



Office of the Utilities Consumer Advocate

**Decision on Preliminary Question
Application for Review of Decision 26212-D01-2021
2022 Generic Cost of Capital**

August 9, 2021

Alberta Utilities Commission

Decision 26508-D01-2021

Office of the Utilities Consumer Advocate

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Application for Review of Decision 26212-D01-2021

2022 Generic Cost of Capital

Proceeding 26508

Application 26508-A001

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Office of the Utilities Consumer Advocate
Decision on Preliminary Question

Application for Review of Decision 26212-D01-2021
2022 Generic Cost of Capital

Decision 26508-D01-2021
Proceeding 26508

1 Decision summary

1. In this decision, the Alberta Utilities Commission denies an application by the Office of the Utilities Consumer Advocate (UCA) to review and vary Decision 26212-D01-2021,¹ which approved the return on equity (ROE) and set the deemed equity ratios for certain Alberta utilities.

2. The Commission finds that no error of fact, law or jurisdiction is either apparent on the face of the decision or otherwise exists on a balance of probabilities that could lead the Commission to materially vary or rescind Decision 26212-D01-2021. In addition, the Commission finds that the UCA has not demonstrated the existence of changed circumstances material to the decision, which occurred since its issuance that could lead the Commission to materially vary or rescind the decision.

2 Background

3. Decision 26212-D01-2021 (the original decision) related to the 2022 Generic Cost of Capital proceeding (the original proceeding). In the original decision, the Commission approved an ROE of 8.5 per cent and a deemed equity ratio of 37 per cent (39 per cent for Apex Utilities Inc.) for 2022 on a final basis.

4. The UCA, an intervener in the original proceeding, filed an application to review and vary the original decision pursuant to Section 10 of the *Alberta Utilities Commission Act* and Rule 016: *Review of Commission Decisions*. The Commission designated the review application as Proceeding 26508.

5. The Commission issued a filing announcement for the review application and, by letter dated May 14, 2021, established a process schedule for the proceeding. The Commission considers the record for this proceeding to have closed on June 11, 2021, the date reply submissions were received.

6. The process included submissions filed by:

- AltaLink Management Ltd. on its own behalf and on behalf of EPCOR Distribution & Transmission Inc.²

¹ Decision 26212-D01-2021: 2022 Generic Cost of Capital, Proceeding 26212, March 4, 2021.

² Exhibit 26508-X0022, AML EDTI Response Submission - UCA RV of 2022 GCOC Decision, May 28, 2021.

- ATCO Electric Ltd., on behalf of Apex Utilities Inc., ATCO Gas, ATCO Pipelines, ATCO Electric - Distribution, ATCO Electric -Transmission and FortisAlberta Inc.³
- the Consumers' Coalition of Alberta⁴
- ENMAX Power Corporation⁵

7. Reply submissions were filed by:

- ATCO Electric Ltd. for six utilities⁶
- AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc.⁷
- the Consumers' Coalition of Alberta⁸
- ENMAX Power Corporation⁹
- the UCA¹⁰

8. In this decision, the members of the Commission panel who authored the original decision will be referred to as the “hearing panel” and the members of the Commission panel considering the review application will be referred to as the “review panel.”

9. In reaching its determinations, the review panel has reviewed the pertinent portions of the original decision and relevant materials comprising the records of this proceeding, Proceeding 26212, and Proceeding 24110. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the review panel’s reasoning relating to a particular matter and should not be taken as an indication that the review panel did not consider all relevant portions of the several records with respect to the matter.

3 The Commission’s review process

10. The Commission’s authority to review its own decisions is discretionary and is found in Section 10 of the *Alberta Utilities Commission Act*. Rule 016 sets out the process for considering an application for review.

11. The review process has two stages. In the first stage, a review panel decides if there are grounds to review the original decision (the preliminary question). If the review panel decides to review the decision, it moves to the second stage where it decides whether to confirm, vary, or rescind the original decision (the variance question).

³ Exhibit 26508-X0023, 2021-05-28 The Utilities Submission on the UCA’s R&V 2022 GCOC, May 28, 2021.

⁴ Exhibit 26508-X0021, CCA Submission – 26508, May 28, 2021.

⁵ Exhibit 26508-X0020, 2021-05-28-EPC Stage 1 Submission on UCA 2022 GCOC RV Application, May 28, 2021.

⁶ Exhibit 26508-X0028, Reply Submission of the Utilities, June 11, 2021.

⁷ Exhibit 26508-X0026, AltaLink EDTI Reply Submission - UCA R&V of 2022 GCOC, June 11, 2021.

⁸ Exhibit 26508-X0024, CCA Reply Submission – 26508, June 11, 2021.

⁹ Exhibit 26508-X0025, 2021-06-11-EPC Reply to Submissions of Parties on UCA 2022 GCOC RV Application, June 11, 2021.

¹⁰ Exhibit 26508-X0027, 2021-06-11 UCA Cover Letter and Reply Submissions, June 11, 2021.

12. In this decision, the review panel has decided the preliminary question.

13. Section 4(d) of Rule 016 requires an applicant to set out, in its application, the grounds it is relying on, which may include the following:

- (i) The Commission made an error of fact, law or jurisdiction.
- (ii) Previously unavailable facts material to the decision, which existed prior to the issuance of the decision in the original proceeding but were not previously placed in evidence or identified in the proceeding and could not have been discovered at the time by the review applicant by exercising reasonable diligence.
- (iii) Changed circumstances material to the decision, which occurred since its issuance.
- (iv) For a decision on an application for a hydro project, power plant, transmission line or gas utility pipeline:
 - a. The decision was made without a hearing or other proceeding, or
 - b. A hearing was held and notice was not given to the person.

14. Section 6(3) describes the circumstances in which the Commission may grant a review as follows:

The Commission may grant an application for review of a decision, in whole or in part, where it determines, for an application for review pursuant to subsections 4(d)(i), (ii) or (iii), that the review applicant has demonstrated:

- (a) In the case of an application under subsection 4(d)(i), the existence of an error of fact, law or jurisdiction is either apparent on the face of the decision or otherwise exists on a balance of probabilities that could lead the Commission to materially vary or rescind the decision.
- (b) In the case of an application under subsections 4(d)(ii) or 4(d)(iii), respectively, the existence of:
 - (i) Previously unavailable facts material to the decision, which existed prior to the issuance of the decision in the original proceeding but were not previously placed in evidence or identified in the proceeding and could not have been discovered at the time by the review applicant by exercising reasonable diligence; or
 - (ii) Changed circumstances material to the decision, which occurred since its issuance

that could lead the Commission to materially vary or rescind the decision,

or

- (c) For an application for review pursuant to subsection 4(d)(iv), the review applicant has shown that the decision on the initial application may directly and adversely affect the review applicant's rights.

15. In its review application, the UCA is relying on sections 4(d)(i), (ii), and (iii), and Section 6(a) and (b) of Rule 016.

4 Issues

16. The grounds raised in the UCA’s review application are as follows:

- The hearing panel erred in law or jurisdiction by failing to apply procedural fairness;
- The hearing panel, in its original decision, relied on a material error in fact;
- There are changed circumstances material to the original decision;
- The hearing panel erred in law or jurisdiction by failing to fulfill its statutory obligation of establishing a fair return:
 - The hearing panel applied the incorrect legal test or standard;
 - The hearing panel made the original decision in the absence of supporting evidence;
 - The hearing panel erred in simply extending the previously approved ROE and equity ratios to the end of 2022 without conducting a full proceeding.

17. The review panel addresses the UCA’s procedural fairness grounds in Section 4.1. Other grounds addressed in this decision relate to factual determinations in Section 4.2, changed circumstances in Section 4.3 and errors in law or jurisdiction in Section 4.4.

4.1 Procedural fairness grounds

18. The UCA alleged that the process followed by the hearing panel in the original proceeding was procedurally unfair. In its review application, the UCA argued that it had a legitimate expectation that (i) it would be allowed to put in proper evidence, and (ii) parties would be able to test and reply to the evidence filed by others.

19. According to the UCA, the hearing panel acted in a procedurally unfair manner by:

- (a) representing, through both its express words and by implication, that further process would be established prior to issuing a determination;
- (b) placing a page limit on the comments parties could provide, thereby limiting the nature and scope of the comments;
- (c) not providing an opportunity for parties to reply to the comments of other parties; and
- (d) not providing an opportunity for parties to develop an adequate evidentiary record from which to establish a fair return, including the “economic and financial evidence” consistently considered by the Commission.¹¹

¹¹ Exhibit 26508-X0027, paragraph 50.

20. The UCA submitted that the factors to consider in determining whether the hearing panel acted in a procedurally fair manner in determining the 2022 GCOC include:

- The nature of the decision and the process followed in making it;
- The nature of the statutory scheme;
- The importance of the decision to the individual affected (or, in other words, the effect of the decision on the individual's rights);
- The legitimate expectations of the parties challenging the decision; and
- The choices of procedure made by the tribunal itself.¹²

21. In applying these factors to the original decision, the UCA asserted that the decision is of significant importance to consumers given the impact on the rates charged to them. The UCA stated that typical GCOC proceedings include extensive expert evidence, and that parties had a legitimate expectation that they could (i) put in proper evidence, and (ii) test and reply to evidence filed by other parties. The UCA added that the hearing panel limited submissions to a maximum of 10 pages, restricted the ability of parties to comment on specific questions, and provided no opportunity for parties to respond to comments of other parties. The UCA submitted that it was unaware that the hearing panel would base its decision solely on the comments received from parties.

22. In a generic cost of capital decision, the Commission establishes the return on equity and the capital structure of the utilities it regulates.¹³ The objective in setting these parameters is “to fix fair and reasonable rates; rates which, under the circumstances, would be fair to the consumer on the one hand, and which, on the other hand, would secure to the company a fair return for the capital invested.”¹⁴

23. Decision 2009-216 provided the Commission's analysis of the statutory framework and case law relevant to setting the fair return standard. That framework requires the Commission to consider all facts that, in its opinion, are relevant to fixing a fair return and to provide an owner of an electric utility a reasonable opportunity to recover its costs including a fair return on the equity of shareholders, as it relates to the investment in the utility. The statutory framework does not prescribe any particular process for establishing a fair return. This was acknowledged by the UCA.¹⁵

24. The responsibility for determining a fair return rests solely with the Commission. This requires that the Commission give notice to, and hear from, interested parties, not that it follow the same process in arriving at its final determination in every proceeding (regardless of any individual party's preference for one process over all others). To the contrary, the Commission

¹² Exhibit 26508-X0001, 2021-04-30 UCA Application for Review and Variance of Decision 26212-D01-2021, April 30, 2021, paragraph 45.

¹³ To satisfy the fair return standard, the Commission is required to determine a capital structure (equity ratio) for each of the utilities. The Commission will take into account the differences in risk among the individual utilities by adjusting their capital structures. (from Decision 2011-474: 2011 Generic Cost of Capital, Proceeding 833, December 8, 2011, paragraph 169). Equity ratio and equity thickness are used interchangeably in this decision.

¹⁴ Decision 2009-216: 2009 Generic Cost of Capital, Proceeding 85, November 12, 2009, paragraph 88.

¹⁵ Exhibit 26508-X0027, paragraph 4.

can adopt the decision-making process it considers best given the circumstances prevailing at the time of each proceeding. The review panel notes, in this regard, that the original decision lists several different approaches¹⁶ that have been used over the years to determine a fair return and agrees with AltaLink and EPCOR that there is insufficient basis for the UCA to claim that it had formed legitimate expectations as to the process the Commission would follow, only to have those expectations unreasonably thwarted by the hearing panel when it selected a different process in rendering its decision.

25. Indeed, in determining the 2021 GCOC, the Commission adopted a menu-based approach, which differed from all previous approaches adopted by the Commission precisely because of the enormous dislocations to general economic activity and significant uncertainties in the magnitude and trendlines of key economic indicators caused by the pandemic and the unprecedented government-initiated fiscal, monetary, social welfare, and public-health related responses to it. In addition, the pandemic was far from over at the time comments were solicited by the hearing panel in the proceeding leading to the original decision for the 2022 GCOC. As such, the review panel does not see a reasonable basis for any party to claim that it had legitimate expectations that any one process would be followed in preference to another in the original proceeding. This is especially the case as no single process had been followed in every proceeding before the pandemic arose and began disrupting many types of commercial and institutional activity worldwide.

26. The review panel considers each of the procedural issues raised in the following subsections.

4.1.1 The hearing panel represented that there would be further process prior to issuing a determination

27. In its reply submissions, the UCA acknowledged that in *Milner* the Alberta Court of Appeal held that “where the Commission seeks input on an issue, parties should be aware the Commission is contemplating a decision on that issue.”¹⁷ The UCA disagreed, however, that the initial letter seeking comments from parties “expressly advised” that the hearing panel was considering extending the parameters.¹⁸ The UCA claimed that since the hearing panel was only seeking comments on process, it was reasonable to conclude that no final determination would be made on substantive matters without additional process. In the UCA’s view, the hearing panel, “through its express words and actions, represented (perhaps unintentionally) there would be further process in this case.”¹⁹

¹⁶ Among the alternative approaches used by the Commission at different times over the past 20 years to determine the ROE and deemed equity ratios for the utilities it regulates, were what the hearing panel described as (i) a “case-by-case” approach; (ii) setting a generic ROE for all utilities and then adopting an adjustment mechanism formula to determine ROE in future years (also referred to by the hearing panel as “a formula-based methodology”); (iii) establishing ROE and equity ratios for a two- to three-year test period at a time following “an intensive regulatory process” in a GCOC proceeding; and, most recently, in the 2021 GCOC proceeding (iv) a menu-based approach specifically developed by the Commission “in light of the uncertainty in financial markets resulting from the COVID-19 pandemic.” See paragraphs 5 to 7 of the original decision for the full summary.

¹⁷ Exhibit 26508-X0027, paragraph 32.

¹⁸ Exhibit 26508-X0027, paragraphs 32-33, citing *Milner Power Inc. v Alberta Utilities Commission*, 2019 ABCA 127, paragraph 55.

¹⁹ Exhibit 26508-X0027, paragraph 35.

28. The review panel agrees with ENMAX's submission that the hearing panel expressly alerted parties to the possibility that the hearing panel might extend the existing 2021 parameters i.e., the ROE and deemed equity ratios, to 2022, without conducting a comprehensive GCOC process. The relevant sections of the initial proceeding letter, in which the hearing panel solicited comments on both substantive and procedural issues, follow below:

- **Maintaining status-quo:** Are there sufficient grounds to extend the currently approved ROE and deemed equity ratios for a further period of time? If so, should the existing parameters be extended for a defined period of time or should the existing parameters be maintained until some type of threshold is passed (for example, a threshold based on specific market conditions and capital market parameters or until any party brings an application satisfying the Commission that circumstances warrant a reconsideration of these parameters)?

...

- **The scope of the proceeding:** In the last GCOC proceeding, the Commission sought to explore the return to a formula-based approach to establishing ROE. The Commission ultimately adopted a menu approach to establish ROE and equity thickness in 2021 in response to consensus that the proceeding, as it had been originally established, should not proceed given the COVID-19 pandemic and the uncertainty in market conditions. What approach should the Commission adopt for establishing ROE and equity thickness for 2022 (and possibly beyond)? Do current circumstances and future expectations support returning to a robust, evidence-based assessment of fair return (as was done in the 2018-2020 GCOC (Proceeding 22570) and prior GCOC proceedings before that)? Should the Commission consider returning to a formula-based approach to ROE? Is there another approach that parties consider is better suited to the current circumstances?²⁰

29. The review panel, however, finds that the hearing panel went further than this in making its intentions clear with respect to future process. The review panel notes, in this regard, that in correspondence issued on January 27, 2021, the hearing panel acknowledged that submissions had been received from parties on various issues including the possibility of extending existing parameters "into the future without additional regulatory process."²¹ The letter also expressly stated that the hearing panel would provide its determinations on the canvassed matters in due course. In stating this, the hearing panel made no reference to pursuing any additional process prior to issuing its pending determinations.

30. Based on the contents of the initial proceeding letter and the hearing panel's acknowledgement of submissions received, the review panel finds that all parties had adequate notice that the hearing panel was considering extending the existing parameters without further process. In arriving at this finding, the review panel acknowledges that the hearing panel may have created some uncertainty (if only inadvertently as the UCA itself posits) - at least initially - about the extent, if any, to which further process might be required before the hearing panel rendered a decision on whether to extend the existing parameters. As the UCA has duly noted, the hearing panel stated that it wished to provide all interested parties the opportunity to comment before establishing any process for this proceeding.²² The review panel finds, however,

²⁰ Exhibit 26212-X0018, AUC letter - Proceeding commenced to establish 2022 Generic Cost of Capital, December 22, 2020, paragraph 3.

²¹ Exhibit 26212-X0029, AUC letter - Acknowledgment of submissions, January 27, 2021, paragraph 1.

²² Exhibit 26508-X0027, paragraph 19.

that any uncertainty that may have arisen from the wording of the initial proceeding letter was later dispelled once the hearing panel issued the January 27, 2021, letter acknowledging submissions of parties.

31. As noted above, the January 27, 2021 letter made two things clear. First, all interested parties had an opportunity to comment on whether the existing parameters should be extended into the future “without additional regulatory process”²³ and several parties did so.²⁴ Second, the hearing panel made no reference in the January 27, 2021 letter to the need for any further process, and expressly stated that it would be rendering its determinations on the canvassed matters in due course.

32. The review panel finds the UCA’s claim that its legitimate expectations of being able to (i) submit “proper” evidence, and (ii) test and reply to the evidence of other parties as part of a comprehensive GCOC proceeding were ignored (or otherwise unfairly denied) by the hearing panel is without merit. The review panel finds that the reasonable expectations of parties as to the process ultimately followed by the hearing panel ought to have been informed by and based upon the following considerations:

- i) the notice provided to parties in the correspondence of the original proceeding that the hearing panel was considering maintaining the status quo for utility ROEs and deemed equity ratios potentially without further regulatory process;
- ii) the pandemic led the hearing panel to adopt a different process in establishing utility ROEs and deemed equity ratios in the 2021 GCOC proceeding;
- iii) the hearing panel issued its decision in the 2022 GCOC proceeding less than 5 months after its 2021 GCOC decision, at a time when Canada and the rest of the world were still in the grips of the worst pandemic in a century with all of the economic, commercial, financial, social and health-related dislocations and uncertainties that this entails; and
- iv) the Commission has, at different times in the past two decades, employed a variety of processes in determining utility ROEs and deemed equity ratios, based on the circumstances prevailing at the time of each proceeding.

33. In deliberating and assessing the reasonableness and fairness of the process followed by the hearing panel in the 2022 GCOC proceeding, the review panel has also taken into consideration the factual findings of the hearing panel, based on (1) the submissions of parties to the 2022 GCOC; (2) the hearing panel’s own access to notoriously known facts in the public domain, especially as they concern the impacts of and uncertainties associated with the ongoing global pandemic; and (3) the record of the 2021 GCOC proceeding which had only just been completed a few months prior to the start of the 2022 GCOC proceeding.

²³ Exhibit 26212-X0029, paragraph 1.

²⁴ In the original proceeding, individual party comments were received from ENMAX Power Corporation (Exhibit 26212-X0022), The City of Calgary (Exhibit 26212-X0023), the Consumers’ Coalition of Alberta (Exhibit 26212-X0019), the Industrial Power Consumers Association of Alberta (Exhibit 26212-X0021), and the Office of the Utilities Consumers Advocate (Exhibit 26212-X0020). Joint submissions of utilities were received in two exhibits: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc. (Exhibit 26212-X0024) and the ATCO Utilities (comprised of ATCO Electric Distribution, ATCO Gas, ATCO Electric Transmission, ATCO Pipelines), Apex Utilities Inc. and FortisAlberta Inc. (Exhibit 26212-X0025).

34. A review of the original decision and the following findings shows that the hearing panel was alive to the facts and the issues affecting the fair return that is set in the ROE and the deemed equity ratios. First, and foremost, the hearing panel found that, on account of the ongoing global pandemic, “the economic and market data that would normally be used to inform its judgment regarding a fair return continue to remain in a state of flux”²⁵ so much so, that evidence submitted by parties would almost certainly need to be updated one or more times throughout the course of a comprehensive proceeding and even then would be “clouded by an unusual degree of uncertainty.”²⁶ Second, the hearing panel held that “its objective of ensuring that utilities earn a fair return and customers pay just and reasonable rates can be met without undertaking complex, lengthy and costly further process”²⁷ and that such additional process would not “be consistent with, or promote, regulatory efficiency”²⁸ as is required of the Commission by its enabling legislation. Third, the hearing panel found that given the circumstances facing the industry, it was unable to conclude that additional process, such as that desired by UCA “would necessarily provide any greater assurance that the resulting rates would be just and reasonable.”²⁹ Fourth, specific fiscal, monetary, and related financial and economic, as well as social welfare and health care system-related factors of uncertain magnitude and (in some cases) direction, relevant to a GCOC proceeding being conducted during a global pandemic and likely to have a non-trivial bearing on outcomes as noted by the hearing panel in its decision included:

- i) the ultimate magnitude of the “aggressive and broad-based fiscal intervention by various levels of government throughout North America”³⁰ and the timing and impact of the withdrawal or winding down of such intervention
- ii) continued capital market volatility
- iii) continued uncertainty as to future yields on government bonds, utility betas, and related economic indicators

35. In view of all these findings and the considerations underlying them, the hearing panel found that there was “an inadequate basis to depart from the currently approved ROE and equity thickness (either up or down).”³¹

36. Taking all of these findings and related considerations into account, the review panel finds that the process followed by the hearing panel in arriving at its determinations was reasonable given the totality of the circumstances facing the industry and the Commission in regulating it, and was sufficient to ensure procedural fairness to all parties.

4.1.2 The hearing panel placed limits on submissions which did not allow parties to establish an adequate evidentiary record

37. The UCA alleged that the hearing panel’s imposition of page limits on comments filed by the parties was procedurally unfair because (a) it significantly limited the nature and scope of the

²⁵ Decision 26212-D01-2021, paragraph 18.

²⁶ Decision 26212-D01-2021, paragraph 18.

²⁷ Decision 26212-D01-2021, paragraph 19.

²⁸ Decision 26212-D01-2021, paragraph 19.

²⁹ Decision 26212-D01-2021, paragraph 19.

³⁰ Decision 26212-D01-2021, paragraph 13.

³¹ Decision 26212-D01-2021, paragraph 18.

comments; and (b) it did not give parties an opportunity to develop an adequate evidentiary record from which the hearing panel could establish a fair return, including the “economic and financial evidence” that it claimed has been consistently considered by the Commission in the past.

38. The review panel considers that these issues can be addressed together since both relate to the ability of parties to provide submissions.

39. The UCA submitted that Section 9(4) of the *Alberta Utilities Commission Act* does not require the Commission to provide an opportunity for oral submissions, provided parties are allowed an adequate opportunity to make representations in writing, but that the hearing panel did not provide the UCA with an adequate opportunity.

40. The review panel finds that the hearing panel allowed parties an opportunity to make adequate representations in writing when it invited both substantive and process comments. Further, there was no prohibition on providing evidence. In fact, the CCA, UCA, and Calgary filed economic evidence. In its joint review submission AltaLink and EPCOR cited their previously filed submissions on the market conditions,³² which were based on supporting evidence from the 2021 GCOC proceeding.³³

41. Other participants referenced facts similar to those adduced in Proceeding 24110³⁴ on the state of the market and utility results that are no less “notorious” than those labelled as such by the CCA and which, for that reason, can be relied upon without being on the record.³⁵ The review panel also notes that the UCA submitted only eight pages of evidence, when 10 pages were allowed. If more pages were required for the UCA’s representations, it could have requested leave to exceed the 10-page limit.

4.1.3 The hearing panel did not provide for a right of reply

42. The UCA submitted that parties were not allowed a right of reply, which it said deprived them of the ability to correct evidence prejudicial to their case and to bring evidence to prove their positions. The UCA cited *audi alteram partem* (the right to hear the other side), which includes the right of a person to know the case being made against them and to be given an opportunity to answer it before the delegate making the decision.”³⁶

43. The review panel agrees with the submissions of the ATCO Utilities, Apex and Fortis that all parties were placed on notice that the hearing panel was considering extending the existing parameters, all parties had the opportunity to comment, and no party had a right of reply. All parties were treated equally, and the outcome was not new or unannounced.³⁷

44. The review panel notes that generic proceedings of the Commission differ in nature from civil proceedings before the courts and even from administrative proceedings initiated by way of

³² Exhibit 26212-X0024, AltaLink and EPCOR Comments on 2022 GCOC Proceeding, January 11, 2021, page 2, noting its previous submissions in Exhibit 24110-X0480 that market conditions are changing rapidly.

³³ Exhibit 24110-X0053 through Exhibit 24110-X0063, inclusive, contain AltaLink’s and EPCOR’s independent evidence from ScottMadden, Inc.

³⁴ Proceeding 24110 is the proceeding for the 2021 GCOC.

³⁵ Exhibit 26508-X0021, paragraph 3.

³⁶ Exhibit 26508-X0001, paragraph 44.

³⁷ Exhibit 26508-X0023, paragraph 55.

application filed by an individual party. Generic proceedings before administrative tribunals also differ from these other types of proceedings in terms of the procedural rights accorded to parties pursuant to the principles of natural justice. In the former situation, one or more plaintiffs seek redress through the courts for damages they allege to have been caused by the defendant(s) they are suing. Litigants in civil proceedings are, by definition, opposite in interest and outcomes precipitate winners and losers. By comparison, the Commission's proceedings are conducted to determine an outcome that meets the public interest mandate set out in the governing legislation.

45. This fact, in turn, will have a bearing on the rules of procedure followed by the civil courts versus those followed by regulatory tribunals in different circumstances. In administrative proceedings such as the 2022 GCOC, where there were no applicants, only regulated parties and interveners (i.e., interested, but non-regulated participants), the rules of natural justice do not invariably require that all participants be afforded a "right of reply." The Commission, in such circumstances, has considerable latitude in deciding the process it will follow in arriving at a determination, including the extent to which participants are allowed the opportunity to make submissions as well as the nature and content of those submissions.

46. In the instant case, the review panel agrees with the joint submission of AltaLink and EPCOR that it is the Commission, and not the UCA or any other participant that determines what constitutes "proper evidence" and the extent, if any, given all relevant circumstances, that parties must be granted the opportunity to test and respond to the evidence of other participants.³⁸ The hearing panel gave notice to parties and an opportunity to comment. The review panel finds that the omission of a right of reply did not prejudice the UCA's opportunity to make adequate submissions. Indeed, the UCA's submissions were clear on the issue and required no further clarification. As a result, the review panel finds that the hearing panel's procedural decision that it possessed all the information it required to determine whether to extend the currently approved parameters without further process was fair.³⁹

47. In summary, the review panel finds that no error of law on the grounds of procedural fairness is either apparent on the face of the decision or otherwise exists on a balance of probabilities that could lead the Commission to materially vary or rescind the original decision.

4.2 Grounds related to facts

4.2.1 The hearing panel relied on a material error of fact

48. The UCA alleged that the hearing panel's conclusions in the original decision relied on a material error of fact; namely, that market data remains in a state of flux and that the hearing panel's finding that the evidence would be clouded by an "unusual degree of uncertainty," was premised on an incorrect and misleading interpretation of a disclaimer by the Bank of Canada advanced by the ATCO Utilities, Apex and Fortis.⁴⁰ The UCA asserted that the Bank of Canada statement in an October 2020 Monetary Policy Report,⁴¹ is the only independent information referenced in any comments of the ATCO Utilities, Apex and Fortis that supports the assertion that it would be unreasonable to proceed with a normal course GCOC.

³⁸ Exhibit 26508-X0022, paragraphs 30, 35 and 36.

³⁹ Exhibit 26508-X0022, paragraph 36.

⁴⁰ Exhibit 26508-X0001, paragraphs 53-55.

⁴¹ Bank of Canada: Monetary Policy Report, October 2020, <https://www.bankofcanada.ca/wp-content/uploads/2020/10/mpr-2020-10-28.pdf>, hard copy page 1, PDF page 7.

49. In reply, the ATCO Utilities, Apex and Fortis jointly argued that whether or not the Bank of Canada was again providing forecasts of future economic conditions does not eliminate the increased uncertainty surrounding them. These utilities asserted that the excerpt from the Bank of Canada Monetary Policy Report quoted by the UCA highlights the fact that the “ongoing uncertainty” of the economic recovery is “dependent on the evolution of the pandemic” and that the Bank of Canada’s “projection remains highly conditional on the course of the virus and the measures needed to contain it.”⁴² They pointed to the concluding paragraph of the overview section, cited by the UCA, which notes that the economic outlook “remains unusually uncertain.”⁴³ Both the UCA, and the joint submission of the ATCO Utilities, Apex and Fortis referenced the overview of the Monetary Policy Report which is reproduced below:

The economic projection is highly conditional on assumptions about COVID-19

The economic recovery remains dependent on the evolution of the pandemic. Despite this ongoing uncertainty, the Bank is returning to its usual practice of providing a projection for economic growth and inflation in this *Monetary Policy Report*. Needless to say, this projection remains highly conditional on the course of the virus and the measures needed to contain it. But, with more than six months since the onset of the pandemic, the Bank has gained a better understanding of how containment measures and support programs affect the Canadian and global economies. This, along with more information on medical developments related to COVID-19, allows the Bank to now make a reasonable set of assumptions to underpin a base-case forecast. Given the continued uncertainty about the evolution of the pandemic (Chart 1), the projection is highly conditional on the following assumptions:

- Extensive lockdown measures, such as the widespread closures imposed early in the pandemic, will not be reintroduced, although more localized and moderate containment measures will ebb and flow.
- Vaccines and effective treatments will be widely available by mid-2022, at which time the direct effects of the pandemic on economic activity will have ended. Precautionary behaviour of households and the effects from the uncertainty surrounding COVID-19 are, however, likely to linger.

The pandemic is also likely to have persistent effects on the preferences and behaviours of consumers and businesses. This could lead to lasting changes to the structure of the economy and could weigh on its potential output. The sizes and timing of such effects are difficult to estimate precisely. Given these considerations, the outlook for Canadian and global economic activity remains unusually uncertain.⁴⁴

50. The dominant message contained in the Bank of Canada statement is one of economic uncertainty caused by the COVID pandemic. The projections are expressly said to be highly conditional on (1) lockdown measures, and (2) the availability of vaccines and effective treatments, both of which are said to have the potential to result in lasting changes to the structure and potential output of the economy. The Bank of Canada indicates that estimating the sizes and timing of these effects is difficult and characterizes the outlook for Canadian and global economic activity as unusually uncertain.

51. Given the economic uncertainty described by the Bank of Canada, notoriously known COVID-related circumstances at the time of the original decision (including the imposition of

⁴² Exhibit 26508-X0023, paragraph 60.

⁴³ Exhibit 26508-X0023, paragraph 61.

⁴⁴ Bank of Canada: Monetary Policy Report, October 2020, hard copy pages 1-2, PDF pages 7-8.

further lockdowns, the emergence of more infectious variants, and uncertainty around the timing and effectiveness of vaccination),⁴⁵ and taking into account submissions from some parties suggesting that updates to evidence may be required,⁴⁶ the review panel finds that the hearing panel's determination that evidence filed in the proceeding would be clouded by an unusual degree of uncertainty and would likely require updating was reasonable and was not premised on an incorrect interpretation of the Bank of Canada evidence advanced in the original proceeding. The review panel therefore finds that the UCA has not demonstrated the existence of an error of fact that is either apparent on the face of the decision or otherwise exists on a balance of probabilities that could lead the Commission to materially vary or rescind the original decision.

4.2.2 CCA submissions on errors of fact

52. The CCA provided its own list of alleged errors of fact, which went beyond those raised in the UCA's review application. This was noted in the joint ATCO Utilities, Apex and Fortis submission.⁴⁷

53. The review panel finds that the CCA's submissions in this regard are outside of the grounds raised by the UCA and were introduced in a procedurally improper manner. The proper forum in which to have raised these alleged errors would have been a separate review application filed by the CCA itself. It chose not to do so. Accordingly, these alleged errors have not been considered by the review panel.

4.3 Changed circumstances

54. The UCA submitted that there is now evidence that markets are stabilizing and that uncertainties that may have existed at the time of the original decision will not persist through 2022. It cited information from the Bank of Canada dated March 23, 2021⁴⁸ and April 21, 2021,⁴⁹ including suspension of the Bank of Canada's market liquidity-focused programs, its note that economic activity had become more resilient, and its revised outlook.⁵⁰ The UCA argued that this indicates that market conditions are stabilizing. The UCA submitted that if conditions are stabilizing, the rationale for declining to hold an intensive GCOC process is no longer applicable.⁵¹ The UCA submitted that while uncertainty has not been eliminated, it has been materially reduced and that economic conditions continue to stabilize.

55. The review panel finds that the Bank of Canada publications cited by the UCA in support of changed circumstances reflect that the uncertainties in economic and market fundamentals have not abated. In fact, the references cited by the UCA indicate that uncertainty remains elevated. This was noted in the joint submission of AltaLink and EPCOR, which highlighted statements in the same Bank of Canada reports cited by the UCA, that pandemic-related uncertainty persists, particularly surrounding inflation, where uncertainty remains "unusually

⁴⁵ Exhibit 26212-X0022, 2021-01-11-EPC comments on foregoing considerations, January 11, 2021, page 1.

⁴⁶ Exhibit 26212-X0024, page 2; Exhibit 26212-X0022, page 4.

⁴⁷ Exhibit 26508-X0022, paragraph 2; Exhibit 26508-X0028, paragraph 4.

⁴⁸ Bank of Canada, "Market stress relief: the role of the Bank of Canada's balance sheet" (March 23, 2021), online: <https://www.bankofcanada.ca/2021/03/market-stress-relief-role-bank-canadas-balance-sheet/>.

⁴⁹ Bank of Canada, Monetary Policy Report, April 2021, (April 21, 2021), online: <https://www.bankofcanada.ca/wp-content/uploads/2021/04/mpr-2021-04-21.pdf>, and Bank of Canada, Monetary Policy Report Press Conference Opening Statement (April 21, 2021), online: <https://www.bankofcanada.ca/2021/04/opening-statement-210421>.

⁵⁰ Exhibit 26508-X0001, paragraphs 56-63.

⁵¹ Exhibit 26508-X0001, paragraph 62.

high.” AltaLink and EPCOR also pointed to comments from the Governor of the Bank of Canada that the third wave of infections “has introduced a new dimension of uncertainty.”⁵²

56. ENMAX submitted that, at best, the Bank of Canada statements suggest that markets are stabilizing, not stable, and that the UCA was re-arguing points made in the original proceeding. ENMAX added that a stabilizing market is not a stable market and does not give “stable and reliable, current and forward-looking economic and market data.”⁵³

57. Based on the foregoing, the review panel finds that the UCA has not shown on a balance of probabilities that circumstances have changed in that markets have now stabilized and uncertainties that may have existed at the time of the original decision will not persist. The UCA’s evidentiary support for changed circumstances indicates that uncertainty remains elevated. The review panel finds that the UCA has not demonstrated the existence of changed circumstances material to the decision, which occurred since its issuance, that could lead the Commission to materially vary or rescind the original decision.

Applicability of changed circumstance to generic cost of capital decisions

58. In its process letter, the review panel invited parties to submit legal argument on the applicability of the ground of changed circumstance to the review of the original decision, where return on equity and capital structures are determined on a prospective basis and fixed during a test period.⁵⁴ The review panel agrees with ENMAX’s position that Commission decisions are intended to be final, and reviews should be granted sparingly. The Commission must make its decision on a prospective basis for a fixed test period based on the information available at the time, and as ENMAX stated, “changed circumstances should be so significant that they render the continued application of the decision obviously unreasonable and unfair.”⁵⁵ The review panel also agrees with the submissions by AltaLink and EPCOR that in considering a changed circumstance in the context of a generic cost of capital decision, factors to take into consideration include: the need for certainty and stability for Alberta ratepayers, as well as utilities and their investors and the increased costs of regulation, regulatory lag, and the public interest argued by UCA, which is the possibility that rates initially determined to be just and reasonable no longer remain so under sufficiently changed circumstances.⁵⁶

4.4 Grounds related to errors in law or jurisdiction

59. In this section, the review panel considers whether the hearing panel committed errors in law or jurisdiction by (1) applying the incorrect legal test; (2) making the decision in the absence of supporting evidence; and (3) extending the previously approved ROE and equity ratios to the end of 2022 without conducting a full proceeding.

4.4.1 The hearing panel applied the incorrect legal test or standard

60. The UCA submitted that there are three factors that must be considered and examined when determining a fair return: capital attraction, financial integrity and comparable investments

⁵² Exhibit 26508-X0022, paragraph 53.

⁵³ Exhibit 26508-X0020, paragraph 23.

⁵⁴ Exhibit 26508-X0019, AUC letter – Process announcement, May 14, 2021, paragraph 7.

⁵⁵ Exhibit 26508-X0020, paragraph 20.

⁵⁶ Exhibit 26508-X0022, paragraphs 52-55.

(from the Supreme Court of Canada’s decision in *Northwestern Utilities*⁵⁷) and that the hearing panel did not consider whether maintaining the status quo is consistent with this test i.e., the fair return standard. A fair return must apply to both utilities and consumers. Instead, the UCA argues that the hearing panel in the original decision was guided by three factors: the unsettled nature of capital markets; the need for certainty and stability; and regulatory efficiency; all of which the UCA states are irrelevant to determining a fair return.⁵⁸

61. The review panel finds that the parameters that were extended to 2022 were those that were determined in Decision 22570-D01-2018,⁵⁹ which considered capital attraction, financial stability, and comparable investments. That decision applied to the years 2018, 2019 and 2020. The 2021 parameters were ultimately approved on October 13, 2020, in Decision 24110-D01-2020⁶⁰ (after Proceeding 24110 was suspended⁶¹), and were based on a menu approach. The menu-based approach, which was adopted by the Commission after it determined that the pandemic rendered the prior, more intensive approach impractical, if not unfeasible, resulted in an extension of the approved 2020 return and equity ratios to the end of 2021.

62. As pointed out by AltaLink and EPCOR, these parameters, that the hearing panel extended into 2022, were unquestionably based on the correct legal test and the hearing panel determined there was an inadequate basis to depart from these values in setting a fair return.⁶² The review panel also notes that there is no prescribed approach or methodology to set a fair return, which the UCA does not dispute.⁶³ The hearing panel, recognizing the ongoing economic uncertainty, concluded that a more intensive process, such as that urged by the UCA, would not provide greater assurance that the resulting rates would be just and reasonable,⁶⁴ and that stability was required for both customers and utilities in a period of economic uncertainty.

63. For the above reasons, the review panel finds that the hearing panel did not apply an incorrect legal test and there is no error of law or jurisdiction apparent either on the face of the decision or that otherwise exists on a balance of probabilities that could lead the Commission to materially vary or rescind the original decision.

4.4.2 The hearing panel made the original decision in the absence of supporting evidence

64. The UCA submitted that the hearing panel failed to consider any supporting evidence in making the original decision. The UCA argued that while a few parties commented on current and future economic conditions, there was no evidentiary support provided for these comments. In the alternative, the UCA submitted that if the comments are evidence, such evidence was neither questioned, nor tested, and was insufficient to support the decision.

⁵⁷ *Northwestern Utilities Ltd. v Edmonton (City)*, [1929] SCR 186.

⁵⁸ Exhibit 26508-X0001, paragraph 40.

⁵⁹ Decision 22570-D01-2018: 2018 Generic Cost of Capital, Proceeding 22570, August 2, 2018.

⁶⁰ Decision 24110-D01-2020: 2021 Generic Cost of Capital, Proceeding 24110, October 13, 2020.

⁶¹ The UCA requested a suspension because there was extraordinary turmoil and uncertainty in financial markets at the time on account of the COVID-19 pandemic (quoted at Decision 24110-D01-2020, paragraph 5). The Commission’s ruling is at Exhibit 24110-X0445, AUC letter - Ruling on the UCA motion, March 19, 2020.

⁶² Exhibit 26508-X0022, paragraph 26.

⁶³ Exhibit 26508-X0027, paragraph 4.

⁶⁴ Decision 26212-D01-2021, paragraphs 19-20.

65. This ground was raised by the UCA as an error of law. While the review panel agrees that a lack of evidentiary support for the hearing panel's decision would constitute an error of law, consideration of the evidence on the record of the original proceeding raises questions of fact or mixed fact and law. Since, the review panel's analysis in this regard will consider whether and to what extent the record in the original proceeding was sufficient to underpin the hearing panel's decision, the review panel has treated this ground as one primarily based in law, but has necessarily considered the factual record of the original proceeding in making its determination.

66. The UCA submitted that while the Commission must consider all facts that are relevant when setting a fair return and has wide discretion to determine what facts are relevant,⁶⁵ the Commission does not have discretion to refuse to obtain and consider any relevant facts at all. The UCA cited the Supreme Court of Canada,⁶⁶ which has stated that it is an error of law to make a finding of fact for which there is no supporting evidence.⁶⁷

67. In its reply submission, the UCA stated that there is a sharp contrast between the significant amount of empirical expert evidence typically required to establish a fair return and the limited 10-page double-spaced comments requested. It said that comments were submitted to demonstrate economic uncertainty, not for the purpose of establishing a fair return and that the information provided was not supported by expert evidence, nor was it tested. The UCA argued that while the Commission is not bound by the rules of evidence, it must ensure evidence is reliable and persuasive and the UCA took the position that there was no evidence that maintaining the status quo met the fair return standard.

68. In response to the suggestion of AltaLink and EPCOR that the hearing panel reached its decision on the basis of relevant evidence including the currently approved parameters and the evidence of economic uncertainty,⁶⁸ the UCA said that this evidence may have supported a finding that maintaining the status quo would provide stability, prospectivity in rate-making, and/or an efficiently determined return, but not a fair return.⁶⁹ The UCA pointed to the hearing panel's language in the original decision that some considerations suggested an increase and others a decrease in key parameters, but argued that the hearing panel made no attempt to weigh these positions to reach a reasoned conclusion. The UCA added that *Northwestern Utilities* supports the proposition that the Commission is not limited to acting on evidence put to it by parties. The Commission can gather its own evidence, but the UCA asserted that the hearing panel did not and added that no parties were able to call witnesses, which was a key factor in *Northwestern Utilities*. The UCA argued that the broad purpose in the *Electric Utilities Act* (efficiency) does not detract from or modify the statute, citing Justice Wakeling of the Court of Appeal of Alberta, that purpose can never trump text.⁷⁰

69. The review panel finds that there was relevant evidence on the record of the original proceeding. The CCA provided independent data in the original proceeding related directly to the capital attraction, financial integrity, and comparable investment criteria of the fair return.⁷¹ The

⁶⁵ *Altgas Utilities Inc. v Alberta Utilities Commission*, 2020 ABCA 375, paragraph 21.

⁶⁶ *R v JMH*, 2011 SCC 45, [2011] 3 SCR 197, paragraph 25.

⁶⁷ Exhibit 26508-X0001, paragraph 28.

⁶⁸ Exhibit 26508-X0022, paragraph 20.

⁶⁹ Exhibit 26508-X0027, paragraphs 24 and 27.

⁷⁰ Exhibit 26508-X0027, paragraph 27.

⁷¹ Exhibit 26508-X0021, paragraph 34, wherein the CCA references its submissions in the original proceeding - found at Exhibit 26212-X0019.

CCA also commented that all the references and data discussed in its submission were available and on the record, or publicly available, at the time of the original decision. The CCA submitted that these facts, the state of the market and the utility results, are facts which are notorious and can be relied on without being on the record. In addition, The City of Calgary referred to publicly available information (i) related to bonds and (ii) in support of its position that the timing and scope of economic recovery across all sectors is uncertain and, in any event, (iii) that recovery is not expected to occur until at least the latter half of 2021 in the United States.⁷² The review panel finds that public sources of information were provided as links, footnotes, or otherwise referred to in the submissions of several parties, including the Bank of Canada's statements discussed in Section 4.2.1. This contradicts the UCA's position that the original decision was reached in the absence of supporting evidence.

70. The review panel agrees with the statements made by AltaLink and EPCOR that the hearing panel considered the currently approved parameters, and evidence of prevailing economic uncertainty. The scope of evidence that the Commission must consider is not limited by legislation and the Commission can consider all evidence that is relevant. The Commission is not obliged to consider the same evidence in each proceeding and, as argued jointly by the ATCO Utilities, Apex and Fortis, the weight assigned to evidence is not a valid ground for review.⁷³ The various, markedly different approaches used to reach the Commission's determinations in prior GCOC proceedings were described in the original decision⁷⁴ and referenced in Section 4.1 of the current decision.

71. The review panel finds that the approach used in the original decision was consistent with the objective of ensuring that utilities earn a fair return and customers pay just and reasonable rates. A review and variance application must not be used to reargue the merits of the original decision. For example, in paragraph 18 of the original decision, the hearing panel evaluated the competing claims of parties, as follows: "AltaLink and EPCOR claimed that a number of relevant considerations in determining a fair return indicate that return requirements for investors have increased, the CCA pointed to lower values for several key variables suggesting the opposite conclusion, namely, that return requirements have decreased." The hearing panel concluded that "there is an inadequate basis to depart from the currently approved ROE and equity thicknesses (either up or down)."⁷⁵

72. Moreover, the Commission, as an expert tribunal, is not limited to considering only the evidence brought by parties. The review panel agrees with the CCA that the state of the markets and the utility results, are facts that are notorious and can be relied on without having been made formally part of the record.

73. With respect to the UCA's alternative submission that if the review panel determines that there was evidence upon which the hearing panel's decision was based, that parties were not able to question or test the evidence or that it was insufficient to support the original decision, the review panel refers to its earlier analysis and related findings at paragraphs 30-32 of this decision. In particular, as articulated and elaborated upon above, the Commission has the

⁷² Decision 26212-D01-2021, paragraph 16. The City of Calgary's submissions are found at Exhibit 26212-X0023, ID 26212 City of Calgary Submissions on Considerations, January 11, 2021, paragraph 6.

⁷³ Exhibit 26508-X0023, paragraphs 48 and 51.

⁷⁴ Decision 26212-D01-2021, paragraphs 5 to 7.

⁷⁵ Decision 26212-D01-2021, paragraph 18.

authority to determine what constitutes “proper evidence” and the extent to which parties must be granted the opportunity to test and to respond to the evidence of other participants. The hearing panel gave notice to parties, expressly indicated that it was considering extending the current cost of capital parameters, and gave all parties an equal opportunity to comment. The review panel has found, and repeats here, that it was reasonable for the hearing panel to conclude that it possessed all the information it required to determine whether to extend the currently approved parameters without further process.

74. The review panel therefore finds that the UCA has not shown on a balance of probabilities that the hearing panel made its decision in the absence of evidence, that the hearing panel provided insufficient opportunity to the parties to test or question the evidence, or that the evidence was insufficient to support the decision made, and that on these grounds, no error of law is either apparent on the face of the decision or otherwise exists on a balance of probabilities that could lead the Commission to materially vary or rescind the original decision.

4.4.3 The hearing panel erred in extending the previously approved ROE and equity ratios to the end of 2022 without conducting a full proceeding

75. The UCA submitted that the Commission has a statutory obligation to set a fair return (*Gas Utilities Act*, Section 37(1); *Electric Utilities Act* Section 122(1)(a)(iv); and *Public Utilities Act*, Section 90(1)) but that the hearing panel decided to maintain the status quo rather than conduct a proceeding to set the fair return. This, argued the UCA, amounted to a refusal to exercise the Commission’s statutory mandate. Further, the UCA submitted that the Commission cannot avoid exercising its jurisdiction because the exercise was too onerous in the circumstances.

76. AltaLink and EPCOR submitted that the UCA’s argument is premised on the Commission being legally required to conduct a particular process and to consider certain evidence.⁷⁶ The review panel agrees. While the UCA favours an intensive GCOC process for the 2022 period, it has not argued that there is a statutory requirement to hold an intensive process on a particular schedule. The review panel observes that even in prior GCOC proceedings that followed an intensive process, the Commission has accepted the parameters of the prior term as a point of departure for the next term,⁷⁷ and after finding that some indicators signalling upward pressure on parameters were offset by other indicators signalling downward pressure,⁷⁸ simply maintained the status quo.⁷⁹ This is similar to what the hearing panel did in the original decision where it found that “there is an inadequate basis to depart from the currently approved ROE and equity thicknesses (either up or down).”⁸⁰ This determination was made based on the hearing panel’s findings of fact as referred to by the review panel in paragraph 34 above.⁸¹ It is these facts and circumstances, as set out in the original decision in paragraphs 10-18, that support the extension of 2021 parameters into 2022. The result is that the hearing panel properly fulfilled its

⁷⁶ Exhibit 26508-X0022, paragraph 10.

⁷⁷ Decision 20622-D01-2016: 2016 Generic Cost of Capital, Proceeding 20622, October 7, 2016, paragraph 27.

⁷⁸ Decision 22570-D01-2018, paragraph 495.

⁷⁹ Decision 22570-D01-2018, paragraph 500.

⁸⁰ Decision 26212-D01-2021, paragraph 18.

⁸¹ Exhibit 26508-X0020, paragraph 13.

statutory obligation using an abbreviated process, that was justified in the circumstances.⁸² The hearing panel considered the evidence before it to make its determinations.

77. The review panel also finds that while the hearing panel took into consideration the extensive resources and time required to conduct an intensive process, this rationale was only one of the reasons for its decision to extend the existing parameters into 2022. Other considerations were equally if not more compelling, for example, the unsettled nature of capital markets, the unusual degree of uncertainty in financial markets and the absence of stable and reliable, current and forward-looking economic market data. The hearing panel found that these circumstances supported a period of stability in uncertain times. The review panel finds no error in the hearing panel taking all of the circumstances into consideration in determining what process was sufficient to determine the cost of capital parameters in the 2022 GCOC proceeding.

78. The UCA noted that the British Columbia Utilities Commission (BCUC) initiated a GCOC in January 2021, and that several BC utilities cited the original decision under review, to which the BCUC replied: “The Panel is not persuaded that market uncertainty warrants a delay. It is unclear to the Panel why some parties argue that a cost of capital review is only relevant under stable conditions.”⁸³ The review panel considers that while the actions taken by other regulators may be informative, they are not binding on the Commission or otherwise limit the Commission in conducting any particular process to establish the 2022 parameters applicable to Alberta utilities. That decision is for the Commission alone, under the purview of the applicable legislation, and for the reasons outlined in this decision, the review panel has found no error in the process used to arrive at the original decision. In any event, the introduction of the BCUC’s remark and its decision to proceed with a cost of capital review, is new evidence improperly introduced in a first stage review.

79. The review panel finds that the UCA has failed to establish on a balance of probabilities that the hearing panel declined to exercise its jurisdiction by extending the previously approved ROE and deemed equity ratios to the end of 2022 without first conducting a comprehensive GCOC proceeding. On this ground the review panel finds that the hearing panel did not commit an error in law or jurisdiction that is either apparent on the face of the decision or otherwise exists on a balance of probabilities that could lead the Commission to materially vary or rescind the original decision.

⁸² Exhibit 26508-X0022, paragraph 16.

⁸³ Exhibit 26508-X0027, paragraph 14.

5 Decision

80. In answering the preliminary question, the review panel finds that the Office of the Utilities Consumer Advocate has not met the requirements for a review of Decision 26212-D01-2021 and the application for review is dismissed.

Dated on August 9, 2021.

Alberta Utilities Commission

(original signed by)

Kristi Sebalj
Panel Chair

(original signed by)

Douglas A. Larder, QC
Vice-Chair

(original signed by)

Bohdan (Don) Romaniuk
Acting Commission Member