



FortisAlberta Inc.

Compliance Filing Pursuant to Decision 27067-D01-2022

February 27, 2023

Alberta Utilities Commission

Decision 27682-D01-2023

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Proceeding 27682

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The Commission may, no later than 60 days from 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.

1 Decision summary

1. In this decision, the Alberta Utilities Commission determines that FortisAlberta Inc. did not comply with directions 1 and 3 from Decision 27067-D01-2022, which concern to whom Fortis pays its streetlight investment in new residential developments.¹ Fortis is not required to submit another compliance filing. The Commission has decided to hear issues concerning streetlight investment, on a province-wide basis, in Proceeding 27658.

2 Introduction and procedural background

2.1 Background on Proceeding 27067

2. In new residential developments in Fortis's service area, the developer is responsible for funding and managing the design, construction and installation of electrical facilities in accordance with Fortis's standards. This includes the installation of streetlights. Fortis invests in the cost of streetlights pursuant to its Customer Contribution Schedules,² in Fortis's Commission-approved Customer Terms and Conditions of Electric Distribution Service (T&Cs).³

3. The T&Cs provide that Fortis's investment is either paid to the developer or to the applicable municipality, if so directed by an agreement between the developer and the municipality.⁴ Fortis's capital investment is then included in its rate base and recovered from customers 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 an Underground Electrical Distribution System Services Agreement⁵ (UEDS Agreement) and accept in writing the proposal as set out in Fortis's Quotation Letter describing, among other things, the customer contribution for the cost of new electrical facilities. 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 streetlight fixture connected to its electrical distribution system, unless otherwise directed by the municipality. Later, the municipality completes a Municipal Approval for Electric Facilities Installation form⁶

¹ Decision 27067-D01-2022: FortisAlberta Inc., Application Respecting the Refund of the Fortis Street Light Investment, Proceeding 27067, July 11, 2022, paragraph 18.

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-X0002, PDF page 5.

⁵ Proceeding 27067, Exhibit 27067-X0003, Appendix A - UEDS Agreement.

⁶ Proceeding 27067, Exhibit 27067-X0004, Appendix C.

(Municipal Approval Form), which requires the municipality to confirm to whom Fortis should direct its streetlight investment.

5. On December 17, 2021, Fortis filed an application with the Commission in Proceeding 27067 seeking the Commission's advice and direction to whom it should pay its streetlight investment if there is a dispute between a developer and municipality regarding whether an agreement has been reached as to entitlement to the payment. The application was apparently the result of a dispute over payment of the investment amount.

6. In Decision 27067-D01-2022, the Commission directed that the streetlight investment be paid to the applicable municipality where the developer and municipality are in dispute.⁷ The Commission further directed that, until such time as Fortis revised and clarified its T&Cs, the streetlight investment refund in similarly affected developments should continue to be paid to municipalities where the developer and municipality are in dispute.⁸ Finally, the Commission directed Fortis to file a proposal to modify its T&Cs to clarify entitlement to its streetlight investment, and provide clear direction on the form of agreement required for the streetlight investment after consulting with the parties. The proposal was to be filed as soon as practicable by either stand-alone application or in some other proceeding.⁹

2.2 Compliance application: Proceeding 27682

7. On September 29, 2022, Fortis made a compliance filing in response to the Commission direction in Decision 27067-D01-2022. In its filing, Fortis revised Section 7.2.3 of the T&Cs so that its streetlight investment is always paid to the municipality where the new residential development is located.¹⁰ Fortis contended that removing all language regarding a potential agreement between the developer and municipality from Section 7.2.3 of the T&Cs reduced complexity and regulatory burden associated with future disputes.¹¹

8. Fortis proposed a revised UEDS Agreement, Quotation Letter and the Municipal Approval Form to ensure consistency with the revised T&Cs. These revised instruments provide that the streetlight investment shall be paid to the applicable municipality and remove the ability for the municipality to direct Fortis's investment to another person.¹²

9. Fortis asserted that it complied with the Commission's directions from Decision 27067-D01-2022.

10. On October 3, 2022, the Commission issued a notice of application establishing Proceeding 27682 to hear Fortis's compliance filing. The Commission received statements of intent to participate (SIPs) from the City of Airdrie and Alberta Municipalities (the municipalities); and Melcor Developments Ltd., Anthem United and Qualico Communities (the developers).

⁷ Decision 27067-D01-2022, paragraph 18.

⁸ Decision 27067-D01-2022, paragraph 19.

⁹ Decision 27067-D01-2022, paragraph 21.

¹⁰ Exhibit 27682-X0001, application, paragraph 14.

¹¹ Exhibit 27682-X0001, application, paragraph 18.

¹² Exhibit 2782-X0004, UEDS Agreement (blackline), Section 10.3; Exhibit 2782-X0004, UEDS Municipal Approval Form (blackline), page 4; Exhibit 2782-X0004, UEDS Quote Letter (blackline), page 2.

11. The developers asserted that entitlement to Fortis's streetlight investment remained a live issue after Decision 27067-D01-2022 as the Commission was not prescriptive on the end state of payment arrangements. The developers requested clear direction from the Commission that entitlement to Fortis's streetlight investment on a prospective basis remains a live issue in this proceeding, and a clear ruling that developers are entitled to it, having regard to its purpose. The developers also requested that the Commission direct Fortis to revise its T&Cs accordingly.¹³

12. The municipalities stated that they would submit evidence in relation to the form of an agreement between the municipalities and developers for the payment of Fortis's streetlight investment to the subdivision developer if and when such payment is agreed to by the parties. Further, the municipalities stated that they wished to submit written argument and reply argument to summarize their position on the issues before the Commission and to respond to any arguments presented by other parties in the proceeding.¹⁴

13. The Commission established a process schedule that included information requests from the Commission to, and responses from, Fortis, and written argument and reply argument from all parties. The Commission also stated that the issues brought forward by the developers and the municipalities in their SIPs were broader than the scope of the present compliance proceeding and, in the case of the developers, were similar to the issues that they raised in Proceeding 27067. The Commission therefore limited the participation of the developers and the municipalities in this proceeding to the issue of Fortis's compliance with the Commission's directions in Decision 27067-D01-2022. The Commission stated that this does not extend to broader arguments of who should receive payment of the streetlight investment refund.¹⁵

14. On November 7, 2022, the developers filed a motion and requested that the Commission broaden the scope of the proceeding, asserting that the scope of the Commission's findings in Decision 27067-D01-2022 were narrow and unclear, and not intended to fully dispose of the issue of the entitlement to the streetlight investment on a prospective basis. The developers requested amendments to the process schedule to allow for full consideration of parties' entitlements to the streetlight investment refund on a prospective basis.¹⁶

15. Fortis submitted that the developers' motion should be denied and stated that it disagreed with the assertion that the scope and effect of Decision 27067-D01-2022 was unclear.¹⁷

16. On November 17, 2022, the Commission denied the developers' motion to expand the scope of the proceeding, with reasons to follow.¹⁸ The reasons for this denial are set out in [Appendix 1](#) to this decision.

17. All parties filed written argument on November 24, 2022, and written reply argument on December 1, 2022.

18. The developers argued that Fortis was non-compliant with the directions from Decision 27067-D01-2022. The developers noted that Fortis failed to comply with the

¹³ Exhibit 27682-X0012, Statement of intent to participate.

¹⁴ Exhibit 27682-X0011, Statement of intent to participate.

¹⁵ Exhibit 27682-X0013, AUC letter – Process schedule.

¹⁶ Exhibit 27682-X0015, Motion of the developers.

¹⁷ Exhibit 27682-X0016, FortisAlberta response to developers motion.

¹⁸ Exhibit 27682-X0020, AUC letter - Ruling on motion of the developers and revised process schedule.

Commission direction to provide a form of agreement required for the streetlight investment refund to be paid to a party other than a municipality.¹⁹ The developers also stated that Fortis failed to meaningfully consult with developers and municipalities in making the determination that all streetlighting refunds be granted to municipalities. Therefore, the developers argued that the revisions to its T&Cs should be denied and Fortis should be found non-compliant with the directions from Decision 27067-D01-2022.²⁰

19. Fortis and the municipalities²¹ argued that Fortis complied with the directions set in Decision 27067-D01-2022. Fortis stated that it removed the ambiguous language regarding which of the developers or municipalities are entitled to the streetlight investment. Fortis noted that its T&Cs were written to expressly provide the municipalities with its investment and nothing prevented the developers and municipalities from separately negotiating a reasonable agreement on how it is allocated.²² Fortis further noted that future disputes on the payments of its streetlight investment between municipalities and developers are private contractual matters and neither itself nor the Commission are required to be involved in those disputes.²³

2.3 Proceeding 27658

20. On September 28, 2022, the Commission provided notice²⁴ that it was initiating Proceeding 27658 on residential standards of service and maximum investment levels (MILs). The Commission indicated that the first stage of Proceeding 27658 will establish the MILs for 2023, and the second stage will address the MILs for 2024 and future years thereafter.

21. On December 15, 2022, Melcor Developments Ltd. filed a letter in Proceeding 27658 requesting that the issues list for the second stage of Proceeding 27658 include “the proper recipient of the MILs for streetlighting, and the principled basis for directing the MIL to any party other than the developer, given the developer is solely responsible for the costs of purchasing and installing streetlights in new developments.”²⁵

22. On February 9, 2023, the Commission issued its final issues list in Proceeding 27658 and determined that it will consider entitlement to electric distributors’ streetlight investment. The final issues list in that proceeding includes, as an issue for the Commission’s consideration, whether MILs should be subject to the same principles as MILs for residential development, and who should be entitled to streetlighting MILs.²⁶ The process schedule for that proceeding allows parties to file evidence, and ask each other information requests, and file argument and reply argument.²⁷

3 Commission findings

23. The Commission finds that Fortis has not complied with directions 1 and 3 from Decision 27067-D01-2022. The Commission agrees with the developers that Fortis’s compliance

¹⁹ Exhibit 27682-X0021, developers argument, paragraph 15.

²⁰ Exhibit 27682-X0021, developers argument, paragraph 26.

²¹ Exhibit 27682-X0024, municipalities argument, paragraph 20.

²² Exhibit 27682-X0023, Fortis argument, paragraph 7.

²³ Exhibit 27682-X0023, Fortis argument, paragraph 7.

²⁴ Proceeding 27658, Exhibit 27658-X0003.

²⁵ Proceeding 27658, Exhibit 27658-X0036, PDF page 2.

²⁶ Proceeding 27658, Exhibit 27658-X0051, PDF page 3.

²⁷ Proceeding 27658, Exhibit 27658-X0051, paragraph 8.

filing did not include clear direction on the form of agreement required for its streetlight investment to be assigned to a party other than the municipality as directed by the Commission. Fortis's proposed T&Cs do not allow for the possibility that parties other than the municipality could receive its streetlight investment, contrary to directions 1 and 3.

24. Fortis indicated that it removed language from its proposed T&Cs, which allowed its investment to be assigned to a party other than a municipality, and therefore it was not required to amend its T&Cs to set out the form of agreement required when its investment is to be assigned. It did so even though Decision 27067-D01-2022 required it to allow a party to assign the investment to another person.

25. If Fortis's intention when applying for advice and direction in Proceeding 27067 was to preclude a party from receiving the streetlight investment, in the Commission's opinion, that should have been explicitly stated in the application. Fortis should have sought Commission approval to preclude either the applicable municipality or developer from receiving its streetlight investment. Fortis cannot, through its compliance filing, effectively attempt to modify the Commission's directions from Decision 27067-D01-2022 to completely exclude a party. The Commission finds Fortis's approach problematic because the need for its application for advice and direction arose from Fortis's own conduct; that is, by having ambiguity in its authoritative documents dealing with entitlement to its streetlight investment.

26. The Commission finds that Fortis has complied with Direction 2 of Decision 27067-D01-2022. Fortis has complied with this direction by issuing the streetlight investment refund to the applicable municipality, or as directed by the municipality, where the developer and municipality are in a dispute, until any amendments to the T&Cs are approved.

27. Typically, in view of its findings of non-compliance, the Commission would direct Fortis to make a second compliance filing to comply with directions 1 and 3 from Decision 27067-D01-2022. However, other considerations arise in this case regarding how investment in residential infrastructure is addressed. If the Commission were to merely direct a new compliance filing, this would create two proceedings where the Commission is considering similar issues related to how Fortis's T&Cs address streetlight investment.

28. In Proceeding 27658, at the request of Melcor Developments Ltd. (a developer in this proceeding), the Commission is considering whether residential developers or municipalities should be entitled to electric distributors' streetlight investment on a province-wide basis, effective 2024. Proceeding 27658 may result in province-wide standardization of streetlight investment for new residential development through Fortis's and other electric distribution owners' T&Cs.

29. The Commission has decided, pursuant to Section 8(5)(d) of the *Alberta Utilities Commission Act*, to relieve Fortis of its obligation to comply with directions 1 and 3 and paragraph 23(2) of Decision 27067-D01-2022, which require Fortis to amend its T&Cs to clarify entitlement to its streetlight investment. In the Commission's opinion, it is inefficient and unreasonable to have multiple proceedings considering issues related to how Fortis's T&Cs address streetlight investment, even though Proceeding 27658 concerns streetlight investment on a province-wide basis commencing in 2024, and the Commission's decision in this proceeding could have prospectively addressed some of Fortis's 2023 streetlight investment. It is likely that Commission findings in Proceeding 27658 regarding streetlight investment on a province-wide

basis will supersede any decisions resulting from another Fortis-specific compliance filing. For these reasons, the Commission concludes it is not in the public interest to expend further public resources.

30. The Commission recognizes that relieving Fortis of its obligation to comply with directions 1 and 3 from Decision 27067-D01-2022 will result in Fortis continuing to comply with Direction 2 and paragraph 23(1) from that decision. Under those provisions, Fortis's streetlight investment will be paid to the applicable municipality, where a developer and municipality are in a dispute, until its T&Cs are amended and approved by the Commission. In the Commission's view, it is reasonable to continue with this approach to avoid multiple concurrent proceedings considering issues related to Fortis's streetlight investment, as discussed above.

4 Order

31. It is hereby ordered that:

- (1) Fortis has complied with Direction 2 from Decision 27067-D01-2022.
- (2) Fortis is relieved from complying with directions 1 and 3 and paragraph 23(2) from Decision 27067-D01-2022.

Dated on February 27, 2023.

Alberta Utilities Commission

(original signed by)

Matthew Oliver, CD
Commission Member

Appendix 1 – Reasons for ruling on motion of the developers

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

1. This appendix provides the Commission’s reasons for its ruling²⁸ dismissing a motion filed by Melcor Developments Ltd., Anthem United and Qualico Communities (the developers).²⁹
2. In their motion, the developers requested that the Commission broaden the scope of this proceeding. The developers asserted that the scope of the Commission’s findings in Decision 27067-D01-2022 was narrow and unclear, and not intended to fully dispose of the issue of the entitlement to Fortis’s streetlight investment on a prospective basis. The developers requested, among other things, amendments to the Commission’s process schedule to allow parties to make information requests of Fortis and file evidence.
3. Fortis responded³⁰ to the developers’ motion and submitted that the motion should be denied. Fortis disagreed with the developers’ assertion that the scope and effect of Decision 27067-D01-2022 is unclear.
4. On November 16, 2022, the developers replied to Fortis’s response.
5. The Commission reviewed Decision 27067-D01-2022 and finds that it is unambiguous. In the Commission’s view, Decision 27067-D01-2022 provides clear direction to Fortis about what it can do to clarify entitlement to its streetlight investment. Indeed, Fortis indicated that the decision was clear.³¹
6. Regardless, the Commission observes that the developers’ motion is now largely moot. At Melcor Developments Ltd.’s request in Proceeding 27658, the Commission is considering whether residential developers or municipalities should be entitled to electric distributors’ streetlight investment on a province-wide basis, effective 2024. The Commission has established a process in Proceeding 27658 that allows parties to ask information requests of other parties and file evidence.

²⁸ Exhibit 27682-X0013, AUC letter - Process schedule.

²⁹ Exhibit 27682-X0015, Cover Letter and Motion of the Developers.

³⁰ Exhibit 27682-X0016, FortisAlberta Response to Developers Motion.

³¹ Exhibit 27682-X0016, FortisAlberta Response to Developers Motion, paragraph 6.