# Alberta Federation of Rural Electrification Associations

## Decision on Preliminary Question
## Application for Review of Decision 25916-D01-2021
## Fortis Alberta Inc. 2022 Phase II Distribution Tariff Application

**September 23, 2021**

**Alberta Utilities Commission**
Decision 26756-D01-2021
Alberta Federation of Rural Electrification Associations
Decision on Preliminary Question
Application for Review of Decision 25916-D01-2021
Fortis Alberta Inc. 2022 Phase II Distribution Tariff Application
Proceeding 26756
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## Contents

**1 Decision** .......... **1**

**2 Background** .......... **1**

**3 The Commission's review process** .......... **2**

**4 Review panel findings** .......... **3**
- **4.1** Questions of law .......... 3
  - **4.1.1** The hearing panel erred by making findings on matters that must be determined by Fortis and the REAs through negotiation or by an arbitrator if parties cannot agree .......... 3
  - **4.1.2** The process followed by the hearing panel in the original proceeding was procedurally unfair .......... 4
- **4.2** Section 5(1)(a) grounds – error of fact, or mixed fact and law where the legal principle is not readily extricable .......... 5
  - **4.2.1** The hearing panel erred by failing to consider or by improperly determining the historical record .......... 5
    - **4.2.1.1** The hearing panel erred in finding that Fortis has historically recovered integration operation costs from its customers .......... 5
    - **4.2.1.2** The hearing panel erred by failing to address the quantification issue 8
    - **4.2.1.3** The hearing panel erred in finding the methodology to determine costs associated with and attributable to integrated operation was reasonable .......... 9
    - **4.2.1.4** The hearing panel erred by making findings with incomplete information .......... 11
  - **4.2.2** The hearing panel erred by classifying REAs as "end users" .......... 12

**5 Decision** .......... **14**

**Alberta Utilities Commission**

**Calgary, Alberta**

**Alberta Federation of Rural Electrification Associations**
**Decision on Preliminary Question**
**Application for Review of Decision 25916-D01-2021** **Decision 26756-D01-2021**
**Fortis Alberta Inc. 2022 Phase II Distribution Tariff Application** **Proceeding 26756**

# 1 Decision

1. In this decision, the Alberta Utilities Commission denies an application by the Alberta Federation of Rural Electrification Associations (AFREA) to review and vary Commission Decision 25916-D01-2021[1].

# 2 Background

2. Decision 25916-D01-2021 (the Decision) related to FortisAlberta Inc.'s Phase II application.[2] The AFREA was an intervener in that proceeding. The AFREA filed its application to review and vary the 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 26756.

3. The review application concerns the hearing panel's findings in Section 6 of the Decision. Paragraph 12 of the Decision broadly described some of the issues in Section 6 of the Decision as follows:

> Fortis's service area overlaps with the service areas of certain REAs, who provide electrical service to their cooperative members. In determining the issues with respect to Fortis's distribution cost allocation and rate design, the Commission had to determine:
>
> • Whether there are costs Fortis incurs as a result of integrated operations with REAs that should not be borne by Fortis's customers through its distribution tariff.
>
> • If confirmed, when and how these costs should be removed from the rates charged to Fortis's distribution customers.

4. The Commission issued a filing announcement for the review application and, by letter dated August 26, 2021, indicated that it required no additional information in the current proceeding to reach a decision.

5. 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." The Commission

[1] Decision 25916-D01-2021: FortisAlberta Inc. 2022 Phase II Distribution Tariff Application, Proceeding 25916, July 8, 2021.

[2] The distribution rate-setting process, including an explanation of Phase I and Phase II, is provided in Section 2 of Decision 25916-D01-2021.

considers that the record for this proceeding closed on August 26, 2021, the date of the Commission's last correspondence in this proceeding.

6. In reaching its determinations, the review panel has reviewed the pertinent portions of the Decision and relevant materials comprising the record of this proceeding and of proceeding 25916. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the several records with respect to the matter.

## 3 The Commission's review process

7. 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.

8. 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).

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

10. In its review application, the AFREA is relying on Section 5(1)(a) of Rule 016.

11. Section 5(1)(a) of Rule 016 describes the circumstances in which the Commission may grant a review as follows:

> 5(1) The Commission may grant an application for review of a decision, in whole or in part, where it determines that the review applicant has demonstrated:
>
> > (a) The Commission made an error of fact, or mixed fact and law where the legal principle is not readily extricable, which is material to the decision and exists on a balance of probabilities.

12. In practice, one of the first steps in an analysis under Section 5(1)(a) is determining whether any of the alleged errors in a review application are, in nature, errors of law. This is because errors in law are outside the scope of a Commission review.[3] In terms of how the Commission distinguishes between questions of fact, mixed fact and law, and law, the Commission takes guidance from the Supreme Court of Canada's characterization of such questions in *Southam*:

> … Briefly stated, questions of law are questions about what the correct legal test is; questions of fact are questions about what actually took place between the parties; and

[3] Bulletin 2021-11, Amendments to AUC Rule 016, May 6, 2021.

questions of mixed law and fact are questions about whether the facts satisfy the legal tests. …[4]

# 4 Review panel findings

## 4.1 Questions of law

13. The Commission recently amended Rule 016, with the amendments applying to review and variance applications filed on or after June 15, 2021. The amended Rule 016 therefore applies to the current review application, which was filed on August 6, 2021. One of the amendments was to remove errors of law or jurisdiction from the scope of a Commission review.[5]

14. In its review application, the AFREA classified multiple grounds as errors of fact or as errors of mixed fact and law. However, the review panel finds that the following two grounds are errors of law, and therefore are outside the scope of Section 5 of Rule 016.

### 4.1.1 The hearing panel erred by making findings on matters that must be determined by Fortis and the REAs through negotiation or by an arbitrator if parties cannot agree

15. In Section 6.2 of the Decision, the hearing panel made findings on its authority to approve certain costs in Fortis's distribution tariff that are associated with Fortis's integrated operations with REAs. The hearing panel found that it did not have the authority to approve the type of costs described in Table 13 of the Decision as "Fortis costs to serve REAs under integrated operations."[6] The hearing panel found, however, that it did have authority to approve the type of costs described in Table 13 as the "REA distribution system use credit" in Fortis's distribution tariff.[7] In Section 6.3 of the Decision, the hearing panel addressed when Fortis's costs to serve REAs under integrated operations should be removed from the rates charged to Fortis's distribution customers.

16. The AFREA argued that the hearing panel erred in fact, or mixed fact and law, in weighing in on the legislative scheme in sections 6.2.2 and 6.3 of the Decision.[8] It said that Part 2 of the *Roles, Relationships And Responsibilities Regulation, 2003* (*3R Regulation*) mandates that the "determination of the lawfulness, reasonableness, quantum, or any other aspect of costs inherent in the system in overlapping service areas"[9] be determined first by Fortis and the REAs by negotiation, and second by arbitration if the parties cannot agree.[10] The AFREA indicated that these issues are therefore outside of the Commission's authority.

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4 *Canada (Director of Investigation and Research) v Southam Inc*., 1997 CanLII 385 (SCC), [1997] 1 SCR 748, paragraph 35.
5 Bulletin 2021-11, Amendments to AUC Rule 016, May 6, 2021.
6 Decision, paragraph 196.
7 Decision, paragraph 209.
8 Exhibit 26756-X0001, AFREA request for Review & Variance (R&V) of Decision 25916-D01-2021, August 6, 2021, paragraph 24.
9 Exhibit 26756-X0001, paragraph 24.
10 Exhibit 26756-X0001, paragraph 43.

17. As support, the AFREA submitted that the Alberta Court of Appeal held that integrated operation agreements, and not the Commission, determine what costs, if any, flow between an REA and a public distribution utility.[11] Specifically, the AFREA pointed to the Court's finding that "REAs are not customers of Fortis" and argued that, contrary to this, the hearing panel made assumptions or factual conclusions that costs could or should be allocated between REAs and Fortis, as if REAs were customers of Fortis.[12] An example of such an assumption or factual conclusion, the AFREA argued, is the hearing panel's approval of a Y factor mechanism in Fortis's distribution tariff, which requires Fortis to refund costs it may recover from REAs for serving REAs under integrated operations to Fortis customers in the current performance-based regulation (PBR) term.

18. The AFREA submitted that the effect of the hearing panel's findings is to limit the scope of negotiations and potentially arbitrations under Part 2 of the *3R Regulation* to the issue of quantum, effectively negating the AFREA's ability in those negotiations or arbitrations to argue the lawfulness or reasonableness of those costs.

19. In the AFREA's view, all negotiations and arbitrations under Part 2 of the 3*R Regulation* must be finalized before Fortis applies to recover amounts from its customers through Fortis's Commission-regulated distribution tariff.[13]

20. The allegation that the hearing panel exceeded its authority when it made findings on the inclusion of specific costs at issue in Fortis's distribution tariff is a question of law. The AFREA itself submits that the legislature accorded that authority to a different decision-maker; that is, Fortis and the REAs by negotiation, or an arbitrator if negotiations fail. Rule 016 specifies that no review is available on errors of law. As such, this is not a ground for which review is available and the application for review on this ground is dismissed.

#### 4.1.2 The process followed by the hearing panel in the original proceeding was procedurally unfair

21. The AFREA submitted that the hearing panel erred by relying on Fortis's written evidence summarizing Fortis staff responses to questions from Commission staff and parties during an oral technical meeting. The AFREA argued that "Fortis's submissions at the Technical Meeting were provided in a manner that prohibited scrutiny, were guided by Commission staff, not Commissioners, without the benefit of intervener perspective, allowed for inadequate testing of the truth of the facts as presented, and yet are arguably relied upon as if they were scrutinized facts."[14]

22. The Commission has previously characterized errors in process as errors in law.[15] Rule 016 specifies that no review is available on errors of law. As such, this is not a ground for which review is available and the application for review on this ground is dismissed.

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[11] Exhibit 26756-X0001, paragraph 25 referencing *Fortis v Alberta (Utilities Commission)*, 2020 ABCA 271
[12] Exhibit 26756-X0001, paragraph 26 referencing *Fortis v Alberta (Utilities Commission)*, 2020 ABCA 271.
[13] Exhibit 26756-X0001, paragraph 9.d.
[14] Exhibit 26756-X0001, paragraph 31.
[15] See, for example, Decision 26508-D01-2021, Office of the Utilities Consumer Advocate, Decision on Preliminary Question Application for Review of Decision 26212-D01-2021, 2022 Generic Cost of Capital,

### 4.2 Section 5(1)(a) grounds – error of fact, or mixed fact and law where the legal principle is not readily extricable

23. The review panel found the AFREA's identification and description of many of the grounds for its review application confusing. The grounds were inconsistently framed (comparing, for example, the description of the grounds at paragraphs 2, 3, 5, and 6, and the titles of headings in sections 5.1 and 5.2 of the review application). In addition, several of the grounds did not include a reference to the record in the original proceeding, leaving the review panel to review the record of the original proceeding in an attempt to identify the evidence the AFREA may have intended to rely on to support its review application. Given this confusion, the review panel attempted to understand the AFREA's position, within the framework of Rule 016, and has provided its reasons based on its interpretation of the review application. The review panel cautions however, that the onus lies with the reviewing party to provide clear grounds, supporting submissions, and references to the original record, failing which, the party risks having its review grounds denied based on the fact that the review panel cannot understand the grounds or ascertain what parts of the record are intended to support those grounds.

#### 4.2.1 The hearing panel erred by failing to consider or by improperly determining the historical record

24. The AFREA submitted that the hearing panel erred by failing to consider or by improperly determining the historical record. The AFREA alleged several errors in this respect.

##### 4.2.1.1 The hearing panel erred in finding that Fortis has historically recovered integration operation costs from its customers

25. First, the AFREA submitted that paragraph 185 of the Decision contains a factual error.[16] This paragraph states:

> 185. Fortis's historical practice has been to recover its costs associated with its integrated operations with REAs and that are attributable to REAs through its distribution tariff, meaning from its customers. Given this past practice, it is helpful to review why the Commission is examining whether there are integrated operation-related costs that should not be borne by Fortis's customers in this proceeding. The reasons are three-fold.

26. The AFREA advised that in the original proceeding it provided substantive historical documentation of how the Alberta Interconnected Electric System was formed. This included evidence on commercial arrangements made between REAs and Fortis's predecessors.[17] In the review application, the AFREA specifically cited the following evidence:

> Q13: Is the application accurate in your view?
>
> A13: No. REAs do not, nor have their members ever been, subsidized by Fortis customers. Methodology to create a placeholder rate mechanism for future distribution

August 9, 2021, paragraph 47; Decision 26529-D01-2021, Decision on Application for Review of Decision 26252-D01-2021, ATCO Electric Ltd. 2020-2022 Transmission General Tariff Application Costs Award, June 7, 2021, paragraph 14.

[16] Exhibit 26756-X0001, paragraph 34.

[17] Exhibit 26756-X0001, paragraph 34 citing Exhibit 25916-X0165 at Q/A 13 and Q/A 14.

> costs is highly prejudicial to ongoing negotiations and future disputes that should not be resolved, even hypothetically, in a rate application.
>
> Q14: Why?
>
> A14: Two key reasons: 1) The application's method for attributing costs to REAs is overly narrow and fails to address the understanding of REAs under their contractual obligations and under various iterations of what most REAs call a wire owners' agreement (WOA); and 2) Fortis has misconstrued the limitations of how they can (or cannot) attribute costs as a result of these contractual agreements. These agreements are currently governed under legislation, the most relevant of which is *the Roles, Relationships and Responsibilities Regulation*, AR 151/2000 (RRR Reg), and prior to de-regulation, administered by the Farm Electric Services Ltd. (FESL). For decades, REAs have relied upon these contracts, the manner in which they were established, and the performance required under them for both the REA and Fortis (or its predecessors) in the ordinary course of events. To be of assistance to the Commission, the AFREA provides the table below. …[18]

27. The AFREA argued that the hearing panel disregarded this evidence, and instead accepted that Fortis has historically recovered integrated operations costs from its customers, not REAs.[19]

28. The hearing panel's silence on a particular point of evidence does not necessarily mean that the hearing panel ignored the evidence. As explained by the Alberta Court of Appeal in *Johnston v Alberta (Energy & Utilities Board)*:

> [10] There is no requirement that a board address in its decision all of the evidence that was put before it in a hearing. … While a Board cannot ignore relevant or important evidence, the failure to discuss all of the evidence in its reasons does not necessarily lead to the conclusion that the Board ignored such evidence: *Woolaston v. Minister of Manpower and Immigration*, 1972 CanLII 3 (SCC), [1973] S.C.R. 102 at 108. The Board's decision should not be read in isolation, but should be considered in light of the totality of evidence and arguments presented at the hearing to determine if important issues or arguments were missed. …[20]

29. In paragraph 16 of the Decision, the hearing panel explained that it considered all relevant materials on the record of the original proceeding, but exercised discretion in choosing what parts of the record to include in the Decision.[21] Further, the analysis in Section 6 of the Decision is extensive and includes descriptions of party positions and ample references to evidence and the record through footnotes. This supports the finding that all evidence and argument was considered by the hearing panel.

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[18] Exhibit 26756-X0001, paragraph 34 citing Exhibit 25916-X0165 at Q/A 13 and Q/A 14.

[19] Exhibit 26756-X0001, paragraph 34 citing Decision, paragraph 185.

[20] *Johnston v Alberta (Energy & Utilities Board),* 1997 ABCA 265 at paragraph 10. See also *Judd v Alberta (Energy Resources Conservation Board)*, 2011 ABCA 159 at paragraph 23.

[21] Decision, paragraph 16: "16. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter."

30. Paragraphs 186-189 of the Decision summarize prior proceedings in which the issue of Fortis's costs associated with its integrated operations was raised before the Commission, but not fully adjudicated. In paragraph 190, the hearing panel accepted Fortis's explanation that the CAM model "contains all FortisAlberta owned distribution system assets used to serve REA members and all REA owned distribution system assets used to serve FortisAlberta Customers" and that "in previous applications, REA costs were allocated to a single aggregated REA rate class." In the same paragraph, the hearing panel also found the fact that the number of feeders in the CAM model increased from nine feeders in 2000-2001 to 594 feeders in Fortis's 2022 Phase II application, and now included all feeders to service each REA, to be "a material change in the information before it regarding Fortis's integrated operation-related costs attributable to REAs." This demonstrates that the hearing panel assessed and accepted Fortis's past practice of including costs associated with and attributable to integrated operations with REAs in its revenue requirement in applications before the Commission.

31. Further, the hearing panel acknowledged in its reasons that REAs do make, and have historically made, payments to Fortis under the IOAs, and vice versa:

> 151. Fortis does receive payments from REAs under the IOAs, as well as makes payments to REAs. These payments are generally trigged by the occurrence of a defined event described in an IOA. Amounts received under the IOAs are treated as revenue offsets and reduce Fortis's customer rates.[123] Between 2013 and 2017, these amounts were less than $1 million.[124] Additionally, Fortis receives payments from the REAs for providing load settlement services, and procuring transmission access service from the AESO.
>
> > 123 In 2018, Fortis changed its accounting treatment to record payments received from REAs as no cost capital. Exhibit 25916-X0212, FAI-AUC-2021MAR08-001(e).
> >
> > 124 Exhibit 25916-X0212, FAI-AUC-2021MAR08-001(b).

32. Footnotes 123 and 124 refer to Fortis's information request (IR) responses to Commission IRs, and specifically to Commission IRs regarding how Fortis has historically accounted for contributions paid to and received from REAs. The contribution evidence identified by the hearing panel in the Decision goes back to 2013.

33. The hearing panel went on to find that "the key facts are: (i) that Fortis incurs costs to construct, operate and maintain distribution facilities; […] (ii) REAs use Fortis's distribution facilities under IOAs to provide service to their members"; and (iii) that it was "appropriate that some portion of Fortis's costs should be allocated to integrated operations with the REAs."[22] The hearing panel also found that the "appropriate method to determine Fortis's costs to allocate to the REAs is in the same way in which Fortis allocated costs to all other users of its system", rather than be limited to the "marginal or incremental costs associated with integrated operations."[23]

34. The reason provided by the hearing panel for this finding was:

[22] Decision, paragraph 178.
[23] Decision, paragraph 179.

> … Fortis's cost-of-service study is an embedded cost-of-service study, meaning that when assets are used by multiple Fortis customers, all customers share in the cost of the asset, regardless of which customer came first and necessitated the construction of the asset. Whether Fortis's lines were principally built first for its own customers as Fortis submitted, or may have been acquired from the REAs as the EQUS evidence suggests, it would be inconsistent to apply different sets of cost allocation methods to different users of Fortis's system (i.e., charge a set of users based on marginal, rather than embedded, costs). … (footnotes omitted)[24]

35. These quotes from the Decision demonstrate that the hearing panel explicitly considered and discussed evidence and argument regarding Fortis's past accounting of integrated operation costs in its tariff, the type of costs historically contemplated under the IOAs, as well as the impact of changing ownership of assets on cost allocations. This supports a finding that the hearing panel considered all of the evidence and argument before it, despite the fact that the evidence the AFREA points to in the review application is not explicitly mentioned in the Decision.

36. Given there is no evidence to suggest that the hearing panel disregarded this information, the review panel concludes that the AFREA's arguments amount to a complaint that the hearing panel did not give the AFREA submissions the weight the AFREA would have preferred. However, the review panel's task is not to retry the application based upon its own interpretation of the evidence nor is it to second guess the weight assigned by the hearing panel to various pieces of evidence.[25]

37. The AFREA's argument may be that the quantum of these costs is incorrect, as it does not take into account that "REAs contributed to the building of Albertan electric infrastructure **free of charge** to the predecessors of Fortis."[26] (emphasis in original) However, even if this is true, it does not materially affect the hearing panel's findings in paragraph 185 of the Decision that there are costs that Fortis incurs associated with its integrated operations that have been recovered through its revenue requirement previously, and that Fortis applied to continue to do so in the original proceeding.

38. In sum, the review panel finds that the AFREA has not shown that a factual error exists in paragraph 185 of the Decision on a balance of probabilities. Accordingly, the AFREA's request for a review on this ground is denied.

#### 4.2.1.2 The hearing panel erred by failing to address the quantification issue

39. Second, the AFREA submitted that the hearing panel failed to "address the quantification issue raised by AFREA for the equity provided to the predecessors of Fortis in exchange for cooperation with the building of Albertan infrastructure that we now know as the AIES."[27] No reference to the record of the original proceeding regarding the "quantification issue" was provided in the review application, but in a footnote the AFREA appears to state that its policy evidence outlines that Fortis never quantified or compensated REAs for their contributions.[28] The

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[24] Decision, paragraph 179.
[25] Decision 2012-124, at paragraph 31.
[26] Exhibit 26756-X0001, paragraph 33.
[27] Exhibit 26756-X0001, paragraph 34.
[28] Exhibit 26756-X0001, footnote 30.

AFREA argued that at a minimum, the hearing panel ought to have referred back to negotiations and/or arbitration in its finding of whether or not Fortis's applied-for costs associated with its integrated operations with REAs were, in fact, reasonable.

40. The review panel is not persuaded that the hearing panel disregarded the evidence cited by the AFREA in the review application. There is no requirement that a hearing panel address in its decision all of the evidence that was put before it in a hearing. As explained by the hearing panel in paragraph 16 of the Decision, the hearing panel considered all relevant materials on the record of the original proceeding, but exercised discretion in choosing what parts of the record to include in the Decision.[29] Further, the analysis in Section 6 of the Decision is extensive and includes descriptions of party positions and ample references to evidence and the record through footnotes. This supports that all evidence and argument was considered by the hearing panel.

41. Given there is no evidence to suggest that the hearing panel disregarded this information, the review panel concludes that the AFREA's arguments amount to a complaint that the hearing panel did not to give the AFREA submissions the weight the AFREA would have preferred. However, the review panel's task is not to retry the application based upon its own interpretation of the evidence nor is it to second guess the weight assigned by the hearing panel to various pieces of evidence.[30]

42. Accordingly, the review panel finds that the AFREA has not shown that the Commission erred in fact, or mixed fact and law by failing to "address the quantification issue raised by AFREA for the equity provided to the predecessors of Fortis in exchange for cooperation with the building of Albertan infrastructure that we now know as the AIES." The AFREA's request for a review on this ground is therefore denied.

43. To the extent that the AFREA alleges that the hearing panel failed to address a central concern raised by the parties in its findings, lack of sufficiency of reasons would, if made out, be indicative of a breach of procedural fairness. As discussed in paragraph 22 above, the Commission has previously characterized errors in process as errors in law and Rule 016 specifies that no review is available on errors of law. As such, this is not a ground for which review is available and the application for review on this ground is dismissed.

#### 4.2.1.3 The hearing panel erred in finding the methodology to determine costs associated with and attributable to integrated operation was reasonable

44. Third, the AFREA argued that the hearing panel, in finding that the methodology to determine costs associated with and attributable to integrated operations with REAs was reasonable, failed to apply the facts presented by the AFREA that the original integrated operation agreements provided for costs that are currently negotiated and paid under the terms of the current integrated operation agreements as transmission or system access costs.[31]

45. The AFREA, in paragraph 34 of its review application, did not reference a specific record on the original proceeding as containing the "facts presented by AFREA." It is important for review applicants to clearly pinpoint the evidence or argument that they are relying on in the

[29] Decision, paragraph 16.
[30] Decision 2012-124, at paragraph 31.
[31] Exhibit 26756-X0001, paragraph 34.

record of the original proceeding so that the review panel can understand and assess the review application. The burden is on the review applicant to make their case, and the review panel finds that the AFREA has failed to sufficiently substantiate the alleged error in the circumstances.

46. Despite this, the review panel notes the following argument made by the AFREA's counsel regarding transmission costs in the transcripts of oral argument in the original proceeding:

> The historical documents that the AFREA has provided represent what is now codified versions of transmission costs and other express costs allowable under the EUA. And that the costs that Fortis describes as distribution costs are not subsidies from one class of customer -- from one class of consumer to the other. Essentially Fortis is pitting consumer against consumer.[32]

47. To the extent that these are the facts the AFREA is referring to (which is not clear to the review panel), the review panel notes that in paragraph 205 of the Decision, the hearing panel identified the types of payments that have historically been part of integrated operation agreements. The hearing panel then rejected the argument that the legislature intended to limit the scope of integrated operation agreements to these types of costs:

> 205. Some parties submitted that the legislature intended that the costs recoverable under IOAs be limited to those that are triggered by the occurrence of a defined event in an IOA. EQUS, for example, explained in its evidence that five types of payments and cost-sharing arrangements in relation to facilities have typically been part of IOAs: operations and maintenance costs, rebuilding facilities costs, upgrading facilities costs, connection contributions, and payments at the time of abandonment of facilities.
>
> 206. The Commission finds that this proposed scope is too narrow. The plain and ordinary meaning of "agreement" is broad and the nature of the agreement is the integrated operations of Fortis's and the REAs' electric distribution systems. An agreement that speaks to the integrated operation of systems must necessarily include the costs of doing so. The Commission is also cognizant that the legislative provisions do not specify that the Fortis costs to serve REAs under integrated operations must be included within Fortis's distribution tariff. This is in direct contrast to other costs for services that Fortis provides the REAs, such as system access service, which the legislation expressly states are to be included as part of Fortis's distribution tariff. In the Commission's view, these indicia support the conclusion that the legislative intent is that recovery of costs resulting from integrated operations must be addressed in the IOAs.
> (footnotes omitted)

48. The review panel considers that this discussion and analysis addressed by the hearing panel in its reasons in the Decision shows that the hearing panel was alert to the fact that: (i) parties have historically included certain costs in integrated operation agreements, and (ii) costs for certain services that Fortis provides to REAs are part of Fortis's distribution tariff pursuant to explicit legislative provisions.

49. There is no evidence to suggest that the hearing panel disregarded this information. The review panel therefore concludes that the AFREA's arguments amount to a complaint that the

[32] Transcript volume 1, page 198, lines 12-18.

hearing panel did not give the AFREA submissions the weight the AFREA would have preferred. However, the review panel's task is not to retry the application based upon its own interpretation of the evidence nor is it to second guess the weight assigned by the hearing panel to various pieces of evidence.[33]

50. The review panel finds that the AFREA has not shown that the Commission, in finding that the methodology to determine costs associated with and attributable to integrated operations with REAs was reasonable, erred by failing to apply the facts presented by the AFREA that the original integrated operation agreements provided for costs that are currently negotiated and paid under the terms of the current integrated operation agreements as transmission or system access costs. As such, the AFREA has not shown that an error in fact, or mixed fact and law, exists on a balance of probabilities. Accordingly, the AFREA's request for a review on this ground is denied.

#### 4.2.1.4 The hearing panel erred by making findings with incomplete information

51. Fourth, the AFREA argued that the hearing panel did not have evidence from REAs regarding Fortis's costs associated with its integrated operations with REAs on the record of the original proceeding, because the REAs only provide full evidence in the negotiations and arbitrations that occur under Part 2 of the *3R Regulation.* The AFREA submitted that it is an error of mixed fact and law for the hearing panel to make findings with incomplete information.[34]

52. The review panel notes that the AFREA argued in the original proceeding that Fortis's CAM modelling in the intermingled service area is inaccurate and technically deficient, and that there were demonstrated errors in REA data.[35] The review panel, considering the Decision holistically, considers that the AFREA may be taking issue with findings made by the hearing panel in sections 6.1.1 and 6.1.2 regarding the accuracy and completeness of the REA-owned asset data used in the CAM model.

53. In its reasons in Section 6.1.1 of the Decision, the hearing panel made a factual finding that it had sufficient information to accept the data on REA-owned assets used in the CAM model given that the errors identified in the data were minimal and that Fortis used the best data available to it in its application. In its reasons in Section 6.1.2 of the Decision, the hearing panel made factual findings regarding the appropriate method to determine Fortis's costs to allocate to the REAs, and Fortis's assumptions regarding the REA per unit costs. The hearing panel also provided reasons, in paragraphs 180-182 of the Decision, explaining how it arrived at the reasonableness of the REA distribution system use credit amount, given that the hearing panel did not have evidence from the REAs regarding their per unit costs.

54. The review panel notes that the burden of proof to show that a tariff is just and reasonable is on the regulated utility.[36] The above analysis referenced from the Decision demonstrates that the hearing panel carefully considered the REA-owned asset data used in the CAM model in assessing Fortis's evidence and expressly took into account the level of accuracy of the information. The hearing panel summarized the AFREA's evidence regarding the accuracy and

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33 Decision 2012-124, at paragraph 31.
34 Exhibit 26756-X0001, paragraph 35.
35 Proceeding 25916, Transcript Volume 1, starting at page 193.
36 *Electric Utilities Act*, SA 2003, c E-5.1, Section 121(4).

completeness of data on REA-owned assets used in the CAM model at paragraph 167 of the Decision and summarized the AFREA position at paragraph 176 of the Decision. The AFREA appears to disagree with the hearing panel's treatment and weighing of the evidence and to be rearguing this point.

55. The review panel's task is not to retry the application based upon its own interpretation of the evidence nor is it to second guess the weight assigned by the hearing panel to various pieces of evidence.[37] Nor is the review process intended to provide a second opportunity for parties to reargue the issues in a proceeding, [38]

56. The review panel finds that the AFREA has not shown that an error in fact, or mixed fact and law, exists on a balance of probabilities. Accordingly, the AFREA's request for a review on this ground is denied.

### 4.2.2 The hearing panel erred by classifying REAs as "end users"

57. The AFREA submitted that the hearing panel made an error of mixed fact and law by describing REAs as "end users" of Fortis's system in the Decision:

> 179. In terms of the method by which costs associated with integrated operations are determined, the Commission does not agree with EQUS that cost allocation should be limited to only the marginal or incremental costs associated with integrated operations. Fortis's cost-of-service study is an embedded cost-of-service study, meaning that when assets are used by multiple Fortis customers, all customers share in the cost of the asset, regardless of which customer came first and necessitated the construction of the asset. Whether Fortis's lines were principally built first for its own customers as Fortis submitted, or may have been acquired from the REAs as the EQUS evidence suggests, it would be inconsistent to apply different sets of cost allocation methods to different users of Fortis's system (i.e., charge a set of users based on marginal, rather than embedded, costs). The Commission finds that the appropriate method to determine Fortis's costs to allocate to the REAs is in <u>the same way in which Fortis allocated costs to all other users of its system.</u> This is what Fortis did in its application. (footnotes omitted) (underlining mirrors what was underlined in the review application)

58. The AFREA submitted that this was an error because REAs are not the same as Fortis's other end users, which are Fortis's customers. The AFREA indicated that the impact of this finding is that "the Panel essentially names REAs as customers of Fortis."[39] In the AFREA's view, the impact of this error is "catastrophic" because it impacts their ability to "navigate negotiations on an even footing."[40]

59. The review panel observes that the hearing panel does not use the phrase "end users" in paragraph 179 of the Decision. Rather, the finding by the hearing panel in that paragraph is that REAs are "users" of Fortis's system.

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[37] Decision 2012-124, at paragraph 31.

[38] Decision 22166-D01-2016: Request for Review and Variance of Decision 21515-D01-2016, ATCO Pipelines' 2015-2016 Revenue Requirements Compliance Filing to Decision 3577-D01-2016, Proceeding 22166, April 5, 2017.

[39] Exhibit 26756-X0001, paragraph 49.

[40] Exhibit 26756-X0001, paragraph 48.

60. Regardless, the alleged error is located in Section 6.1.2 of the Decision, titled "Determination of costs associated with integrated operations with REAs." In paragraph 174, the hearing panel described the issue addressed in that section of the Decision as "whether some portion of Fortis's total costs should be allocated to REAs and, if so, whether the determination of costs related to REAs should follow a similar method to that of Fortis's own customers and rate classes." Accordingly, the issue was whether the cost allocation methodology applied to Fortis customers should also be applied to REAs. With this context in mind, the review panel considers that the hearing panel's choice to differentiate between "REAs" and "Fortis's own customers" in paragraph 174, and between "REAs" and "other users" in paragraph 179, shows an intent to distinguish between REAs and Fortis customers.

61. The review panel also observes that in paragraph 178 of the Decision, the hearing panel made a factual finding that "REAs use Fortis's distribution facilities under IOAs to provide service to their members."[41] This is the context for the reference to "users of the system," in paragraph 179 of the Decision. The review panel finds that this context and the actual words used demonstrate that the hearing panel was not equating REAs with Fortis customers.

62. For these reasons, the review panel finds that the AFREA has not shown that an error in fact, or mixed fact and law, exists on a balance of probabilities on this ground. Accordingly, the AFREA's request for a review on this ground is denied.

[41] Decision, paragraph 178.

## 5 Decision

63. In answering the preliminary question, the review panel finds that the AFREA has not met the requirements for a review of the Decision and the application for review is dismissed.

Dated on September 23, 2021.

**Alberta Utilities Commission**

*(original signed by)*

Kristi Sebalj
Panel Chair

*(original signed by)*

Cairns Price
Commission Member

*(original signed by)*

Vera Slawinski
Commission Member