Commission-Initiated Review and Variance of Decision 22942-D02-2019

November 4, 2020
The Commission may, within 30 days of the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.
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1 Decision

1. In this decision, the Alberta Utilities Commission considers whether to confirm, rescind or vary specific findings made in Section 8 of Decision 22942-D02-2019 (the Decision).¹ The Decision addressed the application from the Alberta Electric System Operator (AESO) for approval of the 2018 Independent System Operator Tariff in Proceeding 22942. This review and variance (R&V) proceeding concerns findings set out in Section 8.1 of the Decision regarding a proposal by AltaLink Management Ltd. for a different treatment of AESO contributions in aid of construction.

2. The Commission has decided to rescind the requirements in Section 8.1 of the Decision that FortisAlberta Inc. transfer the unamortized balance of its AESO contributions as at December 31, 2017, to AltaLink and that the new contribution policy proposed by AltaLink be applied effective January 1, 2018. This decision is based on findings in two main areas.

   (i) The Commission finds that if the Decision were confirmed and Fortis was required to transfer the unamortized balance of AESO contributions as at December 31, 2017, to AltaLink, Fortis would incur incremental income tax, carrying costs and debt restructuring costs of at least $116.6 million that would be required to be recovered from ratepayers.

   (ii) The Commission finds that a majority² of the approximately $40 million in savings to ratepayers on which the hearing panel relied as the basis for requiring Fortis to transfer the unamortized balance of AESO contributions and to apply the new contribution policy proposed by AltaLink can be achieved by directing Fortis to adjust the applicable amortization rate for its AESO contributions to match the service lives of the transmission assets.

3. The Commission also considers and rejects two categories of benefits that AltaLink asserts would result in additional savings to ratepayers over the 2018-2022 period as a result of adopting the AltaLink contribution proposal and transferring Fortis’s unamortized customer contribution balances as at December 31, 2017. The first relates to how the net book value (NBV) of Fortis’s unamortized AESO contributions is calculated. The second relates to AltaLink’s forecast of savings that would be realized by Fortis ratepayers from the replacement of Fortis’s projected K-bar amounts with the actual and forecast cost of energized projects.


² As further discussed in Section 5.1 below, the hearing panel considered AltaLink evidence that included a table filed in support of its evidence (Proceeding 22942, Exhibit 22942-X0345, Table 3) that identified potential savings over the 2018-2022 period totalling $39.3 million. Of this total, the majority of savings calculated by AltaLink (approximately $33.7 million) related to potential depreciation savings while approximately $5.6 million related to net savings from interest and return.
4. The Commission’s reasons are provided below.

5. At the conclusion of this decision, the Commission provides the schedule for a separate proceeding, notice of which will be issued shortly. The proceeding will (i) focus on the legal basis of the current AESO customer contribution policy as it pertains to all transmission facility owners (TFOs) and distribution facility owners (DFOs); (ii) consider whether there is a need for a new policy, including consideration of AltaLink’s proposed policy; and (iii) if approved, set the date on which any new policy would commence.

2 Background

2.1 Review and variance proceeding

6. On September 25, 2019, the Commission received correspondence from Fortis requesting that the Commission commence an R&V proceeding on its own motion to re-evaluate certain findings in the Decision. On October 2, 2019, the Commission initiated a review proceeding (R&V proceeding) pursuant to its authority under Section 10(1) of the Alberta Utilities Commission Act and Section 2 of Rule 016: Review of Commission Decisions. The Commission designated the R&V proceeding as Proceeding 24932.

7. In its letter of October 2, 2019, the Commission limited the scope of the proceeding to the changes made to the AESO’s customer contribution policy that were approved in Section 8 of the Decision and indicated that the proceeding would focus on the second stage of the two-stage R&V process established pursuant to Rule 016, specifically, the merits of Fortis’s request to vary the Decision. The Commission’s letter also established an expedited process schedule for the proceeding.

8. On October 3, 2019, Fortis filed correspondence seeking additional time to prepare a supplemental submission in addition to its September letter, in support of the R&V proceeding. Also on October 3, 2019, AltaLink filed a submission opposing the extension sought by Fortis. However, AltaLink indicated that if the Commission granted Fortis’s request for a schedule adjustment, the deadline for filing of statements of intent to participate (SIP) in Proceeding 24932 should be extended. The Commission issued an updated process schedule on October 4, 2019.

9. The Commission received SIPs from AltaLink, the Office of the Utilities Consumer Advocate (UCA), the AESO, the Consumers’ Coalition of Alberta (CCA), the Alberta Federation of Rural Electrification Associations (AFREA), and EPCOR Distribution & Transmission Inc.

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3 Exhibit 24932-X0004.
4 Exhibit 24932-X0005.
5 Exhibit 24932-X0007.
6 Exhibit 24932-X0009.
7 Exhibit 24932-X0006.
8 Exhibit 24932-X0008.
9 Exhibit 24932-X0010.
10 Exhibit 24932-X0013.
11 Exhibit 24932-X0015.
12 Exhibit 24932-X0016.
10. Fortis filed its main submission (Fortis supplemental submission),\(^1\) and an appendix (Fortis supplemental submission appendix)\(^2\) on October 8, 2019.

11. The Commission, the CCA, AltaLink and the UCA filed information requests (IRs) to Fortis on October 17, 2019, and Fortis provided its responses\(^3\) \(^4\) \(^5\) \(^6\) \(^7\) on October 24, 2019.

12. As part of its supplemental submission, Fortis requested that the Commission immediately stay Section 8 of the Decision pending the Commission’s disposition of the R&V proceeding.\(^8\) Submissions on the stay request were received from the CCA\(^9\) and AltaLink\(^10\) in accordance with the Commission’s process, and on October 25, 2019, the Commission issued a ruling granting Fortis’s stay request.\(^11\) In that ruling, the Commission indicated that it was committed to releasing a decision on the R&V application prior to the end of 2019.

13. In accordance with the October 4, 2019 process schedule, response submissions on the R&V proceeding were filed by AltaLink,\(^12\) the UCA\(^13\) and the CCA\(^14\) on October 31, 2019. The Commission also received a letter from AFREA\(^15\) on this date indicating that AFREA had taken no position in Proceeding 24932 and would not be filing a submission.

14. Fortis filed its reply submission on November 7, 2019.\(^16\) Fortis’s reply submission contained Fortis’s primary reply submission (Fortis reply submission),\(^17\) an appendix (Fortis reply appendix),\(^18\) and an Excel spreadsheet with analysis supporting its reply submission.\(^19\)

15. On December 20, 2019, the Commission issued a status update\(^20\) on the progress of Proceeding 24932, explaining that for the reasons set out therein, it would reopen the record of Proceeding 24932 to clarify certain evidence. The Commission advised parties that it would not release a decision prior to the end of 2019, as it had indicated in its October 25, 2019, ruling.

\(^1\) Exhibit 24932-X0012, PDF pages 2-32.
\(^2\) Exhibit 24932-X0012, PDF pages 33-56.
\(^3\) Exhibit 24932-X0036.
\(^4\) Exhibit 24932-X0038.
\(^5\) Exhibit 24932-X0027.
\(^6\) Exhibit 24932-X0040.
\(^7\) Exhibit 24932-X0012, Fortis supplemental submission, paragraph 75.
\(^8\) Exhibit 24932-X0023.
\(^9\) Exhibit 24932-X0024.
\(^10\) Exhibit 24932-X0041.
\(^11\) AltaLink’s response submission filings on October 31, 2019, consisted of its primary submission (AltaLink response submission), Exhibit 24932-X0046; an appendix to its response submission (AltaLink response appendix), Exhibit 24932-X0047, and two attachments with Excel spreadsheets (exhibits 24932-X0048 and 24932-X0049).
\(^12\) Exhibit 24932-X0044.
\(^13\) Exhibit 24932-X0042.
\(^14\) Exhibit 24932-X0043.
\(^15\) Exhibit 24932-X0050.
\(^16\) Exhibit 24932-X0050, PDF pages 2-25 (Fortis reply submission).
\(^17\) Exhibit 24932-X0050, PDF pages 26-59 (Fortis reply appendix).
\(^18\) Exhibit 24932-X0051.
\(^19\) Exhibit 24932-X0053.
16. On January 16, 2020, the Commission filed supplementary IRs to Fortis\textsuperscript{32} and AltaLink.\textsuperscript{33} Fortis\textsuperscript{34} and AltaLink\textsuperscript{35} filed responses to the supplementary IRs on January 30, 2020.

17. On February 12, 2020, Fortis filed a motion\textsuperscript{36} seeking an oral hearing. AltaLink’s response\textsuperscript{37} and Fortis’s reply submission were filed on February 26, 2020, and February 28, 2020, respectively.\textsuperscript{38}

18. On March 12, 2020, the Commission issued Bulletin 2020-06,\textsuperscript{39} which advised that due to risks arising from the COVID-19 pandemic, the Commission was deferring all public hearings, consultations or information sessions until further notice and would explore written or remote-participation options where a hearing was required.

19. On March 31, 2020, the Commission requested\textsuperscript{40} that Fortis advise the Commission whether it wished to amend its February 12, 2020, motion in light of the deferral of all public hearings.

20. On April 2, 2020,\textsuperscript{41} Fortis responded that the grounds for its request for an oral hearing had not changed and it remained of the view that, to the extent possible, an oral hearing should be held. The Commission also received submissions from AltaLink\textsuperscript{42} and the CCA\textsuperscript{43} on the same date.

21. On May 22, 2020,\textsuperscript{44} the Commission denied the Fortis request for an oral hearing and set out a schedule for a written process for the remaining steps in the proceeding culminating in the filing of written reply argument by all parties on September 14, 2020.

22. 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 R&V application will be referred to as the “review panel.”

23. 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 22942. 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 records of this proceeding and Proceeding 22942 with respect to the matter.

\textsuperscript{32} Exhibit 24932-X0055.
\textsuperscript{33} Exhibit 24932-X0056.
\textsuperscript{34} Exhibit 24932-X0057.
\textsuperscript{35} Exhibit 24932-X0072.01.
\textsuperscript{36} Exhibits 24932-X0085 (cover letter), 24932-X0086 (Fortis Notice of Motion), 24932-X0087 (Affidavit of Amy Johnson), 24932-X0087 (Affidavit of Janine Sullivan).
\textsuperscript{37} Exhibit 24932-X0093.
\textsuperscript{38} Exhibit 24932-X0095.
\textsuperscript{40} Exhibit 24932-X0096.
\textsuperscript{41} Exhibit 24932-X0099.
\textsuperscript{42} Exhibit 24932-X0098.
\textsuperscript{43} Exhibit 24932-X0097.
\textsuperscript{44} Exhibit 24932-X0100.
2.2 The review panel’s decision

24. In Section 8.1 of the Decision, the hearing panel considered a proposal advanced by AltaLink to change how the AESO’s contribution policy is accounted for as between a DFO (Fortis) and a TFO (AltaLink). The mechanics of this proposal included AltaLink refunding all unamortized contributions paid to it by Fortis in respect of Fortis connection projects as at December 31, 2017. AltaLink argued that the current accounting treatment of AESO contributions has the effect of reducing AltaLink’s rate base, which is unfair to AltaLink.45

25. After considering legal, policy and public interest issues, the hearing panel decided that AltaLink’s contribution proposal would result in a $40 million financial benefit to customers during the 2018-2022 performance-based regulation (PBR) term, primarily due to AltaLink’s lower depreciation rates for transmission assets and a lower embedded cost of debt.46

26. In Section 8.1.3.4 of the Decision, the hearing panel found as follows:

1062. In light of other findings in this section that the public interest is not harmed in any other material respect through the adoption of AltaLink’s proposal, the Commission considers that the financial benefit, estimated at $40 million during the 2018-2022 PBR term by AltaLink, is sufficient to warrant a decision to approve the AltaLink contribution proposal.48

27. This finding led to two requirements. First, approximately $400 million of unamortized AESO customer contributions in Fortis’s rate base (the balance effective December 31, 2017) were to be transferred to AltaLink for which Fortis was to be compensated at NBV (rate base transfer). Second, as of January 1, 2018, the AESO customer contributions would be capitalized by AltaLink, not Fortis (AltaLink contribution proposal). In the Decision, the hearing panel directed the AESO to consult with AltaLink, and for these parties to provide a joint proposal to implement the foregoing.

28. The review panel is reversing both aspects of the Decision based on the evidence filed in the proceeding, evidence that was not available to the hearing panel. The review panel concludes that the costs to Fortis (that would be recoverable from ratepayers) resulting from the transfer of unamortized customer contributions from Fortis to AltaLink significantly outweigh the benefits. This is due to increased income taxes, carrying costs and debt restructuring costs resulting from the rate base transfer that the review panel finds that Fortis would incur and ratepayers would bear. The review panel’s decision is also supported by Fortis’s ability to adjust its depreciation rate to match the rate that AltaLink would utilize on the unamortized balance of customer contributions as at January 1, 2018, producing a benefit similar in magnitude to the benefit on which the hearing panel grounded its decision.

45 Decision 22942-D02-2019, paragraph 879.
47 Proceeding 22942, Exhibit 22942-X0555, AltaLink argument, paragraph 89, cited at Decision 22942-D02-2019, paragraph 1060.
48 Decision 22942-D02-2019, paragraphs 1061-1062.
29. The examination of the evidence and arguments of the parties on what the impacts of a rate base transfer from Fortis to AltaLink would have been, follows. The review panel’s emphasis centres on the consequential income tax costs that would be required to be recovered from ratepayers as a result of the transfer. The review panel also finds that the rate base transfer would have resulted in carrying costs for the period between the December 31, 2017, valuation date and the date on which the transfer would occur and for which Fortis would be required to be compensated. The review panel also examined additional benefits to ratepayers that AltaLink has identified in this proceeding.

30. Having found that the costs associated with the rate base transfer would significantly exceed the financial benefit that the hearing panel determined would occur during the 2018-2022 period and which benefits also underpinned the approval of the AltaLink contribution proposal, the review panel is also setting aside the commencement of the AltaLink contribution proposal on January 1, 2018. The Commission has scheduled a separate proceeding to commence in accordance with the process outlined in Section 8 of this decision. The proceeding will focus on the legal basis of the existing AESO customer contribution policy, consider whether there is a need for a new policy, including consideration of AltaLink’s contribution proposal, and if approved, set the date on which any new policy would commence. The commencement of any new contribution policy, if approved, would be on a prospective basis. All DFOs and TFOs, the AESO and other interested parties will be expected to participate in this proceeding. The discussion on this issue is found in Section 8 of this decision.

31. Section 3 below outlines the parties’ positions followed by the review panel’s findings.

3 AltaLink contribution proposal and material financial benefit to ratepayers

32. In its October 8, 2019, supplemental submission, Fortis alleged that the hearing panel erred in fact and law when it determined that the AltaLink contribution proposal will result in a material financial benefit to ratepayers and is therefore in the public interest.49

33. Fortis noted that in the Decision, the hearing panel included a summary of AltaLink evidence which stated that the “lower amortization rate and lower embedded cost of debt would save ratepayers approximately $40 million over the 2018-2022 PBR term.”50 Fortis further noted that the hearing panel concluded that “there is a consensus between [Fortis] and AltaLink that the adoption of AltaLink’s contribution proposal will produce significant financial savings to ratepayers when savings are considered on an NPV [net present value] basis.”51 Fortis noted that the hearing panel then concluded that the “five year nominal savings to ratepayers of $40 million as calculated by AltaLink as being persuasive as to the merits of AltaLink’s proposal.”52

34. Fortis submitted that the hearing panel’s determination that there was a consensus is not supported by any evidence, and disagreed that there will be savings to ratepayers if the AltaLink

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49 Exhibit 24932-X0012, Fortis supplemental submission, PDF page 10.
51 Decision 22942-D02-2019, paragraph 1061, cited at Exhibit 24932-X0012, Fortis supplemental submission, paragraph 26.
52 Decision 22942-D02-2019, paragraph 1061, cited at Exhibit 24932-X0012, Fortis supplemental submission, paragraph 26.
contribution proposal was adopted. Fortis noted that while the Fortis witness panel had agreed that there were errors in a calculation, at no time did Fortis state, or otherwise agree, that the adoption of the AltaLink contribution proposal would result in savings to ratepayers.

35. Fortis submitted that AltaLink’s use of a five-year PBR period from 2018 to 2022, and the hearing panel’s reliance on it, was flawed. Fortis submitted that the limited duration of the five-year analysis is central to the appearance of a benefit itself. Fortis argued “… over the life of the assets, the savings associated with the AML [AltaLink Management Ltd.] Proposal are de minimis. There are no cost savings to customers associated with the AML Proposal.”

36. At the time of its October 8, 2019, supplemental submission, Fortis estimated that, in contrast to the approximately $40 million ratepayer benefit relied upon by the hearing panel, the net financial impact to ratepayers of the AltaLink contribution proposal would be a ratepayer cost of between $204.7 million and $266.1 million as summarized in the table below.

| Table 1. Fortis calculation of net customer cost (savings) from AESO contributions transfer |
|-----------------------------------------------|-----------|-----------|-----------|-----------|-----------|
|                                              | 2018      | 2019      | 2020      | 2021      | 2022      | 5-year total |
| AML revenue requirement before tax           | 37.5      | 41.1      | 44.8      | 48.5      | 52.2      | 224.1        |
| Reduction in base rates and K-bar            | (43.7)    | (46.9)    | (51.0)    | (54.9)    | (58.8)    | (255.4)      |
| (net of AESO Hybrid Deferral Account)        |           |           |           |           |           |              |
| Income tax expense                           | -         | 140.0     | 13.7      | 13.4      | 13.0      | 180.1        |
| Short-term debt cost of equity repayment     | -         | 4.5       | -         | -         | -         | 4.5          |
| Impact before reduction of long-term debt    | (6.2)     | 138.7     | 7.6       | 6.9       | 6.3       | 153.3        |
| Option 1                                     |           |           |           |           |           |              |
| Return on AESO contributions to December 2019| 24.3      | 23.5      | -         | -         | -         | 47.8         |
| Call premium on long-term debt retirement    | -         | 65.0      | -         | -         | -         | 65.0         |
| Net cost (savings) to customer – Option 1    | 18.1      | 227.2     | 7.6       | 6.9       | 6.3       | 266.1        |
| Option 2                                     |           |           |           |           |           |              |
| Impact before reduction of long-term debt    | (6.2)     | 138.7     | 7.6       | 6.9       | 6.3       | 153.3        |
| Return on AESO contributions to December 2019| 24.3      | 12.1      | -         | -         | -         | 36.4         |
| Carrying cost of long-term debt              | -         | 9.3       | 4.6       | 1.1       | -         | 15.0         |
| Net cost (savings) to customer – Option 2    | 18.1      | 160.1     | 12.2      | 8.0       | 6.3       | 204.7        |

Source: Exhibit 24932-X0012, Table 5, PDF page 55.

37. In addition to setting out the negative financial impact to ratepayers over the 2018-2022 period, Fortis indicated that the hearing panel had also erred by failing to consider reasonable alternatives to the AltaLink contribution proposal, namely, that Fortis could, if directed, apply an amortization rate equal to AltaLink’s depreciation rate to unamortized contribution balances within Fortis’s own tariff, achieving the same benefit to ratepayers.

38. Fortis submitted that the majority of the approximately $40 million ratepayer benefit relied upon by the hearing panel in making its findings in Section 8.1 of the Decision arose from the application of AltaLink’s depreciation rate, which is based on the average service life of AltaLink’s transmission assets rather than Fortis’s comparatively higher rate for AESO.

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53 Exhibit 24932-X0012, Fortis supplemental submission, paragraph 27.
54 Proceeding 22942, Transcript, Volume 6, page 1076, lines 2-9.
55 Exhibit 24932-X0012, Fortis supplemental submission, paragraph 27.
56 Exhibit 24932-X0012, Fortis supplemental submission, paragraph 31.
contributions reflecting the shorter estimated service life of distribution assets of 11.5 years.\textsuperscript{57} Fortis submitted that any nominal savings to ratepayers from the application of AltaLink’s rather than Fortis’s depreciation rate to unamortized contributions during the initial five-year period would be offset by increased ratepayer costs in later years. Fortis also indicated that it could adopt the lower depreciation rate, which would result in a similar benefit to ratepayers over the five-year period.\textsuperscript{58}

39. AltaLink submitted in its October 31, 2019, response submission that ratepayers would save between $68 million and $84 million as a result of the AltaLink contribution proposal. This represented an increase from the financial benefit determined by the hearing panel and a widely divergent outcome from Fortis’s calculation of increased ratepayer costs of up to $266 million over the five-year period. AltaLink’s October 31, 2019, financial impact analysis is reproduced as Table 2 below.

<p>| Table 2. AltaLink calculation of net customer cost (savings) from AESO contributions transfer |
|----------------------------------|---------------------------------|---------------------------------|-------------------------------|---------------------------------|---------------------------------|---------------------------------|</p>
<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
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<td>33.3</td>
<td>34.4</td>
<td>35.9</td>
<td>171.4</td>
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<td>Reduction in base rates and K-bar (net of AESO Hybrid Deferral Account)</td>
<td>(43.7)</td>
<td>(46.9)</td>
<td>(51.0)</td>
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<td>(10.9)</td>
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<td>(22.9)</td>
<td>(84.0)</td>
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<td>(11.9)</td>
<td>(10.9)</td>
<td>(17.7)</td>
<td>(20.5)</td>
<td>(22.9)</td>
<td>(84.0)</td>
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<td>(10.9)</td>
<td>(17.7)</td>
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<td>(84.0)</td>
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<td>(22.9)</td>
<td>(84.0)</td>
</tr>
</tbody>
</table>

Source: Exhibit 24932-X0047, Table 1, PDF page 6.

40. Fortis revised its ratepayer impact in its November 7, 2019, reply submission from an initial estimate of between $204.7 million and $266.1 million to a range falling between $134.5 million and $155.8 million. Table 3 below shows the revised numbers.

\textsuperscript{57} Exhibit 24932-X0012, Fortis supplemental submission, Appendix A evidence, paragraph 16.

\textsuperscript{58} Exhibit 24932-X0012, Fortis supplemental submission, Appendix A evidence, paragraph 21.
Table 3. Updated Fortis calculation of net customer cost (savings) from AESO contributions transfer

<table>
<thead>
<tr>
<th></th>
<th>2018 ($ million)</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>5-year total</th>
</tr>
</thead>
<tbody>
<tr>
<td>AML revenue requirement before tax</td>
<td>12.7</td>
<td>13.6</td>
<td>41.0</td>
<td>44.6</td>
<td>48.3</td>
<td>160.2</td>
</tr>
<tr>
<td>Reduction in base rates and K-bar (net of AESO Hybrid Deferral Account)</td>
<td>(43.7)</td>
<td>(46.9)</td>
<td>(51.0)</td>
<td>(54.9)</td>
<td>(58.8)</td>
<td>(255.4)</td>
</tr>
<tr>
<td>Short-term debt cost of equity repayment</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Option 1</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Return on AESO contributions to December 2019</td>
<td>24.3</td>
<td>23.5</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>47.8</td>
</tr>
<tr>
<td>Call premium on long-term debt retirement</td>
<td>-</td>
<td>41.1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>41.1</td>
</tr>
<tr>
<td>Income tax expense</td>
<td>-</td>
<td>121.6</td>
<td>13.7</td>
<td>13.4</td>
<td>13.0</td>
<td>161.7</td>
</tr>
<tr>
<td>Short-term interest expense, net interest income</td>
<td>-</td>
<td>-</td>
<td>1.5</td>
<td>(1.0)</td>
<td>-</td>
<td>0.5</td>
</tr>
<tr>
<td><strong>Net cost (savings) to customer – Option 1</strong></td>
<td>(6.6)</td>
<td>152.8</td>
<td>5.2</td>
<td>2.0</td>
<td>2.4</td>
<td>155.8</td>
</tr>
<tr>
<td><strong>Option 2</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Impact before reduction of long-term debt</td>
<td>(6.2)</td>
<td>138.7</td>
<td>7.6</td>
<td>6.9</td>
<td>6.3</td>
<td>153.3</td>
</tr>
<tr>
<td>Return on AESO contributions to December 2019</td>
<td>24.3</td>
<td>12.1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>36.4</td>
</tr>
<tr>
<td>Carrying cost of long-term debt</td>
<td>-</td>
<td>9.3</td>
<td>4.6</td>
<td>1.1</td>
<td>-</td>
<td>15.0</td>
</tr>
<tr>
<td>Income tax expense</td>
<td>-</td>
<td>136.5</td>
<td>13.7</td>
<td>13.4</td>
<td>13.0</td>
<td>176.5</td>
</tr>
<tr>
<td>Short-term interest expense, net interest income</td>
<td>-</td>
<td>-</td>
<td>0.6</td>
<td>1.1</td>
<td>-</td>
<td>1.7</td>
</tr>
<tr>
<td><strong>Net cost (savings) to customer – Option 2</strong></td>
<td>(6.6)</td>
<td>124.5</td>
<td>9.0</td>
<td>5.3</td>
<td>2.4</td>
<td>134.5</td>
</tr>
</tbody>
</table>

Source: Exhibit 24932-X0050, Updated Table 5, PDF page 53.

41. Fortis did not provide a formal update to the five-year financial impact analysis in its November 7, 2019, reply submission (Table 3 above). However, in its response to FAI-AUC-2020JAN16-007(a), Fortis indicated that by maximizing prior year deductions and utilizing loss carry-backs and carry-forwards, its 2018-2022 income tax cost estimate, which it had originally estimated to range between $161.7 million and $176.5 million, was now approximately $83 million of income tax that would be required to be recovered from customers. Fortis also indicated in that same IR response that in the event that the Canada Revenue Agency (CRA) would not accept refiled prior year returns, Fortis estimated that approximately $95 million of income tax resulting from the proposed rate base transfer would be required to be recovered in customer rates, an amount substantially lower than the earlier estimated tax impact of between $161.7 million and $176.5 million.

42. On January 31, 2020, AltaLink provided a further update to its October 31, 2019, financial impact assessment as part of its response to Commission IR AML-AUC-2020JAN16-001.59

Table 4. Updated AltaLink calculation of net customer cost (savings) from AESO contributions transfer

<table>
<thead>
<tr>
<th></th>
<th>2018 ($ million)</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>5-year Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>AML revenue requirement before tax</td>
<td>31.8</td>
<td>32.6</td>
<td>33.4</td>
<td>35.3</td>
<td>38.7</td>
<td>171.8</td>
</tr>
<tr>
<td>Reduction in base rates and K-bar (net of AESO Hybrid Deferral Account)</td>
<td>(43.7)</td>
<td>(46.9)</td>
<td>(51.0)</td>
<td>(54.9)</td>
<td>(58.8)</td>
<td>(255.4)</td>
</tr>
<tr>
<td>Income tax expense</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Short-term debt cost of equity repayment</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Impact before reduction of long-term debt</td>
<td>(11.9)</td>
<td>(14.3)</td>
<td>(17.5)</td>
<td>(19.7)</td>
<td>(20.2)</td>
<td>(83.6)</td>
</tr>
</tbody>
</table>

59 Exhibit 24932-X0076, AML-AUC-2020JAN16-001.
43. With this update, AltaLink’s calculation of the potential ratepayer savings from its contribution proposal was $83.6 million. AltaLink also submitted in the same IR response that Fortis ratepayers could also benefit by a further $31.8 million arising from the reconciliation of the utility-to-utility NBV transfer. If this occurred, AltaLink submitted that Fortis ratepayers could achieve a total benefit of $115.4 million.

44. In argument and reply submissions, Fortis and AltaLink addressed specific aspects of the financial impact stemming from the AltaLink contribution proposal. These submissions as well as those of the CCA, which addressed a subset of the issues addressed by AltaLink and Fortis, are addressed in greater detail in sections 4 and 5 of this decision.

45. The UCA’s argument focused on the high-level financial impacts to ratepayers rather than the specific, detailed components of financial impact such as tax. It submitted that the hearing panel’s decision should be upheld.

Review panel findings

46. For the reasons provided herein, the review panel is rescinding the hearing panel’s determination that ratepayers would derive a material benefit valued at approximately $40 million as a result of the adoption of the AltaLink contribution proposal. The hearing panel’s finding of benefit was based on the effect of applying AltaLink’s lower cost of debt and lower depreciation rates to the balance of Fortis’s unamortized customer contributions as at December 31, 2017, over the 2018-2022 period. The review panel finds that a significant majority of the $40 million benefit can be offset by requiring Fortis to adjust its depreciation rate to match the rate that AltaLink would utilize on the unamortized balance of customer contributions as at January 1, 2018. Further, the review panel finds that Fortis would incur income tax, carrying costs and debt restructuring costs that would be required to be recovered from ratepayers if the transfer of unamortized customer contributions from Fortis to AltaLink was implemented. In addition to offsetting the portion of the $40 million benefit determined in the Decision to arise from the adoption of the AltaLink contribution not otherwise offset by

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60 Exhibit 24932-X0072.01, AML-AUC-2020JAN16-001, PDF page 2.
61 Exhibit 24932-X0067, cited at Exhibit 24932-X0139, UCA argument, paragraph 27.
requiring Fortis to adjust its depreciation rate, the income tax, carrying costs and debt restructuring costs that the review panel has determined would arise would impose incremental costs on Fortis of at least $111 million that would be required to be recovered from ratepayers.62

47. The review panel also considered two categories of additional benefits advanced by AltaLink. The first relates to how the NBV of Fortis’s unamortized AESO contributions is calculated. The second relates to AltaLink’s forecast of savings that would be realized by Fortis ratepayers from the replacement of Fortis’s projected K-bar amounts with the actual and forecast cost of energized projects. The review panel does not accept either of these purported savings as benefits to ratepayers over the 2018-2022 period.

48. The following sections set out the review panel’s analysis, reasoning and findings on the financial impacts that the parties submitted would result from the rate base transfer and the adoption of the AltaLink contribution proposal. The most significant in the review panel’s view is the financial impact to Fortis of income tax costs associated with the rate base transfer. These costs, which are addressed in Section 4.1, and all other costs that the review panel finds would be incurred by Fortis if the AltaLink contribution proposal was to be implemented and the rate base transfer completed, would ultimately be payable by ratepayers. Other financial impacts are addressed as follows:

- equity repayment carrying costs (Section 4.2)
- debt restructuring costs (Section 4.3)
- credit rating impacts (Section 4.4)
- overlapping claims of entitlement (Section 4.5)
- net book value of AESO contributions (Section 4.6)
- Fortis proposal to change its amortization rate applied to AESO contributions (Section 5.1)
- additional potential financial benefits from adoption of AltaLink contribution proposal in 2018-2022 (Section 5.2)

49. The findings of the review panel in sections 4.1 through 4.6 and in Section 5.2 are based on analyses of the evidence and submissions of the parties on asserted financial costs and benefits that would occur if the AltaLink contribution proposal was implemented and the NBV of the AESO contributions was transferred from Fortis to AltaLink. The review panel has, however, ultimately determined to rescind the Decision in respect of both the implementation of the AltaLink contribution proposal and the transfer of rate base associated with the unamortized AESO contributions from Fortis to AltaLink. As such, none of the financial costs or benefits will actually arise.

50. By contrast, the findings in Section 5.1 regarding the adoption by Fortis of a lower depreciation rate for unamortized customer contributions is not conditional on either the rate

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62 The review panel considers that the net costs to ratepayers if the AltaLink contribution proposal had been implemented would total $111 million, comprised of $86.1 million (income tax) + $27 million (carrying costs in 2018 and 2019) + $3.5 million (debt restructuring costs) = $116.6 million less $5.6 million for the portion of the $40 million benefit determined by the hearing panel that would not otherwise be offset by Fortis’s adoption of new depreciation parameters.
base transfer or the implementation of the AltaLink contribution proposal and is therefore the subject of a direction to Fortis made in this decision.

4 Costs and benefits of transfer of unamortized AESO contribution balance

4.1 Income tax implications

51. Fortis submitted that the transfer to AltaLink of all unamortized balances relating to investments made by Fortis under the AESO customer contributions policy prior to January 1, 2018 (the rate base transfer), would have income tax implications for Fortis. Fortis estimated a one-time income tax expense of $145 million, on a grossed-up basis, which would be required to be recovered from its customers.

52. Fortis provided more detail about the one-time estimated income tax figure in its supplemental submission. It indicated that for income tax purposes, it does not capitalize and claim capital cost allowance (tax CCA) on the AESO contributions. Instead it deducts the full amount of the AESO contributions in the year they are paid. Fortis noted that the total amount of these deductions from 2006 to 2017 is approximately $493 million.

53. Fortis submitted that because it has fully deducted the AESO contributions for income tax purposes, any refund of these contributions would have income tax consequences in the period the transfer is completed. Initially, it assumed that it would be required to include the cumulative gross value of approximately $493 million as taxable income in the year the refund was received and its initial calculations of the estimated income tax expense were based on this assumption. Fortis stated that to try to offset this increase in taxable income, it would be required to maximize its tax CCA deductions in that year and indicated that it does not have sufficient tax CCA or other income tax deductions to reduce the taxable income to zero.

54. The Commission requested that Fortis provide the resulting regulatory income tax expenses and revenue requirements for 2020-2022 assuming the following: (i) the transfer of the AESO contributions takes place in 2020; (ii) the transfer amount includes the actual balance as at December 31, 2019; (iii) Fortis amends previous years’ regulatory income tax returns in order to claim the maximum deductions possible, in accordance with the Income Tax Act; and (iv) Fortis carries long-term debt consistent with Option 2 of the capital restructuring plan.

55. In response to the Commission’s request, Fortis indicated that after seeking further income tax advice regarding opportunities to reduce the income tax expense associated with the

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63 Because the funds received from customers will be revenue for income tax purposes, in order to collect sufficient funds to pay for a certain income tax expense, it is necessary to gross up that income tax expense to allow for the “tax on tax” effect. If the utility wants to collect enough funds to pay a calculated income tax amount of $100 and the income tax rate is 25 per cent, it would have to gross up the $100 by dividing it by 1 minus the income tax rate, or in this case, 75 per cent. $100/0.75=$133.33. The utility would therefore collect $133.33.

64 Exhibit 24932-X0001, PDF page 3.

65 Exhibit 24932-X0012, PDF page 47, paragraph 44. The annual deduction amounts are included in Exhibit 24932-X0107. Line 14 of Exhibit 24932-X0107 has the statutory income tax deductions and line 53 has the regulatory income tax deductions.

66 Exhibit 24932-X0012, PDF pages 47-48, paragraph 45.

67 Exhibit 24932-X0055, FAI-AUC-2020JAN16-007.
transfer, its advisors identified that one opportunity would be to add back the NBV of the rate base transfer amount in determining taxable income, rather than the gross book value.68

56. In the same response, Fortis amended the regulatory income tax expense calculations for 2016, 2017 and 2018 by claiming the maximum regulatory tax CCA for these years. It also included maximum regulatory tax CCA deductions in its calculation of the forecast regulatory income tax expense for 2019-2022.69 The results of Fortis’s calculations indicated a revenue requirement in 2020 of $82.9 million70 associated with regulatory income tax, and a revenue requirement in 2022 of $2.6 million71 associated with regulatory income tax.

57. Fortis also provided a response in which it did not amend any prior year’s regulatory income tax expense calculations and did not create any regulatory tax losses in these prior years. The results of this calculation indicated a revenue requirement in 2020 of $94.9 million72 associated with regulatory income tax, and no revenue requirement for 2021 and 2022 associated with regulatory income tax.

58. Subsequent to filing this response, Fortis updated the calculations that had resulted in a revenue requirement in 2020 of $94.9 million associated with the regulatory income tax impact of the rate base transfer. The updated calculations incorporated Fortis’s actual results for 2019 (as opposed to forecast results for 2019) and the use of a combined income tax rate of 24 per cent in 2020 (as opposed to the rate of 25 per cent used in the original calculation). It also included an add-back of the actual NBV of $372.858 million73 as at December 31, 2019. The results of the updated calculations indicated a revenue requirement in 2020 of $94 million74 associated with regulatory income tax, and no revenue requirement for 2021 and 2022 associated with regulatory income tax.75

59. Fortis also provided the estimated statutory income tax expense associated with the updated calculations. The results indicated a statutory income tax expense of $120.3 million, which is $26.3 million greater than the regulatory revenue requirement.76

60. AltaLink stated that from a statutory income tax perspective, Fortis is able to use any deductions or statutory tax CCA deduction to shelter itself from any income tax impact associated with the transfer. It added that to the extent Fortis’s statutory income tax deductions are insufficient to shelter the entire amount of the rate base transfer, Fortis’s shareholder will be

68 Exhibit 24932-X0057, FAI-AUC-2020JAN16-007(a).

69 Exhibit 24932-X0067, worksheets Tab 1 and Tab 2.

70 Calculated using an income tax rate of 25 per cent for 2020. The income tax expense is $62.2 million before gross up. Details of the calculations are in Exhibit 24932-X0067.

71 Calculated using an income tax rate of 23 per cent for 2022. The income tax expense is $2 million before gross up. Details of the calculations are in Exhibit 24932-X0067.

72 Calculated using an income tax rate of 25 per cent for 2020. The income tax expense is $71.2 million before gross up. Details of the calculations are in Exhibit 24932-X0070.

73 Exhibit 24932-X0108, worksheet Tab 1.

74 Calculated using an income tax rate of 24 per cent for 2020. The income tax expense is $71.4 million before gross up. Details of the calculations are in Exhibit 24932-X0108.

75 Exhibit 24932-X0108.

76 Exhibit 24932-X0124, worksheet Tab 1. The assumptions used by Fortis in its calculations are in Exhibit 24932-X0122, FAI-AML-2020JUL27-002.
required to pay statutory income tax on the unsheltered amount. AltaLink stated that “There is nothing unfair about this.”

61. AltaLink submitted that the $94 million revenue requirement associated with the regulatory income tax effect of the rate base transfer calculated by Fortis is overstated. It noted that Fortis’s calculations include income from the AESO contributions from 2018, 2019 and 2020. AltaLink stated that because Fortis has no right to these returns, they need to be excluded from Fortis’s calculations. Based on its estimate of the excluded returns, AltaLink recalculated Fortis’s estimate, and AltaLink indicated that the revenue requirement associated with the regulatory income tax effect of the rate base transfer would be $73 million. AltaLink noted that this estimate would be smaller if Fortis created regulatory income tax loss carry-backs.

62. The Commission requested that Fortis calculate the revenue requirement that would result if it deducted the maximum regulatory tax CCA in 2021 and 2022, and carried back any regulatory income tax losses in those years to offset against the regulatory income tax resulting from the rate base transfer payment being made in 2020. Based on a rate base transfer payment amount of $372.858 million being received in 2020, the results of Fortis’s calculations indicated a revenue requirement of $83.3 million in 2020, and a revenue requirement of $2.8 million in 2022.

4.1.1 Ability to amend previous year’s statutory income tax returns

63. The CCA stated that in theory, Fortis can refile its income tax returns for prior years to trigger income tax loss carry-forwards. It indicated that the Income Tax Act permits a party to refile prior income tax returns for up to 10 years, and it permits income tax losses to be carried forward for 20 years. It submitted that “It is highly likely that if FortisAlberta were directed by the Commission to refile its theoretical regulatory income taxes for the last ten years, FortisAlberta could easily accumulate a tax loss carry forward that would be sufficient enough to entirely offset the one time cost estimated by FortisAlberta and even possibly offset other current income taxes in the future.”

64. Fortis noted that there is a significant risk that the CRA would not accept amended income tax returns for prior years that result in losses. It submitted that taxpayers do not have the right to file amended income tax returns, and the acceptance and processing of any such amended income tax returns would be subject to the absolute discretion of the CRA.

65. Based on the review by Ernst & Young LLP (Ernst & Young) of Fortis’s corporate income tax returns, notices of assessment and reassessment, its understanding that Fortis is not a Canadian-controlled private corporation, and the CRA’s published administrative policies, Ernst & Young submitted that (i) no request to reassess the 2012, 2013 and 2014 taxation years may be allowed as such years are statute-barred; (ii) a request to reassess the 2015 taxation year may only be allowed if the request is filed and reassessed by September 12, 2020, for federal income tax purposes.

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77 Exhibit 24932-X0093, paragraph 107.
78 Exhibit 24932-X0143, paragraph 142. This includes regulatory income tax expense of $55 million, grossed up based on a combined income tax rate of 24 per cent.
79 Exhibit 24932-X0143, paragraph 143.
80 Exhibit 24932-X0119, FAI-AUC-2020JUL27-001(b). Details of the calculation are in Exhibit 24932-X0121.
81 Exhibit 24932-X0042, paragraphs 83-84.
82 Exhibit 24932-X0042, paragraph 85.
83 Exhibit 24932-X0057, FAI-AUC-2020JAN16-001.
tax and by July 29, 2020, for provincial income tax; and (iii) a request to reassess the 2016, 2017 and 2018 taxation years may not be processed if the request is solely to adjust a discretionary deduction such as tax CCA. Ernst & Young stated that the CRA is under no obligation to follow its published administrative positions.84

66. KPMG LLP summarized its position with respect to the refiling of Fortis’s regulatory and statutory income tax returns by stating, “If the Commission directed Fortis to refile its Regulatory Tax returns to claim additional CCA in past taxation years, this would be consistent with the expected response from the CRA if Fortis were to ask the Minister to adjust its CCA deductions for Statutory Tax purposes.”85 After reviewing Fortis’s subsequently filed 2012 to 2018 notices of assessment and notices of reassessment,86 KPMG concluded that the CRA would not accede to a request from Fortis to change the tax CCA deductions in its 2013 taxation year. KPMG added that its position with respect to all other taxation years (2012, 2014, 2015-2018) remained the same.87

4.1.2 Statutory vs. regulatory income tax requirements

67. The CCA submitted that the key question facing the Commission is whether it needs to abide by the statutory requirements of the Income Tax Act, or whether it has the authority to deem the regulatory treatment of income taxes in the setting of just and reasonable rates. The CCA stated that under any circumstance, if the statutory income tax requirements are applied, then the rate base transfer is not in the public interest. The CCA added that if the Commission determines it is not bound by the statutory income tax requirements in setting the regulatory income tax expense, then the rate base transfer is in the public interest.88

68. AltaLink suggested that “To the extent that the final amount transferred from AltaLink to Fortis is such that the held back Capital Cost Allowance amounts and historical tax loss carry forwards are insufficient to shelter the regulatory income tax impact, Fortis’s excess regulatory undepreciated capital cost (UCC) pools could be drawn down to be used as shelter for ratemaking purposes without affecting Fortis’s taxable status.”89

69. AltaLink submitted that the Commission is not bound by the statutory income tax rules when it determines regulatory income tax expense, but by its own legislated mandate to set just and reasonable rates. It added that accordingly, when the Commission determines whether and how regulatory UCC can be used for rate setting purposes, it is not bound by the statutory limitations imposed by the CRA. AltaLink stated that the Commission has the ability, for regulatory income tax purposes and in furtherance of its own mandate, to access Fortis’s higher level of regulatory UCC balances to manage any immediate income tax impact to Fortis’s ratepayers. AltaLink cited Decision 2000-41,90 in which the Commission ordered that UtiliCorp Canada Corp. (UtiliCorp) adopt TransAlta Utilities Corporation’s (TransAlta) opening UCC balance for regulatory purposes, even though that balance vastly exceeded the income tax value

84 Exhibit 24932-X0109, page 5.
85 Exhibit 24932-X0102, paragraph 58.
86 Exhibit 24932-X0106.
87 Exhibit 24932-X0134, AML-FAI-2020JUL27-012(b).
89 Exhibit 24932-X0047, paragraph 52.
of the UCC, as an example that illustrates the Commission’s authority to set and adjust regulatory UCC balances at different and separate levels than the statutory UCC balances.\(^9\)

70. Fortis was asked to comment on whether the Commission, in order to reduce regulatory income tax, has the ability to direct Fortis to deduct, in a single year, the difference between the regulatory tax UCC balance and the statutory income tax UCC balance. Fortis responded that such a direction would be incapable of altering the statutory income tax expense for that single year, and it would introduce a substantial misalignment between the costs Fortis incurs to provide utility service and its ability to recover those same costs. It submitted that consistent with established regulated ratemaking approaches, the Commission should strive to ensure that the calculation of regulatory income tax aligns with, rather than runs counter to, the calculation of statutory income tax.\(^9\)

71. AltaLink submitted that the Commission’s authority to include income tax expense in just and reasonable rates is not constrained by rules applicable to the determination of statutory income tax, even though in practice the Commission is guided by statutory income tax rules. It stated that the Commission retains the full authority to depart from statutory income tax rules where it is in the public interest to do so.\(^9\) AltaLink submitted that public utility legislation does not confer an absolute right or entitlement on the part of a utility to recover its statutory income tax expense from ratepayers over the same period as it is incurred.\(^9\)

72. The CCA submitted that the Commission’s authority in setting just and reasonable rates, including income tax expense, is not bound by the statutory income tax requirements. It added that were the Commission’s authority so bound, those restrictions would be clearly set out in the relevant legislation, which they are not.\(^9\) The CCA provided a number of examples\(^9\) which it submitted clearly demonstrate that the Commission is not bound by statutory income tax requirements.

73. Fortis submitted that the correct question for consideration is whether and to what extent the Commission’s ratemaking determinations in respect of regulatory income tax should be informed by the “real life” consequences of statutory income tax. It added that the central issue is not whether the Commission has authority to make determinations regarding regulatory income tax treatment, but what permissible regulatory income tax treatment should be when considered in light of the legally applicable statutory income tax treatment.\(^9\)

74. Fortis stated that income tax expense is indisputably a cost that is legitimately incurred by regulated utilities in the course of providing essential services to customers. It submitted, therefore, that just and reasonable rates, as conceptualized in the regulatory compact, cannot simply ignore or deliberately fail to incorporate the actual liability arising under statutory income tax.\(^9\) Fortis noted that actual statutory income tax expenses incurred are the result of a taxpayer’s liability under the Income Tax Act. It added that statutory income tax considerations must be a

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\(^{91}\) Exhibit 24932-X0093, paragraphs 105-106.

\(^{92}\) Exhibit 24932-X0119, FAI-AUC-2020JUL27-002(b).

\(^{93}\) Exhibit 24932-X0136, AML-AUC-2020JUL27-002(a).

\(^{94}\) Exhibit 24932-X0136, AML-AUC-2020JUL27-002(c).

\(^{95}\) Exhibit 24932-X0137, paragraph 29.

\(^{96}\) Exhibit 24932-X0137, paragraphs 33-43.

\(^{97}\) Exhibit 24932-X0137, paragraph 44.

\(^{98}\) Exhibit 24932-X0149, paragraph 23.

\(^{99}\) Exhibit 24932-X0149, paragraph 24.
relevant and significant, if not the sole, consideration for the Commission in determining just and reasonable rates that provide a utility with a reasonable opportunity to recover prudent income tax expenses.100

**Review panel findings**

75. The review panel has been presented with considerably more information in this proceeding regarding the income tax implications associated with the proposed change in the AESO customer contribution policy, compared to what was on the record of the original proceeding that resulted in the Decision. The key factor giving rise to the income tax implications is the transfer of the NBV of the AESO contributions, and the corresponding one-time payment that Fortis will receive from AltaLink.

76. As subsequently explained and for the reasons below, the review panel finds that there would have been no regulatory income tax savings for customers from 2018 to 2022 as a result of the rate base transfer. Instead, based on a number of assumptions as described below, there would have been an incremental statutory income tax expense for Fortis and an incremental regulatory income tax expense revenue requirement for Fortis’s ratepayers of $86.1 million.

77. The review panel accepts the submissions of Fortis101 and Ernst & Young102 that the amount of any payment received by Fortis for the rate base transfer would have to be treated as taxable income for Fortis in calculating its statutory income tax expense for the year in which the payment is received. AltaLink and KPMG did not dispute these submissions. While Fortis and AltaLink have disputed the amount of the NBV to be received by Fortis, based on Fortis’s estimate of the December 31, 2019, NBV of $372.858 million103 and AltaLink’s estimate of $383.9 million,104 the review panel considers that the resulting increase to Fortis’s taxable income for statutory income tax purposes will be substantial.

78. Using the lowest estimate of $372.858 million for the NBV payment, assuming that the payment is made in 2020 and using an estimated combined income tax rate of 24 per cent for 2020 and the information in exhibits 24932-X0108 and 24932-X0124, the resulting statutory income tax expense for Fortis in 2020 would be $89.5 million.105 This is an incremental expense for Fortis when compared to what the situation would be if the NBV payment was never received.

79. The $89.5 million does not reflect the use of any held-back statutory tax CCA deductions that would have otherwise been available to Fortis in 2020 if the NBV payment had not been received. It is apparent to the review panel from the information provided in Exhibit 24932-X0124 that Fortis has no such held-back statutory tax CCA deductions available in 2020 that would help reduce the $89.5 million expense.106 The information provided shows that even if the

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100 Exhibit 24932-X0149, paragraph 26.
102 Exhibit 24932-X0127, FAI-UCA-2020JUL27-002(a).
103 Exhibit 24932-X0108, worksheet Tab 1.
104 Exhibit 24932-X0143, paragraph 45, referencing Exhibit 24932-X0073.
105 $372.858 x 24 per cent is $89.5.
106 In the worksheet Tab 1 of Exhibit 24932-X0124, if the 93,978 in Excel cell G10 and the (372,858) in Excel cell G26 are both changed to zero, the resulting capital cost allowance figure of 252,170 in Excel cell G21 does not change and Fortis has an estimated statutory income tax expense of $8,243 million. In the worksheet Tab 2, it is clear in comparing Excel cells J48 and L48 that the 252,170 capital cost allowance is the maximum available for 2020.
$372.858 million was not received by Fortis in 2020, it would need to maximize its statutory tax CCA deduction in 2020.

80. The $89.5 million also does not reflect Fortis employing any strategies such as: (i) filing a request to amend previous years’ statutory income tax returns to increase statutory tax CCA deductions in those years that would result in statutory income tax losses that could be carried forward to 2020 to help offset the additional taxable income of $372.858 million; or (ii) increasing any statutory tax CCA deductions that may be available in 2021, 2022 and 2023 to create statutory income tax losses in those years that could be carried back to 2020 to retroactively reduce the statutory taxable income in 2020 and recover the statutory income tax expense associated with the loss carry-back amounts. With respect to strategy (i), Fortis advised that “Even if the Company were to retroactively maximize CCA claims for 2015 to 2018, there would be no additional loss carry forwards available to reduce taxable income in 2020.” With respect to strategy (ii), Fortis indicated that there would be no losses available in 2021 and 2022 to reduce the 2020 statutory taxable income.

81. Based on: (i) the assumption of a $372.858 million rate base transfer payment made in 2020 from AltaLink to Fortis; (ii) an estimated combined income tax rate of 24 per cent for 2020; (iii) the information in exhibits 24932-X0108 and 24932-X0124; (iv) the review panel’s determination that Fortis has not otherwise held-back statutory tax CCA deductions available in 2020; (v) Fortis’s submission that there would be no additional loss carry-forwards from 2015 to 2018 available to reduce taxable income in 2020; and (vi) Fortis’s submission that there would be no losses available in 2021 and 2022 to reduce the 2020 statutory taxable income, the review panel finds that Fortis would have an incremental statutory income tax expense of $89.5 million in 2020 as a result of receiving a $372.858 million payment from AltaLink.

82. The review panel accepts the submission of KPMG that any payment made by AltaLink to Fortis for the NBV of the AESO contributions will be treated as an increase to AltaLink’s statutory UCC balance in the year the payment is made, and will result in increased statutory UCC balances for AltaLink compared to what the situation would be if the rate base transfer payment was never made.

83. The issue for the review panel is the extent to which its findings above regarding the statutory income tax results for Fortis resulting from the rate base transfer payment affect the Commission-approved rates that Fortis’s customers pay. In other words, should the review panel permit Fortis to recover any of the additional statutory income tax expense from customers through Fortis’s Commission-approved rates, as regulatory income tax expense, and if the review panel does grant such permission, how would this have affected the information relied on by the hearing panel in Proceeding 22942.

84. The review panel considers that the basis for regulatory income tax expense is statutory income tax expense. If there was no requirement for companies, or utilities treated as stand-alone

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107 For example, assume the statutory taxable income in 2020 as filed was $200 million and the statutory combined income tax rate in 2020 was 24 per cent. If there was a statutory income tax loss of $50 million in 2021, the $50 million could be carried back to 2020 and the company would receive a refund for 2020 of $12 million, being 24 per cent of the $50 million carry-back amount.


109 Exhibit 24932-X0119, FAI-AUC-2020JUL27-001(b).

110 Exhibit 24932-X0102, paragraphs 21 and 28. Exhibit 24932-X0134, AML-FAI-2020JUL27-013(b) and (c).
companies for ratemaking purposes, to pay statutory income tax, there would be no need for utilities to include any regulatory income tax expense as part of their revenue requirements and associated rates. Statutory income tax expense is calculated in accordance with the applicable governing legislation and includes the preparation and filing of statutory income tax returns with the applicable governing bodies.

85. The Commission does not have governing legislation that utilities must follow in calculating forecast or actual regulatory income tax expense. In the absence of this legislation, utilities use the statutory requirements as the basis for the calculation of regulatory income tax, and the Commission has accepted this practice. Utilities include what the statutory income tax rates are forecast to be for a year in calculating the forecast regulatory income tax expense for that year and they use the actual statutory income tax rate for that year when they calculate and report the actual regulatory income tax expense for that year. Utilities follow the statutory income tax requirement that depreciation expense is not deductible when they calculate forecast and actual regulatory income tax expense. When calculating regulatory tax CCA deductions, utilities also comply with the statutory income tax requirements when, among other things: (i) assigning regulatory capital costs to various regulatory tax CCA classes; (ii) using the statutorily approved tax CCA rates; (iii) capping the maximum regulatory tax CCA deduction for a class for a year to the available balance in the UCC pool for that class multiplied by the tax CCA rate; and (iv) having the discretion to reduce the regulatory tax CCA deduction for any class to less than the maximum deduction calculated.

86. Differences do arise between statutory income tax expense and regulatory income tax expense for a number of reasons. One of these reasons is decisions made by a company to employ different statutory income tax strategies than those approved by a regulator (e.g., a regulator could mandate that for regulatory income tax purposes, a utility only deduct enough tax CCA to reduce taxable income to zero, while the company could decide to deduct the maximum tax CCA in calculating its statutory income tax expense and create losses). Another reason is that the regulator could approve the use of different values in calculating regulatory income tax than the values used in calculating statutory income tax. An example of this is described in Section 4.5 of Decision 2000-41. A third reason is because the regulator has approved the inclusion of future income tax expense as part of regulatory income tax expense. Statutory income tax expense does not include any amount for future income tax expense.

87. In this proceeding, parties referenced situations where the setting of regulatory income taxes was different than how the associated statutory income taxes were determined. These included the Commission ordering, in Decision 2000-41, that UtiliCorp adopt TransAlta’s opening regulatory income tax UCC balances even though these balances vastly exceeded the statutory income tax UCC balances, and the Commission approving the inclusion of future income tax as part of regulatory income tax expense.

88. The review panel finds that the current proceeding, in which AltaLink and the CCA have recommended that the Commission not abide by statutory income tax requirements in determining the regulatory income tax expense, is different than the situation it addressed in Decision 2000-41. Decision 2000-41 addressed an application that would ultimately result in the sale of TransAlta’s distribution business to an arm’s-length third party. The opening regulatory income tax UCC balance was determined by TransAlta and not the Commission. The Commission ordered that this opening regulatory income tax UCC balance not be reduced to the corresponding statutory income tax UCC balance but instead be carried forward in order to
preserve this benefit for customers in connection with the no-harm principle. In the current proceeding, the CCA and AltaLink have recommended that the Commission reduce the regulatory income tax UCC balance of Fortis, in order to offset any regulatory income tax expense associated with the receipt of the rate base transfer payment by Fortis.

89. Decision 2000-41 also relied on evidence indicating that TransAlta, as the vendor, would receive a statutory income tax benefit arising from the terminal loss associated with the disposition of its assets. Fortis will receive no such benefit as a result of the rate base transfer being considered in this proceeding.

90. With respect to including future income tax as part of regulatory income tax, the review panel notes that this has generally been done to increase cash flow for the utilities and maintain credit metrics at levels that ultimately result in lower rates for long-term debt, which benefits the utility and ratepayers. In addition, in the case where the Commission approves future income tax expense to be included in regulatory income tax, the utility has to account for the future income tax collected as no cost capital, which is also a benefit to ratepayers. The review panel considers that the current proceeding is not at all reflective of the conditions under which the Commission has approved the inclusion of future income tax expense as part of the regulatory income tax expense.

91. The review panel finds that Fortis calculated the regulatory income tax expense associated with the NBV payment it will receive in accordance with statutory income tax requirements. Fortis used its regulatory tax UCC balances in its regulatory income tax calculations, which is reflected in the fact that the resulting regulatory income tax expense (before gross up) is lower than the resulting statutory income tax expense. The calculations in Exhibit 24932-X0108 included deducting the maximum regulatory tax CCA in 2020 of $361.862 million, which is $68.581 million higher than what would have been required if the NBV payment was not received by Fortis.

92. The review panel finds that it has not been presented with any principled reasons why it should require Fortis to alter its regulatory income tax expense calculation to include the use of additional regulatory tax CCA deductions that would not be permitted if the calculation was done in accordance with the statutory income tax requirements. The main reason submitted by AltaLink and the CCA is that by requiring Fortis to include these additional regulatory tax CCA deductions, it would reduce the regulatory income tax expense to zero. The review panel considers that this is not based on a principle but instead it is designed to result in a desired outcome, and this does nothing to reduce the statutory income tax faced by Fortis. Even if the review panel were to decide to require Fortis to alter its regulatory income tax expense calculation to reduce the regulatory income tax expense to zero, this would still not change the fact that Fortis would be required to pay significant statutory income tax, all as a result of the rate base transfer payment being received.

93. The review panel finds that the statutory income tax expense that would result from the rate base transfer payment received by Fortis would have been a validly incurred cost, and Fortis would have been eligible to recover the associated regulatory income tax expense component of this cost. As with the calculation of the statutory income tax expense of $89.5 million, the

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111 In the worksheet Tab 1 of Exhibit 24932-X0108, if the 93,978 in Excel cell I10 and the (372,858) in Excel cell I25 are both changed to zero, the resulting capital cost allowance figure in Excel cell I20 changes to 293,281 instead of the 361,862 original figure. The difference between 361,862 and 293,281 is 68,581.
starting point for the regulatory income tax expense is an increase to taxable income of $372.858 million. However, unlike the statutory income tax side, Fortis has extra held-back regulatory tax CCA deductions that would have otherwise been available to Fortis in 2020 if the payment had not been received. As previously mentioned, this additional deduction is $68.581 million, which reduces the regulatory taxable income to $304.277 million. Using a combined income tax rate of 24 per cent and the information in Exhibit 24932-X0108, the resulting regulatory income tax expense is $73 million. Fortis deducted an investment tax credit of $1.6 million against the $73 million, for a resulting regulatory income tax expense of $71.4 million.

94. If Fortis were directed to employ a regulatory income tax expense strategy of amending its regulatory income tax expense calculations for 2015, 2016, 2017 and 2018 by deducting the maximum regulatory income tax CCA amounts in those years and carrying forward any losses to offset against the regulatory income tax expense in 2020 created by the rate base transfer payment, the resulting regulatory income tax expense calculated by Fortis for 2020 was $71.2 million, after deducting an investment tax credit of $1.6 million. The review panel notes that there was disagreement between the income tax experts about whether a request to amend previous years’ statutory income tax returns would be permitted by the Minister of National Revenue. The review panel is adhering to statutory income tax guidelines when assessing the regulatory income tax expense calculations in this proceeding, and because there is no guarantee that a request to amend previous years’ statutory income tax returns would be permitted, and considering the insignificant difference in regulatory income tax expense even if it was permissible, the review panel finds that this is not a valid option to calculate regulatory income tax expense in this proceeding.

95. The review panel does consider that employing a regulatory income tax expense strategy of directing Fortis to deduct the maximum regulatory tax CCA in 2021 and 2022 and carry back any regulatory income tax losses in those years to offset against the regulatory income tax resulting from the transfer payment being made in 2020 is valid. This strategy is permissible under statutory income tax, and results in a regulatory income tax expense of $63.3 million in 2020 and $2.1 million in 2022, for a total of $65.4 million.

96. The revenue required to be collected from Fortis’s customers to pay the calculated regulatory income tax expenses of $63.3 million in 2020 and $2.1 million in 2022 needs to be greater than the calculated tax expense, because the revenue is taxed itself. This requires a gross-up to be applied to the calculated regulated income tax expense. Using a combined income tax rate of 24 per cent for 2020 and 23 per cent for 2022, Fortis calculated a revenue requirement of $83.3 million for 2020 and $2.8 million for 2022, for a total of $86.1 million.

97. AltaLink submitted that Fortis’s regulatory income tax expense calculation is overstated because it includes income from the AESO contributions from 2018, 2019 and 2020, to which Fortis has no right. Based on its estimate of this income that should be deducted, AltaLink

\[304.277 \times 0.24 = 73.026\]
\[68.581\]
\[372.858 + 68.581 = 441.439\]
\[441.439 \times 0.24 = 105.945\]

\[304.277 \times 0.24 = 73.026\]
\[68.581\]
\[372.858 + 68.581 = 441.439\]
\[441.439 \times 0.24 = 105.945\]

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\[372.858 + 68.581 = 441.439\]
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\[372.858 + 68.581 = 441.439\]
\[441.439 \times 0.24 = 105.945\]

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\[68.581\]
\[372.858 + 68.581 = 441.439\]
\[441.439 \times 0.24 = 105.945\]

\[304.277 \times 0.24 = 73.026\]
\[68.581\]
\[372.858 + 68.581 = 441.439\]
\[441.439 \times 0.24 = 105.945\]
indicated that the regulatory income tax expense in 2020 would be reduced by $15.8 million.\(^{118}\)

In Section 4.5, the review panel has found that for the purposes of examining the financial impact on ratepayers of the AltaLink contribution proposal, Fortis would be compensated for the return on the AESO contributions for the period between the December 31, 2017, valuation date and the date on which the transfer would occur, and has calculated carrying costs in lieu of this return. Therefore, the review panel finds that AltaLink’s calculated reduction of $15.8 million, which was based on excluding return on the AESO contributions for 2018 to 2020, is not relevant in assessing the amount of the regulatory income tax expense.

98. The review panel considers that the $86.1 million income tax expense is a substantial cost that would be borne by ratepayers and is based on information that was not available to the hearing panel in Proceeding 22942. In addition, the regulatory tax UCC balances of Fortis would be reduced below what they would have been if the rate base transfer payment had never been received, which would result in Fortis incurring regulatory income tax expense in 2022. If the rate base transfer payment was not received, and Fortis continued to make contribution payments to the AESO, the regulatory tax UCC balances of Fortis would not be reduced to such a degree because Fortis would still be able to deduct the full cost of the AESO contributions for statutory and regulatory income tax purposes in the year the contributions are paid.

99. The NBV payment from AltaLink to Fortis would increase AltaLink’s regulatory income tax UCC balance in the year the payment is made. This could be used as a deduction when AltaLink calculated its regulatory income tax expense, using the Class 47 statutory tax CCA rate of eight per cent. AltaLink calculated that if the NBV payment was made, it would have had no regulatory income tax expense for 2018-2022. However, AltaLink also calculated that if the payment is not made, it would likewise have no regulatory income tax expense for 2018-2022. If the NBV payment is not made and is removed from Fortis’s calculations, the result is that Fortis will also have no regulatory income tax expense for 2018-2022. Therefore, the review panel finds that if the rate base transfer was to occur, there would be no regulatory income tax savings for customers from 2018 to 2022 as a result of the NBV payment to Fortis. Instead, there would be an incremental statutory income tax expense for Fortis and an incremental regulatory income tax expense revenue requirement of $86.1 million required to be collected from Fortis’s ratepayers.

4.2 **Equity repayment carrying costs**

100. Fortis’s October 8, 2019, financial impact assessment included an allowance of approximately $4.5 million for the year 2019 to reflect the cost of short-term debt to finance the carrying costs of a one-time equity repayment to Fortis’s parent.\(^{119}\)

101. AltaLink did not make any allowance for financing an equity payment to Fortis’s shareholder in its October 31, 2019, financial impact assessment.\(^{120}\) AltaLink explained that while Fortis had assumed a one-year delay in AltaLink providing funds to Fortis, AltaLink would commit to paying the entire unamortized contribution balance to Fortis, then valued by

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\(^{118}\) Exhibit 24932-X0143, paragraph 142.

\(^{119}\) Exhibit 24932-X0012, Table 5, PDF page 55. (See Table 1 above).

\(^{120}\) Exhibit 24932-X0047, Table 1, PDF page 6. (See Table 2 above).
AltaLink at $373.9 million on or before December 31, 2019, thereby avoiding the carrying costs assumed by Fortis.  

102. On the basis of AltaLink’s undertaking in its October 31, 2019, submission to make a full transfer of Fortis’s unamortized AESO contribution balance prior to the start of 2020, Fortis removed its 2019 allowance of $4.5 million for short-term debt repayment costs from its updated financial impact assessment.

103. In argument, AltaLink noted that while the financial impact analysis in Fortis’s October 8, 2019, supplemental submission suggests that it will incur $4.5 million in short-term debt carrying costs to finance the refund, no carrying costs will be incurred because the repayment will not be delayed by one year. On the assumption that the record of Proceeding 24932 closed as anticipated on September 14, 2020, and that the Commission issues its decision within 90 days of that, AltaLink reaffirmed that it would be prepared to make the first payment as soon as practicable following the decision’s release, no later than December 31, 2020, and that it would make a second payment by January 4, 2021.

Review panel findings

104. The review panel agrees that if the Decision had been confirmed, AltaLink’s commitment to make timely payment of the entire unamortized customer contribution balance would have the effect of eliminating this cost impact. Accordingly, the review panel has not ascribed any value to equity repayment carrying cost as identified by Fortis in its initial financial impact analysis.

4.3 Debt restructuring costs

105. Fortis estimated that the refund of approximately $400 million would require a one-time equity repayment to Fortis’s shareholder of approximately $148 million, and debt repayment of approximately $252 million in order to maintain the Commission’s deemed capital structure of 37 per cent equity and 63 per cent debt, as approved in Decision 22570-D01-2018.

106. It identified two options to address this issue, and estimated that the debt restructuring costs for Option 1 would cost $65 million as it would be required to pay a premium to allow it to remain with the long-term debt arrangements. Fortis said Option 2 would cost $15 million in carrying costs and allow surplus debt capital to “roll off” without being replaced over a three-year period. Fortis subsequently reduced its estimated Option 1 costs from $65 million to approximately $41 million, but maintained its Option 2 costs at $15 million.

107. AltaLink disagreed with Fortis that it would be required to rebalance its capital structure through an equity refund to its shareholder and the retirement of debt. Further, if Fortis was required to adjust its capital structure, AltaLink estimated that Option 1 would cost $16 million and Option 2 would cost $3.5 million. It also argued that Fortis’s estimates were unreliable given the significant adjustment to the Option 1 costs and that Fortis’s options failed to take account of its short-term debt of $66.3 million, which could be retired without call premiums. AltaLink

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121 Exhibit 24932-X0047, AltaLink October 31, 2019 response submission, Appendix A evidence, paragraph 76.
122 Exhibit 24932-X0143, AltaLink argument, paragraph 258.
123 Exhibit 24932-X0141, Fortis argument, paragraph 108.
125 Exhibit 24932-X0012, Fortis supplemental submission, Appendix A evidence, paragraph 38.
126 Exhibit 24932-X0143, AltaLink argument, paragraph 238.
proposed a third option whereby Fortis would transfer the refund of customer contributions that it received from AltaLink to Fortis’s parent and adjust its debt equity structure in the short term to absorb the differential. AltaLink said that this option addressed Fortis’s concern with maintaining its approved capital structure and would keep Fortis’s debt intact without debt retirement costs to ratepayers.

108. The CCA agreed with this approach submitting that Option 3 would allow Fortis to operate with a greater amount of debt leverage thus permitting it to earn a higher ROE for a short period of time, while causing no extra costs for ratepayers.\(^\text{127}\) It stated that it was commonly accepted by the Commission for a parent of a utility to leverage the regulated assets with additional debt at a holding company level.\(^\text{128}\)

109. Fortis rejected Option 3, submitting that it contradicted the stand-alone principle, ignored the reality that no parent would agree to fund the rebalancing of a regulated subsidiary’s balance sheet at no cost, and that no rational investor would incur an opportunity cost to invest capital in circumstances where it would no longer be able to earn its required return.

**Review panel findings**

110. For the reasons below, the review panel has determined that if the hearing panel’s findings had been confirmed, Fortis would incur a cost of at least $3.5 million to restructure its debt. The review panel has therefore included this $3.5 million cost attributable to debt restructuring for the purposes of determining the costs and benefits of the rate base transfer.

111. While Fortis’s submissions do not directly address the potential credit metric impacts of Option 3, the review panel notes the following excerpt from the December 9, 2019, DBRS Morningstar (DBRS) rating report on FortisAlberta Inc.:

> On September 22, 2019, the Alberta Utilities Commission (AUC) issued a decision to approve the change to the method in which the Alberta Electric System Operator’s (AESO) customer contribution policy (ACCP) is accounted for between distribution facility owners and transmission facility owners (TFO; the Decision). As part of the Decision, FortisAlberta Inc. would transfer the unamortized AESO contributions of $403 million (approximately 11% of the 2019 rate base) associated with the ACCP investment to AltaLink Management Ltd (AltaLink), which is the incumbent TFO in FAB’s service area (the Transfer). The implementation of the Decision is suspended by the AUC following FAB’s request, pending further review. DBRS Morningstar believes that even if Transfer is completed, it will not result in a material impact on FAB’s credit metrics. DBRS Morningstar expects FAB to use part of the proceeds from the Transfer to reduce its debt and to maintain its capital structure in line with the regulatory capital structure. However, if the Transfer occurs and if the debt is not reduced accordingly (which is unlikely), FAB’s credit metrics will be negatively affected.\(^\text{129}\)

112. The review panel considers that unlike Option 1, options 2 and 3 affect Fortis’s ability to maintain its regulatory capital structure. While it is not clear that this alone would be sufficient to cause DBRS to downgrade the debt of FortisAlberta Inc., some risk of a downgrade by DBRS is not ruled out under either the Option 2 or Option 3 approach.

\(^\text{127}\) Exhibit 24932-X0137, CCA argument, paragraphs 100-102.
\(^\text{128}\) Exhibit 24932-X0144, CCA reply argument, paragraph 32.
\(^\text{129}\) Exhibit 24932-X0060, PDF page 1.
113. Further, while both options 2 and 3 could affect Fortis’s ability to maintain its regulatory capital structure, the review panel considers that Option 3, on a comparative basis, carries more credit metric risk than Option 2 because Fortis’s regulatory capital structure would not be restored as quickly as Option 2.

114. While Option 1 does not give rise to credit metric risk in the same way as options 2 and 3, the costs associated with this option are significantly higher.

115. Balancing all of the above, the review panel has determined that Option 2 should be used to assess the potential financial impact of the rate base transfer in terms of debt restructuring costs. Accordingly, the review panel finds a cost to ratepayers of at least $3.5 million associated with Option 2 should be used for the purposes of assessing the financial impact of the rate base transfer on ratepayers. This $3.5 million in costs is additive to the incremental income tax costs, that the review panel found in Section 4.1 above, would have occurred if Fortis was required to transfer its unamortized AESO contributions to AltaLink as contemplated in the Decision.

4.4 Credit rating impacts

116. In addition to differences in direct financial impacts to ratepayers arising from the transfer of Fortis’s AESO contributions under the AltaLink contribution proposal, Fortis suggested that the review panel should also consider the potential that the transfer of AESO contribution rate base could have had an impact on how credit rating agencies and other financial institutions view the risk level associated with investments in regulated Alberta utilities. Fortis suggested that due to the unprecedented nature and magnitude of the transfer of its AESO contribution rate base under AltaLink’s contribution proposal, future ratepayers could pay higher debt costs that would raise the financial impact on ratepayers beyond the costs Fortis had identified in its financial impact assessment. In contrast, AltaLink suggested that the impact of its contribution proposal on the risk perceptions of financial market participants would be minimal.

117. In argument, Fortis noted that, under US generally accepted accounting principles, the continued use of specific rules applicable to the rate-regulated accounting under ASC 980, a utility’s regulated rates must be designed to recover the entity’s costs of providing the regulated services. Fortis submitted that because its PBR regime already creates a divergence between costs and rates, there is a material risk that the AltaLink contribution proposal would further “widen the gap” such that Fortis could no longer qualify for ASC 980, thereby requiring changes to Fortis’s income statement and balance sheet that could, in turn, adversely affect Fortis’s credit metrics.

118. In its argument, AltaLink submitted that there is no evidence of any downgrade or negative investor reaction to Fortis as a result of the rate base refund. AltaLink submitted that financial institutions generally consider the impact of the refund of the customer contributions from AltaLink to Fortis to be immaterial from the perspective of Fortis or its parent. Furthermore, AltaLink noted that while in response to Commission IRs, both AltaLink and Fortis provided a number of reports from various research agencies and financial institutions that

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130 Exhibit 24932-X0012, Fortis supplemental submission, Appendix A evidence, paragraphs 47-54.
131 Exhibit 24932-X0047, AltaLink October 31, 2019 response submission, Appendix A evidence, paragraphs 122-126.
132 Exhibit 24932-X0141, Fortis argument, paragraph 113.
133 Exhibit 24932-X0141, Fortis argument, paragraph 114.
discussed the impact of AltaLink’s contribution proposal on Fortis’s parent from an earnings or ratings perspective, some of the reports took note of the fact that the AltaLink contribution proposal “freed up” equity that could be used to invest in Fortis parent’s higher-return U.S. businesses as a benefit of the change.134

119. AltaLink submitted that the potential for a customer contribution transfer would not be considered a new risk by the financial market and that Fortis’s failure to mention risks that could arise from an AESO contribution transfer in earlier financial statements indicates that Fortis did not consider the risk to be material. Furthermore, AltaLink submitted that as Fortis has now disclosed the AltaLink contribution proposal in its financial statements, the fact that there has not been a downgrade is telling.135

120. AltaLink also addressed Fortis’s reliance on a comment in a DBRS report to justify not removing “option 1” from consideration in light of its much higher cost than “option 2” in the context of the debt restructuring costs issue.136 AltaLink suggested that while DBRS indicated an expectation that Fortis would use proceeds from the AESO contribution transfer to reduce debt, the debt reduction did not have to happen immediately (i.e., Option 1) to avoid a downgrade.

121. AltaLink also submitted that Fortis’s suggestion in its response to a Commission IR (FAI-AUC-2020JUL27-002(b)(i)) that using the $321 million of regulatory UCC to shelter Fortis ratepayers from the statutory tax effects of the AltaLink contribution proposal would trigger an adverse credit market reaction should be disregarded. AltaLink indicated that this was contrary to the financial market’s general lack of concern with the effect of the AltaLink contribution proposal and because Fortis carries the $321 million on its balance sheet as a future liability and acknowledges it in its audited financial statements.137

122. Fortis submitted that AltaLink selectively quoted from the DBRS report to suggest minimal impact would arise from the adoption of Fortis’s “option 2” debt reduction approach. Fortis stated that AltaLink failed to acknowledge a passage that noted that despite the transfer not being expected to have a material impact on Fortis’s credit metrics, it showed “a pattern of the AUC’s inconsistent treatment with respect to [Fortis’s] past AUC-approved investments under the ACCP [AESO’s Customer Contribution Policy]. [emphasis removed]”138 Fortis submitted that “to the extent investors are concerned with the decisions of the AUC as it pertains to the treatment of utility investments; this is a concern that must be taken into account” and that investor confidence in Alberta’s regulatory regime is essential if Alberta ratepayers are to have access to low investment cost.139

123. In its reply argument, the CCA submitted that any adverse reaction by the financial market would already be evident. Given the fact that all parties acknowledged that the Commission’s findings are considered to be final, except in extraordinary circumstances, the

134 Exhibit 24932-X0143, AltaLink argument, paragraph 260.
135 Exhibit 24932-X0143, AltaLink argument, paragraph 266.
136 Exhibit 24932-X0057, FAI-AUC-2020JAN16-005, cited at Exhibit 24932-X0143, AltaLink argument, paragraph 254.
137 Exhibit 24932-X0143, AltaLink argument, paragraph 262.
138 Exhibit 24932-X0149, Fortis reply argument, paragraphs 76-77.
139 Exhibit 24932-X0149, Fortis reply argument, paragraph 78.
CCA submitted that it was highly unlikely that rating agencies would be waiting until after a R&V decision to issue a negative rating direction.\textsuperscript{140}

\textbf{Review panel findings}

124. The evidence does not support a conclusion that Fortis’s credit rating would necessarily be downgraded or that there would otherwise be an adverse market reaction if the review panel were to confirm the Decision as it relates to the AltaLink contribution proposal and the resulting transfer of AESO customer contributions from Fortis’s rate base. Rather, the evidence suggests that the implications for market perception depend largely on how Fortis and its parent manage the financial implications of the transaction. Accordingly, except as discussed in Section 4.3 above, the review panel placed limited weight on the risk of a credit downgrade in its overall analysis as to whether the Decision should be confirmed, varied or rescinded.

4.5 \textbf{Overlapping claims of entitlement to regulated returns in 2018, 2019 and 2020}

125. In its October 8, 2019, financial impact assessment (Table 1 above), Fortis included an allowance of between $36.4 million and $47.8 million for returns on AESO contributions for the years 2018 and 2019.

126. AltaLink’s October 31, 2019, financial impact assessment (Table 2 above) included no allowance for the cost of returns to Fortis during those years. AltaLink submitted that Fortis’s calculations incorrectly included both a return of contributions for Fortis and a return on contributions for AltaLink in 2019. AltaLink submitted that because the Commission has ruled that Fortis does not get this return, ratepayers should not pay twice.\textsuperscript{141}

127. In its November 7, 2019, reply submission, Fortis explained that a particular challenge posed by the implementation of the AltaLink contribution proposal arises from the fact that the effective date of the transfer, assumed by AltaLink to be December 31, 2017, does not recognize the recovery of return and depreciation expense associated with AESO contributions in 2018 and 2019 that Fortis would ordinarily recover from ratepayers. Fortis submitted that regardless of whether the transfer is valued at December 31, 2017, it could not practically occur until the end of 2019.

128. Fortis submitted that both AltaLink and Fortis may be \textit{prima facie} entitled to claim the return “on” as well as the associated return “of” (albeit at different depreciation rates) capital invested in AESO contributions over 2018 and 2019. Fortis indicated that it had financed the AESO contributions in the interim period between the effective date of the transfer on December 31, 2017, and the actual execution of the transfer, which at the time was assumed to be December 31, 2019, at the earliest. Given this, Fortis submitted that it would have been entitled to the return “on” AESO contributions in 2018 and 2019.\textsuperscript{142} Fortis further supported its position by noting that the hearing panel’s decision was not issued until September 22, 2019, almost two years after December 31, 2017.\textsuperscript{143}

129. Notwithstanding, in order to avoid a double-collection suggested by AltaLink, Fortis was prepared to allow AltaLink the return “of” the AESO contributions, via its lower depreciation

\textsuperscript{140} Exhibit 24932-X0144, CCA reply argument, paragraph 34.
\textsuperscript{141} Exhibit 24932-X0047, AltaLink October 31, 2019 response submission, Appendix A evidence, paragraph 9(f).
\textsuperscript{142} Exhibit 24932-X0050, Fortis November 7 reply submission, Appendix A evidence, paragraph 66.
\textsuperscript{143} Exhibit 24932-X0149, Fortis reply argument, paragraph 94.
rates, in 2018 and 2019 if the transfer was implemented. Fortis still insisted that it recover the return “on” those same contributions so that it was fairly compensated for the use of its capital in those years.144 145

130. AltaLink disagreed146 that both utilities could simultaneously be entitled to the return “of” or “on” invested capital in 2018 and 2019 and that neither changing the date of the transfer,147 nor splitting the returns148 between Fortis and AltaLink for 2018 and 2019 would provide ratepayers all of the benefits they would otherwise enjoy as approved by the hearing panel. It submitted that Fortis has no legal right to the return on its 2018 and 2019 contributions so that it was fairly compensated for the use of its capital in those years.

131. AltaLink also took exception to Fortis’s request that if the hearing panel’s decision was upheld, the implementation date should be January 1, 2021.150 It submitted that this would further benefit Fortis at ratepayers’ expense when the delays to date were attributed to Fortis’s failure to discuss the financial impacts on the record of Proceeding 22942.151

132. AltaLink proposed that Fortis pursue any carrying costs incurred between December 31, 2017, and the date of the refund through its PBR filings, as contemplated by the hearing panel at paragraph 1077 of Decision 22942-D02-2019.152

Review panel findings

133. For the reasons below, the review panel has determined that Fortis would have been entitled to carrying costs of at least $13.5 million in each of 2018 and 2019 under AltaLink’s contribution proposal. This $27 million in costs is additive to the incremental income tax (Section 4.1) and debt restructuring costs (Section 4.3) that the review panel has found would be incurred by Fortis and recovered from ratepayers if the hearing panel’s adoption of AltaLink’s contribution proposal had been upheld.

134. The review panel agrees with Fortis that determining the value of Fortis’s unamortized contribution balance as at December 31, 2017, but paying Fortis that balance at a later date, would have required Fortis to incur costs for which it should reasonably be compensated. Such compensation would reduce the financial benefit initially determined by the hearing panel.

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144 Exhibit 24932-X0050, Fortis November 7 reply submission, Appendix A evidence, paragraph 68.
145 The review panel notes that while the entries in for the line items “Return on AESO contributions to December 2019” associated with it “Option 1” and “Option 2 in its November 7, 2019, reply submission (i.e., Table 3 above) unchanged from the values shown in the corresponding lines of its October 8, 2019 financial impact analysis (i.e., Table 1 above), the review panel understands that Fortis incorporated this “splitting” proposal in its Table 3 analysis by reducing the “AML revenue requirement before tax” amounts for the years 2018 and 2019.
146 Exhibit 24932-X0072.01, PDF pages 6-10.
147 Exhibit 24932-X0072.01, PDF pages 10-15.
148 Exhibit 24932-X0072.01, PDF pages 15-17.
149 AltaLink indicated at one point in the proceeding, however, that it would be prepared to accept Fortis’s proposal of splitting the returns “on” and “of” AESO contributions for the years 2018 and 2019 as a means of concluding this matter. It did not, however, reaffirm this position in argument. (see Exhibit 24932-X0072, AML-AUC-2020JAN16-002(c), PDF page 16.)
150 Exhibit 24932-X0147, AltaLink reply argument, paragraph 98.
151 Exhibit 24932-X0143, AltaLink argument, paragraph 237.
152 Exhibit 24932-X0147, AltaLink reply argument, paragraph 102.
135. AltaLink argued that Fortis’s rates were interim and that there would be no “overlap” in the entitlement to regulated compensation for the period after December 31, 2017, AESO contribution balance valuation date. AltaLink also acknowledged, however, that Fortis could address the matter of compensation for the period after December 31, 2017, in accordance with paragraph 1077 of the Decision. The review panel considers that, contrary to AltaLink’s submission that the hearing panel’s findings in Section 8.1 of the Decision give sole entitlement to regulated returns after December 31, 2017, to AltaLink, the findings at paragraph 1077 expressly contemplated that further adjustments in Fortis’s favour could have occurred, if the review to be conducted in the context of PBR tariff processes were to determine that the cost was warranted.

136. In light of the foregoing, the review panel finds that for the purposes of examining the financial impact on ratepayers of the AltaLink contribution proposal, the cost of compensating Fortis for the carrying costs of the period between the December 31, 2017, valuation date and the date on which the transfer would occur is necessary.

137. The Commission sets carrying costs in accordance with Rule 023: Rules Respecting Payment of Interest. Section 3(e) of Rule 023 sets out that “interest will be paid using a rate equal to the Bank of Canada’s Bank Rate plus 1½ per cent.” Based on adding 1.5 per cent to the Bank of Canada rates for 2018-2019, and applying the resulting interest rate to the NBV of Fortis’s AESO contributions at December 31, 2017, of $403.789 million, the Commission has calculated carrying costs in each of 2018 and 2019 of $13.5 million.

138. The review panel notes that the carrying costs of $13.5 million in each of 2018 and 2019 are less than the amount that would be implied by Fortis’s proposal that it should at least enjoy the return “on” its investment in AESO contributions over the 2018 and 2019 period. As such, the $13.5 million amount in each of 2018 and 2019 that the review panel has included in its analysis should be considered a minimum valuation for costs related to the “overlap” issue.

4.6 Net book value of AESO contributions

139. In addition to the $83.6 million in savings to Fortis’s ratepayers that AltaLink submitted would result from the implementation of the AltaLink contribution proposal, AltaLink submitted that Fortis’s ratepayers would “also benefit by a further $31.8M [million] arising from the reconciliation of the utility to utility NBV transfer for a total benefit of $115.4 M.” AltaLink indicated that the $31.8 million was the difference between the NBV of $352.1 million as reported by Fortis and the NBV of $383.9 million as reported by AltaLink.

140. Details of the $383.9 million NBV show that it is the balance at December 31, 2019, and comprised (i) an opening NBV on January 1, 2018, of $378.9 million; plus (ii) net additions of $13.7 million in 2018; less (iii) depreciation expense of $10.3 million in 2018; plus (iv) net
additions of $12.6 million in 2019;\textsuperscript{160} less (v) depreciation expense of $11.0 million in 2019.\textsuperscript{161} It was noted that the depreciation expense rates were 2.56 per cent.\textsuperscript{162}

141. AltaLink submitted that its calculation reflected the hearing panel’s intent that depreciation rates should match the characteristics of the underlying assets in service; that is, transmission assets should not be depreciated as if they were distribution assets. Otherwise, AltaLink argued, Fortis would retain the benefit of its overcollection of depreciation to ratepayers’ detriment.\textsuperscript{163}

142. In its argument, AltaLink stated:

The amount of the refund under the New Policy [AltaLink contribution proposal] is based on AltaLink’s NBV. AltaLink’s NBV reflects the NBV of the transmission assets providing transmission service to Fortis’ ratepayers and underlying the tariff charge to the AESO. AltaLink’s NBV reflects the application of AltaLink’s transmission depreciation rates, which in turn reflect the average service life of the actual transmission assets. Fortis’ NBV, on the other hand, reflects a depreciation rate based on its distribution assets, which is inapplicable to the transmission assets underlying the customer contributions and makes no sense in the context of the New Policy.\textsuperscript{164}

143. Fortis rejected the reconciliation of the “utility to utility” NBV amounts, resulting in what AltaLink characterized as customer depreciation overpayments in the sum of $31.8 million, as misleading because only AltaLink’s depreciation rate was used in the calculation and only with respect to projects that have been energized. Fortis indicated that its actual NBV, as reported in its 2019 Rule 005\textsuperscript{165} report, is $372.9 million, which it said is the actual value of investments made by it.\textsuperscript{166}

144. Fortis submitted that its longstanding reporting and practice of amortizing its contributions once they are made\textsuperscript{167} reflects the fact that it does not control physical access to the transmission assets corresponding to the AESO contributions, and no consideration must be given to when these assets are placed into service. Fortis described AltaLink’s utility-to-utility reconciliation with its retroactive application of AltaLink’s depreciation rates in the determination of NBV as an attempt to inflate the apparent value of the AltaLink contribution proposal.\textsuperscript{168}

**Review panel findings**

145. The review panel finds that the $31.8 million of purported additional savings advanced by AltaLink are already accounted for, in part, in the $83.6 million savings identified by AltaLink (discussed above in Section 3) and that including these amounts in the net-benefit analysis would result in double counting. The other part of the $31.8 million savings arises by recalculating opening and closing balances as though the additions in 2018 and 2019 were

\textsuperscript{160} Exhibit 24932-X0076, worksheet AESO charges, Excel cell G9.

\textsuperscript{161} Exhibit 24932-X0076, worksheet AESO charges, Excel cell G14.

\textsuperscript{162} Exhibit 24932-X0076, worksheet AESO charges, Excel cell E14.

\textsuperscript{163} Exhibit 24932-X0143, AltaLink argument, paragraphs 228-229.

\textsuperscript{164} Exhibit 24932-X0143, AltaLink argument, paragraph 227.

\textsuperscript{165} Rule 005: Annual Reporting Requirements of Financial and Operational Results.

\textsuperscript{166} Exhibit 24932-X0149, Fortis reply argument, paragraph 91.

\textsuperscript{167} Exhibit 24932-X0149, Fortis reply argument, paragraph 87.

\textsuperscript{168} Exhibit 24932-X0149, Fortis reply argument, paragraph 92.
accounted for by AltaLink, and appears to disregard Fortis’s new capital additions, or the revenue provided under PBR to support these additions, over the period. This (excluding K-bar revenue from the calculation) is particularly difficult to reconcile with AltaLink’s submission, discussed below in Section 5.2, that additional savings can be identified by comparing Fortis’s K-bar revenue for AESO contributions over 2018-2022 with AltaLink’s actual and forecast costs over the same period.

146. The Commission notes that the $383.9 million is the NBV at December 31, 2019, as reported by AltaLink. The starting point for the calculation of the $383.9 million is the opening NBV on January 1, 2018, followed by the net additions in 2018 and 2019 and the depreciation expense amounts in 2018 and 2019. All of these figures are represented and used in the calculation of the $31.8 million for 2018 and the $32.6 million for 2019 shown in the first line, “AML revenue requirement before tax” in AltaLink’s revised Table 5, as included in Exhibit 24932-X0076 (reproduced in Table 4 above).

147. AltaLink described the $352.1 million as the NBV reported by Fortis. While AltaLink provided no direct link to show the end result of the calculation being $352.1 million, the Commission derived the number as follows: (i) an opening NBV on January 1, 2018, of $403.8 million;\(^{169}\) plus (ii) net additions of ($16.8) million in 2018;\(^{170}\) less (iii) depreciation expense of $17.6 million in 2018;\(^{171}\) less (iv) depreciation expense\(^{172}\) of $17.3 million in 2019.\(^{173}\)

148. The Commission does not accept AltaLink’s evidence that the $352.1 million is the NBV as reported by Fortis at December 31, 2019. Instead, the Commission finds that the $352.1 million is the NBV of Fortis as calculated by AltaLink. As noted above, Fortis has reported a NBV of $372.9 million.

149. In calculating what it determined to be the $352.1 million closing NBV at December 31, 2019, for Fortis, AltaLink only included ($16.8) million net additions in 2018 and zero net additions in 2019. These figures were sourced from the Fortis AESO contribution hybrid deferral account.\(^{174}\) AltaLink did not include the $36.2 million net additions for 2018 and the $54.4 million net additions for 2019 that were used by Fortis in calculating the figures included in line 2, “Reduction in base rates and K-bar (net of AESO Hybrid Deferral Account)” in AltaLink’s revised Table 5, as included in Exhibit 24932-X0076 (reproduced as Table 4 above). The differences in net additions for 2018 of $53.0 million and for 2019 of $54.4 million are included by Fortis as net additions in accordance with the revenue provided to Fortis under K-bar.\(^{175}\)

150. The review panel finds AltaLink’s assumption that the hearing panel implicitly approved a different NBV of the unamortized customer contributions through a utility-to-utility reconciliation is unfounded and cannot reasonably be read into the hearing panel’s decision.

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\(^{169}\) Exhibit 24932-X0076, worksheet Fortis Hybrid Deferral and KBar. The $403.8 million is the difference between the opening gross cost of $493.4 million in Excel cell E8 and the opening accumulated depreciation of ($89.6) million in Excel cell E13.

\(^{170}\) Exhibit 24932-X0076, worksheet Fortis Hybrid Deferral and KBar, Excel cell E28.

\(^{171}\) Exhibit 24932-X0076, worksheet Fortis Hybrid Deferral and KBar, Excel cell E33.

\(^{172}\) It was noted that the depreciation expense rates were 3.63 per cent.

\(^{173}\) Exhibit 24932-X0076, worksheet Fortis Hybrid Deferral and KBar, Excel cell F33.

\(^{174}\) Exhibit 24932-X0076, worksheet Fortis Hybrid Deferral and KBar, Excel cells E28 and F28, referencing Exhibit 24932-X0032.

\(^{175}\) Exhibit 24932-X0076, worksheet Fortis Hybrid Deferral and KBar, Excel cells E47 and F47.
Section 8 of the Decision is silent on how the balance of the unamortized amounts should be calculated at the time of transfer from Fortis to AltaLink; however, the review panel finds that it cannot be implied from the absence of specific guidance in the hearing panel’s reasons that it intended for the balances recorded by Fortis in accordance with existing and Commission approved practice to be restated at the time of transfer of the unamortized amounts to AltaLink. The review panel finds that to do so would in effect reach back and impose upon Fortis a requirement to have accounted for the AESO contributions in a way that was neither expected nor approved at the time the contributions were booked by Fortis.

151. This issue amounts to a fundamental disagreement between Fortis and AltaLink as to how, if the rate base transfer was to occur, the NBV of the customer contribution refund should be determined. AltaLink contends that Fortis’s NBV at December 31, 2019, is $352.1 million and bases its calculation on the following:

One of the Commission’s express reasons for approving the New Policy was that the New Policy “addresses the mismatch between the service life used for AltaLink’s tariff and the AESO contribution amortization rate used in Fortis’s tariff.” AltaLink agrees: the New Policy is designed to give ratepayers the benefit of AltaLink’s depreciation rate and lower cost structure. These parameters are reflected in the refund and all ratepayer benefits derived from the New Policy. The New Policy recognizes that since December 31, 2017 Fortis has overcollected $31.8M in depreciation from its ratepayers, corresponding to the difference between its depreciation rate and AltaLink’s. Under the New Policy, on receipt of the refund Fortis will refund this overcollection of depreciation back to its ratepayers.176 [footnotes omitted]

152. Fortis explained that it begins depreciating an AESO contribution when the payment is made and that whether a project is energized or not has no bearing on its NBV. It submitted that its actual NBV, as reported in its 2019 Rule 005 report, is $372.9 million, which it says is the actual value of investments made by it and that the suggested reduction by AltaLink of Fortis’s NBV by $31.8 million is the result of AltaLink’s recalculation of the NBV to include only energized projects, to exclude projects under construction, and to apply AltaLink’s depreciation rates to those assets.

153. The Commission has subsequently found in Section 5.2 that the savings calculated by AltaLink by replacing Fortis’s projected K-bar amounts with the actual cost of energized projects will not be accepted as recognized savings. The same finding applies to AltaLink’s proposed utility-to-utility reconciliation of the NBV of the unamortized customer contributions. The $31.8 million savings is the difference that results when AltaLink compared its NBV at December 31, 2019, which was calculated using the actual cost of energized projects in accordance with cost-of-service regulation, to the Fortis NBV at December 31, 2019, which AltaLink calculated by excluding Fortis’s K-bar amounts for 2018 and 2019.

154. The NBV of the AESO contributions recorded by Fortis reflect actual contributions paid by Fortis and actual depreciation expenses recorded as approved by the Commission over the years and regularly reported to the Commission in Rule 005 filings.

176 Exhibit 24932-X0143, AltaLink argument, paragraph 228.
155. The review panel therefore finds that the $31.8 million amount identified by AltaLink should not be included in the calculation of potential financial benefits to ratepayers that would be obtained by adopting the AltaLink contribution proposal.

5 Benefits of AltaLink contribution proposal from 2018 to 2022

5.1 Fortis proposal to change amortization rate applied to AESO contributions

156. In its October 8, 2019, supplemental submission, Fortis asserted that the hearing panel erred when it relied upon the fact that AltaLink matches the service life characteristics of the assets to the depreciation rate as a factor supporting adoption of the AltaLink contribution proposal, without first considering any other means of addressing this issue.177

157. Fortis submitted that it did not take issue with the hearing panel’s determination that depreciation rates should match the underlying service life of utility assets and that amortization rates for construction contributions should reflect the average service life of transmission assets. Fortis argued, however, that the hearing panel erred when, without any further assessment, it relied on this issue of amortization and the service life of assets to justify adoption of the AltaLink contribution proposal.178

158. As further described in the evidence supporting its supplemental submission,179 Fortis submitted that it can adjust the applicable amortization rates to match the service life of the transmission assets for which it has made or will make AESO contributions.180 Fortis indicated that this approach, which would result in the same short-term savings to ratepayers as compared to AltaLink’s approach, is a simple adjustment and could be adopted without the disruptions to the existing treatment of AESO contributions required by the AltaLink contribution proposal.181

Review panel findings

159. The majority of the approximately $40 million in savings to ratepayers over the 2018-2022 period upon which the hearing panel relied in making its determination in the Decision, relate to the application of AltaLink’s lower depreciation rate to the AESO contributions over that period.182

160. The review panel directs Fortis to implement its proposal to adjust the applicable amortization rate for its AESO contributions to match the service lives of the transmission assets. Specifically, Fortis must apply the same depreciation/amortization parameters that would have been applied by AltaLink to these AESO contributions had the Decision not been varied. Fortis is directed to file this adjustment by way of an update to its 2021 annual PBR rate adjustment application, currently before the Commission in Proceeding 25843, on or before November 16,

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177 Exhibit 24932-X0012, Fortis supplemental submission, PDF page 23.
178 Exhibit 24932-X0012, Fortis supplemental submission, paragraph 52.
179 Exhibit 24932-X0012, Fortis supplemental submission, Appendix A evidence, paragraphs 19-21.
180 Exhibit 24932-X0012, Fortis supplemental submission, paragraph 53.
181 Exhibit 24932-X0012, Fortis supplemental submission, paragraph 54.
182 In Proceeding 22942, the hearing panel considered AltaLink evidence that included a table filed in support of its evidence (Proceeding 22942, Exhibit X0345, Table 3) that identified potential savings over the 2018-2022 period totalling to $39.3 million or approximately $40 million. Of the $39.3 million total, the majority of savings calculated by AltaLink (approximately $33.7 million) related to potential depreciation savings. The remainder (approximately $5.6 million) related to net savings from interest and return.
2020. Fortis shall use the methodology established in Decision 24609-D01-2019 to incorporate this change into the calculation of its PBR rates and any required adjustments to 2018, 2019 and 2020 rates.

5.2 Additional potential financial benefits from adoption of AltaLink contribution proposal in 2018-2022

161. AltaLink’s calculation of the impact of adopting its contribution proposal on its own revenue requirement over the 2018-2022 period was approximately $52.7 million lower than Fortis’s calculation. In its October 31, 2019, response submissions, AltaLink submitted that the difference between its revised revenue requirement before tax number (the lower $171.4 million amount), and Fortis’s number for AltaLink’s revenue requirement before tax ($224.1 million) is due to the fact that Fortis did not reflect Fortis’s 2020 annual PBR rate adjustment filing.

162. In its November 7, 2019, reply submission, Fortis indicated that it did not incorporate any forecasts in its 2020 annual PBR rate adjustment application apart from K-bar amounts that it had determined using approved net capital additions from the 2013-2017 PBR term, escalated by I-X and Q. Fortis was unable to determine how AltaLink generated this revised forecast and submitted that the effect of incorporating this new, lower forecast is to create the appearance of a corresponding and arbitrary decrease in AltaLink’s forecast revenue requirement over the term as compared to Fortis. The Commission thereafter identified these types of discrepancies in its December 20, 2019, correspondence in which it advised parties that significant uncertainty remained with respect to key elements of the evidence required to make a decision and that additional information was required.

163. AltaLink explained the basis for this difference in response to AML-AUC-2020JAN16-001. AltaLink stated that it forecast the savings that will be realized by Fortis ratepayers from the replacement of Fortis’s projected K-bar amounts with the actual cost of energized projects, which involved replacing the revenue provided to Fortis under the parameters of its 2018-2022 PBR plan with actual net additions up to October 31, 2019, and a forecast of net additions for November 1, 2019, to December 31, 2022.

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184 This $52.7 million difference was initially identified in the difference between the first row of Fortis’s October 8, 2019, financial impact assessment reproduced in Table 1 above (i.e., the row titled “AML revenue requirement before tax”) and totalled $224.1 million as compared with the corresponding row of AltaLink’s October 31, 2019, financial impact assessment reproduced in Table 2 above totalled $171.4 million over the same period.

185 Exhibit 24932-X0047, AltaLink response submissions, Appendix A (AltaLink evidence), paragraphs 28-30.

186 Exhibit 24932-X0050, paragraphs 32-33.

187 Exhibit 24932-X0053, paragraph 17.

188 Exhibit 24932-X0072.01, AML-AUC-2020JAN16-001.

189 Exhibit 24932-X0072.01, AML-AUC-2020JAN16-001: “For net additions, AltaLink replaced Fortis’ K-Bar amounts with actual net additions based on the Fortis projects on AltaLink’s book for 2018 and 2019 up to October 31, 2019, when AltaLink’s submissions were filed.”

190 Exhibit 24932-X0072.01, AML-AUC-2020JAN16-001: “AltaLink then forecast net additions for 2020-2022 based on: 1) projects under construction as of October 31, 2019; 2) projects that Fortis submitted a SASR [system access service request] for and are in the AESO connection process as of October 31, 2019; and 3) an estimate of future projects in 2022. AltaLink then accounted for the revenue requirement using AltaLink’s amortization rates and AltaLink’s weighted average cost of capital.”
164. In its argument, the CCA recommended that the Commission approve the transfer of all future AESO contributions to AltaLink as the benefits of the transfer would outweigh the costs.\(^{191}\) The UCA in its argument supported the adoption of AltaLink’s contribution proposal, in part due to its view that the AltaLink contribution proposal would provide savings to customers over the 2018-2022 period.\(^{192}\)

165. In reply, Fortis submitted that there are no cost savings to customers associated with the AltaLink contribution proposal.\(^{193}\) Fortis stated that the UCA’s argument lacks the depth of analysis, and its conclusions that the AltaLink contribution proposal will result in savings to customers are incorrect and not well reasoned.\(^{194}\)

**Review panel findings**

166. The review panel does not accept the $52.7 million as established savings that ratepayers would benefit from over the 2018-2022 period if the AltaLink contribution proposal had been applied effective December 31, 2017.

167. AltaLink’s calculation seeks to effectively audit a single category of capital costs, currently managed under the terms of an established PBR plan, by comparing the revenue provided to Fortis under the terms of that plan with a combination of actual and forecast costs prepared by AltaLink. This type of approach is inconsistent with the well-established PBR principle that a utility’s costs under PBR are disconnected from its revenues,\(^{195}\) and that a utility has the flexibility to manage its costs efficiently subject to the requirement to continue to provide safe and reliable service. As discussed by the Commission in Decision 20414-D01-2016 (Errata):

19. … with the exception of specifically approved adjustments, a utility’s revenues are no longer linked to its costs during the PBR term, thereby enhancing incentives for the distribution utilities to improve their productivity.

…

26. During a PBR term, the linkage between a utility’s revenues and costs of providing utility service is intentionally broken to provide the distribution utility with the flexibility to manage its business in an environment which fosters incentives to seek out and realize process, operational, capital and financial efficiencies so as to reduce costs while maintaining existing service levels …

168. The Commission explained in Decision 2012-237 how these incentives are intended to work:

17. Establishing prices in this way during the term of a PBR plan creates stronger incentives for the companies to improve their efficiency through cost reductions and other actions because they are able to retain the increased profits generated by those cost

\(^{191}\) Exhibit 24932-X0137, CCA argument, paragraphs 90-91.

\(^{192}\) Exhibit 24932-X0139, UCA argument, paragraph 26.

\(^{193}\) Exhibit 24932-X0149, Fortis reply argument, paragraph 74.

\(^{194}\) Exhibit 24932-X0149, Fortis reply argument, paragraphs 97-99 and 102.

\(^{195}\) Decision 20414-D01-2016 (Errata): 2018-2022 Performance-Based Regulation Plans for Alberta Electric and Gas Distribution Utilities, Proceeding 20414, paragraph 148: “PBR plans derive their incentives from the decoupling of a utility’s revenues from its costs as well as from the length of time between rate cases and not from the magnitude of the X factor (to which the stretch factor contributes).”
reductions longer than they would under cost of service regulation, especially with rates under cost of service regulation that are re-set every two years …

169. If a utility operating under a PBR framework contemplated that a specific revenue line item could be subject to differential treatment if that revenue, considered in isolation, varied from costs established using a cost-of-service approach relying heavily on another party’s forecast, this could introduce perverse incentives and unintended consequences. For example, the utility may seek to ensure its spending on each line item matches or comes close to matching the revenue it is provided under the PBR framework, which would undermine the incentive for the utility to seek productivity improvements and cost savings for the ultimate benefit of the utility and its customers.

170. Accordingly, the Commission will not reconnect the revenues and costs of Fortis in the absence of a compelling and justifiable reason to do so. AltaLink has not justified on what basis the Commission can compare a single source of revenue under PBR with costs that have or are forecast to be incurred under a cost-of-service methodology.

171. The review panel notes that even if it were to accept these purported savings in its assessment of the overall financial benefit analysis, which it has not, the savings, as stated by AltaLink, would not exceed the amount of tax liability discussed in Section 4.1. Accordingly, consideration of these amounts would not change the Commission’s conclusions in this decision in any event.

6 Legal issues raised by Fortis

172. Fortis submitted that the hearing panel’s decision in Section 8 of the Decision was legally unsound for a number of reasons and, on that basis, coupled with the significant costs to ratepayers resulting from the rate base transfer, should be set aside. Prominent among Fortis’s submissions was the purported retroactive effect of the Decision and the lack of jurisdiction to make what it described as a confiscation of its property. Other arguments included the Commission’s misapprehension over which party, Fortis or AltaLink, had the onus of proof in establishing whether to accept or reject the rate base transfer proposal and the hearing panel’s consideration of the rate base transfer proposal in an AESO tariff proceeding when the AESO did not support the proposal. Fortis also argued that the hearing panel’s decision was discriminatory to a pure-play DFO as other DFOs were not affected in the same way because of their common ownership with TFOs.

173. AltaLink fully responded to each of Fortis’s legal arguments, concluding that the hearing panel had not made any legal errors in arriving at its decision.

Review panel findings

174. The review panel’s decision to rescind the rate base transfer is based solely on its conclusion that the costs to ratepayers outweigh the benefits, and that Fortis can achieve a significant majority of the $40 million benefit initially found by the hearing panel, by adjusting its depreciation rate on the unamortized balance of customer contributions to match the service lives of the transmission assets. The review panel also finds that Fortis would incur significant incremental income tax expenses, carrying costs and debt restructuring costs, which would ultimately be recovered from ratepayers, if the Decision were confirmed. The review panel has
not based its decision on any legal argument advanced by Fortis and finds that it is not necessary to consider these arguments in this decision.

7 Cost responsibility

175. The CCA argued that Fortis’s filing of evidence in the R&V application instead of in the main proceeding, when it had the opportunity, is symptomatic of utilities taking advantage of the information asymmetry that exists between utilities and other interveners. The CCA explained that utilities provide less information initially, then in the event of an unfavourable decision, provide more to establish their case. The result is greater regulatory burden and costs for all participants and in particular for interveners with limited resources.

176. To deter such conduct, the CCA proposed that Fortis pay all the costs of the parties participating in the R&V regardless of the outcome of this proceeding.

Review panel findings

177. The CCA’s submissions on costs were made in its argument filed in this R&V proceeding. The UCA supported the CCA’s argument, but no other party addressed cost responsibility either in argument or reply.

178. On October 15, 2020, the Commission issued a process announcement in respect of the CCA’s application for reimbursement of its costs of participation in the R&V proceeding. The costs claim application is being considered under Proceeding 25946.

179. In addition to reviewing and considering the CCA’s costs claim in Proceeding 25946, the Commission will consider any submissions of interested parties in respect of what party or parties should bear the costs incurred. The CCA may make its argument and adduce any related evidence in support thereof in Proceeding 25946.

180. Given that the Commission will address cost responsibility in Proceeding 25946, the review panel makes no determination on this issue in this decision.

8 Conclusions and future process

181. The review panel has held that the financial benefit of $40 million over the five years in question is entirely eroded by directing Fortis to adjust the applicable amortization rate for its AESO contributions to match the service lives of the underlying transmission assets and by the consequential costs that would be incurred by Fortis and ultimately visited upon ratepayers arising from the rate base transfer. The costs come in the form of additional income taxes, carrying costs and debt restructuring costs that Fortis would have had to collect from its customers if the hearing panel’s decision had been confirmed. AltaLink has not persuaded the review panel that any additional benefits to ratepayers, not considered by the hearing panel, offset these costs. As a result, the review panel has rescinded the Decision, which contemplated a transfer of approximately $400 million of AESO contributions from Fortis to AltaLink. Given these reasons, there is no compelling rationale to implement a new contribution policy, or if there is a need, that the policy commence on January 1, 2018.
182. Nonetheless, the review panel is concerned that absent the material financial benefit upon which the hearing panel, in effect, exclusively relied for its adoption and commencement date of the proposed customer contribution policy, certain of the hearing panel’s other findings bear further consideration to allow the Commission to determine whether there is a need for a new AESO customer contribution policy. Further, the review panel notes that AltaLink’s contribution proposal had limited input from other DFOs and TFOs in the Proceeding 22942 even though the new policy could have potentially affected them.

183. As indicated, the review panel is setting aside the commencement of any new customer contribution policy on January 1, 2018, and will schedule a separate proceeding shortly which will (i) focus on the legal basis of the current AESO customer contribution policy as it pertains to all TFOs and DFOs; (ii) consider whether there is a need for a new policy, including consideration of AltaLink’s contribution proposal; and (iii) if approved, set the date on which any new policy would commence. All issues that were raised before the hearing panel on the merits of AltaLink’s contribution proposal compared to the current AESO customer contribution policy will be examined including a commencement date if a new policy is approved. If a new policy is approved, the commencement date would be on a prospective basis. All DFOs and TFOs, the AESO and other interested parties will be expected to participate in this proceeding. Relevant submissions from Proceeding 22942, the current R&V proceeding as well as other evidence and submissions that parties wish to file will be considered.

184. The schedule for this proceeding will be as follows:

<table>
<thead>
<tr>
<th>Process step</th>
<th>Deadline*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice of proceeding</td>
<td>November 10, 2020</td>
</tr>
<tr>
<td>Evidence from TFOs, DFOs and any other interested parties**</td>
<td>December 2, 2020</td>
</tr>
<tr>
<td>IRs on evidence</td>
<td>December 18, 2020</td>
</tr>
<tr>
<td>IR responses</td>
<td>January 6, 2021</td>
</tr>
<tr>
<td>Reply evidence from TFOs, DFOs and any other interested parties</td>
<td>January 15, 2021</td>
</tr>
<tr>
<td>Oral argument</td>
<td>January 21-22, 2021</td>
</tr>
</tbody>
</table>

*Submissions are due by 4 p.m. on the dates indicated.
**Any party wishing to rely on evidence from proceedings 22942 or 24932 should refile those portions of evidence on which it intends to rely on the record of the new proceeding.

9 Order

185. It is hereby ordered that:

(1) The hearing panel’s findings in sections 8.1.3.5, 8.1.4, the last bullet of paragraph 1078, and paragraph 1079 of Section 8.1.5 of Decision 22942-D02-2019 are rescinded.

(2) FortisAlberta Inc. shall apply the same depreciation/amortization parameters that would have been applied by AltaLink Management Ltd. to these AESO contributions had Decision 22942-D02-2019 not been varied by way of an update to its 2021 annual PBR rate adjustment application, currently before the Commission in Proceeding 25843, on or before November 16, 2020.
Dated on November 4, 2020.

Alberta Utilities Commission

(original signed by)

Kristi Sebalj
Panel Chair

(original signed by)

Neil Jamieson
Commission Member
# Appendix 1 – Proceeding participants

<table>
<thead>
<tr>
<th>Name of organization (abbreviation)</th>
<th>Company name of counsel or representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fortis Alberta Inc. (Fortis)</td>
<td>Osler, Hoskin &amp; Harcourt LLP</td>
</tr>
<tr>
<td>AltaLink Management Ltd. (AltaLink or AML)</td>
<td>Borden, Ladner Gervais LLP</td>
</tr>
<tr>
<td>Consumers’ Coalition of Alberta (CCA)</td>
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<tr>
<td>Alberta Electric System Operator (AESO)</td>
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<tr>
<td>Alberta Federation of Rural Electrification Associations (AFREAs)</td>
<td>Main Street Law LLP</td>
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<tr>
<td>EPCOR Distribution &amp; Transmission Inc.</td>
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<tr>
<td>Office of the Utilities Consumer Advocate (UCA)</td>
<td>Brownlee LLP</td>
</tr>
<tr>
<td></td>
<td>Russ Bell &amp; Associates Inc.</td>
</tr>
</tbody>
</table>

Alberta Utilities Commission

Commission panel
- K. Sebalj, Panel Chair
- N. Jamieson, Commission Member

Commission staff
- D.A. Larder, QC (Commission counsel)
- J. Halls
- D. Mitchell
- E. Deryabina
- L. Diebolt
Appendix 2 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. The review panel directs Fortis to implement its proposal to adjust the applicable amortization rate for its AESO contributions to match the service lives of the transmission assets. Specifically, Fortis must apply the same depreciation/amortization parameters that would have been applied by AltaLink to these AESO contributions had the Decision not been varied. Fortis is directed to file this adjustment by way of an update to its 2021 annual PBR rate adjustment application, currently before the Commission in Proceeding 25843, on or before November 16, 2020. Fortis shall use the methodology established in Decision 24609-D01-2019 to incorporate this change into the calculation of its PBR rates and any required adjustments to 2018, 2019 and 2020 rates.

Paragraph 160