



**Residential Standards of Service and
Maximum Investment Levels – Phase 2**

October 18, 2023

Alberta Utilities Commission

Decision 27658-D02-2023

Residential Standards of Service and Maximum Investment Levels – Phase 2

Proceeding 27658

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Contents

1	Decision summary	1
2	Introduction and background	1
3	Background of a MIL	3
3.1	What is a MIL?	3
3.2	Early MILs	5
4	Should MILs be retained?	6
4.1	The regulatory compact	7
4.2	The Electric Utilities Act	8
4.2.1	Sections 101 and 105(1).....	8
4.2.2	Sections 121 and 122	9
5	What principles should govern MILs going forward?	11
5.1	Simplicity, consistency and transparency	13
5.2	New customers should not impose costs on other customers for which they should not be responsible.....	14
5.2.1	The principle	14
5.2.2	Application of the principle	16
5.3	Price signals	16
5.3.1	The principle	16
5.3.2	Application of the principle	17
5.4	Basic versus premium service.....	18
5.4.1	The principle	18
5.4.2	Application of the principle: 100 amp, overhead service	20
5.4.2.1	Underground and overhead service	21
5.4.2.2	100 amp and beyond.....	21
6	MILs in the 2024-2028 PBR term	22
6.1	2024 MILs.....	22
6.2	MILs escalation factor	26
6.3	Distribution utilities’ practices regarding new customer connections.....	27
7	Street lighting MIL and applicable payments	27
8	Change to ENMAX’s present residential development investment policy	28
9	Order	29
	Appendix 1 – Proceeding participants	31
	Appendix 2 – Oral hearing – registered appearances	33
	Appendix 3 – Summary of Commission directions	34
	Appendix 4 – 10 guiding principles, as identified by Fortis in its 2010/2011 distribution tariff application and established in Decision 2010-309	35

List of tables

Table 1. 2023 approved MILs..... 3

1 Decision summary

1. In this decision, the Alberta Utilities Commission concludes that it remains just and reasonable to allow electric distribution utilities to invest in new residential customer connections up to a prescribed maximum amount, referred to as the maximum investment level (MIL). The Commission approves a residential MIL of \$3,016 for all four electric distribution utilities for 2024, which will be annually escalated by I-X¹ for the remainder of the 2024-2028 performance-based regulation (PBR) term. For the reasons set out in this decision, the Commission is satisfied that this MIL is just and reasonable, and strikes a reasonable balance between the costs that new connecting residential customers pay through customer contributions, and those costs that are socialized across all customers within the relevant rate class through rates.

2. For MILs related to street lighting installed in a new development, the Commission finds that the MIL should be paid to the municipality within which the new development was constructed.

3. The Commission also directs that:

- ENMAX must discontinue its current practice of fully funding standard new residential developments.
- To ensure that the funding provided in PBR3 reflects the revised MILs, the four electric distribution utilities are directed to reflect the approved 2024 MIL in their 2024 PBR rate calculations to be filed in the compliance filing to Decision 27388-D01-2023.
- All four electric distribution utilities shall adjust their terms and conditions of service (T&Cs) to reflect the updated MIL as part of their respective compliance filings to Decision 27388-D01-2023,² due November 3, 2023.

2 Introduction and background

4. In Proceeding 26649, the Melcor Entities,³ brought a complaint before the Commission regarding Fortis's changing design standards as they applied to certain developments in Fortis's

¹ The X factor to be used in the escalation of MILs is the X factor set in Decision 27388-D01-2023: 2024-2028 Performance-Based Regulation Plan for Alberta Electric and Gas Distribution Utilities, Proceeding 27388, October 4, 2023, inclusive of the X factor premium.

² Decision 27388-D01-2023: 2024-2028 Performance-Based Regulation Plan for Alberta Electric and Gas Distribution, Utilities, Proceeding 27388, October 4, 2023.

³ The Melcor Entities were made up of Melcor Developments Ltd., Highview Communities Inc. and Sunset Properties Inc.

service territory.⁴ The complaint alleged that the required design standards applicable to the subject developments breached Fortis’s obligations under the *Electric Utilities Act* to provide electric distribution service that is not unduly discriminatory, and that in applying the required design standards, Fortis was acting in a manner that was unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory, or inconsistent with or in contravention of law. As Fortis’s design standards evolved and resulted in increased costs, and as Fortis would not proceed with connecting a new development until the developer had paid the additional costs, the developers were concerned that the changing design standards increased the costs of new developments.

5. The Melcor Entities’ complaint centred around two design standard changes: the requirement to install 200 ampere (amp) services for certain residential lots instead of 100 amp service, and the requirement for cable to be installed in conduit under paved alleys instead of by direct burial.⁵ Both of these requirements resulted in increased connection costs. The developers sought a limitation on design standard changes or an increase in MILs to address these increased costs.

6. The Commission determined in Decision 26649-D01-2022⁶ that the complaint levied by the Melcor Entities focused on design standards and that any change to MILs was out of scope because MILs would be better addressed in a generic terms and conditions consultation, such that other stakeholders would be able to provide input.⁷ At that time, Fortis’s MILs had also already been approved on a final basis for both 2021 and 2022. Further, in Decision 26649-D01-2022, the Commission dismissed the Melcor Entities complaints, determining that Fortis did not breach its obligations under the *Electric Utilities Act*, and that it did not act in a manner that was unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory, or inconsistent with or in contravention of law.⁸

7. On March 9, 2022, the Commission issued Bulletin 2022-03⁹ indicating that it was initiating a stakeholder consultation to review the standards of service for new home connections and the associated MILs for 2023-2028. The topics of discussion for this consultation included the basic design standard for new home construction and a methodology to set the MILs for the electric distribution utilities starting in 2023. After reviewing the materials gathered through the consultation process, the Commission decided that it would benefit from further evidence provided through a hearing process. As a result, the Commission initiated the first stage of the present Proceeding 27658 on September 28, 2022.

8. The Commission indicated that Proceeding 27658 would progress in two phases.¹⁰ The first phase set 2023 MILs with the release of Decision 27658-D01-2022. In that decision, the Commission directed each of the distribution utilities to recalculate their 2023 MILs by

⁴ Proceeding 26649, Exhibit 26649-X0002, 2021-06-30 Melcor Entities Appendix A, PDF page 2.

⁵ Proceeding 26649, Exhibit 26649-X0008, Melcor Entities Complaint Particulars, PDF pages 10-12, paragraphs 23-24 and 27.

⁶ Decision 26649-D01-2022: Melcor Developments Ltd., Highview Communities Inc. and Sunset Properties Inc., Complaint Regarding FortisAlberta Inc. Changing Design Standards, Proceeding 26649, March 22, 2022.

⁷ Proceeding 26649, Exhibit 26649-X0055, AUC letter – Procedural notice, PDF page 3, paragraph 14.

⁸ Decision 26649-D01-2022, PDF page 4, paragraph 4.

⁹ 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.

¹⁰ Exhibit 27658-X0004, AUC letter - Proceeding to determine MILs starting in 2023, PDF pages 1-2, paragraph 4.

escalating 2022 approved MILs by 2.68 per cent.¹¹ Table 1 below illustrates the MILs that were approved as final, effective January 1, 2023.

Table 1. 2023 approved MILs

Distribution utility	2023 MIL
ATCO Electric ¹²	\$3,047 per lot
ENMAX non-standard residential development ¹³	\$2,729 per lot - 100 amp service \$3,975 per lot - 200 amp service \$10,506 per lot - 400 amp service
EPCOR ¹⁴	\$2,820 per lot
Fortis ¹⁵	\$2,749 per lot

9. In this second phase, the Commission re-examined the principles underlying MILs for 2024 and beyond.¹⁶ This decision deals with the second phase of this proceeding.

10. On February 9, 2023, the Commission issued its final issues list, scoping what would be considered in the second phase of this proceeding. Parties to this proceeding, the four Alberta distribution utilities, the Developers,¹⁷ the Alberta Federation of Rural Electrification Associations (AFREA), the Municipalities¹⁸ and the Office of the Utilities Consumer Advocate (UCA) filed evidence, information requests (IRs) and responses. The record of the proceeding closed with oral argument and reply argument on July 19 and 20, 2023.

3 Background of a MIL

3.1 What is a MIL?

11. A MIL is the maximum dollar amount that a distribution utility can invest in a new customer service connection and add to its rate base. Effectively, the distribution utility invests in the expansion of the distribution system, paying some or all of the costs incurred in the connection of a new customer up to the maximum amount allowed (i.e., the MIL). The distribution utility, in turn, capitalizes these costs and recovers the investment over time through the rates it charges to customers. To the extent that connection costs exceed the MIL, these costs are borne directly by the connecting customer, rather than being socialized across customers through rates.¹⁹ Fundamentally, when a new customer connects to the distribution system, the MIL is the portion of the connection costs that all distribution customers in the associated rate

¹¹ Decision 27658-D01-2022: Residential Standards of Service and Maximum Investment Levels – Phase 1, Proceeding 27658, December 15, 2022.

¹² Exhibit 27658-X0047, Schedule of available company investment, PDF page 1.

¹³ Exhibit 27658-X0050, Residential investment levels, PDF page 2. As it relates to a standard residential development, ENMAX continued its practice for 2023 of investing the full amount necessary to provide a modified underground residential distribution system.

¹⁴ Exhibit 27658-X0040, 2023 Schedule A – Investment Eligibility, PDF page 1.

¹⁵ Exhibit 27658-X0042, Appendix I - Customer contributions schedules, PDF page 1.

¹⁶ Exhibit 27658-X0004, AUC letter - Proceeding to determine MILs starting in 2023, PDF page 1, paragraph 4.

¹⁷ When referring to the “the Developers” in the context of Proceeding 27658, the Developers are Melcor Developments Ltd., the Building Industry and Land Development Association Alberta and Building Industry and Land Development Association Calgary.

¹⁸ When referring to the “the Municipalities” in the context of Proceeding 27658, the Municipalities refers to the Association of Alberta Municipalities and the City of Airdrie.

¹⁹ The MILs associated with new residential developments are collected from all residential rate class customers through residential distribution rates.

class pay for, and the customer contribution is the portion of the connection costs the connecting customer pays directly.

12. In most cases, MILs are set amounts, approved as part of each distribution utility's T&Cs. Third-party developers construct electric utility infrastructure inside new residential developments within the service areas of Fortis, ATCO Electric and EPCOR. In ENMAX's service area it, as part of a four-party consortium,²⁰ it constructs the electrical infrastructure associated with the new connections and ENMAX's current practice is to fully fund standard residential developments.²¹

13. Once construction is complete, the developer (or other third party if applicable) passes ownership of this infrastructure to the distribution utility, and is reimbursed for its construction costs (up to the amount of the MIL) by the distribution utility. For any amounts greater than the MIL, the Commission understands developers generally aim to pass on these costs to homebuyers in the form of higher home or lot prices. Developers may not be able to pass on these costs uniformly across new homes or residential lots.²² However, the Commission notes that the Developers operate in a competitive market and are not regulated by the Commission. The Commission understands that generally, in a competitive market, competitive forces will ensure equilibrium between the demand for and supply of new homes or developments regardless of the approved MIL.

14. The Commission also notes that it has previously found that developers are generally not "customers" as defined in, or contemplated by, the *Electric Utilities Act*.²³ During the hearing, Commission counsel asked why the developers were concerned about MILs, since all residential MILs in a service area will be the same and therefore all developers in a given area will generally be faced with the same costs (and therefore none should be able to avoid these costs and obtain a competitive advantage in a given market). The Developers suggested they were acting as a proxy for customers, they were concerned about affordability for customers, and in some circumstances, they would not be able to pass the costs associated with customer contributions through to customers on a timely basis.²⁴ The UCA noted that while other parties in this proceeding submitted they were acting as a proxy for customers interests, "the UCA is the party advocating in that respect without other motivation."²⁵ The Commission notes that the UCA is tasked with representing the interests of Alberta residential electricity customers, among other customers,²⁶ and to a large degree it disagreed with the positions taken by the Developers in this proceeding. The Commission does not find that the Developers represent the interests of customers in this proceeding, but the Commission has nevertheless considered their evidence, arguments and interests as necessary and appropriate in reaching its decision.

²⁰ Exhibit 27658-X0133, EPC-Developers-2023APR21-002, PDF page 4; Exhibit 27658-X0133, EPC-Developers-2023APR21-003, PDF page 6.

²¹ Exhibit 27658-X0060, ENMAX evidence, PDF pages 9-10, paragraph 7.

²² Exhibit 27658-X0027, Developer Response to the Commission, PDF page 8, paragraph 26.

²³ Decision 27658-D01-2023, PDF pages 7-10, paragraphs 19-28.

²⁴ Transcript, Volume 1, page 63 (B. Schwanak).

²⁵ Transcript, Volume 1, page 208 (K. Rutherford).

²⁶ *Government Organization Act*, Schedule 13.1, Section 3(a).

3.2 Early MILs

15. As explained above, MILs and customer contributions are inextricably linked. In Decision 2000-1,²⁷ the Alberta Energy and Utilities Board (the board), predecessor to the Commission, established the following guideline regarding customer contributions:

The Board considers that customer contributions are suitable in circumstances where service to a customer may impose costs on other customers for which they should not be responsible. An appropriate contribution policy therefore provides a suitable balance to an unlimited obligation to serve by imposing economic discipline on siting decisions. It transfers the economic burden of connection of new customers from the utility and its existing customers to the new customer. In other words, it exerts some of the discipline of the utility's economics on the economic decision-making of the customer. The Board considers that customer contributions should relate only to the local connection costs of the system expansion.²⁸

16. This passage identifies some of the key considerations relevant to MILs and customer contributions.

17. These key considerations were also endorsed in Decision 2002-082.²⁹ In that decision, the board determined the appropriate MILs by primarily considering what customer-related costs should be financed by the distribution utility and recovered through rates, and what portion should be financed directly by customers in the form of customer contributions. There were two overarching concerns with respect to MILs in the decisions: (i) did the level of MILs impose costs caused by the connecting customers on other customers who should not be responsible for those costs – either through cross-subsidization or intergenerational inequity; and (ii) did the level of MILs provide an effective price signal to incent the connecting customer to choose the most efficient connection possible. The board also noted that changes to MILs based on changes in technology or construction standards may be appropriate.³⁰

18. The tensions inherent in balancing these concerns, and others, are apparent in the following excerpt from Decision 2002-082, where the board considered whether MILs should be increased to include the average cost of urban underground services as proposed by the distribution utility:

With respect to AE's [ATCO Electric's] submission that underground service is a source of intergenerational inequity, the Board considers, at this point in time, that underground service continues to be a premium service. The Board does not consider the fact that an increasing percentage of new residential services are underground constitutes intergenerational inequity, without consideration of the premium nature of the service. The Board notes that although underground servicing has been a standard in many urban areas for several years, 24% of all new residential services were still overhead in 2001. The Board notes that the aforementioned figures are system wide averages. The Board

²⁷ Decision 2000-1: ESBI Alberta Ltd., 1999/2000 General Rate Application Phase 1 and Phase 2, Application 990005, Files 1803-1, 1803-3, February 2, 2000.

²⁸ Decision 2000-1, PDF page 276.

²⁹ Decision 2002-082: ATCO Electric Ltd., 2002 Investment and Contribution Policy, Application 1251218, September 10, 2002, PDF page 16.

³⁰ Decision 2002-082, PDF page 17.

agrees with FIRM^[31] that the proposed policies could create undue subsidies, beyond what would be anticipated in an averaging methodology, from those customers with low connection costs to those with high connection costs. The proposed policy could create undue-cross subsidies from small rural communities, with overhead service, to urban or rural residential customers.³²

19. In Decision 2002-082, the board denied the utility’s proposal, finding instead the cost for residential customers should be based on the cost of a typical overhead service, citing among other reasons that new customers may not benefit from increased MILs, as developers may not pass this investment on to homebuyers. The board also noted that approving MILs based on underground service could result in customers with lower connection costs subsidizing customers with higher costs, and therefore create undue-cross subsidies from small rural communities with overhead service to other residential customers.³³ The board concluded that the existing MILs should be maintained, but increased by inflation, offset by productivity and technological improvements.³⁴

20. In 2010, after a joint consultation, the distribution utilities agreed on 10 guiding principles for setting MILs.³⁵ The 10 principles are reproduced in [Appendix 4](#) of this decision for ease of reference. The Commission largely endorsed these principles, although it provided some clarifications and qualifications, as discussed further below.³⁶

4 Should MILs be retained?

21. In this proceeding, parties generally supported retaining MILs in some form. The Commission notes, however, that most of the parties in this proceeding were aligned in interest to support the continuation of, and increase to, MILs. Specifically, maintaining and increasing MILs allows for continued and increased investment for distribution utilities and, all else equal, would provide distribution utilities with increased returns. Maintaining and increasing MILs also decreases the amount developers would be required to pay by way of a contribution towards new electricity infrastructure in their developments and allow the developers to either price lots and/or homes lower than they otherwise would, or earn higher profit at a given market price. The fact that both the distribution utilities and the Developers have an incentive to seek increased MILs was discussed by the UCA in argument.³⁷

22. The UCA was the only party in this proceeding who broadly represented utility customers that must ultimately pay for MILs through rates. While the UCA initially advocated for exploring a “zero-MILs” approach to address affordability concerns, it did not ultimately support this approach in argument. Rather, the UCA advised that it had determined a “zero-

³¹ “FIRM” is defined as comprising these parties: Alberta Federation of REAs Ltd., the Alberta Association of Municipal Districts and Counties, the Alberta Urban Municipalities Association, the Consumers’ Coalition of Alberta, and the Public Institutional Consumers of Alberta, on PDF page 54 of Decision 2002-82.

³² Decision 2002-082, PDF page 18.

³³ Decision 2002-082, PDF pages 18-20.

³⁴ Decision 2002-082, PDF page 21.

³⁵ Decision 2010-309: FortisAlberta Inc., 2010-2011 Distribution Tariff – Phase I, Proceeding 212, Application 1605170, July 6, 2010, PDF pages 13-14, paragraph 20.

³⁶ Decision 2011-134: ATCO Electric Ltd., 2011-2012 Phase I Distribution Tariff, 2011-2012 Transmission Facility Owner Tariff, Proceeding 650, Application 1606228, April 13, 2011, PDF pages 51-53.

³⁷ Transcript, Volume 1, pages 236-237 (K. Rutherford).

MILs” approach may not provide the desired relief to customers and focused its submissions on the principles associated with setting MILs and ensuring that approved MILs “ultimately result in the lowest costs possible for DFO [distribution facility owner] customers.”³⁸

23. Counsel for ATCO Electric stated in oral argument that “maintaining MILs is actually less risky in terms of rate impacts as the range and extent of consequences from eliminating the longstanding practice of allowing utility investment subject to MILs cannot be fully known.”³⁹ Fortis argued that MILs facilitate customer growth, which ultimately puts a downward pressure on rates.⁴⁰

24. The Commission finds that MILs should be retained. While MILs as such are not required by the statutory scheme, they are a proportionate way to compensate the distribution utilities for operational and ownership responsibilities incurred in relation to new customer-related connection infrastructure. The Commission has reached this conclusion after considering the submissions of all parties with respect to the regulatory compact and the statutory scheme. In interpreting the statute, the Commission has considered its text, context and purpose with a view to discerning legislative intent.⁴¹

4.1 The regulatory compact

25. ATCO Electric invoked the regulatory compact in support of its position that MILs should be maintained, as described by the Supreme Court of Canada in the following passage:

These goals have resulted in an economic and social arrangement dubbed the “regulatory compact”, which ensures that all customers have access to the utility at a fair price — nothing more. As I will further explain, it does not transfer onto the customers any property right. Under the regulatory compact, the regulated utilities are given exclusive rights to sell their services within a specific area at rates that will provide companies the opportunity to earn a fair return for their investors. In return for this right of exclusivity, utilities assume a duty to adequately and reliably serve all customers in their determined territories, and are required to have their rates and certain operations regulated (see *Black*, at pp. 356-57; *Milner*, at p. 101; *Atco Ltd.*, at p. 576; *Northwestern Utilities Ltd. v. City of Edmonton*, 1929 CanLII 39 (SCC), [1929] S.C.R. 186 (“*Northwestern 1929*”), at pp. 192-93).⁴²

26. As ATCO Electric pointed out, the regulatory compact serves as a backdrop for the interpretation of utility legislation in Alberta. However, as acknowledged by ATCO Electric in argument, the regulatory compact is mutable, as explained by Justice Paperny of the Alberta Court of Appeal:

[12] As such, while the use of the term “regulatory compact” suggests a tight, firmly contained and well-understood agreement between the utility, the regulator and the public, this is misleading. Changes in economics, demographics, technology and policy inform and shape the “compact”. As stated in a leading textbook on utility regulation:

³⁸ Transcript, Volume 1, pages 209-210 (K. Rutherford).

³⁹ Transcript, Volume 1, page 102 (J. Kennedy).

⁴⁰ Transcript, Volume 1, page 194 (T. Ahmed).

⁴¹ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, paragraphs 118-121.

⁴² *ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities Board)*, 2006 SCC 4, paragraph 63.

... it must be stated clearly and recognized at the outset that regulation has not developed in a smooth or always logical manner. To the contrary, regulation has experienced “a slow and fitful growth”.

[13] Or, as stated more recently by Fraser CJA in *ATCO Gas and Pipelines Ltd v Alberta (Utilities Commission)*, 2014 ABCA 397 (*ATCO Costs Decision*), at paragraph 3:

... the terms of the regulatory compact have always been subject to evolution and the rebalancing of competing interests of consumers and utility companies when times and circumstances change. This is as it should be, especially in this era of deregulation of the gas and electrical sectors in Alberta. There is no industry today that is immune to change. Or that enjoys a right to be protected from the consequences of change, whether those arise from legislative choices, deregulation or court decisions.⁴³

27. Generally, ATCO Electric maintained that the regulatory compact represents a balancing of competing interests, with the distribution utility’s right and obligation to provide exclusive service within a designated service area, and its right to receive adequate compensation in respect of that service at its foundation. ATCO Electric further submitted that when the relevant statutory provisions were considered in light of the regulatory compact, and the evidence, MILs should be maintained.⁴⁴

28. While the Commission should consider the regulatory compact when interpreting its statutory scheme, for the reasons explained below, the Commission concludes that the regulatory compact does not dictate a particular outcome with respect to MILs. However, the Commission considers that generally, the regulatory compact’s balancing of the provision of service with recovery of costs associated with that service, favours some basic level of investment by distribution utilities in the connection infrastructure that they will ultimately own and operate.

4.2 The Electric Utilities Act

29. While the Commission asked questions regarding utility legislation generally, the parties to this proceeding that based arguments on the statutory scheme primarily relied on provisions in the *Electric Utilities Act* to support arguments that some MIL was legally required. Arguments related to a particular methodology to calculate MILs were also framed in accordance with the *Electric Utilities Act*. For the reasons set out in this section, the Commission is not persuaded that the statutory scheme requires the availability of MILs, or mandates a particular methodology for calculating MILs. However, the Commission finds some support in this scheme for the principle that some basic level of utility investment in new customer-related connection infrastructure is merited.

4.2.1 Sections 101 and 105(1)

30. Section 101 of the *Electric Utilities Act* provides that a person wishing to obtain electricity must make arrangements with the owner of the electric distribution system in the corresponding service area. Section 105(1) sets out various duties of the owner of an electric distribution system, including the duty to provide electric distribution service that is not unduly

⁴³ *FortisAlberta Inc v Alberta (Utilities Commission)*, 2015 ABCA 295, paragraphs 12-13.

⁴⁴ Transcript, Volume 1, pages 112-113 (J. Kennedy).

discriminatory, and to connect customers. Several distribution utilities pointed to these sections in support of their argument that the *Electric Utilities Act* contemplates an entitlement to MILs.

31. While the Commission accepts that these provisions reflect the right and obligation to serve as contemplated by the regulatory compact, the Commission does not find that any of these obligations directly or indirectly dictate who should pay the customer-related costs of new customer connections nor entitle the owner of an electric distribution system to a particular MIL. Fundamentally, these provisions relate to who is entitled to electric distribution service, from what entity they must seek that service, and who is obligated to provide electric distribution service. They do not provide direction regarding what portion of customer-related connection costs should be borne by the utility (and recovered through rates), and what portion should be borne by the customer who necessitated them.

4.2.2 Sections 121 and 122

32. MILs are part of a distribution utility’s tariff. Section 121(2) of the *Electric Utilities Act* provides that the Commission must ensure that each tariff is just and reasonable, not unduly preferential, arbitrarily or unjustly discriminatory, or inconsistent with any law. Section 122 provides:

122(1) When considering a tariff application, the Commission must have regard for the principle that a tariff approved by it must provide the owner of an electric utility with a reasonable opportunity to recover

- (a) the costs and expenses associated with capital related to the owner’s investment in the electric utility, including
 - (i) depreciation,
 - (ii) interest paid on money borrowed for the purpose of the investment,
 - (iii) any return required to be paid to preferred shareholders of the electric utility relating to the investment,
 - (iv) a fair return on the equity of shareholders of the electric utility as it relates to the investment, and
 - (v) taxes associated with the investment,

if the costs and expenses are prudent and if, in the Commission’s opinion, they provide an appropriate composition of debt and equity for the investment ...

33. The Supreme Court of Canada has interpreted the term “just and reasonable” in the context of Alberta’s utility legislation and explained:

In Canadian law, “just and reasonable” rates or tariffs are those that are fair to both consumers and the utility: *Northwestern Utilities Ltd. v. City of Edmonton*, 1929 CanLII 39 (SCC), [1929] S.C.R. 186, at pp. 192-93, per Lamont J. Under a cost of service model, rates must allow the utility the opportunity to recover, over the long run, its operating and capital costs. Recovering these costs ensures that the utility can continue to operate and can earn its cost of capital in order to attract and retain investment in the utility: *OEB*, at para. 16. Consumers must pay what the Commission “expects it to cost to efficiently provide the services they receive” such that, “overall, they are paying no more than what is necessary for the service they receive”: *OEB*, at paragraph 20.⁴⁵

⁴⁵ *ATCO Gas and Pipelines Ltd v Alberta (Utilities Commission)*, 2015 SCC 45, paragraph 7.

34. ATCO Electric noted that MILs are part of a distribution utility’s tariff, and that these sections apply to MILs. The Commission agrees, and considers that the distribution tariff must be just and reasonable, in the sense that it is fair to both the distribution utility, and consumers.

35. ATCO Electric submitted that Section 122 in particular, was framed through investment. During argument, ATCO Electric was asked whether Section 122(1)(a) would be contravened if MILs were eliminated, because the “investment” would be replaced by customer contributions, and therefore there would be no investment as contemplated by Section 122(1)(a). Ultimately, ATCO Electric emphasized that the important point from its perspective is that under the statute, if the distribution utility is responsible to operate and maintain new connection infrastructure, even if it had not invested in that infrastructure, there should be some level of fair compensation provided to correspond to its responsibilities.⁴⁶ This could be accomplished by a management fee as well as return on some level of investment.

36. EPCOR agreed with this point, emphasizing that even if there is no “investment” as contemplated by this section, the connection assets are owned and operated by the distribution utility, and some compensation is appropriate.⁴⁷ In its evidence, EPCOR went further, stating that the service connections are part of the “electric distribution system” required to provide “electric distribution service” as defined in the *Electric Utilities Act*,⁴⁸ and that:

The legislative framework contemplates that the distribution system owner will invest in, own and operate the facilities, and will be provided through its Commission approved tariffs with a reasonable opportunity to recover its costs and expenses associated with capital related to the owner’s investment in the facilities, including depreciation, debt costs and a fair return on equity, if the costs and expenses are prudent.⁴⁹

37. The Commission accepts that this may be the case to some degree with respect to prudent utility investment in the broader electric distribution system, but MILs only relate to a portion of the customer-related connection costs at the very boundaries of the system. The Commission considers that at least some distinction between the broader system, and the edges of the system, was acknowledged by EPCOR, through its position that it is not required to invest in all portions of the electric distribution system, such as the portion of service connections located on its customers’ property.⁵⁰ Reading sections 121 and 122 in light of the regulatory compact relating to prudent investment and the statute as a whole, the Commission considers that while some degree of investment is contemplated by the statute, it is not the case that the statute provides the

⁴⁶ Transcript, Volume 1, pages 114-115 (J. Kennedy).

⁴⁷ Transcript, Volume 1, pages 181-182 (J. Liteplo).

⁴⁸ *Electric Utilities Act*:

“1(1)(l.1) “electric distribution service” means the service required to transport electricity by means of an electric distribution system

(i) to customers, or

(ii) from distributed generation to the interconnected electric system,

and includes any services the owner of the electric distribution system is required to provide by the Commission or is required to provide under this Act or the regulations, but does not include the provision of electricity services to eligible customers under a regulated rate tariff;

1(1)(m) “electric distribution system” means the plant, works, equipment, systems and services necessary to distribute electricity in a service area, but does not include a generating unit or a transmission facility.”

⁴⁹ Exhibit 27658-X0083, EPCOR evidence, PDF pages 10-11, paragraph 8.

⁵⁰ Transcript, Volume 1, pages 182-183 (J. Liteplo).

utility a right to invest in every component of customer-related infrastructure that may be requested by a customer or a developer.

38. The Commission similarly notes that ATCO Electric argued that it may be consistent with the statutory scheme to provide compensation in respect of customer-related connection assets through some other mechanism such as a management fee if MILs were eliminated. In response to a question from the panel chair regarding whether, if MILs were eliminated, there was a particular threshold at which the operational and ownership responsibilities of the utilities in relation to customer-related connections, would necessitate a management fee or some other form of recompense for these responsibilities, ATCO Electric submitted there was no evidence on the record of this proceeding to establish what a reasonable threshold might be.⁵¹ Based on this discussion, and its broader assessment of the statutory scheme in the context of the regulatory compact, the Commission is satisfied that it may be the case that if MILs were eliminated entirely, it would need to evaluate whether it would be inconsistent with the statutory scheme for there to be a complete absence of compensation in relation to customer connection assets. However, the Commission finds it is unnecessary to decide whether the elimination of MILs entirely would be contrary to the statutory scheme, because as explained further below, the Commission has determined that it will retain MILs. At present the balance of evidence was that MILs represent a very minor amount of distribution utility investment.

39. Regardless, the Commission finds that it is not required by the statutory scheme to allow each utility the opportunity to invest in every metre of the electric distribution system requested by a customer or developer, and that the reasonable opportunity principle embedded in the *Electric Utilities Act* applies to amounts actually and prudently invested. The Commission notes the following recent commentary from the Court of Appeal that “[w]ords like ‘just’, ‘reasonable’, ‘unduly’ and ‘prudent’ bestow broad discretionary powers on the Commission. This is expansive text.”⁵² The Commission considers that while it must ensure that electric distribution tariffs are just and reasonable, in the sense they are fair to both the utility, and consumers,⁵³ the statute confers a wide degree of discretion on the Commission in determining what methodology should be used to determine the appropriate amount of utility investment in customer-related connection costs, and the corresponding amount that should be paid directly by customers.

5 What principles should govern MILs going forward?

40. MILs have allowed connecting customers and developers of new subdivisions to recover some or all customer-related connection costs from the relevant distribution utility. As explained above, the fundamental issue with respect to MILs is what customer-related costs of new connections should be financed by the distribution utility, and what costs should be financed directly by the customer requiring the new connection. The Commission has considered a variety of principles when setting MILs in the past, and in this section of the decision the Commission determines what principles will apply going forward. The Commission then applies these principles to determine a particular methodology for setting MILs.

⁵¹ Transcript, Volume 1, pages 121-123 (J. Kennedy).

⁵² *Equus Rea Ltd v Alberta (Utilities Commission)*, 2023 ABCA 142, paragraph 94.

⁵³ *ATCO Gas and Pipelines Ltd v Alberta (Utilities Commission)*, 2015 SCC 45, paragraph 7.

41. For the reasons explained below, the Commission considers the following principles should govern the setting of residential MILs:

- (a) MILs should be simple to administer, consistent, and transparent.
- (b) MILs should ensure new customers are not imposing costs on other customers for which they should not be responsible.
- (c) MILs should provide price signals to customers and developers to incent the most cost efficient connections possible for their current and future needs.
- (d) MILs should subsidize a service connection at a basic level of service, and not premium levels of service. Basic service is the level of service that a typical Albertan requires to light their homes and power their electronics and household appliances.

42. Applying these four principles, the Commission has determined that MILs should be set to cover a reasonable estimate of the cost to provide a basic electrical service connection, which corresponds to 100 amp, overhead service. This is because, in accordance with the four principles set out in the previous paragraph:

- (a) The current principles governing MILs, and the level of MILs, have led to MILs that are complex, inconsistent and opaque. Changes should be introduced to promote simplicity, consistency and transparency, and the Commission considers the best way to do that is to set MILs that represent the costs of a basic level of infrastructure.
- (b) Including costs in MILs beyond basic service leads both to: (i) customers with lower connection costs, cross-subsidizing customers with higher connection costs; and (ii) intergenerational inequity. Thus, including costs beyond basic service in MILs results in new customers imposing costs on other customers for which they should not be responsible.
- (c) By being set to cover only the basic level of service, the MILs impose economic discipline on customers to consider whether other requirements or a different level of service is necessary to meet their needs or is otherwise something customers are prepared to pay for by way of a customer contribution.
- (d) The basic level of service for residential customers for the purposes of calculating MILs should be 100 amp, overhead service. Therefore, a reasonable estimate of these costs is an appropriate basis to determine the amount of customer-related connection costs that should be subsidized across customers. It is inconsequential that distribution utility service standards, or other requirements, may prevent the actual installation of 100 amp, overhead service, because MILs relate to what costs in relation to new connections should be recoverable through distribution utility rates, not what the form of new connections could or should be. Finally, it is possible that what constitutes basic service could change, but the Commission would require extensive and robust evidence before making any such change.

43. In reaching these conclusions, the Commission has considered the evidence and arguments of the parties and its prior decisions, including the ten prior principles and other methodologies initially proposed by the utilities and endorsed by the Commission in 2010, as set out in Appendix 4 below. With respect to the ten prior principles specifically, while the Commission has analyzed these principles and found some of them helpful in its analysis, the

Commission considers these principles are at too high a level of abstraction to provide meaningful guidance to arrive at a specific MIL for each distribution utility. Instead, the Commission has considered these principles as guidance in determining the more specific principles and methodologies that should govern the setting of MILs, which are summarized above and explained below.

5.1 Simplicity, consistency and transparency

44. The need for simplicity, consistency, and transparency is an important consideration in setting MILs. These principles were reflected in principles 9 and 10 of the 10 principles:

9. MILs should be simple to administer and applied in a consistent and transparent manner.

10. Utilities should take into consideration the approaches of neighboring utilities when developing MILs. In a reasonable timeframe, individual company's MILs should move towards an AUC-adopted, common approach to setting investment levels for Alberta utilities.

45. The Commission has endorsed these principles, and has determined for the reasons set out below and in Section 6 that having one MIL for all four distribution utilities best achieves the principles of simplicity, consistency and transparency.⁵⁴

46. The Commission considers that simplicity, consistency and transparency are important qualities of an effective MIL. The Commission also notes that the previous principle 10 contemplated the 10 principles driving all distribution utilities towards a consistent approach to MILs. However, as is evident from the record of this proceeding, there continue to be inconsistent practices and requirements among the distribution utilities, and a lack of transparency as to what exactly the MIL is funding, and what it is not.

47. While Principle 8 provided that “[t]o the extent practical, the structure of MILs (ex., fixed dollar amount, or \$/unit) should generally align with cost causation and the rate structure which is applied to the customer,” the Commission considers that a fixed dollar amount should remain the basis of MILs, as to do otherwise would introduce undue complexity and costly administrative processes into the setting of MILs.

48. The Commission finds that the principle that MILs should be simple to administer and be applied in a consistent and transparent manner favours a change to the current approach to setting MILs. While a variety of changes could be made to advance these principles, the Commission considers a single, province-wide MIL that reflects an estimate of the costs to provide basic electricity service to residential customers makes MILs much more simple, consistent, and transparent. The Commission considers that this is a superior approach, unless a distinction among distribution utilities is required based on evidence that demonstrates unique characteristics of a distribution utility's service area that require a different MIL.

⁵⁴ Decision 2011-134, PDF page 53, paragraph 213.

5.2 New customers should not impose costs on other customers for which they should not be responsible

49. As explained in this section, the Commission considers that a paramount principle in setting MILs is that MILs should ensure that new customers are not imposing costs on other customers for which they should not be responsible. More specifically, MILs should not lead to customers with lower connection costs cross-subsidizing customers with higher connection costs, or to intergenerational inequity. The Commission concludes that the principle that MILs should ensure that new customers are not imposing costs on other customers for which they should not be responsible, supports a MIL that represents a reasonable estimate of the value of basic service.

5.2.1 The principle

50. The principle that MILs should ensure new customers are not imposing costs on other customers for which they should not be responsible, is well established in its decisions, and well founded. As explained above, this has continued to be a key consideration in setting MILs in Alberta. This principle encompasses two key subprinciples, both critical in setting MILs: MILs should not cause customers with low connection costs, to cross-subsidize customers with high connection costs, and MILs should not cause intergenerational inequity.

51. These principles were evident in early MILs decisions. For example, the Commission has expressed concerns that customers in rural areas of a service area that receive overhead service, may ultimately cross-subsidize customers in more urban parts of a service area that receive underground service, if the MIL that applies to both services incorporates the costs of underground service.⁵⁵

52. These principles are also evident in several of the previous 10 principles:

1. MILs should be set to achieve a reasonable balance of what an individual customer pays upfront through a customer contribution versus what all customers in a particular rate class pay through ongoing rates.

...

5. Setting of MILs needs to respect each utility's standards of service, while recognizing that these standards and the associated costs will change over time.

6. Changes to MILs should balance the need to attain the target MILs over a reasonable timeframe, while ensuring there is not undue upward pressure on tariff rates.

7. Adjustments to MILs should consider minimizing intergenerational inequity and cross subsidy, whereby the portion of the cost of an extension that the company invests in should be in similar proportion with previously established investment levels. Both new and existing customers should be treated similarly to the extent possible and should see a similar price signal when the system is or was extended to provide service.

53. The Commission previously endorsed these principles, and noted that a failure to adjust MILs to keep pace with inflation and increased construction costs could result in intergenerational inequity by requiring new customers to pay more for new connections than existing customers. Conversely, if the MILs were substantially increased in one year, it could be

⁵⁵ Decision 2002-082, PDF page 18.

unduly discriminatory to customers who had connected in previous years.⁵⁶ The Commission considers it necessary to address each of these principles in turn.

54. The Commission endorses the previous Principle 1 and notes it corresponds to what the Commission considers is the fundamental purpose of MILs – establishing a reasonable balance between what connecting customers pay, and what all customers pay in a rate class, when a new customer connects to the system.

55. The Commission considers that previous Principle 5 is no longer helpful in the setting of MILs. The Commission considers that a distribution utility's standards of service are not a proper basis on which to determine what portion of connection costs should be borne by new connecting customers, and what portion should be borne by residential customers as a rate class. Similarly, the Commission accepts that municipalities or communities may choose varying standards of service, and new customers may choose to request and should be permitted to receive different levels of service, which may come with different connection costs. However, the Commission is not persuaded that it is just and reasonable for all customers to pay for these choices through rates. Rather, individual or community decisions on the type of service that drives connection costs higher are more reasonably borne by the customers or communities that are making these decisions. MILs are intended to ensure that every residential customer has basic, safe and reliable electricity service, not to socialize the full costs of elevated and incrementally more costly service. The Commission does not believe that setting a MIL that is different than the full or average cost of service per new lot for each distribution utility would adversely affect the continued expansion of the distribution system or lead to grid defection.

56. While a third party, such as a municipality, may impose requirements for aesthetic or other reasons that impact the costs of connections within their municipality, this is not a cost that should be paid for by customers broadly. The Commission expects that developers take any such additional costs into account in determining which municipalities to construct new developments in and the pricing of these developments.

57. The Commission is of the view that Principle 6 may continue to be relevant. However, based on the evidence in this proceeding, the Commission is not satisfied that any of the changes to MILs contemplated in this decision rise to a level of materiality that would place an undue upward pressure on rates.⁵⁷

58. The Commission considers the considerations of intergenerational inequity and cross subsidy articulated in Principle 7 continue to be relevant but they should be addressed separately.

59. Regarding cross-subsidization, the board expressed the concern in Decision 2002-082 that MILs may result in customers with lower connection costs, subsidizing customers with higher connection costs. This continues to be a central concern for the Commission regarding MILs. In fact, this is a central concern, as increasing variation in levels of services, creates an increasing risk that customers with lower connection costs, will unduly cross-subsidize those customers that benefit from more expensive variations.

⁵⁶ Decision 2011-134, PDF pages 52-53, paragraph 209.

⁵⁷ For example, ENMAX's evidence estimated that the complete elimination of MILs would reduce a typical residential customer bill by approximately \$0.13/month: Exhibit 27658-X0060, ENMAX evidence, PDF pages 14-15, paragraph 21.

60. Regarding intergenerational inequity, ENMAX argued that MILs should be retained for various reasons including the intergenerational inequity that would stem from the elimination of MILs. Fortis, the Developers and ATCO Electric shared the view that by eliminating MILs, there would be concerns regarding intergenerational inequity as current customers would not receive the benefit of a partial subsidy on their connection but pay, through distribution rates, for the connections of existing customers. The Commission finds that there is some merit in these arguments. However, the Commission also considers the argument that MILs ought to be retained due to intergenerational inequity concerns also suggests that MILs should not be materially increased, as existing customers that do not benefit from increased levels and types of service will pay higher rates due to a higher MIL. Ultimately, intergenerational inequity is a concern, in that material changes to MILs may result in new customers receiving a greater or a lesser amount of subsidization than prior generations.

5.2.2 Application of the principle

61. Based on the evidence in this proceeding, the Commission is particularly concerned that MILs that incorporate standards of service beyond a minimum basic standard, are increasingly resulting in customers with lower connection costs subsidizing customers with higher connection costs, and resulting in intergenerational inequity.

62. Where the level (for example, 100 amp versus 200 amp service) or type (such as underground service as opposed to building overhead) of service leads to increased costs, the Commission considers it is not reasonable for customers who do not have these services to bear a portion of the increased costs associated with them, as this may result in undue cross-subsidization and intergenerational inequity. At this time, the Commission finds it is not just and reasonable for an existing customer with 100 amp service and overhead distribution lines to subsidize new 200 amp, underground services, when these requirements are being driven because the new connection is to a larger home with increased servicing demands, by changes due to future policy objectives,⁵⁸ or dictated by communities, municipalities and other planning authorities for aesthetic or other reasons. On balance, it is more reasonable for those driving increased costs to bear such costs. Accordingly, the Commission considers that the principle that MILs should ensure new customers are not imposing costs on other customers for which they should not be responsible, favours setting a MIL based on a single level of basic service.

5.3 Price signals

63. For the reasons explained below, the Commission finds that price signals continue to be a consideration in setting MILs, but notes that these signals are largely muted by municipal standards and other requirements that mandate a particular level or type of service.

5.3.1 The principle

64. The Commission has consistently maintained that MILs should provide price signals to customers to incent efficient connection decisions. This was reflected in Principle 2:

2. MILs should provide economic discipline and price signals to new customers as they are connected to the interconnected transmission and distribution system, and these levels should be aligned with encouraging the best long term economic and technical solution to meet standard service requirements.⁵⁹

⁵⁸ Exhibit 27658-X0159, FAI-AUC-DFO-2023APR21-003(e), PDF page 15.

⁵⁹ Decision 2010-309, PDF page 14, paragraph 20.

65. The Commission considers that this continues to be a relevant consideration in MILs.

5.3.2 Application of the principle

66. While the Commission continues to consider that an important function of MILs is to send a price signal to new customers, in practice, the operation of this price signal is complicated, and to a large degree is muted.

67. Some distribution utilities argued that if the MIL did not cover the costs of certain service standards, such as 200 amp service, customers would be incented to undersize their service connection, and select levels of service that would ultimately be inadequate, requiring costly renovations in the future and resulting in economic inefficiencies. However, the UCA argued that this position does not withstand scrutiny, as the customer would ultimately be responsible for at least some of the costs of these upgrades.⁶⁰

68. The Commission expects that customers will act rationally, and in their own best interests. For example, if the MIL covers only the average costs of a 100 amp overhead connection, customers can be expected to select the least expensive level and type of service that best meets their current and expected future needs. The Commission considers that this is also true of developers. If homebuyers value a more expensive level or type of service, for example 200 amp underground service, they can be expected to pay a correspondingly higher price for homes with that service, than homes without it. In turn, developers can be expected to install the level and type of service that is in demand in the market. In this way, a MIL that covers only the costs of a basic connection creates a price signal that incents customers to select the most efficient level and type of service that meets their needs.

69. Conversely, if the MIL covers an amount greater than the basic level and type of service, an economically rational customer would select the highest level of service that they could receive, without paying any customer contribution. In this way, a MIL that covers an amount greater than basic service, creates a perverse incentive and an inappropriate price signal.

70. However, the Commission recognizes that in practice many of these price signals are muted by requirements imposed by municipalities and others. For example, the Commission asked an IR of the distribution utilities to explain all requirements in their service areas, including legal requirements, that relate to installing underground distribution systems and the relevant distribution infrastructure in a conduit.⁶¹ ATCO Electric identified several municipal bylaws and policies that apply within its service area, that require underground as opposed to overhead service.⁶² Fortis also identified municipal bylaws and policies within its service territory including an example of a municipality that required utilities to be installed underground in some circumstances.⁶³ ENMAX referred to its design standards, and the requirements of its shareholder – The City of Calgary.⁶⁴ EPCOR referred to its T&Cs, and the requirements of its shareholder – the City of Edmonton.⁶⁵

⁶⁰ Transcript, Volume 2, pages 252-254 (K. Rutherford).

⁶¹ Exhibit 27658-X0111, DFO-AUC-2023APR21-009(a), PDF page 11.

⁶² Exhibit 27658-X0147, DFO(ATCO)-AUC-2023APR21-009(a), PDF pages 36-40.

⁶³ Exhibit 27658-X0159, FAI-AUC-DFO-2023APR21-009(a), PDF pages 35-36.

⁶⁴ Exhibit 27658-X0131, EPC-AUC-2023APR21-009(a), PDF pages 34-36.

⁶⁵ Exhibit 27658-X0135, EDTI-AUC-2023APR21-009(a), PDF pages 33-34.

71. The Commission acknowledges that to the extent a distribution utility is required to install a particular form of service by a municipality, the price signal sent to the customer to install a more cost-effective form of service that is inconsistent with this standard is muted. However, the Commission notes that the MIL may still send an effective price signal to the extent that a customer is inclined to install a more expensive type or level of service than is required by a municipality or any other authority depending on the transparency of the costs of connection as a subset of the total lot or home price.

72. For these reasons, while the Commission acknowledges that MILs are an imperfect mechanism to send price signals to customers, and to promote efficient connection decisions, the Commission considers they remain an effective mechanism to send price signals with respect to levels and types of electricity service that exceed third-party requirements. In this way, the Commission considers that setting MILs in a way that reflects the costs of basic service, may still send effective price signals to customers.

5.4 Basic versus premium service

73. In this section of the decision, the Commission explains that the distinction between basic and premium service is an important consideration in setting MILs. While the proportion of levels and kinds of service connections in a service area may be relevant to the distinction between premium and basic service, the key consideration is that basic service is that which is required for a typical Albertan to have access to a sufficient level of service to meet their essential needs – energizing their lights, electronics and household appliances. Anything in excess of this amount is a premium service, and the costs associated with that level of service should generally not be subsidized by other ratepayers.

74. The Commission considers that notionally, basic service is 100 amp, overhead service. Therefore, a reasonable estimate of the costs of 100 amp, overhead service should form the basis of residential MILs in Alberta. As such, the costs of premium service above and beyond 100 amp, overhead residential service should generally be paid for by the connecting customer, and not subsidized across the residential rate class.

5.4.1 The principle

75. In an earlier decision, the Commission made a distinction between premium service and basic service when setting MILs. Parties to this proceeding filed evidence showing that the current MILs are less than the average cost of connecting customers in new residential developments. In the past, the Commission has used an averaging methodology and endorsed principles that indicate MILs should reflect utility service standards. These principles include:

3. The maximum amounts that the company invests in a new extension on behalf of all customers should consider the expected longevity or any other risks associated with the new service.

4. The current cost to connect new customers is the appropriate starting point for establishing MILs.⁶⁶

76. With respect to the previous third principle, the Commission considers that, while a relevant consideration generally speaking, it is not a fundamental principle when looking at the

⁶⁶ Decision 2010-309, PDF page 14, paragraph 20.

issue of residential MILs specifically.⁶⁷ This principle did not feature prominently in any party’s argument in this proceeding and the Commission did not find it particularly helpful, one way or the other, in coming to its decision in relation to residential MILs. The Commission expects that recovery of the distribution utilities’ investment in new customer connections is covered off by their respective, approved depreciation methodologies, and should there be any concerns in this regard, they may be addressed by a distribution utility at the time of its next depreciation study.

77. While the Commission has endorsed the fourth principle in the past, it has also noted that such costs should be calculated by considering an average over the last five years, and the sizing of standard equipment, not solely the current connection costs.⁶⁸ The Commission considers these previously expressed concerns reflect two key issues with using the current cost to connect as an appropriate starting point.

78. First, using data that does not include connection costs over a reasonable period of time, such as five years, may fail to reflect fluctuations in the costs of labour and materials that underpin connection costs.

79. Second, using data that does not include some standard (or basic) form of service will incorporate costs associated with more expensive levels of service, which should not be captured in the MIL. The Commission continues to have these concerns, and considers that this principle fundamentally relates to the distinction between standard and premium service that the Commission has previously employed. As a result, the Commission is not satisfied that the evidence of the current cost to connect new customers provided in this proceeding is the correct starting point for the establishment of MILs. Instead, a reasonable estimate of the cost to connect new customers that corresponds to some notional level of basic service is a reasonable starting point for the analysis. This leads to the question of what constitutes basic service.

80. In Decision 2002-082, in assessing whether underground service constituted “premium service,” the Commission considered the percentage of new connections in a utility’s service territory that were underground, as opposed to overhead.⁶⁹ The Commission considers that the percentage of new connections of a particular kind in a given time period, and the total percentage of connections of that kind across a service area, may be relevant to determining whether that kind of service constitutes “basic” or “premium service.” However, there is insufficient information on the record of this proceeding on this topic.

81. Regardless of these proportions, the Commission considers that basic service should correspond to the level of electrical distribution service that is necessary to meet the essential needs of a typical Albertan – lighting their homes, charging their electronics and energizing common appliances such as dishwashers, laundry machines and refrigerators. This is what distinguishes basic service from “premium” services – such as those kinds of service that are desirable for aesthetic purposes, or that are required to power luxury equipment such as hot tubs, saunas or the multiple appliances of above-average-sized homes.

⁶⁷ The Commission notes, for example, the following statement from Fortis in its IR responses to the Commission: “FortisAlberta suggests that, historically, the nature of residential services is such that residential customers are likely the longest, most stable and least risky rate class customers for recovering investment when compared to non-residential rate classes.”; Exhibit 27658-X0159, FAI-AUC-DFO-2023APR21-005(a), PDF page 22.

⁶⁸ Decision 2011-134, PDF page 52, paragraph 205.

⁶⁹ Decision 2002-082, PDF page 18.

82. The Commission considers that treating the distinction between basic and premium service in this way is consistent with the concept of electric distribution service as a public good. People need access to electricity, and the Commission considers that MILs are still a reasonable approach to socialize the basic costs of connecting to the grid, to access a basic level of electric distribution service that meets the essential needs of a typical Albertan. In brief, the Commission finds that using the average cost to connect in accordance with each utility's evolving service standards will exacerbate issues such as cross-subsidization, intergenerational inequity and improper price signals.

83. For the same reasons, the Commission does not accept that MILs must cover 100 per cent of the current cost of connection nor that the distribution utilities should be able to recover through the MIL 100 per cent of the costs of whatever design standard they choose to set.

84. While the Commission acknowledges ATCO Electric's concern that using a basic level of service to set MILs may result in that basic level of service falling out of line with evolutions in what can be considered basic,⁷⁰ such as changes driven by increased electrification, the Commission is satisfied this concern is addressed by leaving open the possibility that utilities will be able to demonstrate, in the future, that what constitutes basic service has changed, as contemplated by Section 6.1 of the decision below.

85. Accordingly, the Commission finds that the costs intended to be recovered through the MIL and the costs associated with particular service standards of new residential developments are mutually exclusive concepts. Standards of service relate to the technical standards adopted by a utility based on its judgment and expertise, as explained below. MILs, however, relate to how the costs associated with a new service connection should be allocated as between the new customer that is connecting to the distribution utility system, and the customers of the utility in that rate class.

5.4.2 Application of the principle: 100 amp, overhead service

86. In this section, the Commission concludes that the costs associated with 100 amp overhead service constitute basic service for the purposes of MILs, and are therefore reasonably recoverable through the MIL. Costs in excess of this basic level of service should be paid for through customer contributions. As explained in the ruling on final issues list and process schedule in this proceeding, the Commission recognizes the complexity of evaluating distribution owner design standards and correspondingly scoped this issue out from this proceeding.⁷¹ Instead, the Commission reviewed whether design standards should be considered in setting MILs as identified in issue (2)(c) of the issues list, without specifically considering the appropriateness of any particular design standard. ENMAX, EPCOR and the Developers agreed that design standards should be considered in setting MILs, ATCO Electric did not. Fortis explained that a basic standard should capture present and future electric utility and customer considerations. Therefore, a basic standard that considers various customer application scenarios, including panel size or underground and overhead service, would still be required to incorporate significant flexibility (and potentially complexity). Fortis noted that it would not be required to

⁷⁰ Exhibit 27658-X0147, DFO(ATCO)-AUC-2023APR21-003(c), PDF page 12.

⁷¹ Exhibit 27658-X0051, AUC letter – Ruling on final issues list and process schedule, PDF pages 5-6, paragraph 23.

back-calculate a technical or design standard if the Commission’s intention is simply to reduce MILs to a lower, basic level.⁷²

87. The Commission acknowledges the submissions put forward by the distribution utilities that there are third-party requirements, such as municipal bylaws, which must be adhered to in constructing new electrical infrastructure.⁷³ These requirements may lead to costs in excess of what the MIL provides. However, as noted above, the Commission finds that these third-party requirements should not dictate what should reasonably be included in distribution rates.

5.4.2.1 Underground and overhead service

88. In Decision 2002-082, the board found that underground service was considered a premium service and that a MIL that covered the average cost of installing underground service “could create undue subsidies, beyond what would be anticipated in an averaging methodology, from those customers with low connection costs to those with high connection costs.”⁷⁴

89. ATCO Electric submitted that conduit and underground should be considered “basic” as they are required to meet the mandate of the utility to provide safe and reliable service, as they are required by many municipalities.⁷⁵ EPCOR submitted underground should be considered “basic” because although overhead was considered, it was not allowed by the City of Edmonton.⁷⁶ Fortis referred to its standards of service as what constitutes basic service,⁷⁷ as did ENMAX.⁷⁸ The Commission is not satisfied from these responses that underground service constitutes basic service in Alberta. Municipal requirements, and standards of service, are not relevant to whether or not a particular type of service is basic or premium, and the Commission considers that the benefits of underground service are primarily aesthetic.

90. The Commission finds that underground service is premium relative to overhead service, as the latter accords with the principles of the basic service mentioned above. Further, an investment policy that fully funds the investment of underground service could continue to create an undue subsidy between new customers that have the opportunity to be connected via underground service and existing customers that may never benefit from an underground connection but will pay higher rates because of a higher MIL resulting from the socialized costs of other customers’ underground connections. While the Commission does not make any finding regarding preferences in various municipalities or areas of the province for underground service, the Commission finds that it is unreasonable for residential utility customers to pay the incremental costs of new services that exceed the minimum or basic service required.

5.4.2.2 100 amp and beyond

91. Similarly, the Commission finds that 200 amp service is also a premium service relative to the basic requirements of electrical distribution service described above. The Commission notes that 100 amp service is still regularly installed throughout Alberta, evidenced by some

⁷² Exhibit 27658-X0159, FAI-AUC-DFO-2023APR21-003(c), PDF page 14.

⁷³ Exhibit 27658-X0147, DFO(ATCO)-AUC-2023APR21-009(a), PDF pages 36-40; Exhibit 27658-X0159, FAI-AUC-DFO-2023APR21-009(a), PDF pages 35-36; Exhibit 27658-X0131, EPC-AUC-2023APR21-009(a), PDF pages 34-36; Exhibit 27658-X0135, EDTI-AUC-2023APR21-009(a), PDF pages 33-34.

⁷⁴ Decision 2002-082, PDF page 18.

⁷⁵ Exhibit 27658-X0147, DFO(ATCO)-AUC-2023APR21-009(b), PDF page 40.

⁷⁶ Exhibit 27658-X0135, EDTI-AUC-DFO-2023APR21-009(b), PDF page 34.

⁷⁷ Exhibit 27658-X0159, FAI-AUC-2023-APR21-009(b), PDF page 36.

⁷⁸ Exhibit 27658-X0131, EPC-AUC-2023APR21-009(b), PDF pages 36-38

distribution utilities giving developers a choice as to whether to install 100 or 200 amp service. ATCO Electric further noted the current MIL is unlikely to materially change the decisions of customers regarding 200 amp service as demand for 200 amp service is driven more by customer requirements in the competitive market (e.g., wanting electric vehicle chargers or solar panels).⁷⁹ Also, many existing customers have 100 amp service, and may never choose or have the means to upgrade that service. Customers purchasing homes in new communities have the option, through a customer contribution, to have premium infrastructure installed that may be unattainable to existing customers. The Commission finds it just and reasonable to ensure that new customers that will benefit from these optional installations pay the incremental costs of the associated infrastructure.

92. The Commission is not satisfied that MILs should cover the cost of infrastructure beyond basic 100 amp electricity service that is installed overhead. The Commission acknowledges that this basic infrastructure is not, in all cases, what the distribution utilities have designated as their standard or basic service but that does not negate the fact that many customers in Alberta receive safe and reliable service with that basic level of service.

6 MILs in the 2024-2028 PBR term

93. Having found that MILs should continue to be a part of electric distribution tariffs in Alberta and should provide a reasonable opportunity for distribution utilities to invest in basic service, the Commission will now determine the quantum of the MIL for 2024 and the methodology to be used by the distribution utilities to annually escalate the MIL for the coming PBR term. For the reasons set out in this section, the Commission has determined that:

- (a) For 2024, the MIL for each electric distribution utility will be **\$3,016** per lot; and
- (b) The 2024 MIL will be escalated by I-X for the duration of the PBR term.

6.1 2024 MILs

94. As discussed above, the Commission has determined that setting one MIL for all four electric distribution utilities that reflects the notional cost for the distribution utilities to provide 100 amp, overhead service is consistent with the four principles set out in Section 5 of this decision.

95. In addition, the Commission finds that setting a single MIL as opposed to a different MIL for each distribution utility promotes equity for ratepayers as there will not be a different burden for customers residing in or purchasing similar homes based solely on the distribution utility service area in which they reside. Plainly, a customer buying a home in Calgary, Drumheller, Edmonton or Strathmore will benefit from the same MIL. While not a significant concern for the Commission, it is also the case that setting a single MIL reduces the likelihood that the Developers will prefer the service area of one distribution utility over another.

96. On December 15, 2022, in Decision 27658-D01-2022, the Commission held that there was inadequate evidence before it to justify a modification of MILs, because generally, a

⁷⁹ Exhibit 27658-X0147, DFO(ATCO)-AUC-2023APR21-005(c), PDF page 19.

substantial increase in MILs should be supported by a study of a variety of development projects, representative of the characteristics of an entire service area, with sufficient empirical rigour.⁸⁰

97. On February 9, 2023, the Commission set the issues list for this proceeding, which placed in issue, among other things, whether or not MILs should be eliminated, and if they are retained in some form, how the line between MILs and customer contributions should be drawn. One consideration for the latter issue was the following sub issue:

Should there be a standard for “basic” electric distribution service that would be the basis for MILs, where customers would pay for levels of service over and above this standard?⁸¹

98. Both the distribution utilities and the Developers filed estimates on the average cost to service a lot in a new residential community in response to this issue. While Stantec Consulting filed a Cost of Electrical Service Study on behalf of the Developers, the costs listed in that study are materially higher than the estimates and examples provided by the distribution utilities. The four distribution utilities all noted that the cost estimates provided by the Developers were either useful as only points in a wider assessment of costs or should be dismissed.⁸² The distribution utilities also noted, and the Commission agrees, that the Developers face different pressures than regulated distribution utilities. The Commission is not persuaded that the estimates put forward by the Developers accurately reflect customer connection-related costs (i.e., only the non-system costs incurred in the connection of new residential communities to the existing distribution system).⁸³ The Commission is also not persuaded that the costs in the Developers’ evidence accurately reflect the customer-related costs to provide only basic 100 amp, overhead electric distribution service. While the study did include some 100 amp developments, it is not clear to the Commission this data was disaggregated by overhead and underground service. The Commission has therefore decided to place no weight on the cost study provided by the Developers in its determination of the 2024 MILs.

99. The Commission pursued the issue of setting MILs based on a basic service standard by seeking the relevant data, through IRs. For example, the Commission asked the distribution utilities to provide the cost and detailed description of the most basic system that will provide safe and reliable service in the context of the Developers stating that standards and costs should be set for 100 amp underground service, 100 amp overhead service, 200 amp underground service and 200 amp overhead service, and consider whether conduit is required in each circumstance.⁸⁴

100. In its response to this IR, ENMAX stated that its basic system is its standard modified underground residential distribution system, comprising an overhead feeder and 200 amp underground service to individual lots. Its cost estimate for this service is \$3,973 per lot. ENMAX noted that 200 amp service ensures modified underground residential distribution systems meet the basic electrical demand needs of end-use customers today while also supporting growth in demand due to increased electrification. ENMAX also indicated that

⁸⁰ Decision 27658-D01-2022, paragraphs 40-42.

⁸¹ Exhibit 27658-X0051, PDF page 2, paragraph 5(2)(c)(i).

⁸² Exhibit 27658-X0131, EPC-AUC-2023APR21-004(b), PDF pages 20-21; Exhibit 27658-X0135, EDTI-AUC-2023APR21-004(b), PDF page 16; Exhibit 27658-X0147, DFO(ATCO)-AUC-2023APR21-004(b), PDF page 16; Exhibit 27658-X0159, FAI-AUC-2023-APR21-004(b), PDF pages 17-19.

⁸³ Exhibit 27658-X0064.01, Stantec Consulting evidence for the Developers, PDF pages 8 and 13-14.

⁸⁴ Exhibit 27658-X0111, DFO-AUC-2023APR21-009, pages 10-11.

changes in the electrical code have created a shift in the cables that are used in establishing service, making both 100 amp and 200 amp services similarly priced.⁸⁵

101. EPCOR explained that its most basic service is its current underground distribution infrastructure. It explained that aerial (i.e., overhead) distribution systems were considered but the City of Edmonton’s complete streets design requirements does not allow for aerial distribution infrastructure. Finally, EPCOR explained that its 2023 costs are \$3,512 per lot and \$4,612 per lot for 100 amp and 200 amp service, respectively.⁸⁶

102. ATCO Electric explained that conduit and underground are considered “basic” and are required to meet the mandate of the utility to provide safe and reliable service to Albertans at an average cost per lot of \$5,101, based on its 2019 construction costs.⁸⁷ ATCO Electric stated that it does not have the detail of a statistical sample previously used to determine the cost per lot, and instead utilized the range of costs per lot presented during the roundtable as a starting point and to facilitate a high-level estimate of the possible revenue requirement impact to customers resulting from changes in MILs.⁸⁸

103. Fortis stated that MILs should be based on the cost per lot of its standard underground residential development and referred the Commission to its evidence on the costs per lot for 100 amp and 200 amp service in six municipalities (three with 100 amp service and three with 200 amp service) within its service area.⁸⁹ Taking an average of the costs provided by Fortis in its service territory,⁹⁰ the average cost for 100 amp service is \$3,583 per lot,⁹¹ and for 200 amp service is \$7,176 per lot.⁹²

104. ATCO Electric did not provide supplementary information on the mix of assets used in determining its cost per lot estimate of \$5,101. The Commission, therefore, cannot with confidence conclude the mix of basic and premium services that went into ATCO Electric’s cost calculations. Further, based on ENMAX’s statements that it no longer installs 100 amp service, the Commission decided to not include the cost data provided from ENMAX in its calculations.

105. Accordingly, based on the record of the proceeding, the Commission has decided to calculate a base 2024 MIL, for all four distribution utilities, by taking the average of the cost estimates to provide 100 amp service brought forth by EPCOR and Fortis, an average of \$3,548 per lot,⁹³ which the Commission is using as the notional starting point for the 2024 MIL subject to the further adjustments noted below.

⁸⁵ Exhibit 27658-X0131, EPC-AUC-2023APR21-009(b), PDF pages 36-38.

⁸⁶ Exhibit 27658-X0135, EDTI-AUC-2023APR21-009(b), PDF page 34.

⁸⁷ Project cost for 2019 project considered to be typical of developments constructed in ATCO Electric’s service territory. This is the only project constructed by ATCO in the last five-year period. Annual inflation of 2% has been applied (average CPI). These costs include costs within the subdivision and do not include any additional costs associated with bringing a main feeder to the subdivision; Exhibit 27658-X0066, ATCO Electric evidence, PDF page 12, paragraph 34; Exhibit 27658-X0147, DFO(ATCO)-AUC-2023APR21-009(b), PDF page 40.

⁸⁸ Exhibit 27658-X0066, ATCO Electric evidence, PDF page 12, paragraph 34.

⁸⁹ Exhibit 27658-X0159, FAI-AUC-2023-APR21-002(b), PDF page 8; Exhibit 27658-X0159, FAI-AUC-2023-APR21-009(b), PDF page 36; Exhibit 27658-X0075, Fortis evidence, PDF page 15, paragraph 26.

⁹⁰ Exhibit 27658-X0075, Fortis evidence, PDF page 15, paragraph 26.

⁹¹ $(\$4,382 + \$3,496 + \$2,872) / 3 = \$3,583$.

⁹² $(\$8,930 + \$4,480 + \$8,117) / 3 = \$7,176$.

⁹³ $(\$3,512 + \$3,583) / 2 = \$3,548$.

106. As noted above, each distribution utility’s standard practice is to install at least some of its new distribution infrastructure underground. As the Commission has determined that underground service continues to be a premium service, the Commission finds that an average cost that includes the costs associated with underground service will result in a MIL that requires existing customers to subsidize the costs of new residential connections through a higher MIL. Both the Fortis and EPCOR amounts set out above include costs for underground designs. Without further information as to the distribution of underground versus overhead installations represented by these costs, the Commission has decided to take the average cost per lot calculated above and apply a discount of 15 per cent, which results in a single MIL of \$3,016 per lot⁹⁴ for all four electric distribution utilities. Discounting an average cost of service to set a MIL to a lower or basic level was contemplated and endorsed by Fortis.⁹⁵

107. The Commission directs each of the distribution utilities to update their respective MIL in each of their approved T&Cs as part of the compliance filing to Decision 27388-D01-2023.

108. The Commission acknowledges that discounting the average cost of 100 amp service will not reflect, in the most precise way, the amounts embedded within the cost per lot numbers that are related to underground service. The Commission requested more detailed information from the distribution utilities. However, they did not provide all required information.⁹⁶ The Commission has determined that this is a reasonable reduction to address the inclusion of costs for underground service that were not disaggregated as part of the cost estimates provided and which the Commission has determined represent premium rather than basic costs for the reasons set out in this decision. The Commission finds that discounting the base MIL is reasonable way to ensure that the full cost associated with underground service is not socialized through distribution rates and that, therefore, the MIL reasonably reflects the notional costs associated with basic electricity service.

109. In arriving at the MIL in this decision, the Commission has carefully considered the best available evidence on the record of this proceeding. The Commission has reviewed this evidence and noted its concerns about the quality of the evidence above.

110. The Commission considers that as a consequence of the application of the four principles it has set out above and the guidance provided in this decision, in the future the distribution utilities should be able to provide better information relevant to the calculation of MILs. The Commission also recognizes that developments in technology or law – for example, mandatory changes that result from beneficial electrification – may require the Commission to revisit its determination in this decision that the MIL should correspond to the cost of providing 100 amp overhead service.

111. Accordingly, the Commission understands the determinations in this decision may need to change in the future, based on further evidence provided by the distribution utilities and a consideration of the evolving context in which the distributors operate. However, whether that information relates to the costs of providing 100 amp overhead service, or the extent to which 100 amp overhead service constitutes “basic” service as contemplated in this decision, the Commission considers that any such evidence should:

⁹⁴ $\$3,548 * 0.85 = \$3,016$.

⁹⁵ Exhibit 27658-X0159, FAI-AUC-DFO-2023APR21-003(c), PDF page 15.

⁹⁶ Exhibit 27658-X0111, DFO-AUC-2023APR21-009, pages 10-11.

- (a) Include data from a sufficiently long time period to ensure that costs incurred, and technology used, are representative of long-term trends as opposed to short-term fluctuations;
- (b) Include data from the distribution utility’s entire service area, or a sufficient sample size of developments within that service area that it is representative of the distribution utility’s service area, and what customers require, as a whole; and
- (c) Be sufficiently disaggregated and robust to allow the Commission to appropriately review, compare and assess reasonable amounts to be included in any MIL.

112. Further, to ensure that the funding provided in PBR3 reflects the revised MILs, the four electric distribution utilities are directed to reflect the approved 2024 MIL in their 2024 PBR rate calculations to be filed in the compliance filing to Decision 27388-D01-2023.

6.2 MILs escalation factor

113. MILs have historically been annually escalated by an inflation factor less a productivity factor (I-X) during annual PBR rate adjustment applications. The I factor, or inflation factor, is a component of a PBR plan that is intended to reflect the year-over-year changes in the prices of inputs that the utilities use. The X factor is a central component of PBR plans and represents the annual productivity growth a utility is expected to achieve during the PBR term. For this reason, the X factor is often referred to as a “productivity offset.”⁹⁷ In some sense, an X factor can be thought of as a target against which the utility is incented to compete during the PBR plan to earn at least an approved return. It has been standard practice in the previous two PBR terms and has been directed to continue into the PBR3 term.

114. In the current proceeding, the four distribution utilities⁹⁸ and the UCA⁹⁹ supported the use of I-X, as applied to approved 2024 rates and in subsequent years during the PBR term, as an effective and easily understood mechanism to escalate MILs. These parties did not propose any changes to the existing factors that determine the I factor and the X factor for the purposes of how to escalate MILs after 2024.

115. The Developers expressed concern that using the consumer price index to determine the inflation factor will fail to appropriately account for construction-specific inflation. To correct for this concern, Darren Rainkie and Kelly Derksen, on behalf of the Developers, proposed the use of construction cost indexes for materials and labour to determine inflation.¹⁰⁰

116. The Commission does not find a compelling reason to adopt a different mechanism to escalate MILs than what the Commission has decided should otherwise apply for the PBR term starting in 2024. The I-X mechanism plays an important role in maintaining incentives similar to those found in competitive markets. The Commission finds that the use of construction-specific indexes would unnecessarily complicate the escalation mechanism and unreasonably create a different treatment for MILs than would apply to other amounts of the PBR regime. Therefore, the use of utility related indexes that make up the I factor are more relevant and consistent than

⁹⁷ Decision 27388-D01-2023, PDF page 33, paragraph 104.

⁹⁸ Exhibit 27658-X0060, 2023-03-27 ENMAX evidence, PDF page 25, paragraph 63; Exhibit 27658-X0066, ATCO Electric evidence, PDF page 22, paragraph 68; Exhibit 27658-X0075, Fortis evidence, PDF page 22, paragraph 51; Exhibit 27658-X0083, EPCOR evidence, PDF page 26, paragraph 51.

⁹⁹ Exhibit 27658-X0059, UCA evidence, PDF page 11, paragraph 32.

¹⁰⁰ Exhibit 27658-X0063, Mr. Rainkie and Ms. Derksen evidence for the Developers, PDF pages 26-27.

construction-related indexes. As such, the Commission directs each distribution utility to annually escalate MILs, during the PBR3 term, in accordance with the I-X mechanism approved in Decision 27388-D01-2023.¹⁰¹

6.3 Distribution utilities’ practices regarding new customer connections

117. The evidence filed in this proceeding illustrated inconsistencies amongst the distribution utilities in terms of design standards. The evidence also disclosed differences in how distribution utilities delineated between customer-related and system-related infrastructure and associated costs.¹⁰²

118. In setting out the issues list for this proceeding, the Commission excluded distribution utilities’ design standards. In so doing, the Commission recognized that design standards may impact new connection costs and the Commission advised that it may choose to explore the issue of standards further in a future proceeding, following the conclusion of the current proceeding. As part of any such future proceeding, the Commission anticipates exploring these differences and to what extent greater consistency between the electric distribution utilities’ service areas can be achieved to align with the principles articulated in this decision, particularly that MILs should ensure new customers are not imposing costs on other customers for which they should not be responsible and that MILs should be simple to administer, consistent, and transparent.

7 Street lighting MIL and applicable payments

119. As with residential MILs, street lighting MILs are part of a distribution utility’s approved T&Cs. Applicable costs above the MIL are the responsibility of the developer or party installing the street lights.

120. Proceeding 27067 was initiated as a result of Fortis filing an application with the Commission seeking the Commission’s advice and direction on the issue of to whom the street light investment should be paid in the event of a dispute between a developer and a municipality regarding whether an agreement has been reached as to entitlement to the payment. At the time of Fortis’s filing of the application the Commission had before it two related complaints from developers contesting the payment of the street light investment refund to municipalities. On February 16, 2022, the Commission advised parties to the complaints that Proceeding 27067 would address the street light investment issue.¹⁰³

¹⁰¹ Decision 27388-D01-2023, PDF pages 24 and 32-33, paragraphs 70 and 102-103.

¹⁰² For example, ENMAX, ATCO Electric and Fortis each stated that MILs should cover the work and infrastructure to provide the service from the distribution feeder to the lot. EPCOR stated that all infrastructure up to the property line should be included in MILs. However, much of the work should not be included in MILs and instead should be recovered through the approved rates for distribution service. AFREA stated that the work and infrastructure to provide service to multiple lots should be included in MILs but items that pertain to work and infrastructure for a single lot should not be included. The Developers stated that their costs for the work and infrastructure to provide the service within the development in accordance with DFOs standards should be recovered through MILs. The UCA did not take a position on work and infrastructure but instead argued that costs should be minimized to avoid increased burden on ratepayers.

¹⁰³ Decision 27067-D01-2022: FortisAlberta Inc., Application Respecting the Refund of the Fortis Street Light Investment, Proceeding 27067, July 11, 2022, PDF page 5, paragraph 5.

121. In Decision 27067-D01-2022, the Commission determined that the street light MIL should be paid to the municipality, or as directed by the municipality, in such instances of dispute.¹⁰⁴

122. In the compliance filing to Decision 27067-D01-2022, Proceeding 27682, Fortis filed updated T&Cs to clarify entitlement to its street light MIL. Also, Fortis was to include clear direction on the form of agreement required for the street light MIL. In Decision 27682-D01-2023,¹⁰⁵ the Commission found that Fortis did not comply with these directions. Rather than revisiting the issue in another Fortis-specific proceeding, the Commission determined that further consideration of street lighting MILs was warranted and that it would hear issues concerning street lighting MILs on a province-wide basis in the current proceeding.¹⁰⁶

123. In this proceeding, the Municipalities asserted that, as the payers of street lighting electricity rates, they are the customers and therefore the appropriate recipients of street lighting MILs. When a developer enters in to a contractual agreement with a municipality to construct a new development, the agreement is expected to encapsulate mutually agreed upon compensation for the development, irrespective of MILs.¹⁰⁷ Furthermore, it was submitted that the provision of street lighting MILs to developers would result in compensation being unjustly awarded to developers at the expense of municipalities.¹⁰⁸ Once paid to the customer, the distribution utility includes the value of MILs in rate base and recovers it from customers over time through electricity bills. If the MIL goes to the developer, the municipality is then paying a street light electricity rate, including a contribution towards MILs from which it has not benefited, and the developer would benefit by receiving a MIL toward which it would not be making a contribution through rates.

124. The Commission considers the arguments provided by the Municipalities to be persuasive and finds that the municipality in which new street lights are installed and operated is entitled to receive the corresponding MIL. The Commission directs ATCO Electric and Fortis to reflect the entitlement of municipalities to the relevant MIL in their respective T&Cs as part of the compliance filing to Decision 27388-D01-2023.

8 Change to ENMAX's present residential development investment policy

125. ENMAX stated that in accordance with its approved customer T&Cs, it differentiates between standard and non-standard residential developments.¹⁰⁹ Currently, ENMAX only has a dollar per lot MIL for non-standard residential developments. For standard residential developments, ENMAX's T&Cs provide that it invests "the full amount necessary to provide a modified underground residential distribution system," which "includes the cost of an overhead primary voltage main feeder, underground primary voltage service feeders, underground secondary voltage services to individual lots that includes cables, transformers and ducts, the material cost associated with the service coils, as well as project management, engineering and

¹⁰⁴ Decision 27067-D01-2022, PDF pages 8-9, paragraph 23.

¹⁰⁵ Decision 27682-D01-2023: FortisAlberta Inc., Compliance Filing Pursuant to Decision 27067-D01-2022, Proceeding 27682, Application 27682-A002, February 27, 2023.

¹⁰⁶ Decision 27682-D01-2023, PDF pages 7-8, paragraph 29.

¹⁰⁷ Transcript, Volume 1, pages 72-73 (J. Buhler).

¹⁰⁸ Transcript, Volume 1, page 72 (J. Buhler).

¹⁰⁹ Exhibit 27658-X0060, ENMAX evidence, PDF pages 9-10.

administrative costs.”¹¹⁰ Effectively, ENMAX, unlike the other electric distribution utilities, does not have any maximum in place as it relates to standard residential developments.

126. ENMAX provided information on the average cost per lot that is fully funded. Based on its 2023 costs ENMAX’s cost to service a standard residential development was \$3,973 per lot. As noted above, ENMAX only publishes its MIL for non-standard service which, in 2023, was \$2,729 for 100 amp service and \$3,975 for 200 amp service.¹¹¹

127. The Commission finds that fully funding connections runs counter to the intention of MILs and ultimately leads to electricity customers in ENMAX’s service territory paying for costs that are not afforded the same treatment (i.e., socialized through distribution rates) in other service territories.

128. The Commission directs ENMAX to stop fully funding its standard service. Beginning January 1, 2024, ENMAX will be subject to a MIL of \$3,016 for all new residential connections (standard and non-standard service). The Commission finds no meaningful difference between what is installed in ENMAX’s service territory and the service territories of the other three distribution utilities for the purposes of what is reasonable to provide for in the MIL. ENMAX is directed to update its T&Cs accordingly as part of the compliance filing to Decision 27388-D01-2023 that is expected to be filed on November 3, 2023.

9 Order

129. It is hereby ordered that:

- (1) Each of ATCO Electric Ltd., ENMAX Power Corporation, EPCOR Distribution & Transmission Inc. and FortisAlberta Inc. are to reflect all directions and findings of this decision in the compliance filing to Decision 27388-D01-2023, due November 3, 2023.

¹¹⁰ Exhibit 27658-X0050, Residential investment levels, PDF page 1.

¹¹¹ Exhibit 27658-X0050, Residential investment levels, PDF page 1.

Dated on October 18, 2023.

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 Inc. Shores Jardine LLP
Alberta Municipalities MLT Aikins LLP
Anthem Properties
ATCO Electric Ltd. Bennett Jones LLP
Building Industry and Land Development Association Alberta
City of Airdrie MLT Aikins LLP
ENMAX Power Corporation (ENMAX)
EPCOR Distribution & Transmission Inc. (EPCOR) Borden Ladner Gervais LLP
FortisAlberta Inc. (Fortis) Fasken Martineau DuMoulin LLP
Melcor Developments Ltd. (Melcor) 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

P. Schembri (Commission counsel)
P. Khan (Commission counsel)
B. Edwards
S. Abdul-Razak
R. Cassidy
C. Meulenbroek
K. Surgenor

Appendix 2 – Oral hearing – registered appearances

Name of organization (abbreviation) Name of counsel or representative	Witnesses
Melcor Developments Ltd., in coordination with the Building Industry and Land Development Association Alberta, and Building Industry and Land Development Association Calgary (the Developers)	C.R. McCreary B. Schwanak
Alberta Federation of Rural Electrification Associations (AFREA)	M.J. Redman
Alberta Municipalities	J. Buhler, City of Airdrie
ATCO Electric Ltd.	J. Kennedy
ENMAX Power Corporation (ENMAX)	T. Campbell
EPCOR Distribution & Transmission Inc. (EPCOR)	J. Liteplo
FortisAlberta Inc. (Fortis)	T. Ahmed
Office of the Utilities Consumer Advocate (UCA)	K. Rutherford C. Auch

<p>Alberta Utilities Commission</p> <p>Commission panel C. Dahl Rees, Chair K. Sebalj, Vice-Chair</p> <p>Commission staff P. Khan (Commission counsel) P. Schembri (Commission counsel) B. Edwards</p>
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Appendix 3 – 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 also directs that:
 - ENMAX must discontinue its current practice of fully funding standard new residential developments.
 - To ensure that the funding provided in PBR3 reflects the revised MILs, the four electric distribution utilities are directed to reflect the approved 2024 MIL in their 2024 PBR rate calculations to be filed in the compliance filing to Decision 27388-D01-2023.
 - All four electric distribution utilities shall adjust their terms and conditions of service (T&Cs) to reflect the updated MIL as part of their respective compliance filings to Decision 27388-D01-2023, due November 3, 2023.paragraph 3
2. The Commission directs each of the distribution utilities to update their respective MIL in each of their approved T&Cs as part of the compliance filing to Decision 27388-D01-2023..... paragraph 107
3. The Commission does not find a compelling reason to adopt a different mechanism to escalate MILs than what the Commission has decided should otherwise apply for the PBR term starting in 2024. The I-X mechanism plays an important role in maintaining incentives similar to those found in competitive markets. The Commission finds that the use of construction-specific indexes would unnecessarily complicate the escalation mechanism and unreasonably create a different treatment for MILs than would apply to other amounts of the PBR regime. Therefore, the use of utility related indexes that make up the I factor are more relevant and consistent than construction-related indexes. As such, the Commission directs each distribution utility to annually escalate MILs, during the PBR3 term, in accordance with the I-X mechanism approved in Decision 27388-D01-2023..... paragraph 116
4. The Commission considers the arguments provided by the Municipalities to be persuasive and finds that the municipality in which new street lights are installed and operated is entitled to receive the corresponding MIL. The Commission directs ATCO Electric and Fortis to reflect the entitlement of municipalities to the relevant MIL in their respective T&Cs as part of the compliance filing to Decision 27388-D01-2023..... paragraph 124
5. The Commission directs ENMAX to stop fully funding its standard service. Beginning January 1, 2024, ENMAX will be subject to a MIL of \$3,016 for all new residential connections (standard and non-standard service). The Commission finds no meaningful difference between what is installed in ENMAX’s service territory and the service territories of the other three distribution utilities for the purposes of what is reasonable to provide for in the MIL. ENMAX is directed to update its T&Cs accordingly as part of the compliance filing to Decision 27388 D01 2023 that is expected to be filed on November 3, 2023..... paragraph 128

Appendix 4 – 10 guiding principles, as identified by Fortis in its 2010/2011 distribution tariff application and established in Decision 2010-309

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

1. MILs should be set to achieve a reasonable balance of what an individual customer pays upfront through a customer contribution versus what all customers in a particular rate class pay through ongoing rates.
2. MILs should provide economic discipline and price signals to new customers as they are connected to the interconnected transmission and distribution system, and these levels should be aligned with encouraging the best long term economic and technical solution to meet standard service requirements.
3. The maximum amounts that the company invests in a new extension on behalf of all customers should consider the expected longevity or any other risks associated with the new service.
4. The current cost to connect new customers is the appropriate starting point for establishing MILs.
5. Setting of MILs needs to respect each utility's standards of service, while recognizing that these standards and the associated costs will change over time.
6. Changes to MILs should balance the need to attain the target MILs over a reasonable timeframe, while ensuring there is not undue upward pressure on tariff rates.
7. Adjustments to MILs should consider minimizing intergenerational inequity and cross-subsidy, whereby the portion of the cost of an extension that the company invests in should be in similar proportion with previously established investment levels. Both new and existing customers should be treated similarly to the extent possible and should see a similar price signal when the system is or was extended to provide service.
8. To the extent practical, the structure of MILs (ex. fixed dollar amount, or \$/unit) should generally align with cost causation and the rate structure which is applied to the customer.
9. MILs should be simple to administer and applied in a consistent and transparent manner.
10. Utilities should take into consideration the approaches of neighbouring utilities when developing MILs. In a reasonable timeframe, individual company's MILs should move towards an AUC-adopted, common approach to setting investment levels for Alberta utilities.