

October 19, 2023

Alberta Utilities Commission (AUC)  
Eau Claire Tower  
1400, 600 Third Avenue S.W.  
Calgary, Alberta T2P 0G5

Dear Mr. Graham,

**RE: Bulletin 2023-07 Consultation on Proposed Amendments to AUC Rule 016- Review of Commission Decisions**

In Bulletin 2023-07, the Alberta Utilities Commission (Commission) is proposing certain amendments to Rule 016, Review of Commission Decisions, as part of its ongoing review of its case management procedures, and its objective of improving transparency. The Office of the Utilities Consumer Advocate (UCA) appreciates the opportunity to provide input into the proposed Rule 016 amendments. The UCA has a legislated mandate to represent the interests of residential, small business, and farm consumers of electricity and natural gas. As part of this mandate, the UCA aims to ensure that customers get their utility services at the lowest possible cost, consistent with reasonable levels of service.

The UCA continues to support many of the streamlining measures initiated by the Commission to reduce regulatory burden and agrees with all of the changes proposed to Rule 016, except for one key area. The UCA is concerned with the increase in burden of proof for errors for review and variance applications, from the proposed language. Specifically, the change regarding errors based on a “balance of probabilities” to a “palpable and overriding error”, will result in a more restrictive process that may prevent a review that should be conducted for errors material to the decision, which risks increasing consumer costs and harming consumers.

The Minister of Affordability and Utilities Mandate Letter, dated July 19, 2023, specifically states the need to review “Alberta’s electricity pricing system with the goal of reducing transmission and distribution costs for Albertans”. The more restrictive ability to review only those errors that are “palpable and overriding” may impede the Commission and the UCA’s ability to deliver on this important initiative for consumers.

The UCA also notes that the specific mischief which the Commission seeks to remedy in its proposed modifications to Rule 016 have not been specifically identified. The UCA respectfully requests that the Commission provide this rationale to make it clear why the modifications are necessary or an improvement over the existing Rule 016 beyond its stated objective of “improving the transparency, clarity and simplicity of its rules”. It appears that the number of review and variance applications considered by the Commission, since the Commission introduced further assertive case management and other streamlining initiatives, has generally trended downwards after what appears to be an anomalous peak of twenty-five applications in 2021. The UCA would also note that the Commission currently has considerable discretion in its consideration of these applications, and the majority of them were dismissed.

In the UCA’s submission, in considering the broad powers of review under section 10 of the *Alberta Utilities Commission Act*, as well as the supervisory role and public interest mandate of the Commission, a highly deferential standard of review, such as palpable and overriding error, is not appropriate. With the proposed

wording of a “palpable and overriding error”, the Commission appears to be intentionally limiting its statutorily intended broad powers for an internal appeal or review. A review panel should be permitted to intervene and review a decision where an error of fact, or error of mixed law and fact, has been identified on a balance of probabilities that is material to the decision. This is particularly so where a review is the only avenue to address errors of fact, or mixed law and fact, under the legislative scheme.

The proposed application of a “palpable and overriding error” standard to questions of fact, or mixed law and fact, is consistent with appellate standards of review – i.e., the standard of review to be applied where an appeal court reviews the decision of a trial court.<sup>1</sup> The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov* held that where a statute allows for an appeal from a decision of an administrative tribunal to a court, appellate standards of review should be applied.<sup>2</sup> However, the Alberta Court of Appeal recently confirmed that this framework does *not* apply to internal administrative appeals. Instead, “determining an internal standard of review is primarily a question of interpreting the relevant legislative regime to discern the respective roles given to the first instance decision-maker and the appellate administrative tribunal”.<sup>3</sup>

As the Commission is aware, the current heavy workload of proceedings and faster timelines to process applications and issue decisions within the 90-day timeframe would imply that now, more than ever, there is a need to have a review mechanism allows for a re-consideration of decision on the balance of probabilities that an error has occurred.

The proposed burden of proof of errors amendment as outlined in Bulletin 2023-07 further increase costs risks for consumers, many of whom are already struggling with cost of living, and/or business cost competitiveness issues. As stated previously, the Commission’s ability to review its decisions regarding potential errors based on fact or mixed fact and law is the only avenue available to consumers to challenge these types of errors, given applications to the Alberta Court of Appeal are based solely on errors of law and jurisdiction.

The UCA recommends that the Commission maintain the current provisions regarding the proof of error as they are.

Sincerely,



**Chris Hunt**  
**Advocate**

***The Office of the Utilities Consumer Advocate***

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<sup>1</sup> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 37.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Moffat v Edmonton (City) Police Service*, 2021 ABCA 183 at para. 54.