AUC
Alberta Utilities Commission

EPCOR Energy Alberta GP Inc.

2023-2024 Non-Energy Regulated Rate Tariff

June 26, 2024

Alberta Utilities Commission
Decision 28457-D02-2024
EPCOR Energy Alberta GP Inc.
2023-2024 Non-Energy Regulated Rate Tariff
Proceeding 28457

June 26, 2024

Published by the:
Alberta Utilities Commission
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Calgary, Alberta T2P 0G5

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The Commission may, no later than 60 days from the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

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1 Decision summary

1. In this decision, the Alberta Utilities Commission approves the Negotiated Settlement Agreement (NSA) that addresses all but one of the revenue requirement items for 2023-2024 for EPCOR Energy Alberta GP Inc.'s (EEA) non-energy regulated rate tariff (RRT). The one unresolved revenue requirement item that was not subject to the NSA – credit costs for 2023-2024 – is addressed by the Commission in Section 4 of this decision, where it provides its reasons for denying EEA's claim for credit costs.

2. In Section 5 of this decision, the Commission directs EEA to include certain information about cost allocations as part of its next non-energy RRT application. In Section 6, the Commission finds that EEA has complied with certain previous Commission directions, grants EEA's request for relief from having to continue to comply with a previous Commission direction, and replaces a previous Commission direction with a new one. In Section 7, the Commission approves EEA's electronic bill (e-bill) rate effective July 1, 2024, on an interim basis.

3. A compliance filing is required to be filed by July 18, 2024, to determine EEA's final RRT revenue requirements and rates for 2023-2024. Further instructions about the compliance filing are included in Section 8 of this decision.

2 Processing of the application

4. On September 28, 2023, EEA filed an application requesting approval for its 2023-2025 RRT non-energy charges, price schedules including miscellaneous fees, RRT terms and conditions of service, and the establishment of deferral accounts for certain cost items for 2023-2025. EEA considered it would be worthwhile for the parties to this proceeding to be provided with a reasonable opportunity to explore the possibility of reaching a negotiated settlement of EEA's application.

5. Prior to filing the application, EEA submitted a motion for confidential treatment of certain information.[1] The Commission's ruling on the motion was issued on September 26, 2023.[2] The Commission appreciates EEA submitting the motion for confidential treatment and waiting for the Commission's ruling to be issued prior to submitting the application, as this allowed for the application review process to commence efficiently.

6. The Commission issued notice of application on October 2, 2023. The notice requested that interested parties include in their written submissions: (i) a full description of the issues,

[1] Exhibit 28457-X0004.
[2] Exhibit 28457-X0011.

including issues they intended to ask information requests (IRs) about or file evidence on; (ii) the process steps required; and (iii) whether they were amenable to a negotiation process.

7. The Consumers' Coalition of Alberta (CCA) and the Office of the Utilities Consumer Advocate (UCA) registered to participate, and both commented that they were amenable to entering into negotiations with EEA. Following a round of IRs to EEA, the submission of EEA's responses to those IRs, and the submission of intervener evidence, the parties commenced negotiations on January 8, 2024, and negotiations were completed on February 2, 2024.[3]

8. The parties agreed to an NSA, which was submitted to the Commission on February 9, 2024, for approval.[4] The NSA sets out that the term of the agreed test period is 2023-2024 and that the Commission "should only approve EEA's revenue requirement, deferral accounts, rate schedules, and other components of its applied-for non-energy RRT for the Test Period."[5] The NSA settles all aspects of the application other than the matter of EEA's recovery of its applied-for non-energy credit costs.[6]

9. Section 1.0.3 of the NSA states, "Unless otherwise agreed by the Parties in writing, if the AUC declines to approve this Settlement Agreement in its entirety, the Settlement Agreement will be of no force and effect in accordance with Section 135 of the *Electric Utilities Act*, S.A. 2003, c. E-5.1."[7]

10. After filing the NSA for approval, EEA filed a request for updated 2024 interim RRT non-energy rates.[8] The remaining steps to deal with the NSA, the non-energy credit costs issue and the updated 2024 interim rates application consisted of: (i) the Commission issuing IRs to EEA about the NSA, and EEA filing responses; (ii) comments submitted by the UCA about the updated 2024 interim rates and EEA's reply comments; (iii) the filing of rebuttal evidence by EEA on the issue of the recovery of non-energy credit costs; and (iv) the filing of written argument and written reply argument by EEA and the UCA on the issue of the recovery of non-energy credit costs.

11. On March 14, 2024, the Commission issued Decision 28457-D01-2024,[9] in which it approved EEA's applied-for, updated 2024 interim RRT non-energy rates.

12. On May 1, 2024, the Commission reopened the record of the proceeding to obtain more information about the non-energy credit costs issue.[10] EEA calculates its non-energy credit costs based on the amount of financial security it is required to post with FortisAlberta Inc. The process steps consisted of submissions from Fortis, the submission of responses from EEA and

[3] Exhibit 28457-X0117, PDF page 4, paragraph 7.
[4] The application for approval of the NSA is in Exhibit 28457-X0117. Attachment 1 to the application, the NSA, is in Exhibit 28457-X0118. Attachment 2 to the application, a summary of the negotiated adjustments to the revenue requirements for 2023 and 2024, is in Exhibit 28457-X0119.
[5] Exhibit 28457-X0118, PDF pages 2-3, Section 3.0, paragraph 1.
[6] Exhibit 28457-X0118, PDF page 2, Section 1.0, paragraph 1.
[7] Exhibit 28457-X0118, PDF page 2, Section 1.0.3.
[8] Exhibit 28457-X0124.
[9] Decision 28457-D01-2024: EPCOR Energy Alberta GP Inc., Updated 2024 Interim Regulated Rate Tariff Non-Energy Rates, Proceeding 28457, March 14, 2024.
[10] Exhibit 28457-X0146.

the UCA and reply comments from Fortis. EEA also filed (with the Commission's permission) a limited response to the UCA's submissions.

3 NSA

3.1 Requirements governing negotiated settlements

13. Sections 134 and 135 of the *Electric Utilities Act* authorize the Commission, with some limitations, to approve a negotiated settlement. Section 135 indicates that if the parties negotiate a settlement on the basis that the settlement is contingent on the Commission's accepting the entire settlement, the Commission must either approve the entire settlement or refuse it.

14. Section 132 of that act authorizes the Commission to establish rules in respect of negotiated settlements, including settlements of rate-related matters.

15. Section 6 of Rule 018: *Rules on Negotiated Settlements* sets out requirements for the contents of a negotiated settlement application, and places the onus on the applicant to provide sufficient evidence to support the application and to enable the Commission to understand and assess the agreement. Section 7 of Rule 018 includes requirements for the Commission's assessment of the agreement. The Commission structured the settlement process in this proceeding in accordance with Rule 018.

16. In considering these requirements, the Commission has taken into account the direction of the Alberta Court of Appeal as set out in *ATCO Electric Limited v Alberta (Energy and Utilities Board)* (ATCO Electric decision), where the court found that the ultimate responsibility for approving negotiated settlements resides with what is now the AUC.[11] The Commission must therefore ensure that the NSA will result in just and reasonable rates; that none of the NSA provisions, individually or collectively, are patently against the public interest or contrary to law; and that the negotiated settlement process (NSP) used to arrive at the NSA was fair. Performing this assessment requires the Commission to review both the individual provisions of the NSA and the NSA as a whole.

17. In assessing a negotiated settlement, the Commission is aware that while one or more of the interested parties to a settlement may represent certain stakeholders, none will represent all stakeholders. Further, as noted by the court in the ATCO Electric decision, "… even a broad range of Interveners will not necessarily translate into a wide spectrum of positions since parties may make trade-offs which leave other issues unresolved, unaddressed or compromised."[12] Consequently, the NSP and NSA do not replace a full and informed review by the Commission as to what is in the overall public interest. Given that EEA requested and received Commission approval to negotiate a settlement, subsequently negotiated with parties representing ratepayers, executed the NSA, and then applied to the Commission for approval of the NSA, the Commission has proceeded on the basis that the NSA satisfies EEA's interests and has only assessed the NSA from the point of view of ratepayers. This is consistent with the ATCO Electric decision.[13]

[11] *ATCO Electric Limited v Alberta (Energy and Utilities Board)*, 2004 ABCA 215.
[12] 2004 ABCA 215, paragraph 138.
[13] 2004 ABCA 215, paragraph 146.

18. Given the above requirements governing negotiated settlements, the Commission has considered the following in making its determination on whether the NSA should be accepted or rejected in its entirety.

- **Review of the NSP**
  - Was the NSP procedurally fair, both with respect to adequate notice having been served and with respect to the conduct of the negotiation process itself?
- **Review of the NSA**
  - Does the settlement result in rates, and terms and conditions that are just and reasonable?
  - Is the settlement patently against the public interest or contrary to law?

19. Performing this assessment requires the Commission to review both the individual provisions of the NSA and the NSA as a whole.

20. The Commission's findings on the NSP and on the provisions of the NSA are discussed in sections 3.2 and 3.3, respectively.

3.2 Review of the NSP

21. The first factor that the Commission considers is whether the NSP that resulted in the NSA was fair. The Commission notes at the outset that all participants in the negotiations are sophisticated parties and considers that they represent a cross-section of Alberta residential, small business and farm ratepayers.

22. With respect to the conduct of the negotiation process, EEA submitted that the negotiation was informed by its application, IR responses filed by EEA in this proceeding, and additional information provided during the course of the negotiation, all of which were comprehensive in content. EEA noted that no party withheld relevant information, which is supported by Section 8.0.1 of the NSA. EEA's overall submission was that all parties were reasonably informed and able to fully participate.[14] The UCA indicated that it actively participated in the NSP and confirmed that in its view, the NSP was conducted openly and fairly.[15] The CCA similarly advised that the negotiations were fair as was the filed NSA.[16]

23. On the issue of notice, Section 3 of Rule 018 deals with the provision of notice by a utility to parties who may be interested in participating in negotiations. Section 8.0.2 of the NSA indicates that EEA provided notice to all interested parties, and the interveners agreed that proper notice of the NSP was provided to them. The Commission finds that EEA provided adequate notice to parties.

24. The Commission is satisfied that the NSP was fair and that the procedural requirements set out in Rule 018 have been met.

[14] Exhibit 28457-X0117, PDF page 15, paragraph 37.
[15] Exhibit 28457-X0115, PDF page 1, paragraph 1.
[16] Exhibit 28457-X0120, PDF page 1.

3.3 Review of the NSA

25. In assessing the NSA, the Commission must consider whether it will result in just and reasonable rates and terms and conditions (Rule 018, Section 8(1)), including consideration of whether its approval would be patently against the public interest or contrary to law (Rule 018, Section 8(2)).

26. In conducting the public interest assessment, the Commission considered each element of the NSA and the NSA as a whole. As to what constitutes the public interest when assessing the attributes and merits of the NSA, the Commission followed the guidance provided in the ATCO Electric decision discussed above; that is, the Commission considered the public interest from the perspective of ratepayers. In arriving at its findings, the Commission reviewed each of the material provisions of the NSA to determine whether any of these provisions appeared to be unusual, contrary to accepted regulatory practices, or could otherwise have resulted in negative rate effects, service concerns or other concerns in future rate applications.

27. In its application, EEA applied for revenue requirements of $31.72 million for 2023 and $28.56 million for 2024.[17] A description of the specific areas to be adjusted and the estimated impacts to the applied-for revenue requirements for 2023 and 2024 as set out in the NSA are included in the following table.

Table 1. Estimated impacts to the applied-for revenue requirements for 2023 and 2024 as set out in the NSA

NSA section #	Description	RRT revenue requirement impact ($ million)	
		2023	2024
	Applied-for revenue requirement	31.72	28.56
4.1	Allocation of insurance, rent and utilities	(0.06)	(0.05)
4.2	Connection fees, late payment, and collection and NSF (non-sufficient funds) revenues	(0.91)	(0.69)
4.3	2024 non-union salary increase	-	(0.04)
4.4	Mid-term incentive program	(0.02)	(0.02)
4.5	Cloud-based software as a service deferral – removal of customer voice and chat bots projects	-	(0.01)
4.6	Global operating cost reduction	(0.03)	(0.03)
	Total reductions	(1.02)	(0.84)
	NSA revenue requirement (subject to excluded matters)	30.71	27.73
	% reduction	3.2%	2.9%

28. The NSA stipulates that, "In addition to the adjustments and modifications identified herein, the Test Period RRT revenue requirements will reflect EEA's correction of the errors and omissions identified in EEA's response to EEA-UCA-2023NOV20-011, as revised, filed on the record of Proceeding 28457."[18] Section 6.0 of the NSA sets out some non-monetary commitments made by EEA.[19]

[17] Exhibit 28457-X0014, PDF page 15, Table 1.2.1-2, row 18.
[18] Exhibit 28457-X0118, PDF page 4, Section 5.0.1.
[19] Exhibit 28457-X0118, PDF pages 4-5, sections 6.1, 6.2, 6.3 and 6.4.

29. The NSA results in estimated reductions to EEA's applied-for revenue requirements of approximately $1.02 million or 3.2 per cent for 2023, and $0.84 million or 2.9 per cent for 2024. EEA submitted that "This is a rough proxy for the reductions' impacts on the applied-for non-energy rates set out in Schedule 5 of Exhibit 28457-X0064, although EEA notes that the actual impacts are subject to adjustments for items that are allocated according to customer type (e.g., bad debt) and other factors that will be reflected in the final modelling, including the errors and omissions identified in EEA's response to EEA-UCA-2023NOV20-011, as revised."[20] EEA's understanding is that the UCA and the CCA understand that the results of the modelled NSA items will provide the final adjustments.[21]

30. A list of the specific areas to be adjusted as set out in the NSA is provided below:

- The term of the test period was modified from 2023-2025 to 2023-2024.[22]
- The allocation of insurance, rent and utilities costs was modified.[23] EEA provided more information about this allocation in response to a Commission IR on the NSA.[24]
- The forecast revenues from connection fees, late payment charges, and collection and NSF charges for 2023 and 2024 were modified. This change increased the forecast revenues from these items.[25]
- EEA's applied-for, non-union salary escalation of four per cent for 2024 was reduced to three per cent.[26]
- EEA's applied-for mid-term incentive program costs for 2023 and 2024 were removed from the revenue requirements.[27]
- The costs associated with the Customer Voice and Chat Bots Project were removed from the proposed cloud-based software as a service cost deferral account for 2024.[28] EEA provided more information about the cloud-based software as a service cost deferral account in response to a Commission IR on the NSA.[29]
- EEA's 2023 and 2024 RRT revenue requirements were each reduced by $0.025 million. This reduction is not tied to any specific cost category but is a holistic reduction that EEA may apply to any operating expense or cost category as it sees fit.[30]

31. The Commission is satisfied that the NSA represents a unanimous agreement reached as a result of a successful negotiation. Such negotiations and the resulting NSA typically reflect a number of compromises of different interests and positions of the parties. The intervener

[20] Exhibit 28457-X0117, PDF pages 6-7, paragraph 11(e).
[21] Exhibit 28457-X0128, response EEA-AUC-2024FEB23-001(b), PDF page 2.
[22] Exhibit 28457-X0118, PDF page 2, Section 3.0.1.
[23] Exhibit 28457-X0118, PDF page 3, Section 4.1.1.
[24] Exhibit 28457-X0128, response EEA-AUC-2024FEB23-002, PDF pages 3-4.
[25] Exhibit 28457-X0118, PDF page 3, Section 4.2.1.
[26] Exhibit 28457-X0118, PDF page 3, Section 4.3.1.
[27] Exhibit 28457-X0118, PDF page 3, Section 4.4.1.
[28] Exhibit 28457-X0118, PDF page 3, Section 4.5.1.
[29] Exhibit 28457-X0128, response EEA-AUC-2024FEB23-003, PDF page 5.
[30] Exhibit 28457-X0118, PDF page 4, Section 4.6.1.

signatories to the NSA in this case, the UCA and the CCA, have participated in several of EEA's past non-energy RRT applications and they represent a cross-section of Alberta residential, small business and farm ratepayers. The involvement of sophisticated participants like the UCA and the CCA is supportive of a finding that the NSA is in the public interest.

32. After reviewing the provisions of the NSA, along with the detailed analysis of this application[31] and EEA's IR responses, the Commission finds that the NSA, taken as a whole, is not patently against the public interest or contrary to law, and finds that the NSA results in rates and terms and conditions that are just and reasonable, as required by Section 8 of Rule 018. Accordingly, the Commission approves the NSA as filed. The NSA is attached as Appendix 3 to this decision.

4 Credit costs claimed for providing financial security to Fortis

33. EEA, as a regulated rate provider, applied for approval of its credit costs in providing financial security to Fortis, a distribution system owner (DSO). EEA stated that it is required to provide financial security to Fortis under the *Electric Utilities Act* and under the Fortis (Retailer) Terms and Conditions of Service (T&Cs).

34. EEA is currently the regulated rate provider in Fortis's service territory under the RRO Arrangement Agreement between Fortis and EEA that was approved by the Commission in Decision 24839-D01-2019.[32] As a DSO, Fortis is obligated to provide the RRO under Section 103 of the *Electric Utilities Act* but Fortis, as provided for in Section 104 of the *Electric Utilities Act*, has contracted that obligation to EEA.

35. EEA explained that under the Fortis T&Cs, it is required to calculate a gross financial security amount and post it with Fortis. The resulting gross financial security amount is based on 37 days of purchase costs of Fortis's distribution and transmission charges, exclusive of goods and services tax. EEA stated that this is the maximum amount that could be owed to Fortis by EEA at any point in time.

36. EEA indicated that the maximum forecast gross financial security amounts calculated under the Fortis T&Cs are $41.22 million in 2023 and $41.23 million in 2024. However, as a result of EEA's negotiations with Fortis, Fortis agreed to reduce the gross financial security amount to $17.3 million for each of 2023 and 2024. This reduction in security requirement results in a financial security amount attributable to the RRT of $16.46 million in 2023 and $16.36 million in 2024. The reduction in financial security amount required by Fortis results in a corresponding reduction in what EEA pays to maintain that security in the form of credit costs, which is what EEA has claimed in this proceeding, in the amount of $0.29 million for 2023 and $0.28 million for 2024.[33]

37. EEA also claimed for credit costs in its last non-energy RRT application for the years 2021-2022. In that application, EEA argued that under the Fortis T&Cs, EEA was required to provide financial security based on a requirement in Section 8 of the *Distribution Tariff*

[31] Including EEA's application for the approval of the NSA.
[32] Decision 24839-D01-2019: EPCOR Energy Alberta GP Inc., Arrangement to Provide Regulated Rate Option Service in the Distribution Service Area of FortisAlberta Inc., Proceeding 24839, December 9, 2019.
[33] The credit costs are calculated at 1.75 per cent of the financial security amount attributable to the RRT.

Regulation. As described in more detail below, in Decision 26694-D01-2022[34] the Commission denied the credit costs claims, concluding that those costs are not reasonable costs or expenses for EEA to provide RRO service. The Commission's view was that Section 8 of that regulation does not apply to regulated rate providers such as EEA; rather, it requires such security from **retailers**, which the Commission determined does not include a regulated rate provider under the legislative scheme. The Commission found that the Fortis T&Cs imposed a requirement on EEA to pay a security requirement that was **inconsistent** with legislative requirements in the *Electric Utilities Act* and the *Distribution Tariff Regulation*.

38. In the current application, EEA appears to have repositioned its claim for credit costs. It did not argue that it was required to provide financial security to Fortis based on any requirement in Section 8 of the *Distribution Tariff Regulation*. Rather, EEA stated that the legislation is silent with respect to RRO providers, neither requiring nor prohibiting RRO providers to post financial security with DSOs. EEA's position is that Fortis requires EEA to provide the security under a commercial arrangement, adding that financial security is commonly required by parties to commercial arrangements. EEA explained its current claim for credit costs in the following way:[35]

> 602. In Decision 26694-D01-2022, the Commission disallowed EEA's forecast DSO credit costs for its 2021-2022 test period on the basis of its finding that the financial security requirements in EEA's arrangements with EDTI and FortisAlberta were not consistent with the legislation. The Commission interpreted the legislative framework, and particularly section 8 of the *Distribution Tariff Regulation*, Alta. Reg. 162/2003, as only requiring financial security to be posted by non-regulated retailers, and not RRO providers like EEA. With greatest respect, EEA submits that the legislative framework does not prohibit, and cannot reasonably be interpreted as prohibiting, DSOs from requiring financial security from RRO providers, such that an RRO provider's costs of providing such security are not legitimate costs of providing RRO service that are properly included in its RRT revenue requirement.
>
> 603. Financial security is commonly required by parties to commercial arrangements to protect themselves from counterparty credit risk. From a purely commercial standpoint, there is nothing unusual about the arrangement between FortisAlberta and EEA that could make a requirement for financial security unreasonable or unnecessary.
>
> 604. Although the legislation expressly requires non-regulated electricity retailers to post financial security with DSOs, it is silent regarding RRO providers, neither requiring nor prohibiting their posting of financial security with DSOs. In EEA's submission, this evidences the legislative intent to impose an express protection for DSOs vis-à-vis non-regulated retailers, but to allow commercial judgment to prevail where RRO providers are concerned. This makes sense in the context of the legislation, which provides DSOs with other forms of assurance *vis-à-vis* RRO providers, but does not provide those assurances for non-regulated retailers. [footnotes excluded]

39. The Commission agrees with EEA that DSOs are not expressly prohibited from requiring financial security from RRO providers under the legislative framework. Further, the Commission does not disagree with EEA that Fortis and EEA may choose to enter into a commercial arrangement whereby EEA may be required to provide financial security to Fortis. However,

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[34] Decision 26694-D01-2022: EPCOR Energy Alberta GP Inc., 2021-2022 Non-Energy Regulated Rate Tariff Application, Proceeding 26694, February 17, 2022.

[35] Exhibit 28457-X0014, PDF page 198, paragraphs 602-604.

whether costs associated with any such arrangement should be recovered though EEA's RRT is a matter for the Commission's determination. For the following reasons, the Commission is not persuaded that the credit costs claimed by EEA pursuant to the commercial arrangement between EEA and Fortis should be approved.

4.1 Relevant provisions under the commercial arrangement and the Fortis T&Cs

40. Section 8.3(f) of the RRO Arrangement Agreement between EEA and Fortis states:

> **8.3 Related Terms**
>
> Without limiting the generality of Sections 8.1 and 8.2, the Parties agree that:
>
> …
>
> (f) WSP Prudential Requirements: EPCOR will, as the Regulated Rate Provider, post normal course security with FortisAlberta during the Term under the then current FortisAlberta Terms and Conditions.

41. The relevant provisions in the Fortis "then current" T&Cs (i.e., at the time that the RRO Arrangement Agreement was approved in Decision 24839-D01-2019) are the following:

> **ARTICLE 2 – DEFINITIONS AND INTERPRETATION**
>
> **2.1 Definitions**
>
> …
>
> "Regulated Rate Tariff" means a regulated rate tariff for the provision of Electricity Services to eligible Customers pursuant to the [*Electric Utilities*] Act;
>
> "Regulated Rate Option Provider" means the party authorized by FortisAlberta to provide electricity services to eligible customers in the FortisAlberta service area under a regulated rate tariff;
>
> …
>
> "Retailer" means a person, selected by the Customer, **or otherwise to whom the Customer is defaulted in accordance with the Act and Regulations**, who carries out the duties of a retailer prescribed in the Act, including also self-retailers who procure Electricity Services for their own use as a Customer; [emphasis added]
>
> …
>
> **ARTICLE 6 – PRUDENTIAL REQUIREMENTS**
>
> **6.1 General**
>
> Retailers must satisfy the security requirements in Sections 8 through 12 of the Distribution Tariff Regulation A.R. 162/2003 to ensure that the Retailer is and remains of sufficient financial standing to meet its ongoing financial obligations. FortisAlberta reserves the right to re-evaluate the security requirements of a Retailer on a regular basis, and to require additional security where appropriate.[36]

42. EEA's position is that Section 8.3(f) of the RRO Arrangement Agreement created a clear obligation on the part of EEA to post security with Fortis. In Fortis's submission (which the Commission requested when it reopened the record of this proceeding), Section 8.3(f) has the

[36] It would appear that the definition of "Retailer" and Article 6.1 have remained unchanged since the arrangement's approval in 2019.

effect of creating a legally binding obligation on EEA to provide financial security. Fortis indicated that the mechanism by which security was determined under the RRO Arrangement Agreement was by reference to the Fortis T&Cs, wherein Article 6.1 directs that security be calculated in accordance with the *Distribution Tariff Regulation*.

43. In the Commission's view, the proper assessment of these submissions requires consideration of the interaction of the relevant provisions of the RRO Arrangement Agreement and the Fortis T&Cs with the legislative framework, including the analysis and findings in Decision 26694-D01-2022.

4.2 Decision 26694-D01-2022

44. In Proceeding 26694, the UCA challenged EEA's credit cost claim. It is worth noting that prior to that proceeding, EEA had been recovering such costs through its revenue requirement since as early as 2005-2006,[37] and it appears the costs had not been disputed through most of that significant timeframe.[38]

45. EEA's position in Proceeding 26694 was that it was required to provide financial security to Fortis under the Fortis T&Cs based on the requirements of Section 8 of the *Distribution Tariff Regulation*,[39] which states that, "An owner must require a retailer to provide a security deposit before the owner provides service to the retailer under the owner's distribution tariff."

46. In Decision 26694-D01-2022, the panel observed that there is no express provision in the Fortis T&Cs requiring RRO providers to post security (paragraph 55). There is no question about the accuracy of that statement, which is uncontentious in this proceeding because Article 6.1 of the Fortis T&Cs does not expressly state that RRO providers are required to post security with the distribution owner. Rather, Article 6.1 specifies that, "**Retailers** must satisfy the security requirements in Sections 8 through 12 of the Distribution Tariff Regulation [emphasis added]." It was a live question in Proceeding 26694 whether "retailers" included RRO providers, particularly as that term is used in the legislation, but also with respect to the definition of "Retailer" in the Fortis T&Cs (see Decision 26694-D01-2022, paragraphs 52-55).

47. The panel in Decision 26694-D01-2022 undertook an assessment of the *Electric Utilities Act* (the parent legislation to the *Distribution Tariff Regulation*) in concluding that the *Distribution Tariff Regulation* only requires security deposits from retailers, not regulated rate providers:[40]

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37 Decision 26694-D01-2022, PDF page 14, paragraph 49.

38 Please refer to Decision 22853-D01-2018: EPCOR Energy Alberta GP Inc., 2018-2020 Non-Energy Regulated Rate Tariff Application, Proceeding 22853, October 4, 2018; Decision 20633-D01-2016: EPCOR Energy Alberta GP Inc., 2016-2017 Regulated Rate Tariff Application, Proceeding 20633, December 20, 2016; Decision 2014-303: EPCOR Energy Alberta GP Inc., 2014-2015 Non-energy Regulated Rate Tariffs, Proceeding 2986, November 4, 2014; Decision 2013-110: EPCOR Energy Alberta Inc., 2012-2013 Regulated Rate Tariffs, Proceeding 1872, March 21, 2013; Decision 2010-571: EPCOR Energy Alberta Inc., 2010-2011 Regulated Rate Tariff Non-Energy Charge, Proceeding 436, December 16, 2010; Decision 2008-031: EPCOR Energy Alberta Inc., 2007-2009 Regulated Rate Tariff Non-Energy Charge, Application 1512342, April 30, 2008; and Decision 2006-055: EPCOR Energy Inc. & EPCOR Energy Alberta Inc., 2005-2006 Regulated Rate Tariff Non-Energy Charge, Applications 1389878 and 1389879, June 23, 2006.

39 Proceeding 26694, Exhibit 26694-X0008, PDF page 221, paragraph 646.

40 Decision 26694-D01-2022, PDF pages 16-17.

57. Owners of electric distribution systems, such as EDTI [EPCOR Distribution & Transmission Inc.] and Fortis, retailers and regulated rate providers are governed subject to the provisions of the *Electric Utilities Act*. "Retail electricity services" and "retailer" are defined in the *Electric Utilities Act* in Section 1(1), as follows:

> (qq) "regulated rate provider" means the owner of an electric distribution system, or a person authorized by the owner that provides electricity services to eligible customers in the owner's service area under a regulated rate tariff;
>
> …
>
> (tt) "retail electricity services" means electricity services provided directly to a customer but does not include electricity services provided to eligible customers under a regulated rate tariff;
>
> (uu) "retailer" means a person who sells or provides retail electricity services and includes an affiliated retailer;"
>
> …
>
> (zz) "tariff" means a document that sets out
>
> (i) rates, and
>
> (ii) terms and conditions;
>
> (aaa) "terms and conditions", in respect of a tariff, means the standards, classifications, regulations, practices, measures and terms and conditions that apply to services provided under the tariff;

58. Retailers, who are often referred to as competitive retailers, are governed under Part 8 of the *Electric Utilities Act*. Owners of distribution systems are subject to Part 7 of the *Electric Utilities Act*. Part 7, Section 102, relates to the approval of distribution tariffs, which includes provisions addressing RRTs. Section 103(1) requires an owner of a distribution system to prepare an RRT for the purpose of recovering the prudent costs of providing electricity services to eligible customers. Section 104 allows for the owner of the distribution system to make arrangements, specifically:

> 104(1) An owner of an electric distribution system may make arrangements under which other persons perform any or all of the duties or functions of the owner under this Act and the regulations.
>
> (2) No arrangement under subsection (1) affects or reduces the responsibility or liability of the owner to carry out those duties or functions.

59. EEA is the RRO provider for EDTI and Fortis under Section 104(1) arrangements.

60. In determining whether RRO providers must also follow the requirements to provide financial security, Section 8 of the *Distribution Tariff Regulation* is instructive. Section 8(1) states:

> 8(1) An owner must require a retailer to provide a security deposit before the owner provides service to the retailer under the owner's distribution tariff.

61. "Security deposit" is not defined in the *Electric Utilities Act* or its regulations, nor in EDTI's and Fortis's terms and conditions.

> 62. Given the legislative framework applicable to this issue, the Commission interprets the *Electric Utilities Act* and *Distribution Tariff Regulation* as only requiring the security deposits from retailers and not regulated rate providers.

48. The effect of the above analysis, which this panel agrees with, is that a "retailer" under the *Electric Utilities Act* and *Distribution Tariff Regulation* does not include an RRO provider. It does not appear that any of the parties in the current proceeding would disagree with this statement.

49. The panel in Decision 26694-D01-2022 also noted that there is no specific legislative provision requiring RRO providers to provide financial security requirements to distribution companies in either the *Distribution Tariff Regulation* or the *Regulated Rate Option Regulation*. The panel indicated that the only requirement with respect to the RRT is found at Section 6(1)(a) in the *Regulated Rate Option Regulation*, where the Commission must provide the owner with a reasonable opportunity to recover the prudent costs and expenses.

50. The panel in Decision 26694-D01-2022 found, specifically in response to EEA's argument in that proceeding that the T&Cs required that RRO providers provide financial security, that reference to the Fortis T&Cs imposed a requirement on EEA as RRO provider to pay a security requirement that was **inconsistent** with the legislative requirements in the *Electric Utilities Act* and the *Distribution Tariff Regulation*.[41] That finding, which is disputed in this proceeding, grounded that panel's conclusion that the security deposit required by Fortis did not conform with the plain meaning of a retailer in the *Electric Utilities Act* and the financial security provisions that apply to retailers in Section 8 of the *Distribution Tariff Regulation*. The panel ultimately concluded that the credit costs were not reasonable costs or expenses for EEA to provide RRO service.

4.3 Observations on the finding of "inconsistency" in Decision 26694-D01-2022

51. EEA and Fortis argued in this proceeding that the panel's analysis leading to the denial in Decision 26694-D01-2022 was flawed. EEA said the Commission's reasoning did not support the panel's conclusion because in EEA's submission, the absence of a legislated requirement for an RRO provider to provide security to a DSO does not imply a prohibition on any such security; this merely meant that commercial considerations should prevail.[42]

52. In Fortis's submission, a contractual obligation for EEA to pay security is not inconsistent with legislation. It argued that an inconsistency or conflict would only arise if the legislation prohibited the collection of security from RRO providers, but no such prohibition exists, and "if the legislation is silent about a topic, it cannot be inferred that the silence is a prohibition."[43]

53. The Commission has considered the parties' submissions but is satisfied that the panel was correct in Decision 26694-D01-2022 when it found that the Fortis T&Cs imposed a requirement on EEA as an RRO provider to pay a security requirement that was inconsistent with legislative requirements.

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41 Decision 26694-D01-2022, PDF page 17, paragraph 64.
42 Exhibit 28457-X0137, PDF page 7, paragraph 16.
43 Exhibit 28457-X0148, PDF page 5, paragraph 6, citing *Crotty v Aviva General Insurance Company*, 2024 NLSC 54, paragraph 84.

54. In considering the prior panel's finding of inconsistency in Decision 26694-D01-2022, it should be noted that when the parties argued their positions in that proceeding, the Commission had not yet determined whether a "retailer" in Section 8 of the *Distribution Tariff Regulation* included an RRO provider. The panel's finding of inconsistency at paragraph 64 of the decision was a specific response to EEA's assertion that the Fortis T&Cs required RRO providers to provide financial security to DSOs (based on a requirement in Section 8 of the regulation). With that context in mind, the Commission's view is that the panel's finding of inconsistency in Decision 26694-D01-2022 was not only correct, but also provided support for its overall conclusion that the credit costs claim should be denied.

55. If EEA is a "retailer" as defined in the Fortis T&Cs (an interpretation that was urged upon the Commission by EEA and Fortis in this proceeding), then EEA is required by Article 6.1 of the T&Cs to "satisfy the security requirement" in Section 8 of the *Distribution Tariff Regulation*. The problem with such a requirement is that Section 8 of the *Distribution Tariff Regulation* is clearly not intended to apply to RRO providers. Rather, the Fortis T&Cs seek to broaden the application of that section to include RRO providers, which results in EEA having to satisfy a security requirement in the regulation that does not actually exist.

56. While the Commission understands that, in practice, it may make sense for Fortis to not have separate T&Cs for the RRO provider given the common application of some terms with retailers, this panel continues to have concerns about an RRO provider being made subject to the terms of the *Distribution Tariff Regulation* by the operation of the Fortis T&Cs.

4.4 Effect of commercial agreement on EEA's claim for credit costs

57. As previously mentioned, EEA repositioned its argument in this proceeding to focus on Section 8.3(f) of the RRO Arrangement Agreement as the rationale for its credit costs claim. Section 8.3(f) of that agreement states:

> (f) WSP Prudential Requirements: EPCOR will, as the Regulated Rate Provider, post normal course security with FortisAlberta during the Term under the then current FortisAlberta Terms and Conditions.

58. EEA argued that the language of Section 8.3(f) could not have been clearer as to the parties' intentions. In its view, the statement that "EPCOR will … post normal course security with FortisAlberta" unmistakably evidences the parties' objective intention that EEA, "as the Regulated Rate Provider," post security with Fortis.[44]

59. In Fortis's submission, Section 8.3(f) has the effect of creating a legally binding obligation on EEA to provide financial security. Fortis indicated that the mechanism by which security was determined under the RRO Arrangement Agreement was by reference to the T&Cs, wherein Article 6.1 directs that security be calculated in accordance with the *Distribution Tariff Regulation*.

60. The Commission observes that the panel in Decision 26694-D01-2022 was clearly alive to Section 8.3(f) of the RRO Arrangement Agreement when it denied EEA's credit costs. At paragraphs 55-56 of Decision 26694-D01-2022, the panel appeared to contrast the apparent obligation contained in Section 8.3(f) of the RRO Arrangement Agreement with the lack of any

[44] Exhibit 28457-X0137, PDF page 9, paragraphs 20-21.

express requirement for an RRO provider to do the same under the T&Cs. Additionally, the panel encouraged EEA to discuss amending the RRO Arrangement Agreement with the distribution utilities as a possible way of resolving the inconsistency the panel had found between Fortis's T&Cs and the legislation.[45] The inclusion of these paragraphs in Decision 26694-D01-2022 suggests that the panel turned its mind to the effect of the commercial arrangement (i.e., EEA's position in this proceeding) on EEA's credit costs claim but was not persuaded by it. Nevertheless, the Commission acknowledges that the panel in Decision 26694-D01-2022 did not specifically discuss the effect of Section 8.3(f) in its conclusions, and therefore it is important to address Fortis's and EEA's argument here.

4.4.1 Finding of inconsistency of Article 6.1 of T&Cs with legislative framework applicable in current application

61. The Commission is concerned that the "commercial arrangement" submissions of EEA and Fortis do not consider the effect of the Fortis T&Cs, on which Section 8.3(f) of the RRO Arrangement Agreement relies. Recall that Section 8.3(f) of that agreement requires EEA to "post normal course security with [Fortis] during the Term **under the then current [Fortis] Terms and Conditions** [emphasis added]." Assuming the financial security at issue in this proceeding is "normal course security," and assuming EEA is a "retailer" under the Fortis T&Cs, EEA would be obligated to undertake the obligation laid out for retailers under Article 6.1 of the Fortis T&Cs, which requires a retailer to "satisfy the security requirements in Sections 8 through 12 of the Distribution Tariff Regulation A.R. 162/2003."

62. As already discussed at paragraphs 53-56 of this decision, that obligation in the Fortis T&Cs is inconsistent with Section 8 of the *Distribution Tariff Regulation* and the legislative framework more broadly. The fact that the obligation to pay security may have arisen from Section 8.3(f) of the RRO Arrangement Agreement, as submitted by EEA and Fortis in this proceeding, does not change the underlying issue, which is that Section 8.3(f) relies upon the very same T&Cs that were found to be inconsistent with the legislation in Proceeding 26694 and in this decision. In the Commission's view, this underlying issue is one of the primary reasons supporting the denial of EEA's credit costs claim.

4.4.2 Approval of commercial agreement in Decision 24839-D01-2019

63. To support their positions about the binding obligation created by Section 8.3(f), both EEA and Fortis made reference to Decision 24839-D01-2019 that approved the RRO Arrangement Agreement. EEA noted that the Commission approved the agreement in the decision pursuant to Section 113 of the *Electric Utilities Act* as being in the public interest.

64. The Commission acknowledges that it approved the RRO Arrangement Agreement in Proceeding 24839. However, it does not appear that the requirement to provide security to Fortis was brought to the Commission's attention and did not receive any scrutiny from parties in that proceeding. As noted by the UCA, while the two parties to the RRO Arrangement Agreement may have understood that the intent of Section 8.3(f) was to impose prudential requirements on EEA above and beyond what may have been contemplated in the legislation or the Fortis T&Cs, this may not have been appreciated by the Commission.[46]

[45] Decision 26694-D01-2022, PDF page 17, paragraph 64.
[46] Exhibit 28457-X0144, PDF page 5, paragraph 11.

65. It is worth noting that the previous RRO Arrangement Agreement, which was approved 19 years earlier in Decision 2000-71,[47] did not contain such a security provision.[48] In Proceeding 24839, the Commission asked EEA in an IR to "Please prepare and submit a document identifying all of the significant or material differences between the proposed RRO Arrangement Agreement and the current arrangement agreement." In the response, there was no mention of the then proposed WSP Prudential Requirement in Section 8.3(f).[49]

66. With this context, the Commission's view is that the parties had an obligation to bring, but nevertheless did not bring, the inclusion of the security requirement in Section 8.3(f) of the RRO Arrangement Agreement to the attention of the Commission in Proceeding 24839. That obligation is reinforced by the history that is attached to attempts by DSOs to require security from RRO providers.

67. For instance, in Decision 2003-098,[50] the Alberta Energy and Utilities Board (board), predecessor to the Commission, considered an application by ATCO Electric for approval of arrangements with Direct Energy Regulated Services (DERS) for the performance of certain regulated retail functions in ATCO Electric's service territory. As part of that application, ATCO Electric requested approval of certain changes to its T&Cs for Distribution Access Service. In those T&Cs, ATCO Electric had included the RRO provider within the definition of "Retailer" under its proposed T&Cs, and therefore the RRO provider would be required to comply with the same prudential requirements as competitive retailers.

68. In considering Section 8 of the *Distribution Tariff Regulation*, the board stated:

> The [*Distribution Tariff*] *Regulation* defines an owner as the owner of an electric distribution system. In this case the owner is ATCO Electric. A retailer, according to the definition in the EUA [*Electric Utilities Act*], does not include a retailer who provides service to eligible customers under a regulated rate tariff. Therefore DERS is not included in the definition of a retailer for the sake of section 8(1). The Board therefore finds that, with consideration to the [*Distribution Tariff*] *Regulation*, it is inappropriate for ATCO Electric to require DERS to provide the prudential requirements as described in Article 11 of the proposed Retailer T&C. [51]

69. The issue subsequently arose in Decision 2004-066,[52] when the board considered certain changes to the T&Cs of ENMAX Power Corporation. The board stated in that decision:

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47 Decision 2000-71: UtiliCorp Networks Canada (Alberta) Ltd. and UtiliCorp Networks Canada Ltd., Sale of Certain Aspects to EPCOR Energy Services (Alberta Inc.) and Appointment of EPCOR Energy Services (Alberta) Inc. as Provider of the Regulated Rate Option, Application 2000269, File 1900-4, November 24, 2000.

48 Please refer to Proceeding 24839, Exhibit 24839-X0012, PDF page 4, RRO Arrangement Agreement among UtiliCorp Networks Canada (Alberta) Ltd., UtiliCorp Networks Canada Ltd. and EPCOR Energy Services (Alberta) Inc.

49 Proceeding 24839, Exhibit 24839-X0012, PDF pages 31-34.

50 Decision 2003-098: ATCO Electric Ltd., ATCO Gas North and ATCO Gas South, Both Operating Divisions of ATCO Gas and Pipelines Ltd., Transfer of Certain Retail Assets to Direct Energy Marketing Limited and Proposed Arrangements with Direct Energy Regulated Services to Perform Certain Regulated Retail Functions, Application 1299855, December 4, 2003.

51 Decision 2003-098, page 70.

52 Decision 2004-066: ENMAX Power Corporation, 2004 Distribution Tariff Application Part B: 2004 Final Distribution Tariff, Application 1306819, August 13, 2004.

> The Board notes that sections 8 to 12 of the [*Distribution Tariff*] *Regulation* apply to retailers, and that retailers, as defined in the *Electric Utilities Act*, do not include RRT providers. In the Board's view, the legislation requires prudential requirements of competitive retailers but does not require prudential requirements of RRT providers. Therefore, absent a compelling reason to deviate from the provisions included in the *Distribution Tariff Regulation*, the Board is not persuaded that it is appropriate to require prudential requirements of RRT providers at this time.[53]

70. Furthermore, Decision 2004-067,[54] EPCOR Distribution Inc.'s (predecessor to EDTI) 2004 distribution tariff application, EPCOR proposed amendments to its T&Cs for Distribution Access Service to account for the new *Distribution Tariff Regulation*. ATCO Electric took issue with proposed Section 8.1 of the EPCOR T&Cs, arguing "there was a reasonable argument that Section 8.1 of the T&Cs could be interpreted as mandating EPCOR to require security from its RRT provider." Citing Decision 2003-098, ATCO Electric noted that the board had recently denied the right to require security from its RRO provider. ATCO Electric argued "the Board should accord similar treatment to all Board-regulated utilities." EPCOR disagreed with ATCO Electric that the impact of its proposed Section 8.1 was to require RRO providers to provide security. The board agreed with EPCOR, stating:

> … retailers are only required to provide the security deposit required under the Distribution Tariff Regulation, and that the Distribution Tariff Regulation does not require RRT providers to provide a security deposit. The Board does not consider that any changes or clarifications are required to Section 8.1 of the DAS [distribution access service] T&Cs.[55]

71. The Commission takes from the above-noted precedent that in the early 2000s, the predecessor to the Commission considered that provisions in DSOs' T&Cs requiring RRO providers to provide security to DSOs were problematic given the relevant portions of the statutory framework, which has not changed to any significant degree since that time.

72. It is unclear whether the Commission would have expressly approved Section 8.3(f) in Proceeding 24839 given Section 8 of the *Distribution Tariff Regulation* and the precedent considering that provision, as well as Article 6.1 of the Fortis T&Cs.

4.4.3 Applicable law provision in RRO Arrangement Agreement

73. Fortis referenced Section 2.2 of the RRO Arrangement Agreement in its submissions, noting that this provision required EEA to undertake and perform its obligations as RRO provider in compliance with the Fortis T&Cs. Fortis further indicated that the requirements of the Fortis T&Cs form part of EEA's obligations under the RRO Arrangement Agreement and are incorporated into that agreement by reference.[56]

74. Section 2.2 of the RRO Arrangement Agreement states:

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53 Decision 2004-066, page 165.

54 Decision 2004-067: EPCOR Distribution Inc., 2004 Distribution Tariff Application Part B: 2004 Final Distribution Tariff, Application 1306821, August 13, 2004.

55 Decision 2004-067, page 191.

56 Exhibit 28457-X0153, PDF page 4, paragraph 7.

> **2.2 Applicable Laws**
>
> EPCOR will undertake and perform the RRO Obligations in compliance with all Applicable Laws (including any applicable Regulated Rate Tariff; the FortisAlberta Terms and Conditions, and any orders of the Commission, whether directed to EPCOR or FortisAlberta, that are applicable to the performance of the RRO Obligations), and the terms of this Agreement.

75. "Applicable Law" is defined in the RRO Arrangement Agreement as including, among other things, provincial statutes and rules, as well as decisions and orders issued by a governmental authority (including a regulatory authority) that has jurisdiction over the parties.[57]

76. In considering Fortis's submission on Section 2.2 of the RRO Arrangement Agreement, the Commission observes that Section 8.3(f) of that agreement relies on the Fortis T&Cs, which the Commission found to be inconsistent with the *Electric Utilities Act* and the *Distribution Tariff Regulation* in Decision 26694-D01-2022. As a result, the Commission considers that the parties' reliance on Section 8.3(f) may be a breach of their obligations under the RRO Arrangement Agreement. The Commission notes that in Decision 24839-D01-2019, a previous panel of the Commission stated that, "The proposed RRO Arrangement Agreement must be consistent with the legislative duties of the owner of the distribution system and the person authorized to perform any or all of the duties or functions of the owner."[58]

4.4.4 Guidance provided by panel in Decision 26694-D01-2022

77. In Decision 26694-D01-2022, as a result of that panel's finding about a requirement in the Fortis T&Cs being inconsistent with the legislation, the panel stated that it "encourages EEA, in discussions with distribution utilities, to amend the agreement and/or apply to the Commission for approval of an amendment of the arrangements of RRO service from Decision 24839-D01-2019."[59]

78. The Commission acknowledges that after Decision 26694-D01-2022, EEA was able to reduce the amount of financial security required by Fortis.[60] However, despite the Commission's findings in that decision, it does not appear any steps were taken by the parties to amend the RRO Arrangement Agreement as suggested by the panel but neither was that decision reviewed nor appealed. While Fortis did not participate in Proceeding 26694, it was surely aware of the findings in that proceeding given its discussions with EEA following Decision 26694-D01-2022 that resulted in the lowering of financial security that EEA was required to provide it with.

4.4.5 EEA cites precedent to support claim

79. EEA submitted that the Commission has consistently considered other counterparty credit costs incurred by regulated energy retailers to be legitimate and even necessary costs of providing service that are recoverable from customers. EEA referenced a number of decisions relating to credit costs incurred by default gas suppliers as well as by other RRO providers in

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57 RRO Arrangement Agreement at Section 1.1
58 Decision 24839-D01-2019, paragraph 29.
59 Decision 26694-D01-2022, paragraph 64.
60 Exhibit 28457-X0014, application, PDF page 197, paragraphs 599-601.

connection with security posted with the Alberta Electric System Operator, the NGX and backstop suppliers.[61]

80. In the Commission's view, all of the precedent referred to by EEA is distinguishable because it does not consider the unique circumstances at play in this proceeding; namely, where the "commercial arrangement" relies upon provisions of a DSO's T&Cs that the Commission has found to be inconsistent with the applicable legislative scheme. The Commission provides no comment more generally about whether an agreement formed between an RRO provider and a distribution owner in different circumstances might yield a different result before the Commission in terms of an RRO provider's claim for credit costs associated with providing financial security as required by a contractual arrangement.

4.4.6 Lack of explanation of risk supporting financial security requirement

81. Fortis argued that, at a fundamental level, the commercial relationship between itself and EEA is no different than a relationship created between Fortis and a non-regulated retailer; both relationships involve arm's-length parties, and in both cases it is commercially reasonable for Fortis to mitigate counterparty credit risk. Fortis stated that its risk arises not only from customer non-payments, but also because the management of EEA and its financial integrity are outside Fortis's control. Fortis also noted that lowering its risk through the taking of financial security ensures that it can access debt financing on reasonable commercial terms (i.e., interest rates), thereby keeping rates lower overall for its customers.[62]

82. Fortis argued that it has taken as little security as is commercially reasonable from EEA in recognition of EEA's regulated, non-competitive tariff, but the Commission considers that there is no quantitative analysis to support even the reduced amount. The Commission does not accept the assertion that the relationship between Fortis and EEA, whereby EEA has contractually agreed to take on Fortis's legislated responsibilities and is rate-regulated by the Commission, and Fortis and an arm's-length competitive retailer are the same or comparable. EEA and Fortis have an arrangement whereby EEA performs the RRO on behalf of Fortis. There are no such arrangements between Fortis and competitive retailers. Fortis and EEA are both regulated by the Commission, whereas the competitive retailers are not. In the face of EEA's acknowledgment that RRO providers "do not pose the same risks to DSOs due to the legislated approval requirements and RRO providers' ongoing oversight by the Commission,"[63] and given that Fortis has never once had to rely on the financial security provided by EEA,[64] the Commission has no sound basis upon which to find that EEA's credit costs in providing Fortis with financial security are prudent costs or expenses.

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61 Decision 27631-D01-2023: Direct Energy Regulated Services, 2023 Default Rate Tariff and Regulated Rate Tariff, Proceeding 27631, May 4, 2023; Decision 22357-D01-2018: EPCOR Energy Alberta GP Inc., 2018-2021 Energy Price Setting Plan, Proceeding 22357, March 16, 2018; Decision 26316-D02-2021: EPCOR Energy Alberta GP Inc., 2021-2024 Energy Price Setting Plan, Proceeding 26316, October 27, 2021; Decision 27950-D01-2023: Direct Energy Regulated Services, 2023- 2025 Energy Price Setting Plan Compliance Filing, Proceeding 27950, February 28, 2023; Decision 28214-D01-2023: ENMAX Energy Corporation, 2023-2024 Energy Price Setting Plan Compliance Filing, Proceeding 28214, July 6, 2023.

62 Exhibit 28457-X0148, PDF pages 6-7, paragraphs 15-16.

63 Exhibit 28457-X0014, PDF pages 198-199, paragraphs 605-606.

64 Exhibit 28457-X0101.1, PDF page 31, EEA-UCA-2023NOV20-008(a).

4.5 Conclusions on EEA's credit costs claim

83. The Commission is not persuaded that EEA's claim for credit costs in providing financial security to Fortis should be approved. There are a number of reasons for this, which cumulatively persuade the Commission that the credit costs claimed by EEA are not reasonable or prudent costs under Section 6(1)(a) of the *Regulated Rate Option Regulation*. Most notably:

(1) Article 6.1 of the Fortis T&Cs imposes a requirement on EEA as an RRO provider that is inconsistent with the legislation, and Section 8 of the *Distribution Tariff Regulation* in particular. That inconsistency applies whether EEA seeks recovery of its credit costs pursuant to a requirement in the Fortis T&Cs (as it did in Proceeding 26694) or as a result of the RRO Arrangement Agreement (the focus of this proceeding).

(2) Without determining whether Section 8.3(f) of the RRO Arrangement Agreement imposes a legally binding obligation on EEA to provide security to Fortis, the Commission is concerned about the legal effect of that provision because Section 8.3(f) was not brought to the attention of the Commission when approval of the RRO Arrangement Agreement was sought in Proceeding 24839, despite being a new addition to the proposed RRO Arrangement Agreement, and despite precedent at that time suggesting financial security should not be required by DSOs from RRO providers.

(3) The parties may be in breach of their obligations under Section 2.2 of the RRO Arrangement Agreement and Decision 24839-D01-2019, given Section 8.3(f)'s reliance on the Fortis T&Cs, in light of the panel's finding in Decision 26694-D01-2022 that the security requirement under the Fortis T&Cs was inconsistent with legislation.

(4) Neither EEA nor Fortis has sufficiently explained why the particular amount of financial security required by Fortis is reasonable given the applicable risk of default by EEA.

84. The Commission therefore denies EEA's claim for credit costs associated with providing Fortis financial security. The Commission directs EEA, in the compliance filing to this decision, to exclude any credit costs incurred as a result of posting security with Fortis.

85. The Commission also directs Fortis to revise its T&Cs in accordance with this decision and Decision 26694-D01-2022. More specifically, Fortis must modify its T&Cs in such a way as to not require an RRO provider to provide it with security based on requirements directed at retailers in the *Distribution Tariff Regulation*.

5 Information to be included in future non-energy applications

86. In support of its application, EEA submitted financial schedules in Microsoft Excel (Exhibit 28457-X0064) that included, among other things, allocation values, revenue requirements and rate development. All the values on each worksheet within Exhibit 28457-X0064 were hardcoded with no derivation logic included. EEA also submitted, in PDF, build-up tables in Appendix L (Exhibit 28457-X0059), which are tables that detail the methods used to forecast certain costs. In a letter dated October 26, 2024,[65] the Commission directed EEA to

[65] Exhibit 28457-X0074.

resubmit a number of tables from Exhibit 28457-X0059 in Microsoft Excel, with derivation logic intact. The Commission also directed EEA to resubmit a number of worksheets from Exhibit 28457-X0064 with derivation logic intact. The Commission clarified that any calculated value in the resubmitted documents include the precedent logic and be traceable.[66] The resubmitted documents are in exhibits 28457-X0075 and 28457-X0076.

87. The Commission considers that the direction issued to EEA during the proceeding, as included in Exhibit 28457-X0074, should be extended to future non-energy RRT applications submitted by EEA. The Commission considers that the omission of derivation logic in the worksheets and tables identified in Appendix 1 to the letter in Exhibit 28457-X0074 makes it more onerous for parties to test these documents than worksheets and tables submitted in a form with the derivation logic intact. The Commission therefore directs EEA, in future non-energy RRT applications, to comply with the intent of the direction set out in paragraph 4 of Exhibit 28457-X0074, specifically that all applicable financial schedules filed in Microsoft Excel include the derivation logic, and all applicable build-up tables be filed in Microsoft Excel with the derivation logic intact.

88. The financial schedules in Microsoft Excel filed by EEA in support of the application included schedules 3.1 (2021 actuals allocated costs), 3.2 (2022 actuals allocated costs), 3.3 (2023 forecast allocated costs), 3.4 (2024 forecast allocated costs), 3.5 (2025 forecast allocated costs), and 4 (allocation determinants). The Commission requested that EEA provide more information about the information reported on these schedules, including the supporting calculations used to arrive at the allocation percentages, the associated inputs, the primary, secondary and tertiary allocators used, and the percentage weighting of each primary, secondary and tertiary allocators used in allocating costs.[67] The requested information was provided in exhibits 28457-X0094, 28457-X0095 and confidential Exhibit 28457-X0090-C.

89. The Commission considers that the information about the allocated costs provided by EEA was very helpful in understanding the cost allocation process. The Commission directs EEA, in future non-energy RRT applications, to file information about the allocated costs similar to that provided in exhibits 28457-X0094, 28457-X0095 and confidential Exhibit 28457-X0090-C.

6 Compliance with previous Commission directions

90. The Commission issued directions in previous EEA decisions that are applicable to this RRT application. A summary of these directions is listed below:

- From Decision 2012-272.[68]
    - In paragraph 426, the Commission directed EDTI and EPCOR Energy Alberta Inc. (EEA's predecessor) for any future applications that incorporate the composite cost

[66] Exhibit 28457-X0074, PDF page 1, paragraph 4.
[67] Exhibit 28457-X0084, pages 7-8, EEA-AUC-2023NOV20-011 and EEA-AUC-2023NOV20-012.
[68] Decision 2012-272: EPCOR Distribution & Transmission Inc., 2012 Phase 1 and II Distribution Tariff, 2012 Transmission Facility Owner Tariff, Proceeding 1596, Application 1607944, October 5, 2012.

causation allocator, an analysis of the use of payroll and full-time equivalents (FTEs) as the labour component of that composite cost causation allocator.

- From Decision 2014-303:[69]
  - In paragraph 204, the Commission directed EEA to file, if applicable, details about any acquisitions made by EPCOR Utilities Inc. that have a material impact on the corporate costs allocated to EEA.
  - In paragraph 248, the Commission directed EEA to file a forward interest rate curve analysis as part of its forecast cost of debt determination.
  - In paragraph 319, the Commission directed EEA to file information about the commercial relationship between EEA and an unregulated affiliated company, 1772387 Alberta Limited Partnership, operating as ENCOR.
- From Decision 22853-D01-2018:
  - In paragraph 24, the Commission directed EEA to review its methodology for forecasting bill delivery costs if in the future there is a greater number of customers receiving e-bills than paper bills.

91. EEA provided an explanation of how it has responded to each of the directions listed above.[70] The Commission has reviewed EEA's explanations and finds that EEA has fully complied with the five directions listed above. The Commission has added further commentary about the forward interest rate curve analysis direction from Decision 2014-303 in the next three paragraphs.

92. EEA indicated that the forward interest rate curve analysis was part of the evidence of Dr. Robert E. Evans, whose evidence was prepared to estimate the prospective costs of new 10-year debt for 2023-2025. The Commission observes that Dr. Evans included information about the forecast yield on Government of Canada bonds using (i) the Consensus Forecast values; and (ii) the forward curve bond yields.[71]

93. EEA submitted "In Decision 2014 – 303, the Commission decided to change its practice of relying on Consensus Forecast yields and has since used forward curve bond yields to develop estimates of the cost of debt for regulatory purposes – hence, the Direction cited in this Information Request."[72] The Commission notes that there has been no requirement for it to approve the forecast cost of EEA's debt since Decision 2014-303 was issued. No debt was forecast to be issued as part of EEA's RRT non-energy applications for 2016-2017,[73] 2018-2020[74] and 2021-2022.[75] The current 2023-2025 application included a forecast cost of debt, but the Commission does not have to make a finding about this forecast because of the NSA. The

[69] Decision 2014-303: EPCOR Energy Alberta GP Inc., 2014-2015 Non-energy Regulated Rate Tariffs, Proceeding 2986, Application 1610188-1, November 4, 2014.
[70] The explanations, or references to where the explanations were located, were provided in exhibits 28457-X0008, 28457-X0018 and confidential Exhibit 28457-X0018-C.
[71] Exhibit 28457-X0052, PDF pages 12-13.
[72] Exhibit 28457-X0092, PDF pages 47-48, response EEA-AUC-2023NOV20-020.
[73] Proceeding 20633.
[74] Proceeding 22853.
[75] Proceeding 26694.

Commission has not, therefore, had to make a finding about the forecast cost of debt for EEA since Decision 2014-303.

94. The Commission is not restricted to using forward curve bond yields to develop the estimates of the cost of debt for EEA. The Commission considers that it will require information about the forecast yield on Government of Canada bonds using the Consensus Forecast values and the forward curve bond yields, as part of its approval of forecast cost of debt for EEA. The Commission directs EEA, as part of any future non-energy applications in which it forecasts to issue debt during the test period, to include as part of its determination of the forecast cost of that new debt, information about the forecast yield on Government of Canada bonds using (i) the Consensus Forecast values; and (ii) the forward curve bond yields, and to justify which forecast yield on Government of Canada bonds it recommends. The Commission considers that the direction in this paragraph replaces the direction in paragraph 248 of Decision 2014-303.

95. EEA requested that it be relieved of its requirement to comply with the Commission direction in paragraph 426 of Decision 2012-272: the requirement to provide an analysis of the use of payroll and FTEs as the labour component of the composite cost causation allocator. EEA stated that it has provided these comparisons in five proceedings, spanning a decade, and it submitted that in none of those proceedings did the results show material changes to the allocation of corporate services costs to EEA.[76] Based on these results, and in order to reduce regulatory burden, EEA requested that it be relieved of complying with this direction in future non-energy applications.[77] EEA noted that in Decision 27675-D01-2023,[78] the Commission approved EDTI's request to be relieved from complying with this direction.[79]

96. The Commission has reviewed the analysis results provided by EEA for the 2023-2025 application and the previous four non-energy applications and agrees with EEA's submission that the results show no material changes to the allocation of corporate services costs to EEA between using payroll as the allocator and using FTEs as the allocator. This trend has been stable over the last 10 years. The Commission therefore grants EEA's request. EEA is relieved of its requirement to comply with the Commission direction in paragraph 426 of Decision 2012-272, as part of future non-energy applications.

7 2024 interim rate for e-bill credits

97. In Decision 20633-D01-2016, the Commission first approved an e-bill credit for customers who elected to be billed electronically for their RRO service. The e-bill credit offsets the cost difference between a paper bill and an e-bill to ensure that costs are allocated accurately to customers based on the bill delivery option that they have selected.[80]

[76] EPCOR provided the analysis results for the previous four non-energy applications in Exhibit 28457-X0092, PDF pages 41-45, response EEA-AUC-2023NOV20-019.
[77] Exhibit 28457-X0018, PDF page 12, paragraph 46.
[78] Decision 27675-D01-2023: EPCOR Distribution & Transmission Inc., 2023-2025 Transmission Facility Owner General Tariff Application Negotiated Settlement Agreement and Other Matters, Proceeding 27675, April 4, 2023.
[79] Exhibit 28457-X0014, PDF page 63, paragraph 181.
[80] Exhibit 28457-X0014, PDF page 90, paragraph 249.

98. EEA included a summary of the calculation of the e-bill credits for 2023 and 2024. The resulting forecast e-bill credits are $1.12 per e-bill for 2023 and $1.14 per e-bill for 2024.[81] EEA confirmed that it is requesting approval of the 2023 and 2024 e-bill credits on an interim basis. It added that an interim rate provides rate certainty for customers and allows EEA to incur the costs for paper bills, which can then be used to calculate an accurate e-bill credit.[82]

99. The Commission reviewed EEA's summary of the calculation of the interim e-bill credits for 2023 and 2024 and has no issue with it. However, the Commission can only approve interim rates on a go-forward basis because there cannot be two sets of approved interim rates for the same time period. For 2023 and up to the end of June 2024, EEA has been and will apply interim e-bill credits previously approved by the Commission. The Commission approves the applied-for 2024 interim e-bill credit of $1.14 per e-bill, effective July 1, 2024. The Commission directs EEA to apply for the true-up of the 2023 and 2024 interim e-bill credit rates to the actual rates, as part of a future application.

8 Compliance filing

100. A compliance filing is required for EEA to calculate the final revenue requirements and rates for 2023-2024 that result from the Commission's approval of the NSA and the Commission's findings on the non-energy credit costs.

101. In its application, EEA applied for a number of reserve and deferral accounts. The NSA has two sections where deferral accounts are mentioned.[83] The Commission finds it would be helpful in its review of these reserve and deferral accounts as part of EEA's next non-energy application for EEA to include information about them in the compliance filing. The Commission therefore directs EEA, as part of the compliance filing to this decision, to include: (i) a list of all the deferral and reserve accounts for 2023 and 2024 that EEA considers were agreed to as part of the Commission-approved NSA; (ii) the placeholders for 2023 and 2024 for all the deferral accounts listed in response to part (i); and (iii) if the response to part (i) includes a hearing cost reserve account, to include a schedule that shows the forecast opening balances for 2023 and 2024, the forecast costs for 2023 and 2024 included in the reserve, the forecast hearing costs expenses for 2023 and 2024 included in the final revenue requirements, and the forecast closing balances for 2023 and 2024.

102. In its application, EEA applied for approval of its T&Cs, which incorporated some proposed changes. The NSA does not mention anything about the T&Cs. The Commission directs EEA, as part of the compliance filing to this decision, to include a set of the T&Cs that EEA considers were agreed to as part of the NSA.

103. The Commission directs EEA to file the compliance filing to this decision by July 18, 2024.

[81] Exhibit 28457-X0014, PDF page 90, Table 3.1.1.5-2 and paragraph 251.
[82] Exhibit 28457-X0092, PDF page 53, response EEA-AUC-2023NOV20-022(d).
[83] Sections 4.5 and 6.4 both refer to cloud-based software as a service deferral account.

9 Order

104. It is hereby ordered that:

(1) EPCOR Energy Alberta GP Inc. will submit a compliance filing that reflects the findings, conclusions and directions of the Commission in this decision, on or before July 18, 2024.

(2) The Negotiated Settlement Agreement attached as Appendix 3 to this decision is approved.

(2) The electronic bill credit of $1.14 per electronic bill is approved on an interim basis, effective July 1, 2024.

Dated on June 26, 2024.

Alberta Utilities Commission

(original signed by)

Vera Slawinski
Panel Chair

(original signed by)

Vincent Kostesky
Acting Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) **Company name of counsel or representative**
EPCOR Energy Alberta GP Inc. (EEA or EPCOR) Borden Ladner Gervais LLP
FortisAlberta Inc. (Fortis)
Consumers' Coalition of Alberta (CCA)
Office of the Utilities Consumer Advocate (UCA) Reynolds, Mirth, Richards & Farmer LLP InterGroup Consultants

Alberta Utilities Commission Commission panel V. Slawinski, Panel Chair V. Kostesky, Acting Commission Member Commission staff A. Culos (Commission counsel) D. Mitchell A. Hollis E. Davis

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 therefore denies EEA's claim for credit costs associated with providing Fortis financial security. The Commission directs EEA, in the compliance filing to this decision, to exclude any credit costs incurred as a result of posting security with Fortis. ..... paragraph 84

2. The Commission also directs Fortis to revise its T&Cs in accordance with this decision and Decision 26694-D01-2022. More specifically, Fortis must modify its T&Cs in such a way as to not require an RRO provider to provide it with security based on requirements directed at retailers in the *Distribution Tariff Regulation*. ..... paragraph 85

3. The Commission considers that the direction issued to EEA during the proceeding, as included in Exhibit 28457-X0074, should be extended to future non-energy RRT applications submitted by EEA. The Commission considers that the omission of derivation logic in the worksheets and tables identified in Appendix 1 to the letter in Exhibit 28457-X0074 makes it more onerous for parties to test these documents than worksheets and tables submitted in a form with the derivation logic intact. The Commission therefore directs EEA, in future non-energy RRT applications, to comply with the intent of the direction set out in paragraph 4 of Exhibit 28457-X0074, specifically that all applicable financial schedules filed in Microsoft Excel include the derivation logic, and all applicable build-up tables be filed in Microsoft Excel with the derivation logic intact. ..... paragraph 87

4. The Commission considers that the information about the allocated costs provided by EEA was very helpful in understanding the cost allocation process. The Commission directs EEA, in future non-energy RRT applications, to file information about the allocated costs similar to that provided in exhibits 28457-X0094, 28457-X0095 and confidential Exhibit 28457-X0090 C. ..... paragraph 89

5. The Commission is not restricted to using forward curve bond yields to develop the estimates of the cost of debt for EEA. The Commission considers that it will require information about the forecast yield on Government of Canada bonds using the Consensus Forecast values and the forward curve bond yields, as part of its approval of forecast cost of debt for EEA. The Commission directs EEA, as part of any future non-energy applications in which it forecasts to issue debt during the test period, to include as part of its determination of the forecast cost of that new debt, information about the forecast yield on Government of Canada bonds using (i) the Consensus Forecast values; and (ii) the forward curve bond yields, and to justify which forecast yield on Government of Canada bonds it recommends. The Commission considers that the direction in this paragraph replaces the direction in paragraph 248 of Decision 2014-303. ..... paragraph 94

6. The Commission reviewed EEA's summary of the calculation of the interim e-bill credits for 2023 and 2024 and has no issue with it. However, the Commission can only approve interim rates on a go-forward basis because there cannot be two sets of approved interim rates for the same time period. For 2023 and up to the end of June 2024, EEA has been and will apply interim e-bill credits previously approved by the Commission. The

Appendix 3 – Negotiated Settlement Agreement

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Appendix 3 -
Negotiated Settleme

(consists of 12 pages)

NEGOTIATED SETTLEMENT AGREEMENT
EPCOR ENERGY ALBERTA LP
2023-2024 NON-ENERGY REGULATED RATE TARIFF

THIS NEGOTIATED SETTLEMENT AGREEMENT for the negotiated settlement of the Non-Energy Regulated Rate Tariff ("**RRT**") for EPCOR Energy Alberta LP for the 2023 and 2024 test years is made and entered into as of February 9, 2024.

AMONG:

EPCOR ENERGY ALBERTA GP INC., in its capacity as general partner of EPCOR Energy Alberta LP ("**EEA**"),

and

OFFICE OF THE UTILITIES CONSUMER ADVOCATE (the "**UCA**"),

and

CONSUMERS' COALITION OF ALBERTA (the "**CCA**"),

each, a "**Party**" and collectively, the "**Parties**".

WHEREAS:

A. on September 28, 2023, EEA filed with the Alberta Utilities Commission (the "**AUC**") its application for approval of its non-energy RRT for 2023, 2024 and 2025, including its forecast revenue requirements for those years, (the "**Application**") in Proceeding 28457;

B. by letter dated September 28, 2023, EEA requested permission to initiate a negotiated settlement process on all aspects of the Application;

C. on November 3, 2023, the AUC issued a process schedule that included a negotiated settlement process with the UCA and CCA (collectively, the "**Interveners**");

D. on November 22, 2023, the AUC issued an updated process schedule that included filing dates for procedural steps relevant to the negotiated settlement process;

E. the Parties engaged in a negotiated settlement process from January 8, 2024 to February 2, 2024;

F. on February 2, 2024, the Parties reached an agreement in principle for a negotiated settlement of the Application, with the sole exception of the Excluded Matter noted below; and

G. the term of the settlement is the 2023 and 2024 test years.

IN CONSIDERATION of the mutual promises made in this Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the Parties, and subject to the conditions hereinafter set out, the Parties agree as follows:

1.0 SCOPE OF THIS SETTLEMENT AGREEMENT

.1 This Settlement Agreement settles all aspects of the Application other than the matter of EEA's recovery of its applied-for non-energy credit costs (Exhibit 28457-X0014, section 3.2.2) (the "**Excluded Matter**").

.2 The Parties agree that the Excluded Matter has not been settled and shall be submitted to the AUC for adjudication pursuant to the process schedule set out in the AUC's letter of November 22, 2023 or such other process as the AUC may direct.

.3 Unless otherwise agreed by the Parties in writing, if the AUC declines to approve this Settlement Agreement in its entirety, the Settlement Agreement will be of no force and effect in accordance with Section 135 of the *Electric Utilities Act*, S.A. 2003, c. E-5.1.

2.0 APPROVAL OF THE APPLICATION AS MODIFIED BY THIS SETTLEMENT AGREEMENT

.1 Except for the Excluded Matter, which is to be submitted for adjudication as set out above, the Parties agree that the AUC should approve the Application as filed subject only to the specific adjustments and modifications identified in this Settlement Agreement.

.2 The Interveners agree to support EEA's application to the AUC for approval of this Settlement Agreement.

3.0 TERM OF THE TEST PERIOD

.1 The term of the agreed test period is the 2023 and 2024 test years only (the "**Test Period**"). The Parties agree that the AUC should only approve EEA's revenue

requirement, deferral accounts, rate schedules, and other components of its applied-for non-energy RRT for the Test Period.

4.0 SPECIFIC ADJUSTMENTS AND MODIFICATIONS

4.1 Allocation of insurance, rent & utilities cost to EPCOR USA (Exhibit 28457-X0014, section 3.1.5.5)

.1 EEA's allocation of insurance, rent & utilities cost is modified to reflect the average of the "All Sites" allocator and the "Customer Group 3" allocator as set out in **Schedule 1** to this Settlement Agreement. EEA's RRT revenue requirements are accordingly reduced by $0.06 million in 2023 and $0.05 million in 2024 as shown in **Schedule 1**.

4.2 Forecasts of connection fees, late payment charges, and collection and NSF revenues (Exhibit 28457-X0014, section 3.1.6)

.1 EEA's forecasts of its connection fees, late payment charges, and collection and NSF revenues are modified to incorporate actual data from November 2020 to October 2023 as set out in **Schedule 2** to this Settlement Agreement. EEA's RRT revenue requirements are accordingly reduced by $0.91 million in 2023 and $0.69 million in 2024 as shown in **Schedule 2**.

4.3 Non-union salary escalation for 2024 (Exhibit 28457-X0014, section 1.6.1.3)

.1 EEA's forecast of its 2024 non-union salary escalation is reduced from 4.0% to 3.0%, resulting in an RRT revenue requirement reduction of $0.04 million in 2024.

4.4 Mid-Term Incentive Program (Exhibit 28457-X0014, section 1.6.1.1.3)

.1 EEA's Mid-Term Incentive Program costs are removed from the Test Period revenue requirements, resulting in an RRT revenue requirement reduction of $0.02 million in each of 2023 and 2024.

4.5 Cloud-based Software as a Service Cost Deferral Account (Exhibit 28457-X0014, section 5.2.5)

.1 The costs associated with the Customer Voice and Chat Bots project are removed from the proposed Cloud-based Software as a Service Cost Deferral Account for 2024. The 2024 balance of this deferral account is accordingly reduced by $0.12 million and EEA's 2024 RRT revenue requirement is reduced by $0.01 million.

.2 Without limiting or modifying any other provision of this Settlement Agreement, this agreed treatment of the Customer Voice and Chat Bots project costs for 2024 is limited to 2024 and is without prejudice to EEA's ability to apply to include the Customer Voice and Chat Bots project costs in a future non-energy RRT and to the Interveners' ability to oppose same.

4.6 Global operating cost reduction

.1 EEA's 2023 and 2024 RRT revenue requirements are each reduced by $0.025 million. This reduction is not tied to any specific cost category but is a holistic reduction that EEA may apply to any operating expense or cost category as it sees fit.

5.0 ERRORS AND OMISSIONS

.1 In addition to the adjustments and modifications identified herein, the Test Period RRT revenue requirements will reflect EEA's correction of the errors and omissions identified in EEA's response to EEA-UCA-2023NOV20-011, as revised, filed on the record of Proceeding 28457.

6.0 NON-MONETARY COMMITMENTS BY EEA

6.1 Disclosure of site counts

.1 EEA will disclose to the Interveners its 2024 actual RRT site counts, EPCOR USA site counts, and other non-RRT site counts (together, the "**Site Counts**") in accordance with the provisions of this section.

.2 Subject to the other provisions of this section, EEA will disclose the Site Counts as of the end of each of the months of February, April, June, August, October and December 2024, in each case no later than 45 days after the last day of that month.

.3 EEA will disclose the Site Counts by email only to a maximum of five (5) individuals identified in writing by the Interveners who are employees, consultants or representatives of either or both of the UCA or the CCA.

.4 In its disclosures, EEA will present the EPCOR USA site counts separately from its other non-RRT site counts and will present those other non-RRT site counts on an aggregate basis. Nothing in this Settlement Agreement will compel EEA at any time to disclose site

counts for its affiliated retailer Encor except in aggregation with other non-RRT site counts.

6.2 Review of allocation of insurance, rent and utilities costs to EPCOR USA

.1 EEA shall prepare and include in its next non-energy RRT application, a review of its allocation of insurance, rent and utilities costs to EPCOR USA.

6.3 Review of EPCOR USA incremental service revenues

.1 EEA shall prepare and include in its next non-energy RRT application an analysis of any incremental service revenues received pursuant to its service level agreement with EPCOR USA and the allocation options for such revenue.

6.4 Clarification regarding the Cloud-based Software as a Service deferral account (Exhibit 28457-X0014, section 5.2.5)

.1 EEA confirms that it has not included in its proposed Cloud-based Software as a Service deferral account for the Test Period any costs for projects referred to in Exhibit 28457-X0014 as Platform as a Service ("PaaS") projects.

.2 EEA confirms that it expects it will renew or extend the Cloud-based Software as a Service contracts identified in Table EEA-AUC-2023NOV20-002-1, filed on the record of Proceeding 28457, to a 10-year period including both the existing and renewal terms.

7.0 CONFIDENTIALITY, PRIVILEGE AND WITHOUT PREJUDICE

.1 The negotiated settlement reflected in this Settlement Agreement is a compromise and was reached in part as a result of the Parties' desire to avoid the significant resources, costs and risks associated with a fully litigated process. This Settlement Agreement applies for the purpose of the 2023 and 2024 test years only unless expressly stated otherwise and is without prejudice to the positions that any of the Parties may take in any subsequent negotiations or regulatory proceedings.

.2 All discussions among the Parties during the negotiated settlement process are privileged and confidential, and no matter discussed and no information provided during the negotiated settlement process may be disclosed to the AUC or to any other person without the express written consent of all Parties.

.3 The Parties agree that nothing in this Settlement Agreement, including the elimination of the 2025 test year or the agreed reductions to EEA's applied-for Test Period revenue requirements, is an admission by EEA that those revenue requirement amounts are imprudent nor is it an admission by the Interveners that those revenue requirement amounts are prudent. The Parties further agree that no Party may rely on anything in this Settlement Agreement as evidence in any future proceeding that any revenue requirement amounts are either prudent or imprudent.

8.0 REPRESENTATIONS AND WARRANTIES

.1 Each Party represents that it has not withheld any relevant information.

.2 EEA represents that it provided proper notice to all interested parties. The Interveners agree that proper notice of the negotiated settlement process was provided to them.

.3 The Parties are not aware of any factual errors in the Application, including its various attachments, appendices and schedules, that have not been corrected by EEA in IR responses filed on the record of Proceeding 28457.

.4 EEA represents, after due inquiry, that:

(a) The Application, including its various attachments, appendices and schedules, EEA's responses to information requests, and all information filed with the AUC by EEA contains all material information and facts relied upon by EEA to support its revenue requirements for the Test Period;

(b) To EEA's knowledge, the information provided by it in all of its filings with the AUC and in its written and oral correspondence with Parties during the negotiation of this Settlement Agreement does not omit any statement of material fact necessary to make the information provided accurate and true; and

(c) To EEA's knowledge, from the time the Application was filed up to and including the date of this Settlement Agreement, no events have occurred that materially impact EEA's revenue requirements, revenues or accounting methods for the Test Period.

.5 In the event that EEA discovers any material errors in calculations and/or facts related to the revenue requirements for the Test Period set forth in the Application, EEA will

disclose those errors immediately to the Interveners and to the AUC, and also as part of its next application for approval of its non-energy RRT.

.6 EEA will disclose in its next application for approval of its non-energy RRT any changes in accounting policy or practice during the Test Period that result in material changes to EEA's applied-for revenue requirements for the Test Period.

.7 EEA confirms that proper notice of its forthcoming application for approval of this Settlement Agreement will be effected in accordance with the AUC's directions and practice, including the notice provisions of AUC Rule 001.

9.0 COSTS OF THE CCA

.1 Within 30 days following the receipt of an invoice from the CCA, net of any funds received as advance funds, EEA will pay the CCA, on a refundable basis, the reasonable costs and expenses incurred by the CCA in connection with retaining consultants and counsel in relation to the Application and the related negotiated settlement process to and including the point of this Settlement Agreement and approval of the same. In the event of any difference between the costs paid to the CCA consultants by EEA and the cost claim approved by the AUC, the CCA or its counsel or consultants, as the case may be, will refund to EEA within 30 days of the date of the AUC's decision approving the CCA's cost claim.

.2 EEA will, in any event, pay to the CCA the amount of costs and expenses incurred by the CCA in connection with this Settlement Agreement and the related negotiated settlement process within 30 days of the date of the AUC's decision approving the CCA's cost claim.

.3 The CCA will provide EEA with an estimate of the costs and expenses it expects to claim no later than February 29, 2024.

10.0 GENERAL

.1 The division of this Settlement Agreement into headings and paragraphs is for convenience and reference only and should not affect the interpretation or construction of this Settlement Agreement.

.2 This Settlement Agreement constitutes the entire understanding and agreement of the Parties and there are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, among the Parties in connection with the subject matter of this Settlement Agreement except as specifically set out in this Settlement Agreement.

.3 Any alteration or amendment of this Settlement Agreement must be in writing and signed by each of the Parties.

.4 This Settlement Agreement will be binding upon and enure to the benefit of the Parties and each of their respective successors and permitted assigns. A Party may not assign its rights and/or obligations under this Settlement Agreement without the consent of all other Parties, provided that such consent is not unreasonably withheld.

.5 This Settlement Agreement is to be interpreted pursuant to the laws of the Province of Alberta.

.6 If any provision of this Settlement Agreement is found by a court of law to be invalid, this Settlement Agreement will be read and interpreted as if that provision were omitted.

.7 The failure of any Party to exercise any right, power or option given to it under this Settlement Agreement or to insist upon the strict compliance with any of the terms or conditions in this Settlement Agreement does not constitute a waiver of any provision with respect to any other or subsequent breach.

.8 Unless otherwise stated, any dollar amounts, prices or amounts stated under this Settlement Agreement are in the lawful currency of Canada.

.9 References to any statute, legislation or regulation include all subsequent additions, amendments, re-enactments or replacements enacted from time to time during the period covered by this Settlement Agreement.

[Remainder of page intentionally left blank]

.10 This Settlement Agreement may be executed in any number of counterparts (including by facsimile or other electronic means) with the same effect as if all signing Parties had signed the same document. All counterparts shall be construed together and constitute the same agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the date set out above.

EPCOR ENERGY ALBERTA GP INC.,
in its capacity as general partner of
EPCOR Energy Alberta LP

Per: _____ Nadia Bayda for
Name: Mansur Bitar
Title: Director, Energy Services

OFFICE OF THE UTILITIES CONSUMER ADVOCATE

Per: _____
Name:
Title:

CONSUMERS' COALITION OF ALBERTA

Per: _____
Name:
Title:

.10 This Settlement Agreement may be executed in any number of counterparts (including by facsimile or other electronic means) with the same effect as if all signing Parties had signed the same document. All counterparts shall be construed together and constitute the same agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the date set out above.

EPCOR ENERGY ALBERTA GP INC.,
in its capacity as general partner of
EPCOR Energy Alberta LP

Per: _____
Name:
Title:

OFFICE OF THE UTILITIES CONSUMER ADVOCATE

Per: C. W. Hunt
Name: Chris Hunt
Title: Executive Director & Advocate

CONSUMERS' COALITION OF ALBERTA

Per: _____
Name:
Title:

SCHEDULE 1
NEGOTIATED SETTLEMENT AGREEMENT
EPCOR ENERGY ALBERTA LP
2023-2024 NON-ENERGY REGULATED RATE TARIFF

Negotiated allocation of Insurance, Rent and Utilities Costs to RRT Customers ($ millions)

		A Source	B **2023F**	C **2024F**
1	RRT Allocation – All Sites	Exhibit 28457-X0110, pdf 20, Table 5-1	31.19%	25.99%
2	RRT Allocation – Customer Group 3	Exhibit 28457-X0110, pdf 20, Table 5-1	34.95%	29.06%
3	**Average**	**(row1 + row2) / 2**	**33.07%**	**27.52%**
4	Insurance, rent, utilities costs	Exhibit 28457-X0064, Schedules 3.3 and 3.4, row 36	3.20	3.27
5	Applied-for allocation (based on Customer Group 3)	row2 * row4	1.12	0.95
6	Agreed allocation (based on average of All Sites and Customer Group 3)	row3 * row4	1.06	0.90
7	**Difference**	**row5 – row6**	**0.06**	**0.05**

SCHEDULE 2

NEGOTIATED SETTLEMENT AGREEMENT

EPCOR ENERGY ALBERTA LP

2023-2024 NON-ENERGY REGULATED RATE TARIFF

2023-24 Updated Forecast – Collection & NSF, Connection Fees, and Late Payment Charges ($ millions)

		As Filed		Updated Forecast Nov 2020-Oct 2023 Avg		Difference	
		A	B	C	D	E	F
		2023F	**2024F**	**2023F**	**2024F**	**2023F**	**2024F**
	TOTAL COSTS						
1	Collection & NSF	(1.10)	(1.10)	(1.50)	(1.50)	(0.40)	(0.40)
2	Connection Fees	(1.48)	(1.40)	(1.72)	(1.61)	(0.24)	(0.21)
3	Late Payment Charges	(5.13)	(4.35)	(5.82)	(4.89)	(0.69)	(0.54)
4	**Total**	**(7.71)**	**(6.85)**	**(9.04)**	**(7.99)**	**(1.33)**	**(1.14)**
	RRO COSTS						
5	Collection & NSF	(0.35)	(0.27)	(0.57)	(0.47)	(0.22)	(0.20)
6	Connection Fees	(1.00)	(0.84)	(1.21)	(1.01)	(0.21)	(0.17)
7	Late Payment Charges	(3.60)	(2.63)	(4.08)	(2.94)	(0.48)	(0.31)
8	**Total Allocated to RRT**	**(4.95)**	**(3.74)**	**(5.86)**	**(4.43)**	**(0.91)**	**(0.69)**