

July 15, 2021

**Cambridge Park Home Owners Association
Review and variance of Decision 26429-D01-2021
Proceeding 26640
Application 26640-A001**

**Disposition letter dismissing the Cambridge Park Home Owners Association’s application
for a review and variance of Decision 26429-D01-2021**

Background

1. On June 27, 2021, the Cambridge Park Home Owners Association (Home Owners) filed an application with the Alberta Utilities Commission for a review and variance of Decision 26429-D01-2021 (review application).¹ In Decision 26429-D01-2021 (original review decision), a review panel of the Commission approved AMAR Developments Ltd.’s (AMAR) application to review and vary the method used in Decision 25519-D02-2021 (final rates decision) to calculate the variable charge.²
2. In the original review decision, the review panel found that AMAR demonstrated that an error existed, on a balance of probabilities, with respect to the accounting methodology used to calculate monthly costs based on a monthly average over the entire period of 2020, which was mismatched with the approved revenue requirement for the period from May to December 2020.³
3. In its review application, the Home Owners asserted that the review panel erred in the calculation of final rates for 2021 by failing to acknowledge overcollections by AMAR in the period from January to April 2020.⁴
4. The Commission assigned Proceeding 26429 (original review proceeding) to hear AMAR’s review application of the final rates decision. The Commission assigned Proceeding 26640 to hear the Home Owner’s review application of the original review decision. In this disposition, the members of the Commission panel who authored the original review decision will be referred to as the “original review panel” and the member of the Commission panel considering the Home Owner’s review application will be referred to as the “current review panel.”

¹ Decision 26429-D01-2021: AMAR Developments Ltd., Decision on an application for review of Decision 25519-D02-2021 Final Water Rates for Cambridge Park Estates, Proceeding 26429, May 27, 2021.

² Decision 25519-D02-2021: AMAR Developments Ltd., Final Water Rates for Cambridge Park Estates, Proceeding 25519, February 9, 2021.

³ Decision 26429-D01-2021, paragraph 30.

⁴ Exhibit 26640-X0001, Application for Review, June 27, 2021, pages 3-4.

5. Based on the contents of the review application and relevant Commission decisions identified in this letter, the current review panel dismisses the application.

Does the ground raised by the Home Owners relate to a determination made in Decision 26429-D01-2021?

6. The review application alleges that the original review panel committed errors in the calculation of the final rates for 2021, namely, that “AMAR was already overcharging customers in previous months (Jan to April 2020) to cover the additional usage requirements in the upcoming summer and fall months” and that “revenues collected for the entire year 2020 should have also been considered in order to fairly calculate the refund or deficit.”⁵

7. The current review panel finds that Decision 26429-D01-2021 made no new findings in respect of the revenues collected by AMAR from January to April 2020. The finding that the Commission would not consider overcollection amounts from the period from January to April, 2020, was a determination made by the original panel in the final rates decision.⁶ It is this finding that the Home Owners seek to have reviewed.

8. This view is supported by the Home Owner’s submission in Proceeding 26429, where they raised the issue of the overcollection from January to April 2020.⁷ While this issue was raised by the Home Owners in the original review proceeding, it was outside the scope of the grounds alleged in AMAR’s review application. This indicates to the current review panel that the issue was known to the Home Owners prior to the issuance of Decision 26429-D01-2021 and could have formed the basis for the Home Owners to have filed their own review application following the issuance of the final rates decision.

9. In assessing the review application, the Commission’s ability to review its own decisions, at its discretion, is found in Section 10(1) of the *Alberta Utilities Commission Act* (Act). The Commission has established a rule under Section 10(2)(a) of the Act, Rule 016: *Review of Commission Decisions* to adjudicate review applications. Section 3(3) requires an application for review of a decision to be filed within 30 days of the issuance of the decision, unless authorized by the Commission. The review application was filed 138 days following the issuance of the final rates decision, that the Home Owners seek to have reviewed. The Home Owners could have filed the review application within the 60-day⁸ time period following the issuance of the final rates decision.

Finality and certainty of Commission decisions

10. Decisions of the Commission are intended to be final and a review should only be granted in those limited circumstances described in Rule 016.⁹ In addition, an original review

⁵ Exhibit 26640-X0001, pages 4-5.

⁶ Decision 25519-D02-2021, paragraphs 27 and 148.

⁷ Exhibit 26429-X0016, HOA Response to Amars Application, May 6, 2021, page 1.

⁸ The time period for applying for a review of a Commission decision was revised from 60 to 30 days for applications received on or after June 15, 2021.

⁹ See also Decision 2012-124: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc., Decision on Request for Review and Variance of Decision 2011-436 Heartland Transmission Project,

decision should not be subject to further reviews, absent exceptional circumstances, such as if there is an overriding and palpable error in the original review decision.¹⁰ A further review may also be warranted where there are unavailable facts material to the decision that could not have been discovered at the time by the review applicant exercising due diligence, or there are materially changed circumstances.

11. In considering the review application the current review panel finds that principles of finality and certainty are engaged. Finality allows parties to Commission proceedings to rely on Commission decisions once they are issued, once the period of time to challenge them through the administrative review or court process has expired. As affirmed by Mr. Justice O'Brien of the Court of Appeal of Alberta, "A decision of a tribunal should be final, subject to decision or appeal. If a tribunal could review and change its decisions at will, the certainty of the decision of the tribunal would be in jeopardy."¹¹

12. The current review panel finds that the Home Owner's review application seeks to review the final rates decision and that the opportunity to raise the alleged error within the allowed time period under Rule 016 has expired. The current review panel is not persuaded that exceptional circumstances apply that would weigh in favour of setting aside the principles of finality and certainty of Commission decisions to allow the late review application. Further, and in the alternative, the current review panel finds that exceptional circumstances are not engaged in the Home Owner's review application of the original review decision and the Home Owners have not demonstrated the existence of an error which is material to the original review decision.

Conclusion

13. For the above reasons, the current review panel finds that the Home Owners have not fulfilled the requirements under Rule 016 in filing the review application. Accordingly, for the reasons set out above, the current review panel dismisses the Home Owner's review application.

Sincerely,

Cairns Price
Commission Member

Proceeding 1592, applications 1607924-1, 1607942-1, 1607994-1, 1608030-1, 1608033-1, May 14, 2012, at paragraph 31.

¹⁰ A review of a previous review application should only occur in the most limited of circumstances otherwise each review of a Commission decision would then be subject to challenge by a subsequent, or numerous, review applications.

¹¹ *Alta Gas Utilities Inc. v Alberta Energy and Utilities Board*, 2008 ABCA 46, at paragraph 39. Regarding discretion and finality, see *Windrift Ranches Limited v Alberta Surface Rights Board*, 1986 ABCA 158.