



## **EPCOR Distribution & Transmission Inc.**

**Decision on Preliminary Question  
Application for Review of Decision 27653-D01-2022  
2023 Cost-of-Service Compliance Filing and  
2023 Distribution Rates**

**February 23, 2023**

**Alberta Utilities Commission**

Decision 27922-D01-2023

EPCOR Distribution & Transmission Inc.

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2023 Cost-of-Service Compliance Filing and 2023 Distribution Rates

Proceeding 27922

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**1 Decision**

1. In this decision, the Alberta Utilities Commission denies an application by EPCOR Distribution & Transmission Inc. (EDTI) to review Commission Decision 27653-D01-2022.<sup>1</sup>

**2 Background**

2. Decision 27653-D01-2022 (the Decision) concerned EDTI’s 2023 cost-of-service compliance filing and 2023 distribution rates. EDTI was the applicant in that proceeding. EDTI filed its application to review and vary the Decision under Section 10 of the *Alberta Utilities Commission Act* and Rule 016: *Review of Commission Decisions*.

3. In this decision, the member of the Commission panel who authored the original decision will be referred to as the “hearing panel” and the members of the Commission panel considering the review application will be referred to as the “review panel.”

4. In paragraph 53 of the Decision, the hearing panel directed EDTI to include the years impacted by the COVID-19 pandemic in its 2023 residential consumption forecast. EDTI submitted that the hearing panel erred in fact, as the direction should have been for EDTI to exclude the years impacted by the COVID-19 pandemic in its 2023 residential consumption forecast.

5. In reaching its determinations, the review panel has reviewed the pertinent portions of the Decision and relevant materials comprising the record of this proceeding and of Proceeding 27653. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the review panel’s reasoning relating to a particular matter and should not be taken as an indication that the review panel did not consider all relevant portions of the several records with respect to the matter.

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<sup>1</sup> Decision 27653-D01-2022: EPCOR Distribution & Transmission Inc., 2023 Cost-of-Service Compliance Filing and 2023 Distribution Rates, Proceeding 27653, December 13, 2022.

### 3 The Commission's review process

6. The Commission's authority to review its own decisions is discretionary and is found in Section 10 of the *Alberta Utilities Commission Act*. Rule 016 sets out the process for considering an application for review.

7. The review process has two stages. In the first stage, a review panel decides if there are grounds to review the original decision (the preliminary question). If the review panel decides to review the decision, it moves to the second stage where it decides whether to confirm, vary, or rescind the original decision (the variance question).

8. In its review application, EDTI relied on Section 5(1)(a) of Rule 016, which states:

5(1) The Commission may grant an application for review of a decision, in whole or in part, where it determines that the review applicant has demonstrated:

(a) The Commission made an error of fact, or mixed fact and law where the legal principle is not readily extricable, which is material to the decision and exists on a balance of probabilities.

9. In the alternative, EDTI submitted that the review panel should review and vary the Decision on its own motion. Under Section 2(1) of Rule 016:

Notwithstanding sections 3 to 5 of these rules, the Commission may review a decision, in whole or in part, on its own motion at any time for any reason.

### 4 Review panel findings

#### 4.1 Section 5(1)(a) grounds – error of fact

10. The review application concerns the hearing panel's findings in Section 4.3.1 (titled, "Forecast billing determinants for residential class") of the Decision. In paragraph 53 of the Decision, the hearing panel directed EDTI to include the actual residential consumption during the COVID-19 pandemic years of 2020 and 2021 in the calculation of its 2023 residential consumption forecast:

53. Due to the above, EPCOR's 2023 residential consumption forecast is denied, and EPCOR is directed to use the growth rate average of the last 10 years of actual growth (2012-2021) and apply that to the most recent 2022 residential consumption forecast including updates for September and October actual consumption to obtain the revised 2023 residential consumption forecast.

11. EDTI submitted that the hearing panel made an error of fact in paragraph 53, that exists on a balance of probabilities. This is because, in EDTI's view, there was a "clear intention" in the hearing panel's reasoning that EDTI's 2023 residential consumption forecast should be based

on actual residential energy consumption for the years 2010-2019.<sup>2</sup> Specifically, EDTI advised that the direction in paragraph 53 is inconsistent with the following:

(1) Figure 1 in the Decision, titled “EPCOR Residential class consumption trend,” is a graph prepared by Commission staff showing the residential class historical consumption and the forecast values submitted by EDTI in Proceeding 27653 by year. EDTI submitted that it understood that the dashed trend line in Figure 1 was produced using the Trendline function in Excel based on 2010-2019 data only. EDTI advised that it understood the dashed trend line to be the “historical trend,” referenced elsewhere by the hearing panel in Section 4.3.1 of the Decision.

(2) EDTI advised that the hearing panel expressly acknowledged the COVID-19 pandemic’s influence on consumption in 2020-2022 and its exclusion of those years from its calculation of the historical trend that it used to assess the reasonableness of EDTI’s forecast.

(3) The hearing panel’s intention in the Decision that EDTI’s 2023 residential rate class consumption should reflect the 2010-2019 historical trend.

12. In addition, EDTI submitted that the alleged error is material. EDTI advised that including the 2020 and 2021 pandemic years in the 2023 residential consumption forecast results in a revenue shortfall in 2023 of \$952,348 which will be carried forward through the entirety of the next five-year performance-based ratemaking term, commencing January 1, 2024.

13. The review panel is not persuaded that EDTI has demonstrated that an error of fact exists on a balance of probabilities as required by Section 5(1)(a) of Rule 016.

14. The review panel notes that the hearing panel had actual data from 2010 to August 2022 on the record of Proceeding 27653,<sup>3</sup> meaning that the finding in paragraph 53 of the Decision is an outcome that was available based on the facts in that proceeding. In addition, the review panel considers that the finding in paragraph 53 is drafted in a precise and deliberate manner. For example, the hearing panel repeats its finding that the forecast should include the COVID-19 pandemic years of 2020 and 2021 twice in paragraph 53, as evident by the statement “use the growth rate average of the last 10 years of actual growth” and the express use of numbers to clarify the time period that the hearing panel is referring to “(2012-2021).”

15. The review panel observes that in paragraph 49 of the Decision, the hearing panel states, “Figure 1 below is a graph prepared by Commission staff showing the residential class historical consumption and the forecast values submitted by EPCOR in this proceeding by year,” and then goes on to advise of EDTI’s megawatt hour forecast for each of the years 2022, 2023, and 2024. The review panel notes there is nothing in this paragraph to indicate that the hearing panel replaced historical consumption (actuals) for 2020 and 2021 with forecasts made by Commission staff or by EDTI with respect to the dashed trend line in Figure 1, or that the trend line was

<sup>2</sup> Exhibit 27922-X0002.01, EDTI Review and variance application, paragraph 19.

<sup>3</sup> Exhibit 27653-X0002, EDTI Compliance application, paragraphs 11 and 22. In response to an information request from the Commission, EDTI provided updated actual monthly consumption data to the end of August 2022: Exhibit 27653-X0040, EDTI-AUC-2022OCT21-001-006, PDF pages 17-18.

limited to data from 2010 to 2019. In addition, EDTI submitted that it understood that the dashed trend line in Figure 1 was produced using the Trendline function in Excel using only 2010-2019 data,<sup>4</sup> as evident by EDTI's visual approximation of data results using the LINEST function using only 2010-2019 data.<sup>5</sup> While the review panel acknowledges that the trend line in the Decision and Figure 3.1.3-1 of the review application are similar visually, this must be weighed against the possibility of making erroneous assumptions in drawing quantitative inferences by visual inspection alone. In the review panel's view, this makes EDTI's submission in this regard less compelling.

16. Further, the review panel observes that there is no express statement in Section 4.3.1 of the Decision that the hearing panel found that: (i) it is not reasonable for EDTI to include; or ii) EDTI must not include; the 2020 and 2021 pandemic years in EDTI's 2023 residential consumption forecast.

17. The Commission has consistently held that a review panel's task is not to retry the application based upon its own interpretation of the evidence, nor is it to second guess the weight assigned by the hearing panel to various pieces of evidence.<sup>6</sup>

18. Taking into account the above considerations, the review panel is not persuaded that EDTI has demonstrated that an error of fact exists on a balance of probabilities as required by Section 5(1)(a) of Rule 016. EDTI's request for a review on this ground is denied.

#### 4.2 Section 2 grounds

19. EDTI, in the alternative to its Section 5(1)(a) grounds, and for the same reasons, submitted that the Commission should review and vary Section 4.3.1 of the Decision on its own motion.

20. The Commission has previously stated that, given the important principle of finality in administrative decision-making, it should only exercise its discretion under Section 2 of Rule 016 in exceptional or extraordinary circumstances:

30. In exercising its broad discretion under Sections 10 and 23 of the *Alberta Utilities Commission Act*, and Sections 2 and 3 of Rule 016, the Commission maintains the view cited above that finality is an important principle in administrative decision making because it provides certainty to those parties who participated in or are impacted by the proceeding. It also provides certainty to all stakeholders in the regulatory process in general. When considering a motion to permit the filing of a review application outside of the permitted period or whether to commence a Commission initiated review proceeding,

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<sup>4</sup> Exhibit 27922-X0002.01, EDTI Review and variance application, paragraph 22.

<sup>5</sup> EDTI explained that the LINEST function performs a least squares regression analysis of the data. See Exhibit 27922-X0002.01, EDTI Review and variance application, paragraph 23.

<sup>6</sup> Decision 26757-D01-2021: FortisAlberta Inc., Decision on Application for Review and Variance of Decision 25916-D01-2021 2022 Phase II Distribution Tariff Application, Proceeding 26757, December 9, 2021, paragraph 24; Decision 26660-D02-2021: Kalina Distributed Power Limited, Campus Energy Partners LP, Lionstooth Energy Inc., Signalta Resources Limited, BluEarth Renewables Inc. and Elemental Energy Renewables Inc. Decision on Preliminary Question Applications for Review of Decision 26090-D01-2021 Distribution-Connected Generation Credit Module for Fortis's 2022 Phase II Distribution Tariff Application, Proceeding 26660, October 14, 2021, paragraph 14.

the Commission should only exercise its discretion in exceptional or extraordinary circumstances.<sup>7</sup>

21. The review panel finds the basis of the request, which is for the Commission to review an error of fact that is not made out on a balance of probabilities, on its own motion, does not constitute the exceptional or extraordinary circumstances necessary to justify the exercise of its discretion under Section 2 of Rule 016.

22. Accordingly, the review panel denies EDTI's request.

## **5 Decision**

23. In answering the preliminary question, the review panel finds that EDTI has not met the requirements for a review of Decision 27653-D01-2022 and the application for review is dismissed.

Dated on February 23, 2023.

### **Alberta Utilities Commission**

*(original signed by)*

Cairns Price  
Panel Chair

*(original signed by)*

Matthew Oliver, CD  
Commission Member

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<sup>7</sup> Decision 23479-D01-2018: ENMAX Power Corporation, Request for Leave to File an Application for Review of Decision 20414-D01-2016 (Errata), Proceeding 23479, June 20, 2018, paragraph 30.