



ENMAX Power Corporation

Electric Distribution System Service Area Enlargement

May 15, 2009



ALBERTA UTILITIES COMMISSION

Decision 2009-063: ENMAX Power Corporation
Electric Distribution System Service Area Enlargement
Application No. 1552134
Proceeding ID. 56

May 15, 2009

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1 INTRODUCTION & BACKGROUND

1. ENMAX Power Corporation (EPC) applied to enlarge its electric distribution system service area to include land recently annexed by the City of Calgary from the M.D. of Rocky View No. 44.
2. By Order in Council O.C. 333/2007, the provincial Cabinet approved the annexation of approximately 12 sections of land (Annexed Lands) by the City of Calgary (City) from the M.D. of Rocky View No. 44, effective January 1, 2007 (2007 Annexation).
3. EPC operates the electric distribution system within the municipal boundaries of the City. The present service area of the electric distribution system of EPC was established by the Alberta Energy and Utilities Board (EUB) in Approval No. U2005-375, dated October 6, 2005.
4. As a result of the 2007 Annexation, the new boundary of the City extends approximately 12 quarter sections beyond the present service area of the electric distribution system of EPC. Customers within the Annexed Lands (Annexed Customers) are currently serviced by electric distribution facilities owned and operated by FortisAlberta Inc. (FAI).

2 NATURE OF THE APPLICATION

5. EPC filed Application No. 1552134 with the EUB on December 19, 2007 (Application). EPC applied under section 29 of the *Hydro Electric and Energy Act* (HEEA) for approval to enlarge its electric distribution system service area to include the Annexed Lands. On January 1, 2008, the Alberta Utilities Commission (AUC or Commission) was established. In accordance with the transitional provisions of the *Alberta Utilities Commission Act*, the Application has been considered by the Commission.
6. There are 19 sections or portions thereof that would be affected by the requested service area enlargement, representing approximately 12 sections of actual land area.¹ A map showing EPC's existing service area and the proposed enlargements to the service area is attached in [Appendix 3](#).

¹ See response to AUC-EPC-001 (a)

7. The Annexed Lands are as follows:

Section	Township	Range	Meridian
14 (N and E of Bow River)	25	3	West of 5 th
8, 9, 10, 11	26	1	West of 5 th
12 (portion of SE ¼)	26	1	West of 5 th
8, 17 (E ½ of each)	24	28	West of 4 th
20 (SE¼)	24	28	West of 4 th
5 (NE¼)	24	28	West of 4 th
8, 17 (E ½ of each)	23	28	West of 4 th
20 (SE¼)	23	28	West of 4 th
7 (N of Bow River)	22	28	West of 4 th
18, 19, 30, 31	22	28	West of 4 th
12 (N of Bow River)	22	29	West of 4 th

8. EPC estimates that approximately 60 rural residential or farm customers would be affected by the Application.

2.1 Notice of Application

9. To ensure that the Annexed Customers received notice of the Application, the Commission issued an Order to Disclose (Order) to FAI on August 12, 2008. The Order required FAI to release the names and addresses of the Annexed Customers to the Commission. FAI complied with the Order and provided the Commission with the requested information on September 10, 2008.

10. On September 15, 2008, a Notice of Application (Notice) was issued by the Commission and mailed to the Annexed Customers identified by FAI in response to the Order.

11. A deadline of October 10, 2008, was indicated in the Notice as the date by which parties were to notify the Commission of their intent to intervene. By the deadline date, the Commission received Statements of Intention to Participate (SIPs) from three parties: FAI, ATCO Electric Ltd. and The City of Red Deer. FAI was the only party who opposed the Application and indicated its intention to be actively involved in the proceeding. The Commission combined the Application and SIPs from parties into Proceeding 56.

2.2 Written Process

12. On November 4, 2008, the Commission issued a Notice of Proceeding which outlined the following schedule for Proceeding 56:

Process Step	Deadline Date
Information Requests to Applicant	November 12, 2008
Information Responses from Applicant	November 19, 2008
Intervener Submissions/Evidence	November 26, 2008
Information Requests to Interveners	December 03, 2008
Information Responses from Interveners	December 10, 2008
Rebuttal Submissions/Evidence	December 17, 2008
Written Argument	January 16, 2009
Written Reply Argument	January 30, 2009

2.2.1 Request for Extension to Proceeding Schedule

13. On November 13, 2008 the Commission received a request from EPC for an extension to the deadline for responses to Information Requests stating that the Information Requests submitted by FAI called for a level of detail that they had not anticipated. On November 18, 2008, the Commission requested comments from registered parties on EPC's extension request. As well, the Commission issued a letter on November 19, 2008, suspending the original proceeding schedule.

14. On November 20, 2008, the Commission received a response from FAI. FAI indicated that they had spoken with EPC regarding the extension request and that the parties had agreed on amendments to the schedule which included moving the 'Information Responses from Fortis' deadline date from January 15 to January 19, 2009.

15. The Commission directed an extension to the original proceeding schedule and issued the following modified schedule for the proceeding:

Process Step	Deadline Date
Information Responses from Applicant	November 28, 2008
Intervener Submissions/Evidence	December 8, 2008
Information Requests to Interveners	December 16, 2008
Information Responses from Interveners	January 19, 2009
Rebuttal Submissions/Evidence	January 26, 2009
Written Argument	February 4, 2009
Written Reply Argument	February 17, 2009

2.2.2 Commission Amendment to Proceeding Schedule

16. On January 28, 2009, due to potential disruptions to the Commission's Electronic Proceeding System tool, the proceeding schedule was further amended as follows:

Process Step	Original Date	New Deadline Date
Written Argument	February 4, 2009	February 9, 2009
Written Reply Argument	February 17, 2009	February 20, 2009

17. The Commission considers the record for Proceeding 56 closed on February 20, 2009.

18. In reaching the determinations contained within this Decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the evidence and 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 all relevant portions of the record with respect to that matter.

3 LEGISLATIVE FRAMEWORK

19. By Order in Council O.C. 333/2007, the City was granted the lands described in Appendix C1 of the Application pursuant to section 125 and 138 of the *Municipal Government Act* (MGA).

20. As a consequence of this grant, the City granted to EPC, in its Municipal Consent and Access Agreement (MCAA), dated December 18, 1997, exclusive jurisdiction to provide utility service within its municipal boundaries pursuant to section 45 of the MGA.

21. As the Annexed Lands are currently within the service territory of FAI, the Commission has considered the Application in accordance with section 29 of the *Hydro and Electric Energy Act* (HEEA) which states, *inter alia*:

29(1) The Commission, on the application of an interested person or on its own motion,

- (a) **when in its opinion it is in the public interest to do so**, and
- (b) on any notice and proceedings that the Commission considers suitable,

may alter the boundaries of the service area of an electric distribution system, or may order that the electric distribution system shall cease to operate in a service area or part of it at a time fixed in the order.

[...]

(3) When a local authority that owns and operates an electric distribution system applies for an enlargement of its service area to include additional land in its municipality, the Commission shall

[...]

(b) in respect of land included **in the service area of another electric distribution system, grant the application unless after a public hearing the Commission finds compelling reasons in the public interest not to do so**, in which case the Commission with the approval of the Lieutenant Governor in Council may deny the application in whole or in part,

and when the Commission grants an application to which clause (b) applies, it shall stipulate any terms and conditions it considers reasonable including a stipulation of the date on which the alteration of the service areas comes into force.

[...]

(5) When the Commission makes an order to which subsection (4) applies, it may defer the addition to the order of the provisions referred to in subsection (4) in a suitable case to give the parties the opportunity of making an agreement as to compensation to be paid.

(6) The amount of compensation payable by any person under an order under this section is a debt and is recoverable by the person entitled to receive the compensation under the order by action. (emphasis added)

22. Subsection 29(3) of the HEEA requires the Commission to approve the Application unless the Commission can find compelling reasons not to do so. This language suggests that there must be a real impediment to the public interest in order to satisfy this requirement. This interpretation is further supported by the fact that the legislation does not grant to the Commission sole discretion to make such an order but, also requires the Commission to seek the approval of the Lieutenant Governor in Council. As an Order in Council is required to annex the lands to the City of Calgary, it would be necessary for the Commission to demonstrate why a further Order in Council, exempting these lands from service by the municipality-designated utility, would be appropriate.

23. The Commission will consider whether the Application is in the public interest by having regard to its social and economic effects. In the Commission's view, assessment of the public interest requires it to have regard to the franchise rights granted by a municipality as well as consideration of any negative consequences associated with the enlargement of a municipally-owned electric system. The Commission adopts the approach of its predecessor, the EUB, that the public interest standard will generally be met by an activity that benefits the segment of the public to which the legislation is aimed, while at the same time minimizing, or mitigating to an acceptable degree, the potential adverse impacts on more discrete parts of the community.²

4 ISSUES

24. EPC submitted that the terms of the MCAA between the City and EPC provide EPC with the exclusive right to provide distribution service within the municipal boundaries of the City, which includes the Annexed Lands.³

² EUB Decision [2001-33](#): *EPCOR Power Development Corporation and EPCOR Generation Inc., Rossdale Power Plant Unit 11* (RD 11), page 6

³ EPC Application, page 6

25. EPC further submitted that in the event that the Application is granted, EPC anticipates the appropriate facilities purchase and integration costs will be negotiated between FAI and EPC.⁴

26. FAI raised the following issues to demonstrate why a compelling case can be made to deny this request:

- Customer service would be impacted by the switch in distribution provider;
- Reconfiguration of FAI's facilities to effect separation will add unnecessary costs to its system which will have to be borne by all of FAI's customers;
- EPC would also have to incur additional costs to reconfigure its system; and
- FAI and EPC serve in each other's service areas already using service accommodation agreements so there is no need to harmonize service territories with municipal franchise areas.

5 DISCUSSION OF ISSUES

5.1 Customer Service

27. EPC submitted that there are approximately 60 customers that would be affected by the proposed service area enlargement.

28. FAI argued that when customers are forcibly switched from a service provider that is not municipally-owned to provision of service by a municipally-owned utility, a number of changes and disruptions occur. These include:

- The customer will receive communications/notifications that their distribution company is or may be changing;
- Outages will be experienced by customers as their service is physically transferred between systems and/or as meters are exchanged;⁵
- The load settlement site ID will change and customers' information/history must be transferred;
- Rates, terms and conditions, per the respective distribution company's tariffs, will change and any existing or future contractual obligations (if applicable) must be addressed; and
- Regulated Rate Option provider and tariff (if applicable) will change.

29. EPC submitted that the changes identified by FAI are minor and merely changes that are a consequence of the 2007 Annexation. EPC submitted that customers had already experienced

⁴ EPC Application, page 6

⁵ FAI Argument, page 2

changes as a result of the 2007 Annexation and that the transfer of a distribution provider would be no more confusing or inconvenient than any of these other annexation related changes.

30. EPC indicated that the only physical disruptions that are likely to take place are minor outages to the system. EPC stated that there is no evidence to suggest that the outages will not be scheduled with as little inconvenience to customers as possible.⁶

31. EPC asserted that in the last approved service area enlargement, which involved 49 services, EPC received no customer complaints arising from the transfer. EPC indicated that it plans to use the same successful process used in past service area amendments to minimize impacts on customers.⁷

32. EPC submitted that load settlement ID changes are transparent to customers and customers would not even know that this change had taken place.⁸

33. EPC further submitted that changes to rates and tariffs should not be a concern since all of the rates and tariffs involved are approved by the Commission and are, by definition, just and reasonable.

5.1.1 Commission Findings

34. The Commission has considered the following factors in its determination of the impact of the Application on customer service:

- Any resulting interruption(s) in electrical service during the physical changeover will be of a short duration and customers will be notified beforehand;
- EPC's last service area enlargement, in 2005, involved 49 sites and resulted in no customer service complaints. The estimated number of customers impacted by this Application is 60 which is not a significant increase from the last enlargement. As the last enlargement was also in FAI's service territory, it is reasonable to conclude that there would be a similar ease of transition;
- Both EPC and FAI are regulated utilities so their rates and terms and conditions of service are reviewed by the Commission to ensure that they are reasonable; and
- Load settlement IDs and customer information/history can be transferred without impact to customers.

35. Given the foregoing, the Commission finds that FAI's concerns with respect to customer service do not provided compelling reasons to demonstrate that the Application is contrary to the public interest.

5.2 Costs

36. FAI submitted that the transfer of assets from FAI to EPC would require additional costs to be incurred to reconfigure both utility networks. FAI estimated that the total cost to

⁶ EPC Reply Argument, page 2

⁷ See response to FORTIS.EPC-003 (c), (f), (g)

⁸ EPC Reply Argument, page 2

customers, including the cost for EPC to purchase the assets from FAI, is in excess of \$1.4 million.⁹

37. FAI submitted that the perpetual reconfiguration of distribution systems to accommodate the continual enlargement of municipally-owned electric systems as a result of municipal annexations is not an orderly, economic or efficient way to develop distribution networks in Alberta and is not in the public interest.¹⁰

38. EPC argued that these costs are minor and not much different than those incurred from the last annexation application.

39. EPC, as well, argued that it is an urban utility that provides service to densely populated urban areas and that FAI is primarily a rural utility with experience providing service in a sparsely populated rural area. The Annexed Lands have been annexed by the City because the City is growing and the lands will be required for future urban development. As the Annexed Lands are expected to be required for future subdivisions, the existing facilities would likely be removed or reconfigured in any case.¹¹ Further, EPC contended that it has the legal right to provide distribution service in these areas and that any increase in costs will be incremental and an appropriate, reasonable, and acceptable consequence of the transition of the Annexed Lands from a sparsely populated rural area to a densely populated urban subdivision.¹²

40. EPC submitted that system reconfiguration costs represent about 0.2% of EPC's rate base and 0.1% of FAI's rate base¹³ and the cost of the facilities transferred to EPC would be removed from FAI's rate base.¹⁴

41. FAI responded to EPC's contention that it is a rural service provider by submitting that it also services, and services well, many urban areas including Airdrie. FAI submitted that EPC's rationale is against the interests of FAI's customers as it constrains FAI from opportunities to gain economies of scale.

5.2.1 Commission Findings

42. The Commission notes that the cost to customers is approximately \$1.4 million. These costs consist of about \$150,000 for FAI's reconfiguration, \$800,000 for EPC's reconfiguration, and a payment of \$500,000 from EPC to FAI to purchase the assets. The Book Value of the assets is \$400,000.¹⁵

43. The Commission notes that the approved cost for EPC's last service area enlargement in 2005 was \$812,000.¹⁶

⁹ FAI Argument, page 2

¹⁰ FAI Argument, page 2

¹¹ EPC Reply Argument, page 3

¹² EPC Argument, page 5

¹³ EPC Reply Argument, page 2

¹⁴ EPC Reply Argument, page 3

¹⁵ AUC-FAI-002 (a)

¹⁶ FORTIS.EPC-004 (d)

44. The Commission notes EPC's argument that the Annexed Lands are expected to be required for future subdivisions, in which case, as the development of subdivisions proceeds, the existing facilities are likely to be altered or removed anyway.¹⁷

45. The Commission notes that, based on 60 customers, \$1.4 million represents \$23,333 per transferred customer. However, this \$1.4 million can be expected to be a much smaller cost per customer after the land is developed.

46. The Commission finds that issues of costs raised by FAI are not compelling public interest reasons to disallow the Application. The costs are of an incremental nature that, when spread across the EPC customer base, will have little impact on customers.

47. The Commission is not persuaded by FAI's argument that it will lose the opportunity to gain economies of scale. The economies exist because the lands are becoming urban due to their location which is now within the City. The Commission notes that the public is not being deprived of the economies of scale as these economies will exist within the EPC system.

5.3 Harmonization of Boundaries

48. FAI provided evidence to demonstrate that FAI and EPC have had long standing agreements in which both utilities provide service to each other through accommodation agreements therefore there was nothing special about this situation that required a change in service territory. FAI contended that EPC's position that EPC's service area had to be harmonized with the Municipal Boundary was not a compelling reason to reduce FAI's service territory.

49. EPC responded to this position by explaining that the MCAA between the City and EPC grants EPC the exclusive right to provide electricity (including distribution service) within the municipal boundaries of the City. EPC submitted that under section 45 of the MGA, a municipal council has the authority to grant a right, exclusive or otherwise, to a person to provide a utility service in all or part of the municipality. As such, only EPC has the legal right to provide distribution service within the City.

50. EPC submitted that public interest considerations strongly favour giving effect to the long-standing statutory right of a municipality to grant an exclusive utility franchise within its boundaries. It would be in the public interest to ensure that distribution system service areas are harmonized with the franchise rights granted by the respective municipality.

51. Further, EPC stated that while it and FAI provide services in each other's territory through accommodation agreements, those services are provided on a case by case basis and by the consent of the parties to allow the encroachment into the incumbent utility's service territory. This situation is much different as it is not the case of service to one or two customer sites but recognition of a change in service territory consistent with the intent of the legislation.

52. EPC also submitted that under section 105 of the *Electric Utilities Act* (EUA) it has an obligation to plan expansion of its electric distribution system in advance of urban development.

¹⁷ EPC Reply Argument, page 3

In order to meet this obligation, EPC submitted that its distribution service area must include the Annexed Lands, even if all existing sites and facilities are not immediately transferred.¹⁸

5.3.1 Commission Findings

53. The Commission considers that accommodation agreements are provided on a case by case basis and by the consent of the parties to recognize economies by having a service provider, other than the utility in whose service territory the customer resides, serve that customer.

54. Under the MCAA, the City has granted to EPC an exclusive distribution franchise within the municipal boundaries of the City. Therefore, EPC has a legal right to provide distribution service within the City. EPC has chosen to assert this right as opposed to an accommodation agreement.

55. The Commission finds that a consideration of the public interest strongly favours giving effect to the relevant legislation and the legislative scheme that suggests municipal service territories correspond to the boundaries of the municipalities. Specifically, it would be contrary to the public interest to deny EPC any rights that were granted under section 45 of the MGA. The public interest reasons presented by FAI are not of a substantial magnitude to outweigh the public interest factors favouring the Application.

56. The Commission has also given consideration to the planning responsibility of EPC under the EUA. The Commission finds that EPC should acquire service territory in advance of the predicted growth of subdivisions for the City of Calgary in order to facilitate the orderly development of electricity in Alberta.

5.4 Compensation

57. Subsection 29(4) of the HEEA allows the Commission to make provisions for compensation to the owner of an electric distribution system whose service area is reduced in an order made under subsections 29(1) and 29(3) of the HEEA.

58. If the Application were approved, EPC requested that the Commission not make any order with respect to compensation at the time of approval, but rather give EPC and FAI the opportunity to reach an agreement with respect to compensation.

59. FAI submitted that if the Commission approves the Application and EPC subsequently acts upon such approval, matters of the composition and treatment of compensatory payment, are not before the Commission at this time and FAI has therefore not formulated views on such matters.¹⁹

5.4.1 Commission Findings

60. The Commission will defer providing an order directing the compensation amount to be paid to FAI pursuant to subsection 29(4) of the HEEA, in order to give EPC and FAI the opportunity to negotiate and present for approval an agreement as to compensation to be paid.

¹⁸ EPC Argument, page 5

¹⁹ See response to AUC-FAI-002 (b)

6 DECISION

61. The Commission approves Application No. 1552134 for the enlargement of EPC's electric distribution system service area to include land recently annexed by the City of Calgary from the M.D. of Rocky View.

62. The Commission will issue a Distribution Service Area Approval shortly after the issuance of this Decision.

63. The Commission will defer providing an order directing the compensation amount to be paid to FAI in order to give EPC and FAI the opportunity to negotiate and present for approval an agreement as to compensation to be paid. If the parties are unable to agree, either party may bring forward an application to the Commission requesting that the Commission resolve the issue of compensation to be paid.

Dated in Calgary, Alberta on May 15, 2009.

ALBERTA UTILITIES COMMISSION

(original signed by)

Thomas McGee
Panel Chair

(original signed by)

Anne Michaud
Acting Commissioner

(original signed by)

Tudor Beattie, Q.C.
Commissioner

APPENDIX 1 – PROCEEDING PARTICIPANTS

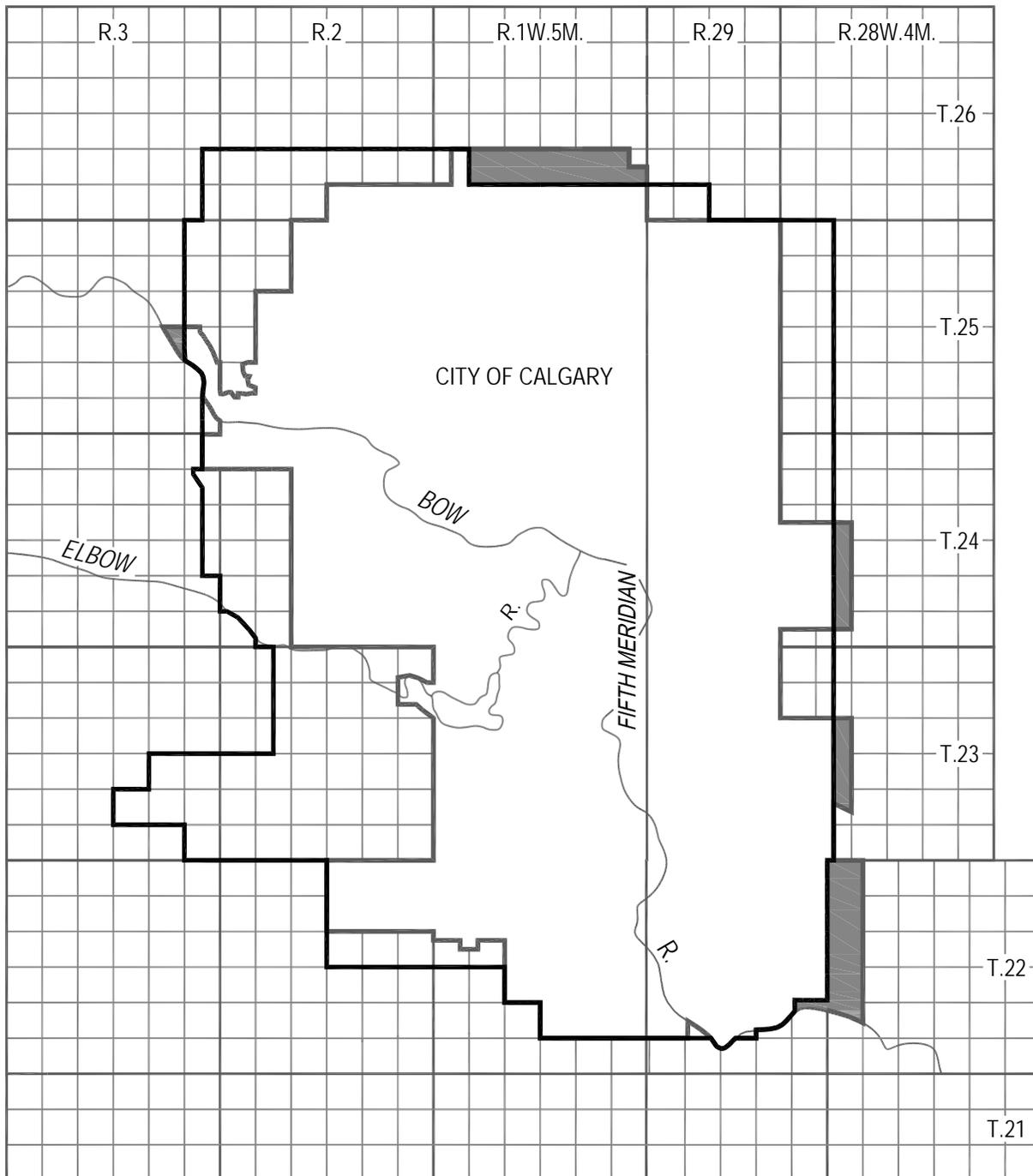
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The City of Red Deer Ligong Gan
ENMAX Power Corporation Debbie Nering
FortisAlberta Inc. Terence Dalglish

Alberta Utilities Commission
Commission Panel Thomas McGee, Panel Chair Anne Michaud, Acting Commissioner Tudor Beattie, Commissioner
Commission Staff Catherine Wall (Commission Counsel) Shannon Ramdin (Commission Counsel) Danielle Glover Shawn Allen

APPENDIX 2 – ABBREVIATIONS

Abbreviation	Name in Full
AUC	Alberta Utilities Commission
City	City of Calgary
EPC	ENMAX Power Corporation
EUA	Electric Utilities Act
EUB	Alberta Energy and Utilities Board
FAI	FortisAlberta Inc.
HEEA	Hydro and Electric Energy Act
MCAA	Municipal Consent and Access Agreement
MGA	Municipal Government Act
SIP	Statement of Intent to Participate

APPENDIX 3 – MAP OF PROPOSED SERVICE AREA ENLARGEMENT



Legend

- EPC existing service area
- Proposed service area enlargements



Calgary - Enmax Service Area

Application No. 1552134

Enmax