



Regulatory Law Chambers (“RLC”) is a Calgary based boutique law firm, specializing in energy and utility regulated matters. RLC works at understanding clients’ business objectives and develops and implements successful legal and business strategies with clients and industry experts, consistent with the legislative scheme and public interest requirements. RLC follows a team approach when working with our clients, industry experts, and other aligned stakeholders. [Visit our website to learn more about RLC.](#)

ALBERTA UTILITIES COMMISSION

ENMAX Power Corporation Recovery of Land and Property Rights Tribunal Order Payments Related to Remington Lands Matter, AUC Decision 28911-D01-2024

Rates – Knowledge Exception

Application

ENMAX Power Corporation (“EPC”) applied to recover, in its 2025 revenue requirement, the amount of \$13.63 million related to EPC’s obligations to pay Remington Development Corporation (“RDC”). This amount was determined in a decision (the “Compensation Decision”) issued by the Land and Property Rights Tribunal (“LPRT”).

Decision

The Alberta Utilities Commission (“AUC”) approved the recovery of the \$13.63 million on a placeholder basis to allow for any future true-up, given the ongoing litigation related to the LPRT compensation decision. The AUC also approved EPC’s 2025 revenue requirement as final and directed EPC to establish a placeholder for costs related to the RDC land matter.

Pertinent Issues

Background

EPC is a transmission facility owner (“TFO”) that owns and operates transmission lines subject to the

LPRT decision, including 138-2.82L and 138-2.83L (“Transmission Lines”). The Transmission Lines cross four parcels of land that were owned by RDC until October 2023 (“Lands”). RDC purchased the Lands in 2002 and terminated the right-of-way agreements that allowed EPC to site the Transmission Lines on the Lands. This termination resulted in litigation between EPC and RDC, which is still ongoing.

In 2018, the Surface Rights Board (“SRB”), the LPRT’s predecessor, issued four right-of-entry orders (“Orders”) regarding the Transmission Lines located on the Lands. In 2022, the LPRT set the compensation owed by EPC to RDC with respect to the Orders (“Compensation Decision”).

EPC Application

In this application, EPC sought to recover the \$13.63 million, as a one-time charge to the Alberta Electric System Operator (“AESO”), effective January 1, 2025. The \$13.63 million include amounts that EPC is legally required to pay RDC, as determined by the Compensation Decision, including a cost award and carrying costs, until the transmission lines are permanently removed from the RDC lands at the end of 2024.

EPC submitted that RDC appealed and EPC cross-appealed the Compensation Decision, scheduled to be heard in October and November 2024, respectively. As a result, EPC stated it would apply to



AUC re Financial Obligations Recovery

the AUC, in a future general tariff application, for a true-up of the Compensation Decision to reflect any changes resulting from the appeal and cross-appeal.

AUC Determination

The AUC considered whether: (i) the applied-for \$13.63 million was prudently incurred; (ii) the recovery of the applied-for \$13.63 million was permissible and, if so, what was the appropriate recovery mechanism; and (iii) the additional, but not yet applied-for, costs related to the Lands should also be granted placeholder treatment.

Were the Costs Prudently Incurred

The AUC found that EPC prudently incurred the applied-for \$13.63 million. The AUC was satisfied that EPC acted prudently prior to and during the LPRT proceeding resulting in the Compensation Decision, that the quantum of the LPRT compensation decision was reasonable, and that there was no other reason to question the prudence of these costs.

Is Recovery Permissible

The AUC considered that the Compensation Decision payment marked a point of resolution of sufficient certainty to meet the AUC's previous requirement that the matter must be resolved prior to testing for prudence any amounts arising from the litigation, including their addition in EPC's tariff. The AUC was of the view that it was in the public interest to approve the recovery of the applied-for \$13.63 million at this time, even though the litigation between EPC and RDC was not fully resolved, to avoid incurring ongoing carrying costs into the future for the now-known amounts EPC was required to pay. On this basis, the AUC approved as a placeholder the inclusion of the \$13.63 million in EPC's 2025 revenue requirement for recovery as a one-time charge to the AESO, effective January 1, 2025. The AUC also directed EPC to apply for any true-up of this placeholder in its next general tariff application.

Additional Costs

EPC provided a list of the following costs that it intended to recover in the future: additional past legal costs related to the LPRT process and the litigation; future legal costs related to the appeal and cross-appeal and the litigation; compensation pursuant to any court award in the litigation; and costs of EPC's 2014 application to move the Transmission Lines subject to the ongoing litigation. The AUC found it necessary to consider the costs associated with the Lands matter, subject to a future prudence review, through the same placeholder mechanism. Consequently, the AUC approved placeholder treatment for the costs described by EPC, including any other costs related to the Lands matter not listed above, which EPC has incurred or will incur.

Conclusion

As a result of the approval of the \$13.63 million in EPC's 2025 revenue requirement and recovery of these costs as a one-time charge to the AESO, effective January 1, 2025, the AUC approved EPC's 2025 revenue requirement as final, subject to the true-up of any placeholders. The AUC directed EPC to file, as a post-disposition filing, updated minimum filing requirement schedules to reflect the findings of this decision, within 30 days of the issuance of the decision.