



**Dalziel Enterprises Ltd.**

**Payment in Lieu of Notice Charge Complaint with  
FortisAlberta Inc.**

**February 9, 2018**

**Alberta Utilities Commission**

Decision 22796-D01-2018

Dalziel Enterprises Ltd.

Payment in Lieu of Notice Charge Complaint with FortisAlberta Inc.

Proceeding 22796

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

Calgary, Alberta

T2P 3L8

Telephone: 403-592-8845

Fax: 403-592-4406

Website: [www.auc.ab.ca](http://www.auc.ab.ca)

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## **1 Decision**

1. In this decision, the Alberta Utilities Commission must make a decision on a complaint filed by Dalziel Enterprises Ltd. (DEL) against FortisAlberta Inc. In its complaint, DEL asked the Commission for relief from the payment in lieu of notice (PILON) provisions in Fortis' Customer Terms and Conditions of Electric Distribution Service (T&Cs), along with certain other forms of relief. For the reasons outlined in this decision, the Commission determines that Fortis' T&Cs, including the PILON provisions, apply to DEL and that the PILON provisions were applied to DEL in a manner consistent with the Commission's original approval of the T&Cs. The Commission therefore dismisses DEL's complaint against Fortis.

## **2 Procedural background**

2. In June 2016, the Commission's consumer relations group contacted Mr. Gil Dalziel regarding a complaint that he had filed on behalf of DEL with the Alberta Minister of Energy concerning fees charged to DEL by Fortis. From that point on Commission consumer relations staff communicated regularly with Mr. Dalziel and Fortis about Mr. Dalziel's concerns, while the two parties entered into voluntary discussions with the goal of resolving those concerns. On July 6, 2017, Mr. Dalziel advised Commission staff by telephone that he was unable to resolve the complaint with Fortis. On July 13, 2017, Fortis confirmed with the Commission that DEL's concerns remained unresolved.

3. On July 26, 2017, the Commission initiated this proceeding to consider DEL's complaint pursuant to its authority under the *Alberta Utilities Commission Act* and the *Electric Utilities Act*.

4. The Commission received statements of intent to participate from Fortis, EPCOR Energy Alberta GP Inc. (EPCOR Energy), and the Office of the Utilities Consumer Advocate (UCA). EPCOR Energy explained that it is the regulated rate option (RRO) provider to customers in Fortis' service area. The UCA advised that it would monitor the proceeding and reserved the right to participate should it be deemed necessary. No further submissions were filed by the UCA.

5. On August 11, 2017, DEL filed submissions formally detailing its complaint.<sup>1</sup> On August 25, 2017, Fortis filed its response to the complaint<sup>2</sup> and, on September 7, 2017, DEL filed its reply to Fortis' response.<sup>3</sup> Upon review of these submissions, the Commission determined that it required additional information and issued a set of questions to both parties on September 25, 2017. Both parties provided their responses by the October 11, 2017 due date.

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<sup>1</sup> Exhibits 22796-X0005 to 22796-X0011, DEL application.

<sup>2</sup> Exhibit 22796-X0033, Fortis response submission.

<sup>3</sup> Exhibit 22796-X0042, DEL reply submission.

6. EPCOR Energy filed submissions on September 12, 2017, and October 18, 2017.<sup>4</sup>
7. The Commission requested additional information from Fortis on October 26, 2017, with a response due by October 30, 2017. Fortis responded to the Commission's request on October 27, 2017. The Commission considers the record of this proceeding closed on that date.
8. In reaching the determinations set out in this decision, the Commission has considered the record of this proceeding. 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 this proceeding.

### **3 Introduction**

#### **3.1 Background**

9. To provide context for the parties' positions in this proceeding, it is helpful to begin with a brief review of the uncontested chronology of events giving rise to this proceeding.
10. DEL operates a hay processing plant in Innisfail, Alberta (the site), on land leased from Red Deer County. DEL began receiving electricity services from TransAlta Utilities Corporation (TransAlta) in July 2000.<sup>5</sup> Fortis is the successor of TransAlta's distribution business.
11. DEL communicated with Fortis a number of times in an attempt to find an alternative billing solution that would not require paying peak delivery charges during the months that the facility was not in production.
12. In mid-August 2016, DEL requested adjustments to reduce its peak demand.<sup>6</sup> On August 22, 2016, DEL received a review of minimum (ROM) proposal from Fortis<sup>7</sup> that offered two options to reduce the expected peak demand from 330 kilowatts (kW) to 11 kW and to change the rate assigned to the service from Rate 61 (general service) to Rate 41 (small general service). The two options were as follows:
  - Option 1: Immediate reduction of the monthly minimum demand with a PILON: distribution customer exit charges of \$ 12,652.58 (\$ 4,981.83 for transmission and \$ 7,068.25 for distribution, plus \$ 602.50 Goods and Services Tax)
  - Option 2: No cost with a 7-month notice period. The service would continue to bill on a monthly minimum demand of 220 kW until the notice period expires.
13. In late August 2016, DEL verbally requested a disconnection of service to the site through its competitive retailer, ENMAX Energy Corporation.<sup>8</sup>

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<sup>4</sup> Exhibit 22796-X0014.01 and Exhibit 22796-X0079, EPCOR Energy submissions.

<sup>5</sup> Exhibit 22796-X0033, Fortis response submission, paragraph 18.

<sup>6</sup> Exhibit 22796-X0046, DEL responses to AUC questions, PDF page 4.

<sup>7</sup> Exhibit 22796-X0046, DEL responses to AUC questions, PDF page 4.

<sup>8</sup> Exhibit 22796-X0046, DEL responses to AUC questions, PDF page 5.

14. In mid-September, Fortis understood that DEL was seeking a salvage cost estimate as well as a ROM.<sup>9</sup> On September 26, 2016, Fortis issued a termination of service proposal letter to DEL,<sup>10</sup> which offered two options to permanently disconnect and terminate distribution charges for DEL's Innisfail service. The two options were:

Option 1: Immediate termination with a PILON of \$ 13,073.45 (\$ 5,112.24 for transmission and \$ 7,338.66 for distribution, plus \$ 622.55 Goods and Services Tax)

Option 2: No cost with a 7-month notice period. The service would continue to bill on a monthly minimum demand of 220 kW until the notice period expires.

15. Both the ROM and the termination of service proposal required DEL to indicate its acceptance of an option by providing a signature. DEL did not provide Fortis with a signed acceptance of any of the options offered.

16. On September 28, 2016, ENMAX notified Fortis and EPCOR Energy that it was deselecting the site with reason code 0001 ("customer consuming electricity at the site has physically moved or will be physically moving to another site"). Fortis reported that this was Fortis' first notice that DEL had reportedly vacated the site.

17. On or about October 3, 2016, the site was dropped by ENMAX and returned to EPCOR Energy for enrollment as Fortis' RRO provider. On October 14, 2016, EPCOR Energy sent Fortis a request to de-energize the site. DEL's service was de-energized on October 17, 2016, meaning that the service was disconnected from the distribution system, preventing delivery of electrical energy to the site on the basis that it was vacant.<sup>11</sup>

18. Pursuant to its terms and conditions, EPCOR Energy established Red Deer County, the property owner of the site, as the customer of record for billing purposes effective October 4, 2016.

19. DEL reported that it maintains and intends to maintain a presence at the site. DEL is interested in transferring its service to EQUUS REA Ltd. (EQUUS), and Red Deer County has formally requested that the site be transferred to EQUUS. However, the transfer has not yet occurred.

20. DEL's site remains de-energized as of the close of this proceeding.

### **3.2 Requested relief**

21. DEL's complaint requests relief from the application of the PILON provisions contained in Fortis' T&Cs. Under the T&Cs, a PILON is charged if a customer gives less than the required notice to reduce demand or to terminate service.

22. DEL's complaint also requested the following additional relief:

- Should the Commission determine PILON fees are due to Fortis, an order dismissing the transmission portion of the PILON fee

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<sup>9</sup> Exhibit 22796-X0026, Attachment 12 - Fortis General Tracking System Inquiry #6836CA, PDF page 4.

<sup>10</sup> Exhibit 22796-X0008.

<sup>11</sup> Exhibit 22796-X0033, Fortis response submission, paragraph 32.

- An order declaring Fortis responsible for all receivables claimed to be due to EPCOR Energy by Red Deer County regarding this proceeding
- An order directing Fortis to provide DEL and Red Deer County with a detailed explanation of the method and real kVA [kilovolt-amperes] values used in calculating delivery charges from January 1, 2016 through the time of this proceeding
- An order deeming Fortis liable for financial damages incurred by DEL in the event that they need to provide their own power generation source to operate<sup>12</sup>
- An order requiring Fortis to immediately provide RCN-D [replacement cost new – depreciation] for the site to EQUUS and facilitate the transfer of service.<sup>13</sup>

## 4 Issues

### 4.1 Applicability of Fortis' T&Cs

23. The first issue the Commission must consider is whether Fortis' T&Cs, including the PILON provisions, apply to DEL.

24. DEL submitted that the original contract between TransAlta and DEL (which it described as a legacy contract<sup>14</sup>) had a three-year term, and did not include a provision pertaining to PILON charges. The electric service agreement (ESA) between DEL and TransAlta (which was not signed by a representative of DEL) states:

11. This Contract begins when TransAlta connects the electric service for the Customer....

12. This Contract is in effect for a minimum of Three year(s) from the date the Contract begins after which either TransAlta or the Customer can terminate this contract by giving One year(s) written notice.<sup>15</sup>

25. DEL acknowledged that it continued to receive service from TransAlta (later Fortis) beyond the original three-year term, and submitted that it “was led to believe, during phone conversations with Fortis representatives, that the 15-year contract with TransAlta and subsequent service providers exists and that it was an Electric Service Contract.”<sup>16</sup> In DEL’s view, a “15-year term was agreed upon to ensure TransAlta (Fortis) would be able to fully recoup their investment and there would be no exit fees upon completion of that contract.”<sup>17</sup> DEL estimated that Fortis’ predecessor had originally invested \$20,000 and submitted that over the course of the 15-year contract, DEL had disproportionately paid an estimated \$450,000 to Fortis. DEL suggested that it did not benefit from electric service, as argued by Fortis.<sup>18 19</sup> DEL submitted that the 15-year contract with Fortis expired on December 31, 2015.<sup>20</sup>

<sup>12</sup> Exhibit 22796-X0005, DEL application, PDF page 2.

<sup>13</sup> This request was added to DEL’s reply submission, Exhibit 22796-X0042, PDF page 6.

<sup>14</sup> In response to Question 2, Exhibit 22796-X0046, PDF page 4, DEL described a legacy contract as the original agreement made between TransAlta and DEL.

<sup>15</sup> Exhibit 22796-X0021, Attachment 7 – Letter to Mr. Dalziel from TransAlta dated August 31, 2000.

<sup>16</sup> Exhibit 22796-X0046, DEL responses to AUC questions, PDF page 3.

<sup>17</sup> Exhibit 22796-X0005, DEL application, PDF page 1.

<sup>18</sup> Exhibit 22796-X0042, DEL reply submission, PDF page 5.

<sup>19</sup> Exhibit 22796-X0033, Fortis response submission, paragraph 47.

<sup>20</sup> Exhibit 22796-X0005, DEL application, PDF page 3.

26. DEL stated that it assumed it would be billed according to Rate 61 after December 31, 2015, but with no contractual obligation to continue service with Fortis.<sup>21</sup> DEL explained that on that assumption, it continued to pay invoices in good faith after December 31, 2015, as it tried to negotiate more suitable billing contract terms, and also that it explored other options for power delivery, including rural electrification associations and self-generation.<sup>22</sup>

27. In DEL's view, Section 7.3.2 (Impact of Changes on a Customer's Electric Service Agreement) of Fortis' T&Cs does not apply to DEL because minimum demand payments allowed TransAlta and Fortis to recover their investment in the distribution facilities, and further, permitting new exit charges in the form of PILON charges is "misaligned with the spirit of the original agreement and the principles of public utility regulation."<sup>23</sup>

28. DEL argued that both parties must consent to any changes to a contract and that applying the T&Cs in these circumstances "creates a situation that is counter to the Commissions [*sic*] purpose of protecting consumers in a regulated industry":

Applying additional Terms and Conditions in this context creates an unreasonable and unfair result for DEL. The Consumer, in this instance, is deprived of contractual certainty, while the Utility is granted investment protection by the high minimums of original contract plus revenue protection by the PILON of new Terms and Conditions. By applying these new terms and conditions, 100% of the financial risk associated with power delivery has been transferred to the consumer with no consideration for the consumer. Modifying Terms and Conditions in this way runs counter to common law principles requiring mutual consideration for the formation of a contract.

In this instance, DEL was denied in their attempts to negotiate more suitable terms because the consumer has no recourse if the terms are deemed unfair. Applying the new Terms and Conditions creates a situation that is counter to the Commissions [*sic*] purpose of protecting consumers in a regulated industry.<sup>24</sup>

29. Fortis argued that the T&Cs, including the PILON provisions, are applicable to DEL. Fortis submitted that a customer who takes electric service from Fortis is deemed to have accepted the T&Cs.<sup>25</sup> Fortis submitted that DEL's failure to sign the ESA has no bearing on the legal applicability of the T&Cs.

30. In Fortis' view, its position is consistent with the Commission's findings in Decision 2011-383.<sup>26</sup> Fortis submitted that in that decision the Commission found that the common law doctrine of privity of contract is inapplicable to the T&Cs, which the Commission determined had the force and effect of a legally imposed regulation.<sup>27</sup> Fortis cited the following paragraphs from Decision 2011-383 in support:

87. The Commission notes that Edson Manor's focus on privity which is not implicated at all by the vacant billing charges is misplaced. The Terms and Conditions

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<sup>21</sup> Exhibit 22796-X0046, DEL responses to AUC questions, PDF page 3.

<sup>22</sup> Exhibit 22796-X0046, DEL responses to AUC questions, PDF page 4.

<sup>23</sup> Exhibit 22796-X0042, DEL reply submission, PDF page 2.

<sup>24</sup> Exhibit 22796-X0046, DEL responses to AUC questions, PDF page 4.

<sup>25</sup> Exhibit 22796-X0059, Fortis responses to AUC questions, PDF page 3.

<sup>26</sup> Decision 2011-383: Edson Manor Properties Ltd., Electricity Billing Dispute with EPCOR Energy Alberta Inc., Proceeding 968, Application 1606821-1, September 22, 2011.

<sup>27</sup> Exhibit 22796-X0059, Fortis responses to AUC questions, PDF page 3.

between the distribution utility and customers are not contracts in the ordinary, common law, sense. They cannot even be characterized as contracts. They are legally imposed regulations that bind the utility to provide a service at just and reasonable rates to all who require and demand them. Public utility regulation is a matter of public law. Rate regulation of public utilities in Alberta is a creature of statute and in Alberta, the Commission and its predecessors have had jurisdiction over public utilities and the manner in which rates are set including the Terms and Conditions as denoted above. The *Electric Utilities Act* and its regulations are a comprehensive statutory scheme. The provisions form a coherent and workable scheme to, among other things, govern all aspects of the provisions of service, billing practices of a regulated rate provider and payment for services rendered.

88. EPCOR as a regulated rate provider has a duty to provide electrical service under Section 103(9) of the *Electric Utilities Act* and Section 2 of the *Regulated Rate Option Regulation* to eligible customers. In return, EPCOR may recover its prudent costs from eligible customers, in accordance with a regulated rate tariff which is approved by the Commission.

89. Given the comprehensive nature of the statutory scheme, the Commission considers that the relationship between EPCOR and Edson Manor results from the statutory scheme and is not a voluntary one. The Commission took note that Edson Manor had a clear understanding of the statutory scheme in place. Edson Manor acknowledged that EPCOR as a regulated rate provider has a duty to serve. Also, Edson Manor did not take issue with the charges imposed for electrical services to its common areas and that the Terms and Conditions applied to the provision of that service. The statutory scheme for the provision of regulated rate service is not comparable to a contract for unregulated services. The Commission finds that agreements under the regulated rate tariff are governed by the provisions of the tariff and not by the common law rules respecting contracts. [footnotes removed]

31. Fortis added that its T&Cs supersede the ESA's original terms, highlighting clause 13 of the ESA, which states that the ESA is to be "governed by TransAlta's Terms and Conditions of Electric Service, as approved from time to time by the Alberta Energy & Utilities Board [a predecessor of the Commission (board)] and its successors."<sup>28</sup>

### Commission findings

32. In order to determine whether Fortis' T&Cs apply to DEL, the Commission must consider the statutory framework under which the tariff is approved. The *Electric Utilities Act* and its regulations establish a comprehensive regulatory scheme governing the electricity market and the provision of electricity in Alberta.

33. As an owner of an electric distribution system pursuant to the *Electric Utilities Act*, Fortis has a duty to provide electric distribution service under Section 105 of the *Electric Utilities Act*. In return, Fortis may recover its prudent costs from eligible customers in accordance with a tariff that is approved by the Commission. The T&Cs, including the PILON provisions at issue in this proceeding, were approved in Decision 2014-018.<sup>29</sup>

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<sup>28</sup> Exhibit 22796-X0033, Fortis response submission, paragraph 20.

<sup>29</sup> Decision 2014-018: FortisAlberta Inc., 2012-2014 Phase II Distribution Tariff, Proceeding 2363, Application 1609211-1, January 27, 2014.

34. The Commission cannot accept DEL's arguments that the PILON provisions do not or should not apply because its "original contract"<sup>30</sup> did not contain a PILON provision, that an amendment including a PILON provision would require the consent of both parties, or that to allow the application of the PILON provisions would be "misaligned with the original agreement and the principles of public utility regulation."<sup>31</sup>

35. The Commission has previously held that the terms and conditions between a public utility and its customers are not voluntary contracts, but "legally imposed regulations that bind the utility to provide a service at just and reasonable rates to all who require and demand them."<sup>32</sup> As noted by the Commission in paragraph 95 of Decision 2011-383:

But as we have seen from the law of public utilities, there is no consent let alone agreement between the parties. The doctrine that public utilities are obligated to serve all who request their services for reasonable prices can be traced back to Lord Hale in the late seventeenth century. It was a matter of common law long before it was ever codified in statutes such as those governing electricity in Alberta today. The lack of consent between the two parties over the suppliers' willingness to provide and the prices it can charge indicate that the Terms and Conditions are not a contract in any sense of the common law definition of contract. In fact, the common law has always held, as far back as Lord Hale, that these are obligations and not voluntary contracts.

36. Consistent with the statutory scheme and the principles of public utilities law described above, the Commission finds that the relationship between Fortis and its customers results from legislative regulation and is not a voluntary one. Explicit consent from individual customers to changes to terms and conditions of service is therefore not required. Further, the terms of an ESA do not necessarily contain all those terms and conditions governing the relationship between a public utility and its customers.

37. Under the *Electric Utilities Act*, a "customer" means a person purchasing electricity for the person's own use. According to the T&Cs, "customer," in part, "has the meaning given such term in, and is determined in accordance with, the [*Electric Utilities Act*]." DEL began purchasing electricity for its own use in 2000, and continued to purchase electricity until DEL sought to disconnect in late August 2016. Consequently, while the ESA was not signed, the Commission is satisfied that DEL was a customer of Fortis, as defined in the *Electric Utilities Act* and the T&Cs, at the time DEL disconnected from the site in 2016.<sup>33</sup> By operation of the legislative framework and principles of public utilities law, the agreement between DEL and Fortis is therefore governed, in part, by the T&Cs.

38. Although not determinative, the ESA provisions also expressly acknowledge that the supply of electric service is governed by the applicable terms and conditions, which may be changed from time to time:<sup>34</sup>

13. The supply of electric service to the Customer is governed by TransAlta's Terms and Conditions of Electric Service, as approved from time to time by the Alberta Energy &

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<sup>30</sup> Exhibit 22796-X0042, DEL reply submission, PDF page 2.

<sup>31</sup> Exhibit 22796-X0042, DEL reply submission, PDF page 2.

<sup>32</sup> Decision 2011-383, paragraph 87.

<sup>33</sup> The Commission notes that subsection 105(1)(k) of the *Electric Utilities Act* requires Fortis to connect and disconnect customers in accordance with its approved tariff.

<sup>34</sup> Exhibit 22796-X0021, Fortis response submission, Attachment 7.

Utilities Board, and any successor, replacement, or additional applicable terms and conditions as may be so approved....

16. ... From and after December 31, 2000, TransAlta will continue to supply unbundled interconnection and distribution access service under this Contract in accordance with applicable tariffs, terms and conditions approved from time to time by the Alberta Energy & Utilities Board.

39. For all of the above reasons, the Commission finds that the T&Cs, including the PILON provisions, apply to DEL.

40. While the Commission acknowledges DEL's argument that over the course of the 15-year contract it had paid disproportionate demand charges compared to Fortis' original investment,<sup>35</sup> this does not alter the conclusion that DEL was a customer of Fortis and is therefore bound by Fortis' T&Cs.

## **4.2 Applicability of PILON charges**

### **4.2.1 Interpretation and application of PILON provisions**

41. Having found that the T&Cs, including the PILON provisions, apply to DEL, the Commission must next consider whether Fortis interpreted and applied the PILON provisions in a manner that was contemplated in the Commission's original approval of the T&Cs.

42. DEL submitted that when its 15-year contract with Fortis expired on December 31, 2015, TransAlta and Fortis had fully recovered their investment in the service, and therefore no PILON charges were owed to Fortis.

43. DEL also argued that should the Commission determine that PILON charges are due to Fortis, the transmission portion of the PILON charges should be waived. However, DEL did not provide a reason for its request to waive the transmission portion of the PILON charges.

44. Fortis advised<sup>36</sup> that the Commission approved the current PILON provisions in Decision 2014-018, and that the current notice provisions for the distribution and transmission components of PILON were approved initially in decisions 2005-086<sup>37</sup> and 2007-106,<sup>38</sup> respectively, and later confirmed in Decision 2010-606.<sup>39</sup>

45. Fortis explained that PILON charges are required to provide adequate notice for planning and revenue stability for other customers,<sup>40</sup> and submitted that in Decision 2005-086, the Commission's predecessor accepted its explanation of the purpose of PILON charges:<sup>41</sup>

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<sup>35</sup> Exhibit 22796-X0042, DEL reply submission, PDF page 5.

<sup>36</sup> Exhibit 22796-X0033, Fortis response submission, paragraphs 8 and 15.

<sup>37</sup> Decision 2005-086: FortisAlberta Inc., 2005 Distribution Tariff – Payment in Lieu of Notice, Proceeding 14350, Application 1371998-1, August 2, 2005.

<sup>38</sup> Decision 2007-106: Alberta Electric System Operator, 2007 General Tariff Application, Proceeding 15832, Application 1485517-1, December 21, 2007.

<sup>39</sup> Decision 2010-606: Alberta Electric System Operator, 2010 ISO Tariff, Proceeding 530, Application 1605961-1, December 22, 2010.

<sup>40</sup> Exhibit 22796-X0033, Fortis response submission, paragraph 4.

<sup>41</sup> Exhibit 22796-X0033, Fortis response submission, paragraph 42.

The Board notes that [FortisAlberta] submitted that the PILON maximum notice period, applicable to demand reductions and customer exits, should be an appropriate balance of cost and risks considering the interests of the existing customer, other remaining customers and the distribution utility. [FortisAlberta] submitted that this approach constituted a balance between flexibility for an existing or demand-reducing customer with ensuring a level of revenue and rate stability appropriate for a distribution wires utility and its remaining customers. The Board finds merit in [FortisAlberta's] argument that "the primary purpose of a notice period is to provide an appropriate level of revenue certainty and rates stability for a distribution wires company and its remaining customers". [emphasis added by Fortis]

46. Fortis explained that the investment term for the service, which was 15 years in this case, reflects the number of years required to provide an investment level sufficient to cover the costs to provide service to the customer. Fortis noted that although the investment term for the service had expired, PILON charges continue to apply pursuant to Section 7.3.2 of its T&Cs.<sup>42</sup>

47. Fortis argued that in requiring DEL to pay PILON charges, it has acted consistent with the T&Cs. Treating customers uniquely, as suggested by DEL in its request for relief from the PILON charges, would "constitute an inconsistent and discriminatory application of the Terms and Conditions, and a departure from both FortisAlberta's and the Commission's historical practice."<sup>43</sup> Fortis explained that absent the required notice, costs to provide service to its customers could increase, because it could result in an excess or deficiency of transmission and distribution capacity. It also advised that it would be administratively complex to attempt to allocate costs on a customer-by-customer basis. Fortis submitted that waiving the PILON charges could create a precedent whereby other customers would then seek to avoid PILON responsibility.<sup>44</sup>

48. DEL refuted Fortis' position that PILON charges are needed to provide adequate notice for planning and revenue stability for other customers, claiming that the reduction in its demand would not have any significant impact on Fortis' revenues or costs.<sup>45</sup>

### Commission findings

49. Sections 7.3.2 and 7.5 of the T&Cs relate to reducing a service's expected peak demand and permanently disconnecting a service:

#### 7.3.2 Impact of Changes on a Customer's Electric Service Agreement

Notwithstanding any other provisions in the Terms and Conditions, a new Electric Service Agreement with revised Minimum Demand and Maximum Supply values may be required before the Customer may change their Expected Peak Demand.

...

#### *Decreases*

If a Customer's Expected Peak Demand or kVA of Capacity decreases, the Customer may enter into a new Electric Service Agreement as provided by FortisAlberta upon

<sup>42</sup> Exhibit 22796-X0033, Fortis response submission, paragraphs 20-22.

<sup>43</sup> Exhibit 22796-X0033, Fortis response submission, paragraph 46.

<sup>44</sup> Exhibit 22796-X0033, Fortis response submission, paragraphs 41 and 43.

<sup>45</sup> Exhibit 22796-X0042, DEL reply submission, PDF page 3.

request, and the Contract Minimum Demand will be revised to two-thirds of the new Expected Peak Demand or to the new kVA of Capacity.

...

A Customer is required to give notice to FortisAlberta to reduce the Contract Minimum Demand. For every 30 kW reduction in Minimum Demand, 1 month of notice is required. A Customer may give no more than 1 notice to reduce per year per Point of Service. Any notice provided in this instance shall take the form of signed acceptance by the Customer of FortisAlberta's Review of Minimum ("ROM") Proposal Letter, which FortisAlberta shall use commercially reasonable efforts to provide the Customer in a timely basis. The notice period shall commence upon receipt by FortisAlberta of the accepted ROM Proposal Letter from the Customer. If FortisAlberta determines in good faith that it has caused a delay of greater than 1 month in its issuance of the ROM Proposal Letter to the Customer, and has thereby delayed the commencement of the notice period, the notice period may be adjusted as deemed appropriate by FortisAlberta, acting reasonably and in good faith, and such adjustment will be reflected in the notice period contained in the ROM Proposal Letter.

**If less notice than is required is provided, the Customer is charged a "Payment In Lieu Of Notice" amount ("PILON"),** calculated as the difference between the Minimum Charge based on the original Contract Minimum Demand and the Minimum Charge on the reduced Contract Minimum Demand, multiplied by the number of months falling short of the required notice. With respect to the distribution component of FortisAlberta's Distribution Tariff charges, the number of months used to calculate the Customer's PILON shall be limited to 24. With respect to the transmission component of FortisAlberta's Distribution Tariff charges, the number of months used to calculate the Customer's PILON shall be limited to 60.

...

If the Customer pays the applicable PILON instead of providing the required notice, demand ratchet history is reduced correspondingly for billing purposes by the amount of the reduction in Operating Demand corresponding to the reduction in Contract Minimum Demand.

The Customer shall pay any applicable Buy-Down Charges or PILON charges at the time that a buy-down proposal is accepted by the Customer. [emphasis added]

...

## 7.5 Charges Related to Permanent Disconnection

When a Distribution Load Customer wishes to permanently disconnect their Point of Service, in addition to the requirements under Article 10, a Customer may be assessed a Distribution Customer Exit Charge.

The Distribution Customer Exit Charge is:

- (a) the Buy-Down Charge, calculated as prescribed under Section 7.3.2, using a new demand of zero, if the termination of service occurs before the end of the Investment Term;

- (b) plus, for Customers on Rate 63, the metres of Customer Extension multiplied by the corresponding maximum Investment Level for the remaining service life, provided in Table 2 of Appendix “B” attached hereto, if the termination of service occurs before the end of the Investment Term;
- (c) less, the value of any Facilities that may be salvaged, reduced by the cost of undertaking the salvage;
- (d) **plus, a PILON, calculated as prescribed under Section 7.3.2, using a new Contract Minimum Demand of zero;** and
- (e) plus, where applicable, any outstanding amounts attributable to the Customer with respect to, but not limited to, any deferral accounts and Commission approved riders, any charges required from FortisAlberta by the Independent System Operator, and charges arising from services supplied by the distribution company prior to the termination of service. [emphasis added]

50. The current PILON provisions (which include a transmission-related and a distribution-related component) were approved through a formal regulatory process, as part of Fortis’ T&Cs in Fortis’ last Phase II distribution tariff proceeding, resulting in Decision 2014-018. This process allowed affected parties sufficient opportunity to test the T&Cs. As such, application of the approved T&Cs should not be viewed as unfair, unreasonable or unforeseen, in the absence of evidence establishing that they were applied in a manner not contemplated in the Commission’s original approval. For the reasons that follow, such a conclusion is not reasonably supported by the evidence in this proceeding.

51. The Commission agrees with Fortis’ submission that PILON charges and a utility’s recovery of its initial investment are distinguishable. This was expressly acknowledged when the Board first approved distribution PILON charges for Fortis in Decision 2005-086. In that decision, the Board expressly distinguished between the concepts of PILON charges and a utility’s recovery of its initial investment, stating:

The Board notes that FAI’s [Fortis’] larger customers are subject to Electric Service Agreements ranging in duration up to 15 years. The Board notes that such customers who wish to reduce load or terminate service may be subject to a “Buy Down Charge” which is separate from PILON.<sup>46</sup>

...

Therefore, the Board finds that PILON is not directly associated with recovery of the initial investment, which recovery is more directly dealt with by the investment policy and associated customer contribution, electric service agreement and buy-down policy.<sup>47</sup>

52. The language of the T&Cs under consideration in this proceeding maintains that distinction and the disassociation between a utility’s recovery of its investment and the payment of PILON charges. For example, the definitions of “investment term” and “investment level” pertain to the recovery of a utility’s costs to provide service to a customer.<sup>48</sup> In contrast, a

<sup>46</sup> Decision 2005-086, PDF page 7.

<sup>47</sup> Decision 2005-086, PDF page 8.

<sup>48</sup> According to the T&Cs, “‘Investment Term’ means the length of time or term as determined by FortisAlberta for investment purposes,” and “‘Investment Level’ means the total dollar investment that FortisAlberta is permitted to make toward the construction of new or upgraded Facilities which total investment available is

customer is charged a PILON amount if a customer gives less than the required notice to reduce demand or to terminate service.<sup>49</sup>

53. Further, the Commission observes that the distribution customer exit charge under Section 7.5 of the T&Cs has two distinct components: the buy-down charge under Section 7.5(a), and PILON charges under Section 7.5(d). The investment term is relevant to the calculation of the buy-down charge under Section 7.5(a). PILON charges are separate and additional charges calculated under Section 7.5(d), and are payable even if the buy-down charge is zero; for example where the investment term expired before the request for termination of service was made, as was the case for DEL.

54. In view of the above, the Commission is satisfied that notwithstanding the expiry of DEL's investment term and Fortis' recovery of its costs to provide service to DEL, Fortis' requirement for payment of a PILON, inclusive of the transmission portion, is consistent with the T&Cs approved by the Commission.

55. In certain, very limited circumstances, that are not present in this proceeding, the T&Cs may be waived or altered. Sections 3.3 and 16.8 of the T&Cs state:

### 3.3 Amendments to the Terms and Conditions

... No agreement can provide for the waiver or alteration of any part of the Terms and Conditions unless **such agreement is first filed with and approved by the Commission** and such agreement expressly provides for any such waiver or alteration.

...

### 16.8 No Waiver

... No term or condition of the Terms and Conditions or any other agreement between the Responsible Party and FortisAlberta relating to a Point of Service or Electric Distribution Service shall be deemed to have been waived and no breach excused **unless such waiver or consent to excuse is in writing and signed by the party claimed to have waived or consented to excuse.** [emphasis added]

56. DEL did not argue or provide evidence that the requirements set out in sections 3.3 and 16.8 of the T&Cs were met. Accordingly, the Commission finds that there was no waiver of the PILON provisions and so again it cannot be concluded that those provisions were applied in a manner not contemplated in the Commission's original approval.

57. While DEL submitted that granting an exemption to the PILON charges in this case would not have a significant impact on Fortis' revenues or costs, the Commission continues to be of the view that inconsistent or discretionary application of the T&Cs could result in a greater

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determined by the Investment Term and Expected Peak Demand and, where applicable, Metres of Customer Extension. Such Investment Level shall also be in accordance with the Customer Contribution Schedules contained in Appendix 'B' attached hereto, and such total distribution investment available shall not exceed the cost as estimated by FortisAlberta of constructing the Facilities."

<sup>49</sup> According to the T&Cs, PILON is calculated as "the difference between the Minimum Charge based on the original Contract Minimum Demand and the Minimum Charge on the reduced Contract Minimum Demand, multiplied by the number of months falling short of the required notice."

administrative burden and higher utility costs and rates. This was discussed by the Commission in paragraph 63 of Decision 2011-362:<sup>50</sup>

The Commission agrees with Fortis that rates and terms and conditions are designed on a rate or customer class basis and not on an individual basis. The Commission also agrees that having standard terms and conditions and a consistent application by the utility, absent the exercise of discretion, eliminates administrative complexities that might ultimately lead to higher utility costs and rates. The Commission also notes Fortis' argument that a reduction in PILON revenue, had it been known at the time revenue requirements were set, may have led to different rates than what were set in the last GTA [general tariff application]. Allowing exceptions or an inconsistent application of T&Cs after specific revenue requirements have been set, without good reason, could result in greater forecasting uncertainty and risk to customers.

58. For all of the above reasons, the Commission is not persuaded by DEL's submissions that the T&Cs are being applied by Fortis in a manner that is unfair, unreasonable, unforeseen or not contemplated in the Commission's original approval.

#### **4.2.2 Equitable remedies**

##### **4.2.2.1 Estoppel**

59. DEL submitted that after being informed of communications between Commission consumer relations staff and Fortis, from which DEL understood that DEL would not be liable for any exit fees,<sup>51</sup> "... DEL decided to request permanent disconnection upon the completion of their retail contract with [ENMAX] in August 2016."<sup>52</sup> The Commission interpreted DEL's submissions to suggest that Fortis is prevented or "estopped" from relying on its T&Cs, and specifically the PILON provisions, because Fortis directly or indirectly made a representation upon which DEL relied.

60. Fortis submitted that the Commission's jurisdiction in relation to the various types of relief requested in DEL's complaint is grounded in the Commission's statutory mandate to fix just and reasonable rates based on a consideration of the role of Fortis' tariff in ensuring the fair and reasonable treatment of all ratepayers. In Fortis' view, the Commission's authority does not include an ability to grant the equitable relief requested by DEL in its complaint, based on implied or express grants of legal jurisdiction, or otherwise.

#### **Commission findings**

61. For the reasons that follow, the Commission has determined that elements necessary to establish an estoppel against Fortis have not been satisfied. Accordingly, the issue of the Commission's jurisdiction to award equitable remedies arising from a finding of estoppel is moot.

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<sup>50</sup> Decision 2011-362: Weyerhaeuser Company Limited, Transmission Payment in Lieu of Notice Charges to Weyerhaeuser Drayton Valley Oriented Strand Board Mill Load Reduction, Proceeding 994, Application 1606844-1, September 2, 2011.

<sup>51</sup> Exhibit 22796-X0005, DEL application, PDF page 4.

<sup>52</sup> Exhibit 22796-X0005, DEL application, PDF page 1.

62. The Supreme Court of Canada has established the legal test for estoppel by representation as follows:<sup>53</sup>

The essential factors giving rise to an estoppel are I think: --

- (1) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made.
  - (2) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation is made.
  - (3) Detriment to such person as a consequence of the act or omission.
- Mere silence cannot amount to a representation, but when there is a duty to disclose deliberate silence may become significant and amount to a representation.

63. The Alberta courts have also held that the subject representation must be clear and unambiguous.<sup>54</sup>

### **The representation**

64. The first step in the analysis is to consider the alleged representation itself.

65. On July 8, 2016, Mr. Deschamps, a supervisor, and Ms. Urzada, a site management work leader, both in Fortis' customer operations department, attended a July 8, 2016 conference call with Commission consumer relations staff regarding Mr. Dalziel's concerns. No representative of DEL participated in the conference call.

66. DEL submitted that it relied on an oral representation made by Fortis during the conference call, which was later communicated to DEL by Commission consumer relations staff in a July 11, 2016 email to Mr. Dalziel. The email states, in part:

I had a discussion with Fortis on Friday, July 8, 2016 regarding their investment into the services at your site. Fortis advised that service for your site began after the contract was signed on January 1, 2001 with the agreement of a 15 year investment. Fifteen years was determined as the amount of time it would take Fortis to recoup their initial investment into setting up services/equipment at your site. The contract ensures Fortis will be able to recoup the investment and if you were to exit the contract at this point you would not be charged any exit fees as the 15 year term has passed. If you had chosen to exit the contract earlier than the 15 years term, you would have been charged exit fees so that Fortis would be able to recoup their initial investment costs.<sup>55</sup>

67. The email did not indicate who from Fortis attended the conference call or whether the representatives had the status, capacity or authority to bind Fortis.

68. The Commission observes that leading up to the conference call, Mr. Deschamps indicated to Commission consumer relations staff that "there appears to be a lot of confusion on the initial request for this inquiry and perhaps some misinterpretation on the part of

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<sup>53</sup> Decision 2005-086, PDF page 8.

<sup>53</sup> *Canadian Pacific Hotels Ltd v Bank of Montreal*, [1987] 1 SCR 711 at para 32, quoting *Greenwood v Martin's Bank Ltd*, [1933] AC 51 (HL).

<sup>54</sup> *Morrow v Royal Insurance Co of Canada*, [1990] AWLD 464 at para 80 (ABQB), aff'd [1992] AWLD 692 (ABCA).

<sup>55</sup> Exhibit 22796-X0006, Appendix 1.

FortisAlberta...”<sup>56</sup> After the conference call, Fortis “understood that this matter has been resolved” and closed its file.<sup>57</sup> The Commission also closed its investigation.<sup>58</sup> However, it appears that matters had not been resolved, and Fortis, Commission consumer relations staff and Mr. Dalziel continued to discuss the matter including the prospect of DEL using the existing Fortis equipment.<sup>59</sup> It is not clear to the Commission, based on the record of this proceeding, what the specific misinterpretation referenced by Mr. Deschamps was and how it was resolved during the conference call.

69. Fortis did not acknowledge that its representatives provided the oral representation as set out in the July 11, 2016 email. Fortis explained, “The Company understood this to be an informal conversation; there was no set agenda and the FortisAlberta attendees did not take any notes.”<sup>60</sup> Fortis submitted that it was always of the view, and had been consistent in its oral and written representations to DEL and Commission staff, that PILON charges applied to DEL if inadequate notice was provided.<sup>61</sup> The Commission notes that a Fortis representative was not copied on the July 11, 2016 email, and there is no evidence that Fortis became aware of the specific wording in the July 11, 2016 email until September 26, 2016.<sup>62</sup>

70. As indicated above, for there to be an estoppel by representation, there must be evidence of a clear and unambiguous representation, made by one party to another with the intention of inducing a course of conduct. None of those elements is reasonably satisfied on the evidence. A summary hearsay statement made to DEL’s representatives by a third party based on a recollection of what was said at a meeting by Fortis’ representatives where DEL was not in attendance, without confirmation from Fortis, cannot be said to be a representation provided by Fortis to DEL. More significantly, it cannot be said that the representation is a clear and unambiguous statement that PILON charges would not apply to DEL. For example, the email says that the conference call was regarding Fortis’ initial investment and the discussion of exit fees appears to be in relation to the 15-year investment term; there is no mention of PILON charges in the email and the term “exit fees” is not defined. Finally, there is no evidence that any representation that might have been made during the conference call was intended to induce a course of conduct on the part of DEL. Accordingly, the Commission finds as a matter of mixed fact and law that DEL has failed to satisfy the requirements for an estoppel by representation.

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<sup>56</sup> Exhibit 22796-X0070, Attachment FAI-AUC-2017SEP25-008.02 June-July 2016 AUC and FAI Email Correspondence, PDF page 5.

<sup>57</sup> Exhibit 22796-X0059, Fortis responses to AUC questions, Question 8(a).

<sup>58</sup> Exhibit 22796-X0070, Attachment FAI-AUC-2017SEP25-008.02 June-July 2016 AUC and FAI Email Correspondence, PDF page 3.

<sup>59</sup> Exhibit 22796-X0070, Attachment FAI-AUC-2017SEP25-008.02 June-July 2016 AUC and FAI Email Correspondence, PDF pages 2-3.

<sup>60</sup> Exhibit 22796-X0059, Fortis responses to AUC questions, Question 8(a).

<sup>61</sup> Exhibit 22796-X0025, Attachment 11 - FortisAlberta General Tracking System Inquiry #09BB90, PDF page 2; Exhibit 22796-X0026, Attachment 12 - FortisAlberta General Tracking System Inquiry #6836CA, PDF pages 2, 4-5; Exhibit 22796-X0027, Attachment 13 - ROM Proposal letter to DEL from FortisAlberta dated August 17, 2016; Exhibit 22796-X0075, Attachment FAI-AUC-2017SEP25-008.07 FAI Sept 2016 email and ROM Letter to DEL.

<sup>62</sup> Exhibit 22796-X0026, Attachment 12 - FortisAlberta General Tracking System Inquiry #6836CA, PDF page 5.

### 4.3 Other requested relief and remedies

#### 4.3.1 Idle service charges

71. DEL submitted that Fortis began billing Red Deer County for delivery charges, through EPCOR Energy, in January 2017. DEL requested an order declaring Fortis responsible for all receivables claimed to be due to EPCOR Energy by Red Deer County regarding this proceeding.

72. EPCOR Energy explained that it provides RRO service to customers in Fortis' service territory and gave the following explanation of why Red Deer County was responsible for payment of the bills for the site effective October 4, 2016:<sup>63</sup>

4. The Site defaulted to EPCOR Energy on or about October 3, 2016. The site was dropped by a competitive retailer and returned to EPCOR Energy for enrollment as Fortis' RRO provider.

5. When the Site defaulted to EPCOR Energy, there was no information about the Site's customer. The site was dropped using de-select reason code 0001 indicating that the "customer consuming electricity at the site has physically moved or will be physically moving to another site". In accordance with section 8.11 of EEA's [EPCOR Energy's] Regulated Rate Tariff Terms and Conditions of Service (Terms and Conditions), where there is no Customer of record and there are no other occupants of the Site who continue to receive Service, the Property Owner is deemed to be the Customer of Record. The Property Owner was placed into billing for the Site in December 2016 with an effective date of October 4, 2016. [footnotes removed]

73. Fortis explained that pursuant to Section 8.2.2 of its retailer T&Cs and Section 10.1.2 of its customer T&Cs, EPCOR Energy (in this instance) pays idle service charges when a site is de-energized. Fortis explained that idle service charges allow distribution system facilities to remain in place for future use and cover the ongoing cost of owning, operating and maintaining those facilities.<sup>64</sup> Fortis argued that the payment of such charges is not conditional upon whether the customer or the customer's retailer agrees to pay such charges.<sup>65</sup> It stated:

FortisAlberta must comply with the Retailer's request to de-energize the Point of Service, and in so complying, is entitled to be recover costs associated with owning, operating and maintaining facilities at the Point of Service during the period of de-energization.<sup>66</sup>

74. In its reply submission, DEL stated that it "never did have intentions of 'moving out of the facility,'" it "continues to maintain a presence at the site" and it "contacted and attempted to contact Fortis numerous times since April 2017 in attempts to get service re-energized."<sup>67</sup>

<sup>63</sup> Exhibit 22796-X0014.01, EPCOR Energy submission, paragraphs 4-5.

<sup>64</sup> Exhibit 22796-X0033, Fortis response submission, paragraph 17.

<sup>65</sup> Exhibit 22796-X0059, Fortis responses to AUC questions, questions 5(b) and 5(c).

<sup>66</sup> Exhibit 22796-X0059, Fortis responses to AUC questions, question 5(c).

<sup>67</sup> Exhibit 22796-X0042, DEL reply submission, PDF page 4.

## Commission findings

75. Pursuant to Fortis' T&Cs, idle service charges apply when a service is not energized. Section 8.2.2 of Fortis' retailer T&Cs and Section 10.1.2 of Fortis' customer T&Cs state:

### 8.2.2 Idle Service Charges

FortisAlberta will accept a request from the Customer's Retailer to De-Energize provided that the Customer, or the Customer's Retailer, agrees to pay the Idle Service Charges as provided in the Rates, Options and Riders Schedules. Idle Service Charges will apply during any period of De-Energization.

...

### 10.1.2 Idle Service Charges

FortisAlberta will accept a request from the Customer's Retailer to De-Energize provided that the Customer, or the Customer's Retailer, agrees to pay the Idle Service Charges as provided in the Rates, Options and Riders Schedules.

76. The T&Cs associated with the idle service charges that are the subject of this complaint were approved through a formal regulatory review process. This process allowed affected parties sufficient opportunity to test the T&Cs. As such, in the absence of evidence establishing that the approved T&Cs were applied in a manner not contemplated in the Commission's original approval, their application should not be viewed as unfair, unreasonable or unforeseen.

77. The Commission finds that DEL did not demonstrate that Fortis or EPCOR Energy applied the idle service charges in a manner that is unfair, unreasonable or unforeseen. The Commission agrees with Fortis that payment of such charges is not conditional upon whether DEL agreed to pay such charges. Section 10.1.2 of the T&Cs anticipates that the customer, or the customer's retailer, may agree to pay the idle service charges. As explained by Fortis:

EPCOR [EPCOR Energy] pays the Idle Service Charges following de-energization pursuant to Section 8.2.2 of the FortisAlberta Retailer Terms and Conditions of Electric Distribution Service (Terms and Conditions) and Section 10.1.2 of the Terms and Conditions. These provisions confirm that FortisAlberta will accept a request from the Customer's Retailer to De-Energize provided that the Customer, or the Customer's Retailer, as in this case, agrees to pay the Idle Service Charges set out in the Rates, Options and Riders Schedules.<sup>68</sup>

78. Further, there was no indication that DEL did not require Fortis' facilities to remain in place; rather, the evidence suggests the opposite.<sup>69</sup>

79. Accordingly, the Commission dismisses DEL's requested relief for an order "declaring Fortis responsible for all receivables claimed to be due to EPCOR Energy by Red Deer County regarding this proceeding."

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<sup>68</sup> Exhibit 22796-X0059, Fortis responses to AUC questions, question 5(b).

<sup>69</sup> In Exhibit 22796-X0042, DEL reply submission, PDF page 4, DEL states: "DEL did not and never did have intentions of 'moving out of the facility.'"

#### 4.3.2 Demand values used in calculating delivery charges

80. DEL requested an order directing Fortis to provide DEL and Red Deer County with a detailed explanation of the method and real kVA values used in calculating delivery charges from January 1, 2016, through the time of this proceeding.

81. Fortis submitted that it is willing to provide DEL with registered demand in kVA for this service if permitted by Red Deer County and so ordered by the Commission. Fortis explained that this information is used to calculate the metered demand for billing purposes as follows, in accordance with the terms of Rate 61:<sup>70</sup>

Fortis will use the greatest of:

1. the highest Metered Demand in the billing period;
2. 85% of the highest Metered Demand in the 12 month period including and ending with the billing period;
3. the Contract Minimum Demand as specified by the Terms and Conditions; or
4. the Rate Minimum of 50 kW.

The Peak Metered Demand is the highest Metered Demand in the billing period.

The Metered Demand is the greater of:

- i) the registered demand in kW, or
- ii) 90% of the registered demand in kVA.

82. In addition, Fortis provided DEL (through the UCA) an information sheet for the rate calculation.<sup>71</sup>

83. The Commission finds that Fortis has provided an explanation of the method used in calculating DEL's delivery charges. Regarding the kVA data, given Fortis' apparent willingness and ability to provide this data to DEL in certain circumstances, the Commission directs Fortis to provide DEL with the kVA values used in calculating delivery charges from January 1, 2016 to February 7, 2018, subject to Red Deer County granting its permission to release the data for the period that it was the customer of record. Fortis is required to notify the Commission that it has provided the kVA values to DEL or has attempted to and has not received permission from Red Deer County to release the data, by way of a post-disposition update in this proceeding to be filed by February 23, 2018.

#### 4.3.3 Financial damages

84. DEL requested an order deeming Fortis liable for financial damages incurred by DEL in the event that it needed to provide its own power generation source to operate.

85. DEL has failed to persuade the Commission that Fortis' requirement for PILON charges was inconsistent with the T&Cs, or that Fortis had otherwise improperly de-energized the site. There is therefore no need to address this request further.

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<sup>70</sup> Exhibit 22796-X0033, Fortis response submission, paragraph 49.

<sup>71</sup> Exhibits 22796-X0040 and 22796-X0041.

#### 4.3.4 Purchase price of Fortis' facilities

86. DEL submitted that it made arrangements with Red Deer County to have its electric delivery services transferred to EQUUS.<sup>72</sup> DEL advised that EQUUS is willing to purchase the existing facilities, upon receipt of a reasonable "RCN-D," from Fortis; however, Fortis has refused to provide that calculation unless DEL agrees to "settle the account" with Fortis. DEL submitted that it is unable to operate its facility without access to electricity,<sup>73</sup> and requested that the Commission order Fortis to immediately provide the RCN-D calculation for the site to EQUUS and facilitate the transfer of service.

87. Fortis advised that it had provided a RCN-D valuation for the site and is continuing to work with representatives of Red Deer County and EQUUS in order to complete the transfer:<sup>74</sup>

... On September 13, 2017, a representative of FortisAlberta met with a representative of Red Deer County (County), the current customer of record for site ID number 0040577864114 ("Site 1"). The purpose of this meeting was to explain that FortisAlberta could not transfer the facilities for Site 1 to EQUUS REA ("EQUUS") under Section 4.01 of the Integrated Operating Agreement with EQUUS unless and until it received a written transfer request from Innisfail Foragers along with a letter from the County, confirming its consent to the transfer in its capacity as landowner. The involvement of Innisfail Forage Processors was required as it shares a service at Site 1. On September 15, 2017, FortisAlberta confirmed the contents of that discussion in an email to the County.

On or about September 18, 2017, FortisAlberta received a request from Innisfail Forage Processors to transfer its service to EQUUS. On or about the same date, FortisAlberta received confirmation from the County as the registered landowner. Shortly thereafter, FortisAlberta completed a RCN-D valuation for the affected facilities. The RCN-D valuation was provided to EQUUS on September 27, 2017.

As of the date of the response to this information request, FortisAlberta is continuing to work with representatives of the County and EQUUS in order to complete the transfer.

88. In the absence of evidence to the contrary, the Commission accepts Fortis' statement that it is continuing to work with representatives of Red Deer County and EQUUS in order to complete the transfer. Given Fortis' submission that it has completed and provided a RCN-D valuation to EQUUS, and its representation that it is continuing to work with Red Deer County and EQUUS in order to complete the transfer, the Commission is of the view that the order requested by DEL is not necessary at this time.

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<sup>72</sup> Exhibit 22796-X0012.

<sup>73</sup> Exhibit 22796-X0005, DEL application, PDF page 1.

<sup>74</sup> Exhibit 22796-X0059, Fortis responses to AUC questions, question 7.

Dated on February 9, 2018.

**Alberta Utilities Commission**

*(original signed by)*

Anne Michaud  
Panel Chair

*(original signed by)*

Carolyn Hutniak  
Commission Member

**Appendix 1 – Proceeding participants**

<b>Name of organization (abbreviation) Company name of counsel or representative</b>
Dalziel Enterprises Ltd. (DEL)
FortisAlberta Inc. (Fortis or FAI)
EPCOR Energy Alberta GP Inc. (EPCOR Energy)

Alberta Utilities Commission
Commission panel
A. Michaud, Panel Chair
C. Hutniak, Commission Member
Commission staff
J. Graham (Commission counsel)
A. Corsi

**Appendix 2 – Summary of Commission directions**

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

1. The Commission finds that Fortis has provided an explanation of the method used in calculating DEL’s delivery charges. Regarding the kVA data, given Fortis’ apparent willingness and ability to provide this data to DEL in certain circumstances, the Commission directs Fortis to provide DEL with the kVA values used in calculating delivery charges from January 1, 2016 to February 7, 2018, subject to Red Deer County granting its permission to release the data for the period that it was the customer of record. Fortis is required to notify the Commission that it has provided the kVA values to DEL or has attempted to and has not received permission from Red Deer County to release the data, by way of a post-disposition update in this proceeding to be filed by February 23, 2018. .... Paragraph 83