



**Residential Standards of Service and
Maximum Investment Levels – Phase 1**

December 15, 2022

Alberta Utilities Commission

Decision 27658-D01-2022

Residential Standards of Service and Maximum Investment Levels – Phase 1
Proceeding 27658

December 15, 2022

Published by the:

Alberta Utilities Commission
Eau Claire Tower
1400, 600 Third Avenue S.W.
Calgary, Alberta T2P 0G5

Telephone: 310-4AUC (310-4282 in Alberta)
1-833-511-4AUC (1-833-511-4282 outside Alberta)

Email: info@auc.ab.ca

Website: www.auc.ab.ca

The Commission may, within 60 days of the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

Contents

- 1 Decision summary..... 1**
- 2 Background 1**
 - 2.1 Overview of MILs..... 2**
 - 2.2 Current MILs 2**
 - 2.3 Fortis’s MILs 3**
 - 2.4 History of the current proceeding 3**
- 3 The participation of developers in this proceeding..... 4**
 - 3.1 Are developers “customers” under the Electric Utilities Act?..... 4**
 - 3.1.1 Developers as customers..... 4**
 - 3.1.2 The significance of the definition of “customer” in the Electric Utilities Act.. 5**
 - 3.2 Should developers have full participatory rights in this proceeding?..... 7**
- 4 2023 MILs..... 7**
 - 4.1 Determination of the 2023 MILs as final..... 7**
 - 4.2 Melcor’s submissions..... 8**
 - 4.2.1 Separate rate class for Fortis’s 200-amp residential service design standard... 8**
 - 4.2.2 Escalation of Fortis’s residential MILs based on cost of servicing 9**
 - 4.3 2023 MILs..... 10**
- 5 Conclusion 11**
- 6 Order..... 12**
- Appendix 1 – Proceeding participants 13**
- Appendix 2 – Summary of Commission directions..... 14**

1 Decision summary

1. In this decision, the Alberta Utilities Commission considers the 2023 maximum investment levels (MILs) for ENMAX Power Corporation, FortisAlberta Inc., EPCOR Distribution & Transmission Inc. and ATCO Electric Ltd. (collectively, the electric distribution facility owners or DFOs). For the reasons that follow, the value of 2023 MILs for each DFO will be set by escalating the 2022 MILs by inflation. The DFOs are directed to file updated investment schedules reflecting the revised MILs based on this escalation by December 19, 2022. Provided the DFOs' 2023 MIL to be filed in the updated investment schedules complies with the Commission directions in this decision, the revised MILs are approved as final, effective January 1, 2023.

2 Background

2. The Commission previously indicated this proceeding would progress in two phases: first, the Commission would set 2023 MILs; second, the Commission would hold a more extensive proceeding re-examining the principles underlying MILs for subsequent years.¹ The first phase allowed for comments from parties on the setting of 2023 MILs.

3. The submissions of some parties, and in particular the submissions of Melcor Developments Ltd., have been of assistance to the Commission when considering whether the status quo for MILs should be maintained. Already, the parties have identified potential changes to MILs for the second phase of the proceeding, including the possibility that developers may not be entitled to MILs,² and the costs of connection infrastructure could constitute no cost capital for the DFOs.³ The Commission looks forward to further evidence and analysis on these issues. However, as stated by the Commission as the outset of this proceeding, in light of the time and resources required to conduct a proceeding to fully examine the principles underlying MILs and to set new MILs, any fundamental changes to MILs to be considered in the second phase of the proceeding will not be implemented until 2024.⁴ This will allow the Commission to fully test the evidence of parties regarding MILs from 2024 onward, particularly because it will take time for parties to retain experts as needed and prepare relevant evidence.

4. This decision considers the extent of developers' participation in the proceeding and the setting of 2023 MILs. In the remainder of this section, the Commission briefly contextualizes MILs, and the history related to this proceeding. Following this section, the Commission: (i) considers the definition of "customer" under the *Electric Utilities Act*, and grants developers full participation rights in both phases of this proceeding; and (ii) rules on the 2023 MILs of the

¹ Exhibit 27658-X0004, paragraph 4.

² Exhibit 27658-X0025, PDF page 7.

³ Exhibit 27658-X0027, paragraph 8.

⁴ Exhibit 27658-X0004, paragraph 3.

DFOs. Ultimately, the Commission concludes that: (a) 2023 MILs should be escalated by inflation and set on a final basis, (b) 2023 MILs for Fortis’s residential class should not be bifurcated into separate MILs for 100 amp and 200 amp services, and (c) Fortis’s 2023 MILs will be escalated on the same basis as all other DFOs.

2.1 Overview of MILs

5. In Alberta, a MIL is the maximum amount that a DFO can contribute toward the cost of connecting a new customer to its system. Any remaining connection costs fall to the individual customer as a customer contribution. MILs are set amounts, approved as part of each DFO’s terms and conditions of service.

6. In the case of Fortis, ATCO Electric and EPCOR, individual developers are responsible for the construction of electric utility infrastructure inside the new residential developments within their service areas. After construction is complete, the developer passes ownership of this infrastructure back to the DFO, and receives compensation (determined with reference to the approved MILs) from the DFO. Any costs in excess of the MILs fall to the developer.

7. MILs were developed under cost-of-service (COS) regulation. In the past, MILs have allowed connecting customers and developers of new subdivisions to recover some or all of their connection costs from the DFO. Under COS regulation, the MIL was generally related to the concept of prudent investment by utilities in new services and was also related to the concept of appropriate levels of customer contributions. The DFO recovered its approved investment levels and a reasonable return on the investment over time through the rates that it charged to all customers. New customers were incented to consider the costs of connection when, for instance, they were located some distance from a utility line. The additional costs above the utility investment level were the responsibility of those customers, and were not shared among all customers. In this way, MILs also acted as price signals to end-use customers.

8. The economic impact of these considerations in setting MILs may be much greater in the future, as technological developments may substantially increase connection costs. The Commission is aware of the complexity of these challenges and has deferred a determination on their merits to the second phase of this proceeding to allow a full consideration of expert and other evidence on these matters. For this reason, the Commission has not substantively revisited the fundamental principles of MILs and their continued applicability in this decision in respect of 2023 MILs.

2.2 Current MILs

9. The MILs currently in place represent values that were set under COS regulation, and subsequently escalated according to the parameters of the performance-based regulation (PBR) plans in place in Alberta. In the first PBR term (PBR1) the Commission determined MILs should be subject to the same incentives as other capital costs faced by DFOs. Accordingly, the

Commission escalated MILs by an inflation factor (I) less a productivity factor (X).^{5,6} In the most recent PBR term (PBR2, for 2018-2022), MILs were once again escalated in the same way.⁷

2.3 Fortis's MILs

10. The recent history of Fortis's MILs has differed slightly from other DFOs. In 2010, Fortis proposed an increase to its MILs based on a sample of one subdivision within its service territory. The Commission stated that:

... given the breadth and diversity of [Fortis's] serving territory, a sample of one subdivision may not be sufficiently representative and a more extensive study encompassing more than one subdivision should be prepared.⁸

11. The Commission rejected the MILs applied for by Fortis, but allowed an increase of Fortis's 2010 MILs by 10 per cent in 2010 to reflect the impacts of inflation and higher construction costs. The Commission stated that if Fortis sought a greater increase of residential MILs in its next general tariff application, it was required to provide a more extensive cost study based on a larger sample of subdivisions representative of its service territory.⁹

12. In PBR1, the Commission approved an escalation of Fortis's residential and street lighting MILs by I-X plus 10 per cent on the basis that this additional escalation was necessary to bring Fortis's MILs in line with other electric DFOs.¹⁰

13. Fortis requested to discontinue escalating MILs by an extra 10 per cent beyond I-X for PBR2.¹¹ Accordingly, for 2018-2022, Fortis's MILs were escalated in the same way as the other electric DFOs (i.e., adjusted annually by I-X).

2.4 History of the current proceeding

14. On September 28, 2022, the Commission initiated a proceeding on residential standards of service and MILs. This proceeding followed the consultation introduced in Bulletin 2022-03.¹² The topics of discussion for this consultation included the basic design standards for new home construction and a methodology to set the MILs for the electric DFOs starting in 2023.

15. Commission staff facilitated consultations with electric DFOs, the building and development community, municipalities, and consumer groups from March 9 to June 22, 2022.

⁵ Decision 2012-237: Rate Regulation Initiative, Distribution Performance-Based Regulation, Proceeding 566, Application 1606029, September 12, 2012, paragraph 849.

⁶ With the exception of the MILs for Fortis, which are addressed in the following section.

⁷ Decision 20414-D01-2016 (Errata): 2018-2022 Performance-Based Regulation, Proceeding 20414, February 6, 2017.

⁸ Decision 2010-309: FortisAlberta Inc, 2010-2011 Distribution Tariff – Phase I, Proceeding 212, Application 1605170, July 6, 2010, paragraph 51.

⁹ Decision 2010-309, paragraph 53.

¹⁰ Decision 2012-237, paragraph 850.

¹¹ Proceeding 22394, Rebasement and setting the going-in rates for the 2018-2022 PBR plans, Exhibit 22394-X0033, 2017-04-21 FortisAlberta Next Generation PBR compliance filing, paragraphs 44-46.

¹² 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.

After reviewing the materials gathered through the consultation process,¹³ the Commission considered that it would benefit from further evidence and initiated the current Proceeding 27658.¹⁴

16. The Office of the Utilities Consumer Advocate (UCA), ENMAX, EPCOR, the Alberta Federation of Rural Electrification Associations (AFREA), The City of Calgary, Melcor, Alberta Municipalities, the Building Industry and Land Development Alberta (BILD Alberta), Anthem Properties and ATCO Electric registered to participate in the proceeding. Out of those participants, the UCA, ENMAX, EPCOR, AFREA, Melcor, BILD Alberta and ATCO Electric filed submissions related to the setting of 2023 MILs.

17. The Commission has 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.

3 The participation of developers in this proceeding

18. In its letter of October 27, 2022, the Commission sought further input from parties regarding the participation of developers in this proceeding.¹⁵ The Commission was seeking additional information to support its understanding of what (if any) obligations the Commission has to developers, and whether the Commission should exercise its discretion to allow developers to participate. For the reasons that follow, the Commission exercises its discretion to grant developers participatory rights in this proceeding, but finds they are not “customers” under the *Electric Utilities Act*.¹⁶

3.1 Are developers “customers” under the Electric Utilities Act?

3.1.1 Developers as customers

19. When interpreting enactments, the words of the enactment must be read “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”¹⁷ That is, the words of the enactment must be interpreted consistently with text, context, and purpose, with a view to discerning legislative intent.¹⁸

20. Turning to the specific definition of customers, the *Electric Utilities Act* states a customer “means a person purchasing electricity for the person’s own use.”¹⁹ Electricity is defined as “electric energy, electric power, reactive power or any other electromagnetic effects associated with alternating current or high voltage direct current electric systems.”²⁰ The word “means” in a statutory definition generally indicates the definition is exhaustive.²¹ Thus, in the

¹³ Stakeholder submissions for this consultation can be found on the Engage platform on the AUC’s website.

¹⁴ Exhibit 27658-X0004, AUC letter - Proceeding to determine MILs starting in 2023, paragraph 3.

¹⁵ Exhibit 27658-X0021, AUC letter – Direction on further process and extension request, paragraph 9.

¹⁶ *Electric Utilities Act*, Section 1(1)(h).

¹⁷ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, paragraph 21.

¹⁸ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, paragraphs 118-121.

¹⁹ *Electric Utilities Act*, Section 1(1)(h).

²⁰ *Electric Utilities Act*, Section 1(1)(p).

²¹ *Enbridge Income Fund Holdings Inc*, 2010 ABQB 274, paragraph 13.

Electric Utilities Act the text of the definition of “customer” strongly supports the conclusion that the term “customer” only contemplates end-use customers who consume electric energy.

21. This interpretation is consistent with the identification of other entities in the *Electric Utilities Act* by definitions that are not directly tied to end-use, such as “electricity market participants,”²² and with other regulations that contemplate a distinction between “customers” and entities that are not end-use consumers.²³ It is also consistent with how the term “customer” is incorporated into another important definition in the *Electric Utilities Act*:

“electric distribution service” means the service required to transport electricity by means of an electric distribution system ... to **customers**;²⁴

22. With respect to context and purpose, one of the purposes of the *Electric Utilities Act* is to “to enable **customers** to choose from a range of services in the Alberta electric industry developed by a competitive electricity market, and to receive satisfactory service” [emphasis added].²⁵ The *Electric Utilities Act* is also public utilities legislation, that was initially drafted to address problems associated with natural monopolies providing critical public services to end-use consumers.²⁶

23. Considering this definition of “customer” in light of the text, context, and purpose of the statute, the Commission therefore finds that the term “customer” under the *Electric Utilities Act*, contemplates the end user of electricity, for whose long-term consumption the electrical infrastructure is installed. In applying the *Electric Utilities Act*, to the question of MILs and who is a customer, the term “customer” does not include developers, in so far as developers are not ultimately the end-use customers.

24. This conclusion is consistent with the positions taken by the parties in this proceeding. Several parties, including developers themselves, noted that developers do not technically meet the definition of “customers”²⁷ under the *Electric Utilities Act*.

3.1.2 The significance of the definition of “customer” in the *Electric Utilities Act*

25. The term “customer” and the related term “electric distribution service” are embedded in many provisions of the *Electric Utilities Act* relevant to the issues to be decided in this proceeding. To illustrate how electric distribution service and service to customers by the DFO is regulated, the following sections of the *Electric Utilities Act* are instructive:

A person wishing to obtain electricity for use on property must make arrangements for the purchase of **electric distribution service** from the owner of the electric distribution system in whose service area the property is located.²⁸

²² *Electric Utilities Act*, Section 1(1)(p.2).

²³ For example, see Section 3(2) of the *Billing Regulation, 2003* under the *Electric Utilities Act*, that specifies that direct charges can be billed to different entities, including developers under part (b).

²⁴ *Electric Utilities Act*, Section 1(1)(l.1).

²⁵ *Electric Utilities Act*, Section 5.

²⁶ *FortisAlberta Inc v Alberta (Utilities Commission)*, 2015 ABCA 295 at paragraphs 9-11.

²⁷ Exhibit 27658-X0027, paragraph 4; Exhibit 27658-X0025, PDF page 4; and Exhibit 27658-X0026.

²⁸ *Electric Utilities Act*, Section 101(1).

Each owner of an electric distribution system must prepare a distribution tariff for the purpose of recovering the prudent costs of providing **electric distribution service** by means of the owner’s electric distribution system.²⁹

The owner of an electric distribution system has the following duties:

- (a) to provide **electric distribution service** that is not unduly discriminatory;
- (b) to make decisions about building, upgrading and improving the electric distribution system for the purpose of providing safe, reliable and economic delivery of electric energy having regard to managing losses of electric energy to **customers** in the service area served by the electric distribution system...
- (d) if a transmission facility serves only one service area, to arrange for the provision of system access service to **customers** in that service area, other than customers referred to in section 101(2)...
- (f) to maintain information systems relating to the consumption of electricity by **customers**...
- (k) to connect and disconnect **customers** and distributed generation in accordance with the owner’s approved tariff and with principles established by the Commission regarding distributed generation;
- (l) to carry out distribution tariff billing for **electric distribution service** under a distribution tariff;
- (m) to respond to inquiries and complaints from **customers** respecting **electric distribution service**;³⁰

A tariff may provide ... for incentives for efficiencies that result in cost savings or other benefits that can be shared in an equitable manner between the owner of the electric utility and **customers**. [emphasis added]³¹

26. These provisions of the *Electric Utilities Act* primarily contemplate the Commission regulating the relationship between an owner of an electric distribution system, and its customers. It is for this reason that the Commission sought input from the parties on whether or not developers, some of whom have been active in pursuing changes to MILs in the prior consultation and in this proceeding, are “customers.”

27. The Commission notes that since developers are not customers, this may limit their entitlements under specific provisions of the *Electric Utilities Act*, and may impact the weight the Commission allocates to certain interests of developers in the second phase of this proceeding. Further, while developers may have been treated as customers under DFO terms and conditions approved in the past, this does not necessarily mean the developers are a customer for the purposes of any MIL. The Commission panel in this proceeding is not bound by decisions of

²⁹ *Electric Utilities Act*, Section 102(1).

³⁰ *Electric Utilities Act*, Section 105(1).

³¹ *Electric Utilities Act*, Section 120(2)(d).

previous panels related to who is a customer³² and the purpose of this proceeding is to determine the application and amount of MILs in the regulated utility context. Parties can make submissions on the relevance and applicability of past decisions in the second phase of this proceeding.

28. However, for the reasons further explained in the next section, despite the fact that developers may not qualify as “customers,” the Commission has taken the developers’ submissions into account in this decision, and will do so in the next phase of this proceeding.

3.2 Should developers have full participatory rights in this proceeding?

29. Parties registered in this proceeding were unanimous in supporting the further participation of developers. Melcor provided compelling reasons as to why developers should be allowed to participate throughout this proceeding, and made submissions on other important points.³³ The UCA agreed that while developers are not customers, developers can provide relevant information including COS studies and input on building codes.³⁴ The Commission agrees that the continued participation of developers may assist it in making its determinations. As such, the Commission is exercising its discretion to allow developers, including Melcor, Anthem Properties, and BILD Alberta, to participate in this proceeding and affords developers the same participation rights as other parties registered in both phases of this proceeding.

4 2023 MILs

30. In its consideration of 2023 MILs, the Commission considered both evidence on how the 2023 MIL should be set, and whether the MILs should be final or interim. In its letter dated September 28, 2022, the Commission had proposed extending the MILs currently in place by approving the MILs as filed by each of the DFOs and requested comments from parties.³⁵

31. In accordance with the *Electric Utilities Act* and for the reasons that follow, the Commission concludes that based on the evidence and submissions before it in this proceeding: (i) the DFOs’ 2023 MILs will be set by escalating its 2022 approved MILs by the inflation escalator consistent with the approvals in the COS rebasing applications, and (ii) the 2023 MILs are final.

4.1 Determination of the 2023 MILs as final

32. DFOs submitted that setting MILs on an interim basis would create a significant administrative burden, as well as uncertainty for all parties, as parties would not know how costs would be allocated when they initiated a project.³⁶ DFOs also highlighted the risk that they might be unable to collect the difference, should the final determination result in a decrease to MILs. As a result, the DFOs advocated for the approval of 2023 MILs on a final basis.

33. Similar issues have been considered by the Commission before. In its 2012 distribution tariff rate filing, Fortis sought to have changes made to its approved terms and conditions on an interim refundable basis, including MILs. The Commission noted the terms and conditions dealt

³² *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, paragraphs 129-132.

³³ Exhibit 27658-X0027, paragraphs 31-36.

³⁴ Exhibit 27658-X0025, UCA Submissions on 2023 MILs, PDF pages 5-7.

³⁵ Exhibit 27658-X0004, AUC letter- Proceeding to determine MILs starting in 2023, paragraph 5.

³⁶ Exhibit 27658-X0016, 2020-10-14 Joint Utilities MILS letter, PDF page 3.

with customer-specific matters, and that if the Commission approved the MILs on an interim-refundable basis, it would be necessary to true up these amounts if the Commission's subsequent decision differed from the interim decision. The Commission reasoned this would require Fortis to track this information in the interim, which would likely be difficult, costly and inconvenient for customers. Accordingly, the Commission concluded interim MILs increases were not in the public interest, and declined to grant them.³⁷

34. Melcor supported the setting of 2023 MILs on an interim basis. Melcor submitted that the increased cost of servicing resulting from Fortis's current design standards results in real harm to developers.³⁸ However, Melcor also suggested that the question of how or whether the increased costs incurred by Melcor are flowed through in lot pricing should not be a consideration in the proceeding.³⁹ Given this, the Commission is not persuaded by Melcor's argument that 2023 MILs should be set on an interim basis, because the extent that developer costs and lot pricing should be examined in setting MILs, particularly for the setting of 2023 MILs, is unclear to the Commission.

35. As argued by the DFOs, and as the Commission has previously found, since MILs are specific to individual customers and developers, tracking these funds and subsequently recalculating them and conducting a true-up would impose a significant and costly administrative burden on the DFOs. It could be difficult for DFOs to collect from developers and customers, if the ultimate true-up would be to the DFOs' credit. Administrative costs would be passed on to customers, without demonstrable benefits. Interim rates also create uncertainty, which is not in the interests of developers, customers or the DFOs. For these reasons, the Commission finds that setting 2023 MILs on a final basis is just and reasonable. Accordingly, the 2023 MILs as set out in this decision are approved as final.

4.2 Melcor's submissions

36. The DFOs and AFREA proposed that the 2023 MILs be set based on an escalation by the PBR inflation (I) factor for 2023,⁴⁰ while Melcor requested MILs be revised to align with its actual costs of servicing new residential developments, among other things.⁴¹ In this subsection of the decision, the Commission will consider Melcor's arguments.

4.2.1 Separate rate class for Fortis's 200-amp residential service design standard

37. Melcor submitted there was sufficient evidence to support a separate MIL for 200-amp residential service for Fortis, based on the increased costs of servicing at 200 amps.⁴² However, Melcor also noted that Fortis's 200-amp design standard only applies to houses larger than 2,000 square feet.⁴³ As discussed below, the relationship between MILs and actual costs requires further assessment and consideration by the Commission, and will be considered in the second phase of this proceeding. Without a comprehensive review of principles underlying MILs and

³⁷ Decision 2011-509: FortisAlberta Inc. – 2012 Distribution Tariff Rate Filing, Proceeding 1534, Application 1607832, December 21, 2011, paragraph 30.

³⁸ Exhibit 27658-X0020, Melcor SIP letter, paragraph 15.

³⁹ Exhibit 27658-X0027, Melcor responses, paragraph 30.

⁴⁰ Exhibit 27658-X0016, Joint Utilities MILS letter, PDF page 2.

⁴¹ Exhibit 27658-X0027, 2022-11-16 Melcor responses to October 27, 2022 Commission questions, paragraph 47.

⁴² Exhibit 27658-X0027, Melcor responses, paragraph 50.

⁴³ Exhibit 27658-X0027, Melcor responses, paragraph 47.

review of related evidence on this issue, the Commission is not convinced of the need to implement a 200-amp MIL for Fortis in 2023.

4.2.2 Escalation of Fortis’s residential MILs based on cost of servicing

38. Melcor submitted that the 2023 MILs for Fortis’s residential class should be set separately from the other DFOs, and that Fortis’s MILs should be determined based on the actual cost of servicing, inclusive of Fortis’s use of 200-amp servicing and conduit, as outlined in its design standards.⁴⁴ In providing its suggested 2023 MIL rate, Melcor relied on evidence⁴⁵ from Proceeding 26649 in which both Fortis and Melcor provided estimates of the incremental cost resulting from the use of conduit and 200-amp servicing.⁴⁶

39. Specifically, Melcor relied on evidence in that proceeding, that:

- Melcor was advised by its construction contractors that the average estimate incremental cost of 200-amp service is in the order of \$1,200 to \$1,350 per lot.⁴⁷
- The incremental cost of installing service cable in individual ducts was estimated to be \$950 per lot, based on quotes from its contractor for two development projects,⁴⁸ and subsequently determined to be \$1,028 to \$1,350 per lot for these projects.⁴⁹
- Fortis estimated the incremental cost of installing service cable in ducts was approximately \$500 per lot.⁵⁰

40. The Commission is not persuaded that Fortis’s 2023 MILs should be set based on the estimates of actual costs provided by Melcor for the following reasons.

41. MILs apply across a DFO’s service area. For this reason, as the Commission has previously held in respect of Fortis’s MILs, a substantial increase in Fortis’s MILs should be supported by a study of a variety of development projects, representative of the diverse characteristics found across Fortis’s service area. The Commission has no such study before it, and has only been presented with evidence in relation to two developments, without an explanation of why these developments are representative of Fortis’s service area as a whole. Melcor’s evidence about general increases to its costs may not be representative of developments in Fortis’s service area in general, and do not have the empirical rigour that the Commission has indicated it will generally require.

42. Based on the evidence before it in the current phase of this proceeding, the Commission finds that there is an inadequate basis to depart from current practice by setting 2023 MILs on the basis of Melcor’s estimated costs.

⁴⁴ Exhibit 27658-X0027, 2022-11-16 Melcor responses to October 27, 2022 Commission questions, paragraph 47.

⁴⁵ Exhibit 27658-X0027, Melcor responses, paragraphs 48-52.

⁴⁶ Proceeding 26649, Melcor Entities Complaint regarding FortisAlberta Inc. Maximum Investment Levels, Exhibit 26649-X0065, FortisAlberta Written Response and Evidence, paragraphs 13 and 41.

⁴⁷ Exhibit 27658-X0027, Melcor responses, paragraph 48.

⁴⁸ Proceeding 26649, Melcor Entities Complaint regarding FortisAlberta Inc. Maximum Investment Levels, Exhibit 26649-X0008, Melcor Entities Cover Letter and Complaint Particulars, paragraph 27.

⁴⁹ Exhibit 27658-X0027, Melcor responses, paragraph 49.

⁵⁰ Proceeding 26649, Melcor Entities Complaint regarding FortisAlberta Inc. Maximum Investment Levels, Exhibit 26649-X0065, Fortis evidence, paragraph 41.

4.3 2023 MILs

43. After a review of the submissions from the DFOs, Melcor, the UCA, AFREA and BILD Alberta, the Commission has decided that 2023 MILs should be set based on an escalation of 2022 approved MILs by the inflation escalator consistent with the approvals in the DFOs' 2023 COS rebasing applications.

44. The DFOs and AFREA had proposed that MILs be escalated by a generic inflation factor (I factor), calculated according to methodology set out in the previous PBR terms. This I factor is not the inflation escalator approved in the COS rebasing applications, but rather the I factor that would have been in place, had 2023 rates been established pursuant to PBR2 plans. The DFOs argued that an escalation by I alone, rather than I-X, would more accurately align with the current costs.⁵¹ The UCA disagreed with this stance, arguing that it represents a partial application of I-X and is without precedent.⁵²

45. The Commission agrees with the UCA that I is generally applied in conjunction with the X factor and not as a stand-alone inflation factor. The Commission notes that the use of I alone was considered as part of its finding in Decision 2012-237 and dismissed, based on the finding that MILs should be subject to the same efficiency incentives as any other utility cost.⁵³ More importantly, however, I-X typically applies within a PBR term. As 2023 is a COS year and not part of a PBR term, there is no I factor or X factor applicable to that year. The Commission finds that escalation by the approved inflation escalators used in DFO forecasting for the 2023 COS proceedings is the most appropriate measure by which to escalate MILs for 2023. This inflation escalator reflects the inflationary pressure DFOs are expected to face in 2023, and aligns with how the DFOs' 2023 forecasts were developed. The Commission finds that the use of the inflation escalator is a reasonable compromise to ensure that MILs are appropriately escalated in recognition of inflationary pressures faced by DFOs in 2023, until such time as the Commission can consider the principles and evidence more holistically to determine the best path forward starting in 2024.

46. In the case of Fortis and ATCO Electric, in Decision 26615-D01-2022,⁵⁴ the Commission reviewed in depth and approved COS inflation escalators based on each DFO's actual or forecast salary increases and their forecast of the Alberta Consumer Price Index (CPI). After revisions directed in Decision 26615-D01-2022, the Commission approved inflation escalators of 2.68 per cent for both ATCO Electric and Fortis,^{55 56} calculated as shown below.

Table 1. Fortis and ATCO Electric inflation escalators

	Fortis	ATCO Electric
Forecast Alberta CPI (45%)	2.89%	2.59%
Salary escalation for internal labour (55%)	2.50%	2.75%
Final Inflation Escalator	2.68%	2.68%

⁵¹ Exhibit 27658-X0016, 2022-10-14 Utilities MILs Letter, PDF page 2.

⁵² Exhibit 27658-X0025, UCA Submission on 2023 MILs, PDF page 2.

⁵³ Decision 2012-237: Rate Regulation Initiative, Distribution Performance-Based Regulation, Proceeding 566, Application 1606029, September 12, 2012, paragraph 849.

⁵⁴ Decision 26615-D01-2022: ATCO Electric Ltd., FortisAlberta Inc., 2023 Cost-of-Service Review, Proceeding 26615, July 28, 2022.

⁵⁵ Decision 26615-D01-2022, paragraph 97, Table 9.

⁵⁶ Proceeding 27671, Fortis compliance filing pursuant to Decision 26615-D01-2022, Exhibit 27671-X0005, Appendix B- COST Rebasing Template, Working Paper 1, line 3.

47. Because ENMAX and EPCOR's rebasing process was subject to a negotiated settlement, the Commission did not review and approve a singular inflation escalator for these DFOs. Given that all DFOs considered in this proceeding face inflationary pressures and based on the Commission's observation that the 2023 salary escalations of all four electric DFOs are within a similar range,⁵⁷ the Commission finds it reasonable to apply a 2023 COS inflation escalator of 2.68 per cent for the purpose of setting ENMAX and EPCOR's 2023 MILs.

48. The Commission therefore directs each of the DFOs to recalculate their 2023 MILs based on an escalation of 2022 approved MILs by the inflation escalator of 2.68 per cent. The DFOs should reflect these changes in updated investment schedules filed in this proceeding, by December 19, 2022. Provided the revised MILs are calculated in accordance with the Commission direction, they are approved as final, effective January 1, 2023, with no further dispositions to be issued for the first phase of this proceeding. The Commission will only issue further direction by way of a post-disposition letter if it finds that the revised investment schedules do not comply with the direction contained in this decision.

5 Conclusion

49. In light of the foregoing, and subject to compliance by each of the DFO's with the Commission's direction set out above, the Commission concludes the first phase of this proceeding. The Commission will commence the second phase in due course to address its consideration of MILs for 2024 and future years.

⁵⁷ ENMAX forecast salary escalations between 2.0 and 3.5 per cent: Proceeding 26617, Exhibit 26617-X0022, ENMAX application, paragraph 90; EPCOR forecast salary escalation at 2.5 per cent: Proceeding 26617, Exhibit 26617-X0047, Rebasing Template, Escalation Assumptions.

6 Order

50. It is hereby ordered that:

- (1) Each of the distribution facility owners calculate 2023 maximum investment levels (MILs) by escalating 2022 MILs by the approved 2023 inflation factors, as described in Section 4.3 of this decision. Each of the distribution facility owners are directed to file utility investment schedules with these revised MILs by December 19, 2022. Provided the 2023 MIL to be filed in each of the distribution facility owners' investment schedules complies with the Commission directions contained in this decision, the filed MILs are approved as final, effective January 1, 2023.

Dated on December 15, 2022.

Alberta Utilities Commission

(original signed by)

Carolyn Dahl Rees
Chair

(original signed by)

Kristi Sebalj
Vice-Chair

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Alberta Federation of Rural Electrification Associations (AFREA) Russ Bell & Associates Shores Jardine LLP
Alberta Municipalities
Anthem Properties
ATCO Electric Ltd.
Building Industry and Land Development Association Alberta (BILD Alberta)
ENMAX Power Corporation (ENMAX or EPC)
EPCOR Distribution & Transmission Inc. (EPCOR or EDTI) Borden, Ladner Gervais LLP
FortisAlberta Inc. (Fortis)
Melcor Developments Ltd. Reynolds, Mirth, Richards & Farmer LLP
Office of the Utilities Consumer Advocate (UCA) Brownlee LLP
The City of Calgary (Calgary) McLennan Ross Barristers & Solicitors

Alberta Utilities Commission
Commission panel C. Dahl Rees, Chair K. Sebalj, Vice-Chair
Commission staff A. Sabo (Commission counsel) P. Schembri (Commission counsel) N. Morter S. Abdul-Razzak B. Edwards

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 therefore directs each of the DFOs to recalculate their 2023 MILs based on an escalation of 2022 approved MILs by the inflation escalator of 2.68 per cent. The DFOs should reflect these changes in updated investment schedules filed in this proceeding, by December 19, 2022. Provided the revised MILs are calculated in accordance with the Commission direction, they are approved as final, effective January 1, 2023, with no further dispositions to be issued for the first phase of this proceeding. The Commission will only issue further direction by way of a post-disposition letter if it finds that the revised investment schedules do not comply with the direction contained in this decision..... paragraph 48