



**Enforcement Staff of the
Alberta Utilities Commission**

Settlement Agreement with ENMAX Energy Corporation

July 19, 2023

Alberta Utilities Commission

Decision 28201-D01-2023

Enforcement Staff of the Alberta Utilities Commission
Settlement Agreement with ENMAX Energy Corporation
Proceeding 28201

July 19, 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.

Contents

1	Decision summary	1
2	Background and AUC Enforcement staff’s application	1
3	Should the Commission approve the Settlement Agreement?	2
4	Order	3
	Appendix 1 – Proceeding participants	5
	Appendix 2 – Settlement Agreement	6

1 Decision summary

1. In this decision, the Alberta Utilities Commission approves the Settlement Agreement between AUC Enforcement staff and ENMAX Energy Corporation related to the late issuance of bills to 1,426 customers (contravention). In accordance with the Settlement Agreement, the Commission imposes a one-time administrative penalty on ENMAX of twenty-three thousand five hundred dollars (\$23,500), and ENMAX shall pay customer bill credits totalling seventy-one thousand three hundred dollars (\$71,300), calculated as fifty dollars (\$50) multiplied by the number of affected customers, to be administered as set out at paragraph 5(b) of the Settlement Agreement.

2 Background and AUC Enforcement staff's application

2. Enforcement staff began an investigation following ENMAX's self-disclosure of an incident that resulted in the issuance of 1,426 late bills. ENMAX disclosed that the late billing was caused by a system error with its automated billing check system, where certain bills failed to reach ENMAX staff for review.

3. Enforcement staff and ENMAX engaged in a discussion to resolve issues of fact, alleged contraventions, and penalties arising from Enforcement staff's investigation. Those discussions resulted in Enforcement staff's current enforcement application to the Commission, and the associated Settlement Agreement between Enforcement staff and ENMAX.

4. Enforcement staff concluded that ENMAX had issued 1,426 late bills contrary to Section 3.4.1(2) of Rule 003: *Service Quality Reporting for Energy Related Service Providers*.

5. In the Settlement Agreement, ENMAX admitted to the contravention and agreed to the imposition of an administrative penalty of twenty-three thousand, five hundred dollars (\$23,500), and the fifty dollars (\$50) credit to affected customer bills totalling seventy-one thousand, three hundred dollars (\$71,300). The parties submitted that the Settlement Agreement is in the public interest because it advances the objectives of the Commission's sanctioning authority, reflects the seriousness of the contravention, and gives due regard to mitigating circumstances, including ENMAX's degree of co-operation during the investigation.¹

6. In this proceeding, ENMAX filed a statement of intent to participate stating that no further process was necessary and that the Settlement Agreement between it and Enforcement staff should be approved.² The Commission issued one round of information requests (IRs) to ENMAX, to which ENMAX responded on June 8, 2023.

¹ See Exhibit 28201-X0001, Submission on settlement – AUC Enforcement – ENMAX Late Bills, May 15, 2023.

² See Exhibit 28201-X0006, ENMAX Energy Corporation's Statement of Intent to Participate, May 30, 2023.

7. The Commission reviewed the application and ENMAX's responses to its IRs and found that no further process was required. As a result, the proceeding record was closed on June 8, 2023.

3 Should the Commission approve the 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 of the *Alberta Utilities Commission Act* and the administrative penalty section, Section 63. Based on information provided in the enforcement application and the Settlement Agreement, the Commission accepts that the contravention occurred. The Commission will now consider whether to accept the Settlement Agreement as filed.

9. The Commission has consistently applied the "public interest test," which it has adopted from criminal law, to negotiated settlements in its enforcement proceedings.³ The "public interest test" sets a high threshold for departing from a joint submission, such that "a trial judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest."⁴ The rationale for the high threshold for departing from joint submissions (or negotiated settlements in the regulatory context) is explained in detail in earlier Commission decisions that have decided whether to approve settlement agreements between Enforcement staff and contravening parties.⁵

10. The parties considered factors listed in Rule 013: *Criteria Relating to the Imposition of Administrative Penalties* when negotiating the Settlement Agreement. In assessing the seriousness of the contravention (Section 4 of Rule 013), the parties highlighted the following information:

- a) ENMAX's issuance of late customer bills affected 1,426 customers.
- b) 47 customers experienced the financial harm of having to request payment arrangements to address amounts that were in arrears set out in paragraph 9(c) (Section 4(1)).

³ 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; Decision 27948-D01-2023: Enforcement Staff of the Alberta Utilities Commission, Settlement Agreement with ATCO Gas and Pipelines Ltd, Proceeding 27948, March 7, 2023, paragraphs 17-20; Decision 27854-D01-2023: Enforcement Staff of the Alberta Utilities Commission, Settlement Agreement with the City of Calgary – Enforcement and Administrative Penalty, Proceeding 27854, March 14, 2023, paragraph 9. 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.

⁴ *R v Anthony-Cook*, 2016 SCC 43, paragraphs 32 and 44.

⁵ See footnote 3.

- c) While the precipitating System Error was a single occurrence, the number of customers affected was significant to the extent that the harm could not be addressed through the typical specified penalty process (Section 4(5)).
- d) The harm occurred over several months, between February and June of 2022 (Section 4(17)).
- e) The harm resulted from an unintentional System Error and ENMAX did not gain any benefit from the Rule 003 Contravention (Section 4(8)).⁶

11. The parties also considered mitigating factors (Section 6 of Rule 013), noting that ENMAX discovered the system error and identified the 1,426 affected customers as a result of its own internal investigation, self-disclosed the wrongdoing to Enforcement staff, and co-operated fully in Enforcement staff's investigation. In addition, ENMAX has taken steps to implement process changes to avoid future non-compliance, and has begun to apply the customer bill credits it committed to in paragraph 5(b) of the Settlement Agreement. The parties submitted that taking these mitigating circumstances into account in assessing the appropriate sanction will incentivize respondents in future enforcement proceedings to take similar steps and co-operate with Enforcement staff.

12. Having considered the circumstances surrounding the contravention and the agreement reached between the parties, the Commission is satisfied the "public interest test" is met by approving the Settlement Agreement.

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 shall pay an administrative penalty in the amount of twenty-three thousand, five hundred dollars (\$23,500) 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 AUC within 30 business days of the date of the order.
- (3) ENMAX Energy Corporation shall pay a customer bill credit of fifty dollars (\$50) for each of the 1,426 affected customers, for a total of seventy-one thousand, three hundred dollars (\$71,300), pursuant to sections 63(1)(b) and 63(3) of the *Alberta Utilities Commission Act*. The customer bill credits shall be administered in accordance with paragraph 5(b) of the Settlement Agreement. The Commission recognizes that ENMAX Energy Corporation has commenced applying a \$50 bill credit to current customers who were affected by the incident, and has commenced efforts to locate former customers who were affected by the incident. The Commission acknowledges that pursuant to paragraph 5(b)(iii) of the

⁶ See Exhibit 28201-X0002, Settlement Agreement – AUC Enforcement – ENMAX Late Bills, May 15, 2023.

Settlement Agreement, customer bill credits that cannot be paid to former customers under paragraph 5(b)(ii) will be donated to the Calgary Urban Project Society (CUPS), Crisis Intervention Fund.

Dated on July 19, 2023.

Alberta Utilities Commission

(original signed by)

Michael Arthur
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Enforcement Staff of the Alberta Utilities Commission
ENMAX Energy Corporation (ENMAX)

Alberta Utilities Commission
Commission panel M. Arthur, Commission Member
Commission staff N. Fitz-Simon (Commission counsel) K. O'Neill C. Strasser P. Story

Appendix 2 – Settlement Agreement

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



Appendix 2 -
Settlement Agreement
(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;

BETWEEN:

Alberta Utilities Commission Enforcement Staff

Applicant

-and-

ENMAX Energy Corporation

Respondent

Settlement Agreement

I. Introduction and executive summary

1. In March 2023, the Alberta Utilities Commission (AUC or Commission) Enforcement staff (Enforcement staff) concluded an investigation in response to an event (the Investigation) that was self-disclosed by ENMAX Energy Corporation (ENMAX), whereby a technical system error with an ENMAX automated billing check system resulted in late bills being issued to 1,426 customers (the Incident).

2. As part of this settlement agreement, ENMAX admits that it issued late customer bills contrary to Section 3.4.1(2) of Rule 003: *Service Quality Reporting for Energy Service Providers* (Rule 003 Contravention).

3. Enforcement staff and ENMAX (collectively, the Parties) have entered into this settlement agreement to resolve the Rule 003 Contravention (Settlement or Settlement Agreement). ENMAX was cooperative, forthright and responsive concerning all aspects of Enforcement staff's Investigation.

4. The Parties acknowledge this Settlement is a comprehensive package dealing with all outstanding issues arising in the Investigation and will jointly ask the Commission to accept and approve the Settlement Agreement in its entirety and without variation.

5. For the reasons set out in further detail below, rather than issue Public Notices of Specified Penalty for each of the 1,426 instances identified relating to the Incident, the Parties have agreed to a Settlement of \$94,800 calculated as follows:

(a) An administrative penalty of \$23,500; and

(b) Payment of customer credits totalling \$71,300, calculated as \$50 multiplied by the number of customers affected by the Incident ($1,426 \times \$50 = \$71,300$) (the Customer Bill Credit Amount). The Customer Bill Credit Amount will be distributed as follows:

- (i) For current ENMAX customers affected by the Incident, a credit of \$50 will be applied to the customer's bill (ENMAX has already commenced applying the \$50 credit to the 986 customers in this category);
- (ii) For former ENMAX customers affected by the Incident, ENMAX will use reasonable efforts to locate each former customer using contact information available to ENMAX, a minimum of two times, and deliver payment in the amount of \$50 to an address or account provided by the former customer. (ENMAX has already commenced efforts to contact these former customers); and
- (iii) If former customers affected by the Incident cannot be located or do not respond to ENMAX's attempts under paragraph 5(b)(ii) within six months from the date of the Settlement Agreement, ENMAX will pay the remaining Customer Bill Credit Amount (i.e. \$73,100 less amounts paid in paragraphs 5(b)(i) and 5(b)(ii)) to the CUPS, Crisis Intervention Fund, a non-profit organization providing support for energy affordability in Calgary.

6. Enforcement staff consider that the Settlement Agreement fosters public protection, encourages compliance with Rule 003, serves as a deterrent and is therefore in the public interest. Enforcement staff and ENMAX therefore jointly request that the Commission approve the Settlement Agreement without variation.

II. Agreed facts

7. On November 16, 2022, ENMAX self-disclosed to Enforcement staff that a system error had resulted in late bills being issued to 1,426 customers. ENMAX explained that it applies a series of automated billing checks to identify bills that differ from typical bill profile parameters (e.g., a bill amount that is higher than usual). Bills identified through that process are then routed to an ENMAX team member for review and, if required, corrected. This process reduces errors and allows for proactive customer outreach, particularly in the event of anomalously high billing. A technical issue with the routing technology resulted in the identified bills not reaching an ENMAX team member for review (**System Error**). These bills were not issued within the 90 days required by Rule 003.

8. Upon becoming aware of the System Error, ENMAX ceased using the automated system and implemented manual bill review methods to ensure service levels were met for its customers in compliance with Rule 003. ENMAX's internal investigation, which led to ENMAX's self-disclosure, identified that 1,426 customers were affected by the System Error and had received late bills.

9. On February 6, 2023, in response to Enforcement staff's information requests and as part of the Investigation, ENMAX provided additional information regarding the dollar amounts, time periods and payment arrangements related to this matter. Key facts include:

- (a) The total dollar value of the late bills arising from the Incident was \$1,737,486.
- (b) The total number of affected customers was 1,426, and the average dollar amount billed late for each of those customers was \$1,218.
- (c) Payment arrangements were requested by 47 customers as a consequence of receipt of the late bills. The total value of those payments is \$87,584. On average, the requested

payment arrangement per customer was in the amount of \$1,863. Customers requesting payment arrangements were provided with the terms they requested and were not charged interest or penalties relating to the Incident.

- (d) For the 1,426 affected customers, bills were delayed an average of 123 days (33 days over the 90-day requirement). Details regarding the length of the delay include:
- 91 per cent of bills were issued within 150 days (60 days over the 90-day requirement).
 - Seven per cent of bills were issued between 151 and 190 days (between 61 and 100 days over the 90-day requirement).
 - Two per cent of bills were issued more than 100 days over the 90-day requirement.
- (e) ENMAX received three customer complaints related to this matter which it worked with these customers to address concerns and provided bill adjustments to these customers.
- (f) No customers were disconnected or placed on a load-limiter as a consequence of the delayed billing.
- (g) ENMAX discovered the System Error on February 21, 2022 and ceased using the automated system on February 28, 2022. To verify the bills through a manual process, ENMAX hired two additional employees, seconded two employees from other teams and incurred 900 hours of employee overtime to review bills affected by the Incident. All of the affected customer accounts were corrected by June 24, 2022.
- (h) ENMAX estimated that it spent approximately \$102,000 for the additional staff and overtime hours described above to correct the issue. ENMAX continues to employ manual bill review methods, which includes creating a report to ensure that accounts are monitored and acted upon, and this report is reviewed daily by a leadership team.

III. Regulatory framework and governing legislation

10. ENMAX is an energy service provider as defined in Section 1.2 of Rule 003. Section 3.4.1(2)(b) of Rule 003 states that an energy service provider must not issue a late customer bill. A late customer bill is further defined in Section 1.3(d) of that rule as follows:

“late customer bill” means a bill issued to a customer in excess of 90 days from the day the ESP received the tariff charge for the customer’s site displayed on the bill and the ESP had a record of the customer’s information for billing purposes at the time the tariff charges were received;

IV. Admitted Contravention

11. For the purposes of the Settlement Agreement and in relation to the Incident only, ENMAX admits and agrees that it issued late customer bills to 1,426 customers contrary to Section 3.4.1(2)(b) of Rule 003.

V. Agreed terms and conditions of settlement

12. Contraventions of Rule 003 may be addressed through the issuance of a specified penalty under Section 63.1 of the *Alberta Utilities Commission Act*, and Rule 032: *Specified Penalties for Contravention of AUC Rules*. The penalty table found in Rule 032 sets out an escalation of specified penalty amounts based on the number of occurrences within a calendar quarter.

13. An estimated strict application of the Rule 032 penalty table for each late bill, even allowing for a 50 per cent reduction for self-disclosure, would result in a net penalty amount of approximately \$7 million.

14. The Parties have agreed to enter into this Settlement Agreement pursuant to Section 63 of the *Alberta Utilities Commission Act*. 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.¹

15. The objectives of the AUC’s sanctioning authority are to achieve general and specific deterrence, encourage compliance and protect the public. Sanctions are intended to be protective but not punitive.² For this reason the agreed upon penalty set out herein is not based on Section 63.1 of the *Alberta Utilities Commission Act* and Rule 032 which would be punitive.

16. The Commission makes enforcement decisions based on the relevant factors of the case before it and Rule 013: *Criteria Relating to the Imposition of Administrative Penalties* which provides guidance when considering the imposition of an administrative penalty under the *Alberta Utilities Commission 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.

17. In assessing the seriousness of the Rule 003 Contravention, of the 23 factors listed in Section 4 of Rule 013, the following are applicable in the circumstances:

- (a) ENMAX’s issuance of late customer bills affected 1,426 customers.
- (b) 47 customers experienced the financial harm of having to request payment arrangements to address amounts that were in arrears as set out in paragraph 9(c) (Section 4(1)).
- (c) While the precipitating System Error was a single occurrence, the number of customers affected was significant to the extent that the harm could not be addressed through the typical specified penalty process (Section 4(5)).
- (d) The harm occurred over several months, between February and June of 2022 (Section 4(17)).

¹ See for example Decision 23013-D01-2018 (Errata): 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.

² Decision 23013-D01-2018 (Errata), paragraph 30.

- (e) The harm resulted from an unintentional System Error and ENMAX did not gain any benefit from the Rule 003 Contravention (Section 4(8)).

18. Enforcement staff considered other factors enumerated in Section 4 of Rule 013 that would contribute to a more serious contravention and submit that there was no loss of life or endangerment of persons, there was no damage to property or the operation of the bulk electric system, there was no fraudulent conduct or misrepresentation of material facts, ENMAX was not reckless or deliberately indifferent nor did it engage in a cover up, and ENMAX did not resist or ignore Enforcement staff's inquiry into the Rule 003 Contravention.

19. As noted, 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. Most notably, ENMAX discovered the System Error and identified the 1,426 affected customers as a result of its own internal investigation. Further, ENMAX responded to the wrongdoing by self-disclosing it to Enforcement staff.

20. In view of ENMAX having:

- (i) Cooperated fully with Enforcement staff in the Investigation,
- (ii) Proactively taken steps to apply customer credits as set out in paragraph 5,
- (iii) Self-disclosed the matter to Enforcement staff and,
- (iv) Taken steps to implement process changes and improvements to avoid future non-compliance as set out in paragraphs 9(g) and (h)

the Parties jointly request that the Commission issue an order:

- (a) Requiring ENMAX to pay an administrative penalty in the amount of \$23,500 pursuant to sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*, payable to the General Revenue Fund and delivered to the Commission within 30 business days of the order.
- (b) Requiring ENMAX to pay a bill credit of \$50 for each customer affected by the Incident to be administered as set out in paragraph 5 herein.

21. The administrative penalty amount recognizes ENMAX's admission of the Rule 003 Contravention, avoids a protracted hearing and facilitates a timely resolution of this matter. The Parties agree that the proposed \$23,500 administrative penalty reflects the seriousness of the Rule 003 Contravention and achieves the public interest objectives of public protection, encouraging compliance as well as general and specific deterrence. The administrative penalty was calculated as \$500 for each of the 47 customers that were harmed to the greatest extent such that they required payment arrangements to resolve the resulting financial impact.

22. In addition to the imposition of an administrative penalty, sections 63(1)(b) and 63(3) of the *Alberta Utilities Commission Act*, authorize the Commission to impose any terms or conditions that the Commission considers appropriate and to direct any action specified in the order. Pursuant to this authority the Parties jointly request that the Commission issue an order

requiring ENMAX to provide a \$50 bill credit or donation for each customer affected by the Incident pursuant to paragraph 5(b) herein.

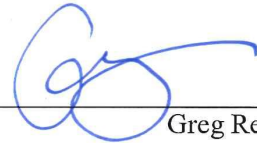
23. Because the credit of some amount to a customer's bill is commonly ordered under Section 63.1(5) of the *Alberta Utilities Act* as part of a specified penalty, the Parties agree that a remedy under Section 63 that similarly allocates an amount to harmed customers should also be applied in this case.

24. This Settlement Agreement includes facts admitted for the purpose of dispensing with formal proof thereof. ENMAX'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.

25. The Parties agree that in the event the Commission has any concerns with the Settlement or any part of it, as filed, and provides notice to the Parties of its concerns, the Parties will engage in further discussions and make best efforts to agree on further submissions to the Commission to address those concerns.

26. Subject to the Commission's approval of this Settlement Agreement, execution and fulfillment of the terms of this Settlement Agreement by ENMAX resolves all issues involving the Investigation and the conduct described herein, and Enforcement staff agree not to undertake any further prosecutions, commence any further enforcement proceedings or take any steps against ENMAX or individuals relating to the facts and the Rule 003 Contravention.

AGREED TO THIS 15TH DAY OF MAY, 2023



Greg Retzer,
Executive Vice President,
ENMAX Energy Corporation

AGREED TO THIS 15TH DAY OF MAY, 2023

Catherine
Wall

Digitally signed by
Catherine Wall
Date: 2023.05.15
14:51:05 -06'00'

Catherine M. Wall
Counsel, Enforcement staff
Alberta Utilities Commission