Entities' reply evidence pertaining to the requirement for separate conduits for each cable or, alternatively, to provide that evidence no weight in this proceeding, due to procedural fairness concerns. Fortis submitted that the Melcor Entities changed their complaint details from a concern with the requirement for conduit under paved alleys to a concern regarding the requirement for separate ducts for primary, secondary and service cables. Because this change occurred in the Melcor Entities' reply evidence, Fortis submitted that it was denied the opportunity to respond.³⁰ The Commission agreed with Fortis and ruled that it would give the related evidence no weight.³¹ Therefore, in making its determinations related to the conduit design standard, the Commission did not consider the Melcor Entities' reply evidence regarding Fortis's design standard that requires a separate conduit for each cable.

36. In response to an IR, the Melcor Entities stated that the Lanark development designs initially submitted to Fortis contemplated direct burial in alleys, but the Melcor Entities were subsequently advised by Fortis that conduit would be required.³²

37. In response to a different IR, the Melcor Entities stated that the 2017 King's Heights, Phase 21 project was completed using direct burial.³³ Later in reply evidence, the Melcor Entities added that in the King's Heights Phase 21 development, rear lane service cable to each lot was all direct buried, except where it crossed the lane and that more than one cable was permitted to be installed in each conduit. Also, in the King's Heights Phase 13 development, all of the primary and secondary 4/0 cables in lanes were installed in conduit; however, all 1/0 secondary service cables were laid directly in the trench, except when crossing lanes.³⁴

38. Fortis also filed a list of four developments dated 2005 to 2015 that required conduit as part of their minimum design standards, including King's Heights Phase 13.³⁵

39. The Melcor Entities have acknowledged that the King's Heights Phase 13 required conduit for all of the primary and secondary 4/0 cables in lanes. Fortis has also adduced evidence in respect of other developments where conduit was required for cables installed in paved lanes. Based on this evidence, the Commission is not satisfied that the conduit design standard results in unduly discriminatory electric distribution service and cost. The standard has been in effect for 18 years, and according to the Melcor Entities, their own previous developments have also been required to comply with the conduit design standard as imposed by Fortis.³⁶ For the above-noted

²⁹ Exhibit 26649-X0043, FAI-AUC-2021SEP24-001(e), PDF page 8.

³⁰ Transcript, Volume 1, page 9, line 12 to page 15, line 17.

³¹ Transcript, Volume 1, page 20, line 18 to page 21, line 3.

³² Exhibit 26649-X0027, MEL-AUC-2021SEPT24-001(a)(iii), PDF pages 10-11.

³³ Exhibit 26649-X0027, MEL-AUC-2021SEPT24-001(a)(iii), PDF pages 10-11.

³⁴ Exhibit 26649-X0078, Melcor reply evidence, PDF pages 33-34.

³⁵ Exhibit 26649-X0043, FAI-AUC-2021SEP24-001(b), PDF pages 5-6.

³⁶ Exhibit 26649-X0027, MEL-AUC-2021SEPT24-001(a)(iii), PDF page 10.

reasons, the Commission does not find that Fortis's design standard regarding use of conduit in paved lanes results in unduly discriminatory electric distribution service and cost.

3.3 Were Fortis's design standards implemented in a manner that is unjust, unreasonable, unduly preferential, arbitrary or unjustly discriminatory, or inconsistent with or in contravention of law?

40. In considering the third issue, the Commission reviewed the manner in which the standards were implemented and the standards of other electric distribution utilities.

41. In Decision 26649-D01-2022, the Commission found that the Fortis design standards imposed in respect of both the 200 amp and conduit requirements were not implemented in a manner that is unjust, unreasonable, unduly preferential, arbitrary or unjustly discriminatory, or inconsistent with or in contravention of law. The reasons for that finding are set out below.

42. Fortis's requirement to install 200 amp services for residential homes larger than 2,000 square feet came into effect January 1, 2020. Fortis sent an email to design consultants, power line technicians and construction crews on December 12, 2019, in which it advised that it had updated its design requirements to account for the results of a residential load study, which included a requirement for all homes in excess of 2,000 square feet to have 200 amp service installed. Although the Melcor Entities raised some concerns about the results of the load study, they indicated that they did not disagree with the results.³⁷ The Melcor Entities acknowledged that they first became aware of the requirement on December 5, 2019,³⁸ 18 months before the agreements were signed for the Sunset and Lanark developments. Similarly, the conduit requirement, which was implemented in 2004, was known by the Melcor Entities to be a Fortis requirement well before the agreements were signed. Therefore, the 200 amp and conduit requirements were known to the Melcor Entities in advance. Consistent with Decision 26510-D01-2022,³⁹ the Commission finds that Fortis's 200 amp and conduit requirements were transparent and not implemented in a manner that is arbitrarily or unjustly discriminatory.

43. The Commission finds that the 200 amp requirement was not implemented in a manner that is unreasonable, given the practices of ENMAX Power Corporation and EPCOR Distribution & Transmission Inc. The Melcor Entities acknowledged that ENMAX recently transitioned to requiring 200 amp service for all new residential developments within its service territory.⁴⁰ Fortis noted that EPCOR's requirement for 200 amp service for a 6 kilovolt ampere load represents a lower threshold than the point at which Fortis requires 200 amp service to be installed.⁴¹ The Melcor Entities noted that the EPCOR standard states: "It is the developer's responsibility to consider the size of lot, size of house and therefore the need for a service size larger than 100 amps."⁴² The ENMAX requirement for 200 amp service for any load, lot or house

³⁷ Exhibit 26649-X0027, MEL-AUC-2021SEPT24-003(c), PDF page 16.

³⁸ Exhibit 26649-X0027, MEL-AUC-2021SEPT24-001(a)(ii), PDF page 10.

³⁹ Decision 26510-D01-2022: Capital Power Corporation, Complaint Application Regarding FortisAlberta Inc. Strathmore Area Interconnection Issues, Proceeding 26510, February 28, 2022. At paragraph 47, the Commission accepted Fortis's position that the practices it has implemented with respect to its distribution-connected generation (DG) queue are not unduly or arbitrarily discriminatory, in the sense that they are available to, and known by, all DG proponents and therefore contain an element of transparency.

⁴⁰ Transcript, Volume 2, page 135, lines 21-24.

⁴¹ Exhibit 26649-X0065, Fortis evidence, paragraph 22.

⁴² Exhibit 26649-X0078, Melcor reply evidence, PDF page 24.

size, and the EPCOR requirement for 200 amp service for larger loads, which is also dependent on lot and house size, are similar to Fortis's 200 amp design standard. This indicates that Fortis's minimum design standard is reasonable when compared to other utilities.

44. In their argument, the Melcor Entities submitted that Fortis's approach of using lot size to estimate square footage is not reasonable or practical. The Melcor Entities noted that in the Lanark and Sunset developments, 200 amp service was installed; however, 24 per cent and 27 per cent of the homes, respectively, were less than 2,000 square feet.⁴³ The Commission is not persuaded by this argument. The Melcor Entities have agreed that the square footage of a home is generally a function of the lot size. Specifically, they stated that for all lots wider than 32 feet, the constructed home is generally 2,000 square feet to 2,500 square feet.⁴⁴ Given that the Melcor Entities are not able to provide load calculations and that Fortis cannot know in advance the size of the home that will be built, the Commission accepts that a proxy is a reasonable way to determine the correct service size. Accordingly, the Commission finds that without any other alternatives to consider on the record of this proceeding, using lot size appears to be a reasonable means to estimate house size.

45. The evidence is not as clear for the conduit requirement, given that the Melcor Entities diverted from their original complaint that referred to Fortis's requirement to install conduit under paved alleys to Fortis's more recent design standard change that requires cables to be installed in separated ducts.

46. In the reply evidence, the Melcor Entities filed an email from ENMAX that stated:

Additionally, for a greenfield installation in lanes, we will typically have buried primary and secondary voltage cable with vacant ducts for spare. The majority of the cable is direct buried with exceptions in conduit if there are multiple circuits running through the lane. In projects I've done in the past with Josh & LBC we confirm the extent of lane paving so we don't have to rip up existing surface for tie-ins etc.⁴⁵

47. The Melcor Entities interpreted the above to mean that ENMAX does not require cables to be placed in conduit. Regarding EPCOR's standards, the Melcor Entities noted that "it appears that EPCOR allows more than one cable to be placed in a single duct,"⁴⁶ which is not relevant to this proceeding given the ruling on Fortis's motion addressed above. Regarding ATCO Electric Ltd.'s standards, the Melcor Entities stated that "it appears as though ATCO Electric may also permit direct burial." They quoted the ATCO Electric design standards:⁴⁷

Within the Bare Land Residential Development, primary cables shall be installed in ducts where it is under a pave[d] surface. Consideration may be made for secondary ducts if the entire length of underground is under a paved surface (i.e. sidewalks, row houses). All requests for direct buried shall be accepted and approved by ATCO Expeditor and Engineering Representatives.

⁴³ Transcript, Volume 2, page 145, lines 4-20.

⁴⁴ Exhibit 26649-X0027, MEL-AUC-2021SEPT24-002(a), PDF page 13.

⁴⁵ Exhibit 26649-X0083, 2022-03-03 Attachment 5.

⁴⁶ Exhibit 26649-X0078, Melcor reply evidence, PDF page 37.

⁴⁷ Exhibit 26649-X0078, Melcor reply evidence, PDF pages 36-38.

ATCO Electric's design guidelines also state:

5.3.2 Primary Cable

Any primary cable installed under a paved surface must be installed in 102mm [millimetre] duct....

48. The Commission does not agree with the Melcor Entities' interpretation of the other utilities' design standards related to the need for conduit under paved alleys. The evidence is that ENMAX installs "vacant ducts for spare" and that cables are installed "in conduit if there are multiple circuits running through the lane."⁴⁸ Further, ENMAX referred to "the extent of lane paving so we don't have to rip up existing surface for tie-ins."⁴⁹ These statements by ENMAX suggest that conduit is required for cables installed under paved surfaces. In addition, ATCO Electric's design guidelines suggest a requirement for conduit under paved surfaces. Accordingly, the Commission finds that Fortis's conduit requirement was not implemented in a manner that is unreasonable, given the design standards of ENMAX and ATCO Electric, as provided by the Melcor Entities in their evidence.

49. As noted in the previous section, and for the reasons that were provided there, the Melcor Entities have not satisfied the Commission that the noted design standards have been implemented in a manner that is unduly preferential to other developers, arbitrary or unjustly discriminatory to the Melcor Entities. Further, the Melcor Entities have not provided any evidence demonstrating that the challenged design standards are inconsistent with or in contravention of law.

50. In summary, the Commission considered the three issues arising out of the Melcor Entities' complaint in this proceeding and is satisfied that Fortis did not breach its obligations under the *Electric Utilities Act* to provide electric distribution service that is not unduly discriminatory. The Commission is also satisfied that Fortis was not acting in a manner that is unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory, or inconsistent with or in contravention of law in imposing the design standards in respect of both the 200 amp and conduit requirements to the Lanark and Sunset developments.

Dated on May 3, 2022.

Alberta Utilities Commission

(original signed by)

Carolyn Dahl Rees
Chair

⁴⁸ Exhibit 26649-X0083, Melcor Entities reply evidence, Attachment 5, email exchange between the Melcor Entities and ENMAX dated February 24, 2022.

⁴⁹ Exhibit 26649-X0083, Melcor Entities reply evidence, Attachment 5, email exchange between the Melcor Entities and ENMAX dated February 24, 2022.

(original signed by)

Kristi Sebalj
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Melcor Developments Ltd. (Melcor Entities) Reynolds, Mirth, Richards & Farmer LLP
FortisAlberta Inc. (Fortis) Fasken Martineau DuMoulin LLP

Alberta Utilities Commission
Commission panel C. Dahl Rees, Chair K. Sebalj, Commission Member
Commission staff N. Sawkiw (Commission counsel) A. Corsi N. Morter

Appendix 2 – Oral hearing – registered appearances

Name of organization (abbreviation) Name of counsel or representative	Witnesses
FortisAlberta Inc. (Fortis) B. Hunter	T. Dettling G. Wiens G. Gonzalez
Melcor Developments Ltd. (Melcor Entities) C.R. McCreary B. Schwanak	G. Melton. A. Boucher