



EPCOR Energy Alberta Inc.

**Review Hearing on Alberta Energy and Utilities Board
Decision 2008-031, 2007-2009 Regulated Rate Tariff
Non-Energy Return**

February 8, 2010



ALBERTA UTILITIES COMMISSION

Decision 2010-055: EPCOR Energy Alberta Inc.

Review Hearing on Alberta Energy and Utilities Board Decision 2008-031,
2007-2009 Regulated Rate Tariff Non-Energy Return

Application No. 1577836

Proceeding ID. 174

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**EPCOR ENERGY ALBERTA INC.
REVIEW HEARING ON ALBERTA ENERGY AND
UTILITIES BOARD DECISION 2008-031, 2007-2009
REGULATED RATE TARIFF NON-ENERGY RETURN**

**Decision 2010-055
Application No. 1577836
Proceeding ID. 174**

1 INTRODUCTION

1. EPCOR Energy Alberta Inc. (EPCOR) filed an application dated June 27, 2008, applying pursuant to sections 10(1) and 80(4) of the *Alberta Utilities Commission Act*, S.A. 2007, c. A-37.2 and sections 3(1), 11, 12, 13 and 14 of Alberta Utilities Commission Rule 016, *Review and Variance of Commission Decisions*, for a review of the determination made by the Alberta Energy and Utilities Board (EUB or the Board) in Decision [2008-031](#),¹ to apply a rate of return method instead of the applied-for return margin method to determine EPCOR's return requirements (Review Application).

2. On March 13, 2009, the Alberta Utilities Commission (AUC or Commission) issued Decision [2009-025](#)² regarding the Review Application, in which it granted EPCOR's request for a review of Decision 2008-031.

3. The Commission indicated in Decision 2009-025 that the review would be limited to the following issues:

- (a) Did the Board in Decision 2008-031 award EPCOR a significantly lower Regulated Rate Tariff (RRT) non-energy return as compared to DIRECT³ and ENMAX?⁴
- (b) If so, how should EPCOR's non-energy return be varied, if at all?

4. On March 13, 2009, the Commission issued a Notice of Review. This Notice of Review was distributed by email to parties on the Commission's distribution list for electricity applications. Parties who wished to participate in the proceeding were required to file statements of intent to participate by April 3, 2009. A list of parties who submitted a statement of intent to participate is included in [Appendix 1](#) of this Decision.

5. On May 6, 2009, the Commission issued the following process and schedule to deal with this proceeding:

¹ Decision 2008-031 – EPCOR Energy Alberta Inc. 2007-2009 Regulated Rate Tariff Non-Energy Charge (Application 1512342) (Released: April 30, 2008).

² Decision 2009-025 – EPCOR Energy Alberta Inc. Decision on Preliminary Question Review and Variance of Alberta Energy and Utilities Board Decision 2008-031 (Application 1577736) (Released: March 13, 2009).

³ Direct Energy Regulated Services.

⁴ ENMAX Energy Corporation.

Table 1. Process Schedule

Process Step	Deadline Date
Commission Information Request (IR) No.1 to EPCOR	May 6, 2009
Commission IR No.1 to DIRECT and ENMAX	May 6, 2009
Commission IR No.2 to EPCOR	On or before May 28, 2009
Interveners IR No.1 to EPCOR	4:00 pm, May 28, 2009
EPCOR, DIRECT and ENMAX Responses to Commission IR No.1	4:00 pm, June 11, 2009
EPCOR Responses to Commission IR No.2 and Interveners IR No.1	4:00 pm, June 30, 2009
Submission of Intervener Evidence	4:00 pm, July 14, 2009
IRs on Intervener Evidence	4:00 pm, August 14, 2009
Interveners Responses to IRs on Intervener Evidence	4:00 pm, September 15, 2009
Submission of EPCOR's Rebuttal Evidence	4:00 pm, September 28, 2009

6. The members of the Commission assigned to this Application were Willie Grieve, Chair, N. Allen Maydonik, Q.C., Commissioner, and Bill Lyttle, Commissioner. A hearing was held in Edmonton from October 5-6, 2009. Written argument and reply argument were received on October 27, 2009 and November 10, 2009, respectively. Accordingly, for the purposes of this Decision, the Commission considers the record for the Application closed on November 10, 2009.

7. In reaching the determinations contained in this Decision, the Commission has considered the record of this proceeding, including the evidence and the argument provided by each party. Accordingly, references in this Decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider other relevant portions of the record with respect to that matter.

2 BACKGROUND AND HISTORY – 2001 THROUGH 2006

8. The following historical background of the provision of service by EPCOR under the regulated rate tariff is provided by the Commission to assist in understanding the context of this decision.

2.1 Current Corporations Involved

9. EPCOR Energy Alberta Inc. is a wholly owned subsidiary of EPCOR Utilities Inc. The common shares of EPCOR Utilities Inc. are wholly owned by the City of Edmonton. EPCOR Energy Alberta Inc. provides regulated rate service in the distribution service areas of FortisAlberta Inc. and EPCOR Distribution & Transmission Inc.

2.2 Previous Corporations

10. On August 31, 2000, the sale by TransAlta Utilities Corporation to UtiliCorp Networks Canada (Alberta) Ltd. of TransAlta Utilities Corporation's electricity distribution and retail

business closed and UtiliCorp Networks Canada Ltd. became the sole shareholder of UtiliCorp Networks Canada (Alberta) Ltd. This sale was approved by the Board in Decision 2000-41.⁵

11. UtiliCorp Networks Canada (Alberta) Ltd. applied to the Board on September 8, 2000 for approval of the sale of certain retail assets to EPCOR Energy Services (Alberta) Inc. and for approval of the appointment of EPCOR Energy Services (Alberta) Inc. as the provider of the regulated rate option in UtiliCorp Networks Canada (Alberta) Ltd.'s service area pursuant to section 8 of the *Regulated Rate Option Regulation*, AR 45/2000, as amended. EPCOR Energy Services (Alberta) Inc. was a wholly owned subsidiary of EPCOR Utilities Inc. The Board approved the application in Decision 2000-71.⁶

12. On May 29, 2002, UtiliCorp Networks Canada Ltd. submitted a letter to the Board advising that effective May 31, 2002, UtiliCorp Networks Canada (Alberta) Ltd. would be changing its name to Aquila Networks Canada (Alberta) Ltd. UtiliCorp Networks Canada Ltd. also changed its name, becoming Aquila Networks Canada Ltd.

13. With the passage of the new *Electric Utilities Act*, SA 2003, c.E-5.1, which came into force on June 1, 2003, the municipal electric distribution systems of the Cities of Edmonton and Calgary became subject to the jurisdiction of the Board. In particular, the Board became the regulatory authority for EPCOR Distribution Inc.⁷ and ENMAX Power Corporation⁸ for the purposes of approving distribution tariffs and regulated rate tariffs to be effective January 1, 2004.⁹

14. Effective January 1, 2001, EPCOR Energy Services Inc. began providing regulated rate service in the EPCOR Distribution Inc. service area pursuant to an arrangement between EPCOR Distribution Inc. and EPCOR Energy Services Inc. approved by Edmonton City Council. On October 10, 2003, EPCOR Distribution Inc. filed an arrangement with the Board that would allow EPCOR Energy Services Inc. to continue to act as the regulated rate tariff provider in EPCOR Distribution Inc.'s service area. The arrangement was approved by the Board in Decision 2003-085¹⁰ in conjunction with EPCOR Distribution Inc.'s 2004 interim distribution tariff.

15. By letter dated October 17, 2003, Aquila Networks Canada Ltd. made an application to the Board for approval to sell 100 percent of the shares of its subsidiary Aquila Networks Canada (Alberta) Ltd. to Fortis Alberta Holdings Inc., an indirectly wholly owned subsidiary of Fortis Inc. The Board approved the sale in Decision 2004-035.¹¹ On June 1, 2004, the name of Aquila Networks Canada (Alberta) Ltd. was changed to FortisAlberta Inc.

⁵ Decision 2000-41 – TransAlta Utilities Corporation Sale of Distribution Business (Application 2000051) (Released: July 5, 2000).

⁶ Decision 2000-71 - UtiliCorp Networks Canada (Alberta) Ltd. and UtiliCorp Networks Canada Ltd. Sale of Certain Assets to EPCOR Energy Services (Alberta) Inc. and Appointment of EPCOR Energy Services (Alberta) Inc. as Provider of the Regulated Rate Option (Application 2000269) (Released: November 24, 2000).

⁷ EPCOR Distribution Inc. owned and operated an electric distribution system in the City of Edmonton.

⁸ ENMAX Power Corporation owns and operates an electric distribution system in the City of Calgary.

⁹ Sections 2 and 3 of the *Electric Utilities Act*, SA 2003, c.E-5.1.

¹⁰ Decision 2003-085 – EPCOR Distribution Inc. 2004 Distribution Tariff Application Part A: 2004 Interim Distribution Rates (Application 1306821) (Released: November 14, 2003).

¹¹ Decision 2004-035 – Aquila Networks Canada Ltd. (ANCL) and Aquila Networks Canada (Alberta) Ltd. (ANCA) – ANCL's Sale of all of the Outstanding Shares of ANCA to Fortis Alberta Holdings Inc. (Application 1317133) (Released: April 29, 2004).

16. The interests of EPCOR Energy Services (Alberta) Inc. in the FortisAlberta Inc. service area were assigned to a new company entitled EPCOR Energy Alberta Inc., as approved in Decision 2004-074.¹² In the same decision, the interests of EPCOR Energy Services Inc. in the EPCOR Distribution Inc. service area were assigned to a new company entitled EPCOR Energy Inc.

17. In Decision 2006-134,¹³ the Board approved effective January 1, 2007, the amalgamation of EPCOR Distribution Inc. and EPCOR Transmission Inc. to form EPCOR Distribution and Transmission Inc.

18. In Decision 2006-135,¹⁴ the Board approved the transfer of EPCOR Utilities Inc.'s shares of EPCOR Energy Inc. to EPCOR Energy Alberta Inc. EPCOR Energy Inc. and EPCOR Energy Alberta Inc. subsequently amalgamated and assumed the current name EPCOR Energy Alberta Inc.

2.3 Previous Applications

19. When the regulated rate option was first introduced, it was designed to be in place for the period of January 1, 2001 to December 31, 2005 for eligible rate classification customers and for the period of January 1, 2001 to December 31, 2003 for persons other than rate classification customers. Rate classification customers were defined to include those receiving service under either the residential rate classification, farm rate classification or irrigation rate classification. Persons other than rate classification customers were eligible for the regulated rate option if they met certain criteria, one of which was: with respect to each separate property on which that person used electricity in 1999, the person's total annual consumption of electric energy was less than 250 MWhs (megawatt hours).

2.3.1 EPCOR Energy Services (Alberta) Inc. – 2001-2005 for Rate Classification Customers and 2001-2003 for Other Eligible Customers

20. In application number 2000257,¹⁵ EPCOR Energy Services (Alberta) Inc. applied for a one time approval of a regulated rate option tariff for customers in the UtiliCorp Networks Canada (Alberta) service area to be effective over the entire term that the regulated rate option was to be in effect (i.e. five years for rate classification customers and three years for other regulated rate option eligible customers.) The regulated rate option tariff was identified as having the following six components:

- Energy Charge;
- Delivery Charge;
- Retail Charge;
- Operating Margin (also referred to as a return margin);
- Franchise Fees and Taxes;
- Balancing Pool Credits and Charges.

¹² Decision 2004-074 – EPCOR Utility Businesses Code of Conduct and Exemption Application & Assignment of RRT Arrangement Agreements (Application 1342385) (Released: August 30, 2004).

¹³ Decision 2006-134 – EPCOR Utilities Holdings Inc., EPCOR Distribution Inc., EPCOR Transmission Inc. Amalgamation and Related Tariff Amendments (Application 1487073) (Released: December 22, 2006).

¹⁴ Decision 2006-135 – EPCOR Utilities Inc., EPCOR Energy Inc., EPCOR Energy Alberta Inc. Share Transfer and Related Amendment to Tariffs (Application 1487076) (Released: December 22, 2006).

¹⁵ Application 2000257 – EPCOR Energy Services (Alberta) Inc. 2001-2005 Regulated Rate Option Tariff Application, filed on September 8, 2000.

21. Application number 2000257 included a formula for determining the monthly RRT energy charge per kilowatt hour; the monthly system access service (transmission) and distribution access service (distribution) charges, and fixed monthly rates for what EPCOR Energy Services (Alberta) Inc. identified as “retail charges.” An operating margin charge of 5.5 percent was included to be applied to all of the RRT energy charge components with the exception of hedging costs and pool trading charges. The 5.5 percent operating margin charge was also to be applied to the system access service and distribution access service charges, as well as the RRT retail charges. The franchise fees and taxes, and the balancing pool credits and charges were identified as pass through charges and no operating margin was to be applied to these. No return on rate base amounts was included in the application.

22. EPCOR Energy Services (Alberta) Inc. included the following regarding the operating margin:

EESAI is proposing an operating margin (also referred to as a “return margin”) to provide compensation for EESAI’s overall risk of providing RRO Service. An operating margin approach is appropriate rather than a traditional return on rate base approach in view of the minimal capital investment and relatively high operating leverage risk associated with providing RRO Service. For each year of the transition period, EESAI has applied for an operating margin of 5.5%.¹⁶

23. On November 22, 2000, EPCOR Energy Services (Alberta) Inc. filed an Energy Price Setting Plan for 2001-2005 that amended the energy supply proposal submitted on September 8, 2000. This energy price setting plan for 2001-2005 submitted on November 22, 2000 was approved in principle in Decision 2000-74.¹⁷ In this Decision, the Board approved a Consultation Agreement between EPCOR Energy Services (Alberta) Inc. and six customer groups referred to in the 2001-2005 Energy Price Setting Plan as the Consultation Parties. The Consultation Agreement provided for ongoing consultations between EESAI and the Consultation Parties in respect of implementing the 2001-2005 Energy Price Setting Plan and amending it from time to time in the future.

24. On November 29, 2000, EPCOR Energy Services (Alberta) Inc. filed a negotiated settlement with respect to its RRT non-energy costs (those being system access service charges, distribution access service charges, and retail charges) and the terms and conditions for 2001-2005. In this negotiated settlement, the parties agreed to a return margin of 3.75 percent (as opposed to the 5.5 percent applied for) and also agreed that the return margin applicable to the energy component would be reduced to 0.5 percent for that portion of the energy component attributable to energy prices in excess of \$75 per megawatt hour.

25. The non-energy costs associated with the negotiated settlement were approved in Decision 2000-89.¹⁸ The return margin was approved on a final basis for 2001 in

¹⁶ Page 21 of Application 2000257.

¹⁷ Decision 2000-74 – EPCOR Energy Services (Alberta) Inc. Part A: Energy Supply Plan (Application 2000257) (Released: November 28, 2000).

¹⁸ Decision 2000-89 – EPCOR Energy Services (Alberta) Inc. Regulated Rate Option Tariff Part B: Non-Energy Cost Components (Application 2000257) (Released: December 22, 2000).

Decision 2002-052,¹⁹ and for 2002 in Decision 2002-073.²⁰ In approving the negotiated return margin for 2001 the Board included the following:

In light of the risks that EESAI appears to have assumed relative to its costs and revenues, the Board can accept the return margin agreed to by EESAI and the Consultation Parties in the 2001 Non-Energy Settlement, and incorporated by reference in the 2001 Shortfall Settlement. The Board accepts that the parties have a basis for justifying the margin and that it is not, therefore, clearly unreasonable. Accordingly, the Board accepts the agreement of the Consultation Parties and EESAI in clause 1(c) of the 2001 Shortfall Settlement that the agreed-upon return margin represents appropriate compensation for services provided and risks undertaken by EESAI on behalf of RRO customers, in accordance with section 9(3)(c) of the New RROR.²¹

26. Decision 2002-112²² dealt with the energy component of EPCOR Energy Services (Alberta) Inc.'s regulated rate tariff operations for 2003 for the service territory of Aquila Networks Canada (Alberta) Ltd. There was no change to the return margin on energy from the 2001 and 2002 energy price setting plans. In Decision 2003-039,²³ an amendment to the 2003 energy price setting plan was approved which allowed EPCOR Energy Services (Alberta) Inc. to purchase super peak products through the Alberta Power Pool. This impacted the return margin allowed on this component of the energy charge only. It did not affect the 3.75 percent return margin on the non-energy costs.

27. In Decision 2003-074,²⁴ EPCOR Energy Services (Alberta) Inc.'s negotiated settlement for 2004 and 2005 relating to its energy price setting plan for its rate classification customers in the Aquila Networks Canada (Alberta) Ltd. service territory was approved. There was no change in the return margin as determined in the amendment to the 2003 energy price setting plan. This 2004 and 2005 settlement did not affect the 3.75 percent return margin on the non-energy costs.

28. Under the terms of the *Regulated Default Supply Regulation* in force prior to November 4, 2003, only rate classification customers could be provided a hedged transition rate beyond the end of 2003. All other eligible customers, whom EPCOR Energy Services (Alberta) Inc. described as non-rate classification customers, could only receive a flow-through rate as of January 1, 2004. On November 4, 2003, the Minister of Energy enacted the *Regulated Default Supply Amendment Regulation* by way of Ministerial Order 73/2003. The effect of this amendment was to require regulated rate providers to offer only a transition rate to all eligible customers until June 30, 2006 and to offer only a flow-through rate to all eligible customers after July 1, 2006.

¹⁹ Decision 2002-052 – EPCOR Energy Services (Alberta) Inc. 2001-2005 Regulated Rate Option Tariff Part F: 2001 Outstanding Matters (Application 1247227) (Released: June 26, 2002).

²⁰ Decision 2002-073 – EPCOR Energy Services (Alberta) Inc. 2001-2005 Regulated Rate Option Tariff Part G: Final 2002 RROT Rates (Application 1251365) (Released: July 30, 2002).

²¹ Page 34 of Decision 2002-052.

²² Decision 2002-112 – EPCOR Energy Services (Alberta) Inc. 2003 Regulated Rate Option Settlement Agreement (Application 1279519) (Released: December 20, 2002).

²³ Decision 2003-039 – EPCOR Energy Services (Alberta) Inc. 2003 Regulated Rate Option Settlement Agreement Amendment (Application 1297658) (Released: May 14, 2003).

²⁴ Decision 2003-074 – EPCOR Energy Services (Alberta) Inc. 2004 and 2005 Regulated Rate Tariff Negotiated Settlement (Application Numbers 1307244 and 1309992) (Released: October 7, 2003).

2.3.2 EPCOR Energy Services Inc. – Energy Charges for 2004 and 2005 for Rate Classification Customers

29. In Decision 2003-087,²⁵ the Board approved RRT energy charges for EPCOR Energy Services Inc. for its rate classification customers in the EPCOR Distribution Inc. service area for 2004 and 2005. Included in the energy charges were a 3.75 percent return margin calculated on the energy cost component as well as a 3.25 percent return margin calculated on the transmission and distribution charge cost components. These return margins would be reduced by the deemed corporate tax rate for EPCOR Energy Services Inc. in each of 2004 and 2005 since the company was not subject to corporate tax. Included in Decision 2003-087 was the following:

The 2004-2005 Energy Price Setting Plans specify the minimum amount and type of electricity contracts that EESI and EESAI must purchase in the open wholesale market. Under the Plans, EESAI and EESI are responsible for all risk due to volume differences between forecast and actual RRT consumption under their respective Plans. No fees are payable for entrance or exit from the RRTs. EESAI and EESI earn a return margin to compensate them for providing RRT service and for the risk each assumes under its respective Plan.

The Board recognizes that some differences exist between the EESI and EESAI settlements, including the effect of the tax-exempt status on the return margins allowed for EESI and the different level of the return margin on the delivery charges for EESI. However, the Board takes comfort from the fact that the CCA's participation in each settlement will likely ensure that the resulting margins were appropriate under the specific circumstances of each settlement.²⁶

2.3.3 EPCOR Energy Services Inc. – Non-Energy Charges for 2004 for all Customers; Energy Charges for 2004 for Other Eligible Customers

30. In Decision 2004-040,²⁷ the Board approved RRT non-energy rates for 2004 for both rate classification and non-rate classification customers for EPCOR Energy Services Inc. for customers in the EPCOR Distribution Inc. service area. EPCOR Energy Services Inc. had requested that the Board apply a fair rate of return on rate base to include in the RRT non-energy revenue requirement. The Board included the following in Decision 2004-040:

The Board notes that the RRT non-energy equity return of \$992,735⁷ requested by EESI in its Revised Application translates to the following:

- A return margin of 5.2% when the equity return is expressed as a percentage of non-energy costs excluding equity return.⁸
- A return margin of \$3.79 per year per customer site.⁹

The Board notes that no party objected to the non-energy charges in the Amended Application. The Board has reviewed the underlying non-energy costs and considers that the non-energy costs reasonably reflect the administration costs of providing RRT service. The Board is satisfied that the Amended Application has appropriately taken into

²⁵ Decision 2003-087 – EPCOR Energy Services Inc. 2004 Regulated Rate Tariff Part A: January 1, 2004 Interim Tariff (Application 1306821) (Released: December 5, 2003).

²⁶ Page 9 of Decision 2003-087.

²⁷ Decision 2004-040 – EPCOR Energy Services Inc. 2004 Regulated Rate Tariff Part B: Final Tariff (Application 1306820) (Released: May 14, 2004).

account the non-energy risks in the agreed reduction to the non-energy revenue requirement.

Accordingly, the Board approves the non-energy charges in the Amended Application on a final basis effective June 1, 2004. The approved RRT Price Schedules are attached as Schedule A to this Decision.²⁸

⁷ EESI non-energy equity return of \$696,384 plus allocated corporate equity return of \$296,351 from Exhibit 003-223 and BR-EESI-10 (d) (Revised)

⁸ Exhibit 003-223.

⁹ Exhibit 003-223.

31. In the same application, EPCOR Energy Services Inc. applied for a return margin associated with energy and transmission and distribution costs for its non-rate classification customers for 2004 in the EPCOR Distribution Inc. service territory. This return margin consisted of a 3.75 percent charge calculated on the energy cost components and a 3.25 percent charge on the transmission and distribution components of customer bills. These return margins would be reduced by the company's deemed corporate tax rates in 2004 as the company was not subject to corporate tax.

32. In approving the requested return margin on energy and transmission and distribution costs for 2004 the Board included the following on page 8 of Decision 2004-040:

The Board notes that the EESI NRCC return margin on the energy and T&D costs provides compensation for risks that are not associated with the provision of non-energy customer services.¹² The risks that the return margin is compensating for are related to energy procurement (including compensation for hourly price and volume risk within each month following upon the purchase of hedges and setting of energy prices pursuant to the approved EESI NRCC Energy Price Setting Plan) as well as risks related to distribution losses and unaccounted for energy.¹³

¹² Ex 003-220 BR-EESI-13 (Revised).

¹³ EESI, at Tr. Pg. 3142, stated that the total return margin derived from energy and T&D charges is more heavily weighted toward energy charges and commodity risk.

2.3.4 EPCOR Energy Services (Alberta) Inc. – Energy and Non-Energy Charges for 2004 for Other Eligible Customers

33. In Decision 2004-041,²⁹ the Board approved RRT energy charges for EPCOR Energy Services (Alberta) Inc. for its non-rate classification customers in the Aquila Networks Canada (Alberta) Ltd. service area for 2004 as determined in the energy price setting plan. Included in the energy charges were a 3.75 percent return margin calculated on the energy cost component of customer's bills as well as the transmission and distribution charge cost components.

34. In approving the requested return margin on energy and transmission and distribution costs for 2004 the Board included the following on page 7 of Decision 2004-041:

The Board notes that the EESAI NRCC return margin on the energy and T&D costs provides compensation for risks that are not associated with the provision of non-energy

²⁸ Page 6 of Decision 2004-040.

²⁹ Decision 2004-041 – EPCOR Energy Services (Alberta) Inc. 2004 Regulated Rate Tariff Part B: Final Tariff (Application 1317308) (Released: May 14, 2004).

customer services.¹⁰ These risks are related to energy procurement (including compensation for hourly price and volume risk within each month following upon the purchase of hedges and setting of energy prices pursuant to the approved EESAI NRCC Energy Price Setting Plan) as well as risks related to distribution losses and unaccounted for energy.¹¹

¹⁰ Ex 007-013 BR-EESAI-18(b).

¹¹ EESAI, at Tr. Pg. 3142, stated that the total return margin derived from energy and T&D charges is more heavily weighted toward energy charges and commodity risk.

35. In the same application, EPCOR Energy Services (Alberta) Inc. applied for a fair rate of return on rate base to include in the RRT non-energy revenue requirement for 2004. The Board included the following on page 5 of Decision 2004-041:

The Board notes that the NRCC non-energy equity return of \$151,968⁶ requested by EESAI in its Revised Application translates to the following:

- A return margin of 3.9% when the equity return is expressed as a percentage of non-energy costs excluding equity return.⁷
- A return margin of \$3.62 per year per customer site.⁸

The Board notes that no party objected to the non-energy charges in the Amended Application. The Board has reviewed the underlying non-energy costs and considers that the non-energy costs reasonably reflect the administration costs of providing RRT service. The Board is satisfied that the Amended Application has appropriately taken into account the non-energy risks in the agreed reduction to the non-energy revenue requirement.

Accordingly, the Board approves the non-energy charges in the Amended Application on a final basis effective June 1, 2004. The approved RRT Price Schedules are attached as Schedule A to this Decision.

⁶ EESAI Equity Return of \$105,006 plus allocated corporate equity return of \$46,962 from Exhibit 007-15B. The Board derived the corporate equity return as 53.1% of the total corporate return allocated to the EESAI NRCC. The 53.1% is the equity portion of total return as shown for EESI on BR-EESI-10(d) (Revised).

⁷ Exhibit 007-15B.

⁸ Exhibit 007-15B.

2.3.5 EPCOR Energy Inc. and EPCOR Energy Alberta Inc. – Energy Charges for January 1, 2005 to June 30, 2006 for all Customers

36. Decision 2005-145³⁰ dealt with, among other items, the return margin on energy and on transmission and distribution costs for the period of January 1, 2005 to June 30, 2006 for EPCOR Energy Inc. in the EPCOR Distribution Inc. service territory and for EPCOR Energy Alberta Inc. in the FortisAlberta Inc. service territory. Some of the approvals included in the Decision were as follows:

As a result, the Board considers that the applied for EEI and EEAI Return Margins, Aggregate Line Loss Factors, Hedging Cost Factors and the Alberta Power Pool Trading Charges continue to be just and reasonable for the period 2005-2006. Accordingly, the

³⁰ Decision 2005-145 – EPCOR Energy Inc. EPCOR Energy Alberta inc. 2005-2006 Regulated Rate Tariff Energy Charge (Application Numbers 1398670 and 1398671) (Released: December 21, 2005).

Board approves, on a final basis, EEI and EEAI's applied for Return Margins, Aggregate Line Loss Factors, Hedging Cost Factors and the Alberta Power Pool Trading Charges, as follows:

1. Approval is granted to EEI to continue to charge a return margin to NRCC that is equivalent to the product of 3.75% multiplied by the difference of 1 minus the EEI deemed income tax rate (as reasonably determined by EEI from time to time) applied to the Energy Charge component and the product of 3.25% multiplied by the difference of 1 minus the EEI deemed income tax rate (as reasonably determined by EEI from time to time) applied to the Wires component of customer bills for the period January 1, 2005 through June 30, 2006.
2. Approval is granted to EEI to continue to charge a return margin to RCC that is equivalent to the product of 3.75% multiplied by the difference of 1 minus the EEI deemed income tax rate (as reasonably determined by EEI from time to time) applied to the Energy Charge component and the product of 3.25% multiplied by the difference of 1 minus the EEI deemed income tax rate (as reasonably determined by EEI from time to time) applied to the Wires component of customer bills for the period January 1, 2006 through June 30, 2006.
3. Approval is granted to EEAI to continue to charge a return margin to NRCC, in an amount equivalent to 3.75% applied to both the Energy Charge component and the Wires component of customer bills, for the period of January 1, 2005 through June 30, 2006.
4. Approval is granted to EEAI to continue to charge a return margin to RCC in an amount equivalent to 3.75% applied to both the Energy Charge component and the Wires component of customer bills, for the period of January 1, 2006 through June 30, 2006.

2.3.6 EPCOR Energy Inc. and EPCOR Energy Alberta Inc. – Non-Energy Charges for 2005 and 2006 for all Customers

37. Decision 2006-055³¹ dealt with the RRT non-energy charges for 2005 and 2006 for all eligible customers of EPCOR Energy Inc. in the EPCOR Distribution Inc. service territory and for EPCOR Energy Alberta Inc. in the FortisAlberta Inc. service territory. With regard to the return margin component for RRT non-energy, the following was included in Decision 2006-055:

The Companies proposed the traditional return on rate base approach to determine the RRT cost of capital as it is appropriate for the customer service businesses of EEI and EEAI due to the capital intensity of these businesses.⁸⁹ If depreciation charges were to exceed capital expenditures such that capital intensity declined, then at some point, it would become appropriate to use the return margin approach to determine the earnings requirements of the customer service business.⁹⁰ In response to a Board IR, the Companies provided estimates showing what the total and equity return margins on customer services revenues would be if the applied for comparable returns on rate base were translated to a return margin.⁹¹

FIRM submitted that the return on rate base approach results in front end loading of return and any move to a margin approach following the initial years, when assets have been depreciated, could result in compensating the utility more than its fair return on

³¹ Decision 2006-055 – EPCOR Energy Inc. EPCOR Energy Alberta Inc 2005-2006 Regulated Rate Tariff Non-Energy Charge (Application Numbers 1389878 and 1389879) (Released: June 23, 2006).

assets over the life of the investment in RRT assets. FIRM recommended that the Companies continue to use the return on rate base approach to determine the RRT non-energy revenue requirement, having regard to the Companies' evidence that the RRT customer service function is capital intensive. FIRM stated that any potential proposal to move to a return margin approach in the future under a scenario of declining capital intensity would need to recognize in the margin estimates the front end loading of return on assets received by EEI/EEAI in the early years of the RRT asset life. The Companies stated that this claim was both incorrect and without foundation based on the evidence in this proceeding. The Companies further noted that any proposal that they might make in a future RRT application to determine their earnings requirements using a return margin approach would have to be addressed based on the evidence adduced at that time.

In this case, the Board agrees with the Companies that the rate of return on rate base approach is the appropriate methodology to determine the earnings requirements, based on the evidence in this proceeding. In addition, the Board agrees with the Companies that FIRM's concerns regarding a future proposal to move to a return margin approach is not relevant for the purposes of this current proceeding. The Board's current determination does not prejudice any future decisions that the Board may make with regard to proposed approaches that any party may make respecting the determination of earnings requirements and the alternative of setting return margin requirements.³²

⁸⁹ Exhibit 159, BR-EEI-EEAI-66.

⁹⁰ Exhibit 62, BR-EEI-EEAI-27(b).

⁹¹ Exhibit 159, BR-EEI-EEAI-69.

2.3.7 EPCOR Energy Inc. and EPCOR Energy Alberta Inc. – Energy Charges for July 1, 2006 to June 30, 2011 for all Customers

38. Order U2006-109³³ concerning the RRT energy price setting plans for EPCOR Energy Inc. and EPCOR Energy Alberta Inc. for the period of July 1, 2006 to June 30, 2011 was issued on April 28, 2006. Included in that Order was the following:

By letter dated March 27, 2006 EPCOR Energy Inc. (EEI) and EPCOR Energy Alberta Inc. (EEAI) filed a combined application requested approval of a Settlement Agreement (NS or Settlement). The Settlement was in regard to the Energy Price Setting Plan (EPSP) for the period July 1, 2006 to June 30, 2011, applicable to Regulated Rate Option (RRO) customers in the EPCOR Distribution Inc. service territory for EEI customers and in the Fortis Alberta Inc. service territory for EEAI customers. Although EEI and EEAI (collectively, the Companies) are distinct legal entities and have separate service areas, the Companies propose to use the same EPSP to provide electrical energy to their RRO customers in the period of July 1, 2006 to June 30, 2011.³⁴

The Application noted that there were two components to Risk Compensation and Return, given the Full Load energy supply and energy provided through the RRO Price Index. The first portion is applicable to all energy regardless of supply, as the risks compensated under this portion occur regardless of the method of supply. The second portion of Risk Compensation is only applicable to the RRO Price Index as this portion is intended to compensate for the energy commodity related risks.

³² Page 31 of Decision 2006-055.

³³ Order U2006-109 – EPCOR Energy Inc. and EPCOR Energy Alberta Inc. 2006-2011 Regulated Rate Option Energy Price Setting Plan Negotiated Settlement (Application Numbers 1454218 and 1454219) (Released: April 28, 2006).

³⁴ Page 1 of Order U2006-109.

The first portion, or All Energy and Return margin equaled \$1.13/MWh, was comprised of the following components:

1. Reasonable return for the obligation to serve	\$0.65
2. Non Commodity Risks ³	\$0.41
3. Plan Administration	<u>\$0.07</u>
TOTAL	\$1.13/MWh ³⁵

³ Non commodity risks include such things as credit risk, settlement risk, risk of errors and operational risk.

The Board notes that the NS includes a component related to reasonable return of \$0.65/MWh. Further, the Board notes that section 6(1)(b) of the RRO Regulation states that

- (i) a regulated rate tariff must allow for a reasonable return for the obligation on the owner to provide electricity services in accordance with section 2, and
- (ii) the risk margin described in section 5 must not be considered as a part of that reasonable return.

The Board considers that the RRO Regulation is clear that a reasonable return is to be provided to the owner for the obligation to serve, above and beyond any amount awarded for risk margin.

The Board understands that the level of reasonable return agreed to by the Companies and the Customer Groups is part of an overall package deal, and works in conjunction with other agreed to costs and circumstances specific to EEI and EEAI and its customers considered in the development of the NS and reflects the parties' assessment of a reasonable return appropriate for EEI and EEAI in these circumstances. The Board is satisfied the reasonable return margin of \$0.65/MWh contained in the NS is just and reasonable. Further, the Board considers that the NS satisfactorily addresses the matters that must be considered by the Board in approving an RRT as set out in section 6 of the RRO Regulation.³⁶

3 BACKGROUND OF THE CURRENT PROCEEDING

39. In application number 1512342, EPCOR requested the Board's approval of the company's 2007-2009 RRT non-energy costs, final rates, terms and conditions, and price schedules for its RRT customers in the service areas of EPCOR Distribution & Transmission Inc. and FortisAlberta Inc. EPCOR applied for a return margin based on the approach and calculation method approved by the Board in Decisions [2006-107](#)³⁷ and [2006-108](#)³⁸ for DIRECT and ENMAX respectively. EPCOR noted that its 2005-2006 RRT non-energy application was based on a return on rate base and associated income tax cost, cost of debt and cost of working capital. However, EPCOR submitted that, given the Board's findings and conclusions in

³⁵ Pages 2 and 3 of Order U2006-109.

³⁶ Pages 5 and 6 of Order U2006-109.

³⁷ Decision 2006-107 – Direct Energy Regulated Services Reasonable Return Margin Effective July 1, 2006 (Application 1455025) (Released: November 1, 2006).

³⁸ Decision 2006-108 – ENMAX Energy Corporation January – June 2006 Reasonable Return Margin (Application 1457764) (Released: November 1, 2006).

Decisions 2006-107 and 2006-108, it was appropriate that EPCOR use the return margin approach established by the Board. In Decision 2008-031, the Commission rejected this approach for EPCOR and instead granted them a return on rate base consistent with the methodology previously approved in association with EPCOR's 2005-2006 RRT non-energy application.

40. EPCOR subsequently requested a Review and Variance of Decision 2008-031 on the grounds that using the rate of return methodology for EPCOR resulted in a RRT non-energy return that was too low in comparison to the returns awarded to ENMAX and DIRECT. EPCOR considered this Decision to be prejudicial due to the magnitude of return margin difference. As mentioned in Section 1 of this Decision, the Commission granted EPCOR's request for the review.

41. EPCOR filed its Review Submission on April 9, 2009 (Review Submission), in which it submitted that the evidence before the Commission clearly shows that Decision 2008-031 awarded EPCOR a significantly lower RRT non-energy return as compared to DIRECT and ENMAX and, further, that EPCOR's RRT non-energy return should be varied.³⁹

4 OVERVIEW OF ARGUMENT OF THE OFFICE OF THE UTILITIES CONSUMER ADVOCATE

42. The Office of the Utilities Consumer Advocate (the UCA) was the only intervener that actively participated in the proceeding. In its argument, the UCA included an executive summary and it is included here in its entirety. The Settlement Agreement referred to by the UCA in its executive summary is the negotiated settlement relating to EPCOR's RRT Energy Price Setting Plan (EPSP) for the period of July 1, 2006 to June 30, 2011, which the Commission has described in Section 2.3.7 of this Decision:

Section 6(1)(b)(i) of the *RRO Regulation* requires the Commission when considering approval of a regulated rate tariff under Section 103 of the *Electric Utilities Act* ('EUA') to have regard for the principles that:

“(i) a regulated rate tariff must allow for a reasonable return for the obligation on the owner to provide electricity services in accordance with section 2.”

The only reasonable return margin to which EEAI is entitled for the obligation to provide electricity services was agreed to by EEAI in a Settlement Agreement it made with customers and was defined without a limitation as the 'Return Margin'.

The amount EEAI agreed to for its reasonable return entitlement under s. 6(1)(b)(i) of the *RRO Regulation* was set at \$0.65/MWh until the Settlement Agreement expires in 2011.

The \$0.65/MWh reasonable return was to be collected by applying it to the energy consumed each month by RRO customers.

The Settlement Agreement could only be changed if all parties agreed so in writing and the parties never agreed to change the \$0.65/MWh as the reasonable return to which EEAI was entitled under s. 6(1)(b)(i) of the *RRO Regulation*.

³⁹ Exhibit 20.01.

The Settlement Agreement, including the \$0.65/MWh for the reasonable return under s. 6(1)(b)(i) of the *RRO Regulation* was vetted and approved by the AEUB in Order U2006-109.

EEAI never indicated in the Settlement Agreement nor even its application to the AEUB to approve the Settlement Agreement that it was entitled to a greater return under s. 6(1)(b)(i) than the \$0.65/MWh it agreed to accept for the 5 year duration of the Settlement Agreement.

When EEAI believed it negotiated a reasonable return lower than what DERS and EEC obtained, EEAI concocted a method to try and get around the ‘Return Margin’ in its negotiated Settlement Agreement.

The return to which EEAI is entitled under s. 6(1)(b)(i) of the *RRO Regulation* has already been agreed to, approved and awarded by the AEUB under Order U2006-109 until June 30, 2011.

With respect, the Commission does not have the jurisdiction to award any additional return to EEAI under s. 6(1)(b)(i) of the *RRO Regulation*, without upsetting the Settlement Agreement.

The Commission however retains the jurisdiction to award EEAI a return on its investment (or the traditional rate base approach) under s. 122(1)(a)(iv) of the EUA as it did in Decision 2008-031. Although EEAI claims the Board awarded an after-tax equity return on rate base of \$820,000 for 2007, the UCA submits EEAI was actually awarded \$1,579,000.

The data associated with the returns for DERS and EEC in Decisions 2006-107 and 2006-108 are unreliable comparators to EEAI because they involve an apples (margin on the entire operation) to oranges (margin on a less risky subset of EEAI’s operations – 86% T&D costs and 14% other non-energy costs) comparison. If the Commission does not accept the UCA’s legal argument, respecting no additional return under s. 6(1)(b)(i) of the *RRO Regulation*, the Commission could consider the non-energy return margin in the most recent EEC non-energy settlement, if it considered the EEAI equity returns on rate base were significantly lower than those determined by applying the EEC approach to EEAI.

If the Commission determines that it is appropriate to use Dr. Cicchetti’s benchmarks, it would be appropriate to increase the turnover ratio from 3.4 to 6.0 for any regression equations used, exclude the ENMAX maximum return from the calculation of the Alberta Negotiated Settlements to ensure that the “going concern” amount (\$0.75/MWh) is not included in the return margins, correct the typo in Appendices 5 of the 2006 Decisions and correct the transposition errors in Dr. Cicchetti’s Appendix 1.⁴⁰

⁴⁰ Exhibit 71.02 - UCA Argument, paragraphs 16 to 28.

5 LEGAL ISSUES RAISED REGARDING EPCOR'S REQUEST FOR RETURN ON RRT NON-ENERGY REVENUE

43. As noted above, the UCA provided an overview of its Argument which it began by noting that section 6(1)(b)(i) of the *Regulated Rate Option Regulation* requires the Commission, when considering approval of a regulated rate tariff under section 103 of the *Electric Utilities Act* to have regard for the principles that:

(i) a regulated rate tariff must allow for a reasonable return for the obligation on the owner to provide electricity services in accordance with section 2.

44. The UCA stated that the only reasonable return margin to which EEAI is entitled for the obligation to provide electricity services was agreed to by EEAI in the Settlement Agreement it made with customers and was defined without a limitation as the "Return Margin."⁴¹

45. The UCA submitted that the Commission cannot change the return margin under the Settlement Agreement. Further, the UCA stated that the Commission clearly expressed that "the scope of the review is limited to non-energy return" and "the Commission wishes to make it clear that it is reviewing the negotiated EPSPs for information purposes only and does not intend to adjust the current RRO negotiated settlements in any manner."⁴²

46. In considering the terms and conditions of EPCOR's Settlement Agreement, the UCA stated the Commission must keep in mind principles of contractual interpretation; in this case, to ascertain the parties' intentions having regard to the background context known to parties. In this regard, the UCA cited the Alberta Court of Appeal's decision in *ATCO Electric Ltd. v. Alberta (Energy and Utilities Board) (ATCO Electric)*⁴³ as authority on how to ascertain parties' intentions in the context of negotiated settlements. The UCA cited and highlighted a passage from that decision in which the Court stated "[i]t must be understood therefore that the search for the parties' intentions is conducted on an objective basis, meaning that the focus is on what a reasonable person would infer from the words used."⁴⁴

47. The UCA submitted that:

... in looking at the negotiated Settlement Agreement as a whole, a reasonable person would infer that the agreement shows the parties had specifically agreed on a 'Return Margin' and that the parties agreed by definition was to include all reasonable return due to EEAI for the entire obligation to provide electricity services to its eligible customers under s. 6(1)(b)(i) of the RRO Regulation. In other words, in looking at the Settlement Agreement, a reasonable person would not infer that the parties contemplated that the negotiated Settlement Agreement excluded a reasonable return on non-energy.⁴⁵

48. Further, the UCA stated that the fact that the definition of return margin in the Settlement Agreement in question is silent as to whether it includes non-energy return does not entitle EPCOR to now claim a separate non-energy return margin under section 6(1)(b)(i) of the *Regulated Rate Option Regulation*. The UCA argued that it would be entirely inconsistent with

⁴¹ "Return Margin" is defined in the Settlement Agreement as meaning "the return described in Section 6(1)(b)(i) of the RRO Regulation and determined in this 2006-2011 Plan".

⁴² Exhibit 71.02 - UCA Argument, paragraph 29, citing Decision 2009-025, paragraph 31.

⁴³ 2004 ABCA 215, 361 A.R. 1. (*ATCO Electric*).

⁴⁴ Exhibit 71.02 - UCA Argument, paragraph 32, citing *ATCO Electric*, paragraph 77.

⁴⁵ Exhibit 71.02 - UCA Argument, paragraph 36.

the parties' reasonable expectations to interpret the return margin in the Settlement Agreement as dealing only with a select yet undefined portion of 'electricity services' required to be provided by EPCOR.⁴⁶

49. The UCA also submitted that EPCOR had an obligation to disclose if there were unresolved issues in the negotiated settlement (citing *ATCO Electric*). In particular, the UCA stated that "...if EEAI did not intend the Settlement Agreement to settle all reasonable return due to it under s. 6(1)(b)(i) of the *RRO Regulation*, then EEAI had an obligation to clearly disclose such to the Board."⁴⁷ The UCA submitted that the Board was entitled to conclude that it was approving an "overall package deal" and that to do otherwise would compromise the Commission's (Board's) ability to determine what is in the public interest.

50. The UCA listed eight objective facts⁴⁸ to counter what it described as EPCOR's subjective belief that the words "all energy risk and return margin" in section 1(d) of the Settlement Agreement⁴⁹ should be read to mean all energy risk margin and all energy return margin.⁵⁰

51. The UCA also noted that section 5(4) of the *Regulated Rate Option Regulation* allows for a distinction between risk margin associated with energy related costs and risk margin associated with non-energy related costs. However, the UCA submitted that no similar legislative distinction is made with respect to reasonable return set out in section 6(1)(b)(i) of the *Regulated Rate Option Regulation*. In the absence of clear, unequivocal and objective facts, the UCA submitted that the Commission must resist any temptation to manufacture a distinction.⁵¹

52. The UCA further submitted that the statutory interpretation of the *Electric Utilities Act* supports differential treatment of utilities in negotiated settlements in the context of developing competition. The UCA included quotes from the *ATCO Electric* case in support of this position, and noted that:⁵²

EEAI argues that it is unfair that its 'peers', DERS and EEC, receive a higher non-energy return than EEAI. However, even if that were the case, nowhere in the *Electric Utilities Act* nor the *RRO Regulation* does it stipulate that EEAI must be treated equally to its peers on all issues it negotiates. Further, as noted earlier, EEAI chose not to include such term in its Settlement Agreement.⁶⁸

⁶⁸ Transcript page 44, lines 19 to 23.

⁴⁶ Exhibit 71.02 - UCA Argument, paragraph 69.

⁴⁷ Exhibit 71.02 - UCA Argument, paragraph 75.

⁴⁸ Exhibit 71.02 - UCA Argument, paragraph 82.

⁴⁹ Section 1(d) of the Settlement Agreement states: For the total RRO Load, the Companies will include Risk Margins and Return Margin in the charges applicable to RRO Customers on the energy charge cost component of customer bills. The Risk Margins and Return Margin will include:
(i) A \$1.13/MWh all energy risk and return margin on the energy charge cost component of customer bills for the total RRO Load. The all energy risk and return margin includes:

- \$0.65/MWh in RRO obligation in Return Margin;
- \$0.07/MWh for plan administration costs; and
- \$0.41/MWh in risk compensation.

⁵⁰ Exhibit 71.02 - UCA Argument, paragraph 81.

⁵¹ Exhibit 71.02 - UCA Argument, paragraph 84.

⁵² Exhibit 71.02 - UCA Argument, paragraph 99.

53. The UCA submitted that section 122 of the *Electric Utilities Act* enables the Commission to provide EPCOR with a reasonable opportunity to recover a fair return on the equity of shareholders of the electric utility as it relates to the investment, but that any return under section 6(1)(b)(i) of the *Regulated Rate Option Regulation* has already been negotiated, agreed to and approved by the Board for the period July 1, 2006 to June 30, 2011.⁵³

54. The UCA concluded by stating:

As held by the Alberta Court of Appeal, even if EEAI received a different level of return that is less advantageous than another negotiated settlement or Board decision (e.g. DERS or ENMAX) that does not constitute unjust discrimination. To otherwise hold, in the words of the Court of Appeal, “would undercut the notion of open competition and the legislative intention that Alberta customers are to benefit from that competition.” There is a legislative intention under Section 6 of the *Electric Utilities Act* “to hold market participants to the deals they make.” The UCA submits that pursuant to the *Electric Utilities Act*, the *RRO Regulation* and the principles of statutory interpretation, EEAI is and should remain bound by and to the Settlement Agreement it negotiated, and the \$0.65/MWh reasonable return for the obligation to provide electricity services to its customers.⁵⁴

55. In its Argument, EPCOR noted that Mr. Marcus, an expert witness for the UCA, filed his evidence in the proceeding leading to Decision 2008-031 after the Board approved the Settlement Agreement in Order U2006-109 (released on April 28, 2006). EPCOR submitted that the evidence of the UCA’s expert Mr. Marcus was very clear that the return margin on transmission and distribution and non-energy costs is “in addition to the \$0.65/MWh return in energy.”⁵⁵ EPCOR submitted that there was no misapprehension at the time the Settlement Agreement was negotiated, at the time the Settlement Agreement was signed, at the time the Settlement Agreement was approved by the Board, or at the time the Board issued Decision 2008-031. EPCOR submitted that everybody was on the “same page” that only the energy return was determined in the Settlement Agreement.⁵⁶

56. In reply, the UCA submitted that notwithstanding any interpretation provided by Mr. Marcus, he was not a legal expert. Further, the UCA submitted, case law indicates that it is generally inappropriate to rely on expert evidence to interpret the meaning of words to a contract.⁵⁷ The UCA also submitted that it had no need to pursue any issue concerning the breach of the Settlement Agreement, since in its view the Board in Decision 2008-031 did not grant any additional return under section 6(1)(b)(i) of the *Regulated Rate Option Regulation* and awarded EEAI a return on non-energy costs using the return on rate base method.⁵⁸

57. EPCOR also argued that any question of whether the Settlement Agreement should now be interpreted as including the non-energy return is beyond the scope of this review proceeding. EPCOR submitted that the scope for this review proceeding was expressly limited in Decision 2009-025 to deal with two narrow issues: (1) Did the Board in Decision 2008-031 award EPCOR a significantly lower regulated rate tariff non-energy return as compared to DIRECT and ENMAX? (2) If so, how should EPCOR’s non-energy return be varied if at all? EPCOR stated

⁵³ Exhibit 71.02 - UCA Argument, paragraph 101.

⁵⁴ Exhibit 71.02 - UCA Argument, paragraph 103.

⁵⁵ Exhibit 29.01 - AUC-EEAI-15(d).

⁵⁶ Exhibit 73.02 - EEAI Argument, paragraph 92.

⁵⁷ Exhibit 74.02 - UCA Reply Argument, paragraph 28.

⁵⁸ Exhibit 74.02 - UCA Reply Argument, paragraph 25.

that any suggestion that the Settlement Agreement should now be reinterpreted to exclude any return in respect of non-energy charges falls well outside the scope of this review proceeding.⁵⁹

58. In its Reply Argument, EPCOR stated:

As is outlined below, the plain and ordinary words used in the Settlement Agreement do not preclude recovery of a return margin for non-energy services precisely because the Settlement Agreement determined prices for "energy" services. Further, the UCA has failed to consider the commercial context of the Settlement Agreement at the time it was entered into. The UCA also ignores its own subsequent conduct. UCA's conduct can only be interpreted as consistent with a common understanding of all parties that a return would be set for non-energy services outside of the Settlement Agreement.⁶⁰

59. EPCOR also submitted that:

The UCA would have the Commission ignore a vital part of its statutory mandate: to ensure that the regulated rate tariff is "just and reasonable" under Section 121 of the Electric Utilities Act. UCA also seeks to blinker the Commission from the purposes of the Electric Utilities Act, which include enabling customers to "choose from a range of services in the Alberta electric industry, including a flow-through of pool price and other options developed by competitive market, and to receive satisfactory service."⁵⁹ The statutory purposes guide the Commission in all of its duties. This statutory purpose is in harmony with the principle of "fair and open competition" set out in the RRO Regulation.⁶¹

⁵⁹ *Electric Utilities Act*, section 5(e).

5.1 Commission Findings

60. The Commission acknowledges that it is beyond the scope of this proceeding to change the Return Margin provided for under the Settlement Agreement. In its argument, the UCA has raised the question of whether that Return Margin provided for in the context of the Settlement Agreement was intended to serve as a return on "everything" – RRT energy and RRT non-energy.

61. On its face, the Settlement Agreement is silent on the issue of return related to RRT non-energy. There is no provision stating that a separate margin was to be negotiated or litigated for RRT non-energy, nor is there a provision stating that the \$0.65 per MWh was considered to include the return margin for RRT non-energy.

62. As a result, the Commission disagrees with EPCOR's position that the interpretation of the Settlement Agreement is out of scope in this proceeding. The Commission must determine the question of how much RRT non-energy return EPCOR received under Decision 2008-031. To the extent the Settlement Agreement represents an integral part of that question, its interpretation must also be at issue.

63. The difficulties involved in assessing what may or may not have been part of a negotiated process that occurred some time ago are exacerbated by the fact that parties to that Settlement

⁵⁹ Exhibit 73.02 - EEAI Argument, paragraph 93.

⁶⁰ Exhibit 75.01 - EEAI Reply Argument, paragraph 53.

⁶¹ Exhibit 75.01 - EEAI Reply Argument, paragraph 86.

Agreement can only provide limited written evidence or witness testimony in support of their interpretation of the Settlement Agreement. Given this lack of testable evidence, the Commission is faced with assessing the credibility of the interpretations urged upon it by the parties to this proceeding.

64. The UCA has argued that a reasonable person would not infer that the parties contemplated that the Settlement Agreement excluded a reasonable return on non-energy.⁶² However, EPCOR has argued that the UCA's actions subsequent to the Settlement Agreement are not consistent with this argument.

65. The Commission has reviewed the plain words of the Settlement Agreement and considers that, looking at the agreement as a whole, a reasonable person would understand the agreement to deal exclusively with matters related to RRT energy charges and not with RRT non-energy charges. This focus is apparent throughout the agreement and is reflected explicitly in section 1(g) of the Settlement Agreement, which states that “[t]he monthly billing (“administration”) charge applicable to RRO Customers will form part of a separate RRO application and is expressly excluded from this Settlement Agreement.”⁶³

66. Consequently, while the definition of Return Margin in the Settlement Agreement did not specify that it was to apply only to the return margin on RRT energy services, the Commission finds that it cannot reasonably be construed to evidence an agreement that: “by definition was to include all reasonable return due to EEAI for the entire obligation to provide electricity services to its eligible customers under s. 6(1)(b)(i) of the *RRO Regulation*.”⁶⁴ In an agreement dealing with RRT energy services only, the Commission considers that something more than an implied agreement “by definition” is necessary to turn what can only be construed objectively as a definition of return margin to be applied only to RRT energy services into an agreement to include all return for the entire obligation to provide all services in that definition.

67. The Commission's interpretation in this regard is also consistent with the subsequent actions of parties with respect to the Settlement Agreement. The UCA did not provide evidence prepared contemporaneously with the negotiations to support the interpretation it urged upon the Commission. Rather, the actions of the UCA and its witness Mr. Marcus point to the UCA having understood that a separate return relating to RRT non-energy charges was contemplated apart from any amount negotiated in the Settlement Agreement. In particular, in the proceeding leading to Decision 2008-031, the UCA proposed the alternative of a six percent return margin on RRT non-energy.⁶⁵

⁶² Exhibit 71.02 - UCA Argument, paragraph 36.

⁶³ Order U2006-109, EPCOR Energy Inc. and EPCOR Energy Alberta Inc. 2006-2011 Regulated Rate Option Energy Price Setting Plan Negotiated Settlement, Appendix 1, page 4 of 59.

⁶⁴ Exhibit 71.02 - UCA Argument, paragraph 36.

⁶⁵ Decision 2008-031, pages 69 and 70: “In Reply, UCA submitted that, in light of Decision 2007-103, the fact that EEAI had a much more limited set of costs subject to deferral accounts than DERS, the fact that no evidence was brought forward by any party similar to that analyzed in Decision 2007-103, and the specific wording of EEAI's Settlement Agreement, the Board was left with the following choices for determining a non-energy return margin for for (sic) EEAI: (a) adopt the rate-base plus working capital approach which is supported in the record; or (b) adopt a 6% non-energy margin (0% on T&D as clarified by the Board in Decision 2007-103) consistent with the Board's previous treatment of EEC in Decisions 2004-065 and 2006-001 (as discussed at page 44 of CG's Argument).”

68. Further, in this Review proceeding, the UCA's expert witness again acknowledged the alternative of a six percent return margin on RRT non-energy.⁶⁶ This witness apparently assumed that the return on RRT non-energy remained an open question in this proceeding. The Commission considers that this witness was not interpreting the words of the Settlement Agreement but, rather prepared his evidence on the basis of what he considered to be a fact.

69. The Commission disagrees with the UCA's position that the Board in Decision 2008-031 awarded EPCOR a return on its investment (or the traditional rate base approach) under section 122(1)(a)(iv) of the *Electric Utilities Act*. Rather, the Commission considers that the Board used the return on rate base methodology to calculate EPCOR's return on RRT non-energy in accordance with section 6(1)(b)(i) of the *Regulated Rate Option Regulation*. There is no reference to section 122 (or section 121) of the *Electric Utilities Act* in Decision 2008-031. Further, no argument was made in this proceeding as to why those sections of the *Electric Utilities Act* are relevant to EPCOR's RRT, given that the RRT is applied for under section 103 of the *Electric Utilities Act* and determined in accordance with the *Regulated Rate Option Regulation*.

70. In summary, the Commission considers that it is reasonable to infer that the return margin calculated as part of an energy agreement would be related to energy only. This view is not contradicted by the UCA's submissions in the proceeding leading to Decision 2008-031 and is only affirmed by all of the other circumstances before the Commission dealing with the Settlement Agreement.

71. Given this finding, the Commission will proceed with its consideration of the Review Questions.

6 REVIEW QUESTION ONE: DID THE BOARD IN DECISION 2008-031 AWARD EPCOR A SIGNIFICANTLY LOWER RRT NON-ENERGY RETURN AS COMPARED TO DIRECT AND ENMAX?

6.1 Comparing the RRT Non-Energy Returns of EPCOR, ENMAX and DIRECT is Difficult

72. In considering Review Question One, it becomes apparent that a comparison of the RRT non-energy returns of these three regulated rate providers is difficult because of the different ways in which these returns have been established for each of DIRECT, ENMAX and EPCOR.

73. In Decision 2006-107, after a litigated process, the Board approved an after-tax RRT return margin of \$1.75 per MWh for DIRECT, for the period of July 1, 2006 to June 30, 2011. This return margin, based on the total return margin approach, was not separated into "return on RRT energy" and "return on RRT non-energy" but rather, was simply designated as an after-tax RRT return margin of \$1.75 per MWh. DIRECT provided the following commentary on its RRT return margin in response to an information request. DIRECT stated that: "... DERS would like to clarify that although Tables 2.1-1 and 2.2-1 show DERS' return margin split between energy and non-energy, this is not how DERS' margin is calculated. DERS' return margin is a return on all costs of goods and is not determined by cost component."⁶⁷

⁶⁶ Exhibit 36.02 - Evidence of William B. Marcus, page 7.

⁶⁷ Exhibit 30.03 - Response to AUC-DERS-15.

74. In ENMAX's case, a negotiated EPSP was approved in Order U2006-110⁶⁸ which incorporated a return on RRT energy for the period of July 1, 2006 to June 30, 2011. In Decision 2006-104,⁶⁹ resulting from a litigated process, the Board approved a RRT non-energy return for ENMAX of 6 percent of its non-energy costs (not including transmission and distribution costs) for 2006. ENMAX subsequently filed a negotiated settlement for its RRT non-energy revenue requirements for 2007 and 2008, which provided for a RRT non-energy return which was also set at 6 percent of its RRT non-energy costs (again excluding transmission and distribution costs). This negotiated settlement was approved by the Board in Order U2007-368.⁷⁰

75. EPCOR also filed a negotiated EPSP for the period of July 1, 2006 to June 30, 2011, which was approved in Order U2006-109. As noted in Section 2.3.7 of this Decision, a return margin of \$0.65 per MWh was provided for RRT energy costs. (As discussed in Section 5.1 of this Decision, the Commission was not persuaded by the UCA that the return margin agreed upon in the context of a RRT energy-related agreement was intended to include a return on RRT non-energy.) In the proceeding leading up to Decision 2008-031, EPCOR had applied for a return margin using the total return margin approach established by the Board in Decisions 2006-107 (for DIRECT) and 2006-108 (for ENMAX). In Decision 2008-031, the Commission rejected this approach for EPCOR and instead granted the company a return on rate base consistent with the methodology previously approved for EPCOR in association with its 2005-2006 RRT non-energy proceeding.

76. Given the disparity by which returns have been provided for each of EPCOR, ENMAX and DIRECT, it is, unfortunately, not simply a task of comparing "apples to apples." Rather, the vagaries of negotiated settlements must be accounted for when comparing with ENMAX, and some reasonable attempt must be made to carve out a notional RRT non-energy return margin from a total RRT return margin in order to make comparisons with DIRECT.

6.2 Determination of RRT Non-Energy Returns of EPCOR, ENMAX and DIRECT

77. In the following sections, the Commission will review and comment on the RRT non-energy returns of EPCOR, ENMAX and DIRECT for 2007, 2008, and, where the data is available, 2009.

6.2.1 EPCOR RRT Non-Energy Returns Awarded for 2007-2009

78. In its Review Submission filed on April 9, 2009 (Exhibit 20), EPCOR included two tables in which it compared the RRT returns awarded to EPCOR, ENMAX and DIRECT. One table included data for the year 2007 (Table 2.1-1) while the other included data for the year 2008 (Table 2.2-1). Included in these tables were the following RRT non-energy returns for EPCOR: \$0.82 million for 2007 and \$0.83 million for 2008. EPCOR included supporting documentation from its 2007-2009 RRT non-energy charge refiling that identified these returns as "return on equity."⁷¹

⁶⁸ Order U2006-110 – ENMAX Energy Corporation 2006-2011 Regulated Rate Option Energy Price Setting Plan Negotiated Settlement (Application 1455236) (Released: April 28, 2006).

⁶⁹ Decision 2006-104 – ENMAX Energy Corporation 2006 Regulated Rate Tariff Non-Energy (Application 1455154) (Released: October 24, 2006).

⁷⁰ Order U2007-368 – ENMAX Energy Corporation 2007-2008 Non-Energy Regulated Rate Option Negotiated Settlement Agreement (Application 1522895) (Released: December 24, 2007).

⁷¹ Exhibit 20.09 (Appendix H of the Review Submission filed on April 9, 2009).

79. The Commission explored the possibility that there were other amounts received by EPCOR through its RRT non-energy revenues that could be considered as being part of the company's RRT non-energy return. Through an examination of EPCOR's 2005-2006 RRT non-energy application, the Commission identified the following components that could be argued to be part of EPCOR's RRT non-energy return:

- Return on Equity
- Equity Component of Working Capital
- Equity Component of Cost of Capital on Customer Services (CUS) Corporate Allocations
- Equity Component of Cost of Capital on RRT Operations (RRT) Corporate Allocations

80. Commission counsel questioned the EPCOR panel in this proceeding about these components from its 2005-2006 RRT non-energy application, referring to a Commission aid to cross.⁷² Commission counsel also requested that the EPCOR panel provide the related amounts for these components for the years 2007, 2008 and 2009. EPCOR provided the requested information in an attachment to an undertaking response.⁷³ The Commission has included that information in Table 2:

Table 2. Possible Components of EPCOR's RRT Non-Energy Return for 2007, 2008 and 2009

Return Component	2007 (\$millions)	2008 (\$millions)	2009 (\$millions)
Return on Equity	0.819	0.831	0.805
Equity Component of Working Capital	0.331	0.367	0.393
Equity Component of Cost of Capital on Corporate Allocations	0.158	0.177	0.172
Total	1.308	1.375	1.370

81. EPCOR stated⁷⁴ that the correct RRT non-energy return would include the return on equity and equity component of working capital. EPCOR did not agree that the equity component of cost of capital on corporate allocations should be included as part of the RRT non-energy return, stating that this was effectively fees for services paid by EPCOR to a third party.⁷⁵ EPCOR added that the equity component of cost of capital on corporate allocations represented the return component for corporate assets owned by the company's parent, EPCOR Utilities Inc.

82. The UCA disagreed and considered that the equity component of cost of capital on corporate allocations should be included as a return component in the calculation of EPCOR's RRT non-energy return, as this item was part of the profit that EPCOR earned for its parent company.

83. In analyzing the RRT non-energy returns for DIRECT for the years 2007 and 2008 in Section 6.2.3 of this Decision, the Commission has included the equity component of working capital awarded to DIRECT. DIRECT included all of its capital assets (including any shared

⁷² Exhibit 58.01 – AUC Aid to Cross-Examination.

⁷³ Exhibit 67.02 – EPCOR Undertaking 01, Attachment.

⁷⁴ Exhibit 73.02 - EEAI Argument, paragraph 44.

⁷⁵ Ibid.

corporate capital assets) in working capital for 2007 and 2008 and as a result earned a return on these for those years.⁷⁶ EPCOR did not include capital assets in working capital for the years 2007 to 2009 but instead included a return on them through either the return on equity charge or the cost of capital on corporate allocations charge. In order to provide for a more accurate comparison between the RRT non-energy returns of EPCOR and DIRECT for 2007 and 2008, the Commission will include the equity return on all of EPCOR's capital assets, including the allocated corporate assets, in the calculation of EPCOR's RRT non-energy returns. Using this approach, the Commission considers that EPCOR was awarded RRT non-energy returns for 2007-2009 as reflected in Table 2 of this Decision.

6.2.2 ENMAX RRT Non-Energy Returns Awarded for 2007-2008

84. ENMAX's RRT non-energy returns for 2007 and 2008 are relatively straightforward to calculate in comparison to EPCOR and DIRECT. ENMAX's RRT non-energy returns for 2007 and 2008 are obtained by multiplying the company's approved 2007 and 2008 RRT non-energy revenues by 6 percent. The 6 percent and the remainder of ENMAX's RRT non-energy revenue requirements for 2007 and 2008 were approved by the Board in Order U2007-368 and were the result of a negotiated settlement between ENMAX and customer representatives. While ENMAX does have a working capital component as part of its approved RRT non-energy revenue requirements for 2007 and 2008, no capital assets were included in the calculation of the working capital. ENMAX's approved total working capital for the years 2007 and 2008 are approximately \$20,000 each year and the equity component of these figures would be even smaller. The resulting equity components would therefore be insignificant for purposes of comparison and accordingly, the Commission will not include them. Instead, the Commission will use the RRT non-energy returns for ENMAX as reported by EPCOR in Tables 2.1-1 and 2.2-1 of its April 9, 2009 Review Submission (Exhibit 20). These figures are \$1.326 million⁷⁷ for 2007 and \$1.243 million⁷⁸ for 2008.

6.2.3 DIRECT RRT Non-Energy Returns for 2007-2008

85. EPCOR reported the approved RRT non-energy return figures for DIRECT for 2007 and 2008 to be \$1.625 million in each year.⁷⁹ In reviewing the supporting documentation for the calculation of these figures, it is apparent that EPCOR started by calculating the total approved after-tax RRT returns for DIRECT for 2007 and 2008 and then assigned them to RRT energy and RRT non-energy using a percentage of total RRT revenue.

86. The total approved after-tax RRT returns for DIRECT were reported by EPCOR to be \$2.977 million for 2007 and \$2.941 million for 2008. These were calculated using the approved after-tax RRT return margin of \$1.75 per MWh (approved in Decision 2006-107) and the approved RRT energy sales forecasts for 2007 and 2008. The Commission has reviewed these calculations and agrees that they are correct.

87. EPCOR determined the RRT energy return component of the \$2.977 million for 2007 by dividing the approved RRT energy revenues for 2007 of \$128.90 million⁸⁰ by the total approved

⁷⁶ Schedule 5.2.3 of Attachment 4(b) of the negotiated settlement for 2007-2008 submitted by DIRECT on August 3, 2007 in Application 1492697.

⁷⁷ Exhibit 20.01 - Table 2.1-1, Column C, Row 5.

⁷⁸ Exhibit 20.01 - Table 2.2-1, Column C, Row 5.

⁷⁹ Exhibit 20.01 - Table 2.1-1, Column D, Row 5; Table 2.2-1, Column D, Row 5.

⁸⁰ Exhibit 20.01 - Table 2.1-1, Column D, Row 9.

RRT revenues for 2007 of \$283.80 million⁸¹ and multiplying the result by the \$2.977 million. The resulting figure was \$1.352 million.⁸² To determine the RRT non-energy component EPCOR simply deducted the RRT energy component of \$1.352 million from the total of \$2.977 million. The resulting figure of \$1.625 million represents the approved RRT non-energy return for DIRECT for 2007. EPCOR used the same procedure in determining the approved RRT non-energy return for DIRECT for 2008.

88. The Commission does not agree with EPCOR's approach for calculating DIRECT's RRT non-energy returns for 2007 and 2008. The approach that EPCOR has taken in this proceeding is to allocate DIRECT's entire RRT return awarded in Decision 2006-107 to RRT energy and RRT non-energy (which EPCOR views as transmission and distribution plus RRT non-energy) based on the proportionate share of these revenues to DIRECT's total RRT revenue. After stripping away the resulting allocated RRT energy return, EPCOR has bundled what it considers DIRECT's return on transmission and distribution revenue with DIRECT's return on RRT non-energy revenue; in essence the term "RRT non-energy revenue" has been modified by EPCOR to combine transmission and distribution revenue with RRT non-energy revenue. In doing so, EPCOR is assuming that DIRECT was awarded a return on transmission and distribution revenue in Decision 2006-107. This assumption by EPCOR is incorrect.

89. It is clear from Decision 2007-103⁸³ that the Board did not award any return to DIRECT on transmission and distribution. Rather the Board spread the RRT return across all three revenue components **only** for the purposes of recovery. This is apparent in the following excerpt from Decision 2007-103:

Methodology Recommended by Mr. Marcus

Mr. Marcus, on behalf of the UCA, proposed a methodology that used the Board's adopted return margins for the RRT as determined in Decisions 2006-107 and 2006-108. Mr. Marcus calculated separate after-tax markups granted by the Board for the transmission and distribution costs and all other costs of the DERS and EEC RRT operations. Mr. Marcus indicated that in Decisions 2006-107 and 2006-108, the Board essentially provided an after-tax markup of 0.505% on transmission and distribution costs and 2.158% on other costs.

.....

The Board understands how Mr. Marcus arrived at an imputed return component for transmission and distribution and a return component for other costs. However the Board considers that the calculations and analyses it performed in Decisions 2006-107 and 2006-108 took a somewhat different approach than the one outlined by Mr. Marcus. Essentially the Board utilized two processes. The first process was to determine what the return margin should be in total dollars. This was done by applying the same return margin percentage to the energy and the non-energy costs of both DERS and EEC. **No return margin percentage was applied to the transmission and distribution costs.** The second process was to determine how to collect the return margin dollars calculated in the first process. In arriving at this determination, the Board used all costs of DERS and EEC, those being energy, non-energy and transmission and distribution. Given that the proportion of transmission and distribution costs to total costs were different between

⁸¹ Exhibit 20.01 - Table 2.1-1, Column D, Row 8.

⁸² $\$128.90/\$283.80 = .454193$ multiplied by $\$2.977 = \1.352 .

⁸³ Decision 2007-103 – Direct Energy Regulated Services 2007/2008 Default Rate Tariffs and Regulated Rate Tariffs (Application 1492697) (Released: December 20, 2007).

DERS and EEC, this resulted in the low and high unadjusted benchmark figures being different between the two.

In effect the return margin for the transmission and distribution costs in the “Negotiated Settlements” benchmark used in Decisions 2006-107 and 2006-108 was zero. The Board notes that Mr. Marcus himself, in discussion with Mr. McNulty, made this same conclusion during his testimony as evidenced by the following:

18 Q What the Board did in Section 6 of this
19 appendix was to take the total markup dollars
20 for Section 5 and calculate what the resulting
21 markup percentages would be if these same total
22 markup dollars were applied against all of the
23 utilities costs, including transmission and
24 distribution; do you see that, sir?

25 A MR. MARCUS: That's exactly what the
0267

01 Board did, and that is -- essentially took into
02 account the fact that there was less T&D and --
03 in DERS and that -- I mean more T&D in DERS and
04 that T&D did not attract any markup in this
05 particular example.¹⁶⁹

The Board considers that in Decisions 2006-107 and 2006-108, it did not specifically determine two separate and distinct components of the return margins (i.e. for transmission and distribution and for other costs) that were approved in those cases. **As noted above, the return margin for the “Negotiated Settlements” benchmark was actually zero for the transmission and distribution costs.** Therefore, while the Board understands Mr. Marcus' approach to the return margin analysis, the Board does not adopt this approach as being the precise equivalent of the methodology the Board actually undertook.⁸⁴ **(emphasis added)**

¹⁶⁸ Transcript Volume 2, p. 260, l. 13 to p. 268, l. 2.

¹⁶⁹ Transcript Volume 2, p. 266, l. 18.

90. In rows 4 and 5 of Tables 2.1-1 and 2.2-1 of its Review Submission filed on April 9, 2009,⁸⁵ EPCOR references a \$1.75 per MWh after-tax return for RRT energy and RRT non-energy for DIRECT per Table 13 from Decision 2006-107. Table 13 from Decision 2006-107 is reproduced below for convenience.

⁸⁴ Pages 88 and 89 of Decision 2007-103.

⁸⁵ Exhibit 20.01 - pages 3 and 7.

Table 3. Table 13 from Decision 2006-107

	DERS	Per Board
	2005 Data	2006 Data
Energy	119,447,000	119,104,000
Non-Energy	13,087,000	13,061,000
T&D	<u>111,514,000</u>	<u>104,033,000</u>
Total	244,048,000	236,198,000
After-Tax Mark-up %	3.149%	1.43%
After-Tax Margin \$	\$7,666,429	3,376,799
After-Tax Margin %	3.00%	1.40%
Less Non-Energy Return	<u>\$ 0</u>	<u>\$ 179,000</u>
Remaining After-Tax Margin	\$7,666,429	\$3,197,799
Sales (MWh)	1,800,000	1,827,291
Pretax Margin (\$/MWh)	\$6.40	\$2.59
After-Tax Margin (\$/MWh)	\$4.26	\$1.75
Tax Rate	33.33%	32.49%

91. It is clear from the above table that transmission and distribution revenue (i.e. T&D in the above table) is a separate and distinct revenue item from energy and non-energy revenue.

92. Accordingly, the Commission finds that in determining DIRECT's RRT non-energy return to be used in its analysis in Section 6.3 of this Decision, it is necessary to calculate the amount of RRT non-energy return based on the proportion of DIRECT's RRT non-energy revenue to the sum of DIRECT's RRT non-energy revenue and DIRECT's RRT energy revenue. To be clear, DIRECT's transmission and distribution revenue is not included anywhere in the Commission's calculation of the amount of DIRECT's RRT non-energy return.

93. Given that the \$1.75 per MWh after-tax RRT non-energy return awarded to DIRECT in Decision 2006-107 was not separated into a return for RRT energy and RRT non-energy, and with the knowledge that there was no return awarded to DIRECT on its transmission and distribution revenues in the same Decision, the Commission has to allocate the \$1.75 per MWh after-tax RRT return between RRT energy and RRT non-energy (excluding transmission and distribution) for comparative purposes. The Commission would like to make it clear that this allocation is only for purposes of obtaining a better comparison of RRT non-energy returns in this Decision. The Commission has allocated the after-tax RRT return of \$1.75 per MWh awarded to DIRECT in Decision 2006-107 between RRT energy (\$1.58/MWh) and RRT non-energy (\$0.17/MWh). The details of this allocation are shown in the following table:

Table 4. Commission Allocation of \$1.75/MWh Awarded to DIRECT in Decision 2006-107

	<u>2006 Data</u>		
After-Tax Margin Awarded	\$3,376,799		
Less: Non-Energy Return	<u>(\$179,000)</u>		
Remaining	\$3,197,799		
MWh Sales	1,827,291		
After-Tax Margin (\$/MWh)	\$1.75		
		% of Total	After-Tax Margin (\$/MWh)
Energy Revenue	\$119,104,000	90.12%	\$1.58
Non-Energy Revenue	<u>\$13,061,000</u>	<u>9.88%</u>	<u>\$0.17</u>
Total	<u>\$132,165,000</u>	<u>100.00%</u>	<u>\$1.75</u>

Source of figures in the first column: Table 13 from Decision 2006-107.

94. Using the RRT non-energy return of \$0.17 per MWh, the Commission can now calculate the RRT non-energy return dollars for DIRECT for 2007 and 2008 to be used for comparison purposes. In calculating these amounts, the Commission has also included the approved equity returns on working capital associated with the RRT non-energy components of DIRECT for 2007 and 2008. These figures are \$253,105⁸⁶ for 2007 and \$242,769 for 2008.⁸⁷ EPCOR did not include these figures in the RRT non-energy returns for DIRECT in Tables 2.1-1 and 2.2-1 of its Review Submission.

95. The Commission has included the RRT non-energy returns for DIRECT for 2007 and 2008 that the Commission will use for comparison purposes in the following table:

⁸⁶ The approved non-energy working capital for the RRT operations of DIRECT for 2007 was \$477,842. This consisted of expense items and adjustments of \$7,011,210 multiplied by a weighted average cost of capital of 6.8154 percent. (Source: Schedule 5.2.3 of Attachment 4(b) of the negotiated settlement for 2007-2008 submitted by DIRECT on August 3, 2007 in Application 1492697). The equity percentage for the Regulated Rate Tariff for DIRECT for 2007 was 38 percent and the approved return on equity was 9.5 percent. The resulting approved equity return on working capital for 2007 for the RRT operations of DIRECT was \$253,105 ($\$7,011,210 * 38% * 9.5%$).

⁸⁷ The approved non-energy working capital for the RRT operations of DIRECT for 2008 was \$458,328. This consisted of expense items and adjustments of \$6,724,890 multiplied by a weighted average cost of capital of 6.8154 percent. (Source: Schedule 5.2.3 of Attachment 4(b) of the negotiated settlement for 2007-2008 submitted by DIRECT on August 3, 2007 in Application 1492697). The equity percentage for the Regulated Rate Tariff for DIRECT for 2008 was 38 percent and the approved return on equity was 9.5 percent. The resulting approved equity return on working capital for 2008 for the RRT operations of DIRECT was \$242,769 ($\$6,724,890 * 38% * 9.5%$).

Table 5. Commission Calculated RRT Non-Energy Returns for DIRECT for 2007 and 2008

	<u>2007</u>	<u>2008</u>
RRT Energy Sales (MWhs) (1)	1,700,910	1,680,856
After-Tax RRT Non-Energy Return Charge (\$/MWh)	<u>\$0.17</u>	<u>\$0.17</u>
After-Tax RRT Non-Energy Return Collected Through Energy Charge	\$289,155	\$285,746
After-Tax RRT Non-Energy Return Collected Through Non-Energy Charge	<u>\$253,105</u>	<u>\$242,769</u>
Total RRT Non-Energy Return	<u>\$542,260</u>	<u>\$528,515</u>
Approved RRT Non-Energy Revenues (2)	\$14,571,000	\$14,695,000
RRT Non-Energy Return as a % of Approved RRT Non-Energy Revenues (3)	3.72%	3.60%
Approved RRT Monthly Sites (4)	165,417	162,769
RRT Non-Energy Return per Site per Year (5)	\$3.28	\$3.25

(1) Schedule 3.2.3 of Attachment 4(b) of the negotiated settlement for 2007-2008 submitted by DIRECT on August 3, 2007 in Application 1492697.

(2) Table 7 of Decision 2007-103. This excludes the transmission and distribution revenues.

(3) $\$542,260/\$14,571,000 = 3.72\%$. $\$528,515/\$14,695,000 = 3.60\%$.

(4) Schedule 5.2 of Attachment 4(b) of the negotiated settlement for 2007-2008 submitted by DIRECT on August 3, 2007 in Application 1492697.

(5) $\$542,260/165,417 = \3.28 . $\$528,515/162,769 = \3.25 .

6.2.4 Updated RRT Non-Energy Returns Approved for 2007 and 2008

96. Using the updated RRT non-energy return information from Sections 6.2.1, 6.2.2 and 6.2.3 of this Decision, the Commission has produced the following table:

Table 6. 2007-2008 RRT Non-Energy Returns for EPCOR, ENMAX and DIRECT as Considered by the Commission

Company	2007 (\$ millions)	2008 (\$ millions)
EPCOR (Table 2 of this Decision)	1.308	1.375
ENMAX (Section 6.2.2 of this Decision)	1.326	1.243
DIRECT (Table 5 of this Decision)	0.542	0.529

97. In terms of absolute dollars the RRT non-energy returns awarded to EPCOR for 2007 and 2008 are not significantly different than the corresponding amounts awarded to ENMAX and are higher than those for DIRECT. However, this does not take into account the differences between the three regulated rate providers with regard to number of sites, return as a percentage of revenues, etc. To make a better assessment of whether EPCOR's awarded RRT non-energy returns for 2007 and 2008 are significantly different than those for ENMAX and DIRECT, a more comprehensive analysis is required.

6.3 Numerical Analysis of Difference in RRT Non-Energy Returns

98. In its Review Submission filed on April 9, 2009 and more specifically, Tables 2.1-1 and 2.2-1 of that submission, EPCOR provided a significant amount of information which compared the following results for EPCOR, ENMAX and DIRECT for 2007 and 2008:

- After-Tax Energy Returns in Dollars;
- After-Tax Non-Energy Returns in Dollars;
- After-Tax Total Returns in Dollars;
- Percentage of After-Tax Total Returns to Total Revenues;
- After-Tax Total Returns Expressed in Dollars per MWh;
- After-Tax Total Returns Expressed in Dollars per Site;
- Percentage of After-Tax Energy Returns to Energy Revenues;
- After-Tax Energy Returns Expressed in Dollars per MWh;
- After-Tax Energy Returns Expressed in Dollars per Site;
- Percentage of After-Tax Non-Energy Returns to Non-Energy Revenues (Including Transmission and Distribution Revenues);
- Percentage of After-Tax Non-Energy Returns to Non-Energy Revenues (Excluding Transmission and Distribution Revenues);
- After-Tax Non-Energy Returns Expressed in Dollars per Site.

99. The Commission’s focus in this proceeding is on the RRT non-energy returns awarded to the three regulated rate providers. Accordingly, the items included in the last two bullet points are the most relevant for the purposes of this Decision. This is consistent with the Commission’s concerns in Decision 2009-025, where it noted discrepancies between the RRT non-energy returns of ENMAX and EPCOR on a percentage of RRT non-energy revenue basis, and on a dollar per site comparison.⁸⁸

100. The Commission has determined that it will not be focusing on the comparator entitled “Percentage of After-Tax Non-Energy Returns to Non-Energy Revenues (Including Transmission and Distribution Revenues). As described in Section 6.1 of this Decision, ENMAX was not awarded any return associated with its transmission and distribution revenues for 2007 and 2008 as part of its RRT non-energy return. In addition, DIRECT was not awarded any return associated with its transmission and distribution revenues for 2007 and 2008. The amount of transmission and distribution revenues the regulated rate providers receive is significantly influenced by the service area in which they operate, and there are significant differences between the transmission and distribution revenues of the three regulated rate providers. The Commission considers that any comparison of RRT non-energy returns that includes transmission and distribution revenues could be misleading.

101. Consequently, the Commission will examine the following comparators: “Percentage of After-Tax Non-Energy Returns to Non-Energy Revenues (Excluding Transmission and Distribution Revenues)” and “After-Tax Non-Energy Returns Expressed in Dollars per Site.” To aid its numerical analysis, the Commission developed the following summary tables for 2007 and 2008:

⁸⁸ Decision 2009-025, paragraph 28.

Table 7. 2007 RRT Non-Energy Return Analysis

	EPCOR	ENMAX	DIRECT
RRT Monthly Sites (1)	600,470	293,237	165,417
RRT Non-Energy Revenue (2) (3) (4) (\$ millions)	\$36.622	\$22.107	\$14.318
RRT Non-Energy Return (5) (\$ millions)	\$1.308	\$1.326	\$0.542
RRT Non-Energy Return / RRT Non-Energy Revenue (Markup)	3.57%	6.00%	3.79%
RRT Non-Energy Return / RRT Monthly Sites	\$2.18	\$4.52	\$3.28

(1) Exhibit 20.01 – Table 2.1-1, Row 1.

(2) EPCOR – Appendix A of Exhibit 20.01, Column B, Row 226 shows \$37.930 million. The RRT non-energy return of \$1.308 million is included in this figure and has to be deducted. The resulting figure is \$36.622 (\$37.930-\$1.308).

(3) ENMAX - Appendix J of Exhibit 20.01. The RRT non-energy return of \$1.326 million is not included in this figure.

(4) DIRECT – Appendix C of Exhibit 20.01 shows \$14.571 million. The equity component of working capital of \$0.253 million is included in this figure and has to be deducted. The resulting figure is \$14.318 (\$14.571-\$0.253).

(5) From Table 6 of this Decision.

Table 8. 2008 RRT Non-Energy Return Analysis

	EPCOR	ENMAX	DIRECT
RRT Monthly Sites (1)	593,687	253,497	162,769
RRT Non-Energy Revenue (2) (3) (4) (\$ millions)	\$37.193	\$20.709	\$14.453
RRT Non-Energy Return (5) (\$ millions)	\$1.375	\$1.243	\$0.529
RRT Non-Energy Return / RRT Non-Energy Revenue (Markup)	3.70%	6.00%	3.66%
RRT Non-Energy Return / RRT Monthly Sites	\$2.32	\$4.90	\$3.25

(1) Exhibit 20.01 – Table 2.2-1, Row 1.

(2) EPCOR – Appendix A of Exhibit 20.01, Column D, Row 226 shows \$38.568 million. The RRT non-energy return of \$1.375 million is included in this figure and has to be deducted. The resulting figure is \$37.193 (\$38.568-\$1.375).

(3) ENMAX - Appendix J of Exhibit 20.01. The RRT non-energy return of \$1.243 million is not included in this figure.

(4) DIRECT – Appendix C of Exhibit 20.01 shows \$14.696 million. The equity component of working capital of \$0.243 million is included in this figure and has to be deducted. The resulting figure is \$14.453 (\$14.696-\$0.243).

(5) From Table 6 of this Decision.

6.3.1 Examination of RRT Non-Energy Returns as a Percentage of RRT Non-Energy Revenues

102. In both 2007 and 2008, the RRT non-energy returns awarded to EPCOR were less than those of ENMAX when expressed as a percentage of RRT non-energy revenues. In 2007, EPCOR's RRT non-energy markup was 3.57 percent and in 2008 it was 3.70 percent. This is in contrast to the 6.00 percent for ENMAX for 2007 and 2008. In both years, the figures for ENMAX exceed those of EPCOR by more than 60 percent. If the Commission were to award EPCOR additional RRT non-energy returns for 2007 and 2008 such that EPCOR's markup

equaled that of ENMAX, the resulting figures would be approximately \$0.9 million in extra return for each of 2007 and 2008.⁸⁹

103. When compared to DIRECT, the RRT non-energy returns awarded to EPCOR for 2007 and 2008 are quite comparable when expressed as a percentage of RRT non-energy revenues. In 2007, EPCOR's RRT non-energy markup was 3.57 percent while the corresponding figure for DIRECT's markup was 3.79 percent. This equates to a difference of approximately 6 percent. In 2008, the RRT non-energy markups are almost exactly the same, with EPCOR's being 3.70 percent and DIRECT's being 3.66 percent.

6.3.2 Examination of RRT Non-Energy Returns Expressed in Dollars per Site

104. In both 2007 and 2008, the RRT non-energy returns awarded to EPCOR were less than those of ENMAX when expressed as dollars per site figures. In 2007, EPCOR's RRT non-energy return equated to \$2.18 per site and in 2008 it equated to \$2.32 per site. This is in contrast to \$4.52 per site and \$4.90 per site for ENMAX for 2007 and 2008, respectively. In both years, the figures for ENMAX are more than double those for EPCOR. If the Commission were to award EPCOR additional RRT non-energy returns for 2007 and 2008 such that EPCOR's RRT non-energy returns expressed in dollars per site equaled those of ENMAX, the resulting figures would be approximately \$1.4 million for 2007 and \$1.5 million for 2008.⁹⁰

105. When compared to DIRECT, the RRT non-energy returns awarded to EPCOR for 2007 and 2008 were also lower when expressed on a dollars per site basis. In 2007, EPCOR's RRT non-energy return equated to \$2.18 per site and in 2008 it equated to \$2.32 per site. This is in contrast to \$3.28 per site for DIRECT in 2007 and \$3.25 per site in 2008. In both years, the figures for DIRECT exceed those of EPCOR by at least 40 percent. If the Commission were to award EPCOR additional RRT non-energy returns for 2007 and 2008 such that EPCOR's RRT non-energy returns expressed in dollars per site equaled those of DIRECT, the resulting figures would be approximately \$0.7 million for 2007 and \$0.6 million for 2008.⁹¹

6.3.3 Commission Findings Regarding RRT Non-Energy Return Comparisons

106. In comparing the RRT non-energy returns for EPCOR and ENMAX for 2007 and 2008 in Sections 6.3.1 and 6.3.2 of this Decision, in both cases the results for ENMAX were considerably larger than those for EPCOR. In the case of DIRECT, this was not the case. Only in comparing the RRT non-energy returns expressed on a dollars per site basis do the results show that the RRT non-energy returns awarded to EPCOR for 2007 and 2008 were considerably lower than those for DIRECT. The Commission has included these results in the following table:

⁸⁹ For 2007: 6.00% less 3.57% = 2.43% X \$36.622 million = \$0.890 million. For 2008: 6.00% less 3.70% = 2.30% X \$37.193 million = \$0.855 million.

⁹⁰ For 2007: \$4.52 less \$2.18 = \$2.34 X 600,470 = \$1.405 million. For 2008: \$4.90 less \$2.32 = \$2.58 X 593,687 = \$1.532 million.

⁹¹ For 2007: \$3.28 less \$2.18 = \$1.10 X 600,470 = \$0.661 million. For 2008: \$3.25 less \$2.32 = \$0.93 X 593,687 = \$0.552 million.

Table 9. Differences in RRT Non-Energy Returns for 2007 and 2008

	<u>EPCOR</u>	<u>ENMAX</u>	<u>DIRECT</u>
2007			
RRT Non-Energy Return / RRT Non-Energy Revenue (Markup)	<u>3.57%</u>	<u>6.00%</u>	<u>3.79%</u>
Difference From EPCOR Figure (Expressed as a Percentage)		68%	6%
Difference From EPCOR Figure (Expressed in \$ millions)		\$0.9	\$0.1
RRT Non-Energy Return / RRT Monthly Sites	<u>\$2.18</u>	<u>\$4.52</u>	<u>\$3.28</u>
Difference From EPCOR Figure (Expressed as a Percentage)		107%	50%
Difference From EPCOR Figure (Expressed in \$ millions)		\$1.4	\$0.7
2008			
RRT Non-Energy Return / RRT Non-Energy Revenue (Markup)	<u>3.70%</u>	<u>6.00%</u>	<u>3.66%</u>
Difference From EPCOR Figure (Expressed as a Percentage)		62%	-
Difference From EPCOR Figure (Expressed in \$ millions)		\$0.9	-
RRT Non-Energy Return / RRT Monthly Sites	<u>\$2.32</u>	<u>\$4.90</u>	<u>\$3.25</u>
Difference From EPCOR Figure (Expressed as a Percentage)		111%	40%
Difference From EPCOR Figure (Expressed in \$ millions)		\$1.5	\$0.6

107. The results show that in three of the four comparisons made for each of 2007 and 2008, EPCOR's RRT non-energy return is significantly lower on a percentage basis than those for ENMAX and DIRECT.⁹² On an absolute dollar basis, in three of the four cases for each of 2007 and 2008, the comparisons show that the differences are \$0.6 million or greater; and in two of the four cases for each of 2007 and 2008 the differences are \$0.9 million or greater.

108. While these amounts may not be significant as a percentage of EPCOR's total RRT revenue requirements for 2007 and 2008, they are significant when considered in relation to what EPCOR was awarded for its RRT non-energy returns for 2007 and 2008. If EPCOR was awarded an additional \$0.6 million in RRT non-energy return for 2007, it would represent an increase of 45 percent over the \$1.308 million that was originally awarded. The results would be approximately the same if EPCOR was awarded an additional \$0.6 million for 2008. The Commission considers that the differences as shown in Table 9 of this Decision are indeed significant. Consequently, the Commission has determined that the answer to Review Question One: "Did the Board in Decision 2008-031 award EPCOR a significantly lower Regulated Rate Tariff non-energy return as compared to DIRECT and ENMAX?" is yes.

7 REVIEW QUESTION TWO: HOW SHOULD EPCOR'S NON-ENERGY RETURN BE VARIED, IF AT ALL?

109. Given the Commission's finding in Section 6.3.3 of this Decision, the next step is to determine how EPCOR's RRT non-energy returns for 2007, 2008 and 2009 should be varied, if at all. Given the significance of the differences demonstrated in Table 9 of this Decision the Commission considers that some adjustment is warranted to EPCOR's RRT non-energy returns. In the Commission's view, returns awarded to regulated rate providers under the same Regulation should be comparable in similar market circumstances.

⁹² As evidenced by the 68 percent, 107 percent and 50 percent figures in Table 9 for 2007; and the 62 percent, 111 percent and 40 percent figures in Table 9 for 2008.

110. EPCOR's recommendation for an adjustment to its RRT non-energy returns for 2007-2009 was based on the work of Dr. Cicchetti. In its argument, EPCOR described Dr. Cicchetti's recommendations as being grounded in the methodology applied by the Board to ENMAX and DIRECT, with necessary refinements to account for factors that are unique to EPCOR.⁹³ EPCOR added that adopting Dr. Cicchetti's evidence produces a RRT non-energy return for EPCOR that is fair and reasonable, that is within a reasonable range of the RRT non-energy returns of ENMAX and DIRECT, and that is in harmony with all other regulatory principles.⁹⁴

111. In its written argument submission, EPCOR indicated that it was requesting an additional \$2.84 million in after-tax RRT return for 2007, with corresponding amounts of \$2.81 million in 2008 and \$2.72 million in 2009.⁹⁵ The Commission has prepared the following table which shows what the comparators would be between EPCOR, ENMAX and DIRECT if the requested amount for 2007 was granted.

Table 10. 2007 RRT Non-Energy Return Analysis Incorporating the Additional RRT Non-Energy Return Requested by EPCOR

	EPCOR	ENMAX	DIRECT
RRT Monthly Sites (1)	600,470	293,237	165,417
RRT Non-Energy Revenue (2) (3) (4) (\$ millions)	\$36.622	\$22.107	\$14.318
RRT Non-Energy Return (5) (6) (\$ millions)	\$4.148	\$1.326	\$0.542
RRT Non-Energy Return / RRT Non-Energy Revenue	11.33%	6.00%	3.79%
RRT Non-Energy Return / RRT Monthly Sites	\$6.91	\$4.52	\$3.28

(1) Exhibit 20.01 – Table 2.1-1, Row 1.

(2) EPCOR – Appendix A of Exhibit 20.01, Column B, Row 226 shows \$37.930 million. The RRT non-energy return of \$1.308 million is included in this figure and has to be deducted. The resulting figure is \$36.622 (\$37.930-\$1.308).

(3) ENMAX - Appendix J of Exhibit 20.01. The RRT non-energy return of \$1.326 million is not included in this figure.

(4) DIRECT – Appendix C of Exhibit 20.01 shows \$14.571 million. The equity component of working capital of \$0.253 million is included in this figure and has to be deducted. The resulting figure is \$14.318 (\$14.571-\$0.253).

(5) EPCOR - \$1.308 from Table 6 of this Decision plus \$2.84 as requested in paragraph 47 of EPCOR's argument.

(6) The ENMAX and DIRECT figures are from Table 6 of this Decision.

112. The results in Table 10 demonstrate that if the Commission was to award EPCOR the additional RRT non-energy return it requested for 2007, then EPCOR's results would be considerably greater than those for ENMAX and DIRECT based on the comparators that the Commission has determined are most relevant for the purposes of this proceeding. EPCOR's RRT non-energy return for 2007 as a percentage of its RRT non-energy revenue would be approximately three times greater than that for DIRECT and nearly double that of ENMAX. EPCOR's RRT non-energy return expressed in dollars per site would be more than twice that of DIRECT's and in excess of 50 percent of ENMAX's.⁹⁶ The Commission finds that these

⁹³ Exhibit 73.02 - EEAI Argument, paragraph 5.

⁹⁴ Ibid.

⁹⁵ Exhibit 73.02 - EEAI Argument, paragraph 47.

⁹⁶ Though the calculation has not been set out here, the results for 2008 are similar.

differences would be significant and if it was to grant the additional RRT non-energy returns requested by EPCOR, then EPCOR would be awarded a significantly higher RRT non-energy return as compared to ENMAX and DIRECT. The Commission is therefore not prepared to grant the additional RRT non-energy return amounts for 2007-2009 as requested by EPCOR.

113. With respect to Dr. Cicchetti's evidence using the methodology employed by the Board in Decisions 2006-107 and 2006-108, the Commission reiterates its comments as stated in Decision 2009-025 regarding whether the total return margin approach set out in Decisions 2006-107 and 2006-108 was intended to apply industry wide.

The Commission finds that EPCOR did not properly interpret the Board's reasons in both the 2006 Decisions and the accompanying Cost Order. Contrary to EPCOR's submissions, there is no indication that the Board in the 2006 Decisions intended to eliminate the traditional rate base approach for all RRO providers. Indeed, the Commission's interpretation of the Board's 2006 Decisions is that the Board would have used the rate base approach had it been possible to do so for DIRECT and ENMAX.³² Thus, EPCOR has failed to establish that the Board erred in the impugned Decision by applying the traditional rate base approach on this basis alone.⁹⁷

³² Decision 2006-107, pages 12-13; similar finding in Decision 2006-108, pages 7-8

114. During the hearing in this proceeding, Commission Counsel questioned EPCOR's witness panel regarding a table that EPCOR had provided in response to an information request.⁹⁸ In this table EPCOR included three RRT non-energy mark-up comparisons for 2007. The three comparators included in the table were: after-tax mark-up per MWh; after-tax mark-up per site; and after-tax mark-up as a percentage of RRT non-energy revenues (including transmission and distribution revenues). During questioning, Commission Counsel asked EPCOR's witness panel whether one of these three comparators was being recommended by EPCOR. In response, Mr. Gerke stated the following:

11 A. MR. GERKE: We believe that the weight that
 12 the Commission should give to each of these three comparators
 13 are close. Probably the one that should get the most weight
 14 is the after-tax markup as a percentage of revenues, but the
 15 other two are also instructive and should be given weight as
 16 well.
 17 The after-tax markup as a percentage of
 18 revenues is derived by looking at what the Commission or what
 19 the Board did in 2006 and replicating that; and because it's
 20 the same methodology, we believe it will give us a fair
 21 result. And so that one should be, we believe, given a
 22 little more weight.⁹⁹

115. The Commission has considered this submission in the context of the alternative posed in the UCA's argument; namely, that if the Commission did not accept the UCA's legal argument respecting no additional return under section 6(1)(b)(i) of the *Regulated Rate Option Regulation*, then the Commission could consider the RRT non-energy return in the most recent ENMAX

⁹⁷ Decision 2009-025, paragraph 41.

⁹⁸ Exhibit 33.02 - Response to AUC-EEAI-24(a); Table AUC-EEAI-24-1.

⁹⁹ Transcript Volume 1, page 138, lines 11-22.

RRT non-energy settlement if the Commission considered that EPCOR's equity returns on rate base were significantly lower than those determined by applying the ENMAX approach (i.e. six percent of RRT non-energy revenue excluding transmission and distribution) to EPCOR.¹⁰⁰ The Commission has also considered the fact that the six percent of RRT non-energy revenues return approved for ENMAX for 2007 and 2008 was a continuation of a Board-determined figure from 2006.¹⁰¹

116. Given all of these factors, the Commission finds that the percentage of RRT non-energy revenue would be the best comparator to employ in this case. The Commission is reluctant to place too much weight on the per site comparisons at this time given on-going issues relating to sites being addressed in other contexts.¹⁰²

117. Further, the Commission considers that setting a RRT non-energy return as a percentage of RRT non-energy revenues (markup) for EPCOR that is equivalent to that awarded to ENMAX best satisfies the expectation that returns awarded to regulated rate providers under the same Regulation should be comparable in similar market circumstances. The Commission therefore awards EPCOR a RRT non-energy markup of six percent of its RRT non-energy revenues (excluding transmission and distribution) for each of 2007, 2008 and 2009. The Commission has calculated the resulting adjustments to EPCOR's after-tax RRT non-energy returns for 2007, 2008 and 2009 in the following table:

Table 11. Commission Calculated Adjustments to EPCOR's After-Tax RRT Non-Energy Returns for 2007, 2008 and 2009

	<u>2007</u>	<u>2008</u>	<u>2009</u>
RRT Non-Energy Revenues (1) (2) (3) (\$ millions)	\$36.622	\$37.193	\$36.840
Multiply by 6%	<u>6.00%</u>	<u>6.00%</u>	<u>6.00%</u>
Total After-Tax RRT Non-Energy Return (\$ millions)	\$2.197	\$2.232	\$2.210
After-Tax RRT Non-Energy Return Previously Awarded (\$ millions)	<u>\$1.308</u>	<u>\$1.375</u>	<u>\$1.370</u>
Additional After-Tax RRT Non-Energy Return (\$ millions)	<u>\$0.889</u>	<u>\$0.857</u>	<u>\$0.840</u>

(1) Appendix A of Exhibit 20.01, Column B, Row 226 shows \$37.930 million. The RRT non-energy return of \$1.308 million is included in this figure and has to be deducted. The resulting figure is \$36.622 (\$37.930-\$1.308).

(2) Appendix A of Exhibit 20.01, Column D, Row 226 shows \$38.568 million. The RRT non-energy return of \$1.375 million is included in this figure and has to be deducted. The resulting figure is \$37.193 (\$38.568-\$1.375).

(3) Appendix A of Exhibit 20.01, Column F, Row 226 shows \$38.210 million. The RRT non-energy return of \$1.370 million is included in this figure and has to be deducted. The resulting figure is \$36.840 (\$38.210-\$1.370).

118. The Commission is awarding EPCOR an additional \$2.586 million in after-tax RRT non-energy return for the three year period of 2007-2009 (\$0.889 million for 2007 plus \$0.857 million for 2008 plus \$0.840 million for 2009, as awarded and shown in Table 11 above). Further, the annual adjustment amounts appear to be within the range of what Mr. Marcus

¹⁰⁰ UCA Argument, paragraph 27.

¹⁰¹ As discussed in Section 6.1 of this Decision.

¹⁰² For example, Decision 2009-238, Direct Energy Regulated Services 2009/2010/2011 Default Rate Tariffs and Regulated Rate Tariffs (Released: December 3, 2009) at paragraphs 222 through 228, regarding issues being addressed by the Street Light Group Standards Project. While this issue was not explored in this proceeding, it could have an impact on the results of the dollars per site comparator for DIRECT.

considered to be significant in this case. The Chair questioned Mr. Marcus during the hearing about what he would consider a significant adjustment in this case to be:

16 And at one point, you said -- I think you said
 17 something like, Only make a change if several million dollars
 18 are at stake; and then another place you said, Fair rate of
 19 return in relation to the paradigm, which is this paradigm
 20 of -- I take it you mean -- you can correct me here -- you
 21 mean a retail company or a company operating in a retail
 22 market only. And then you said it needs to be something
 23 substantial, considerably higher than \$500,000.
 24 So is it several million or considerably
 25 higher than \$500,000? Are those inconsistent or consistent
 1 or the same, and what is the standard that you're applying
 2 there?
 3 A. I think that generally I think that ENMAX received a
 4 fair return consistent with its settlement and what it has.
 5 The Commission, however, is the ultimate arbiter of this.
 6 Because the information presented to you is imprecise and
 7 because the going forward remaining term of this agreement is
 8 fairly short, I would suggest that it would take a fairly
 9 large amount of money to cause you to want to review and vary
 10 it.
 11 Now, I will say I said several million dollars
 12 off the top of my head, and I was able to give a little more
 13 considered response when staff was pointing specifically to
 14 the imprecisions and difficulties in measurement. And I
 15 would probably say it's somewhere -- it has to be at least
 16 \$500,000, probably a million, before I would touch it.¹⁰³

119. The Commission has also prepared the following Table which shows the differences in RRT non-energy return for 2007 once the Commission determined RRT non-energy return for EPCOR for 2007 has been taken into account.

Table 12. 2007 RRT Non-Energy Return Analysis Incorporating the Additional RRT Non-Energy Return Awarded to EPCOR

	EPCOR	ENMAX	DIRECT
RRT Monthly Sites (1)	600,470	293,237	165,417
RRT Non-Energy Revenue (2) (3) (4) (\$ millions)	\$36.622	\$22.107	\$14.318
RRT Non-Energy Return (5) (6) (\$ millions)	\$2.197	\$1.326	\$0.542
RRT Non-Energy Return / RRT Non-Energy Revenue (Markup)	6.00%	6.00%	3.79%
RRT Non-Energy Return / RRT Monthly Sites	\$3.66	\$4.52	\$3.28

(1) Exhibit 20.01 – Table 2.1-1, Row 1.

(2) EPCOR – Appendix A of Exhibit 20.01, Column B, Row 226 shows \$37.930 million. The RRT non-energy return of \$1.308 million is included in this figure and has to be deducted. The resulting figure is \$36.622 (\$37.930-\$1.308).

¹⁰³ Transcript Volume 2, page 213, lines 16-25; page 214, lines 1-16.

- (3) ENMAX – Appendix J of Exhibit 20.01. The RRT non-energy return of \$1.326 million is not included in this figure.
- (4) DIRECT – Appendix C of Exhibit 20.01 shows \$14.571 million. The equity component of working capital of \$0.253 million is included in this figure and has to be deducted. The resulting figure is \$14.318 (\$14.571-\$0.253).
- (5) EPCOR – from Table 11 of this Decision.
- (6) The ENMAX and DIRECT figures are from Table 6 of this Decision.

120. While the additional amount awarded to EPCOR makes its result equivalent to ENMAX for 2007 using the percentage of revenues comparator, it results in EPCOR's RRT non-energy return expressed in terms of dollars per site being between those of ENMAX and DIRECT. EPCOR's RRT non-energy return equates to \$3.66 per site, in comparison to DIRECT's figure of \$3.28 per site and ENMAX's figure of \$4.52 per site. Given the Commission's determination that these two comparators are the most suitable in the context of this proceeding, the Commission considers that these results represent a reasonable balancing of these two comparators, particularly given the concerns expressed previously in this Decision regarding the difficulty in attempting to effectively compare the RRT non-energy returns for EPCOR, ENMAX and DIRECT.

8 PROPOSED METHOD OF COLLECTION

121. EPCOR indicated that if the Commission were to determine that adjustments were warranted in this proceeding, EPCOR would propose to collect the approved adjustments by allocating the additional pre-tax returns for each year among its RRT rate classes based on EPCOR's RRT revenues from each rate class relative to the company's total RRT revenues. EPCOR added that this was consistent with the approach it proposed in its 2007-2009 RRT non-energy application. The total amount for the three years for each rate class would be divided by the number of forecast sites in each rate class and EPCOR would then convert this amount per site for each rate class to a dollar amount per site per month by rate class by dividing it by the number of months over which the adjustment would be collected. EPCOR suggested that recovering any approved adjustment by the end of 2011 would reasonably balance such issues as intergenerational equity with sending a clear message to competitive retailers, consistent with Dr. Cicchetti's testimony.¹⁰⁴ The UCA indicated that it did not oppose the collection of any additional return approved by the Commission in the manner proposed by EPCOR.¹⁰⁵

122. The Commission considers that the approach proposed by EPCOR would be acceptable but would like further information on the dollar impacts to each rate class for the months in question before ruling on whether the time period proposed by EPCOR for the collection of the additional return amount is acceptable. Accordingly, the Commission directs EPCOR to submit a compliance filing to this Decision by no later than March 8, 2010. The compliance filing should include the results of EPCOR's proposed collection process to recover the additional after-tax RRT non-energy return of \$2.586 million approved by the Commission in this Decision. The compliance filing should also include what the impacts associated with the proposed collection period will be on the total monthly bills for each of EPCOR's RRT rate classes. The Commission also directs EPCOR to include in the compliance filing an explanation of the appropriate pre-tax figures associated with the \$2.586 million. Since any corporate income tax returns for 2007 and 2008 for EPCOR should have already been filed, the

¹⁰⁴ Exhibit 73.02 - EEAI Argument, paragraphs 84 and 85.

¹⁰⁵ Exhibit 74.02 - UCA Reply Argument, paragraph 41.

Commission does not expect that the corporate tax rates for those years will be used. Instead, EPCOR should focus on what the corporate tax rates will be for the year(s) the additional return will be recorded as revenue or collected.

9 ORDER

123. IT IS HEREBY ORDERED THAT:

- (1) EPCOR Energy Alberta Inc. is awarded an additional \$2.586 million in after-tax Regulated Rate Tariff non-energy return for the three year period of 2007-2009.
- (2) EPCOR Energy Alberta Inc. shall submit a compliance filing by no later than March 8, 2010, to reflect the findings, conclusions and directions included in this Decision.

Dated in Calgary, Alberta on February 8, 2010.

ALBERTA UTILITIES COMMISSION

(original signed by)

Willie Grieve
Chair

(original signed by)

N. Allen Maydonik, Q.C.
Commissioner

(original signed by)

Bill Lyttle
Commissioner

APPENDIX 1 – PROCEEDING PARTICIPANTS[\(return to text\)](#)

Name of Organization Counsel or Representative
EPCOR Energy Alberta Inc. D. Tenney
Office of the Utilities Consumer Advocate R. McCreary
ENMAX Energy Corporation K. Leonard
Direct Energy Marketing Limited A. Preston

APPENDIX 2 – ORAL HEARING – REGISTERED APPEARANCES

Name of Organization Counsel or Representative	Witnesses
EPCOR Energy Alberta Inc. J. Liteplo	C. Cicchetti D. Gerke J. Baraniecki
Office of the Utilities Consumer Advocate R. McCreary	W. Marcus

<p>Alberta Utilities Commission</p> <p>Commission Panel W. Grieve, Chair N. A. Maydonik, Q.C., Commissioner B. Lyttle, Commissioner</p> <p>Commission Staff V. Slawinski (Commission Counsel) D. Ploof D. Mitchell K. VanKosh R. Litt</p>

APPENDIX 3 – SUMMARY OF COMMISSION DIRECTIONS

This section is provided for the convenience of readers. In the event of any difference between the Directions in this section and those in the main body of the Decision, the wording in the main body of the Decision shall prevail.

1. The Commission considers that the approach proposed by EPCOR would be acceptable but would like further information on the dollar impacts to each rate class for the months in question before ruling on whether the time period proposed by EPCOR for the collection of the additional return amount is acceptable. Accordingly, the Commission directs EPCOR to submit a compliance filing to this Decision by no later than March 8, 2010. The compliance filing should include the results of EPCOR’s proposed collection process to recover the additional after-tax RRT non-energy return of \$2.586 million approved by the Commission in this Decision. The compliance filing should also include what the impacts associated with the proposed collection period will be on the total monthly bills for each of EPCOR’s RRT rate classes. The Commission also directs EPCOR to include in the compliance filing an explanation of the appropriate pre-tax figures associated with the \$2.586 million. Since any corporate income tax returns for 2007 and 2008 for EPCOR should have already been filed, the Commission does not expect that the corporate tax rates for those years will be used. Instead, EPCOR should focus on what the corporate tax rates will be for the year(s) the additional return will be recorded as revenue or collected. Paragraph 122