



Alberta Utilities Commission

Commission-Initiated Proceeding to Review the Terms and
Conditions of Service of Regulated Rate Service Providers

November 9, 2017

Alberta Utilities Commission

Decision 22091-D01-2017

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Conditions of Service of Regulated Rate Service Providers

Proceeding 22091

Application 22091-A001

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1 Decision summary

1. This decision provides the Alberta Utilities Commission's determination as to whether proposed amendments to the terms and conditions of service of EPCOR Energy Alberta GP Inc. (EPCOR), Direct Energy Regulated Services (DERS), ATCO Electric Ltd. (ATCO) and FortisAlberta Inc. (Fortis) (collectively, the companies), ensure that rural property owners will not be liable for electrical distribution charges related to an energy company's oil and natural gas facilities located on their land in circumstances where the rural property owner has not requested the service.
2. For the reasons detailed in this decision, the Commission:
 - (a) Approves, with slight modification, the amendments proposed by EPCOR and DERS, to be effective no later than December 1, 2017; and
 - (b) Conditionally approves the amendments proposed by ATCO and Fortis, pending the outcome of any changes as a result of AUC Rule 021: *Settlement System Code Rules* and AUC Rule 028: *Natural Gas Settlement System Code* consultations.
3. 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.

2 Introduction

2.1 Commission initiated proceeding

4. On October 20, 2016, the Alberta Utilities Commission issued notice that it would, on its own initiative, be reviewing certain terms and conditions of the regulated rate service of EPCOR and DERS.¹ The proceeding was initiated after the Farmers' Advocate Office (Farmers' Advocate) advised the Commission that some rural landowners were being billed by regulated rate service providers as the customer of record for oil and gas sites located on their property after the energy companies had abandoned their facilities and stopped paying the electric distribution charges.

¹ Exhibit 22091-X0005, Notice of Proceeding, October 20, 2016.

5. The Commission stated that it would consider amendments to DERS Article 3.7 (Owner's Liability for Payment) and EPCOR's Article 8.11 (Owner's Liability for Payment) which would explicitly exclude rural property owners from bearing the liability for electrical distribution charges that were not requested by the rural property owner.

6. In a process letter issued on January 9, 2017, the Commission expanded its review of terms and conditions of service to include distribution companies ATCO and Fortis after receiving a complaint from the Farmers' Advocate that a rural property owner had been charged an oilfield rate by ATCO² for service requested by a now insolvent energy company.

7. On November 30, 2016, DERS³ and EPCOR⁴ submitted their revised terms and conditions of service. By January 16, 2017 statements of intent to participate (SIPs) were filed by the Office of the Utilities Consumer Advocate (UCA),⁵ the Farmers' Advocate,⁶ ENMAX Energy Corporation,⁷ ATCO,⁸ Fortis⁹ and the Consumers Coalition of Alberta (CCA).¹⁰ ATCO¹¹ and Fortis¹² filed their respective amendments to their terms and conditions on January 27, 2017.

8. During this period, the Commission also allowed information requests (IRs) to DERS, EPCOR, ATCO and Fortis with the companies' responses due by February 24, 2017. However, the companies objected to a number of information requests filed by the UCA and the CCA. Certain contested IRs sought information concerning amounts of distribution service charges billed to individual rural property owners, suggesting that not all affected rural landowners had been refunded the charges associated with services to an oil and gas company. Other contested IRs related to:

- (a) Assessing the extent and magnitude of the accrual of distribution service charges for abandoned oil and gas sites that have been billed in the past;
- (b) Forward looking impacts and consequences of the proposed amendments to the terms and conditions of service on ratepayers; and
- (c) Strategies or potential means to find preventative measures for the accrual of distribution service charges from abandoned oil and gas sites.

² It is not the normal practice for a distribution company to directly bill a customer, or in this case a landowner who was not the actual customer. Typically, a site which is de-enrolled by a competitive retailer will be assigned to a regulated rate option (RRO) provider. The RRO provider then will attempt to locate and bill the customer responsible for the site. These processes are governed by AUC Rule 021: *Settlement System Code Rules* and AUC Rule 004: *Alberta Tariff Billing Code Rules*.

³ Exhibit 22091-X0012, DERS Proposed Terms and Conditions Amendment, November 30, 2016.

⁴ Exhibit 22091-X0013, EEA Submission regarding Amendments to Terms and Conditions, November 30, 2016, page 4.

⁵ Exhibit 22901-X0008, UCA SIP, October 25, 2016.

⁶ Exhibit 22901-X0009, FAO SIP, October 31, 2016.

⁷ Exhibit 22901-X0010, ENMAX SIP, November 16, 2016.

⁸ Exhibit 22091-X0016, ATCO SIP, January 10, 2017.

⁹ Exhibit 22091-X0015, FORTIS SIP, January 10, 2017.

¹⁰ Exhibit 22901-X0017, CCA SIP, January 16, 2017.

¹¹ Exhibit 22091-X0019, ATCO Electric Retailer Terms and Conditions – Letter, January 27, 2017, and Exhibit 22091-X0020, ATCO Electric Retailer Terms and Conditions (Blackline).

¹² Exhibit 22091-X0018, FortisAlberta letter to AUC re Proposed Terms and Conditions, January 27, 2017.

9. On March 9, 2017, the UCA filed a motion requesting the Commission to compel the companies to respond to the contested IRs, or to expand the scope of the proceeding so that the subject matter of the IRs could be considered by the Commission.¹³

10. On April 7, 2017, the Commission directed the parties to submit argument on whether the Commission had the jurisdiction to order refunds to rural property owners who had paid the electric distribution charges associated with abandoned oil and gas sites on their lands.

11. In a ruling dated July 5, 2017, the Commission held that it does have the authority to order refunds but denied the motions to compel answers to the contested IRs and to expand the scope of the proceeding. Regarding the contested IRs relating to service charges billed to rural property owners in the circumstances giving rise to the proceeding (and efforts taken to resolve those charges), the Commission noted the evidence and submissions from companies representing that they had either not charged rural landowners or had voluntarily refunded customers who had been improperly billed. On that basis, the Commission was satisfied that no further answers to those particular IRs were required. Notwithstanding, the Commission directed the companies to review their records again, make refunds to any affected customers not yet refunded and confirm with the Commission that they had done so.

12. Regarding the balance of the contested IRs, the Commission noted that the singular purpose of the proceeding was to consider and make changes to the companies' terms and conditions of service to ensure that rural property owners will not be liable for electrical distribution charges related to an energy company's abandoned oil and gas facilities located on their land in circumstances where the rural property owner had not requested the service. Since the balance of the contested IRs were not directly relevant to that end, the Commission determined that they were beyond the scope of this proceeding. As the interveners had failed to satisfy the Commission that the proposed amendments to the companies' terms and conditions of service could not be reasonably considered within the scope of the proceeding as constituted, the Commission declined to expand the scope of the proceeding.¹⁴

13. The Commission advised the companies that they could make revisions to their proposed terms and conditions in light of the ruling. On July 12, 2017, EPCOR submitted revisions.¹⁵ A week later, DERS revised its terms and conditions in conformity with EPCOR's.¹⁶

14. By August 11, 2017, the parties had submitted their final and reply arguments and the Commission considers that the record for this proceeding closed on that date.

2.2 Relevant statutory and regulatory provisions

15. The Commission's general jurisdiction relative to this proceeding derives from the *Alberta Utilities Commission Act*, the *Public Utilities Act* and the *Electric Utilities Act*.

16. Section 8 of the *Alberta Utilities Commission Act* provides the Commission with broad powers. The Commission may start a proceeding under its own initiative under the authority granted to it by Section 8(2) which states that:

¹³ Exhibit 22091-X0046, UCA Cover Letter and Motion to Compel, March 9, 2017.

¹⁴ Exhibit 22091-X0067, Ruling on refunds and IR responses, July 5, 2017, pages 2-3.

¹⁵ Exhibit 22091-X0069, EEA Letter, July 12, 2017.

¹⁶ Exhibit 22091-X0073, DERS Amended Proposed Terms and Conditions, July 18, 2017.

The Commission, in the exercise of its powers and the performance of its duties and functions under this Act or any other enactment, may act on its own initiative or motion and do all things that are necessary for or incidental to the exercise of its powers and the performance of its duties and functions.

17. The Commission is also granted broad powers under Sections 85 and 87 of the *Public Utilities Act*. Section 85(1) states that “[t]he Commission shall exercise a general supervision over all public utilities, and the owners of them, and may make any orders regarding extension of works or systems, reporting and other matters, that are necessary for the convenience of the public...” Section 87(1) states that “[t]he Commission may, on its own initiative, or on the application of a person having an interest, investigate any matter concerning a public utility.”

18. In addition, Section 76(1)(e) of the *Alberta Utilities Commission Act* allows the Commission to “make rules governing any matter or person within its jurisdiction, including rules of practice governing the Commission’s procedure and hearings.” Section 19.2 of AUC Rule 001: *Rules of Practice* states that “[t]he Commission may commence a proceeding by a notice of hearing or as determined by the Commission.”

19. Once a decision has been made, the Commission, under Section 23(1)(a) of the *Alberta Utilities Commission Act*, “may order any person to do any act, matter or thing... pursuant to any decision, order or rule of the Commission.”

20. The Commission’s specific authority over terms and conditions of service is found in the *Electric Utilities Act*; sections 119(1), 124 and 125, plus the definitions of “tariff” and “terms and conditions” in sections 1(1)(zz) and 1(1)(aaa) of the act. Under Section 124(1), the Commission may approve the terms and conditions as applied for, approve the terms and conditions with changes, or refuse to approve the terms and conditions.

3 Discussion

3.1 Terms and conditions of service

21. Terms and conditions of service are approved by the AUC in rate or rate related decisions and govern the relationship between the regulated provider and its customer. They deal with a variety of situations including, financial security requirements of a customer, how energy consumption will be measured, the process in which a customer will be billed and how to make payment, the process to close an account and dispute resolution. In the case of a regulated rate provider like EPCOR and DERS, the terms and conditions of service govern the relationship between the provider and its customers, such as an oil and gas company, and the rural property owner. In the case of a distribution service provider, like ATCO and Fortis, the terms and conditions of service govern their relationship with the electricity providers, such as EPCOR and DERS.

22. As noted above, this proceeding was initiated by the Commission once it became aware that some of the companies had erroneously billed rural property owners for electrical distribution charges related to services for an energy company’s oil and natural gas facilities located on their land where those services were not requested by the rural property owner. None of the companies objected to the Commission’s initiative to amend or make new terms of service

to ensure that rural property owners would not be billed in the described circumstances in the future.

3.2 Proposed amendments to EPCOR's and DERS' Owner's Liability for Payment articles

23. In the case of EPCOR, the rural property owners had been billed under the terms and conditions relating to an owner's liability for payment. Both EPCOR's and DERS' terms and conditions deemed the property owner as the customer of record and liable for payment in certain circumstances when the customer who had requested service could not be found.

EPCOR's original article

24. Article 8.11 of EPCOR's terms and conditions stated:

8.11 Owner's Liability for payment

In circumstances where:

- (a) there is no Customer of Record registered on the accounting records of EEA; and
- (b) there are no other occupants of the Site who continue to receive Service,

the Property Owner shall be deemed to be the Customer of Record and shall be liable for payment for Services provided in accordance with the Regulated Rate Tariff until the date a new Customer of Record is determined by EEA. The Property Owner shall be liable for all charges relating to identifying, searching for and contacting the Property Owner as a result of there being no Customer of Record for the Site.¹⁷

DERS' original article

25. Article 3.7 of DERS' terms and conditions did not include a reference to charges incurred in identifying the property owner, but is otherwise essentially the same:

3.7 Owner's Liability for Payment

In circumstances where:

- (a) there is no Customer registered on the account records of DERS; and
- (b) there are no other occupants of the Site who continue to receive service

The Property Owner will be deemed to be the Customer of Record and will be liable for payment for Services provided in accordance with the Regulated Rate Tariff until the date a new Customer is determined by DERS.¹⁸

26. Neither EPCOR's Article 8.11 nor DERS' Article 3.7 were intended to apply to rural property owners in the case of abandoned oil and gas facilities located on their lands. In response to the Commission's direction to propose amendments to effectively protect rural property

¹⁷ Exhibit 22091-X0005, Notice of Proceeding, October 20, 2016, page 3.

¹⁸ Exhibit 22091-X0005, Notice of Proceeding, October 20, 2016, page 3.

owners in such circumstances, DERS¹⁹ and EPCOR²⁰ submitted their revised terms and conditions of service.

EPCOR's first proposed amendment

27. EPCOR proposed the following changes, noted in red, to Article 8.11:

8.11 Owner's Liability for Payment

In circumstances where:

- (a) there is no Customer of Record registered on the accounting records of EEA; and
- (b) there are no other occupants of the Site who continue to receive Service,

the Property Owner shall be deemed to be the Customer of Record and shall be liable for payment for Services provided in accordance with the Regulated Rate Tariff until the date a new Customer of Record is determined by EEA **provided that a rural Property Owner will not be made responsible for paying Regulated Rate Tariff charges related to Service for an energy company's oil and natural gas facilities located on the rural Property Owner's site or sites which were not requested by the rural Property Owner.** The Property Owner shall be liable for all charges relating to identifying, searching for and contacting the Property Owner as a result of there being no Customer of Record for the Site.

DERS' first proposed amendment

28. DERS made a similar amendment, noted in red, to Article 3.7:

3.7 Owner's Liability for Payment

In circumstances where:

- (a) there is no Customer registered on the account records of DERS; and
- (b) there are no other occupants of the Site who continue to receive service

The Property Owner will be deemed to be the Customer of Record and will be liable for payment for Services provided in accordance with the Regulated Rate Tariff until the date a new Customer is determined by DERS, **provided that a rural Property Owner will not be made responsible for paying electrical distribution charges related to service for an energy company's oil and natural gas facilities located on the rural property owner's sites which were not requested by the rural Property Owner.**

29. Further revisions were made by EPCOR and DERS incorporating the rationale underlying the Commission's ruling of July 5, 2017. In that ruling, the Commission held that the owner's liability for payment provision does not apply in the circumstances giving rise to this

¹⁹ Exhibit 22091-X0012, DERS Proposed Terms and Conditions Amendment, November 30, 2016.

²⁰ Exhibit 22091-X0013, EEA Submission regarding Amendments to Terms and Conditions, November 30, 2016, page 4.

proceeding and more specifically, that it does not allow rural property owners to be billed for distribution charges to abandoned oil and gas sites, where the rural property owners had not directly requested nor received a benefit from the continuation of the service.

EPCOR's and DERS' final proposed amendments

30. After the Commission invited any additional changes in light of its ruling, EPCOR proposed the following additional changes to its article:

8.11 Owner's Liability for Payment

In circumstances where:

- (a) there is no Customer of Record registered on the accounting records of EEA; and
- (b) there are no other occupants of the Site who continue to receive Service,

the Property Owner shall be deemed to be the Customer of Record and shall be liable for payment for Services provided in accordance with the Regulated Rate Tariff until the date a new Customer of Record is determined by EEA provided that a rural Property Owner will not be deemed to be the Customer of Record or made responsible for paying Regulated Rate Tariff charges related to Service for an energy company's oil and natural gas facilities located on the rural Property Owner's site or sites unless the rural Proper Owner requested the service or will receive a benefit from the continuation of the service. ~~which were not requested by the rural Property Owner.~~ The Property Owner when deemed to be the Customer of Record under this provision shall be liable for all charges relating to identifying, searching for and contacting the Property Owner as a result of there being no Customer of Record for the Site.²¹

31. DERS subsequently filed a similar revision to its proposed Article 3.7:

3.7 Owner's Liability for Payment

In circumstances where:

- (a) there is no Customer registered on the account records of DERS; and
- (b) there are no other occupants of the Site who continue to receive service

The Property Owner will be deemed to be the Customer of Record and will be liable for payment for Services provided in accordance with the Regulated Rate Tariff until the date a new Customer is determined by DERS, provided that a rural Property Owner will not be deemed to be the Customer of Record or made responsible for paying Regulated Rate Tariff ~~made responsible for paying electrical distribution~~ charges related to service for an energy company's oil and natural gas facilities located on the rural property owner's sites unless the rural Property Owner requested the service or will receive a benefit from the continuation of the service ~~which were not requested by the rural Property Owner.~~ The Property Owner when deemed to be the Customer of Record under this provision shall be liable for all charges relating to identifying, searching for

²¹ Exhibit 22091-X0070, Schedule A RRT Terms and Conditions July 2017 Blacklined, July 12, 2017, PDF page 17.

and contacting the Property Owner as a result of there being no Customer of Record for the Site.²²

32. In response to an information request from the UCA, DERS additionally stated that its definition of “Property Owner” is:

- (a) the registered owner of a parcel of land in the register maintained by the Registrar of Titles under the *Land Titles Act*; or
- (b) a person who has purchased the parcel from the person mentioned in sub clause (a) pursuant to an agreement for purchase and sale.²³

CCA’s position

33. The CCA simply adopted the reasoning of the Commission in paragraphs 13-19 of its ruling of July 5, 2017. At the heart of that reasoning was the Commission’s view that the property owner liability provisions do not apply to a rural property owner who has leased lands to an energy company or whose lands are the subject of a right of entry order in a situation where the energy company subsequently abandons its facilities and the rural property owner has neither requested the service nor received a benefit from the continuation of the service.

3.2.1 UCA and Farmers’ Advocate’s (the Advocates) position on final version of terms and conditions and reply from EPCOR and DERS

34. The Advocates argued for a number of changes to the amendments proposed by EPCOR and DERS.

35. The Advocates argued that the word “rural” should be deleted from EPCOR and DERS terms and conditions because it was too restrictive, citing the situation where rural lands are annexed by an adjacent municipality. They submitted that the underlying consideration for relieving any property owner, rural or urban, from liability for charges associated with abandoned oil and gas sites was whether the property owner requested the service or received a benefit from the continuation of the service.²⁴

36. EPCOR countered that it was complying with the Commission’s direction that proposed amendments should explicitly exclude rural property owners and argued that this request be rejected by the Commission.²⁵ DERS filed a similar response.²⁶

37. The Advocates also proposed that the word “benefit” in the phrase “...received a benefit”, be removed and the words “direct financial benefit” be substituted. They argued (conceding that it was an unlikely scenario), that an energy company could continue to pay some portion of its lease payment to the property owner while at the same time ceasing payment of its electric charges. In these circumstances under the revised terms and conditions, the property owner would be liable to the electric service provider for the oil and gas companies’ charges. The Advocates contended that the continuation of the Service should be specific to the oil and

²² Exhibit 22091-X0074, Schedule A DERS T&C’S RRT – Blacklined, July 18, PDF pages 10-11.

²³ Exhibit 22091-X0034, DERS Responses to UCA, February 24, 2017, page 10.

²⁴ Exhibit 22091-X0077, UCA and FAO Cover Letter and Argument, July 28, 2017, PDF page 10.

²⁵ Exhibit 22091-X0079, EEA Reply Argument, August 11, 2017, PDF page 2.

²⁶ Exhibit 22091-X0082, DERS’ Terms and Conditions Reply Argument, August 11, 2017, pages 2-3.

gas well and/or facility on the Property and offered the following wording for EPCOR's Article 8.11 and DERS Article 3.7:

“...provided that a Property Owner will not be deemed to be the Customer of Record or made responsible for paying Regulated Rate Tariff charges related to Service for an energy company's oil and natural gas wells and/or facilities located on the Rural Property Owner's site or sites, **unless the Property Owner requested the service or will receive a direct financial benefit from the continuation of the Service provided to the energy company's oil and natural gas wells and or facilities.**”²⁷ (bold and underlining added)

38. EPCOR responded that this change would unfairly narrow the application of its Owner's Liability for Payment term because the purpose of the article is to ensure that when a property owner benefits from the electrical service to his or her property, that owner is responsible for the burden of the service.²⁸

39. The Advocates also submitted the un-capitalized word “service” used twice in the phrase “...unless the rural Property Owner requested the service or will receive a benefit from the continuation of the service.” should be capitalized because “Service” is a defined word in EPCOR's terms and conditions and should have the same meaning when used in EPCOR's Article 8.11 or where the un-capitalized word appears in DERS Article 3.7. They further proposed that DERS should use the same definition of “Service” in its terms and conditions as in EPCOR's.²⁹

40. EPCOR characterized the un-capitalized word “service” as a typographical error and stated that it would correct the error prior to filing the final form of its Regulated Rate Tariff Terms and Conditions.³⁰

Arguments of the Advocates, EPCOR and DERS on further amendments, information and payment requests made by the Advocates

41. The Advocates also argued:

- (a) For additional revisions to EPCOR and DERS' terms and conditions of service that would impose a requirement for deposits and security from customers,
- (b) For the provision of detailed information confirming compliance with the Commission's directive to refund all rural property owners improperly billed, and
- (c) For a direction from the Commission that the refunds to those affected rural property owners include payment of a \$75 credit.³¹

42. On the basis that the party responsible for the debt should be held accountable, the Advocates submitted that businesses which pose a greater risk of default, like oil and gas companies during a period of low oil prices, should make a deposit sufficient to cover the

²⁷ Exhibit 22091-X0077, UCA and FAO Cover Letter and Argument, July 28, 2017, PDF pages 10-11.

²⁸ Exhibit 22091-X0079, EEA Reply Argument, August 11, 2017, PDF page 2.

²⁹ Exhibit 22091-X0077, UCA and FAO Cover Letter and Argument, July 28, 2017, PDF page 10.

³⁰ Exhibit 22091-X0079, EEA Reply Argument, August 11, 2017, PDF page 2.

³¹ Exhibit 22091-X0077, UCA and FAO Cover Letter and Argument, July 28, 2017, PDF pages 11-12.

potential debt and that this requirement should be reflected in the terms and conditions of EPCOR and DERS.³²

43. EPCOR noted that Article 5 of its current terms and conditions provides for deposits, but that the security is limited to a maximum amount equivalent to 30 per cent of a customer's annual total charge. It stated that increasing this amount would put it at a competitive disadvantage with retailers whose deposits are capped at the 30 per cent level under the *Energy Marketing and Residential Heat Sub-metering Regulation*. EPCOR rejected the idea of larger deposits.³³

44. DERS submitted that a change in its terms and conditions to accommodate potential defaults was beyond the limited scope of the proceeding.³⁴

45. Regarding the need for further information, the Advocates argued that EPCOR and DERS should be required to provide clear evidence of compliance with the Commission's July 5, 2017 direction. In summary, the Advocates argued that a deadline should be established for the provision of detailed information and supporting documentation:

- Identifying all customers who had erroneously paid the improper bills since the inception of impugned billing practice and details of all refunds paid; and
- Explaining how EPCOR and DERS performed their refund review and identifying the specific records reviewed.

46. The Advocates also asked the Commission to order that refunds to improperly billed rural property owners should include payment of a \$75 credit pursuant to Article 9.8 of EPCOR's terms and conditions of service and Article 11.2 of DERS' terms and conditions of service.³⁵

47. EPCOR replied that the detailed review of its records sought by the Advocates was outside the scope of the proceeding because the review did not concern the effectiveness of the proposed amendments in protecting rural landowners from liability for service charges to abandoned oil and gas sites on their property. However, it stated that it had confirmed prior to the Commission's direction of July 5, 2017, that it had reviewed its records, identified 50 sites that had been billed to a landowner and fully refunded those landowners. No further review was necessary given its compliance with the Commission's direction.³⁶

48. EPCOR also maintained that none of these customers were entitled to a refund or credit of \$75 under Article 9.8 of its terms and conditions as mandated by the Commission's Rule 003. With one exception, it stated that no customer was given written notice of a pending referral to a credit agency nor was any referral made to a credit agency. Further, no customer received a notice of disconnection or an actual disconnection under Article 9.8.

49. In the one instance where a customer was referred to a credit agency, EPCOR submitted that based on its interpretation of Article 8.11 at that time, there was no billing error.

³² Exhibit 22091-X0077, UCA and FAO Cover Letter and Argument, July 28, 2017, PDF pages 10-11.

³³ Exhibit 22091-X0079, EEA Reply Argument, August 11, 2017, PDF page 3.

³⁴ Exhibit 22091-X0082, DERS' Terms and Conditions Reply Argument, August 11, 2017, pages 4-5.

³⁵ Exhibit 22091-X0077, UCA and FAO Cover Letter and Argument, July 28, 2017, PDF page 13.

³⁶ Exhibit 22091-X0079, EEA Reply Argument, August 11, 2017, PDF page 4.

50. EPCOR argued that it had given Article 8.11 a reasonable interpretation at the time it billed the rural landowners, it had proactively and voluntarily refunded those customers and that it would be unfairly punitive to order payment of the Article 9.8 credits.³⁷

51. DERS also rejected the position that a further, detailed review of its records was required, describing the proposal as unnecessary and wasteful in light of the fact that it had not pursued landowners for these charges. DERS referred to an IR response in which it described how it determined the customer of record for an oil and gas site and confirmed that in cases where a landowner had been billed incorrectly, the billing was corrected once DERS knew of the error. It submitted that reasonable assurances and internal inquiries had been made.³⁸

3.3 Commission findings

52. The Commission must determine that it is satisfied that the proposed amendments to EPCOR and DERS' terms and conditions of service achieve the objective set out in the Commission's notice of proceeding.

53. The Commission is satisfied that, with slight modifications, the amendments proposed by EPCOR and DERS will ensure that rural property owners are not charged for distribution charges related to an abandoned oil and gas site located on their property. The Commission's directed modifications to the amendments proposed by EPCOR and DERS and its consideration of the changes requested by the Advocates are described below. The fully approved language is reproduced in its order found in Section 4.

54. Consistent with the principles expressed in the Commission's ruling dated July 5, 2017, where the proposed amendments of EPCOR and DERS state "...unless the rural Property Owner requested the Service..." ("service" in DERS' case), EPCOR and DERS are to insert the word "directly" between "Property Owner" and "requested".

55. The Advocates argued that the word "rural" should be deleted and that the amended terms and conditions should simply refer to a "property owner". The Advocates asserted that situations may arise where a rural property with an oil and gas site on it may be annexed by a municipality. However, such are not the facts before the Commission in this proceeding. This proceeding was initiated by the Commission to address the specific circumstance of a rural property owner charged for an oil and gas company's distribution charges and so its ruling is confined to that context. This does not foreclose the application of the principles expressed in this decision (and in the Commission's July 5, 2017 ruling) to other scenarios not presently before the Commission. It is simply unnecessary for the Commission to consider their wider application in this proceeding. The Commission will therefore not direct EPCOR and DERS to delete the word "rural" from their proposed amendments and the Commission expects that regulated rate option (RRO) providers will use their judgement and fairly assess any future situation involving an abandoned oil and gas site consistent with the principles expressed in this decision.

56. The Advocates requested that the term "direct financial benefit" be substituted for the word "benefit". However, the Advocates have failed to satisfy the Commission that a more, and

³⁷ Exhibit 22091-X0079, EEA Reply Argument, August 11, 2017, PDF pages 4-5.

³⁸ Exhibit 22091-X0082, DERS' Terms and Conditions Reply Argument, August 11, 2017, pages 2-3.

potentially overly restrictive qualifier should be placed on the word “benefit”. The Commission will therefore accept the wording proposed by EPCOR and DERS.

57. The Advocates noted that the word “service” should be capitalized throughout Article 8.11 of EPCOR’s terms and conditions of service as it is a defined term. They also requested that the Commission direct DERS to adopt EPCOR’s definition of “Service” in its own terms and conditions of service. In its reply argument, EPCOR agreed with the Advocates that “service” should be capitalized throughout Article 8.11. The Commission directs EPCOR to capitalize “service” where it has been used in the context of its definition for “Service.” The Commission will not direct DERS to adopt EPCOR’s definition. While DERS has kept its wording similar to EPCOR’s terms and conditions of service, DERS is under no obligation to have identical terms and conditions nor definitions. Furthermore, a direction to adopt another RRO provider’s definition or definitions would be beyond the scope of this proceeding. As such, DERS is under no obligation to adopt EPCOR’s definition or to capitalize the term “service” throughout its Article 3.7.

58. The Advocates requested that the terms and conditions of both EPCOR and DERS be further amended to require deposits and security from businesses which pose a greater risk of default. This proposed amendment does not directly relate to the identified purpose of this proceeding and so the Commission finds it to be out of scope of this proceeding.

59. The Commission likewise finds that arguments made by the Advocates for the payment of a \$75 service quality guarantee are out of scope of this proceeding. Again, this proceeding was initiated to consider amendments to terms and conditions of service to ensure that rural property owners are not charged for distribution charges related to an abandoned oil and gas site located on their property. In its ruling dated July 5, 2017, the Commission determined that it has the authority to order refunds to rural customers who had paid such charges in the absence of terms and conditions that allowed for them and stated that, it would consider requests for the refund of additional costs incurred by individual customers (for example legal fees and disbursements) as a result of the improper billing. What is being requested by the Advocates is neither a refund nor repayment of a cost incurred as a result of improper billing.

60. Regarding the Advocates’ claims for further detailed information regarding the reviews undertaken and the refunds paid, the Commission is satisfied that EPCOR and DERS have complied with the Commission’s direction to refund rural property owners that were improperly billed for an oil and gas site located on their property. DERS has stated several times on the record that it did not bill rural landowners for an oil and gas site’s distribution charges. EPCOR confirmed to the Commission that it has fully complied with the Commission’s direction, noting that it had conducted a complete review of its records and issued the required refunds. The Commission finds that these assurances are sufficient. The Commission expects that should any of the companies discover, or otherwise be advised of, any other rural property owner improperly billed for distribution charges relating to an abandoned oil and gas site located on their property, the rural land owner will be refunded as soon as possible.

3.4 ATCO's and Fortis' retailer Terms and Conditions

ATCO's proposed amendment

61. In its revised retailer terms and conditions for electric distribution service, ATCO proposed to add the following definitions and section:

“Regulated Rate Option Provider” means the party authorized by ATCO Electric to provide electricity services to eligible customers in the ATCO Electric service area under a regulated rate tariff;³⁹

“Rural Lands” means a parcel of land or an interest in any land which is situated outside the boundaries of a city, town, village, summer village or a specialized municipality;⁴⁰

7.5 Cessation of Distribution Tariff charges relating to Oil and Gas Service

Notwithstanding anything to the contrary in these Retailer Terms and Conditions, if ATCO Electric receives a request from the Regulated Rate Option Provider to cease applicable Distribution Tariff charges for a Point of Service, ATCO Electric may, in its sole discretion, cease such charges if:

- (a) The electric service is provided to an oil and gas company located on Rural Lands owned by a farm or residential customer;
- (b) At the time that the service connection was originally provided, the service connection was not requested or approved by, or on behalf of, the then-registered owner of the Rural Lands;
- (c) The Point of Service is for production energy requirements in the petroleum and natural gas industries;
- (d) The Regulated Rate Option Provider has requested that the Point of Service be de-energized as a vacant premise for the purposes of the Settlement System Code; and
- (e) The Regulated Rate Option Provider has advised ATCO Electric in writing that the Regulated Rate Option Provider has conducted a reasonable level of due diligence and determined there is no eligible customer at the Point of Service.

Any cessation of Distribution Tariff charges made under this Section 7.5 shall be effective only from the date that ATCO Electric determines, in its sole discretion, that all of the criteria described in a) through e) above have been satisfied.

ATCO Electric has the right, but not the obligation, acting in its sole discretion, to perform a salvage of Facilities located on Rural Lands at any time after cessation of Distribution Tariff charges as described above.⁴¹

³⁹ Exhibit 22901-X0019, ATCO Electric Retailer Terms and Conditions (Blackline), January 27, 2017, page 4.

⁴⁰ Exhibit 22901-X0019, ATCO Electric Retailer Terms and Conditions (Blackline), January 27, 2017, page 5.

⁴¹ Exhibit 22901-X0019, ATCO Electric Retailer Terms and Conditions (Blackline), January 27, 2017, pages 18-19.

Fortis' proposed amendment

62. Fortis provided similar additions to its retailer terms and conditions of electric distribution service, with two new definitions added as well as a new section:

“Rural Lands” means a parcel of land or an interest in any land that is situated outside the boundaries of a city, town, village, summer village or a specialized municipality;

“Regulated Rate Option Provider” means the party authorized by FortisAlberta to provide electricity services to eligible customers in the FortisAlberta service area under a regulated rate tariff;

9.13 Cessation of Distribution Tariff charges relating to Oil and Gas Service

Notwithstanding anything to the contrary in these Retailer Terms and Conditions, if FortisAlberta receives a request from the Regulated Rate Option Provider to cease applicable Distribution Tariff charges for a Point of Service, FortisAlberta may, in its sole discretion, cease such charges if:

- (a) The Point of Service is located on Rural Lands;
- (b) At the time the Service Connection was originally provided, the Service Connection was not requested or approved by, or on behalf of, the then-Registered Owner of the Rural Lands;
- (c) The Point of Service was constructed as an oil and gas site;
- (d) The Regulated Rate Option Provider has requested that the Point of Service be De-Energized as a vacant premise for the purposes of the Settlement System Code; and
- (e) The Regulated Rate Option Provider has advised FortisAlberta in writing that the Regulated Rate Option Provider has conducted a reasonable level of due diligence and determined there is no eligible customer at the Point of Service.

Any cessation of Distribution Tariff charges made under this Section 9.13 shall be effective only from the date that FortisAlberta determines, in its sole discretion, that all of the criteria described in (a) through (e) above have been satisfied.

FortisAlberta has the right, but not the obligation, acting in its sole discretion, to perform a salvage of Facilities located on Rural Lands at any time after receiving the request from the Regulated Rate Option Provider as described above.⁴²

3.4.1 UCA and Farmers' Advocate's arguments on the amendments proposed by ATCO and Fortis and reply from ATCO and Fortis

63. The UCA requested that Fortis⁴³ and ATCO⁴⁴ explain the purpose of including the phrase “or an interest in any land” in the definition of “Rural Lands” and to confirm if “interest in any land” is synonymous with “Interest in Land”, a defined term in the retailer terms and conditions.

⁴² Exhibit 22091-X0018, FortisAlberta letter to AUC re Proposed Terms and Conditions, January 27, 2017.

⁴³ Exhibit 22091-X0026, FAI-UCA-2017FEB10-001-003, February 10, 2017, page 8.

⁴⁴ Exhibit 22091-X0029, AE-UCA-2017FEB10-001-003, February 10, 2017, page 7.

As a result of this request, Fortis⁴⁵ and ATCO⁴⁶ both revised the definition of “Rural Lands” shown below with the change indicated by the bold strikethrough:

“Rural Lands” means a parcel of land ~~or an interest in any land~~ which is situated outside the boundaries of a city, town, village, summer village or a specialized municipality.

64. At the argument and reply argument stage of the proceeding, the CCA offered no submissions concerning the amendments proposed by Fortis or ATCO. The Advocates submitted that there appeared “to be little value in using the definition “Rural Lands” since the cessation of the Distribution Tariff should still apply after a municipal annexation and the land is no longer rural.” Beyond the objection to the inclusion of this definition, the UCA and the Farmers’ Advocate stated that they had no further objections to Fortis’⁴⁷ and ATCO’s⁴⁸ terms and conditions of service.

65. Neither Fortis nor ATCO responded to this objection, as Fortis simply stated that it had no further comments⁴⁹ and ATCO requested the Commission approve its proposed amendments to its terms and conditions.⁵⁰

66. Additionally, the UCA and the Farmers’ Advocate stated that they maintained interest in the Commission’s direction that ATCO refund any affected rural customers and requested that ATCO confirm that it had complied.⁵¹

67. ATCO confirmed that it had reviewed its records and had refunded all relevant electric charges to the single affected landowner that it had billed.⁵²

3.5 Commission findings

68. The Commission must determine whether it is satisfied that the proposed additions to Fortis and ATCO’s terms and conditions of service achieve the objective set out in the Commission’s notice of proceeding.

69. The only objection raised by the Advocates to the amendments proposed by ATCO and Fortis was the Advocates’ objection to the inclusion of a definition of “Rural Lands”. The basis for this objection was the same as that advanced against EPCOR’s and DERS’ inclusion of the word “rural” in the proposed amendments to their respective terms and conditions. For the same reasons as were articulated in paragraph 55 above, the Commission will not direct Fortis and ATCO to remove the definition of “rural lands” from their proposed amendments.

70. The Commission has considered the balance of the amendments proposed by ATCO and Fortis and is satisfied they will ensure that rural property owners are not improperly billed for service to an oil and gas site located on their property. However, the Commission notes that this issue was raised in the context of a review of Rule 021 and Rule 028 in an industry consultation

⁴⁵ Exhibit 22091-X0043, FAI-UCA-2017FEB10-001 to 003, February 24, 2017, PDF page 8.

⁴⁶ Exhibit 22091-X0039, ATCO Electric's Responses to UCA Requests, February 24, 2017, PDF page 9.

⁴⁷ Exhibit 22091-X0077, UCA and FAO Cover Letter and Argument, July 28, 2017, PDF pages 6-7.

⁴⁸ Exhibit 22091-X0077, UCA and FAO Cover Letter and Argument, July 28, 2017, PDF page 8.

⁴⁹ Exhibit 22091-X0078, FortisAlberta Reply Argument letter to AUC, August 11, 2017.

⁵⁰ Exhibit 22091-X0081, ATCO Electric's Reply Argument, August 11, 2017, PDF page 3.

⁵¹ Exhibit 22091-X0077, UCA and FAO Cover Letter and Argument, July 28, 2017, PDF page 8.

⁵² Exhibit 22091-X0081, ATCO Electric's Reply Argument, August 11, 2017, PDF page 3.

session held in February 2017. A working group was formed to examine the matter but its review was suspended pending the completion of the within proceeding. The Commission believes that a resumption of the review by the working group and all industry stakeholders may result in recommendations that have a direct impact on the business processes proposed by ATCO and Fortis in the amendments to their own terms and conditions.

71. In these circumstances, the Commission conditionally approves the amendments proposed by ATCO and Fortis subject to the outcome of the Rule 021 and Rule 028 consultations. At the conclusion of the consultation, the Commission will revisit its conditional approval and determine whether the present amendments should remain in force or be further amended.

4 Order

72. The Commission orders the companies to make their proposed amendments with the changes directed by the Commission. For ease of reference, the Commission's directed changes have been highlighted in red below.

73. The Commission orders EPCOR to make the following changes to Article 8.11 in its Terms and Conditions of Service:

8.11 Owner's Liability for Payment

In circumstances where:

- (a) there is no Customer of Record registered on the accounting records of EEA; and
 - (b) there are no other occupants of the Site who continue to receive Service,
- the Property Owner shall be deemed to be the Customer of Record and shall be liable for payment for Services provided in accordance with the Regulated Rate Tariff until the date a new Customer of Record is determined by EEA provided that a rural Property Owner will not be deemed to be the Customer of Record or made responsible for paying Regulated Rate Tariff charges related to Service for an energy company's oil and natural gas facilities located on the rural Property Owner's site or sites unless the rural Property Owner **directly** requested the **Service** or will receive a benefit from the continuation of the **Service**. The Property Owner when deemed to be the Customer of Record under this provision shall be liable for all charges relating to identifying, searching for and contacting the Property Owner as a result of there being no Customer of Record for the Site.

74. The Commission orders DERS to add the following definition and to make the following changes to Article 3.7 in its Terms and Conditions of Service:

“Property Owner” means:

- (a) **the registered owner of a parcel of land in the register maintained by the Registrar of Titles under the *Land Titles Act*; or**

- (b) a person who has purchased the parcel from the person mentioned in sub clause (a) pursuant to an agreement for purchase and sale.⁵³

3.7 Owner's Liability for Payment

In circumstances where:

- (a) there is no Customer registered on the account records of DERS; and
- (b) there are no other occupants of the Site who continue to receive service

The Property Owner will be deemed to be the Customer of Record and will be liable for payment for services provided in accordance with the Regulated Rate Tariff until the date a new Customer is determined by DERS, provided that a rural Property Owner will not be deemed to be the Customer of Record or made responsible for paying Regulated Rate Tariff charges related to service for an energy company's oil and natural gas facilities located on the rural property owner's sites unless the rural Property Owner directly requested the service or will receive a benefit from the continuation of the service. The Property Owner when deemed to be the Customer of Record under this provision shall be liable for all charges relating to identifying, searching for and contacting the Property Owner as a result of there being no Customer of Record for the Site.

75. The Commission orders ATCO to adopt, subject to the Commission's direction in paragraph 71, its proposed definitions and proposed Article 7.5 of its Terms and Conditions of service:

Definitions

"Regulated Rate Option Provider" means the party authorized by ATCO Electric to provide electricity services to eligible customers in the ATCO Electric service area under a regulated rate tariff;

"Rural Lands" means a parcel of land which is situated outside the boundaries of a city, town, village, summer village or a specialized municipality;

7.5 Cessation of Distribution Tariff charges relating to Oil and Gas Service

Notwithstanding anything to the contrary in these Retailer Terms and Conditions, if ATCO Electric receives a request from the Regulated Rate Option Provider to cease applicable Distribution Tariff charges for a Point of Service, ATCO Electric may, in its sole discretion, cease such charges if:

- (c) The electric service is provided to an oil and gas company located on Rural Lands owned by a farm or residential customer;
- (d) At the time that the service connection was originally provided, the service connection was not requested or approved by, or on behalf of, the then-registered owner of the Rural Lands;

⁵³ DERS stated that this was its definition of "Property Owner" in an information response to the UCA, however it was not filed with the Commission in its final proposed terms and conditions of service.

- (e) The Point of Service is for production energy requirements in the petroleum and natural gas industries;
- (f) The Regulated Rate Option Provider has requested that the Point of Service be de-energized as a vacant premise for the purposes of the Settlement System Code; and
- (g) The Regulated Rate Option Provider has advised ATCO Electric in writing that the Regulated Rate Option Provider has conducted a reasonable level of due diligence and determined there is no eligible customer at the Point of Service.

Any cessation of Distribution Tariff charges made under this Section 7.5 shall be effective only from the date that ATCO Electric determines, in its sole discretion, that all of the criteria described in a) through e) above have been satisfied.

ATCO Electric has the right, but not the obligation, acting in its sole discretion, to perform a salvage of Facilities located on Rural Lands at any time after cessation of Distribution Tariff charges as described above.

76. The Commission orders Fortis to adopt, subject to the Commission's direction in paragraph 71, its proposed definitions and proposed Article 9.13 of its Terms and Conditions of service:

Definitions

"Rural Lands" means a parcel of land that is situated outside the boundaries of a city, town, village, summer village or a specialized municipality;

"Regulated Rate Option Provider" means the party authorized by FortisAlberta to provide electricity services to eligible customers in the FortisAlberta service area under a regulated rate tariff;

9.13 Cessation of Distribution Tariff charges relating to Oil and Gas Service

Notwithstanding anything to the contrary in these Retailer Terms and Conditions, if FortisAlberta receives a request from the Regulated Rate Option Provider to cease applicable Distribution Tariff charges for a Point of Service, FortisAlberta may, in its sole discretion, cease such charges if:

- (a) The Point of Service is located on Rural Lands;
- (b) At the time the Service Connection was originally provided, the Service Connection was not requested or approved by, or on behalf of, the then-Registered Owner of the Rural Lands;
- (c) The Point of Service was constructed as an oil and gas site;
- (d) The Regulated Rate Option Provider has requested that the Point of Service be De-Energized as a vacant premise for the purposes of the Settlement System Code; and
- (e) The Regulated Rate Option Provider has advised FortisAlberta in writing that the Regulated Rate Option Provider has conducted a reasonable level of due diligence and determined there is no eligible customer at the Point of Service.

Any cessation of Distribution Tariff charges made under this Section 9.13 shall be effective only from the date that FortisAlberta determines, in its sole discretion, that all of the criteria described in (a) through (e) above have been satisfied.

FortisAlberta has the right, but not the obligation, acting in its sole discretion, to perform a salvage of Facilities located on Rural Lands at any time after receiving the request from the Regulated Rate Option Provider as described above.

77. The Commission directs EPCOR and DERS to submit a compliance filing with the directed amendments with the Commission no later than November 24, 2017 at 4 P.M.

78. The Commission directs that the amended terms and conditions of service of the companies be effective no later than December 1, 2017. The Commission directs the companies to notify the Commission when the amended terms and conditions have been put in place and uploaded to their websites.

Dated on November 9, 2017.

Alberta Utilities Commission

(original signed by)

Willie Grieve, QC
Panel Chair

(original signed by)

Carolyn Hutniak
Commission Member

(original signed by)

Neil Jamieson
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Counsel or representative
Direct Energy Regulated Services (DERS) N. Black
EPCOR Energy Alberta GP Inc. (EPCOR) J. Baraniecki
ATCO Electric Ltd. (ATCO) C. Severson
FortisAlberta Inc. (Fortis) J. Sullivan M. Stroh
Office of the Utilities Consumer Advocate (UCA) C. R. McCreary (Counsel) J. Amiwero S. McDonough
Farmers' Advocate Office (Farmers' Advocate) M. Del Colle
Consumers' Coalition of Alberta (CCA) J. Wachowich (Counsel) J. Thygesen
ENMAX Energy Corporation J. Cui K. Hildebrandt

<p>Alberta Utilities Commission</p> <p>Commission panel Willie Grieve, QC, Commission Chair Carolyn Hutniak, Commission Member Neil Jamieson, Commission Member</p> <p>Commission staff Douglas Larder, QC (Commission counsel) Kevin Thompson</p>

Appendix 2 – Abbreviations

Abbreviation	Name in Full
Advocates	The UCA and the Farmers' Advocate collectively
ATCO	ATCO Electric Ltd.
AUC or the Commission	Alberta Utilities Commission
CCA	Consumers Coalition of Alberta
Companies	ATCO, DERS, EPCOR and Fortis collectively
DERS	Direct Energy Regulated Services
EPCOR	EPCOR Energy Alberta GP Inc.
Farmers' Advocate	Farmers' Advocate Office
Fortis	FortisAlberta Inc.
IR	Information request
RRO	Regulated rate option
SIP	Statement of intent to participate
UCA	Office of the Utilities Consumer Advocate