

Review of Commission Decisions



Rule 016

Review of Commission Decisions

This rule

These rules as amended ~~was~~were approved by the Alberta Utilities Commission on ~~February 11, 2016~~May 6, 2021, and ~~is~~ effective ~~March 24, 2016~~apply to review and variance applications filed on or after June 15, 2021.

Contents

1	Definitions.....	2
2	Commission review on its own motion	2
3	Application to review a decision.....	2
4	Contents of a review application.....	2
5	Service of application for review	3
6	Granting of review	3
7	Notice of hearing for variance proceeding.....	4
8	Combined review and variance proceedings	4

1	Definitions	3
2	Commission review on its own motion	3
3	Application to review a decision	3
4	Contents of a review application.....	3
5	Grounds for review	5
6	Combined review and variance proceedings.....	6

4 1 Definitions

In these rules:

- (a) “Commission” means the Alberta Utilities Commission;
- (b) “decision” includes a decision, ~~an~~ order, ~~a cost~~costs order, a licence, permit, approval and ~~an~~ administrative penalty issued by the Commission under the *Alberta Utilities Commission Act* or any other enactment or rule under the jurisdiction of the Commission.

2 2 Commission review on its own motion

(1) Notwithstanding sections 3 to ~~65~~ of ~~this rule~~these rules, the Commission may review a decision, in whole or in part, on its own motion at any time for any reason.

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

~~(3)~~(1) An application for review of a decision must be filed within ~~60~~30 days of the issuance of the decision, unless otherwise authorized by the Commission.

4 4 Contents of a review application

(1) An application for a review must:

- (a) Be in writing and no longer than 2015 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, ~~which grounds may include:~~

~~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 as described 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. ~~(d) For subsections 5(1)(a decision on an application for a hydro project, power plant, transmission line or gas utility pipeline), (b), (c) or (d) of these rules.~~

~~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.~~

(e) Describe the nature of the prejudice or damage that has resulted or will result from the decision and the remedy sought.

~~(g) State the applicant's name, address, email address, and telephone number.~~

~~(h) If the applicant is represented by a lawyer or agent, state fails to comply with these requirements, the Commission may make any order that the Commission considers necessary, including rejecting the lawyer or agent's name, address, email address and telephone number.~~

~~(f) Service of application without further process.~~

~~(1) Unless otherwise authorized by the Commission, any reply submissions must be in writing and no longer than seven pages double spaced.~~

5 5 Grounds for review and granting of review

~~(1) An The Commission may grant an application for a review must be filed 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 served on the parties law where the legal principle is not readily extricable, which is material to the decision and exists on a balance of probabilities.~~

~~(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 for which the decision was made, or

~~6—Granting of review~~

- (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.

6 Separate and combined review and variance proceedings

- (1) ~~— Unless otherwise directed by the Commission, applicationsan application for review and variance of Commission decisions are 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. Where a review is granted, the application will move to a second stage in which the Commission will determine whether its earlier decision should be confirmed, rescinded or varied.~~

- (2) ~~— The Commission may decide whether to exercise its discretion to grant an application for review with or without a hearing.~~

- (3) ~~— 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.~~

~~7—Notice of hearing for variance proceeding~~

~~(1) If the Commission grants an application for review, in whole or in part, it shall issue a notice of hearing in respect of a~~for the~~ variance proceeding which will be held in accordance with the Commission's rules of practice. In this proceeding, the Commission will ~~assess the merits of the review applicant's claim for variance and decide~~determine whether ~~to confirm, rescind or vary~~ the~~its earlier~~ decision should be confirmed, rescinded or varied.~~

~~8—Combined review and variance proceedings~~

~~(1) The~~Notwithstanding subsection 6(1), the~~ Commission may, with or~~without~~ notice, ~~consider whether to~~ 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.~~