



## **ENMAX Power Corporation**

**Recovery of Land and Property Rights Tribunal Order Payments  
Related to Remington Lands Matter**

**June 17, 2024**

**Alberta Utilities Commission**

Decision 28911-D01-2024

ENMAX Power Corporation

Recovery of Land and Property Rights Tribunal Order Payments Related to Remington Lands  
Matter

Proceeding 28911

June 17, 2024

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## Contents

1	Decision summary.....	1
2	Background .....	1
3	Was the applied-for \$13.63 million prudently incurred?.....	3
4	Is the recovery of the \$13.63 million permissible and, if so, what is the appropriate mechanism for recovery? .....	4
5	Should additional costs related to the Remington lands matter also be granted placeholder treatment?.....	6
6	2025 revenue requirement.....	6
7	Order.....	7
	Appendix 1 – Proceeding participants .....	8
	Appendix 2 – Summary of Commission directions.....	9
	Appendix 3 – 2025 transmission tariff .....	10

## List of tables

Table 1.	Summary of LPRT Orders and the associated carrying costs .....	2
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## **1 Decision summary**

1. In this decision, the Alberta Utilities Commission approves an application filed by ENMAX Power Corporation to recover \$13.63 million related to ENMAX's obligations to pay Remington Development Corporation, as determined in a Land and Property Rights Tribunal (LPRT) decision (the LPRT compensation decision)<sup>1</sup> and the related LPRT cost award,<sup>2</sup> in its 2025 revenue requirement. The Commission approves the recovery of the \$13.63 million on a placeholder basis to allow for any future true-up of these amounts given the ongoing litigation related to the LPRT compensation decision. The Commission also approves ENMAX's 2025 revenue requirement as final and directs ENMAX to establish a placeholder for costs related to the Remington lands matter.

## **2 Background**

2. ENMAX is a transmission facility owner (TFO) in Alberta. ENMAX owns and operates transmission lines, including 138-2.82L and 138-2.83L (the transmission lines), a portion of which are located in downtown Calgary. The transmission lines cross four parcels of land that were owned by Remington until October 2023 (the Remington lands).<sup>3</sup>

3. In 2002, Remington purchased the lands underlying the transmission lines and terminated the right-of-way agreements which had originally allowed ENMAX to site the transmission lines on the lands. This termination resulted in litigation between ENMAX and Remington, which is ongoing.

4. In 2017, ENMAX filed four applications with the Alberta Surface Rights Board, the LPRT's predecessor, for right-of-entry orders (the ROE Orders) regarding the transmission lines on the Remington lands. The Surface Rights Board issued the four ROE Orders in 2018.<sup>4</sup> In 2022, the LPRT set the compensation owed by ENMAX to Remington with respect to the four ROE Orders.

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<sup>1</sup> *ENMAX Power Corporation v Remington Development Corporation*, 2022 ABLPRT 1368, Exhibit 28911-X0003.

<sup>2</sup> *ENMAX Power Corporation v Remington Development Corporation*, 2023 ABLPRT 547, Exhibit 28911-X0005.

<sup>3</sup> Exhibit 28911-X0002, application, paragraph 1.

<sup>4</sup> *ENMAX Power Corporation v Remington Development Corporation*, 2018 ABSRB 195.

5. ENMAX has previously applied to the Commission for cost recovery related to this matter. The Commission held that the prudence of these costs would be considered once the matter was resolved.<sup>5</sup>

6. In this application, ENMAX seeks to recover \$13.63 million, as a one-time charge to the Alberta Electric System Operator (AESO), effective January 1, 2025. The \$13.63 million includes amounts that ENMAX is legally obliged to pay Remington, as determined by the LPRT compensation decision<sup>6</sup> and the LPRT cost award<sup>7</sup> (the LPRT Orders) plus carrying costs,<sup>8</sup> until the transmission lines are permanently removed from the Remington lands at the end of 2024.<sup>9</sup>

7. ENMAX provided a breakdown of the costs it seeks to recover:<sup>10</sup>

**Table 1. Summary of LPRT Orders and the associated carrying costs**

Line	Costs	Total
		(\$)
1	Total first year payment	8,273,471
2	\$356,989 annual compensation for 2019-2022	1,427,956
3	Interest on outstanding amounts from the date of ROE Order <sup>7</sup>	599,105
4	Compensation for Remington legal costs	1,051,153
5	Annual compensation for 2023	356,989
<b>6</b>	<b>Total paid pursuant to LPRT Orders</b>	<b>11,708,674</b>
7	Annual compensation for 2024	356,989
<b>8</b>	<b>Total to be paid in 2024 pursuant to LPRT Orders</b>	<b>356,989</b>
<b>9</b>	<b>Total costs EPC required to be paid pursuant to LPRT Orders (details in Section 2.1)</b>	<b>12,065,663</b>
<b>10</b>	<b>Carry Costs – calculated to January 1, 2025<sup>8</sup> (details in Section 2.2)</b>	<b>1,568,422</b>
<b>11</b>	<b>Total</b>	<b>13,634,085</b>

<sup>7</sup> Interest has been calculated on the outstanding amounts effective from the date of the ROE Order (May 18, 2018) to when the amounts were paid to Remington.

<sup>8</sup> Carrying Costs have been calculated on the total amount of \$11,708,674 paid to Remington up to 2023.

8. ENMAX submitted that Remington has appealed the LPRT compensation decision, and ENMAX has cross-appealed.<sup>11</sup> The appeal and cross-appeal are scheduled to be heard in October and November 2024. While ENMAX was required to pay Remington all amounts ordered in the LPRT compensation decision, ENMAX stated it would apply to the Commission for a true-up of

<sup>5</sup> Decision 23966-D01-2020 (Corrigenda): ENMAX Power Corporation, 2018-2020 General Tariff Application Negotiated Settlement Agreement and Excluded Matters, Proceeding 23966, July 30, 2020, paragraphs 95-96; Decision 22089-D01-2018: ENMAX Power Corporation, 2014 Distribution and 2014-2015 Transmission Deferral Account Reconciliation; Proceeding 22089, January 12, 2018, paragraphs 117-120.

<sup>6</sup> *ENMAX Power Corporation v Remington Development Corporation*, 2022 ABLPRT 1368, Exhibit 28911-X0003.

<sup>7</sup> *ENMAX Power Corporation v Remington Development Corporation*, 2023 ABLPRT 547, Exhibit 28911-X0005.

<sup>8</sup> Exhibit 28911-X0002, application, paragraph 2. Carrying costs based on Rule 023: *Rules Respecting Payment of Interest*.

<sup>9</sup> In Decision 28001-D01-2023: ENMAX Power Corporation, Victoria Park Transmission Line Relocation Project, Proceeding 28001, Application 28001-A001, July 7, 2023, the Commission approved a relocation of the transmission lines from Remington lands, due to a conflict with The City of Calgary’s plans for the Green Line Light Rail Transit Project and a related underpass.

<sup>10</sup> Exhibit 28911-X0002, application, PDF page 6.

<sup>11</sup> Exhibit 28911-X0002, application, PDF page 4.

the LPRT compensation decision to reflect changes, if any, resulting from the appeal/cross-appeal, in a future general tariff application.<sup>12</sup>

9. The Commission issued a notice of application on March 20, 2024, which required interested parties to file a statement of intent to participate by April 1, 2024.<sup>13</sup> No statements of intent to participate were received.

10. The Commission issued information requests (IRs) to ENMAX on April 15, 2024. The Commission considers the record of this proceeding to have closed on April 25, 2024, the date ENMAX filed its IR responses.

11. In this decision, the Commission considered: (i) whether the applied-for \$13.63 million was prudently incurred by ENMAX; (ii) whether the recovery of the applied-for \$13.63 million is permissible and, if so, what the appropriate recovery mechanism should be; and (iii) whether additional costs related to the Remington lands matter that ENMAX has not yet applied for recovery should also be granted placeholder treatment.

12. In Section 6 of this decision, the Commission approves ENMAX's 2025 revenue requirement as final, subject to the true-up of any placeholders.

### **3 Was the applied-for \$13.63 million prudently incurred?**

13. For the reasons set out below, the Commission finds that ENMAX prudently incurred the applied-for \$13.63 million that includes amounts it was ordered to pay in the LPRT compensation decision as well as carrying costs.

14. The LPRT compensation decision relates to amounts that the LPRT ordered ENMAX to pay Remington in relation to the ROE Orders. This decision is subject to review by the Court of King's Bench, which also has jurisdiction over other claims brought by Remington against ENMAX in relation to the Remington lands. The Commission's mandate is to assess whether the amounts in relation to the ROE Orders were prudently incurred and if so, whether it is just and reasonable for ENMAX to include these amounts in its tariff.

15. The Commission is satisfied with the explanation of ENMAX's conduct in the LPRT compensation decision and other evidence provided by ENMAX in its application and its IR responses to support the amounts paid to Remington. As shown in Table 1 above, these amounts consist of approximately \$11.71 million that ENMAX has already paid to Remington, the 2024 annual payment of approximately \$0.36 million, and carrying costs of approximately \$1.57 million, calculated in accordance with Rule 023. The Commission is satisfied that ENMAX acted prudently prior to and during the LPRT proceeding resulting in the LPRT compensation decision, that the quantum of the LPRT compensation decision is reasonable, and that there is no other reason to question the prudence of these costs. The Commission notes that its review of the LPRT compensation decision was conducted in the context of the Commission's statutory mandate, which is different from that of other decision-makers, such as the Court of King's Bench on appeal.

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<sup>12</sup> Exhibit 28911-X0014, EPC-AUC-2024APR15-003, PDF page 3.

<sup>13</sup> Exhibit 28911-X0011.

16. The Commission is further satisfied that these amounts were required to be paid by ENMAX in order to comply with the decision of the LPRT for the purpose of compensating Remington for the use of land for transmission facilities. Given that the amounts are supported in the evidence and that the requirement to pay these amounts was also established by the applicant as a legitimate TFO expense, the Commission finds that the amounts were prudently incurred.

17. ENMAX submitted that the Commission was precluded from reviewing the prudence of the Remington land costs applied for in this application, pursuant to a provision of the *Transmission Regulation* that provides that payments made “pursuant to any agreement” that provide compensation related to the use of land for transmission facilities “are prudent unless an interested person satisfies the Commission that the payments are not prudent.”<sup>14</sup> As set out above, the Commission is satisfied the relevant costs are prudent, and therefore finds that it is unnecessary to consider the potential application of Section 46(2) in the absence of an agreement between a landowner and a utility.

#### **4 Is the recovery of the \$13.63 million permissible and, if so, what is the appropriate mechanism for recovery?**

18. Since 2018, the Commission has stated on different occasions that it would not consider including costs related to the Remington lands matter in ENMAX’s tariff until the matter was resolved.<sup>15</sup>

19. The LPRT compensation decision is subject to an appeal and cross-appeal. There is also ongoing litigation regarding ENMAX’s occupation of the Remington lands, prior to the effect of the ROE Orders, as well as other matters which results in costs incurred by ENMAX related to the Remington lands matter that remain outstanding. This is discussed further in the following section. The dispute between Remington and ENMAX regarding the Remington lands has become increasingly complex over time, in a manner that was not contemplated by the Commission’s earlier decisions to defer a consideration of ENMAX’s costs until the matter was resolved. The circumstances of the Remington lands matter are highly unusual. The procedural history includes many different proceedings before several different decision-makers, and involves past, present and future costs that are closely related, arise from the exact same factual context and are not all disclosable currently.

20. Given this, the Commission considers that the payment by ENMAX to Remington pursuant to the LPRT compensation decision and associated carrying costs marks a point of resolution that, while not final, is of sufficient certainty to meet the Commission’s previous requirement that the matter be resolved prior to any amounts arising from the litigation being tested for prudence and considered for inclusion in ENMAX’s tariff. The Commission further considers that it is in the public interest to approve the recovery of the applied-for \$13.63 million at this time, in spite of the fact that the litigation between ENMAX and Remington is not fully resolved, to avoid incurring ongoing carrying costs into the future for amounts known now to be required to be paid by ENMAX. To do otherwise would create uncertainty with respect to recovery of prudently incurred amounts for ENMAX and would subject transmission customers to further potential carrying costs into the future.

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<sup>14</sup> *Transmission Regulation*, Section 46(2).

<sup>15</sup> Decision 23966-D01-2020 (Corrigenda), paragraphs 95-96; Decision 22089-D01-2018, paragraphs 117-120.

21. The bulk of the \$13.63 million was incurred in 2022. ENMAX proposed to include this amount in its 2025 revenue requirement, as it represents the first opportunity to recover this amount.<sup>16</sup> ENMAX submitted that truing up costs in a future test period is reasonable and that this approach falls within the knowledge exception<sup>17</sup> to the general principle against retrospective ratemaking.<sup>18</sup> As explained in the case cited by ENMAX, the knowledge exception is generally satisfied when the circumstances are such that interested parties knew that the approved rates might be subject to future adjustment.<sup>19</sup>

22. In its last general tariff application,<sup>20</sup> ENMAX provided notice to the Commission and parties participating in that proceeding that it would file an application to recover any compensation payable to Remington.<sup>21</sup> The Commission recently approved ENMAX's 2023 and 2024 rates on a final basis,<sup>22</sup> while expressly stating that 2025 rates were approved on an interim basis, and that any amounts arising from ENMAX's current application regarding the compensation payable to Remington ultimately determined to be prudent and recoverable would be addressed as part of ENMAX's 2025 rates.

23. The Commission finds that in the circumstances of the ongoing litigation between ENMAX and Remington and the prior determinations of the Commission that recovery of any amounts payable in relation to that litigation would be considered in the future, all interested parties knew or ought to have known that amounts associated with the Remington lands dispute were not accounted for in any prior approved rates, and that rates in the future might be adjusted to reflect these amounts. Accordingly, the Commission considers the knowledge exception to the general principle against retrospective ratemaking to be satisfied.

24. On this basis, the Commission approves the inclusion of the \$13.63 million in ENMAX's 2025 revenue requirement for recovery as a one-time charge to the AESO, effective January 1, 2025, on a placeholder basis. The Commission also directs ENMAX to apply for any true-up of this placeholder in its next general tariff application.

25. Given the unique circumstances of the underlying litigation and the potential for future changes to the placeholder amount, in the section below, the Commission provides guidance on what additional costs related to the Remington lands matter ENMAX may apply to the Commission to recover through the placeholder in the future.

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<sup>16</sup> Exhibit 28911-X0014, EPC-AUC-2024APR15-005(b), PDF page 8.

<sup>17</sup> Changes to rates when affected parties knew or ought to have known that the rates were subject to change.

<sup>18</sup> Exhibit 28911-X0014, EPC-AUC-2024APR15-003, PDF pages 3-4.

<sup>19</sup> *Atco Gas and Pipelines Ltd v Alberta (Utilities Commission)*, 2014 ABCA 28, paragraph 62.

<sup>20</sup> Proceeding 27851, ENMAX Power Corporation 2023-2025 Transmission General Tariff Application.

<sup>21</sup> Proceeding 27851, Exhibit 27851-X0016, paragraph 98.

<sup>22</sup> Proceeding 27581, AUC letter – ENMAX request for final approval of interim approvals and determinations, post-disposition documentation, April 11, 2024. Proceeding 28563, AUC letter - ENMAX Power Corporation's request for final approval of interim approvals and determinations, post-disposition documentation, April 11, 2024.



## 5 Should additional costs related to the Remington lands matter also be granted placeholder treatment?

26. ENMAX provided a list of costs related to the Remington lands matter that it intends to apply for recovery in the future:

- (1) **Additional past legal costs related to the LPRT and litigation:** ENMAX submitted that it will file evidence to support amounts claimed for legal costs, that it cannot include in its request for cost recovery at this stage as a result of concerns related to litigation privilege and the potential for deemed waiver of that privilege;
- (2) **Future legal costs related to the appeal and cross appeal and court litigation regarding other compensation to Remington;**
- (3) **Compensation ENMAX is required to pay Remington pursuant to any court award in the litigation;** and
- (4) **Costs of ENMAX's 2014 application to move the transmission lines that are the subject of the ongoing litigation (Proceeding 3368<sup>23</sup>):** ENMAX submitted that it has not applied for recovery of internal costs associated with its past application to move the transmission lines, which was denied by the Commission.<sup>24</sup>

27. As noted above, the Remington lands matter is highly unusual. All of these costs have different characteristics, but they are also interrelated and pertain to the same underlying factual context. While the Commission has approved costs related to the LPRT compensation decision on a placeholder basis, in these unique circumstances the Commission finds that it is necessary for costs associated with the Remington lands matter to be considered, subject to a future prudence review, through the same placeholder mechanism. For this reason, the Commission also approves placeholder treatment for the costs described in items (1) to (4), and any other costs related to the Remington lands matter not listed above that ENMAX has incurred or will incur. These costs must be included in the same placeholder approved above.

28. The Commission directs ENMAX to apply for any true-up of this placeholder in its next general tariff application, or to provide an update as to the status of these matters if no further adjustment is then warranted. The Commission will review the prudence of any costs sought to be included in the placeholder at that time.

## 6 2025 revenue requirement

29. The Commission stated in a post-disposition document that it would not declare ENMAX's 2025 revenue requirement as final until Proceeding 28911 was completed.<sup>25</sup>

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<sup>23</sup> Proceeding 3368, ENMAX Power Corporation 138-2.82L and 128-2.83L Transmission Realignment application.

<sup>24</sup> Exhibit 28911-X0002, application, PDF page 11, paragraph 31.

<sup>25</sup> Proceeding 27581, AUC letter – ENMAX request for final approval of interim approvals and determinations, post-disposition documentation, April 11, 2024. Proceeding 28563, AUC letter - ENMAX Power Corporation's request for final approval of interim approvals and determinations, post-disposition documentation, April 11, 2024.

30. With the approval of the \$13.63 million in ENMAX's 2025 revenue requirement and recovery of these costs as a one-time charge to the AESO effective January 1, 2025, the Commission hereby approves ENMAX's 2025 revenue requirement as final, subject to the true-up of any placeholders. In addition to the one-time charge to the AESO of \$13.63 million, ENMAX is to collect on a final basis, a monthly charge to the AESO of approximately \$12.98 million for the January 1, 2025, to December 31, 2025, period, as approved by the Commission in Decision 28563-D01-2023.<sup>26</sup> The Commission approves ENMAX's 2025 rate schedule, attached as [Appendix 3](#) to this decision.

31. The Commission directs ENMAX to file, as a post-disposition filing, updated minimum filing requirement schedules to reflect the findings of this decision, within 30 days of the issuance of this decision.

## 7 Order

32. It is hereby ordered that:

- (1) ENMAX Power Corporation is to collect, as a one-time charge to the Alberta Electric System Operator, \$13,634,085, effective January 1, 2025.
- (2) ENMAX Power Corporation's transmission facility owner revenue requirement is approved on a final basis for the year 2025, subject to the true-up of any placeholders.

Dated on June 17, 2024.

**Alberta Utilities Commission**

*(original signed by)*

Kristi Sebalj  
Vice-Chair

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<sup>26</sup> Decision 28563-D01-2023: ENMAX Power Corporation, Compliance Filing for 2023-2025 General Tariff Application and Negotiated Settlement Agreement, Proceeding 28563, December 4, 2023, paragraph 14.

## Appendix 1 – Proceeding participants

<b>Name of organization (abbreviation) Company name of counsel or representative</b>
ENMAX Power Corporation (ENMAX or EPC)

Alberta Utilities Commission
Commission panel K. Sebalj, Vice-Chair
Commission staff P. Schembri (Commission counsel) F. Alonso M. McJannet A. Culos

## Appendix 2 – 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. On this basis, the Commission approves the inclusion of the \$13.63 million in ENMAX’s 2025 revenue requirement for recovery as a one-time charge to the AESO, effective January 1, 2025, on a placeholder basis. The Commission also directs ENMAX to apply for any true-up of this placeholder in its next general tariff application. .... paragraph 24
2. The Commission directs ENMAX to apply for any true-up of this placeholder in its next general tariff application, or to provide an update as to the status of these matters if no further adjustment is then warranted. The Commission will review the prudence of any costs sought to be included in the placeholder at that time..... paragraph 28
3. The Commission directs ENMAX to file, as a post-disposition filing, updated minimum filing requirement schedules to reflect the findings of this decision, within 30 days of the issuance of this decision..... paragraph 31

## Appendix 3 – 2025 transmission tariff

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



Appendix 3 - 2025  
transmission tariff

(consists of 1 page)



## TRANSMISSION TARIFF RATE SCHEDULE

EFFECTIVE JANUARY 1, 2025

### ENMAX POWER CORPORATION 2025 TRANSMISSION TARIFF

#### ELIGIBILITY

To the Alberta Electric System Operator for use of ENMAX Power Corporation's Transmission facilities for the 2025 calendar year.

#### RATE

The 2025 Transmission tariff charged to the Alberta Electric System Operator is:

Annual Charge:	\$169,369,055.76 <sup>1</sup>
Monthly Charge:	\$12,977,914.23
One-Time Charge:	\$13,634,085.00

#### TERMS AND CONDITIONS

The terms and conditions of ENMAX Power Corporation form part of this rate schedule and apply to service supplied under this tariff.

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<sup>1</sup> \$155,734,970.76 (previously approved 2025 revenue requirement amount) + \$13,634,085.00  
= \$169,369,055.76.