COUNCIL REPORT – BYLAW

Edmonton

BYLAW 21163 - To Amend Bylaw 20959 EPCOR Distribution and Transmission Inc. Electric Distribution System Franchise Agreement, Amendment No. 1

Recommendation

That Utility Committee recommend to City Council:

That Bylaw 21163 be read a first time.

Purpose

To enter into the amended Electric Distribution System Franchise Agreement (the "Amended Franchise Agreement") between the City of Edmonton and EPCOR Distribution and Transmission Inc. (EDTI) in the form and terms as set out in Schedule "A" of Bylaw 21163 (Attachment 1).

The Amended Franchise Agreement reflects the adjustments required by the Alberta Utilities Commission (AUC). Administration is seeking Utility Committee approval of the Amended Franchise Agreement and recommendation to City Council for approval.

Readings

Bylaw 21163 is ready for first reading only.

Advertising and Signing

This bylaw does not need to be advertised, however the Franchise Agreement must be advertised and approved by the AUC before the bylaw can come into effect. In accordance with section 45 of the *Municipal Government Act*, the amended Franchise Agreement will be advertised. The amended Franchise Agreement will be advertised for 10 days on the City's public website immediately following first reading of Bylaw 21163 by Council. EDTI will resubmit the amended Franchise Agreement to the AUC for approval by the June 30, 2025 due date. Following the AUC decision on the amended Franchise Agreement, Bylaw 21163 will be resubmitted for second and third readings.

REPORT

As a result of Bill 19, (the *Utilities Affordability Statutes Amendment Act, 2024*), the City was required to have its Electric Distribution System Franchise Agreement (Franchise Agreement), reviewed and approved by the AUC. This agreement gives exclusive rights to EDTI for distribution of electric power in the City of Edmonton.

Franchise Agreement Approved by City Council

At the November 13, 2024, City Council meeting, Council approved Bylaw 20959 - EPCOR Distribution and Transmission Inc. Electric Distribution System Franchise Agreement, which set a franchise rate of 17.65 per cent of EDTI's distribution revenue. The Franchise Agreement was subsequently submitted to AUC for review and approval.

The AUC preferred methodology to determine franchise fees involves calculating the franchise fee as a percentage of total distribution charges on an electricity bill. AUC refers to this calculation as the "standard franchise determination methodology" and has capped the maximum allowable franchise fee per cent that can be charged in a franchise agreement between a municipality and an electric distribution company at 20 per cent.

The Franchise Agreement that City Council approved on November 13, 2024 used the "standard franchise determination methodology" to calculate the franchise fee that EDTI would collect and remit to the City. In the Franchise Agreement City Council approved, the franchise fee of 17.65 per cent would be applied to EDTI's actual distribution revenue.

EDTI Billing System

EDTI's billing system is unable to directly apply the approved 17.65 per cent franchise fee to actual distribution charges on a customer's monthly bills, and can only charge a predetermined franchise fee rate ($/kWh) on actual consumption. These limitations will remain until EDTI's system is replaced in 2033-2035. To implement the approved 17.65 per cent franchise fee, EDTI proposed continuing with their current process of charging a rate per kWh to utility customers, based on forecasted distribution revenue. Under this method, EDTI sets a rate per kWh to effectively result in a franchise fee that is equivalent to 17.65 per cent. In other words, EDTI indirectly applies the 17.65 per cent to customers based on a per kWh rate, as opposed to directly charging 17.65 per cent on a utility customer's actual monthly billed distribution charges.

In order to determine the appropriate kWh rate for a given calendar year, EDTI estimates what the distribution revenue will be in the next calendar year by customer class (referred to as the forecast distribution revenue) and divides this estimate by the forecast consumption of that customer class for the next calendar year.

Actual distribution revenue and actual energy consumption will be different from forecast distribution revenue and forecast energy consumption. This means that by using forecast distribution revenue and forecast energy consumption, the franchise fee collected may be different from what the franchise fee would be if actual revenue and actual consumption was used. To ensure the franchise fee revenue collected would equal 17.65 per cent of actual distribution revenue, EDTI proposed a true-up adjustment in their franchise fee calculation methodology in the subsequent year's calculation of the franchise fee rate per kWh. This true-up adjustment would accommodate for over- or undercollection of the franchise fee in the previous year based on differences between the forecast consumption, actual consumption and resulting distribution revenues in the past year.

AUC Decision Summary and Amendments to the Franchise Fee Agreement

EPCOR submitted the Franchise Agreement approved by City Council to AUC in December 2024. AUC asked for additional information as a result of the method EDTI had proposed to calculate the franchise fee.

On March 6, 2025, AUC approved the proposed Franchise Agreement, subject to EPCOR submitting specific amendments related to concerns identified with the proposed franchise fee calculation methodology within the agreement. The AUC approved the 17.65 per cent franchise fee rate and the specific kWh franchise fee rates EDTI will charge, effective March 17, 2025, under the condition that the amended Franchise Agreement be submitted to the AUC by June 30, 2025.

The AUC did not approve EDTI using a true-up adjustment to accommodate for over- or undercollection of franchise fees. The AUC reviewed the EDTI historical variances between forecast distribution revenue and actual distribution revenue between 2019 and 2023. AUC found that historically, annual variances were not a concern and considered it reasonable that they would remain similar in the future given no evidence to the contrary. The AUC also found that including the true-up adjustment would diverge from the overall premise of the standard franchise determination methodology. Based on this, the AUC did not support a true-up adjustment. In previous AUC decisions, true-up adjustments have been denied due to the resulting transfer of billing variance risk and potential instability in rates to the utility ratepayer.

Accordingly, the AUC requested the amended Franchise Agreement reflect that the franchise revenue is calculated based on forecasted distribution revenues as opposed to actual distribution revenues (as was stated in the Franchise Agreement submitted to the AUC), and that the true up adjustment be removed from the calculation methodology.

Impacts of AUC Decision

Administration and EDTI are proposing the following changes to the Franchise Agreement based on the AUC decision:

1. Section 5(a) amended "the franchise fee will be calculated as a percentage of the Company's actual revenue" has changed to "forecast revenue" (amendment directly as a result of AUC review); and
2. Addition of Schedule C detailing the calculation of forecast franchise fee revenue (amendment directly as a result of AUC review).

Based on the AUC requested changes and the amended Franchise Agreement, in any given year, a customer might be paying a franchise fee that is more or less than 17.65 per cent of actual distribution revenues, as the franchise fees being collected are based on forecasted consumption and distribution revenues.

The City would now be receiving a franchise revenue that is based on forecast consumption and distribution revenues. This may be more or less than what the City would have collected if the franchise fee revenues were based on actual consumption and distribution revenues.

The AUC was comfortable requesting these changes once EDTI provided forecast distribution revenues compared to actual distribution revenues which demonstrated the annual variance is minimal in the AUC's opinion, ranging from 0.08 to 2.55 per cent annually. The AUC considered it to be reasonable that this level of variance would continue into the future and represented an acceptable level of accuracy to support the rationale that a true-up adjustment process was not required.

In the view of Administration, employing forecast distribution revenues as the foundation for the franchise fee rate is reasonable. This approach is not expected to yield substantial deviations when compared to a methodology predicated on actual distribution revenues.

To ensure Administration has visibility on the forecast risk, Administration and EDTI have agreed that annual updates on the effective franchise fee per cent realized and actual franchise fees collected will be provided by EDTI as part of the annual franchise fee review process. If annual updates begin to show a consistent pattern of material variances, that would have been otherwise managed through the disallowed true-up adjustment, Administration will revisit the Franchise Agreement and related franchise fee rate with EDTI and Utility Committee.

Next Steps

Administration is seeking Utility Committee's recommendation to City Council for first reading of Bylaw 21163 and approval of the amended Franchise Agreement. After City Council completes the first reading of the bylaw, the agreement will be advertised for 10 days.

EDTI must file an amended Franchise Agreement with the AUC by June 30, 3025 for consideration and final approval. The AUC may approve or not approve the suggested amendments to the Franchise Agreement. The AUC clearly stated in their decision that the amendment should not affect the operation or delay the implementation of the Franchise Agreement. After AUC has issued its decision on the amended Franchise Agreement, Bylaw 21163 will be resubmitted for second and third readings. Bylaw 21163 and the amended Franchise Agreement will take effect after the third reading of Bylaw 21163.

Community Insight

The amended Franchise Agreement will be advertised after the first reading of Bylaw 21163.

Budget/Financial Implications

The franchise fee calculation was amended to comply with the AUC's recommended method. As presented in the November 8, 2024, Financial and Corporate Services report FCS02671, Bylaw 20959 - EPCOR Distribution and Transmission Inc. Electric Distribution System Franchise Agreement, the approved per cent rate, 17.65 per cent, is expected to not result in material change to the currently approved franchise revenue budget in 2025 and 2026.

Legal Implications

Section 45 of the *Municipal Government Act*, and section 139 of the *Electric Utilities Act* authorize a municipality to enter into a franchise agreement with a company providing utility services within the municipality.

As a result of the *Utilities Affordability Statutes Amendment Act, 2024*, Section 139 of the *Electric Utilities Act* now requires AUC approval of electric distribution franchise agreements between a municipality and a corporation controlled by the municipality. Although the bylaw does not need to be advertised, the amended agreement itself must be advertised before it can be entered into. Section 4 of the *Water, Gas and Electric Companies Act* and sections 7, 8, 45 and 46 of the *Municipal Government Act* require Council to consent to a company providing power services within a municipality by passing a bylaw granting that consent.

Attachments

1. Bylaw 21163 to Amend Bylaw 20959 EPCOR Distribution and Transmission Inc Electric Distribution System Franchise Agreement, Amendment No. 1
2. Bylaw 21163 Schedule A - Amended Electric Distribution System Franchise Agreement
3. Bylaw 21163 Schedule A - Amended Electric Distribution System Franchise Agreement - RED-LINE Version

Others Reviewing the Report

- M. Gunther, Acting City Solicitor