



## **ENMAX Power Corporation**

### **2023-2025 Transmission General Tariff Application and Negotiated Settlement Agreement**

**October 2, 2023**

**Alberta Utilities Commission**

Decision 27581-D01-2023

ENMAX Power Corporation

2023-2025 Transmission General Tariff Application and Negotiated Settlement Agreement

Proceeding 27581

October 2, 2023

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**Alberta Utilities Commission**  
**Calgary, Alberta**

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**1 Decision summary**

1. In this decision the Alberta Utilities Commission considers the application of ENMAX Power Corporation (EPC or ENMAX) for approval of the Negotiated Settlement Agreement (NSA) reached in respect of its 2023-2025 transmission general tariff application (GTA), as well as two issues that were excluded from the NSA by the Commission and a further excluded issue that was initially part of the negotiated settlement process (NSP), but in respect of which parties were unable to reach agreement. Further, this decision considers (i) the effect of information provided by EPC to the Commission just prior to the originally anticipated release date of this decision (July 21, 2023) that EPC was being investigated by Alberta Utilities Commission Enforcement staff with respect to year-end capitalization of certain EPC distribution and transmission projects; and (ii) the related application for approval of the Negotiated Settlement Amending Agreement filed by EPC on September 20, 2023.

2. Subject to the outcome of the Enforcement staff investigation and any related enforcement action (all of which the Commission understands is unlikely to have a material impact on this decision), the Commission finds that the NSA between EPC and interveners (as amended by the Negotiated Settlement Amending Agreement) was negotiated under a fair process, is in the public interest, and results in just and reasonable rates. Therefore, the Commission approves the NSA on an interim basis.

3. Of the three issues that were not part of the NSA, the Commission has made the following determinations, also on an interim basis and subject to the outcome of the Enforcement staff investigation and any related enforcement action. The Commission:

- (i) Approves EPC's proposal to recover the Account 487.3 – Enterprise Software depreciation expense shortfall through EPC's existing amortization of reserve differences (ARD) mechanism over a period of approximately five years.
- (ii) Denies EPC's request to recover its depreciation shortfall by way of two true-up amounts of \$3.4 million and \$5.0 million in 2023 and 2024, respectively, and instead directs EPC to recover its depreciation shortfalls of \$3.4 million and \$5.0 million through the established ARD mechanism.
- (iii) Approves the opening adjustments to the closing balance for the 2021 test period compliance filing, the 2023 forecast, and 2025 forecast for the transmission allocated general property, plant and equipment accounts and the corresponding accumulated depreciation accounts.
- (iv) Requires that EPC and any participating ratepayer representatives address, as part of EPC Distribution's 2025 annual rate application, whether an adjustment (such as a

Y factor) is required to ensure that the changed allocation does not create an over-recovery at the expense of customers.

4. To reiterate, the Commission's decision is interim and subject to the outcome of the Enforcement staff investigation and any related enforcement action. The Commission directs EPC to file its compliance filing to this decision no later than October 31, 2023. If the investigation is concluded by the time EPC submits its compliance filing, EPC should detail the outcome(s) of the investigation in its compliance filing and identify any changes that may be required. If the investigation is not concluded by the time EPC submits its compliance filing, the Commission will make its determinations on the compliance filing subject to any further changes that may be required to reflect the outcome of the investigation and its impact, if any, on EPC's 2023-2025 tariff. The Commission will finalize EPC's 2023-2025 tariff in due course, following the outcome of the investigation and any related enforcement action.

## **2 Introduction and background**

5. EPC owns, operates and maintains the electricity transmission and distribution system in and around the city of Calgary. EPC recovers the costs of providing electric transmission service through its transmission tariff, which must be approved by the Commission. Once approved, EPC recovers its tariff amounts from Alberta ratepayers through the Alberta Electric System Operator, which collects the costs from the ratepayers' respective distribution facility owners, and from ratepayers directly connected to the transmission system.

6. On August 15, 2022, EPC filed a letter with the Commission, stating that it intended to file its 2023-2025 GTA on or before September 30, 2022. It also requested permission to start the NSP at an appropriate stage of the proceeding.<sup>1</sup> In its letter dated August 22, 2022, the Commission granted the request to commence the NSP.<sup>2</sup>

7. On October 3, 2022, EPC filed an application with the Commission for approval of its 2023-2025 GTA for the period of January 1, 2023, to December 31, 2025. EPC sought approval of:<sup>3</sup>

- Forecast revenue requirements of \$129.5 million, \$138.4 million and \$156.6 million for 2023, 2024 and 2025, respectively.
- Updated depreciation rates for EPC Transmission and EPC Distribution, in accordance with the updated depreciation study.
- A one-time charge of \$3.4 million in 2023 to true up 2021 deferred depreciation expense and a one-time placeholder charge of \$5.0 million in 2024 to true up 2022 deferred depreciation expense.
- The 2023 opening rate base balance.

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<sup>1</sup> Exhibit 27581-X0001, EPC 2023-2025 General Tariff Application Notice of Intention to file, August 15, 2022.

<sup>2</sup> Exhibit 27581-X0005, AUC letter – General tariff application to be filed, August 22, 2022.

<sup>3</sup> Exhibit 27581-X0016, application, paragraph 10.

- Forecast capital additions and rate base for the test period.
- The methodologies used to allocate EPC common operations costs and ENMAX Corporation corporate administration and general expenditures to transmission and distribution on a final basis and approval of the forecast allocations.
- Continuation of the transmission deferral accounts that were previously approved in the 2021-2022 EPC GTA decision.<sup>4</sup>
- Disposition of the approved 2020-2021 transmission deferral account balances, which total \$4.9 million including carrying costs, effective September 1, 2023.
- Such further orders, declarations or exemptions necessary to give effect to EPC's approved revenue requirement for the test period.

8. In the application, EPC included two matters common to transmission and distribution that will subsequently impact EPC Distribution. These are (i) depreciation (for which a depreciation study was prepared); and (ii) the methodologies used to allocate EPC common costs and ENMAX Corporation corporate administration and general expenditures to EPC Transmission and EPC Distribution. With respect to these matters, EPC noted in its application that in Decision 26354-D01-2021,<sup>5</sup> the Commission approved EPC's proposal to use placeholder values for these two common matters for EPC Distribution, to be later tried up subject to the outcome of this application. EPC noted that it will update its approved placeholders for EPC Distribution in a subsequent distribution application.<sup>6</sup>

9. EPC also proposed to update its inflation forecast at the time it filed its rebuttal evidence in this proceeding, citing rapidly rising inflation increasing the risk of materially higher costs in 2023 than those assumed in EPC's forecasts.<sup>7</sup> In its letter dated October 11, 2022, the Commission denied EPC's request to update inflation parameters with its rebuttal evidence.<sup>8</sup> The Commission also established the proceeding process schedule, including, among other things, information requests (IRs), submission of evidence by parties, and oral argument and reply argument.

10. On January 20, 2023, the Commission informed parties that it would be excluding certain matters from any NSP that the parties were undertaking in the proceeding.

11. On February 24, 2023, EPC filed a letter<sup>9</sup> with the Commission advising that it had reached the NSA with the intervening parties. EPC also stated that, in addition to the two matters excluded by the Commission, parties were unable to agree on an additional matter. These matters are discussed further in Section 4.

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<sup>4</sup> Decision 25726-D01-2021: ENMAX Power Corporation 2021-2022 General Tariff Application Negotiated Settlement Agreement and Excluded Matters, Proceeding 25726, June 16, 2021.

<sup>5</sup> Decision 26354-D01-2021: Process to Establish 2023 Rates for Alberta Electric and Gas Distribution Utilities, Proceeding 26354, June 18, 2021, paragraph 49.

<sup>6</sup> Exhibit 27581-X0016, application, PDF page 21, footnote 11.

<sup>7</sup> Exhibit 27581-X0016, application, paragraphs 15-16.

<sup>8</sup> Exhibit 27581-X0086, AUC letter – Notice of hearing and directions on procedure, October 11, 2022, paragraph 35.

<sup>9</sup> Exhibit 27581-X0189, EPC Cover Letter Negotiated Settlement Agreement, February 24, 2023.

12. The Commission subsequently decided that an oral evidentiary hearing was not necessary, and instead set out the remaining process for the proceeding, which included oral argument and reply.<sup>10</sup> The Commission considered the record of this proceeding to have closed on April 24, 2023, the date of oral argument and reply, and the Commission would have issued its decision on or before July 23, 2023, in accordance with its performance metrics.<sup>11</sup>

13. On July 20, 2023, EPC informed the Commission that Enforcement staff had initiated an investigation regarding the year-end capitalization of certain EPC distribution and transmission projects. EPC advised that the investigation was at an early stage, and EPC's analysis at that time indicated that the impact, if any, of the investigation on rates in Proceeding 27581 was expected to be very small.

14. Following the receipt of submissions by the parties on the issue of whether the decision in this proceeding should be issued notwithstanding the investigation, the Commission issued a letter on August 10, 2023, advising the parties that it would not issue a decision until the enforcement investigation was concluded, or until such time as the impact of the investigation, if any, on the NSP and NSA was, at a minimum, understood by the signatories to the NSA. The Commission advised that, in the alternative, parties may amend the NSA to address this issue, and how (or if) the outcomes of the NSA may be subject to further revision depending on the outcome of the investigation.

15. On September 20, 2023, EPC advised the Commission that it had reached an agreement with the interveners to amend the NSA to address the issue of the ongoing investigation. EPC concurrently filed an application for the approval of the Negotiated Settlement Amending Agreement,<sup>12</sup> which amended the NSA by providing for, among other things, further revisions to the NSA, if necessary, following the outcome of the investigation.<sup>13</sup> EPC also reiterated that the outcome of the investigation was not expected to have a material impact on any Commission decision in this proceeding. EPC proposed that the Commission proceed to issue its decision.

16. The Commission has reviewed the entire record in coming to this decision; lack of reference to a matter addressed in evidence or argument does not mean that it was not considered.

### **3 Negotiated settlement**

17. In this section and in the remainder of this decision, the "original NSA" refers to the NSA prior to the filing of the Negotiated Settlement Amending Agreement; the Negotiated Settlement Amending Agreement is the document that amended the original NSA; and the "amended NSA"

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<sup>10</sup> Exhibit 27581-X0226, AUC letter – Cancellation of oral hearing, March 27, 2023.

<sup>11</sup> Bulletin 2015-09, Performance standards for processing rate-related applications, March 26, 2015.

<sup>12</sup> Exhibits 27581-X0252 and 27581-X0253.

<sup>13</sup> In this respect, Article 6.1(c) of the Negotiated Settlement Amending Agreement specifies that "EPC agrees and acknowledges that depending on the outcome of the Investigation and any Enforcement Action, the Commission may increase the reductions to EPC's 2023-2025 GTA revenue requirement set out in Article 2 of this Agreement." Article 6.1(d) states that "The Parties do not object to the Commission approving the NSA and the 2023-2025 GTA revenue requirement on an interim basis before the outcome of the Investigation and any Enforcement Action is known and then making any adjustments the Commission determines are required under this Article to result in just and reasonable final rates."

or “NSA” refers to the original NSA as amended by the Negotiated Settlement Amending Agreement.

### 3.1 Requirements governing negotiated settlements

18. Sections 134 and 135 of the *Electric Utilities Act* authorize the Commission, with some limitations, to approve a negotiated settlement.

19. Section 132 of that act authorizes the Commission to establish rules in respect of negotiated settlements, including settlements of rate-related matters.

20. Section 6 of Rule 018: *Rules on Negotiated Settlements* sets out requirements for the contents of a negotiated settlement application, and places the onus on the applicant to provide sufficient evidence to support the application and to enable the Commission to understand and assess the agreement. Section 7 of Rule 018 includes requirements for the Commission’s assessment of the agreement. The Commission structured the settlement process in this proceeding in accordance with Rule 018.

21. In considering these requirements, the Commission has taken into account the direction of the Alberta Court of Appeal as set out in *ATCO Electric Limited v Alberta (Energy and Utilities Board)* (ATCO Electric decision), where the court found that the ultimate responsibility for approving negotiated settlements resides with what is now the AUC.<sup>14</sup> The Commission must therefore ensure that the NSA will result in just and reasonable rates; that none of the NSA provisions, individually or collectively, are patently against the public interest or contrary to law; and that the process used to arrive at the NSA was fair. Performing this assessment requires the Commission to review both the individual provisions of the NSA and the NSA as a whole.

22. In assessing a negotiated settlement, the Commission is aware that while one or more of the interested parties to a settlement may represent certain stakeholders, none will represent all stakeholders. Further, as noted by the court in the ATCO Electric decision, “... even a broad range of Interveners will not necessarily translate into a wide spectrum of positions since parties may make trade-offs which leave other issues unresolved, unaddressed or compromised.”<sup>15</sup> Consequently, the NSP and NSA do not replace a full and informed review by the Commission as to what is in the overall public interest. Given that EPC requested and received Commission approval to negotiate a settlement, subsequently negotiated with parties representing ratepayers, executed the original NSA, and then applied to the Commission for approval of the original NSA in its entirety, the Commission has proceeded on the basis that the original NSA and the amended NSA satisfies EPC’s interests and has only assessed the NSA from the point of view of ratepayers. This is consistent with the ATCO Electric decision.<sup>16</sup>

23. Given the statutory requirements, Rule 018, the relevant case law and its own prior decisions on negotiated settlements in rate cases,<sup>17</sup> the Commission has considered the following in making its determination on whether the NSA should be accepted or rejected in its entirety:

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<sup>14</sup> *ATCO Electric Limited v Alberta (Energy and Utilities Board)*, 2004 ABCA 215.

<sup>15</sup> *ATCO Electric Limited v Alberta (Energy and Utilities Board)*, 2004 ABCA 215, paragraph 138.

<sup>16</sup> ATCO Electric decision, paragraph 146.

<sup>17</sup> See, for example, Decision 21149-D01-2016 (Errata): ENMAX Power Corporation, Distribution 2015-2017 Performance-Based Regulation – Negotiated Settlement Application and Interim X Factor, Proceeding 21149, October 3, 2016, paragraph 29; Decision 25726-D01-2021: ENMAX Power Corporation, 2021-2022 General



- **Review of the NSP**
  - Was the NSP procedurally fair, both with respect to adequate notice having been served and with respect to the conduct of the negotiation process itself?
- **Review of the NSA**
  - Does the settlement result in rates, and terms and conditions that are just and reasonable?
  - Is the settlement patently against the public interest or contrary to law?

24. Performing this assessment requires the Commission to review both the individual provisions of the NSA and the NSA as a whole.

25. The Commission's findings on the NSP and on the provisions of the NSA are discussed in sections 3.2 and 3.3. The Commission finding on EPC's proposed recovery of the depreciation shortfall for Account 487.3 and the Commission-excluded matters<sup>18</sup> are addressed in Section 4.

### 3.2 Review of the NSP

26. The first factor that the Commission considers is whether the NSP that resulted in the NSA was fair.

27. Starting with the conduct of the negotiation process, EPC submitted that the settlement negotiations were conducted in a fair and open manner, and each party was given a reasonable opportunity to raise and discuss any matters related to the 2023-2025 GTA.<sup>19</sup> The Consumers' Coalition of Alberta (CCA) and the Office of the Utilities Consumer Advocate (UCA) also filed correspondence with the Commission attesting to the fair and open manner in which the negotiation was conducted.<sup>20</sup> The Commission notes that all participants in the negotiations are sophisticated parties, and considers that they represent a cross-section of Alberta residential, small business and farm ratepayers. The Commission is satisfied that the parties had the opportunity to participate meaningfully, and that the negotiations were conducted in an open and fair manner.

28. Turning to the issue of adequate notice, Section 3 of Rule 018 deals with the provision of notice by a utility to parties who may be interested in participating in negotiations. Under Section 3, the Commission requires a statement in a settlement agreement confirming that proper notice was provided by the applicant to all interested parties. EPC submitted that adequate notice was provided to parties, noting that it requested approval of the NSP in its notice of intent to file the 2023-2025 GTA, and that the NSA includes a statement confirming that EPC provided

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Tariff Application Negotiated Settlement Agreement and Excluded Matters, Proceeding 25726, June 16, 2021, paragraph 23; Decision 23966-D01-2020 (Corrigenda): ENMAX Power Corporation, 2018-2020 General Tariff Application Negotiated Settlement Agreement and Excluded Matters, Proceeding 23966, July 30, 2020; and Decision 26207-D01-2021: Direct Energy Regulated Services, 2020-2022 Default Rate Tariff and Regulated Rate Tariff – Negotiated Settlement Agreement, Proceeding 26207, June 4, 2021, paragraph 18.

<sup>18</sup> Exhibit 27581-X0167, In its letter dated January 20, 2023, the Commission informed EPC and interveners that the following two items would be excluded from the NSP: (i) proposal to recover a depreciation shortfall in 2023 and 2024; and (ii) adjustments to the closing balances in previous years for transmission property, plant and equipment, and accumulated depreciation related to changes in the capital allocation rates.

<sup>19</sup> Exhibit 27581-X0190, paragraph 11.

<sup>20</sup> Exhibits 27581-X0186 and 27581-X0187.

proper notice to all interested parties.<sup>21</sup> The only parties to register to intervene in this proceeding (the CCA and the UCA) are signatories to the NSA. The Commission finds that EPC provided adequate notice to parties.

29. Further, Section 6(1) of Rule 018 provides that, when an agreement is reached on all or some of the issues, the text of the agreement, including a representation that no party has withheld relevant information, must be circulated to all parties to the agreement. The NSA addresses this requirement under Article 4.<sup>22</sup>

30. In addition, Article 6.1(a) of the amended NSA provides for a process before the Commission if there is an enforcement action resulting from the Enforcement staff investigation. The purpose of such a process would be to deal with any effects of the outcome of the enforcement action on the GTA. Article 6.1(e) of the amended NSA also provides for such a process in the event that it is found that EPC has provided, either in its filings in the GTA or in submissions to parties during the negotiation of the NSA, information containing an untrue statement of material fact or has omitted a statement of material fact necessary to make the information provided accurate and true.

31. Based on both Article 4 and articles 6.1(a) and (e) of the NSA, the Commission finds that the requirements of Section 6(1) of Rule 018 have been met, on an interim basis.

32. In view of the above and having considered the parties' submissions with respect to the NSP, the Commission is satisfied, subject to the outcome of the investigation and any related enforcement action that may trigger the relevant provisions of the amended NSA, that the NSP was fair and that the requirements set out in sections 3, 6(1) and 6(3) of Rule 018 have been satisfied.

### **3.3 Review of the NSA**

33. The second factor the Commission must consider is whether the NSA is in the public interest, including whether it will result in just and reasonable rates (Section 8(1) of Rule 018). The Commission is also guided by the *Electric Utilities Act* and Section 8(2) of Rule 018, which states that the Commission must intervene if it determines that a unanimous settlement agreement is patently against the public interest or contrary to law.

34. In conducting the public interest assessment, the Commission considered each individual element of the NSA and the NSA as a whole. As to what constitutes the public interest when assessing the attributes and merits of the NSA, the Commission followed the guidance provided in the ATCO Electric decision discussed above. That is, it considered the public interest from the perspective of ratepayers. In arriving at its findings, the Commission reviewed each of the material provisions of the NSA to determine if any of these provisions appear to be unusual, contrary to accepted regulatory practices, or could result in undue rate effects, service concerns, preferences or other concerns in future rate applications. The Commission also considered whether the effect of the NSA would lead to rates and terms and conditions of service that are just and reasonable.

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<sup>21</sup> Exhibit 27581-X0190, EPC 2023-2025 GTA Settlement Application, paragraph 10; and Exhibit 27581-X0191, Appendix A – EPC 2023-2025 GTA Agreement, Article 4.2(b), PDF page 10.

<sup>22</sup> Exhibit 27581-X0191, Appendix A – EPC 2023-2025 GTA Agreement, Article 4, PDF page 10.

35. EPC filed a summary of the terms of the NSA for EPC’s 2023-2025 GTA, reproduced in Table 1 and Table 2 below. In total, the adjustments resulting from the NSA amount to a reduction of \$11.57 million<sup>23</sup> to EPC’s 2023-2025 revenue requirements for the transmission business, and a reduction of \$8.13 million to EPC’s 2023 revenue requirement for the distribution business.

**Table 1. Impact to revenue requirement of agreed adjustments for transmission**

	2023	2024	2025
	(\$ million)		
<b>O&amp;M [operating and maintenance] Negotiated Items</b>			
Business Continuity Planning	(0.10)	(0.10)	0.0
Grid Innovation Expenses	0.0	(0.10)	(0.10)
Line Clearance Mitigation	0.0	(0.10)	(0.10)
Secured Remote Access to Relay Project	(0.10)	(0.10)	(0.10)
Capital Asset Long-Term Plan and Spare Strategy	(0.10)	(0.10)	0.0
Account 560 Direct	(0.60)	(0.40)	(0.20)
IBEW [International Brotherhood of Electrical Workers] and Management Professionals salary escalation	(0.05)	(0.10)	(0.12)
Vacancy Rate	(0.67)	(0.72)	(0.75)
Global Reduction	(1.78)	(1.08)	(0.03)
<b>Total O&amp;M Negotiated Items</b>	<b>(3.40)</b>	<b>(2.80)</b>	<b>(1.40)</b>
<b>Capital Negotiated Items</b>			
Transformer Protection Upgrades PG1-BC-2023-10 C20231	(0.05)	(0.15)	(0.22)
TRV Mitigation Strategy – ENMAX No. 162	(0.02)	(0.03)	(0.03)
Global Reduction	(0.03)	(0.10)	(0.17)
Change in Forecasting Methodology	(0.03)	(0.06)	(0.07)
Application Corrections to C20047 and C20322	(0.01)	(0.07)	(0.13)
<b>Total Capital Negotiated Items</b>	<b>(0.14)</b>	<b>(0.41)</b>	<b>(0.62)</b>
<b>Depreciation Negotiated Items</b>			
USA 392-4840 Vehicles Life Curve of 14-L3	(0.07)	(0.07)	(0.07)
USA 353-4575 Substation Transformers net salvage of -20%	(0.20)	(0.19)	(0.18)
USA353-4576 Substation Switchgear net salvage of -20%	(0.43)	(0.40)	(0.39)
USA 353-4577 – Substation structure net salvage rate of -15%	(0.05)	(0.05)	(0.05)
USA 358-4650 – U/G Conduit net salvage rate of -5%	(0.11)	(0.11)	(0.10)
USA 358-4665 – U/G Manholes net salvage rate of -5%	(0.03)	(0.03)	(0.03)
Impact of Composite rates on depreciation expense	(0.03)	(0.07)	(0.17)
<b>Total Depreciation Negotiated Items</b>	<b>(0.92)</b>	<b>(0.92)</b>	<b>(0.99)</b>
<b>Total Negotiated Reduction</b>	<b>(4.45)</b>	<b>(4.12)</b>	<b>(3.00)</b>

Source: Exhibit 27581-X0190, Table 1, PDF page 9.

<sup>23</sup> = \$4.45 million + \$4.12 million + \$3.0 million.

**Table 2. Impact to revenue requirement of agreed adjustments for distribution**

	<b>2023</b>
	<b>(\$ million)</b>
<b>Depreciation Negotiated Items</b>	
USA 392 – 4840 Vehicles Life curve of 14-L3	(0.34)
USA 367 – 4961 – U/G Primary Cable Life curve of 48-R3	(0.51)
USA 367 – 4761 – U/G Primary Cable Life curve of 48-R3 and net salvage rate of -15%	(4.23)
USA 367 – 4762 – U/G Secondary Cable net salvage rate of -30%	(0.29)
USA 368 – 4773 – Padmount Transformers net salvage rate of -40%	(1.34)
USA 364 – 4731 – Distribution Wood Poles net salvage rate of -30%	(0.54)
USA 365 – 4746 – Overhead Switches net salvage rate of -7%	(0.19)
USA 362 – 4978 – Network Protection net salvage of 0%	(0.08)
USA 353 – 4575 – Substation Transformers net salvage of -20%	(0.04)
USA 353 – 4576 – Substation Switchgear net salvage of -20%	(0.09)
USA 353 – 4577 – Substation Structure net salvage rate of -15%	(0.01)
Impact of Composite rates on deprecation expense	(0.47)
<b>Total Depreciation Negotiated Items</b>	<b>(8.13)</b>

Source: Exhibit 27581-X0190, Table 2, PDF page 12.

36. Parties to the NSA also agreed that the salary escalation for the Canadian Union of Public Employees (CUPE) employees will be updated at the time of EPC’s compliance filing to reflect the actual outcome of the CUPE contract ratification, and that the cost of debt will be updated at the time of EPC’s compliance filing to reflect the actual cost of debt.

37. The NSA represents a unanimous agreement reached as a result of a successful negotiation. Such negotiations and the resulting NSA typically reflect a number of compromises of different interests and positions of the parties. The signatories to the NSA in this case have historically participated in the testing of EPC’s GTAs and represent a cross-section of Alberta residential, small business and farm ratepayers. The involvement of sophisticated participants supports a finding that the NSA is in the public interest.

38. After reviewing the individual provisions of the amended NSA, along with the detailed analysis of the application<sup>24</sup> and IR responses, the Commission finds that the NSA, taken as a whole, is not patently against the public interest or contrary to law, and finds that the NSA results in rates and terms and conditions that are just and reasonable, as required by Section 8 of Rule 018. Accordingly, the Commission approves the amended NSA on an interim basis as filed and subject to the outcome of the investigation and any related enforcement action. The original NSA and the Negotiated Settlement Amending Agreement are attached as [Appendix 4](#) and [Appendix 5](#), respectively, to this decision.

#### **4 Excluded matters**

39. In its letter of January 20, 2023, the Commission informed EPC and interveners that the following two items would be excluded from the NSP: (i) EPC’s proposal to recover a

<sup>24</sup> Including EPC’s application for approval of the Negotiated Settlement Amending Agreement, dated September 20, 2023.

depreciation shortfall in 2023 and 2024; and (ii) adjustments to the closing balances in previous years for transmission property, plant and equipment, and accumulated depreciation related to changes in the capital allocation rates.<sup>25</sup>

40. EPC subsequently advised, as part of its NSA submission, that parties were unable to agree on the proposed recovery of the depreciation shortfall for Account 487.3 – General Plant, Computer Systems - Enterprise Software (USA 391.2). As a result, the Commission must likewise separately determine this issue (along with the other two previously excluded matters).

41. In the following sections, the Commission provides its findings with respect to these three excluded matters. As discussed above, the findings in this decision, including those with respect to the excluded matters, are interim and may be revisited, if required, to reflect the outcome of the enforcement investigation and any related enforcement action.

#### **4.1 EPC’s proposal to recover a depreciation shortfall for Account 487.3 – General Plant, Computer Systems - Enterprise Software (USA 391.2)**

42. As part of its application, EPC proposed to collect what it characterized as an \$18.5 million shortfall of depreciation expense for Account 487.3 – General Plant, Computer Systems - Enterprise Software that had been accumulating since the time of its last depreciation study in 2012.<sup>26</sup> Account 487.3 is used for both the distribution business, as well as the transmission business. EPC proposed to collect the asserted shortfall of depreciation expense through its approved ARD mechanism, which would result in an increase to depreciation expense through an annual ARD<sup>27</sup> true-up amount of \$3.5 million per year for approximately five years. The claimed \$3.5 million per year is the total recovery sought by EPC for assets in this account, and is inclusive of both the distribution and transmission businesses.<sup>28</sup>

#### **Background to EPC’s request**

43. Utility assets are booked into accounts using the Uniform System of Accounts (USA) and depreciated in accordance with Commission-approved parameters. In Decision 2009-035 (EPC’s 2007-2016 formula-based ratemaking proceeding), EPC applied for, and the Commission approved, a 10-SQ curve for Account 487.3, and EPC depreciated the assets in that account at a rate of 10 per cent.<sup>29</sup> <sup>30</sup> In Decision 2014-347 (EPC’s 2014 Phase I distribution tariff application and 2014-2015 transmission GTA), EPC proposed no changes to its previously approved curve parameters for Account 487.3. EPC again applied for a 10-SQ curve, which the Commission approved.<sup>31</sup> A square curve usually indicates that the account is subject to amortization

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<sup>25</sup> Exhibit 27581-X0167, AUC letter – Matters excluded from the negotiated settlement process and CCA extension, January 20, 2023.

<sup>26</sup> Proceeding 2739, EPC 2014 Phase I Distribution Tariff Application, 2014-2015 Transmission GTA, examined EPC’s last depreciation study. The study was dated as of December 31, 2012, and the approvals provided by the Commission with respect to the study were applicable commencing with the year 2014 for both EPC’s distribution and transmission functions.

<sup>27</sup> Also referred to as an annual provision for true-up and the AORD (amortization of reserve differences).

<sup>28</sup> Exhibit 27581-X0051.03, Appendix P, Depreciation Study, PDF page 49, Account 487.3, column (9): Annual provision for true-up, \$3,511,984.

<sup>29</sup> Proceeding 12, Exhibit 0029.00.EPC-12, PDF page 235.

<sup>30</sup> Decision 2009-035: ENMAX Power Corporation, 2007-2016 Formula Based Ratemaking, Proceeding 12, Application 1550487, March 25, 2009, paragraph 428.

<sup>31</sup> Decision 2014-347: ENMAX Power Corporation, 2014 Phase I Distribution Tariff Application, 2014-2015 Transmission General Tariff Application, Proceeding 2739, Application 1609784, December 16, 2014, paragraphs 728-735.

accounting, which means that the asset is automatically retired at the end of the amortization period, regardless of whether or not the asset is still in service.

44. Larry Kennedy, EPC's depreciation expert, explained that in EPC's last depreciation study filed with the Commission in 2013, he had recommended a 10-SQ curve for Account 487.3.<sup>32</sup> Typically, this would indicate that an asset in that account would be depreciated at a 10 per cent depreciation rate for 10 years and then be retired at the end of 10 years regardless of whether the asset was still in service. However, L. Kennedy stated in the current proceeding that at the time of the 2013 depreciation study, he recommended a 5.1 per cent depreciation rate for this account.<sup>33</sup> This resulted in a longer amortization period and a lower depreciation rate than would be typical for a 10-SQ curve. L. Kennedy indicated that he had recommended this rate to align with EPC's accounting practice at that time of retiring assets when they ceased to be used or required to be used rather than at the end of the amortization period. L. Kennedy also stated the UCA's consultant did not object to the treatment of this account at the time, and that this approach was approved by the Commission in Decision 2014-347.<sup>34</sup> <sup>35</sup> L. Kennedy's view was that EPC was therefore obliged to use a 5.1 per cent depreciation rate, and the fact that the variance arose in a square curve account did not change that conclusion. L. Kennedy noted that he was not aware of any Canadian regulator that has determined that it is not appropriate to true up variances in square curve accounts when using group accounting practices.

45. During this proceeding, EPC indicated that, while preparing its most recent 2021 depreciation study, L. Kennedy recommended that EPC change its policy to retire assets in square curve accounts at the end of the approved amortization period (as opposed to retiring assets when they were taken out of service). This proposal would depreciate the assets in Account 487.3 at a rate of 10 per cent, consistent with the 10-SQ curve parameters, rather than at a rate of 5.1 per cent. EPC indicated that it has accepted this recommendation and it formally implemented this policy in 2021, which means that the depreciation in this account will be accelerated relative to the previous rate. From a practical perspective, this means that in future applications, EPC's depreciation rate should align with the amortization period of the square curve parameter for this account and this issue should not arise again.

### **Is EPC's proposal to recover the variance reasonable?**

46. EPC's position is that the variance (i.e., what it calls a shortfall) in this account is not the result of an error or misapplication of depreciation rates, but rather, that it arose in the normal course as a result of the application of a depreciation rate consistent with its policy that was approved by the Commission. EPC pointed out that in Decision 2009-035,<sup>36</sup> the Commission approved "EPC's policy of retiring assets when they are physically taken out of service" rather than at the end of the amortization period. As a result, assets were depreciated at a rate of 5.1 per cent from 2014 onwards, rather than at a 10 per cent rate as EPC has now proposed.

47. The interveners opposed EPC's proposal. The CCA's view was that EPC's request to collect the \$18.5 million should be denied because, based on the CCA's understanding, EPC is applying for costs for assets that were consumed in past test periods. The CCA contended that

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<sup>32</sup> Exhibit 27581-X0222, EPC rebuttal evidence, PDF page 12, paragraph 5.

<sup>33</sup> Exhibit 27581-X0222, EPC rebuttal evidence, PDF page 12, paragraph 5.

<sup>34</sup> Exhibit 27581-X0222, EPC rebuttal evidence, PDF page 12, paragraph 5.

<sup>35</sup> Decision 2014-347.

<sup>36</sup> Decision 2009-035, paragraph 373.

the underlying problem is with EPC's asset retirement processes. It asserted that EPC's proposal to recover a shortfall stemmed from the fact it did not retire assets in the last depreciation study, which were fully amortized. The CCA submitted that this resulted in "EPC choosing to use a 5.1 per cent amortization rate instead of the indicated 10 per cent rate,"<sup>37</sup> and an under-recovery of costs (from 2014 to 2022) that it now seeks to collect.

48. The UCA argued that EPC's claim for recovery of the \$18.5 million shortfall should be denied based on a misapplication of the 10-SQ life curve for this account since 2014. The UCA recommended that the depreciation rate for this account should be set at 10 per cent, with no further true-up<sup>38</sup> because: (i) EPC's proposal to use the ARD mechanism for this particular true-up was inappropriate; and (ii) EPC's distribution function benefitted from the application of the 5.1 per cent depreciation rate during the performance-based regulation (PBR) terms and "has the effect of retroactively double recovering the same proper 10-SQ depreciation expense from those years."<sup>39</sup> The UCA submitted that it would be appropriate to deny retroactive recovery of assets where EPC recorded an excessively low depreciation expense (included as part of its distribution PBR terms).<sup>40</sup>

49. For the following reasons, the Commission approves EPC's request to collect the \$18.5 million shortfall depreciation expense for Account 487.3. EPC is directed to collect the shortfall through its ARD mechanism.

50. EPC indicated that it had understood that it was obliged to retire assets when they were physically taken out of service rather than at the end of the amortization period, consistent with EPC's policy that was approved by the Commission in Decision 2009-035. EPC indicated that for this reason it depreciated the assets in Account 487.3 at a rate of 5.1 per cent rather than at the 10 per cent amortization rate that would have otherwise been consistent with the 10-SQ service life approved for this account. EPC further submitted that the 5.1 per cent depreciation rate was approved by the Commission in Decision 2014-347.

51. With respect to the latter point, despite the fact that EPC and its expert repeatedly took the position that the Commission approves depreciation rates, it is important to note that when the Commission reviewed the 2013 depreciation study, it approved depreciation parameters including estimated service lives, Iowa curves and, where applicable, net salvage percentages. The Commission did not approve the resulting depreciation rates. This is consistent with the Commission's historical practice.<sup>41</sup> As EPC acknowledged in argument, there was nothing in Decision 2014-347 that specifically approved a 5.1 per cent rate.<sup>42</sup> Considering the applied-for parameter was unchanged from a 10-SQ curve, EPC should have advised the Commission that the rate had changed from the 10 per cent rate that was used prior to 2014 to a 5.1 per cent rate. EPC's evidence indicates that the 5.1 per cent rate resulted from the inclusion of assets in the

<sup>37</sup> Exhibit 27581-X0721, CCA evidence of Jan Thygesen, PDF pages 11-19.

<sup>38</sup> Exhibit 27581-X0172.01, Depreciation evidence of P. Bowman and H. Mahmudov, PDF pages 29-31.

<sup>39</sup> Exhibit 27581-X0180, UCA-AUC-2023FEB07-005, PDF pages 10-11.

<sup>40</sup> Exhibit 27581-X0180, UCA-AUC-2023FEB07-005, PDF pages 10-11.

<sup>41</sup> See Decision 2014-347; Decision 20272-D01-2016: ATCO Electric Ltd., 2015-2017 Transmission General Tariff Application, Proceeding 20272, August 22, 2016; Decision 26509-D01-2022: AltaLink Management Ltd., 2022-2023 General Tariff Applications and 2020 Direct Assigned Capital Deferral Account Reconciliation Application, Proceeding 26509, January 19, 2022; and Decision 24161-D03-2019: AltaGas Utilities Inc., 2018 Depreciation Study, Proceeding 24161, December 20, 2019.

<sup>42</sup> Transcript, Volume 1, page 42.

2013 depreciation study that would have otherwise been fully amortized, but were not yet retired, due to EPC's policy.<sup>43</sup>

52. In the Commission's view, EPC's evidence generally supports EPC's recovery of the capital costs associated with Account 487.3. This is because the variance results from EPC's policy of retiring assets when they are physically taken out of service, which is what the evidence indicates led to the application by EPC of a 5.1 per cent depreciation rate to the assets in Account 487.3. The Commission also acknowledges that EPC relied upon the advice of L. Kennedy, its experienced depreciation expert, both in implementing the asset retirement policy and the 5.1 per cent depreciation rate. The Commission also considers that when assets retire in a manner that is not consistent with the approved depreciation parameters, the accumulated depreciation account can develop a surplus or shortfall relative to the theoretically correct accumulated depreciation amount. The variance to be collected from Account 487.3 in this case is consistent with amounts usually collected through the ARD, the purpose of which is to capture differences between the utility's booked accumulated depreciation amount and the theoretically correct accumulated depreciation amounts. In the Commission's view, to deny EPC recovery of the \$18.5 million shortfall in the unique circumstances of this case would not afford EPC the reasonable opportunity to recover its capital investments in accordance with Section 122(1)(a)(i) of the *Electric Utilities Act*.

53. The Commission is not persuaded by the UCA's assertion that allowing recovery of the shortfall will result in double recovery because EPC received a benefit on the distribution side of its business due to a lower depreciation rate (and correspondingly higher net income) during a past PBR term. The Commission agrees with EPC that it would be unreasonable to deny EPC's request on this basis because it would retroactively re-establish the link between costs and revenues, and it may further undermine the efficiency-seeking incentive that is an important component of PBR.

54. The CCA asserted that EPC has benefitted from higher returns due to the higher rate base that resulted from the lower amortization rate and that EPC has not provided any proposal to refund or correct for those higher returns. The CCA did not, however, attempt to quantify the asserted higher returns, nor did it address any additional benefit potentially lost by EPC by not having higher depreciation expense during those years.

55. EPC's proposed recovery in this case is distinguishable from the facts underlying the recently issued Decision 27062-D01-2023.<sup>44</sup> In that decision, the Commission denied ATCO Electric's proposed one-time \$7.5 million adjustment to its depreciation expense to correct an ATCO Electric accounting error. Specifically, ATCO Electric recorded certain isolated generation assets in the incorrect account over a period of more than 10 years. The result was that the assets, which were no longer used, had been depreciated more slowly than they otherwise would have been and, as a result, there was a shortfall, which ATCO Electric proposed

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<sup>43</sup> Proceeding 2739, Exhibit 0004.00.EPC-2739, COS Application Appendices, Appendix E, EPC Depreciation Study, PDF page 565, showed the original cost of Account 487.3 – Enterprise Software in the amount of \$71.6 million, which included approximately \$35 million of fully amortized vintages (2001 and 2002) of assets; and PDF page 209 showed a depreciation rate of 5.10 per cent had been applied to the original cost of Account 487.3 – Enterprise Software in the amount of \$71.6 million, which included approximately \$35 million of fully amortized vintages (2001 and 2002) of assets.

<sup>44</sup> Decision 27062-D01-2023: ATCO Electric. Ltd., 2023-2025 General Tariff Application and Negotiated Settlement Agreement, Proceeding 27062, May 5, 2023.



to recover from current ratepayers. In that case, however, ATCO Electric had recorded the assets into the incorrect account and had opportunities to identify its error, including an opportunity when the Commission specifically directed ATCO Electric to confirm that its then calculated accumulated depreciation balances for the assets in question were accurate.

56. In the current case, EPC's evidence is that the use of the depreciation rate of 5.1 per cent for the period between 2014 and 2022 for the Enterprise Software assets in question was not in error. Rather, this was the rate recommended by its experienced depreciation expert whose evidence is that the rate arose out of the application of a Commission-approved EPC policy to retire assets only when those assets ceased to be used, rather than in accordance with the depreciation parameters associated with those assets. While the Commission-approved 10-SQ depreciation parameters would typically result in a 10 per cent depreciation rate (and the resulting retirement of assets after 10 years, regardless of whether the assets ceased to be used or required to be used), the Commission acknowledges that in Decision 2009-035, it approved an EPC policy stating "... that no changes should be made at this time with respect to EPC's policy of retiring assets when they are physically taken out of service."<sup>45</sup> On the one hand, the Commission considers that EPC's treatment of the assets in Account 487.3 during the period where this policy was in place has varied considerably; in particular, from 2007 to 2013, EPC applied a depreciation rate of 10 per cent to these assets consistent with the 10-SQ curve parameters, then changed the depreciation rate to 5.1 per cent in 2014, only to now switch the depreciation rate back to 10 per cent. On the other hand, the Commission finds that EPC has supported its contention that the basis for the variation in depreciation rates is at least partly attributable to a Commission-approved EPC policy in Decision 2009-035. The Commission therefore finds that the application by EPC of a 5.1 per cent depreciation rate to Account 478.3 between 2014 and 2022 was not an error and that recovery of the variance in the unique circumstances of the current case is appropriate.

57. Turning to how EPC should recover the variance associated with Account 487.3, the Commission's view is that the approved ARD mechanism is the appropriate mechanism for recovery. As stated by L. Kennedy, the ARD is a mechanism used to true up differences between the theoretically correct accumulated depreciation and the booked accumulated depreciation, and it is accepted practice throughout North America to true up these differences over the remaining life of the asset using the ARD.<sup>46</sup> In the Commission's view, the proposed use of the ARD to recover EPC's shortfall is consistent with the purpose of the ARD mechanism.

58. EPC indicated that it has accepted the recommendation to change its policy to retire assets in square curve accounts at the end of the approved amortization period and that it formally implemented this policy in 2021. The Commission therefore expects that EPC's depreciation rate should align with the theoretical amortization period of a 10-SQ curve account and that assets will be retired at the end of the amortization period, so that after approximately five years this variance should resolve since all assets will be retired at the end of the amortization period. At the end of this five-year period, the Commission directs that EPC evaluate and report on the need for any further true-up for Account 487.3, irrespective of whether or not EPC submits a depreciation study at that time.

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<sup>45</sup> Decision 2009-035, paragraph 373.

<sup>46</sup> Exhibit 27581-X0222, EPC rebuttal evidence, PDF page 15.

59. In summary, EPC’s proposal to collect an \$18.5 million shortfall of depreciation expense for Account 487.3 is approved to be collected through its approved ARD mechanism. This will result in an increase to depreciation expense through an annual ARD true-up amount of \$3.5 million per year for approximately five years.

#### **4.2 EPC’s proposal to recover a depreciation shortfall in 2023 and 2024**

60. EPC has requested an “accelerated collection of the deferred depreciation expense”<sup>47</sup> from the years 2021 and 2022 through one-time true-ups of \$3.4 million in 2023 and \$5.0 million (a placeholder true-up amount)<sup>48</sup> in 2024, rather than using the ARD mechanism, which would recover these amounts over the remaining life of the asset.

#### **Why is EPC proposing to recover a depreciation shortfall as a true-up amount in 2023 and 2024?**

61. This issue arises because the Commission denied a depreciation expense claimed by EPC in its last GTA. In Decision 25726-D01-2021 (EPC’s 2021-2022 GTA decision), the Commission found that EPC had not reasonably supported its forecast 2021 and 2022 depreciation expense and directed EPC to:

52. ... incorporate its last approved depreciation expense in the amount of \$24.1 million (2020) in its revenue requirement for each of the [2021 and 2022] test years at issue. When EPC submits its next depreciation study it will allow the Commission and parties to test both updated depreciation parameters that may be applied for and EPC’s detailed depreciation expense calculations....<sup>49</sup>

62. The Commission’s requirement for EPC to hold the 2021 and 2022 depreciation expense at the 2020 revenue requirement level effectively means that the 2021-2022 capital additions have been in service but depreciating at a zero per cent depreciation rate.<sup>50</sup> EPC applied to collect the depreciation amounts from the 2021-2022 capital additions through two lump-sum true-ups, one in each of 2023 and 2024. EPC argued that collecting the amounts in as short a time period as reasonably possible would mitigate intergenerational inequity concerns that it indicated would otherwise result from a collection of the shortfall over a longer period of time using the ARD mechanism.

#### **Should the shortfall be collected as a true-up in 2023 and 2024, or through the ARD mechanism?**

63. The issue that the Commission must determine is whether the recovery of the depreciation expenses should be accelerated through two lump-sum amounts in 2023 and 2024, as opposed to being collected from ratepayers through the ARD mechanism.

64. The CCA argued that in Decision 25726-D01-2021, the Commission approved a level of depreciation expense but did not “defer” (as EPC had suggested) or otherwise postpone the collection of depreciation expense from the years 2021 and 2022. Rather, the CCA submitted that if EPC were to subsequently provide sufficient information to support its depreciation

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<sup>47</sup> Exhibit 27581-X0016, application, PDF page 7.

<sup>48</sup> Exhibit 27581-X0016, application, PDF page 80, paragraph 226: “The 2022 true up amount of \$5.0 million has been included as a placeholder until 2022 actual capital additions are known.”

<sup>49</sup> Decision 25726-D01-2021, Direction 1, paragraph 52.

<sup>50</sup> Exhibit 27581-X0051.03, Appendix P, Depreciation study, PDF pages 439-440.

expense forecasts in its next depreciation study, then the ordinary course of business would be to implement the results of that depreciation study on a go-forward basis. The CCA clarified, in argument, that while it disagreed with the accelerated two-year recovery of the depreciation shortfall proposed by EPC, it was not opposed to the recovery of the depreciation shortfall over multiple years. The CCA noted though, that in accepting that the depreciation shortfall could be recovered under the ARD mechanism, it was not meant to be an endorsement of the ARD mechanism as an umbrella under which all depreciation-related differences that arise could be recovered.<sup>51</sup>

65. EPC argued that the ARD mechanism is ill-suited for recovering EPC's depreciation shortfall for two reasons. First, the depreciation shortfall arose over a period of two years. EPC contended that it is best resolved by truing up the amounts over a similar period of time to mitigate intergenerational concerns. Second, EPC submitted that using the ARD mechanism would be more burdensome administratively as it would require a manual accounting adjustment, for the purpose of recording the variance true-up amounts, which would need to be maintained outside of EPC's financial system for decades.<sup>52</sup>

66. For the following reasons, the Commission finds that the shortfall in depreciation expense from the years 2021 and 2022 should be collected through the approved ARD mechanism rather than by way of accelerated lump sum payments in each of 2023 and 2024.

67. The Commission is not persuaded there are intergenerational concerns of any significance triggered in the assessment of this issue. The ARD mechanism is used to capture the differences in the theoretically calculated accumulated depreciation and the actual book accumulated depreciation, where such differences are resolved through a true-up administered prospectively over time. This typically involves recovering the difference over the average remaining life of the asset, which can be many years. Additionally, in argument, EPC conceded that it was not opposed to a slightly longer true-up period.<sup>53</sup> As a result, the Commission places little weight on intergenerational concerns.

68. In Decision 25726-D01-2021, the Commission specifically contemplated that the depreciation expenses claimed by EPC (if supported by EPC's new depreciation study) would be recovered by way of the ARD mechanism, not through accelerated payments. The Commission stated the following at paragraph 53:

... the amortization of reserve differences mechanism approved for use by EPC will allow EPC to commence a true-up of any under or over collection of depreciation expense at the time it submits a depreciation study and incorporates updated depreciation parameters (and rates).

69. While the Commission is in no way bound by the above remarks from the Commission panel in Decision 25726-D01-2021, the statement does clearly convey that the Commission panel contemplated at that time that the ARD would be an appropriate way for EPC to collect the shortfall in its next tariff application.

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<sup>51</sup> Transcript, Volume 1, page 79.

<sup>52</sup> Transcript, Volume 1, pages 19 and 21.

<sup>53</sup> Transcript, Volume 1, page 28.

70. The shortfalls in question arose as a result of EPC's lack of evidentiary support in its last GTA for its forecast depreciation expenses. Had EPC reasonably supported its forecast 2021 and 2022 depreciation expense (as it has done in this application), the expense would have been recovered through the revenue requirement for those years. The ARD properly captures a broad range of differences, including the amounts claimed by EPC for the years 2021 and 2022, between a theoretically calculated accumulated depreciation and actual book accumulated depreciation, where such differences are resolved through a true-up adjustment administered prospectively over time. The following statement by EPC's depreciation expert in rebuttal evidence appears to support the Commission's conclusion in this respect:

Depreciation variances that arise between depreciation studies are the norm, not the exception. The magnitude of these variances is influenced by several factors, including the length of time between depreciation studies and the expected life of the assets. A longer interval between depreciation studies is generally correlated with larger variances, and accounts that record assets with relatively short service lives are prone to accumulating variances more quickly than accounts that record assets with longer service lives. In this case, both of these factors contribute to the size of the [Account 487.3] variance.<sup>54</sup>

71. The expert's remarks about the purpose of the ARD mechanism and the circumstances of its application in Alberta neither raised nor addressed specific concerns with respect to any intergenerational equity concerns associated with the use of the ARD mechanism as purported by EPC. In particular, in response to EPC-AUC-2023MAR07-004(c)<sup>55</sup> and EPC-AUC-2023MAR27-003,<sup>56</sup> EPC and its expert provided the following reasons why it becomes necessary to use the ARD mechanism:

The accumulated depreciation balance is comprised of many entry types, and may be influenced by a variety of factors, including changes in company accounting policy. For example, a change in the Iowa curve estimate, average service life estimate, or net salvage estimate will result in accumulated depreciation variances as compared to the calculated accumulated depreciation amount. Further, any change in the composition of the plant in service by vintage will also result in the requirement for AORD [amortization of reserve differences] true up. Additionally, when assets retire in a manner that is not consistent with the Iowa curve selected, the accumulated depreciation account can develop a surplus or a shortfall as compared to the CAD [calculated accumulated depreciation]. This is often due to factors out of the control of the company. [footnote omitted]<sup>57</sup>

72. With respect to EPC's submissions on the complexity associated with using the ARD to recover the amounts in question, the Commission is of the view that, rather than complicating the

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<sup>54</sup> Exhibit 27581-X0222, EPC rebuttal evidence, Rebuttal testimony of Larry Kennedy, PDF page 14, paragraph 12. L. Kennedy's discussion was in relation to Account 487.3 – Enterprise Software, but the quoted paragraph is applicable to depreciation variances more generally.

<sup>55</sup> Exhibit 27581-X0215.01, EPC-AUC-2023MAR07-004(c), PDF page 21.

<sup>56</sup> Exhibit 27581-X0228, EPC-AUC-2023MAR27-003, PDF page 5: "Turning to the ARD mechanism, Mr. Kennedy is not aware of any existing depreciation guidance or textbooks that explicitly discuss how errors are treated under the ARD mechanism. The NARUC [National Association of Regulatory Utility Commissioners] manual's discussion of Equal Life Group true up procedures provides credence to the argument that the ARD mechanism accounts for changes between theoretical and book accumulated depreciation for reasons other than changes in life and salvage parameters:"

<sup>57</sup> Exhibit 27581-X0215.01, EPC-AUC-2023MAR07-004(c), PDF page 21.

recovery, use of the existing ARD mechanism should simplify EPC's recovery in this case. The inability of EPC's financial system to record and manage this expense without a manual workaround is not a suitable justification to recover the amounts in an accelerated manner through 2023 and 2024 true-ups.

73. Ultimately, the Commission's view is that there is no principled reason why the shortfall resulting from EPC's inability to support its 2021 and 2022 depreciation expense forecast should be recovered other than through EPC's approved ARD mechanism.<sup>58</sup>

74. For the above reasons, EPC's proposed true-up amounts of \$3.4 million in 2023 and \$5.0 million (on a placeholder basis) in 2024 are denied. EPC is directed to recover its depreciation shortfalls of \$3.4 million and \$5.0 million through the established ARD mechanism. EPC is directed to reflect these changes in its compliance filing.

### **4.3 EPC's adjustments to previous years' closing balances**

75. EPC's common costs are costs incurred internally within EPC that are attributable to both EPC Transmission and EPC Distribution. These common costs are allocated to the appropriate business unit, using a common cost allocation methodology. Generally, operating costs that can be directly assigned to a business unit are charged to the relevant business unit. Costs that cannot be directly assigned are allocated, to the extent possible, using an allocator consistent with cost causation. If a cost cannot be directly assigned or allocated based on cost causation, a universal allocator is used. For example, a capital cost allocator is used to allocate depreciation and amortization, the offset related to interest during construction, and the offset related to capitalized overhead. This allocation is based on the forecast test period ratio, rounded to whole numbers. For the 2023 to 2025 test period, EPC updated the capital asset allocator ratio to 70:30 in 2023, 70:30 in 2024 and 68:32 in 2025 for EPC Distribution and EPC Transmission, respectively.<sup>59</sup> These cost allocations were agreed to by all parties in the NSA,<sup>60</sup> which was approved in Section 3 above.

76. Based on its revised allocations, EPC made opening adjustments in its supporting schedules to previous years' closing balances for the 2021 test period compliance filing, the 2023 forecast, and the 2025 forecast, for the transmission allocated general property, plant and equipment accounts and the corresponding accumulated depreciation accounts. EPC stated that these adjustments reflect, among other things, a change to the capital asset allocation rate for transmission that was either approved in past decisions, or applied for in future years. EPC also stated that the adjustments reflect the proportionate share of EPC's transmission rate base relative to EPC's distribution rate base.<sup>61</sup>

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<sup>58</sup> See paragraph 71 of this decision, which provides a high-level description and purpose of the ARD mechanism.

<sup>59</sup> Exhibit 27581-X0016, application, paragraphs 355-358.

<sup>60</sup> Exhibit 27581-X0190, EPC 2023 to 2025 GTA Settlement Application, paragraph 36.

<sup>61</sup> Exhibit 27581-X0114.01, EPC-AUC-2022NOV25-028.

**Table 3. Opening balance adjustments for transmission-allocated general PP&E and accumulated depreciation related to EPC’s proposed change in capital allocation percentage**

	2021 test period compliance filing	2023 forecast	2025 forecast
	(\$ million)		
PP&E [Property, Plant and Equipment]	13.4	(7.8)	7.4
Accumulated Depreciation	(4.3)	2.7	(2.7)
<b>Net Adjustment</b>	<b>9.1</b>	<b>(5.1)</b>	<b>4.7</b>

Source: Exhibit 27581-X0128, EPC-AUC-2022NOV25-028 Attachment, Attachment (a).

77. In its letter dated January 20, 2023, the Commission expressed concern with these opening balance adjustments, and excluded the matter of the opening balance adjustments from the NSP.<sup>62</sup> Neither the CCA nor the UCA made submissions on this matter.

**Do the adjustments result in retroactive ratemaking or over/under forecasting depreciation and return in the revenue requirement?**

78. EPC noted that the opening balance adjustments for the 2021 test period compliance filing were previously approved adjustments in EPC’s compliance filing<sup>63</sup> to Decision 25726-D01-2021. EPC explained that the adjustments to previous years’ closing balances for the 2023 forecast and 2025 forecast are prospective only, and do not result in retroactive ratemaking. EPC indicated that the change to (i.e., restatement of) previous years’ closing balances only impacts customer rates on a prospective basis after the allocation change is made. Opening balance adjustments are made in the first year of the test period to ensure that capital costs of the shared assets reflect the actual usage of the assets over the test period for both transmission and distribution in accordance with the currently approved allocation percentages.<sup>64</sup>

79. EPC provided an example of a new information technology (IT) system being added to rate base in 2015, with an expected life of 10 years. It explained that if EPC’s usage was based on the approved allocation rate at that time (20 per cent EPC Transmission, 80 per cent EPC Distribution), the asset would have been added to rate base at that ratio. If, subsequently, EPC’s transmission rate base increased relative to EPC’s distribution rate base, EPC would then propose a revised allocation for approval on a prospective basis (30 per cent EPC Transmission, 70 per cent EPC Distribution). As a result of the change to the usage of the IT system, in the opening of the subsequent test period, the capital allocation driver would need to be adjusted to reflect the updated ratio to ensure that the allocation for all years in the test period reflected how the asset is used during the test period, and to ensure that the charge for depreciation, interest and return was allocated to the correct tariff.<sup>65</sup>

80. EPC also argued that if the opening rate base is not adjusted and the allocation is only applied to new additions/retirements on a forward-looking basis in any year, this would not be reflective of how all of the assets are being used. EPC further submitted that the opening rate base and depreciation on the opening rate base would be allocated at one percentage, and the new additions/retirements and associated depreciation would be allocated at a different

<sup>62</sup> Exhibit 27581-X0167, AUC letter – Matters excluded from the negotiated settlement process and CCA extension request, January 20, 2023.

<sup>63</sup> Decision 26732-D01-2021: ENMAX Power Corporation, 2021-2022 General Tariff Application Compliance Filing to Decision 25726-D01-2021, Proceeding 26732, August 25, 2021.

<sup>64</sup> Exhibit 27581-X0215.01, EPC-AUC-2023MAR07-002(a).

<sup>65</sup> Exhibit 27581-X0215.01, EPC-AUC-2023MAR07-002(a).

percentage. EPC noted that such a situation would also pose problems with the percentage that would need to be used to calculate depreciation expense on opening rate base.<sup>66</sup>

81. EPC explained that adjusting the previous years' closing balances as it has proposed to do would only impact the rates of customers on a prospective basis, after the allocation change is made. EPC referred to Decision 2009-238, where the Commission directed the same methodology as EPC proposes here. In that decision, the question was whether Direct Energy Regulated Services (DERS) should adjust its pre-existing shared capital projects on a go-forward basis for the 2009-2011 test years to reflect the modified ratio of 70:30 (regulated/competitive) that DERS had proposed. In approving the new ratio, the Commission directed DERS to identify and adjust the remaining forecast net book value as at January 1, 2009 (the start of the test period in that decision) using the adjusted net book value.<sup>67</sup>

82. Finally, EPC stated that its current practice of adjusting opening rate base to account for the change in capital asset allocation percentages does not lead to over/under forecasting depreciation and return in the revenue requirement. Rather, EPC submitted that the calculation of depreciation expense and revenue requirement reflects the current use of the asset by either EPC Transmission or EPC Distribution. EPC provided an example comparing depreciation expense between an asset with no allocation and an allocated asset where changes to the allocation rates were made over the life of the asset, including opening balance adjustments, to demonstrate that over/under forecasting did not occur.<sup>68</sup>

83. The Commission is persuaded that the methodology behind the previous years' closing balance adjustments do not result in retroactive ratemaking nor in over/under forecasting depreciation and return in the revenue requirement. The Commission is satisfied that the changes proposed by EPC would only impact customer rates on a prospective basis. The Commission is also satisfied that the depreciation, interest and return for the test years should be based on the value of the assets calculated using the new allocation ratio to properly reflect how the assets are being used. If EPC did not adjust the opening balances, its depreciation, interest and return in the test years would not properly reflect how these assets were being used during that test period, which in turn would result in an incorrect tariff to both EPC Transmission and EPC Distribution.

84. As a result, the Commission approves the opening adjustments to previous years' closing balances for the 2021 test period compliance filing, the 2023 forecast and the opening adjustment to the 2025 forecast.

### **What is the impact on EPC Distribution during its PBR term?**

85. Given that EPC Distribution will be under a new PBR term starting in 2024, and thus have any allocation percentages locked in at that time, the Commission is concerned about the impact that adjusting the entirety of shared corporate and common plant opening rate base in 2025 could have on EPC Distribution.

86. EPC stated that the adjustment to previous years' opening balances resulting from the change in the capital allocator would only be accounted for in the going-in rate base calculation (that is, the calculation used to set the rates for the PBR term), and would remain fixed until new

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<sup>66</sup> Exhibit 27581-X0215.01, EPC-AUC-2023MAR07-002(a).

<sup>67</sup> Decision 2009-238: Direct Energy Regulated Services, 2009/2010/2011 Default Rate Tariffs and Regulated Rate Tariffs, Proceeding 149, Application 1600749, December 3, 2009, paragraphs 86-88.

<sup>68</sup> Exhibit 27581-X0218, EPC-AUC-2023MAR27-002(b).

going-in rates were set. EPC explained that if the allocations change during the distribution PBR term, then there will be a period, depending on the length of the PBR term, where the allocation of shared assets between distribution and transmission will not equal 100 per cent, and EPC Distribution would experience a potential over- or under-recovery until the next distribution rebasing. EPC also confirmed that in a distribution rebasing year, where both transmission and distribution are aligned, there is no over- or under-recovery.<sup>69</sup>

87. The Commission notes that the going-in rates for EPC Distribution's next PBR term will be set in 2023 and that, as a result, the 70:30 ratio proposed by EPC will be accounted for in the going-in rate base calculation. However, by changing the allocation ratio to 68:32 in 2025, the allocation of shared assets between EPC Distribution and EPC Transmission will no longer equal 100 per cent in 2025 because EPC Distribution's rates will still be based on the 70 per cent allocation set in the going-in rate base calculation for 2024, while EPC Transmission's rates will be based on a 32 per cent allocation. The effect is an over-recovery at the expense of customers (i.e., an allocation equalling 102 per cent).

88. The Commission therefore requires EPC and any participating ratepayer representatives to address, as part of EPC Distribution's 2025 annual rate application, whether an adjustment (such as a Y factor) is required to ensure that the changed allocation does not create an over-recovery at the expense of customers.

## 5 Order

89. It is hereby ordered that:

- (1) ENMAX Power Corporation submit a compliance filing that reflects the findings, conclusions and directions of the Commission in this decision on or before October 31, 2023.

Dated on October 2, 2023.

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<sup>69</sup> Exhibit 27581-X0228, EPC-AUC-2023MAR27-004(b).



**Alberta Utilities Commission**

*(original signed by)*

Kristi Sebalj  
Vice-Chair

*(original signed by)*

Cairns Price  
Commission Member

## Appendix 1 – Proceeding participants

<b>Name of organization (abbreviation) Company name of counsel or representative</b>
ENMAX Power Corporation (EPC or ENMAX) Torys LLP
Consumers' Coalition of Alberta (CCA) J. Wachowich, KC
Office of the Utilities Consumer Advocate (UCA) Brownlee LLP InterGroup Consultants

Alberta Utilities Commission
Commission panel K. Sebalj, Vice-Chair C. Price, Commission Member
Commission staff A. Culos (Commission counsel) S. Sharma E. Deryabina M. Logan T. Richards

**Appendix 2 – Virtual oral argument and reply argument – registered appearances**

<b>Name of organization (abbreviation) Name of counsel or representative</b>
ENMAX Power Corporation (EPC or ENMAX) David Wood
Consumers' Coalition of Alberta (CCA) James Wachowich, KC
Office of the Utilities Consumer Advocate (UCA) Keegan Rutherford

### 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. To reiterate, the Commission’s decision is interim and subject to the outcome of the Enforcement staff investigation and any related enforcement action. The Commission directs EPC to file its compliance filing to this decision no later than October 31, 2023. If the investigation is concluded by the time EPC submits its compliance filing, EPC should detail the outcome(s) of the investigation in its compliance filing and identify any changes that may be required. If the investigation is not concluded by the time EPC submits its compliance filing, the Commission will make its determinations on the compliance filing subject to any further changes that may be required to reflect the outcome of the investigation and its impact, if any, on EPC’s 2023-2025 tariff. The Commission will finalize EPC’s 2023-2025 tariff in due course, following the outcome of the investigation and any related enforcement action. .... paragraph 4
2. For the following reasons, the Commission approves EPC’s request to collect the \$18.5 million shortfall depreciation expense for Account 487.3. EPC is directed to collect the shortfall through its ARD mechanism. .... paragraph 49
3. EPC indicated that it has accepted the recommendation to change its policy to retire assets in square curve accounts at the end of the approved amortization period and that it formally implemented this policy in 2021. The Commission therefore expects that EPC’s depreciation rate should align with the theoretical amortization period of a 10-SQ curve account and that assets will be retired at the end of the amortization period, so that after approximately five years this variance should resolve since all assets will be retired at the end of the amortization period. At the end of this five-year period, the Commission directs that EPC evaluate and report on the need for any further true-up for Account 487.3, irrespective of whether or not EPC submits a depreciation study at that time. .... paragraph 58
4. For the above reasons, EPC’s proposed true-up amounts of \$3.4 million in 2023 and \$5.0 million (on a placeholder basis) in 2024 are denied. EPC is directed to recover its depreciation shortfalls of \$3.4 million and \$5.0 million through the established ARD mechanism. EPC is directed to reflect these changes in its compliance filing. .... paragraph 74

## Appendix 4 – Negotiated Settlement Agreement

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



Appendix 4 - NSA

(consists of 13 pages)

## Appendix 5 – Negotiated Settlement Amending Agreement

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Appendix 5 -  
Negotiated Settlement  
(consists of 6 pages)

## **NEGOTIATED SETTLEMENT AGREEMENT**

ENMAX POWER CORPORATION  
2023-2025 TRANSMISSION GENERAL TARIFF APPLICATION

### **PROCEEDING 27581**

**THIS AGREEMENT** for the negotiated settlement of the ENMAX Power Corporation's 2023-2025 Transmission General Tariff Application is made and entered effective February 17, 2023

**BETWEEN:**

**ENMAX POWER CORPORATION**, a corporation incorporated under the laws of Alberta

and

**CONSUMERS' COALITION OF ALBERTA**

and

**OFFICE OF THE UTILITIES CONSUMER ADVOCATE**, established as part of the Ministry of Government Services by Order in Council 433/2003

**WHEREAS:**

- (a) EPC owns and operates a transmission system in and around the City of Calgary;
- (b) the AUC regulates EPC's transmission system, including the general transmission tariff;
- (c) on August 15, 2022, EPC filed a notification of intent to file its 2023-2025 general tariff application ("**GTA**");
- (d) on August 22, 2022, the AUC issued a Notice of Application informing parties it would be considering EPC's 2023-2025 GTA;
- (e) on October 3, 2022, EPC filed an application with the AUC for approval of its 2023-2025 GTA;

- (f) on October 11, 2022, the AUC issued an initial process schedule for Proceeding 27581, and approved EPC's request for a negotiated settlement process;
- (g) On November 2, 2022, the AUC established an issues list for Proceeding 27581
- (h) on December 16, 2022, EPC responded to IRs from the AUC, CCA and UCA;
- (i) on December 20, 2022, the CCA brought a motion for further and responses to certain IRs;
- (j) on January 12, and January 18, 2023, EPC filed revised responses to the CCA IRs;
- (k) on January 19, 2023, the CCA advised that it was not seeking any further responses to IRs with respect to its motion;
- (l) on January 27, 2023 the CCA and the UCA filed intervener evidence;
- (m) the Parties met through video conferencing on January 17, February 2, February 8, February 10,<sup>1</sup> February 14, February 15, and February 17, 2023 to attempt to negotiate a settlement of the 2023-2025 GTA; and
- (n) on February 17, 2023, the Parties reached a negotiated settlement with respect to the 2023-2025 GTA, reflecting an informed and considered compromise of the issues and positions advanced by the Parties during Proceeding 27581, including the negotiations.

**IN CONSIDERATION** of the mutual promises made in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by each of the Parties, and subject to the conditions set out below, the Parties agree as follows:

## **ARTICLE 1**

### **INTERPRETATION**

#### **1.1 Defined Terms**

As used in this Agreement, the following capitalized terms have the meaning set out below:

<sup>1</sup> The CCA was unable to attend this meeting due to a conflict with another proceeding.



- (a) “2023-2025 GTA” means the ENMAX Power Corporation 2023-2025 Transmission General Tariff Application filed by EPC with the AUC for approval in Proceeding 27581;
- (b) “AESO” means the Alberta Electric System Operator;
- (c) “Agreement” means this Negotiated Settlement Agreement;
- (d) “AUC” means the Alberta Utilities Commission;
- (e) “AUC Excluded Matters” means the matters described in section 2.2(a);
- (f) “CCA” means the Consumers’ Coalition of Alberta;
- (g) “EPC” means ENMAX Power Corporation;
- (h) “EUA” means the *Electric Utilities Act*, S.A. 2003, c. E-5.1;
- (i) “Excluded Matters” means the AUC Excluded Matters and the Party Excluded Matter;
- (j) “IR” means an information request made in accordance with section 26 of AUC Rule 001;
- (k) “O&M” means operating and maintenance costs;
- (l) “Party” means each of EPC, the CCA and the UCA and “Parties” means all of them;
- (m) “Party Excluded Matter” means the matter described in section 2.2(b);
- (n) “UCA” means the Office of the Utilities Consumer Advocate.

## **1.2 Other defined terms**

Capitalized terms not otherwise defined in this Agreement have the meaning given to them in the 2023-2025 GTA.

## **1.3 Gender and Number**

Any reference in this Agreement to gender includes all genders and words denoting the singular shall include the plural and *vice versa*.

## **1.4 Headings**

The division of this Agreement into articles and sections and the insertion of headings are for convenience only and shall not affect the interpretation of this Agreement.

## **1.5 Including**

In this Agreement, the words “includes,” “including” and similar expressions mean “includes” (or “including”) without limitation.

## **1.6 Accounting Matters**

Unless otherwise noted in this Agreement, all items of revenue, expense, cost, gain, loss, liability, all determinations with respect to accruals, and all accounting matters or terms in this Agreement will be determined or construed in accordance with the relevant requirements or practices of the AUC.

## **1.7 Legal Representation; No Presumption Against any Party**

Each Party acknowledges that it has been represented by counsel in connection with the negotiation and execution of this Agreement, and that the terms of this Agreement have been negotiated by it. Any rule of law or any legal principle that would require the interpretation of any claimed ambiguities in this Agreement against the Party that drafted it has no application, and the right to rely upon any such rule or principle is expressly waived by the Parties.

## **1.8 References to Statutes and Regulations**

Any reference to a statute, regulation or AUC rule is a reference to it as re-enacted, varied, amended, modified, supplemented or replaced from time to time.

## **1.9 Entire Agreement**

This Agreement sets out the entire understanding and agreement of the Parties, and there are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, among the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement. No Party has relied or is relying on any other information, discussion or understanding in entering into this Agreement.

## **1.10 Successors and Assigns**

This Agreement becomes effective only when executed by all of the Parties and then approved by the AUC. This Agreement will then be binding on and enure to the benefit of the Parties and their respective successors. No Party may assign this Agreement without the prior written consent of the other Parties, provided that such consent will not be unreasonably withheld.

## **1.11 Amendments**

This Agreement may be modified, altered or amended only by an agreement in writing, signed by the Parties and approved by the AUC.

### **1.12 Notices**

(a) Any notice or other communication from one Party to the other Parties required or permitted to be given under this Agreement must be in writing and will be sufficiently given or made if delivered during normal business hours on a Business Day and left at the recipient's address set out below, or if transmitted to the recipient by e-mail; and

(i) if to EPC, addressed to it at:

ENMAX Power Corporation  
141 – 50th Avenue S.E.  
Calgary, AB T2G 4S7

Attention: Darren Hoeving  
E-mail: DHoeving@enmax.com

(ii) Or if to the CCA, addressed to it at:

c/o its legal counsel Wachowich & Co  
Attention: James Wachowich K.C.  
Birks Building Suite 410, 10113-104 street  
Edmonton T5J 1A1  
E-mail: jim@wachowich.com

(iii) Or if to the UCA, addressed to it at:

Office of the Utilities Consumer Advocate  
9th Floor, Century Park Place 855 8th Avenue S.W.  
Calgary, AB T2P 3P1

Attention: Sandra McDonough  
E-mail: Sandra.Mcdonough@gov.ab.ca

(b) Any notice or other communication given or made in the manner set out above will be deemed to have been given or made and to have been received on the day of delivery or transmission, as the case may be, if delivered or transmitted during the normal business hours of the recipient on a Business Day and, if not, on the next Business Day. Any Party may change the contact information set out above by giving written notice of that change to the other Parties in accordance with this section.

### **1.13 No Waiver**

No waiver of any provision of this Agreement will be valid or enforceable unless in writing and signed by the Party against whom enforcement of the waiver is sought. The waiver of any provision of this Agreement, at any time, by any Party, will not constitute a

waiver of future compliance with that provision or a waiver of compliance with any other provision of this Agreement.

#### **1.14 Governing Law**

This Agreement and all disputes arising in connection with it will be subject to, governed by, and construed in accordance with the laws of the Province of Alberta including the laws of Canada that are applicable in Alberta.

#### **1.15 Severability**

In the event that any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid, all other provisions of this Agreement will remain enforceable to the fullest extent permitted by law, unless such finding materially impairs the economic benefit or protections to be derived by a Party under this Agreement.

#### **1.16 Execution**

This Agreement may be executed by facsimile transmission or by providing a scanned copy of the executed execution page, and may be executed by different Parties in different counterparts, each of which will be an original and all of which will constitute one and the same instrument.

#### **1.17 Time of the Essence**

Time will be of the essence in respect of this Agreement.

### **ARTICLE 2 TERMS OF SETTLEMENT**

#### **2.1 2023-2025 GTA to be Approved as Filed**

Except as set out in this Article 2, the Parties agree that the 2023-2025 GTA should be approved as filed in Proceeding 27581.

#### **2.2 Excluded Matters**

- (a) In accordance with the AUC's January 20, 2023 letter and January 26, 2023 letter, the issues of (i) the one-time charge of \$3.4 million to true up 2021 deferred depreciation expense and a one-time charge in 2024 to true up 2022 deferred depreciation expense (calculated as a \$5.0 million placeholder); and (ii) the 2023 opening rate base balance were excluded from the negotiated settlement process (the "**AUC Excluded Matters**").
- (b) In addition to the AUC Excluded Matters, the Parties have agreed to exclude the treatment of depreciation expenses relating to account 391.2 – 4873 – Enterprise software (the "**Party Excluded Matter**").

### 2.3 Adjustments in 2023-2025 GTA Revenue Requirement

The Parties have agreed to the following adjustments to the 2023-2025 GTA revenue requirement, resulting in a reduction of \$11.57 million over the test period:

Description	Revenue Requirement Adjustment (\$M)			
	2023	2024	2025	Total
Reduction 1 – (O&M) Business Continuity Planning	\$0.10	\$0.10	-	\$0.20
Reduction 2 – (O&M) Grid Innovation Expenses	-	\$0.10	\$0.10	\$0.20
Reduction 3 – (O&M) Line Clearance Mitigation	-	\$0.10	\$0.10	\$0.20
Reduction 4 – (O&M) Secured Remote Access to Relay Project	\$0.10	\$0.10	\$0.10	\$0.30
Reduction 5 – (O&M) Capital Asset Long Term Plan and Spare Strategy	\$0.10	0.10	-	\$0.20
Reduction 6 – (O&M) Account 560 Direct	\$0.60	\$0.40	\$0.20	\$1.20
Reduction 7 – (O&M) IBEW and Management Professional salary escalation (See Note 1 below)	\$0.05	\$0.10	0.12	\$0.27
Reduction 8 – (O&M) Vacancy Rate (See Note 2 below)	\$0.67	\$0.72	\$0.75	\$2.14
Reduction 9 – (O&M) Global Reduction	\$1.78	\$1.08	\$0.03	\$2.89
Reduction 10 – (Capital) Transformer Protection Upgrades PG1-BC-2023-10 C20231	\$0.05	\$0.15	\$0.22	\$0.42
Reduction 11 – (Capital) TRV Mitigation Strategy – ENMAX No. 162 Substation	\$0.02	\$0.03	\$0.03	\$0.08
Reduction 12 (Capital) Global Reduction	\$0.03	\$0.10	\$0.17	\$0.30
Reduction 13 – (Capital) Change in Forecasting Methodology (Reactive Program)	\$0.03	\$0.06	\$0.07	\$0.15
Reduction 14 – (Capital) Application Corrections to C20047 and C20322	\$0.01	\$0.07	\$0.13	\$0.21
Reduction 15 – (Depreciation) USA 392 – 4840 Vehicles Life curve of 14-L3	\$0.07	\$0.07	\$0.07	\$0.20
Reduction 16 – (Depreciation) USA 353 – 4575 – Substation Transformers net salvage of -20%	\$0.20	\$0.19	\$0.18	\$0.57
Reduction 17 – (Depreciation) USA 353 – 4576 – Substation Switchgear net salvage of -20%	\$0.43	\$0.40	\$0.39	\$1.22
Reduction 18 – (Depreciation) USA 353 – 4577 – Substation Structure net salvage rate of -15%	\$0.05	\$0.05	\$0.05	\$0.15
Reduction 19 – (Depreciation) USA 358 – 4650 – U/G Conduit net salvage rate of -5%	\$0.11	\$0.11	\$0.10	\$0.32
Reduction 20 – (Depreciation) USA 358 – 4655 – U/G Manholes net salvage rate of -5%	\$0.03	\$0.03	\$0.03	\$0.08

Description	Revenue Requirement Adjustment (\$M)			
	2023	2024	2025	Total
Reduction 21 – (Depreciation) Impact of Composite Rates on depreciation expense	\$0.03	\$0.07	\$0.17	\$0.26
<b>Total Transmission</b>	<b>\$4.45</b>	<b>\$4.12</b>	<b>\$3.00</b>	<b>\$11.57</b>

Totals may be affected by rounding.

#### **Note 1: IBEW and Management Professional (MP) salary escalation**

The Parties agreed to a salary escalation of 2.75% for 2023, 2.50% for 2024 and 2.75% for 2025 for the IBEW employee group reflecting the 2022-2024 ratified collective agreement.

The Parties agreed to a salary escalation of 3.00% in 2023, 2024 and 2025 for the MP employee group.

The Parties have also agreed that the salary escalation for the CUPE employees will be updated at the time of EPC's compliance filing to reflect the actual outcome of the CUPE contract ratification.

#### **Note 2: Vacancy Rate**

The Parties agreed to use a vacancy rate of 3.6%.

In addition, the Parties have agreed the cost of debt will be updated at the time of EPC's compliance filing to reflect the actual cost of debt.

## **2.4 Adjustments to Distribution Depreciation Expense and Cost Allocation Methodology**

In addition to the 2023-2025 GTA revenue requirement, the 2023-2025 GTA also includes two common matters that impact distribution as well as transmission, and the Parties have agreed to several adjustments to distribution depreciation expenses in addition to adjustments to the 2023-2025 GTA revenue requirement. The 2023-2025 GTA also addresses the methodologies used to allocate EPC common operations costs ("Common Costs") and ENMAX Corporation ("ENMAX") corporate administration and general expenditures ("Shared Services Costs") to Transmission and Distribution, which will impact distribution rates. The Parties have agreed that both cost allocation methodologies should be approved as filed in the 2023-2025 GTA. Adjustments for distribution depreciation expenses are shown for 2023 only.

The Parties have agreed to the following adjustments to EPC's 2023 Distribution depreciation expenses, resulting in a reduction of \$8.13 million in 2023:

<b>Description</b>	<b>Revenue Requirement Adjustment (\$M)</b>	
	<b>2023</b>	<b>Total</b>
Reduction 22 – (Depreciation) USA 392 – 4840 Vehicles Life curve of 14-L3	\$0.34	\$0.34
Reduction 23 – (Depreciation) USA 367 – 4961– U/G Primary Cable Life curve of 48-R3	\$0.51	\$0.51
Reduction 24 – (Depreciation) USA 367 – 4761 – U/G Primary Cable Life curve of 48-R3 and net salvage rate of -15%	\$4.23	\$4.23
Reduction 25 – (Depreciation) USA 367 – 4762 – U/G Secondary Cable net salvage rate of -30%	\$0.29	\$0.29
Reduction 26 – (Depreciation) USA 368 – 4773 – Padmount Transformers net salvage rate of -40%	\$1.34	\$1.34
Reduction 27 – (Depreciation) USA 364 – 4731 – Distribution Wood Poles net salvage rate of -30%	\$0.54	\$0.54
Reduction 28 – (Depreciation) USA 365 – 4746 – Overhead Switches net salvage rate of -7%	\$0.19	\$0.19
Reduction 29 – (Depreciation) USA 362 – 4978 Network Protection net salvage of 0%	\$0.08	\$0.08
Reduction 30 – (Depreciation) USA 353 – 4575 – Substation Transformers net salvage of -20% (Distribution Driven Transmission Projects)	\$0.04	\$0.04
Reduction 31 – (Depreciation) USA 353 – 4576 – Substation Switchgear net salvage of -20% (Distribution Driven Transmission Projects)	\$0.09	\$0.09
Reduction 32 – (Depreciation) USA 353 – 4577 – Substation Structure net salvage rate of -15% (Distribution Driven Transmission Projects)	\$0.01	\$0.01
Reduction 33 – (Depreciation) Impact of Composite Rates on depreciation expense	\$0.47	\$0.47
<b>Total Distribution</b>	<b>\$8.13</b>	<b>\$8.13</b>

Totals may be affected by rounding.

## 2.5 Costs of CCA

Within 30 days following the receipt of an invoice from the CCA, EPC will pay the CCA, on a refundable basis, the reasonable costs and expenses incurred by the CCA in connection with retaining consultants and counsel in relation to the 2023-2025 GTA and the related negotiated settlement process to and including the point of the Agreement and its approval. In the event of any difference between the costs paid to the CCA by EPC and the cost claim approved by the Commission, the CCA, or its counsel or consultants, as the case may be, will refund to EPC any amount by which the approved cost claim differs from the amount paid to the CCA by EPC within 30 days of the date of the Commission's decision regarding the CCA's cost claim.

EPC will, in any event, pay to the CCA the amount of costs and expenses incurred by the CCA in connection with this Agreement and the related negotiated settlement process within 30 days of the date of the Commission's decision regarding the CCA's cost claim.

## **2.6 Prudence**

The Parties agree that nothing in this Agreement, including the reductions to the 2023-2025 GTA revenue requirement, is an admission by EPC that those revenue requirement amounts are imprudent. The Parties further agree that no Party may rely on anything in this Agreement as evidence in any future proceeding that any revenue requirement amounts are either prudent or imprudent.

## **ARTICLE 3 CONFIDENTIALITY AND PRIVILEGE**

### **3.1 Without Prejudice**

The negotiated settlement reflected in this Agreement is a compromise and was reached in part as a result of the desire of the Parties to avoid the expenditure of significant costs and resources associated with a litigated process. This Agreement is for the 2023-2025 GTA only, and it is without prejudice to the positions that any of the Parties may take in any other negotiations and regulatory proceedings.

### **3.2 No Disclosure**

All discussions among the Parties during the negotiated settlement process are privileged and confidential, and no matter discussed and no information provided during the negotiated settlement process may be disclosed to any person or to the AUC without the express written consent of all Parties.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

### **4.1 Representations of all Parties**

Each Party represents that it has not withheld relevant information.

### **4.2 Representations of EPC**

- (a) EPC represents that all information it provided to the UCA and the CCA during the negotiated settlement process was true and accurate, to the best of EPC's knowledge.
- (b) EPC represents that proper notice of the negotiated settlement process was provided to all interested parties in accordance with the AUC's directions or practice.



**ARTICLE 5  
AUC APPROVAL**


**5.1 AUC Approval**

- (a) Unless otherwise agreed by the Parties in writing, if the AUC declines to approve this Agreement in its entirety, the Agreement will be of no force and effect, in accordance with Section 135 of the EUA.
- (b) The Parties agree that in the application for approval of this Agreement, EPC will request that if the AUC is considering rejecting this Agreement because it is concerned with one or more provisions, it indicate to the Parties which of the provisions of the Agreement are the source of the AUC's concern, and request that in such a case, the AUC provide the Parties with an opportunity to re-negotiate in an attempt to address the AUC's concern.
- (c) The UCA and CCA agree that they will support the application by EPC to the AUC for approval of this Agreement.

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the date set out above.

**ENMAX POWER CORPORATION**

By:

  
Name: Jana Mosley  
Title: President, ENMAX Power Corporation

**OFFICE OF THE UTILITIES  
CONSUMER ADVOCATE**

By:

Name: Chris Hunt  
Title: Executive Director,  
Utilities Consumer Advocate

**CONSUMERS' COALITION OF  
ALBERTA**

By:

Name: James A. Wachowich K.C.  
Title: Legal Counsel to the CCA



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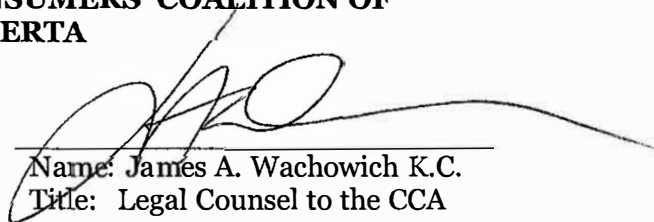
**ENMAX POWER CORPORATION**

**OFFICE OF THE UTILITIES  
CONSUMER ADVOCATE**

By: \_\_\_\_\_  
Name: Jana Mosley  
Title: President, ENMAX Power  
Corporation

By: \_\_\_\_\_  
Name: Chris Hunt  
Title: Executive Director,  
Utilities Consumer  
Advocate

**CONSUMERS' COALITION OF  
ALBERTA**

By:   
Name: James A. Wachowich K.C.  
Title: Legal Counsel to the CCA

February 24/2023 AUC PROCEEDING 27581

## **NEGOTIATED SETTLEMENT AMENDING AGREEMENT**

ENMAX POWER CORPORATION  
2023-2025 TRANSMISSION GENERAL TARIFF APPLICATION

PROCEEDING 27581

**THIS AGREEMENT** dated September September 18, 2023 regarding the amendment of the Negotiated Settlement Agreement dated February 17, 2023

**BETWEEN:**

**ENMAX POWER CORPORATION**, a corporation  
incorporated under the laws of Alberta

and

**CONSUMERS' COALITION OF ALBERTA**

and

**OFFICE OF THE UTILITIES CONSUMER ADVOCATE**,  
established as part of the Ministry of Government Services  
by Order in Council 433/2003

**WHEREAS:**

- (a) ENMAX Power Corporation ("**EPC**"), the Consumers' Coalition of Alberta ("**CCA**") and the Office of the Utilities Consumer Advocate (the "**UCA**") (collectively, the "**Parties**") entered into a negotiated settlement agreement dated February 17, 2023 (the "**NSA**");
- (b) the NSA was filed with the Alberta Utilities Commission ("**Commission**" or "**AUC**") on February 24, 2023;
- (c) on April 24, 2023, the Commission heard oral argument and reply on the Excluded Matters (defined in section 1.1(i) of the NSA);
- (d) on July 20, 2023 Torys LLP filed a letter (the "**July 20 Letter**") with the Commission on behalf of EPC in which it informed the Commission that:

- (i) AUC Enforcement (“**Enforcement**”) had initiated a confidential investigation regarding the year-end capitalization of certain of EPC’s distribution and transmission projects (the “**Investigation**”);
  - (ii) the Investigation was at an early stage;
  - (iii) EPC’s analysis to date indicated that the impact, if any, on rates in Proceeding 27581 was expected to be very small;
- (e) in the July 20 Letter, EPC proposed that the Commission not delay the issuance of the decision in EPC’s 2023-2025 Transmission general tariff application (the “**Decision**”), and indicated that Enforcement supported this proposal;
- (f) on July 21, 2023 the Commission issued a letter in which it requested submissions from the CCA and the UCA on the July 20 Letter;
- (g) on July 28, 2023 the UCA filed a letter in which it indicated that while it was not opposed to the Commission issuing the Decision in advance of Enforcement completing the Investigation, the Decision should provide for a detailed compliance process in which the parties could consider the outcome of the Investigation on the negotiated settlement process (“**NSP**”) and the NSA, as well as adequately test the actual impact of that outcome on EPC’s rates;
- (h) on July 28, 2023 the CCA filed a letter in which it stated that EPC’s proposal appeared reasonable and that the CCA agreed with the comments in the UCA’s submission;
- (i) on August 10, 2023 Torys LLP filed a letter on behalf of EPC in which it submitted that issuing the Decision without further delay was in the public interest;
- (j) on August 10, 2023 the Commission issued a letter (the “**August 10, 2023 Letter**”) in paragraph 7 of which it informed parties that it would not issue the Decision until (i) the Investigation is concluded; (ii) until such time as the impact, if any, on the NSP and NSA is, at a minimum, understood by the signatories to the NSA; or (iii) the Parties amended the NSA to address this issue, and how (or if) the outcomes of the settlement may be subject to further revision depending on the outcome of the Investigation;
- (k) section 1.11 of the NSA provides that it may be modified, altered or amended only by an agreement in writing, signed by the Parties and approved by the AUC.
- (l) the Parties wish to amend the NSP as described in paragraph 7 of the August 10, 2023 Letter so that the Commission may issue the Decision before the Investigation is concluded.

**IN CONSIDERATION** of the mutual promises made in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by each of the Parties, and subject to the conditions set out below, the Parties agree as follows:

**ARTICLE 1  
AMENDMENT OF THE NSA**

1.1 Section 1.1 of the NSA is amended by adding the following:

(d.1) “Enforcement” means the enforcement staff of the AUC;

(f.1) “Enforcement Action” means any application to the AUC filed by Enforcement or jointly by Enforcement and EPC at the conclusion of the Investigation;

(i.1) “Investigation” means the investigation by AUC Enforcement into the year-end capitalization of certain of EPC’s distribution and transmission projects referred to in Exhibit 27581-X0245;

1.2 The NSA is amended by adding the following after Article 5:

**ARTICLE 6  
Investigation**

**6.1 Investigation**

(a) Notwithstanding section 5.1(c), the Parties agree that if there is an Enforcement Action, they have the right to:

(i) make submissions to the AUC about a process for assessing the effect of the outcome of the Investigation on the GTA, the negotiated settlement process and this Agreement; and

(ii) participate fully in any process that the AUC establishes to deal with the effect of the outcome of the Investigation on the GTA, the negotiated settlement process and this Agreement.

(b) Regardless of the outcome of the Investigation and any Enforcement Action, EPC agrees not to request an increase to the GTA revenue requirement.

(c) Section 5.1(a) shall not apply to any adjustments to the GTA revenue requirement that the Commission determines are required to account for the effect of the outcome of the Investigation. For greater certainty, EPC agrees and acknowledges that depending on the outcome of the Investigation and any Enforcement Action, the

Commission may increase the reductions to EPC's 2023-2025 GTA revenue requirement set out in Article 2 of this Agreement.

- (d) The Parties do not object to the Commission approving the NSA and the 2023-2025 GTA revenue requirement on an interim basis before the outcome of the Investigation and any Enforcement Action is known and then making any adjustments the Commission determines are required under this Article to result in just and reasonable final rates.
- (e) The CCA and the UCA have relied on the representations of EPC in entering into the NSA. In the event that it is found that EPC has provided, either in its filings in the GTA or in submissions to Parties during the negotiation of the NSA, information containing an untrue statement of material fact or has omitted a statement of material fact necessary to make the information provided accurate and true, any Party may apply to the AUC for any relief such Party deems appropriate and the Commission may allow, which relief may include but is not limited to the setting aside of the NSA and any adjustments necessary to address the breach by EPC.

## **ARTICLE 2**

### **Execution**

#### **2.1 Execution**

This Agreement may be executed by providing a scanned copy of the executed execution page and may be executed by different Parties in different counterparts, each of which will be an original and all of which will constitute one and the same instrument.

## **ARTICLE 3**

### **AUC Approval**

#### **3.1 AUC Approval**

The UCA and CCA agree that they will support the application by EPC to the AUC for the approval of this Agreement.






**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the date set out above.

**ENMAX POWER CORPORATION**

By: \_\_\_\_\_  
Jana Mosley  
President, ENMAX Power  
Corporation

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