



**Enforcement Staff of the Alberta Utilities  
Commission**

**Settlement Agreement with ENMAX Energy Corporation**

**July 13, 2023**

**Alberta Utilities Commission**

Decision 28213-D01-2023

Enforcement Staff of the Alberta Utilities Commission  
Settlement Agreement with ENMAX Energy Corporation  
Proceeding 28213

July 13, 2023

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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.

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## **1 Decision summary**

1. In this decision, the Alberta Utilities Commission approves the Settlement Agreement between AUC Enforcement staff and ENMAX Energy Corporation (EEC) related to a disclosure by EEC in breach of a confidentiality order of the Commission in Proceeding 27495<sup>1</sup> (contravention). In accordance with the Settlement Agreement, the Commission imposes a one-time penalty on EEC of two-thousand and five-hundred dollars (\$2,500) for the contravention.

## **2 Background and AUC Enforcement staff's application**

2. Enforcement staff started an investigation following a referral from the Commission panel that presided over Proceeding 27495 (27495 panel). In that proceeding, the 27495 panel issued a confidentiality order with respect to certain evidence (confidential information) filed by EEC. EEC subsequently filed reply argument on the public record of the proceeding that disclosed confidential information.

3. On the confidential record in Proceeding 27495, the Office of the Utilities Consumer Advocate requested that the 27495 panel investigate the disclosure of confidential information.<sup>2</sup> After receiving further submissions, the 27495 panel provided notice on the public record of that proceeding that EEC's disclosure of confidential information would be referred to Enforcement staff.

4. Enforcement staff and EEC engaged in discussions to resolve issues of fact, alleged contraventions and penalty arising from Enforcement staff's investigation. The result of those discussions was Enforcement staff's current enforcement application to the Commission, and the associated Settlement Agreement between Enforcement staff and EEC. The contravention was described in the enforcement application as follows:

On November 4, 2022, EEC disclosed information on the public record of Proceeding 27495 contrary to Section 30.11 of Rule 001: *Rules of Practice* concerning the use and protection of information that had been granted confidential protection pursuant to an AUC order ...<sup>3</sup>

5. In the Settlement Agreement, EEC admitted to the contravention and agreed to the imposition of an administrative penalty of two-thousand and five-hundred dollars (\$2,500) under sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*. The parties submitted that

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<sup>1</sup> Proceeding 27495, ENMAX Energy Corporation, 2023-2024 Energy Price Setting Plan, Exhibit 27495-X0025, AUC letter - Ruling on ENMAX motion for confidential treatment and process schedule, August 30, 2022.

<sup>2</sup> Exhibit 28213-X0002, Settlement Agreement-AUC Enforcement-ENMAX Confidentiality signed, May 23, 2023, pages 2-3.

<sup>3</sup> Exhibit 28213-X0001, Submission on Settlement-AUC Enforcement-ENMAX Confidentiality signed, paragraph 2.

the Settlement Agreement is in the public interest because it advances the objectives of the Commission's sanctioning authority, it reflects the seriousness of the contravention, and it gives due regard to mitigating circumstances, including the degree of EEC's co-operation during the investigation.

6. In response to the Commission's notice of application in this proceeding, EEC filed a statement of intent to participate submitting that no further process was necessary and that the Settlement Agreement between it and Enforcement staff should be approved.<sup>4</sup> No other interveners filed a statement of intent to participate.

7. The Commission reviewed the enforcement application and Settlement Agreement and, in the absence of third-party registered interveners, found that no further process was required. As a result, the proceeding record was closed June 2, 2023.

### **3 Should the Commission approve the application and associated Settlement Agreement?**

8. The Commission's jurisdiction to consider and approve the Settlement Agreement is grounded in the Commission's general powers in sections 8 and 23(1)(b) of the *Alberta Utilities Commission Act* and the administrative penalty section, Section 63. Based on information provided by the parties in the enforcement application and in the Settlement Agreement, the Commission accepts that the contravention occurred. The Commission will now consider whether to accept the Settlement Agreement, as filed, the terms of which provide for the imposition of an administrative penalty in the amount of two-thousand and five-hundred dollars (\$2,500).

9. The Commission has consistently applied the "public interest test," which it has adopted from criminal law, to negotiated settlements in its enforcement proceedings.<sup>5</sup> The public interest test in the criminal context requires that "a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest."<sup>6</sup> There is a high threshold for departing from joint submissions (or negotiated settlements in the this enforcement proceeding context). The rationale for this is explained in significant detail in earlier Commission decisions that decided whether to approve settlement agreements between Enforcement staff and contravening parties.<sup>7</sup>

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<sup>4</sup> Exhibit 28213-X0007, ENMAX Energy Corporation Statement of Intent to Participate, May 31, 2023.

<sup>5</sup> See Decision 27013-D01-2022: Enforcement Staff of the Alberta Utilities Commission - Allegations against ATCO Electric Ltd., Proceeding 27013, June 29, 2022, paragraphs 64-68; Decision 3110-D03-2015: Market Surveillance Administrator - Market Surveillance Administrator allegations against TransAlta et al., Phase 2 - request for consent order, Proceeding 3110, October 29, 2015, paragraphs 15-21; and Decision 26379-D02-2021: Enforcement staff of the Alberta Utilities Commission - Allegations against Green Block Mining Corp. (formerly Link Global Technologies Inc.), Westlock Power Plant Phase 1, Proceeding 26379, August 19, 2021, paragraphs 14-15; Decision 27391-D01-2023: Enforcement Staff of the Alberta Utilities Commission, Settlement Agreement with the City of Grande Prairie, Proceeding 27391, January 20, 2023, paragraphs 16-19. See also Bulletin 2016-10, Practices regarding enforcement proceedings and amendments to AUC Rule 001: Rules of Practice, March 29, 2016, paragraph 13, which sets out the obligation for Enforcement staff to safeguard the public interest in pursuing the mandate to bring forward, and in appropriate cases to settle, enforcement proceedings.

<sup>6</sup> *R v Anthony-Cook*, 2016 SCC 43, paragraph 32.

<sup>7</sup> See footnote 4.

10. In the Settlement Agreement, the parties referenced the factors set out in Section 4 of Rule 013: *Criteria Relating to the Imposition of Administrative Penalties* when addressing the severity of the contravention. In particular, the parties highlighted the following facts in the context of that section:

- a) The harm caused was the failure to comply with the 27495 Panel's confidentiality order resulting in the public release of information that the 27495 Panel had determined warranted confidential protection. It is known that six individuals accessed EEC's voided reply argument however only one of those had not filed an undertaking. The registered observer that accessed the confidential information is a member of Regulatory Law Chambers - EEC's legal counsel and have not disclosed the confidential information.
- b) The harm took place over a modest period of time (Section 4(17)) and was limited in scope and impact (Section 4(5)). The voided document was available for two days, 18 hours and 34 minutes however, most of that time was in the evening and over a weekend - when it would be expected that there would be less activity accessing the eFiling system. As well, during that period, only one person who accessed the document had not filed an undertaking and that person was a member of EEC's legal counsel. Further, the reports of Dr. LaCasse indicate that the auctions operated as intended despite the breach. There is thus no evidence that rate payers were harmed by the breach.
- c) The incidents came to light through the actions of Commission counsel on the proceeding who contacted external counsel for EEC (Section 4(20)).
- d) It was not a repeat offence (Section 4 (14)) and was an isolated incident in this proceeding (Section 4(15)).<sup>8</sup>

11. With respect to mitigation (Section 6 of Rule 013: *Criteria Relating to the Imposition of Administrative Penalties*), Enforcement staff considered EEC's conduct in respect of both its reaction to misconduct and the extent of co-operation reflected by the whole of the Settlement Agreement, but most particularly the admitted contravention and agreed-upon administrative penalty, to be important mitigating circumstances in this case. As a result of these circumstances, the parties submitted that respondents in future enforcement proceedings will be incented to take similar steps and to co-operate with Enforcement staff.

12. Having considered the circumstances surrounding the breach of the confidentiality order, the terms of the Settlement Agreement, and Enforcement staff's submissions (as concurred with by EEC), the Commission is satisfied that the "public interest test" is met by approving the Settlement Agreement and imposing the agreed-upon administrative penalty of two-thousand and five-hundred dollars (\$2,500).

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<sup>8</sup> Exhibit 28213-X0002, Settlement Agreement-AUC Enforcement-ENMAX Confidentiality signed, May 23, 2023, paragraph 27.

#### 4 Order

13. It is hereby ordered that:

- (1) The Settlement Agreement between AUC Enforcement staff and ENMAX Energy Corporation, attached as [Appendix 2](#) to this decision, is approved as filed.
- (2) ENMAX Energy Corporation must pay an administrative penalty in the amount of two-thousand and five-hundred dollars (\$2,500) pursuant to sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*. The payment may be made via cheque or bank draft made out to the General Revenue Fund of Alberta and delivered to the Commission within 30 business days of the date of this order.

Dated on July 13, 2023.

**Alberta Utilities Commission**

*(original signed by)*

Vera Slawinski  
Commission Member

**Appendix 1 – Proceeding participants**

<b>Name of organization (abbreviation)</b> <b>Company name of counsel or representative</b>
Enforcement Staff of the Alberta Utilities Commission
ENMAX Energy Corporation Regulatory Law Chambers

Alberta Utilities Commission
Commission panel V. Slawinski, Commission Member
Commission staff A. Marshall (Commission counsel) K. O'Neill



## Appendix 2 – Settlement Agreement

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



Appendix 2 -  
Settlement Agreeme  
(consists of 6 pages)

## ALBERTA UTILITIES COMMISSION

IN THE MATTER OF the *Alberta Utilities Commission Act*, SA 2007, c A-37.2 and the regulations made thereunder;

AND IN THE MATTER OF the Alberta Utilities Commission Rule 001: *Rules of Practice*;

BETWEEN:

Alberta Utilities Commission Enforcement Staff

Applicant

-and-

ENMAX Energy Corporation

Respondent

**Settlement Agreement regarding enforcement of a confidentiality ruling issued in Proceeding 27495**

**I Introduction and executive summary**

1. In March 2023, the Alberta Utilities Commission Enforcement staff (Enforcement staff) commenced an investigation in response to a referral from the Alberta Utilities Commission (AUC) panel presiding over Proceeding 27495 (27495 Panel) concerning the 27495 Panel's findings that ENMAX Energy Corporation (EEC) breached the 27495 Panel's confidential order in that proceeding.
2. The investigation confirmed and, for the purposes of this settlement agreement, EEC admits that it improperly disclosed information on the public record of Proceeding 27495 contrary to Section 30.11 of Rule 001: *Rules of Practice*, concerning the use and protection of information that had been granted confidential protection pursuant to an AUC order.
3. Enforcement staff and EEC have entered into a settlement agreement to address the admitted contraventions (Settlement Agreement). EEC was cooperative, forthright and responsive concerning all aspects of Enforcement staff's investigation. For the reasons set out in further detail below, the Settlement Agreement includes an administrative penalty of \$2,500.
4. Enforcement staff consider that the Settlement Agreement fosters public protection, encourages compliance, serves as a deterrent and is therefore in the public interest. Enforcement staff and EEC therefore jointly request that the AUC approve the Settlement Agreement without variation.

## II Agreed facts

5. The AUC uses an electronic filing tool, known as its eFiling system, to assist with managing and sharing information in its proceedings. This system is used to access, manage, search and upload documents. Documents filed on the public record of a proceeding in eFiling are accessible to any person who has an eFiling system user account. Documents filed on the confidential record of a proceeding in eFiling are only accessible pursuant to the terms of an AUC confidentiality ruling.
6. On July 29, 2022, EEC, the regulated rate option (RRO) provider for ENMAX Power Corporation, filed an application on the Commission's eFiling system requesting approval of its 2023-2024 Energy Price Setting Plan (EPSP) for January 1, 2023 to December 31, 2024 (Exhibit 27495-X0002).
7. Concurrent with its application, EEC filed a motion on the proceeding record requesting confidential treatment for certain portions of its EPSP materials in order to protect the integrity of its auctions. It sought confidential treatment for portions of its EPSP namely: (i) certain definitions in Schedule A of the 2023-2024 EPSP; (ii) certain parameters of the 2023-2024 EPSP described in the section titled "Adjustments to the Energy Acquisition Process" and (iii) certain portions of Section C.4 and Section C.8 of Schedule E. It further sought confidential treatment for portions of the expert evidence prepared by Dr. Chantale LaCasse. Generally, the information for which confidential treatment was sought concerned (1) the starting price methodology and (2) the competitiveness assessment methodology (Exhibit 27495-X0013).
8. On August 30, 2022, the 27495 Panel issued its ruling granting EEC's request for confidential treatment of the materials identified by EEC (Exhibit 27495-X0025).
9. On November 4, 2022, at 3:51 p.m., EEC filed a public version of its reply argument on the proceeding record (Exhibit 27495-X0070).
10. On November 7, 2022, at 10:25 a.m., at EEC's request and following an exchange of emails between Commission counsel for Proceeding 27495 and external counsel for EEC, the AUC voided Exhibit 27495-X0070 from the proceeding record.
11. On November 7, 2022, at 11:41 a.m., EEC filed a revised public, redacted version of its reply argument on the proceeding record (Exhibit 27495-X0071). An unredacted version of the reply argument was also filed on the confidential proceeding record (Exhibit 27495-X0071-C).
12. On November 8, 2022, the Office of the Utilities Consumer Advocate (UCA) filed a letter on the confidential proceeding record noting the removal of Exhibit 27495-X0070 and its replacement with Exhibit 27495-X0071 and requested, along with other relief, that the 27495 Panel conduct a full investigation into the matter (Exhibit 27495-X0072-C).
13. On November 10, 2022, EEC filed a letter on the confidential proceeding record responding to the UCA's request for a full investigation. In its letter, EEC provided an opinion from its expert, Dr. LaCasse, who had concluded that the disclosure of confidential information in Exhibit 27495-X0070 would not impact the competitiveness of EEC's auctions (Exhibit 27495-X0073-C).

14. On November 15, 2022, the UCA filed a reply to EEC's November 10, 2022 response on the confidential proceeding record, reiterating its request for an investigation of the disclosure breach (Exhibit 27495-X0074-C).

15. On November 25, 2022, the 27495 Panel issued a letter on the public proceeding record advising parties that it was referring the disclosure breach to the Enforcement division.

16. On December 2, 2022, the 27495 Panel issued a ruling on the confidential proceeding record directing EEC to retain Dr. LaCasse, or similar suitable expert, to monitor certain auctions, and to file reports on whether these auctions operated as intended. In the event that observable changes in supplier behaviour were observed, EEC was directed to file a report immediately (Exhibit 27495-X0077-C).

17. As of April 24, 2023, two expert reports have been filed on the confidential proceeding record concerning auctions. The reports concluded that the auctions were operating as intended and that there was no observable change in supplier behaviour that could be ascribed to motives to improperly influence auction outcomes. Dr. LaCasse also concluded that the auctions and EPSP were operating as intended. (Exhibit 27495-X0079-C and 27495-X0080-C).

18. As of April 24, 2023, EEC has incurred more than USD \$39,150 in additional costs at its own expense, as directed by the Commission, to ensure the operation of its auctions were unaffected by the disclosure.

19. The unified logging service (ULS) logs in the eFiling system show that the voided Exhibit 27495-X0070 was accessed seven times by six separate individuals. An EEC employee represented two of the seven times the exhibit was accessed and all but one person had filed an undertaking. The party who had not filed an undertaking was a registered observer. There are four registered observers, none of whom have filed undertakings in the proceeding. The registered observer who accessed the information is a member of Regulatory Law Chambers' staff - EEC's legal counsel and therefore, was not required to file an undertaking. The observer who accessed the information did not disclose the information as part of their obligation to maintain client confidence.

### **III Regulatory framework and governing legislation**

20. Section 76(1)(e) of the *Alberta Utilities Commission Act*, authorizes the AUC to make rules of practice regarding its procedure and hearings. The AUC enacted Section 30 of Rule 001 pursuant to this authority.

21. Section 30.7 of Rule 001 enables the AUC to grant a motion for confidential treatment on any terms it considers reasonable or necessary.

22. Section 30.9 of Rule 001 further enables the AUC to establish or adopt any process or procedure considered necessary or reasonable in the public interest to consider the confidential information.

23. In Proceeding 27495, the 27495 Panel directed EEC to provide access to its confidential information provided the requesting parties executed and filed a confidentiality undertaking as provided for in Section 30.11 of Rule 001 and Form RP5.

#### IV Admitted contravention

24. For the purposes of the Settlement Agreement, EEC admits and agrees to the following contravention:

On November 4, 2022, EEC disclosed information on the public record of Proceeding 27495 contrary to Section 30.11 of Rule 001: *Rules of Practice* concerning the use and protection of information that had been granted confidential protection pursuant to an AUC order.

#### V Agreed terms and conditions of settlement

25. Section 63 of the *Alberta Utilities Commission Act* states, *inter alia*, that if the Commission determines in a hearing or other proceeding that a person has contravened or failed to comply with any provision of that act or any other enactment under the jurisdiction of the Commission or any Commission rule, it can impose an administrative penalty and any terms or conditions considered appropriate. The Commission has found that the reference to “other proceeding” includes a settlement process.<sup>1</sup> The purpose of the Commission’s sanctioning authority is to achieve general and specific deterrence, encourage compliance and protect the public. As well, while sanctions are intended to be protective and preventative, they are not to be punitive.

26. The Commission makes enforcement decisions based on the relevant factors of the case before it and has enacted Rule 013: *Criteria Relating to the Imposition of Administrative Penalties* to provide guidance when considering the imposition of an administrative penalty under the act. Section 4 of Rule 013 lists factors to be considered in determining the seriousness of the offence and Section 6 lists mitigation factors to be considered.

27. Substantively, the contravention admitted to by EEC concerns the disclosure, on one occasion, for a set time between 3:51 p.m., November 4, 2022, and 11:41 a.m., November 7, 2022, of confidential information on the public record of Proceeding 27495 contrary to the 27495 Panel’s confidentiality order. In assessing the seriousness of the contravention, of the 23 factors listed in Section 4 of Rule 13, the following matters are of note:

- a) The harm caused was the failure to comply with the 27495 Panel’s confidentiality order resulting in the public release of information that the 27495 Panel had determined warranted confidential protection. It is known that six individuals accessed EEC’s voided reply argument however only one of those had not filed an undertaking. The registered observer that accessed the confidential information is a member of Regulatory Law Chambers - EEC’s legal counsel and have not disclosed the confidential information.
- b) The harm took place over a modest period of time (Section 4(17)) and was limited in scope and impact (Section 4(5)). The voided document was available for two days, 18 hours and 34 minutes however, most of that time was in the evening and over a weekend - when it would be expected that there would be less activity accessing the

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<sup>1</sup> See for example Decision 23013-D01-2018 (Errata): Market Surveillance administrator, Application for approval of a settlement agreement between the Market Surveillance Administrator, TransAlta Corporation and Capital Power Generation Services Inc., Proceeding 23013, Application 23013-A001, August 24, 2018, paragraph 20.

eFiling system. As well, during that period, only one person who accessed the document had not filed an undertaking and that person was a member of EEC's legal counsel. Further, the reports of Dr. LaCasse indicate that the auctions operated as intended despite the breach. There is thus no evidence that rate payers were harmed by the breach.

- c) The incidents came to light through the actions of Commission counsel on the proceeding who contacted external counsel for EEC (Section 4(20)).
- d) It was not a repeat offence (Section 4 (14)) and was an isolated incident in this proceeding (Section 4(15)).

28. Many of the other factors enumerated in Section 4 of Rule 013 are not present. For example: there was no loss of life or endangerment of persons, there was no damage to property or the operation of the bulk electric system, it did not involve significant sums of money or material benefit to EEC, there was no fraudulent conduct or misrepresentation of material facts, EEC was not reckless or deliberately indifferent nor did it engage in a cover up, and EEC did not resist or ignore Enforcement staff's inquiry into the contraventions. As well, EEC expended a further USD \$39,150 in additional expert fees to comply with the 27495 Panel's direction for auction monitoring.

29. As noted above, Section 6 of Rule 013 details factors to be considered in determining if any mitigation is warranted in the amount of the administrative penalty to be imposed. Many of those factors relate to the presence, strength, integrity and success of an existing compliance system. Section 30.11(a) of Rule 001 requires a party who accesses confidential information to provide a copy of its protocol for the treatment of the confidential documents it receives. Because it was EEC who sought the confidential treatment of its information, it was not required to file a protocol. Regardless, protocols generally concern the labelling, storage and later destruction of confidential information and would not serve to mitigate the seriousness of the contravention. However, mitigation factors such as the response and cooperation of EEC when made aware of the contravention do apply (sections 6(19) and 6(20)). In particular, Enforcement staff note that EEC provided an initial assessment from Dr. LaCasse concerning any impact from the breach before the AUC directed Dr. LaCasse, or similar suitable expert, to file post-auction assessment reports (Exhibit 27495-X0073-C).

30. In the circumstances of this enforcement proceeding, the public interest requires the imposition of an administrative penalty to achieve the objectives of encouraging compliance with AUC's orders as well as general and specific deterrence. Pursuant to sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*, the parties jointly request that the AUC issue an order requiring EEC to pay an administrative penalty in the amount of \$2,500 payable to the General Revenue Fund of Alberta and delivered to the AUC within 30 business days of the date of the order.

## **VI General**

31. This Settlement Agreement includes facts admitted for the purpose of dispensing with formal proof thereof. EEC's agreement to the terms of this Settlement Agreement does not constitute an admission as to the facts or findings in any other civil or criminal proceedings.

32. Subject to the Commission's approval of this Settlement Agreement, execution and fulfillment of the terms of this Settlement Agreement by EEC resolves all issues involving EEC relating to the conduct described above and Enforcement staff will take no further steps against EEC arising from these facts.

AGREED TO THIS 23<sup>RD</sup> DAY OF MAY, 2023

**Trevor Wilde** Digitally signed by Trevor  
Wilde  
Date: 2023.05.17  
15:15:31 -06'00'

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Trevor Wilde, Director  
Regulatory Strategy, Coordination & Research  
ENMAX Corporation

AGREED TO THIS 23<sup>RD</sup> DAY OF MAY, 2023

**Catherine  
Wall** Digitally signed by  
Catherine Wall  
Date: 2023.05.23  
08:46:49 -06'00'

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Catherine M. Wall  
Counsel, Enforcement Staff  
Alberta Utilities Commission