



ENMAX Power Corporation

138-2.82L and 138-2.83L Transmission Realignment

May 14, 2015

Alberta Utilities Commission

Decision 3368-D01-2015

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Proceeding 3368

Applications 1610776-1 and 1610776-2

May 14, 2015

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Fifth Avenue Place, Fourth Floor, 425 First Street S.W.

Calgary, Alberta

T2P 3L8

Telephone: 403-592-8845

Fax: 403-592-4406

Website: www.auc.ab.ca

1 Introduction

1. ENMAX Power Corporation (ENMAX) is the operator of a 138-kilovolt (kV) transmission line, designated as 2.82L, that runs between No. 2 substation and No. 5 substation in Calgary, Alberta, pursuant to Permit and Licence [U2014-244](#).¹ ENMAX is also the operator of a 138-kV transmission line, designated as 2.83L, that runs between No. 13 substation and No. 5 substation in Calgary, pursuant to Permit and Licence EN 98-42.² Of note, a segment of transmission line 2.82L is strung on the same structures as a segment of transmission line 2.83L from No. 5 substation to 6 Street S.E.

2. On August 7, 2014, ENMAX filed applications 1610776-1 and 1610776-2 with the Alberta Utilities Commission, pursuant to sections 14 and 15 of the *Hydro and Electric Energy Act*, for approval to remove and realign portions of transmission lines 2.82L and 2.83L, including the double-strung segment of transmission lines 2.82L and 2.83L (referred to in this decision as transmission line 2.82L/2.83L).

3. Transmission line 2.82L/2.83L is located on a right-of-way on lands owned by Remington Development Corporation (Remington). On March 31, 2005, Remington decided to terminate the right-of-way agreement for transmission line 2.82L/2.83L. ENMAX disputed Remington's decision to do so, however, the Alberta Court of Queen's Bench determined that Remington was entitled to terminate the right-of-way agreement³ and the Alberta Court of Appeal upheld this decision.⁴ In its decision, the court directed ENMAX to apply to the Commission to remove these transmission lines from Remington's land, adding that:

The AUC retains its jurisdiction under the Act [*Hydro and Electric Energy Act*] and none of the Transmission Lines shall be removed or relocated in the absence of an Order by the AUC.⁵

2 Application detail

4. Transmission lines 2.82L and 2.83L are both currently in use. ENMAX stated that the Alberta Electric System Operator had no future plans for these lines that would require an increase in capacity.

¹ Transmission Line Permit and Licence U2014-244, Proceeding 3276, Application 1610647, July 16, 2014.

² Permit and Licence EN98-42, Application 970516, January 5, 1998.

³ Remington Development Corporation v. Enmax Power Corporation, 2011 ABQB 694.

⁴ Remington Development Corporation v. Enmax Power Corporation, 2012 ABCA 196.

⁵ Remington Development Corporation v. Enmax Power Corporation, 2011 ABQB 694 at paragraphs 82 and 83.

5. ENMAX considered six options for transmission line 2.82L/2.83L. Options 1 through 4 propose acquiring the land or a right-of-way from Remington. Options 1A and 1B leave transmission line 2.82L/2.83L unchanged, but in one option it proposes to acquire the land and in the other, to acquire a right-of-way. Option 2 is to convert transmission line 2.82L/2.83L to an underground line and bury it along its current alignment. Options 3 and 4 consist of relocating a portion of the overhead line either overhead or underground on the border of Remington's land with the rest of the line being relocated into an underground City of Calgary alignment. Option 5 consists of relocating a portion of the overhead line north of the current alignment onto land owned by Alberta Infrastructure and the rest of the line being relocated into an underground City of Calgary alignment. Option 6 is the preferred route described below.

6. ENMAX rejected options 1 through 4 because Remington indicated that it wanted all transmission infrastructure removed from its land. Option 5 was rejected because Alberta Infrastructure stated that it would not grant a right-of-way due to future development plans for a high-speed train initiative on the land.

7. ENMAX's preferred route for transmission line 2.82L/2.83L is to relocate the existing overhead lines into a City of Calgary line assignment. The line would be routed underground along 10 Avenue S.E. from No. 5 substation to 3 Street S.E., and would then head south to 11 Avenue S.E. The line would continue underground along 11 Avenue S.E. until 6 Street S.E. where it would turn south and connect to a new termination structure. From there, transmission line 2.82L would continue south in its current underground alignment, while transmission line 2.83L would be routed overhead on lands north of the Calgary Transit bus barns at 11 Avenue S.E. and 6 Street S.E.

8. ENMAX requested approval to:

- Remove and salvage segments of transmission lines 2.82L and 2.83L and 13 structures.
- Install new lines in 910 metres of new underground duct banks.
- Construct a new overhead segment of transmission line 2.83L on four new steel monopole structures.
- Replace three existing towers with termination structures.

9. The estimated cost of the proposed relocation is \$13.3 million (with an accuracy of plus 20 to minus 10 per cent).

10. ENMAX stated that the costs of an underground alignment are in the order of 8 to 10 times greater than the costs of an overhead line. However, ENMAX explained that the preferred route has an underground alignment for the majority of its length because of the high-density development in the area and City of Calgary zoning requiring 1.5-metre setbacks from structures which is too restrictive for the line.

11. ENMAX anticipated an in-service date in the third quarter of 2016.⁶

⁶ Presuming the Commission approved the application in Q1 of 2015 (as per AUC-EPC-22 in Exhibit 0010.01.EPC-3368).

3 Application review process

12. The Commission issued information requests to ENMAX on August 12, September 25, and October 30, 2014.
13. On September 23, 2014, the Commission issued a notice of application which was mailed directly to landowners, residents and businesses in the first row of development as identified by ENMAX. It was also published on the AUC website. The notice of application indicated that an information session would be held by Commission staff on October 9, 2014. The information session was held on that date.
14. On October 16, 2014, the Commission received a statement of intent to participate from 803029 Alberta Ltd., wherein it indicated its concerns about potential construction impacts of the proposed route limiting or obstructing access to its commercial property located along the proposed right-of-way. It requested an oral hearing.
15. ENMAX provided updated mailing addresses for landowners, residents and businesses whose mailing address was incorrect on October 31, 2014. A notice of application was sent to these persons with a cover letter on October 31, 2014.
16. On January 13, 2015, the Commission sent a letter to Remington informing it that it could still register to participate and make submissions on the application if it wished to do so.
17. The notice of hearing for this proceeding was issued on January 19, 2015, informing parties that there would be a hearing on the application on March 19, 2015. The notice of hearing was mailed directly to landowners, residents and businesses in the first row of development as identified by ENMAX. The notice of hearing was also published on the AUC website.
18. On January 29, 2015, the Commission received a letter from counsel for Remington indicating that although counsel would attend the hearing, Remington would not participate.
19. The Commission held an oral hearing in Calgary, Alberta on March 19, 2015, before Commission members Anne Michaud (panel chair) and Bill Lyttle and Acting Commission member Kate Coolidge.
20. One intervener, 803029 Alberta Ltd., appeared at the hearing.
21. The close of record for this proceeding was March 19, 2015.
22. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding. 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.

4 Discussion

23. ENMAX stated that Remington is an Alberta corporation that specializes in commercial development. ENMAX explained that based on its discussions with Remington, the planned use of the land where transmission line 2.82L/2.83L is currently located is for residential and commercial purposes. Remington has shown ENMAX representatives a high-level schematic which indicated that the transmission facilities cannot remain on the land. Remington rejected options 1 through 4 as incompatible with its future development.

24. ENMAX stated that the Remington land is currently vacant and that it is unsure of the timing of Remington's development plans.

25. Although Remington registered as a participant in the proceeding, it did not submit any evidence or participate in the hearing.

26. ENMAX confirmed that if the Commission did not approve the relocation of the transmission lines from Remington's land, ENMAX would have no option but to either negotiate a right-of-way agreement with Remington or apply to the Surface Rights Board for a right-of-entry order under the *Surface Rights Act*.⁷

4.1 Construction impacts

27. ENMAX indicated that construction would result in temporary lane closures on a block-by-block basis. It anticipated that weekend and evening construction would be preferred so as to minimize impacts to stakeholders. ENMAX stated it would work "with stakeholders throughout the construction process to facilitate pedestrian and vehicular business access during business hours on public property and private parking structures."⁸

28. 803029 Alberta Ltd. is the owner of a commercial property located at 422 11 Avenue S.E., which is along the proposed new transmission line alignment. 803029 Alberta Ltd. is concerned that construction activities would restrict access to its building and parking lot, would cause noise and vibrations, and would interfere with traffic and street parking. The representative of 803029 Alberta Ltd. testified that its business and others in the area could be seriously impacted if construction of the proposed transmission line was not managed properly.

29. ENMAX stated it is committed to mitigating construction impacts. In a letter dated February 6, 2015,⁹ ENMAX outlined commitments regarding access to 803029 Alberta Ltd.'s building which included mitigation measures such as providing flag staff during construction to help with traffic flow and signage to ensure clients are aware that the building is open during construction. ENMAX asserted that it had adequately addressed the concerns of 803029 Alberta Ltd. and that the commitments it had made would minimize disruptions.

4.2 Cost

30. The cost for the proposed relocation of transmission line 2.82L/2.83L is to be attributed solely as a system cost.

⁷ Transcript, pages 46 and 47.

⁸ Exhibit 0010.01.EPC-3368: AUC-EPC-006(a).

⁹ Exhibit 3368-X0006, PDF pages 2 and 3.

31. In response to a question at the hearing, ENMAX explained that in a situation where ENMAX has a right-of-way for a transmission line and a developer requests a transmission line move, it usually asks the developer to make a contribution that is typically 100 per cent of the cost of the line move. ENMAX stated that it had not had any substantive discussions with Remington regarding cost allocation for the proposed line relocation.¹⁰

32. ENMAX indicated that transmission line 2.82L/2.83L is fully depreciated and has negligible salvage value. The current cost of the line, aside from the annual maintenance cost, is a nominal annual payment of \$4 per year for the right-of-way on the Remington-owned lands.

33. ENMAX estimated that \$700,000 has been spent on the application to date in order to complete route selection, preliminary engineering and design, and to bring the application before the Commission. ENMAX submitted that the steel monopole structures proposed to be installed north of the bus barns have been ordered, but if the project were not approved, the structures could be used in other projects.

34. ENMAX provided a summary of costs for options 1 through 5.¹¹ The estimated relocation costs (defined as “engineering, construction and regulatory”) for the other alternatives range from \$7 million to \$14.2 million, while the preferred route relocation cost is estimated to be \$13.3 million.

35. Taking into account estimated routing costs (i.e. acquisition of land or right-of-way costs), the total project costs for the other alternatives are in the range of \$10 million to \$20 million. ENMAX’s preliminary cost estimate used a value of \$155 per square foot to acquire land in the area in question.¹²

36. Two of the alternatives have lower estimated costs than the preferred route. Option 1B, under which transmission line 2.82L/2.83L would remain in its current alignment above ground, has a preliminary cost of \$10.1 million. This cost includes acquiring a 10-metre right-of-way from Remington at an estimated cost of \$6.5 million. Option 4, under which the line would be changed to underground and moved to the border of Remington’s land, has a preliminary cost of \$12.9 million. This cost includes acquiring a five-metre right-of-way from Remington at an estimated cost of \$1.9 million.

37. At the hearing, however, ENMAX asserted that these costs were simply estimates for the purposes of developing a business case in Application 1609784 - EPC 2014 Phase I Distribution Tariff Application and 2014-2015 Transmission General Tariff Application.¹³ ENMAX stated in argument that these estimates were of no assistance in estimating the actual cost of acquiring right-of-way, because both Remington and Alberta Transportation refused to grant rights to ENMAX.¹⁴

38. ENMAX argued that there is a cost estimate for the proposed relocation whereas the compensation that would be set by the Surface Rights Board is unknown and could be higher

¹⁰ Exhibit 0010.01.EPC-3368: AUC-EPC-018.

¹¹ Exhibit 0017.01.EPC-3368: AUC-EPC-032 Attachment 1.

¹² Exhibit 0017.01.EPC-3368: AUC-EPC-025(a).

¹³ Proceeding 2739.

¹⁴ Transcript, page 80.

than the cost of the preferred route. ENMAX added that it was not aware of any decisions of the Surface Rights Board dealing with compensation for a transmission line right-of-way on land located in a densely populated urban centre. It maintained that in the case of this application “the cost of relocating transmission lines as a result of Remington’s termination of the right-of-way agreements and the court decision could effectively be considered a substitute for the cost of compulsorily acquiring a right-of-way on Remington property.”¹⁵

39. ENMAX indicated that if an application were made to the Surface Rights Board, the costs for any right-of-entry and compensation in annual payments would be included in its next cost-of-service application.¹⁶ ENMAX argued that it “has the right under Section 122 of the *Electric Utilities Act* to a reasonable opportunity to recover the costs and expenses of providing utility service. [Because] the cost of acquiring rights-of-way is clearly a cost of providing utility service, the Commission routinely allows utilities to include these costs in their revenue requirements and rates so long as those costs are reasonable and prudent. Compensation that a utility is required to pay under a compensation order from the Surface Rights Board is...by definition reasonable and prudent.”¹⁷

5 Findings

40. It is undisputed that transmission line 2.82L/2.83L was constructed in 1948 and is currently in operation. Transmission line 2.82L/2.83L has been fully depreciated and there are only maintenance costs associated with this line. At this time, the only other cost is a \$4 per year payment to Remington for the use of the existing right-of-way under the terminated right-of-way agreement. Although part of transmission line 2.83L is located on land owned by Alberta Infrastructure, there is no right-of-way agreement with Alberta Infrastructure.

41. The evidence before the Commission is that this application was filed pursuant to the direction of the Court of Queen’s Bench to ENMAX to apply for the removal of transmission line 2.82L/2.83L from the Remington land. No needs identification document was filed by the Alberta Electric System Operator with respect to this application because it does not entail any expansion or enhancement of the capability of the transmission system.¹⁸ No other reason was given for the filing of the application.

42. In view of the fact that the application is to relocate transmission line 2.82L/2.83L because the right-of-way agreement was terminated and Remington does not want the line on its vacant land, the proposed preferred route must be assessed in light of the options considered by ENMAX for transmission line 2.82L/2.83L and Remington’s plans for development of the land in question.

43. Although ENMAX submitted that the costs of the five rejected options were estimated for purposes of its business case and were not as certain as the costs in its application, the Commission considers that the preliminary costs of the options are at the very least a measure by which to assess whether approval of the preferred route is in the public interest.

¹⁵ Transcript, page 81.

¹⁶ Transcript, page 47.

¹⁷ Transcript, page 80.

¹⁸ As per Section 34 of the *Electric Utilities Act*.

44. Two of the alternatives, Option 1B and Option 4, have lower preliminary costs than the estimated cost of \$13.3 million for the preferred route. The costs of these two options include the cost of obtaining a right-of-way from Alberta Infrastructure, but this cost is not supported because Alberta Infrastructure has not required a right-of-way agreement to date. Consequently, the Commission considered that the preliminary costs for Option 1B and Option 4 would likely have been lower than estimated. Because the cost for this transmission line relocation project is proposed as a system cost, which means that it will be paid by customers of ENMAX, the Commission must be satisfied that approving the preferred route is reasonable in the circumstances.

45. The Commission also understands that the cost of acquiring a right-of-way by way of an application to the Surface Rights Board is uncertain because the Surface Rights Board has not recently determined the value of land within downtown Calgary. However, this uncertainty is an insufficient basis upon which to accept the preferred route.

46. The main justification advanced by the applicant in support of the proposed preferred route is that Remington was not agreeable to continue having transmission line 2.82L/2.83L on its land. However, the Commission has next to no information before it regarding Remington's development plans for the land in question, at what stage those plans are, or if any development approval has been sought. As noted above, ENMAX testified that Remington had shown it a high-level schematic of the future commercial and residential development planned for the property. However, ENMAX was unable to provide anything specific in this regard. No information was provided on how this line might impact such future development plans or why an underground option would not be compatible with any future development on Remington's land. The Commission is unable to approve the relocation of transmission line 2.82L/2.83L in a vacuum.

47. In Decision [2014-040](#),¹⁹ in which the Commission was tasked with considering development plans in relation to a proposed route, it determined the following:

530. The Commission has reviewed the evidence relating to the KLG's claim that the project would limit their rights as landowners because the project may limit their ability to subdivide.

531. Consistent with past decisions, the Commission will consider developments that have received approval or are in the process of obtaining approval as a part of the decision process. However, the Commission considers that future developments and residences that are in the concept stage or that are at the idea stage, are not certain and may change depending on the economy, change of circumstances for the landowner and/or potential developer, amendments to municipal bylaws regarding development or inability to secure municipal approval.

532. The Commission has not been presented evidence to indicate that any contemplated future developments or subdivisions by the KLG have received approval or are in the process of receiving approval. Therefore, the Commission considers that there is a great deal of uncertainty as to whether such projects would ever proceed and if so, the

¹⁹ Decision 2014-040: 1646658 Alberta Ltd. – Bull Creek Wind Project, Proceeding 1955, Application 1608556, February 20, 2014 (Errata issued on March 10, 2014).

timing and the potential impacts. To consider the impact of the project on future developments or subdivisions on KLG land would be speculative.²⁰

48. In Decision [2013-369](#),²¹ the Commission stated the following:

622. With respect to the concerns expressed by interveners about future potential development of their land, no evidence in support of specific development plans or subdivision approvals was filed. Consistent with past decisions, the Commission considers that future developments and residences that are in the concept stage, or that are at the idea stage, are not certain and may change depending on the economy, change of circumstances for the potential developer, amendments to municipal bylaws regarding development or inability to secure municipal approval. Therefore, there is a great deal of uncertainty on whether such projects would ever proceed and if so, the timing and the potential impacts. To consider such projects would be speculative.²²

49. Also, in Decision [2011-250](#),²³ the Commission stated the following:

102. In the Commission's view, landowners along Segment 1 did not provide convincing evidence to demonstrate that the approval of Segment 1 of the proposed transmission line would specifically interfere with any development plans which had been approved or were ready to proceed. Furthermore, the evidence before the Commission was that the Lake Newell Reservoir Resort Area Structure Plan for future development shows that the nearest residential lot in the plan is 875 metres from the Preferred Route. In any event, the Commission considers that it had no convincing evidence that transmission lines are necessarily incompatible with residential developments within the Lake Newell area.²⁴

50. The Commission has also determined in past decisions that transmission lines were compatible with residential and commercial development.²⁵

51. Due to the lack of information on Remington's development plans and on any potential impacts transmission line 2.82L/2.83L could have on such a development, and for the reasons articulated in the above-mentioned decisions, the Commission is not persuaded that the relocation of the line is necessary. Other route options were only deemed "non-viable" because of Remington's refusal of them. The Commission is not convinced that the preferred route is the best route.

52. The Commission also took into account the disruptions that the construction would have on residents and businesses in the area and the mitigations ENMAX has committed to. If transmission line 2.82L/2.83L need not be relocated, any construction impacts would be avoided.

²⁰ Decision 2014-040 at paragraphs 530 to 532.

²¹ Decision 2013-369: Alberta Electric System Operator, AltaLink Management Ltd. and ENMAX Power Corporation – Foothills Area Transmission Development, Proceeding 2001, Applications 1608620, 1608642, 1608637, 1608643, 1608649, 1608846, 1608861, 1608862, October 7, 2013.

²² Decision 2013-369 at paragraph 622.

²³ Decision 2011-250: AltaLink Management Ltd. – Cassils 324S – Bowmanton 244S – Whitla 251S Substations and Associated 240-kV Transmission Lines, Proceeding 748, Applications 1606402 and 1606403.

²⁴ Decision 2011-250 at paragraph 102.

²⁵ See Decision 2011-436 at paragraph 335 and Decision 2013-369 at paragraph 782.

53. Accordingly, the Commission finds that the proposed relocation of transmission line 2.82L/2.83L, at a cost of \$13.3 million, is not in the public interest and denies the application.

Dated on May 14, 2015.

Alberta Utilities Commission

(original signed by)

Anne Michaud
Panel Chair

(original signed by)

Bill Lyttle
Commission Member

(original signed by)

Kate Coolidge
Acting Commission Member