



FortisAlberta Inc.

Application Respecting the Refund of the Fortis Street Light Investment

July 11, 2022

Alberta Utilities Commission

Decision 27067-D01-2022

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Proceeding 27067

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Contents

1	Decision summary.....	1
2	Introduction and procedural background.....	1
3	Discussion of issues and Commission findings.....	2
4	Cost recovery for municipalities and developers.....	5
5	Order.....	5
	Appendix 1 – Proceeding participants.....	7
	Appendix 2 – Summary of Commission directions.....	8

1 Decision summary

1. In this decision, the Alberta Utilities Commission determines that the refund of the FortisAlberta Inc. street light investment is to be paid to the municipalities (or as directed by the municipalities), in those cases where the developer and municipality are currently in dispute in the Fortis service territory, for the following reasons: (i) Fortis's Customer Terms and Conditions of Electric Distribution Service¹ (T&Cs) and the relevant documents identified in Section 3 are consistent in their contemplation of the municipalities as the more typical recipient of the street light investment refund; and (ii) continuing to direct the refund to municipalities at this time will likely minimize disruptions to the present business practice.

2. The Commission directs Fortis to revise its current process and relevant documents and to file a proposal to modify its T&Cs so that the T&Cs clearly (i) set out the street light investment refund entitlement; (ii) set out the form of agreement required when the refund is to be assigned to a party other than the municipality; and (iii) revise the Underground Electrical Distribution System Services (UEDS) Agreement, the Quotation Letter and the Municipal Approval Form to ensure consistency with the revised T&Cs.

2 Introduction and procedural background

3. In new residential developments in Fortis's service area the developer is responsible for managing the design, construction and installation of electrical facilities within the boundaries of the subdivision and in accordance with Fortis standards. This includes the installation of street lights. Fortis invests in or refunds the costs of new street lights as per its Customer Contribution Schedules² referenced by its T&Cs, which are approved by the Commission.³ The T&Cs state the investment amount/refund is either paid to the subdivision developer or to the applicable municipality, if so directed by an agreement between the developer and the municipality, on an annual basis for those street lights that are energized. The investment amount is included in Fortis's rate base and recovered over time through Commission-approved rates.

4. As part of the process to initiate the provision of electric service for new developments, Fortis requires residential developers to sign a UEDS Agreement⁴ (the UEDS Agreement) and accept in writing the proposal as set out in the Quotation Letter⁵ provided by Fortis describing,

¹ Exhibit 27067-X0035, Appendix G - FortisAlberta Inc. Customer Terms and Conditions of Electric Distribution Service, effective January 1, 2022.

² Section 2.5 of the T&Cs.

³ 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, effective January 1, 2022.

⁴ Exhibit 27067-X0003, Appendix A - UEDS Agreement.

⁵ Exhibit 27067-X0004, Appendix B - UEDS Quote Letter.

among other things, the customer contribution, of which a portion would be refundable. The UEDS Agreement references the T&Cs, and advises Fortis shall pay to the applicable municipal authority a portion of the investment amount for each street light fixture, unless otherwise directed by the municipality. Later on in the process, the municipality completes the Municipal Approval for Electric Facilities Installation form⁶ (Municipal Approval Form), which requires the municipality to confirm to whom Fortis should direct the street light investment.

5. On December 17, 2021, Fortis filed an application with the Commission seeking the Commission's advice and direction on the issue of to whom the street light investment should be paid in the event of a dispute between a developer and a municipality regarding whether an agreement has been reached as to entitlement to the payment. The Commission had before it two related complaints from developers contesting the payment of the street light investment refund to municipalities.⁷ On February 16, 2022, the Commission advised parties to the complaints that this proceeding would address the street light investment issue.⁸

6. Statements of intent to participate (SIPs) were received from the Building Industry and Land Development Association Alberta (BILD Alberta);⁹ a group of developers referred to as the "Additional Developers";¹⁰ the City of Airdrie; the City of St. Albert; the Rural Municipalities of Alberta; and the Alberta Municipalities. The Additional Developers and St. Albert did not file further submissions.

7. The process for this proceeding included Commission information requests (IRs) to, and responses from, Fortis, as well as written argument and reply argument. Airdrie and the Alberta Municipalities filed a joint argument and reply argument.

3 Discussion of issues and Commission findings

8. The applicable sections of the T&Cs have been in effect since 2007.

9. Fortis submitted that since June 2021, it began receiving requests from developers for refund of street light investments where it was asserted that no agreement was reached between the developer and the municipality regarding the street light investment and as such, the T&Cs require the street light investment to be paid to the developers. In contrast, municipalities have directed Fortis to provide the street light investment to the municipality. As a result, Fortis sought guidance from the Commission concerning these disputes,¹¹ and has not issued any street light investment refunds for the contested developments since June 2021.¹²

10. Section 2.2 of the T&Cs state that "If there is any conflict between a provision in the Terms and Conditions, and a provision in a Commitment Agreement, Electric Service

⁶ Exhibit 27067-X0004, Appendix C.

⁷ Proceeding 27147 and Proceeding 27155.

⁸ Proceeding 27155, Exhibit 27155-X0008, paragraph 9.

⁹ BILD Alberta represented Melcor Developments Ltd., Anthem United, and Qualico Communities, who had earlier filed a SIP, collectively as "The Developers."

¹⁰ Madlee Developments Ltd. as owner of an interest in Willows West Limited Partnership, GDM Developments Ltd. and West Sylvan Investments Ltd. are collectively referred to as the "Additional Developers" in this proceeding.

¹¹ Exhibit 27067-X0002, application, paragraph 3.

¹² Exhibit 27067-X0002, application, paragraph 21.

Agreement, Interconnection Agreement, Retail Service Agreement, Underground Electrical Distribution System Services Agreement [UEDS Agreement] or any other existing or future agreement between FortisAlberta and a Responsible Party, the provision in the Terms and Conditions shall govern.” As noted below, the applicable sections of the T&Cs are somewhat ambiguous, giving rise to the disputes in the present proceeding.

11. In argument, the Commission requested parties to provide submissions on the provisions in the Fortis T&Cs that are applicable to street light investment and how the provisions in the T&Cs flow through to the UEDS Agreement, the Quotation Letter and the Municipal Approval Form. Templates of these documents formed part of Fortis’s application.¹³

12. The Commission reviewed the entire record in coming to this decision; lack of reference to a matter addressed in evidence or argument does not mean that it was not considered.

13. Sections 7.2.1 and 7.2.3 of the T&Cs are the relevant sections related to the street light investment and to whom the refund should be paid:

7.2.1 Customer Distribution Contribution

...

In a new residential subdivision, since some Points of Service may not be occupied and connected immediately, the Subdivision Developer is initially responsible for the full Customer Extension Costs and Customer Shared Costs for each Point of Service. The FortisAlberta Investment is paid to the Developer, or in the case of street lights, the Municipality, as each Point of Service is connected, as described in Section 7.2.3.

7.2.3 Refunds of Customer Contributions

...

(c) in a residential subdivision, where the developer initially paid the total cost of the Facilities within the subdivision, applicable refunds are reviewed annually and made in accordance with the amounts set out in Table 1 of the Customer Contributions Schedules, for each residence that is connected and taking service within 10 years following the date of payment, to the current developer (or in the case of street lights, to the Municipality if so directed by an agreement between the developer and the Municipality, provided also that such agreement is communicated to FortisAlberta prior to any payment by FortisAlberta), without interest.

14. Section 10.3 of the UEDS Agreement addresses the payment of the street light refund, stating that the payment is to be made to the municipal authority unless the municipal authority directs otherwise:

10.3 Where applicable, FortisAlberta shall, in accordance with the Terms and Conditions, during the Investment Payment Period, pay to the applicable municipal authority a portion of the Investment Amount for each streetlight fixture that is connected to and taking service from the Distribution System, unless the applicable municipal authority directs otherwise, in which case the streetlight portion of the Investment Amount shall be paid as directed by the applicable municipal authority.¹⁴

¹³ Exhibit 27067-X0003, Appendix A - UEDS Agreement; Exhibit 27067-X0004, Appendix B - UEDS Quote Letter; Exhibit 27067-X0005, Appendix C - Municipal Approval Form.

¹⁴ Exhibit 27067-X0003, Appendix A - UEDS Agreement, PDF page 16.

15. Similarly, the Quotation Letter also states that the street light investment is to be paid as directed by the municipal authority:

... The residential lot investment will be paid to _____ for a period of 10 years from the date indicated in the UEDS Agreement, and reviewed annually to determine the number of lots that are connected and taking service. The streetlight investment will be payable as directed by the applicable municipal authority.¹⁵

16. Fortis's Municipal Approval Form is signed by the municipality and Section 4 of the form specifies whether the street light investment is to be directed to the municipality or to the developer. While the form is signed only by the municipality, Fortis believes that when it receives this form it is evidence that an agreement has been reached between the municipality and the developer. According to Fortis, the municipality and the developer consult in completing the form, and it is the developer or its consultant who then submits the form to Fortis.¹⁶ Fortis noted that Melcor Developments Ltd. and La Vita Land Inc., two developers that are currently in dispute with municipalities, submitted Municipal Approval forms to Fortis confirming that the street light investment refund was to be provided to the municipality.¹⁷

17. Parties expressed different interpretations of the T&Cs. Fortis stated that its T&Cs provide developers and municipalities the flexibility to determine between themselves which party will be entitled to the street light investment refund.¹⁸ The municipalities placed emphasis on Section 7.2.1 of the T&Cs, since it appears first. They submitted that Section 7.2.3(c) is only intended to provide additional details on how the Fortis investments are payable depending on the specific service they relate to.¹⁹ Contrary to the municipalities, the developers placed more weight on Section 7.2.3(c). The developers submitted that at first instance the developer is entitled to the Fortis investment for new facilities, including street lights, and only where there is an agreement between the municipality and the developer could an exception be made to direct the street light refund to the municipality.²⁰

Commission findings

18. The Commission acknowledges Fortis's submission that the intention of its T&Cs is to distinguish the street light investment from other rate class investment payments, and to facilitate an election of the entitlement to the street light investment refund, subject to agreement between developer and municipality.²¹ As discussed above, the T&Cs, the UEDS Agreement, the Quotation Letter and the Municipal Approval Form all contemplate the municipality as the more typical recipient of the street light investment refund. The Commission has also considered that with the street light investment refund being primarily directed to municipalities for nearly a decade, maintaining this pattern of practice at this time should minimize the disruptions to the established procedure.²² Accordingly, the Commission will maintain the status quo in this

¹⁵ Exhibit 27067-X0004, Appendix B - UEDS Quote Letter, PDF page 2.

¹⁶ Exhibit 27067-X0042, Fortis argument, paragraph 10.

¹⁷ Exhibit 27067-X0042, Fortis argument, paragraph 11.

¹⁸ Exhibit 27067-X0042, Fortis argument, paragraph 8.

¹⁹ Exhibit 27067-X0040, Airdrie and Alberta Municipalities argument, paragraphs 60-62.

²⁰ Exhibit 27067-X0041, BILD Alberta argument, paragraph 12.

²¹ Exhibit 27067-X0042, Fortis argument, paragraph 2.

²² Exhibit 27067-X0045, Fortis reply argument, paragraph 8.

instance and directs that the street light investment refund be paid to the municipalities where the developer and municipality are in dispute.

19. The Commission also finds that, given the T&Cs' failure to definitively address a party's entitlement to the street light investment refunds and the required documentation to record the entitlement, and until such time that revised T&Cs from Fortis addressing this ambiguity have been approved by the Commission, the street light investment refund in similarly impacted developments should continue to be paid to municipalities where the developer and municipality are in dispute.

20. With reference to Section 7.2.3 of the T&Cs, the Commission observes that neither the UEDS Agreement, the Quotation Letter approval nor the Municipal Approval Form provide an opportunity or signatory lines for the developer or the municipality to indicate that there is an agreement as to where Fortis is to pay the street light investment. The Commission is not persuaded that signing and submitting these forms under the present practice fully and formally communicates the existence of an agreement being reached between the developer and the municipality with respect to the payment of the street light investment.

21. In order to provide necessary clarification on this matter, the Commission directs Fortis to file a proposal to modify its T&Cs as soon as practicable but no later than October 1, 2022, either by way of a stand-alone application or by including these changes in some other proceeding dealing with Fortis's T&Cs. The proposed modifications must clarify entitlement to the street light investment refund, and provide clear direction on the form of agreement required for the street light investment refund to be paid to a party. The Commission expects that Fortis will consult with parties, and amend the language in the UEDS Agreement, the Quotation Letter and the Municipal Approval Form, as necessary, to ensure these documents are consistent with the T&Cs.

4 Cost recovery for municipalities and developers

22. Both the municipalities and the developers have sought recovery of their costs of participating in this proceeding.²³ The Commission reminds the parties that both the developers and the municipalities are ineligible to claim costs pursuant to Section 4 of Rule 022: *Rules on Costs in Utility Rate Proceedings*. Although the Commission does have broad discretion to make cost orders under Section 21 of the *Alberta Utilities Commission Act*, it is not persuaded to exercise such discretion in this proceeding. Accordingly, the parties are not entitled to cost recovery in this proceeding.

5 Order

23. It is hereby ordered that:

- (1) FortisAlberta Inc. shall pay any outstanding and future street light investment refunds to the applicable municipality in instances where the developer and

²³ Exhibit 27067-X0040, Airdrie and Alberta Municipalities argument, paragraph 74; Exhibit 27067-X0041, BILD Alberta argument, paragraph 53.

municipality are in dispute, until such time as its Customer Terms and Conditions of Electric Distribution Service are modified and approved by the Commission.

- (2) FortisAlberta Inc. shall file a proposal to modify its Customer Terms and Conditions of Electric Distribution Service as soon as practicable but no later than October 1, 2022, either by way of a stand-alone application or by including these changes in some other proceeding dealing with Fortis's T&Cs, to address the issue noted in this decision respecting the payment of the street light investment refund in new residential subdivisions.

Dated on July 11, 2022.

Alberta Utilities Commission

(original signed by)

Carolyn Dahl Rees
Chair

(original signed by)

Matthew Oliver, CD
Commission Member

(original signed by)

John McCarthy
Acting Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
FortisAlberta Inc. (Fortis)
Building Industry and Land Development Association Alberta (BILD Alberta) Reynolds, Mirth, Richards & Farmer LLP
City of Airdrie (Airdrie) MLT Aikins LLP
Rural Municipalities of Alberta
City of St. Albert

<p>Alberta Utilities Commission</p> <p>Commission panel</p> <p style="padding-left: 40px;">C. Dahl Rees, Chair</p> <p style="padding-left: 40px;">M. Oliver, CD, Commission Member</p> <p style="padding-left: 40px;">J. McCarthy, Acting Commission Member</p> <p>Commission staff</p> <p style="padding-left: 40px;">N. Sawkiw (Commission counsel)</p> <p style="padding-left: 40px;">A. Corsi</p>

Appendix 2 – Summary of Commission directions

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

1. The Commission directs Fortis to revise its current process and relevant documents and to file a proposal to modify its T&Cs so that the T&Cs clearly (i) set out the street light investment refund entitlement; (ii) set out the form of agreement required when the refund is to be assigned to a party other than the municipality; and (iii) revise the UEDS Agreement, the Quotation Letter and the Municipal Approval Form to ensure consistency with the revised T&Cs. paragraph 2
2. The Commission acknowledges Fortis’s submission that the intention of its T&Cs is to distinguish the street light investment from other rate class investment payments, and to facilitate an election of the entitlement to the street light investment refund, subject to agreement between developer and municipality. As discussed above, the T&Cs, the UEDS Agreement, the Quotation Letter and the Municipal Approval Form all contemplate the municipality as the more typical recipient of the street light investment refund. The Commission has also considered that with the street light investment refund being primarily directed to municipalities for nearly a decade, maintaining this pattern of practice at this time should minimize the disruptions to the established procedure . Accordingly, the Commission will maintain the status quo in this instance and directs that the street light investment refund be paid to the municipalities where the developer and municipality are in dispute..... paragraph 18
3. In order to provide necessary clarification on this matter, the Commission directs Fortis to file a proposal to modify its T&Cs as soon as practicable but no later than October 1, 2022, either by way of a stand-alone application or by including these changes in some other proceeding dealing with Fortis’s T&Cs. The proposed modifications must clarify entitlement to the street light investment refund, and provide clear direction on the form of agreement required for the street light investment refund to be paid to a party. The Commission expects that Fortis will consult with parties, and amend the language in the UEDS Agreement, the Quotation Letter and the Municipal Approval Form, as necessary, to ensure these documents are consistent with the T&Cs..... paragraph 21