



Direct Energy Regulated Services

Application for Recovery of Costs Related to Meter Reading Realignment

June 10, 2019

Alberta Utilities Commission

Decision 24111-D01-2019

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Application for Recovery of Costs Related to Meter Reading Realignment

Proceeding 24111

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1 Decision summary

1. In this decision, the Alberta Utilities Commission determines whether to approve a request from Direct Energy Regulated Services to recover \$1.1 million in costs that were incurred to adjust to a new billing cycle due to the realignment of routes assigned for aerial meter reading by ATCO Gas and Pipelines Ltd. Direct Energy Regulated Services proposed to recover the costs by implementing a rider charge of \$0.023 per site per day on the gas bills of its regulated gas customers from August 1, 2019, to October 31, 2019.

2. For the reasons set out in this decision, the Commission denied Direct Energy Regulated Services' application. The Commission found that the implementation of a rate rider to allow recovery of the \$1.1 million in costs would constitute retrospective ratemaking and that any relevant exceptions to the general prohibition against retrospective ratemaking were not supported in this case.

2 Introduction

3. On December 4, 2018, the Commission received an application from Direct Energy Regulated Services (DERS) requesting approval to recover \$1.2 million in costs incurred to change its billing systems and customer contact centre processes for regulated gas customers. The costs were incurred to adjust to a new billing cycle due to the realignment of routes assigned for aerial meter reading by ATCO Gas and Pipelines Ltd. (ATCO Gas). Subsequent to filing the initial application, DERS amended the recovery amount to \$1.1 million.¹ DERS requested approval to recover the \$1.1 million through implementation of a Rider M charge of \$0.023 per site per day on customer bills from August 1, 2019, to October 31, 2019.

4. DERS is a business unit of Direct Energy Marketing Limited and performs the natural gas default rate tariff (DRT) function in the service territory of ATCO Gas. ATCO Gas is the owner of the gas utility and DERS is the designated default supply provider for ATCO Gas's service territories in Alberta. ATCO Gas appointed DERS to perform the functions of the default supply provider pursuant to Section 28.1 of the *Gas Utilities Act* and sections 2 and 8 of the *Default Gas Supply Regulation*.

5. The Commission issued a notice of application on December 5, 2018, requesting interested parties to file their concerns or support for the application no later than December 18, 2018. The Commission received submissions from the Consumers' Coalition of Alberta (CCA) and the Office of the Utilities Consumer Advocate (UCA). Both the CCA and the UCA

¹ Exhibit 24111-X0045, paragraph 9.

requested the opportunity to test the application through a round of information requests (IRs) and responses before commenting on further process.

6. The Commission initially determined that the application would be considered by way of a *basic written process*.² A basic written process allows for a round of IRs and responses, after which the record is closed if no further process is required. The Commission, the CCA and the UCA issued IRs to DERS, and DERS submitted its responses to the IRs on January 31, 2019.

7. On February 7, 2019, parties submitted their comments on the need for further process. DERS, the CCA and the UCA requested that the proceeding advance to the submission of argument and reply argument. The Commission established February 27, 2019, as the deadline for the submission of written argument, and March 13, 2019, as the deadline for the submission of written reply argument. With the establishment of deadlines for argument and reply argument, the Commission ultimately considered the application by way of a *minimal written process*, as outlined in Commission Bulletin 2015-09.

8. The Commission considers that the record of this proceeding closed on March 13, 2019, the date that reply argument was filed.

9. In reaching the determinations set out in 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.

3 Details of the application

10. DERS indicated that ATCO Gas held a meeting for industry participants on January 18, 2018, to announce the shift to reading ATCO Gas's meters via aerial intake. DERS described that all of ATCO Gas's meter reading routes would be realigned to accommodate aerial intake, and this major meter reading realignment would result in significant impacts on DERS' gas customers, since meter reading dates drive the date that each customer's bill is generated.³ ATCO Gas indicated that it would complete a final read of its customers' meters using the existing methodology prior to implementing aerial intake meter reads.⁴ DERS' evidence is that while ATCO Gas aimed to implement the changes in April 2018, implementation was delayed until June 2018 due to significant retailer concerns regarding the initially proposed timeline.⁵

11. DERS' application indicated that ATCO Gas's major meter reading realignment would have negative impacts on customers based on a previous meter reading cycle change in 2010 that required DERS to alter its billing system and customer contact centre processes.⁶ DERS determined that this billing cycle change would have an impact on approximately 526,000 of its

² Bulletin 2015-09, Performance standards for processing rate-related applications, March 26, 2015.

³ Exhibit 24111-X0001, paragraph 4.

⁴ Exhibit 24111-X0001, paragraph 17.

⁵ Exhibit 24111-X0001, paragraph 3.

⁶ Exhibit 24111-X0001, paragraph 5.

538,194 gas customers when these customers were moved to new meter reading cycles and associated billing dates between July and October 2018.⁷

12. DERS' evidence is that, to minimize the negative effects on customers, it initiated a customer-focused, impact mitigation plan in March 2018, and then determined the necessary changes to its customer care and billing (CC&B) systems and customer contact centre processes. DERS indicated that it designed a comprehensive customer communication campaign and hired a project manager to oversee the transition.⁸ DERS categorized the total project costs into billing process modifications, communications campaign, waived late payment charges and project management expenses. DERS classified the associated costs as the ATCO Gas cycle change (AGCC) project costs.

13. DERS requested approval to recover the \$1.2 million through implementation of a Rider M charge of \$0.025 per site per day on DERS' regulated gas bills from August 1, 2019, to October 31, 2019.

14. On January 31, 2019, DERS submitted information responses to the Commission. DERS stated "that during the preparation of these Information Responses, an error was discovered within the spreadsheet that formed the amount put forward by DERS for waived late penalty charges in its Application. Once the error was corrected, the amount of waived late penalty charges reduced from \$172,588 to \$89,795."⁹ DERS recalculated costs of \$1.1 million for its mitigation plan and a corresponding Rider M charge of \$0.023 per site per day.¹⁰

15. On February 27, 2019, both the UCA and the CCA submitted in written arguments that DERS' application should be denied. DERS filed a reply on March 13, 2019, maintaining that the costs to administer these changes were prudently incurred and should be eligible for recovery.

4 Timing and eligibility to recover costs

16. Ordinarily, any costs that DERS forecasts that it will incur to provide DRT service are included as part of its DRT applications to be approved by the Commission.

17. DERS filed its 2017-2018 DRT and regulated rate tariff (RRT) application on September 20, 2016, which was assigned Proceeding 22004. DERS did not include the \$1.1 million of AGCC project costs that are the subject of this application in the forecast costs filed as part of its 2017-2018 DRT and RRT application.¹¹ The record for Proceeding 22004 closed on March 14, 2018. Decision 22004-D01-2018 was issued on June 12, 2018.¹²

18. In its September 20, 2018 decision on the compliance filing subsequent to Decision 22004-D01-2018, Decision 23748-D01-2018, the Commission approved DERS' DRT 2018 rate

⁷ Exhibit 24111-X0001, paragraph 4.

⁸ Exhibit 24111-X0001, paragraph 6.

⁹ Exhibit 24111-X0023, DERS-AUC-2019JAN14-006 (d).

¹⁰ Exhibit 24111-X0024.

¹¹ Exhibit 24111-X0045, paragraph 38.

¹² Decision 22004-D01-2018: Direct Energy Regulated Services, 2017-2018 Default Rate Tariff and Regulated Rate Tariff, Proceeding 22004, June 12, 2018, paragraph 3.

schedules on a final basis, effective October 1, 2018.¹³ All parties accepted rates on a final basis and no review and variance application was filed.

19. In the current application, DERS indicated that it began to be notified of the details of ATCO Gas's changes to the meter reading cycles in February 2018. It added that prior to this date, it was aware there would be changes and associated costs, but it was not aware of the exact magnitude of the costs.¹⁴

20. Noting that the record for DERS' 2017-2018 DRT and RRT application closed on March 14, 2018, the Commission requested that DERS explain why it did not revise its 2017-2018 DRT and RRT application to incorporate the additional CC&B costs that would result from the change to ATCO Gas's meter reading cycles. DERS replied that the forecasts used to develop the 2017-2018 DRT and RRT application were developed in May 2017, which was many months before DERS was aware of ATCO Gas's plans to change all of the meter reading cycles. It added that the magnitude and materiality of the additional CC&B costs were not understood until the end of April 2018, at which time the record for the 2017-2018 DRT and RRT application was closed.¹⁵

21. DERS further explained that it had applied for a non-energy risk margin as part of its 2017-2018 DRT and RRT application. It says that the preliminary cost estimate of the AGCC project was an example of, and support for, the types of unexpected costs that would fall under the types of non-energy risks that would be covered by the proposed non-energy risk margin, should it be approved. DERS submitted that applying for deferral treatment for the costs, or adding them to its revenue requirement during the 2017-2018 DRT and RRT application process, were not deemed to be appropriate options.¹⁶

22. DERS concluded that given its "... pending request for a non-energy risk margin, the additions of unexpected costs related to the AGCC project at the exceedingly late phase of the Proceeding 22004, especially when the magnitude and materiality of the costs were not known to DERS prior to the close of the Proceeding, would, in DERS' opinion, have been improper."¹⁷ DERS added that even if it had been able to prepare cost estimates within a two-month timeframe, which it said it was not able to do, procedural fairness and the basic principles of natural justice would likely have weighed against DERS filing new, incomplete evidence so late in the 2017-2018 DRT and RRT application proceeding and would have resulted in unnecessary delay and inefficiency in the regulatory process.¹⁸

23. In response to Commission IRs, DERS submitted that once it was denied the non-energy risk margin it had requested in the 2017-2018 DRT and RRT application, a straightforward, stand-alone application to recover the AGCC project costs was the most prudent and logical

¹³ Decision 23748-D01-2018: Direct Energy Regulated Services, 2017-2018 Default Rate Tariff and Regulated Rate Tariff Compliance Filing, Proceeding 23748, September 20, 2018, paragraph 27.

¹⁴ Exhibit 24111-X0023, DERS-AUC-2019JAN14-002(b).

¹⁵ Exhibit 24111-X0023, DERS-AUC-2019JAN14-002(c).

¹⁶ Exhibit 24111-X0023, DERS-AUC-2019JAN14-002(c).

¹⁷ Exhibit 24111-X0023, DERS-AUC-2019JAN14-002(c).

¹⁸ Exhibit 24111-X0049, paragraph 7.

option.¹⁹ In DERS' view, this application is the only reasonable mechanism available to it for recovery of the project costs.²⁰

5 DERS' Rider M application and retroactive ratemaking

24. The CCA and the UCA each submitted that the application should be denied,²¹ arguing that DERS has already received Commission approval for its 2018 costs as final, and that DERS does not have a deferral account for these types of costs.²² The CCA submitted that allowing applications on an after-the-fact basis to adjust costs for test years that were heard and determined by the AUC is inappropriate.²³ The UCA submitted that approval of this application would "constitute retroactive or retrospective ratemaking."²⁴

25. The written argument from the UCA cited the following in support of the general prohibition against retroactive or retrospective ratemaking:

Generally, ratemaking and rates must be prospective: *Coseka Resources Ltd. V. Saratoga Processing Co. (1981)*, 1981 ABCA 180 (CanLII), 31 A.R. 541 at para.29, 16 Alta. L.R. (2d)60 (C.A.).

A utility's past financial results can be used to forecast future expenses, but a regulator cannot design future rates to recover past revenue deficiencies: *Northwestern Utilities Ltd. And al. v. Edmonton*, 1978 CanLII 17 (SCC), [1979] 1 S.C.R. 684 at 691 and 699.

Sometimes retrospective ratemaking is referred to as retroactive ratemaking. This is because rates imposed on a future generation of consumers, while prospective, create obligations in respect of past transactions, and in this sense they are retroactive: *Edmonton (City) v Northwestern Utilities Ltd (No. 2)*, [1961] SCR 392, 1961 CanLII 66 (SCC) at page 402.²⁵

26. DERS contended that the arguments of the interveners concerning retroactive and retrospective ratemaking are not relevant to this proceeding.²⁶ It submitted that it is within the Commission's decision making power to approve stand-alone applications for the recovery of prudent and commercially reasonable costs necessarily incurred for an unexpected event outside of the default supply provider's control. DERS stated that there are no legal or regulatory impediments for approval of its application.²⁷

Commission findings

27. For the reasons set out below, the Commission finds that approval of DERS' request, would amount to retrospective ratemaking as it would result in changing rates that were

¹⁹ Exhibit 24111-X0023, DERS-AUC-2019JAN14-002(c).

²⁰ Exhibit 24111-X0045, paragraph 34.

²¹ Exhibit 24111-X0044, paragraph 28. Exhibit 24111-X0046, paragraph 72.

²² Exhibit 24111-X0044, paragraph 28. Exhibit 24111-X0046, paragraphs 14 and 25.

²³ Exhibit 24111-X0047, paragraph 9.

²⁴ Exhibit 24111-X0046, paragraph 14.

²⁵ Exhibit 24111-X0046, paragraph 15.

²⁶ Exhibit 24111-X0049, paragraph 14.

²⁷ Exhibit 24111-X0049, paragraph 28.

previously set on a final basis, to allow the recovery of AGCC costs incurred by DERS in the past.

28. DERS is requesting the recovery of costs incurred between January and November 2018 inclusive,²⁸ for billing process modifications, a communications campaign, waiver of late penalty charges and project management costs.

29. DERS final DRT rates for 2018 were approved effective October 2018, in Decision 23748-D01-2018, which was the compliance filing decision to its 2017-2018 DRT and RRT application.

30. The Rider M request for rates in the current application was made on December 4, 2018.

31. The relevant legislative provision related to DERS' request for a change in existing rates is found in Section 44 of the *Gas Utilities Act*, which states:

(1) No change in any existing rates, tolls or charges, or schedules of them, or any special rates shall be made by an owner of a gas utility, nor shall any new schedule of rates, tolls or charges be established, until the changed rates or new rates are approved by the Commission.

(2) On approval, the changed rates or new rates come into force on a date to be fixed by the Commission, and the Commission, on its own initiative or on application, may hear and determine whether the proposed increases, changes or alterations are just and reasonable.

(3) The burden of proof to show that the increases, changes or alterations are just and reasonable is on the owner of the gas utility seeking to make them.

32. In the Alberta Court of Appeal's decision in *Calgary (City) v Alberta (Energy and Utilities Board)*,²⁹ in which the court affirmed that the general prohibition against retroactive ratemaking applies equally to retrospective ratemaking, is described below:

Retroactive ratemaking "establish[es] rates to replace or to be substituted to those which were charged during that period": *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1989 CanLII 67 (SCC), [1989] 1 S.C.R. 1722 at 1749 ("*Bell Canada 1989*"). Utility regulators cannot retroactively change rates (*Stores Block* at para. 71) because it creates a lack of certainty for utility consumers. If a regulator could retroactively change rates, consumers would never be assured of the finality of rates they paid for utility services.³⁰

Retrospective ratemaking, in contrast, imposes on the utility's current consumers shortfalls (or surpluses) incurred by previous generations of consumers. It is generally prohibited because it creates inequities or improper subsidizations as between past and present consumers (who may not be the same). "(T)oday's customers ought not to be held responsible for expenses associated with services provided to yesterday's customers":

²⁸ Exhibit 24111-X0001, paragraph 7.

²⁹ *Calgary (City) v Alberta (Energy and Utilities Board)*, 2010 ABCA 132.

³⁰ *Calgary (City) v Alberta (Energy and Utilities Board)*, 2010 ABCA 132, paragraph 47, cited in Decision 790-D02-2015: Milner Power Inc., Complaints regarding the ISO Transmission Loss Factor Rule and Loss Factor Methodology ATCO Power Ltd., Complaint regarding the ISO Transmission Loss Factor Rule and Loss Factor Methodology, Proceeding 790, Applications 1606494-1, 1608563-1 and 1608709-1, January 20, 2015.

Yvonne Penning, “*The 1986 Bell Rate Case: Can Economic Policy and Legal Formalism be Reconciled*”(1989), 47(2) U.T. Fac. L. Rev. 607 at 610. This is sometimes referred to as the problem of inter-generational equity(.)³¹

33. The courts have confirmed that retrospective adjustments to allow for the recovery of a loss of any kind that crystallized prior to the date an application is made are impermissible.³² If the Commission determines that an application constitutes retroactive or retrospective ratemaking, then unless a utility can demonstrate that it satisfies an exception to the general prohibition, the application must be denied.

34. While DERS became aware of ATCO Gas’s changes to the meter reading cycles in January 2018, DERS was not given the details of the changes until February 2018. It was confirmed on the record of this proceeding that prior to February 2018, DERS was aware that there would be changes and associated costs, but it was not aware of the exact magnitude of the AGCC costs. The current record shows that the AGCC costs were incurred between March and November 2018.³³ Given that, it is clear that some AGCC costs were known and may have been incurred prior to the close of record of DERS’ original DRT and RRT rates proceeding for 2018 (Decision 22004-D01-2018) and that some AGCC costs were certainly incurred prior to the close of record of DERS’ compliance filing (Decision 23748-D01-2018). Recovery of the AGCC costs was not, however, specifically requested in either proceeding on a forecasted or actual basis. Rates were set for 2018 on a final basis effective October 1, 2018 in Decision 23748-D01-2018 based on the facts before the Commission at that time. DERS filed its Rider M application in December 2018.

35. Having determined that the request to allow the recovery of the AGCC costs for a past period is, on its face, impermissible under ratemaking principles, the Commission considers below whether any exceptions to the general rule against retroactive ratemaking are supported in DERS’ evidence. The Commission considers that it is appropriate to assess whether any exceptions are made out on the evidence on the basis that any exceptions to the general prohibition against retroactive ratemaking are equally applicable to retrospective ratemaking.³⁴

36. The Commission has recognized at least five exceptions to the prohibition against retroactive ratemaking as summarized in Decision 790-D02-2015, the Milner Power decision.³⁵

³¹ *Calgary (City) v Alberta (Energy and Utilities Board)*, 2010 ABCA 132, paragraph 48, cited in Decision 790-D02-2015.

³² *Northwestern Utilities Ltd and al v Edmonton*, [1979] 1 SCR 684, 1978 CanLII 17 (SCC), at page 690, where in terms of setting rates for gas utilities under certain provisions in the *Gas Utilities Act* in effect at that time, the Court found that there is nothing in the act to suggest that there is any power in the board to establish rates retrospectively in the sense of enabling the recovery of a loss of any kind which crystallized prior to the date of the application, page 690. See also *City of Edmonton et al v Northwestern Utilities Ltd*, [1961] SCR. 392, pages 401-402 and *Coseka Resources Limited v Saratoga Process Company Limited*, 1981 ABCA 180, paragraphs 31 and 43.

³³ Exhibit 24111-X0001, paragraph 6, Table 1: ATCO Gas Cycle Change Project Overview.

³⁴ *Northwestern* (1961), pages 402-403.

³⁵ Paragraph 153: “The courts have recognized at least five exceptions to this ratemaking principle. They include: (1) adjustments to interim rates; (2) the use of deferral accounts to deal with differences between forecast and actual costs and revenues; (3) changes to rates as a result of the operation of a negative disallowance scheme; (4) changes to rates where affected parties knew or ought to have known that rates were subject to change (i.e., the ‘knowledge exception’); and (5) replacing rates in a tariff that has been determined to be a nullity.”

Parties in the current proceeding addressed some of these exceptions in their arguments and reply arguments.

37. The Commission addresses each of the following relevant exceptions below: the interim rates, deferral account, and knowledge exceptions. Finally, the Commission considers whether DERS' proposed use of a rider mechanism is an exception to the prohibition against retroactive ratemaking. The nullity and negative disallowance exceptions are not considered as they are not pertinent to the facts in the current case and were not raised by any party.

5.1 Interim rates as an exception

38. The interim rate exception occurs when rates are approved on an interim basis with an explicit recognition that such rates may be revised by a final order retroactive to the date of the interim order.

39. The UCA emphasized that DERS' DRT rates for 2018 were approved as final in Decision 23748-D01-2018, which has not been challenged by DERS.³⁶ The CCA drew attention to the fact that the 2018 test year has been heard and adjudicated by the AUC.³⁷

40. In DERS' reply argument, DERS agreed with the UCA that DRT rates for 2018 were approved as final in Decision 23748-D01-2018. DERS added that it is not seeking to modify the DRT rates that are currently in effect.³⁸

Commission findings

41. For the reasons set out below, the Commission finds that that interim rates exception is not applicable to adjust DERS' tariff for 2018.

42. Given that final rates were set in Decision 23748-D01-2018 for the DRT for both 2017 and 2018, the Commission agrees with the UCA and DERS that the application cannot be considered as an adjustment to interim rates, because the interim rates for 2018 were replaced by the final rates that were approved in the compliance filing decision. DERS could have reasonably applied for forecast costs in either Proceeding 22004 or Proceeding 23748. DERS knew that the rates the Commission was asked to approve in Proceeding 22004 and Proceeding 23748 were final rates. The evidence in the current proceeding shows that while DERS was not aware of the exact magnitude of the AGCC costs as both Proceeding 22004 and Proceeding 23748 were being heard, DERS was aware that it would incur costs for this project. It was incumbent upon DERS to raise the issue and the AGCC project costs, either forecast or actual, as those rates proceedings were unfolding.

43. The Commission finds that that interim rates exception is not applicable to adjust DERS' tariff for 2018 given that 2018 rates were approved as final in the compliance filing decision. This is consistent with Section 44 of the *Gas Utilities Act* including Section 44(2), which provides that on approval, the changed rates or new rates come into force on a date to be fixed by the Commission. The interim rates exception is therefore not present. Accordingly, this exception is not applicable to DERS' Rider M request.

³⁶ Exhibit 24111-X0046, paragraph 3.

³⁷ Exhibit 24111-X0044, paragraph 16.

³⁸ Exhibit 24111-X0049, paragraph 14.

5.2 Deferral accounts as an exception

44. Deferral accounts are used to account for differences between forecast and actual costs, and are an exception to the general prohibition against retroactive ratemaking.

45. The concept of forecasting costs underpins the deferral account argument raised by the CCA. The CCA submitted that:

DERS is required to forecast all costs at the time it submits its application or when it submits an application update before the filing of argument. DERS did not include a cost forecast related to billing cycle changes. In the event of cost uncertainty, DERS could have applied for a deferral account ...³⁹

46. The CCA pointed out that DERS had many deferral accounts prior to 2009 and DERS operated on a regulatory basis that relied on deferral accounts.⁴⁰ It added that DERS specifically made requests to remove all deferral accounts with the exception of gas commodity costs and revenues associated with the gas cost flow-through rate in its 2009-2011 DRT and RRT application.⁴¹ DERS has not requested deferral account status to be reinstated in a number of DRT or RRT applications since the Commission ruled on the removal of deferral accounts at DERS' request.⁴²

47. The CCA insisted the "fact that DERS does not have a deferral account for the billing cycle change costs in 2018 means DERS has no mechanism in law or regulatory practice to recover additional costs that were not forecast which were spent in 2018."⁴³

48. DERS acknowledged in reply argument that it "did not request and does not have a deferral account for its AGCC Project costs.... There is no dependency or requirement for DERS to have a deferral account."⁴⁴

Commission findings

49. For the reasons set out below, the Commission finds that the deferral account exception to the general prohibition against retroactive and retrospective ratemaking is not applicable.

50. DERS' application in the current proceeding indicates that DERS initiated a customer-focused, impact mitigation plan in March 2018. DERS determined the necessary changes to its billing systems and customer contact centre processes, designed a comprehensive customer communication campaign and hired a Project Manager to oversee the transition. The analysis and planning conducted in March 2018 could have provided a forecast of costs to support a request for a new deferral account.

51. DERS did not reinstate previously eliminated deferral accounts and did not request a new deferral account to record actual AGCC costs for future recovery against a forecast amount. DERS' actual AGCC costs are not appropriate for settlement to any existing deferral account.

³⁹ Exhibit 24111-X0044, paragraph 19.

⁴⁰ Exhibit 24111-X0044, paragraph 24.

⁴¹ Exhibit 24111-X0044, paragraph 23.

⁴² Exhibit 24111-X0044, paragraph 26.

⁴³ Exhibit 24111-X0047, paragraph 6.

⁴⁴ Exhibit 24111-X0049, paragraph 91.

52. The use of a Rider M for the recovery of 2018 costs in 2019 is not supported in the absence of a deferral account for the AGCC project.

53. The Commission therefore finds that the deferral account exception is not applicable in the current circumstances because there is no approved deferral account. Accordingly, this exception is not applicable to DERS' Rider M request.

5.3 Knowledge exception

54. The knowledge exception refers to circumstances where parties to the rate proceeding know (or ought to know) that a regulatory process has been initiated that may change rates, or alternatively, whether parties know whether rates were ultimately subject to change.⁴⁵

55. The UCA submitted the following on the knowledge exception:

DERS' application also does not satisfy the "knowledge exception" as parties had no indication that the final rates approved in Decision 23748-D01-2018 may be subject to change. DERS did not file an application for review of Decision 22004-D01-2018 or Decision 23748-D01-2018, nor did it seek permission to appeal. Instead, DERS proceeded to file two compliance filings with the clear intent of giving effect to the Commission's findings and implementing the final rates approved in these decisions. Rather than provide the requisite knowledge that rates may be subject to change, this was a clear indication to all parties of the finality of the Commission's ruling.⁴⁶

56. DERS was requested to provide any Commission finding or reference in its last DRT and RRT decision which allowed for a placeholder or deferral account status for the costs of the AGCC project. DERS responded that the request was not applicable, and it did not provide any such findings or references.⁴⁷

Commission findings

57. For the following reasons, the Commission finds that the knowledge exception, that is, evidence that the parties had knowledge that there would be a change in rates, is not established. Neither the Commission, nor the interveners had an official record or notification that the AGCC project and associated costs would affect DERS' final rates. Rather, DERS applied for 2018 rates on a final basis without placeholders, and when final rates were approved in Decision 23748-D01-2018, DERS did not file a review and variance of the decision.

58. This exception to retroactive ratemaking principles is therefore not applicable in the current proceeding.

5.4 Rider M mechanism

59. DERS proposed the use of a rider mechanism and noted the following explanation of a rate rider, as it appears on the UCA's website:

⁴⁵ Decision 790-D02-2015, paragraphs 178-180.

⁴⁶ Exhibit 24111-X0046, paragraph 26.

⁴⁷ Exhibit 24111-X0037, DERS-CCA-17JAN2019-001(e).

A Rate Rider is a temporary credit or charge that may appear on utility bills in some communities. The Alberta Utilities Commission (AUC) approves rate riders to enable firms to recover actual operational costs that are not included in the approved rates.⁴⁸

60. DERS argued that the rate rider it has applied for is not a modification to, nor a recalculation of, the existing DRT rates. Instead, it explained that the rate rider will be an addition to the DRT rates that were previously approved by the Commission. DERS added that the use of a rate rider will allow it a reasonable opportunity to recover costs that were not known to it when the 2017-2018 DRT and RRT application was filed, and which were not incurred until well after the close of the record of Proceeding 22004. DERS submitted that it is not utilizing the unexpected costs associated with the AGCC project to design future DRT rates, nor is it seeking to modify the DRT rates currently in place in order to recover past revenue deficiencies.⁴⁹

Commission findings

61. For the reasons set out below, the Commission finds that the use of a stand-alone rider mechanism is not an exception to the general prohibition against retroactive or retrospective ratemaking.

62. The Commission considers that a rate rider is the mechanism through which a utility can either charge or refund customers for the amounts associated with the first two exceptions listed above, namely any adjustments to interim rates or the settlement of an existing deferral account. Further, a rate rider allows for recovery from customers or a refund to customers only for those amounts approved by the Commission. Since the Commission has denied the recovery of the underlying costs that are the subject of the rider, the Commission denies Rider M in this application and no rate rider mechanism is required.

63. Based on its finding that granting the relief requested by DERS in its application would constitute retrospective ratemaking and the further finding that any relevant exceptions to the general prohibition against retrospective ratemaking are not supported in this case, the Commission denies DERS' application.

⁴⁸ Exhibit 24111-X0049, paragraph 17.

⁴⁹ Exhibit 24111-X0049, paragraphs 16-18.

6 Order

64. It is hereby ordered that:

- (1) Direct Energy Regulated Services' application for approval of Rider M is denied.

Dated on June 10, 2019.

Alberta Utilities Commission

(original signed by)

Kristi Sebalj
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Direct Energy Regulated Services (DERS)
Consumers' Coalition of Alberta (CCA)
Office of the Utilities Consumer Advocate (UCA)

Alberta Utilities Commission
Commission panel K. Sebalj, Commission Member
Commission staff D. Reese (Commission counsel) E. Chu D. Mitchell