

# Bulletin 2023-08

December 14, 2023

## Amendments to AUC Rule 016

The AUC has amended [Rule 016](#): *Review of Commission Decisions* in accordance with Section 10 of the *Alberta Utilities Commission Act*, which allows the AUC to make rules respecting the review of any decision or order made by it, including the criteria that the AUC may use to determine whether to review a decision or order. The revised rule is effective February 1, 2024, and applies to review applications filed on or after this date.

The AUC's amendments to Rule 016 include:

- Introducing minimum information requirements that require a review applicant:
  - If alleging an error of fact, to identify the alleged error of fact.
  - If alleging an error of mixed fact and law where the legal principle is not readily extricable, to identify the legal test and facts that are at issue, and explain how the AUC erred in applying the legal test to those facts.
- Changing the criteria under subsection 5(1)(a) from a balance of probabilities to a palpable and overriding error.
- Codifying the AUC's discretion to dismiss a review application, with or without further process, if it does not comply with minimum information requirements, and to dismiss a review ground, with or without further process, if it is out of scope of the permissible grounds for review.
- Introducing page limits for response submissions.

All materials related to Rule 016, including a blackline version of the changes, can be found in the [Consultations library](#) on the AUC's website.

Prior to making the amendments, the AUC held a consultation process and received submissions from stakeholders.

Some stakeholders requested additional information explaining why the AUC sought to change the criteria that it may use to determine whether to review a decision or order under subsection 5(1)(a) of Rule 016. In 2021, the AUC amended subsection 5(1)(a) to remove errors of law or jurisdiction. The scope of subsection 5(1)(a) is therefore limited to an error of fact, or mixed fact and law where the legal principle is not readily extricable. The AUC has determined that a high level of deference to the original decision maker is appropriate where errors of fact, or mixed fact and law where the legal principle is not readily extricable, are alleged, and that the palpable and overriding standard is therefore appropriate going forward. The AUC has included a plain language definition of palpable and overriding as part of subsection 5(1)(a).

Section 2 of Rule 016, which concerns the Commission's ability to review a decision on its own motion, remains substantially the same.

With respect to the AUC's powers to dismiss a review application or review ground, some stakeholders expressed concern that the AUC would not provide reasons when exercising this power. The AUC confirms that it will provide reasons if it dismisses a review application or a review ground; however, it may not provide further process before doing so. The AUC has revised the language in Rule 016 to clarify its intention.

The AUC has also made minor wording changes to Rule 016 to improve transparency, clarity, and simplicity.

Any questions related to this bulletin should be directed to Jaimie Graham at [jaimie.graham@auc.ab.ca](mailto:jaimie.graham@auc.ab.ca).

Alberta Utilities Commission