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To all parties registered in Proceeding 21867:

**Re: Commission ruling on jurisdiction to consider ENMAX Corporation's complaint about the conduct of the Independent System Operator**

1. In this ruling, the Alberta Utilities Commission must decide on its jurisdiction to decide a complaint about the conduct of the Independent System Operator (ISO) filed by ENMAX Corporation (ENMAX) under Section 26 of the *Electric Utilities Act*. The Commission has decided, for the reasons that follow, that it will consider the issues raised in the ENMAX complaint as a tariff matter in a Commission initiated proceeding.
2. The Commission has instructed me to write to interested parties to provide its reasons for this ruling.
3. ENMAX's complaint relates to the compensation payable by the ISO to ENMAX for the provision of unforeseeable transmission must-run services by two ENMAX affiliates, Calgary Energy Centre No. 2 Inc. and ENMAX Generation Portfolio Inc., during February, March and September 2013. The remedy sought by ENMAX is the payment of an additional amount it considers to be outstanding for those must-run services.
4. The Commission issued a notice of the complaint and four parties filed statements of intent to participate in the complaint proceeding: the ISO, TransCanada Energy ltd. (TransCanada), Capital Power Corporation (Capital Power) and the Office of the Utilities Consumer Advocate (UCA).
5. On September 21, 2016, the Commission wrote to registered parties and confirmed that the ISO, TransCanada, Capital Power and the UCA each have standing to participate in the complaint proceeding. The Commission also asked all registered parties to address the following four questions:
  - (a) Given the nature of ENMAX's complaint, and having regard to the Commission's previous findings regarding the scope of its authority under Section 26, does the Commission have jurisdiction under Section 26 to consider the complaint?
  - (b) Given the wording of subsections 26(3)(b) and (c), does the Commission have the jurisdiction to grant the remedies sought by ENMAX?
  - (c) Because the Commission's decision on the interpretation of Section 11 of the ISO tariff could have material implication for other market participants, is it consistent with

the spirit and intent of the statutory scheme that such a decision would be shielded from an appeal by Section 26(4) of the *Electric Utilities Act*?

(d) Is there an adequate alternative process for considering the substance of ENMAX's complaint under the statutory scheme?

6. ENMAX, the ISO, TransCanada and the UCA responded to the questions posed by the Commission. These parties agreed that the Commission has jurisdiction to hear the complaint under section 26 and all but the UCA agreed that the Commission has the jurisdiction to grant the remedy requested by ENMAX. The UCA submitted that the Commission has jurisdiction to order the ISO to change its conduct on a go forward basis. However, it argued that the Commission could not order the ISO to make additional payments to ENMAX for the must-run services because that would be retroactive and retrospective ratemaking.

7. None of the participants expressed concern about the lack of appeal rights associated with a decision of the Commission on a complaint about the conduct of the ISO under Section 26.

8. ENMAX and the ISO both submitted that the Commission could also consider the issues raised in the complaint in a tariff related proceeding. TransCanada submitted that Section 26 provides the only statutory mechanism for ENMAX to pursue its concerns. The UCA argued that the only alternative process available to ENMAX is to seek judicial review of the ISO's determination of the compensation available.

9. ATCO Power Canada Ltd. (ATCO) filed a late statement of intent to participate after the above submissions were filed. ATCO stated that the core of ENMAX's complaint relates to specific payments received for a specific set of transmission must-run services. ATCO submitted that resolution of the specific complaint falls under the Commission's jurisdiction under Section 26. However, ATCO argued that if the Commission determines that it must interpret Section 11 of the ISO tariff to decide the complaint, then its decision has the potential to affect all parties that are subject to the ISO tariff. In those circumstances, ATCO asserted, the Commission must consider the matter in the context of a Commission initiated tariff proceeding and give notice to all potentially affected parties.

### **Commission findings**

10. As the Commission has previously stated, the central issue raised in ENMAX's complaint is whether the ISO correctly interpreted Section 11 of the ISO tariff when it calculated the payments owing to ENMAX for the transmission must-run services its affiliates provided in 2013. Inherent in these issues is whether the ISO's interpretation has rendered the ISO tariff unduly preferential, or arbitrarily or unjustly discriminatory. Given the nature of the issue to be decided, the Commission is of the view that it cannot, as ATCO suggested, confine its consideration to the specific payments made by the ISO for the specific services provided by ENMAX's affiliates. The Commission's decision on this application will not only have ramifications for ENMAX and the ISO, it has the potential to directly and adversely affect the rights of all those who are subject to the ISO tariff and all those who pay the ISO tariff.

11. The Commission is satisfied that it has the jurisdiction to consider and decide this issue under Section 26 of the *Electric Utilities Act*. However, the Commission has decided that the

better approach in these circumstances is to initiate its own inquiry into whether the payments made by the ISO to ENMAX are consistent with the ISO tariff. The Commission's jurisdiction to address the issue in this manner is found in Sections 8 and 23 of the *Alberta Utilities Commission Act* and is also founded in its obligation under Section 121 of the *Electric Utilities Act* to ensure that the tariffs it approves are just and reasonable and not unduly preferential, or arbitrarily or unjustly discriminatory.

12. In the Commission's view, adopting this approach will ensure that all those with an interest in the outcome of the proceeding will have an opportunity to participate in the proceeding. While this approach will require the issuance of an additional notice, the Commission is of the view that it will be able to establish an efficient process so that a decision on the central issue can be rendered in a reasonable time frame.

13. The Commission will issue a notice of proceeding in due course.

Regards,

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Commission Counsel