

In the Court of Appeal of Alberta

Citation: AltaLink Management Ltd v Alberta Utilities Commission, 2026 ABCA 106

Date: 20260407

Docket: 2501-0233AC;
2501-0234AC;
2501-0235AC;
2501-0236AC

Registry: Calgary

Docket: 2501-0233AC

Between:

Altalink Management Ltd., in its capacity as General Partner of Altalink L.P.

Applicant

- and -

**Alberta Utilities Commission, Alberta Electric System Operator, Office of the Utilities
Consumer Advocate, and FortisAlberta**

Respondents

Docket: 2501-0234AC

and Between:

Epcor Distribution & Transmission Inc.

Applicant

- and -

**Alberta Utilities Commission, Alberta Electric System Operator, Office of the Utilities
Consumer Advocate, and FortisAlberta**

Respondents

Docket: 2501-0235AC

and Between:

ATCO Electric Ltd.

Applicant

- and -

**Alberta Utilities Commission, Alberta Electric System Operator, Office of the Utilities
Consumer Advocate, and FortisAlberta**

Respondents

Docket: 2501-0236AC

and Between:

ENMAX Power Corporation

Applicant

- and -

**Alberta Utilities Commission, Alberta Electric System Operator, Office of the Utilities
Consumer Advocate, and FortisAlberta**

Respondents

**Reasons for Decision of
The Honourable Justice Tamara Friesen**

Applications for Permission to Appeal

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The Honourable Justice Tamara Friesen**

[1] AltaLink Management Ltd., EPCOR Distribution & Transmission Inc., ATCO Electric Ltd., and ENMAX Power Corporation have applied for permission to appeal a decision of the Alberta Utilities Commission (the Commission). The decision concerns the statutory interpretation of the *Electric Utilities Act*, SA 2003, c E-5.1 (the *Act*) and the way certain contributions are accounted for by electric utility operators. For the following reasons, permission to appeal is granted to all applicants.

Background

[2] This proceeding arises in the complex landscape of electrical utilities regulation. A detailed overview of the regulatory framework giving rise to the proposed appeals is outlined in *AltaLink Management Ltd v Alberta Utilities Commission*, 2023 ABCA 325 at paras 9-27 (*AltaLink 2023*). Briefly, transmission lines connect power plants, which produce most of Alberta's electricity, to electric distribution systems, which deliver electricity to end-use customers.

[3] The transmission grid (the high-voltage power lines transporting electricity over long distances) is owned, operated and maintained by a class of electric utilities called transmission facility owners (Transmission owners). The applicant AltaLink is a Transmission owner. Distribution systems (the low-voltage lines that connect to the transmission grid and deliver electricity directly to customers) are owned and operated by distribution facility owners (Distribution owners). FortisAlberta Inc., a respondent on the application, is a Distribution owner. The remaining applicants, EPCOR, ATCO, and ENMAX, operate as both Transmission and Distribution owners. The respondent the Alberta Electric System Operator (System operator) is a not-for-profit statutory body that oversees and operates Alberta's entire energy grid, including generators, and transmission and distribution facilities.

[4] Distribution owners charge end users a rate that is based on fixed and variable amounts (transmission rate). Included in the transmission rate is a tariff amount set by the System operator (operator's tariff). The operator's tariff is paid to the System operator, who then pays the Transmission owner a transmission tariff. The transmission tariff is intended to compensate Transmission owners for building, maintaining and operating the transmission grid, and for enabling Distribution owners to access that grid.

[5] The need for new or upgraded transmission facilities is sometimes driven by end-use customer demand, in which case a Distribution owner will make a service request to the System operator. If approved, the System operator will direct a Transmission owner to construct and operate a new transmission facility. The Distribution owner then attempts to recover the cost of accessing the new or upgraded transmission facility from its customers through an amount determined by the System operator, referred to as a contribution in aid of construction

(contribution). These contributions, and how they are dealt with in relation to Transmission and Distribution owners, form the subject matter of the proposed appeal.

[6] Historically, the contributions collected by Distribution owners under the operator's tariff were considered an investment in a utility-owned asset and included as part of the Distribution owner's approved capital structure. Characterizing the contributions in that way entitles Distribution owners to a return under s 122(1)(a) of the *Act*, which states that the "Commission must have regard for the principle that a tariff approved by it must provide the owner of an electric utility with a reasonable opportunity to recover...the costs and expenses associated with capital related to the owner's investment in the electric utility..." [emphasis added].

[7] In 2021, following a challenge to the existing contribution regime by a Transmission owner, the Commission determined that while the legislative framework permits the existing tariff recovery mechanism through contributions, those contributions are not an investment in a utility-owned asset by either the Transmission or the Distribution owner (2021 Decision). This characterization prevented both Transmission and Distribution owners from earning a return pursuant to s 122(1)(a) of the *Act*.

[8] Several electric utilities sought permission to appeal the 2021 Decision, which was granted: *AltaLink Management Ltd v Alberta (Utilities Commission)*, 2022 ABCA 18 (*AltaLink 2022*). In para 4 of that decision, Slatter J succinctly summarized the dispute as follows:

The underlying economic issue is which type of entity, if any, is entitled to a return on the investment or capital involved in constructing those facilities: the Distribution Facility Owner, the Transmission Facility Owner, or neither? Both were prepared to provide the necessary investment, because they welcomed earning the return that would result. This economic motivation generated the Commission's concern that there is a built in incentive for utilities to maximize capital investments, because the higher the investment, the greater the capital base on which they can earn a return.

[9] On appeal, this Court quashed the 2021 Decision due to procedural fairness concerns and remitted the other issues back to the Commission for reconsideration: *AltaLink 2023* at paras 99-101.

[10] On July 22, 2025, the Commission released Decision 29006-D01-2025 (2025 Decision). The Commission's conclusions in the 2025 Decision largely mirror its conclusions in the 2021 Decision. Specifically, the Commission found:

- (i) The System operator is permitted under the operative legislative regime to establish a policy requiring Distribution owners to pay contributions in relation to transmission facility construction or upgrades triggered by system access service requests.

- (ii) The Commission is not compelled by legislation to require Transmission owners to pay or repay these contributions, to include the amounts in their capital base, or to earn a return on such expenditures.
- (iii) The Commission did not err in law by treating contributions paid by Distribution owners as expenditures rather than as capital amounts entitled to a return. These contributions are not investments in utility-owned assets by either Transmission or Distribution owners and thus do not qualify for a return under s 122(1)(a) of the *Act*.

[11] AltaLink, EPCOR, ATCO, and ENMAX apply for permission to appeal the 2025 Decision. The application is opposed by FortisAlberta and the System operator. The Office of the Utilities Consumer Advocate and the Commission are proposed respondents on the appeal but do not take a position on the application.

Analysis

[12] Pursuant to s 29 of the *Alberta Utilities Commission Act*, SA 2007, c A-37.2, permission to appeal is required for decisions of the Commission on questions of law or jurisdiction. Issues of fact, mixed fact and law, and policy are not subject to appeal.

[13] The test for granting permission to appeal engages various factors depending on the circumstances of the application. Frequently considered factors are:

- (a) whether the question of law is of general importance, or only of interest to the immediate parties;
- (b) whether the point raised is of significance to the action itself, or is merely interlocutory, or may not affect the ultimate outcome of the action;
- (c) whether the appeal raises a serious, arguable point of law;
- (d) in the case of ongoing proceedings, whether an appeal would unduly hinder the progress of the action.

AltaLink 2022 at para 13, citing ***Wood Buffalo (Regional Municipality) v Alberta (Energy and Utilities Board)***, 2007 ABCA 192 at para 5.

[14] When considering an application for permission to appeal, it is not the role of the judge to determine the overall merits; however, the proposed issue must be more than theoretically arguable. Success or failure on regulatory permission to appeal applications also depends on whether “the issues are sufficiently important that the Court of Appeal should say whether [the Commission] was right or wrong”: ***AltaLink 2022*** at paras 13-14.

[15] Each of the four permission to appeal applications outline slightly different proposed grounds of appeal. In general, each application frames its grounds around two issues: 1) the “Allocation Issue”, which concerns the Commission’s interpretation s 122 of the *Act* and whether Transmission owners should be entitled to earn a return on contributions paid by Distribution owners in support of transmission facility construction or upgrade, and 2) the “Return Issue”, which concerns the Commission’s determination that contributions should be treated as expenditures which must be recovered in the year they are incurred, rather than as capital amounts which would be entitled to earn a rate of return amortized over time.

[16] FortisAlberta argues the Allocation Issue is not an extricable question of law. It states because the Commission followed the modern approach to statutory interpretation in interpreting s 122 of the *Act*, the issue is more accurately framed as a question of mixed fact and law. The System operator argues the proposed questions do not raise serious, arguable questions of law and the applicants stand no real chance of convincing this Court that the Commission’s decision with respect to those questions is incorrect.

[17] The proposed issues for appeal are the same ones that were before this Court in 2023, wherein the Court concluded both issues raised questions of law: *AltaLink 2023* at para 40. In the 2025 Decision, the Commission acknowledged that the proposed issues were framed as questions of law, while also asserting that the consideration of the questions does not occur in a vacuum. The Commission stated in its decision that it “focused its analysis on the relevant legislation, rather than the history, objectives or merits of the [System operator] policy.”

[18] FortisAlberta may be right that the Allocation Issue is ultimately a question of mixed fact and law subject to a more deferential standard of review, but I am not prepared to make that determination at this stage. Based on the information before me, I am satisfied the questions posed by the applicants are likely questions of law of significant general importance raising serious, arguable points of law. On this latter point, I note that the Commission’s interpretation of the operative provisions of the *Act*, namely that neither Transmission or Distribution owners are eligible to earn a return on contributions and that such contributions are treated as expenditures that must be recovered in the year incurred rather than as capital and amortized over time, are both marked departures from how these provisions were previously interpreted and applied in the context of the historical electrical utility regime in Alberta.

[19] The System operator argues further that allowing permission to appeal will result in additional delay that will unduly hinder the progress of the already long-delayed holistic tariff review process. It does not cite any case law for the proposition that a proposed regulatory review is the type of “action” contemplated by the fourth branch of the test for permission to appeal. I accept the appeal will continue to hinder the progress of the tariff review, but I am not satisfied that this fact has any bearing on the question of whether permission to appeal should be granted in this case. The System operator’s valid concern regarding the impact of any further delay does not

override the importance of the questions posed by the applicants and the necessity of ensuring the Commission has correctly interpreted the *Act*.

Decision

[20] In conclusion, I grant all applicants permission to appeal Commission Decision 29006-D01-2025 on the following issues:

- (i) Allocation Issue: Did the Commission err in its interpretation of the *Electric Utilities Act* by determining that transmission facility owners do not have to pay or repay contributions in aid of construction pursuant to the Alberta Electric System Operator Policy, thereby preventing them from including the resulting costs in their capital base and earning a return on the expenditure?
- (ii) Return Issue: Did the Commission err in directing that contributions in aid of construction paid under the Alberta Electric System Operator Policy be treated as expenses rather than as capital amounts on which an owner of an electric utility (or some component of the utility system) is entitled to earn a return?

[21] The parties are invited to write to me should they require any procedural assistance with moving this matter forward which cannot be obtained from the case management officer.

Applications heard on March 18, 2026

Reasons filed at Calgary, Alberta
this 7th day of April, 2026

Friesen J.A.

Appearances:

J.M. Liteplo

J. Hulecki

for the Applicant, AltaLink Management Ltd.

J. Hulecki

for the Applicant, Epcor Distribution & Transmission Inc.

E.B. Mellett, KC

T. Myers (no appearance)

for the Applicant, ATCO Electric Ltd.

D.M. Wood

N. Ettinger

for the Applicant, ENMAX Power Corporation

R. Watson

N. A. Fitz-Simon

for the Respondent, Alberta Utilities Commission

G. Barnett (no appearance)

K. Long (no appearance)

M. Parker

N. Green (no appearance)

for the Respondent, Alberta Electric System Operator

K. Rutherford

C.J. Auch

for the Respondent, Office of the Utilities Consumer Advocate

A.P. Wilson, KC

E.J. Baker (no appearance)

for the Respondent, FortisAlberta