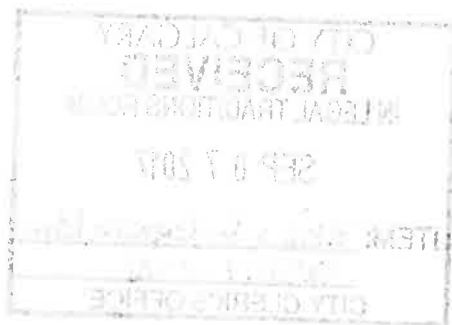


## ENMAX Power Corporation

### Tax Agreement with The City of Calgary

September 7, 2017



**Alberta Utilities Commission**

Decision 22756-D01-2017

ENMAX Power Corporation

Tax Agreement with The City of Calgary

Proceeding 22756

September 7, 2017

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## **1 Introduction**

1. On June 26, 2017, ENMAX Power Corporation (ENMAX) filed an application with the Alberta Utilities Commission for approval of the tax agreement portion of a franchise agreement with The City of Calgary (Calgary). The tax agreement portion of the franchise agreement is found in Section 7 of the franchise agreement<sup>1</sup> and Appendix No.1,<sup>2</sup> which ENMAX submitted as part of the application.

2. ENMAX indicated that public notice of the franchise agreement was advertised in the Calgary Herald and Calgary Sun on May 8 and May 10, 2017, respectively. ENMAX and Calgary were contacted by three customers, two of which were responded to (the third customer did not leave a telephone number and could not be reached). ENMAX indicated that it and Calgary responded to questions regarding the franchise agreement that were brought to their attention, and that so far as both ENMAX and Calgary are aware, there are no outstanding issues with customers with respect to the new agreement.<sup>3</sup>

3. The Commission issued information requests (IRs) to ENMAX on July 27, 2017. ENMAX provided responses to the information requests on August 8, 2017.

## **2 Tax agreement**

4. ENMAX indicated that it had reached an agreement with Calgary on an electricity franchise fee agreement to replace the existing municipal consent and access agreement (MCAA), which is set to expire December 31, 2017.<sup>4</sup> Under Section 45(5) of the *Municipal Government Act*, a franchise agreement between ENMAX and Calgary is exempt from the Commission approval requirement as ENMAX is a subsidiary of Calgary. However, ENMAX submitted that the franchise agreement is, in part, a tax agreement which, under Section 360 of the *Municipal Government Act*, requires Commission approval.

5. Under the proposed tax agreement:

- ENMAX agrees to pay an annual fee to Calgary during the term of the agreement.
- ENMAX shall not pay municipal property tax, business and linear property taxes associated with the distribution of electricity but shall receive, at the same time as Calgary's other taxpayers, assessment and tax notices.<sup>5</sup>

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<sup>1</sup> Exhibit 22756-X0001, PDF pages 14-15.

<sup>2</sup> Exhibit 22756-X0001, PDF pages 24-25.

<sup>3</sup> Exhibit 22756-X0001, PDF pages 7-8.

<sup>4</sup> Exhibit 22756-X0001, PDF page 2.

<sup>5</sup> Exhibit 22756-X0001, PDF pages 14-15.

6. The annual fee paid to Calgary is calculated as a percentage of ENMAX's gross revenue using the formula set out in Section 360(4.1) of the *Municipal Government Act*. ENMAX indicated that the percentage of gross revenue will remain at 11.11 per cent, which is consistent with the rate under the existing MCAA and, as a result, customers will not see an increase in the rate of the local access fee portion of their bill.<sup>6</sup>

7. Through an IR, the Commission asked ENMAX to explain how the proposed tax agreement complies with Section 360(3) of the *Municipal Government Act*, which requires that a tax agreement must provide that the municipality accepts payment of the amount calculated under the agreement in place of the tax and other fees or charges specified in the agreement.<sup>7</sup> In response, ENMAX indicated that Section 7(1)(b) of the franchise agreement clearly indicates that Calgary accepts the annual fee in place of the tax and other fees or charges specified in the agreement as required by Section 360(3).<sup>8</sup>

### 3 Commission findings

8. Section 45 of the *Municipal Government Act* deals with franchise agreements and provides, *inter alia*, that a municipal council may, by agreement, grant a right to a person, exclusive or otherwise, to provide utility service and that the agreement may grant a right to use the municipality's property for the construction, operation and extension of a public utility in the municipality.<sup>9</sup> Section 45(3) provides that before such an agreement is made, amended or renewed, it must (a) be advertised, and (b) be approved by the Alberta Utilities Commission. However, these requirements do not apply in cases where the agreement to provide utility service is between a council and a subsidiary of the municipality (Section 45(5)).

9. The *Municipal Government Act* also includes provisions with respect to tax agreements and provides that a council may make an agreement with the operator of a public utility who occupies the municipality's property. Under Section 360(5) of the *Municipal Government Act*:

360(5) An agreement under this section with an operator who is subject to regulation by the Alberta Utilities Commission is of no effect unless it is approved by the Alberta Utilities Commission.

10. There is no exemption in the legislation for Commission approval of tax agreements where the agreement is between a council and a municipal subsidiary. If a municipal subsidiary, such as ENMAX, is regulated by the Commission, any tax agreement it enters into would appear to require Commission approval. Based on the foregoing, the Commission did not consider the subject agreement for the purposes of determining whether the franchise is in the public interest. The Commission's decision in this case is limited to considering the tax agreement portion of the subject agreement.

11. The Commission has reviewed the agreement and is satisfied that it complies with the required calculation methodology provided in Section 360(4.1). The Commission is also prepared to accept ENMAX's explanation that by agreeing "ENMAX shall not pay municipal

<sup>6</sup> Exhibit 22756-X0001, PDF page 6.

<sup>7</sup> Exhibit 22756-X0004.

<sup>8</sup> Exhibit 22756-X0005.

<sup>9</sup> *Municipal Government Act*, Section 45(1)(2).

property, business and linear taxes associated with the distribution of electricity ...,”<sup>10</sup> Calgary is accepting payment of this amount in place of the tax and other fees or charges specified in the agreement, as required pursuant to Section 360(3). The Commission also notes that the annual fee payable will not result in any change to the local access fee portion of a customer’s bill.

12. For the foregoing reasons, the Commission approves the tax agreement portion of the franchise agreement filed in Proceeding 22756.

Dated on September 7, 2017.

**Alberta Utilities Commission**

*(original signed by)*

Neil Jamieson  
Commission Member

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<sup>10</sup> Exhibit 22756-X0001, Franchise agreement, Section 7(1)(b).

**Appendix 1 – Proceeding participants**

<b>Name of organization (abbreviation)</b> <b>Company name of counsel or representative</b>
ENMAX Power Corporation (ENMAX)

Alberta Utilities Commission
Commission panel
N. Jamieson, Commission Member
Commission staff
K. Kellgren (Commission counsel)
C. Malayney