

Rule 016

Review of Commission Decisions

These rules as amended were approved by the Alberta Utilities Commission on December 14, 2023, and apply to review and variance applications filed on or after February 1, 2024.

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1 Definitions

In these rules,

(a) “decision” includes a decision, order, costs order, licence, permit, approval and administrative penalty issued by the Commission under the *Alberta Utilities Commission Act* or any other enactment or rule under the jurisdiction of the Commission, but does not include a complaint resolution letter made by the Compliance and Enforcement division (an independent division of the Commission).

2 Commission review on its own motion

(1) Despite sections 3 to 5 of these rules, the Commission may review a decision, in whole or in part, on its own motion at any time.

3 Application to review a decision

(1) Subject to subsection 3(2), a person who is directly and adversely affected by a decision may file an application for review of that decision.

(2) A person who was not a party to the proceeding that gave rise to the decision must obtain permission from the Commission before it files an application for review under subsection 3(1).

(3) An application for review of a decision must be filed within 30 days of the issuance of the decision, unless otherwise authorized by the Commission.

4 Contents of a review application

(1) An application for a review must:

(a) Be in writing and no longer than 15 pages double spaced, unless otherwise authorized by the Commission.

(b) Set out the facts relevant to the application.

(c) Describe how the review applicant’s rights are, or may be directly and adversely affected by the decision.

(d) Set out the grounds for the application, as described in subsections 5(1)(a), (b), (c) or (d) of these rules.

(e) If alleging an error of fact under subsection 5(1)(a), identify the alleged error of fact.

- (f) If alleging an error of mixed fact and law where the legal principle is not readily extricable under subsection 5(1)(a), identify the legal test and facts that are at issue, and explain how the Commission erred in applying the legal test to those facts.
 - (g) Describe the nature of the prejudice or damage that has resulted or will result from the decision and the remedy sought.
- (2) The Commission may dismiss an application for a review, with or without further process, if the application does not comply with subsection 4(1).
 - (3) Unless otherwise authorized by the Commission, any response submissions must be in writing and no longer than 10 pages double spaced, and any reply submissions must be in writing and no longer than seven pages double spaced.

5 Grounds for review and granting of review

- (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 a palpable and overriding error of fact, or mixed fact and law where the legal principle is not readily extricable, which is material to the decision. An error is palpable if it is obvious and is overriding if it has impacted the result.
 - (b) There are previously unavailable facts material to the decision, which:
 - (i) existed before the decision was issued,
 - (ii) were not placed in evidence or identified in the original proceeding, and
 - (iii) the review applicant, exercising reasonable diligence, could not have discovered at the time.
 - (c) There are changed circumstances material to the decision, which occurred since its issuance.
 - (d) For a decision on an application for a hydro project, power plant, transmission line or gas utility pipeline, that the decision on the initial application may directly and adversely affect the review applicant's rights, and:
 - (i) the decision was made without a hearing or other proceeding, or
 - (ii) a hearing was held and notice was not given to the person.
- (2) The Commission may exercise its discretion to grant an application for review with or without a hearing.

- (3) The Commission may dismiss a ground in an application for a review, with or without further process, if the ground raises an error outside the scope of subsection 5(1).

6 Separate and combined review and variance proceedings

- (1) Unless otherwise directed by the Commission, an application for review of Commission decisions is considered in two stages. At the first stage, the Commission will determine the preliminary issue of whether a review should be granted, in whole or in part. If a review is granted, then the application will move to a second stage in which the Commission shall issue a notice of hearing for the variance proceeding which will be held in accordance with the Commission's rules of practice. In this proceeding, the Commission will determine whether its earlier decision should be confirmed, rescinded or varied.
- (2) Despite subsection 6(1), the Commission may, with or without notice, review and confirm, rescind or vary the decision in a single proceeding, if in the Commission's opinion it is reasonable and practical to do so.