



ENMAX Corporation

Written Complaint About the Conduct of the Independent System Operator

October 23, 2017

Alberta Utilities Commission

Decision 21867-D01-2017

ENMAX Corporation

Written Complaint About the Conduct of the Independent System Operator

Proceeding 21867

Application 21867-A001

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1 Introduction and background

1. In this decision, the Alberta Utilities Commission considers whether to grant a request by ENMAX Corporation (ENMAX) to direct the Alberta Electric System Operator (AESO) to provide additional compensation for 30 unforeseen transmission must run (UTMR) events that occurred in 2013. The AESO opposed ENMAX's request, as did the Office of the Utilities Consumer Advocate (UCA).

2. After considering the evidence and arguments presented in this proceeding, and for the reasons given in this decision, the Commission finds as follows:

- the payments made by the AESO to ENMAX for the 30 UTMR events in question are just and reasonable and consistent with the ISO Tariff; and
- in accordance with the terms of Section 11 of the ISO Tariff, ENMAX is not entitled to additional fixed cost compensation for the 30 UTMR events in question

1.1 The relief requested by ENMAX

3. On July 29, 2016, ENMAX filed a written complaint, pursuant to Section 26 of the *Electric Utilities Act*, regarding the AESO's application of Section 11 – Ancillary Services from the ISO Tariff. ENMAX submitted that the AESO's conduct and administration of Section 11 is non-compliant with its payment obligations under Section 11 for the UTMR services the AESO directed ENMAX to provide in 2013. It also submitted that the AESO's conduct was unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory or inconsistent with or in contravention of the *Transmission Regulation* and the *Electric Utilities Act*.

4. In its complaint, ENMAX requested the Commission to order the AESO to:

- a) make payments owing for all UTMR Services Events;
- b) make payments in the amount of \$14,392,671.22 (inclusive of GST) as the balance owing for the total UTMR compensation due to the Calgary Energy Centre No. 2 Inc. and ENMAX Generation Portfolio Inc.;
- c) pay late interest on the balance owing for the total UTMR compensation; and
- d) where it appears to the Commission to be just and proper, granting partial, further or other relief in addition to, or in substitution for that applied for, as fully and in all

respects as if the present application had been for the partial, further or other relief, in accordance with Section 8(5) of the *Alberta Utilities Commission Act*

1.2 Process and schedule

5. Statements of intent to participate (SIPs) were filed by the AESO, Capital Power Corporation, the Industrial Power Consumers Association of Alberta, the UCA, and TransCanada Energy Ltd. (TransCanada) on September 7, 2016.

6. On September 21, 2016, the Commission issued a notice requesting parties to provide submissions on a series of questions related to jurisdictional issues.¹ Submissions were received from ENMAX, the AESO, the UCA, TransCanada and ATCO Power Canada Ltd.

7. On November 2, 2016, the Commission issued a ruling on its jurisdiction to consider ENMAX's complaint. The Commission found that it had the jurisdiction to consider and decide this issue under Section 26 of the *Electric Utilities Act*. However, the Commission decided that, given the issues raised by ENMAX, the better approach was to initiate its own inquiry into whether the payments made by the AESO to ENMAX were consistent with the ISO Tariff. The Commission explained that its jurisdiction to address the application in this manner is found in sections 8 and 23 of the *Alberta Utilities Commission Act*, and also noted its obligation under Section 121 of the *Electric Utilities Act* to ensure that the tariffs it approves are just and reasonable, and not unduly preferential, or arbitrarily or unjustly discriminatory. In accordance with that direction, the Commission will hereafter refer to the issues raised by ENMAX, as set out in its original complaint, as the ENMAX application.

8. The Commission issued a second notice of proceeding, informing parties that this proceeding would be convened on the interpretation of Section 11 of the ISO Tariff in accordance with its jurisdiction under sections 8 and 23 of the *Alberta Utilities Commission Act* and Section 121 of the *Electric Utilities Act*. The Industrial Power Consumers Association of Alberta filed a SIP in response to this notice.²

9. The Commission established a written process for consideration of the ENMAX application. The process was extended by motions related to responses to information requests and confidentiality. The evidentiary portion of the hearing closed on June 29, 2017 and the record for this proceeding closed on July 25, 2017, the date upon which written argument was completed.

10. In reaching the determinations contained 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.

¹ Exhibit 21867-X0028, AUC process announcement, September 21, 2016.

² Exhibit 21867-X0045, Statement of intent to participate from the Industrial Power Consumers Association of Alberta, November 8, 2016.

1.3 The ISO Tariff and UTMR compensation

11. Transmission must-run (TMR) is defined by the AESO as “generation that is required to be online and operating at specific levels in a specific part of the province’s electricity system to compensate for insufficient local transmission infrastructure relative to local demand.”³ When the AESO directs a market participant to provide TMR and a market participant does not have an existing contract with the AESO to provide TMR, implying that the TMR service is unforeseen, then this is known as UTMR. Compensation for TMR and UTMR service is prescribed in the ISO Tariff, as authorized by the *Electric Utilities Act* and the *Transmission Regulation*.

12. Section 30 of the *Electric Utilities Act* requires the ISO to submit a tariff to the Commission for approval and sets out what the ISO must include in that tariff. Subsection 30(2)(a)(ii) is relevant to the issues raised in ENMAX’s application. At the material time, subsection 30(2)(a)(ii) read, and continues to read as follows:

- (2) The rates to be charged by the Independent System Operator for each class of service must reflect the prudent costs that are reasonably attributable to each class of system access service provided by the Independent System Operator, and the rates must
 - (a) be sufficient to recover
 - ...
 - (ii) the amounts to be paid to the owner of a generating unit in circumstances in which the Independent System Operator directs that a generating unit must continue to operate, and the costs to make prudent arrangements to manage the financial risk associated with those amounts, ...

13. Section 51 of the *Transmission Regulation* provides more specific direction with respect to compensation for the provision of TMR and UTMR service. At the material time, Section 51 read, and continues to read as follows:

- 51(1)** For the purpose of section 30(2)(a)(ii) of the Act, the compensation must be no greater than an amount that would result in the recovery of fixed, operating and maintenance costs, including a reasonable rate of return, using a methodology described in the ISO tariff.
- (2) The ISO must include in the ISO tariff a cost determination methodology and related terms and conditions of service for the purposes of subsection (1).
- (3) Costs associated with subsection (1) must be included and recovered under the ISO tariff in the same manner as transmission costs under section 47(a)(i).

14. Currently, and at the material time, Section 11 of the ISO Tariff addresses ancillary services, which include TMR and UTMR service. Section 11(6) describes how market participants are to be compensated in the event they are directed to provide UTMR service without an existing contract. Subsection 11(6)(a) explains how variable costs are to be calculated, and subsection 11(6)(b) describes how fixed costs are to be calculated. Section 11(7) of the ISO Tariff is also relevant to ENMAX’s application and states:

³ AESO Website, <https://www.aeso.ca/market/ancillary-services/transmission-must-run-service/>

The maximum monthly amount to be paid by the ISO for transmission must-run service results in the recovery of fixed, operating and maintenance costs, including a reasonable rate of return for the service provider and is equal to the average monthly fixed cost plus variable costs as provided for in subsection [11]6 above.

1.4 The UTMR services provided by ENMAX

15. ENMAX Generation Portfolio Inc. (EGPI) and Calgary Energy Centre No. 2 Inc. (CEC2I) are wholly owned subsidiaries of ENMAX. EPGI owns the Calgary Energy Centre (CEC) and CEC2I owns the three units of the Crossfield Energy Centre (CRS1, CRS2 and CRS3).⁴

16. The AESO⁵ and ENMAX⁶ agree that CEC, CRS1, CRS2 and CRS3 delivered energy in response to 30 UTMR events throughout February, March and September 2013.⁷

17. On September 17, 2014, the AESO paid CEC2I and EGPI a total of \$6,578,247.00, exclusive of GST.⁸ The AESO characterized this payment as being in accordance with Section 11 of the ISO Tariff for the 30 UTMR events.⁹ ENMAX, on the other hand, characterized this as an interim payment, and sought additional compensation for its fixed costs associated with the 30 UTMR events.¹⁰

18. On May 9, 2016, ENMAX filed a written dispute with the AESO, pursuant to ISO rules Section 103.2 – *Dispute Resolution*.¹¹ ENMAX submitted that the AESO had administered the Section 11 formula that determines compensation for UTMR services in a manner that is non-compliant with the AESO's administration of the UTMR services payment formula set out in Section 11. ENMAX advised the AESO that it was seeking an additional payment in the amount of \$14,392,671.22 for the 30 UTMR events, based on ENMAX's own calculations for fixed costs.

19. ENMAX disputed the AESO's interpretation of Section 11 of the ISO Tariff in relation to its compensation of the 30 UTMR events and alleged that it has not been fully compensated for the 30 UTMR events for the following reasons:¹²

- a) when there has been more than one UTMR service direction in a calendar month, the AESO has not paid ENMAX fixed costs for each UTMR service event within a rolling 12-month period;

⁴ Exhibit 21867-X0049, ENMAX-UCA-2016NOV18-008(c), December 19, 2016.

⁵ Exhibit 21867-X0008, AESO Decision Document (July 4, 2016), July 29, 2016, paragraphs 7-11.

⁶ Exhibit 21867-X0002, ENMAX Complaint of AESO Conduct Document, July 29, 2016.

⁷ For CEC there were three UTMR events in February, one in March and four in September. CRS1 had four UTMR events in March and three in September, while CRS2 had five UTMR events in March and three in September, and CRS3 had four UTMR events in March and three in September.

⁸ Exhibit 21867-X0008, AESO Decision Document, July 4, 2016, paragraph 15.

⁹ Ibid., paragraph 62.

¹⁰ Exhibit 21867-X0002, ENMAX Complaint of AESO Conduct Document, July 29, 2016, paragraph 13.

¹¹ Exhibit 21867-X0003, ENMAX dispute to AESO, May 9, 2016, PDF page 1.

¹² Ibid., PDF pages 3-4.

- b) when there has been more than one UTMR service direction in a calendar month, ENMAX has only been compensated by the AESO for its fixed costs for the last UTMR service within a given month;
- c) the AESO did not calculate a payment based on the greater of the must-run ratio (MRR) or the minimum must-run-ratio (MMRR) corresponding with each UTMR service event;
- d) the AESO discriminated between ENMAX UTMR service events that the AESO directed within a month, and those provided within a rolling 12 month period;
- e) the AESO disallowed ENMAX's use of parent corporation values as verifiable actual values for the cost of capital, the share of debt and equity financing, and the rate of return on equity;
- f) the AESO capped the aggregate subsection 11(6)(1)(b) fixed costs compensation, when there was more than one UTMR service direction within a month, to no more than 50 per cent of average monthly fixed costs (AMFC) when the MMRR is greater than the MRR; and
- g) the AESO failed to give effect to Section 11(7), which specifically permits an aggregate monthly payment for fixed costs for all UTMR service events within a month up to 100 per cent of AMFC

20. ENMAX claims that it is owed an additional payment of \$14,392,671.22 for these reasons.

21. On July 4, 2016, the AESO issued its decision in response to ENMAX's dispute. The AESO concluded as follows:

- (A) that a single MRR is to be calculated based on the total hours of all UTMR events in a month;
- (B) that the highest applicable percentage for the MMRR, if greater than the MRR, is applied to AMFC only once for all UTMR events in a month;
- (C) that the cap for compensation in a month using the MRR is 100 per cent of the AMFC, and if using the MMRR, 50 per cent of the AMFC; and,
- (D) that the financial components in items (B) and (C) of subsection 11(6)(1)(b) of the ISO Tariff cannot be based on the verifiable actual values of a market participant's parent company

22. Consequently, the AESO confirmed that ENMAX has been compensated in accordance with the requirements of Section 11 of the ISO Tariff and that the AESO is not required to pay the additional fixed cost compensation requested by ENMAX.¹³

¹³ Exhibit 21867-X0008, AESO Decision Document, July 4, 2016.

23. In its application, ENMAX submitted that it agrees with the AESO that the variable costs for the UTMR events have been correctly calculated and paid to ENMAX in accordance with subsection 11.6(1)(a) of the ISO Tariff.¹⁴ As such, the focus of the ENMAX application is the recovery of fixed costs for the 30 UTMR events, based on an interpretation of Section 11 of the ISO Tariff.

1.5 Application of the must-run ratio

24. As discussed earlier, a major point of contention between ENMAX and the AESO relates to the application of the MRR should there be multiple UTMR directives occurring within a single calendar month.

25. As defined in subsection 11(6)(1)(b) of the ISO Tariff, fixed costs are equal to the average monthly fixed cost multiplied by the greater of the MRR or the MMRR. The average monthly fixed cost is equal to one-twelfth of the sum of the annual costs composed of amortization and depreciation amounts, debt servicing costs, costs of equity, income tax costs, fixed operating and maintenance costs, fixed fuel costs and fixed charges from applicable power purchase arrangements.

26. Subsection 11(6)(1)(b)(ii) of the ISO Tariff defines MRR as the ratio of the number of hours in the month when UTMR services were provided, to the total number of hours in the month.

27. MMRR is a percentage that varies in accordance with the number of UTMR service events within a rolling 12-month period in which TMR service is directed by the AESO. Subsection 11(6)(1)(b)(iii) of the ISO Tariff defines MMRR percentage figures as follows:

- 12 per cent for the first or second event
- 20 per cent for the third event
- 30 per cent for the fourth event
- 40 per cent for the fifth event
- 50 per cent for the sixth or any additional foreseeable event

28. Section 11(7) of the ISO Tariff specifies that the maximum monthly amount to be paid by the AESO for TMR service results in the recovery of fixed, operating and maintenance costs, including a reasonable rate of return for the service provider, and is equal to the average monthly fixed cost plus variable costs as provided for in Section 11(6) of the ISO Tariff.

1.6 Calculation of average monthly fixed costs

29. Another disputed issue between ENMAX and the AESO concerns the use of “verifiable actual values,” in place of deemed values, when calculating UTMR fixed cost compensation.

¹⁴ Exhibit 21867-X0002, ENMAX Complaint of AESO Conduct Document, July 29, 2016, paragraph 13.

30. Subsection 11(6)(1)(b)(D) of the ISO Tariff states that if the market participant provides “verifiable actual values” for the items in both (B) and (C), then those will be used instead of the deemed values. Subsections 11(6)(1)(b)(B) and (C) of the ISO Tariff discuss capital structure (along with a deemed capital ratio of 70 per cent debt and 30 per cent equity), financing costs (with a deemed debt interest rate equal to the current 10-year Government of Canada bond interest rate plus 0.5 per cent, and a deemed 12 per cent rate of return on equity), unamortized or undepreciated capital investment and initial cost of property, plant and equipment (or the initial PPA) along with accumulated depreciation or amortization.

31. Along with a customer invoice (indicating the date of a UTMR event) and calculation spreadsheet (which includes formulae to calculate UTMR costs in accordance with Section 11 of the ISO Tariff), signed Officer’s Certificates are to be submitted by entities to the AESO to receive compensation for UTMR services provided. The Officer’s Certificate is to be signed by an officer who certifies the values and assumptions used for the calculation of UTMR costs and amount(s) owed for the UTMR event(s) ordered by the AESO.

32. In the materials it filed, ENMAX presents the actual values of ENMAX Corporation for capital structure (a debt percentage of 41.02 per cent and an equity value of 58.98 per cent) and return on equity (15.25 per cent). ENMAX is in dispute with the AESO over ENMAX’s request to use these figures from ENMAX Corporation in its UTMR fixed cost compensation calculations.¹⁵

2 How should compensation for UTMR be calculated under Section 11 of the ISO Tariff?

2.1 Views of ENMAX

Interpretation of Section 11 of the ISO Tariff

33. ENMAX submitted that, consistent with the object of the scheme of the *Electric Utilities Act*, Section 11 of the ISO Tariff is intended to provide incentives to the AESO to procure contracts for TMR services that are the result of competitive forces, unless emergency conditions necessitate the conscription of UTMR that justify the costs thereof.¹⁶

34. ENMAX submitted that Section 11 should be interpreted using the modern approach to statutory interpretation, which requires that “the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.”¹⁷ ENMAX submitted that its interpretation of Section 11 of the ISO Tariff is consistent with the grammatical and ordinary meaning of the actual wording of Section 11, and is also consistent with the statutory context within which Section 11 resides.

¹⁵ Exhibit 21867-X0003, ENMAX dispute to AESO, May 9, 2016, PDF pages 13-15, and Exhibit 21867-X0110, Argument from ENMAX Corporation, July 11, 2017, page 24.

¹⁶ Exhibit 21867-X0110, Argument from ENMAX Corporation, July 11, 2017, paragraph 29.

¹⁷ *ATCO Gas & Pipelines Ltd v. Alberta (Energy and Utilities Board)*, [2006] 1 S.C.R. 140, 2006 SCC 4, paragraph 37.

35. ENMAX further submitted that the AESO's interpretation requires a departure from a plain reading of the words of Section 11, to eliminate some UTMR fixed costs compensation for some directives, contrary to the words and the intent of Section 11.¹⁸

36. ENMAX submitted that the Commission approved Section 11 of the ISO Tariff in substantially its present form in Decision 2008-014, in response to an industry-AESO negotiated settlement agreement.¹⁹ ENMAX explained that prior to the approval of Section 11 in Decision 2008-014, compensation for TMR was intended to be on a monthly basis. It argued that the language now used in Section 11, when compared to the language that was used in the predecessor section (called Interim Article 11) shows an intended departure from a monthly amount to a per directive compensation formula.²⁰

37. ENMAX pointed out that Section 11(3) of Interim Article 11 required compensation to be determined as a "monthly amount" and noted that this language is not found in subsection 11(6)(1) of the approved Article 11. ENMAX argued that the use of the phrase "in the settlement period," rather than the phrase "for the settlement period" in subsection 11(6)(1) accords with the other provisions of this section that provide for the determination of fixed cost compensation for each UTMR directive, rather than on a monthly basis.²¹

38. ENMAX submitted that subsection 11(6)(1)(b) of the ISO Tariff requires there to be a comparison of the event-specific MRR and the event-specific MMRR for each directed UTMR service event, as calculated in a month and within a rolling 12-month period. Put differently, ENMAX argued that it is entitled to be paid for each directed service event based on: the product of the AMFC plus the greater of the MRR or MMRR, for each directed UTMR service, subject only to the monthly maximum limit.²²

39. In its application, ENMAX submitted that subsection 11(4)(1) of the ISO Tariff sets out that "transmission must run services" [plural] are ancillary services provided by market participants in response to a direction [singular] provided by the AESO.²³ ENMAX argued that, in its July 4, 2016 decision, the AESO erroneously relied on the language setting out the determination of an MRR and in particular the use of the term "unforeseeable transmission must-run services" (emphasis added). ENMAX contended that the use of the term "services" rather than "service" was not determinative.²⁴

40. ENMAX argued that the AESO's interpretation of subsection 11(6)(b) of the ISO Tariff means that compensation for fixed costs for a market participant responding to multiple UTMR directives within a month (factoring in a rolling 12-month period) will be capped at 50 per cent

¹⁸ Exhibit 21867-X0110, Argument from ENMAX Corporation, July 11, 2017, paragraph 24.

¹⁹ Ibid., paragraph 30.

²⁰ Ibid., paragraph 33.

²¹ Ibid., paragraph 34.

²² Exhibit 21867-X0002, ENMAX Complaint of AESO Conduct Document, July 29, 2016, paragraph 19.

²³ Ibid., paragraph 17.

²⁴ Ibid., paragraph 22.

of AMFC by default for all scenarios, notwithstanding Section 11(7) of the ISO Tariff that provides for maximum monthly compensation of 100 per cent of AMFC.²⁵

41. ENMAX argues that its interpretation of Section 11 of the ISO Tariff is consistent with the grammatical and ordinary meaning of the actual wording of Section 11 of the ISO Tariff, and is also consistent with the statutory context within which Section 11 of the ISO Tariff resides. ENMAX contended that the AESO's interpretation requires a departure from a plain reading of the words of Section 11 of the ISO Tariff, to eliminate some UTMR fixed costs compensation for some directives.²⁶

Verifiable actual values

42. ENMAX submitted that the AESO failed to provide a reasonable explanation in its July 4, 2016 decision as to why ENMAX could not rely on the financial information of its parent corporation as "verifiable actual values" under subsection 11(6)(1)(b)(i)(D) of the ISO Tariff.²⁷ ENMAX also stated that the AESO's July 4, 2016 decision is inconsistent with the AESO's past practice when Encana Corporation (Encana) received compensation for UTMR service provided by the Cavalier Power Station in 2004, 2005, and 2007.²⁸

43. ENMAX submitted that in the Encana scenario, an Officer's Certificate confirmed that financial information for Encana may be used in the compensation of the UTMR service provided by the Cavalier Power Station, and that the AESO paid the invoice on the basis of the financial information of Encana.²⁹

44. ENMAX also stated that subsequent versions of the Officer's Certificate relied on by the AESO imply a reliance on the financial information from either the parent corporation or the affiliated plant. ENMAX cited examples such as the 2010 Officer's Certificate template, which established that the debt to equity structure is to be based on the corporation's debt to equity structure, and the 2012 Officer's Certificate template that required verifiable actual values to be consistent with the information found in the corporation's audited financial statements.³⁰ ENMAX concluded that the AESO has, in certain instances, determined "verifiable actual values" based on the parent corporation's financial values. ENMAX contended that the AESO should have accepted the values it provided on behalf of its subsidiaries, EGPI and CEC2I, in this instance.³¹

45. Subsection 11(6)(b)(i)(A) of the ISO Tariff discusses annual amortization and depreciation amounts. ENMAX argued that its verifiable unamortized and undepreciated capital investment values are calculated in a reasonable and appropriate manner because these figures

²⁵ Exhibit 21867-X0046, ENMAX UTMR Supplemental Submissions, November 28, 2016, paragraph 31.

²⁶ Exhibit 21867-X0110, Argument from ENMAX Corporation, July 11, 2017, paragraph 24.

²⁷ Exhibit 21867-X0002, ENMAX Complaint of AESO Conduct Document, July 29, 2016, paragraph 30.

²⁸ Ibid., paragraph 31.

²⁹ Ibid., paragraphs 32-33.

³⁰ Ibid., paragraphs 34-35.

³¹ Ibid., paragraph 36.

are the book values of ENMAX's capital assets that were deployed to respond to the UTMR directives, as set out in the audited financial statements of ENMAX Corporation.³²

46. ENMAX argued that it calculated undepreciated capital investment (UCI)³³ based on verifiable actual financial information that was used to prepare the financial statements of ENMAX Corporation, and noted that CEC2I and EGPI are wholly owned subsidiaries of ENMAX Corporation.³⁴

47. ENMAX has argued that its reliance on ENMAX Corporation figures for the purposes of subsection 11(6)(1)(b)(i)(D) appropriately constitute verifiable actual values because EGPI and CEC2I are wholly owned subsidiaries of ENMAX Corporation. It submitted that ENMAX Corporation is the only ENMAX entity that has publicly available audited financial statements, and that these financial statements for ENMAX Corporation reflect the actual financial status of ENMAX more accurately than would be the case when using the deemed values.³⁵

Conclusion

48. In summary, ENMAX submitted that its interpretation of Section 11 of the ISO Tariff is consistent with the express wording of Section 11, congruent with the legislative context within which Section 11 operates, is consistent with the AESO's earlier interpretation and application of Section 11, and reasonable when considering the surrounding circumstances of the NSA that led to approval of Section 11.³⁶

49. ENMAX requested orders of the Commission directing that the AESO make full payment of amounts remaining owing for the 30 UTMR service directives in the amount of \$14,392,671.22 (inclusive of GST), to direct the AESO to pay late interest on the balance owing, and to grant partial or further relief where the Commission deems it to be just and proper, in accordance with Section 8(5) of the *Alberta Utilities Commission Act*.³⁷

2.2 Views of the AESO

Interpretation of Section 11 of the ISO Tariff

50. The AESO argued that ENMAX failed to apply the modern principle of statutory interpretation, because ENMAX ignored the AESO's analysis of the provisions and words in subsection 11(6)(1)(b) of the ISO Tariff in the AESO *Dispute Resolution* decision.³⁸ The AESO also submitted it interpreted Section 11 in a manner consistent with the modern principle of

³² Exhibit 21867-X0110, Argument from ENMAX Corporation, July 11, 2017, paragraph 55.

³³ Undepreciated capital investment is part of the average monthly fixed cost calculation seen in subsection 11(6)(b)(i)(B) of the ISO Tariff.

³⁴ Exhibit 21867-X0110, Argument from ENMAX Corporation, July 11, 2017, paragraph 50-51.

³⁵ *Ibid.*, paragraph 60.

³⁶ *Ibid.*, paragraph 93.

³⁷ *Ibid.*, paragraph 10.

³⁸ Exhibit 21867-X0112, Reply Argument of the AESO – ENMAX TMR Complaint, July 25, 2017, paragraph 8.

interpretation by reading Section 11 and the other provisions of the ISO Tariff together, in a harmonious and cohesive manner.³⁹

51. The AESO has also submitted that, contrary to ENMAX's assertions, the change in wording from the Interim Article 11 to the language now used in Section 11(6)(1) was inconsequential to the interpretation of subsection 11(6)(1) of the ISO Tariff.

52. The AESO argued that ENMAX ignored the fact that Section 11(7) prescribes the maximum UTMR compensation to be paid as a "monthly amount," and that the introductory words of subsection 11(6)(1) refer to the "applicable settlement period;" i.e., one month. The AESO argued that, as a consequence, the distinction that ENMAX attempted to make regarding the terms "settlement period" and "month," and whether the word "settlement" is preceded by "in the" or "for the," is meaningless.⁴⁰

53. The AESO pointed out that, in its July 4, 2016 decision, it determined that the use of the plural word "services" in the definition of MRR in subsection 11(6)(1)(b)(ii) of the ISO Tariff indicates that there is a single MRR that is to be based on the total number of hours for all events in a month. The AESO further determined in that decision that the introductory words of subsection 11(6)(1)(b), which refer to the average monthly fixed cost being multiplied by the greater of the MRR or the MMRR, make singular references to MRR and MMRR.⁴¹

54. The AESO submitted that ENMAX's approach of calculating a ratio of UTMR hours for each event to the hours in a month, and then comparing that percentage to the applicable MMRR percentage in the same month, is inconsistent with the definition of MRR and the introductory words of subsection 11(6)(1)(b). In summary, the AESO concluded that the MRR must be calculated based on the total hours of all [UTMR] events in a month, and not based on the number of hours for each separate event in a month (i.e., a subset of total UTMR hours in a month), as ENMAX did.⁴²

55. In response to ENMAX's interpretation of subsection 11(4)(1) of the ISO Tariff, the AESO argued that this portion of the tariff does not define "transmission must-run services" such that it can be used for the purpose of interpreting subsection 11(6)(1)(b)(ii). In support of this position, the AESO submitted that subsection 11(4)(1) broadly describes transmission must-run services in a collective sense (i.e., services provided by "generating units"), whereas subsection 11(6)(1)(b) specifies how fixed cost compensation is to be calculated "for the specific directed generating unit." In sum, the AESO argued that the use of the singular term "directive" in subsection 11(4)(1) is meaningless when interpreting the plural term "transmission must-run services" in subsection 11(6)(1)(b)(ii).⁴³

³⁹ Exhibit 21867-X0112, Reply Argument of the AESO – ENMAX TMR Complaint, July 25, 2017, paragraph 9.

⁴⁰ Ibid., paragraphs 14-16.

⁴¹ Exhibit 21867-X0008, AESO Decision Document (July 4, 2016), July 29, 2016, paragraph 38.

⁴² Ibid., paragraphs 40-41.

⁴³ Exhibit 21867-X0105, Argument of the AESO – ENMAX TMR Complaint, July 11, 2017, paragraphs 21-25.

Verifiable actual values

56. In its July 4, 2016 decision, the AESO determined that because subsections 11(6)(1)(b)(A), (B) and (C) of the ISO Tariff prescribe the calculation of fixed costs related to a market participant's investment (emphasis added) in a generating unit that has provided UTMR, and make no reference to a parent corporation or an affiliate, the verifiable actual values on which a market participant may rely must be its own, and not those of its parent corporation.⁴⁴

57. The AESO also determined in its July 4, 2016 decision that ENMAX is incorrect in claiming that the AESO's template Officer's Certificate allows market participants to rely on either their own verifiable actual values or those of their parent corporation. The AESO concluded that the template specifically refers to the corporation (market participant) that provided UTMR service and the compensation owed to the corporation for the provision of UTMR service. The AESO submitted that the template provided no option to substitute a parent corporation for the market participant.⁴⁵

58. The AESO submitted that Section 1(1) of the ISO Tariff, *Applicability and Interpretation of ISO Tariff*, specifies that "a market participant who applied for or accepts system access service from the [AESO] agrees to be bound by the ISO Tariff," and that CEC2I and EGPI, as Rate STS agreement holders, were market participants and agreed to be bound by the ISO Tariff.⁴⁶

59. The AESO further submitted that Section 11(1) of the ISO Tariff makes references to market participants and as such, Section 11 applies only to market participants that are required to provide ancillary services (including UTMR) and does not apply to the parent corporation of a market participant.⁴⁷ The AESO also submitted that in instances when a market participant directed to provide UTMR does not have an existing [TMR] contract, the language of Section 11(2) of the ISO Tariff referencing "the amount to be paid to the market participant" is important. The AESO submitted that this language indicates that only the market participant that provided UTMR service is entitled to be compensated, not the parent corporation.⁴⁸

60. The AESO contended that, based on subsection 11(6)(1)(b)(A), (B), and (C), the annual amortization and depreciation amounts and capital structure used in the fixed cost calculation is based on the market participant's "initial cost of property, plant and equipment for the specific directed generating unit" and that the applicable rate of return is applied to the equity component of the market participant's initial cost.⁴⁹

61. The AESO acknowledged that, in recognition of the fact that not all market participants that provide UTMR service have audited financial statements, it has previously accepted UCI for generating units owned by a market participant that were included as part of a parent

⁴⁴ Exhibit 21867-X0008, AESO Decision Document (July 4, 2016), July 29, 2016, paragraphs 57-59.

⁴⁵ Ibid., paragraph 60.

⁴⁶ Exhibit 21867-X0068, AESO Evidence, March 10, 2017, paragraphs 14-15.

⁴⁷ Ibid., paragraph 16.

⁴⁸ Ibid., paragraph 17.

⁴⁹ Exhibit 21867-X0105, Argument of the AESO – ENMAX TMR Complaint, July 11, 2017, paragraph 39.

corporation's financial statements audit, as opposed to requiring a direct audit of the market participant's financial information.⁵⁰

62. In response to claims made by ENMAX, the AESO submitted that because UCI is derived from the financial information of the generating unit from which UTMR service was provided, UCI would be the same whether it comes from the audited financial statements of ENMAX Corporation or the underlying financial information of CEC2I or EGPI.⁵¹

63. With regard to debt/equity and ROE figures, the AESO argued that a distinction must be drawn between a market participant's financial information that is reviewed in the course of a parent corporation's financial audit, and the resulting audited financial statements of the parent which, on a consolidated basis, could reasonably be expected to result in fixed cost values that are different than the corresponding values that would be reflected in the market participant's own financial information.⁵²

64. In response to ENMAX's reference to the Cavalier Power Station UTMR service and how its compensation for UTMR service was calculated using the financial information of Encana, the AESO submitted that ENMAX has misconstrued the Cavalier UTMR situation.⁵³ The AESO submitted that Encana was the Rate STS agreement holder for the Cavalier Power Station and that as such, Encana was the market participant entitled to UTMR compensation determined in accordance with Section 11 of the ISO Tariff.⁵⁴ The AESO added that ENMAX's claims that the Officer's Certificates required by the AESO to determine UTMR compensation "imply a reliance on the financial information from either the parent corporation or the affiliated plant" is unfounded, and confirmed that the Officer's Certificates have not, and do not, provide for the use of the financial information of a market participant's parent corporation.⁵⁵

Conclusion

65. The AESO stated that its application of the MMRR to calculate the payments made to CEC2I and EGPI for UTMR services is entirely consistent with the requirements of Section 11 of the ISO Tariff, and that the use of a parent corporation's "verifiable actual values" in the calculation of the fixed cost portion of UTMR compensation would be inconsistent with the provisions of the ISO Tariff and that, accordingly, ENMAX's complaint should be dismissed.⁵⁶

66. The AESO requested that, should the Commission accept ENMAX's interpretation of Section 11 of the ISO Tariff regarding how the fixed cost portion of UTMR compensation is to be calculated using the MMRR, the Commission not specify the amount payable to ENMAX, and, instead, the Commission should direct the AESO to calculate ENMAX's fixed cost

⁵⁰ Exhibit 21867-X0112, Reply Argument of the AESO – ENMAX TMR Complaint, July 25, 2017, paragraph 20.

⁵¹ Ibid., paragraphs 21-22.

⁵² Ibid., paragraph 25.

⁵³ Exhibit 21867-X0068, AESO Evidence, March 10, 2017, paragraph 23.

⁵⁴ Ibid., paragraph 25.

⁵⁵ Ibid., paragraph 32.

⁵⁶ Exhibit 21867-X0105, Argument of the AESO – ENMAX TMR Complaint, July 11, 2017, paragraphs 45-46.

compensation in accordance with the Commission's findings regarding application of the MMRR.⁵⁷

67. The AESO also requested that, in the event that the Commission determines how compensation should be decided by the AESO for components of fixed costs, as raised by ENMAX in its information requests to the AESO, the Commission reject the values presented in ENMAX's February 11, 2016 invoices and direct the AESO to continue to apply the practices described in the IR response Attachment-AESO-ENMAX-2017MAR24-01-(SUPPLEMENTAL).⁵⁸

68. The AESO further requested that, in the event that the Commission determines that CEC2I and EGPI are entitled to additional fixed cost compensation and that interest should be payable, then interest not be paid for the period prior to ENMAX submitting its dispute to the AESO on May 9, 2016.⁵⁹

2.3 Views of the UCA

Interpretation of Section 11 of the ISO Tariff

69. The UCA submitted that in 2003, a Transmission Development Policy Paper released by the Government of Alberta specifically stated that TMR arrangements should not set or distort market prices, [but instead] should be provided on a cost-of-service basis.⁶⁰ The UCA submitted that in the following year (2004), Section 23 of the 2004 *Transmission Regulation* capped compensation for "incremental generation costs that are owing to the owner of a generating unit if the Independent System Operator directs that a generating unit must continue to operate" to an amount no greater than "would result in the recovery of fixed, operating and maintenance costs, including a reasonable rate of return."⁶¹

70. The UCA also submitted that this policy direction; i.e., that conscripted generation was to be provided on a cost of service basis, was reaffirmed in the Alberta Government's 2005 Electricity Policy Framework, which stated that "[c]ompensation must cover variable operating costs at a minimum and provide for recovery of fixed costs prorated according to joint use of the unit (i.e., TMR and the energy market)." The UCA also alluded to a recommendation made in that document that there be a cost of service cap for all TMR services.⁶²

71. The UCA submitted that following the release of the 2007 *Transmission Regulation*, the AESO initiated a negotiated settlement process to resolve the issue of conscripted TMR payments. The UCA stated that this process led to a negotiated settlement agreement on TMR costs that was approved by the Commission in Decision 2008-014. The UCA stated that it was through this process that the current version of Section 11 of the ISO Tariff was developed.⁶³

⁵⁷ Exhibit 21867-X0105, Argument of the AESO – ENMAX TMR Complaint, July 11, 2017, paragraph 47.

⁵⁸ Exhibit 21867-X0112, Reply Argument of the AESO – ENMAX TMR Complaint, July 25, 2017, paragraph 53.

⁵⁹ Exhibit 21867-X0105, Argument of the AESO – ENMAX TMR Complaint, July 11, 2017, paragraph 55.

⁶⁰ Exhibit 21867-X0070, UCA Evidence, March 10, 2017, PDF page 5.

⁶¹ Ibid.

⁶² Ibid., PDF pages 5-6.

⁶³ Ibid., PDF page 6.

The UCA argued that the Commission recognized, in Decision 2008-014, that Section 11's scheme is cost-based and reflective of the requirements in the *Transmission Regulation*. The UCA submitted that the compensation scenario at issue in this proceeding (multiple payments sought for UTMR service in a single month) was before the Commission when it determined that the compensation to be paid under Section 11 was just and reasonable. The UCA observed that in Decision 2008-014, the Commission approved Section 11, in part, because the compensation to be paid under it was not excessive.⁶⁴

72. The UCA submitted that it supports the AESO's July 4, 2016 decision in response to ENMAX's complaint and, relative to the broader scope of this proceeding, considers the AESO's interpretation to be correct and appropriate for the administration of the Alberta Interconnected Electric System.⁶⁵

73. More specifically, the UCA argued that the AESO's interpretation of the applicability of the MMRR in Section 11(6) of the ISO Tariff to multiple directives in a single month is the correct interpretation.⁶⁶ The UCA submitted that the words of Section 11(6), when read in context, support the AESO's interpretation and cited examples, such as: (a) how subsection 11(6)(1) uses the singular for "amount" and "unforeseeable transmission must-run service," (b) the calculation of AMFC in the tariff by using one-twelfth of the sum of a generator's annual costs (suggesting a single fixed cost per month), (c) that the ISO Tariff has defined MRR as a ratio of the number of hours in the month when UTMR services (emphasis added) were provided to the total number of hours in the month (and not UTMR services provided in response to a single directive), and (d) that if the ratchet used in the calculation of the MMRR had been intended to recognize multiple MMRRs, there would be references to the "first and second" events, rather than the existing references to the "first or second" and "sixth or additional" events.⁶⁷

74. The UCA further submitted that the compensation that ENMAX would be entitled to under its proposed interpretation would be "abnormal" compared to what the AESO typically spends on UTMR service,⁶⁸ and that the AESO could have changed its behaviour (e.g., require ENMAX to provide UTMR continuously rather than through multiple discrete events) to avoid significant fixed costs, had the AESO known that the MMRR ratchet operated the way that ENMAX suggests.⁶⁹

75. The UCA took the general position that the intent of Section 11 of the ISO Tariff is, with the exception of the ratchet, to compensate the generator with an amount that is as near to the actual cost incurred by the generator as can be reasonably calculated and that the use of another entity's metrics to calculate this compensation is inconsistent with that intent.⁷⁰

⁶⁴ Exhibit 21867-X0108, UCA Argument, July 11, 2017, paragraph 8.

⁶⁵ Exhibit 21867-X0070, UCA Evidence, March 10, 2017, PDF page 4.

⁶⁶ Exhibit 21867-X0108, UCA Argument, July 11, 2017, paragraph 22.

⁶⁷ *Ibid.*, paragraphs 23-24.

⁶⁸ Exhibit 21867-X0070, UCA Evidence, March 10, 2017, PDF page 8.

⁶⁹ *Ibid.*, PDF page 11.

⁷⁰ *Ibid.*, PDF page 12.

Verifiable actual values

76. The UCA argued that, as ENMAX confirmed, the subsidiaries CEC2I and EGPI are separate corporate entities from ENMAX, and that ENMAX has provided no basis to show that ENMAX's financial metrics reflect those of the subsidiaries. The UCA has expressed doubt that financial metrics from ENMAX would reflect those of CEC2I and EGPI, given the subsidiaries focus on a single business, while ENMAX owns a broad portfolio with differing business risk and debt/equity structures. Accordingly, the UCA argued that the Tariff's deeming provisions, not the parent company's financials, should apply.⁷¹

Conclusion

77. The UCA submitted that the Commission should dismiss ENMAX's complaint because the AESO has applied the correct interpretation of Section 11(6) of the ISO Tariff.⁷²

2.4 Commission findings

78. The Commission finds, for the reasons that follow, that ENMAX is not entitled to additional fixed cost compensation for the 30 UTMR events in question because the payments made by the AESO to ENMAX for those events were consistent with the ISO Tariff and the greater statutory scheme and are accordingly just and reasonable. In coming to this conclusion, the Commission has considered the regulatory history related to compensation for TMR services, the plain and ordinary meaning of Section 11 of the ISO Tariff, and the relationship between that tariff and the greater statutory scheme.

Compensation for TMR: policy and statutory history

79. The determination of the manner in which generators should be compensated for TMR services is not a new issue. In 2003, the Government of Alberta addressed the issue of TMR costs in its Transmission Development Policy.

Where TMR is used, the cost of TMR (or similar) arrangements should be recovered from load customers in the same manner as wire costs as part of the transmission tariff. In the few cases where transmission constraints are not removed, TMR arrangements should not set or distort market prices. Rather TMR contracts should be provided on a cost-of service basis by the owner and should not be a vehicle for exercising market power in a region that is transmission deficient.⁷³ (emphasis added)

80. The first *Transmission Regulation* came into force in 2004, one year later. Section 23 addressed the recovery of must-run costs and stated in part as follows:

23(1) For the purpose of section 30(2)(a)(ii) of the Act, the compensation must be no greater than an amount that would result in the recovery of fixed, operating and

⁷¹ Exhibit 21867-X0108, UCA Argument, July 11, 2017, paragraph 48.

⁷² Ibid., paragraph 49.

⁷³ Transmission Development Policy, December 22, 2003, page 9, as referenced in Exhibit 21867-X0070, UCA evidence, March 10, 2017, page 3.

maintenance costs, including a reasonable rate of return, using a methodology described in the ISO tariff.

- (2) The ISO must include in the ISO tariff a cost determination methodology and related terms and conditions of service for the purposes of subsection (1).⁷⁴

81. In June 2005, the Alberta Department of Energy (DOE) published its *Electricity Policy Framework* that addressed, among other matters, TMR. The DOE acknowledged that discussions with stakeholders on the issue of TMR were ongoing, but observed that there appeared to be significant agreement on a number of overarching principles related to TMR, including the following.

- The compensation for conscripted TMR services should be transparent, fair and simple to apply.
- To promote investor confidence amongst investors in generation, compensation for conscripted TMR services must be codified into the ISO's terms and conditions. This includes provision of a cost of service cap for TMR mandated by the *Transmission Regulation*.
- The ISO must act as a rational buyer of TMR services with MSA oversight regarding competitive procurement.
- The ISO's authority to conscript service should not result in unreasonable compensation for TMR service. Compensation must cover variable operating costs at a minimum and provide for recovery of fixed costs prorated according to joint use of the unit (i.e., TMR and the energy market).⁷⁵

82. In its recommendations related to TMR, the DOE stated that compensation for TMR would be codified in the ISO Tariff, which would "provide for a cost of service cap for all TMR services as mandated by the *Transmission Regulation*."⁷⁶

83. The *Transmission Regulation* was amended in 2007; whereupon the issue of TMR compensation was addressed in Section 51. Section 51 has not changed since then and reads in part, as follows:

51(1) For the purpose of section 30(2)(a)(ii) of the Act, the compensation must be no greater than an amount that would result in the recovery of fixed, operating and maintenance costs, including a reasonable rate of return, using a methodology described in the ISO tariff.

- (2) The ISO must include in the ISO tariff a cost determination methodology and related terms and conditions of service for the purposes of subsection (1).⁷⁷

⁷⁴ Transmission Regulation, Alta Reg 174/2004, repealed.

⁷⁵ Alberta's Electricity Policy Framework, June 6, 2005 Alberta Department of Energy, page 37, <https://open.alberta.ca/publications/3126894>, as referenced in Exhibit 21867-070, UCA evidence, March 10, 2017, page 3.

⁷⁶ Ibid., Framework, page 38.

⁷⁷ Transmission Regulation, Alta Reg 86/2007

84. After the *Transmission Regulation* (2007) came into force, the AESO asked the Commission to approve a negotiated settlement that addressed TMR Compensation. The Commission approved the negotiated settlement and found that the provisions of the then proposed Section 11 of the ISO Tariff to be fair and reasonable. In coming to its conclusion, the Commission found that Section 51 of the *Transmission Regulation* “clearly indicates that the methodology contained in the AESO’s tariff is to be cost based (in contrast to market based).”⁷⁸ The Commission concluded that the formula proposed by the AESO, as set out in Section 11(6) and 11(7), was cost based and complied with the requirements of Section 51.

85. Based on the foregoing, the Commission finds that, since 2003, the intention of government, as expressed in policy and regulation, was that compensation for TMR was to be capped or limited, based on a cost of service model.

The plain and ordinary meaning of Section 11 of the ISO Tariff

86. The Commission agrees with ENMAX and the AESO that the modern principle of statutory interpretation should be applied when interpreting Section 11 of the ISO Tariff. That principle requires the Commission to read the words of the tariff and related legislation in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme and object of the tariff, and the scheme and the intention of Parliament.

87. To assist the reader, the Commission has reproduced those portions of Section 11 that are relevant to this discussion:

- 4(1)**Transmission must-run services are ancillary services provided by market participants with generating units in response to a directive provided by the ISO to ensure safe and reliable electrical service for a region of the interconnected electric system.
- (2)**Transmission must-run services are foreseeable if the ISO, taking into account reasonable procurement timing requirements, determines transmission must-run services are required to meet ISO transmission reliability criteria which includes consideration of expected operating conditions and transmission planned outages. Transmission must-run services are unforeseeable transmission must-run services if they do not constitute foreseeable transmission must-run services.
- 6(1)**If at the time the market participant is directed to provide unforeseeable transmission must-run service the market participant does not have an existing contract, then the amount to be paid to the market participant in the applicable settlement period for unforeseeable transmission must-run service is equal to variable costs plus fixed costs...(Emphasis added)
- (b)**Fixed costs are equal to the average monthly fixed cost multiplied by the greater of the must-run ratio or the minimum must-run ratio, where:
- (i)**Average monthly fixed cost is equal to one-twelfth of the sum of the annual costs in items (A) through (H) as follows:...

⁷⁸ AUC Decision 2008-014, page 9.

(ii) Must-run ratio is the ratio of the number of hours in the month when unforeseeable transmission must-run services were provided to the total number of hours in the month;

(iii) Minimum must-run ratio is:

(A) 12% for the first or second unforeseeable transmission must-run service event within a rolling 12-month period in which transmission must-run service is directed by the ISO;

(B) 20% for the third unforeseeable transmission must-run service event within a rolling 12-month period in which transmission must-run service is directed by the ISO;

(C) 30% for the fourth unforeseeable transmission must-run service event within a rolling 12-month period in which transmission must-run service is directed by the ISO;

(D) 40% for the fifth unforeseeable transmission must-run service event within a rolling 12-month period in which transmission must-run service is directed by the ISO; or

(E) 50% for the sixth or any additional unforeseeable transmission must-run service event within a rolling 12-month period in which transmission must-run service is directed by the ISO.

If there is more than one unforeseeable transmission must-run service event in a settlement period, the minimum must-run ratio shall be the highest applicable percentage described in (A) through (E) above.

7 The maximum monthly amount to be paid by the ISO for transmission must-run service results in the recovery of fixed, operating and maintenance costs, including a reasonable rate of return for the service provider and is equal to the average monthly fixed cost plus variable costs as provided for in subsection 6 above.

88. Having regard to its plain and ordinary meaning, the Commission finds that Section 11(4) serves two purposes. First, subsection 11(4)(1) describes, in broad and general terms, the nature and purpose of TMR services. Second, subsection 11(4)(2) differentiates between foreseeable transmission must-run services and unforeseeable transmission must run services. There is nothing in Section 4 to indicate that the definitions of TMR provided therein relate in any way to the issue of how the compensation for such services must be calculated. Rather, compensation for those services is specifically set out in sections 11(5) through (7).

89. Subsection 11(6)(1) sets out generally that the “amount” (singular) to be paid for unforeseeable TMR service in a settlement period will be the fixed costs plus the variable costs. The term “settlement period” is defined in the AESO’s Consolidated Authoritative Document Glossary as “the period starting on the first day of each calendar month at 00:00 hours and ending on the last day of the same calendar month at 24:00 hours”. Based on a plain reading of the subsection, the Commission finds that subsection 11(6)(1) contemplates the payment of a single amount for transmission must run service for each one month settlement period for UTMR service provided in that month.

90. Those costs that comprise the variable costs in the formula for calculating UTMR compensation are set out in subsection 6(1)(a). The calculation of those costs is not in dispute in this proceeding.

91. The calculation of fixed costs, which is in dispute in this proceeding, is set out in subsection 6(1)(b). In accordance with that subsection, the fixed costs for UTMR are the average monthly fixed costs multiplied by the greater of: (a) the must-run ratio (MRR) or (b) the minimum must-run ratio (MMRR).

92. Three elements of this subsection reflect the intention to calculate compensation for UTMR on a monthly basis rather than on an event basis, contrary to ENMAX's contention. First, the use in subsection 6(1)(b)(i) of monthly average costs (one-twelfth of the generator's annual costs) is consistent with a single monthly payment rather than multiple payments within a single month.

93. Second, subsection 11(6)(1)(b)(ii), which effectively defines MRR, contemplates only a single MRR for each month with the MRR being the "ratio of the number of hours in the month when unforeseeable transmission must-run services were provided to the total number of hours in the month." The plain and ordinary meaning of subsection 11(6)(1)(b)(ii) is that the MRR is calculated based on total hours of UTMR within a settlement period, rather than the number of UTMR events in a settlement period.

94. Third, subsection 11(6)(1)(b)(iii) expressly states that the MMRR for a settlement period can reflect more than one UTMR event. That subsection makes it clear that if there are multiple UTMR service events directed in a single calendar month, the highest applicable percentage value (based on the escalating scale) is to be used for the MMRR.

95. Section 11(7), like Section 11(4), addresses all TMR services, and provides a maximum amount payable for such services. The Commission agrees with the UCA and the AESO that this provision is not inconsistent with subsection 11(6)(1)(b)(iii), as alleged by ENMAX; rather, the Commission finds that this section serves two purposes. First, it provides an effective cap or threshold for negotiating TMR contracts. Second, it addresses the potential for double recovery by a generator providing TMR and UTMR services within the same settlement period.

96. When Section 6 is interpreted as requiring the calculation of UTMR on a monthly basis, rather than on a per event basis, the compensation provided is consistent with the policy goals expressed by the Government of Alberta and with the express requirements of Section 51 of the *Transmission Regulation*. This interpretation allows the provider of UTMR service to recover, at a minimum, its fixed costs for all UTMR hours in a month (MRR) or an amount greater than this if MMRR is greater than MRR. In this way, generators who provide UTMR service are made whole for their fixed costs incurred or, should MMRR exceed MRR in a given month, are provided an additional amount on top of the fixed costs incurred up to 50 per cent, depending on the number of UTMR service events provided within a rolling 12-month period. The Commission considers the MMRR and MRR mechanisms, as interpreted and applied by the AESO, provides UTMR providers with a reasonable rate of return.

97. The Commission is satisfied that calculating compensation for UTMR in this way is reflective of a cost of service approach that allows a generator to recover its fixed, operating and maintenance costs and a reasonable rate of return. Further, the Commission finds that the ratchet mechanism provides fair compensation for UTMR providers, considering the actual fixed costs incurred by the UTMR provider through MMR and the discretion exercised by the ISO when it comes to the frequency of ordering UTMR from generating units through MMRR.

98. The Commission finds that ENMAX's assertion that subsection 11(6)(1)(b) requires a comparison of the event-specific MRR and MMRR ratio for each directed UTMR service event, as calculated in a month and within a rolling 12 month period, is inconsistent with the plain and ordinary meaning of that section. If ENMAX's approach of calculating and comparing an MRR and MMRR for each UTMR event is adopted, and there are multiple UTMR events in a given month, the language at the end of Section 11(6)(1)(b)(iii) of the ISO Tariff is rendered absurd.

99. The Commission further finds ENMAX's interpretation of the tariff is inconsistent with the regulatory history of the tariff and the direction provided in Section 51 of the *Transmission Regulation*. Specifically, the Commission is of the view that calculating compensation for UTMR on a per event basis would not result in compensation consistent with the cost of service approach envisioned by Government, and would effectively produce an unreasonable rate of return for the UTMR services provided. As pointed out by the UCA in its argument, adopting ENMAX's interpretation of the tariff would result in the recovery of compensation 16.9 times that of the fixed cost of service for the UTMR events in question (i.e., \$20.5 Million in compensation for \$1.2 Million in fixed costs). For the 30 UTMR events in question, the UCA calculated that under the AESO's interpretation, ENMAX has been compensated 8.5 times its claimed fixed costs for providing UTMR service.⁷⁹

100. ENMAX argued that changes in language in Section 11.3 of the Interim Approved Article 11 (the reference to "monthly amounts") and Section 11(6)(1) of the approved ISO Tariff (the use of the phrase "in the applicable settlement period" rather than the phrase "for the applicable settlement period") reflects an intention to move from payments based on monthly usage to payments based on a per-event basis. The Commission disagrees. The plain and ordinary meaning of the provisions of Section 11(6), when read in harmony with the rest of the section and in concert with the intention of the statutory scheme, is that payments are to be made for the services provided on a monthly basis. In the Commission's view, the minor change in wording between the current and previous versions reflects no change in the scheme from a monthly basis to an event basis.

101. The Commission concludes that the AESO correctly interpreted Section 11 of its tariff when it initially calculated the compensation for the 30 UTMR events in dispute in this proceeding. The Commission finds that the AESO's interpretation, which calculates collectively compensation for all UTMR services in a settlement period rather than individually for each UTMR service provided within a settlement period, is both reasonable and correct.

⁷⁹ Exhibit 21867-X0070, UCA Evidence, March 10, 2017, page 7.

Verifiable actual values

102. Subsections 11(6)(1)(b)(A) and (B) of the ISO Tariff discusses two components that make up the average monthly fixed cost figure for UTMR. These sections make multiple references to the costs incurred by the market participant in the calculation of fixed cost compensation for UTMR service. For the convenience of the reader, these subsections of the ISO Tariff are reproduced below:

- (A) annual amortization and depreciation amounts for the market participant's investment or for the power purchase arrangement acquisition cost related to the specific directed generating unit, consistent with amounts reported in the market participant's audited financial statements and adjusted for cogeneration infrastructure not utilized for generation purposes;
- (B) the product of the unamortized or undepreciated capital investment multiplied by a deemed debt percentage of 70% and multiplied by a debt interest rate that is equal to the current 10-year Government of Canada bond interest rate plus 0.5% and where the unamortized or undepreciated capital investment is the greater of
 - (1) the market participant's initial cost of property, plant and equipment for the specific directed generating unit or the market participant's initial power purchase arrangement acquisition cost related to the specific directed generating unit, less accumulated depreciation or amortization, as the case may be, related to the specific directed generating unit; or
 - (2) 25% of the market participant's initial cost of property, plant and equipment for the specific directed generating unit or the market participant's initial power purchase arrangement acquisition cost related to the specific directed power purchase arrangement.

103. Subsection 11(6)(1)(b)(C) of the ISO Tariff refers to "the product of unamortized or undepreciated capital investment, as described in (B) above, multiplied by a deemed 30% common equity percentage of capital structure multiplied by a deemed 12% rate of return on equity", while subsection 11(6)(1)(b)(D) of the ISO Tariff states that "if the market participant provides verifiable actual values for the items in both (B) and (C) then those will be used instead of the deemed values."

104. The Commission is satisfied that the context of subsection 11(6)(1)(b)(A), (B), and (C) is structured so that the calculations of this component of UTMR compensation are reflective of a cost of service approach, and that this is reinforced by subsection 11(6)(1)(b)(D), where the market participant is provided the option of providing its "verifiable actual values" for use in place of the deemed values in subsection 11(6)(1)(b)(B) and (C) of the ISO Tariff. The Commission finds that the provision of subsection 11(6)(1)(b)(D) exists so that providers of UTMR may obtain a more accurate reimbursement of their UTMR fixed costs incurred, than would be available if the deemed values are used.

105. The *Electric Utilities Act* and the AESO's consolidated authoritative document glossary both define a market participant as any person that supplies, generates, transmits, distributes, trades, exchanges, purchases or sells electricity, electric energy, electricity services or ancillary

services, or any broker, brokerage or forward exchange that trades or facilitates the trading of electricity, electric energy, electricity services or ancillary services.

106. The calculation of the fixed costs component for UTMR compensation is set out in subsection 11(6)(1)(b) of the ISO Tariff, which provides market participants with two options for determining capital structure and rate of return. A market participant can either use deemed values, as set out in subsections 6(1)(b)(B) and (C) or “verifiable actual values” as set out in subsection 6(1)(b)(D).

107. The Commission finds that the market participant referred to in Section 11(6)(1)(b) of the ISO Tariff, is the generating unit that has provided the UTMR service. This is supported by the repeated references to the market participant’s costs within the context of the calculation of fixed costs for UTMR service being provided and in Section 11(6)(1), where it states that “the amount to be paid to the market participant in the applicable settlement period for [UTMR] is equal to variable costs plus fixed costs.”

108. Based on the plain and ordinary meaning of subsection 11(6)(1)(b)(D), the Commission finds that where a market participant intends to rely upon verifiable actual values, those values must be those of the market participant itself (i.e., the owner of the generating unit) and not those of another entity, regardless of the corporate relationship between such entities. In the Commission’s view, such an interpretation is consistent with the scheme set out in Section 11 which refers exclusively to market participants without reference to affiliates, parent corporations, subsidiaries, etc.

109. Parties, including ENMAX, agreed that for the purposes of the 30 UTMR events, EGPI and CEC2I were the market participants that provided the UTMR services. The Commission agrees that EGPI and CEC2I were the market participants that provided the 30 UTMR services that are the subject of this proceeding. The Commission further agrees with the view of the UCA that ENMAX Corporation is a large, multifaceted entity whose figures are not appropriate for use in the direct cost recovery for UTMR services that were provided by two of its subsidiaries, EGPI and CEC2I.

3 Decision

110. The Commission concludes that the AESO's interpretation of Section 11 of its tariff, when calculating its payment obligations for the 30 UTMR Service Events in question, was reasonable and correct. Interpreted this way, the Commission confirms that the ISO Tariff, specifically as it relates to compensation for TMR, is consistent with the *Transmission Regulation* and the *Electric Utilities Act* and is just and reasonable and not unduly preferential, or arbitrarily or unjustly discriminatory. The Commission therefore concludes that the payments made by the AESO to ENMAX were consistent with the ISO tariff and should not be varied, as requested by ENMAX.

111. While the Commission considered the subject of the complaint pursuant to its general authority, the Commission confirms that the result would have been the same had the Commission addressed the subject of the complaint pursuant to Section 26 of the *Electric Utilities Act*. In other words, had Commission continued to consider the issues raised by ENMAX in the context of its complaint, the Commission would have found that the ISO's conduct was just and reasonable, was not unduly preferential, arbitrarily or unjustly discriminatory and was consistent with the ISO Tariff, the *Transmission Regulation* and the *Electric Utilities Act*.

Dated on October 23, 2017.

Alberta Utilities Commission

(original signed by)

Mark Kolesar
Vice-Chair

(original signed by)

Bill Lyttle
Commission Member

(original signed by)

Henry van Egteren
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) counsel or representative
ENMAX Corporation (ENMAX) Rosa Twyman – Regulatory Law Chambers Chuck Burns
Alberta Electric System Operator (AESO) Brenda J. Hill Tom Sloan
ATCO Power Canada Ltd. Marie H. Buchinski – Bennett Jones LLP Horst Klinkenborg
Capital Power Corporation Santi Churphongphun Steve Kanerva
Industrial Power Consumers Association of Alberta Richard Penn Victoria Bellissimo
Office of the Utilities Consumer Advocate (UCA) Michael Manhas – Norton Rose Fulbright Canada LLP Matthew D. Keen – Norton Rose Fulbright Canada LLP Douglas Simpson
TransCanada Energy Ltd. (TransCanada) David Farmer

Alberta Utilities Commission
Commission Panel Mark Kolesar, Vice-Chair Bill Lyttle, Commission Member Henry van Egteren, Commission Member
Commission Staff JP Mousseau (Commission Counsel) Kenneth Wyllie (Economic Research Analyst, Market Oversight and Enforcement)

Appendix 2 – Abbreviations

Abbreviation	Name in Full
AESO	Alberta Electric System Operator
AMFC	average monthly fixed costs
AUC or the Commission	Alberta Utilities Commission
CEC2I	Calgary Energy Centre No. 2
CRS1, CRS2, and CRS3	Crossfield Energy Centre units 1, 2, and 3
DOE	Alberta Department of Energy
EGPI	ENMAX Generation Portfolio Inc.
ENMAX	ENMAX Corporation
ISO	Independent System Operator
MMRR	minimum must-run ratio
MRR	must-run ratio
ROE	return on equity
SIP	statement of intent to participate
TMR	transmission must-run
TransCanada	TransCanada Energy Ltd.
UCA	Utilities Consumer Advocate
UCI	undepreciated capital investment
UTMR	unforeseen transmission must run