Decision **26589-D01-2021**

ENMAX Power Corporation

Type 1 Capital Tracker – Green Line Light Rail Transit Project

November 24, 2021

Alberta Utilities Commission
Decision 26589-D01-2021
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Proceeding 26589

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Eau Claire Tower
1400, 600 Third Avenue S.W.
Calgary, Alberta T2P 0G5

Telephone: 310-4AUC (310-4282 in Alberta)
1-833-511-4AUC (1-833-511-4282 outside Alberta)
Email: info@auc.ab.ca
Website: www.auc.ab.ca

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ENMAX Power Corporation **Decision 26589-D01-2021**
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1 Decision summary

1. In this decision, the Alberta Utilities Commission considers ENMAX Power Corporation's application for a Type 1 capital treatment of funds associated with relocation of ENMAX's infrastructure and service connection work pursuant to The City of Calgary's (Calgary) Green Line Light Rail Transit (LRT) Project (the Green Line Project). For the reasons set out in this decision, the Commission determines that the Green Line Project does not qualify for Type 1 capital tracker treatment because the project does not meet the requirement that it be extraordinary and not previously included in the distribution utility's rate base. Accordingly, in a compliance filing to this proceeding ENMAX is directed to refund all associated placeholder amounts previously collected from customers.

2 Background and procedural summary

The PBR framework

2. Electric and gas distribution utilities in Alberta, including ENMAX, are currently regulated under the 2018-2022 performance-based regulation (PBR) plans approved in Decision 20414-D01-2016 (Errata).[1] As part of this framework, the Commission separated capital funding into two categories: Type 1 and Type 2 capital.

3. Type 1 capital is intended to provide supplemental funding to a distribution utility for a type of capital that the utility has not deployed in the past.[2] It is supplemental because it is in addition to the funding (or revenue) the distribution utility receives under the other terms of the PBR plan, including Type 2 capital. For Type 1 capital, the Commission approved a modified capital tracker mechanism[3] with narrow eligibility criteria as part of its approval of the 2018-2022 PBR plans.

4. To qualify for a Type 1 capital tracker, a project must be:

(i) extraordinary and not previously included in the distribution utility's rate base; and

[1] Decision 20414-D01-2016 (Errata): 2018-2022 Performance-Based Regulation Plans for Alberta Electric and Gas Distribution Utilities, Proceeding 20414, February 6, 2017.
[2] Decision 20414-D01-2016 (Errata), paragraph 197.
[3] In prior generations of AUC PBR plans, a capital funding mechanism referred to as a "capital tracker" was established. The capital tracker mechanism provides for a cost-of-service application process, whereby the revenue requirement associated with approved capital projects or programs can be reviewed, approved and collected from ratepayers by way of a K factor adjustment to the annual PBR rate-setting formula. Once a capital project has been approved for capital tracker treatment, the costs associated with the project are tracked to determine the amount of revenue the utility requires to recover the actual costs spent.

(ii) required by a third party.[4]

5. The distribution utility requesting Type 1 capital tracker treatment must demonstrate that both of the criteria have been satisfied. The project must also exceed a specific materiality threshold calculated as the dollar amount equal to four basis points of the utility's return on equity.

6. In Decision 20414-D01-2016 (Errata), the Commission indicated that Type 1 capital tracker treatment cannot be granted on the basis of forecast expenditures. Rather, the utility must incur the investment before applying for supplemental funding. To address utility cashflow concerns, the Commission provided a placeholder funding mechanism for Type 1 capital trackers to provide 90 per cent of the management-approved internal forecast for a given year. This internal forecast is not tested by the Commission, and the utility bears the risk of cost disallowance either partially or in full, until such time as the project is approved for Type 1 capital tracker treatment and the prudence review of actually incurred costs by a utility is conducted. If the Commission does not find that the project is eligible for Type 1 capital tracker treatment, any placeholder funding collected using the management-approved internal forecast must be refunded.

7. Additionally, under the PBR plans, a distribution utility may apply for an adjustment to account for the effect of exogenous and material events for which it has no other reasonable cost recovery or refund mechanism within the PBR plan. This is called a Z factor. There are a set of specific criteria and a materiality threshold that must be met in order for the utility to be eligible for a Z factor rate adjustment.

ENMAX's Type 1 capital tracker application

8. In 2018, Calgary reached an agreement with the federal and provincial governments to fund the first stage of the Green Line Project – a large infrastructure project to extend Calgary's LRT system from north to south. The project involves extensive construction work such as building railway tracks, passenger stations, a tunnel in the downtown core, and other related infrastructure.

9. As the owner of the electric distribution system in Calgary, ENMAX is required to perform service connection work for the planned LRT expansion, such as servicing new passenger stations and traction power substations. As well, ENMAX is required to relocate existing civil and electrical infrastructure to accommodate the proposed LRT alignment. ENMAX filed the present application with the Commission for approval of the supplemental Type 1 capital funding for these expenditures.

10. In its 2019 annual PBR rate adjustment filing, ENMAX stated that it had received a request from Calgary to relocate existing infrastructure, and sought Commission approval of a Type 1 capital funding placeholder equal to 90 per cent of the management-approved internal forecast costs associated with the relocation. The Commission approved the request for a placeholder, noting that until the "project's applicability against the Type 1 capital tracker criteria is tested, and the prudence review for incurred costs is conducted, ENMAX bears the risk

[4] Decision 20414-D01-2016 (Errata), paragraph 198.

of cost disallowance either partially or in full."[5] A placeholder for this project was also approved in ENMAX's 2020 and 2021 annual PBR rate adjustment filings subject to the same caveat.[6]

11. The present proceeding was established in response to ENMAX's request for true-up[7] of its 2019 and 2020 Type 1 capital funding placeholders. More specifically, ENMAX applied for approval of the following:

(a) the Green Line Project Type 1 capital revenue requirements of $0.48 million for 2019 and $1.15 million for 2020;

(b) a true-up mechanism to finalize the Green Line Project Type 1 capital tracker revenue requirement amounts;

(c) a true-up of $(0.55) million related to the 2019 Green Line Project Type 1 placeholder amount approved in Decision 23892-D01-2018; and

(d) a true-up of $(0.10) million related to the 2020 Green Line Project Type 1 placeholder amount approved in Decision 24875-D01-2019.

12. At the outset of this proceeding, the Commission identified the project's eligibility for Type 1 capital tracker treatment as a threshold matter that it wished to test prior to establishing further process to consider the prudence of ENMAX's expenditures associated with the Green Line Project for 2019 and 2020, if needed.[8] The established process included information requests (IRs) to ENMAX, IR responses from ENMAX, and oral argument and reply argument at a virtual hearing on September 15, 2021.[9] The Consumers' Coalition of Alberta (CCA) and the Office of the Utilities Consumer Advocate (UCA) participated in the proceeding as interveners.

13. In the sections that follow, the Commission assesses whether the Green Line Project meets the criteria for Type 1 capital tracker treatment and, as a consequence, whether ENMAX must refund all or part of its previously approved placeholder amounts.

14. In reaching the determinations set out within this decision, the Commission 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 a particular matter.

5 Decision 23892-D01-2018: ENMAX Power Corporation, 2019 Annual Performance-Based Regulation Rate Adjustment Filing, Proceeding 28392, December 21, 2018, paragraph 37.
6 Decision 24875-D01-2019: ENMAX Power Corporation, 2020 Annual Performance-Based Regulation Rate Adjustment, Proceeding 24875, December 16, 2019.
7 "True-up" refers to the comparison of 2019 and 2020 actual capital additions and ENMAX's management-approved 2019 and 2020 forecast. It also provides the associated 2019 and 2020 Type 1 true-up adjustment reflecting the difference between the 2019 and 2020 actual revenue requirement and the AUC-approved placeholder revenue requirement.
8 Exhibit 26589-X0016, AUC letter - Issues list and process schedule.
9 Exhibit 26589-X0039, AUC letter - Further process.

3 Discussion of issues

15. As set out in Decision 20414-D01-2016 (Errata), the Type 1 capital tracker criteria are intended to identify whether there is a type of capital that does not meet the criteria for Z factors but is not a type of capital that the distribution utilities have deployed in the past.[10] ENMAX submitted that the analysis included in its application demonstrates that the capital for the Green Line Project does not meet the criteria for a Z factor in 2019 and 2020.[11]

16. In Decision 20414-D01-2016 (Errata), the Commission explained that the types of capital additions that could be funded through a Type 1 methodology might include capital additions required by new government programs not previously experienced, but would not include types of expenditures required by governments in the normal course of expectations, such as moves required to accommodate road or interchange reconfigurations. Growth, short-lived assets and replacement projects or programs are also not Type 1 capital because they have been experienced in the past.

17. As identified in Section 2, for a project to qualify for Type 1 capital tracker treatment the applicant must demonstrate that it exceeds a materiality threshold and that it meets the two Type 1 capital tracker criteria. In the following sections, the Commission evaluates ENMAX's expenditures on the Green Line Project against these requirements and concludes that the project meets the Type 1 capital tracker materiality threshold and Criterion 2, as it can be considered to be required by a third party. However, the Commission is not persuaded that the project can be characterized as extraordinary and finds that the expenditures incurred by ENMAX under the Green Line Project are types that can reasonably be considered as having been previously included in ENMAX's rate base. Therefore, the Commission concludes the project does not meet Criterion 1 and denies ENMAX's request for Type 1 supplemental funding.

3.1 Type 1 capital tracker materiality threshold

18. The materiality threshold for Type 1 capital tracker is calculated annually as the dollar amount equal to four basis points of the utility's return on equity.[12] The following table demonstrates ENMAX's calculated threshold and the Green Line Project revenue requirement for each year of the PBR plan:

Table 1. Type 1 capital tracker materiality thresholds and project revenue requirement

	2018	2019	2020	2021	2022
	($ million)				
Capital tracker materiality threshold	0.18	0.19	0.19	0.19	0.20
ENMAX revenue requirement for the Green Line Project	--	0.48 (actual)	1.15 (actual)	1.90 (forecast)	2.22 (forecast)

Source: Exhibit 26589-X0001, application, paragraph 69.

19. Based on these numbers, ENMAX submitted that the Green Line Project meets the Type 1 capital tracker materiality threshold in each of the years 2019, 2020, 2021 and 2022.

10 Decision 20414-D01-2016 (Errata), paragraph 197.
11 Exhibit 26589-X0001, application, paragraph 23.
12 Decision 2013-435: Distribution Performance-Based Regulation, 2013 Capital Tracker Applications, Proceeding 2131, Application 1608827-1, December 6, 2013, paragraphs 383-385.

Because ENMAX incurred capital additions in 2019 and 2020, it requested approval of the Type 1 capital tracker funding for its revenue requirement of $0.48 million in 2019 and $1.15 million in 2020.

20. No intervener challenged ENMAX’s calculation of Type 1 materiality thresholds.

21. The Commission has reviewed the calculations and is satisfied that ENMAX calculated the Type 1 capital tracker materiality threshold correctly. The Commission also acknowledges ENMAX’s evidence that this project does not meet the criteria for a Z factor in 2019 or 2020. Accordingly, the Commission finds that the Green Line Project meets the Type 1 capital tracker materiality threshold for 2019 and 2020.

3.2 Criterion 1 – Extraordinary and not previously included in rate base

22. Criterion 1 holds that a project must be extraordinary and not previously included in the distribution utility’s rate base.

23. ENMAX submitted that the Green Line Project’s scope of work is extraordinary because ENMAX has not undertaken a project of comparable size and complexity before. Broadly speaking, ENMAX characterized the extraordinary nature of the Green Line Project by pointing to a variety of its attributes; for example, magnitude of capital additions, unparalleled project complexity, line length, iterative design process, and unique land-use and planning considerations.[13]

24. ENMAX indicated capital additions associated with the Green Line Project for the period 2018-2022, on average, were approximately $5.4 million per year. ENMAX stated that, historically, its government-driven distribution relocation capital additions have averaged approximately $2.6 million per year for the 2013-2017 period.[14] ENMAX also asserted that “the Green Line Project is extraordinary in that it intersects both EPC’s Network [downtown] and Non-Network [outside of downtown] distribution systems, each with their own unique characteristics and challenges.”[15]

25. ENMAX also noted that the Green Line Project’s “infrastructure involves the installation of underground rail and LRT crossings which has not been a normal part of EPC’s business.”[16] With regard to size and scale, ENMAX stated that while “past LRT relocations are not directly comparable due to the unique attributes of the Green Line Project,”[17] they reinforce the magnitude of the work being undertaken and the large scale of the Green Line Project. For example, ENMAX illustrated that the Green Line Project is 92 per cent larger length-wise than the second largest LRT relocation constructed over 40 years ago.

26. ENMAX described the design and planning process as unusually iterative, done in segments along the future LRT route. Unlike a typical roadway expansion where space is reserved for ENMAX infrastructure in the right-of-way, Calgary’s approach for the Green Line Project is to create titled utility corridors and expropriate the land it needs to construct the LRT, with no space reserved for ENMAX’s infrastructure. This lack of pre-determined location for its

13 Exhibit 26589-X0001, application, paragraph 130.
14 Exhibit 26589-X0001, application, paragraph 114.
15 Exhibit 26589-X0001, application, paragraph 33.
16 Exhibit 26589-X0001, application, paragraph 31.
17 Exhibit 26589-X0001, application, paragraph 38.

infrastructure resulted in a need for ENMAX to have significant coordination with other third-party stakeholders. According to ENMAX, this is not the normal course of its business.

27. Lastly, ENMAX highlighted the West LRT Project as the closest parallel to the Green Line Project, albeit different in terms of scope and magnitude.[18] The Green Line Project runs through downtown Calgary, which is heavily populated and densely packed with existing utility infrastructure. According to ENMAX, the underground alignment through downtown requires relocation of significantly more ENMAX infrastructure than was required for the West LRT.[19]

28. The UCA and the CCA argued that ENMAX failed to adequately demonstrate how the Green Line Project satisfies Criterion 1.

29. The UCA submitted that the attributes ENMAX used to describe the extraordinary nature of the Green Line Project do not conform with the criterion established by the Commission. Specifically, that a "project must be of a type that is extraordinary. [emphasis in original]"[20] The UCA observed ENMAX's "long history of externally driven projects, having completed sixteen externally driven relocation projects with capital additions that exceed $1 million since 2005."[21] In the UCA's view, externally driven relocations, and LRT relocations in particular, have always been and continue to be a normal part of ENMAX's core business.

30. The CCA similarly considered that the Green Line Project does not satisfy Criterion 1, noting that ENMAX confirmed that third-party-requested costs have been previously included in ENMAX's rate base.[22] Furthermore, the CCA highlighted ENMAX's responses to an IR indicating the number of crossings (under- and above-ground) that ENMAX conducts in a given year, concluding that "underground crossings are hardly unusual or extraordinary."[23] The CCA also dismissed ENMAX's emphasis on the number of stakeholders it has to coordinate with, the variety of systems the line goes through and other attributes noted by ENMAX as not relevant to the capital tracker criteria. The CCA submitted that accepting these attributes creates skewed incentives and precedent for regulatory applications full of details "demonstrating the trials and tribulations which the utility had to go through to complete the project."[24]

31. ENMAX identified the Green Line Project's scope of work as: "to relocate existing civil and electrical infrastructure which conflicts with the Green Line LRT alignment and includes servicing new LRT passenger stations and traction power substations."[25] Therefore, for the purposes of this decision, the Commission considers the Green Line Project to be a "relocation" type of project.

32. In the Commission's view, in evaluating whether the Green Line Project meets the requirements of Criterion 1 as to being extraordinary, it is important to distinguish between the characteristics and work done by Calgary for the entire project and ENMAX's part of it. Calgary's total capital costs to construct the Green Line LRT extension are estimated to be

[18] Exhibit 26589-X0001, application, paragraphs 27 and 34.
[19] Exhibit 26589-X0025, EPC-AUC-2021JUL15-007(a).
[20] Exhibit 26589-X0046.01, UCA summary of oral argument, paragraph 7.
[21] Exhibit 26589-X0046.01, UCA summary of oral argument, paragraph 5.
[22] Exhibit 26589-X0028, EPC-CCA-2021JUL23-007(b).
[23] Exhibit 26589-X0047, CCA summary of oral argument, paragraphs 18-19.
[24] Exhibit 26589-X0047, CCA summary of oral argument, paragraph 8.
[25] Exhibit 26589-X0028, EPC-CCA-2021JUL23-006(c).

$4.90 billion,[26] whereas the estimated net capital additions for ENMAX's Green Line Project are projected to be $26.91 million[27] (or 0.6 per cent of Calgary's total costs to construct the Green Line LRT extension). In this regard, the Commission is not persuaded that some of the characteristics of the entire project that make it extraordinary to Calgary (such as number of kilometres of LRT system to be constructed, the number of passengers the LRT will carry, etc.) equally apply to ENMAX's portion of the project.

33. The Commission is of the view that such project attributes as the number of stakeholders a utility has to coordinate with, the variety of ENMAX systems the line goes through and the number of managers overseeing the project represent internal challenges the utility faces as part of project management. For the purposes of this decision, the Commission finds that such attributes do not make the Green Line Project extraordinary. The Commission also agrees with the CCA that consideration of such attributes showing the internal operations of the utility may create skewed incentives for the distribution utilities seeking additional capital.

34. The Commission concurs with the UCA's and the CCA's observations that relocation of ENMAX's distribution infrastructure, as a result of a third-party request, has repeatedly occurred in the past. In response to a Commission IR,[28] ENMAX confirmed that within the 2005 to 2020 period, it completed 15 externally driven relocation projects (excluding the West LRT Project) with capital additions greater than $1 million. The following table provides a list of project relocations with the year where most of a project's capital additions were recognized (minor project additions may have occurred in the surrounding years).

Table 2. ENMAX's completed externally driven relocation projects

Project	Customer	Capital additions ($ million)	Year of capital additions
C052: CDRQ[29] - 52 Street Glenmore Trail to South of 96 Avenue SE	The City of Calgary	1.08	2011
C052: CDRQ - Country Hills Blvd. Between 60 Street and 68 Street N	Walton Northpoint East Development LP	1.21	2018
CO52: CDRQ - 144 Avenue and 14 Street NW	Mattamy Homes	1.8	2019
C052: 194 Avenue and Wolf Willow Boulevard SE – Bury Overhead Line	WestCreek Developments Ltd.	1.52	2019
C055: MCAA[30] - 37 Street and Glenmore Trail SW	The City of Calgary	1.29	2010
C055: 27051-MCAA-17 Avenue and Stoney-SE Ring Road	Chinook Infrastructure	1.07	2012
C055: MCAA - Deerfoot Trail and Marquis of Lorne Trail SE - SE Ring Road	Chinook Infrastructure	1.67	2013
C055: MCAA - Hwy 2 (Deerfoot Trail) and 212 Avenue SE - 210 Avenue Interchange	Alberta Infrastructure	1.44	2019
C055: CITY TRANS - 14 ST SW (Btwn 75 AV & Heritage DR SW) - SW BRT - Line relocation	The City of Calgary	1.13	2019
C055 - The City of Calgary - Airport TR Btwn 19 ST & Barlow TR NE - Airport TR Re-Development	The City of Calgary	1.87	2020
C055: The City of Calgary - Airport TR Btwn 19 ST & Barlow TR NE - Airport TR Re-Development	The City of Calgary	1.35	2020

26 Exhibit 26589-X0001, application, paragraph 113.
27 Exhibit 26589-X0001, application, paragraph 117.
28 Exhibit 26589-X0025, EPC-AUC-2021JUL15-001(b).
29 CDRQ stands for Customer Driven Request.
30 MCAA stands for Municipal Consent and Access Agreement.

Project	Customer	Capital additions ($ million)	Year of capital additions
C055: Airport TR NE – East of Metis TR NE - Relocate Existing Infrastructure for road widening	The City of Calgary	1.04	2020
C10416: Southwest Calgary Ring Road - Feeders	Alberta Transportation	2.81	2017
C10442: Southwest Calgary Ring Road - Conflicts	Alberta Transportation	0.01	2018
C10508: Southwest Calgary Ring Road - Phase2 – KGL	Alberta Transportation	1.70	2018

Source: Exhibit 26589-X0025, EPC-AUC-2021JUL15-001(b).

35. In reviewing the above data, the Commission observes that the "externally driven relocation of electrical infrastructure" type of projects, such as the Green Line Project, are not atypical to ENMAX's normal course of operations. In particular, it is evident that in the last four years, 2017-2020, these projects occurred on an annual basis with the majority of requests initiated by the government. Furthermore, the Commission notes ENMAX's confirmation in an IR response "that certain LRT projects, relocation projects, and growth projects are included in EPC's rate base."[31] Accordingly, the Commission does not find the Green Line Project to be sufficiently unique to distinguish it from other relocation projects initiated by the government or other third parties, and therefore extraordinary, to satisfy Criterion 1, in light of the evidence that this type of project has been previously included in ENMAX's rate base many times before.

36. While keeping in mind its finding above that the Green Line Project as a whole is not extraordinary because ENMAX has undertaken other projects of similar type in the past, the Commission considered whether a particular segment of the Green Line Project may meet the requirements of Criterion 1. In this proceeding, the Commission queried whether the downtown segment of the Green Line Project, in isolation, can be characterized as extraordinary and not previously included in rate base.

37. ENMAX submitted that an "important aspect of the Green Line LRT is that it directly routes through the existing downtown area, which is unique in that the Road Right of Way has all existing deep and shallow utilities located underground."[32] In this context, ENMAX emphasized in its application that the Green Line infrastructure in the downtown area involves installing underground rail and LRT crossings, which has not been a normal part of ENMAX's business. This is different from LRT line crossings outside downtown, where ENMAX has been using overhead lines.[33]

38. However, the Commission cannot reconcile ENMAX's emphasis on the uniqueness of underground infrastructure installation with the information in its IR response,[34] where ENMAX provided an extensive list of its completed underground and overhead projects and stated that there have been three underground joint heavy rail and LRT rail crossings since 2005 and seven stand-alone underground heavy rail crossings. A concise version of that data, focusing on underground crossings, is provided in the table below.

31 Exhibit 26589-X0028, Second set of questions, EPC-CCA-2021JUL23-008(c).
32 Exhibit 26589-X0028, EPC-CCA-2021JUL23-002(a).
33 Exhibit 26589-X0001, application, paragraph 31.
34 Exhibit 26589-X0025, EPC-AUC-2021JUL15-003(a).

Table 3. ENMAX's completed underground heavy rail crossing and joint rail crossings since 2005

Year	Railway company - Crossing number	Green Line Project	Joint underground*
2007	CPR - XMAC00192W02	No	Yes
2007	CNR - 4730DRM130.92	No	No
2008	CPR - XRED00230WE	No	No
2009	CNR - 4730DRM130.15 - 0.09	No	No
2013	CPR - XRED01170WH	No	No
2014	CPR - XRED01170WI	No	No
2015	CPR - XMAC00505W2	No	Yes
2016	CNR - 4715DRM127.41	No	No
2017	CNR - SAP 3071921	No	No
2017	CPR - XBRO17494WA	Yes	-
2018	CNR - 4730DRM131.88-11S-0.71-M025-0.26	Yes	-
2019	CNR - 4730DRM131.88-F100-0.52	No	Yes
2019	CPR - XALD11866WA	Yes	-
2019	CPR - XALD11878WA	Yes	-
2019	CPR - XALD11900WA	Yes	-
2019	CNR - 4730DRM131.88-01S-3.25	Yes	-
2019	CPR - XBRO17041WB	Yes	-

*Underground joint heavy rail and LRT rail crossing within a project.
Source: Exhibit 26589-X0026, EPC-AUC-2021JUL15-003(a).

39. As part of the same IR response, the Commission also notes ENMAX submitted that in "a typical year, EPC will construct one rail or LRT crossing built underground."[35]

40. While the Commission accepts the possibility of certain degrees of variation when it comes to ENMAX's underground installations as part of the Green Line Project vis-à-vis projects shown in Table 3 above, the Commission is not persuaded that installing underground rail and LRT crossings is outside ENMAX's normal course of business.

41. Based on the above, the Commission finds that the Green Line Project, as a whole or considering any particular segment, fails to meet Criterion 1 for the Type 1 capital tracker treatment.

3.3 Criterion 2 – Required by a third party

42. Criterion 2 holds that a project must be required by a third party. For the purpose of this decision, the Commission considers there are two questions within this criterion: (i) what entity is requiring the project to be completed?; and (ii) is that entity a third party?

43. With respect to the first question, the decision to construct the Green Line LRT extension was made by Calgary, which is also ENMAX's sole shareholder. For the reasons that follow, the Commission has determined that ENMAX's Green Line Project meets Criterion 2 for Type 1 capital tracker treatment.

[35] Exhibit 26589-X0025, EPC-AUC-2021JUL15-003(a).

44. ENMAX received formal requests from Calgary to relocate any infrastructure that is in conflict with Calgary's plans for the Green Line LRT extension.[36] In accordance with agreements between ENMAX and Calgary, as well as Calgary bylaws, ENMAX is required to relocate its infrastructure when requested by Calgary, with Calgary paying a portion of the costs based on the agreement or bylaw governing the sharing of costs at the time.[37] No party disputed whether ENMAX's Green Line Project is required, or whether it is Calgary that is requiring ENMAX to complete its Green Line Project. Accordingly the Commission finds that ENMAX is required to complete the Green Line Project by Calgary.

45. With respect to the second question, the assessment of whether Calgary is a third party is complicated by the fact that Calgary is ENMAX Corporation's sole shareholder. ENMAX Power Corporation is a wholly owned subsidiary of ENMAX Corporation. Calgary elects ENMAX Corporation's board of directors, which in turn elects ENMAX Power Corporation's board of directors.[38] Because of this structure, ENMAX and Calgary have a relationship beyond that of a utility and a municipality. The extent of this relationship is highlighted by the description on ENMAX's website of its relationship with Calgary and quoted by the UCA in its IRs.[39] Additionally, some city councillors have historically sat on ENMAX's board, although this has not been the case since May 3, 2019.[40]

46. ENMAX argued that although Calgary is ENMAX's sole shareholder, Calgary acted in its capacity as a municipality, and not as ENMAX's shareholder, when making decisions regarding the planning and construction of the Green Line LRT extension. ENMAX submitted that its control and influence over the Green Line Project is limited to technical solutions related to the utility relocations.[41] In ENMAX's view, the intent of the third-party criterion is to exclude projects where the decision to spend capital is made by the utility and is not imposed on it by another person.[42]

47. The UCA was of the opinion that the Green Line Project does not meet Criterion 2. The UCA submitted that given the Commission's desire to limit Type 1 capital tracker treatment and to maximize the incentives of PBR, a narrow interpretation of what constitutes a third party is required. In the UCA's view a third party has to be more than just a separate legal entity. The UCA argued that Calgary plays a role in the governance of ENMAX, and receives a financial benefit from ENMAX in the form of dividends, and as such Calgary and ENMAX are closely intertwined and cannot be considered arm's-length. The UCA noted that if ENMAX does not receive Type 1 capital treatment, its return would be negatively impacted, which would in turn impact the dividends Calgary receives from ENMAX. In the UCA's view, this exemplifies the absence of a sufficient degree of separation between ENMAX and Calgary.[43]

48. The Commission considers that because of the relationship Calgary has with ENMAX, Calgary is able to exert some control over ENMAX through the election of ENMAX's board of directors and review of ENMAX's annual business plans.[44] However, Calgary's interactions with

36 Exhibit 26589-X0010, Appendix I - City of Calgary Requests for Relocations
37 Exhibit 26589-X0001, application, paragraphs 62-66.
38 Exhibit 26589-X0001, application, footnote 20, PDF page 19
39 Exhibit 26589-X0031, EPC-UCA-2021JUL23-003.
40 Exhibit 26589-X0031, EPC-UCA-2021JUL23-003.
41 Exhibit 26589-X0024, EPC-AUC-2021JUL23-001(a).
42 Transcript, Volume 1, pages 27-28.
43 Transcript, Volume 1, pages 90-95.
44 Exhibit 26589-X0031, EPC-UCA-2021JUL23-003(g).

ENMAX are not limited to that of its corporate relationship. In carrying out its function as a municipality, Calgary may make requests of ENMAX enabled by its role as a municipality, and not as a shareholder of ENMAX. As such, it is possible that depending on the circumstances, Calgary may or may not be considered a third party in the context of Criterion 2 when making a request of ENMAX.

49. To ascertain whether Calgary is a third party for the purposes of this decision in the context of Criterion 2, the Commission agrees with ENMAX that it is important to consider the extent to which a request by Calgary is made in its capacity as a municipality versus as ENMAX's shareholder. In the case of the Green Line Project, Calgary had the ability to make the requests of ENMAX because Calgary is a municipality. Calgary did not need to be ENMAX's sole shareholder to require ENMAX to undertake the relocations and new connections associated with its Green Line Project.

50. Further, in the case of Calgary's Green Line LRT extension, the Commission views that Calgary's relationship with ENMAX would have been of minimal import when determining whether to undertake the project. Numerous stakeholders besides ENMAX are affected by the project, including other utilities, property and business owners along the LRT route, as well as Calgarians that use the transit system. As previously mentioned in Section 3.2, ENMAX's estimated net capital additions for the project are anticipated to be less than one per cent of Calgary's total costs to construct the Green Line LRT extension. As such, the ability of ENMAX to recover its costs related to the Green Line Project, and any bearing this would have on Calgary's revenue from ENMAX, were unlikely to be material factors that led Calgary to undertake the Green Line LRT extension.

51. Based on the above, for the purposes of this decision, the Commission finds that ENMAX's Green Line Project can be considered to be required by a third party. Accordingly, the Commission finds that this project meets Criterion 2 for the Type 1 capital tracker treatment.

4 Conclusion

52. In Section 3.2 above, the Commission finds that ENMAX's Green Line Project does not meet the requirements of Criterion 1 that the project is extraordinary and not previously included in the distribution utility's rate base. Accordingly, ENMAX's application for Type 1 capital tracker treatment for the Green Line Project is denied.

53. As previously discussed in Section 2, ENMAX was authorized to collect from its customers the placeholder amounts for the Green Line Project of \$1.03[45] million, \$1.25[46] million and \$1.78 million[47] for 2019, 2020 and 2021, respectively. The Commission directs ENMAX to refund all Green Line Project Type 1 capital tracker placeholder amounts (including any associated carrying costs) to customers in 2022 by way of a compliance filing, to be filed no later than December 10, 2021.

45 Decision 23892-D01-2018, paragraph 36.
46 Decision 24875-D01-2019, paragraph 40.
47 Decision 25865-D01-2020: ENMAX Power Corporation, 2021 Annual Performance-Based Regulation Rate Adjustment, Proceeding 25865, December 18, 2020, paragraph 31.

54. As stated in Bulletin 2021-04,[48] the Commission determined that it would assess the prudence of actual costs incurred during the 2018-2022 PBR term as part of the 2023 cost-of-service review proceedings for the distribution utilities. To clarify, the Commission's denial of supplemental Type 1 capital funding for the Green Line Project and the direction to refund the associated placeholder amounts previously collected from customers do not equate to the finding of imprudence. The Commission concluded in Section 3.3 that ENMAX is required to complete the Green Line Project by Calgary and, therefore, under provisions of the current PBR plan, ENMAX must manage these expenditures as part of Type 2 capital that is funded from the revenue available under I-X and K-bar mechanisms of the PBR plan. In this respect, the Commission's findings in this decision do not preclude ENMAX from including the capital additions for the Green Line Project in its rate base for the 2023 cost-of-service review in the upcoming Proceeding 26617.

5 Order

55. It is hereby ordered that:

(1) ENMAX Power Corporation's application for Type 1 capital tracker treatment for the Green Line Light Rail Transit Project is denied.

(2) ENMAX Power Corporation shall file a compliance filing application by December 10, 2021, to reflect the Commission's denial of the Green Line Light Rail Transit Project and the refund of all associated placeholder amounts previously collected from customers, in accordance with the directions provided in the body of this decision.

Dated on November 24, 2021.

[48] Bulletin 2021-04, Stakeholder consultations to evaluate performance-based regulation in Alberta and to determine process to establish 2023 rates for distribution facility owners, March 1, 2021.

Alberta Utilities Commission

(original signed by)

Carolyn Dahl Rees
Chair

(original signed by)

Cairns Price
Commission Member

(original signed by)

Merete Heggelund
Acting Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
ENMAX Power Corporation (ENMAX or EPC)
Consumers' Coalition of Alberta (CCA)
Office of the Utilities Consumer Advocate (UCA) Russ Bell & Associates Inc. Reynolds, Mirth, Richards & Farmer LLP

Alberta Utilities Commission Commission panel C. Dahl Rees, Chair C. Price, Commission Member M. Heggelund, Acting Commission Member Commission staff K. Macnab (Commission counsel) A. Jukov D. Fedoretz

Appendix 2 – Virtual oral argument and reply argument – registered appearances

Name of organization (abbreviation) **Name of counsel or representative**
ENMAX Power Corporation (ENMAX) D. Wood
Consumers' Coalition of Alberta (CCA) J. Wachowich, QC
Office of the Utilities Consumer Advocate (UCA) R. McCreary

Appendix 3 – 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. As previously discussed in Section 2, ENMAX was authorized to collect from its customers the placeholder amounts for the Green Line Project of $1.03 million, $1.25 million and $1.78 million for 2019, 2020 and 2021, respectively. The Commission directs ENMAX to refund all Green Line Project Type 1 capital tracker placeholder amounts (including any associated carrying costs) to customers in 2022 by way of a compliance filing, to be filed no later than December 10, 2021…................... paragraph 53